

An aerial photograph of a winding stone staircase built into a rocky mountain slope. The staircase is made of grey stone steps and is surrounded by dense green forest. The path curves and zig-zags down the hillside. A few small figures of people can be seen on the stairs.

REVIEW OF THE GOVERNANCE REGULATION AND THE EUROPEAN CLIMATE LAW

Upgrading the EU's procedural climate governance



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Policy Options Paper

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List of abbreviations

A2J	Access to Justice
CNT	Climate-neutrality target
CPI	Climate policy integration
DNSH	Do no significant harm
ECHR	European Court of Human Rights
ECL	European Climate Law
EEA	European Environment Agency
ESAB-CC	European Scientific Advisory Board on Climate Change
ETS	Emissions Trading System
GHG	Greenhouse gas
LTS	Long-term strategy
NECP	National Energy and Climate Plan
nLTS	National long-term strategy
SEA	Strategic Environmental Assessment
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Executive Summary

The mandated reviews of the **Governance Regulation** and the **European Climate Law (ECL)** provide a unique opportunity for upgrading the EU's **procedural climate governance**. The Governance Regulation (Regulation 2018/1999 on the Governance of the Energy Union and Climate Action) and the ECL (Regulation 2021/1119 on Establishing the Framework for Achieving Climate Neutrality) are the foundational building blocks of procedural EU climate governance. They define first instruments, institutions and processes for developing and implementing substantive EU climate policies that directly address the mitigation of greenhouse gas (GHG) emissions.

Procedural climate governance is of pivotal importance for a successful transition to climate neutrality. The long-term, dynamically evolving and crosscutting nature of the “super wicked” climate challenge requires the continuous development and adaptation of climate policies. The increasing contestation of climate policies and rising climate “backlash” reinforce the need to firmly anchor the climate transition in our societal and political systems and hence underline the importance of effective procedural climate governance, i.e. of the “how” of climate policymaking, aiming for accountability, fairness, and inclusivity in decision-making.

Against this backdrop, it seems paramount to address existing shortcomings and gaps of procedural EU climate governance to mobilise its potential to the fullest extent possible. To this end, we identify **key options for upgrading eight major dimensions of procedural EU climate governance**:

1. **National Energy and Climate Plans (NECPs) and Long-Term Strategies (LTSS)** under the Governance Regulation: (a) alignment of NECPs and national LTSS with each other and with other plans and strategies; (b) enhanced and aligned review mechanisms, (c) strengthened support and capacity building, and (d) regular updating of the EU LTS.
2. **Climate-neutrality targets**: integration into member states' LTSS under the Governance Regulation, including key accompanying information on how residual emissions are to be balanced, based on independent scientific advice.
3. **Public participation**, in particular: (a) acknowledgement of the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and the right to peaceful assembly; (b) upgrading of public participation in NECPs and national LTSS and of multilevel climate and energy dialogues under Articles 10 and 11 of the Governance Regulation; (c) promotion of innovative means of public participation and deliberation in member states and at EU level; (d) commitment to provide information on how public participation inputs have been integrated into policymaking; (e) provision of support and best-practice guidance; (f) setting up of a consultation structure on EU climate policy and balancing of the composition of advisory bodies.
4. **Access to justice (A2J)**: (a) clarification that acts and omissions of the Commission under these instruments can be challenged under the EU's Aarhus Regulation; (b) providing for A2J in member states regarding key obligations under the Governance Regulation; and (c) a general commitment to including A2J provisions across EU climate and energy legislation or establishing a related provision in the Governance Regulation itself.

5. **Reporting obligations of member states and related review** under the Governance Regulation: (a) instituting systematic biennial reviews by the Commission with actionable recommendations; (b) strengthened reporting particularly concerning the social dimension and investment frameworks; and (c) enhancing the transparency of biennial progress reports.
6. **Evaluation and response (regarding member-state ambition and progress)** under the Governance Regulation: (a) clarification that related Commission recommendations can be challenged under the Aarhus Regulation (see above on A2J); (b) strengthened member state obligations to take corrective action; and (c) cross-compliance restrictions on access to funding in response to persistent lack of ambition or progress.
7. **Independent scientific expert advisory bodies** under the ECL: (a) further specification of the mandate of the European Scientific Advisory Board on Climate Change; (b) requirement for the European Institutions to explain how the advice received has been taken into account in decision-making; and (c) strengthened guidance for member states to establish national advisory bodies in accordance with best-practice standards.
8. **Cross-policy consistency and climate policy integration:** (a) elaboration and codification of the principles on Do No Significant Harm (DNSH) and fostering synergy/coherence; and (b) full alignment of economic and investment policies (European Semester, public budgets, relevant national plans and strategies) with climate policy objectives.

A **coherent and integrated reform package** across all key dimensions of procedural EU climate governance could be achieved by revising the Governance Regulation and the ECL in parallel, or by including consequential amendments of the ECL in a revision of the Governance Regulation. Most of the identified options could be incorporated in a revised Governance Regulation. Two issues in particular, namely scientific expert advisory bodies and climate policy integration, have a strong primary home in the ECL.

On balance, the package of options enables **streamlining, enhancing coherence and simplifying** procedural EU climate governance. Whereas some identified options may strengthen existing reporting and planning requirements in limited and targeted ways, this may be outweighed by suggestions for reinforcing facilitative best-practice guidance and capacity building, and for streamlining and simplification, especially regarding national planning.

Overall, the identified package of options has the potential to make the framework for developing and implementing EU climate policy **fit for the travel to climate neutrality** in 2050 and negative GHG emissions thereafter. Upgraded in this way, its procedural climate governance may also contribute to **stabilising and reinvigorating the EU's democratic architecture** – through advancing the legitimacy of climate governance and moving towards participatory “climate democracy”. The scheduled reviews of the Governance Regulation and the ECL provide a unique and critical opportunity for realising this potential.

1. Introduction

Regulation 2018/1999 on the Governance of the Energy Union and Climate Action (the *Governance Regulation*) and Regulation 2021/1119 on Establishing the Framework for Achieving Climate Neutrality (the *European Climate Law*, ECL) together form the core of the EU's procedural climate governance. Whereas *substantive* climate governance directly addresses the mitigation of greenhouse gas (GHG) emissions (or the adaptation to climate change impacts), *procedural* climate governance establishes the framework of instruments, institutions and processes for developing and implementing substantive climate policies. Over the years, the EU has developed a rich array of substantive climate policy instruments ranging from the EU Emissions Trading System (ETS) and the *Effort Sharing Regulation over the Renewable Energy and Energy Efficiency Directives* to a series of sectoral instruments such as the *Energy Performance of Buildings Directive* and the *CO₂ Emission Performance Standards for Cars Regulation* (and much more – see Dupont et al., 2024). Key aspects of procedural climate governance – including planning, targets, monitoring and reporting, evaluation and review, public participation, scientific expert advice and more – have started to become systematically addressed in the Governance Regulation and the ECL.

Within six months of the Global Stocktake under Article 14 of the Paris Agreement, both the Governance Regulation and the ECL are to be reviewed (Art. 45 of the Governance Regulation and Art. 11 of the ECL). Due in the first half of 2024, these reviews provide an opportunity to consider improving both pieces of legislation that are foundational for EU climate and energy governance (Kulovesi & Oberthür, 2020; Kulovesi et al., 2024a).¹ The review of the Governance Regulation is expected to be released in 2024, whereas no announcement has been made on the review of the ECL.

This paper aims at identifying key options for further strengthening the EU's procedural climate governance through amendments of the Governance Regulation and the ECL. It builds on Oberthür et al. (2023) that reviewed key aspects of the EU's procedural climate governance and identified general options for its improvement. The current paper takes this analysis one step further by considering the following two questions in particular:

- (1) Through which of the two legal instruments under discussion (the Governance Regulation and the ECL) may improvements on specific issues be pursued?
- (2) What aspects could be addressed in potential amendments?

To answer the questions, we proceed through the following four steps. We first provide further background to the analysis in section 2. Section 3 briefly explains the scientific approach and the methods employed for the investigation. Forming the main part of the analysis, section 4 discusses key aspects of EU procedural climate governance, including plans and strategies, climate-neutrality targets, public participation, access to justice, reporting and review, evaluation and response, scientific expert advisory bodies, and climate policy integration. As mentioned, the focus is on the “where” and the “what” of any improvements. Section 5 presents overall conclusions.

