

Paris Climate Agreement and EU Climate Targets

Legal Implications for EU Climate Policy After 2030

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The EU has set its contribution to the realisation of the Paris Climate Agreement by 2035 (2035 EU NDC) and is in the process of setting its climate target for 2040. Both the 2035 EU NDC under international law and the 2040 EU climate target under EU law must be implemented by further developing the whole of EU climate law for the period after 2030. In view of these far-reaching consequences, cep has examined the legal implications of the Paris Climate Agreement for EU climate targets and future EU climate policy:

- ▶ According to the International Court of Justice (ICJ), a state can be ordered by a court to set an “adequate” nationally determined contribution (NDC) towards achieving the global temperature goal of 1.5°C.
- ▶ The NDC level is determined on the basis of a comprehensive consideration of climatological, value-based, ecological, economic and social factors. Discretion is limited. Accordingly, the EU must do its “utmost” to ensure that the 2035 EU NDC fulfils its “highest possible ambition” to make an “adequate contribution” to achieving the global temperature goal.
- ▶ With regard to the range for the 2035 EU NDC, according to which the EU wants to reduce its net greenhouse gas emissions by between 66.25% and 72.5% compared to 1990, only the upper value of 72.5% represents its “highest possible ambition”. The EU must be measured against this under international law.
- ▶ The EU must gear future EU climate policy after 2030 not only towards achieving the 2040 EU climate target it has set under EU law, but also towards the 2035 EU NDC under international law.
- ▶ The EU and its Member States do not have to guarantee the achievement of their 2035 EU NDC under international law in the sense of being under an obligation of result. They must, however, make their “best efforts” to do so as part of their due diligence obligation. To this end, they are obliged to take “adequate” climate protection measures.

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1 The Paris Climate Agreement, 2035 EU NDC and 2040 EU climate target

On 5 November 2025, shortly before the start of the COP30 UN Climate Conference in Belém, Brazil¹, the Member States of the European Union determined the EU's contribution to global climate protection efforts up until 2035 (Nationally Determined Contribution, **2035 EU NDC**) as part of the Paris Climate Agreement^{2,3}. Not a day too soon, as the EU was obliged under international law to notify the Secretariat of the UN Framework Convention on Climate Change (UNFCCC)⁴ of the 2035 EU NDC by February 2025 at the latest.⁵ Accordingly, the EU is pursuing the indicative target of reducing its net greenhouse gas (GHG) emissions by between 66.25% and 72.5% compared to 1990 by 2035. In addition, on 9 December 2025, the Council and the European Parliament agreed on an **EU climate target for 2040**.⁶ The background to this is that, in order to implement the goals of the Paris Climate Agreement, the EU has committed itself under EU law, by way of the European Climate Law⁷, to reducing its GHG emissions to net zero by 2050 (climate neutrality) and to reducing them by 55% compared to 1990 by 2030 (EU 2030 climate target, "Fit for 55") and also to setting a legally binding interim target for 2040.⁸ In July 2025, the European Commission proposed a 90% reduction in GHG emissions within the EU compared to 1990 as the 2040 EU climate target⁹. The 2040 EU climate target now envisaged in the amended European Climate Law also provides for a nominal 90% reduction in GHG emissions compared to 1990 – albeit combined with flexibility options that would, among other things, allow this target to be partially realised by offsetting non-European emission reductions.

Both the 2035 EU NDC under international law and the 2040 EU climate target under EU law are intermediate stages defining the EU's GHG reduction path towards climate neutrality by 2050. Both are to be implemented by means of the continued comprehensive development of EU climate law for the period after 2030 and by means of specific climate protection measures on the part of the EU and its Member States in all areas of the economy and society. Given the far-reaching consequences of the two interim climate targets, it is not surprising that they are the subject of heated debate regarding, on the one hand, their effectiveness in terms of mitigating climate change and, on the other hand, their economic and social cost¹⁰. Tensions and conflicts within this triad of sustainability goals, which appear to be increasingly difficult to resolve, also raise questions about the main legal implications of the Paris Climate Agreement and the 2035 EU NDC for future EU climate policy, which this cepStudy will examine. These will play a key role in shaping future discussions on the design of the EU's climate acquis after 2030.

¹ 30th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP30).

² Paris Climate Agreement of 12 December 2015 [Paris Climate Agreement].

³ Council of the European Union, EU submission of an updated Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC), Approval of 5 November 2025.

⁴ United Nations Framework Convention on Climate Change (UNFCCC) of 5 May 1992.

⁵ Paris Climate Agreement, Article 14 (12); Adolphsen/Könneke/Thielges (2024), Die dritte Generation der Nationalen Klimabeiträge, SWP-Aktuell 2024/A 37.

⁶ Council of the European Union, 2040 climate target: Council and Parliament agree on a 90% emissions reduction, Press Release of 10 December 2025; European Parliament, 2040 climate target: deal on a 90% emissions reduction in EU climate law, Press Release of 10 December 2025.

⁷ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality ("European Climate Law").

⁸ European Climate Law, Article 2 (1), Article 4 (1) and (3).

⁹ European Commission, Proposal COM(2025) 524 of 2 July 2025 for a Regulation amending Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality [European Climate Law Amendment Proposal].

¹⁰ See e.g. European Scientific Advisory Board for Climate Change ESABCC (2023), Scientific advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030-2050 [all links accessed on 15 December 2025].

2 Legal implications of the Paris Climate Agreement for the 2035 EU NDC

Climate protection under international law and climate protection under EU law cannot be viewed in isolation from one another. EU climate policy in general, and the European Climate Law in particular, serve as Europe's contribution to protecting the Earth's climate and to implementing the obligations of the EU and its Member States as parties to the **Paris Climate Agreement**¹¹. Its key requirements are outlined below, taking account of the groundbreaking **legal opinion of the International Court of Justice (ICJ) of 23 July 2025** on the obligations of states under international law in relation to climate change^{12 13}.

2.1 Global temperature goals

For its part, the Paris Climate Agreement serves to implement the **UN Framework Convention on Climate Change (UNFCCC)** and its "ultimate object [...] to achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system"¹⁴ To put this into concrete terms, the Paris Climate Agreement aims to keep the "increase in the global average temperature to well below 2°C above pre-industrial levels" and "pursue efforts" to "limit the temperature increase to 1.5°C above pre-industrial levels".¹⁵ In order to achieve this long-term **global temperature goal**, the parties to the Paris Climate Agreement must "reach rapid reductions" in GHG emissions "in accordance with the best available science" in order to establish a balance between anthropogenic GHG emissions from sources and the removal of GHGs from the atmosphere by sinks (**climate neutrality**) in the second half of the 21st century.¹⁶ In order to contribute to achieving the global temperature goal and climate neutrality, all parties – taking into account the principle of their common but differentiated responsibilities and respective capabilities in the light of different national circumstances¹⁷ – should "strive to formulate and communicate long-term low greenhouse gas emission development strategies".¹⁸

2.2 Nationally determined contributions (NDCs)

The core element of the Paris Climate Agreement is the obligation under international law¹⁹ of each party to develop **climate targets** at regular intervals in the form of "**nationally determined contributions**" (**NDCs**) "that it intends to achieve"²⁰, as well as to maintain these, communicate them to the Conference of the Parties (CoP) every five years²¹ and register them with the UNFCCC

¹¹ European Climate Law, Recital 8, Sentence 2.

¹² International Court of Justice (ICJ), Obligations of States in Respect of Climate Change, Advisory Opinion of 23 July 2025 [ICJ Advisory Opinion on Climate Law (2025)].

¹³ This study will not be looking in any detail at other sources of international law relevant to the obligations of states to protect the climate, such as customary international law, other international environmental treaties, international maritime law or human rights law. Cf. ICJ Advisory Opinion on Climate Law (2025), para. 271-402.

¹⁴ UNFCCC, Article 2 sentence 1; cf. ICJ Advisory Opinion on Climate Law (2025), p. 73, para. 225.

¹⁵ Paris Climate Agreement, Article 2 (1) lit. a. With regard to the relationship between the two global temperature goals, the ICJ has stated that, based on the Paris Climate Agreement itself and subsequent resolutions of the parties, it considers the 1.5°C threshold to be the primary temperature goal agreed by the parties for limiting the global average temperature increase; ICJ Advisory Opinion on Climate Law (2025), p. 73, para. 224.

¹⁶ Paris Climate Agreement, Article 4 (1).

¹⁷ Paris Climate Agreement, Article 2 (2).

¹⁸ Paris Climate Agreement, Article 4 (19).

¹⁹ ICJ Advisory Opinion on Climate Law (2025), p. 75, para. 234.

²⁰ Paris Climate Agreement, Article 4 (2), sentence 1.

²¹ Paris Climate Agreement, Article 4 (9).

Secretariat²². In addition, the parties are obliged under international law²³ to take “domestic mitigation measure with the aim of achieving the objectives of such contributions”.²⁴

2.2.1 Procedural obligations for NDC determination under international law

Whereas under the previous Kyoto Protocol to the UNFCCC²⁵ the industrialised countries (“Annex I countries”) committed themselves under international law to reduce their GHG emissions between 2008 and 2012 by certain percentages compared to 1990 (e.g. EU-15: -8%)²⁶, the Paris Climate Agreement itself – as a consequence of the failure of the Kyoto Protocol – **does not** regulate, by way of the NDCs, **any** corresponding **substantive international legal obligations for emission reductions in percentage terms**. Instead, it deliberately **focuses on the regulation of procedural aspects** for the determination and gradual development of their respective climate protection targets and climate protection measures – to be carried out by the parties themselves.

These procedural obligations under international law include the requirement for all parties to conduct a joint stocktake of their actions to implement the Paris Climate Agreement starting in 2023 – to be conducted every five years thereafter – “to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals” (**Global Stocktake, GST**).²⁷ The result of this global stocktake²⁸ “shall inform the parties in updating and enhancing” their climate action at national level.²⁹ Subsequent NDCs must (1) be more ambitious than those of the previous five-year period and (2) correspond to the “highest possible ambition” of the respective parties – taking into account their common but different responsibilities and their respective capabilities in light of different national circumstances.³⁰

The **procedural obligations** of the Parties to the Paris Climate Agreement to **prepare, communicate, register and maintain successive NDCs** are “**obligations of result**”, so that failure to do so constitutes a breach of international law.³¹ The deadline for reporting the NDCs for 2035 (NDCs 3.0)³² ended on 10 February 2025.³³ Like many other parties, including major GHG emitters such as China³⁴, the EU and its Member States missed this deadline. This violation of international law was not made good by the fact that the UNFCCC Secretariat informally extended the reporting deadline until September 2025.³⁵ As

²² Paris Climate Agreement, Article 4 (12).

²³ ICJ Advisory Opinion on Climate Law (2025), p. 75, para. 234.

²⁴ Paris Climate Agreement, Article 4 (2) sentence 2.

²⁵ Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) of 12 December 1997; cf. e.g. comprehensively Stoll/Krüger, Klimawandel, in: Proelß (Ed.) Internationales Umweltrecht, 2. Aufl. 2022, Neunter Abschnitt, V., p. 423 (452 ff.), para. 54 et seq.

