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Anyssa FATMI

Doctoral Dissertation

EUROPEAN CLIMATE LAW: EFFECTS ON COMPETENCES, NORMATIVE SUBSTANCE, AND GOVERNANCE OF THE EUROPEAN UNION

SOCIAL SCIENCES,
LAW (S 001)
VILNIUS, 2026

université de BORDEAUX

MRU
Mykolas Romeris University

MYKOLAS ROMERIS UNIVERSITY

UNIVERSITY OF BORDEAUX

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EUROPOS SĄJUNGOS KLIMATO TEISĖ: POVEIKIS KOMPETENCIJŲ, REGULIAVIMO IR EUROPOS SĄJUNGOS VALDYSENOS SRITYSE

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LE DROIT EUROPEEN DU CLIMAT INCIDENCES SUR LES COMPETENCES, LA SUBSTANCE NORMATIVE ET LA GOUVERNANCE DE L'UNION EUROPEENNE

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No man is an island,
Entire of itself.
Each is a piece of the continent,
A part of the main.

For Whom the Bell Tolls by John Donne

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A Mamie et Fatiha

LIST OF ABBREVIATIONS

AB – Appellate Body of the Dispute Settlement Body

AETR (ERTA) – ERTA/AETR doctrine on implied external competence (CJEU case-law)

AOSIS – Alliance of Small Island States

APEC – Asia-Pacific Economic Cooperation

API – Administrative Public Institution

APIE – Independent Public Authority for Environmental Protection

CAP – Common Agricultural Policy

CBAM – Carbon Border Adjustment Mechanism

CCEAG – Climate, Energy and Environmental Aid Guidelines

CCP – Common Commercial Policy

CCC – Climate Change Committee (United Kingdom)

CFSP – Common Foreign and Security Policy

CITES – Convention on International Trade in Endangered Species of Wild Fauna and Flora

CJA – Code of Administrative Justice (Code de justice administrative)

CJEU – Court of Justice of the European Union

COP – Conference of the Parties

DG CLIMA – Directorate-General for Climate Action (European Commission)

DSB – Dispute Settlement Body

DSU – Dispute Settlement Understanding

EAP – Environment Action Programme

EC – European Communities

ECN – European Competition Network

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

EEA (Agency) – European Environment Agency

EEA (Area) – European Economic Area

EEC – European Economic Communities

EPA – European Partnership Agreement

EU – European Union

EU-ETS – European Union Emissions Trading System

FAO – Food and Agriculture Organisation of the United Nations

FTA – Free Trade Agreement

GATS – General Agreement on Trade in Services

GATT – General Agreement on Tariffs and Trade

GDP – Gross Domestic Product

GHG – Greenhouse Gas(es)

GPP – Green Public Procurement

HCC – Haut Conseil pour le Climat (France)

IAAs – Independent Administrative Authorities

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ICJ – International Court of Justice

ICTSD – International Centre for Trade and Sustainable Development

IMF – International Monetary Fund

IPCC – Intergovernmental Panel on Climate Change

LDCs – Least Developed Countries

LOTI – Law on Orientation of Internal Transportation (Loi d'orientation des transports intérieurs)

LULUCF – Land Use, Land-Use Change and Forestry

MBT – Mechanical-Biological Treatment

MDGs – Millennium Development Goals

MEA(s) – Multilateral Environmental Agreement(s)

MEPs – Members of the European Parliament

NDC(s) – Nationally Determined Contribution(s)

NGOs – Non-Governmental Organizations

NTO – National Transition Objective Plan

OECD – Organisation for Economic Co-operation and Development

QPC – Priority Question of Constitutionality (Question prioritaire de constitutionnalité)

SCM – Subsidies and Countervailing Measures Agreement

SDGs – Sustainable Development Goals

TEU – Treaty on the European Union

TFEU – Treaty on the Functioning of the European Union

TRIPs – Trade-Related Aspects of Intellectual Property Rights

UN – United Nations

UNFCCC – United Nations Framework Convention on Climate Change

UNGA – United Nations General Assembly

WHO – World Health Organization

WTO – World Trade Organization

1. INTRODUCTION

1.1. Preface

The fight against climate change has become one of the defining challenges of our era, compelling the European Union (hereinafter EU) to rethink not only its environmental ambitions but also the very architecture of its legal and institutional framework. The adoption and implementation of the Regulation 2021/1119, known as the "*European Climate Law*" (hereinafter EU Climate Law)[1] mark a turning point in the Union's trajectory, enshrining the binding objective of climate neutrality by 2050 and setting in motion a profound transformation of the EU's legal order.

For the first time, climate ambition was not only articulated through policy instruments but enshrined as a binding legal objective intended to guide the action of EU institutions and Member States across all areas of Union law (For contextual international climate data underpinning these developments, see Annex 1). Yet this normative strengthening did not occur through a revision of the Treaties, nor through the attribution of a new or autonomous competence to the Union. Instead, EU Climate Law has developed within an existing constitutional framework, relying on implementation mechanisms that profoundly affect the allocation of competences, the integration of climate objectives into internal policies, and the governance of the Union. This apparent continuity conceals a deeper legal mutation. The transformative character of EU Climate Law lies less in the proclamation of ambitious objectives than in the legal and institutional modalities of their implementation. A schematic overview of climate governance in Europe is provided in Annex 2. Climate neutrality operates as a transversal constraint, influencing legislative choices, administrative practices and judicial reasoning across policy fields traditionally governed by different logics, such as the internal market, competition law, or environmental regulation.

This thesis argues that EU Climate Law constitutes a form of constitutional transformation through implementation rather than Treaty revision. The implementation of EU Climate Law therefore constitutes a privileged lens through which to analyse the capacity of the EU legal order to accommodate systemic transformation without formal constitutional change. It reveals a process of normative densification, institutional concentration, and governance transformation that profoundly affects the allocation of competences, the integration of climate objectives into external (*coherence*) and internal (*consistency*) policies, and the governance of the Union. In this thesis, "normativity" is legally used *stricto sensu*, as the capacity of EU climate provisions to produce binding legal effects and to structure legal reasoning; coherence and consistency are analysed as key modalities through which that normativity operates.

This research represents the culmination of several years of analysis and reflection

1 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

on the implementation of EU Climate Law. It departs from a simple observation: while the objectives of EU Climate Law are presented as politically ambitious and legally binding, their effective implementation relies on institutional and procedural arrangements that stretch, recalibrate, and sometimes blur the classical principles of EU constitutional law. Climate neutrality is not merely an environmental target; it operates as a transversal constraint capable of reshaping legislative priorities, administrative practices, and judicial review across policy fields. The question is therefore not whether EU Climate Law is ambitious. It is whether its implementation can be accommodated within the EU constitutional framework without undermining conferral, institutional balance, legal certainty, and democratic legitimacy. The effective realisation of these ambitions requires more than the mere adoption of new legal instruments: it demands a re-examination of the distribution of competences, the coherence of the legal framework, and the modes of governance that underpin the Union's climate action.

The main objective of this thesis is to examine the legal implications of EU Climate Law, both internally and externally, and to propose solutions for its practical and consistent implementation. This research examines the implementation of EU Climate Law, understood not as the effectiveness of climate policies in reducing greenhouse gas emissions, but as the legal and institutional processes through which binding climate objectives are operationalised within the EU legal order. The analysis focuses primarily on Regulation (EU) 2021/1119 (the "EU Climate Law") and the normative ecosystem surrounding it, including secondary legislation adopted under the European Green Deal and the "Fit for 55" package. EU Climate Law is not simply an environmental or climate regulation; it is a cross-cutting legal instrument that interacts with, and sometimes disrupts, the established balance between the Union and its Member States, as well as among the EU institutions themselves.

The thesis does not aim to assess the economic efficiency or scientific adequacy of EU climate policies, nor does it engage in a purely political or sociological analysis of climate governance. Instead, it adopts a juridical perspective, centred on public law, EU constitutional law, and administrative governance. National climate policies are examined only as far as they interact with, implement, or contest EU legal obligations. International climate law, including the Paris Agreement, is addressed as an external normative constraint influencing EU action, not as the primary object of analysis. The research's approach is strictly juridical, grounded in EU constitutional law, public law, and administrative governance. National climate policies and international climate law are examined only to the extent that they interact with, constrain or shape the implementation of EU legal obligations. The focus is therefore deliberately placed on law in action: on the way climate objectives are translated into competences, procedures, institutional roles, and enforcement mechanisms within the EU legal framework.

Its implementation raises fundamental questions: to what extent has the implementation of EU Climate Law *de facto* reconfigured the allocation of competences, institutional balance, and governance mechanisms within the EU, and under what legal conditions can such a transformation remain consistent with the principles of conferral, accountability, and democratic legitimacy? What forms of governance are

best suited to address the polycentric and transboundary nature of climate change, and how can the rule of law be preserved in the face of urgent and complex challenges? It reflects a structural tension at the heart of EU climate action. While climate objectives are formally integrated into the existing hierarchy of Treaty objectives and competences, their implementation generates farreaching effects on internal market law, competition policy, external trade relations, and institutional power dynamics. The challenge is therefore not one of legal ambition, but of constitutional accommodation.

The research is situated at the intersection of European public law, environmental law, and institutional theory. It draws on a rich body of legal doctrine, including the works of leading scholars in EU institutional law, climate law, and the articulation between EU and WTO law. The thesis also engages with recent jurisprudence and doctrinal debates on the role of independent administrative authorities in climate governance, the constitutional implications of climate action, and the evolving landscape of climate litigation at national, European, and international levels.

This research is guided by four main hypotheses. These hypotheses structure the analysis without prejudging its outcomes. *First*, it is argued that EU Climate Law produces a *de facto* recalibration of competences without formal competence transfer. While climate objectives do not alter the principle of conferral, their implementation constrains Member State autonomy and reshapes the horizontal balance between EU institutions, particularly to the benefit of the European Commission – a concentration of powers within the European Commission, resulting in an institutional imbalance. Through its roles in monitoring national measures, issuing recommendations, assessing compliance, and initiating infringement proceedings, the Commission occupies a position that combines agenda-setting, quasi-regulatory, and supervisory functions, raising concerns of accountability and procedural fairness. The analytical model of polycentric climate governance developed in this thesis is illustrated in Annex 4.

Second, the thesis advances that the integration of climate objectives into external and internal EU policies reveals the limits of legal coherence achieved through consistency and balancing mechanisms. Climate considerations increasingly structure internal market law, competition policy, and environmental protection, yet they do not establish a hierarchical primacy. Instead, they generate tensions, legal frictions, trade-offs, and fragmentation, highlighting the structural limits of integration through transversal objectives.

Third, the thesis posits that a polycentric model of climate governance constitutes a legally sound response to these challenges. By distributing powers across interconnected institutions and independent authorities, such a model can reconcile climate ambition with constitutional safeguards, enhance expertise and coordination, and strengthen democratic and procedural legitimacy without undermining the principle of conferral.

Fourth, the analysis demonstrates that judicial intervention, while increasingly significant, remains structurally limited as a corrective mechanism. It is contended that judicialisation and governance mechanisms operate as necessary but insufficient correctives to the challenges of implementation. National courts, the Court of Justice of

the European Union (hereinafter CJEU), and the ECtHR have contributed to strengthening climate accountability, notably by recognising binding obligations and procedural rights. However, litigation operates *ex post* and case by case and cannot alone ensure a coherent and balanced implementation framework.

The originality of this thesis lies in its systematic constitutional reading of EU Climate Law as a crosscutting legal constraint operating through implementation rather than formal competence transfer. Rather than treating climate law as a self-contained field, the thesis systematically examines its interactions with other core areas of EU law and policy. It pays particular attention to the dynamic processes of (re)balancing competences, the mechanisms for ensuring legal and policy coherence, and the institutional innovations required to meet the Union's climate objectives. The research is grounded in both theoretical analysis and practical case studies, including landmark rulings such as the *Grande-Synthe*[2] litigation in France, the *Urgenda case*[3] in the Netherlands, and the evolving jurisprudence of the European Court of Human Rights (hereinafter ECtHR). A comparative overview of key national, CJEU and ECtHR climate cases referred to in this Part is provided in Annex 3.

The research adopts a doctrinal and qualitative legal methodology, grounded in the analysis of EU primary and secondary law, case law of the CJEU and the ECtHR, national judicial rulings, and academic legal scholarship. Comparative elements are mobilised selectively, particularly through the examination of national climate litigation and national climate governance bodies, to illuminate structural dynamics rather than to produce an exhaustive comparative study. Governance theories, including polycentric governance, are employed not as political science frameworks, but as analytical tools for understanding legal institutional design. The approach remains firmly anchored in public law, with particular attention to principles of institutional balance, accountability, and procedural justice.

The structure of the thesis reflects this ambition to provide a comprehensive and critical analysis of the implementation of EU Climate Law. It is organised in three main parts, each corresponding to a fundamental dimension of the subject: ***Part I*** examines the impact of EU Climate Law on the allocation and (re)balancing competences within the Union. It explores both the vertical dimension—between the EU and its Member States—and the horizontal dimension—among the EU institutions themselves. This part analyses how the adoption of ambitious climate objectives, such as climate neutrality by 2050, challenges the existing legal equilibrium and may lead to a recalibration of powers, raising questions about the exclusivity or shared nature of climate competences. ***Part II*** focuses on the integration of EU Climate Law and the obligation to ensure coherence and consistency within the Union's legal framework. It investigates how climate law interacts with other core EU policies, such as the internal

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2 Conseil d'État, (6ème - 5ème Chambers), 1 July 2021, N° 427301, «Grande Synthe», ECLI:FR:CECHR:2021:427301.20210701

3 Urgenda Foundation v. The Netherlands [2015] HAZA C/09/00456689 (June 24, 2015); aff'd (Oct. 9, 2018) (District Court of the Hague, and The Hague Court of Appeal (on appeal))

market, competition law, and environmental law, as well as with the Union's external commitments, particularly with respect to the World Trade Organisation (hereinafter WTO). This part highlights the need for polycentric governance and the articulation of climate objectives with economic and international obligations. ***Part III*** addresses the implementation of climate law through litigation and governance innovations. It analyses the evolution of climate litigation at national, European, and international levels, including before the ECtHR. This part also discusses the proposal for an independent administrative authority dedicated to climate regulation and the constitutional and procedural challenges raised by the enforcement of EU Climate Law. The thesis concludes with recommendations for strengthening the legal and institutional framework of EU climate governance to ensure both the effectiveness and legitimacy of climate action in Europe.

In order to support the doctrinal and institutional analysis developed throughout the thesis, a set of annexes is included at the end of the manuscript. These annexes do not introduce new arguments, but provide supplementary data, comparative material, and schematic representations directly connected to the reasoning developed in the main text. In particular, they document contextual elements relating to international climate data, the structure of climate governance in Europe, the comparison of landmark climate litigation at national, EU and ECHR levels, and the analytical framework of polycentric climate governance. Reference is made to these annexes at relevant points in the dissertation where they serve to substantiate, illustrate or clarify the legal analysis.

By analysing EU Climate Law through the prism of implementation, this thesis seeks to contribute to a better understanding of the constitutional and governance transformations induced by climate objectives within the EU.

1.2. Relevance of the topic: its novelty and actuality

The research demonstrates that human activity is the largest source of greenhouse gas emissions, as the most abundant gas is carbon dioxide (CO2), which directly results from the consumption of energy from burning fossil fuels or deforestation.[4] Numerous States consented to undertake international or supranational obligations as parties to different international conventions, such as the United Nations Framework Convention on Climate Change (hereinafter UNFCCC), which includes the 2005 Kyoto Protocol and the 2016 Paris Agreement, with a variable degree of legal intensity to achieve the objectives linked to the enhancement of environmental quality, hence climate actions. Such initiatives have been endorsed and enforced at the supranational level through the involvement of international organisations, such as the WTO and its

4 K. Kirk, "Burning fossil fuels heats the climate. It also harms public health.", 13 March 2020, Yale Climate Connections : https://www.yaleclimateconnections.org/2020/03/burning-fossil-fuels-heats-the-climate-it-also-harms-public-health/

Secretariat, which seek to implement Multilateral Environmental Agreements (hereinafter MEAs), and the EU, which represents 27 States among the most significant greenhouse gas emitters.[5]

The proactive approach of the EU, having a shared competence under Article 4[6] of the Treaty on the Functioning of the EU (hereinafter TFEU) has raised numerous questions regarding the allocation of competence to act, in the field of climate law between the Union and its Member States, reconciling the conflicts between different obligations, as well as the effectiveness of the action from the enforcement perspective.

1.2.1. EU Climate Law: a new legal tool in the context of the era of global warming's consciousness

The introduction of the first EU Climate Law by the Commission serves to "write into law the goal set out in the European Green Deal"[7], presented on the 11th of December 2019. The relevance of EU Climate Law issues in this research will be addressed from different angles. The most problematic aspect is the scope of EU Climate Law, what is intended to be covered, and how it will be allocated to and between the EU, its institutions, and the Member States. The enforcement of EU Climate Law-driven obligation is the next step of the research. Climate Change Law is fought at the EU level, but as outlined below, it is also a matter concerning the international community. It implies the need for coherence in the EU's external relations and various obligations.

To clarify what is meant by EU Climate Law, it is necessary to specify its scope. Hence, to highlight the factors that led the international community to apprehend Climate law as a restraint on economic growth and, nonetheless, to urge States to adopt relevant legal texts to tackle climate change (A). From the actuality perspective, the constructive yet slow consideration at the EU level of the adoption of EU Climate Law must be stressed (B). Finally, climate law also raises the question of its reconciliation with economic growth at the EU level (C).

A. <u>Factors determining the legal approach of the international community: a new kind of antagonism impeding economic growth</u>

Constraints defined to contribute to environmental protection are opposed to

5 J. Friedrich, M. Ge and A. Pickens, "This Interactive Chart Explains World's Top 10 Emitters, and How They've Changed.", April 11 2017, World Resources Institute : https://www.wri.org/blog/2017/04/interactive-chart-explains-worlds-top-10-emitters-and-how-theyve-changed

6 The article 4 TFEU discloses the competences shared between the EU and its Member States. It only refers to «environmental » area. It is necessary to have a look at Article 191 TFEU which explicitly mentions climate change actions as part of environmental policies.

7 The Proposal Regulation was officially introduced on the 4th of March 2020 and is still under development. Public consultations were open until June 2020: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

States' objectives for economic growth and the intensive exploitation of natural resources, especially fossil fuels, which have a tremendous impact on the environment. The idealistic reconciliation of economic and environmental exigencies is at the core of the notion of sustainable development.

Interestingly, the EU is at the core of this legal tension, as it is a Party to the WTO, equally with its Member States. As such, the EU, alongside its Member States, must ensure the coherence of its external relations.[8] It implies that if trade remains a priority, it has contracted international obligations to mitigate climate change and to ensure multilateral trade[9]. While it is assumed that international trade can contribute to economic growth and to the right to development, the WTO can make a crucial contribution to sustainable global development by incorporating environmental precepts. The WTO's approach to sustainable development and its related issues is a lengthy process. Indeed, from 1947 to 1994, the only contribution was to the letter of Article XX of the GATT of 1947.[10] The paragraphs on environmental sustainability were paragraphs b) and g).[11] However, with the emergence of the WTO, the GATT has been institutionalised as a temporary agreement, and environmental protection is now integrated into its objectives, as is the Agreement on Subsidies and Countervailing Measures.[12] Indeed, the preamble to the Marrakesh agreement establishing the WTO makes a direct reference to "*the goal of sustainable development and the need to protect and preserve the environment*."[13]

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8 C. Hillion, «Tous pour un, un pour tous ! Coherence in the External Relations of the EU" (March 6, 2014). M. Cremona (ed.), Developments in EU External Relations Law, Collected Courses of the Academy of European Law (Oxford, Oxford University press, 2008) pp. 10-36, Available at SSRN: https://ssrn.com/abstract=2405364 or http://dx.doi.org/10.2139/ssrn.2405364

9 WTO website, "WTO rules and environmental policies : GATT exceptions" : https://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm#:~:text=The%20introductory%20clause%20of%20Article,disguised%20restriction%20on%20international%20trade%E2%80%9D.

10 Article XX of the GATT discloses the exceptions to trade, allowing State-Parties to impose trade measures to achieve non-trade related objectives, given they are objectives and cannot be used as disguised barriers to trade. Its chapeau states: "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures."

11 Article XXb) is related to the protection of human, animal or plant life or health, when the Article XXg) is dedicated to the conservation of exhaustible natural resources.

12 Article 8.2.c) of the SCM Agreement: "assistance to promote adaptation of existing facilities33 to new environmental requirements imposed by law and/or regulations". Until 2000, they were called "green light subsidies", allowed under WTO law. However, the classification of subsidies was not renewed by the Member States to the WTO.

13 WTO website, "an introduction to trade and environment in the WTO": https://www.wto.org/english/tratop_e/envir_e/envt_intro_e.htm

B. Factors determining the legal approach of the international community: a long consideration in the EU

The EU took a similar approach in 1957 to the GATT practices. In the early days of the Communities, the fundamental objective was to ensure the free movement of goods, services, capital, and people; protection of the environment was not yet an objective of the Treaty. Article 36 TFEU[14] was to provide an exception to the free movement of goods, as a mimicry of the GATT. Comparably, the Treaty of Rome did not mention the protection of the environment, but rather the protection of human health.[15] Until the late 1960s, no Community environmental policy was developed. It is only through the case-law of the CJEU that, for the first time, environmental protection was established as an essential objective of the Community, through the notion of mandatory requirements.[16] The Single European Act (hereinafter SEA), which came into force in 1987[17], introduced the concept of environmental protection into the Treaty of Rome and the legal basis for the adoption of acts in this area.[18]

As far as the scope of the EU's environmental policy is concerned, it is not directly enshrined in the EU. Indeed, the preamble states that the Union is committed to "*promoting economic progress and a high level of employment and achieving balanced and sustainable development*."[19]

Outlined as a shared competence by the letter of Article 4 TFEU, it is only at the letter of Article 191 TFEU that climate change is mentioned as part of the Union's policy on the environment. However, environmental law is not climate law.[20] The research,

14 In its former writing, Article 36 TFEU, or Article 30 TEC provided for "prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

15 D. Wilkinson, 1990. Greening the treaty: Strengthening environmental policy in the Treaty of Rome. London: Institute for European Environmental Policy.

16 CJEU, 7 February 1985, C-240/83, ECLI identifier: ECLI:EU:C:1985:59: the Court identified for the first time that environmental protection is an essential objective of the Community.

17 Single European Act, OJ L 169, 29.6.1987, p. 1–28

18 Article 130r - EC Treaty (Maastricht consolidated version): "1. Community policy on the environment shall contribute to pursuit of the following objectives: preserving, protecting, and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources, promoting measures at international level to deal with regional or worldwide environmental problems."

19 Preamble of TEU: "DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,"

20 C. Hilson, It's All About Climate Change, Stupid! Exploring the Relationship Between Environmental Law and Climate Law, Journal of Environmental Law, Volume 25, Issue 3, November 2013, Pages 359–370, https://doi.org/10.1093/jel/eqt019

by addressing the issue of the scope intended by EU Climate Law, will have to disclose the interactions and also assess the degree of compatibility among them. If the means are likely to complement each other, the final objectives may drastically differ. Indeed, Climate Law seeks a *"climatically sustainable development"* when environmental law has, as a goal, the preservation of nature for "nature's sake" or in balance with nature (including exhaustible resources, fauna, and flora life's protection, etc).[21] One of the criticisms and potential pitfalls of the Paris Agreement, which EU Climate Law seems to fall into as well, is that it is "anti-environmental" because its aim is the sustainability of an equivalent way of life rather than the protection of exhaustible resources, flora and fauna.[22]

C. Factors determining the legal approach of the international community: the EU's leading impact on external relations

Globally, the dynamic changed drastically in 1992, as the EU sought to become a global actor in tackling climate change by playing a leading role in the Kyoto Protocol negotiations.[23] Nonetheless, to some scholars, the Kyoto Protocol is only "a false solution"[24], an initiative which creates the dangerous illusion that international society is progressing when it only delays concrete and tangible actions. For instance, the fact that global emissions increased by more than 60% between the Earth Summit in Rio in 1992 and the Paris Conference in 2015[25] shows the failure of the political systems put in place during this period, despite the multilateral effort for a global response provided in the UN Sustainable Development Goals (hereinafter SDGs).[26]

Indeed, SDG 13 is dedicated to actions to tackle climate change. Among targets linked to the environment,[27] SDG 13 seeks the integration of climate change measures into "national policies, strategies and planning." As such, the 2016 Paris Agreement

21 Idem

22 A. Zahar, Climate Law, Environmental Law, and the Schism Ahead (February 11, 2020). Available at SSRN: https://ssrn.com/abstract=3536096 or http://dx.doi.org/10.2139/ssrn.3536096

23 McLean, V. Elena, and R. W. Stone. "The Kyoto Protocol: Two-Level Bargaining and European Integration." International Studies Quarterly 56, no. 1 (2012): 99-113. Accessed August 18, 2020. www.jstor.org/stable/41409825.

24 Gardiner, Stephen M. A Perfect Moral Storm: The Ethical Tragedy of Climate Change. Oxford University Press, 2011. Oxford Scholarship Online, 2011. doi: 10.1093/acprof: oso/9780195379440.001.0001.

25 S. Neo. (2017) Beyond the Paris Agreement: Climate change policy negotiations and future directions. Regional Science Policy & Practice, 9: 121– 140. doi: 10.1111/rsp3.12090.

26 Idem

27 Among the other targets:
Target 13.1: Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries.
Target 13.2: Integrate climate change measures into national policies, strategies, and planning.
Target 13.3: Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction, and early warning.

marks a double turning point in the climate regime.[28] On the one hand, it represents the first climate agreement signed by all parties to the UNFCCC.[29] It is a framework agreement, set to last, with a periodic review of what has been promised and achieved. On the other hand, it turns its back on the top-down architecture of the Kyoto Protocol, adopting a bottom-up approach in which countries submit proposals for voluntary reductions. The absolute global emission reduction targets have been replaced by the infamous nationally determined contributions (hereinafter NDCs). Admittedly, if the Paris Agreement has the legal status of an international treaty that creates legal obligations for all countries that have agreed to sign and ratify, the devil lies in some details that the International Court of Justice (hereinafter ICJ) sought to vanquish.[30] In 2024, the global surface temperature reached a record high of 1.52°C above late nineteenth-century levels. Despite this, the 1.5°C threshold has not yet been surpassed. The 1.5°C limit established by the Agreement refers to the long-term change in global average temperature attributable to human activity, relative to pre-industrial levels (1850-1900). Assessment of compliance with this limit is based on the average human-induced warming over a 20-to-30-year period. At current annual greenhouse gas emission rates, the global carbon budget is projected to be depleted in just over three years.[31]

Distinguishing between short-term and long-term exceedance of the 1.5°C threshold is essential. Long-term exceedance, in particular, poses a significant challenge for the planet's future. Scientific consensus indicates that, although the threshold has not yet been surpassed, it is highly likely to be exceeded. This issue will be a central focus of the forthcoming IPCC report. Until very recently, the ICJ clarified the scope and extent of the obligations contained in the Paris Agreement and, more specifically, of the NDCs. Ultimately, States Parties to the Paris Agreement are required to exercise

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Target 13.a: Implement the commitment undertaken by developed-country parties to the United Nations Framework Convention on Climate Change to a goal of mobilizing jointly $100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation and fully operationalize the Green Climate Fund through its capitalization as soon as possible

Target 13.b: Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States, including focusing on women, youth, and local and marginalized communities.

28 D. Chalmers, G. Davies, G. Monti, & V. Heyvaert. (2024). *EU Law: Text and Materials* (5th ed.). Cambridge: Cambridge University Press.

29 US Department of State, press statement, "On the US withdrawal from the Paris Agreement," 2019: including the United States now. Article 28 of the Paris Agreement states that a country cannot withdraw from the Agreement before three years of its start date in the relevant country (2019). The US Administration gave its formal notice of withdrawal in November 2019 – taking effect one year from the delivery of the notification. Their withdrawal will come into force in November 2020.

30 ICJ, Obligations of States in respect of Climate Change (Advisory Opinion), International CJEU, General List No 187, 23 July 2025

31 Météo France, CEA, CNRS, Mercator Ocean International, 'Greenhouse gas emissions still on the rise, limiting global warming to below 1.5°C is no longer achievable', 19 June 2025.

due diligence by implementing measures that align with their common but differentiated responsibilities and respective capabilities, thereby contributing effectively to achieving the temperature goal established in the Agreement.[32] Beforehand, the level of NDCs and respect for their content were not legally binding *per se* – these were political commitments.[33] It explains a rather strict wording as the ICJ further insisted that "States Parties to the Paris Agreement are obligated to establish, communicate, and update nationally determined contributions that are both successive and progressive."[34]

It was therefore crucial to shift from proposals for voluntary reductions to a binding level for NDCs at the EU level, as the EU is currently the organisation with the most extensive policies on the topic, yet also one of the biggest contributors to greenhouse emissions.[35] In March 2020, the European Commission submitted a regulation proposal to enshrine climate law from the Paris Agreement, as part of its own legal arsenal.[36] The regulation proposal aimed at implementing the Paris Agreement on the reduction of greenhouse emissions. The Paris Agreement, devoid of legal binding effect, and rather promoted as a good faith commitment by the international community, the EU on the other hand, focuses on providing binding thresholds to attain the objective of climate neutrality inside the EU by 2050. Accordingly, the scope of the regulation EU Climate Law is to establish a "*framework for the irreversible and gradual reduction of greenhouse gas emissions and enhancement of removals by natural or other sinks in the Union*."[37] To do so, the Regulation Proposal aims to set a "binding objective of climate neutrality in the Union by 2050 in pursuit of the long-term temperature goal set out in Article 2 of the Paris Agreement."[38] If the goal is to tackle climate change by the reduction – and ambitiously the neutrality, of greenhouse emission, the means are left to the Member States.[39]

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32 M. Forst, Rapporteur spécial des Nations unies sur les défenseurs de l'environnement, en vertu de la Convention d'Aarhus, Statement on the historic Advisory Opinion of the International CJEU on States' Climate Change Obligations, 25 juillet 2025.

33 D. Bodansky, (2016), The Legal Character of the Paris Agreement. RECIEL, 25: 142-150. doi: 10.1111/reel.12154

34 ICJ, Obligations of States in respect of Climate Change (Advisory Opinion), International CJEU, General List No 187, 23 July 2025, § 457 A

35 A.J. Jordan and C. Adelle (ed.) (2012) Environmental Policy in the EU: Contexts, Actors and Policy Dynamics (3e).

36 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (EU Climate Law)

37 Article 1 of the Regulation Proposal

38 Idem. Article 2 of the 2015 Paris Agreement aims to hold "the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change".

39 Article 4 of the Regulation Proposal: Member States shall develop and implement adaptation strategies and plans that include comprehensive risk management frameworks, based on robust climate and vulnerability baselines and progress assessments

1.2.2. Enforcements of EU Climate Law driven obligations

The last recent years experienced a new kind of action: the climate change litigation – domestically and at the EU level. In many EU countries, citizens brought claims against their respective States to coerce them to protect its population from climate change. By providing a legally binding effect of the Paris Agreements, the EU commits itself and its Member States to respect their engagements. The EU Regulation Proposal on climate change was recommendation-based.[40] It reveals the question of the room of manoeuvre left for Member States as recommendations are not legally binding per se and the question of their legal force (see aims and objectives of the dissertation). It reveals the issue of enforcement of EU Climate Law driven obligations and the litigation aspect, which is so far, suffering from accessibility flaws but also reveals a concentration of powers in favour of the Commission. The trend is confirmed by the letter of the regulation EU Climate Law, with disparate means and a different mitigation of climate change at the national scale.[41]

For instance, in the "*Urgenda Foundation*"[42] case, the High Court of the Netherlands acknowledged that the States acted in contravention of the duty of care under Article 2 and 8 of the European Convention of Human Rights (hereinafter ECHR) by failing to "pursue a more ambitious reduction [of carbon emissions] as of end-2020."[43] Also, in Ireland, in the "*Friends of the Irish Environment*"[44] case, the network brought a claim challenging the expansion of a runway. The Irish High Court held that "right to an environment that is consistent with the human dignity and well-being of citizens at large is an essential condition for the fulfilment of all human rights."[45] By asserting

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40 Article 6.3.a) of the Regulation Proposal: "the Member State concerned shall take due account of the recommendation in a spirit of solidarity between Member States and the Union and between Member States."

41 Articles 6 and 7 of the REGULATION (EU) 2021/1119 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law') :
- Article 6: "By 30 September 2023, and every five years thereafter, the Commission shall assess, together with the assessment provided for under Article 29(5) of Regulation (EU) 2018/1999: (a) the collective progress made by all Member States towards the achievement of the climate-neutrality objective set out in Article 2(1) of this Regulation"
- Article 7 : "By 30 September 2023, and every five years thereafter, the Commission shall assess: (a) the consistency of national measures identified, on the basis of the integrated national energy and climate plans, national long-term strategies and the biennial progress reports submitted in accordance with Regulation (EU) 2018/1999, as relevant for the achievement of the climate-neutrality objective set out in Article 2(1) of this Regulation with that objective"

42 Urgenda Foundation v. The Netherlands [2015] HAZA C/09/00456689 (June 24, 2015); aff'd (Oct. 9, 2018) (District Court of the Hague, and The Hague Court of Appeal (on appeal))

43 Idem.

44 Friends of the Irish Environment CLG -v- The Government of Ireland & others, [2020] IEHC 225 (April 24, 2020), 2018 391 JR (Irish High Court).

45 Idem

so, the Court deduced a right to the protection of the environment from their Constitution.[46]

In France, two landmark cases have shaped the legal landscape of climate action: the "*Affair of the Century*"[47] and the "*Grande Synthe*"[48] case. The "*Affair of the Century*" saw four Non-Governmental Organisation (hereinafter NGOs): Notre Affaire à Tous, Greenpeace France, Oxfam France, and the Foundation for Nature and Man, bring a compensation claim before the administrative courts, arguing that the French government's inaction on climate change violated its obligations under the Paris Agreement.[49] Their objective, as articulated by Marie Toussaint and Christel Cournil, president of Notre Affaire à Tous and European and youth delegate of the Green Party, was "to put the State before its responsibilities," namely to "limit the effects of climate change to a level below 2°C compared to pre-industrial levels."[50]

In parallel, the "*Grande Synthe*" case,[51] initiated by the municipality of Grande-Synthe and its mayor, directly challenged the State's failure to take adequate measures to reduce greenhouse gas emissions. This case is widely recognized as a foundational precedent in French climate litigation, as it led the Conseil d'État (France's highest administrative court) to order the government to take additional measures to ensure compliance with its climate commitments.[52] The *Grande Synthe* ruling underscored the binding nature of France's international and national climate obligations and established the possibility for local authorities and citizens to hold the State accountable for climate inaction.[53] France is directly concerned by this case-law, unprecedented in France, which has taken the model of successful claims abroad, in the United States or in the Netherlands[54]. Bound by its commitments to international treaties - including the Paris agreement, the French government has not taken any action to respect the objectives. The cause has grown to such an extent that the supporting text associated with it under the name "*Notre affaire à tous*" reached just over two million signatures.

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46 Idem

47 Conseil d'Etat (1st Chamber), 16 october 2017, N°397606, «Notre affaire à tous », ECLI:FR:CECHR:2017:397606.20171016

48 Conseil d'État, (6ème - 5ème Chambers), 1 July 2021, N° 427301, «Grande Synthe », ECLI:FR:CECHR:2021:427301.20210701

49 Conseil d'État, (6ème - 5ème Chambers), 24 October 2025, N° 467982, «Grande Synthe III», ECLI:FR:CECHR:2025:467982.20251024

50 C. Cournil, »Les «sinistré(e)s » de l'adaptation : un recours systémique contre les inégalités climatiques », *La Revue des droits de l'homme* [En ligne], Actualités Droits-Libertés, mis en ligne le 21 octobre 2025, consulté le 12 janvier 2026. URL : http://journals.openedition.org/revdh/23667 ; DOI : https://doi.org/10.4000/14zqc

51 H. Delzangles (2025). Libre-propos sur les régressions du droit de l'environnement

52 S. Hoynck (2022). *The Administrative Judge and Climate Change.* AJDA, 147

53 Conseil d'État, (6ème - 5ème Chambers), 1 July 2021, N° 427301, «Grande Synthe», ECLI:FR:CECHR:2021:427301.20210701

54 Urgenda Foundation v. The Netherlands [2015] HAZA C/09/00456689 (June 24, 2015); aff'd (Oct. 9, 2018) (District Court of the Hague, and The Hague Court of Appeal (on appeal))

Claimants accused here the French State of "faulty deficiency." It highlights the lack of binding force of the voluntary NDCs implied in the UNFCCC and the need enhance the legal strength by adopting EU Climate Law. Surprisingly, the request takes the form of a claim for compensation, which is not quantified in addition. In practice, cases have traditionally focused on monitoring and compliance with regulatory standards. The stated objective was to "limit the effects of climate change to a level below 2°C compared to pre-industrial levels." The case highlighted the lack of binding force of voluntary NDCs under the UNFCCC and the need to enhance legal strength by adopting EU Climate Law.

The access to EU climate justice by all the actors involved in Climate law – individuals, companies, NGOs, States, also represents a crucial issue. On the one hand in 2018, the CJEU held the UK "significantly breached air-quality limits for nitrogen dioxide from diesel vehicles,"[55] and failed to provide "credible, effective and timely" plans to reduce carbon emissions. On the other hand, the "*People's Climate Case*"[56] emphasized the struggle of access to direct judicial review of EU legal acts – in action for annulment; when claims involve the EU itself - climate litigations cases are no exceptions. Indeed, the plaintiffs argued that EU's climate policies, by failing to meet its threshold of reduction of greenhouse emissions, were damaging their lives and living space. The General Court of the EU held, despite that "every individual is affected one way or another by climate change,"[57] the claim was rejected on the procedural aspect - on the basis that the applicants were lacking of "direct and individual concern."[58] The criteria required to successfully bring an action for annulment are generally exceedingly high to meet for individuals.[59] At the first glance it seems that only indirect judicial review for climate law-related claims, when the EU is adopting legal act, is accessible. It results in the questioning of the scope of EU Climate Law, the actions taken by Member States, which would be the only ones legally exposed in climate-related claims, although the EU and its institutions are also bound.[60]

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55 CJEU (Second Chamber), 19 November 2014, C-404/13, The Queen, on the application of: ClientEarth v The Secretary of State for the Environment, Food and Rural Affairs. ECLI:EU:C: 2014:2382

56 CJEU, Order of the General Court (Second Chamber) of 8 May 2019, T-330/18, Armando Carvalho and Others v European Parliament and Council of the EU, ECLI:EU: T:2019:324

57 CJEU, Order of the General Court (Second Chamber) of 8 May 2019, T-330/18, Armando Carvalho and Others v European Parliament and Council of the EU, ECLI:EU: T:2019:324

58 CJEU (Second Chamber), 19 November 2014, C-404/13, The Queen, on the application of: ClientEarth v The Secretary of State for the Environment, Food and Rural Affairs. ECLI:EU:C: 2014:2382, para. 42: "Accordingly, and without there being any need to examine whether the other conditions of the third scenario set out in paragraph 36 above, concerning the lack of implementing measures and direct concern on the part of the applicants, are satisfied, it is not possible to establish the admissibility of the present action on that basis."

59 Dutheil de la Rochère Jacqueline, «Droit au juge, accès à la justice européenne « (*right to a judge, access to EU justice*), Pouvoirs, 2001/1 (n° 96), p. 123-141. DOI : 10.3917/pouv.096.0123. URL : https://www.cairn.info/revue-pouvoirs-2001-1-page-123.html

60 Article 4.1 of the Regulation Proposal: "The relevant Union institutions and the Member States shall ensure continuous progress in enhancing adaptive capacity, strengthening resilience and reducing

1.2.3. EU Climate Law: the obligation of coherence

Consistency internally is an obligation for the EU, both from a material point of view - among its various policies, and from a constitutional one – between the allocation of competences.[61] The first issue raised by the EU legislative initiative on EU Climate Law is related to the allocation of competences between the masters of Treaties (the Member states) and the creature born from: the EU. In the field of environmental policy, the EU and the Member States share competence,[62] whereas the Common Commercial Policy (CCP hereinafter) is an exclusive EU competence.[63] For instance, the use of green economic stimulus (green public procurement, demand-side subsidies, etc) is fully integrated into the current Union's policies,[64] which aims for a "Green Deal" advocating climate neutrality by 2050.[65] Despite their coordination at the EU level,[66] national schemes aiming to tackle climate change, raise the question of their legality first against Union law, but also the WTO, as the EU and its Member States enjoy the status of full membership to the WTO. It hence gives a clear insight of its duties as the prohibition of quotas, objective technical regulations and standards, or quantitative restrictions. It was the case for national purchase incentives on less-polluting cars that infringed EU law.[67] So far, before the WTO's Dispute Settlement Body (hereinafter DSB), the environment is hardly reconcilable with peremptory, often appreciated as a restriction on trade. For instance, some of those green economic stimulus – indirect subsidies especially, are benefiting from a legal presumption. Unfortunately, the absence of a clear and established definition of the scope of indirect subsidies does not allow States to take concrete, lasting, and effective actions.

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vulnerability to climate change in accordance with Article 7 of the Paris Agreement."

61 Article 7 TFEU: "The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers."

62 Article 4.2 TFEU: «Shared competence between the Union and the Member States applies in the following principal areas: (e) environment."

63 Article 3.1 TFEU: "1. The Union shall have exclusive competence in the following areas: (a) customs union; (b) the establishing of the competition rules necessary for the functioning of the internal market; (c) monetary policy for the Member States whose currency is the euro; (d) the conservation of marine biological resources under the common fisheries policy; (e) common commercial policy."

64 The legal basis of the EU Green Deal is the TFEU title on the environment, from Article 191 to 193. Regarding Articles 191 and 192(1) TFEU, the EU "shall contribute to the pursuit, inter alia, of the following objectives: preserving, protecting and improving the quality of the environment, promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change."

65 European Commission strategic long-term vision for a prosperous, modern, competitive and climate neutral economy by 2050 – "a Clean Planet for All", press release, 28 November 2018: Commissioner for Transport, Violeta Bulc said: "All transport modes should contribute to the decarbonisation of our mobility system. The goal is to reach net-zero emissions by 2050. This requires a system approach with low and zero emission vehicles […] incentives for behavioural changes."

66 EU Regulation Proposal, recital 23.

67 CJEU, 6 October 2011 - C-443/10 - Philippe Bonnarde./. Agence de Services et de Paiement ; ECLI :EU :C :2011 :641

The relevance, novelty and actuality as outlined above, show that throughout these impulses, States have taken concrete steps to promote and protect their own environment. The scope of EU Climate Law also implies, as the main challenge, to act accordingly to their international and regional obligations to find an effective solution to these wills and objectives. If the previous legal acts mentioned above have provided a scope for States to act, setting a red line not to be crossed, it remains to balance the scope of EU Climate Law when implementing those measures – both internally, towards other EU policies; and externally, in relation to WTO law (see: objective of the research).

1.3. Formulation of the research problem

The research problem addressed in this thesis concerns the implementation of EU Climate Law and the challenge of balancing its scope and effects within the internal and external legal framework of the EU. Nonetheless, such general research problem implies the following four sub-problems:

1) **constitutional allocation of competence**. The principle of conferral which founds the system for allocating competences within the EU indeed establishes that the Union can act only within the limits of competences that the Treaties attribute to it.[68] However, the Treaties, which do not attribute to the Union an exclusive competence in the environmental policies, hence climate-related ones, oblige it to base its action on existing competences, which only partially cover the sectors relating to climate change – the environment, a shared competence. The question of the scope of EU Climate Law towards EU environmental law will therefore be assessed in the research. This tension between European ambition and the system for allocating internal and external powers makes climate change an exceptional laboratory for assessing the complex balances between Member States and European institutions, but also between the latter. However, does its constitutional and procedural system allow the EU to assume this ambition?

2) **consistency (internally)**. The implications of the cross-cutting policies involved by the adoption of EU climate change policies, on the functioning of the Union is a direct consequence on the adoption of other policies to fulfil other EU's objectives concerning EU internal market, competition, and environmental policies. This diversity of practices and cross-cutting disciplines involved, raises fundamental legal questions regarding the consistency, effectiveness, and legality of EU climate action. It calls into question the extent to which national implementation measures remain compatible with EU law requirements and whether such divergences undermine the uniform application of EU climate objectives within the Union, to still ensure the objective of economic growth inside the EU. How can the Union guarantee the consistency of the cross-cutting policy to tackle climate change with EU policies already in force and the

68 Article 5 TEU

actions taken by the Member States? In particular, how should potential tensions be handled between climate law and other areas of EU law, such as internal market law, especially the free movement of goods, competition law, and environmental law.

3) **compliance (procedure).** A further dimension of the research problem concerns compliance and enforcement mechanisms applicable to EU Climate Law. Although EU climate objectives are increasingly formulated in binding terms, the procedures available to ensure compliance remain fragmented and, in some respects, limited. This raises questions as to the effectiveness of existing procedural mechanisms—such as infringement proceedings, judicial review before EU and national courts, and access to climate-related remedies—for ensuring that both Member States and EU institutions comply with their climate-related obligations. The adequacy of these procedures is particularly contested considering the structural difficulties associated with climate litigation, including standing requirements, causation, and the justiciability of climate commitments. They can be employed to enhance the quality and social acceptance of climate change initiatives.[69] What are the available legal remedies within the EU Treaties allowing an effective judicial implementation of EU Climate Law and the policies arising from it?

- To what extent does EU law provide effective access to justice for direct judicial review of EU climate measures through actions for annulment?
- To what extent can EU climate action be subject to effective judicial review, particularly with regard to claims for damages and the establishment of a causal link between EU conduct and climate-related harm?
- Can recommendations provided by the Commission lead to litigation?
- Can recourses before the ECHR help for an effective implementation of EU Climate Law?
- Can the WTO's DSB also provide a legal remedy for climate law-related claims?

4) **coherence (externally)**. The balance currently in place between the competence and the consistency of the EU legal system leads to analyse the Union's system of attributing competences. It therefore leads in its external dimension: it will allow to examine if and how Union can present itself on the international scene with the ability to assert its position. The only international organization to count equally the EU and its Member States as members, is the WTO. It aims to promote a sustainable development of its members by multilateral negotiations and considering other interests to trade, such as the preservation of the environment. The order of analysis prevailing before the WTO and the EU is the reflexion of the other. It drives the order of examination of a potential exemption to trade by first providing if the measure taken can justify a restriction to trade. The two-tier analysis is scrupulously abided by the Panels and the Appellate Body, which then adopt a report with mandatory requirements upon the parties to the dispute. Can the Union ensure the coherence of its regional climate policy against its international trade commitments?

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69 J. Peel. (2012). Climate Change Law: The Emergence of a New Legal Discipline. Melbourne Univ. Law Review. 32.

1.4. Aims and objectives of the dissertation

By revealing the scope (boundaries and content) of EU Climate Law, the main aim of the research is to assess the legal framework of the EU from the perspective of consistency, effectiveness, and coherence of its various international obligations. To do so, it is necessary to conduct the following objectives:

1. The review of the current allocation of competence in climate law as a cross-cutting policy implying different kind of competences (constitutional)
2. The disclosure of the scope intended to be provided by EU Climate Law towards other EU policies (consistency).
3. The analysis of the effectiveness of the litigation implied by the enactment of EU Climate Law (compliance).
4. The display of the impact of EU Climate Law in the external relations of the EU (coherence).
5. The proposal of a coherent framework for EU climate action, encompassing the allocation of competences, governance structures, and implementation mechanisms at both internal and external levels

1.5. Object of the research

Throughout this thesis, practical cases are systematically linked to theoretical frameworks. Each case study is analysed not only for its factual and legal outcome but also for its implications for broader legal theories. This approach ensures that the discussion remains grounded in real-world developments while continuously testing and refining theoretical assumptions.

1) The allocation of powers and competences within the EU legal framework

In its last version adopted in June 2021, EU Climate Law enshrines climate neutrality as an objective of the Union.[70] Promoted as such, it challenges articles 2 and 3 TFEU, which are the constitutional stone of the Union's framework. From the horizontal perspective, Articles 6.3 and 8 of the Regulation are likely to imply a new reading of Article 290 TFEU.[71] The Treaty clearly requires the powers delegated to the Commission to be "explicitly defined" in the legislative acts. Nonetheless, the lack of the definition of the intended to be granted to the latter shadows a subsequent and consequent power left to the Commission.

Also, from the vertical perspective, as the means of actions are left to the Member

70 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

71 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law'), Article 5 and 6 on the assessment of Union progress and measures and common provisions on Commission assessment

States, it provokes more vagueness by Article 6.3 of the Regulation[72] implied by a competence shared between the EU and its Member States. Article 191 TFEU includes into Union policy on the environment measures "combating climate change." It threatens the legal equilibrium of the allocation of competences between the institutions themselves but also towards the Member States.

2) The implication on the cross-cutting policies: consistency with other EU policies (internal market, competition, and environmental policies)

Climate law, similarly, to environmental law,[73] is trans-boundary and considered as a natural exception to trade, which, as discussed above, is at the historical core of the European Communities project. It is therefore necessary to assess the impact of climate law on other policies it will crosscut and to a certain extent, impede, once enacted. The research will focus on the two main pillar of the EU such as internal market law and the risk of measures having equivalent effect to quantitative restrictions.[74]

The other challenged area that is competition law. The most preferable approach to incite the public to participate and to reduce the greenhouse emissions is to be done through undirect funding – or demand-side subsidies. If State aids are strictly defined and monitored under EU law, it is not the case for the latter, considered as less harmful to trade and the market. It is raising the issue of the legal boundaries of such funding as it will be the main tool for the Member States to reach their national contributions targets.[75]

3) The means to effective climate remedies before courts: complementarity and tensions with EU environmental law

Article 6[76] of the Regulation fits into the nomenclature of Article 288 TFEU.[77] EU Climate Law is recommendation-based. According to the legal classification set by the Treaties, recommendations are not legally binding. As D. Tingley and M. Tomz put

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72 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law'), Article 6.3: "Where, based on the assessments referred to in paragraphs 1 and 2 of this Article, the Commission finds that Union measures are inconsistent with the climate-neutrality objective set out in Article 2(1) or inconsistent with ensuring progress on adaptation as referred to in Article 5, or that the progress towards that climate-neutrality objective or on adaptation as referred to in Article 5 is insufficient, it shall take the necessary measures in accordance with the Treaties."

73 A. Zahar, Climate Law, Environmental Law, and the Schism Ahead (February 11, 2020). Available at SSRN: https://ssrn.com/abstract=3536096 or http://dx.doi.org/10.2139/ssrn.3536096

74 They benefit from a large and comprehensive definition to catch any hinderance or behaviours likely hinder directly or indirectly, the functioning of the internal market.

75 European Investment Bank, "EIB Climate Strategy: Mobilising finance for the transition to a low carbon and climate-resilient economy," 22 September 2015.

76 Article 6: Where a recommendation is issued in accordance with paragraph 2, the following principles shall apply: (a) the Member State concerned shall take due account of the recommendation in a spirit of solidarity between Member States and the Union and between Member States.

77 Article 288 TFEU: Recommendations and opinions shall have no binding force.

several questions accurately: is public naming and shaming sufficiently efficient?[78] Are those recommendations sufficiently coercive to ensure the efficiency of EU Climate Law? In the end, it is raising the question of the utility to have EU Climate Law distinguished from EU environmental law, which produces legal binding acts able to be used before courts.

As a recent but growing litigation aspect of the EU litigation system, climate law challenges as well the criterion to the access to EU justice. As mentioned previously, the "*People's Climate Case*"[79] showed the problem of access to EU justice when climate litigations are brought against the EU. Among the other possible legal measures suitable (naming and shaming, recommendations), a more positive and inclusive approach would be preferred to encourage and incite both Member States and their citizens to act in accordance with the reduction of greenhouse gas emissions target (green economic stimulus, i.e. : demand-side incentives, green public procurement, indirect funding; the efficiency of polluter pays principle, etc). Case-law help exemplify the principle of effective judicial protection in EU law, demonstrating how supranational legal norms are operationalized at the national level. It confirms the theoretical expectation that EU law can empower national courts to act as guardians of EU objectives, bridging the gap between supranational norms and local enforcement.

4) The assessment of the compatibility of EU Climate Law towards international commitments of EU (CCP)

The objective is to establish the legal framework governing the implementation of EU Climate Law and to determine the room for manoeuvre left to Member States for effective and legally compliant climate action. This analysis focuses on the compatibility of national climate measures with EU law and World Trade Organization law. It particularly applies to the substantial test of the two-tier analysis which consists of firstly, to assess the scope of the measure, if it falls under at least one of the exceptions related to the protection of the environment (paragraphs (b) or (g), Article XX). The second step focuses on conducting the analysis if the measure does not constitute "a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail,"[80] and is not "a disguised restriction on international trade."[81]

The ambition of the Union's Climate Law also raises the question of its viability within the framework of existing legal tools – from the perspective of the allocation of competences. The research focuses on the need for the EU to preserve a coherent

78 D. Tingley, M. Tomz, "The Effects of Naming and Shaming on Public Support for Compliance with International Agreements: An Experimental Analysis of the Paris Agreement" – Research Note: the authors pointed out few elements to assess whether naming and shaming would be relevant for the Paris Agreement. As EU Climate Law provides for the participation of the public (Article 8 of the Regulation Proposal), it would be the best way to collect data on whether they approve or disapprove the policies taken (or not taken) by the Member States.

79 CJEU, Order of the General Court (Second Chamber) of 8 May 2019, T-330/18, Armando Carvalho and Others v European Parliament and Council of the EU, ECLI:EU: T:2019:324

80 Article XX GATT, introductory clauses.

81 Idem.

whole legal system but also its ambition to become a leader in the fight against climate change by ensuring a consistent policy in its external relations.

2. LITERATURE REVIEW

The academic literature on EU Climate Law and its implementation has grown considerably in recent years, reflecting the increasing legal, political, and societal importance of climate action at both European and national levels. This review provides an overview of the main currents in the French-speaking doctrine, focusing on four key areas: the development of climate law, the evolution of EU institutional law, the articulation between EU and WTO law, and the question of EU competences.

The steps in the change of paradigm, prioritizing the environment with a focus on the reduction of greenhouse emissions will imply a change of mindsets from the legal perspective as well, as instead of a regular development or trade, can represent a jump into the unknown. Thanks to the previous practices thriving from case-laws, a shy pattern seems to appear: economic considerations are still prevailing over environmental precepts, although the market is more and more used in a greener manner.[82] It implies that national practices are not uniform, even in the EU where there is an incomplete harmonization.[83]

This research will be the first to apprehend climate law from the trade law perspective in France[84] and in Lithuania. If climate change and environmental protection inspired researchers and continues to do so, the angle proposed in this research is unprecedented yet. Indeed, if the constitutional approach benefited from a comprehensive analysis, EU Climate Law and its consequences internally and externally remain original.

The doctoral thesis will systemize the articulation of EU environmental law towards other EU policies had already been discussed by scholars, focusing on the place left for environmental law within the EU legal order.[85] Consequently, the previous re-

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82 Peel, J., & Osofsky, H. M. (2018). *Climate Change Litigation: Regulatory Pathways to Cleaner Energy*. Cambridge University Press.

83 Nicolas de Sadeleer, 2014, "EU Environmental Law and the Internal Market", Oxford University Press, p. 290: the author emphasizes the incomplete character of EU environmental harmonization and the fact that "formal existence of secondary law does not preclude the application of article 36 TFEU", about the exception to the free movement of goods, nor the use of mandatory requirements.

84 According to SUDOC, the official legal database of doctoral dissertations achieved and prepared in France: http://www.sudoc.abes.fr/cbs/xslt/?COOKIE=U10178,Klecteurweb,D2.1,E83332556-1d3,I250,B341720009+,SY,QDEF,A%5C9008+1,,J,H2-26,,29,,34,,39,,44,,49-50,,53-78,,80-87,NLECTEUR+PSI-,R45.83.90.236,FN

85 Gráinne De Búrca, Nicolas de Sadeleer, Catherine Barnard, Charlotte Bretherton, Mariachiara Alberton deeply analysed the environmental protection against EU material law and especially internal market law. The analysis on competition law is merely comprehensive now. Climate law and specifically the Regulation has not been discussed yet.

search (Bretherton, Charlotte, and John Vogler, Nicolas de Sadeleer, etc.) was focusing exclusively either on EU environmental law towards its internal market[86]; or WTO trade system against environment protection.[87] The insights of the above mentioned scholars provided a guideline of what was analysed before, and especially the long-process achievements achieved by the former organizations such as the Agreement on Subsidies and Countervailing Measures (hereinafter SCM)[88]. Questions and remarks were rising from the readings, as new elements were analysed separately, considering either solely the EU or the international level. Indeed, the scholars focused either on the sole WTO appreciation of environmental considerations before the DSB, or rather on the construction of EU environmental law.[89] Instead this research aims to disclose the scope of EU Climate Law and to confront it the legal issues previously mentioned (see object of research). The current state of doctrine is vivid and highly dynamic now, which was not the case, yet when EU Climate Law was implemented in 2021. Environmental law being a laboratory for legal science, the same rational can be applied to climate law, since it is recent, and its preponderance became a viral hotbed with the development of climate law inside the EU. Therefore, it is crucial to rely on the past and current developments from the doctrine, in French and in English. The thesis aims to test the legal reasonings for environmental and EU institutional law, to transpose them, if applicable, to climate law.

French-speaking legal scholarship has played a pioneering role in conceptualizing climate law as a distinct field, separate from but intricately linked to environmental law. Authors such as Michel Prieur, Julien Bétaille, and Jessica Makowiak have emphasized the specificity of climate law, its sources, and its challenges in terms of effectiveness and justiciability.[90] The literature highlights the growing role of litigation as a driver of climate action, with landmark cases such as "*Grande Synthe*" and "*l'Affaire du siècle*" serving as focal points for doctrinal analysis. Hubert Delzangles has contributed significantly to the understanding of the legal mechanisms underpinning climate governance, particularly regarding the independence and impartiality of regulatory authorities. His work, often in collaboration with Julien Bétaille, argues for the creation of an independent public authority for environmental protection (hereinafter APIE), highlighting the limitations of current administrative structures and the need

86 Orlando E (2014) The Evolution of EU Policy and Law in the Environmental Field: Achievements and Current Challenges. In: Bakker C, Francioni F (eds) The EU, The US, and Global Climate Governance. Routledge, London and New York, 61–80

87 Bretherton, Charlotte, and John Vogler. "The EU as Trade Actor and Environmental Activist: Contradictory Roles?" Journal of Economic Integration 15, no. 2 (2000): 163-94. www.jstor.org/stable/23000497

88 Agreement SCM, WTO website: https://www.wto.org/english/tratop_e/scm_e/subs_e.htm

89 Mariachiara & Alberton, 2012, "Environmental Protection in the EU Member States: Changing institutional scenarios and trends" (L'Europe en Formation, CAIRN)

90 Michel Prieur, Julien Bétaille, H. Delzangles, Jessica Makowiak, Pascale Steichen, et al.. Droit de l'environnement. Dalloz. Dalloz, 8ème édition, 1394 p., 2019, Droit de l'environnement.

for institutional innovation.[91]

The question of competences—how they are allocated, exercised, and potentially recalibrated—lies at the heart of the debate on the implementation of EU Climate Law.[92] The doctrine, notably through the works of Martucci, Sébastien Platon, and Bosse-Platière, has examined the principle of conferral, the distinction between exclusive, shared, and supporting competences, and the evolving nature of EU powers in the environmental and climate domains.[93]

Martucci's analyses are particularly influential in clarifying the constitutional foundations of EU competences, the principle of subsidiarity, and the tensions between national sovereignty and supranational integration.[94] Sébastien Platon has explored the role of the CJEU in shaping the boundaries of EU action, especially through its jurisprudence on environmental and climate matters. Bosse-Platière has contributed to the understanding of the articulation between EU and Member State competences, emphasizing the dynamic and sometimes contested nature of this relationship.[95]

The interaction between EU law and the WTO law is a recurring theme in the literature, particularly regarding the compatibility of EU climate measures with international trade obligations. Scholars such as Hugo Flavier and Bosse-Platière have analysed the legal challenges posed by instruments like the Carbon Border Adjustment Mechanism (hereinafter CBAM) and the broader "Fit for 55" package.[96] Their work highlights the need for coherence between the EU's internal climate objectives and its external commitments, as well as the risk of legal disputes before the WTO.

The doctrine also addresses the principle of mutual supportiveness between environmental protection and trade liberalization, as well as the potential for conflict or synergy between the two regimes. The literature underscores the importance of the CJEU and the WTO Appellate Body in resolving such tensions and shaping the legal landscape.[97]

A distinctive feature of the French-speaking doctrine is its focus on the institutional dimension of climate governance. Hubert Delzangles, in particular, has developed

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91 J. Bétaille & H. Delzangles, (2014). Pour une autorité publique indépendante dans le domaine de l'environnement. AJDA, 37, 1-2 4.

92 Platon, S. (2017). L'Union européenne et la protection de l'environnement: entre compétence partagée et compétence exclusive. In J. Bétaille (Ed.), *Droit de l'environnement et Union européenne* (pp. 45-62). Mare & Martin.

93 F. Martucci, Droit du marché intérieur de l'Union européenne, 2021, Presses Universitaires de France - P.U.F.

94 Idem

95 Bosse-Platière, I. (2009). L'article 3 UE: recherche sur une exigence de cohérence de l'action extérieure de l'Union européenne. Bruylant.

96 Flavier, H. (2020). L'articulation entre le droit de l'Union européenne et le droit de l'OMC en matière environnementale. *Revue européenne et internationale de droit environnemental*, 2(1), 45-67.

97 Bosse-Platière, I. (2017). L'Union européenne et l'OMC: entre complémentarité et concurrence normative. In J. Bétaille (Ed.), Droit de l'environnement et Union européenne (pp. 85-102). Mare & Martin.

a comprehensive analysis of independent regulatory authorities, both at the national and European levels.[98] His work examines the evolution of these authorities, their role in ensuring impartiality and effectiveness, and the challenges they face in integrating environmental and climate objectives into their mandates. The literature also explores the comparative dimension, drawing lessons from other jurisdictions and highlighting the diversity of institutional arrangements across Europe. The debate on the creation of an APIE in France, for example, is situated within a broader reflection on the need for robust, independent, and accountable governance structures to support the implementation of ambitious climate policies.[99]

The current state of the art reveals a rich and dynamic field, characterized by intense doctrinal debate and rapid legal developments. This thesis positions itself at the intersection of these debates, seeking to contribute to the understanding of how EU Climate Law can be effectively implemented through a (re)balancing of competences, enhanced coherence between legal regimes, and innovative governance mechanisms. By engaging with the works of Martucci, Platon, Bosse-Platière, Flavier, Delzangles, and others, the research aims to offer both a critical synthesis of existing knowledge and original insights into the future of EU climate governance.

As EU Climate Law still is not applied to its fullest extent and represents a burning topic from the legal point of view, the research at the international level at the moment is focusing mostly on the political impact of it.[100] So far, the research conducted were focusing on either solely the internal aspect of climate change, but not climate law itself.[101] This research will start from the legal permissibility of EU Climate Law from the EU legal framework before disclosing its legal feasibility by the actions to be taken – and already taken, by the Member States. Concerning those actions, the doctoral thesis will take the example of national incentives on demand-side for the purchase of a car as it will be the way privileged by Member States and those incentives are illustrating the tangible breaches of EU and WTO law.[102] Additionally, the angle that was not approached so far by scholars is the impact of EU Climate Law on external relations and the legal consequences of membership to the WTO which is also involved into the protection of the environment and to tackle climate change by adopting over 250 multilateral environmental agreements[103] – although its priority is to preserve and

98 J. Bétaille & H. Delzangles, (2014). Pour une autorité publique indépendante dans le domaine de l'environnement. AJDA, 37, 1-2 4.

99 Idem

100 M. Peeters & N. Athanasiadou, (2020). The continued effort sharing approach in EU Climate Law: Binding targets, challenging enforcement? Review of European, Comparative & International Environmental Law. 10.1111/reel.12356.

101 Craig, P., & de Búrca, G. (2020). *EU Law: Text, Cases, and Materials* (7th ed.). Oxford University Press.

102 P. Slowik & N. Lutsey, (2016). Evolution of incentives to sustain the transition to a global electric vehicle fleet. 10.13140/RG.2.2.36368.81920.

103 World Trade Organization "The Doha mandate on multilateral environmental agreements (MEAs)" (2014)

protect multilateral trade.[104] It is crucial to combine the external relations maintained with the WTO, as both the EU and its Member States are enjoying full membership to it and efforts can be quashed before the DSB if not acting in accordance with WTO law. It is the only international organization to implement a judicial monitoring of the reports adopted with a tangible legal strength, with a binding legal effect.

3. METHODOLOGY

3.1. Structure of the dissertation

This thesis is structured in three main parts, each addressing a fundamental dimension of the implementation of EU Climate Law within the European legal framework. The first part explores the impact of EU Climate Law on the distribution and (re)balancing of competences within the Union. It examines both the vertical dimension—between the EU and its Member States—and the horizontal dimension—between the EU institutions themselves. This part analyses how the adoption of ambitious climate objectives, such as climate neutrality by 2050, challenges the existing legal equilibrium and may lead to a recalibration of powers, raising questions about the exclusivity or shared nature of climate competences. The second part of the research focuses on the integration of EU Climate Law and the obligation to ensure coherence and consistency within the Union's legal framework. It investigates how climate law interacts with other core EU policies, such as the internal market, competition law, and environmental law, as well as with the Union's external commitments, particularly with respect to the WTO. This part highlights the need for polycentric governance and the articulation of climate objectives with economic and international obligations. The third part addresses the implementation of climate law through litigation and governance innovations. It analyses the evolution of climate litigation at national, European, and international levels, including before the ECtHR. This part also discusses the proposal for an independent administrative authority dedicated to climate regulation and the constitutional and procedural challenges raised by the enforcement of EU Climate Law. This structure reflects the logic of EU constitutional law: competences first, substance second, remedies last.

Each part comprises several chapters, each introduced by a thematic overview and concluded with a synthesis of the main findings. The thesis concludes with recommendations for strengthening the legal and institutional framework of EU climate governance to ensure both the effectiveness and legitimacy of climate action in Europe.

104 L. Stuart, (2014). Trade and Environment: Mutually Supportive Interpretation of WTO Agreements in Light of Multilateral Environmental Agreements. New Zealand Journal of Public and International Law 12(2), 379-412.

3.2. Research methods and process

Prima facie, four obstacles were identified regarding EU Climate Law: constitutional, consistency, compliance, and coherence. As a very new and dynamic topic, it is necessary to adopt a method that accounts for its constantly evolving nature by processing the latest available data. *Grounded theory*[105] is the best general approach to adopt for such a changing topic as EU Climate Law and its scope. As mentioned above, it is still under development, although data are already accessible for in-depth *qualitative research.*[106]

This thesis adopts a qualitative, doctrinal legal research methodology, grounded in the analysis of primary and secondary legal sources. The research is situated at the intersection of European public law, environmental law, and institutional theory, and is informed by the current state of the art in both francophone and anglophone legal scholarship. The approach is both analytical and critical, synthesising doctrinal debates, jurisprudence, and policy developments to assess the implementation and governance of EU Climate Law.

This research adopts a "*law in action*" methodology, beginning with the analysis of concrete cases and disputes that have shaped the implementation and interpretation of EU Climate Law. By focusing first on landmark rulings and real-world litigation—such as the *Urgenda* case in the Netherlands,[107] the "*Affair of the Century*" in France,[108] and the "*People's Climate Case*"[109] before the CJEU—this study immediately immerses the reader in the practical realities and challenges of climate law enforcement within the EU.

Through detailed examination of these cases, the research identifies recurring legal questions, procedural obstacles, and patterns of judicial reasoning. This case-based analysis reveals both the strengths and the limitations of the current EU climate legal framework, highlighting issues such as access to justice, the effectiveness of legal remedies, the distribution of competences, and the interaction between EU and national law.

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105 A. Strauss & J. Corbin (1990) Basics of qualitative research: grounded theory procedures and techniques. Newbury Park, Calif.: Sage Publications, Jonny Saldana, The Coding Manual for Qualitative Researchers, (Sage Publications, 2012)

106 K. Charmaz, Constructing Grounded Theory: A Practical Guide through Qualitative Analysis (Sage Publications, 2006)

107 Urgenda Foundation v. The Netherlands: The Dutch Supreme Court ordered the government to reduce greenhouse gas emissions by at least 25% by 2020 compared to 1990 levels, establishing a direct link between climate inaction and the violation of human rights under the ECHR.

108 Notre Affaire à Tous ("Affair of the Century") v. France: French NGOs successfully brought a claim against the French government for insufficient climate action, resulting in a landmark administrative court ruling recognizing the State's responsibility for climate inaction.

109 People's Climate Case (Armando Carvalho and Others v. European Parliament and Council): This case before the CJEU highlighted the procedural barriers individuals and NGOs face in accessing EU courts for climate litigation, particularly the strict standing requirements for annulment actions.

The *inductive approach* fits the research on EU Climate Law consistency and coherence issues, involving a bottom-up reflection in which the theory emerges from the data, rather than starting from a hypothesis and then deductively turning to the data in search of confirmation. The other method tool is the *comparative legal analysis method*. Applied to the dissertation, this text-based analysis, combined with a *dynamic statutory interpretation*[110], will serve to compare, weigh, and deduce similarities and differences between environmental legal developments and EU Climate Law, as well as their interaction with EU internal market and competition law.[111]

Inextricably linked to climate law, climate justice must be analysed to understand the legal impacts of this new kind of law. The *case-law analysis* allows the disclosure, examination, and commentary on national and EU judicial practices and trends, as well as inadmissibility rulings, including those that are partially inadmissible, as long as they relate to EU climate justice. It will help to provide a broad overview of the content of the rulings, to quantify access to EU justice for climate-related claims, and to explain why this is an issue.

Using an *inductive approach*, the research will focus on clarifying the allocation of competences by applying the EU's constitutional legal framework to EU Climate Law proposal from a horizontal perspective. However, for rigorous research and to frame the impact of EU Climate Law and its issues, an analytical comparison will disclose the different ecological subsidy systems within the EU and highlight the various means left to the Member States to substantiate EU Climate Law.

The *linguistic method* allows the interpretation of the meaning of the legal norms analysed (i.e. the scope of EU Climate Law, the degree of legal force implied, the notion of recommendations, the concept of exhaustible natural resources: quite broad in the terminology of the WTO, for example). Then, the analytical method will be used to identify the characteristics of indirect funding aimed at reducing greenhouse emissions (such as purchase incentives for less polluting cars) to determine whether, in practice, the current policies in place have potentially problematic aspects.

The comparative and legal method will be the most important to highlight the comparison between doctrinal opinions and, especially, the different legal systems involved in the protection of the environment as a matter of the EU's coherence in its external relations: the WTO, the EU and the national plans, as they will constitute and shape the viability of EU Climate Law. Finally, the systematic analysis of the literature will be used to understand the balance struck by the various legal acts and jurisdictions mentioned in the research (the CJEU and WTO's DSB) and to systematise the multiple sources of information to identify the reconciliation achieved between environmental protection and trade, the main component for an effective EU Climate Law.

By foregrounding "*law in action*," this research tests theoretical assumptions

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110 W. N. Eskridge, Jr., Dynamic Statutory Interpretation. Cambridge, Mass.: Harvard University Press, 1994. Pp. ix + 438.: "Statutes, however, should-like the Constitution and the common law-be interpreted "dynamically," that is, in light of their present societal, political, and legal context."

111 Idem.

against practical outcomes and proposes reforms that are both ambitious and feasible. The methodology centres real-world cases within the analysis, employing them as a foundation for broader theoretical reflection and policy recommendations. Through the integration of doctrinal, comparative, case-based, and interdisciplinary approaches, the thesis provides a holistic and critical examination of the implementation of EU Climate Law. It not only synthesises existing knowledge but also offers original insights and recommendations to strengthen the legal and institutional framework of EU climate governance. By progressing from practice to principle, the thesis bridges the gap between legal theory and the urgent, evolving demands of climate governance in the EU.

4. DATA ANALYSIS

4.1. Review of data sources

Non-exhaustively, the data sources will include, firstly, the EU Treaties (TEU and TFEU), recent developments in the doctrine on the allocation of competence in environmental law, and, more specifically, climate law. Also, given the novelty of this topic, it will be necessary to provide an in-depth analysis of the EU Regulation Proposal on Climate law and related case-law, aiming to disclose the efficiency of climate justice. The parallel with environmental law and its legal development will have been necessary as a complement to the other. To test the consistency at the international level within the EU's external relations to the WTO, the research will also use the DSB case-law related to the environment[112] – protection of natural resources and the right to a healthy environment.

A first strand of scholarship, particularly in French and EU constitutional doctrine, has emphasized the constitutional implications of EU climate action, notably in terms of competence allocation, the principle of conferral, and the evolving balance between the Union and the Member States: The(re)balancing of competences within the EU

112 See Report of WTO, DSB, AB, 17 December 2007, "Brazil – retreaded tyres" (WT/DS332/19/). Also, in the "EC – Asbestos" case (WT/DS135/AB/R), the Appellate Body considered that the alternative measure proposed by Canada, namely "controlled use", does not achieve "the desired level of health protection"; therefore, it cannot be an alternative measure; Report of WTO, DSB, AB, 12 October 1998, "United States – shrimp case" (WT/DS58/AB/R) : in this case, a measure prohibiting importation was implemented. If it was allowing this to happen on the pretext of saving a marine animal, it implies that rules of multilateral trade appearing to be an arbitrary and unjustifiable discrimination, it is automatically a measure that goes directly against international trade. It would be the end of the analysis, as under the pretext of not to want to nullify the rules of trade, it nullifies Article XX. That was the argument of the Panel, explaining that if a measure is directly contrary to GATT obligations, Article XX cannot justify it. However, when there is a measure that indirectly harms international trade, if it is in addition justified by an exception, it is eligible; Report of WTO, AB, 17 December 2007, «Brazil – retreaded tyres case « (WT/DS332/AB/R) and Report of WTO, DSB, AB, 29 August 2014, "China – Rare Earths" (WT/DS433/AB/R).

legal framework (Martucci, Platon, Bosse-Platière, Delzangles); The coherence and articulation of EU Climate Law with other EU and international regimes, notably the WTO (Flavier, Bosse-Platière, Bartels, Shaffer & Bodansky) and; The evolution of climate litigation and governance innovations, including the role of independent authorities (Bétaille & Delzangles, Peel & Osofsky). The research displays a thorough analysis of EU Climate Law (Regulation (EU) 2021/1119), the TEU, TFEU against relevant directives and regulations and rulings from the CJEU, the ECtHR, and landmark national cases (e.g., *Grande Synthe*, *Urgenda*). The legal framework analysed in this thesis is composed of the core instruments of EU Climate Law and related secondary legislation. In particular, the analysis focuses on Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality (EU Climate Law), as well as the main instruments of the EU's climate and energy acquis, including Directive 2003/87/EC establishing the EU Emissions Trading System, Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States (Effort Sharing Regulation), Regulation (EU) 2018/841 on land use, land-use change and forestry (LULUCF Regulation), and Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action. The research also considers relevant sectoral legislation, notably Directive (EU) 2018/2001 on renewable energy and Directive 2012/27/EU on energy efficiency, as amended. The jurisprudential framework examined in this thesis is based on a selection of landmark climate-related rulings at national, European, and international levels. At the national level, particular attention is given to emblematic cases such as *Urgenda Foundation v. State of the Netherlands*, which established a duty of care grounded in human rights obligations, and *Commune de Grande-Synthe v. France*, in which the Conseil d'État recognised the binding nature of national and international climate commitments. At the EU level, the analysis focuses on the case law of the CJEU concerning access to justice and judicial review, notably the People's Climate Case (*Carvalho and Others v Parliament and Council*), which illustrates the procedural limits of actions for annulment in climate-related matters. Finally, the research takes into account relevant developments before the ECtHR, where climate litigation has increasingly been framed through the protection of fundamental rights, contributing to the broader evolution of climate justice in Europe.

In its external dimension, the analysis addresses the interaction between EU climate measures and international trade law, with particular attention to Regulation (EU) 2023/956 establishing a Carbon Border Adjustment Mechanism (hereinafter CBAM), assessed in light of World Trade Organization law, and notably Article XX GATT. A second body of literature has focused on issues of coherence and consistency, analysing the interaction between EU climate objectives and other areas of EU law, including the internal market, competition law, and the Union's external commitments under international trade law (e.g. Delzangles; Flavier; Bartels). Finally, a growing strand of scholarship has examined questions of enforcement and justiciability, highlighting the limits of access to justice, judicial review, and remedies in climate-related litigation before EU and national courts (e.g. Bétaille; Peel & Osofsky). These three strands of analysis form the conceptual and structural foundation of this thesis.

The scientific literature was consolidated and then mapped according to its analytical function within the thesis. Rather than presenting an undifferentiated bibliography, references were organised according to their contribution to constitutional and theoretical foundations, EU competence and institutional analysis, climate and environmental law doctrine including litigation, and (iv) governance and implementation mechanisms. This mapping ensured that interdisciplinary sources were used in a targeted and methodologically controlled manner (see Annex 5). The international scientific and statistical data relating to climate change, which form the factual background of the Union's climate action, are summarised in Annex 1.

While preparing this thesis, artificial intelligence–based tools were used in a limited and complementary manner during the drafting process. Their use was confined to assistance with language clarification, stylistic refinement, and the restructuring of certain passages in order to improve readability and coherence. All substantive legal analysis, interpretation of legal sources, selection of case law, formulation of arguments, and conclusions remain entirely the author's own.

No artificial intelligence tool was used to generate original legal analysis, interpret case law, or produce doctrinal content. All references to EU law, international law, and jurisprudence were identified, selected, and verified by the author. The use of such tools did not replace critical reasoning or academic judgment but served solely as a support for drafting and editorial purposes. Their use did not affect the substance of the research, which is based entirely on the author's independent analysis of legal texts, jurisprudence, and academic literature.

4.2. Data collection process and data validation

The data collected will be analysed using various methods. While the methodology section set out the general research approach and analytical methods adopted in this thesis, the present section focuses on the practical implementation of that methodology. It explains how the legal materials used in the research were identified, collected, and validated, and clarifies the criteria applied to ensure their relevance, reliability, and accuracy. As mentioned above, the qualitative research method will reveal the scope of EU Climate Law and allow a clearer allocation of competences between the EU and its Member States. This section therefore adopts a different angle from the methodology chapter. Rather than reiterating the theoretical and methodological choices underpinning the research, it details the concrete process through which primary and secondary legal sources—such as EU primary and secondary law, national legislation, case law, and doctrinal writings—were selected, cross-checked, and systematically analysed. This operational perspective is intended to demonstrate how the methodological framework outlined above was applied in practice and to ensure the transparency and robustness of the research process.

The data collection process was based on a systematic identification of relevant primary and secondary legal sources. Primary sources include EU primary law, EU

secondary legislation, and jurisprudence of the CJEU, national courts, and international courts where relevant. It helped clarify the different means left to Member States to legally concretise EU Climate Law, as well as how it interacts with other EU policies and WTO law. The linguistic method allows the interpretation of the meaning of the legal norms analysed (i.e., the scope of EU Climate Law, the degree of legal force implied, the notion of recommendations, the concept of exhaustible natural resources, and climate law: quite broad in the terminology of the WTO, for example) These sources were identified through official legal databases and institutional repositories, ensuring the use of authoritative and up-to-date texts.

Secondary sources, including doctrinal writings and academic commentary, were selected based on their relevance to the research questions, their methodological rigor, and their recognition within the field of EU climate and environmental law. To ensure data validation, legal texts and case law were cross-checked against multiple official sources, and doctrinal analyses were compared across different scholarly traditions. This process aimed to ensure consistency, accuracy, and reliability in the interpretation of legal norms and jurisprudence throughout the thesis.

It contains a comprehensive review of leading monographs, edited volumes, and peer-reviewed articles in both French and English, including works by Martucci, Platon, Bosse-Platière, Delzangles, Flavier, Bétaille, Prieur, Peel & Osofsky, Craig & de Búrca, Scott, Bartels, and others; reports from the Intergovernmental panel on climate change (hereinafter IPCC), the European Commission, the French Haut Conseil pour le Climat, and other relevant institutions and studies and reports that provide comparative perspectives on climate governance and litigation.

The literature review was conducted using academic databases (HeinOnline, JSTOR, Cairn, SSRN, Westlaw, LexisNexis), library catalogues, and institutional repositories. Keywords included "EU Climate Law," "compétences de l'UE," "climate litigation," "independent authorities," "EU–WTO relationship," and equivalents in French. Jurisprudence was selected based on its doctrinal significance, citation in the literature, and relevance to the research questions. Priority was given to cases cited by leading scholars and those that have set important precedents. Only official, up-to-date versions of legislative texts and policy documents were used, cross-checked with institutional websites (eur-lex.europa.eu, ec.europa.eu, Conseil d'État, etc.).

All doctrinal claims and interpretations were cross-referenced with multiple sources, including both francophone and anglophone literature, to ensure accuracy and to reflect the diversity of academic perspectives. Case law was validated by consulting official court databases and by comparing doctrinal commentaries from different legal traditions. Preference was given to peer-reviewed publications and works by recognized experts in the field. Where possible, findings were triangulated with recent academic debates and policy developments. All sources are cited in accordance with APA style, and a comprehensive bibliography is provided.

Given the evolving nature of EU Climate Law and climate-related litigation, particular attention was paid to the temporal dimension of the sources analysed. Legislative texts and case law were examined in their most recent consolidated versions at the

time of writing, while also considering earlier versions where relevant to trace legal developments over time. Where jurisprudence or legislative initiatives were still emerging, the analysis was limited to officially adopted texts and final judicial rulings, to avoid reliance on speculative or provisional material. This approach necessarily entails certain limitations, as EU Climate Law remains a rapidly developing field. Nonetheless, by prioritising authoritative sources, cross-checking materials, and situating legal developments within their broader doctrinal and institutional context, the research seeks to ensure a balanced and reliable assessment of the current state of EU Climate Law and its implementation. While every effort has been made to ensure the comprehensiveness and reliability of the data, some limitations remain. The rapidly evolving nature of climate law and policy means that new developments may arise after the completion of this research. Additionally, while the thesis draws on a wide range of sources, some national jurisprudence and grey literature may not be fully covered. The scholars' research will also be beneficial in asserting the viability of such a proposal. Nonetheless, the study aims to highlight a new way to use trade as a complementary, more responsible, and sustainable tool to achieve the objectives set in EU Climate Law.

By analysing EU Climate Law through the prism of implementation, this thesis clarifies the constitutional conditions under which the EU can pursue climate neutrality while preserving the rule of law.

PART I. THE INFLUENCE OF EU CLIMATE LAW: THE ALLOCATION OF COMPETENCES WITHIN THE EU LEGAL FRAMEWORK

The allocation of competences constitutes the constitutional backbone of the EU legal order. Rooted in the principle of conferral, it organises the allocation of powers between the Union and its Member States, while simultaneously structuring the balance between the Union's institutions. Traditionally conceived as a stabilising framework, the system of competences is intended to preserve both the autonomy of Member States and the functional effectiveness of Union action. Yet this architecture has never been static. From the internal market to monetary union, successive policy developments have demonstrated that profound transformations of the Union may occur without formal Treaty revision, through the progressive densification of secondary law and the evolution of institutional practices.