¹ Although legally operating at the intersection of EU climate and energy policies, we refer to EU climate policy/governance in the following for ease of reference.

2. Background and starting points

The central importance of procedural climate governance follows not least from the super wicked nature of the climate challenge. The latter entails, among other things, that addressing climate change is a long-term, crosscutting and dynamically evolving challenge that requires far-reaching, science-based and societally contested decisions/policies being consistently and flexibly developed over a long period of time. This underlines the importance of procedural governance bolstering the “input legitimacy” and political and societal anchoring of the climate transition (see discussion and references in Oberthür et al., 2023, p. 9-10). As a result, procedural climate governance is also related to broader debates surrounding, and can potentially significantly strengthen, the legitimacy and democratic nature of European integration at large (e.g., Scharpf, 2009; Cheneval & Schimmelfennig, 2013; Sánchez-Cuenca, 2017; Neuhold, 2020).

Procedural climate governance encompasses several key aspects of the political system that shape the decision-making on and the implementation of substantive climate policies. Whereas different accounts have put forward a slightly different slicing of the matter, the following are emerging as key aspects of procedural EU climate governance (Moore et al., 2023; Oberthür et al., 2023; Kulovesi et al., 2024a) as further investigated in this paper (main rationale in brackets):

- (1) Medium-term planning and long-term strategizing (responding to the long-term nature of the challenge);
- (2) Target setting (ditto);
- (3) Public participation and stakeholder involvement (responding to the crosscutting and contested nature of the challenge and advancing societal support and anchoring);
- (4) Access to justice (ditto);
- (5) Monitoring and reporting (supporting effective implementation and the further development of the governance framework);
- (6) Review and response (ditto);
- (7) Scientific expert advisory bodies (ensuring a sound evidence base for addressing this crosscutting and societally contested challenge); and
- (8) Climate policy integration (responding to the crosscutting nature of the challenge).

As mentioned, the Governance Regulation and the ECL form the key cornerstones of EU procedural climate governance. The reviews of these instruments in 2024 constitute a crucial opportunity for upgrading such governance. A focus on advancing the EU’s procedural climate governance may also be suitable with the conclusion of the “Fit for 55” package and other substantive EU climate policies for implementing the EU’s 2030 target towards achieving climate neutrality by 2050 (Oberthür & von Homeyer, 2023; Dupont et al., 2024). It also seems timely after the *Klimaseniorinnen* decision by the European Court on Human Rights in April 2024 that addresses most the aforementioned elements and establishes relevant benchmarks (ECHR, 2024). In this context, it should be useful to explore how related options may be pursued within the EU, i.e. what focus possible amendments might have and which legal instrument might be most suitable for realising them.

3. Scientific approach and methods

This paper updates and further advances the analysis provided in Oberthür et al. (2023) as described above. This analysis was itself based on an in-depth review of available scholarly literature and expert studies and informed by stakeholder input (at a two-pronged workshop in autumn 2022). For the purpose of this paper, the following methods have been deployed:

- Comprehensive consideration of available evidence and knowledge as reflected in scholarly literature from various disciplines analysing “governance” (including law, political science, European studies, and policy analysis) as well as relevant grey literature (think tank reports, working papers, etc.);
- Insights from ongoing research known to the contributing experts;
- Reviews and group discussions amongst the contributing experts (October 2023 to January 2024);
- Discussion at a hybrid workshop convened in Brussels and online on 24 January 2024, including various stakeholders.

More specifically concerning the two foci of the current paper (specifying the “where” and the “what/how” of the implementation of the identified options), the following approach was pursued:

- To assess the most appropriate legal instrument (Governance Regulation or ECL) for pursuing the identified policy options, the fit with the instruments’ legal bases as well as their scope and focus were particularly considered.
- To develop the specifics of the policy options and how they might be reflected in the Governance Regulation and/or the ECL, the analysis in particular considered and weighed the following aspects:
 - What would be required for procedural climate governance to most effectively address the climate challenge given its specific characteristics arising from its super wicked nature (including urgency, dynamism, complexity, contentiousness, and long-term, cross-cutting nature; see Oberthür et al. 2023);
 - Relevant legal and institutional constraints and competences, taking into account both applicable primary EU law and secondary legislation, as well as any pertinent international law;
 - Political and resource constraints (for example concerning administrative capacities for implementation) as well as related opportunities (for example for reaping synergies or streamlining);
 - The compatibility and potential synergy with broader goals of European integration (such as ensuring and advancing vital democracy).

4. Key issues of EU procedural climate governance

Building on Oberthür et al. (2023), each of the following subsections first establishes a benchmark and takes stock of the status quo in EU climate law and policy before discussing main options for reform, specifically: (1) through which legal instruments to implement any reform (especially the Governance Regulation or the ECL) and (2) what to substantively amend or further develop.

4.1 National Energy and Climate Plans and Long-Term Strategies

Benchmark: Comprehensive medium- and long-term strategic climate policy planning constitutes a key component of climate governance aiming to prevent fragmented and incoherent climate policies and carbon lock-in. Based on current knowledge, the following elements of best practice can be identified: (a) integration of planning across all relevant sectors and government departments; (b) broad societal and stakeholder participation (see section 4.3); (c) coherence between medium- and long-term planning; and (d) regular updating and review to reflect evolving knowledge and technological, socio-economic and political framework conditions and objectives (e.g., Moallemi & Malekpour, 2018; Dubash et al., 2022).

Status quo: Bringing together several previously separate planning obligations, the 2018 Governance Regulation requires each member state to produce and regularly update a **National Energy and Climate Plan (NECP)** with a medium-term ten-year time horizon (Art. 3). Each NECP addresses a member state's objectives and planned measures concerning the five Energy Union dimensions of: (1) decarbonisation of the economy; (2) energy efficiency; (3) energy security; (4) the internal energy market; and (5) research, innovation, and competitiveness. Importantly, NECPs must specify the national contributions to the EU's overall renewables and energy efficiency targets. Annex I to the Governance Regulation stipulates the areas to be covered by, and the information to be included in, NECPs. "Early and effective" public consultation on NECPs is required (Art. 10) (along with regional cooperation and consultations with other member states: Art. 12), and NECPs should contain information on these public (and regional) consultations (Art. 3.2) (see also section 4.3).

As part of the NECP process, each member state submits a draft plan, which is evaluated by the Commission and then revised for final submission. Approximately halfway through the ten-year cycle, member states must submit an update of the NECP. The first draft NECPs were due at the end of 2018, followed by a Commission review by mid-2019 (European Commission, 2019b), and a final submission by the end of 2019 (European Commission, 2020a). Drafts of the first NECP updates were due in June 2023 followed by a Commission review by the end of 2023 (European Commission, 2023b), with final NECP updates to be submitted in June 2024. In November 2022, the Commission had published guidance for the NECP updates, emphasizing the importance of taking into account the changed energy-related circumstances in the aftermath of the Russian invasion of Ukraine in 2022 (European Commission, 2022).

The Governance Regulation (Art. 15) moreover requires each member state to submit a **national Long-term Strategy (nLTS)** every ten years covering at least the next 30 years. In doing so, the Regulation also implements the invitation in Article 4.19 of the Paris Agreement for elaborating

such strategies. The Commission must then analyse the nLTSs as a whole to assess whether they are “adequate for the collective achievement” of the Energy Union goals (Art. 15.9). A quite general assessment was included in the Commission’s 2023 Climate Action Progress Report (European Commission, 2023a, pp. 101-105). Guidance on the contents of nLTSs is provided in Annex IV of the Governance Regulation. The first nLTSs were due to be submitted by 1 January 2020. The second nLTSs are due by 1 January 2029. Updates are due every five years, “where necessary” (Art. 15.1). Arguably, given fundamentally changed circumstances over the past years (Covid-19, Russian invasion of Ukraine), updates may be deemed “necessary”.

The Governance Regulation also requires the European Commission to undertake a one-time **EU Long-term Strategy (EU LTS)** for GHG emission reductions, which was published in November 2018 (European Commission, 2018). The main focus was on scenarios for the achievement of various climate-related targets. The process ultimately led to the proposal for the EU’s 2050 climate-neutrality target, which is now enshrined in the ECL.