²⁶ Kyoto Protocol, Annex B.

²⁷ Paris Climate Agreement, Article 14 (1) and (2).

²⁸ UNFCCC, Conference of the Parties serving as the meeting of the Parties to the Paris Climate Agreement, Fifth session, Outcome of the first global stocktake, Draft decision CMA.5 of 13 December 2023.

²⁹ Paris Climate Agreement, Article 14 (3).

³⁰ Paris Climate Agreement, Article 4 (3).

³¹ ICJ Advisory Opinion on Climate Law (2025), p. 76, para. 236.

³² UNFCCC (2025), NDC 3.0.

³³ Paris Climate Agreement, Article 4 (2) and (9); UNFCCC (2024), Paris Climate Agreement Implementation and Compliance Committee Gears up to help Countries meet Key Deadlines.

³⁴ Chinese President Xi Jinping announced in a video message at the UN Climate Summit on 24 September 2025 that, as its NDC 3.0, China would “reduce economy-wide net greenhouse gas emissions by 7 to 10% of peak levels by 2035” and “strive to do better”. State Council of the People’s Republic of China, News Update of 25 September 2025, Xi announces China’s 2035 Nationally Determined Contributions to beef up climate response.

³⁵ UNFCCC (2025), UN Climate Chief urges countries to submit new climate plans.

long as the EU had not officially reported its NDC 3.0 to the UNFCCC Secretariat in violation of international law, it was obliged under international law to do so without delay.

In the absence of a final decision, the European Commission and the Council adopted a joint declaration on 18 September 2025 in which they confirmed to the UNFCCC Secretariat on behalf of the EU and its Member States the intention to submit “the EU’s next NDC with an indicative 2035 target” before the start of the COP30 UN Climate Change Conference on 10 November 2025, according to which “net greenhouse gas emissions are expected to be reduced by between 66.25% and 72.5% compared to 1990 levels”.³⁶ The Council formally adopted this target corridor on 5 November. Accordingly, “the EU and its Member States, acting jointly, aim to achieve an indicative contribution of a reduction of net GHG emissions of between 66.25-72.5% compared to 1990 by 2035.” The lower and upper ambition levels of this range are based “on indicative linear trajectories from, on the one hand, the EU’s climate targets for 2030 and 2050, and, on the other hand, the EU’s climate target for 2030 and the 2040 climate target from the position of the Council of the European Union”.³⁷ With the communication of the 2035 EU NDC to the UNFCCC Secretariat³⁸, which also took place on 5 November 2025, the EU has now – albeit belatedly – at least formally fulfilled its corresponding procedural obligation under international law.

2.2.2 Substantive obligations for NDC determination under international law

In addition to the procedural obligations of the Paris Climate Agreement regarding the definition of NDCs, **the question arises as to which substantive requirements NDCs must fulfil under international law.** At first glance, the Paris Climate Agreement does not appear to provide its parties with any substantive requirements for defining their NDCs, including the level of ambition – especially compared to the Kyoto Protocol with its precisely specified obligations for percentage reductions in GHG emissions by the industrialised countries listed in Annex I. Accordingly, fossil fuel exporting countries in particular took the position vis-à-vis the ICJ that the contracting parties are not subject to any limitations under international law when determining their NDCs.³⁹ However, this contrasts with the detailed provisions of the Paris Climate Agreement on the definition of NDCs, which codify a progressive process of continuous identification, reporting, communication, implementation, maintenance and periodic review of NDCs with subsequent updating and further increase in their level of ambition, ultimately aimed at achieving the global temperature goal. In this regard, the ICJ

³⁶ Council of the European Union, EU statement of intent in view of the EU submission of a Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC), Approval of 18 September 2025, p. 3.

³⁷ Council of the European Union, EU submission of an updated Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC), Approval of 5 November 2025, p. 6, para. 15. For the Council’s position on the 2040 EU climate target, see Council of the European Union, General Approach of 5 November 2025 on the proposal for a Regulation amending Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality.

³⁸ UNFCCC (2025), NDC 3.0: The Nationally Determined Contribution of the European Union and its Member States, Submission by the Danish Presidency of the Council of the European Union and the European Commission on Behalf of the European Union and Its Member States of 5 November 2025 [UNFCCC (2025), NDC Registry: EU-2035-NDC], p. 3, para. 15.

³⁹ Cf. e.g. Written Statement of the State of Kuwait of 22 March 2024, p. 21, para. 35: “It is left solely to each party to prepare and decide on the content of its NDC which it aims to achieve.”; Written Statement of the Kingdom of Saudi Arabia of 21 March 2024, p. 51, para. 4.68.: “[S]tates Parties did not agree to be bound by any obligations which regulate the content or enforcement of their NDCs. States Parties continue to enjoy flexibility and discretion in this respect.”; Written Statement of the Russian Federation of 21 March 2024, p. 8: “Determining the goals and ways to achieve its NDC is the prerogative of each individual State. Establishing any universal criteria for determining whether an NDC is sufficiently ambitious would be contrary to this principle.”

emphasises in its Climate Law Opinion that the “mere formal” preparation, communication and maintenance of successive NDCs is not in itself sufficient to comply with the obligations of result under international law attaching to these procedural requirements. The **substantive content of the NDCs** is in fact equally relevant.⁴⁰ Consequently, the procedural requirements of the Paris Climate Agreement for NDCs also include substantive legal obligations, giving them a dual procedural-substantive character.

The key question is whether and to what extent the parties to the Paris Climate Agreement have **discretionary powers** when setting their NDCs.⁴¹ To answer this, Article 4 must be interpreted in good faith on the basis of its ordinary meaning, in the context of the other provisions of the Paris Climate Agreement and in the light of its object and purpose.⁴² The wording of Article 4 (2) of the Paris Climate Agreement is silent on the content of the NDCs and on the issue of the parties' discretion in setting NDCs. It does not contain any concrete specifications for the content of the NDCs, nor does it indicate whether the contracting parties have unrestricted discretion in defining them.⁴³ However, according to the ICJ⁴⁴, Article 4 (3) of the Paris Climate Agreement sets out “**certain expectations and standards**” that parties must observe when preparing their NDCs. The ICJ derives this in particular from the requirements that, when setting their NDCs, parties must (1) raise the level of ambition compared to the previous NDC and (2) the NDC must “reflect their highest possible ambition, reflecting their common but differentiated responsibilities and respective capabilities in the light of different national circumstances”.⁴⁵ Accordingly, although both requirements are enshrined in the procedural rules of the Paris Climate Agreement for the definition and progression of NDCs on the path to climate neutrality, they also have substantive legal effects by limiting the parties' discretion in determining the content of their NDCs:

2.2.2.1 The requirement to increase ambition

2.2.2.1.1 General interpretation of the International Court of Justice

The requirement to increase the ambition of subsequent NDCs, which goes beyond merely prohibiting a regression, already has a dual procedural-substantive character in that, although it is anchored in the procedural rules for defining and progressing the NDCs on the path to climate neutrality, it can only be fulfilled by means of a corresponding substantive requirement to increase their stringency. In particular, the ICJ cites the obligation of industrialised countries under international law to take mitigating measures in accordance with the UN Framework Convention on Climate Change⁴⁶, as well as the customary duty under international law to exercise due diligence to prevent significant harm to the environment⁴⁷. As a result, NDCs must become more demanding in terms of content over time⁴⁸, which limits the discretion of a contracting party when setting NDCs.

⁴⁰ ICJ Advisory Opinion on Climate Law (2025), p. 76, para. 236.

⁴¹ ICJ Advisory Opinion on Climate Law (2025), p. 76-79, para. 237-249.

⁴² Vienna Convention on the Law of Treaties of 23 May 1969 (BGBl. 1985 II, p. 927) Article 31 (1); cf. ICJ Advisory Opinion on Climate Law (2025), p. 76, para. 238.

⁴³ ICJ Advisory Opinion on Climate Law (2025), p. 76, para. 239.

⁴⁴ ICJ Advisory Opinion on Climate Law (2025), p. 76 et seq., para. 240.

⁴⁵ Paris Climate Agreement, Article 4 (3); cf. ICJ Advisory Opinion on Climate Law (2025), p. 76 et seq., para. 240.

⁴⁶ UNFCCC, Article 4 (2) (a).

⁴⁷ ICJ Advisory Opinion on Climate Law (2025), p. 77, para. 241 and p. 49 et seq., para. 135-139.

⁴⁸ ICJ Advisory Opinion on Climate Law (2025), p. 77, para. 241.

2.2.2.1.2 Legal implications for the definition of the 2035 EU NDC

If we apply the substantive provisions of the requirement, for an increase in ambition, to the assessment of the 2035 EU NDC, the latter has to be compared with the previous NDC: Thus, in December 2020, the EU committed to reducing its net GHG emissions (GHG emissions after deduction of GHG removals) “within the Union” by at least 55% by 2030 compared to 1990.⁴⁹ This EU 2030 climate target was communicated to the UNFCCC Secretariat as the **2030 EU NDC** as follows:

“The EU and its Member States, acting jointly, are committed to a binding target of a net domestic reduction of at least 55% in greenhouse gas emissions by 2030 compared to 1990.”⁵⁰

This 2030 EU NDC must be compared with the **2035 EU NDC** reported to the UNFCCC Secretariat:

“[T]he EU and its Member States, acting jointly, aim to achieve an *indicative* contribution of a reduction of net GHG emissions of between 66.25-72.5% compared to 1990 by 2035.”

Firstly, a **comparison** shows that the two successive EU NDCs provide for a **percentage reduction in net GHG emissions** and that these relate in each case to the base year 1990. The lower ambition level of 66.25% of the NDC target corridor reported for 2035, which is relevant for the comparison, is at least nominally higher than the reduction of “at least 55%” by 2030. Although this in itself represents an increase, further differences between the two NDCs could give rise to doubts as to whether the requirement under international law to increase ambition is fulfilled in this respect.

Thus, it is striking that the 2030 EU NDC was qualified as legally binding (“...are committed to a binding target...”), whereas now the legally non-binding nature of the 2035 EU NDC is being emphasised (“...aim to achieve an *indicative* contribution...”). It could be argued that the resulting **loss of the new NDC’s legally binding nature** would weaken its overall level of ambition to such an extent that, for this reason alone, there would be no increase in ambition. However, this thesis presupposes the existence of such a loss in the first place which would only be the case if the EU had wanted to bind itself, by way of its 2030 EU NDC, not only under EU law, but also under international law in the sense of an “obligation of result”, meaning it would have to guarantee the achievement of the 55% emissions reduction compared to 1990 specified therein. This is countered by the fact that the contracting parties are only expressly obliged to progress and communicate the NDCs “which they intend to achieve”.⁵¹ In accordance with the NDC communication’s designation as a declaration of intent, the contracting parties are subject – as will be explained in detail below in Section 3.4) – to an obligation of conduct under international law to take the necessary measures, whilst exercising due diligence, to achieve the objectives set out in their NDCs. The wording of the new 2035 EU NDC, which states that the EU and its Member States “aim” to achieve a provisional, indicative target for reducing emissions, is also compatible with this duty of due diligence. Against this backdrop, we may assume that the 2030 EU NDC was only intended to provide declaratory information on the binding nature of the reduction target *under EU law*, but without seeking to establish a further obligation *under international*

⁴⁹ European Climate Law, Article 4 (1) subpara. 1; Conclusions of the European Council of 10/11 December 2020, EUCO 22/20 CO EUR 17 CONCL 8, No. 12.