EU Climate Law inscribes itself within this dynamic. The adoption of binding climate objectives, culminating in Regulation (EU) 2021/1119 establishing climate neutrality by 2050, does not formally alter the Treaties' allocation of competences. Climate change is not recognised as an autonomous field of Union competence, nor does EU Climate Law purport to redefine the categories of exclusive, shared, or supporting competences. On a formal level, climate action remains embedded within existing legal bases, primarily environmental policy, energy, and internal market provisions. From a purely formal perspective, EU Climate Law appears constitutionally unremarkable.

Such a reading, however, proves insufficient once the implementation of EU Climate Law is examined in practice. Climate objectives differ fundamentally from traditional policy goals in both scale and structure. They are quantified, long-term, and transversal by nature, requiring coordinated action across multiple policy fields and levels of governance. As a result, the implementation of EU Climate Law generates effects that extend beyond the formal boundaries of competence attribution under the Treaties. It influences the interpretation of Treaty provisions, constrains the exercise of national regulatory autonomy, and redistributes institutional influence within the Union. The interaction between EU Climate Law and the allocation of competences thus emerges as a central constitutional issue, rather than a peripheral technical concern.

The adoption of EU Climate Law marks a decisive turning point in the evolution of the EU's legal and institutional architecture.[113] By enshrining the objective of climate neutrality by 2050, the EU has not only set an ambitious environmental target but has also triggered a profound re-examination of the distribution of competences between the Union and its Member States.[114] This first part of the thesis is devoted to the *"vertical"* and *"horizontal"* dimensions of this transformation: how the implementation

113 Platon, S. (2017). L'Union européenne et la protection de l'environnement: entre compétence partagée et compétence exclusive. In J. Bétaille (Ed.), *Droit de l'environnement et Union européenne* (pp. 45-62). Mare & Martin.

114 Bosse-Platière, I. (2009). *L'article 3 UE: recherche sur une exigence de cohérence de l'action extérieure de l'Union européenne*. Bruylant.

of EU Climate Law challenges, recalibrates, or even redefines the balance of powers within the EU legal order.

Doctrinal approaches to this interaction remain divided. Some analyses emphasise continuity, portraying EU Climate Law as an extension of established environmental integration mechanisms, constrained by subsidiarity and proportionality.[115] Others highlight a more transformative trajectory, describing climate law as a vector of centralisation and executive empowerment, capable of reshaping the constitutional balance through regulatory density rather than formal transfer of powers.[116] This Part situates itself within this debate by rejecting both constitutional alarmism and a purely formalist minimalism. It argues instead that EU Climate Law induces a recalibration of competences through implementation, operating within the existing constitutional framework while significantly affecting its practical equilibrium.

Methodologically, Part I adopts a constitutional and doctrinal approach to the analysis of competence allocation within the EU. It proceeds from the distinction between the formal architecture of competences as defined by primary law and the practical modalities of their exercise as shaped by secondary legislation and institutional practice. By examining the implementation of EU Climate Law through its vertical and horizontal effects, this Part seeks to identify how binding climate objectives operate within the existing constitutional framework, without presupposing either a formal transfer of competences or a static reading of the Treaties. This approach makes it possible to assess the constitutional significance of EU Climate Law through its implementation, rather than through abstract claims of continuity or rupture.

The question of competence allocation lies at the heart of EU law and its governance. As highlighted by leading scholars such as Martucci, Platon, and Bosse-Platière, the principle of conferral, the distinction between exclusive, shared, and supporting competences, and the evolving nature of EU powers are central to understanding the Union's capacity to act in the field of climate policy.[117] EU Climate Law, by introducing binding targets and new mechanisms for monitoring and enforcement, raises

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115 See, inter alia, J. Scott, Environmental Protection and the Principle of Conferral, in Environmental Protection: European Law and Governance, Oxford University Press, 2009, pp. 17–34; J. Bétaille and M. Prieur, Droit de l'environnement de l'Union européenne, Dalloz, 2022, esp. pp. 91–118; J. van Zeben, "Subsidiarity in European Environmental Law: A Competence Allocation Approach", Harvard Environmental Law Review, vol. 38, 2014, pp. 415–458. See also Article 5 TEU and Protocol No 2 on the application of the principles of subsidiarity and proportionality, as reflected in the subsidiarity assessments accompanying climate legislation.

116 See K. Kulovesi, S. Oberthür, H. van Asselt and A. Savaresi, "The European Climate Law: Strengthening EU Procedural Climate Governance?", Journal of Environmental Law, vol. 36, no 1, 2024, pp. 23–42; I. Bosse-Platière, "Le principe d'attribution et les politiques transversales de l'Union européenne", in Objectifs et compétences dans l'Union européenne, E. Neframi (dir.), Bruylant, 2013, pp. 55–78; G. de Búrca and J. Scott (eds.), Constitutional Change in the EU: From Uniformity to Flexibility, Hart Publishing, 2000, esp. pp. 259–281 (on functional constitutional change through regulatory practice)

117 Scott, J. (2015). The Geographical Scope of the EU's Climate Responsibilities. *Cambridge Yearbook of European Legal Studies*, 17, 88-112.

fundamental questions about the scope and limits of EU action,[118] the autonomy of Member States,[119] and the legitimacy of supranational intervention.[120]

This part draws on both francophone and anglophone doctrine to examine how this recalibration manifests itself along two complementary dimensions. First, EU Climate Law affects the *vertical allocation of competences* between the Union and its Member States. While Member States formally retain their powers, the binding nature of climate objectives, combined with monitoring, reporting, and corrective mechanisms, progressively structures the manner in which those powers may be exercised. Second, EU Climate Law reshapes the *horizontal allocation of competences* within the Union, raising renewed questions concerning institutional balance, accountability, and the concentration of governance functions. It examines the genesis of the EU's climate competence, the interplay between environmental and climate objectives, and the jurisprudential developments that have shaped the current landscape. Special attention is given to the role of the CJEU in interpreting and enforcing competence boundaries. [121]

Accordingly, Part I is therefore devoted to analysing how EU Climate Law influences the allocation of competences within the EU legal framework, not by altering its formal structure, but by transforming its functional operation. Chapter 1 examines the implications of EU Climate Law for the vertical distribution of powers between the Union and the Member States, highlighting the emergence of a coordinated yet constraining framework of shared competences. Chapter 2 then turns to the horizontal dimension, analysing how the implementation of EU Climate Law affects the institutional balance within the Union and contributes to a concentration of governance functions. Together, these chapters aim to demonstrate that EU Climate Law acts as a catalyst for constitutional transformation through practice, revealing both the adaptability and the fragility of the Union's competence framework in the face of systemic challenges.

CHAPTER 1. THE INFLUENCE OF EU CLIMATE LAW ON THE VERTICAL DISTRIBUTION OF COMPETENCES

The vertical distribution of competences between the EU and its Member States lies at the heart of the EU constitutional order. Structured around the principle of conferral, it defines not only the scope of Union action but also the conditions under which Member States retain regulatory autonomy. In this framework, the attribution of competences is traditionally conceived as both a legal limit and a guarantee: a limit on supranational expansion, and a guarantee of national regulatory autonomy within an integrated legal order.

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118 Martucci, F. (2013). *L'Union européenne et la compétence internationale*. Bruylant.

119 Craig, P., & de Búrca, G. (2020). *EU Law: Text, Cases, and Materials* (7th ed.). Oxford University Press.

120 Idem

121 Joined Cases C-626/15 and C-659/16. ECLI identifier: ECLI: EU :C :2018 :925

Climate change places this architecture under particular strain. As a transboundary, cumulative, and long-term phenomenon, climate change challenges the capacity of Member States to act effectively in isolation while simultaneously testing the limits of Union intervention. EU Climate Law emerges precisely at this intersection. Formally, it does not establish climate change as an autonomous field of competence, nor does it seek to displace the existing categories of exclusive, shared, or supporting competences laid down in the Treaties. Climate action remains anchored in shared competences, primarily environmental policy, energy, and internal market provisions, and is framed by the principles of subsidiarity and proportionality. Yet this formal continuity obscures a more complex reality. The implementation of EU Climate Law introduces binding and quantified objectives, accompanied by procedural obligations, which affect the exercise of competences at national level. By requiring Member States to align national measures with long-term climate neutrality objectives, and to report on and adjust their policies in light of Union level assessments, EU Climate Law progressively shapes the conditions under which national competences are exercised. The vertical distribution of competences is therefore not altered in its legal classification but recalibrated in its practical operation.

This functional recalibration has been the subject of sustained doctrinal debate. Part of the doctrine emphasises the resilience of the principle of conferral, portraying EU Climate Law as a coordinated framework that preserves Member State discretion over substantive regulatory choices. Other analyses underline the cumulative effects of regulatory density, arguing that binding targets, monitoring mechanisms, and enforcement tools may lead to a *de facto* centralisation of decision-making.[122] This chapter positions itself within this debate by moving beyond a binary opposition between transfer and retention of competences. It argues instead that EU Climate Law operates through a logic of constraint and coordination,[123] reshaping the exercise of shared competences without formally reallocating them.[124]

This evolution raises a series of interrelated legal questions. To what extent do binding climate objectives limit Member State discretion within shared competence

122 See, in particular, F. Martucci, *Droit de l'Union européenne*, 4th ed., LefebvreDalloz, 2025, esp. pp. 155–168 (on the principle of conferral and the functional evolution of shared competences); S. Platon, "Le principe d'équilibre institutionnel : genèse, éclipses et renouveau d'un principe constitutionnel de l'Union", in *Research Handbook on General Principles of EU Law*, E. Korkeaaho & P. LeinoSandberg (eds.), Edward Elgar, 2022, pp. 136–155 (on constitutional balance and functional shifts without formal competence transfer)

123 I. BossePlatière, "Le principe d'attribution et les politiques transversales de l'Union européenne", in *Objectifs et compétences dans l'Union européenne*, E. Neframi (dir.), Bruylant, 2013, pp. 55–78 (on the adaptability of the conferral principle in the context of transversal policies); J. Scott, "Environmental Protection and the Principle of Conferral", in *Environmental Protection: European Law and Governance*, Oxford University Press, 2009, pp. 17–34 (on coordination, regulatory density, and Member State discretion);

124 G. de Búrca & J. Scott (eds.), *Constitutional Change in the EU: From Uniformity to Flexibility*, Hart Publishing, 2000, esp. pp. 1–20 and 259–281 (on functional constitutional transformation through regulatory practice).

areas? How do principles such as subsidiarity and proportionality operate when objectives are long-term, quantified, and legally binding? Can the vertical balance of powers be preserved when national autonomy is exercised under continuous Union level supervision? These questions are not merely theoretical. They go to the core of the Union's capacity to pursue ambitious climate action while remaining faithful to its constitutional foundations.

Chapter 1 examines how the implementation of EU Climate Law interacts with the allocation of competences between the Union and the Member States. It demonstrates that, while climate objectives do not modify the distribution of powers laid down by the Treaties, they progressively influence the interpretation, coordination, and exercise of shared and supporting competences within the EU legal framework. It focuses on the disclosure of the consequences of the new regulation of the EU on Climate change[125] (referred to as EU Climate Law), through the analysis of the regulatory novelties it implies. *De jure*, EU Climate Law does not aim to distort the current allocation of competences between the EU and its Member States (vertically) and institutional roles set by the Treaties (horizontally). Nonetheless, *de facto*, due to the various interactions the regulation has on the current legal framework, it will be necessary to readjust the current set of repartitions inside the EU. Indeed, "climate neutrality" as part of the objectives of the EU puts the EU to draw new limits of the current allocation of competences within its legal framework vertically between the EU and Member States' national regulatory autonomy.

This transformation is particularly evident in the vertical dimension of EU governance,[126] where the boundaries between supranational authority and are being redefined in response to the urgent demands of climate action.[127] At the heart of this evolution lies the principle of conferral,[128] which stipulates that the Union may act only within the limits of competences conferred upon it by the Treaties.[129] However, the dynamic nature of climate policy, coupled with the cross-cutting character of environmental challenges, has led to an increasingly complex and sometimes contested allocation of powers.[130] EU Climate Law, by introducing binding targets, robust monitoring mechanisms, and new forms of enforcement, has intensified the debate over the respective roles of the EU and its Member States in designing and implementing

125 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

126 Idem

127 Peel, J., & Osofsky, H. M. (2018). *Climate Change Litigation: Regulatory Pathways to Cleaner Energy*. Cambridge University Press.

128 Treaty on the Functioning of the EU (TFEU), Article 5

129 Platon, S. (2017). L'Union européenne et la protection de l'environnement: entre compétence partagée et compétence exclusive. In J. Bétaille (Ed.), *Droit de l'environnement et Union européenne* (pp. 45-62). Mare & Martin.

130 Idem

climate policy.[131]

Methodologically, this chapter adopts a doctrinal approach grounded in the analysis of primary law, secondary legislation, and relevant jurisprudence. It proceeds from a fundamental distinction between the formal allocation of competences under the Treaties and the conditions governing their exercise in practice. This distinction is essential in order to assess the constitutional implications of EU Climate Law without conflating competence attribution with the functional constraints arising from the densification of secondary legislation and coordination mechanisms linked to binding climate objectives.

This chapter seeks to unravel the legal and institutional implications of this vertical (re)balancing of competences. It begins by tracing the historical development of EU environmental and climate competences, from the early days of the European Communities to the present, highlighting the gradual shift from a predominantly national approach to a more integrated and supranational framework. The analysis then turns to the legal basis and scope of EU Climate Law, examining how this regulation serves as a catalyst for change in the allocation of powers and the emergence of new governance dynamics.[132] This shift raises important questions about the legitimacy and effectiveness of supranational intervention, as well as the capacity of Member States to retain meaningful autonomy in the face of increasingly stringent EU requirements.[133]

The chapter also explores the jurisprudential developments that have shaped the current landscape, with particular attention to the role of the CJEU in interpreting and policing the boundaries of EU and national competences.[134] Landmark cases have not only clarified the legal framework but have also underscored the tensions and trade-offs inherent in the pursuit of ambitious climate goals within a multi-level governance system.[135] By situating the discussion within this broader doctrinal and jurisprudential context, the chapter aims to provide a nuanced understanding of how the implementation of EU Climate Law is reshaping the vertical distribution of competences. It seeks to highlight the tensions, opportunities, and pathways for reform that arise as the Union and its Member States navigate the complex terrain of climate action in the twenty-first century.

To further comprehend the impact of EU Climate Law on allocation of competences

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131 Prieur, M., Bétaille, J., Delzangles, H., Makowiak, J., & Steichen, P. (2019). *Droit de l'environnement* (8th ed.). Dalloz.

132 Jordan A, Huitema D, Schoenefeld J, van Asselt H, Forster J. Governing Climate Change Polycentrically: Setting the Scene. In: Jordan A, Huitema D, van Asselt H, Forster J, eds. *Governing Climate Change: Polycentricity in Action?* Cambridge University Press; 2018:3-26.

133 Mangiameli, S. (2013). The EU and the Identity of Member States. L'Europe en Formation, 369, 151-168. https://doi.org/10.3917/eufor.369.0151

134 Joined Cases C-626/15 and C-659/16. ECLI identifier: ECLI :EU :C :2018 :925

135 Mariachiara & Alberton, 2012, "Environmental Protection in the EU Member States: Changing institutional scenarios and trends" (L'Europe en Formation, CAIRN)

vertically, it is necessary to first address the climatization phenomenon[136] on the EU's constitutional framework by the adoption of EU Climate Law (1.1) to analyse the necessary and inevitable legal implications on the equilibrium set in the Treaties (1.2.).

1.1. The "climatization" of the EU's constitutional framework: an external construct

Subchapter 1 examines how climate objectives have progressively been integrated into the EU's constitutional framework. It demonstrates that, without altering the principle of conferral, climate considerations have been constitutionalised through Treaty amendments, general principles, and interpretative practices, thereby reshaping the *context* in which Union competences are exercised rather than their formal allocation.

The adoption of EU Climate Law on June 2021[137][138] implements objectives consistent with the UNFCCC.[139] EU Climate Law aims to integrate the climate neutrality as a legal objective for the Union to be reached by 2050.[140] By affecting the Union's constitutional framework, EU Climate Law contributes to a functional recalibration of competence exercise. EU Climate Law represents a watershed moment in the evolution of the EU's legal and institutional landscape: by establishing the objective of climate neutrality by 2050, [141] it strengthens the normative framework within which competences are exercised between the Union and the Member States. This transformation is particularly evident in the vertical dimension of EU governance,[142] where the relationship between Union level coordination and Member States' regulatory autonomy is

136 Sandrine Maljean-Dubois, Jacqueline Peel. La «climatisation» progressive du droit international. Sandrine Maljean-Dubois; Jacqueline Peel. Climate change and the testing of international law. Le droit international au défi des changements climatiques, 26, Brill, pp.41-81, 2023, Centre for Studies and Research in International Law and International Relations Series, 9782233010360. ⟨halshs-04329341⟩

137 European Council conclusions on (EUCO 169/14) Nationally Determined Contributions (NDCs) of the EU and its Member States

138 Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

139 United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.

140 Recital 20, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law') : "The Union-wide 2050 climate-neutrality objective should be pursued by all Member States collectively, and Member States, the European Parliament, the Council and the Commission should take the necessary measures to enable its achievement. Measures at Union level will constitute an important part of the measures needed to achieve the objective."

141 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (EU Climate Law)

142 Idem

increasingly structured by binding climate objectives.[143]

EU Climate Law is the result of external commitments, absorbed in its internal legal framework and is not an exception to the Union's environmental policies (1.1.1). Thus, the internal integration of external commitments through EU Climate Law is both ambitious and constitutionally sensitive because it operates within—yet places sustained pressure on—the equilibrium set by the Treaties (1.1.2).

1.1.1. The external genesis of the EU's "climatization" constitutional framework

Subsection 1.1 examines the role of international climate commitments in shaping the constitutional context of EU climate action. It demonstrates that, while external agreements did not create Union competences, they progressively influenced the integration, interpretation, and intensity of climate objectives within the EU legal order.

The "climatization"[144] of the EU's constitutional framework finds its genesis as an external construct through its external dimension. It refers to the process by which climate objectives become embedded in the core legal and constitutional principles of the EU. By acting externally, the Union helped to consolidate the political and legal impetus for internal climate action. External commitments did not create Union competences, but they contributed to shaping the objectives, intensity, and coordination needs of internal legislation adopted on existing legal bases.[145]

1.1.2. The emergence of an international climate governance

Subsection 1.1.2. examines the progressive emergence of an international climate governance framework and the EU's role within it. It demonstrates that the development of multilateral climate regimes structured the external context in which the Union acts, progressively constraining and orienting EU climate action without altering

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143 Peel, J., & Osofsky, H. M. (2018). *Climate Change Litigation: Regulatory Pathways to Cleaner Energy*. Cambridge University Press.

144 Christel Cournil et Camila Perruso, «Réflexions sur «l'humanisation « des changements climatiques et la «climatisation « des droits de l'Homme. Émergence et pertinence « (*Réflexions on «humanization » of climate changes and the «climatisation » of human rights. Emergence and relevance*), La Revue des droits de l'homme [En ligne], 14 | 2018, mis en ligne le 11 juin 2018, consulté le 08 septembre 2021. URL: http://journals.openedition.org/revdh/3930; DOI: https://doi.org/10.4000/revdh.3930

145 The legal basis for the European Community to adopt a ruling regarding the implementation of the Kyoto Protocol was article 175 TEC, which relates to Union policies and internal actions on economic, social, and territorial cohesion, in combination with the article 300 TEC to conduct international negotiations and agreements with several States or International organisations. It is only with the adoption of the Lisbon Treaty that the EU was able to dedicate to the protection of the environment and climate-related issues, a legal basis per se.

the internal allocation of competences.

What matters constitutionally is not the political success of the COPs, but the normative pressure they generate on internal legal consolidation. This evolution illustrates how international climate governance progressively shaped the constitutional context in which EU competences are exercised. Accordingly, the relevance of COP practice for EU constitutional analysis lies in the way it reinforces the need for internal legal consolidation and coordination, rather than in the diplomatic outcome of any single conference.

Linked to international action by States on climate targets, "*all concrete steps to support the objective pursued by the United Nations Framework Convention on Climate Change (UNFCCC) have been postponed and entrusted to a governing body called the Conference of Parties (COP), which is responsible for ensuring the effective implementation of the Framework Convention*."[146] The COP can be defined as the "highest decision-making authority of the UNFCCC (...) association of all countries party to the Convention"[147] ratified by 195 countries. Thus, the COPs (or more precisely, the various editions or summits of the COP) have a technical dimension, even if they are "often seen as spaces where States and their representatives compete with each other for grand declarations without these being sufficiently followed by concrete actions."[148] The conferences of the parties are therefore associated with instruments of multilateral global governance,[149] in which heads of state are anxious to maintain their international image.

In fact, global governance is currently based "on rules inherited from the post-war period, and its modalities, while tending to better represent the new balance of power, have not allowed the emergence of a real-world government."[150] The COPs therefore seem to be adapted to a world of tomorrow, while relying on structures that may seem outdated in the context of the contemporary climate emergency. In this sense, the COPs are part of global governance as far as they play a role in structuring power relations between states on the world stage. However, in recent years, the COPs have also had an influence in that the reports on which they are based are also the result of collaboration between the public, private and non-governmental organizations responsible for environmental protection,[151] with the "Rio negotiations of 1992 having

146 UNFCCC, "what is the United Nations Framework Convention on Climate Change" : https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change

147 UNFCCC, idem

148 Raiser, Kilian; Kornek, Ulrike; Flachsland, Christian; Lamb, William F. "Is the Paris Agreement effective? A systematic map of the evidence; 2020. URL : https://iopscience.iop.org/article/10.1088/1748-9326/ab865c

149 Maurice Kamto, "Droit international de la gouvernance », Paris, A. Pedone, 2013, pp. 31–35.

150 Weiss, Thomas G., Global Governance: Why? What? Whither?, Polity Press, 2013, pp. 8-26.

151 The reports consist of national communications, emission inventories submitted by the Parties. The COP then assesses the effects of the measures taken and their progress in accordance with the objective of the Convention.

given them a place under the heading of 'governance.'"[152]

Understood in this way, the COPs are indeed part of the multilateralist software that has dominated the world scene since the break-up of the Soviet Union and the distribution of global issues within a fragmented international scene between different poles of influence. Thus, as far as the COPs are instruments of multilateralism, it must also be considered that the latter's influence is greatly diminishing with the deep antagonism that is emerging between the United States, which is not a party to the Kyoto Protocol, and China. Indeed, multilateralism is understood as "the method of favouring the common resolution of problems [where] through multi-voice consultation, States agree to resolve together both the differences between them and the common challenges and issues they face."[153] However, the whole point of the COPs was to suggest that global warming and its effects concern not certain parts, certain regions or sub-regions, but all the countries globally.

Overall, the participation of the EU in the COP was not obvious. The UNFCCC being part of the UN, only States would be able to participate. However, the EU consolidated its capacity to act externally by legislating internally, giving it a legitimacy in the negotiations, without creating new competences. Being the result of multilateralism, the EU evolved from a spectator to a global actor, being parties to the UNFCCC.

To sum up, subsection 1.1.2. identifies the emergence of international climate governance progressively structured the external environment of EU climate action. While multilateral climate regimes did not alter the internal allocation of competences, they imposed coherence, coordination, and compliance requirements that increasingly framed the Union's conduct on the international stage. At no stage did this process alter the distribution of competences under the Treaties; rather, it recalibrated the manner in which existing competences are exercised. As a result, international climate governance functioned as a constraining and orienting context for EU action, reinforcing the need for internal consolidation without generating new constitutional powers.

While the emergence of international climate governance progressively structured the external environment of EU action, it also raised the question of how the Union positioned itself within that evolving framework. This shift invites an examination of how sustained participation, coordination, and representation enabled the EU to consolidate its role on the international stage.

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152 Biermann, Frank. 2012. Curtain Down and Nothing Settled. Global Sustainability Governance after the 'Rio+20' Earth Summit. Earth System Governance Working Paper No. 26. Lund and Amsterdam: Earth System Governance Project.

153 Rumpala, Y. (2011). De l'objectif de «développement durable « à la gouvernementalisation du changement. Expressions et effets d'une préoccupation institutionnelle renouvelée en France et dans l'Union européenne. Politique européenne, (1), 119-153.

1.1.3. The emergence of the Union's role internationally: the rise of a global actor

This subsection examines the progressive consolidation of the EU's role in international climate governance. It demonstrates that, without creating new competences, the accumulation of climate commitments, institutional coordination, and coherent external representation reinforced the Union's capacity to act as a unified and credible participant in global climate negotiations.

For the purposes of this development, the legal significance of the COP framework lies not in political declarations as such, but in the normative pressure it generates it structures the Union's external commitments and reinforces the need for internal legal consolidation without creating new competences under EU primary law.

The Union's policies on the protection of the environment and against climate change are a dynamic construction, if not the most dynamic and influential globally, laying on around 700 acts of legislation.[154] It consolidated its position as a leader, firstly in 1992 when climate change became a legal issue to tackle internationally with the creation of the UNFCCC, in addition to the withdrawal of the United States in 1997 during the negotiations of the Kyoto Protocol stressed the Union's weight as a global actor. Indeed, the American Senate refused to ratify the Kyoto Protocol, ninety-five against, zero in favour. Not a single democrat senator voted in favour of the implementation of the Protocol.[155] The change of paradigm started the emergence of the EU as a new global actor. The European experience at the Copenhagen climate summit in 2009 led many to question the EU's role in contemporary global climate governance. Accordingly, in December 2009, the Copenhagen international conference brought together delegations from 193 states to negotiate an international agreement capable of effectively combating climate change. Called COP15, it was the 15th international conference between the 193 signatory states of the UNFCCC, ratified in 1992.

The Copenhagen Conference revealed the structural limits of a top down, binding approach to emission reductions. Despite the EU's ambitious position, resistance from major emitters prevented the adoption of a legally binding framework, highlighting the fragility of multilateral consensus and foreshadowing the subsequent shift towards a more flexible governance model."[156] In accordance with the 1992 framework convention, COP 15 recognized the three fundamental principles of an international

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154 Laurent Eloi, «La politique climatique européenne : vers une nouvelle ambition ? » (*European Climate Policy: towards a new ambition?*), 2019: http://ses.ens-lyon.fr/articles/la-politique-climatique-europeenne-vers-une-nouvelle-ambition

155 The New York Times, «Réchauffement. Les Chinois suivent le mauvais exemple américain «, in Courrier international n°840, 07/12/2006

156 Bone, G. (2010). The Copenhagen Global Summit on Climate Change: A View from the Ground. *Globalizations*, *7*(1–2), 313–317. https://doi.org/10.1080/14747731003593919

agreement on climate change:[157]

- *The precautionary principle*: activities likely to cause irreversible damage to the environment must be avoided, even if their effects are not established with certainty.
- *The principle of common but differentiated responsibilities*: industrialized countries must assume their responsibilities in the international effort in favour of sustainable development, considering the pressures they exert on the environment and the techniques and resources at their disposal.
- *The principle of the right to development*: the fight against climate change must not slow down the economic and human progress of developing countries.

The United States, the second emitter in the world of CO2 with 5902 Mt in 2009,[158] which had not ratified the Kyoto protocol, has set for the first time a quantified objective for reducing its GHG emissions: 17% compared to 2005 by 2020. This corresponds to a decrease of 4% compared to 1990, which is below the Kyoto objectives. The United States had a decisive role in the Copenhagen negotiations and their failure. Also, China, being the largest emitter of CO2 in the world with 6017 Megatons (Mt) in 2009 appeared to be one of the countries most concerned by this conference.[159] The EU adopted an ambitious position in the fight against global warming by proposing a reduction in its GHG emissions of 20% compared to 1990 by 2020. This rate could have reached 30% if the conference were successful.

Finally, Island states, composed of forty-seven nations grouped within AOSIS (Alliance of Small Island States), wanted to try to limit global warming to 1.5°C in 2050 compared to the level in 1950. Rising water levels would lead to disappearance of these states. Their political weight on the international scene was, however, very weak. The Copenhagen summit was doomed to fail, and the results remained a disappointment: the agreement was not legally binding, and it did not propose quantified objectives for reducing greenhouse gas emissions.[160]

The Durban conference saw the EU play a more active role and was central to launching the "Durban Platform" in 2011.[161] It is considered as a turning point, as the Parties acknowledged the need for a "fresh, universal, legal agreement to deal with climate change beyond 2020." During the second half of 2011, the Union announced its ruling to commit during the conference of Durban in a second phase of the Kyoto

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157 Rajamani, L. (2010). THE MAKING AND UNMAKING OF THE COPENHAGEN ACCORD. *The International and Comparative Law Quarterly*, *59*(3), 824–843. http://www.jstor.org/stable/40835435

158 UNFCCC (21 October 2009), *UNFCCC (Annex I) National GHG Inventory Data for the period 1990–2007*, UNFCCC,

159 Idem

160 Rajamani, L. (2010). THE MAKING AND UNMAKING OF THE COPENHAGEN ACCORD. *The International and Comparative Law Quarterly*, *59*(3), 824–843. http://www.jstor.org/stable/40835435

161 Rajamani, Lavanya. "The Durban Platform for enhanced action and the future of the climate regime." *The International and Comparative Law Quarterly* 61, no. 2 (2012): 501–18. http://www.jstor.org/stable/23279901.

protocol, if negotiations begin for a legally binding global agreement by 2015 which would mention the emissions reduction objectives pursued by all countries. It was perceived as a bold choice because this strategy risked encountering refusal from the United States and emerging countries, to lead to the cessation of negotiations on the future of the Kyoto Protocol and thus worsening the deficit of trust which weighed down the multilateral discussions. Amongst these international tensions, one may refer to the Indian press issued strong comments at the beginning of November, criticism of the EU, which it accused of not respecting the UN principle of "common responsibilities but differentiated."[162] It further indicated the position of the EU against it, by the singular alliance composed of India, China, the United Arab Emirates, the United States, Indonesia and South Korea. Factually, the Durban conference almost ended by a failure.[163]

Three elements made it possible to find a positive outcome:[164]

1) China, wishing not to appear responsible for a halt to the negotiations, changed its position: at the start of the second week of the conference, it accepted the idea of a global agreement that would come to fruition from 2020 (which would allow it by then not to alter its economic growth, necessary to continue its development dynamic) and which could be binding,[165] provided that a second period of the Kyoto Protocol is open;
2) Following this statement, American Representative Todd Stern indicated that the United States was ready to support the European roadmap.
3) Last decisive element was the support the EU received from around a hundred countries, including of the African Union, least developed countries, and members of the AOSIS which largely belonged to the G77.

These States, being directly threatened by the consequences of climate change have recalled in Durban, alongside the EU, their desire to move forward as quickly as possible in the fight against climate change.[166]

The previous EU negotiating mandate aimed at reaching a global climate agreement by 2015 – which was achieved with the ratification of the Paris Agreement by the EU and its Member States.

As a result, the absolute global emission reduction targets are replaced by the infamous NDCs. Admittedly, if the Paris Agreement has the legal status of an international treaty, it creates legal obligations for all the countries parties that signed and ratified. However, the level of NDCs and respect for their content are not legally binding.

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162 As established in the Copenhagen Summit.

163 Bodansky, D. (2016), The Legal Character of the Paris Agreement. RECIEL, 25: 142-150. doi:10.1111/reel.12154

164 Idem

165 Rajamani, L. (2012). THE DURBAN PLATFORM FOR ENHANCED ACTION AND THE FUTURE OF THE CLIMATE REGIME. *The International and Comparative Law Quarterly*, *61*(2), 501–518. http://www.jstor.org/stable/23279901

166 Idem

NDCs are only a political commitment.[167] Parties are assumed to follow a different effort-sharing approach. The quantification of NDCs must be in accordance with Paris Agreement's mitigation but also, with mitigation and equity goals relying on a vast array of interpretations of distributive justice.[168] A bottom-up approach was preferred in the Paris Agreement, with countries emphasizing that it would enable communities to transmit local and indigenous knowledge, information on vulnerability, needs and capacity gaps to the national level, so that national policies and plans truly reflect local priorities and needs and help develop the capacities of actors at all levels.[169]

It was then crucial to shift from proposals of voluntary reductions to a binding effect for the level of NDCs at the EU level, as the EU was the organization with the most extensive policies on the topic at the moment, yet also one of the biggest contributors to the production of greenhouse emissions.[170] Ranked top 3 emitters in 2017, the Union's awareness in the fight against climate change drastically grew, alongside the adoption of the Paris Agreement of 2016.[171]

The evolving legal understanding of nationally determined contributions further reinforces this external normative pressure. In its Advisory Opinion of 23 July 2025, the ICJ clarified that, while the Paris Agreement preserves the nationally determined character of mitigation contributions, the discretion of States is not unlimited.[172] The Court held that the formulation, updating, and implementation of NDCs are subject to binding *obligations of conduct* under international law, assessed against an objective standard of due diligence and informed by the best available scientific evidence.[173] Although NDCs do not constitute *obligations of result*, their content must be progressive and compatible with the 1.5°C temperature goal, and a failure to act with the required level of diligence may engage State responsibility.[174] This clarification does not alter the distribution of competences within the EU legal order; rather, it strengthens the

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167 Bodansky, D. (2016), The Legal Character of the Paris Agreement. RECIEL, 25: 142-150. doi:10.1111/reel.12154

168 Winkler, H., Höhne, N., Cunliffe, G. & Maria, J., de V. C. Countries start to explain how their climate contributions are fair: more rigour needed. *Int. Environ. Agreements Polit. Law Econ.* **18**, 1–17 (2017).

169 Robiou du Pont, Y., Meinshausen, M. Warming assessment of the bottom-up Paris Agreement emissions pledges. *Nat Commun* **9**, 4810 (2018). https://doi.org/10.1038/s41467-018-07223-9

170 See Annex 1.

171 See Annex 1.

172 International CJEU, *Obligations of States in respect of Climate Change*, Advisory Opinion, 23 July 2025, paras 174–176, 246, 280: affirming that States' climate obligations under the Paris Agreement and customary international law are obligations of conduct assessed according to a duediligence standard, informed by the best available science

173 International CJEU, *Obligations of States in respect of Climate Change*, Advisory Opinion, 23 July 2025, paras 175–176, 283–286: confirming that NDCs remain nationally determined and are not obligations of result, but that their content is legally constrained by due diligence, progression, and compatibility with the 1.5°C objective

174 Le Moli, G. (2025). *The ICJ Advisory Opinion on Climate Change and the Paris Agreement*. Revue européenne du droit.

external normative framework within which the Union acts. In this sense, the ICJ Opinion contributes to the legal densification of the Paris regime and reinforces the rationale for the EU's internal consolidation of climate objectives through EU Climate Law, without creating new Union competences.

As such, the adoption of EU Climate Law resulted in the enshrinement of climate neutrality as a new Union's objective. The text of the regulation reads as follows, in its recital 20: "all Member States should pursue the Union-wide 2050 climate-neutrality objective collectively, and Member States, the European Parliament, the Council and the Commission should take the necessary measures to enable its achievement. Measures at Union level will constitute an important part of the measures needed to achieve the objective."[175] It sets another example of the Union's practice to internalize external commitments to consolidate them. Applied to EU Climate Law, the Union's objective is to grant a stronger legal strength to the Paris Agreement throughout its integration into the EU legal framework.

Against this background, the adoption of EU Climate Law represents the internal consolidation of externally generated normative constraints. By enshrining climate neutrality as a Union objective, the Regulation strengthens the legal force of the Paris framework within the EU constitutional order, without generating new competences.

To sum up**,** subsection 1.1.3. highlights the constitutional nature of the competence regarding climate policies is inherent to its external construct. Indeed, the very foundation of Union's environmental policies, and tackling climate change, are to be found internationally.[176] The adoption of the regulation implementing EU Climate Law was made possible through external dimensions the EU acted and asserted itself as a global actor. It was then made possible to internally consolidate legislations related to climate policies with a renewed legal strength.

EU's climate action initially evolved within an externally structured environment shaped by international climate governance and sustained participation in multilateral regimes. However, the effectiveness of this external engagement ultimately depended on the Union's capacity to consolidate climate objectives internally within its constitutional framework. This shift from external influence on internal consolidation marks the next stage in the climatization of the EU's constitutional order, which is examined in the following section.

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175 Recital 20, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law') : "The Union-wide 2050 climate-neutrality objective should be pursued by all Member States collectively, and Member States, the European Parliament, the Council and the Commission should take the necessary measures to enable its achievement. Measures at Union level will constitute an important part of the measures needed to achieve the objective."

176 Jordan, A.J. and C. Adelle (ed.) (2012) Environmental Policy in the EU: Contexts, Actors and Policy Dynamics (3e).

1.2. The "climatization" of the EU's constitutional framework: an internal consolidation

Subchapter 2 examines how climate objectives were progressively consolidated within the EU's constitutional framework at the internal level. It demonstrates that, without modifying the allocation of competences laid down by the Treaties, climate considerations were integrated through constitutional principles, policy coordination requirements, and interpretative practices shaping the exercise of Union action.

EU Climate Law achieves a consolidation of the "climatization" of the EU's constitutional framework by enshrining climate neutrality as a legally binding Union objective under secondary law, which must be integrated across and upon Union action. This means that climate action is no longer a peripheral or sectoral policy, but a central constitutional commitment with constitutional effects. The regulation requires all EU institutions and Member States to align their policies and legislation with the climate neutrality goal, thereby embedding climate considerations into the very fabric of EU law and governance.

The "climatization" of the EU's constitutional framework became an internal consolidation by the multiplication of legislations reinforcing Union's policy in climate-related issues. EU environmental policy is commonly dated to the Paris Summit of October 1972, which prompted the first Environmental Action Programme, while at global level the Stockholm Conference (1972) marked the first major international consolidation of environmental concerns .It is only in 1987 through the European Single Act that the title "Environment" was added into primary law.[177] The notion of sustainable development was introduced for the first time in 1997 through the adoption of the Treaty of Amsterdam and then consolidated by the Lisbon Treaty in 2009. It implies that any additional legal reinforcement had to be consolidated within the Union's legal framework, through primary law.

The Lisbon treaty made limited but significant changes: it introduced the mention of "climate change." Before the Lisbon treaty, it did not mean that the EU did not take any action against climate change. Beyond its legal effects, the integration of climate objectives also performs a function of institutional legitimation, in a similar way of a *justice done and seen to be done*.[178] By embedding climate protection within its legal framework, the Union reinforces its credibility both externally and visàvis its citizens, signalling that EU integration extends beyond market regulation to the pursuit of collective public goods. This dynamic has accompanied EU climate action since the late 1980s, reflecting not only environmental ambition but also the construction of the

177 No legal definition of the word environment was enacted until the Directive 27/1985 (85/337) on the assessment of the effect of public and private projects objects on the environment. Article 3 provided a non-exhaustive list of what the environment could be: "human beings, fauna, and flora; soil, water, climate, and landscape; the interaction between these different factors; material assets and the cultural heritage.

178 This dictum was laid down by Lord Hewart, the then Lord Chief Justice of England in the case of Rex *v. Sussex Justices,* [1924] 1 KB 256.

Union as a political community. Indeed, since the late 1980s and early 1990s, the EU was a big actor in the fight against climate change. However, it is also for institutional and political reasons: acting to protect climate was the way not only to increase its legitimacy on the international scene but also towards the EU citizens, as the Union was not only a market and an economic entity but also a political community as well.

The Lisbon Treaty added a new objective: *the fight against climate change*.[179] In 2010, the Union dedicated the Commissioner to the Action for the Climate to the head of a Directorate General for the action to the Climate (DG CLIMA), in addition to the Commissioner for the Environment.

Defined as a shared competence in Article 4 TFEU, the only mention in the Treaties of the Union is to be found at the letter of Article 191. Interestingly, in Article 191 the Union is bound to solely contribute to the promotion of measures at the international level to "deal with regional or worldwide environmental problems", adding "in particular combating climate change."[180] The mere mention of a climate-related policy is directed at external relations, and the obsolete status of this provision was confirmed by the very adoption of EU Climate Law, as a central, cross-cutting and trans-boundary policy, shaping the future policies of the EU. EU Climate Law elevates climate neutrality to a binding objective for the entire Union, integrating it into the EU's legal architecture at the highest level. Climate law extends beyond the traditional scope of environmental protection, by nature, impacting drastically other areas of the EU.[181]

Although climate-related regulation is falling under the scope of Article 191 TFEU that defines Union's environmental policies[182], so far, the legal basis referred to the adoption of EU Climate Law, as all climate-related legislature, has been Article 192.1

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179 Article 191 TFEU: "Union policy on the environment shall contribute to pursuit of the following objectives: preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources, promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."

180 Article 191.1 TFEU: "Union policy on the environment shall contribute to pursuit of the following objectives: promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change."

181 Recital 25, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law') : "the European Council, in its conclusions of 12 December 2019, stated that all relevant Union legislation and policies need to be consistent with, and contribute to, the fulfilment of the climate-neutrality objective while respecting a level playing field, and invited the Commission to examine whether this requires an adjustment of the existing rules."

182 Joined Cases C-164/97 andC-165/97 Parliament v Council ECLI:EU:C: 1999:99, para 16.

TFEU, which only displays procedural steps.[183] There is no mention of Article 191 TFEU in the Regulation. The article indicates the complex and various nature, impact, and implications EU Climate Law is rising. Even the choice of words is subject to interpretation. The regulation is called EU Climate Law and seems to intend to apply over the Union's legal and territorial boundaries.

Nonetheless, the practical and now legal distinction made between environmental protection and the fight against climate change allows for a reinforcement of climate-related legal instruments. When focusing on EU Climate Law and Article 191, they are narrower than environmental policies. Indeed, the policies taken to mitigate climate change will benefit from the regulation, besides being a great visibility and stakeholders' engagement (public, private sectors, citizens, NGOs, with compelling labelling), a clearer set of tools to help tackling climate change. Nonetheless, in an equivalent manner of environment being a legal laboratory, climate law is also one, foreshadowing the expression that it is only through practice that one's will discover other implications and practicalities.

As of now, a declination of the Union's policy regarding environmental protection, the institutional change promised by the entry into force of EU Climate Law seems to diminish the impact itself of having a "law of all laws"[184] mentioned in a list under environment policies. This contradiction displays the inadequacy of the current formulation of Article 191 TFEU and points, first, to the limits of interpretative or functional "rewriting" through secondary law, and ultimately to the need for a formal Treaty amendment. Indeed, as climate change is distinguished as being a new objective of the Union, impacting other relevant areas of competences of the Union, the question of whether climate action may give rise to forms of functional exclusivity—particularly in external action—deserves further examination (see Chapter 2 and Part II). The second tense will be developed in the next chapter of the research about the content, aims, and scope of EU Climate Law.

1.2.1. EU Climate Law: Climate change within the framework of EU environmental policy

Subsection 1 examines EU Climate Law as a central instrument for the internal consolidation of climate objectives within EU environmental policy. It demonstrates that, rather than creating new competences, the Regulation operationalises climate neutrality and emission reduction targets within the existing constitutional framework

183 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law'): "Having regard to the Treaty on the Functioning of the EU, and in particular Article 192(1) thereof (…)"

184 Kate Abnett (Reuters), "Climate "law of laws" gets European Parliament's green light," June 24, 2021: https://www.reuters.com/world/europe/climate-law-laws-gets-european-parliaments-green-light-2021-06-24/

governing environmental action under the Treaties.

EU Climate Law enshrines climate neutrality as a legally binding Union objective under secondary law, requiring climate considerations to be integrated across Union action. It exposes the internal tension within Article 191 TFEU, hence highlights the need for an innovative interpretation of this article or, alternatively, legislative clarification through secondary law.[185] As such, it would benefit from clarification or consolidation in order to better reflect the differentiation between environmental protection and climate neutrality objectives. The shift, instead of a disequilibrium, would intensify coordination and constrain Member State discretion within areas governed by dense Union common rules.

In its current formulation, Article 191 TFEU would benefit from clarification or consolidation in order to better accommodate the differentiation between environmental protection and climate neutrality objectives. The spill-over implied by the application of EU Climate Law aims for a substantive change of scope to implement Article 191 in a new and updated version.

Indeed, the great(est) novelty brought by EU Climate Law is the inscription of the climate-neutrality as a binding objective for and on the Union.[186] However, it is not the only vagueness or source of contradiction. For instance, Article 191 TFEU includes into the Union's policy on the environment measures "combating climate change."[187] It means that if not sacralised, EU Climate Law promoting climate-neutrality, acquires a normative weight comparable to other transversal objectives guiding Union action, without altering the hierarchy established by the Treaties.[188]

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185 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law'): "Having regard to the Treaty on the Functioning of the EU, and in particular Article 192(1) thereof (…)"

186 Recital 7, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

187 Article 191 TFEU: "1. Union policy on the environment shall contribute to pursuit of the following objectives: "(…) promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change."

188 Article 5.4, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law') : "Member States shall adopt and implement national adaptation strategies and plans, taking into consideration the Union strategy on adaptation to climate change" and recital 20 of the Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law') : "The Union-wide 2050 climate-neutrality objective should be pursued by all Member States collectively, and Member States, the European Parliament, the Council and the Commission should take the necessary measures to enable its achievement. Measures at Union level will constitute an important part of the measures needed to achieve the objective."

So far, Article 191 TFEU was analysed in parallel with Article 11 TFEU.[189] Article 11 TFEU aims to provide for a legal duty to integrate environmental protection standards and requirements whilst shaping and implementing other policies and activities of the Union.[190] As such, it may explain why EU Climate Law may be referred as the law of all laws, as its reading must be done in parallel with the other objectives of the Union listed in Articles 2 and 3 TEU, which are the pillars on which the EU was founded.[191] The label "Climate Law" reflects the transversal ambition of the instrument, but its constitutional relevance lies in its binding effects and integration duties rather than in nomenclature. It implies a broadening perspective that the EU aims to apply, also to its external relations as a governing principle, similarly to the ones listed in Articles 2 and 3 TEU. Therefore, by enshrining climate neutrality as a new Union's objective, EU Climate Law reaffirms its particular legal nature.

The regulation gives the Commission significant powers to monitor, assess, and recommend actions, although the actual implementation and many administrative powers remain with the Member States. While EU Climate Law strengthens the role of the European Commission—granting it powers to monitor progress, assess national measures, and issue recommendations—the regulation does not create a complete centralization of authority. Instead, it establishes a dialectic relationship: the Commission acts as a coordinator and watchdog, but Member States retain substantial administrative powers, especially regarding the design and implementation of national climate policies. This balance reflects the EU's principle of subsidiarity and the shared competence in environmental matters, ensuring both Union-wide coherence and national flexibility.

The intrinsic protection provided for in the Regulation 2021/1119 on EU Climate Law seems to naturally distinguish it from Union's policies on environmental protection.[192] As the means of actions are left to the Member States, the regulation provokes more vagueness by Article 5.4 of the Regulation[193] implied by a competence shared be-

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189 Joined Cases C-164/97 andC-165/97 Parliament v Council ECLI:EU:C: 1999:99, para 16.

190 Sjåfjell, Beate, The Legal Significance of Article 11 TFEU for EU Institutions and Member States (November 24, 2014). Sjåfjell, Beate, The Legal Significance of Article 11 TFEU for EU Institutions and Member States (November 24, 2014). The Greening of European Business under EU Law: Taking Article 11 TFEU Seriously, Beate Sjåfjell and Anja Wiesbrock (eds), Routledge 2015, pp. 51-72; University of Oslo Faculty of Law Research Paper No. 2014-38; Nordic & European Company Law Working Paper No. 14-08, Available at SSRN: https://ssrn.com/abstract=2530006

191 Mangiameli, S. (2013). The EU and the Identity of Member States. L'Europe en Formation, 369, 151-168. https://doi.org/10.3917/eufor.369.0151

192 Zahar, Alexander, Climate Law, Environmental Law, and the Schism Ahead (February 11, 2020). Available at

SSRN: https://ssrn.com/abstract=3536096 or http://dx.doi.org/10.2139/ssrn.3536096

193 Article 5.4, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law') : "Member States shall adopt and implement national adaptation strategies and plans, taking into consideration the Union strategy on adaptation

tween the EU and its Member States. The regulation leaves significant administrative powers to the Member States in accordance with the principle of shared competence set out in the Treaties (Article 4 TFEU) and the principle of subsidiarity. Climate and energy systems vary greatly across the EU, and effective climate action often requires tailored national measures. By allowing Member States to determine the specific means of achieving Union-wide targets, the regulation respects national circumstances while ensuring collective progress toward climate neutrality.

Subsection 1.2.1. demonstrates that EU Climate Law operates as a central instrument for the internal consolidation of climate objectives within EU environmental policy. Rather than reallocating competences, the Regulation embeds climate neutrality and emission reduction targets into the existing constitutional framework, translating environmental objectives into binding benchmarks and governance obligations. In doing so, it confirms that the climatization of EU law proceeds through operationalisation and coordination within established Treaty limits, rather than through constitutional transformation.

While EU Climate Law consolidates climate objectives within the framework of EU environmental policy, its significance extends beyond sectoral integration. The following subsection therefore examines how this instrument operates as a constitutional catalyst, influencing the interpretation and coordination of Union action across the broader legal order.

1.2.2. EU Climate Law: a constitutional catalyst

Subsection 1.2.2 examines EU Climate Law as a constitutional catalyst within the Union's legal order. While the Regulation does not modify the allocation of competences laid down by the Treaties, it exerts a transversal influence by structuring the interpretation, coordination, and consistency of Union action across policy fields in light of binding climate objectives. In this sense, EU Climate Law operates as a framework of constitutional orientation rather than as an instrument of formal competence reallocation. The densification of internal climate rules may, however, produce functional effects on the exercise of Union action—particularly by constraining regulatory discretion and reinforcing coherence requirements—without prejudging the internal classification of competences. It is against this background that the potential implications of EU Climate Law for external action and competence exercise must be assessed.

In this perspective, EU Climate Law brings to the surface a structural tension within Article 191 TFEU:[194] climate neutrality is pursued through an environmen-

to climate change referred to in paragraph 2 of this Article and based on robust climate change and vulnerability analyses, progress assessments and indicators, and guided by the best available and most recent scientific evidence."

194 Article 191 TFEU (limiting Union environmental policy to objectives including "combating climate change", without providing for a quantified, longterm climateneutrality target);

tal legal basis that was not originally designed to carry a transversal, long-term, and quantified objective. This does not entail a Treaty revision, nor a formal reallocation of competences. Rather, it invites an assessment of how secondary law may clarify the articulation between environmental protection and climate neutrality objectives,[195] and how the densification of Union "common rules" progressively structures Member State discretion. It is precisely this densification that becomes legally relevant when assessing the external implications of EU Climate Law under the ERTA/Article 3(2) TFEU logic.[196]

The regulation does not introduce new, stronger enforcement mechanisms primarily due to the limits of EU competence in the field of climate policy and the need to respect Member States' regulatory autonomy. Instead, it relies on a framework of monitoring, reporting, and recommendations, backed by the possibility of infringement proceedings under Articles 258–260 TFEU if a Member State fails to fulfil its obligations. This approach seeks to balance effective Union oversight with respect for national autonomy, while still providing legal avenues to address non-compliance.

From a practical and institutional perspective, the progressive expansion of EU climate legislation raises the question of the evolution of the nature of the competence exercised in this field. While climate policy is formally situated within the shared competence on the environment, the accumulation of binding objectives, harmonised instruments, and extensive secondary legislation increasingly constrains Member State autonomy. In parallel, this evolution intensifies the need for a clearer and more explicit framework governing the delegation of powers to the Commission, in order to ensure transparency, accountability, and institutional balance in the implementation of EU Climate Law. Although the transformation of a shared competence into an exclusive one cannot be presumed and remains highly context dependent, the breadth and density of post 2020 Union common rules suggest a progressive narrowing of Member State discretion, and—externally—may strengthen arguments for Union exclusive competence under Article 3(2) TFEU in specific settings.

In external relations, exclusivity may arise under Article 3(2) TFEU where an envisaged international agreement is capable of affecting Union common rules or altering

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Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality, OJ 2021 L 243/1, Arts 2–4 (introducing a legally binding Unionwide objective of climate neutrality by 2050 on the basis of Article 192(1) TFEU).

195 Regulation (EU) 2021/1119, Recitals 1–4, 19–21: requiring the integration of the climateneutrality objective across Union policies and measures); see also Article 11 TFEU (integration principle), read in conjunction with Articles 2–4 of Regulation 2021/1119: demonstrating how secondary law structures the exercise of existing competences without Treaty amendment

196 CJEU, Case 22/70, *Commission v Council* (AETR), EU:C:1971:32, paras 16–22 (establishing that the adoption of common internal rules may preclude Member States from acting externally in the same field); CJEU, Opinion 1/03, EU:C:2006:81, paras 114–126: clarifying that exclusive external competence may arise where an international agreement is capable of affecting common Union rules, taking into account their scope, nature, content and foreseeable development; Article 3(2) TFEU, codifying the ERTA doctrine

their scope.[197] It appears from the *AETR* ruling that a competence, which initially was not attributed to the Community exclusively, can become so as it is exercised by the Community. In the present case, the implementation of the common transport policy by the Community, by establishing common rules of an internal nature (adoption of a regulation), had the effect of excluding a competing competence of the Member States throughout the transport sector. The CJEU, while considering that the regime of internal Community measures was inseparable from that of external relations, concluded that Member States were no longer entitled to establish international agreements in this area with third States.[198]

Recently, the CJEU recalled that under Article 3.2 TFEU[199], the Union has "an exclusive competence" for the conclusion of an international agreement when its conclusion may affect "common rules or alter their scope."[200] The Court highlighted that when there is a risk of common EU rules to be affected, it may have an effect on their "meaning, scope and effectiveness."[201] Therefore, the international agreement has to fall "to a large extent" within that already been covered.

Arguably, this test contained in *Joined cases C-626/15 and C-659/*16 has never been successful towards environmental conventions that are covering extensive aspects or trade agreements with environmental considerations.[202] For instance, in the *Opinion 2/15,*[203] the CJEU underlined that "the objective of sustainable development is now an integral part of the common commercial policy."[204] Generally speaking, the CJEU opinion interprets the scope of EU trade policy quite broadly. Thus, the CJEU maintains that the objective of sustainable development is an integral part of the common commercial policy and not of the EU's environmental policy alone, which falls under a shared competence between the Union and the Member States, following the terms of Article 4 of the TFEU. The CJEU took care to specify that the envisaged agreement aims to subordinate the liberalization of trade between the EU and the Republic of Singapore "on the condition that the parties respect their international obligations

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197 CJEU, Opinion of the Court (Full Court) of 7 February 2006. Competence of the Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of rulings in civil and commercial matters. Opinion 1/03. ECLI identifier: ECLI:EU:C: 2006:81

198 CJEU, Ruling of the Court of 31 March 1971. Commission of the European Communities v Council of the European Communities. European Agreement on Road Transport (ERTA). Case 22-70. ECLI identifier: ECLI:EU:C: 1971:32

199 Article 3.2 TFEU: "The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope."

200 Joined Cases C-626/15 and C-659/16. ECLI identifier : ECLI :EU :C :2018 :925 : § 110

201 Joined Cases C-626/15 and C-659/16. ECLI identifier : ECLI :EU :C :2018 :925 : § 114

202 Joined Cases C-626/15 and C-659/16. ECLI identifier : ECLI :EU :C :2018 :925

203 CJEU, Opinion of the Court of 16 May 2017, Opinion 2/15, ECLI:EU:C:2017:376.

204 CJEU, Opinion of the Court of 16 May 2017, Opinion 2/15, ECLI:EU:C:2017:376: § 166

in terms of (…) environmental protection."[205] Therefore, *joined Cases C626/15 and C659/16* illustrates two limits that matter directly for EU climate external action. First, the litigation confirms that disputes about whether the Union may act alone internationally often turn on *how the subject-matter is characterised* (exclusive/shared/complementary) and how that characterisation shapes external representation. Second, and more importantly for the *ERTA/Article 3(2) logic*, the Court's approach shows that even where the Union can invoke exclusivity arguments (including under the Common Fisheries Policy and Article 3(2) TFEU), the practical ability to act alone may still be constrained by the institutional and membership structure of the relevant international body (here, the CCAMLR[206] context), which can require Member State participation alongside the Union. Accordingly, the Joined Cases should not be read as a mechanical "trigger" transforming shared environmental competence into a fully exclusive competence. They therefore support a nuanced reading: regulatory densification may narrow Member States' room for external commitments, but "speaking with one voice" remains contingent on the legal basis and the procedural structure of the relevant international forum. The CCAMLR litigation thus illustrates that Article 3(2) TFEU operates as a constraint-based competence, not as an institutional shortcut.

However, if one applies the body of evidence set out in the Opinion 1/03 by the CJEU to climate-related convention, the test contains two key features:

- Same scope between the obligation in the agreement and in the internal legislation.
- Same objective as well unless the internal legislation provides only for minimum standards.[207]

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205 CJEU, Opinion of the Court of 16 May 2017, Opinion 2/15, ECLI:EU:C:2017:376: § 166

206 Commission for the Conservation of Antarctic Marine Living Resources - CCAMLR and the limits of automatic exclusivity. *A useful illustration of these limits is provided by the litigation concerning the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR).* In Joined Cases C626/15 and C659/16, Commission v Council, the Court examined whether the Union could act alone within the CCAMLR framework on the basis of exclusive external competence under Article 3(2) TFEU. While reaffirming that Union common rules may trigger exclusive external competence where an envisaged position is capable of affecting their scope or effectiveness, the Court emphasised that the practical exercise of such competence remains conditioned by the institutional structure and membership rules of the international organisation concerned. In the CCAMLR context, where decision-making takes place by consensus and participation is limited to States and regional economic integration organisations alongside their Member States, the Union's capacity to act autonomously was constrained by procedural realities requiring coordinated participation with the Member States. The CCAMLR cases therefore confirm that regulatory densification and ERTAbased exclusivity do not mechanically translate into unilateral Union representation, but operate within the concrete legal and institutional framework of the relevant international forum.

207 CJEU, Opinion of the Court of 19 March 1993. Opinion delivered pursuant to the second subparagraph of Article 228 (1) of the EEC Treaty - Convention Nº 170 of the International Labour Organization concerning safety in the use of chemicals at work. Opinion 2/91. ECLI identifier: ECLI:EU:C: 1993:106

Arguably, in this case which concerned an action for annulment by the European Commission, the CJEU considers that only the conservation of the biological resources of the sea ensured within the framework of the fishing policy is referred to in Article 3 §1 TFEU and that it does not fall within the exclusive competence of the Union only in this framework. It considers, moreover, that if the reflection document and the measures envisaged by the Union within the framework of the activities of the Commission for the Conservation of Fauna and Flora Antarctic marine regulations aim to regulate the activities of fishing vessels and go beyond the sole environmental protection, the latter nevertheless constitutes their main component. According to the Court, the fishing appears to be only an accessory purpose of the discussion document, and the measures envisaged. Therefore, the contested rulings fall not within the exclusive competence of the Union, but within the competence shared between the Union and its Member States under Article 4 §2(e) TFEU.

Opinion 1/03 refines the *ERTA/AETR* logic by clarifying how to assess whether an envisaged international agreement falls within the Union's exclusive external competence by virtue of existing Union rules. The Court stresses that any claim to exclusivity not expressly conferred must rest on a specific analysis of the relationship between the envisaged agreement and the EU legal rules in force, showing that the agreement is capable of affecting those rules.[208]

Crucially, the Court confirms that the areas covered by the agreement and by EU legislation need not coincide fully;[209] when applying the "area largely covered by common rules" approach, the assessment must consider not only the scope of EU rules but also their nature and content, and it must take into account not only the current state of EU law but also its foreseeable future development. The underlying rationale is to safeguard the uniform and consistent application of EU rules and the proper functioning of the system they establish.

Applied to EU Climate Law, *Opinion 1/03* supports a claim of functional exclusivity in external action rather than a formal "conversion" of internal shared competence into exclusivity. Climate policy remains anchored, internally, in shared competence under the environmental title; however, as the Union adopts increasingly dense "common rules" (targets, governance mechanisms, harmonised instruments), Member States' capacity to undertake external commitments that might affect those rules or alter their scope becomes progressively constrained under the same logic that *Opinion 1/03* articulates.[210] In other words, the relevance of *Opinion 1/03* for climate competence lies in its method: the closer the overlap in scope, objective, and regulatory structure between a climate-related agreement (or position in an international forum) and

208 CJEU, Opinion 1/03, Opinion of the Court (Full Court) of 7 February 2006, Competence of the Community to conclude the new Lugano Convention, ECLI:EU:C:2006:81, §§ 124–128.

209 CJEU, Opinion 1/03, ibid., ECLI:EU:C:2006:81, §§ 126–128; see also CJEU, Commission v Council (ERTA), Case 22/70, Ruling of 31 March 1971, ECLI:EU:C:1971:32, §§ 17–22.

210 N. Lavranos, "Opinion 1/03, Lugano Convention", Common Market Law Review, Vol. 43, No. 4, 2006, pp. 1087–1100.

Union common rules, the stronger the case for Union-exclusive external competence for that agreement or that aspect of external action—because fragmentation would endanger the uniform application and effectiveness of the Union's climate framework.

To sum up, subsection 1.2.2. demonstrates that EU Climate Law functions as a constitutional catalyst by exerting a transversal influence on the exercise of Union action. While leaving the allocation of competences unchanged, the Regulation operates as a reference framework for coherence and consistency, guiding the interpretation and coordination of EU policies considering binding climate objectives. In this sense, it confirms that the internal climatization of EU law proceeds through constitutional orientation and systemic integration rather than formal competence reconfiguration.

While EU Climate Law operates as a constitutional catalyst by orienting the interpretation and coordination of Union action, its influence is not without limits. The following subsection therefore examines the constitutional boundaries that constrain the expansion of Union competences through climate objectives, particularly in the sensitive field of external trade.

1.2.3. Constitutional limit on competence expansion through climate objectives in trade

Whereas Section 1.2.2. highlighted the expansive potential of regulatory densification, subsection 1.2.3. examines the constitutional limits that constrain the mobilisation of climate objectives within the EU's external trade policy. It demonstrates that, notwithstanding the transversal influence of climate considerations, the principle of conferral continues to circumscribe the Union's action, preventing climate objectives from serving as an autonomous basis for competence expansion in the field of trade.

While *Opinion 1/03* illustrates how dense Union climate rules may justify exclusive external action to preserve coherence, *Opinion 2/15* introduces an essential counterbalance by reaffirming that climate objectives cannot, by themselves, expand the scope of the Union's exclusive competence in external trade.

The CJEU has played a crucial role in determining the distribution of competences between the EU and its Member States. One of the key aspects of this role involves assessing whether a particular competence, initially shared between the EU and its Member States, has shifted to become an exclusive competence of the EU. This shift can occur when the EU has legislated extensively in a particular area, thereby precluding Member States from exercising their own competences in that area.

The test for determining whether a shift of competence has occurred involves several key elements:

1. *Existence of Common Rules*. The CJEU examines whether the EU has established common rules in a particular area. If such rules exist, Member States are generally precluded from taking actions that would affect these rules. This principle was established in the *AETR* ruling, where the CJEU held that the

implementation of common rules by the EU excludes the competence of Member States in that area.[211]

2. *Risk of Affecting Common Rules*. The CJEU also considers whether the actions of Member States could affect the common rules established by the EU. In the context of international agreements, the CJEU has held that the EU has exclusive competence if the conclusion of an international agreement by Member States could affect common rules or alter their scope.[212]
3. *Scope and Objective of the Measure*. The CJEU assesses whether the scope and objective of the measure in question align with the common rules established by the EU. This involves examining whether the measure falls within the same scope and pursues the same objective as the EU's internal legislation.[213]
4. *Practical Implications*. The CJEU considers the practical implications of the measure, including whether it would undermine the effectiveness of the EU's common rules. This involves assessing whether the measure would create inconsistencies or conflicts with the EU's objectives.[214]

In the context of climate law, the adoption of EU Climate Law has significant implications for the distribution of competences. The regulation on EU Climate Law sets ambitious targets for climate neutrality by 2050 and establishes a comprehensive framework for achieving these targets. This extensive legislative framework suggests a functional narrowing of Member State discretion, which may have relevance in external action but does not alter the internal allocation of competences. This distinction between competence, capacity, and power, which underpins the analysis of EU climate action, is synthesised in Diagrams 1 and 2.

The CJEU's test for determining the shift of competence is particularly relevant in this context. The EU Climate Law consolidates the EU's role in climate policy, potentially precluding Member States from taking independent actions that could affect the EU's common rules. This shift is further supported by the CJEU's emphasis on the need for coherence and consistency in the EU's external representation, as seen in cases such as *Commission v. Sweden*.[215]

Overall, the CJEU's test for determining the shift of competence involves a careful assessment of the existence of common rules, the risk of affecting these rules, the scope and objective of the measure, and the practical implications. In the context of climate law, this test underscores the EU's significant role in shaping and implementing climate

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211 CJEU, Ruling of the Court of 31 March 1971. Commission of the European Communities v Council of the European Communities. European Agreement on Road Transport (ERTA). Case 22-70. ECLI identifier: ECLI:EU:C: 1971:32

212 Joined Cases C-626/15 and C-659/16. ECLI identifier: ECLI:EU:C: 2018:925: § 110 and Joined Cases C-626/15 and C-659/16. ECLI identifier: ECLI:EU:C: 2018:925: § 114

213 CJEU, Opinion of the Court of 16 May 2017, Opinion 2/15, ECLI:EU:C:2017:376.

214 CJEU, Opinion of the Court of 16 May 2017, Opinion 2/15, ECLI:EU:C:2017:376: § 166

215 CJEU, Ruling of the Court (Grand Chamber) of 20 April 2010. European Commission v Kingdom of Sweden. Case C-246/07. ECLI: ECLI:EU:C: 2010:203

policy, potentially leading to a progressive narrowing of Member State discretion in external action under Article 3(2) TFEU.

The Paris Agreement only focuses on the reduction of greenhouse gas emissions. However, the Regulation on Climate law itself is an extensive reflection of the Paris agreement regarding its scope, meaning and incidentally its effectiveness (discussed in Part II and III of the research). Indeed, and contrarily to the directive aiming at integrating the Kyoto Protocol,[216] the nature of the legislative tool - the Regulation - has changed – it is a regulation aiming at providing the objective of climate-neutrality by 2050.[217] EU Climate Law internalises the objectives of the Paris Agreement within the EU legal order, without transforming the international commitments themselves into autonomous sources of EU competence.[218] It obliges the Member States to adopt tangible strategies to mitigate their GHGs with an efficient legal mechanism to monitor the implementation of national plans – the infringement procedure.

To sum up, subsection 1.2.3. demonstrates that climate objectives, while increasingly influential in shaping EU external action, remain constitutionally constrained in the field of trade. The analysis confirms that climate considerations cannot serve as an autonomous basis for competence expansion, as the principle of conferral continues to delimit the scope of Union action under the CCP. In this respect, trade law reveals the outer boundaries of the constitutional climatization process, reaffirming that climate ambition must operate within the Treaties' structural limits.

To sum up, section 1.2. identifies that the internal climatization of the EU constitutional framework proceeds through consolidation rather than transformation. EU Climate Law embeds climate objectives within environmental policy and operates as a constitutional catalyst by orienting coherence and consistency across Union action, while leaving the allocation of competences unchanged. At the same time, the limits identified in the field of trade confirm that climate objectives, however transversal, cannot override the principle of conferral. Internal consolidation thus emerges as a process of constitutional guidance and coordination, bounded by enduring structural constraints.

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216 Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market

217 Recital 7, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

218 Article 4.7, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law') : "the provisions of this Article shall be kept under review in light of international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement, including with regard to the outcomes of international discussions on common time frames for nationally determined contributions."

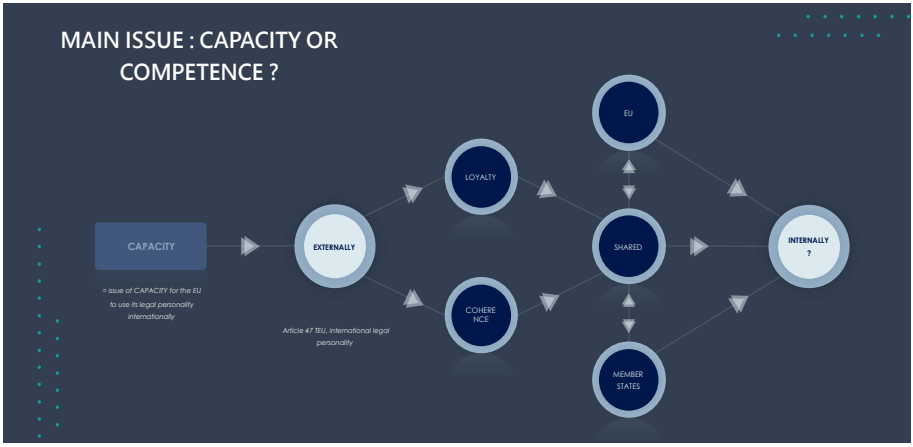

Diagram 1. *Main issue relating to the nature of a competence, capacity, or competence?*[219]

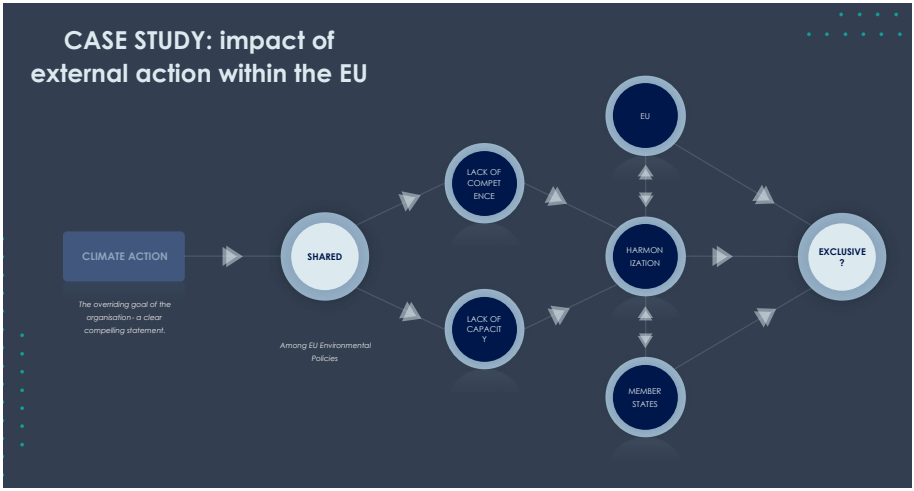

Diagram 2. *Case study: change of a nature's competence from EU external action on the internal framework*[220]

Synthesis – Chapter 1, Part I: the interaction of EU Climate Law on the vertical allocation of competences

The historical evolution of EU environmental and climate competences demonstrated how the Union has gradually moved from a predominantly national approach

219 Composed by the author

220 Composed by the author

to a more integrated and supranational model. EU Climate Law, with its binding targets and robust enforcement mechanisms, has acted as a catalyst for this transformation, challenging the traditional boundaries between EU and Member State powers. The institutional complexity of European climate governance, based on coordination rather than formal centralisation of competences, is illustrated in Annex 2.

The principle of conferral remains the cornerstone of competence allocation in the EU. However, the dynamic and cross-cutting nature of climate policy has revealed the limitations of a rigid interpretation of this principle. The increasing centrality of climate objectives has led to a more flexible and sometimes contested approach to the exercise of competences, with the European Commission assuming enhanced powers of coordination, monitoring, and enforcement.

Recent jurisprudence of the CJEU has played a decisive role in clarifying the vertical allocation of competences in the field of climate action. In particular, the Court's case law on the existence of common rules and the risk of affecting their scope—developed notably in the *ERTA* line of cases and reaffirmed in subsequent rulings—provides the analytical framework for assessing whether EU climate legislation may preclude parallel national action. Applied to EU Climate Law, this jurisprudence confirms that while climate policy formally remains a shared competence under Article 4 TFEU, the density and binding nature of Union-level regulation significantly constrain Member State discretion in areas covered by common rules.

At the same time, comparative national case law—such as the rulings of the Dutch Supreme Court in *Urgenda*, the Conseil d'État in *Grande-Synthe*, and *the Irish Supreme Court in Friends of the Irish Environment*—demonstrates that Member States continue to exercise residual autonomy in the choice of instruments and enforcement mechanisms, provided that national measures do not undermine the objectives or coherence of EU Climate Law. These rulings illustrate both the practical limits of EU harmonisation and the persistence of national constitutional specificities in the implementation of climate obligations.

The vertical impact of EU Climate Law therefore lies not in a formal transfer of exclusive competence, but in a functional reconfiguration of shared competence: EU law increasingly determines the objectives, timelines, and evaluative criteria of climate action, while Member States retain responsibility for implementation within those parameters. This reconfiguration sets the legal conditions for the subsequent analysis of horizontal competence allocation and the integration of climate objectives across the broader EU legal and policy framework.

To sum up, the evolution of EU Climate Law confirms neither an automatic nor a formal conversion of shared competences into exclusive Union competences. Rather, the final regulation reflects a deliberate choice to reinforce Union level coordination, monitoring, and evaluative functions, while preserving the shared nature of climate competence under the Treaties. The enhanced role of the Commission and the densification of common rules operate as functional constraints on Member State discretion, without altering the constitutional allocation of competences.

Chapter 1 has shown that the interaction between EU Climate Law and the

allocation of competences remains governed by the principle of conferral, with climate objectives shaping the exercise of Union action without altering constitutional boundaries. This analysis nevertheless reveals that the most significant effects of climate integration arise not from vertical competence redistribution, but from the horizontal interaction between climate objectives and other Union policies. Chapter 2 therefore turns to the impact of EU Climate Law on the horizontal repartition of competences, examining how climate considerations intersect with, influence, and are constrained by parallel policy domains within the EU legal framework.

CHAPTER 2. THE INFLUENCE OF EU CLIMATE LAW ON THE HORIZONTAL DISTRIBUTION OF COMPETENCES

While the vertical repartition of competences determines the relationship between the EU and its Member States, the horizontal distribution of competences structures the internal constitutional equilibrium of the Union. Anchored in the principle of institutional balance, this equilibrium requires that each institution act within the limits of the powers conferred upon it by the Treaties and in accordance with its role in the decision-making process.[221] The preservation of this balance is a central condition of the Union's democratic legitimacy and of the rule of law within the EU legal order.

The implementation of EU Climate Law places this equilibrium under renewed pressure. Regulation (EU) 2021/1119 does not formally redefine the distribution of powers between the European Commission, the European Parliament, and the Council. Nor does it alter the institutional architecture laid down by the Treaties. From a formal perspective, legislative initiative remains vested in the Commission, co-ruling in the Parliament and the Council, and judicial oversight in the CJEU. Yet, as with the vertical allocation of competences, this formal continuity conceals significant functional shifts.

EU Climate Law is characterised by a governance model centred on objectives, monitoring, and continuous adjustment. The pursuit of climate neutrality requires long-term planning, technical expertise, and the capacity to assess compliance over time. In this context, the European Commission occupies a central position.[222] It is

221 Art. 13(2) TEU ("each institution shall act within the limits of the powers conferred on it…") and its explicit link to institutional balance in CJEU caselaw: CJUE (Grande chambre), 14 Apr. 2015, *Council v Commission*, C409/13, esp. para. 64 (Art. 13(2) TEU "translates" the principle of institutional balance). See also S. Platon, "The principle of institutional balance: rise, eclipse and revival of a general principle of EU constitutional law," *Research Handbook on General Principles in EU Law*, Edward Elgar, 2022, pp. 136–155

222 Regulation (EU) 2021/1119 (European Climate Law), OJ L 243, 9.7.2021, pp. 1–17, in particular: Art. 6 (Union progress and measures) and Art. 7 (national measures), and the architecture of procedural steering that presupposes assessment/monitoring cycles. See also K. Kulovesi, S. Oberthür, H. van Asselt, A. Savaresi, "*The European Climate Law: Strengthening EU Procedural Climate Governance?*," *Journal of Environmental Law*, Vol. 36(1), 2024, pp. 23–42.

entrusted not only with proposing legislative measures, but also with monitoring national action, assessing progress, issuing recommendations, and initiating enforcement procedures where necessary. This accumulation of functions contributes to a concentration of steering power that blurs traditional distinctions between legislative initiative, executive implementation, and regulatory oversight.

Doctrinal analyses have increasingly drawn attention to this phenomenon.[223] Some approaches emphasise the functional necessity of Commission leadership in the face of complex and urgent policy challenges, portraying the strengthening of executive steering as a pragmatic response to the requirements of effective climate action. Other analyses adopt a more critical stance, raising questions about the preservation of institutional balance, the weakening of parliamentary influence, and the dilution of accountability. This chapter situates itself within this debate by examining not whether the Commission's role has expanded in formal terms, but how the implementation of EU Climate Law reshapes institutional balance through governance mechanisms rather than explicit competence transfer.

The enhanced role of the Commission[224] inevitably affects the position of the other institutions. The European Parliament, while formally reinforced through co-ruling at the legislative stage, remains constrained by the absence of a general right of legislative initiative and by the technical and procedural framing of climate governance. The Council continues to represent Member State interests yet operates within a framework increasingly structured by Union level objectives, assessments, and benchmarks. Judicial actors, particularly the CJEU, contribute more indirectly to this evolving equilibrium by delineating the limits of institutional action and ensuring respect for procedural guarantees. This accumulation of functions has significant constitutional implications. Although each task exercised by the Commission finds its legal basis in existing Treaty provisions, their combination contributes to a concentration of influence that blurs traditional distinctions between legislative initiative, executive implementation, and regulatory oversight. EU Climate Law thus exemplifies a shift towards governance through objectives and procedures, in which the Commission operates simultaneously as agenda-setter, coordinator, and supervisor of compliance. This evolution challenges classical conceptions of institutional balance by reinforcing executive steering at the implementation stage, where parliamentary involvement is structurally more limited.

Chapter 2 examines how the implementation of EU Climate Law affects the horizontal distribution of competences between EU institutions. It demonstrates that

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223 J. Pollex and A. Lenschow, When talk meets actions – return to Commission leadership in EU environmental policymaking with the European Green Deal, Journal of European Public Policy, Vol 32, No 9 (2025), 2197–2222, analysing the renewed leadership role of the European Commission under the European Green Deal and the Climate Law as a functional response to policy complexity and crisisdriven governance

224 Article 7, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

climate objectives have accentuated existing asymmetries within the institutional balance, strengthening the role of certain actors—particularly the Commission—while raising constitutional questions concerning accountability, delegation, and institutional equilibrium within the EU legal framework.

The implementation of EU Climate Law has not only transformed the vertical allocation of competences between the EU and its Member States, but has also profoundly affected the horizontal distribution of powers among the EU's own institutions.[225] This horizontal dimension refers to the evolving relationships and balance of authority between the European Commission, the European Parliament, the Council, and other institutional actors involved in the formulation, adoption, and enforcement of climate policy.[226]

EU Climate Law introduces new mechanisms for monitoring, reporting, and enforcement, which have significantly strengthened the role of the European Commission as the central coordinator and guardian of climate objectives.[227] This shift raises important questions about the legitimacy, transparency, and effectiveness of supranational intervention, as well as the risk of institutional imbalance or even a concentration of climate governance within the executive branch.[228] At the same time, the European Parliament's role as a democratic counterweight and the Council's function as a forum for Member States' interests are being redefined in light of the cross-cutting and urgent nature of climate action.[229]

This chapter explores the legal, institutional, and political implications of these horizontal shifts. It examines the empowerment of the Commission, the evolving function of the Parliament and Council, and the emergence of new forms of governance, such as independent administrative authorities and polycentric regulatory networks. Special attention is given to the challenges of ensuring democratic legitimacy, accountability, and the separation of powers in the context of increasingly complex and technical climate regulation.[230]

By situating the discussion within the broader context of EU constitutional law and

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225 Article 7, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

226 Pia Engelbrecht-Bogdanov, Green Deal Imbalance unveiled: who's accessing the EU institutions? 21 February 2024 : https://transparency.eu/green-deal-imbalance-unveiled/

227 Article 7, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

228 Jordan A, Huitema D, Schoenefeld J, van Asselt H, Forster J. Governing Climate Change Polycentrically: Setting the Scene. In: Jordan A, Huitema D, van Asselt H, Forster J, eds. *Governing Climate Change: Polycentricity in Action?* Cambridge University Press; 2018:3-26.

229 Pia Engelbrecht-Bogdanov, Green Deal Imbalance unveiled: who's accessing the EU institutions? 21 February 2024 : https://transparency.eu/green-deal-imbalance-unveiled/

230 J. Bétaille & H. Delzangles, (2014). Pour une autorité publique indépendante dans le domaine de l'environnement. AJDA, 37, 1-2 4.

recent jurisprudence, Chapter 2 aims to provide a nuanced understanding of how the horizontal dimension of competence allocation is being reshaped by the demands of climate policy and the pursuit of the Union's climate neutrality objective. The analysis within the broader constitutional framework of the Union aims to demonstrate that EU Climate Law operates as a catalyst for institutional rebalancing through practice, rather than through formal institutional reform. EU Climate Law brought a profound change in the Union's institutions, in addition to the transformations discussed above.

Chapter 2 focuses on the effect of the Regulation on EU Climate Law on the horizontal distribution of competences between EU's institutions. It proceeds from the constitutional principle of institutional balance to the concrete governance mechanisms through which EU Climate Law reshapes the distribution of influence between institution. First, the Commission has emerged as the centre of gravity of EU climate governance, raising the question of whether this visible empowerment risks evolving into a form of institutional pre-dominance (2.1). To the extent, that it is likely to result in a polarization of its function at other institutions and stakeholders' expense (2.2). Third, this evolution also reveals the need for counterbalancing mechanisms capable of preserving institutional equilibrium within EU climate governance (2.3).

2.1. Towards a polycentric model of EU climate governance: a functional asymmetry in favour of the Commission

Subchapter 2.1. examines the emergence of a polycentric model of EU climate governance and its implications for the horizontal balance of powers between EU institutions. It demonstrates that, while Treaty based competences remain formally unchanged, the operational demands of climate governance have reinforced the Commission's significant role, generating a *de facto* institutional imbalance in agenda setting, coordination, and implementation. EU Climate Law significantly reinforces the Commission's position within the institutional framework. Through its control over legislative initiative, delegated and implementing acts, monitoring mechanisms, and enforcement procedures, the Commission emerges as the central institutional actor in climate governance. This centrality, while formally consistent with the Treaties, produces tangible effects on the horizontal balance of competences by concentrating strategic and operational powers within a single institution. The result is a form of functional centralisation that reshapes interinstitutional relations without altering their formal legal basis.

The Parliament's influence, often portrayed as the Union's primary environmental advocate,[231] while formally reinforced at the legislative stage, appears structurally

231 Pia Engelbrecht-Bogdanov, Green Deal Imbalance unveiled: who's accessing the EU institutions? 21 February 2024 : https://transparency.eu/green-deal-imbalance-unveiled/

more limited at the implementation and monitoring phases of climate governance.[232] The European Parliament formally participates in EU climate legislation through the ordinary legislative procedure, yet its influence over the strategic orientation and implementation of climate policy remains structurally constrained. While parliamentary scrutiny and reporting obligations have increased, these mechanisms do not compensate for the Commission's monopoly over initiative and technical steering. As a result, the Parliament's role is strengthened procedurally but remains limited substantively, illustrating a disconnect between democratic participation and effective decision-making power in EU Climate Law. Member States must provide strategies to tackle climate change.