The experiences with the first round of NECPs, the emerging NECP updates and the nLTSs have revealed **significant shortcomings and an urgent need for improvement**. The main issues identified concern: (1) the quality and completeness of information and data provided, especially on planned policies and measures; (2) lack of appropriate public (and regional) consultations; (3) coherence between NECPs and nLTSs; and (4) integration/consistency with other EU and national plans and legislation (regarding climate and energy and beyond, including economic planning) (Williges et al., 2022; EEB, 2023a and b; Kögel, 2024; Velten et al., 2022; Duwe, 2022; European Commission, 2023b; ESAB-CC, 2024b, ch. 15).

MAIN OPTIONS FOR REFORM

Where: The **Governance Regulation** seems the most logical focus for pursuing improvements, as it provides for both NECPs and LTSs.

What: Based on the existing experience and other available literature, the following main options for improving medium- and long-term strategic climate policy planning in the EU can be identified²:

- **Alignment of NECPs and nLTSs.** An alignment of the timing but also of related national processes (including public consultations) (Velten et al., 2022, p. 104) and content (to enhance coherence) could simplify national planning efforts, while facilitating coherence across NECPs and nLTS. This would include making the currently optional 5-yearly updates of nLTSs mandatory (also in view of fast-changing geopolitical conditions) (see also ESAB-CC, 2024b, ch. 15).
- **Alignment and coherence with other plans and energy security.** Efforts to this end could help streamline and integrate varying planning processes, thereby enhancing consistency and embedding of NECPs and nLTSs in national contexts. More specific guidance in Annexes I (NECPs) and IV (nLTSs) of the Governance Regulation, but also in the chapters on the NECPs and LTSs in the Regulation itself, could make an important contribution. The Commission

² The issue of public consultations is addressed in section 4.3 on public participation.

could complement such guidance with further coordination efforts and by identifying and disseminating national examples of good practice. The following issues could usefully be addressed:

- Alignment with other national climate and sustainability plans and strategies, whether required under other EU policies (on the just transition, the social climate fund, and others) or arising from national processes/requirements;
 - Coherence with other relevant national plans and strategies (especially macro-economic and investment planning) (see also section 4.8);
 - Coherence of the energy security dimension with climate objectives and planning.
- **Strengthened support and capacity building for EU member states.** Developing meaningful NECPs and LTSs is a demanding task that requires specialised knowledge and expertise that needs to be continuously further advanced. Strengthened support mechanisms at the EU level (beyond Article 15.8 of the Governance Regulation, providing for technical assistance and a regular exchange of best practice) could significantly help enhance relevant capacities in the member states.
 - **Alignment and enhancement of review of draft NECPs and nLTSs.** This would complement the alignment of the NECPs and nLTSs themselves addressed above. The full NECP/nLTS system would thereby be streamlined and enhanced. Regarding the review, this could in particular be achieved by introducing:
 - An NECP-style review-and-recommendation system for nLTSs (see also ESAB-CC, 2024b, ch. 15), and
 - The possibility to reject incomplete or inadequate NECPs and LTSs combined with “cross-compliance” provisions to limit access to relevant funding (e.g., LIFE Unify, 2022, p. 11; see also section 4.6).
 - **Require regular updates of the EU LTS** to inform the development of the EU climate policy framework (Duwe, 2022, p. 13). This could be based on input from the European Scientific Advisory Board on Climate Change (see section 4.7).

4.2 Climate-neutrality targets (and beyond)

Benchmark: Climate-neutrality targets (CNTs) are considered a key element of effective climate governance frameworks providing guidance and direction to policy development as well as a key point of reference for holding policymaking to account (e.g., Dubash et al., 2022; Dolphin et al., 2023). They frequently take the form of “net-zero” targets that require any residual emissions to be balanced by (natural or artificial) sinks. In contrast to climate neutrality, carbon neutrality only requires net zero carbon dioxide emissions (as opposed to emissions of all greenhouse gases). CNTs may also be accompanied by emission budgets, i.e. an allocation of the aggregate net emissions that may still be released until climate neutrality is reached. For achieving the temperature target of the Paris Agreement, climate neutrality will need to be followed by net-negative emissions.

Status quo: The EU has adopted a legally binding CNT for 2050 in the 2021 ECL. In addition, the ETS's linear reduction factor would suggest that GHG emissions in the ETS sectors are on their way toward net zero well before 2050. As of late 2023 (European Commission, 2023a, p. 64), 13 EU member states had established in national law a CNT by 2050 or earlier (usually as part of a broader climate governance framework). Another ten member states envisaged climate neutrality by 2050 in policy documents (but have not necessarily reported this officially at the EU level), and four member states had not determined a CNT. About half of the EU member states hence lack a legally binding, economy-wide CNT. In 2023, the European Commission calculated that national emission targets reflected in Member States' NECPs, progress reports and LTSs together fall short of the EU's 2050 climate-neutrality objective (by about 8 percentage points; European Commission, 2023a, pp. 4-5). The *Klimaseniorinnen* judgment by the European Court on Human Rights (ECHR) in April 2024 indicates that countries should specify "a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame" (or an equivalent) (ECHR, 2024, para. 550).

MAIN OPTIONS FOR REFORM

Where: The **Governance Regulation** is particularly well-suited for requiring member states to establish CNTs (and align their understandings of climate neutrality) because it (in contrast to the ECL that focuses on the EU level): (1) primarily addresses member states and (2) already requires the submission of relevant plans (NECPs) and strategies (nLTSs) for implementing national climate ambition. Given their 30-year time horizon, nLTSs may be considered particularly well-suited for including CNTs. Having said that, a relevant requirement might also be established in the course of determining the EU's 2040 GHG emission reduction target as foreseen under the **ECL**.

Addressing the issue through revisions of the ETS Directive and the Effort-Sharing Regulation seems a less promising option for at least three reasons. First, revisions of these instruments are likely to be presented only for implementing the EU's 2040 GHG emission reduction target, once agreed (with uncertainty on the future of the Effort-Sharing Regulation). Second, national CNTs would only be an indirect result of net zero emissions under the ETS and emission targets under the Effort-Sharing Regulation. Third, national CNTs established in this way would not result from national processes and may hence lack national ownership.

What: The following elements deserve consideration in establishing a requirement for member states to establish national CNTs in the Governance Regulation:

- The revision of the Governance Regulation could usefully introduce a requirement for **nLTSs to include national economy-wide CNTs**. Article 15 (as amended by the ECL) already requires nLTSs to be consistent with the EU's CNT; this could be complemented with a requirement to specify a national CNT accordingly.
- To enhance clarity of such CNTs, they should include **information on residual emissions foreseen and how these are to be balanced** (e.g., through carbon removals).
- In view of the EU's "aim to achieve net negative emissions" after 2050 (Art. 2.1 ECL) and to facilitate an overall EU assessment, nLTSs should also contain **information on the development of GHG emissions and removals beyond CNTs**.

- A relevant provision could also stipulate that national CNTs should be based on independent scientific advice, e.g. from national climate advisory bodies according to Article 3.4 of the ECL (and informed by public participation in line with the general standards in this respect – see section 4.3).
- A review of national CNTs should be part of the review of (draft and final) nLTSs by the European Commission (including related recommendations) suggested in section 4.1.

Further considerations:

- On the way towards an amendment of the Governance Regulation, the European Commission could issue related guidance for any nLTS updates to include a CNT (and accompanying information). Optional nLTS updates are due in 2024/25 (see section 4.1).
- While CNTs should ultimately be firmly anchored in national climate governance frameworks, an EU requirement for member states to establish national CNTs in national law would need to ensure national CNTs are consistent with, and not insufficient for reaching, the EU's CNT (through appropriate safeguards such as EU review and validation).
- The European Scientific Advisory Board on Climate Change could potentially provide useful analysis (e.g. on criteria for assessing the consistency of national CNTs with the EU's CNT) as an input to the establishment and further development of national CNTs across the EU (see section 4.7).

4.3 Public participation

Benchmark: Given the far-reaching implications of the climate transition, citizen and stakeholder participation, if done properly, have the potential to support the transition in various ways (e.g., Wamsler et al., 2020; Kiss et al., 2022; Dubash et al., 2022; Jager et al., 2020; Liu et al., 2019). Public participation may enhance the democratic legitimacy and public acceptance of climate action, thereby also addressing the contentiousness of the issue, while also strengthening democracy at large. It can also help improve climate policy through closer links to citizens and stakeholders and tapping into their knowledge, raise awareness, create a more climate-aware and active citizenry, and mobilise resources (cf. Weaver & Cousins, 2004; Jones et al., 2009; Lee, 2017; Ebbesson, 2021).

