

# The European Climate Law: Strengthening EU Procedural Climate Governance?

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## ABSTRACT

In 2021, the European Union (EU) adopted the so-called European Climate Law (ECL), enshrining in law the 2050 climate-neutrality objective and upgraded 2030 emission reduction target. The ECL bears the hallmarks of what we term ‘procedural climate governance’, which comprises the regulatory frameworks, instruments, institutions and processes that shape substantive climate policies and their implementation. This article identifies seven key functions of procedural climate governance—target-setting; planning; monitoring and evaluation; climate policy integration; scientific expert advice; access to justice; and public participation—and uses these for critically assessing the ECL. We argue that while the ECL has significantly strengthened important aspects of EU procedural climate governance, further reforms are needed for the EU to develop and implement the substantive policies towards a climate-neutral and climate-resilient economy and society and to bolster public support and ownership of the transition. The upcoming reviews of the ECL and the Governance Regulation provide a critical opportunity for strengthening procedural climate governance in the EU.

**KEYWORDS:** access to justice, climate governance, climate neutrality, EU climate law, Paris Agreement, throughput legitimacy

## 1. INTRODUCTION

In April 2021, the European Union (EU) adopted a Regulation commonly known as the European Climate Law (ECL).<sup>1</sup> The ECL enshrines in law the goals for the EU to become

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<sup>1</sup> Parliament and Council Regulation 2021/1119 of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’) [2021] OJ L243/1 (ECL).

climate neutral by 2050 and to reduce its net greenhouse gas (GHG) emissions by at least 55% from 1990 levels by 2030. The ECL—alongside the Regulation on the Governance of the Energy Union and Climate Action (Governance Regulation)<sup>2</sup>—establishes a regulatory framework for the implementation and further development of climate policy in the EU, with a view to achieving the Union's mid- to long-term climate targets.

Like most national framework climate laws, the ECL bears the hallmarks of what we term 'procedural climate governance'. This comprises the instruments, institutions and processes that shape substantive climate policies and their implementation.<sup>3</sup> Procedural climate governance consists of a range of elements, such as target-setting, planning and monitoring and evaluation. It also includes features related to the quality of climate governance, such as access to justice, inclusiveness and public participation, and independent scientific advice. Procedural climate governance therefore has the potential to strengthen the throughput legitimacy<sup>4</sup> of EU climate change law and help overcome what Fisher has criticised as the EU's 'linear', output-oriented approach.<sup>5</sup> To the extent it is effective, procedural governance forms an essential part of a successful response to climate change by aligning governance structures with core features of the climate challenge, such as its long-term, dynamic, uncertain, complex and cross-sectoral nature.<sup>6</sup>

Building on earlier work developing the concept of procedural climate governance,<sup>7</sup> this article identifies its seven key functions, and uses these as an analytical lens for critically assessing the ECL and its contribution to procedural climate governance in the EU. In doing so, the article seeks to improve understanding of the 'largely uncharted legal territory' of EU climate change law,<sup>8</sup> with a specific focus on the ECL, which—withstanding its importance as an overarching legal framework for the future development of EU climate change law—has thus far received limited scholarly attention.<sup>9</sup> Potential reasons for this limited scholarly attention to the ECL include its procedural focus, which adds a new dimension to EU climate change law and is possibly not yet fully understood by legal scholars. Our analysis focuses primarily on climate change *mitigation* governance, although the ECL also introduces elements of procedural climate governance for *adaptation* to climate change.<sup>10</sup>

We start by discussing in Section 2 how and why the ECL—along with the Governance Regulation—constitutes the core of the EU's legal framework for procedural climate governance. In Sections 3–8, we analyse the extent to which the ECL advances six functions of procedural climate governance, namely: target-setting (Section 3); monitoring and evaluation

2 Parliament and Council Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action [2018] OJ L328/1 ('Governance Regulation').

3 Brendan Moore and others, 'Transformative Procedural Climate Governance: Mechanisms, Functions and Assessment Criteria: Deliverable 5.1' (4iTraction 2023), <<https://www.ecologic.eu/sites/default/files/publication/2023/33007-Report-2023-DS-1-Transformative-procedural-climate-governance.pdf>> accessed 18 December 2023.

4 Vivien Schmidt and Matthew Wood, 'Conceptualizing Throughput Legitimacy: Procedural Mechanisms of Accountability, Transparency, Inclusiveness and Openness in EU Governance' (2019) 97 Pub Admin 727.

5 Liz Fisher, 'Challenges for the EU Climate Change Regime' (2020) 21 German LJ 5.

6 On the nature of climate change as a 'super wicked' problem, see Kelly Levin and others, 'Overcoming the Tragedy of Super Wicked Problems: Constraining Our Future Selves to Ameliorate Global Climate Change' (2012) 45 Pol'y Sciences 123.

7 Moore and others (n 3).

8 Marjan Peeters, 'EU Climate Law: Largely Uncharted Legal Territory' (2019) 9 Clim L 137.

9 The few academic publications on the ECL include, for example: Ana Cardoso and Carlos Abreu Amorim, 'European Climate Law: Real Changes or Postponed Future?' (2021) 7 Unio – EU LJ 138; Beatriz Pérez de las Heras, 'European Climate Law(s): Assessing the Legal Path to Climate Neutrality' (2021) 21 Rom J Eur Aff 19; and Christina Tvarno, 'The New Era of Climate Law in Denmark and in the EU' (2022) 28 EPL 101.

10 These include (1) a qualitative goal for the relevant EU institutions and Member States to 'ensure continuous progress in enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change'; (2) a requirement for the Commission and Member States to adopt adaptation strategies; and (3) a requirement to 'work towards better integration of adaptation to climate change in a consistent manner in all policy areas'; see ECL (n 1) art 5. In any case, most of the provisions analysed in this article cover both mitigation and adaptation. For an analysis of the ECL's adaptation provisions, see Andreas Buser, 'Towards a Climate Resilient European Society: Objectives and Principles of EU Climate Adaptation Law', Berlin e-Working Papers on European Law Nr. 138 (2022) 5.

(Section 4); climate policy integration (Section 5); scientific expert advice (Section 6); access to justice (Section 7); and inclusiveness and public participation (Section 8) and conclusion (Section 9).

## 2. THE EUROPEAN CLIMATE LAW AND PROCEDURAL CLIMATE GOVERNANCE

### 2.1 Procedural Climate Governance

As outlined above, the ECL develops the legal framework for what can be termed the EU's procedural climate governance. The notion of procedural governance is related to the distinction between substantive and procedural policy measures. Whereas substantive climate policy instruments, such as the EU emissions trading system, aim to directly mitigate GHG emissions, procedural climate governance instead sets the overarching goals for substantive climate policy and puts in place the instruments, institutions and processes for planning, implementing, enforcing and adjusting substantive climate policies.<sup>11</sup> Procedural climate governance is closely related to throughput legitimacy, which relates to the quality of governance, notably with respect to transparency and accountability, as well as inclusiveness and openness.<sup>12</sup> As Fisher has argued, 'ensuring that the challenges of climate change are met' requires shifting the traditional emphasis away from the EU's input and output legitimacy towards its throughput legitimacy, including 'a focus on how disruption is managed as fairly as possible, on how disputes are resolved, and on how consensus is built'.<sup>13</sup>

The growing importance of procedural climate governance is underscored by the proliferation of national framework laws on climate change, especially in Europe.<sup>14</sup> Following the example of the 2008 UK Climate Change Act,<sup>15</sup> EU Member States with framework climate laws now include Austria, Bulgaria, Denmark, Finland, France, Germany, Ireland, Malta, the Netherlands, Spain and Sweden.<sup>16</sup> Such national framework climate laws commonly incorporate elements of procedural climate governance, making national climate targets legally binding through domestic law<sup>17</sup> and establishing governance procedures and institutional responsibilities relating to climate policy planning, monitoring and reporting. Many such laws also include provisions for scientific advisory bodies, as well as for public participation, transparency and accountability.<sup>18</sup>

Here, we identify seven key functions of procedural climate governance.<sup>19</sup> First, *medium- and long-term targets* play an important role in guiding the development of substantive climate policies, offering direction over a longer period and improving legal certainty.<sup>20</sup> In addition, they can play a critical role in ensuring that the global carbon budget is distributed fairly between generations and countries. Second, medium- and long-term climate policy *planning* is crucial in view of the long-term perspective needed to effectively respond

11 See also Azad Singh Bali and others, 'Procedural Policy Tools in Theory and Practice' (2021) 40 Pol'y & Society 295.

12 As defined in Schmidt and Wood (n 4) 727.

13 Fisher (n 5) 8.

14 See Matthias Duwe and Nicholas Evans, 'Climate Laws in Europe: Good Practices in Net-Zero Management' (Ecologic Institute 2020); Jennifer Huang, 'Exploring Climate Framework Laws and the Future of Climate Action' (2020) 38(2) Pace Envtl L Rev 285; Thomas L Muinzer (ed), *The Emergence, Form and Nature of National Framework Climate Legislation* (Hart 2020). The procedural turn in domestic climate governance also reflects the growing 'proceduralisation' of international climate change law. See generally Jutta Brunnée, *Procedure and Substance in International Environmental Law* (Brill 2020).

15 Sarah L Nash, Diarmuid Torney and Simon Matti, 'Climate Change Acts: Origins, Dynamics, and Consequences' (2021) 21 Clim Pol'y 1111, 1112.

16 Duwe and Evans (n 14) 10.

17 *ibid* 8.

18 *ibid*.