⁵⁰ UNFCCC (2025), *NDC Registry: Update of the Nationally Determined Contribution of the European Union and its Member States*, Submission by Germany and the European Commission on Behalf of the European Union and Its Member States of 17 December 2020, p. 20, para. 27.

⁵¹ Paris Climate Agreement, Article 4 (1), sentence 2

law going beyond the existing due diligence obligation. Consequently, there is ultimately no difference between the EU-2030-NDC and 2035 EU NDC in terms of the degree to which they are binding under international law. This means that the actual extent of the respective percentage reduction in emissions of at least 55% by 2030 and at least 66.25% by 2035 is decisive for the assessment of the increase in ambition.

Legal questions also arise in this regard however: While the 2030 EU NDC stipulates that the EU wants to achieve this by reducing its net GHG emissions “**within the Union**” (“**domestic**”), this qualification is missing in the 2035 EU NDC, which opens up the option for the EU to achieve at least part of its NDC through emission reductions that take place outside the territories of its Member States. This is not precluded by the fact that the parties to the Paris Climate Agreement are obliged under Article 4 (2) sentence 2 to take *domestic* mitigation measures in order to realise the goals of their NDCs. In fact, **Article 6** of the Paris Climate Agreement explicitly provides for the possibility of transferring GHG reduction results between parties, under certain conditions within the framework of voluntary international cooperation, in order to count them towards the achievement of NDCs. Accordingly, the EU may also wish to fulfil its 2035 EU NDC through an “adequate contribution of high-quality international credits” within the meaning of Article 6 of the Paris Climate Agreement “that is both ambitious and cost-effective”⁵². The question of the extent to which the EU can fulfil its NDC through such international credits is then determined by what is meant by (1) an “adequate contribution” and (2) “high quality”. In order to achieve the 2040 EU climate target of reducing net GHG emissions by 90% compared to 1990, the amended European Climate Law considers a contribution of international credits of up to 5% of the EU’s net emissions in 1990 to be “adequate” in future, so that net GHG emissions within the EU (“domestically”) still have to be reduced by 85% compared to 1990 by 2040.⁵³

In summary, it is the case that the 2035 EU NDC fulfils the requirement to increase ambition in accordance with Article 4 (3) of the Paris Climate Agreement compared to the previous 2030 EU NDC.

2.2.2.2 The requirement for the highest possible ambition

2.2.2.2.1 General interpretation of the International Court of Justice

According to the ICJ, the fact that determining the NDC is not left entirely to the discretion of the parties to the Paris Climate Agreement arises not only from the requirement to increase ambition, but also from the **requirement** under Article 4 (3) that the NDC must reflect “their **highest possible ambition**”. The interpretation of the legal content of this requirement in the context and in light of the objective and purpose of the Paris Climate Agreement and the customary obligation to prevent significant harm to the environment shows that the content of a party’s NDCs must be capable of making **an adequate contribution to the achievement of the global temperature goal**⁵⁴

- The relevant context arises, inter alia, from Article 3 of the Paris Climate Agreement, which formulates the **expectation** that all parties will “undertake and communicate **ambitious efforts**” within the meaning of Article 4 (NDCs), Article 7 (climate adaptation), Article 9 (climate finance), Article 10 (technology development and transfer), Article 11 (capacity building) and Article 13 (transparency) “to achieve the purpose of this Agreement as set out in Article 2”. Taken as a whole,

⁵² UNFCCC (2025), *NDC Registry: EU-2035-NDC*, p. 3, para. 13.

⁵³ European Climate Law, new Article 4 (5) (a).

⁵⁴ ICJ Advisory Opinion on Climate Law (2025), p. 77, para. 242.

these provisions show that the ambition contained in a party's NDC must be related to the **objective and purpose of the Paris Climate Agreement**, as set out in Article 2, to limit the **increase in the global average temperature to below 1.5°C**, which is considered by the ICJ to be the primary temperature goal⁵⁵.

- In addition, Article 4 (9) provides that the NDCs are to be “informed by the outcomes of the **global stocktake** referred to in Article 14”.⁵⁶ According to the ICJ, this shows that “despite overall progress on mitigation, adaptation and means of implementation and support, the parties are not yet collectively on track towards achieving the purpose of the Paris Climate Agreement and its long-term goals”⁵⁷. Therefore, “limiting global warming to 1.5°C with no or limited overshoot requires deep, rapid and sustained **reductions in global greenhouse gas emissions** by 43% by 2030 and **60% by 2035 relative to the 2019 level** and reaching net zero CO₂ emissions by 2050”⁵⁸.
- According to the ICJ, further context can be found in the transparency and content obligations under Article 4 (8), according to which the parties “in communicating their NDCs [...] shall provide the **information necessary for clarity, transparency and understanding** in accordance with decision 1/CP.21⁵⁹ and any relevant decisions⁶⁰ of the Conference of the Parties serving as the meeting of the Parties to this Agreement”. In addition, Article 4.13 requires parties to **account for their NDCs** and to do so in a manner that promotes “**environmental integrity, transparency, accuracy, completeness, comparability and consistency**” and ensures the avoidance of double counting. The ICJ infers from this that such **transparency and accountability provisions** would be meaningless if the contracting parties had unrestricted discretion in setting their NDCs.⁶¹

From this summary of the substantive and procedural provisions of the Paris Climate Agreement, the ICJ concludes that the **discretion** of the parties when preparing their NDCs is **limited**.⁶² In particular, when exercising what discretion is left to them, the parties are obliged to exercise **due diligence** and ensure that the NDCs of all parties as a whole are capable of achieving the objectives of the Paris Climate Agreement – the global temperature goal of limiting global warming to 1.5°C above pre-industrial levels and the UNFCCC overall objective of stabilising GHG concentrations in the atmosphere at a non-harmful level.

⁵⁵ ICJ Advisory Opinion on Climate Law (2025), p. 73, para. 224.

⁵⁶ ICJ Advisory Opinion on Climate Law (2025), p. 77, para. 243.

⁵⁷ UNFCCC, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Climate Agreement on its fifth session, held in the United Arab Emirates from 30 November to 13 December 2023, Decision 1/CMA.5: Outcome of the first global stocktake, UN doc. FCCC/PA CMA/2023/16/Add.1, p. 3, para. 2.

⁵⁸ UNFCCC, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Climate Agreement on its fifth session, held in the United Arab Emirates from 30 November to 13 December 2023, Decision 1/CMA.5: Outcome of the first global stocktake, UN doc. FCCC/PA CMA/2023/16/Add.1, p. 5, para. 27.

⁵⁹ UNFCCC, Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, Decision 1/CP.21: Adoption of the Paris Climate Agreement, UN doc. FCCC/CP/2015/10/Add.1, p. 2 et seq.

⁶⁰ UNFCCC, Decision 4/CMA.1: Further guidance in relation to the mitigation section of decision 1/CP.21, 15 December 2018, UN doc. FCCC/PA/CMA/2018/3/Add.1, p. 9 et seq.

⁶¹ ICJ Advisory Opinion on Climate Law (2025), p. 77 et seq., para. 244.

⁶² ICJ Advisory Opinion on Climate Law (2025), p. 78, para. 245.

- The ICJ emphasises that the **degree of due diligence** depends on a number of different factors.⁶³ In the present context, a **stringent standard** of due diligence must be applied when drafting the NDCs due to the **seriousness of the threat posed by climate change**. Accordingly, each party must do **“its utmost”** to ensure that the NDCs it submits fulfil its **highest possible ambition** in order to achieve the goals of the Paris Climate Agreement.
- In principle, this obligation applies equally to all contracting parties.⁶⁴ However, in line with the **principle of common but differentiated responsibilities and respective capabilities**, the **standard** to be applied when assessing the NDCs of the different parties **varies** depending, inter alia, on the historical contributions to cumulative GHG emissions as well as the level of development and national circumstances of each party. In particular, the degree of due diligence depends on the specific circumstances of a state and its capacity to influence the relevant acts or events.⁶⁵ Consequently, according to Article 4 (4) of the Paris Climate Agreement, **industrialised countries** should continue taking the lead by committing to absolute economy-wide emission reduction targets, while developing countries should further strengthen their mitigation efforts and are encouraged to move to economy-wide emission reduction or limitation targets over time, given different national circumstances.⁶⁶
- According to the ICJ, the fact that the fundamental obligation to prepare and communicate NDCs that can achieve the objectives of the Paris Climate Agreement nevertheless applies to all contracting parties is also reflected in the corresponding **obligations of the contracting parties to provide substantiating information**.⁶⁷ For example, each party must provide information along with its NDC on why it considers the NDC to be “fair” and “ambitious” – including in terms of “fairness considerations” and “equity”⁶⁸ – in light of its national circumstances, and how it has addressed progression, highest possible ambition, common but differentiated responsibilities and respective capabilities in light of different national circumstances.⁶⁹ From a transparency perspective, these substantiation obligations serve as indicators for assessing whether and to what extent a contracting party has exercised “due diligence” in determining its NDC with the greatest possible ambition. Ultimately, they are also intended to generate corresponding political pressure to act – especially in view of the fact that the possibilities for sanctions are generally at least severely limited under international law.

⁶³ ICJ Advisory Opinion on Climate Law (2025), p. 78, para. 246 with reference to International Tribunal for the Law of the Sea (ITLOS), Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 43, para. 117.

⁶⁴ ICJ Advisory Opinion on Climate Law (2025), p. 78, para. 247.

⁶⁵ ICJ Advisory Opinion on Climate Law (2025), p. 78, para. 247 with reference to ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, ICJ Reports 2007, p. 43 (221), para. 430.

⁶⁶ ICJ Advisory Opinion on Climate Law (2025), p. 78, para. 248.

⁶⁷ ICJ Advisory Opinion on Climate Law (2025), p. 79, para. 248.

⁶⁸ UNFCCC, Decision 4/CMA.1: Further guidance in relation to the mitigation section of decision 1/CP.21, 15 December 2018, UN doc. FCCC/PA/CMA/2018/3/Add.1, Annex I, p. 11, para. 6 (a) and (b).

⁶⁹ UNFCCC, Decision 4/CMA.1: Further guidance in relation to the mitigation section of decision 1/CP.21, 15 December 2018, UN doc. FCCC/PA/CMA/2018/3/Add.1, Annex I, p. 11, para. 6 (c) and (d).