Status quo: The **ECL** addresses, in general terms, public participation at the **EU level**. Specifically, its Article 9 requires the Commission to “facilitate an inclusive and accessible process at all levels, including [...] citizens and civil society”, as well as to “use all appropriate instruments, including the European Climate Pact, to engage citizens, social partners and stakeholders, and foster dialogue ...”. Furthermore, the Commission shall engage with stakeholders on preparing voluntary indicative sectoral roadmaps, including the “facilitation of dialogue at Union level, and the sharing of best practice” (Art. 10). In addition, the Commission has launched the European Climate Pact, referred to in Article 9.2 ECL, that is designed as a broad “movement of people” promoting sustainability via climate “ambassadors”, pledges, “peer parliaments”, dissemination of information, etc. (European Commission, 2020b).

The **Governance Regulation** contains relevant provisions directed at the **member states**, in the Regulation's chapter on NECPs (but going beyond NECPs in the provisions' content). Its Article

10 requires member states to conduct public consultations in the preparation of NECPs and nLTSs (see also section 4.1). It also determines that consultations undertaken in accordance with the Strategic Environmental Assessments (SEA) Directive shall be deemed to satisfy the related obligations – a route that has hardly been pursued (European Commission, 2023b). Article 11 furthermore obliges Member States to create multilevel climate and energy dialogues to discuss different scenarios for climate and energy policy at national level with a broad set of stakeholders. Available analysis has identified significant shortcomings in the implementation of these provisions, partly related to unclear/unspecific or inadequate requirements, a lack of best-practice guidance and a lack of capacity (Faber et al., 2024; von Homeyer et al., 2024; Williges et al., 2022; LIFE Unify, 2022; EEB 2023b; Didi & Laugier, 2023).

The EU and all its member states are also parties to the **1998 Aarhus Convention** on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters that contains relevant requirements, especially in its Articles 6-8 (Lee & Abbott, 2003). Significantly, the Aarhus Compliance Committee has found that the provisions of the Governance Regulation do not live up to the standards of the Convention and has requested that they be upgraded (Roberts, 2023). The **ECHR** in its *KlimaSeniorinnen* judgement in April 2024 also held that appropriate procedures for public participation must be in place (ECHR, 2024, para. 554).

Other EU rules on public participation exist outside the Governance Regulation and the ECL (Hough, 2017), including in the EU Directives on Environmental Impact Assessment (for projects) and Strategic Environmental Assessment (for public plans and programmes; mentioned above), as well as in the Electricity Market and Renewable Energy Directives (that in particular facilitate “citizens/renewable energy communities”). Other relevant practices include public consultations undertaken by the Commission prior to legislative proposals and key policy initiatives, often in the context of its formal impact assessments (European Commission, 2021); and the inclusion of stakeholders in various relevant working groups and advisory groups at the EU level (established by the Commission or in the context of relevant legislation). General EU rules on public participation also apply, including the European Citizens’ Initiative according to Article 11.4 of the Treaty on European Union (TEU) and the right to petition the European Parliament and to complain to the European Ombudsman according to Article 24 of the Treaty on the Functioning of the European Union (TFEU). For the purposes of this paper, the following discussion of options focuses on the Governance Regulation and the ECL.

MAIN OPTIONS FOR REFORM

Where: The current “division of labour” between the Governance Regulation and the ECL may suggest that public participation in climate governance at member-state level could be enhanced through a revision of the former, whereas participation at the EU level could be further addressed through a possible revision of the ECL. However, it might be possible to address both levels in a revised **Governance Regulation** in view of its scope and subject matter addressed in its Article 1 (which could also be broadened slightly in the process) or to amend the ECL in the course of a revision of the Governance Regulation (to ensure a consistent and integrated approach to public

participation and involvement across EU climate governance).³ These provisions could usefully be framed as a **separate chapter of the Regulation on public participation**, as it is a self-standing dimension of (climate) governance that cuts across other chapters.

What: Public participation and stakeholder involvement spans governance levels and should best be promoted both across member states and at the EU level, taking due account of varying historical, cultural and institutional contexts. The suggested separate chapter of the Governance Regulation on public participation provides the opportunity to develop a **more systematic and comprehensive approach to public participation and stakeholder involvement** in the climate and energy transition across the EU. It could usefully address: (a) overarching considerations, (b) the member-state level, and (c) the EU level.

Overarching considerations (principles and general commitments):

- Acknowledgement of the right to peaceful assembly and of the climate transition as a societal task that requires democracy (in accordance with the TEU and in particular its Article 2) and the involvement of citizens, including youth (as a critical but often neglected “major group”/stakeholder: United Nations Agenda 21) and marginalised groups;
- Acknowledgement of the **Aarhus Convention**, specifically its public participation provisions and the obligation to ensure that in decisions “due account is taken of the outcome of the public participation” (Art. 6.8); including recognition that effective public participation is interrelated with access to information and access to justice in environmental matters.

Member-state level:

Guidance to member states on public participation should aim at ensuring meaningful and effective, best-practice public participation and stakeholder involvement, rather than harmonising related approaches and structures across member states. Taking into account varying national circumstances and pre-existing consultation and planning structures, EU regulation can promote high standards of public participation, while providing for flexibility and room for experimentation at national level. Aspects and related elements that may deserve particular consideration include:

- **Multi-level energy and climate dialogues** as a central element of public participation, with further specification and clarification of their design and mandate beyond what is currently reflected in Article 11 of the Governance Regulation, including appropriate embedding in any existing dialogue structures (see also Faber et al., 2024);
- Establishing/ensuring effective participatory mechanisms, in line with Aarhus Convention requirements and best practice (including provision of full information, timely and broad consultation, etc.), for the development and discussion of **NECPs and nLTs**, appropriately

³ It is common practice in EU legislation to include in (revisions of) legal instruments consequential amendments of other pieces of legislation. For example, the ECL included consequential amendments of the Governance Regulation (ECL Art. 13).

aligned with each other and with other relevant national planning processes (see section 4.1);⁴

- Member states to facilitate and support **broad, inclusive and innovative means of public participation and deliberation** in line with best-practice standards (on national-level lessons, see e.g. Farrell et al., 2019; Elstub et al., 2021; McBride, 2022), including bottom-up citizen-owned initiatives, and their institutionalisation, as appropriate. This can include citizen assemblies, citizen panels, citizen councils, mini-publics, electronic surveys, etc.;
- Member states to **consider and take into account in public decision-making** in a timely manner the inputs generated by the participatory mechanisms for NECPs and nLTSSs as well as the other means of public participation and deliberation referred to above;
- Member states to provide information in their biennial progress reports, NECPs and nLTSSs on **how public participation inputs have been followed up and integrated into policy decisions**;
- Commission to elaborate **best-practice guidance** and facilitate **sharing of best practice and capacity building** on public participation (e.g., through the establishment of a multi-stakeholder consultation forum);
- **Capacity building** for public participation to be integral part of relevant EU funding arrangements (e.g. Social Climate Fund, Just Transition Fund).

EU level:

- **Systematic and focused use of innovative means of public participation and deliberation** in line with relevant best-practice standards (including broad and cross-generational participation), such as citizen assemblies, citizen panels and mini-publics at the EU level, including support for collaborative participatory “experiments”. To strengthen the link to policymaking, the use of such means could focus on providing input to major legislative decisions/packages or major moments of evaluation/review and strategy development.
- Set up a more **permanent and comprehensive consultation structure on EU climate policy**, including various stakeholders (potentially building on experience with the 2000-2003 European Climate Change Programme; see Rusche, 2010); this could build on existing sectorally focused consultation efforts.
- Ensure adequate representation and participation of relevant climate and sustainability interests (including youth) **across relevant EU advisory and implementing committees and bodies** (see also section 4.8).
- **Strengthen and specify the requirements for public participation** towards the Commission’s impact assessments (rights to participate, procedural obligations; cf. Armeni, 2021).
- Allow and enable public input into assessments of NECPs by the European Commission.

⁴ Clarifying that the SEA Directive is applicable to the preparation of NECPs and nLTSSs might go a long way towards realising this.

- **The European Institutions to give account** of how public participation/deliberation inputs have been taken into account in climate decision-making in its outputs such as relevant legislation.
- Arrangements for public participation to be **regularly reviewed and further developed** (based on broad stakeholder input); this seems to be particularly important in view of the evolving knowledge and experience in this field, especially at the EU level.