19 See Moore and others (n 3); Sebastian Oberthür and others, 'Towards an EU Climate Governance Framework to Deliver on the European Green Deal' (Brussels School of Governance 2023).

20 Matthias Duwe and Ralph Bodle, 'Paris Compatible Climate Acts?' in Muinzer (n 14) 43, 52. See also Chris Hilson, 'Hitting the Target? Analysing the Use of Targets in Climate Law' (2020) 32 JEL 195.

to the climate crisis. Its main functions relate to aligning substantive policies with climate targets and for engaging the public and scientific experts in policy instrument choice and design.<sup>21</sup> Increasingly, planning must also consider the need for a just transition and any adverse and unequal socioeconomic consequences of climate policies on individuals and communities.<sup>22</sup> Third, arrangements for *monitoring and evaluation of implementation*—providing for enforcement where needed—are key for enabling climate governance to take stock of progress and ensuring that substantive policies are delivered. Related to this function are legal mandates and procedures for modifying and re-aligning substantive climate policies with climate targets in case of insufficient progress. Fourth, the integration of climate objectives into other policy areas (i.e., *climate policy integration*) is important in view of the cross-sectoral nature of the climate change challenge and the whole-of-government approach needed to respond to it.<sup>23</sup> Fifth, *scientific expert advice* is essential for an objective evaluation of substantive climate policy options and for assessing progress made in the light of changing scientific insights. Sixth, mechanisms for holding policymakers to account, including through judicial means and by providing for *access to justice*, are important for determining the adequacy of climate policy goals and the effective implementation of climate policies.<sup>24</sup> Lastly, *inclusiveness* and meaningful *public participation* can be considered crucial for supporting the legitimacy and acceptance of climate policy.<sup>25</sup> This function also covers access to information and openness of the relevant policy processes as important aspects of transparency.<sup>26</sup>

## 2.2 The ECL and the Governance Regulation as the Legal Framework for EU Procedural Climate Governance

To assess the contribution of the ECL to procedural climate governance in the EU, it is crucial to understand how the ECL and the Governance Regulation complement each other. To start with, the ECL is based on Article 192(1) of the Treaty on the Functioning of the European Union (TFEU) and solely addresses EU climate policy, whereas the Governance Regulation is based on both Articles 192(1) and 194(2) and addresses both climate and energy policy. Different competencies have been used because the Governance Regulation is closely related to the EU initiative known as the Energy Union,<sup>27</sup> and its key aims include ensuring the implementation of both the EU's 2030 climate and energy targets.<sup>28</sup> The ECL, in turn, focuses on EU climate policy and is therefore based on environmental competence only.

Furthermore, the ECL primarily addresses the EU level and introduces obligations mainly for the Commission. By contrast, the Governance Regulation imposes several obligations directly on EU Member States, while also containing obligations for the Commission,

21 See also Orla Kelleher, 'The Supreme Court of Ireland's Decision in *Friends of the Irish Environment v Government of Ireland* ("Climate Case Ireland")', *EJIL: Talk!* (9 September 2020), <<https://www.ejiltalk.org/the-supreme-court-of-irelands-decision-in-friends-of-the-irish-environment-v-government-of-ireland-climate-case-ireland/>> accessed 18 December 2023.

22 Vilja Johansson, 'Just Transition as an Evolving Concept in International Climate Law' (2023) 35 *JEL* 229.

23 See generally Camilla Adelle and Duncan Russel, 'Climate Policy Integration: A Case of Déjà Vu?' (2013) 23(1) *Env'tl Pol'y & Governance* 1; Claire Dupont, *Climate Policy Integration into EU Energy Policy: Progress and Prospects* (Routledge 2016).

24 Ludwig Krämer, 'Climate Change, Human Rights and Access to Justice' (2019) 16 *JEEPL* 21; see also Moore and others (n 3); Oberthür and others (n 19).

25 See Odile Ammann and Audrey Boussat, 'The Participation of Civil Society in European Union Environmental Law-Making Processes: A Critical Assessment of the European Commission Consultations in Connection with the European Climate Law' (2023) 14 *EJRR* 235.

26 On challenges in the context of the 'Fit for 55' legislative package, see Päivi Leino-Sandberg, 'Transparency and Trilogues: Real Legislative Work for Grown-Ups?' (2023) 14 *EJRR* 271, 289–291.

27 European Council, 'Conclusions', EUCO 11/15 (20 March 2015) para 1.

28 Kati Kulovesi and Sebastian Oberthür, 'Assessing the EU's 2030 Climate and Energy Framework: Incremental Change towards Radical Transformation?' (2020) 29 *RECIEL* 151, 153–154.

especially to review and ensure adequate ambition and progress at the Member State and EU levels. Regarding the functions of procedural climate governance introduced in Section 2.1, the Governance Regulation focuses on planning, whereas the ECL mainly addresses EU climate targets, climate policy integration and scientific expert advice. The two instruments furthermore address different aspects of monitoring and evaluation, as well as inclusiveness and public participation, while neither addresses access to justice.

Having been described as an ‘umbrella regulation’ establishing a common governance system for EU climate and energy policy,<sup>29</sup> the Governance Regulation covers three of the functions of procedural climate governance.<sup>30</sup> On planning, it specifically requires EU Member States to prepare mid-term National Energy and Climate Plans (NECPs) every 10 years, and to update these every five years.<sup>31</sup> The current NECPs detail how each Member State intends to achieve its 2030 climate and energy targets and are being revised and updated in 2023/2024. Every 10 years, Member States must also prepare Long-Term Strategies (LTSs) covering at least the next 30 years.<sup>32</sup> In addition to various monitoring and reporting obligations for the Commission and Member States related to the EU’s internal climate and energy targets, the Governance Regulation addresses monitoring and evaluation by incorporating and amending the earlier Monitoring Mechanism Regulation<sup>33</sup> to ensure the EU’s compliance with the reporting obligations under the Paris Agreement.<sup>34</sup> Importantly, Member States must submit integrated national energy and climate progress reports (biennial progress reports), starting from 2023 and every two years thereafter.<sup>35</sup> In addition to mandating the Commission to review NECPs and issue related guidance to Member States, the Governance Regulation prescribes action to be taken by the Commission in response to insufficient ambition and progress by individual Member States or collectively.<sup>36</sup> The Governance Regulation also seeks to enhance inclusiveness and public participation at the Member State level.<sup>37</sup>

As this article focuses on the ECL, the following sections analyse those five functions of procedural climate governance that the ECL either addresses exclusively (target-setting, climate policy integration, scientific expert advice) or in tandem with the Governance Regulation (monitoring and evaluation, inclusiveness and public participation). While the focus will be on the ECL, aspects of the Governance Regulation will, where relevant, also be discussed for a fuller understanding of the EU’s legal framework for procedural climate governance. Since planning is primarily addressed in the Governance Regulation, but not in the ECL, this function of procedural climate governance is not addressed further in this article. We also analyse access to justice, which is not covered by either the ECL or the Governance Regulation but is an important element of procedural climate governance (Section 7).

### 3. MEDIUM- AND LONG-TERM TARGETS

Target-setting is a key feature of procedural climate governance. Arguably, enshrining climate targets in legislation not only strengthens their credibility but it also offers some

29 Sabine Schlacke and Michèle Knodt, ‘The Governance System of the European Energy Union and Climate Action’ (2019) 16 JEEPL (2019) 323, 326.

30 See generally Kulovesi and Oberthür (n 28).

31 Governance Regulation (n 2) art 3.

32 *ibid* art 15. The Commission is also mandated to adopt a Union-wide LTS, although curiously unlike Member States it is not required to adopt one every 10 years or update it every five years; see *ibid* art 15(2).

33 Parliament and Council Regulation (EU) No 525/2013 of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC [2013] OJ L165/13.

34 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 55 ILM 740, art 13(7).

35 Governance Regulation (n 2) art 17.

36 *ibid* arts 30–32.

37 *ibid* arts 10–11; and ECL (n 1) art 9.



certainty and long-term perspective to industry and investors.<sup>38</sup> The ECL includes the EU's 2050 climate-neutrality objective, an upgraded EU net emission reduction target for 2030, and a process for defining both the EU's 2040 climate target and an indicative GHG emissions budget for 2030–2050.

### 3.1 Climate Neutrality by 2050

One of the key elements of the ECL is 'a binding objective of climate neutrality in the Union by 2050'.<sup>39</sup> More concretely, GHG emissions and removals 'shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date'.<sup>40</sup> The target covers all GHG emissions and removals by sinks. In addition, the EU 'shall aim to have negative emissions' after 2050.<sup>41</sup>

The ECL represents significant progress for procedural climate governance as the first legal instrument with a binding climate-neutrality objective for one of the world's largest GHG emitters. The 2050 climate-neutrality objective might also align with the global net-zero goal in Article 4(1) of the Paris Agreement, depending, however, on how this somewhat opaque provision is interpreted,<sup>42</sup> including with respect to the highly contentious question of burden-sharing between countries.