Overall, the ICJ therefore concludes that the NDCs are not entirely at the discretion of the parties to the Paris Climate Agreement, but must satisfy the aforementioned requirements of the Paris Climate Agreement in order to meet the requirement of the highest possible ambition.⁷⁰ To this end, a party's individual NDC must be able to make an "adequate contribution" to achieving the global temperature goal⁷¹, so that all NDCs taken together are capable of realising the global temperature goal under Article 2 of the Paris Climate Agreement. Against this background, the question arises as to the **legal consequences of a breach of duty** in general and whether it is **justiciable** in particular. In this regard, the ICJ has clarified that if a party were to adopt an "**inadequate**" or "**insufficient**" NDC, a court may order it to adopt an NDC that complies with its obligations under the Paris Climate Agreement ("duty of performance").⁷²

2.2.2.2.2 Legal implications for the definition of the 2035 EU NDC

The task of jurisprudence and case law is therefore to make the undefined legal concept of the "**adequate**" contribution of an individual contracting party's NDC to the **collective achievement of the global temperature goal**⁷³ legally tangible and thus, if necessary, justiciable. The legal assessment of whether an NDC in general and the 2035 EU NDC, now defined by the EU, in particular, fulfils the requirement of maximum possible ambition in accordance with Article 4 (3) of the Paris Climate Agreement, requires a comprehensive consideration and assessment of a large number of both individual and collective aspects, and the interaction between them. Even though it goes beyond the scope of the present study, the basic structure of the decision on the NDC determination and the procedural and substantive requirements of the principle of maximum possible ambition, specified by the ICJ, do have key implications for the legal assessment of the 2035 EU NDC:

Implication 1: NDC determination as a balancing process with limits on discretion

On the one hand, having learned from the failure of the Kyoto Protocol, the Paris Climate Agreement leaves it up to the contracting parties themselves to determine their contribution to climate protection in the form of NDCs.⁷⁴ Accordingly, the ICJ also assumes that the contracting parties are generally entitled to a certain degree of **discretion**. Consequently, the **basic structure of the decision that determines the NDC** is characterised by the fact that it requires the parties to the Paris Climate Agreement to consider and assess a **wide range of different factors** of a scientific-climatological, value-based, ecological, economic and social nature, and the interaction between them. At the heart of this decision is therefore a complex **balancing process** involving various factors arising from the tug of war between the partly synergistic, partly conflicting **objectives of the sustainability triangle**. On the one hand, the results of such a balancing process and the judgements of the responsible decision-makers manifested therein are not capable of a comprehensive judicial review. Consequently, the courts cannot simply override the political decision arising from this balancing process and determine the exact NDC themselves. In this respect, there are **limits to justiciability**. This is familiar to political

⁷⁰ ICJ Advisory Opinion on Climate Law (2025), p. 79, para. 249.

⁷¹ ICJ Advisory Opinion on Climate Law (2025), p. 77, para. 242.

⁷² ICJ Advisory Opinion on Climate Law (2025), p. 127, para. 446. For comprehensive information on the conceivable legal consequences of states acting in violation of international law ("legal consequences arising from wrongful acts") in connection with their obligations to protect the climate, see ICJ Advisory Opinion on Climate Law (2025), p. 126 et seq., para. 444-455: "duty of performance", "duty of cessation and guarantees of non-repetition", "duty to make reparation": "restitution", "compensation", "satisfaction".

⁷³ ICJ Advisory Opinion on Climate Law (2025), p. 77, para. 242.

⁷⁴ Paris Climate Agreement, Article 4 (2), sentence 1.

systems involving the democratic separation of powers. On the other hand, where it is the rule of law that prevails and not the arbitrary law of the strongest, discretion cannot be unlimited. Accordingly, the decisive factor for the assessment of a party's NDC under international law is whether it has complied with the procedural and substantive requirements formulated by the ICJ, including the **limits on the exercise of discretion** imposed by the duty of due diligence.

Implication 2: Balancing factors for determining NDC

In order to clarify the factors which can legitimately be taken into account under international law when defining NDCs and which must be balanced against each other, the following section takes a closer look at their nature and interaction. The starting point for this is the fundamental duty of all parties to the Paris Climate Agreement to strive “to reach the global peaking of greenhouse gas emissions as soon as possible [...] and to undertake rapid reductions thereafter in accordance with the best available science” in order to achieve a balance between anthropogenic GHG emissions and GHG removals (“climate neutrality”) in the second half of the 21st century “on the basis of equity and in the context of sustainable development and efforts to eradicate poverty”.⁷⁵ On the one hand, this obligation takes account of the fact that the long-term temperature goal constitutes a **scientific and climatological parameter**. On the other hand, the design of climate protection measures in general and the definition of NDCs in particular must also take into account **value-based, ecological, economic and social criteria** with the aforementioned aspects of “equity”, “sustainable development” and “poverty eradication”:

- From a **scientific and climatological point of view**, the Earth's atmosphere can only cope with a certain GHG concentration before the global temperature goal is exceeded and harmful disruptions to the climate system can no longer be avoided. Accordingly, the “rapid reductions” for achieving the global temperature goal; the global stocktake of progress; and the determination of a party's individual NDC must take account of the “best available science”. Only then can it be legally deemed an “adequate contribution” (see below). Defining individual NDCs to ensure compliance with the global temperature goal, is essentially about the allocation and distribution between the states, of the total amount of GHG emissions still possible for compliance. In this respect, the Intergovernmental Panel on Climate Change (IPCC) determines the **remaining CO₂ budget** at regular intervals on the basis of scientific and climatological criteria, compliance with which would make it possible to keep the increase in the global mean temperature below certain threshold values compared to pre-industrial times. The relevant IPCC reports are among the “best available scientific evidence” that must be taken into account when determining the NDC.

If the “adequate contributions” of the parties could be objectively derived and quantified according to scientific and climatological criteria from the IPCC's CO₂ budget alone, the discretion of the states in setting NDCs would be reduced to zero from the outset. However, this is not possible for several reasons.⁷⁶ From a scientific point of view, it is problematic because the IPCC's

⁷⁵ Paris Climate Agreement, Article 4 (1).

⁷⁶ Umweltbundesamt (2024), Grundlagen von CO₂-Budgets, *Climate Change* 31/2024, p. 13. For a comprehensive discussion of the limits of the budget approach as a basis for determining NDCs, among other things, see Geden/Knopf/Schenuit, Der Emissionsbudget-Ansatz in der EU-Klimapolitik, SWP-Aktuell No. 47 July 2023, e.g. p. 3 et seq.: “Contrary to the widespread perception among climate politicians, non-governmental organisations and the media, the IPCC's global CO₂ budgets do not provide a sufficiently stable starting point. The translation of the Paris Climate Agreement's long-term temperature target [...] into carbon budgets already involves genuinely political decisions, whether about the ‘adequate’ level of

determination of the remaining CO₂ budget is subject to various methodological limitations. For example, methane and nitrous oxide emissions are only taken into account indirectly, meaning that the remaining CO₂ budget does not cover all GHG emissions relevant to climate change and compliance with the global temperature goal. In addition, the IPCC regularly changes its calculation methods due to scientific progress. Finally, the determination of “adequate emission budgets” or NDCs for individual parties also depends on assumptions “that are not genuinely scientific, but value-based and political – and are not provided by the IPCC”.⁷⁷ Consequently, the carbon budgets determined by the IPCC do provide necessary information and indicators about the status quo and potential developments in climate change and global warming but are not sufficient in themselves to serve as the sole reference for deriving and defining individual NDCs.

- One of the key **value-based criteria** that plays a role in determining the NDC, according to the Paris Climate Agreement and the ICJ, is the question of the extent to which an NDC must be “**fair**” or “**equitable**” in order to represent an “adequate” contribution to achieving the global temperature goal. Since the NDC determination concerns the distribution of the remaining global GHG budget between the states, values such as “fairness” and “equity” relate particularly to the relationship between the states. This addresses the central challenge for the collective pursuit of the global temperature goal by the international community: the idea of the **Earth’s atmosphere as a global common good**. From an economic perspective, it represents a common good (“common land”) that is accessible to all countries and is scarce due to its limited GHG absorption capacity⁷⁸. The effectiveness of an individual country’s climate protection contribution in achieving the global temperature goal is limited from the outset and depends on the climate protection contributions of other countries, over whose determination it has no influence. As the negative effects of climate change affect all countries – albeit to varying degrees – it is in everyone’s common interest to significantly reduce GHG emissions and promote GHG removal in order to reduce the concentration of GHGs in the atmosphere. However, while the GHG reduction efforts of a state benefit all states, the associated costs are borne exclusively by the reducing state. Countries therefore have an incentive to rely on the climate protection efforts of others without taking comparable measures themselves.⁷⁹ At least in the short term, benefiting as a “**free rider**” and minimising your own efforts to reduce GHG emissions may seem to pay off. This applies even though long-term international cooperation would lead to a more effective reduction in GHG concentration to the benefit of all countries (“**tragedy of the commons**”).⁸⁰ Consequently, the structural free-rider problem inhibits the willingness of countries to take ambitious climate protection measures themselves.

warming (1.5°C, 1.75°C or 2°C) or about the sufficient probability of achieving a target (50%, 67% or 83%). In addition, the remaining CO₂ budgets determined by the IPCC change regularly, simply as a result of scientific progress. [...] In addition, the fact that there is no global budget for GHG emissions is often overlooked. For methodological reasons, the IPCC budgets only refer to CO₂ [...].”

⁷⁷ Geden/Knopf/Schenuit, Der Emissionsbudget-Ansatz in der EU-Klimapolitik, SWP-Aktuell Nr. 47 Juli 2023, p. 2 et seq.

⁷⁸ On the concept of “planetary boundaries”, including with regard to the climate system, see Steffen/Rockström et al. (2009), Planetary boundaries: Exploring the safe operating space for humanity, in: Ecology and Society, Volume 14, No. 2.

⁷⁹ Nordhaus (2015), Climate Clubs: Overcoming Free-riding in International Climate Policy, American Economic Review 105 (4), pp. 1339-1370.

⁸⁰ Hardin (1968), The Tragedy of the Commons, in: Science, New Series, Vol. 162, No. 3859, pp. 1243- 1248.

The Paris Climate Agreement represents an attempt to overcome the limited effectiveness of individual action and the **obstacles to collective action**⁸¹ by states, by creating a legal framework under international law with procedural and substantive elements. Nevertheless, the free-rider problem of global climate protection manifests itself not only in the withdrawal of major GHG emitters such as the USA⁸² from the Paris Climate Agreement, but also in the NDCs set by the remaining parties for 2035. Even if fully implemented, these will probably not be enough to achieve the global temperature goal of the Paris Climate Agreement.⁸³ The different levels of ambition of the NDCs with correspondingly diverging climate protection costs have economic and social as well as climatological-ecological consequences: For domestic companies, climate protection costs, which their competitors in third countries do not have to bear, represent a disadvantage in international competition. This distortion of international competition and the weakening of the competitiveness of domestic companies increases the risk of **carbon leakage**. This is characterised (1) by the relocation of production from the EU to third countries with less cost-intensive climate protection requirements and (2) by the associated relocation of the GHG emissions linked to production. As this leads to an overall increase in global GHG emissions, that is harmful to the climate, carbon leakage not only has a negative impact on a contracting party's growth and employment, but also undermines its efforts to make an effective contribution to protecting the global climate by way of ambitious climate protection measures.⁸⁴ Such unintended repercussions are counterproductive from an ecological, economic and social point of view and are also unfair to those countries that are pursuing ambitious climate protection. In particular, they are detrimental to global climate protection. Consequently, they are also relevant for a contracting party's individual NDC determination aimed at the collective achievement of the global temperature goal and must be taken into account in the balancing process.