Several of these elements could potentially be integrated and advanced under the **European Climate Pact** launched in 2020 and referred to in Article 9.2 of the ECL.

4.4 Access to justice

Benchmark: As a fundamental human right and key aspect of the rule of law, access to justice (A2J) enables citizens and stakeholders to hold the executive and legislative powers as well as polluters judicially accountable (in court) for compliance with environmental/climate law obligations, ensuring adequate ambition and effective implementation and raising awareness (Setzer & Higham, 2023). Given the wide scope of climate law (broadly conceived: including climate-related law with a different legal basis) and the crosscutting nature of the climate transition, it should be appropriate to grant effective A2J to a broad range of stakeholders.

Status quo: Climate change litigation has been increasingly used to challenge action and inaction of both governments and companies in relation to climate mitigation and has, overall, been found helpful for prompting more ambitious national climate legislation (Setzer & Higham, 2023; Grantham Institute, 2022; Wewerinke-Singh & McCoach, 2021; see also Gellers & Jeffords, 2018; Pouikli, 2021; McGlone, 2022; Savaresi & Setzer, 2022). International and EU law provide for A2J in environmental matters. The Aarhus Convention requires its parties (including the EU and all its member states) to provide for A2J in environmental matters in their legal frameworks (Art. 9), while the TEU/TFEU and the EU Charter of Fundamental Rights (Art. 47) indicate that the right to A2J applies to the EU and its member states (when implementing Union law) (EU Agency for Fundamental Rights & Council of Europe, 2016). Furthermore, the European Convention on Human Rights extends A2J to associations defending climate-related human rights (ECHR, 2024, paras. 501-502), while setting the bar high for individuals seeking A2J based on human-rights violations.

At the EU level, there have been around 60 climate cases, focusing mainly on the Emissions Trading Scheme (Setzer et al., 2022). However, cases initiated by individuals to challenge EU climate ambition have been found inadmissible due to lack of standing, since the EU Court has required individuals and legal persons to be directly and individually concerned (the so-called “Plaumann” test). While EU acts of general concern (such as climate change) may be challenged through national courts and their requests for preliminary rulings, such requests have remained rare even where they might have been warranted (Mähönen, 2024). Accordingly, the Compliance Committee of the Aarhus Convention has found twice, in 2017 and 2021, that the EU is breaching the Convention’s provisions (Articles 9.3 and 9.4) by limiting access to EU courts by individuals and NGOs.

A Commission proposal in the context of the ratification of the Aarhus Convention to establish a specific Directive on A2J in environmental matters was shelved after negotiations from 2003 to

2014 due to persistent resistance by the Council. Instead, A2J has been specifically provided for under several environmental directives/regulations, such as the Industrial Emissions Directive, Environmental Impact Assessment Directive, Seveso III Directive, Access to Environmental Information Directive, Environmental Liability Directive, Regulation on Deforestation-free Products, and the amended Air Quality Directive (Ryall, 2019; Mähönen, 2024). The European Commission committed to expanding this sectoral approach in 2020 (European Commission, 2020b), a commitment that has only been implemented partly. Notably, the Commission proposals for the Governance Regulation and the European Climate Law did not include A2J provisions. The Parliament proposed (unsuccessfully) adding such a provision in the Governance Regulation.

The EU's amended "Regulation 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" (Aarhus Regulation) contains a broad internal review mechanism that allows some NGOs (and, since 29 April 2023, individuals under certain conditions) to ask EU institutions to review their own decisions on environmental matters (including those related to climate change), with a right of appeal to the EU courts.

In conclusion, significant room for improvement remains both at the EU and the national levels to ensure effective A2J. At the EU level, this room for improvement especially regards standing (Hough, 2022) and the possibility to challenge the lawfulness of EU climate legislation itself (Kelleher, 2021) and of obligations on EU institutions (especially the European Commission). At the national level, there is uneven and frequently deficient A2J among EU member states, especially in areas where EU legislation does not specifically require A2J. Member states' implementation of the general right to A2J in environmental/climate matters is fragmented, with a significant number of countries failing to execute such access effectively (e.g., Ryall, 2009; 2018; Milieu, 2019; Ohler et al., 2021; Kelleher, 2021; Mähönen, 2024).

MAIN OPTIONS FOR REFORM

Where: A2J has so far not been addressed in either the Governance Regulation or the European Climate Law. As such, it could in principle be introduced in either instrument, or in both. If A2J were provided regarding the specific obligations of the instrument in question (see below), an anchoring in the **Governance Regulation** would seem particularly warranted (since the Governance Regulation establishes several relevant obligations for member states). Such an anchoring would also generally be compatible with any more encompassing approach to addressing A2J in environmental matters (such as an A2J Directive). In line with the respective foci of the Governance Regulation and the ECL, it would also be conceivable that the former addresses the national, member-state level and the latter the EU level.

Given the focus of this paper on the Governance Regulation and the ECL, we do not consider the option of a cross-cutting general environmental A2J Directive. Such a Directive could address A2J in environmental matter more widely (beyond climate).

What: We separately address A2J at the EU level and at member-state level.

EU level:

While revisions of the Governance Regulation and/or the ECL do not lend themselves to changing the jurisdiction of the CJEU or the Aarhus Regulation, they could serve to significantly improve A2J at the EU level:

- A revision of these instruments could in principle clarify that the fulfilment of key requirements (of these instruments or EU climate law more broadly) should be considered as being of “direct and individual concern” to NGOs and individual citizens. This would help address the barrier to access to the European Courts established by the “Plaumann” ruling of the ECJ (Hough, 2022; Krämer, 2017). This option may face considerable political resistance due to possible further-reaching implications.
- Less far-reaching, an amended Governance Regulation and/or ECL could in principle clarify that (specific) acts and omissions by the Commission mandated by these instruments (such as conclusions from progress assessments and recommendations to member states) are open to challenge by NGOs and individuals in accordance with Articles 10 and 11 of the Aarhus Regulation (see also section 4.6). Alternatively, the revisions could also establish a parallel, Aarhus Regulation-like system to the same effect. Building on the existing Aarhus Regulation system has the advantage of being leaner.

Member-state level:

- Introduce a specific and tailored A2J clause in the Governance Regulation that provides for A2J in member states regarding key member-state obligations (procedural and substantive) under the Regulation (see also Mähönen, 2024), including regarding:
 - The submission of adequate NECPs and nLTSS and the fulfilment of related procedural requirements, such as those related to public participation;
 - The submission of adequate biennial progress reports; and
 - The taking of corrective action (in response to identified deficiencies – for example, under Articles 32 and 34 of the Governance Regulation).

This would be in line with the European Commission’s commitment to “sectoral” A2J clauses set out in 2020 (European Commission, 2020b).

- Address A2J regarding legal obligations under a broader set of EU climate and energy legislation (akin to proposals for an A2J Directive) by:
 - Establishing a general commitment to including appropriate A2J provisions across EU climate (and energy) legislation; and/or
 - Including a commitment to A2J across EU climate and energy legislation; relevant legal instruments (and relevant specific obligations) could be listed in an Annex that could be adapted through a simplified procedure. Such a “grand” solution could ensure greater consistency regarding A2J across EU climate and energy governance (on related shortcomings, see Mähönen, 2024), but may also prove politically particularly challenging (judging from the experience with discussions on an A2J Directive; see Krämer, 2015, 4-16).

4.5 Reporting obligations of member states and related review

Benchmark: Monitoring the progress of policy measures taken and progress towards climate objectives enables decision makers to improve policies and their implementation over time and is an essential input into public debate and discourse on climate policy. Such “transparency” is also at the core of the 2015 Paris Agreement. Monitoring and reporting must be broad and detailed enough to collect the information required, while keeping the reporting and review burden manageable. Transparency also presupposes that access to information is ensured in line with the requirements of the Aarhus Convention and Directive 2003/4/EC on public access to environmental information (Duwe et al., 2016, p. 2; European Commission, 2017; Gupta & van Asselt, 2019; Schoenefeld et al., 2021).