It is less clear whether the EU's 2050 climate-neutrality objective aligns with the collective 1.5/2°C temperature goal in Article 2(1)(a) of the Paris Agreement. While the 1.5°C goal is aspirational, it forms the current benchmark for countries' mitigation efforts,<sup>43</sup> and the reference point for defining countries' equitable share of the remaining global carbon budget. Accordingly, recent advice by the European Scientific Advisory Board on Climate Change (ESABCC; see Section 6)—mandated by the ECL—suggests that the EU's fair share of the remaining global carbon budget for the 1.5°C goal from the start of 2020 based on an equal per capita allocation of emissions would amount to 20–25 gigatonnes of carbon dioxide equivalent (Gt CO<sub>2</sub>-eq.).<sup>44</sup> However, the Advisory Board adds that '[d]ividing the same budget using approaches informed by other ethical principles (such as the ability to pay or historical emissions) produces estimates of the EU share, which in some cases suggest that the EU has already used its fair share of the global carbon budget'.<sup>45</sup>

Notably, the ECL defers to future decision-making to determine to what extent climate neutrality in the EU will be achieved through emission reductions, and how much it will rely on natural (e.g., forests, soil, wetlands) or artificial sinks (e.g., direct air capture or bioenergy with carbon capture and storage). This critical issue is to be covered by the Commission's 2024 proposal for an indicative EU carbon budget for 2030–2050 (see Section 3.2).<sup>46</sup> The delay in resolving this issue is concerning given the rapid drop in the EU forest sink, which is projected to further decrease under current management practices.<sup>47</sup>

38 Hilson (n 20) 213–214. See also Diarmuid Torney and Roderic O'Gorman, 'Adaptability versus Certainty in a Carbon Emissions Reduction Regime: An Assessment of the EU's 2030 Climate and Energy Policy Framework' (2020) 29 RECIEL 167.

39 ECL (n 1) art 1.

40 *ibid* art 2(1).

41 *ibid*.

42 Lavanya Rajamani and Emmanuel Guérin, 'Central Concepts in the Paris Agreement and How They Evolved' in Daniel Klein and others (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (OUP 2017) 74, 76.

43 *ibid*. See also UNFCCC, 'Decision 1/CMA.3, The Glasgow Climate Pact', UN Doc. FCCC/PA/CMA/2021/10/Add.1 (8 March 2022), para 21.

44 European Scientific Advisory Body on Climate Change (ESABCC), 'Scientific Advice for the Determination of an EU-wide 2040 Climate Target and a Greenhouse Gas Budget for 2030–2050' (15 June 2023) 14. The global carbon budget discussed was 500 Gt CO<sub>2</sub>-eq., giving a 50% chance of staying below 1.5°C.

45 *ibid*.

46 ECL (n 1) art 4(4).

47 Anu Korosuo and others, 'The Role of Forests in the EU Climate Policy: Are We on the Right Track?' (2023) 18 Carbon Balance and Management 15.

During the law-making process, the European Parliament proposed including in the ECL an obligation for each Member State to achieve climate neutrality by 2050 at the latest.<sup>48</sup> However, this proposal was unsuccessful and the ECL does not, in its current form, specify how individual Member States are expected to contribute to the collective climate-neutrality objective. Instead, the ECL merely emphasises ‘the importance of promoting both fairness and solidarity among Member States and cost-effectiveness in achieving this objective.’<sup>49</sup> At the time of writing, 13 Member States had a self-defined climate-neutrality target enshrined in national legislation;<sup>50</sup> six had set such targets through policy documents;<sup>51</sup> and eight Member States had no national climate-neutrality targets.<sup>52</sup> The Commission has estimated that the Member States’ national targets in 2023 leave a gap of eight percent to net-zero emissions by 2050.<sup>53</sup> To close this important gap in the EU’s procedural climate governance framework, clarity is needed on contributions by individual Member States and/or the three key climate pillars of EU climate law, namely emissions trading, effort sharing, and land use, land-use change and forestry (LULUCF). This issue should be considered in the reviews of the ECL and the Governance Regulation due in the first half of 2024.<sup>54</sup>

### 3.2 Intermediate Targets

The ECL increases the EU’s 2030 net GHG emission reduction target from at least 40% to at least 55% compared to 1990 levels. The Parliament had proposed including in the ECL a 60% emission reduction target for 2030. The final compromise<sup>55</sup> was a 2030 target equal to a net emission reduction of at least 57%. This would be achieved by limiting the contribution of net removals to the 55% target to 225 million tonnes of carbon dioxide equivalent, while aiming for actual net removals of 310 million tonnes. The EU has subsequently passed legislation aiming to increase net removals in the LULUCF sector from 280 to 310 million tonnes of carbon dioxide equivalent by 2030.<sup>56</sup> However, due to the inclusion of removals from the LULUCF sector, the EU’s actual emission reduction target for 2030 amounts to only 52.8%,<sup>57</sup> so that the EU’s revised 2030 target relies more on the LULUCF sector than its initial 2030 target.

Non-governmental organisations (NGOs) and researchers have criticised the EU’s strengthened 2030 target enshrined in the ECL for being insufficient. The NGO Climate Action Tracker suggests that the EU’s mitigation target for 2030 needs substantial improvement to be

48 European Parliament, ‘Report on the 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 (ECL) (COM(2020)0080—C9-0077/2020—2020/0036(COD))’ (22 September 2020).

49 ECL (n 1) art 2(2).

50 Oberthür and others (n 19) 17. Denmark, France, Greece, Hungary, Ireland, Latvia, Luxembourg, the Netherlands and Portugal have a 2050 target, Sweden and Germany a 2045 target, and Finland a 2035 target.

51 *ibid* (Austria, Italy, Lithuania, Malta, Slovakia and Slovenia).

52 *ibid* (Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Poland and Romania).

53 European Commission, ‘Progress Report 2023: Climate Action. Shifting Gears: Increasing the Pace of Progress towards a Green and Prosperous Future’ (European Commission 2023), <[https://climate.ec.europa.eu/system/files/2023-11/com\\_2023\\_653\\_glossy\\_en\\_0.pdf](https://climate.ec.europa.eu/system/files/2023-11/com_2023_653_glossy_en_0.pdf)> accessed 18 December 2023.

54 ECL (n 1) arts 11 and 12 (amending art 45 of the Governance Regulation).

55 European Parliament, ‘MEPs Reach Deal with Council on Obligation for the EU to be Climate Neutral by 2050’, Press Release (21 April 2021), <<https://www.europarl.europa.eu/news/en/press-room/20210419IPR02302/meps-reach-deal-with-council-on-obligation-for-eu-to-be-climate-neutral-by-2050>> accessed 18 December 2023; European Parliament, ‘EU Climate Law: MEPs Confirm Deal on Climate Neutrality by 2050’, Press Release (24 June 2021) <<https://www.europarl.europa.eu/news/en/press-room/20210621IPR06627/eu-climate-law-meps-confirm-deal-on-climate-neutrality-by-2050>> accessed 18 December 2023.

56 Parliament and Council Regulation (EU) 2023/839 amending Regulation (EU) 2018/841 as regards the scope, simplifying the reporting and compliance rules, and setting out the targets of the Member States for 2030, and Regulation (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review [2023] OJ 107/1, art 4(2).

57 European Commission, ‘Impact Assessment Accompanying the Communication “Stepping up Europe’s 2030 Climate Ambition: Investing in a Climate-neutral Future for the Benefit of Our People”’ (Staff Working Document) SWD(2020) 176 final, 17 September 2020, 52.

consistent with limiting warming to 1.5°C.<sup>58</sup> Gheuens and Oberthür argue that an EU target between 60–70% would have been ‘an ideal range’.<sup>59</sup> Similarly, a report by Climate Analytics – one of the organisations behind Climate Action Tracker – suggests that the EU mitigation target can ‘feasibly’ be increased to 61–73% below 1990 levels by 2030, *excluding* LULUCF.<sup>60</sup>

From the perspective of international fairness, the EU would arguably need to do even more. As another Climate Analytics report claims, the EU’s target ‘would result in warming between 2 and 3°C (with a 66% probability) by 2100 if all countries were to set targets of an equivalent fair share level of mitigation ambition’.<sup>61</sup> Following this logic, they posit that the EU should achieve emission reductions of at least 93% below 1990 levels (again, excluding LULUCF) by 2030.<sup>62</sup> Another study on ‘fair shares’ suggests that the EU’s (and other developed states’) emissions should be net zero or net-negative by 2030.<sup>63</sup> Hence, the EU’s strengthened 2030 target as enshrined in the ECL is an important, yet still insufficient step towards an internationally and intergenerationally fair implementation of the Paris Agreement.

The ECL also outlines the process for setting the EU’s 2040 target. To this end, the Commission is required to prepare a proposal to amend the ECL within six months after the first global stocktake under the Paris Agreement,<sup>64</sup> which concluded at the end of 2023.<sup>65</sup> When tabling this proposal, the Commission is required to specify, in a separate report, an indicative EU GHG budget for 2030–2050, as well as the related methodology.<sup>66</sup> In making its proposal, the Commission has to take a wide range of considerations into account, including not only familiar criteria such as environmental effectiveness and cost-effectiveness, but also broader considerations, such as costs of inaction and the ‘need to ensure a just and socially fair transition for all’.<sup>67</sup> At the time of writing, the Commission is expected to release a communication with options for the 2040 target in early 2024. As European Parliament elections are due in June 2024, and a new Commission would take over soon after, the actual legislative proposal would likely be tabled only after the new Commission has assumed office.<sup>68</sup>

Carbon budgets have been described as a useful tool to gauge the consistency of climate targets with global temperature goals.<sup>69</sup> The EU’s indicative carbon budget is expected to help evaluate whether the ECL targets represent a fair and equitable contribution to the implementation of the Paris Agreement and the 1.5°C goal. After ‘considering multiple dimensions of fairness

58 Climate Action Tracker, ‘EU Country Summary’, <<https://climateanalytics.org/media/1-5pathwaysforeu27-2022.pdf>> accessed 18 December 2023.