EU institutions are also bound by EU Climate Law. Within the horizontal institutional framework, the Council retains a decisive role as co-legislator, yet its capacity to shape climate policy is increasingly mediated by Commission driven processes. The technical complexity of climate regulation and the reliance on scientific benchmarks tend to favour executive steering over political negotiation. Consequently, while the Council formally participates in legislative decision-making, its influence over the operational content of EU Climate Law is partially displaced by upstream agenda setting and downstream implementation controlled by the Commission. In order to ensure that sufficient efforts are made to reduce and avoid emissions until 2030, the Regulation on EU Climate Law introduces a limit of 225 million tons of CO2 equivalent for the contribution of removals to this target.[233] The Union will also strive to achieve a higher volume of net carbon sinks by 2030.[234]

The Commission, initially, proposed a reduction in greenhouse gas emissions of 55% by 2030 in absolute value (for 40% to date), compared to 1990: members of the European Parliament (hereinafter MEPs) had at first reading voted for a reduction 60% (objectives broken down for certain sectors between States in proportion to their respective GDP with support to the countries with the lowest incomes). The current reduction plan therefore lands at 55%.

The Commission also proposes an interim climate target for 2040, if applicable, no later than six months after the first global stocktake carried out under the Paris Agreement.[235] At the same time, it will publish an indicative budget forecast for the Union's

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232 J. Pollex and A. Lenschow, When talk meets actions – return to Commission leadership in EU environmental policymaking with the European Green Deal, Journal of European Public Policy, Vol 32, No 9 (2025), 2197–2222, analysing the recentring of climate governance around the European Commission under the Green Deal and Climate Law, and noting the relative weakening of parliamentary influence during implementation and enforcement stages.

233 Commission press release, Commission welcomes completion of key 'Fit for 55' legislation, putting EU on track to exceed 2030 targets, 9 October 2023 : https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4754

234 Idem

235 Recital 30, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

greenhouse gas emissions for the period 2030-2050, together with the method used to establish it. This budget is defined as the indicative total volume of net greenhouse gas emissions (expressed in CO2 equivalent and providing separate information on emissions and removals) that should be issued during this period without jeopardizing the commitments taken by the Union under the Paris Agreement.[236]

The horizontal reconfiguration induced by EU Climate Law raises broader constitutional questions concerning institutional balance and accountability. Although the Treaties do not prohibit a strong executive role, the cumulative concentration of initiative, expertise, and enforcement within the Commission challenges the equilibrium envisaged by Article 13 TEU.[237] This evolution does not amount to a formal breach of institutional balance, but it nevertheless alters the conditions under which democratic control and interinstitutional checks are exercised.[238] Based on Article 7 of EU Climate Law, the Commission will be empowered to make recommendations to Member States whose actions are incompatible with the objective of climate neutrality, and they will have the obligation to follow up or justify their inaction, if necessary.[239] The Commission will also be able to assess the relevance of the path and measures taken at Union level.[240]

In 2022, the Commission adopted guidelines defining common principles and practices for the identification, classification and prudential management of material physical risks related to the climate in the context of planning, implementing development, application and monitoring of projects and programmes for projects.[241]

In addition, there are the concrete measures of the Climate Pack announced by the European Commission ("fit for 55" package):

- End of sales of new hybrid cars, gasoline, or diesels by 2050;
- Obligations for States to deploy recharging infrastructures;
- Integration of maritime and, in part, air transport, even buildings within certain limits, in the European carbon market (ETS);
- Fewer free emission allowances in this context;

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236 Commission press release, Commission presents recommendation for 2040 emissions reduction target to set the path to climate neutrality in 2050, 6 February 2024 : https://ec.europa.eu/commission/presscorner/detail/en/ip_24_588

237 Article 13 TEU: principle of institutional balance

238 B. de Witte, "Institutional Principles", in C. Barnard and S. Peers (eds), *EU Law*, Oxford University Press, 2020, pp. 93–97

239 Article 7, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

240 Commission press release, Commission presents recommendation for 2040 emissions reduction target to set the path to climate neutrality in 2050, 6 February 2024 : https://ec.europa.eu/commission/presscorner/detail/en/ip_24_588

241 Article 5, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

– Possible carbon tax[242];
– Carbon adjustment mechanism at the borders (import tax for countries with little environmental virtue), at the risk of highly foreseeable trade wars with certain countries.

Taken together, these measures illustrate a mode of climate governance in which the Commission not only proposes legislation but also structures implementation pathways, sectoral coordination, and compliance incentives.

Also, the Commission will be able to start sector-specific climate dialogues but also partnerships with key stakeholders, as shown in diagram 3. The aim will be to encourage sectors, by themselves, to create voluntary and indicative roadmaps to reach climate neutrality target by 2050.[243]

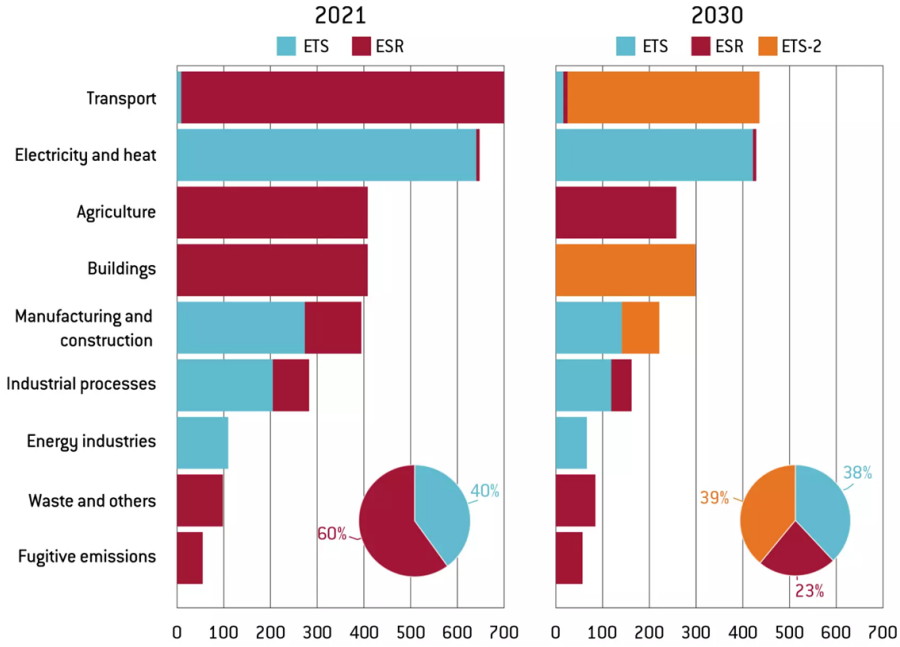

Diagram 3. *2021 EU emissions and 2030 EU targeted emissions by sector and scheme*[244]

242 Recital 26, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

243 Recital 7, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

244 J. Pisani-Ferry, S. Tagliapietra, G. Zachmann (2023) "A new governance framework to safeguard the European Green Deal", Bruegel, available at https://www.bruegel.org/policy-brief/new-governance-framework-safeguard-european-green-deal : ETS is the Emission Trading System; ESR is the Effort Sharing Regulation that sets national targets for emission reductions from road transport, heating of

While climate governance involves multiple actors and levels, its polycentric character does not prevent the emergence of a dominant coordinating centre—here, the Commission. The central position granted to the Commission is a way to ensure the feasibility of EU Climate Law.[245] Beyond this evident empowerment, the Regulation alters the distribution of influence among institutional and noninstitutional actors involved in climate governance.

The present analysis focuses on institutional balance within the Union, without denying that climate governance also reshapes the position of noninstitutional actors. The extent of this concentration will determine whether the Commission's role amounts to functional pre-eminence or risks evolving into a *de facto* monopolisation of climate governance. This will be assessed by examining the cumulative concentration of functions conferred on the Commission—agenda setting, assessment and monitoring, and follow-up or enforcement—and their effects on institutional balance and accountability.

2.1.1. The EU's climate governance inadaptability to a traditional separation of powers

Subsection 2.1.1. examines the structural tension between EU climate governance and a traditional model of separation of powers. It demonstrates that the complexity, urgency, and technical nature of climate action have rendered classical institutional distinctions increasingly ill-suited, leading to governance arrangements that blur legislative, executive, and coordinating functions, particularly to the benefit of the Commission.

As E. Salzberger and S. Voigt observe, more than a doctrine, the separation of powers has ended up being established as a dogma of modern constitutionalism.[246] It is also a key component to a democratic regime.[247] After having been elevated to the funda-

buildings, agriculture, small industrial installations and waste management. These sectors were not included until now in the EU Emissions Trading System (EU ETS) – although they currently generate about 60% of EU greenhouse gas emissions. In 2027, ETS-2 will complement the ESR by a second emissions trading system (ETS-2) for buildings, road transport and process heat, accounting for a quarter of total EU emissions. ETS-2 will thus push the share of EU emissions covered by emissions trading from 40% to 77% in 2030.

245 Commission press release, Commission presents recommendation for 2040 emissions reduction target to set the path to climate neutrality in 2050, 6 February 2024 : https://ec.europa.eu/commission/presscorner/detail/en/ip_24_588

246 Salzberger, E., Voigt, S. Separation of powers: new perspectives and empirical findings—introduction. *Const Polit Econ* **20**, 197–201 (2009). https://doi.org/10.1007/s10602-009-9076-6

247 UN criteria for democracies: the UN General Assembly and the former Commission on Human Rights endeavoured to draw on international human rights instruments to promote a common understanding of the principles and values of democracy. In 2000, the Commission recommended a series of legislative, institutional, and practical measures to consolidate democracy. In 2002, the Commission declared the following as essential elements of democracy: Respect for human rights and fundamental

mental essence of modern constitutionalism, the separation of power has become the criterion for classifying and adjusting political regimes. If the classic concept of the separation of powers persists for States, it tends to evolve to a polycentric governance for the EU today (A). It is necessary to first display the essence of principle before assessing its transposition at the EU level, and then its polarization with practical implications contradicting democratic values that the EU aims to stand for and protect. The climate policies, cross-cutting horizontally and vertically is advocating for a polycentric governance to avoid contradictory practices (B).

A. *The classic concept of the separation of powers*

Indeed, having a closer look at article 16 of the French Declaration of the Rights of Man and of the Citizen of 26 August 1789 stated peremptorily that: "*any society in which the guarantee of rights is not assured or the separation of powers determined has no constitution.*"[248] As B. Ackerman aptly observes, through this proclamation with a universal destiny, reprised in most democratic regimes, the separation of powers was to experience a messianic fortune to the point of being considered the *sine qua non* of any democratic society.[249]

The origin of the separation of powers can be traced back to the time of Aristotle, who distinguished three main operations: deliberation, command, and justice. These distinctions indirectly laid the groundwork for a theory that was to experience extraordinary growth.

However, one cannot attribute to Montesquieu the invention of the theory of the separation of powers, the real ideas of which were put forward by John Locke.[250] He maintains that power should be allocated to several organs in order to preserve freedom. It was under Montesquieu's impulse, who was president of the Bordeaux parliament, that the principle of the separation of powers was scientifically systematized. According to Montesquieu, there are three separate powers: the legislative, which makes laws, the executive, which applies them in general, and the judiciary, which applies them in a particular way.[251] Each of these three powers must be entrusted to a body that is separate and independent of the other two. Through this division, he wrote, "the powers being limited by each other, liberty, that is, government based on law, would

freedoms; Freedom of association; Freedom of expression and opinion; Access to power and its exercise in accordance with the rule of law; The holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people; A pluralistic system of political parties and organizations; The separation of powers; The independence of the judiciary; Transparency and accountability in public administration and Free, independent and pluralistic media.

248 "Declaration of human and civic rights of 26 August 1789" , article 16.

249 B. Ackerman. The new separation of powers, 2000, Harvard Law Review. https://www.palermo.edu/derecho/eventos/pdf/Ackerman_The_New_Separation_of_Powers_HLR.pdf

250 Locke, J. (1980). Second treatise of government (C. B. Macpherson, Ed.). Hackett Publishing.

251 Montesquieu, De L'Esprit des Lois (1748)

become possible."[252]

The basis of Montesquieu's thought is freedom through moderation. It was the idea of an ideal political regime, the prototype of which would be the British regime that he observed during a trip to Great Britain between 1729 and 1730.[253]

Following this trip, he published his master work entitled *De l'Esprit des Lois*, reserving chapter 6 of book 11 for the Constitution of England in which he set out the theory of the separation of powers. According to him, to resolve the contradiction between authority and freedom, there must be a balance of power. To achieve this objective, Montesquieu prescribes the separation in the exercise of certain functions between several holders. He states: "*It is an eternal experience that every man who has power is inclined to abuse it; it comes until it finds limits (...) so that power cannot be abused, it is necessary that by the arrangement of things, power stops power*."[254]

The principle, as systematized by Montesquieu, is built around a double idea: the distinction of organs and the specialization of functions on the one hand, and the independence of powers on the other.[255] For the implementation of the moderate government advocated by Montesquieu, it is necessary to distinguish between the different organs an executive body, a legislative body and a judicial body.

Alongside this distinction of bodies, a specialization of functions is crucial. In other words, the executive function must be exercised by the executive branch, in the same way that the legislative function is to be entrusted to the legislative branch, while the judicial function is entrusted to the judicial body. The author thus advocates the principle of prohibiting the accumulation of functions; that is to say, nobody should exercise more than one function.

In addition to this rule, the author postulates the idea of independence. This entails the ability for each body to conduct the missions assigned to it by the Constitution without constraint or pressure.[256] Each power must therefore be able to assume itself, not depending in any way on another power.

So grandly elaborated and even applied, the principle of the separation of powers is yet to be relativized. Transposed to the EU's concentration of powers to the Commission in regard to Climate Law, it complicates a classical democratic reading of EU climate governance.

B. *The contemporary conception of the separation of powers at the EU level*

Once considered a principle of distinction between traditional institutions part of the separation of powers theory and independence of powers, the principle of the

252 Montesquieu, De l'Esprit des Lois, 1748, book 1

253 Bacot, G. (2007). Montesquieu et la question de la nature monarchique de la Constitution anglaise. Revue Française d'Histoire des Idées Politiques, n°25(1), 3-31. https://doi.org/10.3917/rfhip.025.0003.

254 Montesquieu, De l'Esprit des Lois, 1748, book 6

255 Idem

256 Montesquieu, De l'Esprit des Lois, 1748, book 1

separation of powers has been truly transformed in practice by the EU and its Member States, thus implying a strong tendency towards the centralization of power in favour of the executive and collaboration between the powers brought about by other stakeholders involved, such as the European Parliament. The general strong trend towards the centralization of power in favour of the executive is not a coincidence. It has explanatory reasons: fighting against political instability with the scandals involving members of the EU Parliament or the 2024 EU elections and the rise of Eurosceptic parties,[257] financial instability such as in 2008 and 2020 during COVID-19,[258] social crises faced recently from the Agricultural riots.[259]

First of all, there are the imperatives of the fight against political instability.[260] To deal with security crises and with a view to ensuring the protection of the good practices locally, as well as the security of people and their property, the executive benefits from a strengthening of its powers. For this body, it is a question of taking sometimes *ultra vires* measures interfering in the field of competence of the other powers.

The centralization of powers is then caused by the need for the executive to deal with economic crises, because it has the administration considered as the secular arm of the executive.[261]

Finally, the Commission benefits from a centralization of power due to the increasing complexity of cross-cutting policies aspect of the EU's climate governance. EU Climate Law, or so-called EU Climate Law, aims to affect and be affecting all areas of policies, considered as normative integration (see Part II).[262]

This strong technicalisation of these problems leads in practice to the erasure of the other powers. It is a general characteristic of contemporary democracy. In practice, the exercise of legislative power shifted from the assembly to the government, which retained its explicit prerogatives while directing. The assembly becomes a chamber for the registration or ratification of bills tabled by the executive. The majority fact not only reconfigures the separation of powers but also favours the emergence of a new separation of powers.

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257 Chopin, T., Fraccaroli, N., Hernborg, N. & Jamet, J.-F., "Political dynamics ahead of the European Parliament elections: implications for the EU's political direction and policy priorities," *Policy Paper N. 302*, Jacques Delors Institute, May 2024

258 Jiahao Liu, Wenyu Shen, Financial instability in Europe: Does geopolitical risk from proximate countries and trading partners matter? Finance Research Letters, Volume 66, 2024, 105657, ISSN 1544-6123, https://doi.org/10.1016/j.frl.2024.105657.

259 Press release on the Strategic Dialogue on the future of EU agriculture : https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/agriculture-and-green-deal/strategic-dialogue-future-eu-agriculture_en

260 Understood as the opposite of the rule of law, as instability is seen as uncertainty and an aggravating factor for arbitrary.

261 Lynch, T. D., Omdal, R., & Cruise, P. L. (1997). Secularization of Public Administration. *Journal of Public Administration Research and Theory: J-PART*, *7*(3), 473–487. http://www.jstor.org/stable/1181606

262 Kate Abnett (Reuters), "Climate "law of laws" gets European Parliament's green light," June 24, 2021: https://www.reuters.com/world/europe/climate-law-laws-gets-european-parliaments-green-light-2021-06-24/

To sum up, subsection 2.1.1. demonstrates that EU climate governance operates in tension with a traditional model of separation of powers. The analysis shows that the technical complexity, urgency, and iterative nature of climate regulation have favoured flexible governance arrangements that combine normative orientation, coordination, and implementation functions. As a result, classical institutional distinctions have been progressively blurred in practice, reinforcing the Commission's significant role while leaving the formal institutional balance laid down by the Treaties unchanged.

The difficulty of reconciling EU climate governance with a traditional separation of powers has not resulted in institutional paralysis, but rather in the emergence of alternative governance arrangements. This evolution leads to the development of a polycentric model of climate governance, in which multiple institutional actors interact under the coordinating influence of the Commission.

2.1.2. Towards a polycentric governance for the EU Climate governance

Subsection 2.1.2. examines the emergence of a polycentric model of EU climate governance as a functional response to the limits of a traditional separation of powers. It demonstrates that climate action has increasingly relied on the interaction of multiple institutional actors, coordinated through flexible governance mechanisms, while consolidating the Commission's significant role in steering, monitoring, and ensuring consistency across the climate framework.

Time has given rise to a new separation of powers both horizontally and vertically at the EU level, and more specifically to a polycentric governance.[263] Polycentric governance refers not to a replacement of the classical tripartite model, but to the interaction of multiple institutional centres of authority operating across policy levels under shared objectives.[264] While EU Climate Law involves a plurality of institutional and administrative actors, it does not amount to a fully polycentric governance structure. Rather, it reveals an asymmetrical configuration in which decentralised implementation and dispersed participation coexist with strong central steering by the Commission. Polycentric governance thus functions less as a constitutional model than as an analytical lens highlighting the tension between governance pluralism and institutional centralisation in EU Climate Law.[265] Applied to the governance of EU Climate Law, with norms, rules and guidelines in the event of overlap between the different organs inside the EU (horizontally), it also involves the Member States (vertically).

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263 E. Ostrom, *A Polycentric Approach to Coping with Climate Change*, World Bank Policy Research Working Paper No 5095, 2009

264 Jordan A, Huitema D, Schoenefeld J, van Asselt H, Forster J. Governing Climate Change Polycentrically: Setting the Scene. In: Jordan A, Huitema D, van Asselt H, Forster J, eds. *Governing Climate Change: Polycentricity in Action?* Cambridge University Press; 2018:3-26.

265 A. Thiel, "Polycentric Governing and Polycentric Governance", in *Polycentrism: How Governing Works Today*, Oxford University Press, 2023

The role of the parliamentary opposition is to prevent, as far as possible, the omnipotence of the executive power in the EU's climate governance. The role of the CJEU will be to arbitrate, more than ever, the tumultuous crossings between policies and to counterbalance the concentration of powers granted to the Commission by a judicial review thoroughly performed.

Among other means, with the development of constitutionalism, a vertical separation of power is applicable to EU's general governance. It leads to the existence, alongside the Member States and below it, of independent administrative authorities contributing to the implementation of climate objectives alongside, and under the coordination of, the Commission. Decentralized local authorities thus benefit from real transfers of powers that are likely to sometimes call into question the unity of a State, in a traditional separation of powers. However, a polycentric governance would tend to avoid these consequences.

To sum up, subsection 2.1.2. demonstrates that EU climate governance has evolved towards a polycentric model characterised by the interaction of multiple institutional actors and governance levels. The analysis shows that this dispersion of tasks has not resulted in institutional fragmentation, but rather in reinforced central coordination, with the Commission acting as the pivotal node for steering, monitoring, and ensuring coherence. Polycentricity thus emerges as a functional adaptation to the demands of climate governance, consolidating the Commission's practical authority without formally altering the institutional balance established by the Treaties.

To sum up, section 2.1 demonstrates that the implementation of EU Climate Law has accentuated a horizontal imbalance of powers in favour of the Commission. The inadaptability of a traditional separation of powers model, combined with the emergence of polycentric governance arrangements, has progressively concentrated agenda setting, coordination, and implementation functions within the Commission. While this evolution does not amount to a formal reconfiguration of institutional competences, it reveals a de facto shift in institutional equilibrium driven by the functional requirements of EU climate governance.

The implementation of EU Climate Law has generated a de facto institutional imbalance, reinforcing the Commission's significant role within a polycentric governance structure. This evolution invites a broader constitutional reflection on how climate objectives are reshaping the traditional theory of separation of powers at EU level, which is examined in the following section.

2.2. Towards a polycentric model of EU climate governance: a "climatization" of the theory of separation of powers at the EU level

Subchapter 2.2. examines how the implementation of EU Climate Law challenges and reconfigures the traditional theory of separation of powers at EU level. It demonstrates that climate objectives have not displaced the principle of institutional balance, but have progressively 'climatized' it, giving rise to a polycentric governance model

in which functions are distributed, shared, and coordinated across institutions under evolving constitutional constraints.

This polycentric reading of EU governance provides the analytical framework necessary to understand how climate law is implemented beyond classical institutional hierarchies. This theoretical discussion is not pursued in the abstract, but in order to assess whether classical separation of powers models remain capable of explaining the institutional dynamics of EU climate governance. Montesquieu's theory today comes up against certain limits – whose are exacerbated at the EU level, in particular by the preponderant role of the CJEU to compensate the legislative voids (2.2.1.), but also by accepting courts as a counter-power, since they would represent a mixed government that would stand in the way of strict separation of powers and a "pure"[266][267] democracy (2.2.2.); and finally, by the emergence of an EU climate governance that operates through polycentric arrangements, far removed from the institutional premises of Montesquieu's theory (2.2.3.).

2.2.1. The empowerment of the judiciary branch: a direct contradiction to a classic separation of powers theory

Subsection 2.2.1. examines the evolving role of the judiciary in the implementation of EU Climate Law and its implications for the classical theory of separation of powers. It demonstrates that climate-related litigation and judicial review have strengthened the judiciary's functional influence, not by displacing legislative or executive competences, but by recalibrating institutional balance through intensified interpretative and supervisory functions.

Montesquieu, in his initial theory of the separation of powers, characterized "the power to judge as null"[268] and to the judges to be solely the "mouth of the law,"[269] so it should have no impact on the rest of the institutions of power. Indeed, according to him, if it were attached to the executive power, judges would have the strength of an oppressor. And conversely, if it were joined to the legislative power, the freedom of citizens would be arbitrary since the judge would be partly a legislator. Montesquieu's desire was therefore to separate these three powers and to restrict judicial power to an authority that was limited to settling a dispute by virtue of the laws established by the

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266 Le Pourhiet, A. (2011). Définir la démocratie. Revue française de droit constitutionnel, n° 87(3), 453-464. https://doi.org/10.3917/rfdc.087.0453.

267 Pierre Rosanvallon, *La démocratie inachevée – Histoire de la souveraineté du peuple en France*, Gallimard, 2000 ; Laurent Cohen-Tanugi, *La métamorphose de la démocratie française – De l'État jacobin à l'État de droit*, Folio, Gallimard, 1989.

268 D. Kelley, «The prehistory of sociology: Montesquieu, Vico, and the legal tradition «, in History, Law and the Human Sciences, Londres, Varior

269 Céline Spector. La bouche de la loi ? Les figures du juge dans L'Esprit des lois. Montesquieu Law Review, 2015, n°3, p. 87-102. ⟨hal-02476028⟩

legislator, without even being able to consider the different circumstances with which the judge is confronted. This vision of Montesquieu can be explained by a great distrust of judicial institutions in the eighteenth century. This mistrust was expressed in particular through the law of 16 and 24 August 1790.[270]

However, Montesquieu's vision clashes with a more contemporary vision of justice, especially at the EU level, with a justice asserting itself as a real power that can interpret the law and render judicial rulings on a case-by-case or casuistic basis. Courts are no longer limited to deciding a dispute under the law, but to dispensing justice by relying on the law, by interpreting it, but also by using subsequent rulings rendered, this is what is called jurisprudence.[271] As aptly observed by K. J. Alter, judiciary, in today's institutions, is thus revealed to be a real power and not an authority as Montesquieu wanted. Nonetheless, beyond the power it represents, the courts, and more specifically constitutional ones, are judged as "courts of counter-powers": the powers they exercise make it possible to constitute an obstacle to the other powers.[272]

Thus, granting Montesquieu that constitutional courts are part of his legacy can be difficult since the judiciary plays a different role from the one who had thought it was. There would therefore be a double vision as to the evolution of Montesquieu's theory. A first that accepts constitutional courts as an evolution of the theory of check and balances[273] that applies to contemporary political systems through constitutional courts, although the form is different from the one, he had imagined. A second vision that refuses to grant this inheritance of check and balances to Montesquieu since he had judged the power to judge to be null, and therefore to grant him this inheritance would be paradoxical, since this modern theory is opposed to his own. To transpose it to the EU, one must assess what character a must take precedence must take in order to grant it this heritage: the content or the form. If content is the main element of a theory, then constitutional courts are the result of the evolution of Montesquieu's thought. However, if form takes precedence, constitutional courts are in no way part of Montesquieu's theory. Nonetheless, this is not the only problem that arises. Indeed, granting constitutional courts as a legacy of a balance of powers also means accepting the existence of a mixed form of governance. It is an inevitable evolution to the traditional reading of the separation of powers theory.

To sum up, subsection 2.2.1. demonstrates the growing role of the judiciary in EU climate governance introduces a functional tension with the classical theory of

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270 D. Kelley, «The prehistory of sociology: Montesquieu, Vico, and the legal tradition «, in History, Law and the Human Sciences, Londres, Varior

271 Conway, G. (2012). EU law and a hierarchy of interpretative techniques. In *The Limits of Legal Reasoning and the European CJEU* (pp. 201–224). chapter, Cambridge: Cambridge University Press.

272 Alter, K. J. (1996). The European Court's political power. *West European Politics*, *19*(3), 458–487. https://doi.org/10.1080/01402389608425146

273 Gargarella, R. (2022). Checks and Balances: Combining "Institutional Means and Personal Motives." In *The Law as a Conversation among Equals* (pp. 124–135). chapter, Cambridge: Cambridge University Press.

separation of powers. Through intensified judicial review and climate-related litigation, courts have acquired an expanded interpretative and supervisory role that shapes the implementation of climate objectives. While this evolution does not amount to a formal redistribution of institutional competences, it reveals a recalibration of institutional balance in practice, reflecting the judiciary's increasing involvement in the governance of long-term and legally binding climate commitments.

The judiciary's enhanced role is only one dimension of the broader reconfiguration of institutional functions induced by EU climate governance. Beyond judicial empowerment, the combination of executive discretion, regulatory flexibility, and multilevel coordination gives rise to mixed governance arrangements, raising fundamental questions as to whether such models undermine classical democratic principles or instead reflect a pragmatic response to the realities of climate governance.

2.2.2. Climate mixed governance: as an obstacle to majoritarian democracy or realpolitik?

Subsection 2.2.2. examines mixed governance arrangements in EU Climate Law and their implications for democratic legitimacy. It demonstrates that the combination of executive discretion, technical expertise, and flexible coordination mechanisms raises tensions with classical models of democratic accountability, while simultaneously reflecting a pragmatic response to the complexity and urgency of climate governance.

The balance of powers, in Montesquieu's theory,[274] to divide legislative power between "a noble chamber" and "an elected chamber." Thus, this system was understood as a "mixed government" since it was composed both of nobles who alone constituted a Chamber, and of the people represented by elected representatives. Interests are therefore shared between these two Chambers, but this would be necessary in order to guarantee equality according to Montesquieu.

Today, mixed government would theoretically not exist. However, if one follows Montesquieu's thought and admit that the constitutional courts constitute a counterpower to the elected assemblies, then this system would be equivalent to a mixed government – or a souple separation of powers.[275] Since "*the will of the parliamentary majority of the moment, the democratic element, is controlled by a court composed of persons chosen because of their competence, and therefore by an aristocratic element,*""[276]

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274 Boris Mirkine-Guetzévitch, «L'exécutif dans le régime parlementaire », *RPP*, 1931, p. 158 & «La révision constitutionnelle », *loc. cit.*, 1933, p. 347, cités *in* Stéphane Pinon, «Boris Mirkine-Guetzévitch et la diffusion du droit constitutionnel », *Droits*, n° 46, 2007, p. 206 & 211.

275 Pierre Pactet & Ferdinand Mélin-Soucranamien, *Droit constitutionnel*, Paris, Sirey, 26e éd., 2007, p. 107.

276 Alexis de Tocqueville, Democracy in America, trans. Harvey Mansfield, and Delba Winthrop (University of Chicago Press, 2002), 675. All citations of Democracy in America are from this edition

so to accept this idea that constitutional courts constitute a counter-power is to accept a form of a mixed government. However, the problem is not the form of mixed government, but rather the "conscious acceptance of mixed government and the correlative rejection of democracy,"[277] so accepting mixed government would be an obstacle to democracy. Indeed, this situation generates a certain duality in the management of power.[278] On the one hand, democracy is based on the idea that the rulings adopted by the assemblies must reflect the will of the people, expressed by their elected representatives. Moreover, the participation of the constitutional courts in the political system created an aristocratic or technocratic control exercised by a minority of jurists, responsible for monitoring the actions of elected officials. This type of government is a mixed government where the power of democratically elected representatives is limited by an institution that has no direct electoral mandate, which can be seen as an impediment to true democracy.[279]

Thus, the contradiction in the structure between mixed government and democracy is highlighted in the current regimes of the Member States of the EU. While the Constitutional Courts play a role in the balance of powers – this role at the EU level is assumed by the CJEU, their political commitment raises questions about their legitimacy, particularly with regard to their position in a system that claims to be democratic. These difficulties highlight the complexity of integrating judicial institutions that would play a real role in a democracy while preserving the principle of the sovereignty of the people. By accepting Montesquieu's legacy, one is also accepting the idea of the existence of a mixed government with the existence of constitutional courts within democratic regimes, calling into question democracy and public sovereignty – especially when the greenest institution of the EU is deemed to be the European Parliament.

To sum up, subsection 2.2.2 demonstrates that mixed governance arrangements in EU Climate Law generate a structural tension with classical models of democratic accountability. The analysis shows that the reliance on executive discretion, technical expertise, and flexible coordination mechanisms dilutes traditional forms of democratic control, while simultaneously enabling the effective management of long term and complex climate commitments. Mixed governance thus emerges less as a normative deviation than as a pragmatic response to the functional demands of climate

unless otherwise noted. Future references to this edition will follow this format: DAII, part 4, chap. 8, 675.

277 Hansen, M. H. (2010). The mixed constitution versus the separation of powers: monarchical and aristocratic aspects of modern democracy. *History of Political Thought*, *31*(3), 509–531. http://www.jstor.org/stable/26224146

278 Hansen, M. H. (2010). The mixed constitution versus the separation of powers: monarchical and aristocratic aspects of modern democracy. *History of Political Thought*, *31*(3), 509–531. http://www.jstor.org/stable/26224146

279 Blum, Christian & Zuber, Christina. (2015). Liquid Democracy: Potentials, Problems, and Perspectives. Journal of Political Philosophy. 24. 10.1111/jopp.12065. In opposition to the liquid democracy theory which is defined as in between representative (election) and direct democracy (self-selection).

governance, reflecting a recalibration—rather than a rejection—of democratic principles within the EU legal order

While mixed governance arrangements may be justified as a form of institutional realpolitik, they also expose the growing gap between normative models of EU climate governance and its practical operation. This divergence calls for a broader assessment of whether the prevailing theoretical frameworks of EU governance remain adequate to capture the reality of an increasingly polycentric climate governance system, which is examined in the following subsection.

2.2.3. Towards an EU climate governance: a far-removed theory from the reality of a polycentric governance

Subsection 2.2.3. demonstrates that mixed governance arrangements in EU Climate Law generate a structural tension with classical models of democratic accountability. The analysis shows that the reliance on executive discretion, technical expertise, and flexible coordination mechanisms dilutes traditional forms of democratic control, while simultaneously enabling the effective management of long-term and complex climate commitments. Mixed governance thus emerges less as a normative deviation than as a pragmatic response to the functional demands of climate governance, reflecting a recalibration—rather than a rejection—of democratic principles within the EU legal order.

At the same time, the association of powers now seems to take precedence over the separation of the latter provided for by the practice made at the EU level. Indeed, the observation of the practical ineffectiveness of modern countervailing powers (A) seems to be intended to demonstrate the past – if not outdated – logic of the separation of powers (B).

A. *The observation of the practical non-existence of modern countervailing powers at the EU level*

Whether in the context of a parliamentary or presidential regime, the practical ineffectiveness of modern checks and balances is noted by a large part of the doctrine. However, this statement must be nuanced, in the sense that "the problem of counter-powers is the modern transposition, in a more complex sense, of Montesquieu's separation of powers."[280]

The parliamentary system, although it was the model of the separation of powers in the eighteenth century, is presented by legal writers as a regime with no to little checks and balances, because it was characterized by collaboration between the legislative and

280 F. Hourquebie, «Le contre-pouvoir, enfin connu «, Mélanges en l'honneur de Slobodan MILACIC. Démocratie et liberté: tension, dialogue, confrontation, Bruylant, 2008, p. 101.

executive powers, and this from the interwar period to the twentieth century.[281]

a) Example of Carré de Malberg findings[282]

As early as the 1920s and 1930s, Carré de Malberg thought of the parliamentary system as a system of association between the executive and legislative powers. In his book "Contribution to the General Theory of the State,"[283] he presents this type of regime as the "opposite" of a system of separation of powers and even speaks of an "organic fusion" between them. He thus made a reversal of the French doctrine of the time, which established a powerful relationship between the parliamentary regime and the separation of powers.

b) Example of René Capitant's observation[284]

Later, in 1934, it was the turn of the French jurist and politician René Capitant to thwart Montesquieu's theory. Comparing the practical application of the separation of powers in various states, he concludes in his book The Reform of Parliamentarism that "the parliamentary system is the opposite of the separation of powers." One may add that René Capitant is in the tradition of Boris Mirkine-Guetzevich[285] in this respect, who certifies that the essential characteristic of modern parliamentarism paradoxically lies in the preponderant role of the executive power. It therefore finds a tangible reasoning with the current practice of the distribution of powers and the preeminent role delegated to the Commission.

At the same time, a "presidentialist" system seems to be characterized not by a strict separation of powers, but by the collaboration of the latter, sometimes leading to an imbalance or disequilibrium of powers and an apparent ineffectiveness of counter-powers.

c) Example of the American regime[286]

The political system across the Atlantic is not exempt from a certain collaboration between the organs holding power. Thus, Julien Boudon,[287] in his book "The Separa-

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281 Lindseth, Peter L., 'The Interwar Crisis and the Postwar Constitutional Settlement of Administrative Governance', *Power and Legitimacy: Reconciling Europe and the Nation-State* (2010; online edn, Oxford Academic, 1 Jan. 2011), https://doi.org/10.1093/acprof:oso/9780195390148.003.0003

282 Carré de Malberg, R. (2008). Contribution à la théorie générale de l'Etat : Spécialement d'après les données fournies par le droit constitutionnel français. Tome premier/par R. Carré de Malberg... https://gallica.bnf.fr/ark:/12148/bpt6k9359q

283 Garner, J. W. (1922). Contribution à la Théorie Générale de l'Etat spécialement d'après les Données fournies par le Droit Constitutionnel français. Par R. Carré de Malberg. Tome premier, 1920. Pp. xxxvi, 837. Tome deuxième. 1922. Pp. xiv, 638. Paris. Librairie de la Société du Recueil Sirey, Léon Tenin. *American Political Science Review*, *16*(2), 322–324. Doi :10.2307/1943970

284 R. Capitant, La Réforme du parlementarisme, Paris, Recueil Sirey, 1934

285 Boris Mirkine-Guetzévitch, «L'exécutif dans le régime parlementaire », *RPP*, 1931, p. 158 & «La révision constitutionnelle », *loc. cit.*, 1933, p. 347, cités *in* Stéphane Pinon, «Boris Mirkine-Guetzévitch et la diffusion du droit constitutionnel », *Droits*, n° 46, 2007, p. 206 & 211.

286 Julien Boudon, La séparation des pouvoirs aux Etats-Unis, Pouvoirs n°143 - novembre 2012 - La séparation des pouvoirs - p.113-122

287 Idem

tion of Powers in the United States," highlights an interdependence of the different powers. Nonetheless, more dramatically, the legislative branch has been able to take on a predominant role in the United States, leading to a disruption of the balance of power and an ineffectiveness of the executive counter-power. Thus, Woodrow Wilson, asserting that the president and cabinet members are sometimes only "servants of Congress."[288] Nowadays, the executive power seems to impose itself to the detriment of the legislative power.[289] In general, American countervailing powers are struggling to make their voices heard and their practical effectiveness must be questioned.[290]

Thus, the application of the separation of powers is extremely far from the ideal of the original concept. The numerous transfers of powers from Parliament to the Government, because of the evolution of modern politics, make the separation of powers a myth, the very logic of which seems outdated in many respects.

B. *The outdated logic of the traditional separation of powers*

The theory of the separation of powers appears to be an outdated concept that is not well suited to modern political regimes, associated with "*party democracy*."[291] The application of the obsolete logic of eighteenth-century theory must evolve in order to be able to respond to the new objectives of contemporary political life. The objectives of modern regimes are deeply linked to the political developments that animate contemporary societies.

The logic of the separation of powers, developed at a time when parties in the modern sense did not exist, now seems outdated.

a) Example of the new organization of oppositions

"Modern and contemporary democracies have become "'party democracies' [...] so that the same party or the same coalition presides over the destiny of the chamber or chambers and the government."[292] Indeed, the government is no longer an opposition in Parliament, but is its "leading portion,"[293] in the words of Renaud Baumert. Thus, the classic separation of powers no longer makes sense today: the opposition no longer concerns the executive and legislative powers, but the majority in power and the

288 Wilson, W. (1885). *Congressional government: a study in American politics* [Dissertation]. https://archive.org/details/congressionalgov00wilsa

289 Sajó, András, and Renáta Uitz, 'The Executive Power', *The Constitution of Freedom: An Introduction to Legal Constitutionalism* (Oxford, 2017; online edn, Oxford Academic, 21 Dec. 2017), https://doi.org/10.1093/oso/9780198732174.003.0008

290 Jenkins, T. M., Buchbinder, L., & Buchbinder, M. (2024). Forces to Be Reckoned with: Countervailing Powers and Physician Emotional Distress during COVID-19. Journal of Health and Social Behavior, 0(0). https://doi.org/10.1177/00221465241281371

291 Renaud Baumert, »Le droit politique face à la Ve République «, le 06 juin 2019

292 Feldman, J. (2010). La séparation des pouvoirs et le constitutionnalisme. Mythes et réalités d'une doctrine et de ses critiques. Revue française de droit constitutionnel, n° 83(3), 483-496. https://doi.org/10.3917/rfdc.083.0483

293 Renaud Baumert, »Le droit politique face à la Ve République «, le 06 juin 2019

various parties of the minority.

Doomed to failure, must be renewed? The ideal model of the pure and simple separation of powers must be replaced by a new model that is not a myth and that perpetuates the principle, if not of the separation, at least of the balance of powers in today's societies.

b) Example of the constitutional judge as a necessary counterweight to power

In order to save the idea of the separation of powers, it seems necessary, following the example of Renaud Baumert, to "shift the gaze and return to an older conception of theory."[294] The "balance of powers" advocated by the liberals of the eighteenth century can now be ensured by constitutional justice, which is predominant in EU Member States. Following Montesquieu's idea that the sovereign should have a right of veto over the law, the constitutional judge is able to censure it. In addition, the interests of the constitutional judge diverge from those of the holders of executive power. This new opposition would thus give rise to a "renewed form of mixed government"[295] and the omnipotence of the majority would be counteracted, reinvigorating the principle of the balance of powers.

Thus, the expression "myth of the separation of powers" finds a new relevance in the ineffectiveness of the concrete application of the concept in contemporary societies.[296] Nevertheless, if the logic of the classical theory of the separation of powers seems well and truly outdated, the principles of balance and the necessary counterweight to power are still relevant in modern political regimes.[297]

Despite the existence of these various measures to mitigate or update the separation of powers, they remain a relevant criterion for categorizing distribution of competences and powers at the EU level.[298] Henceforth, the concrete application at the EU level for a climate governance calls for a polycentric form.

To sum up, the analysis demonstrates that prevailing theoretical models of EU governance struggle to fully capture the realities of climate governance in practice. The analysis shows that the classical separation of powers framework, even when adapted, remains only partially aligned with the operational logic of an increasingly polycentric climate governance system. The growing gap between normative theory and institutional practice thus reveals the limits of traditional constitutional categories in accounting for the functional, multi actor, and iterative nature of EU climate governance.

To sum up, section 2.2. emphasizes that the implementation of EU Climate Law has progressively 'climatized' the classical theory of separation of powers at EU level.

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294 Renaud Baumert, »Le droit politique face à la Ve République «, le 06 juin 2019

295 Feldman, J. (2010). La séparation des pouvoirs et le constitutionnalisme. Mythes et réalités d'une doctrine et de ses critiques. Revue française de droit constitutionnel, n° 83(3), 483-496. https://doi.org/10.3917/rfdc.083.0483.

296 Idem

297 Idem

298 Marcel J. Dorsch, Christian Flachsland; A Polycentric Approach to Global Climate Governance. *Global Environmental Politics* 2017; 17 (2): 45–64. doi: https://doi.org/10.1162/GLEP_a_00400

The empowerment of the judiciary, the rise of mixed governance arrangements, and the growing disjunction between theory and practice reveal a functional reconfiguration of institutional roles rather than a formal redistribution of competences. Polycentric governance thus emerges as a pragmatic constitutional response to the specific demands of climate action, recalibrating institutional balance and democratic accountability without displacing the foundational principles of EU constitutional law.

EU Climate Law is progressively "climatizing" the classical theory of separation of powers, exposing a growing gap between constitutional models and governance realities. This theoretical recalibration now calls for an examination of how polycentric climate governance is concretely materialised in practice through institutional mechanisms, procedures, and regulatory tools.

2.3. The materialization of a polycentric EU climate governance

Subchapter 2.3 examines how the polycentric model of EU climate governance materialises in practice through concrete institutional mechanisms and regulatory processes. Polycentricity is operationalised through instruments that allocate planning, monitoring, and implementation tasks across multiple actors and governance levels, while simultaneously organising these dispersed functions around a central coordinating node. In the EU climate framework, that node is the Commission: it proposes the normative trajectory, evaluates national measures, issues recommendations, and—where necessary—triggers compliance pathways. The section therefore analyses a structural paradox: polycentric arrangements designed to manage complexity may, in operation, reinforce executive steering and create accountability and implementation asymmetries. The first subsection identifies the principal shortcomings of the current framework (2.3.1.); the second connects these shortcomings to institutional imbalance and the limited capacity of existing counterweights to operate at the implementation stage (2.3.2.); and the third assesses whether the accumulation of governance functions risks producing a de facto concentration of authority at the Commission level, particularly through delegation and compliance mechanisms (2.3.3.).

Following the traditional reading of the separation of powers doctrine, a polycentric governance model, when applied to EU climate policy, challenges the underlying assumption of a clear and stable allocation of powers among institutions. Although it is a shared competence, the regulation on EU Climate Law tends to centralize the powers to the EU and more specifically to the Commission. These responses to this challenge will require a combination of changes in case law, initiative-taking legislative and regulatory action, institutional innovation, and increased awareness of these rights among citizens and judicial actors.

2.3.1. Inadequate nature of the EU climate governance: a failure in prospect?

Subsection 2.3.1. examines the structural limitations of the EU's polycentric climate governance model and its capacity to deliver effective climate outcomes. It demonstrates that, despite its flexibility and coordination mechanisms, the current governance framework reveals prospective failures linked to fragmentation, accountability gaps, and implementation asymmetries, which risk undermining the Union's climate ambitions without amounting to a formal breakdown of the constitutional order.

Originally, the EU was built through an economic dimension of the treaties. The European construction was therefore originally built on a vast market where competition is free.[299] The original objective of the Union explains why there are so many economic provisions within the treaties and why the normative power is therefore entrusted to economic regulatory bodies such as the High Authority, which has become the European Commission. If the original objective was the creation of a large market, then there would be no need for a democratic quality in the decision-making process, but for a logic of efficiency. Gradually, the EU has been transformed, moving from an economic Europe to a more political Europe. In hindsight, it is based first and foremost on economic ties, but not only. There are common values and standards that are the basis for the transition to a Europe that is as much political as economic. Moreover, one is forced to note that the departure of the United Kingdom through the Brexit procedure has strengthened the political holding of the EU through a stronger cohesion of the Franco-German couple.[300] This political transformation has been possible mainly by the presence of a strengthening of the power of the Parliament in the course of the political evolution of Europe.

It was then a question of the competences and the respective field of political powers. The author Hans Kelsen said: "The distribution of powers is the political core of the federalist idea."[301] The Treaty of Lisbon was a real innovation, as it clearly states the list of the Union's competences and its Article 1 § 1 of the TFEU[302] states "This Treaty shall organize the functioning of the Union and determine the areas, determination and procedures for the exercise of those competences". Article 14 TEU[303] states that "the European Parliament shall exercise, jointly with the Council, legislative, and budgetary functions. It exercises political control and advisory functions. It shall elect the President of the Commission."

As for any State, the main standard-setting function in the EU is the legislative

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299 Article 119 of the TFEU

300 KROTZ, Ulrich, SCHRAMM, Lucas, *An old couple in a new setting: Franco-German leadership in the post-Brexit EU*, Politics, and governance, 2021, Vol. 9, No. 1, pp. 48-58 - https://hdl.handle.net/1814/69725

301 Hans Kelsen, «La garantie juridictionnelle de la Constitution », *RDP*, 1928, p. 240 et 241.

302 Article 1 § 1 of the TFEU

303 Article 14 TEU

function, because it is through a legislative procedure that the main choices at European level are made. It can be said rather naively that Parliament is the democratic body around which democracy revolves in a political system.[304] The way to assess the democratic nature of this system is to look at the powers of the parliamentary. To conduct this study, it is necessary to start from Parliament in order to identify them. However, this is a doubly limited analogy, as the place of Parliament varies considerably from one system to another among the most well-known constitutional examples. One cannot say that one system is more democratic than another, because the parliamentary would have more power. Realities are more complex and call for nuance.

The new President of the Commission, Mrs Ursula Von der Leyen, wanted to make democracy the main theme of her mandate in her political guidelines for the European Commission from 2019 to 2024, the title of which was "a more ambitious Union, my programme for Europe."[305] Why make democracy the main focus of the new Commission presidency ? In most democratic Constitutions, Parliament remains the body where the right of legislative initiative belongs to it. The EU is breaking this code, which is quite common. Even though the Parliament is currently the only body elected by direct universal suffrage in the Union, the fact remains that it does not have the power to initiate legislation as such.[306] EU policy-making remains complex due to the EU's governance structure, which is characterised by several levels of intervention and a multiplicity of actors.[307] The stringent timeline shows an inadequacy with the lengthy process usually taken by the power of legislative, as shown in diagram 4. This power of legislative initiative belongs in principle to the European Commission, which is also the sole executive body of the EU.[308] It is in this function in particular that Parliament has constantly claimed and acquired greater powers. However, as the new President of the European Commission said, *"I am convinced that we should give a greater role to the European Parliament, which is the voice of the citizens. I am in favour of a right of initiative for the European Parliament*."[309] Parliament seems to suffer from the absence of this power.

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304 Cameron, Maxwell A., 'Democracy Without the Separation of Powers?', *Strong Constitutions: Social-Cognitive Origins of the Separation of Powers* (New York, 2013; online edn, Oxford Academic, 26 Sept. 2013), https://doi.org/10.1093/acprof:oso/9780199987443.003.0007, accessed 25 Nov. 2024.

305 Sam van der Staak, Politico, In her State of the Union, von der Leyen should swap pragmatism for principles, 12 September 2023 : https://www.politico.eu/article/in-her-state-of-the-union-speech-von-der-leyen-should-swap-pragmatism-for-principles/

306 Rachele Raus, »Les rapports d'initiative au Parlement européen ou comment la traduction influe sur les aspects performatifs d'un genre discursif », *Mots. Les langages du politique* [En ligne], 114 | 2017, mis en ligne le 10 juillet 2019, consulté le 24 novembre 2024. URL : http://journals.openedition.org/mots/22810 ; DOI : https://doi.org/10.4000/mots.22810

307 Idem

308 Article 17 § 2 TEU

309 Commission press release, U. von der Leyen, "A More Ambitious Union, My Agenda for Europe", 2019, https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_fr.pdf, p 23, accessed on 7 December 2020

The political system of the Union is, in fact, special if not atypical. Parliament is not at the origin of the democratic study of the Union, whereas in general it starts from there.[310] It is originally very self-effacing. The EU's institutional architecture was not initially designed to govern long-term, technically dense policy trajectories requiring continuous adjustment. While the Parliament's legislative influence has expanded over time, climate governance increasingly shifts the decisive phase of institutional influence from adoption to implementation: the Commission retains initiative, structures the monitoring architecture, and steers iterative revisions through evaluation and follow-up mechanisms. As a result, the core challenge is not the Parliament's formal role in coruling, but the limited scope of parliamentary control over the procedural climate governance cycle (planning–monitoring–recommendation–adjustment), where executive steering dominates.

It can be said today that the European Parliament has on the one hand, an indirect power of legislative initiative, but also seems to be vested with a direct power of legislative initiative with a limited scope of application, but with the aim of surpassing the Commission. All recent events could set in motion this process of a more political, more representative, more democratic EU with a real power of legislative initiative for Parliament, which could redefine the Union's policy – except for climate governance at the EU level.

Indeed, the principle remains that today, the power of legislative initiative lies with the European Commission. It can be asserted that it has a virtual monopoly that attracts other initiative, and one may witness a fusion confusion of powers, whom the Commission is the centre of gravity. In principle, this power is enshrined in the Treaties in Article 17 § 2 of the TEU,[311] which provides it with a solid basis, in particular in the event of an appeal to the CJEU, which is often favourable to the Court. The Commission therefore plays a particularly significant role in this legislative initiative, but Parliament seems to be acquiring more competence in exercising its right of legislative initiative. It is also often discussed whether the Treaties should not be amended in order to overturn the Commission's power of initiative and to entrust it to Parliament in broader areas.[312] It was also at the request of the European Commission that in 2022 it published a report on the European Parliament's initiative in the legislative procedure,[313] setting out the solutions that could be provided and demonstrating its legitimacy for the Parliament to acquire this power of initiative.

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310 Ariadna Ripoll Servent, Olivier Costa. The European Parliament: Powerful but Fragmented. Dermot Hodson; Uwe Puetter; Sabine Saurugger; and John Peterson (ed.). The Institutions of the EU, Oxford University Press, 2021

311 17 § 2 of the TEU

312 Ariadna Ripoll Servent, Olivier Costa. The European Parliament: Powerful but Fragmented. Dermot Hodson; Uwe Puetter; Sabine Saurugger; and John Peterson (ed.). The Institutions of the EU, Oxford University Press, 2021

313 Report on Parliament's right of initiative, A9-0142/2022, 10 May 2022 (2020/2132(INI))

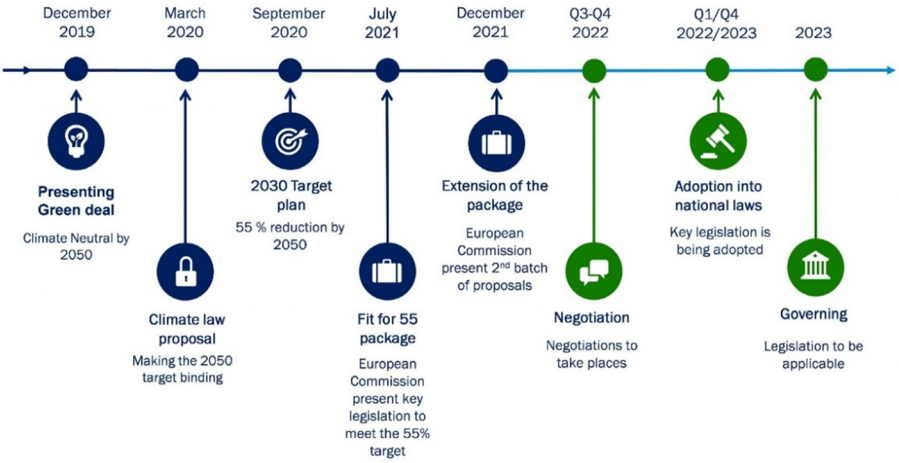

Diagram 4. *EU Climate Law timeline*[314]

To sum up, subsection 2.3.1. demonstrates that the materialisation of polycentric EU climate governance reveals significant structural inadequacies. The analysis shows that fragmentation of responsibilities, uneven implementation across levels of governance, and limited accountability mechanisms weaken the effectiveness of the current framework. While these shortcomings do not amount to a constitutional failure, they expose a risk of prospective governance failure, highlighting the gap between the Union's climate ambitions and the practical capacity of its governance structures to deliver coherent and enforceable outcomes.

The inadequacies identified in the current configuration of EU climate governance are intricately linked to underlying institutional imbalances. These shortcomings therefore call for a reassessment of the distribution and coordination of powers, highlighting the need for a genuinely polycentric governance model capable of restoring balance, accountability, and effectiveness in the implementation of EU climate objectives.

2.3.2. Institutional imbalance: the need for a polycentric EU climate governance

Subsection 2.3.2. examines institutional imbalance as a structural driver of the shortcomings identified in EU climate governance. It demonstrates that the concentration of steering and coordination functions, combined with fragmented accountability mechanisms, calls for a more genuinely polycentric governance model capable of redistributing responsibilities while preserving coherence, effectiveness, and

314 J. Räsänen, Changes in policy climate drive demand of renewable energy, 2023 : https://visionhunters.com/changes-in-policy-climate-drive-demand-of-renewable-energy/

constitutional balance within the EU legal order.

Therefore, a question of whether it is a "parliamentarization" or a "commissionnarization" of institutional relations arises. It is the relationship between Parliament and the Commission that allows us to see the degree of parliamentarization of the regime from the basis that the government is controlled by Parliament in a parliamentary system but finds its limits as in France and the United Kingdom. The government controls the majority in Parliament, because very often the government is made up of the leaders of the parliamentary majority. It is not a control, but an interaction between a government and a parliament, but the EU does not have a government, but a Commission, so the interest in the Commission and the Parliament, today seems to be the vectors of legislative initiative. The structural limitations of the current EU climate governance framework identified in the preceding analysis are summarised in Table 1, entitled "EU Climate Governance: Elements highlighting the limitations of the current governance framework." While Table 1 highlights the limitations of the existing governance framework, Table 2 shifts the perspective by mapping the institutional dynamics of EU climate governance through a polycentric lens. In this respect, Table 2, entitled "EU Climate Governance: Overview of polycentric governance arrangements", provides a structured overview of how climate governance operates beyond classical hierarchical models.

Many reflections were therefore considered concerning the power of initiative of the European Parliament, which is "at the centre of democracies" and is "the only parliament in the world not to have such a power of legislative initiative,"[315] even though it is the body with the greatest democratic legitimacy. Is the European Parliament a copy of an ordinary Parliament with real power of legislative initiative or is it phagocyted by the European Commission, which has a quasi-all-powers monopoly? The Parliament has grown considerably in power, especially in the fight against climate change,[316] becoming more and more the essential legislative institution of the EU with an indirect power of legislative initiative, even if this seems to be limited in particular by the dominant presence of intergovernmental bodies (A). Subsequently, questioning arises regarding an existing or future power of direct legislative initiative, especially since Parliament is the most legitimate body for the exercise of this power, even though it seems that only the CJEU is against it (B).

A. *The core disequilibrium in EU climate governance: indirect legislative initiative dominated by intergovernmental bodies*

The Parliament embodies democratic legitimacy *par excellence* in the Union, as it has been directly elected by direct universal suffrage since 1976. This increase in

315 During the speech of Mr. Antonio Tajani, President of the European Parliament, at the opening of the 2018-2019 academic year at the College of Europe on the Bruges campus, on 9 October 2018.

316 Kinski, L., & Ripoll Servent, A. (2022). Framing Climate Policy Ambition in the European Parliament. *Politics and Governance, 10*(3), 251-263. https://doi.org/10.17645/pag.v10i3.5479

power has enabled it to extend its powers to indirectly exercise legislative initiative, in particular by including it in the Lisbon Treat in Article 225 of the TFEU. This indirect initiative is nevertheless limited, in particular by the presence of intergovernmental bodies, which constitutes a persistent domination. The European Parliament's powers have been extended as a result of the rise in power of the European Parliament and its recent democratic legitimacy. Professor J. Chevalier recalled that "the undeniable rise in power of Parliament should not lead to an overestimation of its influence."[317] However, the Maastricht Treaty subsequently gave an indirect power of legislative initiative.

The main function of the Union is indeed the legislative function because it is through a legislative procedure that the main political choices are made. The European Parliament has continued to acquire powers and to increase its power. In addition to the function of controlling the budget that had been granted to the European Assembly through Article 269 of the TEC,[318] the Assembly sees other innovations such as the term "Parliament" increasingly used and this gradually replacing the term Assembly. By the resolution of 30 March 1962, the Assembly proclaimed itself the "European Parliament", even though it was not until the Single European Act that this new qualification was enshrined in European primary law.

In addition, in the 1980s, Parliament began to draw up a proposal for a Treaty on EU. With the aim of relaunching European integration, Parliament prepared a draft revision of the EEC Treaty and was adopted by the Parliament on 14 February 1984.[319] This bill only establishes legislative power granted jointly to Parliament and the Council, acting by majority. The Treaty provides that Parliament is to increase its powers, in particular by simplifying the operation and extending the use of the co-ruling procedure.

Finally, the other innovation is one of the most important. With the Treaty of Rome and Paris, MEPs were appointed by indirect suffrage by the Parliament of their State of origin according to a procedure left to the total discretion of each Member State. It is now the only body directly elected by direct universal suffrage and therefore has the strongest democratic legitimacy at the level of the EU.

This steady rise in power of the Parliament has allowed the greatest democratic legitimacy compared to all the other bodies of the Union. Article 225 TFEU[320] granted Parliament, through the Maastricht Treaty, an indirect right of legislative initiative.

B. *The textual incorporation of an indirect legislative initiative*

Firstly, it was following the Maastricht Treaty that Parliament was given a real power of indirect legislative initiative, but without any questioning of the Commission's

317 J. Chevallier, "The EU as a democratic space" in B. Bertrand, F. Picod and S. Roland (eds.), *The Identity of EU Law. Mélanges en l'honneur de Claude Blumann,* Brussels, Bruylant, 2015, p. 34.

318 Article 269 of the TEC

319 Amato, G., Bribosia, H., De Witte, B., Genesis and destiny of the European Constitution, Bruylant, Brussels, 2007, p. 14.

320 Article 225 TFEU

power of initiative. It is now enshrined in Article 225 of the TFEU, which grants an indirect power of initiative qualified as the power of initiative "of the initiative"[321] which allows the Parliament to initiate a legislative proposal that it will propose to the European Commission. This power therefore constitutes a power of indirect legislative initiative granted to Parliament, which means that it is not really a direct power of initiative, in the true sense. One of the examples that demonstrated an initiative that would fall under the purview of Parliament was its ruling in 1982 on banning the import of baby seal skin. However, the Lisbon Treaty will go further in this prerogative by granting the Commission the obligation to state reasons, in the event of a rejection of the proposal put forward by the Parliament.

In addition, the committee undertook to give favourable action to legislative initiatives resulting from Parliament, in particular by means of inter-institutional agreements.[322] To illustrate this point, let us look at the framework agreement of 25 July 2000 where the Commission undertook to "provide a rapid and sufficiently detailed response to any request from the European Parliament submitted in accordance with Article 192 of the TEC."[323] Relations between the Commission and the Parliament are governed by the framework agreement of 20 October 2010[324] in which the Commission undertook "to report on the concrete action taken on any request to submit a proposal under Article 225 of the TFEU within three months of the adoption of the relevant resolution in plenary."[325] Following a request from Parliament, the Commission will have to present this proposal within one year or enter it for the following year. If the Commission does not do so, it will then have to give the reasons for its refusal to the Parliament. A final framework agreement dated 13 April 2016 provided a clarification.[326] From now on, in the event of a refusal, the Commission will have to explain the reasons for its refusal through an analysis of viable solutions and answer questions from Parliament.[327]

Finally, when the Commission refuses a request from Parliament, it is always possible where, according to Parliament, the Commission has not given sufficient reasons for its ruling, it is then possible for it to bring an action for failure to act before the CJEU. It can also be added that it is also possible for Parliament to bring an action for

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321 I. Pingel, "Article 192 TEC", in I. Pingel (ed.), *Commentary article by article of the EU and EC treaties*, 2nd ed., Bruylant, Brussels, 2010, p. 1305.

322 J.P. Jacqué, "*The European Parliament*", published by Dalloz, 2011, p. 2.

323 The Framework Agreement on relations between the European Parliament and the Commission, OJ C 121 of 5 July 2000, paragraph 4

324 The Framework Agreement on relations between the European Parliament and the European Commission, OJ L 304 of 20 November 2010

325 Framework Agreement on relations between the European Parliament and the European Commission, OJ L 304, 20 November 2010, §16

326 Framework Agreement on relations between the European Parliament and the European Commission. OJ L 304, 20.11.2010, p. 47–62.

327 Idem

failure to comply with the obligation to motivate its ruling, in particular by introducing a motion of censure against the Commission.[328] This power of initiative is therefore genuine and binding on the Commission. Therefore, this indirect power of legislative initiative is still a powerful power, but also in the sense that this right is not limited to the policy areas in which the ordinary legislative procedure is applicable.

The introduction of direct universal suffrage in Parliament was however criticised by France and in particular by President Giscard d'Estaing who, although Parliament was elected by direct universal suffrage, wanted to establish a counterweight through greater involvement at the summit between Heads of State, hence the creation of the European Council.[329] The condition for this direct universal suffrage therefore seems to be embodied in a counterweight to other bodies of the EU. The Commission remains free to reject a proposal from the Parliament if it justifies the reasons[330], but also that, as a matter of principle, the power of legislative initiative is a quasi-monopoly which belongs to the Commission, under the influence of the Council.

Parliament does not, however, enjoy a monopoly on indirect legislative initiative. Indeed, similar powers are conferred on the Council as well as on European citizens through the European Citizens' Initiative.[331] Parliament therefore sometimes enters confrontation with the other institutions.

C. *The EU Parliament as a palliative to a quasi-monopolistic role of intergovernmental bodies in legislative initiative*

As a matter of principle, certain policy areas are traditionally considered sensitive, limiting the European Parliament's capacity to acquire powers comparable to those exercised by the Commission. In this context, a specialised institutional actor emerges, namely the Council, which plays a significant role in such areas. However, the Union's institutional framework does not confer the power of legislative initiative on either the Parliament or the Council; on the contrary, this prerogative remains vested in the Commission pursuant to Article 17(2) TEU, [332] while the Parliament and the Council exercise shared legislative authority within the ordinary legislative procedure under Article 289 TFEU.[333]

Parliament has a restrictive scope for its indirect legislative initiative. In some cases,

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328 E.-M. Poptcheva, "Library Briefing - Parliament's legislative initiative", 24 October 2013

329 Speech of Valéry Giscard d'Estaing, 28 February 2002 : https://sgae.gouv.fr/files/live/sites/SGAE/files/Contributed/SGAE/02_Tout-Savoir_UE/documents/Discours%20de%20Val%C3%A9ry%20Giscard%20d'Estaing%20le%2028%20f%C3%A9vrier%202002.pdf

330 E.-M. Poptcheva, "Library Briefing - Parliament's legislative initiative", 24 October 2013

331 Longo, E. (2019). The European Citizens' initiative: too much democracy for EU polity? *German Law Journal*, *20*(2), 181–200. doi:10.1017/glj.2019.12

332 17 § 2 TEU

333 Article 289 of the TFEU

the Council has the power of initiative in certain areas deemed sensitive or reserved.[334] First, these domains have never formed a homogeneous bloc. They affect a sensitive area of material sovereignty marked by an intergovernmental logic.[335] In the common foreign and security policy, the authorisation procedure is different, and intergovernmentalism is found there.[336] The Member States shall make a request to the Council, which has a monopoly on the initiative. The Commission has only an advisory role and Parliament only has a right to be informed.[337] The Adviser shall act unanimously on his own after having sought the opinion of the Union Representative for Foreign Affairs and Security Policy and the opinion of the Commission on the coherence and enhanced cooperation envisaged with the Union's Common Foreign and Security Policy (hereinafter CFSP) and with other Union policies, Article 329 § 2 TFEU.[338]

Despite the role of the Parliament and the Council in the legislative initiative, the Commission remains in principle the initiator. It has a quasi-monopoly that allows us to say that Parliament does have this power, but in a limited way. Originally, the power of initiative was granted to the Commission and constituted a monopoly. The Council had acquired a share of legislative power and left the assembly only with the power to give an opinion, and often a non-binding one. Originally, therefore, there was a significant dominance of the Commission and the Council vis-à-vis Parliament.

The desire for a quasi-monopoly on legislative initiative granted to the Commission was explained by the fact that, after the post-war period, the Commission was given the expression of this power of initiative in order to watch over the general interests of the Union, which should not, therefore, in the post-war period, be confused with the individual interests of each Member State. The representation that seemed to be perfect was the one embodied by the Commission. It was therefore logical to give this power of initiative to the Commission, which would be able to act in the interests of all the Member States and to adopt legislative proposals based on the most advanced national legislation.[339]

This three-way system, i.e. the Commission that proposes, the Parliament and the Council which has Article 289 of the TFEU[340] which enshrines this procedure as being ordinary to produce European laws, is not the only one. There are still special procedures in which Parliament either gives a simple assent or even a simple consultation, but these areas have become rarer, even if they relate to sensitive subjects such as

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334 Tsebelis, G., & Garrett, G. (2001). The Institutional Foundations of Intergovernmentalism and Supranationalism in the EU. *International Organization*, *55*(2), 357–390. http://www.jstor.org/stable/3078635

335 Idem

336 Idem

337 Article 218 § 10 TFEU

338 Article 329 § 2 TFEU

339 P. Pozzano, C. Hermanin and D. Corona, "The European Commission's power of initiative: a gradual erosion", 2 February 2012

340 Article 289 TFEU

taxation, an aspect of criminal law, and the CFSP which completely excludes Parliament, which is just kept informed, as seen above.

Unfortunately, the emergence of Parliament's power, as well as its acquired legitimacy and all the means that have enabled it to take indirect initiative, and even, as explained below, a direct power of initiative, should now make it possible to reverse the Commission's hold on the power of legislative initiative, to the benefit of Parliament.

The initiative continues to belong to the Commission, which often plays the role of a transmission belt, called a trilogue to facilitate the discussion. However, recent discussions, debates, analyses, reports and resolutions adopted by Parliament have led to questions being asked, on the one hand, about the existence of a direct power of legislative initiative conferred on Parliament, but also, on the other hand, about the real existence today of a desire to amend the Treaties in order to grant this direct power of initiative to Parliament by text, thereby reducing that of the Commission.

In the synthesis of the study commissioned by the Policy Department for Citizens' Rights and Constitutional Affairs of the European Parliament at the request of the AFCO Committee,[341] the experts were able to identify the informal existence of a direct legislative initiative power granted to the European Parliament. This informal existence remains at least limited or even dominated, so there are now many discussions and debates regarding a modification of the treaties in order to fully grant this power because of the rise in power and its greater democratic legitimacy despite the fact that the case law is still in favour of the Commission.

D. *The existence of the European Parliament's direct right of legislative initiative*

Is the possibility of a direct right of legislative initiative by Parliament a reality? "A false but clear and precise idea will always have more power in the world than a true but complex idea."[342] These were the words of Alexis de Tocqueville. If one compares his words to the situation studied. The Commission has the power of legislative initiative, but in reality, because of democratic legitimacy, would it not be more efficient for this power to belong to the Parliament, which represents the citizens they elect directly? The idea seems more logical and even the Commission enshrines it in its report.

Many questions remain unanswered regarding its real existence. In its resolution of 13 March 1996, Parliament even stated that "the independence of the Commission must be safeguarded, its right of initiative must be maintained."[343] This was reiterated

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341 Policy Department for Citizens' Rights and Constitutional Affairs of the European Parliament study, July 2020:https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655134/IPOL_STU(2020)655134(SUM01)_FR.pdf, accessed 5 December 2020

342 A. de Tocqueville, «*De la démocratie en Amérique* «, Paris, 1848, p. 267.

343 With regard to the European Parliament Resolution on the opinion on the convening of the Intergovernmental Conference, on the evaluation of the work of the Reflection Group and clarification of the European Parliament's public priorities with a view to that Conference, OJ C 96, 1 April 1996, p. 77, point 21.

by its resolution of 19 November 1999.[344] However, this position is not the most democratic. On 4 April 2019, the candidate Glucksmann of the Place Publique party in the European elections argued that there was a crisis of democracy in Europe and that the solution was the result of an increase in the prerogatives of the European Parliament and that it should be given a direct power of initiative.[345]

However, the evolution of its last years and the demands emerging in particular during the Convention on the Future of Europe, but the Parliament's position was limited to the fact that Community law should therefore be adopted on the "sole initiative of the Commission."[346] Recently, Parliament claimed to have a direct power of legislative initiative in its resolutions of 16 February 2017 and 12 and 13 February 2019 and this demand is fuelling the public debate.

The first resolution in paragraph 62 stated that "the two chambers of the legislative branch of the Union, namely the Council and in particular the Parliament, as the only institution directly elected by the citizens, shall be granted the right of legislative initiative, without prejudice to the basic legislative prerogative of the Commission."[347] The Commission has given itself a real power of legislative initiative. As identified in the analysis report commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Commission[348], the "overall assessment is mixed."

However, it may be noted that the European Parliament has given itself the power of direct legislative initiative, particularly in interinstitutional and intra-institutional matters. This procedure has often been successful, especially when the Council did not oppose it head-on. Parliament had a direct power of initiative with regard to its composition and the status and function of its members. Finally, it can be added that Parliament has a direct legislative initiative with regard to the establishment of its rules of procedure. Moreover, even if the Parliament does not have a direct general power of legislative initiative, it can still initiate decision-making procedures without any intervention by the Commission.

Despite, as explained above, a significant extension of Parliament's powers in the field of legislative power, it still remains on the margins of direct and indirect legislative initiative. It is still dominated by the Commission, which has a virtual monopoly, but a large number of people now want to see this situation changed. This is due in

344 European Parliament resolution on the preparation of the reform of the Treaties and the forthcoming Intergovernmental Conference, OJ C 189, 7 July 2002, p. 222, point 26.

345 Televised debate in France concerning the European elections organized by France Television by its channel France 2, Thursday, April 4, 2019.

346 European Parliament resolution on the delimitation of competences between the EU and the Member States, 16 May 2002, §12.

347 European Parliament resolution on possible developments and adaptations to the current institutional structure of the EU, 16 February 2017, §62.

348 Policy Department for Citizens' Rights and Constitutional Affairs of the European Parliament study, July 2020https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655134/IPOL_STU(2020)655134(SUM01)_FR.pdf. Accessed December 5, 2020

particular to the greater legitimacy that it has built, and which shines today through its influence. It would seem today that only the CJEU is positioning itself against the current in preparation, but that all these developments have marked a starting point in a new redistribution of the powers of the initiative.

Apart from these nuances, Parliament has as little power in the initiative as the Council. The question of the Commission's monopoly of initiative continues to raise questions. From a democratic point of view, would it not be important for the European Parliament to have its own political agenda in relation to its political programme, because for the moment it remains dependent on the Commission's choices to legislate on this or that subject?

Parliament should be able to influence the Commission on the political agenda, with regard to the issues on which it would like to legislate. In this way, Parliament influences the Commission's power of initiative. Indeed, the development of a public policy that leads to an act of secondary legislation is done in various stages, the first of which is the definition of the agenda. The definition of the agenda is extremely important because it makes it possible to determine the contours of the political discourse as well as the contours of a legislative debate.[349] Thus, any area that is not invited in the final agenda will not be able to be part of the decision-making process. There is therefore no risk that acts of secondary legislation in those areas will be adopted there. It is because of the Commission's monopoly on legislative initiative that it is impossible for Parliament to exercise this power directly.

However, the enlargement of Parliament's powers and of its greater democratic legitimacy, which represents the strongest of all the bodies of the EU, gives rise to a more logical idea, which is to invest Parliament with this power of initiative, particularly through action and the political agenda that Parliament should therefore initiate. Although Parliament does not have a direct power of legislative initiative, it has, as seen, an indirect power of legislative initiative under Article 225 TFEU.[350] This article allows the Parliament, by a majority of its members, to ask the Commission to "submit any appropriate proposal on the matters which it considers necessary and to draw up an act of the Union for the implementation of the Treaties." Parliament therefore has the capacity to influence the Commission's legislative initiative, but it remains an indirect power, whereas the legitimacy of Parliament should lead to a reversal of its roles.

E. *Jurisprudential developments for the moment favourable to the Commission*

The case law remains fairly favourable to the Commission by recognising that the Commission has the power to withdraw its initiative.[351] If it considers that the draft it

349 Amie Kreppel conference on "European Parliament Resolutions – Effective Agenda Setting or Whistling into the Wind?", 2018, https://www.researchgate.net/publication/327537276_European_Parliament_Resolutions- Effective_Agenda_Setting_or_Whistling_into_the_Wind, p.2, accessed 4 December 2020

350 Article 225 TFEU

351 Case C409/13, Council of the EU v European Commission, ECLI:EU:C:2015:217: "Since that power of the Commission to withdraw a proposal is inextricably linked with its right of initiative and exercise

has submitted to the Parliament and the Council is amended to such an extent that it is distorted, it can withdraw the draft and block the process. This is an important power of the Commission, which can then guide the discussions. In the event of a discussion on GMOs, the Commission can authorise them with some exceptions, the Parliament cannot say that they are banned unless there are exceptions, i.e. the exact opposite.

In spite of everything, Parliament will therefore surely have to evolve in the coming years with a view to redistributing the powers of the legislative initiative. Intrinsically, the concentration of powers to the Commission without proper guidelines yet set for the interaction vertically and horizontally, prevents from having a polycentric governance. However, the body of proof tends to be in disfavour of the current governance of Climate Law, as it enacts drastic weaknesses.[352]

Tables 1 and 2 operationalise the section's constitutional diagnosis. Table 1 maps how the current climate governance architecture generates accountability gaps (e.g., concentration of assessment and follow-up functions) and implementation asymmetries across Member States. Table 2 identifies the polycentric features that mitigate these risks (mutual learning, differentiated means under common targets, adaptive governance under uncertainty). Read together, the tables show that the key constitutional issue is not whether polycentricity exists, but whether polycentric instruments are designed and supervised in a manner compatible with institutional balance and democratic accountability. Read together, Tables 1 and 2 illustrate the gap between the limitations of the current governance framework and the polycentric reality of EU climate governance.

Table 1. EU Climate Governance: Elements highlighting the limitations of the current governance framework

Polycentric climate governance	Bias by the concentration of powers to the Commission. This point emphasizes the potential drawbacks of centralizing power within a single institution, such as the European Commission. While centralization can lead to more streamlined decision-making, it can also result in a lack of transparency, accountability, and inclusiveness. Polycentric governance, on the other hand, distributes power across multiple actors, reducing the risk of such biases.

of the power is circumscribed by the abovementioned provisions of the FEU Treaty, there can be no question of an infringement of that principle." §96

352 Marcel J. Dorsch, Christian Flachsland; A Polycentric Approach to Global Climate Governance. *Global Environmental Politics* 2017; 17 (2): 45–64. doi: https://doi.org/10.1162/GLEP_a_00400

Procedural climate justice	Different means of action and procedural burdens to the litigants, depending on the Member State they are in. This aspect focuses on ensuring that all stakeholders, regardless of their location or status, have equal access to justice and decision-making processes related to climate policies. In a polycentric system, different governing bodies can address specific local needs and contexts, promoting fairness and equity.
Transparency	Polycentric governance can enhance transparency by involving multiple actors in the decision-making process. This approach allows for more diverse perspectives and greater scrutiny, which can help prevent corruption and ensure that policies are implemented effectively. How to insure it when the powers are concentrated in the palm of one hand? i.e. setting and assessing whether objectives and obligations are fulfilled and sentencing when they are not
Reasonable disagreement	A polycentric system acknowledges that different actors may have varying opinions and priorities. By allowing for reasonable disagreement, this approach fosters a more inclusive and adaptive governance structure that can better respond to changing circumstances and added information. The European movement of farmers and the new CAP allowing pesticides to perdure and shrinking the amount of unoccupied land for the sake of biodiversity
Participation and voice	Polycentric governance encourages active participation from various stakeholders, including citizens, businesses, and non-governmental organizations. This inclusiveness ensures that diverse voices are heard and considered in the decision-making process, leading to more robust and widely accepted policies. The Citizen Convention for Climate (Convention Citoyenne pour le Climat), only 10% of the proposals were considered by the French Government (i.e. the proposal of loans with zero interest rates to buy a clean vehicle; diminish by 50% the use of phytopharmaceutical products and prohibition of the most damaging pesticides by 2025)
No need to agree on one target	it goes de facto and de jure against the Paris Agreement (target of limit global warming to 1.5C°) of and EU Climate Law (climate neutrality by 2050)

However, following the assessment, the current governance offers already encouraging settings to implement a polycentric governance:[353]

353 Marcel J. Dorsch, Christian Flachsland; A Polycentric Approach to Global Climate Governance. *Global Environmental Politics* 2017; 17 (2): 45–64. doi: https://doi.org/10.1162/GLEP_a_00400

Table 2. EU Climate Governance: Overview of polycentric governance arrangements

Mutual learning	Polycentric governance promotes mutual learning among different actors and institutions. By sharing best practices, experiences, and knowledge, governing bodies can improve their policies and strategies, leading to more effective climate action. Dialogue of judges through the Urgenda case, reprised in France and Ireland, Lithuania
No need to set one goal	The goal is established, but the means are left to the Member States. In a polycentric system, different governing bodies can pursue their own climate goals and strategies, as long as they align with overarching objectives like the Paris Agreement and EU Climate Law. This flexibility allows for more tailored and context-specific approaches to addressing climate change. It calls for inclusiveness and adaptability in regard to each MS peculiarities
Uncertainty	Concerning the exact effects of alternative policy responses, it provides a more productive and innovative framework for readjusting climate governance. The inherent uncertainty in addressing climate change requires a flexible and adaptive governance system. Polycentric governance allows for experimentation and innovation, enabling governing bodies to assess different approaches and adjust their strategies based on latest information and changing conditions.

To sum up, subsection 2.3.2, demonstrates that institutional imbalance constitutes a central weakness of the current EU climate governance framework. The analysis shows that the concentration of steering and coordination functions, combined with fragmented responsibility and limited counterbalancing mechanisms, undermines both accountability and effectiveness. The need for a genuinely polycentric governance model thus emerges not as an abstract ideal, but as a structural requirement to rebalance institutional roles while preserving coherence and constitutional integrity in the implementation of EU Climate Law.

While polycentric governance is presented as a corrective response to institutional imbalance, the practice of EU climate governance reveals a parallel and potentially contradictory trend. The following subsection therefore examines the progressive polarisation of powers in favour of the Commission, questioning whether the operational demands of climate governance are in fact leading towards a renewed concentration of powers at the heart of the EU institutional system.

2.3.3. The polarization of powers to the Commission in the EU climate governance: towards a concentration of powers

Subsection 2.3.3. examines the progressive polarisation of powers in favour of the Commission within EU climate governance. It demonstrates that, despite the formal embrace of polycentric governance, the accumulation of steering, coordination, and

supervisory functions has led to a *de facto* concentration of authority at the Commission level, raising renewed constitutional concerns regarding institutional balance, accountability, and the limits of functional centralisation.

The practical implementation of EU Climate Law raises a structural question of institutional balance: whether the accumulation of steering, monitoring, and follow-up functions at Commission level remains compatible with the Treaties' requirements on delegation, accountability, and procedural safeguards. The concern is not that climate governance introduces a formally new executive power, but that iterative governance mechanisms may produce a de facto concentration of influence at the implementation stage, where parliamentary involvement is structurally weaker.

Legally translated in practice, the definitive version of the Regulation is not as likely to breach as the proposal itself. Indeed, Articles 3[354] and 9[355] of the Regulation Proposal were allegedly to imply a new reading of Article 290 TFEU on the delegation of powers to the benefit of the Commission.[356] The Treaty clearly requires those powers delegated to the Commission to be "explicitly defined" in the legislative acts.

The adoption of the definitive version of the Regulation tends to palliate those gaps. Nonetheless, the lack of the definition of some of powers to be delegated to the Commission to shadows a subsequent and consequent power left to the Commission. The broadness of power to the Commission appears to leave the Guardian of the Treaties even more empowered, if not monopolistic. It polarizes its position towards other institutions, but also the Member States.

As such, two components mentioned above are breaching Article 290 TFEU. Firstly, on the end of hybrid, diesel, and gasoline cars sale, in which there is no precise agenda nor explicit strategy in this regard from the Commission. The most severe breach would be on the proposal to create a carbon tax at the EU level. Despite its

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354 Article 3, Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (Text with EEA relevance.) : "The Commission is empowered to adopt delegated acts in accordance with Article 9 to supplement this Regulation by setting out a trajectory at Union level to achieve the climate-neutrality objective set out in Article 2(1) until 2050"

355 Article 9.2, Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (Text with EEA relevance.): "The power to adopt delegated acts referred to in Article 3(1) shall be conferred on the Commission for an indeterminate period of time from …[OP: date of entry into force of this Regulation]."

356 Article 290 TFEU: The objectives, content, scope, and duration of the delegation of power shall be explicitly defined in the legislative acts

obvious unpopularity in some Member States, it is rather on the way it is mentioned in the Regulation that would only tease some counterproductive fire. For instance, Recital 26 explains some set of measures to be implemented inside the Union under its 2030 climate target. It displays the future of legislation to be included, mentioning "energy taxation." It does not provide any explicit details on how the Commission intends to implement this kind of taxation under EU Climate Law, hence contradicting openly Article 290 TFEU.

