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The European Climate Law – a new legal revolution towards climate neutrality in the EU

Europejskie prawo dla klimatu – Nowa rewolucja prawna
w kierunku neutralności klimatycznej w Unii Europejskiej

JAKUB PRZYBOROWICZ

ORCID: 0000-0003-1090-9333, jprzyborowicz@gmail.com

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Abstract: The European Climate Law (EU Climate Law) shall become a critical element of future EU regulations and law-making process based on the Green Deal (the EU climate and energy strategy) which is the result of the COP21 and the Paris Agreement signed during the conference of the United Nations by its worldwide members. With the current climate challenges, the EU wishes to keep the leading role and set trends towards a radical decrease in GHG emissions.

It is especially for this reason that a new regulatory framework was prepared with a comprehensive support of various EU policies. Accordingly, as a result of those expectations, the European Commission proposed the EU Climate Law endorsed by a strong political signal from the European Parliament and the Council with its declaratory conclusions. This new legal act with its formula refers to many legal acts and the EU policies such as “Fit for 55%” package, and many other energy- and climate-related laws. It developed into an essential signal towards the EU Member States to keep comprehensive policies and plans towards climate neutrality. It should be underlined that this act will be a new ‘opening’ towards upcoming legislative packages and potential financial instruments to come. Occasionally, the EU policymakers use a controversial nomenclature defining the Regulation as “The Climate Treaty” to emphasize the act’s significance and its special regulatory status.

The aim of the article is to present and clarify the background of the law-making process of the EU Climate Law and discuss the ongoing wave of the EU’s policies transformation towards net zero economy as well as to underline its importance for the future generations.

Keywords: EU Climate Law, Green Deal, Climate Change, Green Transition, Fit for 55%, climate neutrality, net zero emission economy

Streszczenie: Europejskie prawo o klimacie stanie się kluczowym elementem przyszłych regulacji UE i procesu stanowienia prawa. Zielony Europejski Ład jako strategia klimatyczno-energetyczna UE stała się istotną podstawą prawa klimatycznego a jest między innymi wynikiową zawartych podczas COP21 porozumień paryskich. W obliczu aktualnych wyzwań klimatycznych UE chce zachować rolę i trend lidera w radykalnym zmniejszeniu emisji gazów cieplarnianych na Świecie. Szczególnie z tego powodu potrzebne są nowe ramy regulacyjne. W wyniku tych oczekiwań Komisja Europejska przygotowała Prawo o klimacie wsparte silnym sygnałem politycznym płynącym z Parlamentu Europejskiego i Rady Europejskiej, która poprzez podjęte konkluzje w grudniu zeszłego roku w których podjęła stosowne konkluzje.

Ponadto ten nowy akt prawny swoją formułą odwołuje się do szeregu aktów prawnych i polityk unijnych, głównie regulacji z zakresu unii energetycznej i wielu innych. Stał się również ważnym sygnałem dla państw członkowskich UE i prowadzenia kompleksowych polityk i planów na rzecz neutralności klimatycznej. Należy również podkreślić, że prawo o klimacie jest swego rodzaju otwarciem na nowe pakiety legislacyjne i potencjalne przyszłe instrumenty finansowe. Czasami decydenci unijni używają terminu „Traktat klimatyczny”, co prawda nie ma to odzwierciedlenia w stanie faktycznym ale w ten sposób próbuje się podkreślić niespotykaną do tej pory kompleksowość dokumentu.

Prawo o klimacie zostaje tutaj przybliżone jako kompleksowe narzędzie prawne w kierunku transformacji ekonomicznej UE, która ma doprowadzić do zeroemisyjnej gospodarki.

Słowa kluczowe: Europejskie Prawo o Klimacie, Europejski Zielony Ład, Zmiany Klimatu, Zielona Transformacja, dopasowany do 55%, neutralność klimatyczna, gospodarka netto zeroemisyjna.

1. The background and role of international policies towards the EU Climate Law

European Communities (actually all the activities were taken over by the European Union after revision of the Treaties) with the European Commission's leading role as the EU legislator are responsible for the preparation, and subsequently – implementation of the EU climate and energy policies. The European Community established its first programme towards reducing CO₂ emissions already in 1991, by that action attempting to fight against climate change, among others, by publishing Community strategy to limit carbon dioxide emissions and improve energy efficiency .