59 Jana Gheuens and Sebastian Oberthür, ‘EU Climate and Energy Policy: How Myopic Is It?’ (2021) 9 *Politics & Governance* 337, 342.

60 Climate Analytics, ‘1.5°C Pathways for the EU27: Accelerating Climate Action to Deliver the Paris Agreement’ (September 2022) 23 <<https://climateanalytics.org/media/1-5pathwaysforeu27-2022.pdf>> accessed 18 December 2023.

61 William Hare and others, ‘Achieving the 1.5°C Limit of the Paris Agreement: An Assessment of the Adequacy of the Mitigation Measures and Targets of the Respondent States in Duarte Agostinho v Portugal and 32 other States’ (Climate Analytics 2022) 54 <[https://climateanalytics.org/media/final\\_report\\_ca\\_glan.pdf](https://climateanalytics.org/media/final_report_ca_glan.pdf)> accessed 18 December 2023.

62 *ibid.*

63 Lavanya Rajamani and others, ‘National ‘Fair Shares’ in Reducing Greenhouse Gas Emissions within the Principled Framework of International Environmental Law’ (2021) 21 *Clim Pol’y* 983, 999.

64 ECL (n 1) art 4(3).

65 *ibid* art 4(4). The global stocktake is a process whereby Parties to the Paris Agreement assess at five-year intervals their collective progress ‘towards achieving the purpose of this Agreement and its long-term goals’. Paris Agreement (n 34) art 14(1). UNFCCC, ‘Decision -/CMA.5, Outcome of the First Global Stocktake’, UN Doc. FCCC/PA/CMA/2023/L.17 (13 December 2023).

66 *ibid* art 4(4). The ECL’s language on a ‘GHG budget’ is not entirely clear. The ECL defines it as an indicative budget for the ‘total volume of net greenhouse gas emissions’ for 2030–2050 ‘that are expected to be emitted in that period without putting at risk the Union’s commitments under the Paris Agreement’, *ibid.* This term seems to correspond to the notion of carbon budget commonly used in the literature (see eg Damon H Matthews and others, ‘Opportunities and Challenges in Using Remaining Carbon Budgets to Guide Climate Policy’ (2020) 13 *Nature Geoscience* 769, 769). In this article, we use the term ‘carbon budget’ to include emissions of all GHGs, not just carbon dioxide.

67 ECL (n 1) art 4(5).

68 Nils Meyer-Ohlendorf and others, ‘Designing the EU 2040 Climate Target’ (*Ecologic* 2023) 10–11.

69 Matthews and others (n 66) 775.



and feasibility', the ESABCC suggested an emission reduction of 90–95% from 1990 levels by 2040 and an EU GHG emission budget of 11 to 14 Gt CO<sub>2</sub>-eq.<sup>70</sup>

It can be questioned whether the ECL's current lack of a clear emission trajectory from 2030 to 2050 is consistent with the principle of intergenerational equity. In this respect, the ECL bears similarities with the first German Climate Change Act, which was declared unconstitutional precisely because it did not clearly outline steps towards Germany's 2050 carbon-neutrality goal beyond 2030.<sup>71</sup> According to the German Constitutional Court, one generation 'must not be allowed to consume large portions of the [GHG] budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom.'<sup>72</sup> The ECL, however, does not list either international or intergenerational equity among the issues that the Commission must take into account when proposing the EU's 2040 target and indicative carbon budget.<sup>73</sup> Nevertheless, the ESABCC's consideration of 'multiple dimensions of fairness and feasibility' shows that such considerations can and should be taken into account in the target-setting process.<sup>74</sup>

#### 4. MONITORING AND EVALUATION

Provisions on monitoring and evaluation of implementation of substantive climate policies, and legal requirements for their enforcement and/or adjustment in cases of insufficient progress, are crucial features of procedural climate governance. Ultimately, the role of such provisions is to ensure that climate policies deliver, and that climate targets are met. Otherwise, governments could be tempted to prioritise short-term interests and delay difficult political decisions on concrete climate policies needed to achieve climate targets.<sup>75</sup> As noted in Section 2, the Governance Regulation includes provisions on monitoring and reporting, as well as on action to be taken by the Commission in case of insufficient progress towards the EU's 2030 climate and energy targets. The ECL introduces additional processes for the Commission to track progress towards the ECL objectives and to respond to lack of progress. These new processes include assessing the Member States' collective progress towards the ECL's 2050 climate-neutrality and adaptation objectives as well as the consistency of EU measures with these objectives. The Commission must also assess Member States' national measures in light of the ECL objectives.

##### 4.1 Assessing EU-Level Measures

The Commission must regularly assess Member States' collective progress towards the ECL's objectives,<sup>76</sup> as well as the consistency of EU measures with these objectives.<sup>77</sup> The first such assessments were presented in the autumn of 2023, with further rounds due every five years thereafter.<sup>78</sup> The ECL progress assessments are linked with, and complement, the relevant annual assessments of progress towards the 2030 climate and energy targets under the

<sup>70</sup> ESABCC (n 44) 10.

<sup>71</sup> *Neubauer et al v Germany*, BverfG Beschluss des Ersten Senats vom 24.3.2021 – 1 BvR 2656/18 (*Neubauer*), para 192, available in English at <[https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324\\_1bvr265618en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324_1bvr265618en.html)> accessed 4 October 2023. On climate litigation involving youth and future generations generally, see Larissa Parker and others, 'When the Kids Put Climate Change on Trial: Youth-focused Rights-based Climate Litigation around the World' (2022) 13 JHRE 64.

<sup>72</sup> *Neubauer* (n 71) para 192.

<sup>73</sup> ECL (n 1) art 4(5).

<sup>74</sup> ESABCC (n 44) 10.

<sup>75</sup> Hilson (n 20) 215. See also Sarah Louise Nash and Reinhard Steurer, 'Taking Stock of Climate Change Acts in Europe: Living Policy Processes or Symbolic Gestures?' (2019) 19 Clim Pol'y 1052.

<sup>76</sup> ECL (n 1) art 6(1).

<sup>77</sup> *ibid* art 6(2).

<sup>78</sup> *ibid* art 6(1)-(2). See also Commission (n 53).

Governance Regulation, and the conclusions of the collective progress assessment will be published together with the State of the Energy Union report that the Commission must prepare under the Governance Regulation.<sup>79</sup>

While these progress and consistency assessments promise added value, a shortcoming in the ECL is that it does not spell out crucial details, such as the indicators and methodology to be used by the Commission in these assessments, the scope and focus of the consistency assessment, and the role of the ESABCC (see Section 6).<sup>80</sup> Indeed, the Commission's first Climate Action Progress Report of October 2023 also identifies the need for more detailed monitoring 'to better highlight areas where progress is lacking or more action is needed'.<sup>81</sup>

If the Commission concludes that insufficient progress towards the ECL's objectives has been made, or that Union measures are inconsistent with the ECL objectives, it must 'take the necessary measures in accordance with the Treaties'.<sup>82</sup> In practice, this could mean proposing new measures. However, neither the meaning of 'necessary measures' nor the threshold for the Commission to propose additional measures has been specified in the ECL. In light of this, as detailed in Section 7, a shortcoming in the ECL is that it does not include specific accountability mechanisms – such as the possibility to seek judicial review – to challenge the conclusions from the Commission's progress and consistency assessments and/or the responses taken to address inadequate progress or inconsistency.

#### 4.2 Assessing Member States' National Measures

By 30 September 2023, and every five years thereafter, the Commission must also assess the consistency of Member States' national measures with the ECL's climate-neutrality and adaptation objectives. The assessment will be based on NECPs, LTSs and biennial progress reports.<sup>83</sup>

If the Commission finds a Member State's measures to be inconsistent with either of the ECL's two objectives, it *may* issue recommendations to the Member State.<sup>84</sup> However, the Commission must first give 'due consideration' to Member States' collective progress towards the ECL goals (see Section 4.1). As discussed in Section 3.1, the ECL does not spell out individual Member States' contributions to the climate-neutrality objective. In practice therefore, the Commission will need to give concrete meaning to the terms 'fairness', 'solidarity among Member States' and 'cost-effectiveness' in Article 2(2) of the ECL. This gap may also be addressed in the review of the ECL, although this review comes too late for the first assessment round.

Within six months of receiving the Commission's recommendations, a Member State must let the Commission know how it intends to address these 'in a spirit of solidarity between Member States and the Union and between Member States'.<sup>85</sup> The Member States' biennial progress reports prepared under the Governance Regulation must also explain how they have addressed the Commission's recommendations.<sup>86</sup> If a Member State decides not to address the recommendations or a substantial part thereof, it must provide its reasoning in the same report.<sup>87</sup>

79 ECL (n 1) art 6(1); and Governance Regulation (n 2) art 29(5). The relevant progress assessment under the Governance Regulation concerns, *inter alia*, collective progress with respect to implementation of obligations under the UNFCCC and Paris Agreement, obligations in the LULUCF Regulation and objectives set out in NECPs. For the first joint assessment of progress under the ECL and Governance Regulation, see Commission (n 53).

80 Matthias Duwe, 'Making EU Climate Governance Fit for Net Zero' (Ecologic Institute 2022) 14 and 16 <<https://www.ecologic.eu/sites/default/files/publication/2022/3550-scientific-opinion-paper-making-eu-climate-governance-fit-for-net-zero-web.pdf>> accessed 18 December 2023.

ECL (n 1) art 6(1). See also Duwe (n 80).