Status quo: Closely tied to the reporting and review system under the UN Framework Convention on Climate Change and the 2015 Paris Agreement, the EU’s transparency system is primarily operated under the Governance Regulation. It requires **member states** to report biennially on policies, measures, and GHG emission projections, as well as progress on the five dimensions of the Energy Union (including on renewable energy and energy efficiency) every odd year by 15 March (Governance Regulation, Arts. 17-25). In addition, member states must provide information annually on GHG inventory data (emissions and sinks) (Art. 26). Reporting is based on “national systems” that each member state is required to create and maintain (Art. 39). Further guidance on the structure and content of annual and biennial reports beyond the guidance in the Governance Regulation can be provided in implementing acts (Arts. 17.4 and 26.7). Reports and data submitted by member states are generally available to the public.

The **Commission** is mandated to biennially review member state reports (by the end of October) to determine individual and collective progress towards climate and Energy Union targets (Art. 29). This review can lead to recommendations to member states individually or collectively (esp. Art. 34) and feeds into an annual State of the Energy Union report (also due by the end of October: Art. 35). Complementing the provisions of the Governance Regulation, Articles 6 and 7 of the ECL furthermore require the Commission to assess progress toward climate neutrality and review the consistency of EU and member-state measures with the climate-neutrality objective every five years from 2023 (and make the results available with the State of the Energy Union report). In 2023, the Commission combined its response to the mentioned review requirements in the Governance Regulation and the ECL in a comprehensive Climate Action Progress Report (European Commission, 2023a). The Governance Regulation furthermore foresees in-depth reviews of inventory data in 2027 and 2032 (Art. 38).⁵

There is significant room for further improving the system of member state reporting and related review. Ensuring high quality requires constant efforts and follow up. Despite the fundamental importance of transparency, reporting and review have received scant public and political attention. Reporting under the Governance Regulation as designed in 2018 does not sufficiently reflect

⁵ In addition, other review reports address more specific elements of EU climate policy. The European Environment Agency (EEA), drawing on member state reports, also provides yearly progress updates on the EU ETS, the Effort Sharing Regulation, and the EU’s overall climate and energy targets (e.g., EEA, 2023).

developments since, including the rising importance of the social dimension, investment schemes and others. Reliance on the technical expert review system under the Paris Agreement (Decision 18/CMA.1) may be increasingly insufficient as the EU's reporting requirements develop further. Furthermore, issues regarding the accessibility of information reported by member states have been identified (EEB & CAN Europe, 2024, esp. 9).

MAIN OPTIONS FOR REFORM

Where: Options for reform predominantly focus on the **Governance Regulation** as the main home of provisions on reporting and review. As mentioned above, the ECL has a complementary role and its related provisions could be adapted in consequential amendments, as appropriate.

A significant part of the potential for improved reporting and review can likely be realised without amendments of the legal requirements, including by continued and intensified sharing of best practice, development of best-practice guidance, and capacity building as well as rigorous review by the European Commission. Expert advisory bodies discussed in section 4.7 can also have a (more) prominent role in providing independent assessment of progress, thereby enhancing transparency.

What: In addition, the following revisions of the Governance Regulation may be considered:

- Mandate the Commission to biennially review, possibly with the assistance of the EEA and other experts, member states' quality of reporting and the underlying national system and to issue recommendations for improved reporting. This review should take into account and complement the technical expert review under the Paris Agreement.
- Further strengthen member states' biennial progress reporting under Article 17 of the Governance Regulation and EU-wide reporting under Article 29 of the Governance Regulation (and Articles 6 and 7 of the ECL), especially:
 - On investment frameworks and the social dimension (including just transition aspects), thereby also enhancing integration with related processes such as under the Social Climate Fund and the Just Transition Mechanism/Fund to avoid double-work and streamline reporting efforts (cf. ESAB-CC, 2024b, chs. 11 and 12);
 - Through enhancing indicators to better reflect the unique challenges of achieving climate neutrality (such as public support; see, e.g., Duwe & Spasova, 2021);
 - Foreseeing regular reviews of the reporting and review arrangements.
- Enhance the transparency of member state biennial progress reports under Article 17 of the Governance Regulation by considering the addition of non-technical summaries of reported data and ensuring easy public access to reports. (It may be possible to advance on this option without revising the Governance Regulation itself.)

4.6 Evaluation and response (member-state ambition and progress)

Benchmark: Effective implementation of climate policies, ensuring compliance and facilitating overachievement is crucial for realising the climate transition. This requires regular evaluation of ambition and progress as well as effective means to respond to shortcomings and promote implementation (through support and sanctions/penalties – “positive” and “negative” incentives)

(e.g., Tallberg, 2002; Chayes & Chayes, 1998; Downs et al., 1996). Arguably, effective implementation across the EU to ensure a level playing field increases in importance as climate and energy objectives are ratcheted up.

Status quo: The **Governance Regulation** has established a specific procedure for responding to insufficient ambition in a member state's NECP and lack of progress in its implementation, specifically also addressing the promotion of renewables and energy efficiency. These arrangements have been referred to as “harder soft governance” (Knodt & Schoenefeld, 2020) in combining review (of NECPs and biennial progress reports; see also section 4.5), Commission recommendations, and follow-up action of the Commission with obligations by member states to take corrective action in response to recommendations. With the Energy Efficiency Directive 2023/1791, obligations regarding energy efficiency have been broadly aligned with the (originally somewhat sharper) obligations regarding renewables (cf. Kulovesi & Oberthür, 2020; Oberthür, 2019). Furthermore, the **ECL** essentially extends this system to the quintennial assessments of member states' progress toward the climate neutrality and resilience targets (ECL Art. 7; see also Kulovesi et al., 2024a).

In accordance with the specific focus of this paper, we concentrate on options for enhancing evaluation and response in the context of the Governance Regulation and the ECL. In doing so, it is useful to acknowledge other relevant elements of EU (climate) governance aimed at ensuring effective implementation. These include the Commission's power to launch infringement proceedings under Articles 258 and 260 TFEU against member states that it considers do not fulfil an obligation under EU law (which requires these obligations to be sufficiently precise). Furthermore, other pieces of climate legislation, such as the ETS Directive, the Effort-Sharing Regulation, the CO₂ Emission Performance Standards for Cars Regulation, the Ecodesign Directive and others, at times possess their own implementation response/enforcement mechanisms. Finally, the growing number of funding instruments in support of effective implementation of climate targets and policies (including the Innovation and Modernisation Funds, the Just Transition Fund, the Social Climate Fund, the Recovery and Resilience Facility, and the Multiannual Financial Framework) provide important means for facilitating implementation (see Oberthür et al., 2023, p. 28). Also highly relevant is the issue of access to justice, in focus in section 4.4.

MAIN OPTIONS FOR REFORM

Where: Since the **Governance Regulation** addresses the assessment of NECPs and their implementation (as reported in biennial progress reports), it seems a logical starting point for strengthening the related system. Such a strengthening could include the aforementioned quintennial assessments under Article 7 of the ECL as a consequential adaptation.

As indicated above, we here do not consider other options for enhancing implementation beyond the scope of the Governance Regulation and the ECL, such as increasing the Commission's capacity for infringement proceedings and enforcement, to increase the speed and efficiency of the process (see general recommendations in: Hildt & Weyland, 2022) or an increase of the Commission's technical assistance for member states related to implementation.

What: More specifically, the following revisions of the Governance Regulation could be considered to promote corrective action where a member state is found to be off track:

- Clarify that the Commission issuing recommendations to member states under the Governance Regulation and the European Climate Law (but also Commission action under Articles 4 and 8 of the Energy Efficiency Directive 2023/1791) is subject to Articles 10 and 11 of the Aarhus Regulation (see also section 4.4);
- Strengthen the obligation of member states to take corrective action if ambition or progress are found to be insufficient (under Articles 31 and 32 of the Governance Regulation, in conjunction with Articles 4 and 8 of the Energy Efficiency Directive 2023/1791);
- Restrict access to EU funding in response to (persistent) lack of ambition or progress (including non-submission of NECPs or LTSs) (“**cross-compliance**”) (see also section 4.1).

There may also be potential to streamline and simplify the system, and enhance its transparency, by further aligning procedures and obligations regarding renewable energy and energy efficiency (taking into account Energy Efficiency Directive 2023/1791).