More than 20 years ago, the European Commission established the European Climate Change Programme (ECCP) to help identify the most environmentally oriented, cost-effective policies and measures that can require obligations to

cut greenhouse gas emissions at the European level (Rusche 2010: 6349). The reason behind this legal tool came out as a result of the Kyoto Protocol of 1997 – which is the United Nations Framework Convention on Climate Change that committed industrialized countries and economies in transition to limit and reduce greenhouse gases (Skjærseth 2021: 28). The first ECCP (2000-2004) examined an extensive range of policy sectors and instruments with potential for reducing greenhouse gas emissions. It became the EU's Sixth Environmental Action Programme (2002-2012) and Sustainable Development Strategy afterwards. These activities became a vital part of the future policies and critical elements of the *acquis communautaire*.

The document which set up the first international programme for reducing GHG emission was published in 2000 by the European Commission. The so-called “Green Paper on greenhouse gas emissions trading within the European Union” established the year 1991 as the reference year starting with which the reduction targets would be counted. By means of this document a new instrument was created (the emission trading scheme), which was supposed to significantly reduce the industrial emissions.

The first directive concerning the reduction of GHG emissions was published in 2003 (Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community) and entered into force in 2005. So far there have been four revisions of this document published, each establishing new, more ambitious targets. The very last emission reduction level was set up at 55% (Siddi 2020: 5). It became clear that the EU wanted to play the role of an international leader in fight against climate actions and simultaneously underlined and reinforced its position within the United Nations Climate Change Conference of the Parties (COP). The main gamechanger, as far as the relevant policies implementation is concerned, was the conference COP21 in Paris, where parties co-signed the so-called “Paris Agreement” as a legally binding international treaty on climate change adopted by 196 Parties (countries) on 12 December 2015. It entered into force on 4 November 2016. The agreement appointed global warming limitation goals to well below 2, preferably to 1.5 degrees Celsius, compared to the pre-industrial levels. It established a five-year cycle for stocktaking and raising ambition.

To achieve this long-term climate goal, countries nowadays aim to reach global peaking of greenhouse gas emissions as soon as possible to achieve a climate-neutral world by the mid-century. The agreement signed by the parties requires economic and social transformation based on the best available technologies. However, it was agreed that all parties of the convention by 2020 would prepare and implement internally long-term greenhouse gas emission development strategies (LT-LEDS). The rulebook for implementing the Paris

Agreement was completed by the COP24 climate conference in 2018, except for cooperative approaches (including international emissions trading). The COP25 conference in 2019 failed to conclude with an agreement. This issue and the raising of ambitious goals will be on the agenda of the COP26 conference in Glasgow, initially scheduled for November 2020 but now postponed until November 2021.

It should be underlined that by introducing the proposal of the Climate Law, the EU has indeed become a leading party in the world as far as the fight against climate change is concerned. However, the Paris agreement cannot bring the necessary developments without engagement on the part of the US and China. We still need to remember about G20 countries, especially Brazil, Australia, Saudi Arabia and Russia which should be obliged to get involved in the process as well. Furthermore, it is of paramount importance to build up the confidence and trust amongst developing countries through the EU climate diplomacy so that they can get involved in the UN process and the US's climate action and engender the fight to significantly decrease the GHG emissions (Dröge, Schrader 2021: 2). One of the positive aspects that requires attention is the fact that the US has recently revised its climate action principles and hopefully will remain a reliable long-term partner at the UN level.

2. European legislative initiatives with the political directions

According to the European law-making and decision-making process, the legislative initiative is one of the European Commission's competencies; however, in the situation of the milestone changes in the European policy, strong political directions are needed. Due to the course of the new political direction adopted on 11 November 2018, the European Commission accepted the Communication entitled "Clean Planet for all" – a European strategic long-term vision for a prosperous, modern, competitive, and climate-neutral economy. The communication, in its Article 2 on the climate neutrality objective, aims for a prosperous, modern, competitive, and climate-neutral economy by 2050, analysing scenarios to achieve net-zero GHG emission by 2050. In this understanding, literally it became a strong signal regarding the implementation of the Paris Agreement. In this respect, in order to make an extensive revision of the climate and energy policy the European Council's meeting, held on 12 December 2019, adopted Conclusions endorsing climate-neutral EU economy by 2050, which gained support of all the Member States. This was as well the follow up of the COP21 and the Paris Agreement. According to Chapter I of the Conclusions, the Commission was appointed by the Member States to prepare a proposal for the EU's long-term strategy with a comprehensive climate policy.