81 Commission (n 53) 10.

82 ECL (n 1) art 6(3).

83 *ibid.*

84 *ibid* art 7(2).

85 *ibid* art 7(3)(a).

86 *ibid* art 7(3)(b).

87 *ibid.*

The ECL's five-yearly consistency assessments of Member States' measures are complementary to progress assessments under the Governance Regulation. The assessments under the Governance Regulation require the Commission to assess every two years each Member State's progress towards the objectives set out in its NECP.<sup>88</sup> In case of insufficient progress, the Commission must issue recommendations to the Member State in question.<sup>89</sup> The findings of the first such assessment in 2023 are described below (Section 4.3).

Both the Governance Regulation and the ECL thus rely mainly on the Commission's recommendations for promoting compliance.<sup>90</sup> Under the ECL, the Commission has discretion in issuing recommendations, whereas the Governance Regulation requires the Commission to do so whenever it finds a Member State making insufficient progress. The Commission's recommendations to Member States have not been particularly effective in the context of the European Semester<sup>91</sup>—an annual process through which the EU coordinates and monitors budgetary, fiscal, economic and social policies and creates a space for discussing these between the EU institutions and Member States.<sup>92</sup> The same concern may be formulated regarding the effectiveness of the Commission recommendations under the ECL and Governance Regulation.

In assessing enforcement-related provisions in the ECL and Governance Regulation, it must be taken into account that additional means of judicial enforcement exist in EU law. The Commission may, for example, initiate infringement procedures against Member States breaching their EU law obligations, including those under the ECL and the Governance Regulation. Indeed, in September 2022, the Commission started infringement procedures against Bulgaria, Ireland, Poland and Romania for not complying with their obligation to submit LTSs under the Governance Regulation. The Commission may also initiate infringement action against Member States for lack of compliance with substantive climate policy obligations. In addition to enforcement action by the Commission, citizens may also seek to challenge inaction through EU or Member State courts, although this is subject to important limitations, as will be discussed in Section 7.

The possibility of infringement procedures under general EU law therefore complements in an important way the specific enforcement-related provisions in the ECL and Governance Regulation. However, recourse to infringement also has limitations: implementation of EU environmental law remains generally rather weak and enforcement action by the Commission has been described as too slow.<sup>93</sup>

### 4.3 Implementing the Commission Assessments

The Commission's assessments of EU and national measures' progress on and consistency with the ECL objectives play a key role in ensuring that the ECL's objectives are met. The details of these assessments, including their factual basis and indicators to be used to measure progress, are therefore crucial. The ECL contains a provision defining elements that are common to the various Commission assessments. While the ECL provides some guidance on the assessment of

<sup>88</sup> Governance Regulation (n 2) art 29(1)(b).

<sup>89</sup> *ibid* art 32(1).

<sup>90</sup> Nils Meyer-Ohlendorf, 'Implementing New EU Climate Targets: Why Member State Responsibility Must Continue' (Ecologic Institute 2021) 3, <<https://www.ecologic.eu/sites/default/files/publication/2021/60005-Implementing-New-EU-Climate-Targets.pdf>> accessed 18 December 2023.

<sup>91</sup> M Vandendriessche and others, 'The Governance of the Energy Union: Bridging the Gap?' (Florence School of Regulation 2017).

<sup>92</sup> Kulovesi and Oberthür (n 28).

<sup>93</sup> Laura Hildt and Raphael Weyland, 'Stepping up Enforcement: Recommendations for a Commission "Better Compliance" Agenda to Ensure the Application of EU Environmental Law' (European Environmental Bureau and BirdLife International 2022) 3 <[https://eeb.org/wp-content/uploads/2022/06/EEB-BirdLife\\_Stepping-up-Enforcement\\_Recommendations-for-an-EC-Better-Compliance-Agenda\\_2022-1.pdf](https://eeb.org/wp-content/uploads/2022/06/EEB-BirdLife_Stepping-up-Enforcement_Recommendations-for-an-EC-Better-Compliance-Agenda_2022-1.pdf)> accessed 18 December 2023.

Member States' collective progress and consistency of collective and individual Member States' measures with the ECL targets, it leaves many details to be elaborated by the Commission.<sup>94</sup>

The starting point for the Commission's first and second climate-neutrality progress assessments, which are due by 2023 and 2028 respectively, is an 'indicative linear trajectory' linking the EU's 2030, 2040 (once adopted) and 2050 climate targets.<sup>95</sup> From the next assessment (due by 2033) onwards, assessments must take a linear trajectory, taking the 2040 and 2050 targets as its starting and end points respectively.<sup>96</sup> The European Environment Agency (EEA) is to assist the Commission in preparing the assessments.<sup>97</sup> The ECL lists several information sources that the Commission must use as a basis for its assessments, including: information submitted and reported under the Governance Regulation; reports by the EEA, the ESABCC and the Commission's Joint Research Centre; scientific information, including the latest reports by the Intergovernmental Panel on Climate Change; and supplementary information on environmentally sustainable investment by the EU or the Member States, such as that provided under the Taxonomy Regulation.<sup>98</sup>

However, the ECL lacks important details on methodologies and indicators that could help ensure the quality of the Commission assessments, leading some commentators to call on the Commission to start a transparent process to develop the monitoring of progress.<sup>99</sup> The role of the newly created ESABCC in the assessments should also be considered and potentially strengthened (see Section 6).<sup>100</sup>

In practice, the first Commission progress assessment published in October 2023 identified the need for both better monitoring and additional mitigation measures to cut around 1,600 million tonnes of CO<sub>2</sub> equivalent (or 34 percentage points) to achieve climate neutrality by 2050.<sup>101</sup> Concerning further action, the Commission emphasised its plans to publish in early 2024 a communication on the EU 2040 climate target, setting a path from 2030 to net-zero emissions in 2050.<sup>102</sup> This, according to the Commission, 'will provide the information needed to ensure that measures and investments to implement the EU's 2030 targets are also well aligned with the pathways to climate neutrality by 2050' and 'keep progress on track to climate neutrality'.<sup>103</sup>

## 5. CLIMATE POLICY INTEGRATION

Climate policy integration is an important element of procedural climate governance.<sup>104</sup> Accordingly, all sectors and policy areas must be aligned with, and contribute to, the achievement of the climate-neutrality objective. Conceptually, the idea of climate policy integration is closely related to the whole-of-government approach, which includes the 'aspiration to achieve horizontal and vertical coordination', 'eliminate situations in which different policies undermine each other' and create 'synergies by bringing together different stakeholders in a particular policy area'.<sup>105</sup> For climate policy integration to take place, different public authorities must not

94 ECL (n 1) art 8.

95 *ibid* art 8(1).

96 *ibid* art 8(2).

97 *ibid* art 8(4).

98 *ibid* art 8(3). See Parliament and Council Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 [2020] OJ L198/13 (Taxonomy Regulation).

99 Duwe (n 80) 4.

100 As also suggested in *ibid*.

101 Commission (n 53) 9–10.

102 *ibid* 11.

103 *ibid*.

104 Moore and others (n 3).

105 Tom Christensen and Per Laegreid, 'The Whole-of-Government Approach to Public Sector Reform' (2007) 67 *Pub Admin Rev* 1059, 1060.

work in siloes, but institutional mandates and processes must be created for considering different sectors and policy areas more holistically in light of the ECL's objectives and targets. The ECL makes important advances in developing the EU's procedural climate governance in this respect while leaving significant room for further improvement.

In particular, the ECL requires the Commission to assess whether any draft EU measures or legislative proposals, including budget proposals, are consistent with the climate-neutrality objective, the 2030 and 2040 climate targets, and the adaptation objective.<sup>106</sup> The Commission must then 'endeavour' to align all measures it proposes with the objectives of the ECL<sup>107</sup> and explain the reasons for any non-alignment.<sup>108</sup> The ECL thus creates an important mandate and procedural mechanism for strengthening the integration of climate considerations into all areas of EU law and policy.<sup>109</sup> The relevant sectors and policy areas include energy, industry, transport, agriculture, forestry, and buildings, but also finance, trade and general foreign policy.<sup>110</sup>

The quinquennial consistency assessments of EU and national measures discussed in Section 4 also have potential for enhancing climate policy integration. Their potential depends on how the Commission will define the scope of its assessments, and especially on what policies and measures beyond climate and energy policy it will consider. The ECL's requirement that any recommendations that the Commission may issue to Member States 'shall be complementary to the latest country-specific recommendations issued in the context of the European Semester'<sup>111</sup> provides a clear opening in this respect.

Overall, however, policy integration in the ECL falls short of requiring 'principled priority' for climate policy.<sup>112</sup> The Commission's impact assessments will continue to be made public only at the stage when the measure or proposal in question is published.<sup>113</sup> A Parliament proposal to oblige the Commission in the ECL to make the impact assessment immediately and directly available to the public was rejected.<sup>114</sup> The public will have no opportunity to comment on the impact assessment before the Commission has finalised its proposal or measure.<sup>115</sup> Furthermore, the ECL lacks criteria for assessing the consistency or alignment of legislative proposals with the climate-neutrality and adaptation objectives. It provides no safeguards for preventing legislative or budgetary proposals from being inconsistent with the ECL objectives.<sup>116</sup> In this context, the ECL also fails to codify, let alone elaborate on, the European Green Deal's pledge to 'do no harm'<sup>117</sup> or require maximising synergies between climate policy and other policy areas.

<sup>106</sup> ECL (n 1) art 6(4).