If the criticism is often made towards this Union's institution to be "judge, jury and executioner,"[357] the latest version of the regulation adopted in June 2021 emphasised the role of the Commission in this regard:

- From the adoption of legislative proposals by the Commission, it shall monitor the legislative procedures for the different proposals[358]

If the foreseen outcome would not deliver a result in line with the target set out in the Regulation, the Commission may take the necessary measures, including the adoption of legislative proposals, in accordance with the Treaties.[359] It is not surprising for the Commission to have the legislative initiative. However, added to the following elements, EU Climate Law results in a polarization of powers to the benefit of the Commission:

- Adoption of Union's strategy on adaptation to climate change in accordance with the Paris Agreement;[360]
- Assessment of Union progress and measures;[361]
- Assessment of the consistency of any draft measure or legislative proposal;[362]
- Commission's report may be accompanied, where appropriate, by legislative proposals to amend this regulation;[363]

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357 P. Marsden, "Checks and balances: EU competition law and the rule of law," 2009: https://www.biicl.org/files/4080_checks_and_balances_(marsden).pdf

358 Article 4.2, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

359 Idem.

360 Article 5.2, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

361 Article 6, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

362 Article 6.4, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

363 Article 4.2, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

– Assessment of national measures;[364]
– Make public recommendations when one Member States' measures are inconsistent with climate neutrality objective.[365]

Interestingly, once a closer look is given at the content of Article 7 on the assessment of national measures, the system to be put in place is very close to the general infringement procedure set at Article 258 TFEU.[366] If it formalizes the first step of this litigation, it may also appear to be a way to fast track it, as Member States would already be notified of their national measures insufficiency and recommendations would also have been provided by the Commission already. Then, if the Member States still does not comply, Article 7 of the Regulation is likely to appear as a special and fast track infringement procedure. One of the reasoning behind would be the urgency brought by the fight against climate change. No mention is brought towards insufficient actions by the Union's institutions for instance, which biases or tends to undermine the actual commitment of the Union, as a whole, to fight against climate change.[367]

The visibility of recommendations stressing the lack of action of a Member State can be considered as a naming and shaming practice by the Commission to emphasize whom are the worst Member States, which contradicts the spirit of cooperation the Regulation stands for. For instance, the recital 2 supports a just and inclusive transition, that should not leave "no one behind."[368] Furthermore, the Regulation intends to implement a comprehensive approach that includes "fairness and solidarity across and within Member States, in light of their economic capability, national circumstances, such as the specificities of islands, and the need for convergence over time."[369]

In this respect, the delegation framework under Article 290 TFEU is a key benchmark: delegated powers must be clearly defined, limited in scope, and subject to control by the legislator. Where climate governance relies on broadly framed mandates

364 Article 7, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

365 Article 7.2, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

366 Article 258 TFEU: «If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the CJEU."

367 The issue of Union's institutions responsibility is not addressed at all in the Regulation, only regarding the Member States.'

368 Recital 2, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

369 Recital 34, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

combined with monitoring and recommendation powers, the risk is not formal illegality *per se*, but an expansion of discretionary steering capacity that is difficult to scrutinise *ex ante* and challenging to contest *ex post*. Arguably, the Commission's powers are condensed into one and only set of hands. It calls for a more transparent process: a climate independent administrative body at the EU level.

To sum up, the analysis demonstrates that the practical implementation of EU climate governance reveals a persistent trend towards the polarisation of powers in favour of the Commission. The analysis shows that the accumulation of steering, coordination, monitoring, and supervisory functions has produced a *de facto* concentration of authority, despite the formal commitment to polycentric governance. This dynamic exposes a structural tension between functional efficiency and institutional balance, raising renewed concerns regarding accountability and the long-term sustainability of Commission centred climate governance.

To sum up, section 2.3 shows that the materialisation of polycentric EU climate governance is marked by a dual movement. On the one hand, climate governance disperses tasks across levels and actors through planning, reporting, monitoring, and participatory instruments. On the other hand, these dispersed arrangements are organised around a dominant coordinating node—the Commission—whose cumulative steering functions may generate accountability gaps and uneven implementation. The constitutional question is therefore not whether polycentricity exists, but whether the balance between coordination and counterbalancing mechanisms is sufficient to preserve institutional equilibrium while delivering effective climate action

The polarisation of powers in favour of the Commission identified above reveals the limits of existing governance arrangements in ensuring institutional balance and effective oversight. These dynamic invites consideration of whether the current architecture requires an additional counterbalancing protagonist, capable of supporting coordination, expertise, and accountability within EU climate governance, which is the focus of the following section.

2.4. The need for a counterbalance protagonist: a climate administrative regulating authority – the creation of a European Climate Network

Subchapter 2.4. examines whether the current configuration of EU climate governance requires the emergence of a counterbalancing institutional protagonist. It demonstrates that the polarisation of powers in favour of the Commission, combined with the limits of existing polycentric arrangements, raises the question of whether a climate administrative regulating authority—conceived as a European Climate Network—could contribute to restoring institutional balance, coordination, and accountability within the EU climate governance framework.

The governance of climate policy in the EU and its Member States is increasingly marked by complexity, technicality, and the need for impartial oversight. In this context, Independent Administrative Authorities (hereinafter IAAs) have emerged

as pivotal actors, bridging the gap between political decision-making and the technical implementation of climate law. Their role is particularly salient in the climate domain, where the stakes—scientific, economic, and societal—are exceptionally high, and where the risk of regulatory capture or political inertia can undermine ambitious climate objectives. Despite the existing authorities involved in environmental policies at the EU and national level, the enactment of the regulation will provoke a concentration of powers to the Commission, breaching the separation of powers and principles of the rule of law, as the Commission will be assessor, part of the policy-making process and sanctioning the foreseeable infringements – the thesis suggests to create a climate administrative regulating authority with a coercive power.[370]

In France, the term "Independent Administrative Authorities" (AAI) appeared for the first time in 1978 during the examination of the bill that would set up what is now known as the CNIL (National Commission for Informatics and Freedoms - *Commission nationale de l'informatique et des libertés*). Subsequently, this term was taken up again in a case law of the Conseil Constitutionnel on 26 July 1984. Today, IAAs remain a remarkably diverse concept that legislators try to fit into "categories" without success. In the EU context, preventing an excessive concentration of powers within the Commission calls for the involvement of a counterbalancing, independent administrative body.[371]

2.4.1. Genesis of independent national administrative bodies

Subsection 2.4.1 examines the emergence of independent national administrative bodies as a structural response to the regulatory demands of EU governance. It demonstrates that such bodies have progressively developed as instruments of expertise, coordination, and regulatory autonomy, offering a useful point of reference for assessing whether similar institutional logics could be mobilised in the context of EU climate governance.

Administrative bodies are terms often used, although with a rather imprecise legal content, to designate the organs of the State, and sometimes even those of local authorities. In this sense, it is possible to also speak of public authorities, although these words seem to have an even more extensive content.[372] IAAs, which are usually collegial, are authorities, which are institutions of the State acting on its behalf, but whose statute seeks to guarantee independence of action both from the Government

370 The CJEU ruling in the Seaport case (CJEU, 20 October 2011, case C-474/10) highlights the importance of the independence of environmental authorities.

371 Bétaille, J. (2020). Arguments en faveur d'une autorité publique indépendante environnementale. In M. Sousse (Ed.), Droit économique et droit de l'environnement: Les conférences du CDED (pp. 107-124). Éditions Mare & Martin

372 Delzangles, H. (2014). Les autorités de régulation indépendantes de marché et la prise en compte de l'environnement: L'exemple de l'énergie.

and from Parliament, have been created with a view to ensuring in their field of competence, without a direct intervention of the executive branch, a certain number of guarantees such as the protection of rights and freedoms, or the proper functioning of certain sectors of the economy.[373] Depending on the case, they have in their field, sometimes cumulatively, a power of opinion, recommendation, sanction, individual decision-making, or even a real regulatory power.

It is good to start by remembering first of all that the IAAs belong to the executive administration but remain independent authorities.[374] IAAs are defined as "authorities, which means that their role is not limited to simple consultation."[375] They act in the name and on behalf of the State. In all cases, IAAs fall within the administrative sphere and therefore under basic public law.[376] An element in P. Idoux's The New General Statute of the IAAs and APIs is also striking in terms of the State's attributions,[377] stating that "their immovable property is subject to the provisions of the General Code of Property of Public Entities applicable to the State's public establishments."[378] However, the State is not the master, the IAAs are devoid of moral authority and are therefore subject to the authority of their president, a natural person. It [the President of the IAA] is the authorizing officer for revenue and expenditure. The budget shall be adopted by the College on the proposal of its President; the powers of the President shall be adopted. Financially, they all have a public budget that is funded by various resources.

There is always a financial allocation from the State from the Finance Act, but it may be noted that some authorities levy their own resources, which are often fees. They therefore have a certain degree of financial autonomy in certain areas. The common provisions relating to the finances of the IAAs and APIs merely recall that they are exempt from the approval of the budgetary controller,[379] the mention of the imposing rule that they have the means necessary to conduct their mission. It also adds that "their president is the authorizing officer for revenue and expenditure,[380] and that their

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373 Article 52.3 of the EU Charter of Fundamental Rights : "In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection."

374 P. Idoux, «Les autorités administratives indépendantes : des interrogations classiques renouvelées dans un contexte européanisé «, Les AAI, dossier spécial, Droit et Société, 2016, n°93, 2016

375 Idem.

376 P. Idoux's, The New General Statute of the IAAs and APIs, 2019

377 The term of «State" refers to the executive body lato sensu as the EU is not a State. The author aims to create a parallel from a known tool at the State level, to implement it at the EU level.

378 Article 20, P. Idoux, «Les autorités administratives indépendantes : des interrogations classiques renouvelées dans un contexte européanisé «, Les AAI, dossier spécial, Droit et Société, 2016, n°93, 2016

379 Article 18, P. Idoux, «Les autorités administratives indépendantes : des interrogations classiques renouvelées dans un contexte européanisé «, Les AAI, dossier spécial, Droit et Société, 2016, n°93, 2016

380 Idem

budget is adopted by the College on the proposal of its President.[381]

This is where the idea of the guidelines emerges, which states that "IAAs are responsible for the regulation of a specific sector of activity. Each IAA adopts its own rules of procedure specifying the rules of organization, operation, and ethics."[382] Finally, it is important to talk about the members, their status, and of course, their appointment within such an organization. Accordingly, the term of office of the members of an IAA, between 3 and 6 years according to the authorities, is irrevocable and renewable once.[383] The members shall perform their duties with dignity, probity and integrity and shall ensure that any conflict of interest is prevented or immediately put an end to," it is also further stated that the IAAs "may employ civil and military officials, officials of the parliamentary assemblies and magistrates placed with them in a position in accordance with their statutes and recruit contract staff."[384] The main element is to ensure the independent and integrity of its members to have a proper independent administrative body, both in form and in content.[385]

To sum up, subsection 2.4.1. demonstrates that the emergence of independent national administrative bodies reflects a structural response to the increasing complexity, technicality, and long-term orientation of EU regulatory policies. The analysis shows that such bodies have developed as instruments of expertise, regulatory autonomy, and coordination, often positioned at a distance from direct political control. Their proliferation within the EU legal order provides a relevant institutional precedent for assessing whether similar logics could be transposed to the field of EU climate governance.

The experience of independent national administrative bodies thus raises a broader question at EU level. Considering the institutional imbalances and governance shortcomings identified in EU climate governance, the following subsection examines whether the creation of an independent administrative body may be necessary to support coordination, expertise, and accountability within the Union's climate governance framework.

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381 Article 19, P. Idoux, «Les autorités administratives indépendantes : des interrogations classiques renouvelées dans un contexte européanisé «, Les AAI, dossier spécial, Droit et Société, 2016, n°93, 2016

382 Idem

383 Council Regulation (EU) 2021/2085 of 19 November 2021 establishing the Joint Undertakings under Horizon Europe and repealing Regulations (EC) No 219/2007, (EU) No 557/2014, (EU) No 558/2014, (EU) No 559/2014, (EU) No 560/2014, (EU) No 561/2014 and (EU) No 642/2014

384 Becker, S., Bauer, M.W., Connolly, S. & Kassim, H. (2016). The Commission: Boxed in and constrained, but still an engine of integration. West European Politics 39(5): 1011–1031.

385 CJUE, 20 October 2011, «Seaport » C-474/10 ECLI:EU:C:2011:681 §42 : "functional separation is organised in such a way that an administrative entity within it has real autonomy, implying in particular that it is provided with its own administrative and human resources and is thus able to fulfil the tasks entrusted to it."

2.4.2. The necessity for an independent administrative body

Subsection 2.4.2. examines whether the structural shortcomings and institutional imbalances of EU climate governance necessitate the involvement of an independent administrative body. It demonstrates that, in a context marked by polycentric governance and the progressive concentration of powers within the Commission, institutional independence may serve as a functional safeguard to enhance expertise, coordination, and accountability, without disrupting the Treaties' allocation of competences or institutional balance.

For many years, the IAAs have been subject to numerous reforms aimed at guaranteeing their independence in the face of an executive, which has sometimes tried to appropriate them. Seeing the phenomenon developing, parliamentarians then tried to remedy the problem through reforms. Two glaring examples can be given of the appropriation of these entities by the executive branch. First, the regulatory power is entrusted to the Prime Minister in its greatest generality, however, some IAAs have part of the regulatory power. The IAAs have regulatory power only in their areas of competence, such as financial markets, online gaming, competition law, audiovisual, etc. In this sense, the IAAs can issue standards that are generally addressed to all the fields concerned, but also to its actors. Hence the fact that it can be read that "some parliamentarians fear that independent authorities will thereby increase their influence on the legislative process."[386] In addition to these hesitations, there is the persistence of the long-standing debate concerning the relevance of the link forged by the legislator between the notion of 'authority' and the possession of decision-making power.

Then, independent authorities must be able to impose sanctions. These can be coercive sanctions, but they can also be financial penalties with fines of several thousand euros. For example, the competition authority can impose sanctions on companies when it has had cartels, i.e. when there have been concerted practices between various companies to neutralize the effects of the market and competition. One example is the case of the three mobile telephone operators: SFR, Orange and Bouygues Telecom, which were fined on 1 December 2005 following a fraudulent competition agreement on the price of certain telephone packages.[387]

Finally, for these authorities to be independent, it appears that they all have common guarantees which must make it possible to ensure their independence. These guarantees are similar to those of the judiciary and to the rule of security of tenure. It is a safeguard that prevents these people from being moved, from being appointed to another function without their consent. The purpose is, when implemented, this system is mainly aimed at "ensuring that any conflict of interest is prevented or immediately

386 Anastasia Ershova, Nikoleta Yordanova, Aleksandra Khokhlova, Constraining the European Commission to please the public: responsiveness through delegation choices, Journal of European Public Policy, 10.1080/13501763.2023.2224399, (1-25), (2023)

387 French Competition Council, Ruling 05-D-65, 30 November 2005 related to practices observed in the mobile telephony sector

put an end to within the meaning of Law No. 2013-907 of 11 October 2013 on transparency in public life."[388] This affirms the provisions put in place to best guarantee the independence of IAAs. Thus, the law now prohibits being a member of "several IAAs or APIs [...]. It is also now forbidden to combine the functions of a member of an authority with functions within the services of an authority,"[389] while the functions of member or president of independent authorities are incompatible with an extensive list of mandates inspired by that which now applies to parliamentarians themselves. Some were against this project, because by accepting it officially, it recognized their independence, and as mentioned earlier, parliamentarians tended to distrust the IAAs as a threat to the legislative branch.[390]

To sum up, subsection 2.4.2. demonstrates that the necessity for an independent administrative body in EU climate governance arises from structural and institutional shortcomings rather than from a desire to expand regulatory authority. The analysis shows that increasing complexity, coordination failures, and the concentration of powers within the Commission generate a functional need for an independent actor capable of supporting expertise, consistency, and accountability. Independence thus emerges as a governance safeguard designed to complement existing institutional arrangements, rather than to disrupt the constitutional allocation of competences under the Treaties.

However, the identification of a functional necessity for an independent administrative body does not exhaust the constitutional inquiry. The following subsection therefore examines the legal, institutional, and democratic limitations that constrain the capacity of such a body to effectively counterbalance climate governance, highlighting the boundaries within which any administrative solution must operate.

2.4.3. The limitations to counterbalance the administrative body to climate change

Subsection 2.4.3 examines the constitutional, legal, and democratic limitations that constrain the capacity of an independent administrative body to counterbalance EU climate governance. It demonstrates that, while such a body may contribute to expertise and coordination, its role remains bounded by principles of conferral, institutional balance, and democratic accountability, which prevent administrative solutions from becoming a substitute for political responsibility in climate governance.

A statutory or legislative oversight is complementary to counterbalance the attributions lent to the IAAs. Indeed, legislative branch tends to consider that these

388 LOI n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique, NOR : PRMX1309699L, ELI : https://www.legifrance.gouv.fr/eli/loi/2013/10/11/PRMX1309699L/jo/texte

389 P. Idoux's, "The New General Statute of the IAAs and APIs," 2019

390 J. Chevallier, «Autorités administratives indépendantes et État de droit «, Civitas Europa, vol. 37, no. 2, 2016, pp. 143-154.

authorities form a 'mosaic' and that it would be appropriate both to better delimit the category and to associate it with a set of homogeneous legal characteristics, in order not only to better contain the phenomenon, but also to remedy certain legal inconsistencies in the implementation of the few transversal provisions applicable to IAAs.[391]

A. *A mandatory statutory oversight*

The reasons for a possible reform are set out. Hence, the multiplication of these entities is increasingly leading Parliament to want to rationalize the phenomenon, which, according to them, is becoming increasingly uncontrollable.

Indeed, the status of IAAs is interesting and therefore EU Climate Law would benefit from it. However, the proliferation of these bodies does not please parliamentarians who are unable to impose their legislation. Thus, the rules that the legislator wants to impose on these entities will only apply to those that have been officially qualified as IAAs.[392] According to the French Conseil Constitutionnel, only independent administrative or public authorities explicitly qualified as such by the legislator are subject to the obligation of parity composition.[393] This being the limit mentioned above, the former IAAs will not be subject to these new measures, which are important for the proper development of the country and rights in particular. The author also points out that "the classification of IAA or API has been refused, in particular, when, in the absence of decision-making powers, there was no tangible authority.[394]

While the effort at clarification is commendable, the parliamentary work has illustrated the difficulty of drawing up a consensual list, from which it emerges that the work of the legislator remains difficult, not all the measures it takes can be imposed on all IAAs. This lack of standardization has also led to significant impact in terms of terms of mandates for IAA members. Therefore, the composition and appointment of the members of the colleges has not been harmonized and the duration of the mandates has not been standardized, but only included in a range of three to six years allowing to remain at the same rate.[395] Finally, a word must also be said about the rules of procedure of the IAAs, the fact that they are administratively linked to the State implies that their rules of procedure are dictated by law. The fact remains, however, that the rationalization envisaged by parliamentarians has had and still has many limitations that they are unable to remedy and rulings that they are unable to get accepted at all levels.

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391 P. Idoux's, The New General Statute of the IAAs and APIs, 2019

392 French Ordonnance n° 2015-948 of 31 July 2015 on equal access of women and men to independent administrative authorities and independent public authorities

393 French Conseil Constitutionnel, Ruling n° 2014-700 DC, 31 July 2014

394 J. Chevallier, «Autorités administratives indépendantes et État de droit «, Civitas Europa, vol. 37, no. 2, 2016, pp. 143-154.

395 Idem.

B. ***Due process control of the administrative body***

Despite their independence, administrative bodies are not insubordinate organizations, there is always a form of control by the state itself in their functioning. First, there is a strengthening of parliamentary control over appointments made by the executive body, which is justified by explaining that it wants to make these bodies independent from the latter. Nonetheless, it must be affirmed that the independent authorities ought to be subject to the control of Parliament too, that the budgetary monitoring of the authorities be strengthened and that real accountability be made to each parliamentary assembly, from the perspective of democratic control. Hence, the European Parliament would be able to counterbalance its powers in this regard, as it is competent for budgetary related issues.

Finally, in the event of dispute, transposed to the EU, it therefore seems quite logical that the CJEU should be consulted and that the IAAs will find themselves before the Court. A simple example is that a government commissioner who ensures that the law is respected makes administrative rulings that can therefore be challenged before the administrative judge and sometimes before the judicial body depending on their area of intervention, in respect to due process. Such acts also ought to be the subject of an action for annulment where they are likely to produce significant effects, in particular of EU Climate Law nature, condensing most of the powers to the Commission, or are intended to have a significant influence on the conduct of the persons to whom they are addressed.[396]

To sum up, subsection 2.4.3. demonstrates that the role of an independent administrative body in EU climate governance is necessarily circumscribed by constitutional, institutional, and democratic constraints. The analysis shows that principles of conferral, institutional balance, and political accountability limit the extent to which administrative actors can counterbalance existing governance structures. As a result, any administrative solution must operate as a complementary mechanism, enhancing expertise and coordination without displacing political responsibility or judicial oversight in climate governance.

While these limitations define the constitutional boundaries of administrative counterbalancing, they do not preclude the existence of functional models within the EU legal order. The following subsection therefore turns to competition law governance at both European and national levels as a case study, examining how independent administrative authorities have been integrated into EU governance structures and assessing the relevance of this experience for the design of a climate-related administrative authority.

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396 Zahar, Alexander, Climate Law, Environmental Law, and the Schism Ahead (February 11, 2020). Available at SSRN: https://ssrn.com/abstract=3536096 or http://dx.doi.org/10.2139/ssrn.3536096

2.4.4. Case-study for a climate independent administrative authority: the European and domestic competition law governance

Subsection 2.4.4. examines the governance role of competition authorities as climate relevant but climate independent administrative actors, through a case study of European and domestic competition law enforcement. It explores how competition authorities integrate climate objectives into their decision-making despite lacking an explicit climate mandate, and whether this integration results from institutional autonomy or from constraints embedded in EU competition law. After outlining the legal and institutional position of competition authorities within the EU administrative framework, this subsection analyses how climate considerations are operationalised through enforcement practices at both EU and national levels. It then assesses the implications of this governance model for the coherence, limits, and legitimacy of climate integration in competition law.

Competition law is primarily concerned with the protection of the normal functioning of the market. Its particularity is that it is both the EU and Member States engage in implementing competition rules and policies. It involves various institutions at both levels, although it is an exclusive competence of the EU, with a significant role granted and played by the Commission.

Thus, the National Competition Council or authority, and the national courts may penalise infringement of national and Union law but also only that of Union law alone – being part of the European Competition Network. The Competition Council must qualify the practices submitted to it with regard to competition law – distortions of competition, such as abuse of dominant positions, anti-competitive agreements, and mergers and acquisitions; State aid when distorting competition.[397] Moreover, in general, the Competition Council and national courts are subject to the principle of the primacy of EU law.

Indeed, primacy implies that rules and acts of national law cannot contradict rules of EU law and that, in the event of conflict, the latter must be respected.[398] In competition law, it's different, there is primacy and direct effect, but national law continues to apply, there is superimposition. National law can therefore be applied only on condition that it does not undermine the legal strength and effectiveness of the EU competition rules.

More specifically, the superimposition of the two rights implies the application of Articles 101 and 102 of the TFEU as soon as there is an effect on trade between Member States, but this does not prevent the application at national level of other rules or

397 Articles 101 to 109 TFEU and Protocol No 27 on the internal market and competition, which make clear that a system of fair competition forms an integral part of the internal market, as set out in Article 3(3) of the Treaty on EU

398 Case 6/64, Flaminio Costa v. ENEL [1964] EU:C:1964:66

principles. In addition, there is therefore a ***triple referral***,[399] i.e. it is possible to refer the matter simultaneously to the Commission, the Competition Council, and the national judge (administrative or judicial). This trinity is essential for the implementation of polycentric governance at the EU level for mitigating climate change.

The interest of the subject is therefore to understand the division of competences between national law and EU law but also the effects on the allocation of competences in the application of EU competition law by the Member States. Thus, how do these two legal spheres manage to coexist? How and according to what rules do the Member States apply EU competition law? Could this lead a prospective practice for EU climate governance?

The study of the coexistence of European and domestic competition law (A) will be followed by that of the application of EU law by national courts (B). Only then a potential prospective practice for the EU climate governance will be discussed (C).

A. *The (inter)action of European and domestic laws in competition law*

The case law of the CJEU has established that in the event of an effect on trade between Member States, EU law applies. This raises the question of the concurrent application of the allocation of competences between the EU and its Member States.

a) *The effect on trade between Member States: a condition for the application of EU law*

Under domestic law, anti-competitive practice is punished only when it is detrimental to the proper functioning of the market. Thus, the cartel is sanctioned in the event of harm to competition and the abuse of a dominant position when proof of abuse is provided. Indeed, an alteration of competitive structures or behaviour granting an abnormal advantage may constitute an abuse. Domestic law retains two main characteristics for the constitution of a market damage. First, there is the existence of a causal link between the practice at issue and the restrictive effect of competition, and a proof of an infringement of the consumer's interests. Transposed to a constitution of a climate damage, there will be the need for a causal link between the actual and tangible consequence, and the restrictive effect of a legal measure. This must be imputable with a proof of an infringement of the litigant's health or direct environment.[400]

To this, Union law will add an additional condition: the effect on trade between Member States. This legal burden would not be likely to apply to climate, in the sense that if affects already the world, globally.[401] The change in dimension in relation to the

399 Auguet, Y., Galokho, C. et Riéra, A. (2020). Chapitre V. Les garants du droit de la concurrence. Droit de la concurrence (p. 103-135). Ellipses. https://droit.cairn.info/droit-de-la-concurrence--9782340029750-page-103?lang=fr.

400 Cournil, C. (2023). Les «victimes climatiques » au prétoire : premiers traits d'une catégorie émergente. La Pensée écologique, 10(1), 4-15. https://doi.org/10.3917/lpe.010.0004.

401 Recital 9, REGULATION (EU) 2021/1119 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 June 2021 establishing the framework for achieving climate neutrality and amending

criteria adopted by domestic law is visible here. One now refers to the internal market as a European framework, instead of a national one.

In fact, the aim is to delimit the fields of action of domestic and EU law. This condition makes it possible to define both the respective competences of the two laws but also to distribute the dispute between them. EU law therefore makes this condition a rule of jurisdiction. Indeed, as soon as there is an infringement of trade between Member States, EU law applies.

In addition, the role of EU law is to ensure the proper functioning of the European single market. Therefore, this condition seems to acquire a dual nature: it becomes a rule of jurisdiction but also a substantive rule.

b) *A broad interpretation of the condition of effect on trade between Member States*

In principle, there is an effect on trade between Member States when the practice hinders cross-border trade. The agreement must have a ***cross-border*** economic impact involving at least two member states. The infringement must have a significant effect on trade between states.

Thus, in the ruling of 27 January 1987 in *Verband der Sachversiherer e.V. v EEC Commission*,[402] the CJEU sanctioned the application of a recommendation which, in its view, affects trade between Member States because the recommendation is addressed to fire insurers having their registered office in Germany but also to those having their registered office in other Member States (the recommendation is therefore of a cross-border nature) and because the recommendation is likely to partition the market between Member States and to make it more difficult to achieve the economic interpenetration desired by the EC Treaty (the recommendation will change the competitive situation of foreign insurers, and therefore has a significant effect on trade between States). In this case, the recommendation meets the two criteria of the "classic" definition of the effect on trade between Member States.

However, it can be noted that the case law of the CJEU has made a broad interpretation of the condition of effect on intra-Union trade. Thus, the infringement may be direct or indirect, actual, or potential. It is therefore no longer necessary for the infringement to have an appreciable effect on trade between States. It is sufficient to show that the text or practice in question can affect those exchanges.

Thus, in the *British Sugar* ruling of the CJEU of 29 April 2004,[403] the cross-border nature of an agreement is no longer necessary to sanction a practice (in this case, only one State is concerned). Moreover, according to the Greenwich Film Production ruling of the CJEU of 25 October 1979,[404] it is irrelevant whether the practice in question concerns trade between Member States. Thus, even practices taking place outside the EEC can affect competition in the common market. This broad interpretation of EU law is called the theory of objective territoriality.

Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

402 CJEU, case of 27 January 1987, Verband der Sachversicherer v Commission, 45/85, EU:C:1987:34, §105

403 CJEU, n° C-359/01, ruling, British Sugar plc v.EEC, 29 April 2004

404 CJEU, preliminary ruling, case C-22/79 Greenwich Film Production 25 Oct 1979

B. ***The concurrent use of the two legal tools***

The application of competition law as soon as there is an effect on intra-Union trade will raise the problem of the concurrent application of domestic law and EU law.

a) *The rejection of the one-stop-shop theory*

The one-stop-shop theory is the theory according to which EU law applies exclusively. By choosing the condition of effect on trade between Member States, EU law rejected this theory.

The *Walt Wilhem* ruling of the CJEU of 13 February 1969[405] affirms that the same cartel can be the subject of two parallel procedures. Indeed, one procedure is possible before the Community (or Union nowadays) authorities, in application of EU law, and another procedure is possible before the national authorities in application of national law. Two sanctions can therefore be imposed.

This ruling also recalls the principle of primacy previously laid down by *the Costa v. Enel* ruling of the CJEU of 15 July 1964.[406] Thus, if there is primacy of EU law, then Articles 101 and 102 of the TFEU apply automatically in domestic law and take precedence over national law.

Concurrent application is therefore possible as long as it does not prejudice the uniform application of the Union's competition rules. The Commission's rulings are therefore binding on the national competition authority and the national courts.

b) *Compliance with Commission rulings by national authorities*

It should be noted first that, in the case of a cartel, the national court cannot condemn a practice based on its law if that practice is validated or exempted under EU law and vice versa. Secondly, when EU law is applicable, there is necessarily the competence of the Union and national authorities. It is therefore possible to refer the matter to the Commission, the national competition authority, and the national court at the same time.

If the Commission agrees to initiate proceedings (which is becoming less and less common as the Commission can close cases of insufficient Union's interest), the national court can continue to investigate and can rule on the case. It is not obliged to stay the proceedings but for reasons of legal certainty (to avoid a risk of contrariety of rulings), it may do so. If the proceedings have been initiated before the national competition authority, there is an obligation to stay the proceedings. If the Commission issues a ruling declaring a practice to be unlawful, national law may continue to apply as long as it does not completely contravene EU law.

Finally, if the Commission issues a negative clearance ruling (because of the information at its disposal, it considers that it does not have to intervene), it may mean that EU law is not applicable, that there is not sufficient Union's interest or that the practice does not sufficiently affect trade between Member States.

The uniform application of EU law therefore obliges the national authorities to

405 CJEU, Case C-14/68, Walt Wilhelm e.a. c/ Bundeskartellamt, 13 Feb 1969

406 CJEU, Case 6/64, Flaminio Costa v. ENEL [1964] EU:C:1964:66

suspend their rulings in certain cases to avoid the risk of contradiction and in others not to take a ruling which would run counter to that taken by the Commission or that which is likely to be issued by the Commission.

Without going against the principle of the primacy of EU law and its procedural consequences, it is now increasingly clear that the law tends to give a greater place to national courts.

c) *Towards the recognition of a greater role for national courts*

Regulation 1-2003 of 16 October 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 TFEU establishes the competence of the national authorities to apply the above-mentioned Articles. Moreover, by cooperating between national and EU bodies, it appears that national law has powers complementary to EU law (c).

According to Article 3 of Regulation 1-2003 of 16 October 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 TFEU,[407] "Where the competition authorities of the Member States or the national courts apply national competition law to agreements, rulings by associations of undertakings or concerted practices within the meaning of Article 101, (1) of the Treaty which may affect trade between Member States within the meaning of that provision, they shall also apply Article 101 of the Treaty to such agreements, rulings or concerted practices. Where the competition authorities of the Member States or the national courts apply national competition law to an abusive practice prohibited by Article 102 of the Treaty, they shall also apply Article 102 of the Treaty.[408]

The Regulation has thereby ***decentralised*** the Commission's powers. The national authorities can now find that competition has been harmed and declare the agreement null and void. However, if a procedure is initiated with a view to the adoption of a ruling, this relieves the competition authorities of the Member States of their competence to apply Articles 101-1 and 101-2. This does not prevent them from applying national competition law. In addition, if a national competition authority has opened a case, if it wants to take it over must notify the Commission. This articulation is a milestone to the implementation of an effective EU Climate governance framework.

One can see the evolution of the role of the national courts, a development that is still closely supervised by the Commission. A change is also visible in the obligations of cooperation between national and EU bodies set out in the regulation.[409]

d) *Cooperation between national and EU bodies*

As regards cooperation between the national competition authorities and the

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407 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty

408 Idem

409 K. L. Scheppele, D. V. Kochenov, B. Grabowska-Moroz, EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the EU, *Yearbook of European Law*, Volume 39, 2020, Pages 3–121, https://doi.org/10.1093/yel/yeaa012

Commission, Article 11 of the Regulation I of 16 December 2002[410] provides, inter alia, that the latter must inform of cases brought before a national authority. la Commission

In addition, regarding cooperation between national courts and the Commission, Article 15 of the Regulation provides that Member States have the possibility to "request to communicate to them information in its possession or an opinion on questions relating to the application of the Community competition rules." Conversely, Member States must send the Commission a copy of all rulings which they have delivered through their national courts applying Articles 101 and 102 TFEU.

National courts are acquiring new powers that seem to allow them to participate more fully in rulings and rulings. However, the Commission retains a particularly important leadership role; even more so with the implementation of EU Climate Law that sees a concentration of powers to its advantage. Therefore, it is noted that national courts have a complementary role to play in the application of competition law in relation to the Commission.

e) *The complementary powers of the national authorities to EU law*

First, in principle it is impossible to apply stricter national rules to agreements covered in Community law by Article 101(3) TFEU.[411]

Moreover, also regarding such unilateral conduct, it is accepted that national provisions may be implemented if they have a different objective in mind from that pursued by Articles 81 and 101 of the EC Treaty. The courts thus seem to obtain a certain "independence" in relation to EU law. However, always with a view to standardising the law, the national authorities must not contradict Community law. In the end, their skills seem easily reducible.

National law protects rights or practices not protected by EU law in many respects. Thus, the national courts fulfil an essential function in the application of the Union's competition rules. They preserve the individual rights provided for by EU law when adjudicating disputes between individuals, in particular by awarding damages to the victims of the infringements. The role of the national courts is, in that regard, complementary to that of the competition authorities of the Member States. They should therefore be allowed to fully apply Articles 191 and 192 TFEU.

Moreover, it should be borne in mind that certain environmental and climate peculiarities and dependence are punishable only under national law since they are not recognised under EU law. National courts are therefore a necessary complement to EU Climate Law.

However, if the regulations would provide for all these changes, it is questionable whether they will actually be implemented. Indeed, the Commission retains a leading role by providing impetus for implementing, mentoring, and sanctioning policies, by centralising information and by having the possibility of dealing with cases itself by being judge, juror and executioner.

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410 Article 11, Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty

411 Article 101(3) TFEU

Finally, if on paper a step forward seems to have been made, in practice it seems exceedingly difficult to establish because respect for the principle of primacy predominates and lets the Commission impose its rules – leading to an evitable absorption of the competence in favour of the Commission. In addition, respect for the principle of primacy remains very strong. It remains to be seen whether the Commission will accept this decentralisation of powers for anything other than matters of insufficient Union's interest, thereby denying any real involvement of the national authorities in the application of EU Climate Law.

To sum up, subsection 2.4.4. demonstrates that competition authorities constitute a paradigmatic example of climate-relevant but climate-independent administrative governance within the EU legal order. The case study of European and domestic competition law enforcement shows that climate considerations are integrated into decision-making not through an explicit attribution of climate competences, but through the discretionary use of existing enforcement powers framed by EU competition law. As a result, climate objectives are operationalised indirectly, within the limits imposed by institutional independence, legal certainty, and the internal logic of competition enforcement. This governance model allows for a form of pragmatic climate integration, but one that remains structurally constrained by sector specific mandates and by the absence of a dedicated coordination framework. The limits observed at the level of competition authorities therefore raise a broader question as to whether climate governance at EU level can rely solely on decentralised, mandate neutral actors, or whether it requires the development of more explicit and structured forms of coordination.

It is against this background that Subsection 2.4.5 turns to the emergence of climate specific governance mechanisms at EU level, examining whether the European Climate Council reflects a form of institutional mimicry of the European Competition Network, adapted to the particularities of EU climate governance.

2.4.5. Mimicry of the European Competition Network applied to the Climate governance at the EU level: the European climate council

Subsection 2.4.5. examines the European Climate Council as an emerging model of EU climate governance, through the lens of institutional mimicry of the European Competition Network (hereinafter ECN). It explores whether the European Climate Council reproduces key features of the ECN—such as decentralised expertise, coordination without hierarchy, and institutional independence—as a means of structuring climate governance at EU level. After outlining the rationale and functioning of the European Competition Network as a governance model within EU competition law, this subsection analyses the legal design, mandate, and operational role of the European Climate Council under EU Climate Law. It then assesses whether this form of institutional mimicry effectively addresses the coordination limits identified in mandate neutral governance models, or whether it reveals structural constraints specific to climate governance within the EU legal order.

Climate policy is inherently cross-sectoral, long-term, and often contentious. The need for regulatory independence arises from several factors: *technical complexity*: climate regulation requires expertise in science, economics, and law.[412] The design and implementation of climate policies—such as emissions trading schemes, carbon taxes, and adaptation strategies—demand a high level of technical knowledge that is often beyond the capacity of traditional political bodies; *political neutrality*: rulings must be shielded from short-term political cycles and lobbying pressures. Climate policy often involves difficult trade-offs and long-term investments that may not align with electoral incentives or the interests of powerful stakeholders; and *credibility and trust*: independent authorities can enhance public confidence in the fairness and effectiveness of climate measures. By operating at arm's length from government, IAAs can provide objective assessments, transparent decision-making, and consistent enforcement.[413]

IAAs are essential for ensuring impartiality and expertise in the implementation of climate law, especially when the executive branch may be subject to conflicting interests or insufficient technical capacity. One must emphasize that the independence of these authorities is not merely a formal attribute but a functional necessity for the effective governance of complex and contested policy domains such as climate change.[414] The European Climate Council would be an independent administrative authority dedicated to climate regulation, ensuring the implementation of EU Climate Law and contributing to the conciliation between the internal market and environmental protection.[415] The authority would be composed of members appointed through a process ensuring their independence and impartiality. The council would have the power to issue recommendations, sanctions, and individual rulings, and would also have a regulatory power in its field of competence.

The procedure adopted before the European Climate Council would be adversarial, ensuring that the rights of the defence are respected, in compliance with the article 6 of the ECHR. The council would have investigative powers and the ability to impose sanctions, similar to the Competition Authority. The council would also work closely with national climate councils and other EU institutions to ensure the effective implementation of climate policies.

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412 Bétaille, J. (2020). Arguments en faveur d'une autorité publique indépendante environnementale. In M. Sousse (Ed.), Droit économique et droit de l'environnement: Les conférences du CDED (pp. 107-124). Éditions Mare & Martin.

413 Delzangles, H. (2014). Les autorités de régulation indépendantes de marché et la prise en compte de l'environnement: L'exemple de l'énergie. In *Les autorités administratives indépendantes: des interrogations classiques renouvelées dans un contexte européanisé* (pp. 143-154). Droit et Société, 93.

414 Platon, S. (2017). L'Union européenne et la protection de l'environnement: entre compétence partagée et compétence exclusive. In J. Bétaille (Ed.), *Droit de l'environnement et Union européenne* (pp. 45-62). Mare & Martin.

415 Firat Cengiz, «Multi-level governance in competition policy: The European Competition Network », *European Law Review*, vol. 35, nº 5, 2010, p. 660–677

A. ***The genesis of the European climate Council***

European Climate Council would play a crucial role in integrating climate policies with existing EU policies, ensuring that climate actions do not disrupt the internal market but rather support sustainable economic growth. The council would also engage with stakeholders, including member states, businesses, NGOs, and the public, to ensure that its policies are fair, transparent, and widely accepted.

Main arguments proponent to the creation of an independent public authority for the environment (hereinafter APIE), whose underlying rationale can be extended to the field of climate governance.:

- **Guaranteeing impartiality:** IAAs are less susceptible to political or economic pressures than ministries or agencies directly under government control. Delzangles (2014) notes that the insulation of IAAs from direct political oversight allows them to make rulings based on scientific evidence and legal principles, rather than on the shifting sands of political expediency.
- **Ensuring procedural fairness:** IAAs can provide transparent, reasoned rulings, subject to judicial review. This procedural rigor is particularly important in the climate domain, where regulatory rulings can have significant distributive impacts and may be subject to legal challenge.
- **Promoting innovation and mutual learning:** IAAs can serve as hubs for best practices and policy experimentation, especially in a polycentric governance model. Delzangles (2020) highlights the potential for IAAs to foster cross-jurisdictional learning and to function as catalysts for the diffusion of innovative regulatory approaches.

The European Climate Council would be modelled after the European Competition Network, as aforementioned, with national administrative climate councils having decision-making power in matters of anticlimactic practices. The authority would be composed of members appointed through a process ensuring their independence and impartiality. The council would have the power to issue recommendations, sanctions, and individual rulings, and would also have a regulatory power in its field of competence.

The council would have investigative powers and the ability to impose sanctions, similar to the Competition Authority. The procedure adopted before the European Climate Council would be adversarial, ensuring that the rights of the defence are respected. The council would also work closely with national climate councils and other EU institutions to ensure the effective implementation of climate policies.

The European Climate Council would play a crucial role in integrating climate policies with existing EU policies, ensuring that climate actions do not disrupt the internal market but rather support sustainable economic growth. The council would also engage with stakeholders, including member states, businesses, NGOs, and the public, to ensure that its policies are fair, transparent, and widely accepted.

First, the proposed model of a European Climate Council takes inspiration from the established EU administrative governance practices, in particular network

based- enforcement structures such as the European Competition Network, created under Regulation (EC) No 1/2003, which combine decentralised implementation by national authorities with coordination at Union level in order to ensure effectiveness, consistency, and procedural guarantees.[416] It is grounded, second, in comparative experience with national climate councils, notably the UK Climate Change Committee[417] and the French *Haut Conseil pour le Climat*,[418] which demonstrate the institutional value of independent, expert based- bodies tasked with monitoring climate action and advising public authorities on the consistency and credibility of climate policies. Finally, the proposal responds directly to the structural limitations of the current EU climate governance framework established by Regulation (EU) 2021/1119,[419] which centralises agenda setting-, monitoring, and assessment powers within the Commission, thereby raising concerns related to institutional concentration, procedural impartiality, and democratic balance. It results in the following.

The appointment process for the European Climate Council is designed to ensure the independence and impartiality of its members.

The council would be composed of a President, Vice-Presidents, and non-permanent members. The members would be appointed through a process that ensures their independence and impartiality. The term of office for all members of the college is five years, renewable for all members except the president, who is renewable only once.

The President of the council would be appointed by decree of the Head of State on the advice of the committees of the National Assembly and the Senate competent in environmental and climate matters.

The Vice-Presidents and non-permanent members would be appointed by decree of the President of the Republic. The Chairperson and Vice-Chairpersons would serve on a full-time basis.

The college would comprise six members or former members of the judicial and administrative legal orders -where applicable, or other administrative or judicial courts. Additionally, five persons chosen based on their competence in economic matters or in matters of competition and consumption, and five persons exercising or

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416 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 TFEU, establishing a decentralised enforcement system coordinated through the European Competition Network (ECN): OJ L 1, 4 January 2003, pp. 1–25

417 UK Climate Change Committee (CCC), *About the Climate Change Committee*, established under the Climate Change Act 2008 as an independent statutory body advising the government and reporting to Parliament on emissions targets and progress

418 Haut Conseil pour le climat (HCC), *Présentation*, organisme indépendant chargé d'évaluer l'action publique en matière de climat et sa cohérence avec les engagements européens et internationaux de la France, créé by Decree No 2019-439 of 14 May 2019 and enshrined in the 2019 Energy and Climate Law: https://www.hautconseilclimat.fr/ ; Decree No 2019-439, JORF, 15 May 2019

419 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality ('EU Climate Law'), in particular Articles 6–9 on monitoring, assessment, recommendations, and public engagement by the Commission: OJ L 243, 9 July 2021, pp. 1–17

having conducted their activities in the production sectors, distribution, crafts, services, or liberal professions.

To ensure the independence and impartiality of the council, any member must inform the President of the Authority of the interests they hold or have just acquired and the functions they perform in an economic activity. No member can deliberate in a matter in which they have an interest. They are not revocable, except for legal exceptions, and are subject to the rules of incompatibility laid down for public employment or public service.

This authority would be the result of a legal modernization induced by the introduction of EU Climate Law, conferring a right of ruling on national administrative climate councils, in matters of anticlimactic practices. Diagram 5 provides a visual synthesis of the European Climate Governance Structure, highlighting the network-based articulation between the European Climate Authority, national authorities, and the Commission.

Similarly to the establishment of the European competition network,[420] it is necessary to also profoundly reform the rules relating to the most restrictive powers of investigation in a way that is favourable to the rights of the defence, and in particular to the rights provided for in Article 6 of the ECHR. Regarding the nature of this authority, the law establishing it would specify that it is an independent administrative authority. It explains its mandate, which is to ensure the implementation of EU Climate Law and to contribute to conciliation between the internal market and environmental protection. For this reason, the procedure adopted before the authority is adversarial. This law on establishing the climate council would not change much the composition practice of the members actually, who exercise decision-making power.[421] At the EU level, the debate on creating a European Climate Authority has gained momentum, especially in light of EU Climate Law.[422] Scholars argued that such an authority could:[423]

- *Coordinate national IAAs and ensure upward convergence of standards.* A European Climate Authority could serve as a hub for the exchange of information

420 Bruno Lasserre, «The Future of the European Competition Network », *21st St. Gallen International Competition Law Forum ICF*

421 Autorité Nationale de la Concurrence, The European Competition Network publishes a joint paper addressing the issue of the involvement of national competition authorities in the Digital Markets Act, June 23rd, 2021: https://www.autoritedelaconcurrence.fr/en/communiques-de-presse/european-competition-network-publishes-joint-paper-addressing-issue

422 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

423 M. Peeters, S. Oberthür, B. Moore, I. von Homeyer and Ó. Söebech, *Towards an EU Climate Governance Framework to Deliver on the European Green Deal*, Policy Options Paper, Brussels School of Governance / Maastricht University, February 2023; see also Bétaille, J., & Delzangles, H. (2014). For an independent public authority in the field of the environment. *AJDA*, 37, 1-4. and K. Kulovesi, S. Oberthür, H. van Asselt and A. Savaresi, "The EU Climate Law: Strengthening EU Procedural Climate Governance?," *Journal of Environmental Law*, vol. 36, no. 1, 2024, pp. 23–42

and best practices among national authorities, fostering a more coherent and effective approach to climate governance across the EU.

- *Monitor Member State compliance with EU climate targets.* The authority could be tasked with assessing national climate plans, verifying emissions data, and ensuring that Member States are on track to meet their obligations under EU law.
- *Provide independent scientific and legal advice to EU institutions.* By offering objective assessments and recommendations, the authority could enhance the quality of EU climate policy and reduce the risk of politicization.
- *Enhance transparency and public participation in climate governance.* The authority could facilitate stakeholder engagement, promote access to information, and ensure that the voices of civil society and affected communities are heard.

The analogy with the European Competition Network is often invoked: just as competition law relies on a network of national and EU authorities, climate governance could benefit from a similar multi-level, polycentric structure.[424]

On the basis of comparative climate governance, EU administrative law, and the shortcomings identified in the current procedural framework of EU Climate Law,[425] one must advocate for the creation of a European Climate Authority as a mean to strengthen the EU's capacity to deliver on its climate commitments.[426] It is necessary to envision an authority with the following characteristics:

- *Legal independence:* Enshrined in EU law, with statutory guarantees of autonomy from the European Commission and Member State governments.
- *Expertise:* Staffed by professionals with expertise in climate science, economics, law, and policy.
- *Powers:* Mandated to monitor compliance, issue recommendations, and, where appropriate, initiate infringement proceedings against non-compliant Member States.
- *Transparency:* Required to publish regular reports, conduct public consultations, and provide access to data and analysis.

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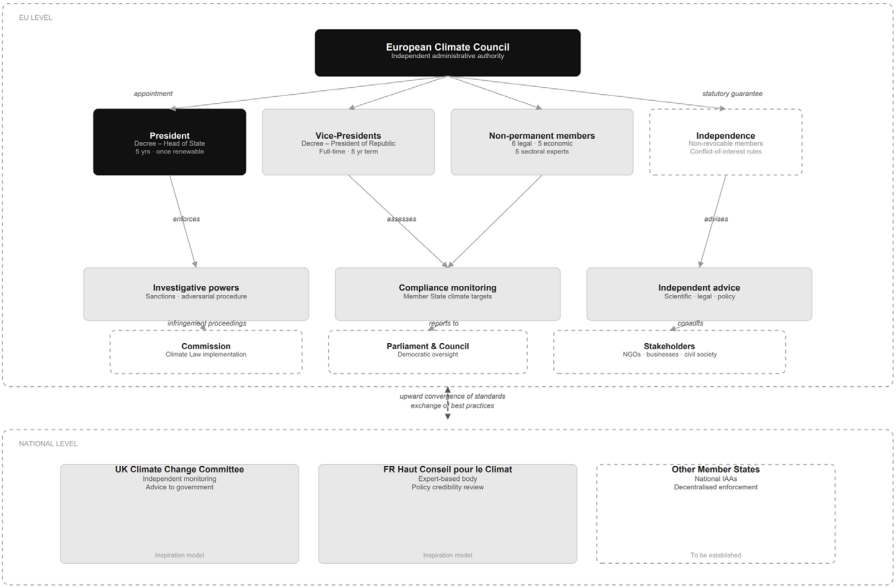
424 Bétaille, J., & Delzangles, H. (2014). For an independent public authority in the field of the environment. *AJDA*, 37, 1-4.

425 K. Kulovesi, S. Oberthür, H. van Asselt & A. Savaresi, "The EU Climate Law: Strengthening EU Procedural Climate Governance?," *Journal of Environmental Law*, vol. 36, no. 1, 2024, pp. 23–42

426 M. Peeters, S. Oberthür, B. Moore, I. von Homeyer & Ó. Söebech, *Towards an EU Climate Governance Framework to Deliver on the European Green Deal*, Policy Options Paper, Brussels School of Governance / Maastricht University, 2023



European Climate Governance Structure

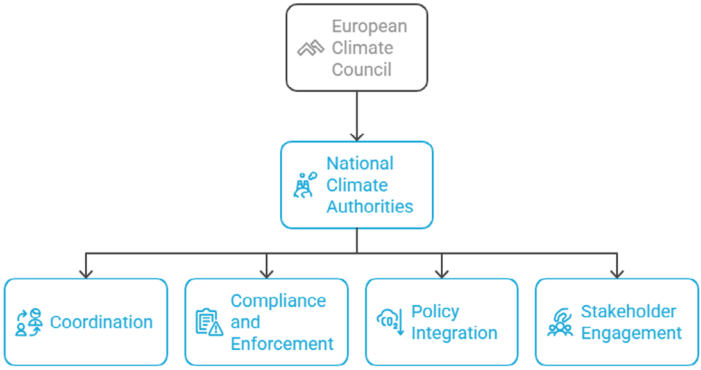


Diagram 5. *European Climate Governance Structure – the European Climate Network*[427]

One may argue that such an authority would not only coordinate national efforts but also serve as a guardian of the rule of law and a catalyst for innovation in climate governance.[428]

427 Composed by the author, based on author's original analysis and research. AI-assisted visualisation provided by Claude Sonnet 4.6 (Anthropic, 2026)

428 Delzangles, H. (2020). Libre-propos sur les régressions du droit de l'environnement. Retrieved from https://halshs.archives-ouvertes.fr/halshs-04329341

B. ***The climate council at the national level***

While paragraph A addressed the case for an EU level- climate authority, this section focuses on national climate councils, whose relevance is grounded not in prospective reform but in existing domestic practice.[429] Drawing on comparative national experience and climate governance scholarship, this section examines the role of national climate councils as institutional mechanisms capable of strengthening Member States' capacity to implement EU and international climate commitments. These bodies are no longer marginal or experimental but form an increasingly standard component of national climate governance frameworks across the EU.

The national climate authority would be composed of members appointed through a process ensuring their independence and impartiality.[430] The council would have the power to issue recommendations, sanctions, and individual rulings, and would also have a regulatory power in its field of competence. The procedure adopted before the authority would be adversarial, ensuring that the rights of the defence are respected. The council would also work closely with national climate councils and other EU institutions to ensure the effective implementation of climate policies.

It should be noted that to ensure the independence and impartiality of the court, any member of the Authority must inform the President of the Authority of the interests he or she holds or has just acquired and the functions he or she performs in an economic activity. In other words, no member can deliberate in a matter in which he or she has an interest. They are not revocable, except for legal exceptions. They are subject to the rules of incompatibility laid down for public employment.

Regarding innovations, the law would redistribute tasks within the Authority in favour of the general rapporteur, who would be appointed by the Minister for the Environment, but on the simple advice of the college and no longer on his proposal.

The second innovation lies in the appearance of a new Union-inspired character, the Hearing Officer. One is a magistrate, appointed by the Minister of Justice after consulting the college. It intervenes only after the notification of objections to collect the parties' observations on the conduct of the proceedings, if necessary.

One can see from this brief presentation that the Ministers of the Environment and for Justice have a significant role in this climate authority. The reform was partly due to the fact that the European Council for Human Rights had reprimanded their mimicry - the Competition Council to the effect that the latter, or at least the procedure it was exercising was not in accordance with the ECHR and in particular its Article 6 (1).[431] Finally, the climate national authority may take up any question concerning climate or environmental on its own initiative and recommend to the Minister for the

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429 N. Evans and M. Duwe, *Climate governance systems in Europe: the role of national advisory bodies*, Ecologic Institute & IDDRI, 2021, commissioned by the European Environment Agency

430 Delzangles, H. (2020). Libre-propos sur les régressions du droit de l'environnement. Retrieved from https://halshs.archives-ouvertes.fr/halshs-04329341

431 ECHR, Article 6.1

Environment or the Minister responsible for the sector concerned to implement the measures necessary to improve the effective implementation of climate and environmental protection.

One could multiply the examples, in various fields, but what must be remembered is that these developments are accompanied by significant procedural reforms intended to increase the effectiveness of the authority while strengthening the rights of the defence in compliance with the ECHR.

While the proposal for a European Climate Council draws inspiration from the model of the European Competition Network, its feasibility and potential effectiveness require critical assessment. On one hand, such a body could address current governance gaps by providing independent oversight, enhancing transparency, and ensuring more consistent enforcement of EU Climate Law across Member States. This could help mitigate the risks of fragmentation and uneven ambition that currently challenge the EU's polycentric climate governance model.

However, several challenges must be considered. First, the creation of a new authority risks institutional overlap with existing bodies such as the European Environment Agency and the Commission's Directorate-General for Climate Action (DG CLIMA). Questions of legitimacy and democratic accountability also arise, particularly regarding the appointment process and the scope of the Council's powers. Furthermore, the effectiveness of such a Council would depend on its ability to coordinate with national authorities and to enforce its recommendations or sanctions in practice.

Comparative experience with the European Competition Network suggests that while networked governance can foster mutual learning and upward convergence, it can also lead to complex inter-institutional dynamics and potential turf wars. Therefore, while the European Climate Council could be a valuable innovation, its design must carefully balance independence, accountability, and integration with existing EU structures to avoid duplication and ensure real added value.

Several Member States have established independent authorities with environmental or climate mandates. Notable examples include the French Haut Conseil pour le Climat, the UK Climate Change Committee, and the German Council of Environmental Advisors. These bodies typically have the following features:

- **Collegial structure:** A board of experts appointed for fixed terms, often with a mix of scientific, legal, and policy expertise.
- **Advisory and monitoring powers:** They issue opinions, monitor compliance, and sometimes have sanctioning authority. For example, the UK Climate Change Committee is responsible for advising the government on emissions targets and reporting on progress towards meeting those targets.
- **Legal independence:** Statutory guarantees of autonomy from the executive, including budgetary independence and protection from arbitrary dismissal.

The diversity of national models but insists on the need for strong legal safeguards

to ensure real independence and effectiveness.[432] The mere formal designation of an authority as "independent" is insufficient; what matters is the actual degree of autonomy in practice, which depends on factors such as appointment procedures, funding mechanisms, and the scope of regulatory powers.

Example: The French Haut Conseil pour le Climat

The French Haut Conseil pour le Climat (HCC) was established in 2018 as an independent body tasked with evaluating the government's climate policies and progress towards France's climate targets.[433] The HCC is composed of experts in climate science, economics, and policy, and operates independently of the executive. Its annual reports have been influential in shaping public debate and holding the government accountable for its climate commitments.

The HCC can be seen as a positive development, but it is important to note that its advisory role is limited by the absence of binding powers.[434] For IAAs to be truly effective, they must be endowed with the authority to enforce compliance and to impose sanctions where necessary.

Example: The UK Climate Change Committee

The UK Climate Change Committee (CCC) is widely regarded as a model of best practice in independent climate governance.[435] Established under the Climate Change Act 2008, the CCC has a statutory mandate to advise the government on emissions targets, monitor progress, and recommend policy measures. The CCC's independence is safeguarded by transparent appointment procedures, secure funding, and a clear legal mandate.[436]

The CCC is an example of how IAAs can contribute to the credibility and effectiveness of climate policy. It must be noted that the CCC's rigorous analysis and public reporting have played a key role in maintaining political momentum for ambitious climate action in the UK.[437]

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432 Delzangles, H. (2014). Les autorités de régulation indépendantes de marché et la prise en compte de l'environnement: L'exemple de l'énergie. In *Les autorités administratives indépendantes: des interrogations classiques renouvelées dans un contexte européanisé* (pp. 143-154). Droit et Société, 93.

433 Articles L132-4 and L132-5, French Environmental Code

434 Bétaille, J. (2020). Arguments en faveur d'une autorité publique indépendante environnementale. In M. Sousse (Ed.), Droit économique et droit de l'environnement: Les conférences du CDED (pp. 107-124). Éditions Mare & Martin

435 Idem

436 Bétaille, J., & Delzangles, H. (2014). For an independent public authority in the field of the environment. *AJDA*, 37, 1-4.

437 Delzangles, H. (2014). Les autorités de régulation indépendantes de marché et la prise en compte de l'environnement: L'exemple de l'énergie. In *Les autorités administratives indépendantes: des interrogations classiques renouvelées dans un contexte européanisé* (pp. 143-154). Droit et Société, 93.

C. *Creation of a European Climate Authority: Theoretical and practical implications*

While the case for IAAs in climate governance is strong, several challenges remain. Indeed, one of the main criticisms of IAAs is that their independence may come at the expense of democratic accountability. By operating at arm's length from elected officials, IAAs may be perceived as technocratic or unresponsive to public concerns. This risk is acknowledged but it can be argued that it can be mitigated through robust mechanisms for parliamentary oversight, judicial review, and stakeholder engagement.[438] Independence does not mean isolation: IAAs must be embedded within a broader framework of checks and balances, including transparent appointment procedures, clear legal mandates, and regular reporting to elected bodies.[439]

Another challenge is the risk of duplication or conflict with existing agencies, such as the European Commission's Directorate-General for Climate Action (DG CLIMA) or the European Environment Agency (EEA). It can be noted that the proliferation of agencies can lead to fragmentation and inefficiency but argues that a well-designed European Climate Authority could complement rather than compete with existing institutions. One may suggest that the authority's mandate should be clearly defined to avoid overlap, and that mechanisms for inter-agency coordination should be established.

Ensuring sufficient funding and expertise is a perennial challenge for IAAs.[440] Under-resourced authorities may lack the capacity to fulfil their mandates effectively and may be vulnerable to capture by powerful interests. One must advocate for secure, multi-annual funding arrangements and competitive recruitment processes to attract and retain top talent.

The creation of a European Climate Authority would require significant legal and political changes, including amendments to EU law and the consent of Member States. There may be resistance from governments wary of ceding authority to an independent body, but one may argue that the benefits in terms of credibility, effectiveness, and public trust outweigh the costs.

The creation of a European Climate Authority is a mean to strengthen the EU's capacity to deliver on its climate commitments. Such an authority would not only coordinate national efforts but also serve as a guardian of the rule of law and a catalyst for innovation in climate governance. The establishment of a European Climate Authority

438 Delzangles, H. (2020). Libre-propos sur les régressions du droit de l'environnement. Retrieved from https://halshs.archives-ouvertes.fr/halshs-04329341

439 Bétaille, J. (2020). Arguments en faveur d'une autorité publique indépendante environnementale. In M. Sousse (Ed.), Droit économique et droit de l'environnement: Les conférences du CDED (pp. 107-124). Éditions Mare & Martin

440 Delzangles, H. (2014). Les autorités de régulation indépendantes de marché et la prise en compte de l'environnement: L'exemple de l'énergie. In *Les autorités administratives indépendantes: des interrogations classiques renouvelées dans un contexte européanisé* (pp. 143-154). Droit et Société, 93.

would represent a significant step towards a more coherent, transparent, and effective climate governance framework in the EU.

One must envision the authority as playing a vital role in the implementation of EU Climate Law, monitoring Member State compliance, providing independent advice to EU institutions, and facilitating stakeholder engagement. By operating at the intersection of law, science, and policy, the authority would help to bridge the gap between ambition and implementation, ensuring that the EU's climate targets are translated into concrete action on the ground.

The creation of a European Climate Authority would have far-reaching implications for the governance of climate policy in the EU. It would signal a shift towards a more polycentric, networked model of regulation, in which independent authorities at the national and European levels work together to achieve common objectives. This model offers several advantages:

- *Resilience***:** by distributing authority across multiple levels and institutions, the system is less vulnerable to capture or failure at any one point.
- *Adaptability:* IAAs can experiment with different approaches, learn from each other, and adapt to changing circumstances.
- *Legitimacy:* by providing transparent, evidence-based decision-making, IAAs can enhance public trust in climate policy and reduce the risk of backlash or non-compliance.

At the same time, the success of this model depends on careful institutional design, including clear legal mandates, robust accountability mechanisms, and adequate resources.[441] Independent Administrative Authorities are increasingly recognized as essential actors in the governance of climate policy, both at national and European levels. Building on the foundational work of Delzangles,[442] this chapter has shown that IAAs can enhance the impartiality, expertise, and legitimacy of climate action—provided that their independence is robustly protected and balanced with mechanisms for accountability and transparency.

The creation of a European Climate Authority, as advocated, represents a promising avenue for strengthening the EU's capacity to deliver on its climate commitments. Such an authority would not only coordinate national efforts but also serve as a guardian of the rule of law and a catalyst for innovation in climate governance. As climate challenges intensify, the institutional architecture of climate governance must evolve. IAAs—rooted in independence, expertise, and public trust—are likely to play a significant role in this evolution. The experience of existing authorities at the national level provides valuable lessons for the design of a European Climate Authority, and the current research aims to offer a compelling blueprint for the future of independent climate regulation in Europe.

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441 Bétaille, J., & Delzangles, H. (2014). For an independent public authority in the field of the environment. *AJDA*, 37, 1-4.

442 Delzangles, H. (2020). Libre-propos sur les régressions du droit de l'environnement. Retrieved from https://halshs.archives-ouvertes.fr/halshs-04329341

To sum up, subsection 2.4.5. illustrates that the European Climate Council reflects an attempt to structure EU climate governance through institutional mimicry of the European Competition Network, relying on decentralised expertise, coordination mechanisms, and institutional independence rather than hierarchical command. The analysis shows that, while this model offers a framework for coordination without formally reallocating competences, its effectiveness remains constrained by the advisory nature of the Climate Council and by the absence of binding enforcement powers. As a result, the European Climate Council contributes to the rationalisation and coherence of climate governance primarily through expertise and guidance, rather than through decision-making authority. This confirms that ECN style governance can support climate coordination at EU level, but cannot, on its own, overcome the structural limits associated with nonbinding and mandate restricted climate institutions.

To sum up, Section 2.4 demonstrates that EU climate governance increasingly relies on administrative and institutional mechanisms that integrate climate objectives without systematically reallocating formal competences. Through the examination of competition authorities and the European Climate Council, this section shows that climate objectives are incorporated either indirectly, through the exercise of mandate neutral powers, or through coordination-based governance models inspired by existing EU regulatory networks. While these approaches allow for a degree of flexibility and adaptability, they also reveal persistent structural constraints linked to institutional independence, sector specific mandates, and the predominance of nonbinding coordination. EU climate governance thus emerges as a composite system, characterised by pragmatic integration rather than by the establishment of a unified and autonomous climate administration.

To sum up, chapter 2 has shown that the implementation of EU Climate Law is shaped less by the creation of new exclusive competences than by the reconfiguration of existing legal, administrative, and governance frameworks. Across the analysis of legislative instruments, enforcement mechanisms, and governance models, climate objectives are progressively embedded within established areas of EU law, including competition, State aid, and administrative coordination. This integration operates through conditionality, proportionality, and coordination, rather than through the recognition of climate objectives as autonomous or overriding legal imperatives. As a result, EU Climate Law develops within a structurally constrained legal environment, in which ambition is mediated by competence boundaries, institutional design, and the internal coherence of the EU legal order. The chapter therefore highlights the central tension of EU Climate Law: its capacity to drive systemic transformation while remaining anchored in a legal framework originally designed for economic integration rather than climate governance.

Synthesis – Chapter 2, Part I: the interaction of EU Climate Law on the horizontal distribution of competences

Chapter 2 has provided an in-depth analysis of how EU Climate Law has reshaped the horizontal distribution of powers among the EU's institutions, significantly reshaping the practical operation of the institutional architecture that underpins EU climate governance. The strengthening of the European Commission's role as the central coordinator, monitor, and enforcer of climate objectives has not only redefined the balance of power between the executive, legislative, and intergovernmental branches, but has also raised critical questions about the legitimacy, transparency, and effectiveness of supranational intervention in the climate domain.

One of the most significant developments highlighted in this chapter is the emergence of a more centralized and technocratic model of climate governance. The Commission's enhanced powers—ranging from agenda-setting and legislative initiative to the monitoring and enforcement of Member State compliance—have positioned it as the "engine" of EU climate policy. While this centralization has the potential to ensure greater coherence and consistency in the implementation of ambitious climate objectives, it also brings with it the risk of institutional imbalance and the marginalization of other key actors, notably the European Parliament and the Council.

The evolving role of the European Parliament, traditionally seen as the "green" institution and the democratic counterweight within the EU, has been both challenged and redefined by the cross-cutting and urgent nature of climate action. Although Parliament has acquired new powers of scrutiny, co-ruling, and indirect legislative initiative, its influence remains constrained by the Commission's quasi-monopoly on legislative initiative and the persistent dominance of intergovernmental bodies in sensitive policy areas. The Council, for its part, continues to serve as the forum for Member State interests, but its capacity to shape climate policy is increasingly mediated by the need for consensus and the growing complexity of the regulatory landscape.

This chapter has also examined the rise of new forms of governance, such as independent administrative authorities and polycentric regulatory networks, which offer innovative responses to the challenges of climate governance. The creation of independent authorities—both at the national and European levels—has been proposed as a means of ensuring impartiality, expertise, and accountability in the implementation of climate law. However, these developments raise further questions about the separation of powers, the risk of fragmentation, and the need to maintain democratic legitimacy and effective oversight.

Comparative perspectives from other jurisdictions and recent doctrinal debates have underscored the importance of designing an institutional architecture that is both adaptive and resilient. The experience of Member States in establishing independent climate authorities, the interplay between constitutional courts and EU law, and the growing importance of climate litigation all point to the need for a balanced approach—one that combines central coordination with pluralism, innovation with tradition, and efficiency with legitimacy.

Ultimately, the horizontal impact of EU Climate Law is characterized by a delicate interplay between innovation and tradition, centralization and pluralism, and efficiency and legitimacy. As the Union continues to pursue its climate neutrality objective, the challenge will be to maintain a balanced and adaptive institutional framework—one that can respond to the demands of climate action while safeguarding the core values of democratic governance and the rule of law. The lessons drawn from this chapter set the stage for analysing how these institutional dynamics interact with the broader legal and policy landscape of EU climate governance, and how they may be harnessed to ensure both effectiveness and legitimacy.

Synthesis – Part I: the interaction between EU Climate Law and the allocation of competences within the EU legal framework

The Union's climate policy is the result of an external construct. It explains the difficulties it has faced in the internal absorption; hence the inadequacies found in the Treaties and the need for amendments. Firstly, of the definition of Union's policy regarding environment at article 191 TFEU, as article 192 TFEU, which is the legal basis for every legal act taken to adopt climate-related legislation.

On a purely competence perspective, the adoption of EU Climate Law challenges the legal equilibrium between the Union and its Member States, as it generates structural conditions that may, over time, challenge or re-characterise the current classification of climate action within shared competences. By distinguishing climate policies from environment ones, it tacitly results in a functional tendency towards centralisation that challenges the traditional understanding of shared environmental competence and climate-related acts.

The content of EU Climate Law amplifies, if not aggravates, the fragile distribution of roles of the different Union's actors to the benefit of the Commission. To counterbalance the polarization of powers – or concentration of powers, to the latter, it is highly needed to create an independent administrative authority dedicated to the consequences of EU Climate Law to monitor its implementation, similarly to the European Competition Network. The establishment of an independent climate authority emerges as a structurally significant option to ensure the effective implementation and monitoring of EU Climate Law. This authority would play a vital role in maintaining transparency, accountability, and fairness in climate governance. By providing a balanced and impartial oversight, the independent climate authority would help mitigate the risks associated with the concentration of powers within the Commission and ensure that climate policies are implemented effectively across the Union.

Part I has shown that the implementation of EU Climate Law operates through the progressive integration of climate objectives into existing areas of EU law, administrative practices, and governance structures, without fundamentally redefining the distribution of competences. Climate ambition is thus mediated by sector-specific legal logics, institutional mandates, and coordination mechanisms, resulting in a fragmented

but pragmatic model of implementation. While this approach allows climate considerations to permeate diverse policy fields, it simultaneously raises questions regarding the overall coherence and consistency of the EU legal framework.

Part II therefore shifts the focus from implementation to integration, examining the obligation for a consistent and coherent EU climate framework. It explores how EU Climate Law interacts with other areas of EU law, how potential conflicts and overlaps are managed, and whether the existing legal architecture can support a unified and legally coherent and consistent climate strategy across the Union.

PART II. THE INTEGRATION OF EU CLIMATE LAW: THE OBLIGATION FOR A CONSISTENT AND COHERENT EU LEGAL FRAMEWORK

The implementation of EU Climate Law does not only affect the allocation and exercise of competences within the Union. It also raises a distinct, yet closely related, question concerning the external coherence and internal consistency of the EU legal order. By introducing binding long term climate objectives and requiring their integration across a wide range of policy areas, EU Climate Law challenges the unity of the Union's normative framework and tests its capacity to accommodate transversal objectives without fragmenting its legal structure.

Unlike traditional sector specific regulation, EU Climate Law operates through a logic of -integration.[443] Climate neutrality is not confined to environmental policy alone, but extends to internal market, energy, transport, competition, trade, agriculture, and financial regulation. This crosscutting reach generates normative tensions, as climate objectives- must coexist with pre-existing legal principles, policy priorities, and regulatory techniques. The obligation to ensure coherence and consistency between climate action and other Union policies therefore emerges as a central normative requirement of EU Climate Law. Climatization should not be understood as a new autonomous legal principle or a reallocation of competences, but as a process through which climate objectives progressively operate as internal parameters of legal reasoning within existing doctrinal frameworks.

The obligation of coherence and consistency examined in this Part does not imply the hierarchical primacy of climate objectives over other Treaty based policies. Rather, it operates as a balancing requirement, structured by the principles of conferral, proportionality, and institutional equilibrium that continue to govern the EU legal order.

This integration imperative is explicitly reflected in EU Climate Law,[444] which seeks to ensure that all Union policies contribute to the achievement of climate neutrality and that climate considerations are systematically taken into account in the formulation, implementation, and review of EU legislation. However, the insertion of climate

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443 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"), OJ L 243, 9.7.2021, pp. 1–17, in particular Article 2(1) (binding objective of climate neutrality), Article 4, and Article 6, read in light of recitals 16, 19 and 25, which require Union institutions and Member States to ensure that all Union policies and measures contribute to the achievement of climate neutrality.

444 On the cross-cutting and integrative nature of EU Climate Law, see Article 11 TFEU, which establishes the environmental integration principle, requiring environmental protection requirements to be integrated into the definition and implementation of all Union policies; see also K. Kulovesi, S. Oberthür, H. van Asselt and A. Savaresi, "*The European Climate Law: Strengthening EU Procedural Climate Governance?*", Journal of Environmental Law, vol. 36, no. 1, 2024, pp. 23–42, at pp. 28–31, describing EU Climate Law as a framework of procedural climate governance based on policy integration rather than sectoral harmonization.

objectives into multiple legal regimes raises complex questions of coherence and consistency. It requires not only the alignment of substantive rules, but also the coordination of legal instruments, decision-making processes, and interpretative frameworks across the EU legal system. "Normativity" is legally used *stricto sensu*, as the capacity of EU climate provisions to produce binding legal effects and to structure legal reasoning; coherence and consistency are analysed as key modalities through which that normativity operates.

Part II identifies the adoption of EU Climate Law as a pivotal moment in the evolution of the EU's legal and institutional architecture. It examines EU Climate Law through the lens of normativity, understood as the capacity of law to structure obligations, guide institutional action, and maintain the intelligibility of the legal order. By enshrining the objective of climate neutrality by 2050, the EU has not only set an ambitious environmental target but has also triggered a profound transformation in the way climate objectives are integrated across the Union's legal and policy landscape. This transformation is not merely a matter of legislative innovation; it is a test of the Union's capacity to ensure the consistency and coherence of its legal framework, both internally—across its diverse policy domains—and externally, in its relations with the wider world.

Part II of this thesis is dedicated to the critical examination of this integration process. It seeks to unravel the legal, institutional, and political implications of embedding climate objectives at the heart of the EU's legal order, and to assess the mechanisms by which the Union strives to achieve a harmonious interplay between climate law and other core areas of EU policy. The challenge is formidable: climate law, by its very nature, is transversal and polycentric. This integration process raises the question whether existing governance structures are sufficient to manage the transversal and multi-level nature of climate objectives. It cuts across traditional boundaries, interacts with established legal regimes, and demands a level of coordination and mutual reinforcement that evaluates the limits of the Union's governance structures.

The ruling to address the integration of EU Climate Law into the Union's external relations before turning to its internal integration is both deliberate and methodologically grounded. Part II adopts a sectional structure to distinguish clearly between the external and internal dimensions of the obligation of coherence in EU Climate Law. This choice reflects the specific analytical needs of this Part, which examines the integration of climate objectives both in the Union's external relations and within its internal policies. The use of sections is therefore functional and aims at improving the clarity and readability of the reasoning, without modifying the overall architecture of the thesis. This structure reflects the unique legal and political context in which EU Climate Law has emerged and operates. Primarily, EU Climate Law is, at its core, a response to global challenges and international obligations. The EU's climate objectives—most notably the commitment to climate neutrality by 2050—are rooted in, and shaped by, international agreements such as the UNFCCC, the Kyoto Protocol, and the Paris Agreement. EU Climate Law itself is designed to operationalize these global commitments within the EU legal order. As such, the external dimension is not merely

an afterthought or a secondary concern; it is the very foundation upon which the EU's climate policy is constructed.

By beginning with external relations, the analysis acknowledges that the EU's climate law is fundamentally outward-looking: it is shaped by, and in turn shapes, the Union's position in the international community. The EU's dual status as both a regional organization and a party to global climate agreements creates a complex web of obligations. Understanding how the EU navigates its international commitments, and how it seeks to ensure coherence and consistency between its internal policies and its external actions, is therefore a necessary precondition for any meaningful assessment of the law's integration within the Union. This principle operates both externally—ensuring that the Union speaks with one voice and acts consistently on the international stage—and internally—ensuring that policies across different domains are mutually supportive. By analysing external relations first, the thesis foregrounds the EU's need to align its internal legal and policy frameworks with its international commitments. This approach mirrors the logic of the Treaties, which require the Union to ensure coherence between its external actions and its other policies. The EU's external commitments often serve as catalysts for internal legal and policy developments. Conversely, the effectiveness of the EU's external action depends on the robustness and consistency of its internal policies. By first mapping the external landscape, the analysis is better positioned to assess how internal integration efforts respond to, and are conditioned by, external imperatives. It allows for a comprehensive examination of the EU's climate governance, beginning with the broader international context and then narrowing the focus to the specific challenges of internal policy integration. This approach ensures that the discussion of internal consistency is grounded in an understanding of the external pressures and obligations that shape the Union's choices.

Chapter 1 is structured around several interrelated axes. First, it explores the integration of climate law into the Union's external relations, with particular attention to the duty of coherence in the EU's interactions with international organizations such as the WTO and in the negotiation of FTAs (hereinafter FTAs). The EU's dual status as both a regional organization and a party to global climate agreements creates unique challenges and opportunities for the articulation of climate objectives on the international stage. The analysis delves into the legal and practical implications of aligning the Union's climate commitments with its trade obligations and examines the mechanisms by which the EU seeks to ensure that its external actions reinforce, rather than undermine, its internal climate ambitions.

Chapter 2 focuses on the integration of climate law into the Union's internal policies. Here, the focus is on the obligation of consistency across key policy domains—most notably, the internal market, competition law, and environmental law. The interplay between these domains is complex and, at times, contentious. Measures adopted to achieve climate neutrality may have significant implications for the free movement of goods, the regulation of state aid, and the application of competition rules. The analysis seeks to identify the points of friction and synergy, and to assess the extent to which the Union's legal framework is equipped to manage the inevitable trade-offs that

arise in the pursuit of multiple, sometimes competing, objectives.

This integration process raises the question whether polycentric governance mechanisms are necessary. The integration of climate law cannot be achieved through top-down regulation alone; it requires the active engagement of multiple actors—EU institutions, Member States, independent authorities, stakeholders, and citizens. The thesis examines the institutional innovations that have emerged in response to this need, including the proposal for a European Climate Council and the strengthening of national climate authorities. These developments are assessed in light of their potential to enhance transparency, accountability, and mutual learning, while also safeguarding the democratic legitimacy and effectiveness of climate governance.

The obligation for consistency and coherence also extends to the procedural dimension of climate law. Effective integration requires not only substantive alignment of policies but also the establishment of robust mechanisms for monitoring, reporting, and enforcement. The thesis analyses the legal instruments and institutional arrangements that underpin these mechanisms and evaluates their capacity to ensure that climate objectives are translated into concrete action at both the Union and national levels.

Finally, this part situates the integration of climate law within the broader context of the Union's commitment to the rule of law and fundamental rights. The pursuit of climate neutrality must be balanced with the protection of economic freedoms, social rights, and the principles of proportionality and non-discrimination. The articulation between these two perspectives is crucial. On the one hand, the EU's credibility as a climate leader depends on its ability to translate international commitments into effective internal and external policies. On the other hand, the robustness of its internal climate framework enhances the Union's capacity to negotiate, implement, and uphold ambitious standards on the international stage. The dynamic feedback loop between external obligations and internal policy development is thus at the heart of the EU's climate governance strategy.

Part II of the thesis focuses on the identification of the consequences of the new EU Climate Law[445] by its integration *vis-à-vis* the duties of coherence and consistency of the EU, through the analysis of the novelties it displays. *De jure*, the Regulation does not aim to distort the current application of the duties aforementioned set by the Treaties. This part deals with the question how the integration of EU Climate Law affects the consistency of EU external policies and relations. Implementing the Regulation on EU Climate Law explicitly advocates for the upcoming policies to be in line with EU's commitments to the UNFCCC. Indeed, as enshrined now as a component of future legislations of the EU, climate neutrality puts the EU to draw new limits of the current application of its policies within its legal framework externally (chapter 1) but also internally (chapter 2).

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445 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

CHAPTER 1. CLIMATIZING THE UNION'S EXTERNAL RELATIONS: THE DUTY OF COHERENCE

As climate change is a transboundary phenomenon, the effectiveness of EU Climate Law depends on the Union's capacity to project its climate objectives beyond its borders, to ensure coherence between its internal commitments and its external actions, and to influence the development of international norms and practices.

Climate change governance confronts the EU with a structural challenge that extends beyond the boundaries of its internal legal order. As both a regional integration organization and an autonomous actor in international law, the Union is required to ensure that its external action reflects and reinforces the objectives it has set internally. The adoption of the EU Climate Law has intensified this challenge by elevating climate neutrality to a legally binding objective that must guide not only internal policies but also the Union's conduct on the international stage. The process of "climatizing" the Union's external relations thus raises fundamental questions about the scope, content, and justiciability of the duty of coherence in EU external action.

The duty of coherence occupies a central position in the EU's constitutional architecture. Enshrined in the Treaties, it requires the Union to ensure consistency between its different external actions and between its external policies and other areas of Union action. In the context of climate law, this duty acquires renewed normative significance. Climate objectives are no longer confined to environmental diplomacy or participation in multilateral climate regimes; they increasingly shape the Union's positions in trade negotiations, its engagement with international economic institutions, and the design of external regulatory instruments. External coherence in climate matters therefore entails more than the avoidance of contradictions. It demands an active alignment of the Union's external commitments, instruments, and practices with the overarching objective of climate neutrality.

This chapter explores the external dimension of EU Climate Law through two complementary perspectives. Section 1 examines how the EU's climate objectives are embedded in its external relations—diplomatic, legal, and institutional—highlighting the Union's role in international climate governance, its participation in global agreements such as the Paris Agreement, and its interactions with key organizations like the WTO. The analysis focuses on the duty of coherence that underpins the EU's external action, requiring the Union to speak with one voice and to align its international commitments with its internal legal framework.

A central focus of the analysis lies in the interaction between EU climate objectives and the Union's external economic relations. Trade policy, in particular, constitutes a privileged site for observing the tensions inherent in climatizing external action. As the EU seeks to integrate climate considerations into its engagement with the World Trade Organization and into the negotiation and implementation of FTAs, questions arise concerning compatibility with international trade law, the risk of regulatory fragmentation, and the limits of unilateral climate action. The chapter assesses the legal mechanisms through which the Union attempts to reconcile its climate ambitions with

its trade obligations and evaluates whether the duty of coherence operates as an effective constraint or merely as a programmatic aspiration in this context.

Beyond trade, the chapter also addresses the broader international dimension of EU climate governance. The Union's participation in multilateral climate regimes, its leadership claims in global climate diplomacy, and its reliance on external commitments as drivers of internal legal development all contribute to a complex web of reciprocal influences. External coherence emerges here as a dynamic process, shaped by feedback loops between international obligations and internal regulatory choices. The analysis investigates how EU Climate Law positions the Union within this global governance landscape and whether it strengthens the Union's capacity to act coherently and credibly as a climate actor under international law.

Section 1 analyses the evolution of the EU's external climate commitments and the legal and institutional mechanisms that support them (1.1.). It then examines the operationalization of these commitments in EU external policies, with particular attention to the challenges and opportunities associated with integrating climate objectives into trade, diplomacy, and international cooperation (1.2.). This dual approach aims to clarify the complex, evolving, and often contested landscape of the EU's external climate action (1.3.).

Section 2 investigates how these external commitments are operationalized through concrete EU policies and instruments (2.1.1). This includes the integration of climate objectives into trade policy, the negotiation of FTAs with climate clauses (2.1.2.), the development of mechanisms such as the CBAM, and the broader challenge of reconciling climate ambition with the realities of global economic governance (2.1.3). By analysing both the legal foundations and the practical implementation of EU Climate Law in the external sphere, Section 2 aims to provide a comprehensive understanding of how the Union seeks to ensure coherence, credibility, and leadership in the global fight against climate change.