In view of the interdependence between the a priori limited climate protection effect of the NDC of an individual state, on the one hand, and the climate protection effect of the NDCs of all states as a whole, on the other, the collective achievability of the global temperature goal and thus also the "adequacy" of individual NDCs represent "moving targets". Ultimately, this raises the legal **question** of whether and to what extent the inadequate or even missing NDCs of "free rider states" **justify an obligation under international law for other states to compensate for these deficits through additional climate protection efforts**. Is, for example, the EU obliged to compensate for the "climate protection gap", caused by the USA's cancellation of the Paris Climate Agreement, by increasing the ambition of its own 2035 EU NDC? After all, parties must take due care to ensure that the NDCs of all parties as a whole are fit to comply with the global temperature goal (see above).⁸⁵ However, any such **compensation obligation** is likely to be limited not only by the objective limits on the effectiveness of individual NDCs in achieving the global temperature goal, but also from the point of view of equity.

⁸¹ Seminal in this regard Olson (1965), *The Logic of Collective Action: Public Goods and the Theory of Groups*; Ostrom (1990), *Governing the Commons: The Evolution of Institutions for Collective Action*.

⁸² President Donald J. Trump, The White House, 20 January 2025, [Putting America First in International Environmental Agreements](#), Executive Order (E.O.) 14162, Sec. 3 Implementation (a).

⁸³ United Nations Environment Programme (2025), [Emissions Gap party 2025: Off target – Continued collective inaction puts global temperature goal at risk](#).

⁸⁴ European Commission (2012), *Impact Assessment Report accompanying the Guidelines on certain State aid measures in the context of Greenhouse Gas Emission Allowance Trading Scheme*, SWD(2012) 130 of 22 May 2012, p. 8 et seq.

⁸⁵ ICJ Advisory Opinion on Climate Law (2025), p. 78, para. 245.

In the political and scientific debate, there is a wide range of different positions regarding the conceivable **criteria for distributing** the remaining GHG budget for meeting the global temperature goal, which address considerations of fairness and equity. These range, on the one hand, from a pure per capita approach, which tends to favour industrialised countries, to the full inclusion of historical emissions in favour of developing countries, on the other.⁸⁶ If the historical responsibility of industrialised countries since the beginning of the industrial age were the only decisive factor, the EU, for example, would probably have to stop emitting GHG gases immediately, if it were to set a 1.5 °C-compatible budget as an NDC. In addition, the respective national potentials and capabilities for reducing GHG emissions and removing GHGs from the atmosphere, the associated costs and the general economic situation of countries are aspects that also raise questions of fairness and justice.⁸⁷ The relevance of these aspects under international law for determining an “adequate contribution” is emphasised several times in the Paris Climate Agreement⁸⁸, which is implemented to “reflect equity and the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances”.⁸⁹

- Ultimately, the complexity of the balancing decision, which requires a multitude of **ecological, economic and social criteria** to be taken into account when determining climate protection measures, in general, and the NDC, in particular, arises from the nature of climate protection itself: The climate system of the atmosphere, together with the Earth’s hydrosphere, biosphere, geosphere and anthroposphere, forms a planetary system of interactions that influence each other. In order to stabilise GHG concentrations in the Earth’s atmosphere at a level that prevents dangerous anthropogenic interference with the climate system, it is particularly important to reduce GHG emissions and remove GHGs from the Earth’s atmosphere. This basically requires all countries to **undergo a fundamental and long-term transformation** of their economies and lifestyles, which have generally been based primarily on fossil fuels. Consequently, measures and behavioural changes are required in **all areas of the economy and society** and **across several generations** by a **large number of stakeholders and decision-makers** – the state, companies, private households – each with their own different needs, preferences and interests. The type and extent of the measures possible and necessary in this regard also depend on the **individual underlying conditions** of a contracting party – a circumstance that is expressed in international law by the principle of common but differentiated responsibilities and respective capabilities in light of the different national circumstances⁹⁰. The main challenge in weighing up the various factors is to resolve as far as possible the inevitable **tensions** with regard to the partly **synergistic, partly conflicting objectives of the sustainability triangle**. As the current discussions on EU climate policy show, this seems to be increasingly difficult to achieve. The question of whether and to what extent, an **ambitious climate protection policy** can be reconciled with both **security of supply** and, in particular, **high-energy prices** for companies and private households and the associated consequences for growth and employment, will dominate discussions on the future shape of EU climate policy after 2030 and its **acceptance among the population**. Further challenges arise from **uncertainties** due to a lack of knowledge, and factors with various origins, which can only be

⁸⁶ Umweltbundesamt (2024), Grundlagen von CO₂-Budgets, Climate Change 31/2024, p. 13 ff.; Geden/Knopf/Schenuit, Der Emissionsbudget-Ansatz in der EU-Klimapolitik, SWP-Aktuell Nr. 47 Juli 2023, p. 3.

⁸⁷ Geden/Knopf/Schenuit, Der Emissionsbudget-Ansatz in der EU-Klimapolitik, SWP-Aktuell Nr. 47 Juli 2023, p. 3; Umweltbundesamt (2024), Grundlagen von CO₂-Budgets, Climate Change 31/2024, p. 13 ff.

⁸⁸ Paris Climate Agreement, Article 4 (1) and Article 14 (1) sentence 2.

⁸⁹ Paris Climate Agreement, Article 2 (2).

⁹⁰ Paris Climate Agreement, Article 2 (2).

planned and controlled to a limited degree, and which are inherent in long-term transformation processes in view of developments that are difficult to predict, e.g. those **of a technological and geopolitical nature**.

An example of the type and diversity of criteria that may be relevant and need to be weighed up when determining the NDC of a party to the Paris Climate Agreement is the list of factors that, according to the European Climate Law, the European Commission had to take into account in its proposal for the EU-wide 2040 EU climate target:⁹¹

- a) the best available and most recent scientific evidence, including the latest reports of the IPCC and the European Climate Change Advisory Board;
- b) the social, economic and environmental impacts, including the costs of inaction;
- c) the need to ensure a just and socially fair transition for all;
- d) cost-effectiveness and economic efficiency;
- e) the competitiveness of the EU economy, in particular small and medium-sized enterprises and the economic sectors most exposed to carbon leakage;
- f) the best available, cost-effective, safe and scalable technologies;
- g) energy efficiency and the “energy efficiency first” principle, energy affordability and security of supply;
- h) fairness and solidarity between and within the EU Member States;
- i) the need to ensure environmental effectiveness and progress over time;
- j) the need to maintain, manage and enhance natural sinks in the long term and to protect and restore biodiversity;
- k) investment needs and opportunities;
- l) international developments and the efforts undertaken to achieve the long-term objectives of the Paris Climate Agreement and the ultimate objective of the UNFCCC;
- m) existing information on the EU’s projected indicative GHG budget⁹² for the 2030 to 2050 period.

Collectively, this multiplicity of different scientific-climatological, value-based, ecological, economic and social factors must be weighed up by each party to the Paris Climate Agreement when determining the level of ambition of their NDC in accordance with their individual responsibilities, capabilities and circumstances⁹³. In view of the complexity of this balancing decision, the question that arises from a

⁹¹ European Climate Law, Article 4 (5) (a)-(m).

⁹² European Climate Law, Article 4 (4). Accordingly, the EU’s “projected indicative greenhouse gas budget” is defined as “the indicative total volume of net greenhouse gas emissions (expressed as CO₂ equivalent and providing separate information on emissions and removals) that are expected to be emitted in that period without putting at risk the Union’s commitments under the Paris Climate Agreement”.

⁹³ Paris Climate Agreement, Article 2 (2).

legal standpoint is how far it can be reviewed by the courts. As already mentioned, such a balancing process naturally requires certain room for discretion, the justiciability of which is inevitably limited. On the other hand, the **exercise of discretion** by the contracting parties is also subject to **limits** under the provisions of the Paris Climate Agreement, which, according to the ICJ, manifest themselves in corresponding obligations of conduct and due diligence. The **substantive and procedural facets of these due diligence obligations** are examined in more detail below, with a particular focus on the 2035 EU NDC.

Implication 3: Alignment of the individual NDC with the collective global temperature goal

Even if a party's individual NDC is determined on the basis of a complex balancing of a wide variety of factors, in substance the associated discretion is guided from the outset, as a result of the requirement to maximise ambition, by the ability to make an **"adequate" contribution to achieving the collective global temperature goal**.

In order to make a **"contribution"** to achieving the target, the NDC must first objectively demonstrate a scientific and climatological "climate protection effect" in that the measures taken to implement it actually reduce GHG emissions and remove GHGs from the atmosphere. To demonstrate this effectiveness, the EU lists numerous examples of climate protection measures in its 2035 EU NDC report to the UNFCCC Secretariat⁹⁴ (e.g. expansion of renewable energies, increase in energy efficiency, phase-out of coal-fired power generation, use of carbon capture, utilisation and storage). Due to their recognised climate protection effect, these are fundamentally suitable for making a contribution to achieving the global temperature goal.

Whether a party's contribution to climate protection is also **"adequate"** in terms of its **level ("ambition")** for achieving the goal so as to meet the requirement under international law for the highest possible ambition, must be measured on the basis of the aforementioned factors which have to be weighed against each other (see above). However, in the context of the **balancing process**, **greater weight** in legal terms is given to the **final focus of the NDC determination on achieving the global temperature goal**.

Implication 4: Highest possible level of ambition

This increased weight placed on the global temperature goal in the balancing process is further amplified by the fact that a strict standard of due diligence must be applied when determining the NDC due to the severity of the threat posed by climate change.⁹⁵ Accordingly, each party must do **"its utmost"** so that the NDC substantively fulfils its **highest possible ambition** in order to achieve the goals of the Paris Climate Agreement.⁹⁶ Even if this does not constitute an obligation to achieve a specific result ("obligation of result"), states are nevertheless obliged, in terms of a duty of conduct or due diligence, to use suitable means, make every effort and do everything possible to achieve the desired goal.⁹⁷ In general, such due diligence obligations under international law, especially with regard to

⁹⁴ UNFCCC (2025), NDC Registry: EU-2035-NDC, p. 5 ff., para. 23-82.

⁹⁵ ICJ Advisory Opinion on Climate Law (2025), p. 78, para. 246 with reference to International Tribunal for the Law of the Sea (ITLOS), Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 43, para. 117.

