Who Can Demand Justification for the EU's Climate Ambition?

On GLAN and CAN-Europe v Commission and the Missing Route to Challenge the EU's Climate Targets

Christina Eckes & Maiju Mähönen

03.09.2026 doi: 10.59704/b51579042508bce8

On 2 September 2026, the General Court handed down its judgment in Global Legal Action Network (GLAN) and CAN-Europe v Commission (T-120/24). Its central conclusion was to be expected. The EU's Aarhus Regulation cannot be used to challenge indirectly a level of climate ambition fixed by the EU legislature. An implementing power does not allow the Commission to rewrite legislation, even indirectly.

However, we see the constitutional significance of the judgment elsewhere. It risks closing one of the few routes through which civil society might ask the EU Court to scrutinise the legal adequacy of the EU's climate targets, while direct review remains effectively closed under Article 263(4) TFEU. The pressing question is therefore: What judicial or other institutional channel remains to challenge and demand justification for the adequacy of the EU's 2040 climate target, since 2026 enshrined in the European Climate Law (ECL)?

A Challenge to the EU's 2030 Ambition

The case arose from a request by GLAN and CAN-Europe for internal review of Commission Implementing Decision (EU) 2023/1319, which fixes Member States' annual emission allocations under the Effort Sharing Regulation (ESR). Formally, the applicants challenged the implementing decision. Substantively, however, their arguments concerned the EU's climate ambition translated into the annual emissions allocations.

The applicants argued that the EU's 55% net greenhouse gas reduction target for 2030, laid down in the ECL, and the corresponding ESR target were inadequate in light of the Paris Agreement and the EU's fair share of the global mitigation effort. They also criticised the Commission's 2020 impact assessment for failing adequately to assess the EU's 2030 target in the light of the EU's fair share of the global carbon budget consistent with the Paris Agreement's 1.5°C goal, the feasibility of higher emissions reductions, climate impacts and fundamental rights.

The General Court carefully reconstructed these arguments but concluded that they were, "in reality", directed against the legislative provisions setting the EU's 2030 targets (para 128). The Commission could not set annual emissions allocations that are higher in ambition, as it is bound by the essential elements of the applicable law under Article 291 TFEU. Had it indirectly replaced those targets with more ambitious ones because it considered them inadequate under primary EU or international law, it would have "exceeded its implementing power" and encroached on the legislature's competence (para 107).

As anticipated by earlier commentators, internal review can test how climate legislation is implemented where the Commission retains relevant administrative discretion. Hence, while potentially promoting compliance with the EU's existing climate targets, it cannot provide a back door for demanding justification of their ambition fixed by the legislature itself.

What Remains of Aarhus Review

The judgment still contains several useful findings for climate litigation (and environmental litigation more broadly). Where an applicant argues that the Commission misunderstood an internal review request, the Court must conduct "full review" of whether the

grounds were correctly understood (para 50). Complex technical and scientific assessments remain subject to the familiar manifest error standard (paras 45-46).

The Court also held that defects in a preparatory act may be relied upon when challenging the definitive administrative act for which it was preparatory (paras 143-146). This may matter greatly in future climate litigation because scientific, economic and distributive choices are often framed at the impact-assessment stage, where the evidentiary basis for climate ambition is constructed. That being said, Article 6(4) ECL obliges the Commission to review the consistency of all its measures with the climate neutrality objective. This suggests that internal review requests asking the Commission to justify how its preparatory material aligns with the climate neutrality objective in light of the best available science, rather than with broader fair-share considerations, may have a greater chance of being considered by the Court.

However, by giving the legislative exclusion a wide functional reach, the Court did not allow the applicants to challenge the Commission's 2020 impact assessment, which preceded the formal legislative procedure. While it was not itself legislation, it was treated as an exercise of the Commission's legislative capacity because it was prepared with a view to a legislative proposal and was substantively connected to the resulting legislation (para 165).

Finally, the Court drew attention to Article 277 TFEU, which allows a party, in proceedings before the EU Courts, to challenge incidentally the legality of an EU act of general application on which the contested measure depends. It held that the Commission itself cannot entertain a plea of illegality when conducting an internal review because Article 277 is a judicial mechanism (para 134). Although the applicants' Article 277 argument failed in this case because the plea was not capable of undermining the relevant inadmissibility reasoning and the argument was directed at the wrong part of the contested decision (para 136), the Court left open the possibility of such a plea once the dispute reaches the EU Courts. A carefully framed plea of illegality may therefore still be worth raising in future climate litigation. The Court also noted that the applicants had not challenged the interpretation of the Aarhus Regulation under primary EU law, including Article 47 of the Charter (para 136).