<sup>107</sup> *ibid.*

<sup>108</sup> *ibid.*

<sup>109</sup> Cf Per Mickwitz and others, 'Climate Policy Integration, Coherence and Governance' (Partnership for European Environmental Research 2009) 19.

<sup>110</sup> Sebastian Oberthür and Ingmar von Homeyer, 'From Emissions Trading to the European Green Deal: The Evolution of the Climate Policy Mix and Climate Policy Integration in the EU' (2023) 30 JEPP 445.

<sup>111</sup> ECL (n 1) art 7(3)(c).

<sup>112</sup> Oberthür and von Homeyer (n 110) 451, referring to William M Lafferty and Eivind Hovden, 'Environmental Policy Integration: Towards an Analytical Framework' (2003) 12 *Envtl Politics* 1. With the term 'principled priority', Lafferty and Hovden suggest that environmental objectives and requirements should prevail over non-environmental objectives, unless there are overriding reasons to deviate from this rule.

<sup>113</sup> ECL (n 1) art 6(4).

<sup>114</sup> European Parliament (n 48) amendments proposed to art 5(4).

<sup>115</sup> For a critical assessment see Sebastian D Bechtel, 'The New EU Climate Law: Symbolic Law or New Governance Framework?', *Verfassungsblog* (7 July 2021) <<https://verfassungsblog.de/the-new-eu-climate-law/>> accessed 18 December 2023.

<sup>116</sup> Duwe (n 80) 14.

<sup>117</sup> Commission (EU), 'The European Green Deal' COM(2019) 640 final, 11 December 2019, 19. Although the European Green Deal does not elaborate on this principle, guidance can be found in the Taxonomy Regulation (and associated delegated acts), which specifies under which circumstances economic activities can be considered to lead to *significant* harm to environmental objectives. See Taxonomy Regulation (n 99) art 17; as well as Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives [2021] OJ L442/1.



## 6. SCIENTIFIC EXPERT ADVICE

Various national framework climate laws establish scientific expert bodies to offer advice to policymakers. Such bodies are important for ensuring that scientific and expert knowledge inform climate policymaking and implementation. Depending on their mandate, these bodies can play different formal and informal roles, including those of watchdog, knowledge broker and convenor.<sup>118</sup> They arguably add ‘unique value’<sup>119</sup> to climate governance by increasing ‘the transparency and legitimacy of policymaking, contributing to greater political and public support.’<sup>120</sup> At least some of these bodies have been ‘instrumental in providing the analytical basis for more ambitious climate action.’<sup>121</sup> At the same time, studies also suggest that there are limits to what these bodies can achieve, and warnings issued by an advisory body, e.g., that a country is not on course to meet its targets, may go unheeded.<sup>122</sup>

The ECL establishes a climate expert advisory body, the European Scientific Advisory Board on Climate Change.<sup>123</sup> It also invites Member States to establish their own national climate advisory bodies.<sup>124</sup> The ESABCC is composed of 15 members chosen based on merit, including scientific excellence, with a view to covering ‘a broad range of relevant disciplines.’<sup>125</sup> There is a requirement for geographical and gender balance.<sup>126</sup> The members are appointed for a four-year term, which can be renewed once.<sup>127</sup> The Advisory Board members are independent of the Member States and of the EU institutions.<sup>128</sup> The ESABCC is supported by a secretariat hosted by the EEA, which has a budget to cover up to 14 staff, as well as €500,000 for other tasks.<sup>129</sup>

The ESABCC’s mandate is broad and general. Among others, it is tasked with considering the latest scientific insights, and providing scientific advice and issuing reports on existing and proposed EU measures, climate targets and indicative GHG budgets, and their coherence with the objectives of the ECL and the Paris Agreement.<sup>130</sup> Its other tasks include identifying actions and opportunities to achieve the EU climate targets, raising awareness of climate change and its impacts, and stimulating dialogue and cooperation between scientific bodies within the Union.<sup>131</sup> The Advisory Board is mandated to set out its own work programme while consulting the Management Board of its host institution, the EEA.<sup>132</sup>

118 Cynthia Elliot and others, ‘Climate Advisory Bodies: Experiences and Approaches for Effective Climate Change’ Policy (World Resources Institute 2021) 11.

119 Nick Evans and others, ‘Climate Governance Systems in Europe: The Role of National Advisory Bodies’ (Ecologic Institute and IDDRI 2021) 6 and 46.

120 Alina Averchenkova and Lara Lazaro, ‘The Design of an Independent Expert Advisory Mechanism under the ECL: What Are the Options?’ (Grantham Research Institute on Climate Change and the Environment, LSE 2020) 8.

121 *ibid.*

122 See eg on the UK Climate Change Committee: Alina Averchenkova, Sam Fankhauser and Jared J Finnegan, ‘The Influence of Climate Change Advisory Bodies on Political Debates: Evidence from the UK Committee on Climate Change’ (2021) 21 *Clim Pol’y* 1218; Harriet Dudley, Andrew Jordan and Irene Lorenzoni, ‘Advising National Climate Policy Makers: A Longitudinal Analysis of the UK Climate Change Committee’ (2022) 76 *Glob Envtl Change* 102589.

123 ECL (n 1) art 3(1). See Elliot and others (n 118); Evans and others (n 119); Matilda Miljand and Karin Bäckstrand, ‘Climate Policy Councils: Success Factors and Lessons Learned’ (Global Challenges Foundation 2021).

124 ECL (n 1) art 3(4). Indeed, several Member States had already done so prior to the adoption of the ECL. See Evans and others (n 120).

125 Parliament and Council Regulation on the European Environment Agency and the European Environment Information and Observation Network [2009] OJ L126/13, as amended by the ECL, art 10a(2). The list of members can be found at European Advisory Board on Climate Change, ‘Members’ <<https://climate-advisory-board.europa.eu/about/advisory-board-members>> accessed 18 December 2023.

126 *ibid* art 10a(2).

127 *ibid.*

128 *ibid* art 10a(4).

129 ESABCC, ‘Annual Work Programme 2023’ (20 December 2022) 4 <<https://climate-advisory-board.europa.eu/about/description-of-the-ecl-and-the-legal-mandate/2023-work-programme-of-the.pdf/@@display-file/file>> accessed 18 December 2023.

130 ECL (n 1) art 3(2).

131 *ibid.*

132 *Ibid* art 12(1) (amending art 10a of Regulation No 401/2009/EC).

The ESABCC has the potential to strengthen EU climate policy. Its independence from the EU institutions and the Member States enables it to provide impartial advice. Due to its general mandate, the Advisory Board can exercise discretion in identifying critical priorities. It has already provided advice to the Commission on the 2040 EU target and the 2030–2050 carbon budget, recommending a reduction of GHG emissions by 90–95% by 2040 (from 1990 levels) (see Section 3.2).<sup>133</sup> Its 2023 work programme further indicates that the Board plans to engage with a range of issues, such as mitigation options for agriculture, land use and forestry, and their links with adaptation to climate change.<sup>134</sup>

However, the ESABCC's role and mandate could be strengthened by identifying entry points in the EU climate policy process where the Advisory Board's input would be *required*—in combination with an obligation to take its input into consideration. A comparative analysis of national advisory bodies points to the added value of a clear mandate, with specific roles and responsibilities.<sup>135</sup> For example, the UK Climate Change Committee's specific tasks include advising the UK Government in the preparation of carbon budgets, and in both the UK and New Zealand there is a legal obligation for the government to respond to advice given by the respective advisory bodies.<sup>136</sup> By contrast, the ECL does not include an obligation for the Commission to respond to (or heed) the recommendations issued by the ESABCC. The ECL merely lists the Advisory Board's latest reports among the materials that the Commission must consider when proposing the EU's 2040 target and the 2030–2050 indicative carbon budget, conducting the five-yearly progress and consistency assessments, and reviewing the operation of the ECL following each global stocktake under the Paris Agreement.<sup>137</sup> Without a clear mandate to engage in critical aspects of the policy process, the realisation of the ESABCC's potential to enhance the quality and ambition of EU climate policy largely depends on how the Advisory Board will define its agenda, and how its recommendations and advice will be received by EU policymakers. For these reasons, the ESABCC's mandate is an issue that merits further consideration during the forthcoming review of the ECL.<sup>138</sup> The Commission's five-yearly progress and consistency assessments under the ECL are obvious places where independent scientific input would seem beneficial, including an obligation to take this input into account.<sup>139</sup>

## 7. ACCESS TO JUSTICE

Framework climate laws, at least in theory, can be used to hold governments to account for adopting sufficiently ambitious climate policies and their effective implementation.<sup>140</sup> However, evidence is emerging, including from the UK,<sup>141</sup> Ireland<sup>142</sup> and Finland,<sup>143</sup> that national climate

133 ESABCC (n 44).

134 Annual Work Programme 2023 (n 130).

135 Elliot and others (n 118); Miljand and Bäckstrand (n 123).

136 Elliot and others (n 118) 15.

137 ECL (n 1) arts 4(5)(a), 8(3)b and 11.

138 See similarly Oberthür and others (n 19) 24.

139 *ibid.*

140 Catherine Higham and others, 'Accountability Mechanisms in Climate Change Framework Laws' (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science (LSE) 2021).

