Shaping the EU's 2040 Climate Target

Reforming the European Climate Law's Procedural Climate Governance

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The EU appears close to enshrining its 2040 climate target in the European Climate Law (Regulation (EU) 2021/1119), an important milestone in the EU's journey toward the Law's overarching goal of climate neutrality by 2050. Both the EU Council and the European Parliament have adopted very similar positions in preparation for trilogue negotiations, endorsing the Commission's proposed 90 percent net emission reduction target for 2040, albeit with important conditions. The process has also enabled the EU to define and submit, with significant delay, its Nationally Determined Contribution (NDC) for 2035 under the Paris Agreement.

The European Climate Law – soon to be amended – shapes the EU's procedural climate governance, encompassing the frameworks, institutions, and processes that shape substantive climate policies. As we have previously comprehensively analysed, the Climate Law in particular enshrines the EU's medium- and long-term climate targets, addresses monitoring and evaluation of progress, advances the integration of climate objectives across policy domains, strengthens scientific expert advice and bolsters public participation in EU climate policymaking.

We argue here that the EU is, for the first time, establishing its climate target through the ordinary legislative process, building on recommendations from the European Scientific Advisory Board on Climate Change (ESABCC). However, the 2040 target will be less ambitious than recommended and not living up to standards of international fairness. Furthermore, important review and implementing provisions of the amended Climate Law will be weakened, along with existing substantive climate legislation. The full impact of these changes will eventually only materialise in the implementing legislative package expected to be proposed in 2026.

Process towards the EU 2040 climate target

Key developments in the journey towards setting the EU 2040 climate target thus far include:

- A recommendation by the European Scientific Advisory Board on Climate Change (ESABCC) for a 90-95 percent domestic net emission reduction from 1990 levels issued in June 2023, and updated recommendations in June 2025;
- a Commission proposal for an at least 90 percent target with a limited contribution from high-quality international carbon credits (up to 3 percent) in July 2025;
- implicit endorsement of the 90 percent target by the European Council linked to various conditions;
- the Council position adopted on 5 November, supporting the 90 percent target but setting various conditionalities, including a higher share of international carbon credits; and
- the Parliament position adopted on 13 November, aligning in some key respects with the Council position, with some stricter conditions on the use of international carbon credits.

Through a politically connected but legally separate process, the EU submitted its 2035 climate target (Nationally Determined Contribution, NDC) under the Paris Agreement to the United Nations on 5 November, committing to reducing net greenhouse gas emissions by 66.25-72.5 percent from 1990 levels.

Role of scientific advice in the target-setting process

The European Climate Law introduced two significant reforms of the process for setting EU climate targets, a key feature of procedural climate governance.

First, whereas EU climate targets were politically decided by the European Council in the past, the 2040 target will be enshrined in binding form in the European Climate Law through the ordinary legislative procedure. Even though the European Council continues to be involved, this makes aspects of the process more transparent. Second, the Law specifies several considerations for the Commission to account for when proposing the 2040 target, including scientific advice provided by the ESABCC, thereby reinforcing the scientific basis of EU climate policy. The ESABCC itself was established by the Climate Law and started operating in 2022.

The ESABCC recommendation of a 90-95 percent reduction target for 2040 also suggests that pursuing the upper target range, and complementing domestic action with international cooperation and partnerships outside the EU, would enhance the target's fairness. Yet, according to the ESABCC, even the 90-95 percent range does not fully represent the EU's globally fair share of mitigation efforts.

The ESABCC's recommendation marks the first time that global fairness has been explicitly considered in the EU's target-setting process. Analyses connecting domestic climate targets to the Paris Agreement's objective of limiting the global average temperature increase to 1.5°C above pre-industrial levels remain rare, also outside the EU. Nevertheless, the significance of aligning national climate targets with such analysis for compliance with international law has been crystallised through the 2024 *KlimaSeniorinnen* decision by the European Court of Human Rights and the 2025 Advisory Opinion on the *Obligations of States in respect of Climate Change* by the International Court of Justice (ICJ).

The ESABCC's scientific input has clearly influenced the target discussions. However, the 2040 target will not fully reflect its recommendations. All three EU institutions have agreed on a 90 percent target but have also effectively lowered it, especially by proposing to authorise the use of international carbon credits of up to five percent. Additionally, as detailed below, Council and Parliament have included a range of conditions that would further lower the EU's overall climate ambition. It has therefore already been argued that the EU's proposed 2040 target is not compatible with international law.

International carbon credits: further implications

The inclusion of international carbon credits into the 2040 target constitutes an important change. The EU decided to achieve its 2020, 2030 and 2050 climate targets through domestic emission reductions, and the ESABCC recommended the same for the 2040 target. In contrast, the Commission proposed that a maximum of three percent of the 2040 target could be achieved through "high-quality" international carbon credits from 2036 onwards. Council and Parliament suggested a pilot phase from 2031 to 2035 and increased the amount of international credits to "up to" five percent, also specifying that the EU would aim for 85 percent net domestic emission reductions. While the exact amount of carbon credits permitted still requires clarification, their inclusion clearly weakens both the ambition and the fairness of the EU's 2040 target (see above).