Within the EU agenda it was clarified that climate neutrality requires overcoming severe challenges and that the European Commission is requested to prepare a directory document in order to launch the implementation of the policy.

What should be highlighted is that energy and climate legislative package was introduced into the EU comprehensive solutions for the reduction of greenhouse gas emissions not only by the EU ETS, but also by introducing other legislative tools encompassing the so-called non-ETS sectors: transport, agriculture, waste, industrial emissions outside the ETS, communal and housing sector with buildings, small sources, households, services, etc. In the entire European Union, the share of non-ETS emissions accounts for approximately 55% of the total emissions. However, it differs from the EU ETS, which relates directly to the emissions from individual installations. The EU legislation currently regulates this area of emissions and imposes emission reduction targets on the Member States divided into two trading periods 2013-2020 and 2021-2030.

3. European Green Deal

In terms of the comprehensive approach towards setting up future climate and environmental steps, on 11 December 2019 the European Commission published its Communication setting out a European Green Deal for the European Union (EU). This policy declared commitment towards climate and environmental-related challenges. It entailed a comprehensive approach for the EU economic growth, for new business models and markets, new jobs and technological development together with research, development and innovation policies. It became a basis for upcoming regulatory changes in the legislation and newly drafted policies published in 2021 and planned for 2022, contributing to the fulfilment of the climate neutrality objectives.

By means of this document, the European Commission responds to the number of challenges by preparing updated energy and economy transformation in the EU into fair and modern community, based on the net emissions economy in 2050. The Communication strictly endorses the transformation needs to be based on a fair and legally just approach. What brings and becomes an essential factor with future legislative acts is that the European Commission declares the willingness of active public participation and confidence in the transition, mainly by preparing a number of public consultations, and further fact-based investigations (impact assessments) performed by independent consultants.

The Institute for European Environmental Policy within its policy study underlined 8 dimensions of sustainable economy where the Green Deal ad-

dresses a number of issues not only regarding decreasing CO₂ emissions, but also focuses on R&D programmes, sustainable finance and long term changes to the economy. We can acknowledge that scientists, experts and the private sector that undersigned the Green Deal, will require large scale investments and transformation of the economies and industries in every single Member State (Charveriat, Bodin 2020: 7-26). Steering away from carbon-intensive economy together with investment based on the business renewable technologies are becoming an important contribution of the European Companies towards decarbonisation process (Rajavouri 2020: 6). Concurrently, European Commission keeps on working on various forums, providing a possible dialogue with the industry and stakeholders' representatives mainly during conferences, workshops and public hearings. The international content still stays a vital factor where national, regional, and local authorities need to be engaged. With the publication of the Communication, it was declared that all the EU's actions and policies would have to contribute to the European Green Deal objectives. The Commission became responsible for proposing the first European so-called EU Climate Law. It was as well decided that the key element of the economy transformation should lead the way to climate neutrality. Additionally, the European Commission presented a comprehensive plan to increase the EU's greenhouse gas emission reduction target for 2030 to 55% compared with the 1990 levels, in a responsible way. European Parliament prepared and adopted its resolution on 15 January 2020, advocating for the necessary transition towards a climate-neutral society by 2050.

As the key result of the Green Deal, on 14 July 2021, the European Commission published "Fit for 55 package" – a comprehensive legislative package mainly defining new legislative proposals such as Phase four of the EU Emissions Trading System (ETS) directive which introduces carbon pricing principle and lowers the cap on emissions from certain economic sectors every year. The Commission also proposed to increase the size of the Innovation and Modernisation Funds.