Section 1. Integrating climate law into EU external policies: the genesis of an external construct

The integration of climate objectives into the EU legal order is structurally shaped by the Union's participation in international climate regimes. EU Climate Law did not emerge autonomously but developed in response to binding external commitments undertaken under the UNFCCC, the Kyoto Protocol, and, most decisively, the Paris Agreement. These instruments establish substantive targets and procedural expectations that the Union is required to internalise through its own legal and policy framework.

For this reason, the analysis in this section begins with the external dimension of EU Climate Law integration. This methodological choice reflects the genesis of EU climate action: international obligations have functioned as a primary catalyst for internal legal developments, including the adoption of binding climate targets, the

reinforcement of governance mechanisms, and the progressive recalibration of the exercise of competences between the Union and the Member States. In parallel, the effectiveness and credibility of the EU's external climate action depend on the coherence, enforceability, and internal consistency of its domestic legal framework.

At the same time, the external construct is inseparable from the Treaty based duty of coherence in external relations. The Union's climate ambition must be articulated across fragmented external competences and instruments—diplomacy, trade, and international regulatory engagement—while remaining aligned with internal objectives and the constitutional limits of conferral. The duty of coherence thus becomes the legal hinge through which climate objectives are expected to structure the Union's external action without dissolving the internal logic of EU law or undermining the unity of external representation.[446] This approach is consistent with both Treaty principles and the case law of the CJEU, which identify coherence as a governing norm of EU action across internal and external policies.[447] It also reflects established practice in legal scholarship, where analyses of EU environmental and climate law commonly proceed from international commitments to mechanisms of internal implementation.

The section develops this argument through three complementary movements, corresponding to the subsection structure of the chapter. Subsection 1.1 examines how climate objectives progressively permeate the Union's diplomatic action, shaping external representation and the framing of climate leadership. Subsection 1.2 analyses the juridical mechanism through which an "external construct" is built by relying on internal bases—most notably sustainable development—to support the climatization of external policies. Subsection 1.3 then turns to the Union's practice before the WTO, where the coherence requirement is tested under the constraints of international trade law and where the tension between climate ambition and trade discipline becomes particularly visible – such as climate clauses in FTAs and the CBAM.

By reconstructing this external genesis, Section 1 clarifies why EU Climate Law cannot be analysed exclusively through internal regulatory categories. It shows that the Union's external commitments and external constraints are not simply background conditions but formative elements of EU climate normativity, and that the duty of coherence is the legal principle through which this external dimension is integrated into a structured, and governable climate framework.

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446 CJEU, Front Polisario, Joined Cases C-779/21 P and C-799/21 P, EU:C:2024: §277–278, in which the Court reaffirmed that Article 21 TEU constitutes a binding constitutional framework guiding all external Union action, including trade policy.

447 I. Bosse-Platière, *La cohérence de l'action extérieure de l'Union européenne*, Revue du droit public 2016, p. 1739

1.1. The climatization of the duty of coherence: the climatization of diplomatic action

Because climate change is transboundary, the credibility of EU Climate Law depends partly on the Union's capacity to act coherently in external relations. This subsection therefore examines how climate diplomacy progressively became a structured field of Union action and how the duty of coherence—read together with the duty of sincere cooperation—conditions both the Union's external representation and Member State conduct in international climate negotiations. The core claim is not that participation in climate regimes creates competences autonomously, but that international engagement has progressively intensified coordination duties and contributed to the consolidation of a legally defensible "one voice" requirement in external climate action. [448]

In particular, it raises a specific legal problem: how can the Union develop a coherent and credible climate diplomacy without formally extending its external competences, and through which legal mechanisms is such coordination ensured.

From the second half of the 1990s, the global eco-diplomacy agenda shifted to the issue of the fight against climate change with the establishment of the UNFCCC in 1992,[449] the signing (1997) and then the entry into force of the Kyoto Protocol (2005).[450] Climate change has renewed the debate on the trade-environment relationship, especially since the climate voluntarism shown by some countries seems to be at odds with their trade commitments, while others consider it legitimate to use a range of trade measures to achieve their climate objectives.[451] These regimes sharpened expectations of coordinated mitigation commitments and brought climate policy into direct contact with trade disciplines, particularly where climate measures interact with market access and non-discrimination rules. The EU's external climate posture therefore developed in a context where diplomatic commitments, trade obligations, and internal regulatory consolidation increasingly interacted.

Against this background, subsection 1.1.1 traces the emergence of coordinated external representation through the evolution of the duty of loyalty and cooperation

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448 C. Hill, M. Smith, S. Vanhoonacker, (2017) International Relations and the EU (3rd edition). Oxford: Oxford University Press, 123-142.

449 UNFCCC, 1992: United Nations Framework Convention on Climate Change. United Nations, FCCC/INFORMAL/84 GE. 05-62220 (E) 200705, Secretariat of the United Nations Framework Convention on Climate Change, Bonn, Germany, 24 pp., unfccc.int/resource/docs/convkp/conveng.pdf.

450 Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162.

451 The EU-Mercosur agreement explained, European Commission. It is the first EU's public attempt to include a climate clause in an FTA (point 14 of the agreement in principle, Brussels 1 July 2019):
Under the agreement, the EU and Mercosur agree to:
- protect the environment, including fighting climate change and deforestation
- cooperate on animal welfare standards, biotechnology, food safety, and fight against antimicrobial resistance.

within the EU legal order, while subsection 1.1.2 examines how this duty progressively evolved into a broader requirement of external coherence, structuring the Union's participation in international climate governance.

1.1.1. The duty of coherence at the EU level: from loyalty to cooperation

This subchapter explains how the Union's capacity to act coherently in external climate diplomacy builds on earlier techniques of coordinated external representation. The core argument is that external engagement did not merely follow pre-existing competences; it progressively intensified duties of coordination between the Union and the Member States and contributed to the consolidation of "one voice" external action.

The context who permitted the European countries to develop a common strategy in external relations field was initiated in the early 1960s. Indeed, the EEC treaty established that the EEC should represent its members in external trade matters. The GATT 1947[452] negotiations were clearly part of this category. The Kennedy Round (1964–67)[453] marked the first round of negotiations in which six Member-States were represented by the EEC. During the GATT meetings held in Geneva, the EEC could negotiate from a position of strength as its member States were able, finally, to speak in one voice. It was the first step. Throughout the Kennedy Round in the GATT, the EC were able to negotiate in a position of strength as all its member-States were speaking with one voice. Furthermore, this position was even more strengthened as in 1994, the WTO created thanks to the Marrakesh Agreement[454] allowed the EC, a regional organization, to be part officially in an institutionalized international organization: the WTO. It is rare enough to be underlined.

Regarding the foreign policy, the major effect of the SEA[455] was the codification of the European Political Cooperation and the European Council. The SEA formalized intergovernmental cooperation in foreign policy without changing its existing nature or methods of operation. Title III of the SEA specifically dealt with the treaty provisions on European cooperation in the sphere of foreign policy and affirmed that the member states should inform and consult reciprocally[456] "to ensure that their combined influence is exercised as effectively as possible through coordination, the

452 General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT]

453 Johnson, H. G. (1967). The Kennedy Round. *The World Today*, *23*(8), 326–333. http://www.jstor.org/stable/40394600

454 Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994)

455 Single European Act OJ L 169, 29.6.1987

456 SEA, Title III

convergence of their positions and the implementations of joint action"[457] and that "common principles and objectives are gradually developed and defined."[458] In codifying what had been informally established over the years through several different texts and treaties, the SEA defined the role of the European Council, the European Commission, and the Parliament within the European political cooperation (hereinafter EPC). A leading role was given to the first; the possibility to assist in all matters was given to the second; and the minimal right to be informed was granted to the third. Coordination on matters of European security was mentioned, specifically on the political and economic aspects of security, as well as the development of a European identity in external policy matters. Member states were asked to define common positions within international institutions and conferences and to mutually assist and inform each other. The SEA also codified the role of the Presidency and of the troika (the High Representative for the Common Foreign and Security Policy, the foreign minister of the country holding the EU Presidency, and a senior representative from the European Commission) in the EPC, as well as of the different ruling- making levels (European correspondents, the Political Committee and related working groups, the Council of Ministers). A secretariat based in Brussels was established to assist the Presidency in dealing with the EPC. Finally, member states' missions and the European Commission's delegations were asked to intensify their cooperation with third countries. The SEA also substantially increased the role of the European Parliament, to which it gave the power of assent both in future enlargements of the EU, and in agreements with either Third States or international organizations involving "reciprocal rights and obligations, common actions and special procedures."[459]

The gradual institutionalisation of cooperation in external relations was subsequently reinforced through political coordination frameworks. Therefore, the SEA codified European Political Cooperation and formalised consultation and coordination practices in foreign policy, requiring Member States to inform and consult one another to exercise their combined influence effectively through coordinated positions and joint action. This cooperative logic was later consolidated by the Maastricht Treaty's institutional architecture, which further structured cooperation in external action.

This trajectory is legally significant for climate diplomacy, where international negotiations require stable external representation and coordinated commitments. The disciplining effect of loyalty and cooperation on Member State conduct in external relations was confirmed by the CJEU in *Commission v Greece*,[460] where the Court held that no way authorises a Member State, acting individually in the context of its participation in an international organisation (in this case, International Sea Organisation), to assume obligations likely to affect Community rules promulgated for the attainment of the objectives of the Treaty. The duty of loyalty thus operates as a constraint on

457 SEA, article 30.2.a

458 SEA, article 30.2.c

459 Article 217 TFEU

460 CJEU, C-369/07, Commission v. Greece, 7 July 2009, ECLI :EU :C :2009 :428

unilateral external action and as a legal foundation for coherent Union participation in international regimes.

To sum up, subsection 1.1.1. demonstrates that that the Union's external climate diplomacy rests on historically developed mechanisms of coordinated representation, first consolidated through trade policy and later institutionalised through political cooperation frameworks. These developments provide the legal background against which duties of loyalty and cooperation support coherent external action in the climate field.

1.1.2. The evolution of the duty of loyalty: from a unilateral obligation to reciprocal external coherence

This subchapter demonstrates that the Union's capacity to act externally in the climate field has been significantly shaped by the evolution of the duty of loyalty (sincere cooperation). As this duty developed from a primarily unilateral constraint on Member States into a reciprocal principle structuring the unity of external action, it increasingly operated as a legal mechanism enabling coherent Union participation in international climate governance.

Article 21(3), subparagraph 2, TEU[461] sets the constitutional requirement of coherence in EU external relations in both material and institutional terms. Materially, the Union must ensure consistency between the different areas of its external action and between external action and other Union policies. Institutionally, the Council and the Commission, assisted by the High Representative, are required to ensure such coherence and cooperate to that end. In the climate context, this Treaty framework provides the normative baseline against which Union external positions must be articulated and coordinated.[462]

The Court's case law shows that sincere cooperation plays a decisive role in structuring external competence and external representation. The *ERTA*[463] doctrine links exclusive external competence to the existence of common Union rules that may be affected by Member State external action. In this sense, sincere cooperation operates in a supplementary function: it reinforces the effectiveness of Union rules by requiring Member States to avoid external conduct capable of undermining the scope or effectiveness of common rules.

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461 Article 21(3), subparagraph 2, TEU

462 The external powers by nature provided for by the treaties mainly concern the CFSP, including its security and defence component, the common commercial policy (articles 206 and 207 TFEU), development cooperation (articles 208 to 211 TFEU), economic cooperation, financial and technical with Third Countries (articles 212 and 213 TFEU), humanitarian aid (article 214 TFEU), restrictive measures (article 215 TFEU) as well as than the association policy based on Article 217 TFEU.

463 CJEU, 31 March 1971, Commission v. Council, C-22/70

Subsequent jurisprudence, including *the Open Skies line of cases*[464] and *Opinion 1/03*[465] on the Lugano Convention, further highlights an identifying function of sincere cooperation.[466] Admittedly, the *ERTA* case-law derives the exclusivity of the Community's external competence from the obligation of the Member States to ensure the proper implementation of the Community -or Union regulation. It is also a manifestation of the principle of sincere cooperation, but in its supplementary function, as a reinforcement of the duty of execution and the principle of primacy, and not in its identifying function.[467] Even in contexts where the Union has not fully "occupied the field" through detailed common rules, Member States may be required to coordinate and, where necessary, refrain from unilateral external action where such action risks affecting Union rules or compromising the unity and effectiveness of Union external representation.[468] In this way, sincere cooperation contributes not only to protecting existing Union rules, but also to sustaining the Union's capacity to act as a coherent external actor.[469]

In addition, *Opinion 1/76* illustrates that the duty of sincere cooperation also informs the exercise of implied external powers where external action is necessary to attain Union objectives and cannot be effectively achieved through internal measures alone. Less directly, it could have been considered that the duty of sincere cooperation implies the obligation for the Member States to trigger the application of the flexibility clause[470] at the internal level, which would lead to the exercise of the Union's external competence based on parallelism. The underlying logic is that Member States must facilitate the achievement of Union tasks and avoid conduct that would frustrate the Union's ability to exercise its powers.

Applied to climate diplomacy, these principles explain why the Union's external climate action is not simply an aggregation of Member State conduct, but a legally conditioned process of coordination.[471] The duty of loyalty operates as a constraint on

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464 CJEU, 5 November 2002, Open Skies case : Commission v. Denmark, C-467/98; Commission v. Swede, C-468/98; Commission v. Finland, C-469/98; Commission v. Belgium, C-471/98; Commission v. Luxembourg, C-472/98; Commission v. Austria, C-475/98; Commission v. Germany, C-476/98, ECLI:EU:C:2002:63 ; and CJEU, 24 Avril 2007, Commission v. the Netherlands, C-523/04, ECLI:EU:C:2007:244

465 CJEU, 7 February 2006, Opinion 1/03, ECLI:EU:C:2006:81

466 I. Bosse-Platière, *L'article 3 UE : recherche sur une exigence de cohérence de l'action extérieure de l'Union européenne*, Bruxelles, Bruylant, 2009.

467 CJEU, 31 March 1971, *Commission v Council* (ERTA/AETR), Case 22/70, EU:C:1971:32, paras 16–22; Article 4(3) TEU. See, by contrast, CJEU, 5 November 2002, *Open Skies* rulings, inter alia Case C-467/98, EU:C:2002:625; CJEU, Opinion 1/03, EU:C:2006:81, paras 114–126.

468 88/592/EEC: Convention on jurisdiction and the enforcement of rulings in civil and commercial matters - Done at Lugano on 16 September 1988

469 Article 3.2 TFEU

470 Article 352 TFEU

471 Jean-Félix Delile. L'État de droit dans les relations extérieures de l'Union européenne. Civitas Europa, 2016, Dossier spécial : L'Etat de droit, 37, pp.47-64. ⟨10.3917/civit.037.0047⟩. ⟨hal-03177353⟩

unilateral external initiatives likely to undermine common rules or Union positions, and as a legal basis for the articulation of coherent external representation across international fora relevant to climate governance.[472]

To sum up, the duty of loyalty evolved from a constraint imposed on Member States into a reciprocal obligation underpinning the unity of the EU's external action. This evolution strengthens the Union's capacity to participate coherently in international climate governance by legally structuring coordination and restraint in external relations.

Overall, subchapter 1.1. identifies that EU climate action was constitutionally shaped from the outside in, with external climate commitments acting as the primary driver of legal development. This external construct enabled the EU to internalise and consolidate climate objectives within its constitutional framework, transforming international engagement into binding internal authority.

1.2. The climatization of the duty of coherence: an external construct by the use of an internal competence on sustainable development

Subchapter 1.2 examines how the externally driven "climatization" of EU external action was consolidated within the Union's internal constitutional framework after Lisbon. The central claim is that international climate engagement did not generate a free-standing "climate competence;" rather, the Lisbon Treaty's elevation of sustainable development and climate action as Union objectives provided an internal constitutional basis that stabilised and legitimised the Union's external climate posture through existing legal bases and coordination duties. The EU used it formal competence on sustainable development to build its external action on the climate commitments.

This raises a specific legal problem: how can externally generated climate commitments become constitutionally "anchored" within the Union legal order without violating the principle of conferral, and through which legal mechanisms is the unity of external representation ensured in practice.

The first international action taken against global warming was the UNFCCC, which was adopted in 1992 and entered into force in 1994. It aims to "stabilize greenhouse gas concentrations in the atmosphere at a level that prevents dangerous human disruption of the climate system."[473] The Convention obliges parties to take measures at the national level to achieve this goal and to report on their results. The target set

472 Glossary of summary of the EU : "Under this fundamental principle of EU (EU) law, laid down in Article 5 of the Treaty on EU, the EU acts only within the limits of the competences that EU Member States have conferred upon it in the treaties. These competences are defined in Articles 2–6 of the Treaty on the Functioning of the EU. Competences not conferred on the EU by the treaties thus remain fully with the Member States. While the principle of conferral governs the limits to EU competences, the use of those competences is governed by the principles of subsidiarity and proportionality."

473 UN Documentation Centre, Rio Declaration, Article 1

is deliberately unclear, as it is considered that countries have different responsibilities and capacities for reductions. Thus, industrialized countries are invited to make the greatest effort, as they are historically responsible for the largest share of emissions and have the largest economic resources. They were encouraged to reduce their emissions to 1990 levels by 2010, but this target is not binding. More than 190 countries have signed this agreement today, and conferences between the parties are held regularly, but the non-binding nature of this commitment led to the addition of a protocol at the Kyoto Conference.[474]

The Treaty of Lisbon, without changing this architecture, reaffirms the dual priority of "sustainable development" associated with a high level of protection and improvement of the quality of the environment.[475] It makes it an objective of the leading role that the Union must play in its relations with the rest of the world, whether with developing countries or in international negotiations. This commitment is affirmed by the fight against climate change, which is defined as a priority issue for the EU in terms of both its internal policies and its external relations.[476] The EU's internal policies are explicitly presented as a spearhead of its international action, validating the Commission's speeches which highlight the progress of European legislation in the field of the environment in particular.[477] The Treaty of Lisbon thus recognises the activism of the European Commission at the international level: the Community was an early signatory to several international conventions,[478] thanks to the case-law of the CJEU,[479] and then to primary law from the Single Act onwards. As presented in subchapter 1.1., the EU has thus gradually replaced the United States, which was the forerunner and driving force behind environmental protection measures in the 1970s, because it regularly promoted stricter measures, both internally and internationally, in the areas of, for example, waste management, air pollution and the export of chemicals.[480]

The Treaty of Lisbon did not alter the basic architecture of external action, but it strengthened the constitutional status of sustainable development and affirmed the Union's role in climate action across both internal and external policies. In doing so, it provided a more explicit objective-basis through which the Union's external climate engagement could be framed as constitutionally coherent with internal policy development, rather than as purely contingent diplomacy. The Union's policy making is increasing and consolidating the competence on climate change mitigation, which is

474 Idem

475 Art. 3 TEU

476 Art. 191.1 TFEU

477 Kelemen R. Daniel (2010), «Globalizing EU environmental policy «, Journal of European Public Policy, vol. 17, n° 3, April, p. 335-349

478 Idem

479 CJEU, 31 March 1971, Commission v. Council, ERTA case, C-22/70, ECLI:EU:C:1971:32

480 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (Text with EEA relevance)

structurally important in this area, is constantly increasing.[481] In 2007, environment was still the most important sector in the complaints examined by the Commission, although their relative share decreased. However, during the period of negotiations of the Maastricht Treaty, the Member States reconsidered the need for Community intervention and its binding nature.

The exclusivity of the Union's external competence, which allows it to function as a subject of international law with its own competences, does not therefore automatically follow from a parallelism of internal and external competences. Regardless of the exclusivity of internal competence, the Member States have a duty to refrain from international action with a view to preserving the effective application of the common rules, which corresponds to the obligation to refrain from any measure likely to jeopardise the achievement of the Union's objectives. The CJEU even extended the obligation to abstain to the case of potential impairment of the common rules, explicitly referring to the duty of sincere cooperation.[482]

The duty of sincere cooperation in the context of a mixed agreement implies not only an obligation of conduct, but also an obligation of result. In the case of *Commission v. Ireland*,[483] the Court found that the former Article 10 EC had been infringed in that Ireland had not fulfilled the obligation to consult the Commission beforehand before initiating proceedings before the arbitrator for the settlement of the dispute between it and the United Kingdom under the UN Convention on the Law of the Sea,[484] mixed agreement. In so doing, the Member State has jeopardised the unity of the Union's international presence, which could be guaranteed if close cooperation with the Commission implied a duty to abstain. However, it was above all in the case of *Commission v. Sweden*[485] that the CJEU made the principle of sincere cooperation the basis for the identification of the European whole. In this case, which falls within the framework of the management of the Stockholm Convention on Persistent Organic

481 Kelemen R. Daniel (2010), «Globalizing EU environmental policy «, Journal of European Public Policy, vol. 17, n° 3, April, p. 335-349

482 See CJEU, *Commission v Council (ERTA)*, Case 22/70, EU:C:1971:32; CJEU, *Commission v Ireland*, Case C-459/03 (MOX Plant), EU:C:2006:345, paras 168–174; CJEU, *Commission v Sweden*, Case C-246/07, EU:C:2010:203, para 77 : The Court held that Member States must refrain from external action where such action may affect common rules or alter their scope, even if no actual conflict has yet materialised. The Court expressly relied on Article 10 EC (now Article 4(3) TEU) to impose an obligation on Member States to abstain from initiating international dispute-settlement proceedings where there is a *risk* of undermining Union competence or common rules, even in the context of a mixed agreement. The Court reaffirmed that, under the duty of sincere cooperation, Member States must refrain from unilateral international action where such action could compromise the unity or effectiveness of EU external representation, even absent a completed EU agreement.

483 CJEU, 30 May 2006, C-459/03, Commission v. Ireland, ECLI:EU:C:2006:345

484 : Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397. Enacted as: entered into force as the "United Nations Convention on the Law of the Sea" on Nov. 1, 1994.

485 CJEU, 20 April 2010, Commission v. Sweden, C-246/07, ECLI:EU:C:2010:203

Pollutants,[486] a mixed agreement, the Member State is found to have failed to fulfil its obligation under Article 4(3) TEU,[487] in that it dissociated itself, by expressing a unilateral position, from the Community strategy of not taking an individual position pending the development of a common position. The Court thus considered that Sweden had failed to fulfil its obligation to guarantee the unity of the Union's international representation, an obligation as to the result to be achieved which makes it possible to identify a united whole irrespective of the division of competences between its components.[488] In other words, the Court treated unilateral deviation from an agreed Union strategy as a failure to fulfil the obligation under Article 4(3) TEU, emphasising an obligation of result aimed at preserving the unity of the Union's external representation irrespective of the internal division of competences.

This constitutional anchoring becomes legally operational through the duty of sincere cooperation, particularly in the management of mixed agreements. This shift from the legalistic approach to governance is not only the result of the Union.[489] It was also observable in Europe and within the Member States during the 1990s: the complexity of environmental issues and the interdependence that characterize the phenomena at play led to a need for increased coordination between actors and between public policy sectors, partly explaining this phenomenon of convergence.[490] This change of orientation coincides with a renewal of the contours of the field of public intervention, of which instrumental innovation has been the vector, and this beyond the environment.

To sum up, the analysis shows that externally generated climate commitments became constitutionally stabilised after Lisbon not through the creation of a new autonomous competence, but through the internal elevation of sustainable development and climate action as Union objectives and through the operation of sincere cooperation in external relations. This combination enables the Union to translate external climate engagement into a legally defensible and institutionally coherent external posture while remaining within the limits of conferral.

While subchapter 1.2 demonstrates how externally driven climate commitments were constitutionally consolidated within the Union's internal legal order through the elevation of sustainable development and the operation of sincere cooperation, this internal anchoring does not, in itself, guarantee the coherence of EU climate action

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486 The Stockholm Convention on Persistent Organic Pollutants, *opened for signature* May 23, 2001, UN Doc. UNEP/POPS/CONF/4, App. II (2001), *reprinted in* 40 ILM 532 (2001) [hereinafter Stockholm Convention]. The text of the convention and additional information about POPs is available online at the United Nations Environment Programme's (UNEP's) POPs Web site, <http://irptc.unep.ch/pops/>.

487 Article 4(3) TEU

488 Rapoport, C. (2022). L'Union européenne et l'OMC: entre complémentarité et concurrence normative. *Revue européenne et internationale de droit environnemental*, 2(1), 45–67

489 Jordan Andrew J. et Duncan J. Liefferink (dir.) (2004), Environmental Policy in Europe. The Europeanization of National Environmental Policy, Londres, Routledge

490 Arts Bas et Leroy Pieter (dir.) (2006), Institutional Dynamics in Environmental Governance, Dordrecht, Springer, coll. «Environment & policy «

in the external legal sphere. The credibility of the Union's climatized external posture ultimately depends on its capacity to project climate objectives beyond its own legal order while remaining subject to the constraints of international economic law. It is in this context that the Union's practice before the WTO constitutes a critical test of the duty of coherence, where climate ambition confronts the disciplines of trade liberalisation and non-discrimination.

1.3. The climatization of the duty of coherence: the climatization of the EU practice before the WTO

Subchapter 1.3. examines how the duty of coherence operates in practice when EU climate objectives are projected into the multilateral trading system. It argues that the Union's engagement before the World Trade Organization constitutes a decisive stress test- of climatized coherence, as climate ambition must be articulated and defended within a legal order structured around market access, non-discrimination, and trade liberalisation. Unlike the internal consolidation analysed in subchapter 1.2, coherence in the WTO context is not -self-generated- but constrained by external legal disciplines that limit the forms and intensity of permissible climate action.

From the outset, the Union's participation in the multilateral trading system has been marked by a progressive consolidation of external representation. Since the Dillon Round of 1960-1961,[491] the Community participated in GATT's activities. In addition to mere indirect participation - through its Member States, which are required to act jointly and severally in the context of *a "joint action"* on the basis of Article 116 of the EEC Treaty, repealed by the Maastricht Treaty - it gradually acted autonomously, replacing its Member States as the holder of their rights and obligations in tariff and commercial matters, although it has never been a de jure contracting party to the GATT. It thus appeared as such during the various rounds of GATT negotiations, notably during the Uruguay Round. In addition, under Article 216 TFEU[492] and of the dynamic interpretation of the CJEU as to the content of the concept of common commercial policy enshrined in that provision, the Community was recognised as competent to conclude most of the multilateral commitments relating to trade in goods drawn up and negotiated under the auspices of the GATT.

The Union's capacity to pursue climate objectives within the WTO framework rests on a historically developed consolidation of external representation in trade matters. From the early GATT rounds to the establishment of the WTO, the Community increasingly acted as an autonomous trade actor in areas falling within the common commercial policy. Yet the consolidation of representation did not eliminate competence complexity. *Opinion 1/94* limited exclusive Community competence largely to

491 Josling, T.E., Tangermann, S., Warley, T.K. (1996). The Dillon Round. In: Agriculture in the GATT. Palgrave Macmillan, London. https://doi.org/10.1057/9780230378902_3

492 Article 216 TFEU

trade in goods and recognised shared competence for significant components of the WTO package, while simultaneously imposing a stringent obligation of cooperation to preserve the unity of European representation. In this setting, sincere cooperation functions as a practical substitute for exclusivity: it compensates for fragmented competences by legally structuring coordination and restraint. This evolution was accompanied by persistent legal uncertainty regarding the distribution of competences between the Union and the Member States. While this approach constrained the Union's autonomous capacity to act, the Court simultaneously imposed a stringent obligation of cooperation on the Union institutions and the Member States in order to preserve the unity of external representation within the WTO framework.[493]

The EU's participation in the WTO is governed by a code of conduct that ensures the unity of European representation.[494] The EU's practice before the WTO supports the primacy of WTO agreements over secondary EU legislation. Article 216(2) TFEU states that external agreements bind the institutions of the Community and the Member States, meaning they must be respected by Europe in the exercise of its legislative powers. The CJEU has repeatedly referred to this solution, ensuring that secondary European law is interpreted in conformity with international agreements applicable in the European legal order. Its practice demonstrates the concrete exercise of its externally constructed and internally consolidated climate competence.

Even before the Court's *Opinion 1/94,*[495] the conclusion of a code of conduct governing Community action within the WTO had been proposed. The position of the CJEU recognising the existence of shared competences for most trade in services and intellectual property rights has made this code of conduct even more necessary than it previously appeared. In response to these constraints, the Union progressively strengthened its internal legal and procedural framework governing participation in the WTO. Treaty revisions from Amsterdam to Lisbon reinforced the legal basis for the conclusion of international agreements and clarified their binding force within the Union legal order. It supports a primacy of WTO agreements over secondary EU legislation. To the extent that the current Article 216(2) TFEU states that external agreements "*... bind the institutions of the Community and the Member States*", it is logical to conclude that they must be respected by Europe in the exercise of its legislative powers, in other words that they are binding on secondary European law. The CJEU has repeatedly referred to this solution, notably in its first opinion on the establishment of the European Economic Area[496] and in a ruling delivered in 1996 in which it stated: "the primacy of agreements concluded by the Community over texts of secondary

493 Rapoport, C. (2022). L'Union européenne et l'OMC: entre complémentarité et concurrence normative. *Revue européenne et internationale de droit environnemental*, 2(1), 45–67

494 Proposal and discussion of a "code of conduct" governing Community action within the WTO in light of Opinion 1/94 and shared competence findings; Treaty reforms thereafter (Amsterdam/Nice/Lisbon) adjusting the CCP/agreement-making framework.

495 CJEU, Opinion 1/94, ECLI :EU :C :1994 :38

496 CJEU, 14 Dec. 1991, Opinion 1/91 : ECR 1991, ECLI :EU :C :1991 :490

Community law requires that the latter be interpreted, as far as possible, in accordance with these agreements."[497] The CJEU largely reduced potential conflicts between international agreements applicable in the European legal order and secondary European law by using this technique of "interpreting secondary European law in conformity with EU law."[498] Under Article 216(2) TFEU, international agreements concluded by the Union bind both its institutions and the Member States, requiring secondary EU law to be interpreted, so far as possible, in conformity with the Union's international obligations. In the trade context, this technique of conform interpretation significantly conditions the Union's regulatory autonomy.

This constraint directly affects the Union's ability to project climatized coherence externally. Instruments such as climate clauses in FTAs and unilateral regulatory initiatives like the CBAM illustrate the Union's attempt to extend climate governance beyond EU borders without formally renegotiating the underlying framework of international trade law.[499] WTO law does not recognise climate protection as a hierarchically superior objective, but frames environmental and climate-related trade measures as conditional justifications within the existing trade discipline. This strategy remains legally fragile: the enforceability of climate clauses is often weak and procedural, and CBAM type instruments- intensify legal uncertainty by relying on *ex post* justification under WTO disciplines. In this context, coherence does not "solve" the trade–climate tension; it operates as a coordination requirement that stabilises the Union's external action while preserving the primacy of trade governance logics.

Within this framework, WTO law exerts a particularly strong normative constraint on EU climate action. Article 216(2) TFEU[500] establishes the binding force of international agreements on Union institutions and Member States, and the Court has consistently held that secondary EU law must, so far as possible, be interpreted in conformity with the Union's international obligations.[501] In the trade context, this technique of conform interpretation significantly limits the Union's regulatory autonomy, requiring climate-driven measures to be designed and justified in a manner compatible with WTO disciplines.

The climate specific significance of this framework lies in the fact that WTO law does not recognise climate protection as a hierarchically superior objective. Instead, climate-related trade measures must be justified through the normative architecture of trade disciplines. As your analysis already shows, climate measures operate in the

497 CJEU, 10 Sept. 1996, Case C-61/94 ECR v Germany [1996] ECR, ECLI:EU:C:1996:313

498 CJEU, Case "Hermès and Dior," 2000, ECLI:EU:C:2000:688

499 Regulation (EU) 2023/956 of the European Parliament and of the Council establishing a carbon border adjustment mechanism (CBAM); see also analysis of CBAM as a unilateral climate-trade instrument operating under WTO constraints

500 Article 216(2) TFEU: binding force of international agreements on the Union institutions and Member States

501 CJEU, Opinion 1/91 (EEA) and CJEU, ruling of 1996: "the primacy of agreements concluded by the Community over texts of secondary Community law requires that the latter be interpreted, as far as possible, in accordance with these agreements

WTO system primarily through defensive legal mechanisms, notably the conditional logic of Article XX GATT, rather than through systemic integration of climate objectives into the core of trade governance. Climate ambition is therefore mediated through exceptions and justifications, which exposes EU climate-related measures to legal uncertainty and case-by-case adjudication.

The integration of climate objectives into EU trade practice therefore operates primarily through legally conditioned accommodation rather than through the assertion of normative primacy. Environmental protection, including climate mitigation, remains framed within the WTO legal order as a conditional justification rather than as an overriding objective. The duty of coherence plays a critical role in this context by requiring that EU climate measures adopted in the trade sphere neither undermine WTO commitments nor fragment the Union's external representation. Coherence thus functions as a disciplining principle, structuring the Union's climate ambition within the limits imposed by international economic law, while ensuring that internally consolidated climate objectives are projected externally in a legally defensible and institutionally unified manner.

To sum up, subchapter 1.3 demonstrates that the Union's practice before the WTO reveals coherence as a legally constrained mode of external climate action rather than as a vehicle for normative primacy. While the Union has progressively consolidated its capacity to act as a unified trade actor, the projection of climate objectives into the multilateral trading system remains mediated by WTO disciplines that frame environmental protection as a conditional justification rather than as a structuring objective. The duty of coherence does not eliminate these constraints but operates as a disciplining legal mechanism that channels EU climate ambition into forms compatible with international trade law, thereby stabilising external action while exposing the limits of climate governance under existing economic rules.

Synthesis – Section 1, Chapter 1, Part II: Integrating Climate Law into EU External Policies: The Genesis of an External Construct

The analysis undertaken in this section has demonstrated that the integration of climate objectives into the EU's external relations is both foundational and transformative for the Union's broader climate governance. By foregrounding the external dimension, we have shown that the EU's climate law is not merely a product of internal policy evolution but is fundamentally shaped by its international commitments and diplomatic engagements. The Union's participation in global frameworks such as the UNFCCC, the Kyoto Protocol, and the Paris Agreement has not only set ambitious benchmarks for action but has also imposed a duty of coherence that permeates every aspect of EU climate policy.

A central insight emerging from this section is the existence of a dynamic feedback loop between the EU's external obligations and its internal legal and policy development. The Union's credibility and effectiveness as a global climate leader depend on its

ability to translate international commitments into robust, enforceable internal measures. Conversely, the strength and coherence of the EU's internal climate framework enhance its capacity to negotiate, implement, and uphold ambitious standards on the international stage. This reciprocal relationship ensures that external and internal dimensions are not isolated silos but mutually reinforcing spheres of action.

Section 1 has also highlighted the legal and practical complexities that arise at the intersection of climate, trade, and sustainable development. The EU's efforts to integrate climate objectives into its external relations—whether through the negotiation of climate clauses in FTAs, the implementation of mechanisms such as the CBAM, or its engagement with the WTO—illustrate both the opportunities and the tensions inherent in aligning climate ambition with the realities of global economic governance. The principle of coherence, enshrined in the Treaties and reinforced by the jurisprudence of the CJEU, serves as a guiding norm, but its operationalization requires constant negotiation and adaptation.

Furthermore, Section 1 has shown that the EU's external climate action is not static, but evolves in response to shifting international expectations, scientific developments, and geopolitical realities. This adaptability is both a strength and a necessity, as the Union must continuously recalibrate its policies to maintain leadership and credibility in a rapidly changing global context. The feedback loop between external and internal dimensions thus acts as a catalyst for legal innovation, policy learning, and institutional reform.

In sum, the integration of climate law into the EU's external relations is not a preliminary or peripheral concern, but a central pillar of the Union's climate governance architecture. It is through this external-internal interplay that the EU is able to project its values, fulfil its obligations, and drive forward the global climate agenda. As the thesis moves to examine the internal dimension of climate law integration, the lessons drawn from the external sphere will serve as both a benchmark and a source of inspiration, underscoring the imperative of coherence, consistency, and ambition in the Union's ongoing response to the climate crisis.

Section 2. Integrating Climate Law into EU External Policies: The Duty of Coherence

If Section 1 reconstructed the external origins of EU Climate Law, this section turns to its normative articulation. Once climate objectives are embedded within the Union's legal framework, their relevance for external action is no longer merely contextual or political; it becomes juridical. The question addressed here is therefore not whether climate considerations may inform EU external policies, but how the duty of coherence structures, constrains, and enables the integration of climate objectives across the Union's external action.

Anchored in the Treaties, the duty of coherence occupies a distinctive position in EU external relations law. Anchored in the Treaties, it requires the Union to ensure

consistency between its various external policies and between external action and internal objectives. In the context of EU Climate Law, this duty acquires a heightened normative function. Climate neutrality, as a binding objective enshrined in the EU Climate Law, operates as a transversal benchmark against which the Union's external conduct must be assessed. Coherence thus becomes the legal mechanism through which climate objectives are translated into obligations affecting the formulation, negotiation, and implementation of external policies.

In this section, it is important to delve into the intricate relationship between climate law and economic policies within the EU. The primary focus is on how the EU's climate law interacts with and influences its internal and external policies, particularly in the context of international trade and environmental protection. This section examines the duty of coherence as the central legal constraint governing the integration of climate objectives into the EU's external economic relations. It shows that once the EU acquired the capacity and ability to act in the climate field, the challenge shifted to ensuring that climate action remains consistent with international trade obligations, particularly within the WTO framework.

As demonstrated in Section 1, the EU has progressively structured its climate action through sustained engagement at the international level. This evolution is reflected in EU Climate Law, which translates international commitments into a binding objective of climate neutrality by 2050. This ambitious goal necessitates a comprehensive and coherent approach that integrates climate considerations into all aspects of EU policymaking. The principles outlined in this chapter are essential for ensuring that the EU's climate law is effectively implemented and that its objectives are met.

A central concern of this section is the relationship between climate objectives and the Common Commercial Policy. Trade instruments, including FTAs and unilateral measures, increasingly serve as vehicles for advancing climate goals. At the same time, they are governed by strict constitutional and international constraints. The duty of coherence operates here both as an enabling framework—allowing climate considerations to permeate trade policy—and as a limiting principle, ensuring respect for the division of competences, the principle of conferral, and the Union's international obligations, particularly within the WTO legal order.

By analysing coherence as a legal obligation rather than a rhetorical commitment, this section highlights its dual function in EU climate governance. On the one hand, coherence provides the normative justification for integrating climate objectives into diverse areas of external action. On the other hand, it delineates the boundaries within which such integration may occur. The duty of coherence thus emerges as a key site where ambition meets constraint, and where the transformative potential of EU Climate Law is tested against the structural limits of the Union's external legal order.

In doing so, Section 2 complements the external genealogy explored in Section 1 by demonstrating how climate objectives are operationalised, contested, and stabilised within the framework of EU external policies. It shows that coherence is not merely an organising principle of external action, but a central instrument through which the Union seeks to reconcile climate leadership with legal certainty, institutional balance,

and international credibility. Building on the external construction and internal consolidation of EU climate competence established in Section 1, this section turns to the obligation of coherence governing the Union's external action. It examines how climate objectives are integrated into the EU's external economic relations, where international trade law—particularly within the WTO—constitutes the most stringent constraint. Moreover, the principles discussed in this chapter highlight the importance of international cooperation and the role of the EU as a global leader in climate action. The EU's climate law not only sets ambitious targets for its member states but also serves as a model for other countries and regions. By adhering to these principles, the EU can strengthen its position in international negotiations and foster global collaboration in addressing climate change.

Section 2 of Part II examines the coherence of EU Climate Law within the Union's external policies. It focuses on how climate objectives are integrated into the EU's action on the international stage and articulated with other external policy priorities, such as trade, development cooperation, and diplomatic relations. Rather than treating climate policy as a self-contained field, the chapter analyses the structural interactions that arise when climate commitments intersect with the Union's broader external competences and international obligations.

The first subsection addresses the role of climate objectives in shaping the Union's external action, with particular attention to the duty of coherence governing the EU's participation in international agreements and organisations. It examines how climate considerations influence the exercise of external competences and the requirement for the Union and its Member States to act in a unified and coordinated manner in international climate diplomacy (2.1). The second subsection analyses the interaction between EU climate objectives and the Union's external economic policies, focusing on trade and investment. It explores the integration of climate clauses in FTAs, the emergence of instruments such as the Carbon Border Adjustment Mechanism, and the legal constraints arising from international trade law, notably within the WTO framework. This section highlights how the pursuit of climate objectives reshapes the content and limits of the EU's external economic action (2.2). The concluding subsection examines the relationship between EU climate policy and other external legal regimes, identifying areas of synergy as well as potential tensions. It assesses how the Union seeks to ensure coherence between its climate commitments and its obligations under international law, and how disputes, trade-offs, and governance challenges are managed in practice. Drawing on case law and policy examples, this section highlights the structural difficulties of maintaining coherent and credible climate action across the Union's external relations (2.3).

2.1. The climatization of economic relations at the WTO level

As a party to the WTO, the EU is bound by core trade disciplines requiring non-discrimination and the prohibition of disguised restrictions on international trade.

Within the WTO legal order, environmental measures are not excluded but remain subordinated to core trade disciplines, with Article XX GATT operating as the sole conditional gateway for their justification —a constraint that frames the legal assessment of EU climate instruments, including the CBAM.

2.1.1. WTO trade disciplines as a constraint on EU climate action

The starting point is that climate driven trade measures frequently- engage the WTO's baseline disciplines of market access and non--discrimination. The concept of mutual support[502] is taken up as such by the WTO, which goes further by affirming the existence of a "synergy" between free trade and climate policy. This assertion relies on a major component, redounding for many years: the idea of introducing a carbon tax on imports from countries that refuse to commit to the Paris Agreement.[503]

This constraint is reinforced by climate -regime language itself: Article 3.5 of the UNFCCC states that "measures taken to combat climate change, including unilateral measures, should not be used as a means of imposing arbitrary or unjustifiable discrimination in international trade, or disguised barriers to international trade."[504] Similarly, Article 2.3 of the Kyoto Protocol[505], which refers to Articles 4.8 and 4.9 of the Convention[506], calls for the implementation of only climate policies that minimize the impact on the international trade of developing countries, so that mutual support

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502 Riccardo Pavoni, Mutual Supportiveness as a Principle of Interpretation and Law-Making: A Watershed for the 'WTO-and-Competing-Regimes' Debate?, *European Journal of International Law*, Volume 21, Issue 3, August 2010, Pages 649–679, https://doi.org/10.1093/ejil/chq046 : mutual support is "[…] to be understood and applied as reinforcing each other with a view to fostering harmonization and complementarity, as opposed to conflictual relationships. This is indeed how MS has usually been characterized, i.e., as an *interpretative principle or technique* sharing the same rationale and addressing similar concerns to those underlying the more familiar notions of systemic integration, harmonious interpretation, and presumption against conflicts."

503 Mario Larch, Joschka Wanner, The consequences of non-participation in the Paris Agreement, European Economic Review, Volume 163, 2024, 104699, ISSN 0014-2921, https://doi.org/10.1016/j.euroecorev.2024.104699 : International cooperation is at the core of multilateral climate policy. How is its effectiveness harmed by individual countries not participating in the global mitigation effort? We use a multi-sector structural trade model with carbon emissions from production and a constant elasticity of fossil fuel supply function to simulate the consequences of unilateral non-participation in the Paris Agreement. Taking into account both direct and leakage effects, we find that non-participation of the US would eliminate more than a third of the world emissions reduction (31.8% direct effect and 6.4% leakage effect), while a potential non-participation of China lowers the world emission reduction by 24.1% (11.9% direct effect and 12.2% leakage effect). The substantial leakage is primarily driven by technique effects induced by falling international fossil fuel prices. In terms of welfare, the overwhelming majority of countries gain from the implementation of the Paris Agreement and most countries have only very little to gain from unilaterally deciding not to participate.

504 UNFCCC, Article 3.5

505 Kyoto Protocol, Article 2.3

506 UNFCCC, 1992

is verified *ex ante*.[507] These provisions do not displace WTO obligations but contribute to the contextual interpretation of non-discrimination- and necessity requirements under Article XX GATT. It is increasingly used as a guiding concept for necessary adjustments and changes in the law, especially in challenging cases where reconciling conflicting rules has failed, thus threatening the integrity of international law. It fits with the role of the WTO to prevent violations to reoccur, instead of preventing them from happening.[508]

As a consequence, EU instruments that condition market access on carbon content or production constraints—whether through unilateral measures or trade agreement-practice—must be assessed first as potential restrictions under WTO disciplines and only then justified (if necessary) through Article XX GATT. The Doha Round includes a section to clarify the relationship between multilateral environmental agreements[509] (MEAs) and WTO agreements. However, it was not until the Bali conference (13th Conference of the Parties to the Climate Convention) in December 2007 that the WTO took an interest in the climate issue itself.[510]

Despite these developments, WTO disciplines continue to operate as a strict baseline, requiring climate measures to be assessed first as trade restrictions and only subsequently as potentially justifiable exceptions.

To sum up, WTO trade disciplines operate as a strict baseline: they do not prohibit climate action, but they require that climate measures be designed to avoid discriminatory structure, disguised restriction, and protectionist effect.

2.1.2. Article XX GATT as a conditional gateway for environmental protection

This subsection analyses Article XX GATT as the primary legal mechanism through which environmental protection may be reconciled with international trade obligations. It shows that environmental measures are not excluded from WTO law but remain subject to a strict two-step test that conditions their legality.

Article XX GATT is the principal legal avenue through which climate-related trade measures may be defended in the WTO system. Its structure is two-tiered: a measure must first fall under one of the enumerated exceptions—most relevantly Article XX(b)

507 United Nations Conference on Trade and Development, "Making trade work for climate change mitigation: the case of technical regulations," 2022: https://unctad.org/system/files/official-document/ditctab2022d7_en.pdf

508 Riccardo Pavoni, Mutual Supportiveness as a Principle of Interpretation and Law-Making: A Watershed for the 'WTO-and-Competing-Regimes' Debate?, *European Journal of International Law*, Volume 21, Issue 3, August 2010, Pages 649–679, https://doi.org/10.1093/ejil/chq046

509 Ninth WTO Ministerial Conference, 2013, "Bali Package": https://www.wto.org/english/thewto_e/minist_e/mc9_e/mc9_e.htm

510 World Trade Report 2022 on Climate Change and International Trade: https://www.wto.org/english/res_e/publications_e/wtr22_e.htm

(protection of human, animal or plant life or health) or Article XX(g) (conservation of exhaustible natural resources, coupled with domestic restrictions)—and must then satisfy the chapeau requirement that it not be applied in a manner constituting arbitrary or unjustifiable discrimination or a disguised restriction on international trade

The international regime regarding the fight against climate change defined by the UNFCCC is now the structuring mechanism for national policies on the environment and the fight against climate change. However, measures taken within the framework of the latter (taxes, norms and standards, subsidies, emission permits) fall within the scope of the WTO. There is therefore a potential conflict between the Organization's rules and domestic measures to combat climate change.[511]

As far as Europe is concerned, the entry into force in 2016 of both the Paris Agreement and the European system of emission permits/quotas has an impact on its trade relations and on the competitive position of producers located on its territory vis-à-vis competitors not subject to carbon constraints.[512] The phenomenon continued to grow because, according to the conclusions of the European Summit back in March 2007,[513] the EU committed to reducing its GHG emissions by 30% and its CO2 emissions by 20% by 2020 by 2020 simultaneously as part of a post-Kyoto agreement. Since the Paris Agreement, and EU Climate Law, the EU has now committed to climate neutrality by 2050.[514] Carbon pricing mechanisms alter relative production costs and may affect competitiveness in energy intensive and -trade exposed sectors. While the economic impact varies across industries, WTO law remains indifferent to such variation, focusing instead on the existence of differential treatment and its justification under Article XX.

The assumption that a carbon tax or emissions trading system affects the relative costs of products is not unfounded.[515] As such, these measures to combat global warming have an impact on the competitiveness of companies, i.e. on their ability to

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511 Barnett, J. (2018). Global environmental change. I: Climate resilient peace? *Progress in Human Geography*, 43(5), 927–936. https://doi.org/10.1177/0309132518798077

512 Sunayana Sasmal, New Approaches and Challenges Regarding Trade, Climate Action, and the WTO. New York: Columbia Center on Sustainable Investment (CCSI), December 2024.

513 EU External Action Service. *2007 EU-U.S. Summit Statement. Energy security, efficiency, and climate change*, Brussels: 30.04.2007, 7 p. http://eeas.europa.eu/us/sum04_07/joint_statement_energy_security.pdf. Copyright: (c) EU

514 Meinhard Doelle, "Climate Change and the WTO: Opportunities to Motivate State Action on Climate Change through the World Trade Organization" (2004) 13:1 RECIEL 85.: The Kyoto Protocol, the first international agreement with legally binding commitments to begin to address climate change by reducing greenhouse gas (GHG) emissions, is expected to come into force in 2004. With it, most of the developed world will be committed to modest reduction targets over the next decade. The two largest per capita emitters, the USA and Australia, have so far opted not to join this modest effort to address climate change, and developing countries, while party to the Kyoto process, are so far only engaged in voluntary action to reduce emissions.

515 WTO Appellate Body Report, European Communities — Measures Affecting Asbestos and Products Containing Asbestos (EC – Asbestos), WT/DS135/AB/R, adopted 5 April 2001

maintain their profits and market share. However, other factors are relevant to the effects of these measures on the competitiveness of a sector:

- the specificities of the sector (degree of exposure to international competition, energy intensity, CO2 emissions intensity, possibility of passing on cost increases through prices).
- the regulation of the sector (possibility of tax relief or exemption, method of allocating emission allowances).
- the impact of other public policies (energy policy, research support policy).

The ability of companies to pass on their costs to consumers depends on the degree to which they are exposed to international trade.[516] Openness is a limiting factor in the ability to internalize environmental externalities. However, the literature insists on the differentiated impact of carbon price effects on competitiveness, since only energy-intensive manufacturing industries would see their competitiveness decrease. In a context of economic globalization whose main characteristic is a high degree of freedom of movement of productive capital, a geographically limited agreement with a differentiated constraint confers a comparative advantage on countries not subject to the carbon constraint. European industry is faced with a problem of loss of competitiveness, on the one hand in exports to third markets and, on the other hand, at the internal level due to lower-cost imports.[517]

Indeed, the cost of decarbonization is much higher than that incurred so far to comply with existing environmental regulations. The cost of policies to reduce CO2 emissions would lead to a significant decrease in the competitiveness of companies subject to the carbon constraint and a transfer of production to areas where production methods are less efficient from the energy point of view. The risk of *"motivated carbon industrial migrations"*[518] will depend on the sectors or industries subject to the carbon constraint. Differences in regulations and mitigation policies on the one hand, and carbon price differentials on the other, are two factors of carbon leakage. Two remarks are important. The first concerns the fact that it is incorrect to compare this risk of carbon leakage to that of pollution havens because CO2 is not a polluting gas. A country can have advanced anti-pollution legislation and still have a carbon advantage. The second is that the phenomenon does nothing to solve the problem of the fight against climate change. On the contrary, it is synonymous with a loss of overall effectiveness of environmental policies aimed at reducing carbon emissions.[519] Stud-

516 Fontagné Lionel, Philippe Martin, and Gianluca Orefice (2018): "The international elasticity puzzle is worse than you think", Journal of International Economics, 115, pp. 115–129.

517 The Draghi report: A competitiveness strategy for Europe (Part A), 9 September 2024 : https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en

518 Houyin Long, Jianglong Li, Hongxun Liu, Internal migration and associated carbon emission changes: Evidence from cities in China, Energy Economics, Volume 110, 2022, 106010, ISSN 0140-9883, https://doi.org/10.1016/j.eneco.2022.106010.

519 Stefan Nabernegg, Birgit Bednar-Friedl, Pablo Muñoz, Michaela Titz, Johanna Vogel, National Policies for Global Emission Reductions: Effectiveness of Carbon Emission Reductions in International Supply Chains, Ecological Economics, Volume 158, 2019, Pages 146-157, ISSN 0921-8009, https://

ies carried out indicate that energy-intensive sectors or large consumers of electricity, which do not have the capacity to pass on the additional carbon cost to the consumer and do not have any margin in terms of reducing other production costs, will be the most severely affected (steel, metallurgy, aluminium industries, cement industry, etc.). glass, paper, refining).[520]

The problem of the loss of competitiveness has led to the belief that commercial measures would be likely to compensate for the losses linked to the free-riding behaviour of certain countries.[521] In fact, by raising this issue, the UNFCCC brings to light trade and investment issues that place it on the edge of the WTO's agenda.

Article XX GATT thus permits environmental protection only as a narrowly circumscribed derogation from trade obligations, confirming that climate action remains accommodated within — rather than integrated into — the normative structure of WTO law.

To sum up, Article XX GATT constitutes the principal legal mechanism through which environmental protection may be reconciled with WTO obligations. However, the permissibility of environmental measures remains strictly conditional upon compliance with the dual test of justification and non-discrimination, confirming that climate action operates as an exception rather than a structural objective of trade law.

2.1.3. The CBAM as a test case for WTO compatible climate action

This subsection applies the Article XX GATT framework to the CBAM as a concrete expression of the EU's climate ambition in the trade context. It examines whether

doi.org/10.1016/j.ecolecon.2018.12.006. Abstract: In a world with diverging emission reduction targets, national climate policies might be ineffective in reducing consumption-based CO2 emissions (carbon footprints), i.e. emissions of final demand that are embodied across the whole supply chain, including international fractions. We analyse a set of different policies in three areas with particularly high consumption-based emissions in Austria: building construction, public health, and transport. To capture the substitution possibilities triggered by these policies and the induced emission reductions along the full global supply chain, our analysis combines a Computable General Equilibrium with a Multi-Regional Input-Output model. For construction of buildings we find that a carbon added tax is highly effective in reducing consumption-based emissions whereas an information obligation on vacant dwellings combined with a penalty payment when vacant buildings are not made available is ineffective because of reallocated investment capital. Mandatory energy efficiency improvements in public health and mobility are found equally effective in reducing consumption- and production-based emissions while a decarbonization of freight transport logistics stronger reduces production-based emissions. Overall, the effectiveness of policies, to mitigate consumption-based emissions, is therefore determined by the backward and forward linkages of the sector addressed by the policy as well as the substitution effects within final demand.

520 Idem

521 TARR, David, *A WTO compatible climate club that solves the free-rider problem in global climate policy*, EUI, RSC, Working Paper, 2024/29, Global Governance Programme - https://hdl.handle.net/1814/77095

the CBAM can be designed and administered in a manner compatible with WTO law while remaining consistent with the Union's objective of climate neutrality.

The CBAM constitutes a paradigmatic illustration of the EU's attempt to project climate governance beyond its borders while remaining formally embedded within multilateral trade disciplines. By conditioning access to the EU market on the payment of a carbon price equivalent to that borne by domestic producers under the EU Emissions Trading System (ETS), the mechanism is structurally exposed to WTO scrutiny. Its legality therefore hinges on the extent to which it can anticipate and withstand the two-tier test laid down in Article XX GATT. From a legal perspective, the decisive issue is whether the CBAM can be characterised and implemented in a manner that preserves the principle of non-discrimination, avoids constituting a disguised restriction on international trade, and pursues a recognised environmental objective. In practice, any defence of the CBAM before the WTO would likely rely on the logic of Article XX(b) and/or (g), coupled with strict compliance with the chapeau, with particular sensitivity to design features that could be perceived as arbitrary differentiation or as producing protectionist effects.

As an integral component of the EU's concrete measures of the Climate Pack announced by the European Commission ("fit for 55" package), regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a CBAM[522] has fuelled the debate on the link between international trade and environmental protection. The objective of a CBAM would be to:

a) restore the conditions for competitiveness.
b) support companies exposed to international competition in their post-carbon transition.
c) reduce the risk of carbon leakage.
d) addressing free-riding risks associated with asymmetric climate constraints[523]

The use of trade measures to preserve the environment has long been a key condition for the effectiveness of major multilateral environmental agreements, such as the Montreal Protocol on Substances that Deplete the Ozone Layer (1987),[524] the CITES (1973),[525] and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes (1989).[526] Nevertheless, the WTO legal order does not contain rules

522 Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance)

523 WTO Glossary, definition of free-rider: A casual term used to infer that a country which does not make any trade concessions, profits, nonetheless, from tariff cuts and concessions made by other countries in negotiations under the most-favoured-nation principle.

524 Montreal Protocol on Substances that Deplete the Ozone Layer; Citations to Text, 1522 UNTS 3, 26 ILM 1541, 1550 (1987); Date of Adoption, 16/09/1987

525 CITES; Convention on International Trade in Endangered Species of Wild Fauna and Flora; Signed, 3 March 1973 (1973-03-03)

526 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Basel, 22 March 1989.

specifically dedicated to climate change. The assessment of the CBAM's compatibility with WTO law must therefore be conducted through the prism of general WTO disciplines and the corresponding body of jurisprudence on environmental measures.

At the outset, it should be recalled that the WTO framework does not preclude the use of trade measures in pursuit of non-trade objectives, provided that such measures comply strictly with the relevant substantive and procedural requirements. The WTO legal order seeks to ensure predictability, transparency, and fairness in the application of trade restrictions, which explains both the permissive potential and the constraining nature of its rules in the environmental field. Against this background, the analysis of the CBAM raises three distinct but interrelated questions: the justification for the introduction of the mechanism; its consistency with the core obligations of the GATT; and, where necessary, the possibility of recourse to an exception under Article XX.

As already noted, the absence of WTO rules specifically dedicated to climate change confines the legal assessment of CBAM to general GATT disciplines and Article XX exceptions.[527] WTO rules and jurisprudence on environmental issues are relevant to the examination of the compatibility of a regulation such as the CBAM[528] with the multilateral trade architecture. It should be noted at the outset that the Commission recognizes that trade measures can be used to achieve policy objectives provided that certain provisions are strictly adhered to. The WTO regime provides a framework at this level for predictability, transparency, and fairness in the application of these measures, which is the very reason for the existence of the institution.[529] The first paragraph displays the reasons for introducing a CBAM. The second deals with the consistency of such a measure with the multilateral trade regime. The third considers the option of a derogation from the multilateral standard.

These rules establish a strict baseline that limits the extent to which climate

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527 It is a central part of the Fit for 55 aforementioned in Part 1, presented by the Commission's Green Deal. It is enacted through the Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance). Historically, the allocation of free allowances within the framework of the European carbon market has been the solution to limit the risks of carbon leakage. This system gradually revealed several limitations. In particular, the allocation of free allowances significantly degrades the average price signal per tonne of carbon. Indeed, if we allocate 85% of the quotas for free, for example, as has long been the case for cement or even aluminium, a quota price of €100/tCO2eq is felt to be only €15/tCO2eq. This limitation of effective carbon pricing partly explains why emissions reductions have been lower for industrial sectors than for the electricity production sector, especially before 2022 when the carbon price was less than €30/tCO2. The rise of the CBAM is therefore inseparable from the gradual disappearance of free allowances in the EU ETS (i.e. the European carbon market). It is for this reason that the CBAM Regulation and the revision of the ETS Directive had to be negotiated jointly at European level.

528 The CBAM, introduced by EU Regulation 2023/956, is the world's first mechanism aimed at decarbonising the most energy-intensive sectors while minimising the risk of carbon leakage, including the relocation of production to third countries with less ambitious environmental standards. In this way, the CBAM seeks to avoid an increase in carbon emissions produced outside the territory of the EU.

529 Lydgate, Emily (2017). Is it rational and consistent? the WTO's surprising role in shaping domestic public policy. University of Sussex. Journal contribution. https://hdl.handle.net/10779/uos.23448929.v1

measures may interfere with international trade, irrespective of their environmental objectives.

Regarding the application of border adjustments for carbon or energy taxes, there is a GATT report dated 1970, *GATT Working Party on Border Tax Adjustments*, which, based on the work of the OECD, defines border adjustment measures.[530] These fall into two categories:

(i) the imposition of a tax on imported products corresponding to the tax paid by domestic producers.

(ii) the refund of internal taxes on export.

The economic rationale of this type of measure is the equalization of the conditions of competition between taxed domestic industries vis-à-vis foreign competitors that are not taxed.

– *The feasibility test of a CBAM against WTO rules*

From the perspective of WTO law, the CBAM raises a number of structural difficulties. A first concern relates to the risk that export-related compensation mechanisms could be characterised as prohibited subsidies under the Agreement on Subsidies and Countervailing Measures (SCM Agreement). While climate-related subsidies are not prohibited per se, Article 3 of the SCM Agreement explicitly bans export subsidies and Annexes I and II further circumscribe the scope of permissible support measures. Any attempt to offset carbon costs for exporters would therefore require particular caution.

The main pitfall of an export support measure to compensate for the loss of international competitiveness would be its categorization as a "prohibited subsidy." The Agreement on Subsidies and Countervailing Measures does not prohibit climate subsidies as such, provided that they are not specific and do not have an adverse effect on the interests of another member State. However, any tax or subsidy has a distorting effect that makes its acceptance by the WTO problematic. In addition, Article 3 prohibits export subsidies and Annexes I and II of the Agreement exclude such measures.

More broadly, the CBAM poses challenges under the GATT framework for three main reasons. First, Article III GATT does not provide a clear and unequivocal basis for accommodating carbon border adjustments. Second, the GATT Working Party on Border Tax Adjustments did not reach a definitive conclusion on the treatment of taxes linked to production processes. Third, the Working Party's definition of "hidden taxes" casts doubts on the adjustability of carbon and energy taxes, which are generally associated with production rather than with the physical characteristics of products. Although some commentators have argued that the SCM Agreement may offer limited flexibility with respect to certain hidden taxes, the legal status of such adjustments remains uncertain.

However, there is no adjustment in the case of these taxes. However, some authors noted that the Agreement on Subsidies and Countervailing Measures allows for some

530 GATT Working Party Report, *Border Tax Adjustments*, L/3464, adopted 2 December 1970, BISD 18S/97

of the hidden taxes mentioned by the GATT Working Group.[531]

The feasibility of a CBAM ultimately depends on its compatibility with the core principles of trade multilateralism enshrined in Articles I, II, III, and XI GATT. Among these, Article III is likely to give rise to the most acute legal difficulties. The provision prohibits internal taxes and regulations that afford protection to domestic production and requires an assessment centred on the existence of competitive distortions rather than on actual trade effects. WTO jurisprudence has consistently held that even minimal tax differentials may suffice to establish discrimination. In Korea – Alcoholic Beverages, the Appellate Body confirmed that Article III tolerates *no de minimis* exception and applies irrespective of whether a measure has already produced measurable trade effects.

It establishes that this respect stems from the response to the following two elements:

– *The question of the level of the tax*

The CO2 tax will only apply to emissions-intensive or highly price-sensitive commodities. But a customs adjustment tax is only allowed for so-called "product taxes" like VAT; it is not so for the so-called "production" or "producer" taxes. The WTO regime has a preference for product regulation rather than production regulation. Also, any tax on the latter cannot be adjusted at the borders.

The CBAM Regulation provides for a reduction of the carbon adjustment if the importer can prove that a carbon price has been paid in the country of production of the imported goods. Goods originating in a country applying the same emissions trading system (e.g. the EEA and EFTA States) or in countries that have concluded an agreement linking their emissions trading system to the EU emissions trading system (e.g. Switzerland) will be exempt from the application of the CBAM Regulation, as the carbon price has already been paid in full and is not subject to any other form of rebate. By ensuring that importers pay the same carbon price as local producers covered by the EU ETS, the CBAM ensures equal treatment and avoids the risk of carbon leakage.

Moreover, the GATT/WTO jurisprudence has consistently held that the volume of trade does not matter for the purposes of compliance with the provisions of Article III. The only element to be considered is whether there is a distortion of competition. Similarly, the existence of a minimum tax differential is sufficient to establish discrimination. Referring to Provisions III.1 and III.2, the *Korea – Alcoholic Beverage*[532] dispute concludes that the WTO regime does not tolerate any "minimum amount" of taxation and that the prohibitions contained in Article III apply against a measure that favours

531 Abbas, M. (2020). Chapitre 2. Gouvernance climatique et régime de l'OMC. Economie politique globale des changements climatiques Préface de Patrick Criqui. (P. 79 -90). Presses universitaires de Grenoble. https://shs.cairn.info/economie-politique-globale-des-changements-climatiques--9782706116131-page-79?lang=fr.

532 WTO Appellate Body Report, Korea — Taxes on Alcoholic Beverages (Korea – Alcoholic Beverage), WT/DS84/AB/R, adopted 18 January 1999

domestic products, even if no trade is disrupted or the measure has not yet been the subject of enforceable provisions. Even if border adjustment passes these two conditions, the principle of non-discrimination between imports and like domestic products is likely to be problematic.

– *The question of product similarity*

The GATT/WTO Agreements do not define the concept of likeness, nor do they express a clear doctrine on the matter. Nevertheless, the GATT/WTO case law sheds some light on the final product, but also on the production processes and methods (hereinafter PPM). The similarity criteria generally used are:

(i) the properties, nature, and quality of the products.

(ii) the end use of the products.

(iii) the tastes and habits of consumers and the way they perceive the products.

(iv)the tariff classification of products.

The Appellate Body (*EC – Asbestos* and *Japan – Alcoholic Beverages II*)[533] has made it clear that the likeness of products must be examined on a case-by-case basis. In the case of climate change measures, the question is whether products can be considered "unlike" because of differences in production technology, even if the latter does not affect the physical characteristics of the final product.

There are no criteria in the GATT/WTO texts for concluding whether two or more products are like or not. Two doctrines are in conflict. The first considers that products obtained from different production processes cannot be considered as similar products. Thus, PPMs can be the source of a distinction between products in the context of Articles I and III of the GATT.[534] The second doctrine, which is favoured by the GATT/WTO case-law, considers that PPMs are not taken into account in the similarity or otherwise of the products. The debate is not over, however, since according to the Appellate Body, the notion of similarity must be assessed on a case-by-case basis according to the context and circumstances of a given case.[535] This gives panels a margin of discretion as to the criteria to be used and the weighting of each of them.

For example, there is an ambiguity as to whether the dangerousness and toxicity of a product can be differentiating criteria. The Appellate Body in the *EC – Asbestos* dispute considered that the dangerousness of a product could be taken into account when it affected the physical properties of the product or determined the competitive relationships between products in a given market. This opens up a way to admit that

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533 WTO Appellate Body Report, European Communities — Measures Affecting Asbestos and Products Containing Asbestos (EC – Asbestos), WT/DS135/AB/R, adopted 5 April 2001 and WTO Appellate Body Report, japan – Taxes on Alcoholic Beverages (Japan – Alcoholic Beverages II), WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996

534 WTO Appellate Body Report, European Communities — Measures Affecting Asbestos and Products Containing Asbestos (EC – Asbestos), WT/DS135/AB/R, adopted 5 April 2001

535 WTO Appellate Body Report, Japan – Taxes on Alcoholic Beverages (Japan – Alcoholic Beverages II), WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996

a CO2-intensive product is more dangerous than another "similar" product but with a lower CO2 content.[536] That being said, dangerousness is not a sufficient criterion in itself but must be assessed in the context of the examination of the physical characteristics of a product or that of the tastes and habits of consumers.[537] WTO case law indicates that the way in which products have been manufactured need not be considered as a relevant criterion of differentiation. The only possibility would be to demonstrate that divergent manufacturing methods have an impact on the intrinsic qualities of the products.

WTO jurisprudence rejects the possibility of invoking the argument of *a production method* that generates pollution or loss of natural resources exclusively in the territory of third countries (e.g. a measure prohibiting the import of products produced using intermediate processes or goods or CO2-intensive resources) since the CO2 tax can only achieve its objective if the producing State adopts the emission restriction measures desired by the State importer.[538] The CO2 tax allows the latter to exert pressure on its trading partners to comply with the production standards set by the latter in order to benefit from.[539]

What conclusion can be drawn regarding the compatibility between a CO2 tax and the fundamental principles of multilateralism? The WTO regime and jurisprudence allow for the development of trade measures targeted at the fight against climate change, but under certain conditions that are difficult to systematize.[540] Only the settlement of a dispute along these lines would be likely to resolve the problem. Nonetheless, there is no guarantee that the dispute settlement process will lead to a final solution that is consistent with the environmental objective of the measure. The other possible path for the implementation of a CBAM is through exceptions to the multilateral standard.

In light of these constraints, the compatibility of the CBAM with WTO law remains contingent and context dependent. WTO rules and jurisprudence do not exclude trade measures aimed at combating climate change, but they confine them within narrow and procedurally demanding limits. Only the settlement of a dispute would ultimately clarify the scope of permissible climate-related border measures. Even then, there is no guarantee that the outcome would fully accommodate the environmental objectives pursued by the EU. Recourse to the general exceptions under Article XX therefore appears as a necessary, albeit uncertain, pathway.

To sum up, subsection 2.1.3. demonstrates that the CBAM exposes the practical

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536 WTO Appellate Body Report, European Communities — Measures Affecting Asbestos and Products Containing Asbestos (EC – Asbestos), WT/DS135/AB/R, adopted 5 April 2001

537 WTO Appellate Body Report, Japan – Taxes on Alcoholic Beverages (Japan – Alcoholic Beverages II), WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996

538 WTO Panel Report, Brazil – Measures Affecting Imports of Retreaded Tyres (Brazil – Retreaded Tyres), WT/DS332/R, adopted 17 December 2007

539 WTO Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products (US – Shrimp), WT/DS58/AB/R, adopted 6 November 1998

540 Green, Andrew, Trade Rules and Climate Change Subsidies, World Trade Review (2006) 5: 3, 377-414

and legal difficulties inherent in reconciling ambitious EU climate objectives with WTO trade disciplines. While the CBAM seeks to operationalise external climate coherence, its legality ultimately depends on its ability to satisfy the stringent conditions of Article XX GATT, thereby revealing the narrow margins within which EU climate action may unfold in the multilateral trade context.

While the foregoing analysis has examined the CBAM through the abstract framework of WTO rules and jurisprudence, the legal assessment of climate-related trade measures cannot remain purely theoretical. The compatibility of such measures ultimately acquires concrete meaning only when tested before the WTO dispute settlement system. In this respect, the CBAM not only raises questions of normative feasibility under the GATT but also prefigures potential litigation dynamics within the multilateral trading system. The following subsection therefore turns to the role of the WTO DSB in adjudicating climate-related trade measures, with particular attention to the CBAM as a likely focal point of future disputes.

2.1.4. Climate-related trade measures before the WTO Dispute Settlement Body: the case of the EU CBAM

This subsection examines the systemic implications of integrating EU climate measures into the WTO legal framework. It shows that reliance on Article XX GATT as a vehicle for climate action entails significant legal uncertainty and litigation risk, thereby limiting the capacity of WTO law to serve as a stable framework for ambitious climate regulation.

Reliance on Article XX GATT entails structural legal uncertainty. Because legality is established through *ex post* adjudication and case-by-case application, climate measures remain continuously exposed to challenge. This reinforces the thesis's core point: within the WTO system, climate protection functions as a conditional justification rather than as a structuring objective, and coherence operates as a constraint that channels climate ambition into legally defensible forms rather than guaranteeing its acceptance.

A. **The structural limits of WTO law for climate action under Article XX GATT**

Article XX relates to general exceptions to the multilateral norm. Of the ten cases mentioned in this chapter, two relate directly to the environment.[541] Article XX states that "Provided that such measures are not applied in such a way as to constitute a means of arbitrary or unjustifiable discrimination between countries where the same

541 WTO Appellate Body Report, European Communities — Measures Affecting Asbestos and Products Containing Asbestos (EC – Asbestos), WT/DS135/AB/R, adopted 5 April 2001 and WTO Panel Report, Brazil – Measures Affecting Imports of Retreaded Tyres (Brazil – Retreaded Tyres), WT/DS332/R, adopted 17 December 2007

conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or application by any Contracting Party of the measures: (…)

(b) necessary for the protection of human, animal or plant life or health.

(g) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic production or consumption ..."

The purpose of paragraphs (b) and (g) of Article XX is to enable WTO Members to justify measures inconsistent with the GATT if this is necessary to protect human, animal or plant life or health, or if such measures relate to the conservation of exhaustible natural resources. The chapeau of the article is intended to ensure that the measures taken are not discriminatory or arbitrary or unjustifiable or constitute a disguised restriction on international trade. In a dispute, panels or the Appellate Body seek to establish, primarily, whether the policy of a measure falls within the categories of paragraph (b) or paragraph (g). The second step is to check whether the measure meets the necessity test contained in the chapeau of the article.

The "necessity test" refers to the least trade-restrictive effect of a measure. WTO jurisprudence also adopts a proportionality approach: a member must establish that the means (the measure chosen) correspond to the aim pursued (the stated objective of conserving exhaustible natural resources). This is called the "set of factors" examination. The Appellate Body has considered that, in order to accept that a measure is necessary, it is necessary to take into account a series of factors, including: the role played by the measure in complying with the regulation or law in question, the importance of the common interest or common values protected by that measure or law, and the impact of the law; the import and export regulations or measure. Article XX.g contains a requirement that the measures concerned impose restrictions not only on imported products but also on domestic products (even-handed standard).

In the *US - Shrimp* dispute,[542] the Appellate Body considered that, in order to accept that a measure is necessary, a range of factors must be taken into account, including: the role played by the measure in complying with the regulation or law in question, the importance of the common interest or common values protected by that measure or law, and the impact of the law, the regulation or measure on imports and exports.[543] The complainants argued that the US measure violated several provisions of the General Agreement on Tariffs and Trade (GATT), including the principles of non-discrimination[544] and the prohibition of quantitative restrictions.[545] They contended that the US measure was a disguised restriction on international trade and that it

542 WTO Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products (US – Shrimp), WT/DS58/AB/R, adopted 6 November 1998

543 WTO Appellate Body Report, United States – Subsidies on Upland Cotton (US – Upland Cotton), WT/DS176/AB/R, adopted 21 March 2005

544 GATT, Article I

545 GATT, Article III

unfairly discriminated against their shrimp exports.

The DSB concluded that the US measure was applied in a manner that constituted arbitrary and unjustifiable discrimination between countries where the same conditions prevailed. The ruling emphasized the need for the US to ensure that its environmental measures were applied in a non-discriminatory and transparent manner. The case highlighted the tension between trade and environmental protection within the WTO framework. It underscored the importance of balancing environmental objectives with the principles of free and fair trade. The ruling also emphasized the need for countries to cooperate and seek multilateral solutions to environmental challenges rather than imposing unilateral measures that could disrupt international trade.

Once a measure is recognized as meeting the requirements of Article XX, a panel, or the Appellate Body resorts to the application of the chapeau of Article XX. The measure must not constitute a means of *arbitrary* or *unjustifiable discrimination*. This amounts to the view that "the chapeau expressly applies not so much to the measure at issue or to its specific content itself, but rather to the manner in which the measure is applied".[546]

Article XX GATT offers only a conditional and fragmented accommodation of climate objectives within international trade law. Its exception-based logic confirms that WTO law remains structurally ill-equipped to support comprehensive climate regulation, confining climate action to narrowly circumscribed derogations.

B. The CBAM before the WTO Dispute Settlement Body: insights from trade dispute practice

To determine whether a measure is applied unjustifiably, two criteria have so far been used: (a) a serious negotiating effort with a view to concluding bilateral and multilateral agreements with a view to achieving objectives, and (b) the flexibility of the measure. In determining whether the measure is applied arbitrarily, the Appellate Body considered in *US – Shrimp case*[547] that "rigidity and inflexibility" in the application of a measure constitutes "arbitrary discrimination" within the meaning of the chapeau.

Article XX.g contains a requirement that the measures concerned impose restrictions not only on imported products but also on domestic products (impartiality standard).[548] In order to determine whether a measure constitutes a disguised restriction on trade, three criteria have been introduced: the publicity criterion (publicly

546 WTO Appellate Body Report, United States – Standards for Reformulated and Conventional Gasoline (US – Gasoline), WT/DS2/AB/R, adopted 20 May 1996

547 WTO Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products (US – Shrimp), WT/DS58/AB/R, adopted 6 November 1998

548 WTO Appellate Body Report, "China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum" (WT/DS433/AB/R) adopted 29 August 2014 WTO Appellate Body Report, Japan – Taxes on Alcoholic Beverages (Japan – Alcoholic Beverages II), WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996

announced measure); an examination of the application of a measure amounting to arbitrary or unjustifiable discrimination, and an examination of the "design, basic principles and revealing structure" of the measure in question.[549]

In practice, in the *US – Shrimp* dispute (1998),[550] the WTO Appellate Body found that the US measure was provisionally justified under Article XX(g) of the GATT, which allows trade restrictions for the conservation of exhaustible natural resources. The Appellate Body recognized the measure's legitimate goal of sea turtle conservation and noted that the restrictions were paired with similar domestic measures, meeting the conditions of Article XX(g) to protect marine biodiversity and more globally the environment. The climatization of WTO provisions is the result of the combination of paragraphs b) ***and*** g). This mechanism is in line with WTO standards and international environmental law. In fact, the CBAM is designed to mirror the EU Emissions Trading Scheme (EU-ETS), ensuring that an equivalent carbon price will be paid by domestic and imported products. It is intended to be non-discriminatory and compatible with WTO rules and other EU international obligations.

Under the revised EU-ETS, free allowances in CBAM sectors will be phased out in a non-linear manner over a period of 9 years starting in 2026.[551] In these sectors (with the exception of electricity as a CBAM commodity), the CBAM will be introduced symmetrically to the phase-out of free allowances, providing incentives for European and foreign industries to innovate and reduce their emissions. The sectoral distribution of EU greenhouse gas emissions in 2021 and the corresponding reduction targets for 2030, differentiated by regulatory scheme, are illustrated in Diagram 3.

WTO dispute settlement practice confirms that Article XX GATT offers only a fragile and *ex post* accommodation of climate objectives. The case-by-case adjudication of environmental exceptions exposes climate-related trade measures such as the CBAM to persistent legal uncertainty, reinforcing the conclusion that WTO law constrains climate ambition rather than structurally enabling it.

To sum up, subsection 2.1.4. demonstrates that the integration of EU climate objectives into the WTO framework remains structurally fragile. While Article XX GATT offers a conditional legal avenue for environmental protection, its case-by-case application and inherent uncertainty constrain the effectiveness and predictability of climate action within international trade law. WTO dispute settlement practice underscores the legal uncertainty surrounding climate-related trade measures such as the CBAM. The case-by-case adjudication of Article XX derogations reinforces the fragility of relying on WTO law to accommodate climate ambition, exposing the narrow and contested space available for coherent climate action in the trade context.

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549 WTO Appellate Body Report, United States – Shrimp (Thailand) and United States – Customs Bond Directive, WT/DS343/AB/R, WT/DS345/AB/R, adopted 1 August 2008

550 WTO Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products (US – Shrimp), WT/DS58/AB/R, adopted 6 November 1998

551 Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance)

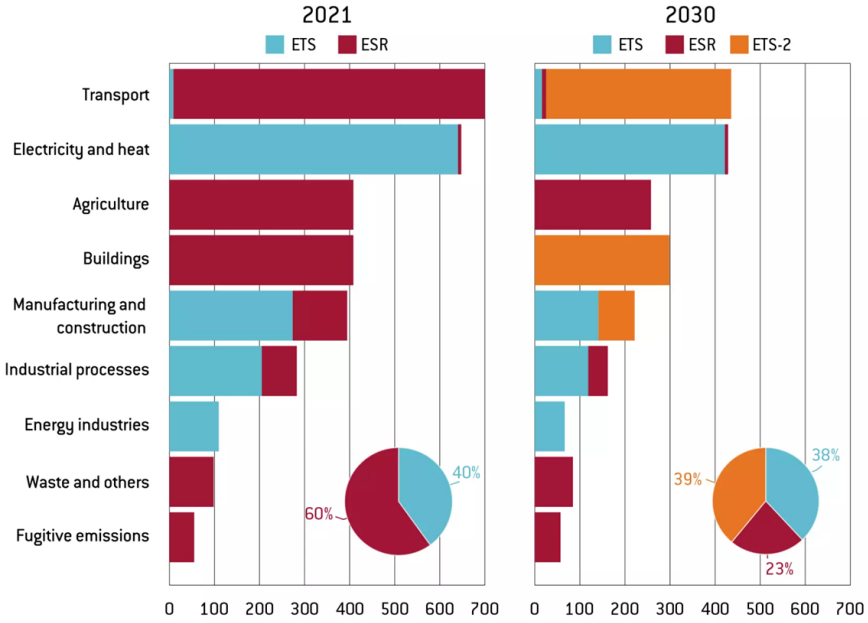

Diagram 3. *2021 EU emissions and 2030 EU targeted emissions by sector and scheme*[552]

The analysis of climate-related trade measures before the WTO DSB confirms that the accommodation of climate objectives within the WTO legal order remains fragile and contingent. While the CBAM illustrates how environmental measures may be provisionally justified through Article XX GATT, dispute settlement practice also reveals the structural limits of relying on exceptions as the primary legal vehicle for climate action. This observation calls for a broader examination of Article XX itself, not merely as a defensive tool in litigation, but as the central doctrinal framework through which the fight against climate change is legally channelled within WTO law. Section 2.2 therefore turns to a systematic analysis of Article XX GATT and its capacity to accommodate climate protection beyond individual test cases.

552 J. Pisani-Ferry, S. Tagliapietra, G. Zachmann (2023) "A new governance framework to safeguard the European Green Deal", Bruegel, available at https://www.bruegel.org/policy-brief/new-governance-framework-safeguard-european-green-deal : ETS is the Emission Trading System; ESR is the Effort Sharing Regulation that sets national targets for emission reductions from road transport, heating of buildings, agriculture, small industrial installations and waste management. These sectors were not included until now in the EU Emissions Trading System (EU ETS) – although they currently generate about 60% of EU greenhouse gas emissions. In 2027, ETS-2 will complement the ESR by a second emissions trading system (ETS-2) for buildings, road transport and process heat, accounting for a quarter of total EU emissions. ETS-2 will thus push the share of EU emissions covered by emissions trading from 40% to 77% in 2030.

2.2. The fight against climate change and Article XX

This subsection examines the alternatives through which the EU seeks to advance its climate objectives beyond the constraints of the WTO framework. It shows that, faced with the structural limits of multilateral trade law, the Union increasingly relies on differentiated instruments—such as bilateral trade agreements, regulatory autonomy, and unilateral measures—to preserve coherence between climate ambition and external economic relations.

Article XX states that "<...> [p]rovided that such measures are not applied in such a way as to constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed as preventing the adoption or application by any Contracting Party of the measures: (b) necessary for the protection of human, animal or plant life or health; (g) relating to the conservation of exhaustible natural resources, if such measures are applied in conjunction with restrictions on domestic production or consumption (...)"

The purpose of paragraphs (b) and (g) of Article XX is to allow WTO Members to justify measures inconsistent with the GATT if this is necessary to protect human, animal or plant life or health, or if such measures relate to the conservation of exhaustible natural resources. In a dispute, panels or the Appellate Body seek to determine, first and foremost, whether the policy of a measure falls within the categories of paragraph (b) ***or*** paragraph (g).[553] However, as discussed previously, the fight against climate change is the result of the combination of paragraphs (b) ***and*** (g).