The Missing Institutional Opportunity to Demand Justification

The deeper problem exposed by *GLAN* is a familiar flaw of the EU legal order whose significance increases with waning climate ambition and growing climate impacts. In Carvalho, the EU Courts rejected a direct challenge to EU climate legislation because the applicants were not individually concerned. The Plaumann doctrine continues to make direct review of EU legislative climate ambition exceptionally difficult. The usual response is that the Treaties offer protection via a broader "complete system of legal remedies" (*Inuit*, para 92; *Les Verts*, para 23; *UPA*, para 40). If the EU legal order is to sustain that claim, at least one realistic judicial route must exist through which the legality of the EU's climate targets can be tested. The *GLAN* case makes clear that internal review does not offer such a route. Preliminary references remain possible in principle, but depend on suitable national litigation and on a national court deciding to refer a validity question. Article 277 remains uncertain.

This is more than a technical problem of access to court. It concerns whether citizens have an institutional opportunity to demand justification from public power. Rainer Forst's work on the right to justification starts from the idea that legitimate authority must be capable of offering adequate reasons to those subject to it. Judicial review is one setting in which reasons can be demanded, tested against law and confronted with evidence.

Other courts in Europe are already carrying out this function in climate cases. In Urgenda, Neubauer, KlimaSeniorinnen and, more recently, Bonaire, courts have required public authorities to defend the adequacy of their choices against human rights, interpreted in light of best available science and existing international and national commitments. The ICJ's 2025 Advisory Opinion has further articulated and strengthened this net of legal requirements governing mitigation ambition. These courts require govern-

ments to justify why the level of protection they provide is legally defensible.

At EU level, this exchange has still not taken place in relation to the Union's own climate targets. *GLAN* shows that the problem is not only that the EU Courts may apply deferential review once scientific evidence is before them. For legislative climate ambition, the scope of the available procedures may prevent the Court from engaging on merit at all.

Why This Matters for the 2040 Target

The implications of the case are particularly important for the EU's 2040 climate target, the lawfulness of which has been seriously questioned. The European Scientific Advisory Board on Climate Change (ESABCC) recommended domestic reductions of 90 to 95% by 2040. The final legislation retains a headline target of 90% while allowing international credits to account for up to five percentage points. This permits domestic reductions to fall to 85%.

The legal question extends beyond procedural requirements to how the EU institutions engage with fundamental rights (*Kadi*, para 316) and balance scientific advice with other policy considerations (Article 4(5) ECL). However, *GLAN* shows how difficult it may be to put that question before the EU Courts once the chosen ambition has been embedded in legislation. Its treatment of the 2020 impact assessment raises an additional concern that the scientific basis constructed before legislation may constrain further choices but remain outside of judicial review.

GLAN clarifies a constitutionally coherent line but also reveals a gap. The line is that the Commission cannot rewrite legislation through implementing powers. The gap is that if *Plaumann* continues to obstruct direct review, the Aarhus Regulation excludes challenges to legislative ambition, preliminary references depend on a suitable national route, and Article 277 remains uncertain, the claim that EU law offers a complete system of remedies is unconvincing where a central EU policy choice has serious fundamental rights consequences.

GLAN hence aggravates our doubts on whether EU law provides a realistic institutional route through which the Union can be required to justify the legal adequacy of its own climate ambition at all.

Research for this blog post was funded by the European Research Council (LitDem project, grant agreement no. 101125511) and the Academy of Finland Strategic Research Council project 2035Legitimacy (grant/award number: 358397).

A more extensive and substantially different discussion of the ruling by the authors will be published on EU Law Live.

ABOUT THE AUTHORS

Christina Eckes
Christina Eckes is a Professor of European law at the University of Amsterdam and Director of the Amsterdam Centre for European Law and Governance (ACELG).
Maiju Mähönen
Maiju Mähönen is a doctoral researcher at the University of Eastern Finland and a visiting researcher at the University of Amsterdam specializing in EU climate law, with a particular focus on accountability in EU climate governance.

SUGGESTED CITATION

Eckes, Christina; Mähönen, Maiju: Who Can Demand Justification for the EU's Climate Ambition?: On GLAN and CAN-Europe v Commission and the Missing Route to Challenge the EU's Climate Targets, Verfassungsblog, 03.09.2026, doi: 10.59704/b51579042508bce8.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260904-145435-0.