⁹⁶ ICJ Advisory Opinion on Climate Law (2025), p. 78, para. 246 and p. 84 et seq., para. 270; Voigt et al. (2025), The Legal Power of Highest Possible Ambition: Setting Legal and Scientific Indicators to Assess Highest Possible Ambition under Article 4 (3) of the Paris Climate Agreement, in: Climate Law 15(1-2) [Voigt et al. (2025)], p. 1 ff. (13).

⁹⁷ Voigt et al. (2025), p. 16.

climate protection, are no less demanding than obligations of result.⁹⁸ The content of a due diligence obligation must be determined objectively, taking into account the relevant factors and specific circumstances.⁹⁹ The transboundary nature of the harmful effects of GHG emissions is particularly important in this respect, making the standard of due diligence even more stringent.¹⁰⁰

Due to the complexity of the balancing process to determine the NDC, it is difficult from a legal point of view to make the vague legal concepts of “utmost” or “highest possible ambition”, including the associated due diligence obligations, tangible and thus capable of review by the court. This naturally stretches justiciability to its limits. Given this lack of clarity, it is not surprising that the question of whether the 2035 EU NDC represents the EU’s “highest possible” level of ambition and fulfils the corresponding requirement under international law in accordance with Article 9 (3) of the Paris Climate Agreement is the subject of heated debate. While NGOs in particular express considerable doubts about this¹⁰¹, the EU itself only addresses this issue indirectly. It emphasises that it will continue to call on the countries with the largest share of emissions to commit to the highest possible targets.¹⁰² This call implicitly contains the assertion that their own 2035 EU NDC fulfils the requirement of the highest possible level of ambition. Regardless of whether this is the case, it should be emphasised with regard to the **range for the 2035 EU NDC** specified by the EU, which aims to reduce net GHG emissions “by between 66.25 and 72.5% compared to 1990”¹⁰³, that it is not the lower value of 66.25%, but only the **upper value of 72.5%** that can be regarded as the “highest possible ambition”. That is the sole benchmark by which the EU has to be measured under international law.

The level of an NDC, which is based on a complex balancing process, is likely to be difficult to review in court, in substantive terms, against the undefined requirement of the highest possible ambition. The Paris Climate Agreement anticipated this by expressly regulating several minimum requirements for the due diligence obligations to be observed when exercising discretion in determining NDCs. These and the resulting legal implications are analysed in more detail below.

⁹⁸ International Tribunal for the Law of the Sea (ITLOS), Climate Change and International Law, Advisory Opinion of 24 May 2024 [ITLOS Climate Law Opinion (2024)], p. 92, para. 257; Voigt et al. (2025), p. 16.

⁹⁹ ITLOS Climate Law Opinion (2024), p. 92, para. 257: “[T]he Tribunal wishes to emphasize that an obligation of due diligence should not be understood as an obligation which depends largely on the discretion of a State or necessarily requires a lesser degree of effort to achieve the intended result. The content of an obligation of due diligence should be determined objectively under the circumstances, taking into account relevant factors. In many instances, an obligation of due diligence can be highly demanding. Therefore, it would not be correct to assume that the obligation under Article 194 (2) [measures to prevent, reduce and control pollution of the marine environment], of the Convention [on the Law of the Sea], as an obligation of due diligence, would be less conducive to the prevention, reduction and control of marine pollution from anthropogenic GHG emissions.”

¹⁰⁰ ITLOS Climate Law Opinion (2024), p. 93, para. 258; Voigt et al. (2025), p. 17.

¹⁰¹ See e.g. Coalition for Higher Ambition, Statement of 15 September 2025 urging to agree on an ambitious EU 2040 domestic emissions reduction target and NDC; World Resources Institute, EU’s 2035 Climate Signal Must Aim Higher to Ensure Credibility and Competitiveness, Statement of 18 September 2025; Bellona, EU-2035-NDC: EU Ministers struggle to agree on 66-72.5% range, leaving climate ambition off the table, Statement of 19 September 2025.

¹⁰² UNFCCC (2025), NDC Registry: EU-2035-NDC, Annex: Information to facilitate clarity, Transparency and Understanding of the Nationally Determined Contribution of the European Union and its Member States for the timeframe 2026-2035, p. 46 et seq.

¹⁰³ Council of the European Union, EU submission of an updated Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC), Approval of 5 November 2025, p. 6, para. 15.

Implication 5: Absolute macroeconomic GHG emissions reduction target

Article 4 (4) sentence 1 of the Paris Climate Agreement obliges at least the industrialised countries like the EU Member States to set their NDC in the form of an “absolute economy-wide emission reduction target”. On the one hand, this requirement for the configuration of the NDC reflects the principle of common but differentiated responsibilities and respective capabilities in light of the different national circumstances.¹⁰⁴ It assumes that industrialised countries – unlike developing countries¹⁰⁵ – are able to make their contribution to climate protection through an absolute overall economic emissions reduction target, depending on the specific circumstances and their capabilities¹⁰⁶. Secondly, it specifies the due diligence to be applied by industrialised countries when setting their NDCs by limiting their discretion. The 2035 EU NDC, according to which the EU and its Member States jointly aim to reduce their net greenhouse gas emissions by between 66.25 and 72.5% by 2035 compared to 1990, sets out such absolute macroeconomic emission reduction targets and therefore fulfils this requirement.¹⁰⁷

Implication 6: Scientific findings and global stocktaking

The Paris Climate Agreement further clarifies the duty of due diligence in the exercise of discretion by stipulating that each party must endeavour to achieve rapid reductions of its GHG emissions “in accordance with the best available science”¹⁰⁸ and be “informed by the outcomes of the global stocktake” (GST) regarding the progress made by all parties towards achieving the global temperature goal when setting its NDC.¹⁰⁹

The wording of this **obligation to be informed** indicates, on the one hand, that the results of the global stocktake have a prominent guiding function for determining the NDC. On the other hand, it recognises the fact that – In line with the basic structure of the balancing process to determine the NDC – the obligation to be informed is not absolute, but relative to the other factors to be weighed up. Even if the results of the global stocktake are not legally binding in the sense of indicating a precisely quantifiable level of ambition for an individual NDC, they cannot simply be ignored by the contracting parties. This would clearly be a violation of the duty of due diligence under international law.¹¹⁰ Consequently, it is also relevant for the legal assessment of the adequacy of the 2035 EU NDC that, according to the global stocktake “limiting global warming to 1.5°C with no or limited overshoot requires deep, rapid and sustained reductions in global greenhouse gas emissions of 43% by 2030 and 60% by 2035 relative to the 2019 level and reaching net zero CO₂ emissions by 2050”¹¹¹. Therefore, a strong indication of the adequacy of an NDC, particularly in the case of industrialised countries such as the EU Member States, is whether the reduction of their GHG emissions set out in their NDC for 2035

¹⁰⁴ Paris Climate Agreement, Article 2 (2).

¹⁰⁵ Paris Climate Agreement, Article 4 (4), sentence 2.

¹⁰⁶ ICJ Advisory Opinion on Climate Law (2025), p. 78, para. 247 with reference to ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, ICJ Reports 2007, p. 43 (221), para. 430.

¹⁰⁷ UNFCCC (2025), NDC Registry: EU-2035-NDC, p. 3, para. 15 and Annex, p. 33 et seq.

¹⁰⁸ Paris Climate Agreement, Article 4 (1).

¹⁰⁹ Paris Climate Agreement, Article 4 (9) and (14); ICJ Advisory Opinion on Climate Law (2025), p. 77 et seq., para. 243.

¹¹⁰ Voigt et al. (2025), The Legal Power of Highest Possible Ambition: Setting Legal and Scientific Indicators to Assess Highest Possible Ambition under Article 4 (3) of the Paris Climate Agreement, in: Climate Law 15(1-2), p. 1 et seq. (12 et seq.).

¹¹¹ UNFCCC, Report of the Conference of the parties serving as the meeting of the parties to the Paris Climate Agreement on its fifth session, held in the United Arab Emirates from 30 November to 13 December 2023, Decision 1/CMA.5: Outcome of the first global stocktake, UN doc. FCCC/PA CMA/2023/16/Add.1, p. 5, para. 27.

is in the order of 60% stipulated by the global stocktake and thus recognisably aligned with it (“alignment”). In the communication of its 2035 EU NDC to the UNFCCC Secretariat¹¹², the EU claims to fulfil this requirement:

“The EU’s emission reductions are aligned with science and the IPCC as well as the call for deep, rapid and sustained reductions in global GHG emissions of 43% by 2030 and 60% by 2035. [...] By submitting this NDC, the EU’s commitments are:

- Consistent with the IPCC emissions trajectories and the GST’s call for deep, rapid, and sustained reductions in GHG emissions in line with 1.5°C;
- responding to the GST to set absolute, economy-wide reduction targets covering all GHG, sectors, and categories; and
- aligned with steep and credible emissions reductions toward their respective mid-century net zero goals, consistent with a linear or steeper trajectory.”

The EU has thus formally fulfilled its due diligence obligations, at least to the extent that, in defining its NDC, it has taken into account the results of the global stocktake of the progress made by all parties towards achieving the global temperature goal. The question of whether these claims by the EU are also correct in terms of content is generally open to a review by the court. If **obvious objective errors** are identified with regard to the accuracy of the content or the assessment of facts, the exercise of discretion in determining the NDC would be flawed and consequently the duty of due diligence under international law would be breached. If such an error or the associated breach of due diligence is **causal** for the failure to specify the highest possible level of ambition in the NDC, a court could order the EU to adopt an “adequate NDC” in line with its commitments under the Paris Climate Agreement.¹¹³

Implication 7: Clarity, transparency and understanding of the NDC

In order to compare the NDCs of the parties to the Paris Climate Agreement with each other and review their respective adequacy, the parties must provide certain “information to ensure clarity, transparency and understanding”.¹¹⁴ The EU has at least formally fulfilled this obligation as part of its communication of the 2035 EU NDC to the UNFCCC Secretariat.¹¹⁵ Whether it has also fulfilled the substantive requirements in accordance with the relevant decisions of the committees of the Paris Climate Agreement can, in principle, be examined by the court.

¹¹² UNFCCC (2025), NDC Registry: EU-2035-NDC, Annex: Information to facilitate clarity, Transparency and Understanding of the Nationally Determined Contribution of the European Union and its Member States for the timeframe 2026-2035, p. 45 et seq.

¹¹³ ICJ Advisory Opinion on Climate Law (2025), p. 127, para. 446.

¹¹⁴ Pariser Klimaabkommen, Article 4 (8) in conjunction with UNFCCC, Report of the Conference of the parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, Decision 1/CP.21: Adoption of the Paris Climate Agreement, UN doc. FCCC/CP/2015/10/Add.1, p. 2 ff.; UNFCCC, Decision 4/CMA.1: Further guidance in relation to the mitigation section of decision 1/CP.21, 15 December 2018, UN doc. FCCC/PA/CMA/2018/3/Add.1, p. 9 ff.

¹¹⁵ UNFCCC (2025), NDC Registry: EU-2035-NDC, Annex, p. 42 ff.