Two further key issues that need clarification concern the way in which international carbon credits will be integrated into the EU's post-2030 climate law architecture and measures to safeguard the high quality of such credits. In the past, linking the Kyoto Protocol's market mechanisms to the EU Emissions Trading Scheme (ETS) led to an influx of low-quality credits and a significant drop in the ETS carbon price. The Council and Parliament have suggested to clarify that international credits cannot be used for compliance in the ETS. This would limit the use of international carbon credits to the non-ETS sectors currently regulated by the Effort-sharing and Land Use Land-use Change and Forestry (LULUCF) Regulations. However, details will need to be determined in the implementing legislation for achieving the 2040 target, which the Commission is expected to table in late 2026.

Regarding the high quality of international carbon credits, the Parliament has suggested strengthening the legal requirements in the Climate Law, *inter alia*, related to robust safeguards concerning additionality, permanence, transparent governance as well as environmental, social and human rights impacts. Even if these proposals are successful, high-quality standards will have to be specified, and compliance be ensured, through further implementing legislation – which will also have the task to avoid that international credits divert clean investments outside Europe.

Weakening progress monitoring and evaluation

In its current form, the European Climate Law mandates the Commission to regularly monitor progress towards climate neutrality and adaptation at both the EU and Member State levels. Such reviews may lead to proposals for new measures and recommendations to individual Member States. The Commission is also tasked with issuing a report on the Law's implementation every five years. The core idea is that insufficient progress would trigger stronger actions to close the gap. Both Parliament and Council are suggesting important revisions to the Climate Law's review provisions.

The first proposal relates to Article 11 of the Climate Law concerning the review to be conducted every five years following the Paris Agreement's global stocktake. In contrast to the Paris Agreement's obligation to enhance ambition over time, the proposed amendment would allow the Commission to recommend lowering the 2040 target. An adjustment of the target could occur explicitly if the estimated level of net natural removals for 2040 significantly diverges from what is required. This is a likely scenario, as the EU's natural carbon sink is declining, and many Member States are not on track to meet their 2030 targets in the LULUCF sector. Additionally, when undertaking the review, the Commission would be requested to consider new factors, including competitiveness, energy prices, and socioeconomic and employment impacts. Second, the Council and Parliament are proposing a new biennial assessment under Article 4 of the Climate Law that would consider the EU's global competitiveness and possibly lead to legislative proposals.

While any legislative proposals remain the prerogative of the Commission—an authority that cannot be altered through secondary legislation—inclusion of new review provisions in the Climate Law that could lead to a weakening of the 2040 target during the implementation period would constitute a significant setback for EU procedural climate governance. Such weakening would also be inconsistent with international law, including the Paris Agreement's requirement that each Party's NDC becomes more ambitious over time – a point that is emphasized in the ICJ Advisory Opinion. Additionally, this would result in unclear investment signals, ultimately diminishing legal certainty for investors and other key stakeholders.

The way forward - or backward?

Once the 2040 target is enshrined in the European Climate Law, the Commission is expected to make legislative proposals in late 2026 to ensure the target's effective implementation, in accordance with the guidance provided in the amended Article 4.5 of the Law.

However, the Climate Law amendment also foreshadows a weakening of existing parts of the previous "Fit for 55" package of legislation adopted in 2023 and 2024 to implement the EU's 55 percent reduction target for 2030.

First, both the Council and the Parliament suggest inserting a provision in the Climate Law to postpone by one year the start of the new ETS 2 for fuel used in transport and buildings. Second, the Commission will review the regulation on CO_2 standards for cars and vans by the end of the year, especially the 2035 target of achieving zero emissions of newly registered cars. Third, both the Parliament and Council are also suggesting that the Commission should revise the ETS trajectory so as to allow a limited amount of emissions beyond 2039 and also consider a slower phase out of the free allocation of emission allowances for energy-intensive industries.

Finally, while no pre-2030 measures are foreseen in the Climate Law, both the Council and Parliament suggest considering the declining capacity of natural

sinks when amending EU legislation to achieve the 2040 target. Accepting the decline contradicts the current LULUCF Regulation, which aims to enhance natural sink capacity, and has been interpreted by some Member States as a pre-2030 concession for those unlikely to meet their 2030 targets under the LULUCF Regulation.

Overall, discussions on the 2040 target of 90 percent have hence also led to, or may at least pave the way to, weakening some aspects of existing substantive legislation. This could both reduce the likelihood of achieving the EU's 2030 target and increase uncertainty about the path to the 2040 target.

The EU is, for the first time, in the process of defining its climate target through the ordinary legislative process, building on scientific analysis. While recent jurisprudence mentioned above emphasizes that this analysis is necessary for compliance with international law, the EU's 2040 climate target will not fully align with the ESABCC's recommendations.

Key details impacting the EU's climate ambition will be finalized in the next stage of the policy process, which focuses on detailed implementing legislation. It remains to be seen how the Commission will address the "shopping list" of concerns outlined in the European Climate Law that could potentially lead to lower ambition. Given that its overarching right of initiative cannot be constrained by secondary legislation, the Commission could still propose implementing measures that preserve and even enhance ambition. Otherwise, civil society is likely to try to engage courts and other accountability mechanisms, which are also a crucial aspect of procedural climate governance.

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