Interestingly, the panel in *US – Gasoline*[554] concluded that a measure to reduce air pollution from gasoline consumption falls within the scope of Article XX.b. It had also established that a policy to limit the depletion of clean air was a policy for the conservation of a natural resource within the meaning of Article XX.g. It is therefore a question of demonstrating that a tax would be a necessary complement to make effective a policy to combat climate change, the EU's system of tradable emission permits, for example.[555] In addition, it must be demonstrated that it is the best means of achieving the objectives of paragraphs (b) and (g).

This double demonstration is extremely problematic, but not impossible. However, it is unlikely that a panel or Appellate Body would be sensitive to this. Indeed, rather they tend to invoke the "presumption of mutual compatibility" between trade and the

553 WTO Panel Report, Brazil – Measures Affecting Imports of Retreaded Tyres (Brazil – Retreaded Tyres), WT/DS332/R, adopted 17 December 2007

554 WTO Appellate Body Report, United States – Standards for Reformulated and Conventional Gasoline (US – Gasoline), WT/DS2/AB/R, adopted 20 May 1996

555 Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance)

environment.[556] Moreover, scientific uncertainty works against a panel or Appellate Body ruling. For example, in *Brazil – Retreaded Tyres*,[557] while recognizing that environmental problems require comprehensive and interrelated policies, the Appellate Body emphasized that the results achieved by certain actions – for example, measures to combat global warming – can only be assessed with hindsight. At this level, we find the dilemma of the political ruling-maker in terms of climate deadlines. If one must wait until the effect is established and visible before acting, the action is ineffective by definition.

In a second step, the introduction of a tax will have to comply with the three conditions indicated in the chapeau of Article XX. The measure: (a) must not constitute a means of arbitrary or unjustifiable discrimination; (b) relates to countries where the same conditions exist; (c) shall not constitute a disguised restriction on international trade.

The first condition is an unequivocal incentive for a multilateral solution prohibiting any unilateral initiative. Secondly, in order to avoid distortive effects, tax calculations and procedures will have to be non-discriminatory and transparent. They will have to consider the local conditions of the producing countries and focus on finding the quantities of carbon dioxide actually emitted to manufacture the product in question and not the country's overall emissions, which is a question of formidable complexity. Finally, the measure will have to pass the "necessity test."[558]

Apart from the fact that the WTO Agreements are the primary source of dispute settlement proceedings, a panel or the Appellate Body will never go beyond what is provided for in the Convention. However, Articles 3.5 and 4.2 of the Convention prevent the use of trade measures to achieve their objectives.

Only the *US – Shrimp*[559] dispute offers any indication of a favourable conclusion to the environment, since it was accepted that a policy applying to turtles living in US waters but also to those living beyond US territorial waters was covered by Article XX.g. This makes it possible to establish a link between a country's mitigation policy or a border adjustment measure and the objective of that policy, which is the protection of an overall public good: the climate. This is what leads Joseph Stiglitz to be surprised that a trading system capable of saving turtles cannot preserve the climate.[560] One is tempted to reply that it was precisely because this dispute concerned turtles and

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556 WTO Panel Report, Brazil – Measures Affecting Imports of Retreaded Tyres (Brazil – Retreaded Tyres), WT/DS332/R, adopted 17 December 2007

557 WTO Appellate Body Report, Brazil – Measures Affecting Imports of Retreaded Tyres (Brazil – Retreaded Tyres), WT/DS332/19/Add.6, adopted 15 September 2009

558 WTO Appellate Body Report, "China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum" (WT/DS433/AB/R) adopted 29 August 2014

559 WTO Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products (US – Shrimp), WT/DS58/AB/R, adopted 6 November 1998

560 Stiglitz, Joseph. (2008). The Future of Global Governance. The Washington Consensus Reconsidered: Towards a New Global Governance. 10.1093/acprof: oso/9780199534081.003.0014.

shrimps that it was able to succeed. The nature, scale and consequences of the issues are radically different in the case of unilateral measures relating to carbon taxation.

It would seem more rational to move towards an Article XX justification, which provides ways to establish WTO-consistent CBAMs, than to seek consistency with Article III. But only the dispute settlement procedure would be likely to solve the problem. Stricto sensu, the outcome of such an action cannot be anticipated. Between the trade war for climate reasons and the use of a strategic climate policy within the WTO, other paths exist.

For example, in *Brazil – Retreaded Tyres* (2007)[561], while acknowledging that environmental problems require comprehensive and interrelated policies, the Appellate Body emphasized that the results achieved by certain actions – for example, measures to combat global warming – can only be assessed with the benefit of hindsight. The Brazil re-treaded tyres case, formally known as *Brazil – Measures Affecting Imports of Re-treaded Tyres*, was a dispute brought before the WTO by the European Communities (EC) against Brazil. The case revolved around Brazil's import ban on re-treaded tyres, which the EC argued was inconsistent with several provisions of the GATT 1994.

Brazil imposed the import ban on re-treaded tyres to address environmental and public health concerns, particularly the accumulation of waste tyres and the associated risks of mosquito-borne diseases such as dengue fever. Brazil argued that the measure was necessary to protect human, animal, and plant life or health, as well as to conserve exhaustible natural resources.

The EC contended that the import ban violated GATT Article XI, which prohibits quantitative restrictions on imports, and that it was not justified under GATT Article XX, which allows exceptions for measures necessary to protect human, animal, or plant life or health, or to conserve exhaustible natural resources.

The WTO DSB ruled in favour of the EC, finding that Brazil's import ban was inconsistent with GATT Article XI. The DSB concluded that the measure was not justified under GATT Article XX because it was applied in a manner that constituted arbitrary and unjustifiable discrimination between countries where the same conditions prevailed. The ruling emphasized the need for Brazil to ensure that its environmental measures were applied in a non-discriminatory and transparent manner.

The case highlighted the tension between trade and environmental protection within the WTO framework. It underscored the importance of balancing environmental objectives with the principles of free and fair trade. The ruling also emphasized the need for countries to cooperate and seek multilateral solutions to environmental challenges rather than imposing unilateral measures that could disrupt international trade.

Also, in the *US – Shrimp dispute* (1998)[562] the measure failed to meet the require-

561 WTO Appellate Body Report, Brazil – Measures Affecting Imports of Retreaded Tyres (Brazil – Retreaded Tyres), WT/DS332/AB/R, adopted 17 December 2007

562 WTO Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products (US – Shrimp), WT/DS58/AB/R, adopted 6 November 1998

ments of the chapeau of Article XX, which prevents measures from being applied in ways that lead to arbitrary or unjustifiable discrimination between countries. The Appellate Body determined that the US applied its measure in a discriminatory manner. The US had extended technical and financial support for compliance to some nations (e.g., in the Caribbean) but not to the complainant countries. This inconsistent approach constituted arbitrary and unjustifiable discrimination. Furthermore, the US did not engage sufficiently with the complainants to explore alternative, less trade-restrictive solutions tailored to their specific circumstances, undermining the fairness and necessity of the measure.

Now that the EU implements a CBAM on the carbon content of its imports, it can do so under Article IX.3 of the WTO Agreement. It states that "in exceptional circumstances, the Ministerial Conference may decide to grant a member a waiver from any of its obligations under this Agreement or under any of the multilateral trade agreements, provided that such a ruling is taken by three-fourths of the Members." However, it is clear that this option implies that a country or a group of countries works to create an inter-State coalition that ensures it a three-quarters majority of the State Parties in the multilateral forum – 166 are parties to the WTO, so the EU would need over 124 votes.

To sum up, the limits encountered within the WTO framework have prompted the EU to diversify the legal avenues through which it pursues external climate action. While bilateral agreements and unilateral instruments offer greater regulatory flexibility, they also raise new challenges for coherence and legitimacy, confirming that climate ambition increasingly reshapes—rather than fits within—the traditional architecture of international trade law.

In conclusion, the integration of climate objectives into the EU's external economic action operates under significant legal constraints. WTO law does not preclude climate-related trade measures, but it subjects them to strict conditions that limit both their scope and design. Instruments such as the CBAM illustrate that coherence between climate ambition and international trade law is not achieved through automatic alignment, but through legally calibrated mechanisms that must reconcile environmental objectives with non-discrimination and proportionality requirements. As a result, the integration of climate law into the EU's trade policy remains a constrained and conditional process, shaped as much by international economic law as by the Union's climate objectives.

It should be noted that the WTO has not remained indifferent to environmental concerns, since this acknowledgement determines the legal conditions under which climate objectives may be accommodated within the multilateral trading system. This is crucial for assessing the scope and limits of EU climate measures—such as the CBAM—whose legality depends on their ability to satisfy the exceptions and constraints laid down in WTO law. Indeed, the priority set in the Preamble was, "it must therefore combine the rules of international trade, traditionally based on the dogma of good free trade, and new requirements, falling under the concept of sustainable

development."[563] Arguably, the margin of manoeuvre is different when one is gathering 27 voices and the other, 166.[564] Nevertheless, the foregoing examination of WTO jurisprudence and EU regulatory practice demonstrates that the Union does not pursue climate objectives in isolation from trade law constraints. On the contrary, by designing climate-related- measures that explicitly engage with the legal tests developed under Article XX GATT, the EU reveals a deliberate strategy of regulatory alignment. This confirms a strong willingness on the part of the Union to adjust its regulation to WTO principles, while prioritising the consistency of its internal climate policies with its external trade commitments.

2.3. The fight against climate change in EU-FTA's agreements outside the WTO forum

This subsection draws together the implications of the EU's external climate action for the coherence of its broader legal and institutional framework. It examines how the tensions revealed in international economic relations feed back into the Union's internal governance, reshaping the articulation between climate objectives, regulatory autonomy, and legal consistency.

Faced with the paralysis of the WTO, EU FTAs function as instruments of normative projection rather than enforcement, revealing both the strength and limits of EU climate constitutionalisation beyond the WTO.[565] The EU has been a global leader in integrating climate change considerations into its FTAs. This approach ensures that trade liberalization does not come at the expense of environmental protection and climate action. The inclusion of climate clauses in FTAs reflects the EU's commitment to sustainable development and its role as a global leader in climate action.[566]

External trade constraints do not merely limit EU climate action but actively influence the internal coherence of the Union's legal framework. This interaction confirms that climate law operates as a cross-cutting force capable of re-ordering traditional governance and regulatory boundaries. Against this background, the section first analyses how the EU projects its internally consolidated climate standards through FTAs (2.3.1), before turning to the governance and institutional mechanisms that condition the coherence and effectiveness of this external climate action (2.3.2.).

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563 Daniel Jouanneau, 2003, L'Organisation mondiale du commerce, Que sais-je ? Presses Universitaires de France.

564 166 Members en 2024 to WTO, latest data available (https://www.wto.org/french/thewto_f/whatis_f/tif_f/org6_f.htm)

565 Hoekman, B. et Mavroïdis, P. (2021). Éviter un Requiem pour l'OMC. RED, N° 2(1), 97-100. https://doi.org/10.3917/red.002.0097.

566 Miranda, J., & Sánchez Miranda, M. (2023). *Chronicle of a crisis foretold: How the WTO Appellate Body drove itself into a corner*. Journal of International Economic Law, 26(3), 435–461. https://doi.org/10.1093/jiel/jgad023

2.3.1. The external projection of EU internal climate standards

This subsection draws together the implications of the EU's external climate action for the coherence of its broader legal and institutional framework. It examines how the tensions revealed in international economic relations feed back into the Union's internal governance, reshaping the articulation between climate objectives, regulatory autonomy, and legal consistency.

While EU FTAs increasingly incorporate climate-related- provisions, their legal architecture reveals a deliberate preference for normative coordination over enforceable constraint. Climate clauses—typically embedded within chapters on trade and sustainable development—are formally binding but substantively programmatic, reaffirming commitments under multilateral environmental agreements such as the Paris Agreement without translating them into operational trade obligations.[567] Their insulation from classical dispute settlement mechanisms confirms that these clauses function less as instruments of legal coercion than as vectors of regulatory convergence. In this sense, EU FTAs do not externalise climate law through adjudicatory enforcement, but through the projection of internally consolidated standards whose authority derives from their normative density rather than their sanctioning capacity. This architecture reflects both the Union's awareness of WTO constraints and its strategic reliance on internal climate consolidation as a source of external coherence.

Environmental Standards and Regulations included in FTAs with climate clauses often stand for provisions that require the parties to maintain and enforce high environmental standards. This ensures that trade liberalization does not lead to a lowering of environmental protections. Both parties commit to implementing and enforcing their respective environmental laws and regulations effectively.[568]

The legal force of commitments to International Agreements allows the FTAs reaffirm the legal bound of both parties to international environmental agreements, such as the Paris Agreement on climate change. This clause ensures that both parties work towards achieving the goals set out in these agreements, including reducing greenhouse gas emissions and promoting sustainable development.[569] Also aligned with Sustainable Development Goals (SDGs), climate clauses in FTAs emphasize the importance of sustainable development and include specific provisions to promote environmental protection, social development, and economic growth. This includes measures to support renewable energy, energy efficiency, and sustainable agriculture

567 Garcia, M. (2025). Implementation of trade and sustainable development chapters in EU FTAs: Promoting environmental reforms? Journal of Environmental Policy & Planning, 27(6), 671–686. https://doi.org/10.1080/1523908X.2025.2489534

568 Sierpinski, B. et Tourard, H. (2019). Mise à l'épreuve du système de règlement des différends de l'OMC. Est-ce un rejet du multilatéralisme ou une mise en cause de l'ordre économique actuel ? Revue internationale de droit économique, t. XXXIII (4), 423-447. https://doi.org/10.3917/ride.334.0423.

569 Hoekman, B. et Mavroïdis, P. (2021). Éviter un Requiem pour l'OMC. RED, N° 2(1), 97-100. https://doi.org/10.3917/red.002.0097.

practices. Climate Mitigation and Adaptation can be enhanced with the FTAs including commitments to take measures to mitigate climate change and adapt to its impacts. This involves promoting the use of clean technologies, reducing carbon emissions, and enhancing climate resilience in various sectors, such as energy, transportation, and agriculture.

Finally, trade and Environmental Cooperation allow agreements to establish mechanisms for cooperation on environmental and climate issues. This includes joint committees and working groups facilitating collaboration, exchanging best practices, and monitoring the implementation of climate-related provisions.[570] Dispute Resolution mechanisms contained in Climate clauses in FTAs may include provisions for resolving disputes related to environmental and climate commitments. This ensures that any disagreements or non-compliance issues can be addressed through established legal and diplomatic channels.

A few examples of climate clauses in FTAs concluded by the EU:

a) ***EU-Canada Comprehensive Economic and Trade Agreement (CETA):***[571] CETA includes a chapter on trade and sustainable development, which covers environmental protection, climate change, and labour rights. The agreement reaffirms the parties' commitment to the Paris Agreement and includes provisions for cooperation on climate change mitigation and adaptation1.
b) ***EU-Japan Economic Partnership Agreement (EPA):***[572] The EPA includes a chapter on trade and sustainable development, which addresses environmental protection and climate change. The agreement emphasizes the importance of implementing the Paris Agreement and includes provisions for cooperation on renewable energy, energy efficiency, and climate resilience.
c) ***EU-MERCOSUR Agreement:***[573] The EU-MERCOSUR agreement includes climate clauses that emphasize the importance of sustainable development and environmental protection. The agreement reaffirms the parties' commitment to the Paris Agreement and includes provisions for cooperation on climate change mitigation and adaptation.

To sum up, subsection 2.3.1. demonstrates that the coherence of EU external climate action increasingly depends on the solidity of its internal legal consolidation. By externalising internally anchored climate objectives through trade-related instruments and standards, the EU seeks to preserve consistency across legal orders—while revealing that external coherence is often achieved through internal regulatory strength rather than multilateral alignment alone.

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570 Sierpinski, B. et Tourard, H. (2019). Mise à l'épreuve du système de règlement des différends de l'OMC. Est-ce un rejet du multilatéralisme ou une mise en cause de l'ordre économique actuel ? Revue internationale de droit économique, t. XXXIII (4), 423-447. https://doi.org/10.3917/ride.334.0423.

571 Chapter 24, CETA: trade and environment

572 Chapter 16, EU-Japan EPA: trade and sustainable development

573 Chapter on Trade and Sustainable Development, EU-MERCOSUR Agreement

2.3.2. Governance and institutional articulation of external climate coherence: MERCOSUR and EU FTAs' Climate Clauses

This subsection examines how the EU's internal climate framework is operationalised externally through governance and institutional coordination. It shows that the projection of internal climate standards beyond the Union's borders depends not only on legal ambition, but on the capacity of EU institutions to coordinate, monitor, and enforce coherence across external action.

The MERCOSUR–EU FTA (FTA) represents a significant step forward in embedding environmental and climate considerations within the framework of international trade. Rather than treating environmental standards as peripheral, the agreement weaves them into its core provisions, requiring both MERCOSUR and the EU to uphold and actively enforce high environmental standards. This approach is designed to ensure that the liberalization of trade does not come at the expense of environmental protection. Both parties are thus committed not only to maintaining their existing environmental laws and regulations but also to implementing them effectively, thereby preventing any regulatory "race to the bottom" that could undermine environmental safeguards in pursuit of economic gain. Furthermore, the MERCOSUR-EU FTA is a comprehensive trade agreement that includes various provisions aimed at promoting sustainable development and addressing climate change. The inclusion of climate clauses in this FTA demonstrates the commitment of both parties to align trade policies with environmental and climate objectives.

At the operational level, the agreement relies on governance mechanisms—joint committees and working groups—to organise cooperation, exchange best practices, and monitor the implementation of climate-related provisions. It also provides avenues for addressing disagreements o-r noncompliance through established legal and diplomatic channels, although the overall design continues to favour cooperative implementation over classical trade-law sanction. A central feature of the FTA is its explicit reaffirmation of the parties' commitment to international environmental agreements, most notably the Paris Agreement on climate change. By referencing such agreements, the FTA binds both MERCOSUR and the EU to pursue the objectives set out in these global frameworks, including the reduction of greenhouse gas emissions and the promotion of sustainable development. This linkage transforms the FTA from a mere instrument of economic integration into a vehicle for the realization of shared international climate commitments.[574] The agreement includes provisions that require both MERCOSUR and the EU to maintain and enforce high environmental standards. This ensures that trade liberalization does not lead to a lowering of environmental protections. Both parties commit to implementing and enforcing their respective environmental laws and regulations effectively.

The agreement also places a strong emphasis on sustainable development, recognizing its multidimensional nature. It incorporates specific provisions aimed at

574 Article 2, Chapter on Trade and Sustainable Development, EU-MERCOSUR Agreement

fostering not only environmental protection but also social development and economic growth. These provisions translate into concrete measures supporting the transition to renewable energy, the enhancement of energy efficiency, and the adoption of sustainable agricultural practices, thereby promoting a holistic approach to development that harmonizes economic progress with ecological stewardship and social inclusion.

In response to the urgent challenge of climate change, the FTA includes robust commitments to both mitigation and adaptation. The parties agree to promote the use of clean technologies, reduce carbon emissions, and enhance climate resilience across key sectors such as energy, transportation, and agriculture. These commitments reflect a recognition that trade policy must be aligned with the broader imperative of climate action, and that economic integration should serve as a catalyst for environmental innovation and resilience.[575] The FTA reaffirms the commitment of both MERCOSUR and the EU to international environmental agreements, such as the Paris Agreement on climate change. This clause ensures that both parties work towards achieving the goals set out in these agreements, including reducing greenhouse gas emissions and promoting sustainable development.[576] The agreement emphasizes the importance of sustainable development and includes specific provisions to promote environmental protection, social development, and economic growth. This includes measures to support renewable energy, energy efficiency, and sustainable agriculture practices.

Finally, the agreement establishes institutional mechanisms for ongoing cooperation on environmental and climate issues. Through the creation of joint committees and working groups, the FTA provides a platform for dialogue, the exchange of best practices, and the monitoring of the implementation of climate-related provisions.[577] The FTA includes provisions for resolving disputes related to environmental and climate commitments. This ensures that any disagreements or non-compliance issues can be addressed through established legal and diplomatic channels.[578] The agreement establishes mechanisms for cooperation on environmental and climate issues. This includes joint committees and working groups to facilitate collaboration, exchange best practices, and monitor the implementation of climate-related provisions.

These mechanisms are designed to ensure that environmental commitments are not static but evolve in response to new challenges and opportunities, reinforcing the dynamic character of the agreement's environmental dimension.[579] The FTA includes commitments to take measures to mitigate climate change and adapt to its impacts. This involves promoting the use of clean technologies, reducing carbon emissions, and enhancing climate resilience in various sectors, such as energy, transportation,

575 Article 4, Chapter on Trade and Sustainable Development, EU-MERCOSUR Agreement

576 Article 1, Chapter on Trade and Sustainable Development, EU-MERCOSUR Agreement

577 Article 15, Chapter on Trade and Sustainable Development, EU-MERCOSUR Agreement

578 Article 14, Chapter on Trade and Sustainable Development, EU-MERCOSUR Agreement

579 Article 12, Chapter on Trade and Sustainable Development, EU-MERCOSUR Agreement

and agriculture.[580] The agreement establishes mechanisms for cooperation on environmental and climate issues. This includes joint committees and working groups to facilitate collaboration, exchange best practices, and monitor the implementation of climate-related provisions. The FTA includes provisions for resolving disputes related to environmental and climate commitments. This ensures that any disagreements or non-compliance issues can be addressed through established legal and diplomatic channels.[581]

Overall, the inclusion of climate clauses in FTAs allows for the promotion of sustainable trade. Climate clauses in FTAs help ensure that trade liberalization does not undermine environmental protection and climate action. By aligning trade policies with climate goals, these clauses promote sustainable trade practices. It also enhances climate cooperation. FTAs with climate clauses facilitate cooperation between countries on environmental and climate issues. This cooperation can lead to the exchange of best practices, joint initiatives, and increased capacity to address climate challenges. It contributes to strengthening environmental governance in the sense that climate clauses in FTAs can substantiate a global environmental governance by requiring parties to maintain and enforce environmental standards and regulations. This can lead to improved environmental protection and more effective climate action. Finally, by including climate clauses in FTAs, countries can demonstrate their commitment to global climate goals, such as the Paris Agreement and the SDGs. This can enhance their credibility and leadership in international climate negotiations.

Examples of FTAs with Climate Clauses

a) *EU-Canada Comprehensive Economic and Trade Agreement (CETA):* CETA includes a chapter on trade and sustainable development, which covers environmental protection, climate change, and labour rights. The agreement reaffirms the parties' commitment to the Paris Agreement and includes provisions for cooperation on climate change mitigation and adaptation.
b) *EU-Japan Economic Partnership Agreement (EPA):* The EPA includes a chapter on trade and sustainable development, which addresses environmental protection and climate change. The agreement emphasizes the importance of implementing the Paris Agreement and includes provisions for cooperation on renewable energy, energy efficiency, and climate resilience.
c) *US-Mexico-Canada Agreement (USMCA):* The USMCA includes a chapter on the environment, which covers various environmental issues, including climate change. The agreement includes commitments to implement and enforce environmental laws and regulations, promote sustainable forest management, and address marine litter and air quality.

While the EU's integration of climate considerations into its external policies—through FTAs, CBAM, and engagement in multilateral agreements—demonstrates a commitment to policy coherence, the effectiveness and consistency of these

580 Article 14, Chapter on Trade and Sustainable Development, EU-MERCOSUR Agreement

581 Article 15, Chapter on Trade and Sustainable Development, EU-MERCOSUR Agreement

mechanisms warrant critical examination. For instance, the inclusion of climate clauses in FTAs is often celebrated as a step toward sustainable trade, yet their enforceability remains limited. Many such clauses are phrased in aspirational terms and lack robust dispute resolution mechanisms, raising questions about their practical impact on partner countries' climate behaviour.

The CBAM, designed to prevent carbon leakage and level the playing field for EU industries, represents a more assertive approach. However, it faces significant legal and diplomatic challenges, including potential conflicts with WTO rules and resistance from trading partners who view it as a form of green protectionism. This tension highlights the difficulty of reconciling ambitious climate objectives with the realities of global trade governance.

Moreover, the EU's external climate policy is not immune to internal contradictions. While the Union projects itself as a climate leader, Member States sometimes pursue bilateral trade or energy agreements that undermine collective climate goals. This fragmentation exposes the limits of EU-level harmonization and underscores the need for stronger mechanisms to ensure that national actions align with the Union's external commitments.

To sum up, subsection 2.3.2. identifies that the external coherence of EU climate action is shaped as much by governance arrangements as by substantive legal standards. The effectiveness of projecting internal climate consolidation externally ultimately depends on institutional coordination and enforcement mechanisms capable of sustaining coherence across the Union's diverse external instruments.

Although the EU has made significant strides in integrating climate objectives into its external policies, the current framework is characterized by a mix of ambition and ambiguity. The challenge moving forward is to enhance the legal force and operational coherence of these instruments, ensuring that the EU's external actions genuinely support its climate leadership aspirations. In fine, this section also underscores the significance of international cooperation and the EU's role as a global leader in climate action. By adhering to these principles, the EU can strengthen its position in international negotiations and foster global collaboration in addressing climate change. The introduction of measures such as the CBAM demonstrates the EU's commitment to restoring competitiveness, supporting companies in their post-carbon transition, and reducing the risk of carbon leakage. It shows also the efforts made by the EU and its other partnerships to include climate clauses in the FTAs it concludes, outside the forum of the WTO.

Synthesis – Section 2, Chapter 1, Part II: Integrating Climate Law into EU External Policies: The Duty of Coherence

The integration of climate law into the EU's external policies, as explored in this section, reveals the EU's ambition to position itself as a global leader in climate governance. This ambition is not merely rhetorical; it is embedded in the legal and institutional

architecture of the Union, most notably through EU Climate Law, which enshrines climate neutrality by 2050 as a binding objective. The duty of coherence, as articulated in the Treaties and reinforced by the jurisprudence of the CJEU, requires that all external actions—whether diplomatic, commercial, or developmental—are aligned with the Union's climate objectives and do not undermine its internal commitments.

Throughout this section, it has become clear that the EU's external climate policy is characterized by a complex interplay between international obligations, legal innovation, and pragmatic adaptation. The Union's participation in international agreements such as the Paris Agreement and its active engagement in multilateral fora like the WTO and UNFCCC have set a high bar for climate ambition, but they have also exposed the EU to the challenges of reconciling diverse interests and legal regimes. The inclusion of climate clauses in FTAs, the operationalization of the CBAM, and the mainstreaming of climate objectives in development cooperation all reflect the EU's commitment to ensuring that its external actions are mutually supportive and reinforce its internal climate goals.

However, the pursuit of coherence is not without its tensions. The need to balance trade liberalization with environmental protection, to navigate the intricacies of WTO law, and to manage the expectations of partner countries requires constant vigilance and institutional flexibility. The EU's approach has been to innovate—developing new governance mechanisms, enhancing cooperation with third countries, and establishing monitoring and enforcement tools to ensure compliance with climate-related provisions. These efforts are essential for addressing the risk of fragmentation and for maintaining the Union's credibility as a climate leader on the global stage.

A key insight from this analysis is the feedback loop between the EU's external and internal climate policies. The credibility and effectiveness of the Union's external climate action depend on the robustness of its internal legal framework and the consistency of its domestic implementation. Conversely, the Union's external commitments and international leadership serve as catalysts for internal policy development and legal reform. This dynamic relationship underscores the importance of coherence not only as a legal principle but as a practical necessity for effective climate governance.

In fine, the integration of climate law into the EU's external policies is both a reflection of and a driver for the Union's broader climate governance strategy. The duty of coherence is not merely a formal requirement; it is a foundational principle that ensures the EU's actions on the global stage are aligned with its internal ambitions and obligations. As the Union continues to refine its approach, the lessons drawn from this section highlight the need for ongoing adaptation, institutional learning, and a steadfast commitment to the principles of coherence, consistency, and ambition. These insights will be crucial as the thesis turns to examine the integration of climate law into the EU's internal policies and the challenges of achieving a truly holistic and effective climate governance framework.

Synthesis – Chapter 1, Part II: climatizing the Union's external relations: the duty of coherence

The analysis of the EU's external climate commitments reveals that EU climate ambition, while increasingly articulated as a global normative project, remains structurally constrained by the legal architecture of international economic law. Rather than projecting a coherent and autonomous climate regime externally, the Union operates within a framework of conditional compatibility, in which climate objectives must continuously be reconciled with preexisting trade disciplines and international obligations.

The Union's participation in the Paris Agreement and its sustained engagement within the UNFCCC framework confirm a clear political and normative commitment to climate leadership. However, this commitment does not translate into a legally privileged status for climate objectives in the external sphere. Instead, climate action is mediated through instruments and exceptions that presuppose compatibility with international trade law, most notably within the WTO system. The analysis demonstrates that Article XX GATT functions not as a vehicle for climate integration, but as a defensive mechanism, permitting climate-related measures only under strict conditions of necessity, proportionality, and non-discrimination.

This legal configuration exposes a fundamental asymmetry between ambition and enforceability. While the EU increasingly conditions its external action—through trade agreements, regulatory standards, and unilateral measures such as the CBAM—on climate considerations, these instruments remain legally fragile. Their validity depends on *ex post* adjudication and case by case justification, rather than on the recognition of climate protection as an autonomous ground of external action. As a result, climate objectives do not operate as structuring norms of the Union's external economic relations, but as contingent justifications, continuously exposed to legal challenge.

The duty of coherence in external action, enshrined in the Treaties, does not resolve this tension. Rather than ensuring normative alignment between climate commitments and trade obligations, coherence operates as a coordination requirement that preserves the primacy of the common commercial policy. Climate clauses in bilateral and regional trade agreements illustrate this limitation: while they symbolically reinforce the Union's climate narrative, their weak enforceability and procedural nature confirm that climate ambition remains subordinated to trade governance logics.

From an institutional perspective, the Union's external climate action relies heavily on regulatory experimentation and unilateral initiatives. Instruments such as the CBAM reflect an attempt to extend climate governance beyond EU borders without formally renegotiating the underlying legal framework of international trade. Yet this strategy accentuates legal uncertainty and reinforces the dependence of EU climate action on judicial interpretation, particularly within a WTO system whose dispute settlement mechanisms are not designed to accommodate systemic climate objectives.

Taken together, the analysis confirms that the EU's external climate commitments are characterised by a structural imbalance: climate ambition is asserted politically and

normatively but implemented through legal mechanisms that limit its transformative potential. The external dimension of EU Climate Law therefore mirrors its internal challenges: climate objectives are integrated without being hierarchically prioritised, resulting in selective accommodation rather than systemic recalibration.

This conclusion underscores a central finding of the thesis: without a governance framework capable of reconciling climate ambition with international economic law on a stable and predictable basis, the EU's external climate action remains inherently fragile. The limits identified here justify the subsequent examination of competence allocation and governance mechanisms, as the effectiveness of EU Climate Law cannot be assessed independently of the legal constraints shaping its external projection.

To sum up, Chapter 1, Part II demonstrates that the integration of climate objectives into the EU's external economic relations reveals coherence as a constrained and dynamic process rather than a given outcome. While WTO law imposes significant structural limits on climate-related trade measures, the EU responds by diversifying its external instruments and by mobilising its internally consolidated climate framework to project coherence beyond its borders. This analysis demonstrates that external climate coherence increasingly depends on internal legal consolidation and governance capacity, confirming climate law as a crosscutting force reshaping the Union's external action.

These findings provide the analytical benchmark for the examination of the internal dimension of climate law integration. The challenge that follows is no longer one of international positioning, but of ensuring that the Union's internal legal and policy framework can absorb, translating, and enforcing the commitments generated at the external level.

CHAPTER 2. CLIMATIZING THE UNION'S INTERNAL POLICIES: THE DUTY OF CONSISTENCY

While the Union's external action reveals the outward projection of its climate ambition, the internal dimension of EU Climate Law exposes its most profound structural implications. The integration of climate objectives into the Union's internal policies is not a matter of simple policy coordination; it is a constitutional exercise that tests the capacity of the EU legal order to accommodate a binding, transversal objective within a system historically organised around sector specific competences and differentiated regulatory logics. Chapter 2 examines this internal transformation through the prism of the duty of consistency, understood as a foundational requirement of the Union's legal order.

This chapter examines the internal integration of EU Climate Law and its implications for the coherence of the Union's legal framework. It shows that the implementation of climate objectives does not merely add a new policy layer but operates as a cross-cutting force that reconfigures internal market rules, competition law, and environmental governance within the EU legal order. In this Part, 'consistency' is used

in its Treaty sense, as an obligation governing the relationship between Union policies and actions, whereas 'coherence' refers to the functional alignment produced through legal interpretation, coordination mechanisms, and governance practices.

Originally, EU internal policies were structured around market integration, without climate considerations. As climate commitments became legally binding, climate objectives were progressively integrated into internal market, competition, and environmental policies. This integration has been driven by the requirement of consistency between Union policies. The policy area concerned was not originally designed to pursue climate objectives. The integration of climate law requires that this policy be applied consistently with the Union's climate commitments. This raises questions as to the limits and modalities of such consistency.

The duty of consistency governs the internal articulation of Union policies. It requires that the exercise of competences across distinct policy domains—such as the internal market, competition, state aid, energy, and environmental protection—be mutually supportive and legally intelligible. In the context of EU Climate Law, this duty acquires renewed significance. Climate neutrality, as a legally binding objective enshrined in the EU Climate Law, is not confined to environmental regulation but extends across the full spectrum of Union action. The challenge addressed in this chapter is therefore how such a transversal objective can be integrated internally without destabilising the constitutional balance of the Treaties or fragmenting the coherence of EU law.

This chapter proceeds from the premise that internal consistency is neither automatic nor self-executing. The incorporation of climate objectives into internal policies generates normative tensions, as climate driven measures interact with preexisting legal principles, economic freedoms, and regulatory techniques. Measures adopted in pursuit of climate neutrality may restrict market access, justify differentiated treatment of economic actors, or require increased public intervention. These developments raise complex questions concerning proportionality, legal certainty, institutional balance, and the limits of policy integration under the principle of conferral.

Against this background, Chapter 2 analyses how the Union seeks to operationalise the duty of consistency in its internal climate governance. It examines the legal mechanisms through which climate objectives are aligned with core internal policies and identifies the points at which friction and accommodation emerge. Particular attention is paid to the internal market and competition framework, where the pursuit of climate objectives confronts entrenched assumptions about neutrality, efficiency, and non-distortion. The analysis also addresses the evolving role of governance mechanisms, institutional coordination, and procedural tools in sustaining consistent internal implementation across multiple levels of authority.

A central argument developed in this chapter is that consistency operates both as an enabling and as a constraining principle. On the one hand, it provides the normative justification for integrating climate considerations into diverse internal policies. On the other hand, it delineates the boundaries within which such integration may occur, ensuring that climate objectives do not function as an unbounded source of

competence expansion or legal exception. The duty of consistency thus performs a stabilising function, preserving the unity and predictability of the EU legal order while allowing for normative evolution.

This chapter examines how EU Climate Law reshapes the Union's internal policies by imposing a duty of consistency across the internal market, competition law, and environmental regulation. It argues that climate objectives are not hierarchically dominant but integrated through balancing techniques that recalibrate, rather than replace, core economic principles. The originality of the chapter lies in showing that internal "climatization" operates through fragmented legal adjustments, revealing the structural limits of coherence within the EU legal order.

The integration of climate law into the EU's internal policies marks a decisive evolution in the Union's legal and institutional landscape. While the EU has long been recognized as a global leader in environmental protection, the adoption of EU Climate Law has elevated climate action to a central, cross-cutting objective that permeates all facets of the Union's internal governance. This chapter explores how the ambitious targets and binding commitments enshrined in EU Climate Law are operationalized within the EU's internal legal order, focusing on the obligation of consistency that underpins the Union's approach to climate governance.

The duty of consistency, as articulated in Article 7 in light of the reading of Article 11 of the TFEU, requires that all EU policies and activities are mutually supportive and contribute to the achievement of the Union's objectives, including climate neutrality by 2050. This principle is particularly salient in the context of climate law, which, by its very nature, is transversal and polycentric. The implementation of climate objectives necessitates a delicate balancing act between environmental ambition, economic integration, and social cohesion—a challenge that is further complicated by the diversity of national circumstances and the multi-level structure of EU governance.

The analysis demonstrates that while climate considerations increasingly permeate EU internal policies, their integration remains conditional and uneven. The duty of consistency functions as a mechanism of legal accommodation rather than harmonisation, preserving economic logics while constraining their operation. As a result, the effectiveness of EU Climate Law internally depends less on normative ambition than on the Union's capacity to manage persistent legal tensions.

Chapter 2 is structured around two core dimensions of internal policy integration. Section 1 examines *the interplay between climate law and the internal market*, with particular attention to the free movement of goods, the articulation of environmental exceptions, and the evolving jurisprudence of the CJEU. It interrogates how climate objectives are reconciled with the foundational principles of the single market, and how national measures aimed at reducing greenhouse gas emissions are assessed for their compatibility with EU law. The analysis draws on landmark cases, legislative developments, and doctrinal debates to illuminate the tensions and synergies that arise at the intersection of climate and market regulation.

Section 2 delves into *the "climatization" of competition law* and internal governance. Here, the focus shifts to the role of state aid, green subsidies, public procurement,

and the emergence of independent administrative authorities in supporting the green transition. The section explores how the modernization of competition policy, exemplified by the Climate, Energy and Environmental Aid Guidelines (CEEAG), has enabled Member States to direct unprecedented levels of public support toward renewable energy, decarbonization, and clean technologies. It also considers the challenges of ensuring that such support remains targeted, proportionate, and consistent with the Union's climate and market objectives.

Throughout, the chapter emphasizes the importance of institutional innovation, legal adaptability, and procedural justice in achieving effective and legitimate climate governance. The integration of climate law into internal policies is not a static or linear process; it is shaped by ongoing legal developments, political negotiation, and the evolving expectations of European society. By critically engaging with these dynamics, the chapter aims to provide a nuanced understanding of the opportunities and obstacles that define the EU's quest for climate neutrality.

Ultimately, this chapter situates the integration of climate law into internal policies as both a reflection of and a catalyst for the broader transformation of the Union's legal and economic order. It argues that the duty of consistency is not merely a formal requirement, but a practical necessity for ensuring that the EU's internal actions are aligned with its external commitments and capable of delivering the transformative change required to address the climate crisis. The insights developed here will inform the subsequent analysis of climate litigation, governance innovations, and the evolving relationship between climate and environmental law within the EU.

EU internal policies were initially climate neutral and driven by economic integration. The development of EU Climate Law has required these policies to be applied consistently with climate objectives. This consistency requirement has constrained their operation without fundamentally altering their legal foundations. Climate law forces internal legal recalibration, not simple coordination.

Section 1. Integrating Climate Law into EU Internal Policies: The Judicial Construction of Consistency

The integration of climate objectives into the Union's internal policies is not achieved solely through legislative design or administrative coordination. It is also, and increasingly, shaped through judicial interpretation. As climate neutrality becomes a binding objective of Union law, the CJEU is called upon to reconcile climate driven measures with the foundational principles governing the internal legal order. This section examines the judicial construction of consistency as a key mechanism through which EU Climate Law is internalised across policy domains.

The duty of consistency acquires concrete meaning through adjudication. When climate objectives intersect with internal market freedoms, competition rules, or principles of legal certainty and proportionality, it is the CJEU that is tasked with articulating the conditions under which climate considerations may justify regulatory

differentiation, restrictions on economic activity, or departures from established doctrinal patterns. Judicial reasoning thus plays a constitutive role in defining how climate objectives are balanced against other Union interests and in determining whether internal integration remains compatible with the constitutional framework of the Treaties.

This section proceeds from the observation that EU Climate Law introduces a new normative parameter into judicial review. Climate neutrality is not merely a policy goal invoked by political institutions; it operates as a legally relevant objective capable of influencing the interpretation of secondary legislation and the assessment of national and Union measures. The Court's case law reflects an evolving approach in which climate considerations are progressively embedded within established analytical frameworks, rather than treated as external or exceptional concerns. Through techniques such as proportionality analysis, margin of appreciation reasoning, and contextual interpretation, the judiciary contributes to the gradual construction of internal consistency.

At the same time, judicial integration is inherently constrained. The CJEU does not possess a general mandate to redesign internal policies in the name of climate protection. Its role is circumscribed by the principle of conferral, respect for institutional balance, and the limits of judicial review. The construction of consistency through case law therefore unfolds incrementally, through the interpretation of specific disputes, and often reveals tensions between climate ambition and legal stability. This section pays particular attention to these limits, examining how the Court navigates the risk of normative overreach while responding to the increasing centrality of climate objectives.

This section examines the interaction between EU Climate Law and the internal market, where climate objectives directly confront fundamental economic freedoms. It shows that the implementation of climate measures challenges the traditional logic of market integration, requiring a recalibration of internal market rules to accommodate climate driven regulatory intervention.

In the context of EU internal policies, consistency does not primarily operate as an *ex-ante* coordination of policy objectives, but rather as an *ex-post* mechanism of legal reconciliation. Climate objectives are not integrated into the internal market as autonomous goals, but are progressively accommodated through judicial interpretation, derogations, and proportionality analysis. The duty of consistency thus materialises through the Court's case-law, which constructs a functional compatibility between market freedoms and climate imperatives.

EU internal policies were originally designed to ensure the functioning of the internal market, with priority given to free movement and economic integration. The development of EU Climate Law has required these policies to be applied consistently with climate objectives. This integration raises structural tensions between market freedoms and climate protection.

This analysis provides the foundation for understanding how internal consistency is shaped not only by legislative and administrative choices, but also by the interpretative

authority of the Court. It sets the stage for examining the broader mechanisms of internal integration addressed in the following section, where consistency is pursued through governance structures and regulatory coordination beyond the courtroom.

Nevertheless, the judicial construction of internal consistency remains circumscribed by the principle of conferral.[582] The integration of climate objectives into internal policies does not grant the Union an autonomous or unlimited competence to reshape substantive policy choices.[583] Rather, EU Climate Law operates within a constitutional framework in which competences have historically been derived from economic integration and progressively extended through functional spill-over. Environmental protection, and later climate action, emerged not as original Treaty objectives, but as fields gradually anchored in the Union's economic competences and operationalised through secondary legislation.

This historical trajectory continues to structure the scope and limits of judicial intervention, ensuring that the pursuit of climate objectives internally proceeds through recalibration and interpretation, rather than through a fundamental redefinition of the Union's competences' foundations. Indeed, it started from its economic competences, and as the Treaty did not discuss environmental concerns *per se* (1.1) to attract greenish competences and implement a viable protection via its secondary law (1.2).

1.1. The challenge of the protection of the free movement of goods with environment's protection

This subsection examines how EU climate measures interact with the principle of free movement of goods, a cornerstone of the internal market. It highlights that climate driven regulation increasingly challenges traditional market access logic, requiring a reassessment of how regulatory obstacles to trade are identified and justified within EU law.

Despite the absence of definition of environment in EU primary law (see Part I, Chapter 2), EU Environmental law was allegedly born during the Stockholm Summit

582 CJEU, 5 February 1963, NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration, ECLI:EU:C:1963:1 - Reference for a preliminary ruling: Tariefcommissie - Pays-Bas. C-26-62: autonomy principle of EU law over the international legal order. On 5 February 1963, in the so-called 'Van Gend en Loos' ruling, the CJEU established the principle that [Community law become law] of the Union, independent of the laws of the Member States, creates rights for the benefit of nationals who enter their legal heritage.

583 Article 288 TFEU presents the nomenclature of norms of the EU: "To exercise the Union's competences, the institutions shall adopt regulations, directives, rulings, recommendations, and opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A ruling shall be binding in its entirety. A ruling which specifies those to whom it is addressed shall be binding only on them. Recommendations and opinions shall have no binding force."

of 1972.[584] Indeed, in 1973, the Communities created the Environmental and Consumer Protection Directorate and composed the first Environmental Action Programme. If a closer look is taken about the path of the EU to acknowledge the necessity for green EU policies, it is from the lack of definition. Indeed, in the Treaty of Rome, there was no mention of the environment. The turning point was in 1973. It emphasised the action that the Commission could propose to "reduce pollution and nuisances; improve the natural and urban environments; deal with environmental problems caused by the depletion of certain natural resources; and promote awareness of environmental problems and education."[585] It allowed to launch the normative will of the EU, such as the Birds Directive.[586]

The focus on the free movement of goods with environment's protection is at the core of the EU's regulation on implementing EU Climate Law,[587] since it is the main of the four freedoms to be affected by it. The most CO2 emitting freedom[588] needs to be in compliance with the route set by EU Climate Law and is the biggest challenge to be achieved. To assert the articulation between the free movement of goods and the protection of the environment, it is necessary to define what is implied by this freedom (1) before analysing the exceptions conceived by the Treaties and the CJEU (2).

1.1.1. The qualification of climate measures under the scope of the free movement of goods

This subsection examines the qualification of climate-driven regulatory measures as obstacles to the free movement of goods within the internal market. It argues that national and Union measures adopted in pursuit of climate objectives are structurally prone to fall within the scope of Article 34 TFEU, either as quantitative restrictions or as measures having equivalent effect, thereby systematically triggering internal market scrutiny.

The principle of free movement of goods is enclosed in Article 26 and from Article 28 to Article 37 TFEU. This first place given to the principle of the free movement of goods is explained by the very objectives of achieving a European customs union, namely, economic prospects favourable to all Member States. Article 28 lays down the principle of free movement of goods. Indeed, it states that "the Union shall comprise a customs union which shall cover all trade in goods, and which shall involve the prohibition between Member States of customs duties on imports and exports and

584 Ibid

585 Peter Bromley, 2012, «Nature Conservation in Europe: Policy and Practice" (ISBN: 9780419216100)

586 Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

587 Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

588 N. de Sadeleer, 2013, "Environmental regulatory autonomy and the free movement of goods", Jean Monnet Working Paper Series, Environment and Internal Market, vol. 2013/1

of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries."[589] Nevertheless, restrictions authorized by the Treaty exist.[590] The free movement of goods is based on a double limitation, which affects both customs duties and equivalent effect tax,[591] and quantitative restrictions and measures having an equivalent effect.[592]

The concept of "goods" has been defined judicially as covering all products capable of being valued in money and forming the subject of commercial transactions, a definition that has been interpreted inclusively so as to maximise the reach of internal market rules. This functional understanding ensures that climate-related regulation affecting industrial products, waste, energy-intensive goods, or environmentally sensitive materials is fully captured by free movement law. CJEU specified the term "goods." It refers to all goods "which can be valued in money, and which are capable, as such, of forming the subject of commercial transactions."[593] The case law of the CJEU encloses the characterization of a product on two conditions, namely its value for money, and its ability to be traded. This definition is intended to be inclusive of the case law, with the aim of extending as much as possible the scope of the principle of the free movement of goods. For example, the case law has extended it to areas such as the filmmaking[594], art objects[595], or even waste.[596]

This very expression of internal, or single market, finds its roots and formula in the CJEU case-law.[597] It held that the Treaty aims to eliminate all obstacles and barriers to "intra-Community trade with a view to merging national markets into a single market

589 Article 28 TFEU: "The Union shall comprise a customs union which shall cover all trade in goods, and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries."

590 Article 36 TFEU: "Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

591 Article 30 TFEU: "Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature."

592 It is the result of the combination of articles 34 and 35 TFEU. The article 34 TFEU states that "quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States" and article 35 TFEU provides that "Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States."

593 CJEU, 10 December 1968, Commission v. Italy, C-7/68, ECLI :EU :C :1968 :51

594 CJEU, 11 July 1985, Cinéthèque, C-60/84, ECLI :EU :C :1985 :329

595 CJEU, 10 December 1968, Commission v. Italy, C-7/68, ECLI :EU :C :1968 :51

596 CJEU, 9 July 1992, Commission v. Belgium, C-2/90, ECLI :EU :C :1992 :310

597 CJEU, 17 May 1994, France v. Commission, C-41/93, ECLI :EU :C :1994 :196

achieving conditions as close as possible to those of a genuine domestic market."[598] Composed of four freedoms – free movement of goods, services, capitals and persons, the research will focus on the first freedom[599]. Although the freedom of movement of goods corresponds to a priority objective fixed by an intrinsically economic treaty, it remains that values of an essentially non-economic nature are among the causes of possible derogation to those freedoms,[600] but the scope is appreciated casuistically by the CJEU. The breadth of Article 34 TFEU has been further reinforced by the inclusion of administrative measures and even regulatory inaction within its scope.

The case law illustrates that environmental or climate objectives do not prevent the initial qualification of a measure as a restriction on free movement. In the "*Danish bottles*"[601] case where the CJEU emphasized that "environmental protection constitutes an imperative requirement which may limit the application of Article 30 of the Treaty",[602] now article 34 TFEU.[603] Quantitative restrictions or measures having an equivalent effect can be defined as "any trade measure which currently or potentially hinders trade directly or indirectly between the Member States."[604] As an example, in the "*foie gras*" case[605] the Court unambiguously reaffirmed the application of Article 34 TFEU to regulations producing potential restrictive effects on intra-Community trade. The case involved the French regulations that reserve the appellation "foie gras" for preparations meeting certain standards relating to the composition and quality of products. The French government based its argumentation on the "very theoretical and hypothetical" alleged fault due to the low level of "foie gras" production in other Member States and the fact that the products produced there are generally in conformity with French requirements. The CJEU quashed this rationale in the sense that Article 30 of the Treaty (now Article 34) cannot be dismissed on the grounds that there have been no concrete cases, to this date, having a link with another Member State.[606] Discriminatory measures can be applied if they are justified by the goals provided in

598 Ibid.

599 The free circulation of goods is enshrined at the article 28 TFEU, stating that "1. The Union shall comprise a customs union which shall cover all trade in goods, and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries."

600 See article 36 TFEU.

601 CJEU, 20 September 1988, Commission v. Denmark, C-302/86, the "Danish Bottles" case, ECLI:EU:C:1988:421

602 This statement was already established in the ADBHU case of 7 February 1985 C-240/83, ECLI:EU:C:1985:59

603 See article 34 TFEU

604 CJEU, 11 July 1974, Dassonville, C-8/74, ECLI:EU:C:1974:82

605 CJEU, 22 October 1998, Commission v. France, C-184/96, the "foie gras" case, ECLI:EU:C:1998:495

606 Ibid.

article 36 only. Mandatory requirements[607] cannot be used to justify discriminations.[608] To that extent, the principle of proportionality must be applied. It consists of a gathering of evidence where the judge will have to assess whether the domestic measure is suitable to achieve the alleged goal; whether the measure is necessary or if another measure less restrictive or hindering, is reasonably available; and if the measure is proportionate *per se*.[609]

Regarding the field of measures with equivalent effect, these are judicial constructions that have been carried out as a measure having an equivalent effect is constituted by "any commercial regulation." The CJEU deepened its reasoning in its famous "*Cassis de Dijon*" case,[610] where it went a step further in the prohibition of measures with equivalent effect by stating that "any goods legally manufactured or marketed in one Member State must be admitted in the other Member States." Thus, here the Court sets the principle of mutual recognition of the requirements of Member States. Consequently, it found that there could be measures having an equivalent effect even when there is no discrimination, when a Member State imposes technical rules on the products of other Member States which can lead to costly adaptations. The case law therefore extends the concept of measure having an equivalent effect to indiscriminately applicable measures.

Moreover, its judicial development was keen to include administrative measures in measures of having an equivalent effect. Thus, the CJEU held that an advertising campaign can be prohibited. For instance, with the slogan "*Buy Irish*," since it was funded by the State, the Republic of Ireland had to remove its funding.[611]

Similarly, the CJEU also further interprets prohibition of the inaction of a Member State, which has not taken necessary measures to prevent obstruction, such as strikes.[612] In the *Keck and Mithouard* case,[613] there is a distinction between the terms of marketing and the terms of sale. Thus, according to the ruling, it is necessary to distinguish between "the rules on the conditions to which goods must meet." For instance, the application of the *Dassonville* and *Cassis de Dijon* cases is still valid, concerning

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607 The initial scope of exceptions and derogations to the principle of the free movement of goods appeared to lack consistency. The CJEU innovated by including mandatory requirements, adding another series of exception to quantitative restrictions, with an interpretation of their scope and functioning, since the Cassis de Dijon case in 1979 (C-120/78). It introduced a new justification to hinderances to trade, the notion of mandatory requirements.

608 Ruling of the CJEU, 12 March 1984, "German Beer" (C-178/84) ECLI:EU:C:1987:126: the CJEU held the German rule could not be justified. It examined international scientific research and the EU's scientific committee for food work, the codex of the UN and the WHO and found that additives posed no risk to public health. In addition, Germany permitted additives in drinks other than beer, so its policy was inconsistent.

609 CJEU, 20 February 1979, "Cassis de Dijon" (C-120/78), ECLI :EU :C :1979 :42

610 CJEU, 20 February 1979, Rewe-Central, C-120/78, ECLI:EU:C:1979:42

611 CJEU, 24 November 1982, Commission v. Ireland, C-249/81, ECLI :EU :C :1982 :402

612 CJEU, 9 December 1997, Commission v. France, C-265/95, ECLI :EU :C :1997 :595

613 CJEU, 24 November 1993, "Keck and Mithouard" C-267/91 and C-268/91, ECLI:EU:C:1993:905

measures «that limit or prohibit certain terms of sale.» Indeed, the Court refused to characterize as a measure having an equivalent effect a national act prohibiting resale at a loss. It therefore accepts that certain terms of sale may be limited or prohibited by States on two conditions: that they apply to all operators and that they apply to domestic and imported products.[614]

This very inclusive interpretation of can be explained by the desire to give full scope to the fundamental objective enshrined in the Treaty of Rome in 1957, namely the free movement of goods. In any case, it involves precisely measuring the impact of national measures on intra-community trade in goods. This interpretation involves carefully assessing the impact of national measures on intra-community trade in goods. In the context of climate law, this principle is highly relevant. Climate law often involves national measures aimed at reducing greenhouse gas emissions, promoting renewable energy, and implementing environmental protection standards. These measures can have significant implications for intra-community trade, as they may affect the production, distribution, and sale of goods within the EU.

To ensure that climate law measures do not create unjustified barriers to trade, it is essential to measure their impact on the free movement of goods. This involves balancing the environmental objectives of climate law with the economic objectives of the internal market.

To sum up, subsection 1.1.1 thus establishes that the integration of climate objectives reveals the limits of a purely market-oriented reading of Article 34 TFEU. While climate measures may restrict market access, their growing normative weight ensures that free movement rules operate within a framework of conditional openness, in which market freedoms persist but are increasingly exercised under climate-related constraints. The CJEU plays a central role in maintaining this balance by subjecting climate driven regulation to proportionality review, thereby constructing a legally coherent interface between environmental ambition and economic integration.

To sum up, subsection 1.1. demonstrates that EU climate measures reveal the limits of a purely market-oriented reading of the free movement of goods. While such measures may restrict market access, their growing normative weight confirms that climate objectives increasingly condition the application of internal market rules, requiring a recalibration rather than a displacement of free movement principles.

The CJEU plays a crucial role in this process by assessing the proportionality of national measures and ensuring that they do not constitute quantitative restrictions or measures having an equivalent effect on trade. In hindsight, the inclusive interpretation of the free movement of goods principle, as enshrined in the Treaty of Rome, is essential for the effective implementation of climate law. It ensures that national measures aimed at achieving environmental protection and climate goals are carefully assessed for their impact on intra-community trade, maintaining a balance between environmental, climate and economic objectives.

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614 CJEU, 20 February 1979, "Cassis de Dijon" (C-120/78), ECLI :EU :C :1979 :42

1.2. Justified restrictions to the free movement of goods: the genesis of climatization

The acceptance of climate-related restrictions to the free movement of goods finds its legal foundation in the CJEU's longstanding recognition of environmental protection as a legitimate ground for derogation from internal market freedoms. Building on the jurisprudential framework developed under Article 36 TFEU and the doctrine of mandatory requirements, the Court progressively opened the internal market to considerations that transcend purely economic rationales.

This subsection examines how restrictions on the free movement of goods may be justified by environmental and climate-related objectives under EU law. It shows that the progressive recognition of environmental protection as an overriding interest marks the genesis of the climatization of internal market rules, allowing climate considerations to be integrated into the justification of regulatory barriers. This evolution laid the groundwork for the emergence of climate objectives as a distinct and increasingly autonomous justification capable of constraining free movement obligations.

According to Article 36 of the TFEU,[615] it can be observed that none of these textual derogations have economic motives and would have as a common basis the concept of public order understood in the broadest sense. In the *Bakker Hillegon* case,[616] the CJEU considered Article 36 "as a derogation from the fundamental rule of removing all obstacles to the free movement of goods between member states." Nevertheless, Article 36 "is strictly interpreted." Thus, the Court refused to allow this ruling to be used as a legal basis by state to protect its economic interests.[617] By these two rulings, the judges definitively closed the floodgates to possible abuses of the use of Article 36 by the Member States and thus protected the principle of free movement of goods. Moreover, this article is only applicable if Union's harmonization is not extensive[618]. Thus, the Court specified that if full harmonization had been made,[619] States could no longer justify themselves under Article 36 but rather refer to the relevant secondary act.[620]

The second set of exceptions was developed by the case law in the "*Cassis de Dijon*"

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615 Article 36 TFEU: "The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

616 CJEU, 2 May 1990, Bakker Hillegon C-111/89, ECLI:EU:C:1990:177

617 CJEU, 25 October 2001, Commission v. Greece C-398/98, ECLI:EU:C:2001:565

618 Pieter Jan Kuijper, Fabian Amtenbrink, Deirdre Curtin, Bruno De Witte, Duncan McDonnell, Stefaan Van Den Bogaert, 2018, The Law of the EU: fifth edition, Deventer: Kluwer.

619 CJEU, 23 May 1990, Gourmetterie Van den Burg C-169/89, ECLI:EU:C:1990:227

620 CJEU, 3 mars 1988, Allen and Hasburys C-434/85, ECLI:EU:C:1988:109

case.[621] The Court created mandatory requirements by explaining that "obstacles to free intra-community movement resulting from disparities in national laws relating to the marketing of products [...] requirements must be accepted to the extent that these requirements can be recognized as necessary to meet mandatory requirements, including the effectiveness of tax controls, the protection of public health, the loyalty of commercial transactions and the defence of consumers." This list, unlike Article 36, is not exhaustive.[622]

The list has grown with the case law[623], enshrining as mandatory requirements workers' or consumer protections.[624] Within this evolving framework, environmental protection emerged as the most significant mandatory requirement. Indeed, according to Dubouis and Blumann,[625] this judicial development was particularly consequential given the absence of any explicit reference to environmental protection in the original Treaty of Rome. Environmental protection thus became the most emblematic mandatory requirement, to the extent that some scholars have regretted its exclusion from the list of express derogations in Article 36 TFEU. Through this jurisprudential innovation, the Court enabled non-economic objectives to operate as legally relevant justifications for restrictions on market freedoms.

To sum up, subchapter 1.2 identifies that the justification of restrictions to the free movement of goods has provided the primary entry point for the integration of environmental and climate objectives into internal market law. Through the recognition of environmental protection as an overriding interest capable of justifying regulatory barriers, EU law laid the foundations for the gradual climatization of market freedoms, allowing climate considerations to be accommodated without dismantling the internal market framework.

1.3. Internal market instruments as vehicles for the implementation of climate objectives

This subsection examines how EU internal market instruments are progressively mobilised to operationalise climate objectives. It argues that, beyond the justification of national restrictions under Articles 34–36 TFEU and the Court's case law, the Union increasingly relies on harmonisation techniques and market governing instruments to embed environmental—and subsequently climate—considerations into the ordinary functioning of the internal market. In this sense, internal market law shifts from *accommodating* climate objectives through exceptions to *implementing* them through

621 CJEU, 20 February 1979, Rewe-Central C-120/78, ECLI:EU:C:1979:42

622 Catherine Barnard, Steve Peers, 2017, EU Law, Oxford University Press

623 CJEU, 23 November 1989, Torfaen Borough Council (C-154/88), ECLI:EU:C:1989:593

624 CJEU, 13 January 2000, Estée Lauder, C-220/98, ECLI :EU :C :2000 :8

625 L. Dubouis, C. Blumann, 2012, Droit matériel de l'Union européenne, LGDJ Paris

regulatory design.

In the absence of an explicit definition of "environment" in the founding Treaties, early conceptual consolidation occurred primarily through secondary law. The first elaborative elements of definition were enclosed in the Directive 27/1985 (85/337)[626] on the assessment of the effect of public and private projects objects on the environment. Article 3 of the Directive provides an element of definition by stating it is composed of "human beings, fauna and flora; soil, water, climate and landscape; the interaction between these different factors; material assets and the cultural heritage."

The turning point for the relationship between environmental protection and market integration is illustrated by the *Danish Bottle* case.[627] It stands as the landmark one in the consideration of environmental justifications within the protection of the functioning of the internal market. It paved the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste.[628] The Danish regulation was imposing a return system for empty packaging of beers and other drinks, with accreditation. In this case, the use of the mandatory requirement for the protection of the environment was not a new founding by the Court. Indeed, it recalled that "the environment constitutes one of the essential objectives of the Community "which may justify certain limitations to principle of free movement of goods."[629] However, the licensing regime for returnable packaging was at the core of the debate about the proportionality of the measure. The CJEU's assessment involved balancing the environmental benefits against the potential trade restrictions imposed by the measures.

Regulations limited the amount of beer and refreshing drinks to be marketed in unapproved packaging. The practical difficulties encountered by professionals were highlighted, in the assumption that they should actually accept the takeover of numerous types of packaging.[630] Indeed, the CJEU's assessment involved balancing the environmental benefits against the potential trade restrictions imposed by the measures. Ultimately, the CJEU determined that Denmark's scheme was not proportionate because it acted as a quantitative restriction or had an equivalent effect on trade. As a result, the scheme was invalidated. In other terms, Denmark tried to introduce strict environmental regulations related to packaging. However, these regulations made it difficult for professionals to manage different types of packaging. When the CJEU reviewed the regulations, they found that the measures restricted trade too much and were not justified by the environmental benefits. Despite the high level of environmental protection Denmark tried to enact, the abstract balance operated by the CJEU

626 Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

627 CJEU, 20 September 1988, Commission v. Denmark, C-302/86, ECLI :EU :C :1988 :421

628 European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

629 CJEU, 20 September 1988, Commission v. Denmark, C-302/86, ECLI :EU :C :1988 :421

630 CJEU, 20 September 1988, Commission v. Denmark, C-302/86, ECLI:EU:C:1988:421, grounds §15

concerning the proportionality of the measure, the scheme was quashed as it constituted a quantitative restriction or a measure having an equivalent effect.

It is against this background that the emergence of internal market instruments as implementation vehicles becomes intelligible. Harmonisation was not strictly indispensable—Member States could already rely on Treaty derogations and mandatory requirements, subject to proportionality—but the Union nevertheless opted for legislative intervention to stabilise both environmental ambition and market unity *ex ante*. Directive 94/62/EC on packaging and packaging waste exemplifies this logic. Its preamble explicitly combines a high level of environmental protection with the prevention of obstacles to trade, distortions of competition, and restrictions within the internal market, while also allowing Member States to pursue more ambitious programmes provided that internal market conditions are respected and subject to Commission verification.[631] In principle, harmonisation was not legally indispensable, as Member States were already able to adopt climate-related restrictions to the free movement of goods based on Article 36 TFEU and the Court's case-law on mandatory requirements, subject to proportionality review. The ruling to adopt a harmonisation directive therefore calls for explanation: why did the Union move beyond case-by-case judicial control and opt for legislative harmonisation in this context? In the preamble, the directive aims "on the one hand, to prevent any impact thereof on the environment or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the- internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community."[632] The directive continues by stating that "Whereas Member States which have, or will set, programmes going beyond such target ranges should be permitted to pursue those targets in the interest of a high level of environmental protection on condition that such measures avoid disturbances on the internal market and do not prevent other Member States from complying with this Directive; whereas the Commission should confirm such measures after appropriate verification."[633]

Additionally, the directive 94/62 of 1994 on packaging and packaging waste[634] was adopted after the Danish bottle case. The Directive 94/62/EC of 1994 on packaging and packaging waste aims to harmonize national measures concerning the management of packaging and packaging waste to prevent or reduce its impact on the environment. This directive covers all packaging placed on the market within the EU and all packaging waste, whether it is used or released at the industrial, commercial, office,

631 European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, OJ L 365, 31.12.1994, pp. 10–23, recitals 1 and 7

632 Article 6.6, European Parliament, and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

633 Article 1, European Parliament, and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

634 European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

shop, service, household, or any other level, regardless of the material used. The scope of the directive includes:

Prevention: Measures to prevent the production of packaging waste.

Reuse: Systems to encourage the reuse of packaging.

Recycling: Targets for the recycling of packaging materials.

Recovery: Measures to recover packaging waste, including energy recovery.

Reduction: Reducing the final disposal of packaging waste.

The directive also sets out essential requirements for the composition and the reusable and recoverable nature of packaging. It aims to ensure that packaging is designed in such a way that the environmental impact is minimized throughout its lifecycle. However, this directive also considers the situation of other Member States, having lower target ranges. The aim is to also protect the internal market. This directive is not only about the economic need of market integration, but also to consider the protection of the environment. The same rationale underpins the Union's waste shipment-regime. The Regulation 259/93[635] on the supervision and control of shipments of waste within into and out of the EC, promotes the same idea – to protect the environment without hindering or distort the market too much. Its preamble emphasizes that "whereas the supervision and control of shipments of waste within a Member State is a national responsibility; whereas, however, national systems for the supervision and control of shipments of waste within a Member State, should comply with minimum criteria in order to ensure a high level of protection of the environment and human health." It sets a minimum threshold, even if it takes also into account the different circumstances of the Member States. At the time, the EC sought to implement the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.[636] It was a mean to an end to guarantee uniformity of the implementation in the internal market in order to prevent distortion of competition inside the internal market.[637] It is a very strong link between the good functioning of the market and the high protection of the environment. The CITES convention on international trade of Endangered species of 1973[638] was not signed by the EC as at that time, it was not possible internationally. Therefore, the EC then, adopted two regulations to

635 Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community

636 The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 22 March 1989: it sets the objective of the protection of "human health and the environment against the adverse effects of hazardous wastes."

637 Report from the Commission to the Council and the European Parliament on the implementation of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community : "The European Community is a party to this Convention and has transposed it by Council Regulation (EEC) No 259/93[1], known as the Waste Shipment Regulation. The purpose of this regulation is to organise the supervision and control of shipments of wastes in a way which takes account of the need to preserve, protect and improve the quality of the environment and of human health."

638 CITES Convention : https://www.cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf

implement the Convention within its territory, allowing CITES to enter into force even in Member States that did not yet join the Convention at the time.[639] Nowadays, the EU is a party to this convention.

The conciliation of environmental considerations with the integrity of the internal market was a hurdle that the Union had to overcome. In a conventional lacunary context, the CJEU sought for viable solutions to preserve both challenging interests, sometimes with success as shown in the *ADBHU* case[640], or with a more debatable approach, as it appeared in the *Danish Bottles* case.[641] However, the principal innovation introduced by the CJEU was the construction of a jurisprudential palliative to the exhaustive derogations listed in Article 36 TFEU: the doctrine of mandatory requirements. Originating in *Cassis de Dijon*,[642] mandatory requirements refer to overriding reasons of public interest identified through case law, which allow Member States to justify restrictions on the free movement of goods outside the Treaty's explicit exceptions. This flexible mechanism enabled the progressive integration of objectives such as environmental—and later climate—protection into internal market law, subject to strict proportionality review.

To this extent, the consolidation of the "environment" priority within EU primary law secured formally the balance that needs to still be operated as Member States are a major component in the construction of a high level of protection for the environment. Environment now is a shared competence; it was necessary to have a specific regulation to guarantee a harmonized climate governance implementation. Now the legal basis for specific climate policies could be Articles 2, 3, 191 or 192 TFEU,[643] although Articles 191 and 192 are dedicated to the environment. The schism shows that environment is integrated into EU policies and especially in economic policies, but climate policies must be integrated as well to both economic and environmental policies.

To sum up, these developments demonstrate that internal market instruments are not merely reactive tools for accommodating environmental constraints. They increasingly operate as proactive mechanisms for implementing environmental—and subsequently climate—objectives within the ordinary functioning of the market. Harmonisation thus transforms proportionality from a judicial technique applied *ex post* into

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639 Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora and Commission Regulation (EEC) No 3418/83 of 28 November 1983 laying down provisions for the uniform issue and use of the documents required for the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora.

640 CJEU, 7 February 1985, ADBHU case C-240/83, ECLI:EU:C:1985:59

641 CJEU, 20 September 1988, Danish Bottles case C-302/86, ECLI:EU:C:1988:421

642 CJEU, Case 120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)*, 20 February 1979, ECLI:EU:C:1979:42.

643 Article 192 TFEU: "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191."

a regulatory principle embedded *ex ante* in market design, enabling climate-related constraints to be stabilised without fragmenting the internal market.

The evolution of EU internal market law reveals that climate objectives are no longer confined to the justification of regulatory restrictions. It increasingly mobilises its own legislative and regulatory instruments to operationalise them. The Union thus moves beyond the logic of exception: environmental protection becomes a parameter of internal market design, and climate objectives—building on this trajectory—are progressively embedded as structuring constraints within internal economic governance.

1.3.1. Integrating environmental considerations within the internal market framework

While sub-section 1.1.1 examined the accommodation of environmental considerations within the internal market through derogations and exceptions to the free movement of goods, the present analysis adopts a distinct perspective. Rather than treating environmental protection as an external constraint requiring justification, this sub-section focuses on its progressive integration into the very functioning of internal market law. The shift is therefore not one of objective, but of legal logic: from environmental considerations operating as limits to free movement, to their recognition as legitimate parameters shaping market regulation itself.

This subsection examines how environmental considerations have been progressively integrated into the internal market framework through the interpretation and application of EU law. It shows that, beyond being accommodated as justifications, environmental objectives increasingly operate as internal parameters shaping the functioning of market freedoms.

In the lack of clarity provided by the Rome Treaty and, generally of EU law until the 1970s, the main insight of this case law was the mandatory requirements, created by the CJEU since 1979, "*Cassis de Dijon*" case.[644] However, it was through the *ADBHU* case that environmental protection was recognized as a mandatory requirement: it is a new tool, a new way to justify restrictive measures, without any explicit legal basis.[645] In *the Danish Bottle* case, 1988, the CJEU confirmed its previous statement, holding that "if a Member State has a choice between various measures for achieving the same aim, it should choose the means which least restricts the free movement of goods."[646] The Court stated that measures adopted to protect the environment must not "go beyond the inevitable restrictions which are justified by the pursuit of the objective of

644 CJEU, 1979, Cassis de Dijon, C-120/78, ECLI :EU :C :1979 :42

645 Francis Jacobs, 2006, "The Role of the European CJEU in the Protection of the Environment", Journal of Environmental Law

646 CJEU, 20 September 1988, Danish Bottle, C-302/86, ECLI:EU:C:1988:421

environmental protection."[647] In those circumstances, a restriction of the quantity of products which may be marketed by importers was disproportionate to the objective pursued. If the Danish Bottles case definitely included the protection of the environment as a mandatory requirement, the other major consequence was that "environmental protection could, in principle, serve as justification only for national measures applicable without distinction, whereas discriminatory measures, on the contrary, were to be justifiable only on the basis of the article 36 TFEU."[648]

Still, in early 1990s, the first point invoked by the CJEU was to assert whether waste constitutes goods or not. In the *Belgian Waste case* of 1992[649], the CJEU held that absolute prohibition on the storage, tipping or dumping in Wallonia of hazardous waste originating in another Member State and thereby precluding the application of the procedure laid down in Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transborder shipment of hazardous waste, the Kingdom of Belgium has failed to fulfil its obligations under that directive. The CJEU refused to make a difference between certain kinds of waste depending on their origin. Free movement of goods is a fundamental economic freedom[650] and the CJEU interprets the scope of this freedom. Recycling is something likely to change, throughout innovations and technical progress. The question of distinctive treatment was also present in the case as there was a difference of treatment between Walloon waste and other waste produced elsewhere. The mandatory requirement cannot be applied to distinctly applicable measures, but only to measures applying the same way to all goods. It can be justified on the type of waste, hazardous or non-hazardous for instance.

The CJEU also held that environmental principle could not be used in this way: it shall have been implemented to help the European legislator, not to create a balance between principles. The Court integrated the environmental requirement into the internal market. The principle that environmental damage should as a matter of priority be remedied at source, laid down by Article 130r[651] of the Treaty as a basis for action by the Community relating to the environment, entailed, in the court's view? that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of.

Usually, it is internal market versus national laws. Here, there was a third component:[652] the environmental policy. In July 1992, the Maastricht treaty was signed, and environment was introduced among the objectives, highlighted by the letter of the article 2 of the Maastricht treaty. Even if the Maastricht treaty had not come into force,

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647 Ibid.

648 Francis Jacobs, 2006, "The Role of the European CJEU in the Protection of the Environment", Journal of Environmental Law

649 CJEU, 9 July 1992, Belgian Waste, C-2/90, ECLI:EU:C:1992:310

650 Ibid.

651 Article 174, ex Article 130r of the EC Treaty

652 CJEU, 9 July 1992, Belgian Waste, C-2/90, ECLI:EU:C:1992:310

the CJEU applied by anticipation the recognition of environmental within the objectives of the EU. At the point 35, the CJEU made reference to two principles from the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 22 March 1989 : self-sufficiency, implying that most waste should be treated or disposed of within the region in which it is produced,[653] and proximity, enabling waste management as near as possible to its place of production, mainly because transporting waste has a significant environmental impact.[654]

In the *Green Tax* case of 1998[655], the CJEU held that "although in principle Article 95 of the Treaty does not require Member States to abolish differences which are objectively justified and which national legislation establishes between internal taxes on domestic products, it is otherwise where such abolition is the only way of avoiding direct or indirect discrimination against the imported products". It continued by saying that "such differentiation is compatible with Union law, however, only if it pursues objectives which are themselves compatible with the requirements of the Treaty and its secondary legislation, and if the detailed rules are such as to avoid any form of discrimination, direct or indirect, against imports from other Member States or any form of protection of competing domestic products."[656]

In the "*Danish Bees*" case of 1998[657], a dispute arose with a national measure very similar to the *Belgian Waste case*. This national measure was aimed to the protection of a little territory, an island here, by banning the import of another species of bees as it was appearing necessary to protect the biodiversity. In 1992, at the Earth summit, there were three components: the diversity of the species, the diversity inside the species, the diversity of the habitat of the species.[658] In this case, the Danish legislator wanted to protect the diversity among the species of the brown bees as if another kind is imported, it may lead to the extinction of the brown bees. This measure be a measure having a restrictive effect, normally prohibited. However, there are two kinds of justifications: the mandatory requirements and article 36 TFEU.[659] In that case, Article

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653 EEA Glossary, principle of self-sufficiency (https://www.eea.europa.eu/help/glossary/eea-glossary/principle-of-self-sufficiency)

654 EEA Glossary, principle of proximity (https://www.eea.europa.eu/help/glossary/eea-glossary/principle-of-proximity)

655 CJEU, 2 April 1998, Green Tax C-213/96, ECLI:EU:C:1998:155

656 Ibid.

657 CJEU, 3 December 1998, Danish Bees C-67/97, ECLI:EU:C:1998:584

658 Steve Urlich, Judi Hewitt and Eric Jorgensen, 2018, "The Earth Summit 25 Years on: Why is biodiversity continuing to decline?" (http://www.rmla.org.nz/wp-content/uploads/2018/04/Urlich1_RMJ_April_2018-3-1.pdf)

659 Article 36 TFEU: "The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

36 was used. It can be used to justify certain discriminatory measures as long as it is not a disguised and arbitrary measure to discriminate. In this case, the CJEU used EU directives to assert the compatibility of the national measures to the internal market. In the Belgian Waste case, they did the same in order to assert the proportionality. Even more than a conciliation, it was the integration of environmental requirements into internal market law. They also referred to the Rio Convention, as the Union is a signatory Party to it.[660]

To sum up, subsection 1.3.1. argues that the integration of environmental considerations within the internal market framework confirms that environmental protection is no longer confined to the margins of free movement law. Through judicial interpretation and Treaty-based integration requirements, environmental objectives increasingly operate as internal parameters shaping the application of market freedoms, marking a decisive step in the consolidation of the climatization of the internal market.

1.3.2. From integration to normalisation: disciplining environmental considerations within the internal market

As demonstrated in the preceding subsections, climate considerations initially entered internal market law through exceptional mechanisms. Subsection 1.1.1 showed how environmental and climate objectives were first accommodated via Treaty based derogations to the free movement of goods, while subsection 1.2.1 highlighted the CJEU's development of mandatory requirements and proportionality review as tools for integrating climate concerns on a case-by-case basis. Building on this progressive integration, the present subsection examines a further step in this evolution: the transition from integration to the normalisation of climate objectives within internal market law.

EU Climate Law introduces regulatory measures aimed at reducing greenhouse gas emissions and promoting sustainable development, including technical standards, fiscal instruments, and support schemes that directly affect the production, distribution, and consumption of goods. By their very nature, such measures are liable to interfere with free movement. Their legal admissibility therefore depends not on the mere legitimacy of their environmental purpose, but on their conformity with proportionality requirements and non-discrimination principles embedded in internal market law.

This subsection examines how the integration of environmental considerations within the internal market is legally structured and constrained through the principle of proportionality. It shows that, while environmental objectives increasingly shape market freedoms, proportionality operates as a central discipline or framework ensuring that climate-driven regulatory intervention remains compatible with the internal market framework.

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660 Signatories to the Rio Convention (list available online : https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-8&chapter=27)

The interaction between the free movement of goods and climate law within the EU legal framework involves several key aspects. Interestingly, although EU Climate Law aims to respect Article 37 of the EU Charter of Fundamental rights and asserts as such from the beginning, key aspects must be observed.[661] Article 36 TFEU provides exceptions to the free movement of goods for reasons such as the protection of health and the environment. Climate law can leverage these exceptions to justify measures that restrict trade to achieve climate objectives. However, these measures must be proportionate and not constitute arbitrary or unjustifiable discrimination.

The EU must balance the objectives of climate law with the principles of the internal market. This involves ensuring that climate measures do not disrupt the free movement of goods but rather support sustainable economic growth. The EU's approach to climate law must be integrated with its internal market policies to create a coherent and consistent legal framework.

Normalisation also generates new governance challenges at the national level. Once environmental and climate objectives are embedded in harmonised internal market legislation, Member States may be tempted to engage in "gold-plating" or over-transposition, adopting measures that go beyond Union requirements. Such practices risk fragmenting the internal market and undermining legal certainty. Where over implementation results in disproportionate restrictions or conflicts with Union law, infringement proceedings may follow, illustrating that proportionality continues to operate- as a constraint not only on Union action, but also on national implementation. The CJEU has played a crucial role in shaping the interaction between free movement of goods and climate law. Through its case-law, the CJEU has established principles that guide the application of climate measures within the internal market. Beginning with *Cassis de Dijon* (Case 120/78)[662] and *Commission v Denmark* (Case 302/86),[663] the Court recognised that environmental protection may justify restrictions on free movement, provided that such measures are suitable, necessary, and proportionate. This approach was subsequently refined in cases such as *PreussenElektra* (Case C-379/98)[664]

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661 Recital 6, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law') : "This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the EU, in particular Article 37 thereof which seeks to promote the integration into the policies of the Union of a high level of environmental protection and the improvement of the quality of the environment in accordance with the principle of sustainable development."

662 CJEU, Case 120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*, Ruling of 20 February 1979, ECLI:EU:C:1979:42, ECR 1979, p. 649

663 CJEU, Case 302/86, *Commission v Denmark*, Ruling of 20 September 1988, ECLI:EU:C:1988:421, ECR 1988, p. 4607

664 CJEU, Case C-379/98, *PreussenElektra AG v Schleswag AG*, Ruling of 13 March 2001, ECLI:EU:C:2001:160, ECR 2001, p. I-2099.

and *Commission v Italy (Trailers)* (Case C-110/05),[665] where the Court assessed climate and -environment driven measures through a structured balancing of internal market freedoms and public interest objectives. More broadly, the Court's methodology- reflects an effort to reconcile economic integration with constitutional values, including fundamental rights, as illustrated by *Schmidberger* (Case C-112/00).[666] These principles include the need for proportionality, non-discrimination, and the protection of fundamental rights. Engaging with stakeholders, including member states, businesses, NGOs, and the public, is essential for ensuring that climate measures are fair, transparent, and widely accepted. This engagement helps to address concerns about the impact of climate measures on trade and ensures that the objectives of both climate law and internal market law are met.

At a systemic level, the Court's proportionality review contributes to maintaining coherence between international environmental commitments, Union secondary legislation, and national regulatory measures. This judicial discipline prevents environmental and climate objectives from being instrumentalised in a manner that would distort market integration, while preserving sufficient regulatory space for ambitious climate action. In this sense, proportionality functions as a "Trojan horse" of the internal market: it allows environmental considerations to permeate market regulation, while simultaneously subjecting them to a rigorous legal framework that preserves the unity and predictability of EU law. From the national perspective, there is a risk of "gold-plating", where a Member State, in order to transpose a EU secondary law within its legal order, has to implement several other national acts, and, therefore, going even further than the goals established within the EU legal act.[667] An "over transposition" can be assimilated to an incorrect implementation and it is a real combat for the Member States, as it may overlap with other EU rules.[668] If acknowledged as a proper incorrect implementation of an EU legal act, it is not impossible to imagine that an infringement procedure can be launched as well.[669]

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665 CJEU, Case C-110/05, *Commission v Italy*, Ruling of 10 February 2009, ECLI:EU:C:2009:66, ECR 2009, p. I-519.

666 CJEU, Case C-112/00, *Schmidberger v Austria*, Ruling of 12 June 2003, ECLI:EU:C:2003:333, ECR 2003, p. I-5659

667 Some regulations leave the Member States the option of imposing more the latter transpose these pieces of legislation into their national legal framework, introducing additional procedures which are not necessarily required by EU regulations. Rigorous attention must be paid to the interaction between the EU institutions and the institutions national; it is important for the EU to be able to predict the effects of new regulations in various national systems. New regulations may have repercussions at the national level, if they are transposed into national law with excessive zeal: that is what is called in English the effect "gold plating" (effect "browning")

668 Cécile Barbière, EurActiv, 2018, "France continues fight against 'gold plating' of EU laws" (article online : https://www.euractiv.com/section/politics/news/france-continues-to-fight-against-too-many-standards/)

669 Article 258 TFEU: "If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the

The CJEU creates an environmental coherence between the international agreements, the directives, and the national measures. It is a proportionality control, codified as Trojan horse of the internal market.[670] This legal reasoning is a way to equilibrate the balance between social measures, broadly, and economic goals. Without this interpretation, the EU integration could have been jeopardized as there is no consensus among the Member States. Indeed, its hybrid nature from the competence deferral, prevents it from bringing a global and asserted answer from the Member States legally.

To sum up, subsection 1.3.2. aims to proportionality operates as the key legal mechanism structuring the integration of environmental considerations within the internal market. By disciplining the scope and intensity of climate driven regulatory intervention, proportionality ensures that the climatization of market freedoms remains compatible with the core logic of the internal market, confirming that integration does not amount to unchecked derogation. The integration of EU Climate Law is still a legal novelty, although based on similar mechanisms such as the articulation between trade and environmental protection.

Synthesis – Section 1, Chapter 2, Part II: Integrating Climate Law into EU Internal Policies: The Judicial Construction of Consistency

The examination of the integration of EU Climate Law into internal Union policies demonstrates that the duty of consistency does not operate as a harmonising principle capable of structurally reordering the internal market around climate objectives. Rather than producing a unified normative framework, consistency functions as a selective and context dependent mechanism, whose legal effects vary according to the policy field concerned and the institutional tools mobilised.