4.7 Independent scientific expert advisory bodies

Benchmark: Independent scientific expert advisory councils or committees have become best practice for ensuring non-politicised high-quality expert input into climate policymaking. Key elements of best practice in the design of such arrangements include: independence, a membership with a broad range of recognised expertise and not based on stakeholder or political representation, a clear (non-exclusive) mandate with specific advisory roles and responsibilities (such as for establishing emission targets, assessing adequacy of policies proposed to meet the targets, or providing an independent assessment of progress with implementation), an obligation of policymakers to consider and respond to the advice in the policymaking process, regular public reports (at least annually), and ample/sufficient support capacity/resources. Ensuring a close and direct link between the contribution of these councils or committees and the policy process has proven to be particularly important (Varis, 2024; Elliott et al. 2021; Evans & Duwe 2021; Averchenkova & Lazaro 2020). Previous research has found that independent expert advisory bodies can strengthen climate governance by serving as an impartial knowledge broker, contributing to more evidence-based and ambitious policymaking (Averchenkova et al., 2021).

Status quo: The ECL has established the European Scientific Advisory Board on Climate Change (ESAB-CC), composed of independent experts and hosted by the European Environment Agency (Arts. 3 and 12). Its mandate is kept rather broad; at its core is the task of “providing scientific advice and issuing reports on existing and proposed Union measures, climate targets and indicative greenhouse gas budgets” (Art. 3.2(b)). The Board determines its own work programme, while consulting the EEA Management Board (Art. 12). The Commission is to take into account the advice of the Board when proposing the 2040 emission reduction target and the indicative 2030-50 emission budget (Art. 4.4 and 4.5). In 2023, the Board 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) (ESAB-CC, 2023). Subsequently the European Commission suggested a 90% reduction target for 2040 in February 2024. The ESAB-CC’s 2024 work programme further indicates that the Board plans to engage with a range of issues, such as mitigation and resilience of agriculture, carbon removals, energy infrastructure and adaptation and resilience (ESAB-CC, 2024a).

In addition, a number of member states also have relevant advisory councils/committees (mostly established before the ESAB-CC), which take different forms. The International Climate Councils Network has members from eight EU member states (<https://climatecouncilsnetwork.org/members/>, visited 11 April 2024). The ECL has invited each Member State “to establish a national climate advisory body responsible for providing expert scientific advice on climate policy to the relevant national authorities” (Art. 3.4). A recent overview identified related advisory bodies in 12 member states (Ecologic Institute, 2023).

MAIN OPTIONS FOR REFORM

Where: The ECL seems most appropriate to further develop provisions on climate expert advisory bodies since it has established the ESAB-CC and has invited member states to establish national climate advisory bodies.

What:

ESAB-CC: Previous work has identified a need and scope for improvement in particular with respect to **three key elements** (also highlighted as important in the more general literature on scientific advisory bodies; see Elliot et al. 2021; Evans & Duwe, 2021; Averchenkova & Lazaro 2020; Varis, 2024, Kulovesi et al., 2024a):

- Further specification of the Advisory Board’s **mandate** in Article 3 of the ECL, especially for the Board to:
 - Provide expert input to: (a) the Commission reviews of progress and the adequacy of EU climate action under the Governance Regulation (especially its Art. 29); (b) the Commission’s quintennial assessments of progress and measures under Articles 6 and 7 of the ECL; and (c) updates of the EU-level Long-Term Strategy (see section 4.1); and
 - facilitate the coordination of national scientific advisory bodies (exchange of information).⁶
- Introduction of a requirement for the Commission and the other European institutions (notably the European Parliament and the Council) to consider the advice by the Board on specific key components and to explain how this advice has been taken into account in relevant outputs (e.g., legislative proposals and positions, agreed legislation, strategies) in Article 3 of the ECL.
- Ensure **sufficient resourcing**. This relates in particular to the availability of supporting research staff and adequate fees for Board members to enable them to dedicate a substantial part of their time to their work for the Board and to strengthen their independence. Resourcing may be addressed in a revision of the rules addressing the Board in Regulation (EC) No 401/2009 (on the EEA), as originally introduced in Article 12 of the ECL.

⁶ The ESAB-CC could, in so doing, also further elaborate best-practice guidance for the design of national scientific advisory bodies.

National scientific expert advisory bodies: The relevant guidance to the member states could be strengthened (beyond the current “invitation”; see also ESAB-CC, 2024b, ch. 15) and enhanced by a **specification of standards of best practice**, including with respect to:

- The independence of advisory bodies;
- The breadth of expertise represented through the membership;
- The specification of the mandate/tasks, while ensuring flexibility to set priorities and prepare work programmes independently;
- The commitment of policymaking institutions to considering the advice in a timely manner and to explaining in writing how it has been taken into account;
- Public annual reports by the bodies on their activities to national governments and parliaments; and
- Adequate resourcing.

In addition, the ECL could usefully invite member states to regularly (i.e. annually or biennially) report on the design and activities of their climate advisory bodies (e.g. to the EEA). If the bodies are required to publish annual reports, the effort required for effective reporting to the EU level should be negligible to modest.

4.8 Consistency and climate policy integration

Benchmark: Ensuring cross-policy consistency and climate policy integration (CPI) is key for advancing the climate transition given its cross-sectoral and whole-of-society/economy character. Effective CPI requires that (1) other policies do not undermine climate policy objectives (preventing inconsistency/incoherence) but (2) support them as much as possible (synergy/coherence) and (3) avoid/minimise negative externalities on other environmental/sustainability issues and Union objectives (Rosenbloom et al., 2019; Perlaviciute et al., 2021; Oberthür & von Homeyer, 2023; Dubash et al., 2022; Dupont, 2016; generally also: Howlett & Rayner, 2007) (while keeping administrative burdens on member states, businesses, and civil society in check).

Status quo: Article 11 TFEU broadly commands the integration of environmental protection requirements into the definition and implementation of all EU policies and activities (Klamert, 2019; Novag, 2016). Also, the preamble of the Treaty on European Union (TEU) refers to “the principle of sustainable development” and Article 3.3 TEU establishes that the Union “shall work for the sustainable development of Europe”. Beyond the Treaties, the European Green Deal aims at coherence of other policy areas and calls for all EU initiatives to “live up to a green oath to ‘do no harm’” (European Commission, 2019a, p. 19). Several investment-related instruments have subsequently incorporated the “Do no significant harm” (DNSH) principle, including the 2020 Taxonomy Regulation, the EU COVID recovery funding, funding under the ETS Directive as revised in 2023 (Innovation and Modernisation Funds) and the Social Climate Fund. EU guarantees under the InvestEU programme are subject to a “sustainability proofing”. In addition, the Commission’s formal impact assessments of its legislative proposals consider environmental impacts. EU legislation also mandates specific environmental impact assessments of certain projects (infrastructure etc.) and public plans at member state level (Environmental Impact Assessment and Strategic Environmental Assessment Directives).

Specifically **concerning climate change**, the ECL requires the Commission to assess the consistency of all its proposals with the EU climate neutrality target, intermediate emission targets and progress on adaptation (Art. 6.4). In response, the Commission has further updated its impact assessments to specifically consider consistency with the EU's climate objectives, although it apparently limited such consistency assessments to proposals that it itself considered relevant (European Commission, 2023a, p. 8; see also Kulovesi et al., 2024a and b; ESAB-CC, 2024b, ch. 15).

Climate considerations have to some extent been integrated into **EU economic, investment and fiscal policies**. Concerning the EU budget for 2021-27, the EU has committed to spending at least 30 percent on climate. The climate share rises to 37 percent for EU recovery funding which, as mentioned above, is also subject to a DNSH test. Since 2015, the European Semester no longer systematically addresses climate and energy policies in country recommendations (Climate & Company, 2022). The European Investment Bank has pledged to become the climate bank, with more than half of its investments in 2021 and 2022 going to green (climate and environmental) projects. The European Central Bank also aims to further integrate climate change into its work (banking supervision, risk assessments, asset purchase programme) (see Oberthür & von Homeyer, 2023).

Despite significant progress towards effective CPI under the ECL and the European Green Deal, there remains significant room and need for further improvement. Two key issues concern (1) a firmer anchoring, operationalisation and implementation of related principles and approaches and (2) the need to advance CPI towards further key policy areas, in particular economic and investment policy (including fiscal policy). The specific focus on economic and investment policy seems also warranted because of the crucial role of economic governance for achieving climate neutrality (for recent contributions on CPI in the EU, see, e.g., Kulovesi et al., 2024a and b; Oberthür & von Homeyer, 2023; Rietig & Dupont, 2023).