Implication 8: Fairness of the NDC

Finally, each party must submit and substantiate information¹¹⁶ on why it considers its NDC to be “fair” and “ambitious” in light of its national circumstances – including in terms of “fairness considerations” and “equity”¹¹⁷ – and how it has addressed progression, highest possible ambition, common but differentiated responsibilities and respective capabilities in light of different national circumstances.¹¹⁸ In this respect, the EU comprehensively presents its climate protection measures in its communication of the 2035 EU NDC to the UNFCCC Secretariat, emphasising the following in summary:¹¹⁹

“The EU’s NDC is both ambitious and fair as it will set one of the world’s largest fossil fuel-dependent and industrialised economies, on a pathway to climate neutrality by 2050, while considering fairness and solidarity across Member States with diverse national circumstances. [...] According to the latest UNEP Emissions Gap Report, the EU share of global GHG emissions lies at 6%. The EU cannot solve the climate crisis on its own. International cooperation remains at the heart of the EU’s contribution to global climate action and the EU will continue to call on the countries with the largest share of emissions to commit to the highest possible ambition.”

The EU has thus formally fulfilled its due diligence obligations, at least to the extent that it has explained why it considers its 2035 EU NDC to be “fair” and “ambitious”. The question of whether this claim by the EU is also correct in terms of content is generally open to a review by the court. If **obvious objective errors** can be identified with regard to the accuracy of the content or the assessment of facts, the duty of due diligence under international law would also be breached in this respect and the exercise of discretion in determining the NDC would be flawed. Here too, if such an error or the associated breach of due diligence is **causal** for the failure to specify the highest possible level of ambition in the NDC, a court could also order the EU to adopt an “adequate NDC” in line with its commitments under the Paris Climate Agreement.¹²⁰

¹¹⁶ ICJ Advisory Opinion on Climate Law (2025), p. 79, para. 248.

¹¹⁷ UNFCCC, Decision 4/CMA.1: Further guidance in relation to the mitigation section of decision 1/CP.21, 15 December 2018, [UN doc. FCCC/PA/CMA/2018/3/Add.1](#), Annex I, p. 11, para. 6 (a) and (b).

¹¹⁸ UNFCCC, Decision 4/CMA.1: Further guidance in relation to the mitigation section of decision 1/CP.21, 15 December 2018, [UN doc. FCCC/PA/CMA/2018/3/Add.1](#), Annex I, p. 11, Annex I, para. 6 (c) and (d).

¹¹⁹ UNFCCC (2025), [NDC Registry: EU-2035-NDC](#), Annex, p. 43 ff.

¹²⁰ ICJ Advisory Opinion on Climate Law (2025), p. 127, para. 446.

3 Legal implications of the 2035 EU NDC for EU climate policy after 2030

The obligations of the EU and its Member States under international law as parties to the Paris Climate Agreement are relevant not only for the provisions of the 2035 EU NDC, but also for the future design of EU climate law for the period after 2030. In order to explain these connections in the multi-level legal regime of international and EU climate protection, the following section will look in more detail at the position of international legal obligations under the Paris Climate Agreement in the EU hierarchy of norms; the subject matter and objectives of EU climate law; the relationship between the 2035 EU NDC under international law and the 2040 EU climate target under EU law and, finally, the relevance of international legal obligations for the implementation of the 2035 EU NDC under EU law.

3.1 Position of international law in the EU hierarchy of norms

The international legal obligations of the EU and its Member States under the Paris Climate Agreement and the 2035 EU NDC defined on the basis thereof also have an effect under EU law. This already follows from the position of international treaties, which the EU has concluded as a contracting party¹²¹, in the hierarchy of norms of Union law. The EU has its own legal personality¹²² and can therefore also exercise its competences, including for climate protection measures¹²³, by concluding international treaties such as the Paris Climate Agreement.¹²⁴ These are “integral components” of Union law¹²⁵ and bind the EU institutions and the EU Member States.¹²⁶ In the EU hierarchy of norms, they are below EU primary law (TEU, TFEU), but above EU secondary law, so that they take precedence over Regulations and Directives¹²⁷.¹²⁸ Therefore, in the event of a conflict between the Paris Climate Agreement on the one hand and EU legislation such as the European Climate Law on the other, the former would take precedence.

3.2 Subject matter and objectives of the European Climate Law

In line with the Paris Climate Agreement, the European Climate Law codifies a continuous process “for the irreversible and gradual **reduction of anthropogenic greenhouse gas emissions by sources and enhancement of removals by sinks**”¹²⁹, to be achieved through climate action by the EU and its Member States across all sectors of the economy and society.

¹²¹ Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Climate Agreement adopted under the United Nations Framework Convention on Climate Change

¹²² Treaty on the European Union (TEU), Article 47.

¹²³ TFEU, Article 192 (1) in conjunction with Article 191 (1).

¹²⁴ TFEU, Article 216 (1).

¹²⁵ ECJ, Judgement of 30 April 1974, C-181/73 (Haegeman), ECLI:EU:C:1974:41, ECR. 1974, 449, para. 2 and 6; Schmalenbach, in: Calliess/Ruffert, TEU/TFEU, 6th edition 2022, Article 216 TFEU, para. 28-32. On the controversial question, which is ultimately irrelevant here due to Council Decision (EU) 2016/1841, of whether a separate transformation act is required for the validity of international treaties under EU law (dualism) or not (monism), see Vöneky/Weller, in: Grabitz/Nettesheim, Das Recht der Europäischen Union, 85th Update May 2025, Article 216 AEUV, para. 26- 38 citing further references.

¹²⁶ TFEU, Article 216 (2).

¹²⁷ TFEU, Article 288 (1).

¹²⁸ Vöneky/Weller, in: Grabitz/Nettesheim, Das Recht der Europäischen Union, 85th Update May 2025, Article 216 AEUV, para. 38 citing further references.

¹²⁹ European Climate Law, Article 1 (1). In addition, the European Climate Law creates a “framework for progress towards achieving the global goal for adaptation” to the unavoidable negative consequences of climate change set out in Article 7 of the Paris Climate Agreement; cf. e.g. Reichert/Schwind (2024), Climate Risks and Climate Resilience, [cepPolicyBrief 07/2024](#) on European Commission Communication COM(2024) 91 of 12 March 2024 “Managing climate risks – protecting people and prosperity”.

The reduction of GHG emissions in combination with the removal of GHG from the atmosphere is geared in the long term towards the “binding objective” of “**climate neutrality** in the Union by **2050**”.¹³⁰ According to this, “Union-wide greenhouse gas emissions and removals [...] shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date”.¹³¹ The EU 2050 climate target of climate neutrality is expressly intended to contribute to the realisation of the **global temperature goal** established under international law in the Paris Climate Agreement **through measures taken by the EU and its Member States**.¹³² In order to further clarify the gradual reduction of GHG emissions towards achieving climate neutrality by 2050, the European Climate Law provides for the definition of binding staged or “intermediate climate targets” for emission reductions by 2030¹³⁴ and 2040¹³⁵.

In December 2020, the European Council decided that the EU must reduce net GHG emissions (emissions after deduction of removals) “within the Union” by at least 55% by 2030 compared to 1990.¹³⁶ This EU 2030 climate target was communicated to the UNFCCC Secretariat as the **2030 EU NDC**.¹³⁷ To adapt all EU climate and energy legislation to the binding EU 2030 climate target¹³⁸, the Commission proposed the “**Fit for 55**” **legislative package** as part of the European Green Deal in July 2021, which has since been largely adopted by the EU legislative bodies.¹³⁹

In addition, although the EU did not have to lay down an **EU climate target** in the European Climate Law for 2035, it was supposed to lay one down for **2040**.¹⁴⁰ To this end, the Commission should have submitted a legislative proposal by June 2024, no later than six months after the first global stocktake on progress towards achieving the goals of the Paris Climate Agreement¹⁴¹, which took place in December 2023¹⁴². However, owing to the sensitive political situation in 2024 (European Parliament elections, subsequent reappointment of the College of Commissioners, growing concerns among Member States¹⁴³), it let this deadline pass. Instead, it initially published a communication in February 2024¹⁴⁴ together with an impact assessment¹⁴⁵, on the basis of which it recommended a 90% reduction in GHG emissions within the EU by 2040 compared to 1990. The Commission’s impact assessment and

¹³⁰ European Climate Law, Article 1 (2), sentence 1.

¹³¹ European Climate Law, Article 2 (1), first half of sentence 1.

¹³² Paris Climate Agreement, Article 2 (1) (a).

¹³³ European Climate Law, Article 1, (2) sentence 1 and Recital 17.

¹³⁴ European Climate Law, Article 1 (2) sentence 2 and Article 4 (1) and (2).

¹³⁵ European Climate Law, Article 4 (3)-(6).

¹³⁶ European Climate Law, Article 4 (1) subpara. 1; Conclusions of the European Council of 10/11 December 2020, EUCO 22/20 CO EUR 17 CONCL 8, No. 12.

¹³⁷ UNFCCC (2025), NDC Registry: Update of the Nationally Determined Contribution of the European Union and its Member States, Submission by Germany and the European Commission on Behalf of the European Union and Its Member States of 17 December 2020.

¹³⁸ European Climate Law, Article 4 (2).

¹³⁹ European Commission (2023), Press release of 9 October 2023, Commission welcomes completion of key Fit for 55 legislation – putting EU on track to exceed 2030 targets; Council of the European Union, Fit for 55; European Parliament, Legislative Train Schedule: Fit for 55 Package under the European Green Deal

¹⁴⁰ European Climate Law, Article 4 (3)-(5).

¹⁴¹ Paris Climate Agreement, Article 14 (1) and (2).

¹⁴² UNFCCC (2024), Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Climate Agreement on its fifth session, held in the United Arab Emirates from 30 November to 13 December 2023, Decision 1/CMA.5 adopted on 13 December 2023, Outcome of the first global stocktake, pp. 2-22.

¹⁴³ EU climate target 2040: Warum unter Polens Ratspräsidentschaft kaum Fortschritt zu erwarten ist, Europe.Table of 31 December 2024.

¹⁴⁴ European Commission, Communication COM(2024) 63 of 6 February 2024, Securing our future – Europe’s 2024 climate target and path to climate neutrality by 2050 building a sustainable, just and prosperous society.