141 ClientEarth, 'Historic High Court Ruling Finds UK Government's Climate Strategy "Unlawful"' (2022) <<https://www.clientearth.org/latest/press-office/press/historic-high-court-ruling-finds-uk-government-s-climate-strategy-unlawful/>> accessed 18 December 2023; and ClientEarth, 'UK Government Faces Fresh Legal Challenge over "Unlawful" Climate Plans' (2023), <<https://www.clientearth.org/latest/press-office/press/uk-government-faces-fresh-legal-challenge-over-unlawful-climate-plans/>> accessed 18 December 2023; and T Dooks, 'Better Transparency Is No Substitute for Real Delivery' (*Climate Change Committee*, 27 June 2023) <<https://www.theccc.org.uk/2023/06/28/better-transparency-is-no-substitute-for-real-delivery/>> accessed 18 December 2023.

142 Victoria Adelmant, Philip Alston and Matthew Blainey, 'Human Rights and Climate Change Litigation: One Step Forward, Two Steps Backwards in the Irish Supreme Court' (2021) 13 *J Hum Rts Practice* 1.

143 Kati Kulovesi and others, 'Finland's First Climate Judgment: Putting the Government on Notice' (2023) *Legitimacy Blog*, 12 June 2023) <<https://2023legitimacy.fi/finlands-first-climate-judgment-putting-the-government-on-notice/>> accessed 18 December 2023.

framework laws are not necessarily being effectively implemented and may lack adequate accountability mechanisms. Against this backdrop, access to justice is a critical element of procedural climate governance and throughput legitimacy. As parties to the Aarhus Convention,<sup>144</sup> the EU and its Member States have committed to ensuring access to justice in environmental matters. In practice, however, citizens' access to the EU courts remains constrained,<sup>145</sup> whereas access to Member States' national courts varies significantly.<sup>146</sup>

Litigation in support of stronger climate action (so-called 'strategic' climate litigation) has significantly increased across the EU in recent years.<sup>147</sup> Some EU Member States' courts have delivered judgements granting the claims of applicants demanding more ambitious climate action.<sup>148</sup> The same surge of litigation has not happened before the courts of the EU, where the majority of climate law-based lawsuits have concerned the implementation of the Emissions Trading Directive.<sup>149</sup> Only few strategic lawsuits have been filed before the courts of the EU.<sup>150</sup> Some of the early cases—*Carvalho*<sup>151</sup> and *Sabo*<sup>152</sup>—were rejected at the admissibility stage, as the Court deemed that the applicants had no standing to challenge EU law measures of general application.

The 2021 revision of the so-called Aarhus Regulation<sup>153</sup> has bolstered the powers of NGOs and some individuals to request an 'internal review'—a procedure enabling them to ask EU institutions to review their own decisions on environmental matters, and eventually bring a case before the Court of Justice of the EU. NGOs have recently relied on this procedure to request the EU courts to annul the decisions to include forest biomass in and list natural gas and nuclear energy as sustainable investment under, the Taxonomy Regulation.<sup>154</sup>

The ECL could have further strengthened the hand of climate litigants, by including an explicit provision enabling citizens and other relevant stakeholders, such as NGOs, to question, for example, the findings of the Commission's assessments of progress towards climate neutrality or its proposed EU-level action following such assessments (or the lack thereof). During the negotiations of the ECL, the NGO ClientEarth highlighted the need to ensure accountability of the EU institutions and the Member States, should they fail to meet the ECL targets and

144 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2162 UNTS 447.

145 See eg Jan H Jans, 'Who Is the Referee? Access to Justice in a Globalised Legal Order' (2011) 4 Rev Eur Admin L 87; Jan H Jans, 'On Inuit and Judicial Protection in a Shared Legal Order' (2012) 21 Eur Energy Env't LR 188; Sanja Bogojević, 'Human Rights of Minors and Future Generations: Global Trends and EU Environmental Law Particularities' (2020) 29 RECIEL 191.

146 Mariolina Eliantonio and others (eds), *Standing up for Your Right(s) in Europe: A Comparative Study on Legal Standing (Locus Standi) before the EU and Member States' Courts* (Intersentia 2013).

147 Joana Setzer and others, 'Climate Litigation in Europe: A Summary Report for the European Union Forum of Judges for the Environment' (Grantham Research Institute on Climate Change and the Environment, LSE 2022).

148 See eg *Urgenda Foundation v State of the Netherlands*, Case no C/09/456689/ HA ZA 13-1396 (2015); *Friends of the Irish Environment v The Government of Ireland & Others*, [2020] IESC 49; *Neubauer (n 71) Notre Affaire à Tous et al v France*, Tribunal Administratif de Paris, Case no 1904967, 1904968, 1904972, 1904976/4-1 (3 February 2021 and 14 October 2021).

149 See eg Case C-158/15, *Elektricitets Produktiemaatschappij Zuid-Nederland EPZ NV v Bestuur van de Nederlandse Emissieautoriteit*, ECLI:EU:C:2016:422; Case C-5/16, *Republic of Poland v European Parliament and Council of the European Union*, ECLI:EU:C:2018:483.

150 Setzer et al (n 147) reported only five strategic cases filed with the courts of the EU in 2022.

151 Case T-330/18, *Armando Carvalho and Others v European Parliament and Council of the European Union Order of the General Court*, ECLI:EU:T:2019:324.

152 Case T-141/19, *Peter Sabo and Others v European Parliament and Council of the European Union Order of the General Court*, ECLI:EU:T:2020:179.

153 Parliament and Council Regulation (EU) 2021/1767 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2021] OJ L356/1.

154 Natasha Turner, 'EU Taxonomy Forest Bioenergy Inclusion "Unlawful" (ESG Clarity, 16 September 2022) <<https://esgclarity.com/eu-taxonomy-forest-bioenergy-inclusion-unlawful-say-ngos/>> accessed 18 December 2023; ClientEarth, 'Environmental Groups Take EU to Court over "Green" Gas Label' (18 April 2023), <<https://www.clientearth.org/latest/press-office/press/eu-taxonomy-environmental-groups-take-eu-to-court-over-green-gas-label/>> accessed 18 December 2023; Valentina Romano, 'NGOs Sue Commission for "Absurd" Inclusion of Gas in EU Green Taxonomy', *EurActiv* (18 April 2023), <<https://www.euractiv.com/section/energy-environment/news/ngos-sue-commission-for-absurd-inclusion-of-gas-in-eu-green-taxonomy/>> accessed 18 December 2023.

objectives.<sup>155</sup> It also proposed inserting a provision in the Governance Regulation giving citizens access to the courts of Member States to challenge the substantive or procedural legality of NECPs and LTSs.<sup>156</sup> The Parliament made a similar proposal during the trilogue negotiations.<sup>157</sup>

A specific right to access justice on environmental matters already exists under EU law.<sup>158</sup> The inclusion of an explicit provision in the ECL would, however, have established a level playing field across the EU by providing NGOs and individuals standing to challenge the legality of NECPs and LTSs at the Member State level. Such an inclusion would have aligned with recent practice,<sup>159</sup> whereby the Commission has promoted a 'sectoral' approach to enhancing access to justice in environmental matters.<sup>160</sup>

Proposals to include provisions on access to justice in the ECL were, however, rejected.<sup>161</sup> As a result, neither the ECL nor the Governance Regulation explicitly address the matter of access to justice and include provisions enabling citizens and other stakeholders to hold policymakers to account for the ambition and implementation of the ECL's targets. This arguably leaves a significant gap in the EU's legal framework for procedural climate governance and severely constrains the EU's throughput legitimacy and the quality of its climate governance procedures.

## 8. INCLUSIVENESS AND PUBLIC PARTICIPATION

Public participation and inclusiveness can foster societal acceptance of climate policies, thus helping address the contentiousness of the climate and energy transition.<sup>162</sup> They can also advance climate policy by enabling input by citizens and stakeholders,<sup>163</sup> raising awareness, strengthening political engagement and mobilising resources.<sup>164</sup> However, the 'emergency' mode of governance dominated by the executive, which has characterised the aftermath of the COVID-19 pandemic and of Russia's war on Ukraine, has put public participation in the EU under strain.<sup>165</sup>

Several pieces of EU environmental law already require public participation in decision-making, pursuant to the EU's obligations under the Aarhus Convention.<sup>166</sup> At the EU level, the Commission routinely undertakes public consultations prior to legislative proposals and certain policy initiatives, often in the context of its formal assessment of the impact of

<sup>155</sup> Sebastian D Bechtel, 'Short Note: Access to Justice under the EU Climate Law' (*ClientEarth*, 20 December 2020).

<sup>156</sup> *ibid.*

<sup>157</sup> See European Parliament (n 48), inserting in the Governance Regulation a new Article 11a on Access to Justice.

<sup>158</sup> See Case C-197/18, *Wasserleitungsverband Nördliches Burgenland and Others*, ECLI:EU:C:2019:824.

<sup>159</sup> See eg Parliament and Council Regulation 2023/1115 of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 [2023] OJ L150/206, art 32.

<sup>160</sup> Sebastian D Bechtel, 'Access to Justice to Enforce the European Green Deal' (2023) <<https://www.clientearth.org/projects/access-to-justice-for-a-greener-europe/updates/access-to-justice-to-enforce-the-european-green-deal/>> accessed 18 December 2023.

<sup>161</sup> Similarly, proposals to include national-level access to justice provisions in the revised LULUCF and Effort-sharing Regulations were not accepted: see Frederik Hafen and Romain Didi, 'Legal Challenges by NGOs, Citizens Key to Climate Battle', *Social Europe* (22 December 2022), <<https://www.socialeurope.eu/legal-challenges-by-ngos-citizens-key-to-climate-battle>> accessed 18 December 2023.