Across competition law, state aid, and public procurement, climate objectives are progressively incorporated, yet never elevated to a hierarchically superior norm. Instead, their integration is mediated through sector specific adjustments that preserve the core architecture of market regulation. The analysis reveals a clear asymmetry: where public intervention is involved, particularly through state aid and regulatory guidance, climate objectives justify increased flexibility and discretionary accommodation; by contrast, private economic coordination remains subject to stricter constraints, with sustainability considerations operating only within carefully circumscribed exceptions. This uneven incorporation confirms that climate law reshapes internal policies without displacing the internal market's underlying rationales.

The duty of consistency thus emerges less as a principle of normative alignment than as a balancing tool, enabling climate objectives to be accommodated without

opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the CJEU."

670 Dupéré, O., & Peyen, L. (Eds.). (2017). The Integration of Environmental Issues in Legal Branches: What Legal Realities? Presses Universitaires d'Aix-Marseille

fundamentally altering the legal hierarchy governing internal economic freedoms. This balancing logic produces legal fragmentation rather than convergence. Climate considerations are integrated in a piecemeal manner, contingent upon regulatory context, institutional competence, and enforcement modality, rather than through a coherent cross-sectoral framework.

Moreover, the interaction between climate law and environmental law further exposes the limits of consistency as an integration mechanism. While climate mitigation imperatives increasingly influence policy design, they do not systematically override environmental protection objectives. In certain instances, climate measures generate tensions with biodiversity conservation, pollution control, or precautionary requirements, demonstrating that consistency cannot be presumed between climate ambition and environmental integrity. The duty of consistency therefore does not resolve normative conflicts; it merely manages them on a case-by-case basis.

From an institutional perspective, the reliance on consistency as an implementation device places significant weight on executive discretion and regulatory steering. The absence of clear hierarchies or binding prioritisation criteria allows climate objectives to be integrated through soft coordination, guidance, and incentive-based mechanisms rather than through enforceable legal commands. While this approach enhances adaptability, it also contributes to legal uncertainty and uneven application across Member States and policy sectors.

Taken together, the analysis confirms that the duty of consistency does not transform EU internal policies into a climate centred legal order. Instead, it facilitates a pragmatic coexistence between climate objectives and existing market disciplines, preserving flexibility at the cost of coherence. This finding underscores a structural limitation of EU Climate Law: without a governance framework capable of articulating clear priorities and procedural safeguards, consistency remains an insufficient instrument for ensuring effective and uniform implementation.

This conclusion prepares the ground for the subsequent examination of governance and enforcement mechanisms. If climate objectives are to move beyond selective integration and sector-specific accommodation, the limits identified in the operation of consistency within internal policies must be addressed through institutional design, procedural guarantees, and accountability structures capable of supporting climate ambition under the rule of law.

Section 2. Integrating climate objectives into EU competition law

Among the Union's internal policies, competition law occupies a singular position in the integration of climate objectives. Long presented as a domain governed by principles of economic neutrality, efficiency, and market preservation, EU competition law has traditionally operated at a distance from sectors specific policy goals. The rise of binding climate objectives challenges this paradigm. As climate neutrality becomes a legally entrenched objective of Union law, competition rules are increasingly called

upon to accommodate, and at times facilitate, climate driven regulatory choices. This section examines how the integration of climate objectives into EU competition law contributes to the internal construction of consistency within the Union's legal order.

This section examines the interaction between EU Climate Law and competition law, a field traditionally structured around economic efficiency and market neutrality. It shows that, while competition rules impose strict constraints on climate driven coordination and intervention, they are increasingly reinterpreted and mobilised to accommodate environmental objectives, revealing a progressive climatization of competition law.

The relevance of competition law for climate governance lies in its transversal reach. Competition rules shape market structures, influence investment incentives, and condition the scope of permissible public intervention. Measures adopted in pursuit of climate objectives—such as support schemes for renewable energy, sustainability-oriented cooperation between undertakings, or regulatory differentiation favouring low carbon technologies—often interact directly with antitrust prohibitions and State aid control. Competition law thus emerges as a key site where the Union's climate ambition confronts the internal logic of market integration.

Climate objectives do not displace competition law; rather, they require its reinterpretation within existing constitutional boundaries. The duty of consistency plays a central role in this process. It demands that competition rules be applied in a manner that neither undermines the Union's climate commitments nor compromises the foundational principles of the internal market. The integration of climate considerations into competition analysis therefore unfolds through incremental adjustments, guided by legal reasoning, administrative practice, and judicial oversight, rather than through explicit derogations or formal competence shifts.

Particular attention is given to the evolving treatment of sustainability objectives in antitrust enforcement and State aid assessment. The emergence of guidance on sustainability agreements, the recalibration of State aid rules in support of the green transition, and the growing recognition of climate justifications in competition analysis illustrate a gradual shift towards a more integrated approach. At the same time, these developments raise questions concerning legal certainty, equal treatment, and the risk of fragmentation within competition enforcement across Member States and sectors.

The EU's ambition to achieve climate neutrality by 2050 has triggered a profound transformation in the application and interpretation of competition law. No longer viewed solely as a guardian of market preservation and consumer welfare, the EU competition policy is increasingly recognized as a lever for advancing the Union's climate and sustainability objectives. This "climatization" of competition law is reflected in recent policy reforms, new guidance from the European Commission, and a growing body of case law that seeks to reconcile the imperatives of competition with the urgent need for environmental action.

Is competition law a catalyser for climate change? The capacity of competition law to function as a catalyst for climate action remains inherently ambivalent. Competitive market dynamics may, under certain conditions, foster environmental innovation and

efficiency; yet they may also generate negative externalities, including increased pollution, pressures on biodiversity, and unsustainable production practices. Competition law therefore occupies a structurally complex position in climate governance. While its economic orientation has traditionally limited the scope for environmental and climate considerations, it does not operate solely as a constraint. Through the regulation of market behaviour, the control of anti-competitive practices, and the supervision of public intervention, competition law may also serve as an enabling framework for environmentally responsible conduct. The integration of climate objectives thus does not require a departure from competition law's economic foundations, but rather a calibrated reinterpretation of its tools and objectives within the boundaries of the existing legal order.

This analysis complements the judicial perspective developed in Section 1 by shifting attention to the regulatory and enforcement dimension of internal climate integration. It shows that the success of EU Climate Law depends not only on judicial interpretation, but also on the capacity of core internal policies—such as competition law—to evolve in a manner that remains legally coherent, economically sound, and constitutionally grounded.

The focus on competition law with environmental and climate protection is another pillar of EU Climate Law, since it is the internal market as a whole, to be affected by it. The needs to be in compliance with the route set by EU Climate Law and is the second grand challenge to be achieved. To what extent can competition law comply with EU Climate Law? To demonstrate the articulation between competition law and the implementation of EU Climate Law, it is first necessary to examine the environmentalisation of EU competition law (2.1), before analysing the instruments designed to mitigate climate change (2.2) and their concrete application (2.3).

2.1. The climatization of competition law through State aid control

Subsection 2.1. examines State aid control as the primary entry point through which climate objectives are integrated into EU competition law. While competition law is traditionally grounded in principles of economic neutrality and market preservation, State aid rules increasingly function as a channel for accommodating climate driven public intervention. This evolution reveals a progressive climatization of competition enforcement, not through the suspension of market discipline, but through the structured recalibration of compatibility criteria under Union law.

The central challenge lies in reconciling two structurally competing logics: the preservation of undistorted competition and the pursuit of ambitious climate objectives. State aid law occupies a singular position in this regard. Unlike antitrust rules, which primarily constrain private conduct, State aid control governs public intervention and therefore provides the Union with a legally recognised mechanism for steering markets in support of climate policy. The proliferation of climate-related support schemes, however, places increasing strain on the traditional architecture of State aid discipline

and raises questions as to the limits of compatibility under Article 107 TFEU.

A major milestone in this evolution is the European Commission's 2023 revision of the Horizontal Guidelines, which for the first time provide explicit guidance on sustainability agreements between competitors. The new guidelines devote an entire chapter to sustainability, clarifying the circumstances under which companies may cooperate to pursue climate and environmental objectives without infringing Article 101 TFEU. The Commission recognizes that certain collaborations—such as joint efforts to reduce greenhouse gas emissions, develop green technologies, or set industry-wide environmental standards—can deliver substantial benefits to society that may outweigh any potential restriction of competition, provided such agreements are necessary, proportionate, and transparent.[671]

This development marks a significant shift from the traditional approach, which often viewed horizontal cooperation with suspicion. By offering legal certainty for sustainability-driven collaboration, the Commission aims to remove barriers to collective climate action and encourage innovation in support of the European Green Deal. The guidelines also introduce a "soft safe harbour" for certain types of agreements, such as those that are indispensable for achieving clear sustainability benefits, provided consumers receive a fair share of those benefits.[672]

While the EU also regulates subsidies—referred to in its legal order as "State aid"—this section examines whether demand side incentives, which fall outside the notion of subsidies under WTO law as demonstrated in Part II, Chapter 1, nonetheless fall within the scope of EU State aid rules.

2.1.1. Climate objectives under the compatibility assessment under Article 107 TFEU

Subsection 2.1.1. examines how climate objectives are considered in the compatibility assessment of State aid under Article 107 TFEU. It explores whether the climatization of competition law operates through the creation of dedicated climate-based exemptions or, rather, through the adaptation of existing compatibility mechanisms. After recalling the logic of incompatibility laid down in Article 107(1) TFEU, the analysis focuses on the role of Article 107(3) TFEU as the principal legal basis through which environmental—and subsequently climate—objectives are accommodated within State aid control.

Article 107(1) TFEU lays down the principle of incompatibility of State aid with the internal market, specifying that, unless there is a derogation under the Treaties, aid

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671 European Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the EU to horizontal cooperation agreements (Horizontal Guidelines), OJ C 259, 21.7.2023, p. 1–191, especially Chapter 9: Sustainability Agreements.

672 Kerber, W., & Vezzoso, S. EU Competition Policy, Vertical Restraints, and Innovation: An Analysis from an Evolutionary Perspective. https://core.ac.uk/download/pdf/6978648.pdf

granted by States or through State resources, in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, is incompatible with the internal market insofar as it affects trade between Member States. It establishes a broad presumption of incompatibility for aid granted by States or through State resources which distorts or threatens to distort competition and affects trade between Member States. The concept of State aid extends beyond direct subsidies to encompass a wide range of measures, including tax exemptions, preferential fiscal treatment, and selective advantages granted through public resources.[673] The concept of State aid is more restrictive than the concept of public aid, insofar as public aid also targets aid granted through state resources, which allows for the inclusion of local authorities.[674]

Articles 107(2) and 107(3) TFEU introduce differentiated regimes of compatibility, distinguishing between aid deemed compatible *ex lege* and aid subject to discretionary assessment by the Commission. Within this framework, Article 107(3) TFEU has progressively emerged as the central conduit for the integration of climate objectives. Initially centred on regional development and economic restructuring, the compatibility logic under Article 107(3) has been extended to environmental protection and, more recently, to climate mitigation and decarbonisation. This evolution has been operationalised through secondary instruments, notably block exemption regulations and Commission guidelines, which structure the assessment of aid in light of proportionality, necessity, and the control of competitive distortions. The form of aid can be in many forms: direct subsidies; tax or social exemptions; targeted tax cuts for certain individuals, businesses or industries, preferential allocation of public procurement, etc. Therefore, the very concept of aid is much broader than the traditional concept of subsidy.[675]

If Article 107.1 TFEU establishes the principle of incompatibility, Articles 107.2 and 107.3 TFEU are aimed at aid compatible with the common market, by distinguishing between full-law and optional compatibility, which assumes a ruling to Commission. Since the Treaty of Rome, several State aids have been considered compatible de facto, which exempts them from any control procedure. As the European integration progressed, the list of compatible aid de jure has been narrowed, which at the same time corresponds to a strengthening of the Commission's power.[676] Under Article 107(2) TFEU, social aid granted to individual consumers—such as tax exemptions for

673 Article 107.1 TFEU: "Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."

674 Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the EU (2016/C 262/01), OJ C 262, 19.7.2016

675 Christian Buelens, Gaëlle Garnier, Matthew Johnson, and Roderick Meiklejohn, 2007, "the analysis of State Aid: some open questions." (https://ec.europa.eu/economy_finance/publications/pages/publication9549_en.pdf)

676 Ibid.

work intended to achieve energy savings—is deemed to be fully compatible with the internal market, provided that it is granted without discrimination related to the origin of the product. Also, Article 107.3 TFEU considers that the aids listed in a limited way by the Commission may be subject to a compatibility ruling. This article can be considered compatible with the internal market, as it is an aid aiming to promote economic development in regions where living standards are abnormally low, or where there is severe underemployment, as well as that of some regions given their structural, economic and social situation.[677] Also, the aid to promote the implementation of an important project of common European interest is compatible.[678] Then, there is also the aid to facilitate the development of certain activities or economic regions, etc.[679] Furthermore, additional categories of aid may be declared compatible with the internal market through rulings adopted by the Council on a proposal from the Commission. In this regard, Regulation (EU) No 651/2014 of the Commission, adopted pursuant to Articles 107 and 108 TFEU, declares certain categories of aid compatible with the internal market, including environmental aid, following earlier block exemption regulations adopted by the Commission, notably the regulation of 6 August -2008.[680]

Parallel to the evolution of rules on horizontal cooperation, the modernization of State aid policy has played a pivotal role in supporting the EU's green transition. The Climate, Energy and Environmental Aid Guidelines (hereinafter CEEAG), which entered into force in 2022, provide a flexible and targeted framework for Member States to support investments in renewable energy, energy efficiency, decarbonization, and clean technologies. The CEEAG reflect the Commission's recognition that massive public and private investment is required to meet the EU's climate targets, and that competition law must be sufficiently adaptable to facilitate this transformation.[681] Recent years have seen the approval of large-scale aid schemes for hydrogen production, battery manufacturing, and industrial decarbonization, as well as temporary crisis frameworks to address energy price shocks and accelerate the transition away from fossil fuels. The Commission emphasized the need to balance support for green innovation with safeguards against undue market distortions, ensuring that State aid

677 Article 107.3a) TFEU: "aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned."

678 Article 107.3b) TFEU: "aid to make good the damage caused by natural disasters or exceptional occurrences."

679 Article 107.3c) TFEU: "aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division."

680 Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

681 European Commission, Communication from the Commission: Guidelines on State aid for climate, environmental protection, and energy 2022 (CEEAG), OJ C 80, 18.2.2022, p. 1–111. See also recent Commission press releases on major green aid schemes in 2023–2024.

remains targeted, proportionate, and aligned with the Union's climate objectives.[682]

In July 2022, the Commission approved €5.4 billion in public support for the first *Important Project of Common European Interest* (IPCEI) on hydrogen, involving 15 Member States and over thirty-five companies. The project aims to develop a full hydrogen value chain in Europe, from production to storage and distribution, and is expected to unlock an additional €8.8 billion in private investments. The approval under the CEEAG demonstrates the Commission's willingness to allow large-scale, cross-border State aid for climate innovation, provided it is well-targeted and avoids undue distortions of competition.[683] The implementation of the "Fit for 55" legislative package and the introduction of the CBAM (Part II, Chapter 1) tested further the adaptability of EU competition law.[684] In this context, competition law has been applied pragmatically, with a view to supporting climate ambition while safeguarding the integrity of the single market.

To sum up, subsection 2.1.1 illustrates that the compatibility assessment under Article 107.3 TFEU constitutes the primary channel through which climate objectives are integrated into State aid control. The analysis of CEEAG in light of Article 107(3) TFEU shows that climate objectives are integrated into State aid law only through the existing compatibility framework of Article 107 TFEU: they operate as conditional justifications assessed through proportionality and the control of distortions of competition, rather than as autonomous or overriding objectives. As a result, climate ambition in State aid remains structurally subordinated to the internal market's economic logic. EU law therefore requires case-by-case assessments, rather than automatically exempting environmental measures from competition and State aid rules. By embedding climate considerations within the established criteria of compatibility, EU competition law accommodates climate driven public intervention while preserving the internal coherence of State aid discipline.

2.2. Climate driven cooperation within the limits of EU competition law

Following the general analysis of State aid compatibility with Article 107.3 TFEU, Subsection 2.2. further examines the cooperation between companies motivated by climate objectives as a distinct mode of integrating climate objectives into EU competition law. It analyses to which extent the cooperation between undertakings, normally

682 Antonis Metaxas, 2024. "The new State Aid Guidelines on Climate, Environmental Protection and Energy: what changes do they bring?," Chapters, in: Leigh Hancher & Ignacio Herrera Anchustegui (ed.), Research Handbook on EU Competition Law and the Energy Transition, chapter 15, pages 299-323, Edward Elgar Publishing.

683 European Commission, "State aid: Commission approves up to €5.4 billion of public support by fifteen Member States for the first IPCEI on hydrogen," Press Release, 15 July 2022.

684 Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism; European Commission, "Fit for 55" package overview.

restricted by competition rules, may be tolerated or encouraged when justified by climate objectives.

State aid granted for the protection of the environment, while constituting an essential instrument of environmental and climate policy, raises a structural tension with the competitive functioning of the internal market, insofar as such aid may distort competition and affect trade between Member States, thereby requiring strict compatibility assessment under EU State aid rules.[685] Aids granted to promote the development of renewable energies also posed legal questions, for instance, whether the financing of the wind-energy support scheme involved "State resources," which, as was mentioned above, is one of the necessary conditions for State aid under Article 107(1) TFEU.

Thus, the CJEU held it that the French obligation to purchase wind-generated electricity at a price higher than that of the market is constitutive of a state aid.[686] The additional cost was compensated through a charge imposed on electricity consumers. In this case, the French Conseil d'État had to assess the legality of the decree of November 17, 2008,[687] referred to the preliminary ruling procedure. The CJEU noted that the sums collected from end-users, who were transiting through the *Caisse des Dépôts et Consignations*[688] and the compensation mechanism established by French law is "an intervention by means of State resources.[689] The problem arose from the fact that the French support scheme was qualified as State aid involving State resources within the meaning of Article 107(1) TFEU, yet had not been notified to the Commission in accordance with Article 108(3) TFEU. As a result, Member States were required to obtain prior approval from the European Commission before implementing or modifying such support schemes, and France had to amend its policy in order to comply with EU law.

However, any intervention by the Member States is not prohibited in this sector even though it undermines the principles of free competition. So, the CJEU found compatible with EU law the Swedish aid scheme in favour of green energy production in its territory.[690] In this case, Sweden had refused electricity certificates to a company[691] for its wind farm located in Finland. According to that company, the Swedish

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685 EU Commission, ruling of October 2003, granting aid to research and development to the reduction of CO2 emissions in the car sector.

686 CJEU, 19 December 2013, Association Vent de colère ! C-262/12, ECLI :EU :C :2013 :851

687 Conseil d'État, 28 May 2012, Association Vent de colère ! n° 324852, ECLI:FR: XX:2014:324852.20140528

688 Ibid.

689 Ibid.

690 CJEU, 1 July 2014, Ålands Vindkraft C-573/12, ECLI:EU:C:2014:2037

691 According to a Swedish law of 2011, licensed producers are awarded a certificate electricity per megawatt hour (MWh) of green electricity produced. The certificate requests electricity to be born from the fact that electricity suppliers are subject to an obligation to hold and to return to the State, on April 1st of each year, a certain quota of certificates corresponding to a share of the total of their supplies during the past year. In the absence of the return of these certificates, suppliers are obliged to pay a sum of money.

system of electricity certificates was opposed to principle of free movement of goods because it had the effect of reserving about 18% of the Swedish electricity market to green electricity producers located in Sweden, to the detriment of electricity imports from other Member States. The CJEU recalled that a Member State granting aid to domestic producers was not obliged to support the use of green energy produced in another Member State. However, it considered that "this restriction is justified by the public interest objective of promotion of the use of renewable energy sources to protect the environment and fight climate change"[692] after verifying that the measure was appropriate and did not go beyond what was necessary to achieve that objective.

The Commission recalled that the Europe 2020[693] strategy, which aims to create the conditions for smart, sustainable, and inclusive growth, "sets the goal" to increase to 20% the share of EU energy consumption produced from renewable resources. It is also a matter for the Commission to prepare a post-2020 strategy, where "existing renewable energy sources will supply the grid at competitive prices, which [...] should be removed degressively." The new guidelines should thus ensure the transition to market-based mechanisms. The implementation of EU Climate Law provides for an enacting legal framework to achieving EU's objectives regarding tackling climate change.

In 2023, the Commission approved a French scheme providing up to €1.2 billion in aid for the purchase of electric vehicles, as part of the country's implementation of the Fit for 55 objectives. The scheme was assessed under the CEEAG and found to be compatible with the internal market, as it incentivized the uptake of clean vehicles while minimizing distortions to competition. This assessment by the Commission illustrates how competition law is being used to facilitate Member State climate action in line with EU-wide targets.[694] However, Member States may consider differences in the technological development of renewable energy and the size of facilities. For example, the guidelines provide for the gradual introduction of competitive bidding procedures for public aid, while leaving the Member States room for manoeuvre to consider national particularities. In practice, it can be seen by the different level of threshold retained by Member States concerning CO^2 emissions.[695] Different incentives schemes on cars can illustrate those differences, as the vehicle fleet is differing from one Member State to another.

To sum up, subchapter 2.2. demonstrates that the CJEU's reasoning in *Association Vent de colère!* and *Ålands Vindkraft* demonstrates that climate driven cooperation and support mechanisms are tolerated only within the traditional limits of EU competition law. Climate objectives may justify deviations from competition rules solely where they comply with efficiency based and proportionality requirements, reflecting

692 CJEU, 1 July 2014, press release n°90/14.

693 Official Journal of the EU, C 200, 28 June 2014

694 European Commission, "State aid: Commission approves French scheme to support the purchase of clean vehicles," Press Release, 8 February 2023

695 EU Commission, 2019, "Reducing CO2 emissions from passenger cars" (https://ec.europa.eu/clima/policies/transport/vehicles/cars_en)

a cautious and controlled integration of environmental considerations. In this sense, the Court's case law on renewable energy support schemes indirectly supports the objectives of the Europe 2020 Strategy, by preserving sufficient regulatory space for Member States to implement renewable energy policies contributing to EU wide climate and energy targets.

2.3. The asymmetrical integration of climate objectives in EU competition law

Subsection 2.3. draws together the lessons from State aid compliance assessment and climate driven cooperation of companies to assess the overall capacity of EU competition law to integrate climate objectives. Building on the analysis of the previous subsections, Subsection 2.3. examines the integration of climate objectives within State aid control performed before the CJEU. It analyses to which extent climate considerations receive differing legal weight depending on the exemption framework and degree of Commission discretion under Article 107(3) TFEU.

In the *Concordia* case,[696] the CJEU examined whether a contracting authority could include environmental criteria in a public procurement procedure for the purchase of buses. Although public procurement is traditionally governed by economic and competition-based considerations, the Court held that environmental criteria may be taken into account in the award of public contracts, provided that they are linked to the subject matter of the contract and comply with the principles of transparency, non-discrimination, and equal treatment. Is it possible to include or integrate environmental criteria into public procurements? In principle, it is an economic area about an economic matter. For the first time, the CJEU held that it accepted the integration of environmental criteria in a tender and, therefore, in a public procurement. The CJEU put some conditions as well: the public authority had to establish a link between the object of the tender and the environmental criterion. In this case, the city was likely to choose buses that are less polluting. The economic advantage for the city was, if the buses were less polluting, there was also less air pollution and less health costs. This ruling was held at the same time as the Johannesburg summit, an UN summit about sustainable development. As a result, public authorities could, if they wanted, use this economic tool in favour of the protection of the environment.

In the *EVN case*,[697] the CJEU was asked about the integration of criteria of environmental protection into a public procurement in an Austrian region. Assessing the most economically advantageous tender could be made on environmental, "ecological" grounds. Economic matters had to respect environment, to consider ecological criteria. The CJEU made a broad interpretation of what was economic: the EU, in its essence, was an economic project, and the CJEU used a broad interpretation to bring

696 CJEU, 17 September 2002, Concordia Bus Finland C-513/99, ECLI :EU :C :2002 :495

697 CJEU, 4 December 2003, EVN and Wienstrom C-448/01, ECLI:EU:C:2003:651

environment in other areas, such as economic sphere.

In the field of public procurement, contracting authorities have made strategic use of this instrument to promote broader public interest objectives, including environmental and climate goals. Environment is a legal laboratory also here. It is the use of the principle of integration, through Article 11 TFEU where its reading suggests that environmental requirements must be integrated into EU policies. At EU level, the use of Green Public Procurement (hereinafter GPP) has been promoted through policy instruments encouraging Member States to apply environmental criteria in a sizeable proportion of public tenders. For instance, the Commission set indicative targets—such as the objective of applying GPP to 50% of public procurement procedures by 2022—within the framework of the EU Environmental Action Programmes (hereinafter EAPs). However, these commitments remain nonbinding, as the EAP constitutes a soft law instrument and does not impose legally enforceable obligations on Member States. It clarifies the idea that the economic tool, public procurement, can be used in favour of the protection of the environment as this tool represents 80% of the GDP. They could promote the economical scale and the market integration of several green goods (organic products, green electricity, goods benefiting the ecolabelling scheme, etc).

The implementation of the "Fit for 55" legislative package and the introduction of the CBAM further tested the adaptability of EU competition law.[698] The Commission was called upon to assess the compatibility of new climate-related measures with competition rules, particularly in relation to their impact on competitiveness, the risk of carbon leakage, and the functioning of the internal market. In this context, competition law was applied pragmatically, with a view to supporting climate ambition while safeguarding the integrity of the single market.[699]

Recent State aid rulings adopted by the European Commission in the energy and transport sectors illustrate this pragmatic approach. In particular, the Commission approved aid schemes aimed at deploying renewable energy infrastructure and decarbonising transport under the CEEAG, accepting limited distortions of competition where necessary to achieve EU climate objectives.

The CJEU has begun to engage more directly with the intersection of competition and climate law, although much of the jurisprudence remains in its early stages.[700] In the 2023 case T-640/16 *RENV GEA Group AG v Commission*, the CJEU considered the compatibility of environmental agreements with competition law, emphasizing the

698 Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism; European Commission, "Fit for 55" package overview.

699 See Regulation (EU) 2023/956 establishing a carbon border adjustment mechanism; European Commission, "Fit for 55" package overview; and recent Commission rulings in the energy and transport sectors (e.g., SA.102731 – Support for renewable energy in Italy).

700 Aristova E and Lim J (eds) (2024) Climate Litigation in Europe Unleashed: Catalysing Action against States and Corporations, Bonavero Institute for Human Rights.

need for a careful balancing of environmental benefits and competitive effects.[701] The CJEU further examined the compatibility of national support schemes for renewable energy with EU State aid rules. [702] The Court reaffirmed that while Member States have discretion to design climate support measures, these must be consistent with EU competition law and subject to Commission approval to prevent undue market distortions. The ruling reinforced the principle that climate ambition and competition enforcement must proceed hand in hand, with the CJEU acting as a guardian of both.

The challenge for both the Commission and the courts is to ensure that competition law evolves in step with the Union's climate commitments, providing sufficient flexibility for innovation and cooperation, while maintaining the core principles of market integrity and consumer welfare.

To sum up, subchapter 2.3. demonstrates that climate objectives are integrated unevenly within State aid control under Article 107(3) TFEU. This unevenness emerges from the analysis of the different exemption frameworks applied—ranging from ad hoc compatibility assessments to block exemption regimes under the GBER and the CEEAG—as well as from the broad margin of discretion exercised by the Commission in assessing proportionality, necessity, and distortions of competition. As a result, climate considerations do not benefit from a uniform or predictable treatment, but rather from a fragmented integration within State aid law. This asymmetrical integration confirms that EU competition law can support climate objectives only indirectly and conditionally, operating through controlled exceptions and discretionary balancing rather than through any systemic reorientation, and thereby revealing the structural limits of competition law as a comprehensive instrument of climate governance.

Synthesis – Section 2, Integrating climate objectives into EU competition law

Section 2 has demonstrated that the integration of climate objectives into EU competition law reflects a process of progressive adaptation rather than structural transformation. While competition law was long conceived as a policy domain insulated from sector-specific objectives and grounded in principles of economic neutrality, efficiency, and market preservation, the emergence of legally binding climate commitments has required a recalibration of its application. This recalibration, however, operates within existing constitutional and doctrinal boundaries and does not displace the core logic of competition enforcement.

A central development in this evolution is the European Commission's 2023 revision of the Horizontal Guidelines, which for the first time provides explicit legal certainty for sustainability agreements between competitors. By clarifying the conditions under which cooperation pursuing environmental and climate objectives may comply

701 CJEU, Case T-640/16 RENV GEA Group AG v Commission, ruling of 25 January. 2023, EU:T:2023:18.

702 CJEU, Case C-594/18 P Austria v. Commission, Ruling of 22 September 2020, ECLI:EU:C:2020:742

with Article 101 TFEU, the Guidelines signal a controlled opening of competition law to collective climate action. Cases such as Chicken of Tomorrow illustrate both the potential and the limits of this approach: sustainability-driven cooperation is tolerated only where it remains necessary, proportionate, and demonstrably beneficial to consumers.

In parallel, the modernisation of State aid policy through the CEEAG has enabled Member States to deploy significant public resources in support of renewable energy, clean technologies, and industrial decarbonisation. The approval of large-scale measures, including IPCEIs in hydrogen and battery production and national schemes such as the French electric-vehicle bonus, illustrates a pragmatic use of State aid control to facilitate the green transition. Yet these measures remain subject to rigorous compatibility assessments under Article 107(3) TFEU, confirming that climate objectives are integrated into competition law only as conditional justifications assessed through proportionality and the control of distortions of competition.

Judicial engagement at the intersection of climate and competition law remains cautious. While the CJEU has not yet articulated a comprehensive doctrine of climate integration within competition law, recent rulings on State aid in the energy and environmental fields indicate an increasing willingness to take climate objectives into account, provided that market integrity and equal treatment are preserved. This jurisprudence, combined with evolving Commission practice, reflects a gradual but uneven accommodation of climate considerations across different competition law instruments.

To sum up, the analysis confirms that the climatization of EU competition law is real but structurally constrained. Climate objectives are neither hierarchically prioritised nor uniformly integrated; instead, they are accommodated through selective flexibility, discretionary balancing, and sector-specific instruments. Competition law thus supports climate ambition only indirectly and conditionally, operating as a constraining framework rather than as an autonomous instrument of climate governance. This asymmetrical integration underscores the limits of competition law as a comprehensive tool for delivering the Union's climate objectives and points to the need for complementary governance and enforcement mechanisms if climate ambition is to be realised consistently under the rule of law.

The analysis of competition law confirms that the integration of climate objectives within the Union's internal policies remains structurally constrained and asymmetrical. While competition law has proven capable of accommodating climate considerations through selective flexibility and discretionary balancing, this accommodation operates within a legal framework primarily designed to preserve market rivalry rather than to arbitrate between competing public interest objectives. As a result, climate objectives are integrated conditionally and unevenly, without resolving the normative tensions that arise when climate ambition intersects with other core policy goals. These limits become particularly visible when climate objectives interact not with market disciplines, but with environmental protection itself. The assumption that climate action and environmental protection are inherently aligned obscures the emergence of new

conflicts, trade-offs, and regulatory frictions between mitigation imperatives and other environmental values. Section 3 accordingly turns to the (un)natural conciliation of environmental and climate policies within EU law, examining how climate objectives are reconciled—or come into tension—with environmental protection requirements. By shifting the focus from market-based constraints to intra-environmental conflicts, the analysis explores whether existing legal principles and governance mechanisms can manage these emerging tensions, or whether the integration of climate law risks fragmenting environmental protection itself.

Section 3. The (Un)Natural Conciliation of Environmental and Climate Policies

The integration of climate objectives into the Union's internal policies finds its most complex expression in the relationship between environmental law and climate law itself. At first sight, the conciliation of these two policy areas may appear natural. Both pursue objectives of environmental protection, both are anchored in the Treaties, and both are increasingly mobilised in response to systemic ecological challenges. Yet, the emergence of climate neutrality as a binding and overarching objective has revealed underlying tensions between environmental and climate policies, calling into question the assumption of automatic consistency within the Union's environmental acquis.

This section examines the ambivalent relationship between environmental protection and climate action within EU law. While climate law has developed as a specific response to the challenge of global warming, environmental law encompasses a broader range of objectives, including biodiversity conservation, pollution control, public health, and resource management. The prioritisation of climate neutrality may, in certain contexts, generate trade-offs with other environmental objectives, forcing the Union to arbitrate between competing forms of environmental protection. The conciliation of environmental and climate policies thus becomes a site of normative tension rather than seamless alignment.

The EU stands at a pivotal crossroads in its legal and policy response to the climate crisis. The adoption of EU Climate Law, with its binding objective of climate neutrality by 2050, marks a historic turning point in the Union's trajectory. Yet, as the EU accelerates its climate ambitions, a fundamental question arises: can the legal frameworks and governance structures that have traditionally underpinned environmental protection adapt to the new imperatives of climate action? Or do the objectives, instruments, and logics of climate law and environmental law sometimes collide, producing tensions that threaten the coherence and effectiveness of the Union's response to the planetary emergency?

This chapter embarks on a critical exploration of the relationship between climate and environmental policies within the EU legal order. While both domains share the overarching goal of safeguarding the planet for present and future generations, their approaches, priorities, and practical effects can diverge in significant—and sometimes

problematic—ways. Climate law, as it has emerged in the EU context, is characterized by its focus on rapid decarbonization, systemic transformation, and the achievement of quantifiable targets such as net-zero greenhouse gas emissions. It is a field driven by urgency, innovation, and the need for cross-sectoral integration. Environmental law, by contrast, has historically centered on the conservation of biodiversity, the protection of ecosystems, and the application of the precautionary principle. It often emphasizes local or regional contexts, gradual adaptation, and the safeguarding of natural resources for their intrinsic value.

The duty of consistency plays a central role in structuring this relationship. Internally, it requires that climate driven measures be integrated into environmental regulation without undermining the coherence of the broader environmental framework. This task is particularly delicate where climate objectives justify regulatory choices that may adversely affect other environmental interests, such as land use, ecosystem protection, or local pollution standards. The section explores how EU law addresses these tensions, and whether consistency functions as a mechanism of reconciliation or merely as a procedural safeguard against fragmentation.

The interplay between these two legal spheres is far from straightforward. On the one hand, there are clear synergies: measures to reduce emissions can also benefit air quality, water resources, and ecosystem health; the restoration of forests and wetlands can serve both climate mitigation and biodiversity objectives. On the other hand, the pursuit of ambitious climate goals can sometimes undermine environmental protection, and vice versa. The deployment of large-scale renewable energy infrastructure, for example, may disrupt habitats and landscapes protected under environmental law. The promotion of bioenergy as a climate solution can lead to deforestation, monoculture plantations, and the loss of biodiversity. Even the transition to electric vehicles, while reducing emissions, raises concerns about the environmental and social impacts of mining for battery materials.

These conflicts are not merely theoretical. They are playing out in courtrooms, regulatory agencies, and local communities across Europe. Landmark cases such as the "*Danish Bottles*" ruling, the litigation over wind farm siting, and disputes over the compatibility of state aid for green technologies with competition law illustrate the practical and legal dilemmas at stake. The jurisprudence of the CJEU has been pivotal in mediating these tensions, developing doctrines of proportionality, non-discrimination, and the integration of environmental requirements into other policy areas. Yet, as this chapter will show, the balancing act is becoming ever more complex as the climate crisis intensifies and the demands on legal and governance systems multiply.

At the heart of this analysis lies a deeper question about the future of EU governance. Can the Union achieve a truly integrated approach to sustainability—one that reconciles the imperatives of climate action with the foundational values of environmental protection, social justice, and democratic legitimacy? Or will the "climate trilemma"—the challenge of balancing environmental integrity, economic growth, and social equity—prove insurmountable within existing legal and institutional frameworks?

This section is structured to illuminate these issues from multiple angles. It begins by mapping the conceptual and doctrinal distinctions between climate and environmental law, tracing their evolution within the EU legal order. It then examines concrete examples of conflict and synergy, drawing on case law, policy analysis, and real-world controversies. Special attention is given to the role of the CJEU, national courts, and independent authorities in arbitrating disputes and shaping the contours of the law. The chapter also explores the implications of these tensions for the legitimacy and effectiveness of EU climate governance, considering proposals for institutional reform, the creation of independent climate authorities, and the adoption of polycentric governance models.

Ultimately, the (un)natural conciliation of environmental and climate policies is not simply a technical or legal problem. It reflects deeper societal choices about the kind of future the EU seeks to build. As the Union moves forward in its quest for climate neutrality, the challenge will be to ensure that the pursuit of one set of objectives does not come at the expense of others, and that the legal order remains both coherent and responsive to the evolving demands of sustainability. By critically engaging with these questions, this chapter aims to contribute to the ongoing debate on the future of EU climate and environmental governance—and to offer insights that may guide policymakers, scholars, and citizens alike in navigating the complexities of the green transition.

This section thus complements the preceding analyses by showing that internal consistency must also be achieved within environmental governance itself. It demonstrates that the success of EU Climate Law depends not only on its integration into market-oriented policies or judicial reasoning, but also on its capacity to coexist—and at times compete—with other environmental objectives embedded in the Union's legal order.

The test of legal compliance between EU environmental law against climate change may sound surprising, and far-fetched. However, the implications of the application of EU Climate Law also comes to disrupt the fragile equation of internal market, competition law, and environmental policies. Does climate law need legal adjustments to comply with climate-related policies, if any? The needs to be in compliance with the route set by EU Climate Law and is the most obvious – so obvious that it may appear as unobvious; grand challenge to be completed. To assert the articulation between existing EU environmental policies and the implementation of EU Climate Law, it is necessary to assess how EU environmental law if it may contradict EU Climate Law (3.1) before analysing the practical incidences before national courts – more specifically the judicial practice of *Conseil Constitutionnel* in France in a preliminary ruling procedure before the CJEU (3.2).

3.1. Environmental law under the constraint of EU Climate Law: An (un) natural contradiction?

The integration of climate objectives into the Union's internal policies finds its most complex expression in the relationship between environmental law and climate law itself. At first sight, their conciliation may appear natural: both pursue forms of environmental protection, both are anchored in the Treaties, and both are mobilised in response to systemic ecological risks. Yet the elevation of climate neutrality to a binding and transversal objective has exposed tensions within the *environmental acquis*, challenging the assumption that consistency between climate action and environmental protection is automatic. Subsection 3.1 examines whether EU environmental law and EU Climate Law pursue fully aligned objectives when applied in parallel. It focuses on situations where measures adopted to protect the environment may conflict with, or only partially support, climate objectives.

The scope of EU Climate Law and Environmental law differs drastically and manages to oppose legally. Indeed, if one aims for the preservation of our way of life under the threshold of 1.5 degrees rise, the latter seeks to preserver the biodiversity – fauna, flora, exhaustible resources, etc. The current practice of EU Climate Law directly hinders the protection of the environment. section examines the ambivalent relationship between environmental protection and climate action within EU law. Climate law is increasingly structured around rapid decarbonisation, target driven governance, and cross sectoral transformation, whereas environmental law encompasses a broader set of objectives—biodiversity conservation, pollution control, public health protection, and resource management—often operationalised through precaution, ecological limits, and place sensitive standards. The prioritisation of climate neutrality can therefore generate trade-offs with other environmental aims, requiring the Union to arbitrate between competing forms of environmental protection rather than merely aligning them.

Reaffirming the climate emergency at COP25, UN Secretary-General Antonio Guterres called on States to show "political will" and spoke that by the end of the next decade two paths were possible on the climate issue: that of "capitulation" and that of "hope."[703] This book is undeniably part of the book of hope by modestly shedding light on the existing legal instruments necessary to build a "climate law"[704] equal to the ecological emergency.

The last three IPCC[3] special reports on the impact of global warming of 1.5 °C above pre-industrial levels and the corresponding greenhouse gas (hereinafter GHG)

703 UN News: 2 December 2019: https://news.un.org/fr/story/2019/12/1057261 Retrieved 1[he] December 2020).

704 The term "climate law" here refers to the combination of climate change law (law stemming from the international climate regime (UNFCCC, Kyoto Protocol and Paris Agreement), European directives and regulations and national law regulating both mitigation and adaptation of climate change. climate management) and other aspects of law that are now governing broad areas of action to meet global climate goals. V. online on the IPCC website: https://www.ipcc.ch/

emission trajectories, on the links between climate change, desertification, land degradation, sustainable land management, Food security and the links between climate change, the oceans and the cryosphere attest to unprecedented degradation and damage to our ecosystems and living conditions on Earth. The climate emergency is no longer to be demonstrated and for the last three years, it has been increasingly "declared"[705] by certain States, regions, metropolises, cities, as an area of priority public action.

However, declarations of political intent are not enough, the procrastination[706] of public ruling-makers to seize head-on and "head-on" this global issue is tested. Like Stefan Aykut, it is clear that "a paradox is at the heart of climate governance: we, the humans, "already govern the climate," as far as it strongly influences its evolution through our industrial and agricultural activities. In contrast, despite twenty-five years of international efforts, one may seem unable, at least so far, to have a grip on the social and political dynamics that cause anthropogenic climate change."[707]

In this regard, the 2019[708] and 2020 UN Environment Programme (hereinafter UNEP)[709] "emissions gap" reports have shown that the last decade of climate action has failed to commit to the reductions needed to stabilize the climate system. Current policies around the world point to a temperature increase of 3.5°C this century, compared to pre-industrial levels.

The duty of consistency provides the legal framework for addressing these tensions, but it does not eliminate them. Consistency requires that climate driven measures be integrated into environmental regulation without fragmenting the broader environmental framework; it does not supply a hierarchy capable of resolving conflicts in the abstract. The question, therefore, is whether EU law treats consistency as a substantive mechanism of reconciliation—or whether it operates primarily as a procedural discipline that manages tensions case by case through proportionality, integration requirements, and governance techniques.

Trapped in the "schism of reality" [710] and paradoxical injunctions, the climate

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705 V. in this sense the collaborative site on the census of Declarations of emergency: https://www.cedamia.org/ global/ Retrieved 1he December 2020). For example, the France has legalized the "ecological and climate emergency" in its article L 100-4 of the Energy Code since Law No. 2019-1147 of 8 November, Energy and Climate 2019.

706 C. Cormier, *Climate, permanent resignation. From "our house is burning"... at the Citizens' Climate Convention, twenty years of climate policies,* ed. Les éditions Utopia, December 2020.

707 S. C Aykut, «Chapitre 30. Climate and the Anthropocene. Framing, agency, and global climate policy after Paris", in R. Bwater (You.), *Thinking about the Anthropocene*, Paris, Presses de Sciences Po, «Académique «, 2018, p. 499-522

708 UNEP, *From «lost decade « of climate action, hope emerges*, Sep 22nd, 2019 https://www.unenvironment.org/news-and-stories/story/lost-decade-climate-action-hope-emerges Retrieved 1he December 2020). See also the work of *Climate Action Tracker*, https://climateactiontracker.org/

709 V. the 2020 version of the report takes into account the consequences of the COVID pandemic: https://www.unep.org/emissions-gap-report-2020 (accessed online December 9, 2020).

710 S. C. Aykut and A. Dahan, *Governing the climate? 20 years of international negotiations*, Paris, Presses de Sciences Po, 2015.

struggle faces a "fundamental disjunction between climate governance – the global institutions created to address climate change – and a range of other processes such as the globalization of the Western way of life, the excessive exploitation of fossil fuel resources, the ferocity of economic competition (...)."[711] However, each year of delay requires additional, more drastic, and faster efforts to reduce GHG emissions weighing on future generations, with an economic cost that will be increasingly important while making the future and the chances of success as difficult as they are unlikely.

The tension analysed here is not peripheral. Climate law increasingly constrains regulatory choices across environmental fields, including land use, biodiversity protection, pollution standards, and precautionary regulation. The issue is therefore not whether EU environmental law "supports" EU Climate Law in general, but whether specific environmental instruments and judicial techniques can accommodate climate neutrality without undermining environmental integrity. This is why the section first examines doctrinal points of friction (3.1.1) before analysing their practical judicial articulation (3.1.2), with particular attention to French constitutional practice and its interaction with EU law.

3.1.1. A jurisdictional contradiction: case study of the French Conseil Constitutionnel

Subsection 3.1.1. examines situations in which measures adopted under EU environmental law do not effectively contribute to climate mitigation objectives, following the case-study practice under the French Conseil Constitutionnel. It embodies the limits of environmental protection as a proxy for climate action within EU law.

In the long progress of environmental law, this ruling of the French Conseil Constitutionnel of 31 January 2020[712] certainly marks a most crucial step and highlights the practical implications of EU Climate Law's application. It also emphasized the legal contradiction that can only be solved before court.

It is in the context of an action for annulment for abuse of power against the circular of 23 July 2019 of the Minister for the Ecological and Inclusive Transition, the Minister of Economy and Finance and the Minister of Agriculture and Food relating to the entry into force of the ban on certain plant protection products for reasons of protection of health and the environment that the Conseil d'État referred to the Conseil Constitutionnel the priority question of constitutionality (hereinafter QPC) brought by the applicant, the *Union des industries de la protection des plantes* (hereinafter UIPP), relating to the conformity with the rights and freedoms guaranteed by the Constitution of paragraph IV of Article L253-8 of the Rural and Maritime Fisheries

711 S. C Aykut, *on. Cit.*

712 Décision n° 2019-823 QPC du 31 janvier 2020, Union des industries de la protection des plantes [Interdiction de la production, du stockage et de la circulation de certains produits phytopharmaceutiques]

Code, providing for that prohibition.[713]

In support of its claim, the UIPP argues that the impugned provisions constitute for producing or exporting companies an infringement of the freedom to conduct a business, guaranteed by Article 4 of the Declaration of the Rights of Man and of the Citizen of 1789,[714] without it being useful to assess their proportionality, considering the prohibition unrelated to the objective of protecting the environment and health in so far as it will only have the effect of driving countries users to source from outside France.

The Conseil Constitutionnel responds by recognizing a new objective of constitutional value, taken from the preamble of the 2005 Environment Charter, of "protection of the environment, common heritage of human beings,"[715] leading it, while admitting the infringement of the freedom of enterprise, to judge it in connection with the protection of the environment at first. Recalling the role of the legislature in reconciling constitutional principles and objectives, and proportionate to the aim pursued in a second, stressing the period of adaptation left to businesses, to conclude that the contested legislative provisions are compliant.

This unprecedented consecration undoubtedly brings to the Charter of the Environment, sometimes accused of a "catch-all" text, essentially declaratory and without legal reality – especially regarding its preamble, a new normative scope. The Conseil Constitutionnel is in fact, by this ruling, part of a general trend of substance, admittedly sometimes still stumbling or hesitant, by which the environment benefits increasingly from judicial protection.

Thus, several important rulings recognize the possibility of restricting economic freedoms in the face of environmental protection, such as that relating to mineral exploration,[716] the *a priori* review of constitutionality with regard to the ban on neonicotinoids[717], or the cancellation of a marketing authorization for a weedkiller containing glyphosate by an administrative court.[718]

Other rulings do not specifically oppose economic freedoms, but clearly highlight the environmental imperative, such as the summary sent to the Prime Minister on 27 November 2019 by the Court of Auditors, which accuses the government of unmet objectives in terms of pesticide reduction[719], or most recently, the condemnation of the State by the Administrative Court of Paris for its partial deficiency in the reduction of

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713 Article L253-8 of the Rural and Maritime Fisheries Code

714 Article 4 of the Declaration of the Rights of Man and of the Citizen of 1789

715 Loi constitutionnelle n° 2005-205 relative à la Charte de l'environnement, *JO*, n° 51, 2 mars 2005, p. 3697.

716 Conseil Constitutionnel, Decision No. 2013-346 QPC of 11 October 2013, Société Schuepbach Energy LLC

717 Conseil Constitutionnel, Decision No. 2016-737 DC of 4 August 2016

718 Administrative Tribunal of Lyon, 15 January 2019, Committee for Independent Research and Information on Genetic Engineering

719 Court of Auditors, summary No. S20192659 of 27 November 2019

greenhouse gases.[720]

And undoubtedly, this recognition of the status of an objective of constitutional value constitutes a further step in the regulation of economic activity by the public authorities in the name of environmental protection.

3.1.2. Jurisprudential evolution: the inclusion of an extranational concern

The evolution of climate-related jurisprudence marks a decisive departure from territorially confined reasoning. Courts increasingly acknowledge that climate harm, by its very nature, transcends national borders, thereby challenging traditional assumptions underpinning jurisdiction, responsibility, and justiciability. This shift signals the emergence of an extranational concern within judicial reasoning, progressively reshaping the legal contours of climate obligations.

It is first necessary to identify the jurisprudential evolution of this ruling, and how it proposes a rupture in its judicial practice. Indeed, the Conseil Constitutionnel has already had to hear cases relating to a restriction of the freedom to conduct a business based on the protection of the environment. Thus, it was seized regarding the prohibition of the use of substances of the neonicotinoid family[721] or the prohibition of the provision of certain plastic utensils.[722]

However, in those two a priori reviews which the Council had to carry out of the constitutionality of those provisions, it did not fail to point out that they concerned only a limited field, that of the French territorial market, and that, therefore, the interference with the freedom to conduct a business was not manifestly disproportionate to what was still only an objective of general interest, to conclude that the said provisions submitted to it were in conformity with it.

A. *Contextualization of the extranational concern*

Another case was much closer to the commented ruling, for which the Conseil Constitutionnel was seized of a constitutionality review, this time a posteriori, relating to the moratorium on bisphenol A.[723]

Accordingly, the Plastics Europe Association attacked here the legislative provisions of the Law of 30 June 2010 which suspended the manufacture, import, placing on the market, but also the export of packaging, containers or utensils containing bisphenol A. The legislative provisions subject to review, as well as the pleas put forward by the applicants, were therefore remarkably similar to the present case, except that the former were intended to prevent risks to human health and not to pursue an objective

720 Administrative Tribunal of Paris, February 3, 2021

721 Ruling No. 2016-737 DC of 4 August 2016

722 Ruling 2018-771 DC of 25 October 2018

723 Ruling n ° 2015-480 QPC of September 17, 2015

of protecting the environment.

However, this difference is irrelevant here since the protection of public health was enshrined as a constitutional principle as early as 1991. And despite this constitutional guarantee, which now also benefits environmental protection, the Conseil Constitutionnel had then dissociated, in their ruling, the situation of manufacture, import and placing on the market in France from that of export. And it was in the light of the latter that they censured the contested legislative provisions, considering that they constituted an infringement of the principle of freedom to conduct a business without justification, since they had no effect on the marketing of those products abroad, and therefore unlikely to contribute to the protection of health, without even examining the question of proportionality.

Without constituting, *stricto sensus*, a reversal of its case-law, given that the solution provided by the Conseil Constitutionnel, however unprecedented, relates to a case which is also unprecedented, the evolution of the latter's position is nevertheless notable in that, for the first time, the question of the effects produced by a legislative provision outside French territory justifies its ruling.

Three elements contained in the ruling of 31 January 2020[724] tend to support this postulate that the environment to be protected is no longer limited to the national territory.

First of all, the very purpose of the QPC presented by the UIPP, namely the ban on the export of unapproved substances established by the provisions of paragraph IV of Article L235-8 of the Rural and Maritime Fisheries Code,[725] in fact limits the examination carried out by the Conseil Constitutionnel to the sole question of the effect of the law outside the French borders.

It is also noteworthy that the legislative provisions in question go beyond those of the European regulation on which they are based. Regulation 1107/2009[726] provides for the framework of the authorisation by Member States of the placing on the market of plant protection products by making it subject to the approval by the EU of the substances they contain. However, in these provisions, it only refers to the placing on the European market, by expressly exempting said products from marketing authorization from third countries to the EU, where Article L235-8 of the Rural and Maritime Fisheries Code also refers to the export of those products.

Hence the complaint, the plea and the claim raised and relied on by the applicants: considering that the prohibition introduced infringed the constitutional principle of freedom to conduct a business and that, since the provisions in question had no effect

724 Décision n° 2019-823 QPC du 31 janvier 2020, Union des industries de la protection des plantes [Interdiction de la production, du stockage et de la circulation de certains produits phytopharmaceutiques]

725 Article L235-8 of the Rural and Maritime Fisheries Code

726 Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC

on the protection of the environment in so far as user countries could always obtain supplies from undertakings established in a State other than France, that interference is not linked to the objective of environmental protection and, therefore, is devoid of justification; Those provisions should therefore be found unconstitutional.

B. ***Application of the extranational concern***

The arguments mobilized by the Conseil Constitutionnel also support this hypothesis of extraterritorial recognition of the effects of the law.

For it is according to the preamble to the Charter on the Environment[727] that it bases its reasoning, in particular in that it aims, as recalled in recital 4, to "the future and the very existence of humanity," "the environment [is] the common heritage of mankind", or "the capacity of future generations and other peoples to satisfy their own needs." The textual wording of the new objective of constitutional value leaves no doubt as to its scope: "the protection of the environment, the common heritage of human beings."[728]

Finally, the Conseil Constitutionnel's reasoning confirms that environmental protection is no longer treated as territorially confined, but as capable of extending to the extraterritorial effects of domestic regulation.

In addition to the formal conformity of the contested legislative provisions, the complaint alleging infringement of the principle of freedom to conduct a business rejected, the Conseil Constitutionnel adopt an innovative and potentially replicable position, thus considering that "the legislature is justified in taking into account the effects that activities carried out in France may have on the environment abroad" (recital 6), or that "by doing (...) preventing companies established in France from participating in the sale of such products anywhere in the world and thus (...) the damage that may result to human health and the environment and even if, outside the EU, the production and marketing of such products are likely to be authorised, the legislator has infringed the freedom to undertake an infringement that is well in line with the value objectives" (recital 10).[729]

Consequently, it is both the precisely limited subject-matter of the present case and the arguments relied on by the Council and the conclusions which it draws from it in terms of the ruling and principles set out which seek to demonstrate that the protection of the environment must henceforth be understood in its global dimension.

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727 Loi constitutionnelle n° 2005-205 relative à la Charte de l'environnement, *JO*, n° 51, 2 mars 2005, p. 3697.

728 Ruling 2018-771 DC of 25 October 2018, recital 6

729 Ruling 2018-771 DC of 25 October 2018, recital 10

C. *The implications of the recognition of environmental protection as an objective of constitutional value on French domestic law*

If this ruling marks the emergence of concern for environmental protection at the international level, it will only have normative scope on French domestic law. The research will first consider the consequences of the advent of the new objective of constitutional value on the review of constitutionality, before attempting to identify the issues at stake for legislative action.

This ruling necessarily advances the legal scope of the preamble to the Environment Charter and provides the Conseil Constitutionnel with a new basis on which to exercise its review of constitutionality.

D. *The broadening of the domestic legal scope to articulate fundamental freedoms in the light of the protection of the environment.*

Although the protection of public health has been a constitutional principle since 1991, environmental protection has hitherto been recognised as an objective of general interest. And to be elevated to the rank of an objective of constitutional value is not without repercussions on the nature of the control exercised by the judges.

The latter themselves stress this in their comments on their ruling, stating that the Conseil Constitutionnel considers "that any limitation of the freedom to undertake a business must be justified by constitutional requirement or a reason of general interest in order to be declared in conformity with the Constitution,"[730] before specifying that once the infringement of the freedom to undertake and the existence of a constitutional requirement or a reason of general interest likely to bring the justify, it must then examine the proportionality of the attack on the objective pursued.

And this is where the nuance between the two qualifications comes in, and therefore the importance of the change of qualification, since the drafters of the commentary recall that "faced with an objective of constitutional value, the Conseil Constitutionnel exercises in principle a limited control of the absence of manifest disproportionality while it carries out a complete control in the face of a reason of general interest."[731]

In other words, the Conseil Constitutionnel provides itself with the means, by recourse to an objective of constitutional value of protection of the environment, the common heritage of human beings, to relax its review of proportionality, whether exercised a priori or a posteriori, between the infringements of the freedom to undertake established and the objective pursued.

Therefore, it is the question of the invokability in QPC[732] of the protection of the environment, common heritage of human beings, which may arise. And it is another

730 Ruling No. 2016-737 DC of 4 August 2016

731 Ruling No. 2016-737 DC of 4 August 2016

732 QPC is a question priority of constitutionality, or the constitutionality review introduced by the QPC is unprecedented on several points:

distinction that is mobilized by the drafters of the Conseil Constitutionnel's commentary on its ruling, that between an objective of constitutional value and a constitutional principle, guaranteeing rights and freedoms.

E. *The concretization of the evolution for consistency between climate and environmental law*

Thus, the constitutional value of the preamble to the Environmental Charter had already been recognized, but without instituting "a right or freedom guaranteed by the Constitution; that they [the seven paragraphs of which it is composed] cannot be relied on in support of a priority question of constitutionality."[733] And the drafters of the commentary go on to indicate that the consecration of a new objective of constitutional value of environmental protection does not constitute from this point of view an evolution of its jurisprudence, "since, with some exceptions, such objectives of constitutional value do not constitute rights or freedoms invokable in the context of a QPC."[734] The possibility is therefore, despite the notorious evolution of environmental protection, not yet open for the litigant to invoke it in support of a QPC. However, if this door remains closed for the time being, it is on the other hand new perspectives that are open to the legislator and new challenges that it faces in terms of environmental policy.

Before stating that "it is not for the Conseil Constitutionnel, which does not have a discretion and ruling of the same nature as that of Parliament, to call into question, in the light of the state of knowledge, the provisions thus taken by the legislator,"[735] the ruling had also stated that "it is for the legislature to ensure the reconciliation of the aforementioned objectives [protection of health and protection of the environment] with the exercise of freedom to undertake."

If these are reminders of principles already mobilized in previous rulings, the innovation here comes from the clarification made to the role of the legislator, "justified in taking into account the effects that the activities carried out in France may bring to the environment abroad."

And the Conseil Constitutionnel, by affirming the purpose of allowing the legislator to undermine a constitutional requirement not only "in the name of environmental protection understood as a concept limited to the national space, but to admit that the protection of the environment must be apprehended universally" and to "promote, as far as the area of French sovereignty is concerned, protective behaviour", regardless of the actions carried out or not by other States.

- the Conseil Constitutionnel, responsible for carrying out this control, can be contacted by any litigant involved in a trial via the Conseil d'État or the Court of Cassation.
- it is an *a posteriori* control (that is to say relating to texts already promulgated).
- it can give rise to the repeal of a law.

733 Preamble of the French Charter of the Environment, 2004

734 Ruling 2018-771 DC of 25 October 2018

735 Court of Auditors, summary No. S2019-2659 of November 27, 2019

If one will not go so far as to see it as a mission letter addressed to the legislator, since the Conseil Constitutionnel does not have such prerogatives with regard to politics, this is at least enough to offer it freedom of manoeuvre by relieving it of the need to limit its action under the threat of censorship of legislative provisions for some reason of territoriality. In this respect, such a ruling is hopefully likely to provide judicial support to Parliament in front of lobbies, which are highly active in this area.

It is also a ruling to encourage more ambition in the legislator's environmental policy. It is just as much a ruling that resonates with the summary sent to the Prime Minister by the Court of Auditors on November 27, 2019,[736] or the recent condemnation of the State by the Administrative Tribunal of Paris,[737] two rulings that explicitly point to the responsibility of the executive in the shortcomings of the State in terms of environmental protection.

As a result, at a time when the executive is increasingly on legislative initiative, this ruling may help to preserve (if not already restore) the balance in the distribution of powers, especially since it is Parliament that benefits from the electoral base and therefore from democratic legitimacy on the one hand and the prerogative of control of the executive on the other, because the Conseil Constitutionnel also indirectly supports, by its ruling, an increasingly strong citizen's aspiration.

The relationship between EU Climate Law and Environmental Law is complex and multifaceted. While their scopes and primary objectives may differ—climate law often focuses on limiting global temperature rise (e.g., the 1.5°C target), whereas environmental law traditionally emphasizes the preservation of biodiversity, natural resources, and ecosystems—there are numerous instances where the two regulatory approaches coincide and reinforce each other. For example, measures aimed at preserving forests and wetlands not only protect biodiversity but also enhance carbon sequestration, directly contributing to climate mitigation goals. Similarly, the restoration of natural habitats can serve both environmental and climate objectives by increasing ecosystem resilience and CO_2 absorption capacity.

However, tensions can arise in specific contexts. For instance, certain climate mitigation projects, such as large-scale renewable energy installations or afforestation with non-native species, may have unintended negative impacts on local biodiversity or ecosystem integrity. Conversely, strict environmental protection measures may sometimes limit the deployment of climate infrastructure.[738] Therefore, rather than a strict opposition, the interaction between climate law and environmental law should be seen as a dynamic relationship that can involve both synergy and conflict, depending on the regulatory context and the specific measures implemented.

In fine, the relationship between EU Climate Law and Environmental Law is not

736 Idem

737 Administrative Tribunal Paris, February 3, 2021

738 Woolley O. Climate Law and Environmental Law: Is Conflict between Them Inevitable? In: Mayer B, Zahar A, eds. *Debating Climate Law*. Cambridge University Press; 2021:398-411. : The expansion of bioenergy crops for renewable energy can lead to habitat loss and reduced biodiversity if not carefully managed, illustrating a potential conflict between climate mitigation and environmental protection.

one of inherent opposition, but rather one of potential synergy and occasional conflict. It is essential to assess, on a case-by-case basis, whether specific climate measures align with or diverge from environmental protection goals, and to design policies that maximize co-benefits while minimizing trade-offs. This confirms that environmental protection can operate as a constitutional proxy for climate governance only imperfectly, because the legal test remains structured around economic freedoms and proportionality rather than around climate neutrality as a hierarchically guiding norm.

To sum up, subsection 3.1.2. illustrates that the progressive inclusion of an extranational concern in climate jurisprudence reflects a structural adaptation of judicial reasoning to the transboundary nature of climate change. Rather than extending existing environmental doctrines, courts recalibrate concepts of responsibility, standing, and causation to accommodate systemic and diffuse harm beyond territorial limits. By analysing this jurisprudential evolution through the lens of implementation, this research demonstrates that extranational judicial reasoning operates less as an expansion of jurisdiction than as a functional response to the inadequacy of territorially bounded legal frameworks in addressing climate governance.

Synthesis – Section 3, Chapter 2, Part II: The (Un)natural Conciliation of Environmental and Climate Policies

The analysis of the relationship between environmental law and climate law demonstrates that their conciliation within the EU legal order is neither natural nor structurally resolved. Despite their shared objectives of environmental protection, the two bodies of law pursue distinct normative logics, operational timelines, and regulatory priorities, which complicate their simultaneous implementation.

Climate law, as institutionalised through EU Climate Law and its implementing instruments, is oriented toward rapid decarbonisation and the achievement of quantifiable targets within fixed temporal horizons. Environmental law, by contrast, remains grounded in principles of precaution, prevention, and ecosystem protection, which require contextual assessment and long-term ecological balance. The analysis shows that the integration of climate objectives does not subsume environmental law, but instead generates normative tensions, particularly where climate mitigation measures produce adverse environmental effects.

This tension is most visible in policy areas such as renewable energy deployment, land use, biodiversity conservation, and industrial regulation. Climate-driven measures may conflict with habitat protection, species preservation, or pollution control requirements, revealing that climate action does not automatically equate to environmental protection. The legal framework governing these interactions does not provide a clear hierarchy capable of resolving such conflicts *ex ante*. Instead, conciliation is managed through case-by-case balancing, often delegated to administrative authorities or courts.

The duty of integration enshrined in EU law does not eliminate these frictions.

Rather than ensuring systematic alignment between climate and environmental objectives, it operates as a procedural obligation requiring consideration, not prioritisation. As a result, environmental law retains its autonomous constraints, while climate law advances through targeted exemptions, derogations, or adaptive interpretations. This confirms that climate law functions as a *sui generis* regime, interacting with—but not replacing—the existing environmental acquis.

Judicial practice further illustrates the limits of conciliation. Courts increasingly recognise climate obligations as legally binding yet continue to assess environmental impacts through established environmental law standards. This dual scrutiny reinforces the absence of a unified normative framework and highlights the judiciary's role in arbitrating conflicts that the legislative framework leaves unresolved. While judicial intervention provides corrective mechanisms, it does not substitute for structural coherence.

Taken together, the analysis confirms that the conciliation of environmental and climate policies within EU law remains structurally unstable. The coexistence of parallel regimes produces legal uncertainty and fragmented implementation, particularly where climate urgency pressures established environmental safeguards. This finding underscores a central limitation of EU climate governance: without a framework capable of articulating clear priorities and procedural safeguards, the interaction between climate and environmental law is managed reactively rather than systematically.

This reinforces the broader argument developed in Part II: climate law's integration across policy domains exposes the limits of consistency and integration as implementation tools. The unresolved tension between climate ambition and environmental protection further justifies the shift, in the subsequent Part, toward governance and procedural mechanisms capable of managing conflict, accountability, and legitimacy under the rule of law.

The foregoing analysis demonstrates that the relationship between environmental law and climate law within the EU legal order is characterised by structural tension rather than seamless alignment. Judicial practice reveals that environmental protection cannot function as a fully adequate proxy for climate governance, as the legal tests applied remain anchored in proportionality, economic freedoms, and sector specific objectives rather than in climate neutrality as a guiding norm. These findings expose the limits of resolving climate–environment conflicts solely through adjudication and case-by-case balancing.

This diagnosis calls for a broader inquiry into the scope of EU Climate Law itself. If climate objectives are not hierarchically prioritised within environmental law, the question shifts from conciliation to implementation: how, and to what extent, does EU Climate Law structure the action of Union institutions and Member States across the policies it affects? Section 3.2 therefore turns to a theorisation of the implementation of EU Climate Law, examining its capacity to operate as a transversal normative framework shaping Union policies beyond the environmental field, and assessing the legal techniques through which climate objectives are translated into concrete obligations within the EU's multi-level governance system.

3.2. The Scope of EU Climate Law: Implementation as a Transversal Legal Constraint

Subsection 3.2. examines the scope of EU Climate Law cannot be reduced to a logic of policy integration or climate mainstreaming. Its implementation does not merely influence Union policies *ex post* but operates *ex ante* as a legal constraint shaping how objectives are formulated, balanced, and justified across policy domains. This section therefore theorises the scope of EU Climate Law as an implementation dynamic that conditions Union action without formally redefining competences.

Perhaps the most profound challenge illuminated by this analysis is the so-called "climate trilemma"—the difficulty of simultaneously achieving deep environmental integration, preserving the internal market, and ensuring climate equity. The pursuit of one objective often comes at the expense of the others, and the trade-offs inherent in climate policy design are both technical and political. Implementing a carbon tax, for example, can effectively reduce emissions but may increase energy costs for consumers and businesses, disproportionately affecting low-income households. Similarly, promoting renewable energy can drive economic growth and reduce emissions but may require significant investments and subsidies, which can strain public finances and create disparities in access to clean energy.

The EU's experience demonstrates that the integration of climate law into its internal policies is an ongoing and dynamic process, shaped by legal innovation, political negotiation, and the evolving expectations of European society. The challenge of balancing climate and economic objectives is not merely a technical or legal issue, but a fundamental test of the Union's capacity for adaptive, coherent, and forward-looking governance.

Understanding the scope of EU Climate Law in this way brings to light a set of structural tensions inherent in its implementation. Chief among these is what this section conceptualises as the *climate trilemma*: the difficulty of simultaneously achieving deep environmental integration, preserving the internal market, and ensuring climate equity. The pursuit of any one of these objectives tends to constrain the others, revealing trade-offs that are not merely political or technical, but legally embedded in the Union's governance framework.

In order to theorise this tension with sufficient conceptual rigour, the section proceeds in two steps. Subsection 3.2.1 situates the analysis within the broader intellectual genealogy of trilemma thinking, drawing on political economy frameworks developed to explain structural trade-offs in systems of deep integration. Subsection 3.2.2 then transposes this analytical logic into the EU legal order, developing the concept of a climate trilemma as a specifically legal configuration that shapes the scope and implementation of EU Climate Law.

3.2.1. The Genesis of Trilemma Thinking: Structural Trade-offs in Integrated Legal Orders

Before turning to the climate trilemma as a feature of EU Climate Law, it is necessary to briefly examine the origins and function of trilemma thinking as an analytical framework for understanding structural constraints in integrated legal and economic orders. Trilemma frameworks originate in political economy as a means of capturing the structural trade-offs inherent in systems characterised by deep integration. Rather than attributing governance failures to policy errors or contingent crises, trilemma thinking highlights the incompatibility of certain objectives when pursued simultaneously at their highest intensity. In this sense, trilemmas do not describe temporary dysfunctions, but enduring constraints that legal and institutional arrangements must manage rather than resolve.

The first misconception is that crisis is a virtue, as it stimulates innovation, etc.[739] The internal market is overregulated with sanitary rules, financial institutions are not sufficiently involved in the climate mitigation process, and rights are not implemented to the full extent of their content. These have some truth but miss the point: the structural problems induced by EU Climate Law as such. To understand this, two tools are useful: the incompatibility of Mundell and political trilemma Rodrik triangle.

Based on Mundell's trilemma well-known monetary trilemma elaborates that a country (or a monetary union such as the Eurozone) cannot implement the following three policies simultaneously: free movement of capital, fixed exchange rates, and policy independence monetary.[740] A financial trilemma has been added to the monetary trilemma: according to Dirk Schoenmaker, financial stability, financial integration, and national financial policies are incompatible.[741] The reading grid for understanding the euro is well known it is the theory of optimum currency area; the starting point is the incompatibility triangle Mundell. It is impossible to have simultaneously a group of countries:

- Open capital flows
- Fixity of exchange rates
- Monetary policy independently in different countries.

The trilemma presents as follows[742] :

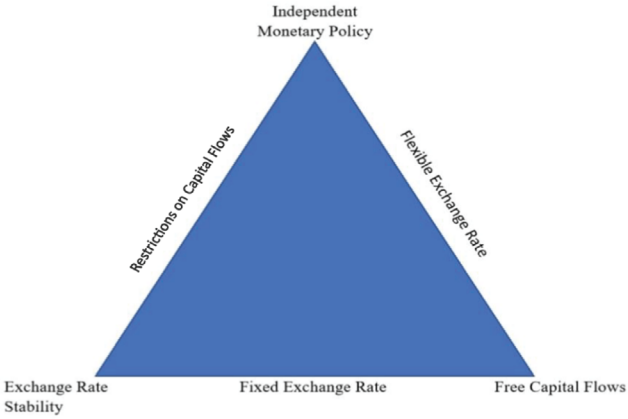
739 X. Kuangfei. (2015). The Crisis of Modern Virtues and the Possible Ways to Rebuild the Virtues. Education Journal. 4. 245. 10.11648/j.edu.20150405.19.

740 R. Mundell, (1963). "Capital mobility and stabilization policy under fixed and flexible exchange rates". *Canadian Journal of Economics and Political Science*. **29** (4): 475–485. doi:10.2307/139336

741 D. Schoenmaker, The Financial Trilemma (February 10, 2011). Economics Letters, Vol. 111, 2011, p. 57-59; Duisenberg School of Finance - Tinbergen Institute Discussion Papers No. TI 11-019 / DSF 7, Available at SSRN: https://ssrn.com/abstract=1340395 or http://dx.doi.org/10.2139/ssrn.1340395

742 J. Aizenman, A modern reincarnation of Mundell-Fleming's trilemma, Economic Modelling, Volume 81, 2019, Pages 444-454, ISSN 0264-9993, https://doi.org/10.1016/j.econmod.2018.03.008.

Scheme 1. The Monetary Trilemma



It can, at best, be only two of the three. Then the question is under what circumstances, any combination is possible. The choice of financial integration and the single currency is the euro area. This is what is also prevalent within the USA, between different states that share the dollar. It is therefore to ask whether the loss of autonomy of monetary policy across countries may also be perceived as a big issue.

It can become if there are too great economic differences between different areas sharing the same currency. If a region is experiencing a recession, the standard response is to change monetary policy, which lowers the interest and exchange rates, raising demand. If this option does not exist, it is possible to play fiscal policy (except that public resources are limited, especially in a recession); the inevitable alternative is an adjustment cost, i.e., wage deflation that restores competitiveness and profitability.

In the euro area, these two factors do not play: the European budget is somewhat cyclical; labour mobility is low, even if only because of language problems. The desired economic convergence has not occurred, quite the opposite. The single monetary policy has been adapted to the euro area average, but unsuitable for all countries in particular. It amplified, including speculative bubbles (real estate or securities of Greek debt) and created huge shifts today in competitiveness between countries. Convergence mechanisms between public budgets proved to be delicate, the convergence of interest rates even encouraging budgetary differences. There are therefore now three possibilities described by Roubini:[743]

– A significant fiscal federalism, in which the debts of peripheral states are supported by the EU, with an increased thereof on national economic policies in exchange control.

743 Gabrisch, Hubert (2020). "Elements, origins and future of Great Transformations: Eastern Europe and global capitalism," *The Economic and Labour Relations Review*, 31(2), pp. 172–190

– A partial default of the peripheral countries, with a sharp devaluation of the euro to restore, at least partially, their competitiveness. But this would require the European Central Bank inadequate policy for the countries of the heart; it has no reason to carry. Not to mention the systemic consequences of these defects could cause another major financial crisis.

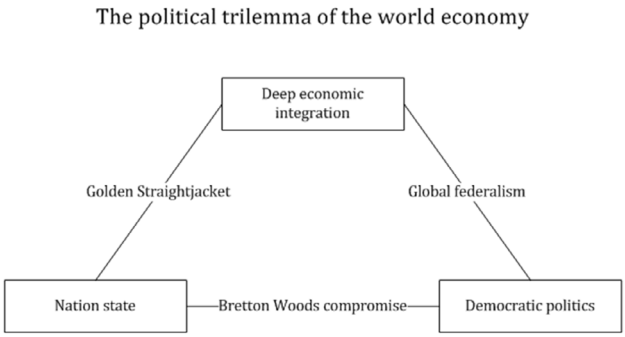
A recovery device through structural reforms, prolonged deflation, and austerity to eventually restore national fiscal savings. Except that it involves a period of recession so long without hope things improve quickly because austerity amplifies the budgetary problems and private debt.

While Mundell's monetary trilemma illustrates how economic integration generates unavoidable constraints on policy autonomy, it does not fully account for the political and democratic implications of such constraints. These dimensions are more explicitly addressed by Rodrik's political trilemma, which extends the logic of incompatibility to the relationship between economic integration, state sovereignty, and democratic governance. The relevance of Mundell's trilemma for EU Climate Law lies not in monetary policy itself, but in its demonstration that legal systems organised around integration generate unavoidable structural trade-offs.

This logic becomes directly relevant when climate objectives are elevated to binding Union-wide constraints. The Rodrik trilemma is as follows.[744] It is impossible to have simultaneously:

– Deep economic integration (free trade flows open, single currency capital, etc.)
– Sovereign nation-states
– Democracy

Scheme 2. The Political Trilemma of the World Economy[745]



744 D. Rodrik, The inescapable trilemma of the world economy, 2007. However, it must be nuanced that the notion of market populism in 1933 (replaced by Golden straitjacket in 1999) was replaced by European economic integration instead, as it was more fitting for politics in the US than European ones. Thomas L. Friedman, who coined this expression, explains it as the concept that the free market is more democratic than any political democracy (Friedman, Thomas L. (2000). *The Lexus and the Olive Tree*. Anchor Books. pp. 252–253. ISBN 978-0-385-49934-7).

745 Idem

The trilemma argues that it is not possible to have two of the three. Indeed, economic integration requires a competition between States that limit their ability to adopt interventionist policies that people want. The government can then either choose to ignore the will of the people and preserve this way its freedom of choice; or decide to abandon its sovereignty and democratic aspirations transfer to supranational bodies.

Before the First World War, under the gold standard, people did not have their say in national policies. It was therefore possible to have a world composed of nation-states economically highly integrated, in which people had to endure episodes of sustained deflation. Bretton Woods was a compromise: limited economic integration, and the exercise of democracy within sovereign states. Victim of its own success, this compromise proved not to be working.

The Rodrik trilemma thus illustrates the problem of European economic integration. It aims it to move to the single currency requires either abandon national sovereignty or democracy. Interestingly, the EU has chosen not to choose. Monetary policy was transferred to a technocratic instance, the European Central Bank, on which limited direct democratic contestation mechanisms exist at the level where key climate-related constraints are formulated and operationalised. Fiscal policy has remained as a competence to the Member States' sovereignty and democratic choice. The current crisis is, among others, the expression of this lack of choice. It is also a result of a growing competence, shared between the EU and its Member States.

These trilemma frameworks demonstrate that systems organised around deep integration are structurally prone to tensions that cannot be eliminated through doctrinal balancing alone. They provide a conceptual vocabulary for understanding how binding supranational objectives generate legal constraints that reshape governance without necessarily altering formal competences. It is against this background that the climate trilemma can be theorised as a distinctive feature of EU Climate Law.

3.2.2. The Climate Trilemma and the Scope of EU Climate Law

When transposed into the EU legal order, trilemma thinking sheds light on the structural conditions under which EU Climate Law is implemented. The climate trilemma does not operate as an abstract political dilemma, but as a concrete legal configuration structured by Union law. It conceptualises EU Climate Law implementation as a balancing exercise between three legally embedded objectives that cannot be fully realised simultaneously: deep environmental integration, internal market preservation, and climate equity. Each of these objectives is anchored in distinct legal obligations, constraints, and governance techniques, which together shape the scope of EU Climate Law through its implementation rather than through the formal reallocation of competences. The notion of a "climate trilemma"[746] builds on established politi-

746 The notion of a "climate trilemma" draws on a broader body of political-economy and climate-governance literature analysing the structural tensions between environmental sustainability, economic objectives,

cal -economy trilemma frameworks,[747] which conceptualise climate governance as a balancing exercise between environmental protection, economic growth, and social equity. This concept is particularly relevant in the context of climate policies, where achieving one objective often comes at the expense of the others. Drawing on the climate governance- and political economy literature, climate law implementation can be understood through a trilemma framework structured around three competing objectives-: environmental protection, internal -market preservation, and social (or climate) equity. This integration operates primarily through procedural and justificatory obligations—such as target setting-, consistency requirements, and review mechanisms—rather than through the harmonisation of substantive regulatory outcomes.

The first vertex of the climate trilemma concerns deep environmental integration as a legally binding objective of Union action. First, deep environmental integration reflects the Union's commitment to climate neutrality and environmental protection as legally binding objectives. This dimension is primarily articulated through EU Climate Law, which establishes quantified targets and procedural obligations requiring Union institutions and Member States to ensure that all policies contribute to the achievement of climate neutrality. It is further operationalised through sectoral legislation adopted under the European Green Deal and the "Fit for 55" package, which embeds climate objectives into fields such as energy, transport, industry, and agriculture. In legal terms, this vertex is characterised by an *ex-ante* constraint: climate objectives structure the formulation, justification, and review of regulatory choices without necessarily harmonising substantive outcomes. Deep economic integration is increasingly conditioned by the integration of climate objectives into internal market regulation, without displacing the underlying competence framework. While EU environmental law traditionally pursues the protection of natural resources and ecosystems under Article 191 TFEU, EU Climate Law introduces a distinct regulatory logic centred on quantified mitigation objectives and long-term neutrality targets, which may at times pull in different normative directions.

The second vertex reflects the continued centrality of the internal market as a

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and social or distributive concerns. Trilemma frameworks have been widely used to conceptualise trade-offs in global governance, notably in relation to economic integration and development (see D. Rodrik, *The Globalization Paradox*, Oxford University Press, 2011; and D. Rodrik, "A New Trilemma: Climate Change, Trade, and Development", Harvard Kennedy School, 2021). Similar balancing logics are also reflected in climate and energy governance debates, particularly in discussions of sustainability, affordability, and equity (see World Energy Council, *World Energy Trilemma* reports; and I. Noy & T. Uher, "The Climate Adaptation Trilemma," *Economic Policy*, 2025). This thesis adopts the trilemma as an analytical framework to examine how these competing objectives are managed within EU internal market law, litigation and a deep or global environmental integration.

747 D. Rodrik, The inescapable trilemma of the world economy, 2007. However, it must be nuanced that the notion of market populism in 1933 (replaced by Golden straitjacket in 1999) was replaced by European economic integration instead, as it was more fitting for politics in the US than European ones. Thomas L. Friedman, who coined this expression, explains it as the concept that the free market is more democratic than any political democracy (Friedman, Thomas L. (2000). *The Lexus and the Olive Tree*. Anchor Books. pp. 252–253. ISBN 978-0-385-49934-7).

structural discipline on climate-related regulation. The preservation of the internal market constitutes a structural counterweight to deep climate integration. The internal market's foundational principles—free movement, non-discrimination, competition discipline, and the prohibition of unjustified fragmentation—continue to govern the legality of climate-related measures. Climate action is therefore implemented within a legal environment that subjects regulatory intervention to proportionality review, State aid control, and competition law constraints. This explains why climate objectives are accommodated through conditional compatibility, selective exemptions, and case-by-case balancing rather than through categorical derogations from market rules.

Within the climate trilemma, the preservation of the internal market functions as a federalising constraint, in the sense that it centralises legal standards of justification and review without fully pre-empting Member State regulatory autonomy. EU Market Law implies a free movement of goods, capitals, services, and people. The internal market continues to operate as a structural discipline on climate measures, requiring their justification within proportionality, non-discrimination, and competition frameworks rather than allowing categorical priority to climate objectives. For instance, goods of wastes and less polluting vehicles, services for energy supply, free capital movements including blue bonds and person with the freedom of establishment, allowing for disincentives and incentives regarding the nature of the company from eco-friendly to eco-responsible.

The third vertex introduces a distributive dimension that complicates both regulatory design and institutional legitimacy. Climate equity introduces a distributive and social dimension into the implementation of climate law. Climate policies generate uneven economic and social effects across regions, sectors, and populations, raising issues of energy poverty, access to clean technologies, and the fair allocation of transition costs. It concerns the fair distribution of the costs and benefits of climate policies across social groups and territories. It encompasses issues such as energy poverty, access to clean technologies, and the disproportionate exposure of vulnerable populations to climate impacts. Addressing these concerns often necessitates targeted support mechanisms, adding further complexity to climate policy design. U climate law addresses distributive concerns primarily through ancillary instruments—such as compensatory funds, social climate mechanisms, and targeted support schemes—rather than through enforceable equity based legal obligations. This dimension therefore remains the least institutionalised within EU climate governance, yet it exerts increasing pressure on the design and legitimacy of climate measures.

The climate trilemma thus captures a structural reality of EU Climate Law implementation: none of these objectives can be fully realised without constraining the others. Deep environmental integration is limited by internal market discipline; market preservation is challenged by the scale of climate intervention required; and climate equity complicates both regulatory design and institutional legitimacy. EU Climate Law navigates this trilemma not by resolving it, but by managing it through implementation techniques that prioritise coordination, proportionality, and proceduralisation over hierarchical ordering.