Other parts of the "Fit for 55" package relate to various areas such as: assigning strengthened reduction targets to each Member State for buildings, road and domestic maritime transport, agriculture, waste and small industries by means of the Effort Sharing Regulation; strenghtening the CO₂ emission performance standards for new passenger cars and new light commercial vehicles in road transport; creating the EU Forest Strategy aiming at improving the quality, quantity and resilience of EU forests; RED III Directive proposing an increased target to produce 40% of our energy from renewable sources by 2030; the Energy Efficiency Directive proposing to set a more ambitious binding annual target for reducing energy use at the EU level; the Alternative

Fuels Infrastructure Regulation bringing a new approach in the transport sector to install charging and fuelling points at regular intervals on major highways: every 60 kilometres for electric charging and every 150 kilometres for hydrogen refuelling; the ReFuelEU Aviation and Maritime Initiative obliging fuel suppliers to blend increasing levels of sustainable fuels and using zero-emission technologies; the Revised Energy Taxation Directive proposing to align the taxation of energy products with the EU energy and climate policies; the Carbon Border Adjustment Mechanism responsible to put a carbon price on imports in order to reassure that the emission reductions contribute to a global emissions decline. All the above-mentioned legal acts show the complexity of the process of emissions reduction for the whole Community.

4. The European Climate Law practical aspect

The relevant legislative proposal for the European Climate Law was published by the European Commission on 4 March 2020. It has its legal basis under Articles 191, 192 and 193 of the Treaty on the Functioning of the European Union (TFEU). The above-highlighted articles define the EU's competences in the area of the climate change, in particular Article 191 point 1 which reads: "Union policy on the environment shall contribute to pursuit of the following objectives: promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change".

This became a basis for the European Climate Law as a unique legislative act setting the objective for the EU to become climate-neutral by 2050. Moreover, this Regulation started to be treated within the EU institutions informally as a framework act – it was unofficially called "the climate treaty". As the primary approach, this document sets up several different essential areas of the Union activities related to the environment, climate, and energy issues. As the first element, it determines an emissions trajectory for the period between 2030 and 2050, and what should be emphasized, the Regulation obliges the Member States to build on their climate change measures (Sikora 2021: 688). The framework regulation establishes a milestone towards consistency with existing legislation and, in that respect, amends Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action. It also exerts a considerable impact on several European Green Deal Initiatives, including the "Fit for 55" legislative package.

On 17 September 2020, following an impact assessment presented in the 2030 climate target plan, the Commission amended the proposal to introduce the updated 2030 climate target of a net reduction of at least 55% of the EU's

GHG emissions compared to the 1990 levels, which was defined in Article 1 of the Regulation, together with the equivalent of the limitation of 225 million tonnes of CO₂. By June 2021, the Commission was expected to propose revisions of the critical EU climate and energy legislation in line with the revised 2030 target. The EU Climate Law regulation is the first comprehensive set of legally binding EU-wide common target of net-zero GHG emissions by 2050 defined as well in Article 1 and prepared by the EC according to Article 10 on indicative voluntary roadmaps towards achieving the climate-neutrality. To make better the coordination between the EU and individual Member States, the EU with current legislation sets governance framework for the energy union and climate action based on a comprehensive impact assessment and taking into account its analysis of the integrated national energy and climate plans submitted to the Commission

With a view to achieving the climate-neutrality objective the EU will be obliged to set up a 2040 target. It was defined in Article 4 that within six months from the first global stocktake referred to in Article 14 of the Paris Agreement, the Commission shall make a relevant legislative proposal allowing just and socially fair transition for all Europeans.

According to Article 6 of the Regulation, by 30 September 2023, and then every five years, the Commission shall perform the assessment of national measures identifying bases on the National Energy and Climate Plans (NECPs) or the Biennial Progress Reports. The Commission shall submit the conclusions of that assessment, together with the State of the Energy Union Report prepared in the respective calendar year, following Article 35 of Regulation (EU) 2018/1999. The proposed Regulation shall require EU institutions and Member States to take measures necessary to achieve the collective climate-neutrality objective, taking into account fairness and solidarity. The conclusion of the assessment of national measures shall be included in the annual State of the Energy Union Report.