¹⁴⁵ European Commission, Impact Assessment Report SWD(2024) 63 of 6 February 2024.

its legally non-binding recommendation¹⁴⁶ for the 2040 EU climate target were in turn based on a corresponding recommendation by the European Climate Change Advisory Board from June 2023¹⁴⁷. Ursula von der Leyen also stood by this following her re-election as Commission President in July 2024.¹⁴⁸ After further hesitation, the Commission, with its legislative proposal of 2 July 2025, initiated the ordinary legislative procedure required to adopt the 2040 EU climate target¹⁴⁹.¹⁵⁰ Now, as of 9 December 2025, the Council and the European Parliament have agreed on the amendment to the European Climate Law and the new EU climate target for 2040 enshrined therein.¹⁵¹

The actual implementation of the 2040 EU climate target will in turn require further climate protection measures in all areas of the EU economy and society¹⁵² and therefore a corresponding **adjustment and further development of the EU's climate law acquis after 2030**, which has so far essentially only been designed up to 2030 by way of the Fit for 55 legislation. To this end, on 21 October 2025, the European Commission announced numerous legislative proposals in its 2026 work programme¹⁵³, particularly for the second half of 2026, including the Governance Regulation (EU) 2018/1999, the Effort Sharing Regulation (EU) 2018/842 setting greenhouse gas emission targets for Member States, the ETS Directive 2003/87/EC for maritime and aviation transport and stationary installations (EU-ETS-1) together with Decision (EU) 2015/1814 on the relevant Market Stability Reserve (MSR), the Renewable Energy Directive (EU) 2018/2001 and the Energy Efficiency Directive (EU) 2023/179.

These adjustments in turn require numerous individual decisions that require the consideration and weighing up of a large number of different factors. In this respect, the amended European Climate Law obliges the European Commission to take due account of certain scientific, value-based, environmental, economic and social factors in its legislative proposals¹⁵⁴. The corresponding list of criteria largely corresponds to that which was previously taken into account when setting the 2040 EU climate target (see above Section 2.2.2.2. Implication 2)¹⁵⁵, even if a detailed comparison reveals a certain shift in priorities towards greater consideration of the affordability of energy and the international competitiveness of the European economy.

3.3 Relationship between the 2035 EU NDC and the 2040 EU climate target

There is no direct legal link between the 2035 EU NDC now set by the EU as part of its obligations under international law in accordance with the Paris Climate Agreement, on the one hand, and the 2040 EU climate target now to be adopted on the basis of the European Climate Law, on the other: For one

¹⁴⁶ TFEU, Article 288 (4).

¹⁴⁷ European Scientific Advisory Board on Climate Change (ESABCC), Scientific advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030-2050 of 15 June 2023.

¹⁴⁸ Ursula von der Leyen (2024), Europe's Choice – Political Guidelines for the Next European Commission 2024-2029, p. 8.

¹⁴⁹ TFEU, Article 294.

¹⁵⁰ European Commission, Proposal COM(2025) 524 of 2 July 2025 for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality [European Climate Law Amendment Proposal COM(2025) 524 of 2 July 2025].

¹⁵¹ Council of the European Union, 2040 climate target: Council and Parliament agree on a 90% emissions reduction, Press Release of 10 December 2025; European Parliament, 2040 climate target: deal on a 90% emissions reduction in EU climate law, Press Release of 10 December 2025.

¹⁵² See e.g. European Scientific Advisory Board for Climate Change – ESABCC (2023), Scientific advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030-2050.

¹⁵³ European Commission, Communication COM(2025) 870 of 21 October 2025, Commission Work Programme 2026, Annex I, p. 2.

¹⁵⁴ European Commission, European Climate Law Amendment Proposal COM(2025) 524 of 2 July 2025, new Article 4 (4) (a)-(r).

¹⁵⁵ European Climate Law, Article 4 (5) (a)-(m).

thing, the 2035 EU NDC and the 2040 EU climate target have different legal bases under international and EU law, and for another, they refer to different target years. Under international law, the 2040 EU climate target under EU law must be communicated to the UNFCCC Secretariat in the form of an EU 2040 NDC in the next five-year cycle for NDCs 4.0, in accordance with the Paris Climate Agreement. Nevertheless, the 2035 EU NDC under international law and the 2040 EU climate target under EU law are linked in that both refer to **the same EU GHG target pathway** and define it over time. Due to this factual connection alone, the 2035 EU NDC on the one hand and the 2040 EU climate target on the other should be harmonised in order to avoid inconsistencies. The definition of the 2035 EU NDC therefore has a de facto **predetermining effect** on the definition of the subsequent **2040 EU climate target under EU law** and thus indirectly also on the corresponding **EU 2040 NDC under international law** - which will only be formally defined and reported to the UNFCCC Secretariat in a few years' time.

3.4 International law obligations for the implementation of the 2035 EU NDC under EU law

The European Climate Law does not expressly require the codification of a binding EU 2035 climate target in order to transpose the 2035 EU NDC under international law into Union law. Nevertheless, the communication of the 2035 EU NDC to the UNFCCC Secretariat also has legal implications for the forthcoming design of EU climate law for the period after 2030. As parties to the Paris Climate Agreement¹⁵⁶, the EU and its Member States have to take “domestic” mitigation measures in order to realise the goals of their 2035 EU NDC.¹⁵⁷ In its legal opinion of 23 July 2025, the ICJ clarified that – contrary to the legal opinion previously held by several states – this is an individual obligation under international law applicable to each contracting party, which is not only of a formal-procedural nature but also in fact of a substantive nature.¹⁵⁸

The first consequence of this is that the EU not only has to align its future **climate acquis for the period after 2030**, and the associated GHG reduction path, with the 2040 EU climate target codified in the European Climate Law, but must also **take account of the 2035 EU NDC**. This states that the EU is striving to reduce its net GHG emissions by up to 72.5% compared to 1990 as its “highest possible ambition” (see above Section 2.2.2.2. Implication 3). According to the ICJ, there is an “**obligation of conduct**” in this respect, according to which the parties to the Paris Climate Agreement are obliged to act with **due diligence** in taking the necessary measures to achieve the goals set out in their NDCs.¹⁵⁹ Whether a party has fulfilled this obligation must therefore be assessed according to whether it has exercised due diligence in its efforts and in the use of adequate means to implement domestic mitigation measures.¹⁶⁰ In this context, the ICJ recalls that the standard of due diligence varies depending on the particular circumstances to which it is applied.¹⁶¹ These circumstances include, in particular, the state of scientific knowledge on and the risk of harm from climate change as well as the urgency of climate protection measures.¹⁶² Since “the best available scientific evidence” indicates that “the risks and projected adverse impacts and the associated losses and damages from climate change

¹⁵⁶ Paris Climate Agreement, Article 4 (2) sentence 2.

¹⁵⁷ ICJ Advisory Opinion on Climate Law (2025), p. 75, para. 234.

¹⁵⁸ ICJ Advisory Opinion on Climate Law (2025), p. 79, para. 250 et seq.).

¹⁵⁹ Paris Climate Agreement, Article 4 (2) sentence 2.

¹⁶⁰ ICJ Advisory Opinion on Climate Law (2025), p. 79, para. 252.

¹⁶¹ ICJ Advisory Opinion on Climate Law (2025), p. 80, para. 254.

¹⁶² ICJ Advisory Opinion on Climate Law (2025), p. 49 et seq., para. 134-138.

escalate with every increment of global warming (very high certainty)”¹⁶³, the ICJ considers that a **stringent standard** must be applied to the obligation to implement national climate protection measures.¹⁶⁴ Consequently, it is necessary for each party to the Paris Climate Agreement to “**make best efforts**” to actually achieve its NDC.¹⁶⁵ This requires states “to be proactive” and take measures that are “reasonably capable” of achieving the NDC.¹⁶⁶ These criteria will be used in future for assessment under international law as to whether the EU has exercised the necessary diligence in the forthcoming EU legislation setting out its specific climate protection measures for the period after 2030 in order to achieve its 2035 EU NDC.

¹⁶³ ICJ Advisory Opinion on Climate Law (2025), p. 80, para. 254 with reference to IPCC, 2023 Summary for Policymakers, p. 14, Statement B.2.

¹⁶⁴ ICJ Advisory Opinion on Climate Law (2025), p. 50, para. 138, p. 80, para. 254 and p. 81 et seq., para. 258 et seq.

¹⁶⁵ ICJ Advisory Opinion on Climate Law (2025), p. 80, para. 253.

¹⁶⁶ ICJ Advisory Opinion on Climate Law (2025), p. 80, para. 253.

4 Conclusion

The determination of the EU's contribution to climate protection under international law for 2035 (2035 EU NDC) within the framework of the Paris Climate Agreement has far-reaching legal implications for the forthcoming development of the whole of EU climate law for the period after 2030. The reason for this is that, according to the ICJ's landmark legal opinion of July 2025 on the obligations of states under international law in relation to climate change, a state – including a community of states such as the EU – may be ordered by a court to set an “adequate” NDC to achieve the global temperature goal of 1.5°C.

The level of an NDC is determined on the basis of a comprehensive consideration of a large number of different factors of a climatological, value-based, ecological, economic and social nature, including how they interact with each other in the field of tension and trade-offs between the partly synergistic, partly conflicting objectives of the sustainability triangle. On the one hand, such a complex balancing process naturally requires a certain amount of room for discretion, so that there are inevitably limits to the justiciability of the result of this process. On the other hand, in international law, where the rule of law still prevails over the arbitrary law of the strongest, discretion is not unlimited. Accordingly, the Paris Climate Agreement sets judicially verifiable limits on the exercise of discretion, in the form of the due diligence obligations, which have to be observed by its parties when setting their NDCs. Thus, the courts cannot simply override the political decision arising from this balancing process, and determine the exact NDC themselves, but they can object to obvious breaches of due diligence.

This means that the final focus of the NDC towards achieving the global temperature goal is given greater weight in the balancing process. Primarily, the EU must do its “utmost” to ensure that the 2035 EU NDC fulfils its “highest possible ambition” in order to make an “adequate contribution” to achieving the global temperature goal. If there are obvious objective errors regarding the accuracy of the content or the assessment of facts and these are causal for the failure to specify the highest possible level of ambition for the NDC, a court could order the EU to adopt an “adequate NDC”. With regard to the 2035 EU NDC, which gives a range for the reduction in net GHG emissions of between 66.25 and 72.5% compared to 1990, only the upper value of 72.5% represents the EU's “highest possible ambition”. The EU must be measured against this under international law.

It must gear future EU climate policy after 2030 not only towards achieving the 2040 EU climate target that it has set under EU law, but also towards the 2035 EU NDC under international law. In doing so, it does not have to guarantee the achievement of its 2035 EU NDC under international law in the sense of being under an obligation of result. The EU and its Member States must, however, use their “best efforts” to do so as part of their due diligence obligation. To this end, they are obliged to take “adequate” climate protection measures.

Overall, despite the scope revealed herein of the legal implications of the Paris Climate Agreement for the definition of EU climate targets in general, and the future design of EU climate law for the period after 2030 in particular, one should also be aware of the limits of international law when it comes to protecting the climate. The ICJ itself explicitly pointed this out in its legal opinion on climate change.¹⁶⁷

¹⁶⁷ ICJ Advisory Opinion on Climate Law (2025), p. 129 et seq., para. 456.

“International law [...] has an important but ultimately limited role in resolving this problem. A complete solution to this daunting, and self-inflicted, problem requires the contribution of all fields of human knowledge, whether law, science, economics or any other. Above all, a lasting and satisfactory solution requires human will and wisdom — at the individual, social and political levels — to change our habits, comforts and current way of life in order to secure a future for ourselves and those who are yet to come.”

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