MAIN OPTIONS FOR REFORM

Where: Efforts to strengthen CPI may overall best fit the overarching nature of the **ECL**, whereas the Governance Regulation is focused on the Energy Union and climate action. Having said that, this is largely a matter of interpretation and potential adaptation, as so far only few provisions in either instrument address CPI. CPI could usefully be advanced in a focused article or chapter (that could incorporate the substance of Article 6.4 of the ECL).

What: We here address the two priority areas for advancing CPI identified above.

The first priority area for advancing CPI is that of **principles of DNSH and synergy** (minimising inconsistency and maximising coherence). The legal codification of the **DNSH principle** and the establishment of a complementary **"synergy principle"** (i.e. that other policies should contribute to climate objectives to the extent possible) could help ensure the consistent application of these principles across all other policies. This would help generalise the current piecemeal approach of introducing variants into specific instrument and thereby allow broadening the application beyond funding/investment instruments. These principles would be relevant at both the EU and member state levels.

The elaboration and codification of these principles can be understood as a specification of the aforementioned provisions of the TFEU and the TEU on environmental policy integration and sustainable development. They hence do not establish completely new principles but derive from the ECL's long-term climate objectives. These objectives constitute environmental protection requirements that, according to Article 11 TFEU, need to be integrated into the definition and implementation of all EU policies and activities.

An appropriate **formulation and operationalisation** of these principles would need to be elaborated and **means for advancing their implementation** considered, including the following elements:

- Accurate definitions of both principles, including general indicators and a clarification of "significant" in the DNSH principle, and entailing a clear commitment to these principles in the elaboration and implementation of relevant policies and activities;
- Any significant harm to only be permissible for strictly limited and explicated overriding reasons;
- The application of the principles to avoid negative effects on realising other environmental objectives/requirements (in line with Article 11 TFEU);
- Regular reporting on implementation: the Commission should report on implementation at the EU level (e.g. in the context of the State of the Energy Union Report) and member states on implementation at national level (e.g. in biennial progress reports under the Governance Regulation);
- The Commission could further promote best practice by issuing related guidance and offering support;
- Two concrete implementing actions concern the full integration of both principles in the Commission's better regulation framework (regulatory scrutiny) and ensuring adequate representation of climate expertise in all relevant EU advisory bodies (see also section 4.3).

The second priority area for advancing CPI is the **focus on economic and investment policy** (including fiscal policy). Beyond an important general recognition that public budgets and economic and investment policies (including fiscal policy) are crucial for driving critical climate investments, key options include:

- As the core of EU macroeconomic governance, the **European Semester** should be adapted to include the systematic monitoring of member states' green transition progress, based on suitable indicators, including full integration at the recommendation stage.
- The **methodology and criteria used to identify EU climate spending** across EU institutions and member states should be strengthened and aligned to minimize "greenwashing" opportunities. This should include effective mechanisms for review and implementation, which could include elements of cross-compliance (e.g. making release of funds for non-climate purposes dependent on fulfilling climate benchmarks).
- Enhance **coherence across relevant national plans and strategies (including their implementation)**; this could be significantly advanced through reforms of the NECP/nLTS process (as discussed in section 4.1).

5. Overview of options for reform

The review of procedural EU climate governance under the Governance Regulation and the ECL is timely given the intensifying contestation of climate policy. The increasing “backlash” against EU climate policy measures and the climate transition more broadly in the 2020s (e.g. Vihma et al., 2021; Patterson, 2023) has highlighted the need for societal ownership and a deep anchoring of the climate transition in political systems and societies across the EU. The reviews of the Governance Regulation and the ECL open the prospect for upgrading procedural EU climate governance to this effect (following the conclusion of the Fit for 55 package).

As summarised in Table 1, our analysis finds that most of the key issues of procedural EU climate governance could be advanced through a revision of the Governance Regulation. Such a revision could in part also include consequential amendments of the ECL, for example concerning public participation, and evaluation and response. Two issues in particular seem to have a strong primary home in the ECL, namely scientific expert advisory bodies and climate policy integration. Amending both the Governance Regulation and the ECL in tandem would enable an integrated and coherent approach to advancing the EU’s procedural climate governance across its different aspects.

A main consideration in advancing the EU’s framework for procedural climate governance is the desire for streamlining, enhanced coherence and simplification, where possible. Such streamlining, coherence and simplification may support political and societal buy-in in two ways. It may help make efficient use of limited administrative capacity, especially in EU member states. And it may also help enhance transparency of the overall framework.

In this regard, some options identified in this paper may strengthen existing reporting and planning requirements, especially regarding member states’ NECPs, nLTs and biennial progress reports under the Governance Regulation. Not only have these been carefully considered to focus on aspects in particular need of bolstering. But these strengthened requirements are also balanced and possibly outweighed by suggestions for streamlining and simplification (e.g., see the suggested alignment of NECPs and nLTs processes and consolidation across various EU and national plans) as well as facilitative elements, in particular the provision of (best-practice) guidance and capacity building.

Overall, the package of options discussed in this paper have the potential to make the instruments, institutions and processes for developing and implementing EU climate policy fit for the travel to climate neutrality in 2050 and negative GHG emissions thereafter. A procedural EU climate governance upgraded in this way may also contribute to stabilising and reinvigorating the EU’s democratic architecture – through advancing the legitimacy of climate governance and moving towards participatory “climate democracy”. The scheduled reviews of the Governance Regulation and the ECL provide a unique and critical opportunity for realising this potential.

Table 1: Overview of key options for reform

Aspect	GR / ECL	Key options
NECPs and LTSs	GR	<ul style="list-style-type: none"> • Alignment of national NECP and nLTS processes and enhancing internal and external coherence • Strengthened support and capacity building • Alignment and strengthening of review • Regular update of EU LTS
Climate-neutrality targets	GR	<ul style="list-style-type: none"> • nLTS to include CNT, with key accompanying information
Public participation	GR (and ECL)	<p>More systematic approach, including:</p> <ul style="list-style-type: none"> • Acknowledgement of Aarhus Convention • Enhanced provisions for multi-level dialogues, public participation in NECPs & nLTSs • Use of innovative means • Commitment to giving account on how decision-making has followed up on public participation • Best-practice guidance and capacity building • Permanent EU consultation structure
Access to justice	GR (and/or ECL)	<ul style="list-style-type: none"> • Make Commission action under the GR/ECL challengeable under Aarhus Regulation • Mandate A2J in member states regarding key obligations under GR • Mandate A2J in member states regarding broader set of EU climate legislation
Reporting and its review	GR	<ul style="list-style-type: none"> • Upgraded reporting, especially on social dimension and investment frameworks • Enhanced transparency of biennial reports • Systematic review with recommendations
Evaluation and response (member states)	GR (and ECL)	<ul style="list-style-type: none"> • Strengthen member state obligations to take corrective action • Cross-compliance restriction on access to EU funding
Expert advisory bodies	ECL	<ul style="list-style-type: none"> • ESAB-CC: specify mandate and require that its advice be taken into account • National bodies: strengthen requirement and specify best practice
Climate policy integration	ECL and/or GR	<ul style="list-style-type: none"> • General principles: DNSH and synergy • Economic and investment policy: European Semester, public budgets and investment policies

GR = Governance Regulation – ECL = European Climate Law – A2J = access to justice.

Source: Derived from analysis in section 4 above; see there for further details.

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[GreenDeal-NET](#) (The European Green Deal: Governing the EU's Transition towards Climate Neutrality and Sustainability) is a Jean Monnet Network that aims to dissect the European Green Deal, and the complex set of governance challenges related to sustainability and climate neutrality it poses. The network aims to deepen our understanding of what a fair and effective climate transition could look like by focusing on the governance of the European Green Deal, by acting as a platform for collaboration and debate on teaching and research.

The core network consists of 12 European universities and is coordinated by the Centre for Environment, Economy and Energy of the Brussels School of Governance that is part of the Vrije Universiteit Brussel (VUB). Moreover, GreenDeal-NET expands beyond these core partners to include an ever-growing number of institutions as Associate Members and individuals as experts, from Europe and beyond, while reaching out to other key actors working on the EU's climate and sustainability transition.

GreenDeal-NET builds on previous successful networking projects, including the COST Action on Innovations in Climate Governance ([INOGO](#)) and the Jean Monnet Network entitled "Governing the EU's Climate and Energy Transition in Turbulent Times" ([GOVTRAN](#)).



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