According to Article 290 of the Treaty on the Functioning of the European Union, all powers should be delegated to the Commission. Especially referring to Article 3 of the Regulation, the Commission can set up the trajectory to reach carbon-neutrality by 2050, starting with the 2030 target. While preparing the delegated act, a broad range of factors, including cost-effectiveness, competitiveness of the EU economy, fairness and solidarity, a just and socially fair transition, and technological, scientific, and international developments, need to be adapted. According to Article 9, the Commission will be allowed to adopt delegated acts for an indeterminate time. What should be emphasized, the European Parliament and the Council will hold additional supervisory control over the European Commission. Due to the Interinstitutional Agreement of

13 April 2016 on Better Law-Making, the EC shall consult experts designated by each Member State. The delegated act shall enter into force if neither the Parliament nor the Council object within two months.

What is of crucial importance, Article 5 point 2 obligated the EC to adopt a Union strategy on adaptation to climate change in line with the Paris Agreement. Moreover, point 4 defines new power of the Commission to assess any draft measure or legislative proposal in order to be consistent with the climate-neutrality objective. On the power of Article 11 the Regulation gives more in depth delegation of the obligations as well to the Member States and other parties “directly pointing out the need for a multilevel climate and energy dialogue under national rules, in which local authorities, civil society organization, the business community, investors and other relevant stakeholders, and the general public are able to actively engage and discuss the achievement of the Union’s climate-neutrality objective. Article 5 point 5 indicates that one year after its entering into force, the EC will be obliged to adopt guidelines setting out common principles and practices for the identification, classification and prudential management of material physical climate risks when planning, developing, executing and monitoring projects and programmes for projects. With this power we can definitely underline that any new policy shall not be drafted within the EU without compliance with the Green Deal and by that, with the Paris Agreement. Article 6 point 4 of the Regulation highlights as well that the budgetary measures need to fulfil the 2030 and 2040 targets, allowing the EU carbon neutrality in 2050.

As a final result, Article 8 defines an indicative, linear trajectory as a pathway for the net emissions at the Union level, which links the Union 2030 climate target, the Union 2040 climate target, when adopted, and the climate-neutrality objective set out in Article 2(1).

What was newly brought with the agreed text was Article 10 a) that established a European Scientific Advisory Board on Climate Change – a body consisting of 15 senior scientific experts covering a broad range of relevant disciplines in order to serve as a point of reference on scientific knowledge relating to climate change and support the process of implementation of the EU decarbonisation targets.

To be absolutely confident about policy consistency following Article 10 of the Regulation, the Commission shall prepare indicative voluntary roadmaps towards achieving the climate-neutrality objective engaging in the preparations different sectors or the so-called EU economy. Having fulfilled the above, Article 15 sets up the obligation for every Member State to prepare and submit to the Commission its long-term strategy by January 2029 and every 10 years,

with a 30-year perspective and being consistent with the Union's climate-neutrality objective.

5. Legislative process

Considering the current state of affairs, information included in this academic text refers to the advancement of negotiations as of 29 March 2021. Simultaneously, the legislative procedure refers to the European Parliament and the Council negotiations (trialogues) based on the equal footing, formerly called 'Ordinary Legislative Procedure' (previously co-decision). With the National Parliament's role, nine parliamentary assemblies completed the scrutiny of the proposal, and ten others have commenced a scrutiny. Three parliamentary assemblies raised subsidiarity concerns regarding the delegated act and power given to the Commission setting up the emissions trajectory.

The first presentation of the Regulation within the Council was set up on 5 March 2021. In contrast, the relevant body was the Environment Council which, on 23 October 2020, reached an agreement on a partial general approach – mainly proposing linear emissions trajectory linking the intermediate targets and the 2050 climate neutrality simultaneously setting up and *sine qua non* objective in order to target fair and cost-effective society. The Council's proposal gives the EC a direct obligation to regularly review/assess the consistency of the EU measures, draft measures, and legislative proposals in addition to climate neutrality. Due to the decision made by Conference of Committee Chairs (CCC) of the European Parliament the lead was given to the Committee on Environment, Public Health and Food Safety (ENVI). The Committee on Industry, Research, and Energy (ITRE) became associated under Rule 57 of the European Parliament rules of procedure. The report adopted by the plenary on 11 September 2020 established the negotiating point with the Council held by the Portuguese Presidency to the EU Council.