<sup>162</sup> See eg Bernadett Kiss and others, 'Citizen Participation in the Governance of Nature-Based Solutions' (2022) 32 *Env'tl Pol'y & Governance* 247; Nicolas W Jager and others, 'Pathways to Implementation: Evidence on How Participation in Environmental Governance Impacts on Environmental Outcomes' (2020) 30 *J Pub Admin Res & Theory* 383; Candice Howarth and others, 'Building a Social Mandate for Climate Action: Lessons from COVID-19' (2020) 76 *Env'tl and Resource Econ* 1107.

<sup>163</sup> Maria Lee, 'Knowledge and Landscape in Wind Energy Planning' (2017) 37 *Legal Studies* 3.

<sup>164</sup> Linda Weaver and J Bradley Cousins, 'Unpacking the Participatory Process' (2004) 1 *J Multidisciplinary Evaluation* 19.

<sup>165</sup> Ingmar von Homeyer and others, 'Implementing the European Green Deal during the Evolving Energy Crisis' (2022) 60 *JCMS* 125.

<sup>166</sup> Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters [2005] OJ L124/1; and Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13 ('Aarhus Regulation').

those proposals and initiatives.<sup>167</sup> At the national level, Member States are required to inform and consult the public on the environmental implications of relevant projects (under the Environmental Impact Assessment Directive)<sup>168</sup> and public plans and programmes (under the Strategic Environmental Assessment Directive).<sup>169</sup> These general public participation requirements apply also to EU climate law- and policymaking.

Over the years, however, more specific forms of participation in climate action have been introduced. At the EU level, the Commission has launched the European Climate Pact, as a ‘movement of people’ promoting sustainability via climate ambassadors, pledges, ‘peer parliaments’ and dissemination of information.<sup>170</sup> At the national level, several EU Member States—including Finland, France, Germany and Ireland—have experimented with forms of citizen-centric input into climate policy development, via mechanisms of deliberative democracy, such as citizens’ assemblies.<sup>171</sup> Furthermore, the Governance Regulation requires Member States to ensure that ‘the public is given early and effective opportunities to participate’ in the preparation of NECPs and LTSs.<sup>172</sup> Member States are also required to create multilevel energy and climate dialogues that include a broad set of stakeholders, to discuss different scenarios for climate and energy policy.<sup>173</sup>

Complementing these existing participatory mechanisms, the ECL modestly bolsters public participation in climate governance at the EU level. Specifically, it requires the Commission to facilitate ‘an inclusive and accessible process at all levels... with social partners, academia, the business community, citizens and civil society, for the exchange of best practice and to identify actions’<sup>174</sup> to contribute to achieving the ECL’s climate-neutrality and adaptation objectives. Furthermore, the Commission ‘shall use all appropriate instruments, including the European Climate Pact, to engage citizens, social partners and stakeholders, and foster dialogue.’<sup>175</sup> It must furthermore engage with stakeholders who choose to prepare voluntary indicative sectoral roadmaps, including the ‘facilitation of dialogue at Union level, and the sharing of best practice among relevant stakeholders.’<sup>176</sup> Although the ECL thus pays lip service to public participation, these provisions are vague and lack concrete means to strengthen the inclusiveness and openness of climate policymaking.

Significant potential for further improvement and harmonisation exists. At the EU level, for example, public participation arrangements in various EU-level committees and initiatives, such as the InvestEU Advisory and Steering Boards and its Investment Committee, could be revised to provide for more systematic and balanced involvement of stakeholders. At the Member State level, public participation in climate policymaking has varied significantly and evidence suggests it can be more systematically developed, for instance by providing guidance for, or sharing, best practices.<sup>177</sup> In particular, experiments of deliberative democracy have been at best loosely connected to decision-making and can be deployed in a more targeted manner.<sup>178</sup>

167 See also Aarhus Regulation, *ibid* art 9(1).

168 Parliament and Council Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment [2012] OJ L26/1.

169 Parliament and Council Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment [2001] OJ L197/30.

170 European Commission, ‘European Climate Pact’ COM(2020)788 final, 9 December 2020.

171 See Knowledge Network on Climate Assemblies, ‘National Climate Assemblies’ <<https://knoca.eu/national-climate-assemblies/>> accessed 4 October 2023.

172 Governance Regulation (n 2) art 10.

173 *ibid* art 11.

174 ECL (n 1) art 9(1).

175 *ibid* art 9(2).

176 *ibid* art 10.

177 See Oberthür and others (n 19) 36.

178 European Commission, ‘Shaping the EU’s Climate Transition: European Citizens Take the Floor’ (Publications Office of the EU 2022).



## 9. CONCLUSIONS

In this article, we have critically assessed the ECL's contribution to EU climate governance through the lens of procedural climate governance. Focusing on the instruments, institutions and processes for making, implementing and developing substantive climate policies, procedural climate governance is arguably of crucial importance for the success of the EU's transition towards climate neutrality. Specifically, procedural climate governance can strengthen the EU's throughput legitimacy, thereby responding to criticism regarding the output-oriented focus of EU climate change law.<sup>179</sup> Our distinction of seven key functions of procedural climate governance provides a firm conceptual basis for the assessment, with potential beyond the case at hand.

Our findings are ambivalent. On the one hand, the ECL has advanced the EU's procedural climate governance in several important respects. Perhaps most importantly, the ECL advances target-setting by making the EU's 2050 and 2030 climate targets legally binding. By doing so, it provides direction for the further development of substantive climate law and policy in the EU and offers some degree of certainty to industry and investors. Moreover, the ECL defines the contours of the process for setting the EU's 2040 climate target and developing an indicative EU carbon budget for 2030–2050. The requirements in the ECL for the Commission to consider issues such as the latest climate science (including advice from the ESABCC), the need for a just and fair transition, as well as the costs of inaction, offer an opportunity for strengthening the ambition and the fairness of the proposed interim 2040 target.

Beyond target-setting, the ECL especially advances procedural climate governance in the areas of monitoring and evaluation, climate policy integration and scientific expert advice. On monitoring and evaluation, the ECL offers new means for the Commission to ensure that EU measures and Member States' actions align with the ECL objectives, especially through introducing five-yearly progress and consistency assessments. Progress on climate policy integration is especially made through an obligation for the Commission to assess and ensure, as much as possible, the consistency of new legislative and budget proposals with the climate-neutrality and adaptation objectives. These provisions advance a cross-sectoral approach to climate policy and can help improve coherence across different policy areas.

The creation of the European Scientific Advisory Board on Climate Change is an important step forward for ensuring that EU climate policy decision-making is informed by the latest scientific insights. The advice by the Advisory Board in June 2023 concerning the EU's 2040 target and indicative 2030–2050 carbon budget illustrates the benefits of strengthening scientific input into the EU climate policy processes, including by drawing attention to the equity and fairness of the EU's climate mitigation efforts. In comparison, the ECL's provisions on public participation are notable but lack concreteness.

On the other hand, our analysis also shows that the ECL falls short in several respects. First, the ambition of the ECL's climate targets remains problematic when viewed in light of the Paris Agreement's long-term 1.5/2°C temperature goal, as well as from the perspective of both international and intergenerational fairness. Furthermore, the ECL leaves open key questions on the contribution of individual Member States to the EU's climate-neutrality objective, and the respective roles of emission reductions and removals. There is an opportunity to address these concerns in the development of the 2040 target and the indicative carbon budget for 2030–2050. Unfortunately, the ECL does not list international and intergenerational equity as considerations that the Commission must take into account when

179 Fisher (n 5).

making the related proposals.<sup>180</sup> However, we argue that the list of relevant considerations included in the ECL is sufficiently broad for the Commission to incorporate these dimensions in its proposals. The importance of their inclusion is reflected in that the ESABCC already took them into account when issuing its advice on the 2040 target.

The ECL also leaves significant room for further advancing other areas of procedural climate governance. As to monitoring and evaluation, clarity concerning the contribution by individual Member States to the climate-neutrality objective would much facilitate the Commission's assessment of consistency of Member State measures with this objective. Likewise, clearer criteria for assessing the consistency of EU legislative and budgetary proposals with the ECL's objectives could help enhance climate policy integration—as could a further codification of the no-harm principle and of the objective to maximise synergies between other policy areas and the climate objectives. This could also help prevent the Commission from making proposals that are not well aligned with the ECL. Regarding scientific expert advice, the potential of the ESABCC remains under-exploited, especially due to the lack of an explicit mandate to provide input into critical stages of the EU climate policy processes, such as the Commission's progress and consistency assessments, and of a requirement for policymakers to take its advice into account. Moreover, much more remains to be done to bolster public participation in climate law- and policymaking at the EU and Member State levels, including through developing more systematically mechanisms of deliberative democracy in climate policy.

Finally, our analysis demonstrates that access to justice remains unaddressed in both the ECL and the Governance Regulation. Given the shortcomings in the enforcement of environmental law in general and climate law in particular, better avenues for access to justice could make an important contribution to holding EU and Member State policymakers accountable for complying with relevant obligations, including those contained in the ECL and the Governance Regulation.

Overall, while the ECL has significantly strengthened important functions of EU procedural climate governance, our analysis shows that the legal framework for procedural climate governance remains to be significantly upgraded. Such an upgrade is needed for the EU to have the processes, institutions and instruments in place to develop and implement the substantive policies towards a climate-neutral (and climate-resilient) economy and society and to bolster public support and ownership of the transition. The reviews of the ECL and the Governance Regulation, due to take place in 2024, provide a critical opportunity for doing so.

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180 ECL (n 1) art 4(5).