The final compromise between the Council (represented by the Portuguese Presidency) and the EP has been achieved after the 5th round of negotiations (trilogues) with the European Commission's participation. The Regulation, being complex and controversial, seems to be one of the most difficult as far as the negotiation process is concerned in the climate and energy legislation. While the Regulation gave a substantial amount of power to the EC with the delegated act and the European Parliament proposed even more ambitious CO₂ reduction targets, reaching another agreement became very difficult. The European Parliament put a strong effort towards an independent scientific advisory body to keep the EU on its targets together with defining a greenhouse gas emissions budget to inform future EU climate targets.

The complexity of the Regulation covers financial aspects as well as contains many references to the Sustainable Finance regulation. The legal action aims to establish a common European standard with unified EU taxonomy to set up an environmentally sustainable economic activity for investment purposes. The typical standardization-related role is to decide which investments would be considered sustainable to ensure that investors support low emissions enterprises. A project that will not fulfil the requirements of green factor will still be eligible for receiving financing, but the financial instruments shall not be granted on preferable loan options. With the Regulation, the European Commission received several responsibilities with a number of delegated acts to be prepared mainly with the factors introduced to the taxonomy. The regulatory framework is now in preparation by the relevant European Commission bodies.

The Council and the European Parliament reached a provisional political agreement on the proposal on 21 April 2021. As a result, the European Parliament during the plenary session on 24 June 2021 adopted the legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending the Regulation. The procedure became finalised by the Council's adoption of the EU Climate Law proposal on 28 July 2021, ending the adoption procedure and setting into legislation the objective of a climate-neutral EU by 2050. As it was underlined at the beginning, the EU Climate Law was a priority for the Portuguese Presidency that terminated its mandate on 30 June 2021. We are waiting now for the document to be signed and published in the Official Journal, before entering into force.

6. Possible future impacts

As a next step, in response to the Green Deal and with reference to net zero economies by 2050, the European Commission will publish a legislative package to achieve those ambitious plans. However, the Commission will need to review the relevant EU legislation for achieving these targets. Following this timeline, on 19 October 2020, the Commission adopted its Work Programme for 2021, announcing the preparation of the “Fit for 55 packages”. The new comprehensive legislation will bring a solution for the decarbonization process, creating a revolutionary approach towards improvements for renewable energy sources and new gases to the European economy, together with framing the transitional role for natural gas and new gases in the European Energy sector and the EU economy. The whole process commenced on 14 July 2021.

7. Concluding remarks

With the political situation and international climate-oriented agenda of the European Commission, after receiving political support from the Council's conclusions, they decided to prepare one joint comprehensive legal act covering several issues and delegating responsibilities to prepare a thorough legislation. As a framework act, for the first time in the EU history, the Climate Law regulation has set up so many different essential aspects of the energy and climate policy to the EU activity.

What needs to be emphasized is that the European Commission will receive as well a lot of power with the delegated acts in order to be sure that the Member States shall implement all proposed targets and introduce changes to their national economies and policies. The document's revolutionary aspect comes with the establishment of one common European goal of the CO₂ decrease with the trajectory to be set up with the NECPs. As far as the sustainable finance is concerned, this document will decide about green-oriented investments in the EU. The further step shall consist in revision of the EU ETS system together with decarbonisation of the natural gas energy sector. For the second half of the 2021, the European Commission has planned to publish a second part of the legislative package (a set of regulations, directives, impact assessments) defining future EU energy mix and preferable options of energy production and different industries based on natural gas as a source of energy.

The post COVID-19 pandemic situation in the UE even strengthened the need for the implementation of the more ambitious and comprehensive climate legislation. However, taking into consideration the national policies and their fossil fuel dependant economies, it became more challenging for a number of the Member States. In order to implement those policies in cost effective and reliable a manner, the European Commission needs to bring forward fact-based financial tools. With the beginning of the legislative process an in-depth debate will need to be initiated among the European Parliament and the Council, together with Slovenian Presidency's activity and the ones that will follow. It is of utmost importance to safeguard two dimensions in this climate battle: the leadership of the EU in keeping climate goals on the international area but simultaneously maintain the competitiveness of the EU economy in the globalised market. With the current situation we will be most probably taking part in the most challenging policy making process that commenced in the last decade, having in mind its influence it may have on the EU till the mid-21st century.

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