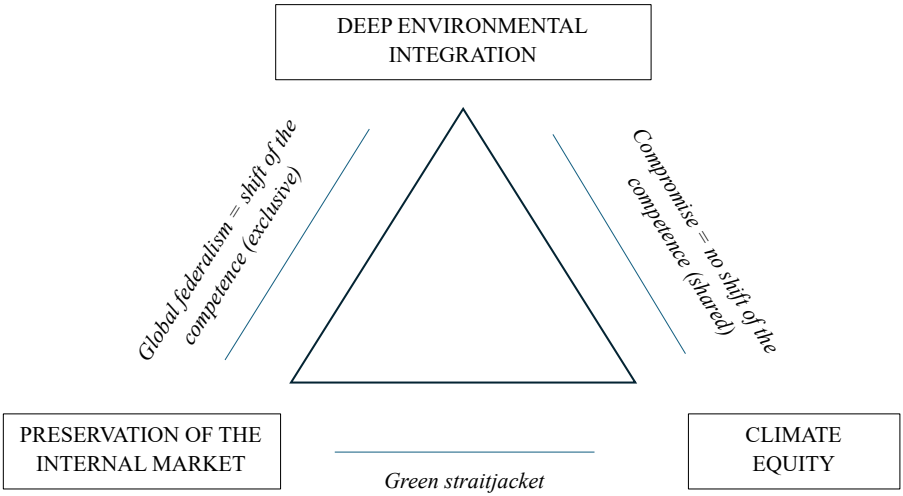
The objective of EU Climate Law, grounded in the Paris Agreement, is not merely to reduce emissions incrementally, but to preserve the conditions of life compatible with limiting global warming to 1.5 °C. When taken seriously, this objective implies a paradigmatic shift in the Union's legal order: climate law is no longer conceived as an exception to internal market or environmental policies, but as a transversal constraint that must be fully integrated into their design and implementation.

This shift, however, carries structural risks. The full integration of climate objectives may lead to what can be described as a "green straitjacket," whereby climate imperatives justify regulatory choices that themselves generate environmental or social harm. The 'green straitjacket' designates a legal configuration in which the elevation of climate objectives to transversal constraints risks narrowing the scope of proportionality assessment and justificatory pluralism, thereby legitimising regulatory choices that generate new environmental or social externalities without adequate corrective mechanisms. These tensions illustrate that climate integration does not automatically equate to environmental coherence, and that climate law may, in certain configurations, hinder rather than reinforce other environmental objectives.

The implementation of EU Climate Law also raises acute questions of democratic legitimacy. Climate-related rulings are increasingly adopted at Union or international level, often through technocratic processes justified by urgency and expertise. While this does not amount to a disappearance of national sovereignty—given the involvement of both the European Parliament and national parliaments in climate-related legislation—it does contribute to a perception of distance between climate governance and democratic accountability. As previous economic crises have shown, including the management of the eurozone, policies adopted against prevailing public opinion may achieve short-term stability at the cost of long-term legitimacy.

Transposed to climate governance, these dynamic risks producing a form of normative imbalance: ambitious climate objectives are asserted at Union level, yet their implementation may be perceived as insufficient, socially inequitable, or environmentally inconsistent, a perception increasingly echoed in judicial scrutiny. This confirms that the scope of EU Climate Law cannot be assessed solely through the ambition of its objectives but must be evaluated through the legal and institutional conditions under which those objectives are implemented.

Scheme 3. The EU Climate Trilemma[748]



The climate trilemma is evident in various policy debates and rulings. For example, implementing a carbon tax can effectively reduce emissions (environmental protection) but may increase energy costs for consumers and businesses (economic growth) and disproportionately affect low-income households (social equity). Similarly, promoting renewable energy can drive economic growth and reduce emissions but may require significant investments and subsidies, which can strain public finances and create disparities in access to clean energy.

The term "Green Straitjacket" in the context of *deep environmental integration and climate equity* is to be part of a broader discussion on balancing environmental protection (deep environmental integration) with economic growth (internal market preservation). The concept refers to the constraints and regulations imposed to ensure climate sustainability, which can sometimes be seen as restrictive or limiting economic and environmental activities. The "Green Straitjacket" is mentioned alongside other key concepts such as *global federalism, climate equity, and the preservation of the internal market.* This suggests that the Green Straitjacket is part of the framework aimed at achieving a balance between environmental goals, climate change(s), and economic policies.

The idea is that while these environmental regulations may seem restrictive, they are necessary to achieve long-term sustainability and climate goals. This concept is part of a larger discussion on how to integrate environmental considerations into various policies and ensure that economic activities do not compromise environmental integrity.

To address the climate trilemma, policymakers need to adopt a holistic and

748 Composed by the author

integrated approach that considers the interdependencies and trade-offs between these three objectives. This involves designing policies that maximize synergies and minimize conflicts, such as investing in green technologies that create jobs and reduce emissions or implementing social safety nets to protect vulnerable populations from the impacts of climate policies.

In conclusion, the climate trilemma underscores the complexity of achieving sustainable development in the face of climate change. By recognizing and addressing the trade-offs between environmental protection, economic growth, and social equity, policymakers can develop more effective and equitable climate strategies.

To sum up, the scope of EU Climate Law is revealed through its mode of implementation rather than through the material extension of its policy reach. By theorising climate law as a transversal legal constraint, this research demonstrates that its impact lies in structuring how Union policies are designed, justified, and legally balanced, rather than in harmonising their substantive content. The originality of this approach resides in identifying implementation as the decisive vector through which climate objectives permeate Union action, producing legal effects across policies without altering the formal distribution of competences.

Synthesis – Chapter 2, Part II: The Integration of EU Climate Law: The Obligation for a Consistent and Coherent EU Framework

The integration of EU Climate Law into the Union's internal policies marks a profound transformation in the legal and institutional architecture of the EU. This chapter has demonstrated that EU Climate Law, by setting binding targets for climate neutrality and embedding climate objectives across all policy domains, has fundamentally altered the way the EU approaches the interplay between environmental ambition, economic integration, and social cohesion.

A central finding of this analysis is the pivotal role of the duty of consistency, as articulated in Article 7 TFEU, in ensuring that all EU policies and activities are mutually supportive and contribute to the achievement of the Union's climate objectives. The chapter has shown that the implementation of climate law within the internal market is characterized by both opportunities and persistent tensions. On the one hand, the jurisprudence of the CJEU has provided a framework for reconciling climate-related measures with the principles of free movement and economic integration, allowing for the development of environmental exceptions and the evolution of legal doctrines that support climate ambition. On the other hand, the diversity of national circumstances and the multi-level structure of EU governance continue to pose challenges for the uniform application and effectiveness of climate policies.

The chapter has also highlighted the emergence of new governance mechanisms and regulatory instruments, such as the modernization of competition policy, CEEAG, and the increasing role of independent administrative authorities. These innovations have enabled Member States to direct unprecedented levels of public support toward

renewable energy, decarbonization, and clean technologies, while also raising questions about the balance between innovation, market integrity, and climate ambition. The analysis has underscored the importance of legal adaptability, procedural justice, and institutional innovation in achieving effective and legitimate climate governance.

Moreover, the chapter has emphasized the significance of the feedback loop between internal and external policies. The credibility and effectiveness of the EU's internal climate action are intricately linked to its external commitments and international leadership. The Union's ability to deliver on its climate objectives depends not only on the robustness of its internal legal framework but also on the consistency of its domestic implementation and its capacity to adapt to evolving scientific, economic, and social realities.

The Chapter therefore confirms a central limitation of EU Climate Law: the obligation for a consistent and coherent framework is insufficient, on its own, to support the systemic integration required by climate neutrality. Consistency manages coexistence; it does not ensure transformation. The persistence of asymmetries, conflicts, and contingent accommodations demonstrates that integration through coordination cannot substitute for governance structures capable of articulating priorities, managing conflict, and ensuring compliance.

In conclusion, the integration of climate law into the EU's internal policies is both a reflection of and a catalyst for the broader transformation of the Union's legal and economic order. The duty of consistency is not merely a formal requirement but a practical necessity for ensuring that the EU's internal actions are aligned with its external commitments and capable of delivering the transformative change required to address the climate crisis. As the Union continues to refine its approach, the lessons drawn from this chapter highlight the need for holistic strategies that recognize the interconnectedness of legal domains, the necessity of procedural and substantive consistency, and the importance of maintaining both environmental ambition and economic resilience on the path toward climate neutrality.

Synthesis – Part II: the integration of EU Climate Law: the obligation for a consistent and coherent EU framework

Part II has demonstrated that the integration of EU Climate Law is best understood through the prism of coherence as a legal and institutional constraint that operates across two interconnected arenas: the Union's external action and its internal policy regimes. This Part's central contribution is to show that coherence is not a static attribute of the EU legal order but a constrained and dynamic process, produced through what this thesis conceptualizes as the "climatization" of Union action—i.e., the progressive transformation of climate objectives from peripheral considerations into structuring parameters of legal reasoning and policy design.

Externally, Part II has shown that the duty of coherence functions under conditions of legal constraint. WTO disciplines and the logic of trade liberalization impose

structural limits on climate-related trade measures, which means that external climate coherence cannot be assumed as an outcome of ambition alone. The Union's response is not simply to "fit" climate within trade law, but to diversify external instruments (FTAs, climate clauses, CBAM) and to rely increasingly on the internal consolidation of EU climate governance as the precondition for projecting coherence beyond its borders. The resulting finding is precise: external climate coherence is a constrained and evolving construction, and its credibility depends on the robustness of internal legal consolidation and governance capacity.

Internally, this Part has identified a doctrinal shift that is central to the thesis's originality: climate objectives are no longer confined to the logic of exception but increasingly operate as internal parameters that reshape how core areas of EU economic law are interpreted and applied. This is visible in internal market reasoning, where "climatization" progressively modifies the legal treatment of restrictions and justifications, and in competition law, where the incorporation of climate objectives is real but asymmetrical. The thesis's contribution here is to diagnose that competition law climatizes unevenly—more permissively through State aid frameworks and Commission guidance than through a comprehensive recalibration of the competitive order—thereby exposing both the possibilities and limits of using competition law as an instrument of climate governance.

Finally, Part II has articulated an overarching interpretive lens—the "climate trilemma"—to capture the structural trade-offs that coherence must manage within the EU legal order: deep environmental integration, internal market preservation, and climate equity cannot be simultaneously maximized without legal and political trade-offs. This trilemma is not merely descriptive; it functions as an explanatory framework for why coherence problems persist across both external and internal dimensions, and why EU Climate Law integration necessarily generates tensions rather than eliminating them.

The overall conclusion of Part II is therefore not that coherence is a desirable aspiration, but that it is the operative condition for EU Climate Law to function across domains governed by different logics and constraints. By theorizing "climatization" and by showing its differentiated effects in external relations and internal economic governance, this Part provides the conceptual bridge to the subsequent analysis of governance and implementation, where the question becomes how institutional design, enforcement mechanisms, and adjudication can stabilize (or fail to stabilize) coherence and consistency over time.

The analysis conducted in Part II has shown that the integration of EU Climate Law is structurally conditioned by the requirements of consistency and coherence within a legal order originally designed around economic integration and sectoral governance. While these mechanisms are essential to prevent fragmentation and manage normative coexistence, they also reveal their limits: coherence can organise coordination, but it cannot resolve conflicts or establish hierarchy between competing legal rationales.

These limits become particularly salient when climate obligations are subjected to judicial scrutiny. Part III therefore turns to climate litigation as a site where the tensions identified in Part II are not merely managed but actively tested. It examines how

courts—at both Union and national level—interpret, enforce, and sometimes recalibrate climate obligations, and whether judicial review operates as a corrective mechanism capable of transforming climate objectives into enforceable legal constraints within the EU legal order.

PART III. THE IMPLEMENTATION OF EU CLIMATE LAW: RESHAPING CLIMATE LITIGATION AT THE EUROPEAN LEVEL?

While the preceding parts of this thesis have examined the normative foundations and structural implications of EU Climate Law, they have not yet addressed a decisive dimension of its operation: the conditions under which climate objectives are translated into enforceable legal obligations. Part III therefore shifts the analysis from the construction of climate normativity to its institutional and judicial implementation, focusing on the mechanisms through which EU Climate Law is applied, contested, and ultimately rendered effective. Beyond the allocation of competences and the integration of climate objectives into the Union's legal framework, EU Climate Law raises a fundamental question of implementation: how, and to what extent, climate objectives become enforceable through litigation. Rather than treating implementation as a purely technical or administrative phase, this part advances the argument that implementation choices—particularly those mediated through judicial processes—play a constitutive role in shaping the effectiveness, coherence, and legitimacy of the Union's climate action.

Therefore, the adoption of EU Climate Law[749] marks a pivotal moment in the evolution of climate governance within the EU. By enshrining the objective of climate neutrality by 2050 and setting binding intermediate targets, EU Climate Law has transformed the legal landscape, establishing a new paradigm for both national and supranational action on climate change.[750] However, the central question addressed in this part is therefore not whether climate objectives exist, but how—and to what extent—they become enforceable through litigation, and with what consequences for institutional balance and democratic accountability. Part III of this thesis is dedicated to a critical examination of the implementation of EU Climate Law, with a particular focus on the role of litigation, the evolution of governance structures, and the emergence of climate justice as a central concern in European legal discourse.

The analysis developed in this part adopts a doctrinal and jurisprudential approach, grounded in the examination of legislative instruments, judicial rulings, and institutional practices at both national and European levels. Rather than treating litigation as a peripheral phenomenon, this approach considers judicial reasoning as a central site for the specification and operationalisation of climate objectives. By analysing case law as an expression of legal normativity in action, this part assesses how abstract climate commitments are translated into enforceable obligations, how standards of review and remedies evolve in response to systemic climate claims, and how courts position themselves within the broader architecture of EU climate governance. This

749 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('EU Climate Law')

750 Evans, Nick, Deyana Kocher, Nora Kögel, Matthias Duwe (2023): The landscape of national climate framework laws in Europe: A status update. Ecologic Institute, Berlin.

method makes it possible to capture both the normative and institutional dimensions of implementation, while remaining attentive to the limits of judicial intervention in a field characterised by scientific uncertainty and political discretion.

The increasing legal bindingness and temporal horizon of EU climate objectives raises fundamental questions as to the role of litigation within the Union's climate governance framework. As climate neutrality targets are formulated in long-term, scientifically grounded terms, traditional models of judicial review — centred on discrete regulatory acts and immediate legal effects — appear increasingly strained. This raises the question of whether, and to what extent, existing procedural and substantive categories of EU adjudication are equipped to address claims alleging insufficient, inconsistent, or structurally inadequate public action in the face of such objectives.

Against this background, climate litigation emerges not merely as a reaction to individual measures, but as a potential site where the meaning, enforceability, and institutional implications of climate obligations are contested. This section therefore examines how the evolution of EU Climate Law challenges established assumptions concerning standing, the intensity of judicial scrutiny, and the scope of available remedies, while simultaneously requiring courts to engage with complex scientific assessments and long-term policy trajectories. In doing so, it situates climate litigation at the intersection of law, expertise, and governance within the EU legal order.

Part III undertakes a critical analysis of the implementation of EU Climate Law through the prism of litigation and governance. It examines how climate objectives are integrated into administrative decision-making, how access to justice is reshaped in climate-related disputes, and how judicial review contributes to—or potentially constrains—the effectiveness of climate action. Particular attention is paid to the role of administrative law, which emerges as a central framework for translating abstract climate objectives into legally enforceable duties.

The development of climate litigation also raises broader questions of climate justice. While the notion of climate justice lacks a *stricto sensu* legal definition, it has progressively acquired juridical relevance through litigation strategies that frame climate change as an issue of rights, inequalities, and differentiated vulnerability. Climate litigation expands the legal vocabulary of climate governance beyond purely environmental or technical considerations. This part analyses the extent to which existing legal mechanisms are capable of accommodating these claims and whether they are fit for ensuring effective and equitable climate protection.[751]

Although enacted by Courts for several decades, it reflects in practice, one way, for litigants, to ensure their rights to a healthier, safer and sustainable environment before jurisdictions, instead of only focusing on solely environmental or scientific

751 Schlosberg, David; Collins, Lisette B. (May 2014). "From environmental to climate justice: climate change and the discourse of environmental justice". WIREs Climate Change. 5 (3): 359–374. Bibcode:2014WIRCC...5.359S. doi:10.1002/wcc.275

reasonings.[752] EU Climate Law binding targets for GHG reduction, its mechanisms for monitoring and enforcement, and its integration with broader EU strategies such as the "Fit for 55" package,[753] have set the stage for a new era of accountability and legal scrutiny.[754] Yet, as recent case law and doctrinal commentary reveal, the gap between legislative ambition and practical realisation is significant.[755] The persistent shortfall in national implementation, the complexity of multi-level governance, and the evolving expectations of civil society have all contributed to a dynamic and, at times, contentious process of legal adaptation. Administrative law plays a crucial and critical role in the effectiveness of climate litigation.[756]

The French experience occupies a central place in this analysis. A central theme of this part is the increasing judicialization of climate policy.[757] Landmark cases in France such as the "*Grande-Synthe*",[758] "*l'Affaire du siècle*",[759] and the earlier "*Amis de la Terre*"[760] litigation have not only tested the boundaries of administrative and constitutional law but have also served as laboratories for the development of new legal doctrines and remedies.[761] The *Grande-Synthe* case, in particular, stands as a foundational precedent, predating and anticipating EU Climate Law by asserting the justiciability of climate inaction and the enforceability of emission reduction targets at the national level. The subsequent evolution of climate litigation in France and abroad, such as the Dutch *Urgenda* case[762] and the strategic use of public interest standing—has positioned

752 Manzo, Rosa (19 March 2021). "Climate Equity or Climate Justice? More than a question of terminology". International Union for Conservation of Nature (IUCN)

753 Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism; European Commission, "Fit for 55" package overview.

754 Jacek Brożyna, Jintao Lu, Wadim Strielkowski, Is European current climate regulation strategy feasible? A comparative analysis of "Fit for 55" green transition package for V4 and LEU4, Energy Strategy Reviews, Volume 61, 2025, 101843, ISSN 2211-467X, https://doi.org/10.1016/j.esr.2025.101843.

755 Idem

756 Fort, F.-X. (2022). L'office du juge administratif sous influence climatique. Revue juridique de l'environnement, 47(4), 689-701. https://droit.cairn.info/revue-juridique-de-l-environnement-2022-4-page-689?lang=fr.

757 Marko Bošnjak, Climate Change: The Role of Judges, Nov 2025, Climate Change: The Critical Decade, Issue #6 Revue Européenne du Droit : https://geopolitique.eu/en/articles/climate-change-the-role-of-judges/

758 Conseil d'État - 6ème - 5ème chambres réunies, N° 428409, ECLI :FR : CECHR :2022 :428409.20221017

759 Conseil d'Etat (1st Chamber), 16 october 2017, N°397606, «Notre affaire à tous », ECLI:FR:CECHR:2017:397606.20171016

760 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804

761 Dickinson, Gerald S., Judicial Laboratories (June 18, 2024). University of Pennsylvania Journal of Constitutional Law, Vol. 27, p. 74 (2025), https://doi.org/10.58112/jcl.27-1.2, U. of Pittsburgh Legal Studies Research Paper No. 2024-19, Available at SSRN: https://ssrn.com/abstract=4869452 or http://dx.doi.org/10.2139/ssrn.4869452

762 Urgenda Foundation v. The Netherlands HAZA C/09/00456689 (24 June 2015); aff'd (9 October 2018) Article L. 100-4 of the French Energy Code

the judiciary as a key actor in the enforcement of climate obligations. Comparative references, notably the Dutch *Urgenda* case, further demonstrate the transnational diffusion of climate litigation strategies and the emergence of courts as key actors in the enforcement of climate obligations. The influence of doctrinal voices such as Christel Cournil, as well as the practical impact of high-profile cases like *Grande-Synthe* and *Urgenda*, underscore the transnational dimension of climate justice and the diffusion of legal strategies across jurisdictions.[763]

At the institutional level, this part also engages with doctrinal and institutional debates surrounding the effectiveness of current governance models. The call for the creation of an independent public environmental authority (APIE), as advocated by Delzangles, Bétaille, and developed early in the research (see Part I, Chapter 2, §3), reflects a growing recognition of the need for impartiality and expertise in the implementation of climate law. The tension between executive discretion and judicial oversight, the challenges of coordinating action across multiple levels of governance, and the imperative of ensuring procedural and substantive climate justice are all examined in light of recent jurisprudence and academic commentary.

Finally, Part III situates European climate litigation within a broader regional context. The interaction between national courts, the CJEU, and the ECtHR is analysed with particular attention to evolving standards of access to justice, the recognition of environmental harm, and the role of fundamental rights in climate-related disputes. The persistent gap between the ambitions of EU Climate Law and the realities of national implementation—highlighted by institutional reports and civil society interventions—raises fundamental questions about the credibility and resilience of EU climate governance. Addressing this gap requires not only more robust enforcement mechanisms, but also a clearer articulation of the respective roles of political institutions and courts.

On this basis, Part III is structured as follows. Chapter 1 examines the protection granted before national courts in climate litigation. Chapter 2 analyses the practice of the CJEU; and Chapter 3 addresses access to the ECtHR in climate-related disputes. The diversity of judicial approaches to climate obligations across jurisdictions is reflected in the cases outlined in Annex 3.

To synthesize the findings of Part III, Figure 1 entitled "polycentric climate governance and procedural climate justice"[764] presents a conceptual model that articulates polycentric climate governance through the lens of procedural climate justice. Rather than depicting litigation as a linear enforcement mechanism, the figure illustrates how judicial intervention operates within a multilevel institutional ecosystem, interacting with legislative, administrative, and regulatory processes. This model reflects the central argument developed throughout Part III: climate litigation contributes to

763 M-C. Ponthoreau : «Constitutions nationales et droit(s) sans frontières ; Jalons méthodologiques. « ; Constitutions, 2010, p. 61.

764 Ridder, Kilian & Schultz, Felix Carl & Pies, Ingo. (2023). Procedural climate justice : Conceptualizing a polycentric solution to a global problem. Ecological Economics. 214. 10.1016/j.ecolecon.2023.107998.

implementation by structuring accountability and procedural safeguards, but it cannot, in itself, ensure effective governance mechanisms capable of translating legal obligations into sustained climate action.

CHAPTER 1. NATIONAL COURTS AS LABORATORIES FOR THE EMERGENCE OF EFFECTIVE CLIMATE LITIGATION

The emergence of climate litigation has profoundly altered the landscape of judicial enforcement of environmental and climate obligations. While EU Climate Law establishes binding objectives and governance frameworks, its effective implementation increasingly depends on the capacity of courts to translate abstract commitments into enforceable legal duties. This chapter examines how national courts, through litigation, act as sites of experimentation for the emergence of effective climate litigation, revealing implementation as a dynamic process shaped by judicial practice rather than centralized design.

While a new form of climate litigation emerged following the adoption of the Paris Agreement,[765] it was the promotion of the European Green Deal and the adoption of the EU Climate Law that provided litigants with a new range of legal tools, enabling a more intensive practice of climate litigation.[766] This chapter is dedicated to the application and judicial interpretation of climate-related claims by national courts in the EU, as they have served as legal laboratories for reconciling environmental protection with the protection of human life.[767]

Climate litigation first started developing and most dynamically at the domestic level. Faced with claims challenging the adequacy of climate action, national judges were required to engage with complex questions of causation, justiciability, standing, and remedies, often in the absence of explicit procedural pathways tailored to climate disputes. These judicial responses have not only contributed to the enforcement of climate obligations but have also generated innovative legal reasoning that influences the broader European legal order.

National climate litigation occupies a distinctive position at the intersection of national legal orders, EU law, and international climate commitments. While it remains embedded in domestic procedural traditions and constitutional frameworks, it increasingly draws upon EU law, international obligations, and fundamental rights as sources of normative authority. This dual anchoring enables national courts to act as intermediaries between global climate objectives and their local implementation,

765 K.F. Kuh, The Law of Climate Change Mitigation: An Overview, Editor(s): Dominick A. Dellasala, Michael I. Goldstein, Encyclopedia of the Anthropocene, Elsevier, 2018, Pages 505-510, ISBN 9780128135761, https://doi.org/10.1016/B978-0-12-809665-9.10027-8.

766 Peeters, M. and Nóbrega, S. (2014), Climate Change-Related Aarhus Conflicts. Rev Euro Comp & Int Env Law, 23: 354-366. https://doi.org/10.1111/reel.12076

767 Article 2 and 8 ECHR

while simultaneously exposing tensions between judicial intervention and the principle of separation of powers. The chapter explores how national courts navigate these tensions and whether they contribute to the development of more effective and accessible climate litigation.

Despite the increasing use of climate litigation before national courts, claimants continue to face significant procedural obstacles. One of the primary obstacles stems from the difficulty of establishing the claimant's interest to act under national procedural law, which generally requires proof of a real, certain, and personal harm.[768] In the context of climate litigation, this requirement raises specific challenges, given the diffuse nature of climate-related- damage and the uncertainty surrounding its future impacts.[769] In response, national courts in several Member States have adopted a more flexible approach to standing, a development that can be partly explained by the growing receptiveness of domestic courts to scientific evidence relating to greenhouse gas (hereinafter GHG) emissions and their long-term- consequences.

As Cournil and Perruso observe,[770] European climate litigation has increasingly been used to challenge the insufficiency of State climate action and to seek injunction-type remedies that go beyond the individual case.[771] This dynamic is often traced back to the turning point represented by *Urgenda*,[772] where the court ordered the State to adopt more ambitious emissions reductions while explicitly framing its intervention as the provision of legal protection rather than an intrusion into political decision-making. The resulting shift in the "centre of gravity" reflects, first, the growing number of claims brought before national courts in response to perceived legislative and executive insufficiency; and, second, the fact that climate harm does not fit neatly within traditional material and procedural categories, prompting courts to interpret existing rules (standing, proof, remedies) in ways that can accommodate the specificities of climate disputes—without formally rewriting the law.[773] Cournil and Perruso further

768 Cournil, C. et Perruso, C. (2025). La contribution des juges régionaux des droits de l'Homme à la protection des victimes environnementales et climatiques. Écologie & Politique, 71(2), 109-127. https://doi.org/10.3917/ecopo1.071.0110.

769 Conseil d'État, Commune de Grande Synthe, 1 July 2021, No 427301, recognising the specific temporal and collective nature of climate-related harm and accepting that future risks linked to climate change may be taken into account in assessing admissibility

770 Cournil, C. et Perruso, C. (2025). La contribution des juges régionaux des droits de l'homme à la protection des victimes environnementales et climatiques. Écologie & Politique, 71(2), 109-127. https://doi.org/10.3917/ecopo1.071.0110.

771 Christel Cournil & Camila Perruso, Le climat s'installe à Strasbourg – Les enseignements des premières requêtes portées devant la Cour européenne des droits de l'Homme, L'Observateur de Bruxelles, 2021/2, no 124, pp. 24–29 (HAL Id: hal-03265249) ; Christel Cournil, Les prémisses de révolutions juridiques ? Récents contentieux climatiques européens, Revue française de droit administratif (RFDA), 2021, pp. 957–966.

772 Supreme Court of the Netherlands, Urgenda Foundation v. State of the Netherlands, Ruling of 20 December 2019, ECLI:NL:HR:2019:2007

773 Conseil d'État, Commune de Grande-Synthe, 1 July 2021, no 427301

note that, although climate litigation has been predominantly national, it is increasingly moving toward supranational human-rights fora—making Strasbourg a potential "new arena" for assessing States' climate obligations, as also remarked in the debate by ECtHR Judge Tim Eicke.[774]

The chapter also addresses the broader systemic implications of national climate litigation. Judicial rulings at the domestic level often reverberate beyond national borders, contributing to transnational judicial dialogue and influencing litigation strategies across Europe. Through preliminary references, comparative reasoning, and mutual citation, national courts participate in the gradual construction of a European climate litigation space. This process raises important questions about uniformity, fragmentation, and the role of judicial coordination in the absence of a fully harmonised procedural framework for climate disputes.

It is therefore necessary to assess the national practice that some scholars see as landmarks in the climate litigation.[775] Although the *Urgenda case*[776] is seen as the foundation of climate justice in Europe (1.2), the Chapter will start analysing the ingenuity from some national courts to compensate the lack of tools to enforce climate-related remedies (1.1), and the broadening of right to act of litigants before national courts to protect the environment and their health (1.3).

1.1. Normative climate constitutionalism: recognising the right to effective judicial protection in climate litigation

In this subsection, "normative climate constitutionalism" is understood as the process through which climate obligations, and their judicial enforcement, are integrated into the constitutional guarantees governing effective judicial protection.[777] Rather than referring to the creation of new substantive climate rights, this dimension of climate constitutionalism concerns the recognition of climate litigation as a legally effective form of judicial protection, grounded in existing constitutional and administrative review mechanisms.

The emergence of climate litigation before national courts has progressively shifted the focus from the mere admissibility of climate claims to the recognition of their effectiveness. Beyond questions of procedural access, judicial practice reveals a gradual

774 Christel Cournil & Camila Perruso, *Le climat s'installe à Strasbourg*, op. cit., spec. pp. 26–28

775 Armstrong, Anne K., Marianne E. Krasny, and Jonathon P. Schuldt. "CLIMATE CHANGE SCIENCE: The Facts." In Communicating Climate Change: A Guide for Educators, 7–20. Cornell University Press, 2018. http://www.jstor.org/stable/10.7591/j.ctv941wjn.5.

776 *Urgenda Foundation v. State of the Netherlands*, Supreme Court of the Netherlands, 20 December 2019

777 *Urgenda Foundation v. State of the Netherlands*, Supreme Court of the Netherlands, 20 December 2019, ECLI:NL:HR:2019:2007; *Commune de Grande-Synthe*, Conseil d'État, 1 July 2021, no 427301; *Friends of the Irish Environment v. Government of Ireland*, Supreme Court of Ireland, Judgment of 31 July 2020, [2020] IESC 49.

consolidation of legal guarantees enabling claimants to invoke climate obligations in a meaningful and operational manner.[778] In this way, climate commitments acquire normative force as judicially cognisable standards capable of structuring standards of review, remedies, and the authority of judicial decisions, thereby contributing to the implementation of EU Climate Law at national level.

This subsection examines how national courts participate in the construction of an effective right to climate litigation as a functional component of climate governance. It first analyses the transformation of judicial review from a formal assessment of legality into a substantive evaluation of the adequacy of State action in light of binding climate obligations (1.1.1). It then explores the expansion and intensification of administrative judicial review over State climate action, including the articulation of justiciability, standards of review, and remedial techniques (1.1.2). Finally, it addresses the reinforcement of the authority of *res judicata* in climate litigation as a key condition for the durability and effectiveness of judicial intervention (1.1.3).

1.1.1. From formal review of legality to substantive review of the adequacy of State action in light of climate obligations

Article L. 100-4 of the French Energy Code establishes that "*The objective of the national energy policy is to reduce greenhouse gas emissions by 40% by 2030 compared to their 1990 level*".[779] With this provision, the legislator confers an imperative character on the State's climate commitments, requiring that public policies be oriented and assessed in light of the objectives set. The transformation of environmental obligations from programmatic objectives into legally assessable commitments illustrates a significant conceptual shift: the adoption of ambitious standards is no longer the central issue. It is standards' effectiveness that becomes decisive. However, elevating climate commitments to the rank of a legal imperative does not *ipso facto* guarantee the effective implementation of the public measures adopted to give effect to the objectives they contain. Therefore, the role of the administrative judge in the operationalization of climate law raises a central question. While it is for the administrative judge to sanction the shortcomings of the public authorities, the judicial review exercised by that judge must not be limited to a mere finding of non-compliance but must be accompanied by an effective power of injunction, capable of being enforced through

778 M. Peeters & T. Etty, "Climate Law in the Courts: A New Jurisprudence or a New Approach?", *Review of European, Comparative & International Environmental Law*, 2019, pp. 131–140.

779 French Energy Code, Article L. 100-4, in force since 24 June 2023, setting out the objectives of national energy policy, including the reduction of greenhouse gas emissions by 40% between 1990 and 2030 and the achievement of carbon neutrality by 2050, *Official Journal of the French Republic*, available on Légifrance: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000047303609

appropriate coercive mechanisms.[780]

Through this unprecedented approach, the administrative judge establishes compliance with climate obligations as a legally enforceable imperative, the failure to comply with which is likely to justify corrective intervention by the judicial authority. A central question emerges in the contemporary landscape of European climate governance: To what extent does the contribution of judicial review to the operationalization of climate law depend on the design of judicial remedies and the institutional context in which they are implemented and constrained?

This question frames judicial review as a governance instruments whose effectiveness is structurally conditioned, rather than presumed. It approaches climate litigation not as an autonomous enforcement mechanism, but as a component of a broader climate governance architecture shaped by institutional balance, remedial design, and political implementation. More specifically, the effectiveness of climate adjudication depends on the clarity and binding force of the underlying norms, the remedial "toolkit" available to the judge (injunctions, deadlines, monitoring devices, and—where available—coercive levers), and the behaviour of administrative and political actors in implementing judicial orders.[781]

EU Climate Law has set ambitious, binding targets for climate neutrality by 2050, establishing a robust governance framework that requires Member States to align their policies and actions with these objectives. However, the translation of these legal commitments into effective, enforceable action remains a complex and contested process, particularly when viewed through the lens of judicial review.

Comparative climate litigation illustrates both the potential and the limits of this model. Landmark cases such as *Urgenda*[782] in the Netherlands, *Grande-Synthe*[783] in France, and *Friends of the Irish Environment*[784] in Ireland illustrate how courts have been called upon to assess whether states are fulfilling their climate obligations and, where necessary, to order corrective measures. For example, in *Grande-Synthe*, the French Conseil d'État not only recognized the justiciability of climate commitments but also issued an injunction requiring the government to take additional measures to meet its emission reduction targets. Similarly, the Dutch courts in *Urgenda* established that the State's duty to protect its citizens from the dangers of climate change

780 Conseil d'État (France), *Commune de Grande-Synthe et autres*, 1 July 2021, No. 427301, ECLI:FR:CECHR:2021:427301.20210701, published in the *Recueil Lebon*.

781 H. Delzangles, «Le "contrôle de la trajectoire" et la carence de l'État français à lutter contre les changements climatiques «, *AJDA* (Actualité juridique Droit administratif), n° 36, 25 oct. 2021, p. 2115-2127

782 Supreme Court of the Netherlands, *Stichting Urgenda v Staat der Nederlanden*, ruling of 20 December 2019, ECLI:NL:HR:2019:2006 (Dutch), ECLI:NL:HR:2019:2007

783 Conseil d'État (France), *Commune de Grande-Synthe et autres*, 1 July 2021, No. 427301, ECLI:FR:CECHR:2021:427301.20210701, published in the *Recueil Lebon*.

784 Supreme Court of Ireland, *Friends of the Irish Environment CLG v Government of Ireland*, ruling of 31 July 2020, [2020] IESC 49

is a legally enforceable obligation, grounded in both domestic law and international human rights instruments. Courts did not merely review formal legality but engaged with the adequacy of State action in light of legally defined climate obligations. Yet these legal developments do not eliminate an enduring enforcement gap:[785] courts may enjoin governments to corrective measures, but compliance often depends on executive cooperation, especially where coercive mechanisms are absent or difficult to deploy in practice. In this context, climate litigation functions simultaneously as a mechanism of accountability and as a site where the practical limits of litigation-driven climate governance become visible.

Despite these legal developments, a persistent challenge remains: the lack of coercive mechanisms to guarantee the enforcement of judicial injunctions. Courts can order governments to act, but they often lack the tools to compel compliance if the executive is unwilling or slow to respond.[786] This limitation is particularly acute in the context of climate litigation, where the effectiveness of judicial review depends not only on the clarity and binding force of legal norms, but also on the willingness of political actors to implement court orders in good faith.

As aptly analysed by Delzangles, Bétaille and Prieur, the French *Grande-Synthe* case is illustrative of the structural limits of litigation driven climate governance. While the Conseil d'État formally enjoined the executive to adopt additional measures to ensure compliance with -emissions reduction objectives, the effectiveness of this remedial intervention remained contingent upon the broader institutional framework governing the execution of judicial rulings. Under French administrative law, the power of injunction does not, in itself, entail automatic coercive enforcement, nor does it displace the executive's discretion as to the choice and sequencing of implementing measures.[787]

This configuration exposes a well-documented enforcement gap between the judicial recognition of climate obligations and their practical realization.[788] As several commentators have observed, climate injunctions operate primarily as instruments of normative clarification and accountability rather than as mechanisms of direct compulsion. Their capacity to induce compliance depends less on the formal authority of the judicial order than on the availability of complementary enforcement devices—such as *astreinte*, judicial follow -up, or institutionalized monitoring—and on the compatibility of judicial intervention with the constitutional principle of separation of powers.

From this perspective, *Grande-Synthe* exemplifies a broader tension inherent in

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785 Hugh Gallagher, "Environmental Constitutionalism After Friends of the Irish Environment," *Trinity College Law Review*

786 H. Delzangles, «Le "contrôle de la trajectoire" et la carence de l'État français à lutter contre les changements climatiques «, *AJDA* (Actualité juridique Droit administratif), n° 36, 25 oct. 2021, p. 2115-2127

787 S. Hoynck, «*Le juge administratif et le dérèglement climatique* «, AJDA, 2022, p. 147

788 M. Prieur, J. Bétaille, J. Makowiak (dir.), *Les grandes affaires climatiques*, DICE, 2022

contemporary climate adjudication: courts are increasingly willing to assess the adequacy of State action in light of legally binding climate trajectories, yet they remain structurally constrained in their ability to ensure execution in the absence of robust coercive tools.[789] The case thus invites a reassessment of the role of judicial review within climate governance, not as a self-sufficient enforcement mechanism, but as one component- within a multi-layered system combining judicial oversight, administrative implementation, and political responsibility.[790]

EU Climate Law represents a new paradigm in EU climate governance, embedding binding targets and procedural obligations within the legal order of the Union. It empowers both the European Commission and national authorities to monitor and enforce compliance, creating a multi-level system of accountability. However, as this doctoral thesis demonstrates, the practical realization of these commitments often hinges on the effectiveness of judicial review at the national level. National courts, acting as legal laboratories, reveal both the potential and the limitations of this approach. On the one hand, they provide a forum for citizens, NGOs, and local authorities to hold governments accountable for climate inaction, thereby enhancing the legitimacy and responsiveness of climate governance. On the other hand, the absence of robust enforcement mechanisms can render judicial rulings symbolic rather than transformative, especially when political or administrative inertia prevails. Judicial review is a powerful tool for accountability and norm-setting, but its effectiveness is limited by the absence of coercive enforcement mechanisms.

National climate cases reveal a structural tension in the operationalization of climate law. Judicial review has proven capable of transforming climate commitments into legally cognisable obligations and of strengthening accountability for State inaction. At the same time, its effectiveness remains institutionally conditioned: courts may intensify the review of public action and articulate binding climate trajectories, yet they operate within remedial frameworks that do not allow them to secure execution autonomously. Climate litigation thus functions less as a self-standing enforcement mechanism than as a catalyst within a broader governance architecture, whose effectiveness ultimately depends on the articulation between judicial oversight, administrative implementation, and political responsibility.

1.1.2. The expansion of administrative judicial review over State climate action

The effectiveness of climate litigation before national courts has been decisively transformed by the emergence of substantive judicial control over State climate commitments. Moving beyond deferential review and purely procedural oversight, administrative judges have progressively engaged with the content, consistency, and

789 D. Tabuteau, "*The administrative judge and climate change*," *Revue européenne du droit*, 2022

790 M. Peeters & N. Athanasiadou, "*Binding targets, challenging enforcement?*," RECIEL, 2020

execution of governmental climate obligations. This evolution reflects an intensification of judicial involvement in climate litigation, as judicial review increasingly contributes to the operationalization of binding climate commitments within the framework of EU Climate Law. Climate litigation, long confined to the sphere of public policy and *soft law*, is now asserting itself as a structured jurisdictional field, where the administrative judge positions itself as a guarantor of the effectiveness of the State's commitments. The ruling handed down by the Conseil d'État on 1 July 2021 is part of this evolution.[791] This evolution unfolds through the judicial construction of the justiciability of climate obligations (A) and the deepening of the court's standard of review (B). Furthermore, this evolution simultaneously exposes structural limits linked to the absence of effective enforcement mechanisms (C), and—only in exceptional, sector-specific contexts—gives rise to forms of judicial experimentation with execution and coercive tools (D).

A. *The judicial construction of the justiciability of climate obligations*

In this context, justiciability refers to the capacity of climate obligations to be assessed by a court as legal standards, capable of grounding judicial review of State action or inaction, rather than being confined to the sphere of political discretion or programmatic policy objectives. It designates the point at which climate commitments cease to function merely as political programmes and become capable of operating as legal standards for judicial review of State action or inaction. The judicialisation of climate commitments presupposes access to the administrative judge. In this respect, the development of climate litigation has been accompanied by a gradual reconfiguration of locus standi, allowing certain public authorities and civil society actors to challenge State inaction in climate matters.

This shift is not automatic. It depends on whether the relevant climate commitments possess sufficient normative density and binding character to be treated as legal obligations, are capable of being invoked within the applicable litigation framework and can be assessed through judicially manageable criteria without collapsing into a pure review of policy discretion. The *Grande Synthe* ruling contributes to the consolidation of that justiciability precisely because it resolves these doctrinal thresholds through a multilevel legal architecture. The Conseil d'État treats emissions reduction targets not as aspirational policy guidance but as enforceable benchmarks against which State conduct can be reviewed, thereby reframing climate inaction as a legally reviewable failure to comply with binding objectives.

a) *Locus standi as a gateway to climate litigation*

Locus standi operates as a gateway to the judicialisation of climate obligations, determining both access to enforcement proceedings and the scope of judicial intervention.

791 Conseil d'État, (6ème - 5ème Chambers), 1 July 2021, N° 427301, «Grande Synthe », ECLI:FR:CECHR:2021:427301.20210701

The standing of the applicants seeking the penalty payment is strictly reviewed by the judge. In the present case, the association *Les amis de la terre – France* and sixty-eight other associations, eight natural persons and one municipality submitted a request for enforcement of the ruling of 12 July 2017.[792] A considerable number of people reflecting a strategy of collective mobilisation aimed at maximising access to enforcement proceedings. This ruling allows the Conseil d'État to strengthen the authority of the *res judicata* of its ruling previously rendered.

The Conseil d'État begins by recalling the conditions of admissibility of the application for penalty payment to rule on the admissibility of the applications made. Under Article L. 911-4 of the CJA,[793] "the parties to the proceedings have standing to ask the Court to impose a penalty payment in the event of non-execution of a ruling it has rendered." Article L. 931-2 of the same code[794] provides that "interested parties may request the Conseil d'État to prescribe the measures necessary for the execution of one of its rulings or a ruling of a special administrative court, accompanied, if necessary, by a penalty payment." Thus, according to the case-law stemming from the ruling in *Mrs Tusques and Marcaillou*[795], the application for a penalty payment may be made not only by the parties to the penalty payment resulting from the ruling to be enforced, but also by 'persons directly concerned' by the act which gave rise to that proceedings.

The interest in bringing proceedings of the persons making the applications for periodic penalty payments is assessed broadly as far as even third parties to the proceedings are granted *locus standi* to seek enforcement of a ruling concerning them. In the present case, the association "*Les amis de la terre – France*" being a party to the proceedings has its application declared admissible immediately as well as "the other natural and legal persons plaintiffs, who may be regarded as interested parties within the meaning of these same provisions." [796]

Nevertheless, the Conseil d'État screens the applicants eligible to seek the imposition of a penalty payment on the basis of two conditions derived from its interpretation of the relevant provisions: the territorial scope of action of the associations, on the one hand, and their statutory purpose, on the other. In the enforcement proceedings relating to the ruling of 12 July 2017 on air quality,[797] these criteria enabled the Court to conduct a case-by-case assessment and to exclude associations considered not directly concerned by the execution of that ruling. In particular, the Conseil d'État held that sixteen associations lacked standing to apply for the penalty payment on the ground that their territorial field of action did not cover any of the areas subject to the

792 Requested by several environmental defence associations, the Conseil d'État ordered on July 12, 2017, the State to implement plans to reduce the concentrations of nitrogen dioxide (NO2) and fine particles (PM10) in 13 areas in France, in order to comply with the European directive on air quality.

793 Article L. 911-4 of the CJA

794 Article L. 931-2 of the CJA

795 Conseil d'Etat, 13 November 1987, N° 68964

796 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804

797 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804

injunction issued in 2017.

This judge made filtering framework is nevertheless open to debate. While it seeks to prevent congestion of enforcement proceedings, it sits uneasily with the nature of air quality protection as a matter of general interest, the effects of which are not confined to a strictly delimited geographical area.

Then, the Court considered that the social purpose of 7 associations did not correspond to the theme of air quality (without knowing if they cover the required territorial field of action).[798] Here again, the condition is questionable, because the field of action of some of these associations deemed inadmissible to request the penalty nevertheless borders on environmental issues: so it is the case of the AVL3C association which fights against cement quarries rather more broadly, the boundaries between social and environmental issues are increasingly porous.

The *locus standi* of the persons making the applications for periodic penalty payments is certainly widely assessed, but it is strictly controlled by the court. The penalty payment is not accessible to all: it is conditioned – even if the criteria of filtering are arguable. In addition to the strict nature of the quality control to bring proceedings of the applicants, that ruling is likely to strengthen the authority of *res judicata*.

b) *The normative density of climate commitments*

This construction is based on a double dynamic: the inclusion of these commitments in a bottom-up normative hierarchy and the integration of climate commitments into comparative national jurisprudence.[799] First, the ruling anchors justiciability in a "bottom-up" normative chain combining international, EU, and domestic law**.** It relies on the Paris Agreement as a framework shaping the trajectory of public action, on EU Regulation 2018/842[800] as a source of binding Member State targets accompanied by monitoring logic, and on Article L.100-4 of the French Energy Code[801] as a prescriptive domestic legal basis that translates those targets into nationally enforceable obligations. On this basis, the court is able to treat compliance with the emissions trajectory as a legal question rather than a discretionary policy choice.[802] Second, the ruling situates this move within a broader comparative judicial trend in which

798 Idem

799 On the framing of *Grande-Synthe* within a comparative trend of national climate adjudication (including references to other national rulings): Stéphane Hoynck, *Conclusions* (Conseil d'État, Commune de Grande-Synthe, n° 427301)

800 Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013, OJ L 156, 19 June 2018, p. 26–42, ELI: http://data.europa.eu/eli/reg/2018/842/oj.

801 Code de l'énergie, Art. L.100-4, version in force (objective of reducing greenhouse gas emissions by 40% between 1990 and 2030 and achieving climate neutrality by 2050)

802 H. Delzangles, «Le "contrôle de la trajectoire" et la carence de l'État français à lutter contre les changements climatiques «, *AJDA* (Actualité juridique Droit administratif), n° 36, 25 oct. 2021, p. 2115-2127

courts increasingly operationalise climate commitments through established review techniques.

c) *From political discretion to judicially manageable standards*

The justiciability of climate obligations has emerged through different judicial pathways across European legal orders. While some courts have addressed climate commitments at the constitutional level, framing them as constraints derived from fundamental rights and intergenerational justice,[803] others have developed their justiciability through administrative law techniques, focusing on the review of State action and compliance with legally binding targets.[804] This plurality of approaches reflects a broader judicial trend towards treating climate commitments as legally cognisable standards, even though the doctrinal foundations and remedial implications vary depending on the level of jurisdiction involved. These cases illustrate different judicial pathways leading to the same outcome: the transformation of climate commitments into judicially manageable standards.

At constitutional level, this evolution is exemplified by the German Federal Constitutional Court,[805] in which the Court held that insufficient specification of emissions-reduction pathways under the Federal Climate Protection Act[806] violated fundamental freedoms by disproportionately shifting mitigation burdens onto future generations. By treating climate targets and emissions budgets as constitutionally reviewable constraints on legislative discretion, the Court affirmed that climate obligations may ground judicial review even in the absence of precise policy prescriptions.[807]

Likewise, the ruling of the Conseil d'État contributes to the consolidation of the justiciability of climate obligations, understood as the capacity of legally binding climate commitments to serve as standards for judicial review of State action and inaction.[808] It enshrines the idea that the commitments made by the State in terms of reducing GHG emissions do not constitute mere political guidelines, but rather legally

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803 Bundesverfassungsgericht (Federal Constitutional Court), Order of 24 March 2021, *Klimaschutzgesetz*, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, ECLI:DE:BVerfG:2021:rs20210324.1bvr265618.

804 M. Torre-Schaub, *Climate Change Risk and Climate Justice in France: The High Administrative Court as Janus or Prometheus?*, European Journal of Risk Regulation, vol. 14, no. 1, 2023, pp. 213–227, DOI: 10.1017/err.2023.2.

805 Bundesverfassungsgericht (Federal Constitutional Court), Order of 24 March 2021, *Klimaschutzgesetz*, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, ECLI:DE:BVerfG:2021:rs20210324.1b vr265618.

806 Federal Climate Protection Act (*Bundes-Klimaschutzgesetz*, KSG) of 12 December 2019, Federal Law Gazette (Bundesgesetzblatt) I, p. 2513, as amended by the Act of 18 August 2021, BGBl. I, p. 3905, and by the Act of 15 July 2024, BGBl. I 2024, No. 235.

807 Bundesverfassungsgericht (Federal Constitutional Court), Order of 24 March 2021, *Klimaschutzgesetz*, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, ECLI:DE:BVerfG:2021:rs20210324.1b vr265618, esp. paras 182–186, 198–203, 216–220

808 Conseil d'État, Assemblée du contentieux (6e–5e ch. réunies), 1 July 2021, *Commune de Grande-Synthe*, n° 427301, ECLI:FR:CECHR:2021:427301.20210701, Recueil Lebon and S. Hoynck, Conclusions sur CE, Commune de Grande-Synthe, 19 Nov. 2020 and 1 July 2021, n° 427301, *AJDA* 2021

enforceable obligations of result.[809]

On the one hand, the Conseil d'État relies on a legal architecture combining international, European, and domestic sources to enshrine the imperative nature of climate commitments. At the international level, the Paris Agreement[810] sets an imperative trajectory for reducing green emissions by imposing an enhanced duty of care on signatory states in the implementation of policies compatible with limiting global warming to 1.5°C or 2°C.[811] At the European level, Regulation (EU) 2018/842[812] assigns binding targets for reducing GHG emissions to the Member States of the EU, accompanied by monitoring and sanctioning mechanisms.[813] Finally, domestic law provides an indisputable legal basis for these commitments, in particular through Article L. 100-4 of the Energy Code, which sets the target of reducing GHG emissions by 40% by 2030.[814] Far from being a simple guidance standard, this provision is prescriptive in nature, obliging the State to comply with an emission reduction trajectory compatible with its international commitments. The Conseil d'État held that annulling the implicit refusal to adopt additional measures is necessary to ensure compatibility with the objectives set out in Article L.100-4 of the Energy Code and Annex I of Regulation (EU) 2018/842.[815]

On the other hand, this development is part of an international jurisprudential dynamic inclined to recognize the enforceability of climate commitments. This move is not isolated. Several recent rulings reflect this trend. It aligns with a broader trend in comparative national case law in which courts have operationalised climate commitments through established review techniques, albeit via different doctrinal routes. In *Urgenda*, the Dutch Supreme Court grounded enforceability in fundamental-rights reasoning and ordered a quantified reduction obligation within a defined timeframe. It enjoined the Government to reduce emissions by 25% by 2020, considering that the State's inaction in the climate field constituted a violation of the fundamental rights of citizens, such as the right to life. The German Federal Constitutional Court reviewed the climate framework in light of intergenerational freedom constraints, holding that insufficient specification of post-2030 reduction pathways impermissibly shifted burdens to future generations. It censured national climate policies on the grounds that

809 H. Delzangles, *Le «contrôle de la trajectoire « et la carence de l'État français à lutter contre les changements climatiques*, AJDA 2021, p. 2115

810 Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, Recital 17

811 Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015

812 Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU)

813 Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU), Article 1

814 Article L.100-4 of the French Energy Code

815 Torre-Schaub M. Climate Change Risk and Climate Justice in France: The High Administrative Court as Janus or Prometheus? *European Journal of Risk Regulation*. 2023;14(1):213-227. doi:10.1017/err.2023.2

they shifted an excessive burden to future generations.[816] Similarly, in *Friends of the Irish Environment*,[817] the Supreme Court of Ireland annulled a government climate plan deemed insufficient to meet legislative and international commitments. The *Grande Synthe* ruling is part of this dynamic,[818] by enshrining the enforceability of the State's climate commitments and thus paving the way for enhanced litigation.

B. *Evolution of the court's standard of review in climate litigation*

The recognition of the justiciability of climate commitments is accompanied by a transformation of the modalities of judicial review, rather than by a mere increase in judicial intervention. This evolution concerns the object, the intensity, and the temporal horizon of judicial control, while preserving the distinction between legal review and political discretion. Traditionally confined to the external legality of administrative acts, judicial review in climate cases now extends to the substantive adequacy of State action in light of quantified reduction targets and emissions trajectories. A distinctive feature of climate litigation is the anticipatory nature of judicial review. Courts no longer wait for the expiry of statutory deadlines to assess compliance but evaluate whether current policies are capable of ensuring future attainment of legally binding climate objectives. While courts formally refrain from substituting themselves for the executive in the choice of policy instruments, the review nonetheless deepens as far as judges assess the coherence, sufficiency and credibility of the measures adopted in light of the applicable emissions trajectory.

This evolution is accompanied by a transformation of remedial techniques, as courts increasingly combine annulment of unlawful inaction with injunctions requiring the State to adopt additional measures capable of restoring compliance with climate obligations. The extension of judicial control over the State's climate commitments is not limited to a normative recognition of their enforceability. It is accompanied by a transformation of the office of the administrative judge, who is gradually abandoning a strictly formal approach to adopt a control based on the substantial evaluation of the effectiveness of climate policies. Traditionally, the administrative judge confined his review to the external legality of administrative acts, without assessing their effectiveness in achieving the objectives pursued. However, this procedural approach, which focuses on the regularity of the measures adopted, showed its limits. Climate litigation has disrupted this model by requiring courts to assess the compatibility of State action

816 Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], Mar. 24, 2021, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20, http://www.bverfg.de/e/rs20210324_1bvr265618en.html (hereinafter *Neubauer*). See Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], *Constitutional Complaints Against the Federal Climate Change Act Partially Successful, Press Release No. 31/2021*, (Apr. 29, 2021), https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html

817 *Friends of the Irish Environment v. The Government of Ireland & Others,* [2020] IESC 49.

818 Conseil d'État, (6ème - 5ème Chambers), 1 July 2021, N° 427301, «Grande Synthe », ECLI:FR:CECHR:2021:427301.20210701

with legally binding emissions trajectories.[819]

The *Grande Synthe* case breaks with this restrictive approach and inaugurates a control based on the tangible effectiveness of climate policies.[820] From now on, the assessment of the State's action is no longer based solely on the existence of legislative and regulatory measures, but on their real ability to concretely change the trajectory of emissions.[821] In other words, a climate policy that is formally in line with international commitments can nevertheless be considered insufficient if it does not produce the expected results.[822]

One of the major innovations of *Grande Synthe* lies in the integration of scientific and empirical data as the basis for the jurisdictional evaluation of the State's climate action.[823] To this end, the Conseil d'État bases its assessment on independent sources of expertise such as the reports of the High Council for the Climate (hereinafter – HCC): the latter noted in its annual report published in July 2020, that "*the reduction of greenhouse gas emissions continues to be too slow and, in any case, insufficient to reach the ceilings set by current and future carbon budgets*."[824] The court also refers to data produced by the Interprofessional Technical Centre for Atmospheric Pollution Studies (hereinafter CITEPA), which highlighted the increase *in "national greenhouse gas emissions to around 441 Mt CO2 eq in 2019.*" This objectification of judicial review reinforces its impartiality and effectiveness.

The other major innovation of *Grande Synthe* ruling lies in the use of the power of injunction. Pursuant to Article L. 911-1 of the Code of Administrative Justice,[825] the judge may order the Administration to take the necessary measures to comply with a legal obligation. However, as Torre-Schaub aptly notices, its use in the climate field is an unprecedented step forward.[826] By ordering the Government to adopt additional measures within a limited deadline, the Conseil d'État arrogates to itself a competence to regulate climate policies, beyond the simple control of legality. This development, while it undeniably reinforces the effectiveness of climate law, nevertheless raises the question of the limits of judicial power in the face of government action.

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819 H. Delzangles, *Le «contrôle de la trajectoire « et la carence de l'État français à lutter contre les changements climatiques*, AJDA 2021, p. 2115

820 Torre-Schaub M. Climate Change Risk and Climate Justice in France: The High Administrative Court as Janus or Prometheus? *European Journal of Risk Regulation*. 2023;14(1):213-227. doi:10.1017/err.2023.2

821 Torre-Schaub, Marta. (2023). Climate Change Risk and Climate Justice in France: The High Administrative Court as Janus or Prometheus?. European Journal of Risk Regulation. 14. 1-15. 10.1017/err.2023.2.

822 Conseil d'État, (6ème - 5ème Chambers), 1 July 2021, N° 427301, «Grande Synthe », ECLI:FR:CECHR:2021:427301.20210701

823 Hoynck, S. (2022). *The Administrative Judge and Climate Change*. AJDA, 147

824 Haut Conseil pour le Climat, Rapport annuel 2020 – «Redresser le cap, relancer la transition »

825 Article L. 911-1 of the Code of Administrative Justice

826 Torre-Schaub M. Climate Change Risk and Climate Justice in France: The High Administrative Court as Janus or Prometheus? *European Journal of Risk Regulation*. 2023;14(1):213-227. doi:10.1017/err.2023.2

Ultimately, it should be noted that the *Grande Synthe* ruling of 1 July 2021 marks a decisive step forward in the affirmation of substantial judicial control over the State's climate commitments. By enshrining their enforceability and strengthening the requirement of effective compliance, it places climate litigation in a dynamic of increased effectiveness. However, the absence of sanctions in the event of non-performance underlines the limits of this development. Therefore, the question of the effectiveness of climate litigation is acute and requires reflection on the means of ensuring the concrete respect of judicial rulings in environmental matters.

C. *The limits of judicial review stemming from the absence of effective enforcement mechanisms*

The *Grande-Synthe* case marks a significant reinforcement of the intensity and scope of judicial review over the State's compliance with its climate obligations, extending control beyond the mere adoption of measures to their adequacy in light of binding climate targets. However, behind this normative advance, a structural paradox remains in the absence of effective enforcement remedies, the administrative jurisdiction lacks the means to ensure compliance by the executive with its obligations. An injunction that is legally binding but weakly enforced risks operating more as a normative signal than as a fully coercive legal instrument. The aim here is therefore to demonstrate that, while the administrative judge now imposes legally enforceable obligations on the State, the effectiveness of this new judicialisation of public action remains limited by the absence of effective enforcement mechanisms and by its subjection to institutional and constitutional balances.

a) *Judicial injunctions subject to limited enforcement mechanisms*

The assertion of judicial control over the State's climate commitments logically presupposes the existence of mechanisms capable of ensuring the effective execution of judicial rulings. Yet, as the law currently stands, such mechanisms remain limited. The injunction addressed to the Government in *Grande Synthe*, based on Articles L. 9111 and L. 9113 of the Code of Administrative Justice, formally obliges the administration to act within a specified period. Its binding character is not in question; its effectiveness is. In the absence of robust coercive or follow-up mechanisms, compliance ultimately depends on the executive's willingness to act.

The paradox is striking. Although the Conseil d'État enjoins the Government to adopt corrective measures aimed at reducing GHG emissions and ensuring compliance with France's international commitments,[827] the effectiveness of such judicial intervention remains judicially constructed yet structurally incomplete. The administrative judge lacks any prerogative enabling it to sanction persistent inertia on the part of the executive. The absence of a coercive mechanism therefore deprives the injunction of much of its practical substance, ultimately relegating compliance to the goodwill of

827 Conseil d'État, 1 July 2021, Commune de Grande-Synthe, n° 427301

the executive alone.[828]

This structural weakness is particularly problematic in a context where political commitment to climate action is marked by fragmented decision-making, trade-offs frequently driven by economic considerations, and, above all, a chronic deficit in effective implementation.[829] Beyond the lack of constraint, a further limitation lies in the absence of *ex post* judicial review capable of assessing the adequacy of the measures adopted in response to the injunction. Even where the executive formally complies with the Conseil d'État's order, no legal mechanism ensures that the measures implemented are commensurate with the climate imperatives identified by the court.[830] The broad margin of appreciation left to political authorities thus opens the door to purely symbolic compliance, with little or no impact on the actual trajectory of GHG emissions.

In this respect, climate litigation appears less as a fully effective enforcement mechanism than as a process of judicial construction whose binding force remains institutionally constrained. Addressing these shortcomings would require the development of genuine constraint mechanisms, such as the introduction of dissuasive financial penalties for prolonged non-compliance, the establishment of judicial monitoring procedures enabling periodic assessment of the adequacy of adopted measures, or even the recognition of a limited power of judicial substitution in cases of manifest and persistent failure by the State.[831] Absent such mechanisms, climate litigation risks remaining largely declaratory, with only a limited capacity to produce tangible regulatory change.

The expansion of judicial review nevertheless encounters a fundamental institutional limit: respect for the principle of separation of powers. As guarantor of legality, the administrative judge cannot, without exceeding his constitutional role, interfere directly in the formulation of public policy. While the imposition of an obligation to act places the judge at the frontier between legality control and normative intervention, the *Grande-Synthe* litigation illustrates a conscious effort to preserve this boundary. The Conseil d'État requires the executive to restore compliance with binding climate objectives yet refrains from prescribing the specific instruments through which this compliance must be achieved. As Torre-Schaub observes,[832] this institutional self-restraint necessarily constrains the effectiveness of climate litigation, even

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828 François-Xavier Fort, The French administrative Court under the influence of climate change, Revue Juridique de l'Environnement, 2022

829 Marta Torre-Schaub, Climate Change Risk and Climate Justice in France: The High Administrative Court as Janus or Prometheus?, European Journal of Risk Regulation, 2023

830 Éric Sacher, Les procès climatiques : quand la justice se mêle du climat, Revue Administration, 2024

831 M. Torre-Schaub, Climate Change Litigation, and the Legitimacy of Judges towards a "Wicked Problem": Empowerment, Discretion and Prudence, French Yearbook of Public Law, 2023

832 M. Torre-Schaub, Climate Change Risk and Climate Justice in France: The High Administrative Court as Janus or Prometheus? *European Journal of Risk Regulation*. 2023;14(1):213-227. doi:10.1017/err.2023.2

as it preserves the constitutional balance of powers.[833] First, it gives the political power a wide latitude in the interpretation and implementation of judicial injunctions, thus limiting the real scope of the administrative judge's rulings. Secondly, it restricts the ability of the Conseil d'État to impose precise and binding objectives, relegating it to the role of a critical observer. Finally, this limit compromises the coherence of climate justice, as far as it creates an imbalance between the affirmation of an obligation of result and the impossibility for the judge to ensure that it is effectively achieved.

Thus, while *Grande Synthe* constitutes a major jurisprudential advance, it remains incomplete. The litigation edifice built by the administrative judge still rests on fragile foundations, due to the lack of coercive mechanisms to ensure the effectiveness of the injunctions issued. In the absence of a strengthening of jurisdictional power, climate litigation risks remaining a symbolic instrument, incapable of imposing on the public authorities the urgency of the ecological transition.

b) *Institutional and constitutional constraints on enforcement*

This transformation of the administrative judge's role remains framed by institutional and constitutional constraints that limit the enforceability of judicial intervention in climate matters. Hoynck, as public rapporteur in the *Grande-Synthe* litigation, provides a doctrinal and practical framework for understanding the judge's role in ensuring the effectiveness of climate law, particularly in the context of EU Climate Law and its national implementation.[834]

Hoynck's analysis underscores the transformation of the administrative judge from a passive arbiter of legality to an active guarantor of the effectiveness of climate commitments. In his conclusions, Hoynck emphasizes that the commitments made by the State in terms of reducing GHG emissions are not mere political guidelines, but rather legally enforceable obligations of result.[835] This shift is grounded in a multi-level legal architecture, combining international, European, and domestic sources, and is exemplified by EU Climate Law's binding targets and monitoring mechanisms.

The need for judicial review to move beyond formal legality and address the substantive effectiveness of climate policies lets the administrative judge, according to Hoynck, assess not only the existence of legislative and regulatory measures, but also their real capacity to alter the trajectory of emissions and achieve the objectives set by EU Climate Law and national strategies.[836] This approach is reflected in the *Grande Synthe* rulings, where the Conseil d'État required the government to justify the adequacy of its measures in light of the carbon budgets and to take additional steps if

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833 M. Torre-Schaub, Décision Grande-Synthe III : qui va doucement, (ne) va (peut-être pas) sûrement, La Semaine Juridique – A.C.T., 2023

834 Hoynck, S. (2021, July 1). *Conclusions of the Public Rapporteur in the Case of the Commune of Grande-Synthe*.

835 Idem

836 Hoynck, S. (2021, July 1). *Conclusions of the Public Rapporteur in the Case of the Commune of Grande-Synthe*

necessary. Hoynck highlights the integration of scientific and empirical data as a foundation for judicial evaluation. The judge's assessment is informed by independent expertise, such as reports from the *HCC*, which provide objective benchmarks for evaluating the effectiveness of public policies.[837] This reliance on evidence-based review strengthens the impartiality and legitimacy of judicial intervention in climate matters.

Despite the expansion of judicial oversight, Hoynck is attentive to the institutional limits imposed by the principle of separation of powers.[838] This balance is also apparent in the case law itself. The administrative judge does not substitute his own policy preferences for those of the executive but ensures that State action is consistent with legally binding obligations.[839]

In this sense, while *Grande-Synthe* constitutes a major jurisprudential advance in the judicialisation of climate obligations, it remains institutionally incomplete. The edifice constructed by the administrative judge rests on fragile foundations, as far as binding obligations are not matched by equally robust enforcement mechanisms. Absent a recalibration of jurisdictional tools capable of ensuring effective execution, climate litigation risks remaining predominantly declaratory—symbolically powerful yet structurally limited in its capacity to compel the ecological transition.

D. ***Judicial experimentation with coercive execution mechanisms***

While the *Grande-Synthe* litigation illustrates the limits of judicial enforcement in the absence of coercive mechanisms,[840] other strands of administrative case law reveal a more robust—yet exceptional—use of judicial powers. In particular, litigation concerning air quality under Directive 2008/50/EC[841] demonstrates that the administrative judge may deploy coercive enforcement tools, including periodic penalty payments, when faced with persistent and objectively verifiable State non-compliance with EU law. This case law thus provides a counterpoint to *Grande-Synthe*, while simultaneously highlighting the strict conditions under which such coercive mechanisms are activated.

Directive 2008/50/EC imposes binding limit values for concentrations of nitrogen dioxide and particulate matter and requires Member States to adopt air-quality plans where those limits are exceeded. Despite the transposition of these obligations into domestic law, the French authorities failed for several years to ensure compliance in a number of urban areas. Following a refusal to take corrective action, environmental

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837 Hoynck, S. (2022). *The Administrative Judge and Climate Change*. AJDA, 147

838 Idem

839 Conseil d'État, 6e–5e ch. réunies, 1 July 2021, *Commune de Grande-Synthe*, n° 427301, ECLI:FR:CECHR:2021:427301.20210701, Recueil Lebon

840 Conseil d'État, *Commune de Grande-Synthe*, 1 July 2021, n° 427301, Rec. Lebon, contrasting substantive judicial review with the absence of coercive enforcement mechanisms

841 Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ L 152, 11 June 2008, arts. 13 and 23

organisations—led by *Les Amis de la Terre – France*—brought proceedings before the Conseil d'État, which, in its ruling of 12 July 2017,[842] annulled the State's refusal and issued an injunction requiring the adoption of appropriate air-quality plans within a specified period. The Conseil d'État granted the request of the applicant associations.[843] It annulled rulings refusing to take all appropriate measures and to draw up air quality plans in accordance with the abovementioned directive. The Conseil d'État issued injunctions to this effect within 9 months. To implement the ruling, the government transmitted to the European Commission and makes public fourteen "roadmaps" indicating concrete measures to reduce pollutant emissions. In subsequent rulings, the Court imposed periodic penalty payments amounting to ten million euros per semester of non-compliance, explicitly grounding its reasoning in the seriousness of the breach, the prolonged nature of State inaction, and the imperative of ensuring the effectiveness of EU environmental law.[844] The penalty was not conceived as punitive, but as a means of restoring the authority of judicial rulings and securing effective execution.

This case law demonstrates that the administrative judge possesses effective coercive tools but deploys them only in narrowly circumscribed situations characterised by clear, persistent, and objectively verifiable breaches of EU law. Far from contradicting the limits identified in *Grande-Synthe*, the air quality litigation confirms that judicial enforcement remains exceptional, conditional, and institutionally constrained. As such, it reinforces the conclusion that the effectiveness of climate litigation depends less on the formal availability of coercive mechanisms than on the judicial willingness — and institutional capacity — to activate them.[845]

To sum up, the expansion of administrative judicial review over State climate action marks a significant evolution in the implementation of climate obligations, whereby procedural forms of review are progressively coupled with a substantive evaluation of the adequacy and effectiveness of State action. By scrutinising the coherence, adequacy, and execution of governmental climate commitments, administrative courts transform abstract objectives into legally assessable standards. This development demonstrates that effective climate litigation does not depend on the creation of new rights or obligations, but on the capacity of existing administrative review mechanisms to recalibrate State action in light of binding climate commitments, thereby reinforcing the operational dimension of EU Climate Law.

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842 Conseil d'État, *Association Les Amis de la Terre France*, 12 July 2017, n° 394254, Rec. Lebon; and subsequent enforcement rulings imposing periodic penalty payments for non-execution of that ruling

843 Conseil d'État, 6ème - 1ère chambres réunies, 12/07/2017, 394254

844 The State is ordered to pay the sum of 20 million euros, for the provisional liquidation of the penalty imposed by the ruling of July 10, 2020, for the period from July 11, 2021, to July 11, 2022

845 H. Delzangles. Le «contrôle de la trajectoire « et la carence de l'Etat français à lutter contre les changements climatiques. Actualité juridique Droit administratif, 2021, 36, pp.2115. ⟨halshs-03407198⟩

1.1.3. Strengthening the authority of *res judicata* in climate litigation

The effectiveness of climate litigation depends not only on judicial intervention, but on the durability of its legal effects. In this respect, the strengthening of the authority of *res judicata* plays a decisive role in transforming climate rulings from isolated rulings into structuring constraints on State action. This subsection examines how national courts reinforce the binding force of climate-related rulings, ensuring continuity, compliance, and institutional accountability within the implementation of EU Climate Law.

In hindsight, it should be noted that the directive 2008/50/EC[846] regulates the concentration of eight air pollutants and provides for the setting of harmonised limit values throughout the territory of the European States to measure the level of pollution and set binding targets for these States. When these limit values are exceeded, the provisions of the Directive require "air quality plans to be put in place with appropriate measures to ensure that the exceedance period is as short as possible."[847]

Article L. 222-4 of the Environmental Code,[848] which transposes Article 13 of the Directive,[849] provides for the possibility of not using an air protection plan in the event that "it is demonstrated that measures taken in another framework will be more effective" to comply with the standards in question. However, the Court recalls it in the present case: "if the Member States have a certain margin of discretion in determining the measures to be adopted, these must in any event allow the period of exceedance of the limit values to be as short as possible."[850]

Coming to the question of whether the roadmaps can be regarded as "measures taken in another framework (...) more effective,"[851] the Court considers that the adoption of these roadmaps by the Minister for the Ecological Transition does not make it possible to verify whether the measures they include make it possible to reduce pollutant concentrations below the limit values within the set deadlines.[852] In particular, it considers that "the government does not put forward justifications capable of demonstrating that this date of 2025 can be regarded as allowing compliance with

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846 Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe. This Directive defines objectives for ambient air quality designed to avoid, prevent, or reduce harmful effects on human health and the environment as a whole.

847 Recital 19 of the Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe.

848 Article L. 222-4 of the French Environmental Code

849 Article 13 of the Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe.

850 Article 2 of the Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe.

851 Article 23 of the Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe.

852 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804

the requirement that the period of exceedance of these limit values be as short as possible."[853] By its ruling of 2017, the Court already ordered the State to "reduce the concentration levels of these 2 pollutants below these limit values in the shortest possible time."[854] It is the urgency that pushes the judge to go beyond the simple declaratory role to force litigants to follow the meaning of these rulings. However, urgency is combined by the 2017 ruling with non-compliance with the French and European provisions to pronounce the injunction while it is combined by the present ruling, with non-compliance with the injunction to pronounce the penalty payment. Thus, the Court oversees the penalty both in the common interest (the preservation of the environment) and in the concern for the proper administration of justice (enforcement of its rulings).

The rulings of the administrative judge are covered by the authority of res judicata. As René Chapus points out in his administrative litigation manual, "*res judicata* has and must have authority, that is to say, impose itself: for the simple reason that it would be useless to judge, if what has been judged could not be respected (...)."[855] By imposing a penalty payment on the State in this case, the Court reinforces the authority of res judicata of its 2017 ruling. Specifically, the State has not taken sufficient measures to ensure the implementation of the ruling requiring it to implement plans to reduce emissions harmful to air quality.[856]

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853 Although in Conseil d'État - 6ème - 5ème chambres réunies, N° 428409, ECLI :FR : CECHR :2022 :428409.20221017, §8, the Conseil d'État argued that : "Furthermore, under Article 4 of Regulation (EU) 2021/1119 of 30 June 2021 establishing the framework for achieving climate neutrality, which entered into force on 30 July 2021, i.e. after Ruling No. 427301 of 1 July 2021 of the Conseil d'État, the EU approved a new target for reducing net greenhouse gas emissions, after deduction of removals, by 2030, with the target now set at reducing these emissions by at least 55% in 2030 compared to 1990 levels. The terms and conditions under which this new overall target is to be implemented, in particular in terms of new targets applicable to each Member State, have been defined by the European Parliament and the Council of the EU as part of the regulatory package known as 'Fit for 55' or 'Adjustment to the 55% target'. In this context, Regulation (EU) 2023/857 of 19 April 2023 amends Regulation (EU) 2018/842 of 30 May 2018, which sets binding national targets for each Member State, in particular Annex I thereto. As a result, France's greenhouse gas emission reduction target, which was 37% for the period 2005-2030, has now been increased to 47.5% for the same period. To meet this target, the Government has drawn up a draft third national low-carbon strategy, not yet adopted at the date of this ruling, aiming for a 50% reduction in emissions between 1990 and 2030. However, Ruling No. 427301 of 1 July 2021 of the Conseil d'État, having examined the legality of the contested implicit refusal rulings in light of the objectives applicable on the date of its intervention, i.e. 1 July 2021, the new European target and its national variations cannot be regarded as applicable to the present dispute concerning the enforcement of the rulings of 1 July 2021 and 10 May 2023." French government is, again, out of delay and exposed to more sanctions.

854 The air quality plan to reduce the concentrations of nitrogen dioxide and fine PM10 particles below the limit values set by article R. 221-1 of the environmental code as quickly as possible, to be transmitted it to the European Commission before March 31, 2018.

855 R. Chapus, Droit du contentieux administratif, T éd. In : Revue internationale de droit comparé. Vol. 51 N°4, Octobre-décembre 1999. p. 1164.

856 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804, §6

With this ruling, the jurisdiction is conducting a real analysis and comparison of the plans conducted in each administrative air quality monitoring zone. The Conseil d'État notes the shortcomings of the State on a case-by-case basis and finally decides that only one administrative area, the Arve Valley, correctly implemented the 2017 ruling: indeed, the zone has drawn up an air protection plan comprising a series of measures "sufficiently precise and detailed as well as credible modelling of their impact to make it possible to expect compliance with the limit values for the concentration of nitrogen dioxide and fine particles in this area by 2022."[857] On the other hand, the measures taken in all other areas only incompletely implement the 2017 ruling. The roadmaps for these areas are too incomplete and are never updated.

Consequently, the State is held liable for the non-execution of res judicata in environmental matters. 3 years after its ruling pronouncing the injunction, the Conseil d'État financially obliges the State to effectively enforce its ruling. This ruling is indicative of the significant role that the Court plays in respecting the protection of air quality, but more generally in environmental policy. Indeed, it is characterized not only by its rigour, but also by its exceptional scope.

The scope of the ruling is exceptional. First, the recipient of the penalty payment and the amount of it are unusual (a). Then, the Conseil d'État innovates by proposing a solution to circumvent the difficulty relating to the identification of the beneficiary of the penalty payment when the State is debtor (b).

a) *A high penalty payment imputable to the State*

The penalty payment is the tool allowing a party to be ordered to pay an agent's sum for non-execution of *res judicata*. The penalty payment may intervene a priori, to quote the ruling, "both in the ruling, decision on the merits on the claims of the parties on the basis of Article L. 911-3[858] of the CJA. Hence also *a posteriori*, by a return to the judge to whom it will be up to exercise the necessary constraints – as "enforcement judge" – on the basis of Articles L. 911-4 and 911-5 of the CJA.[859]

If the requests for penalty payments were numerous, the rejections overwhelmingly prevailed. As Professor Chapus notes,[860] the penalties imposed by the High Court after the intervention of the Act of 16 July 1980 number only in the dozens, whereas the number of applications for penalty payments had begun to exceed one hundred in 1992 and was close to 250 in 1995.[861] According Chapus, the practice of *a posteriori* penalty payments is doomed, because of the development of preventive penalty payments, to marginality. It is therefore quite exceptional that requests for penalty payments are justified.

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857 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804, §11

858 Article L. 911-3 of the CJA

859 Articles L. 911-4 and 911-5 of the CJA

860 R. Chapus, Droit du contentieux administratif, T éd. In : Revue internationale de droit comparé. Vol. 51 N°4, Octobre-décembre 1999. p. 1164

861 Idem

By its first recital,[862] the Conseil d'État recalls the principle that "in order to ensure the enforcement of its rulings, the administrative court may impose a penalty payment on a legal person governed by public law or a body governed by private law entrusted with the management of a public service." The judge's power to impose periodic penalty payments had initially been recognised only against legal persons governed by public law.[863] On the other hand, private-law bodies entrusted with the management of a public service did not fall within the scope of the Law of 16 July 1980 vesting the Conseil d'État with the power to impose periodic penalty payments;[864] they were subsequently included in it by a law of 30 July 1987. "Ordinary" private persons are still not concerned by this penalty payment mechanism.[865]

In addition, the principle is that the court which imposed the penalty payment has jurisdiction to fix the amount of the penalty payment in each case, having regard to its rate and the length of the period of non-performance (or insufficient performance).

In the present case, the Conseil d'État held that the State had failed to take the measures necessary to ensure the execution of its earlier ruling. On that basis, the Court decided to impose a periodic penalty payment until full compliance was achieved, justifying the use of this mechanism by reference to several cumulative factors.

In particular, it relied on "the period which has elapsed since the adoption of the ruling whose execution is sought, the importance attached to effective compliance with the requirements stemming from EU law, the seriousness of the consequences of partial non implementation- in terms of public health, and the particular urgency arising therefrom.[866] The factors of delays, compliance with EU law, seriousness and urgency are not the subject of any discussion by the Conseil d'État.[867] The latter could have merely noted the non-execution of the ruling in order to use the penalty payment mechanism but nevertheless preferred to specify these data to justify the astronomical and exceptional sum to which the State is condemned.

In the present case, the Conseil d'État ordered the State to pay a penalty payment of ten million euros for each six-month- period of non-execution.[868] The *astreinte* was imposed "until the date on which the ruling of 12 July 2017 has been enforced," [869] unless the State was able to justify full compliance within six months of notification of the ruling.

The amount of the penalty payment is exceptional. The Court itself emphasised

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862 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804, §1

863 Loi n° 80-539 du 16 juillet 1980 relative aux astreintes prononcées en matière administrative et à l'exécution des jugements par les personnes morales de droit public

864 Conseil d'Etat, Sect., 17 October 1986, Vinçot

865 Conseil d'Etat, 10 February 1992, Commune de Charbonnières-lès-Varennes

866 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804, §7

867 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804

868 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804, §2

869 Conseil d'Etat, 4 August 2021, ECLI :FR : CECHR :2021 :428409.20210804, §11

that it constituted "the highest amount ever imposed to compel the State to execute a ruling rendered by the administrative judge." This exceptional level reflects the gravity attached by the Conseil d'État to persistent noncompliance with obligations deriving from EU -air quality law, particularly in light of- their implications for public health.[870]

However, this amount is justified as far as there is no enforcement mechanism in domestic law. This makes some authors, like Roger Perrot, say that the mechanisms of coercion are such that "the poor judge can only be respected by rounding up the piggy bank of one of the parties."[871] The issue is even more delicate when it is the State that is the addressee of a request for enforcement. The latter is, in fact, very often requested to ensure the execution of the rulings of the administrative judge (and exceptionally obliged to execute them). In addition to the reception of the request for penalty payment and the identity of the debtor of it which may be surprising, the amount of the penalty payment is unusual and is likely to create a real media impact and political reactions.[872]

Given the amount of the penalty payment, the Court did not stop at ordering the State to pay the sum to the applicants but innovated by providing for a new mechanism for allocating the penalty payment.

b) *An innovative mechanism for allocating penalty payments to ensure an effective climate transition*

Another exceptional aspect of the ruling is the identity of the addressee of the penalty payment. The Conseil d'État considers the amount of the penalty payment to be too high for it to go entirely to the association *Friends of the Earth – France*. The Court explains in this regard that it intends to "avoid undue enrichment" of this association.[873]

Article L. 911-8 of the CJA provides for the possibility for the judge of the penalty payment to decide that the sums due by the public person will only be paid in part to the beneficiary of the ruling. If it so decided, paragraph 2 of the same article provides that the remaining part shall be "allocated to the State budget." Previously, this remaining share was allocated to the Value Added Tax Compensation Fund. However, since such an assignment is meaningless when it is against the State that the penalty payment is imposed, it is understandable that the judge refrains from any distribution and allocates the entire sum to the beneficiary of the ruling.[874] By its ruling dated 6 March 2015, the French Conseil Constitutionnel ruled in this sense: "it follows from

870 Idem

871 R. Perrot, Nouveaux juges, nouveaux pouvoirs ? 1996, ISBN : 2247020739, URL : http://catalogue.bnf.fr/ark:/12148/cb37670326b

872 A. Dannenberg, M. Lumkowsky, E.K. Carlton, D.G. Victor, Naming, and shaming as a strategy for enforcing the Paris Agreement: The role of political institutions and public concern, Proc. Natl. Acad. Sci. U.S.A. 120 (40) e2305075120, https://doi.org/10.1073/pnas.2305075120 (2023).

873 Conseil Constitutionnel, n ° 2014-455 QPC of 6 March 2015

874 Conseil d'Etat, Federation of physiotherapists, 2001, N° 229562 229563 229721

the constant case law of Court that the second paragraph of Article L. 911-8 does not apply when the State is debtor of the penalty decided by a court."[875]

Applying the ruling of the Conseil Constitutionnel, the Conseil d'État specifies in this case that "the purpose of the penalty payment is to compel the legal person governed by public law or the body governed by private law responsible for the management of a public service to perform the obligations assigned to it by a court ruling, these provisions do not apply when the State is liable for the penalty payment in question." It continues by stating that where the State is liable for the penalty payment, the court has the power to decide to allocate a fraction of the penalty payment to a legal person governed by public law "having sufficient autonomy vis-à-vis the State and whose tasks are related to the subject-matter of the dispute"[876] or to a non-profit-making legal person governed by private law "carrying out actions of general interest in connection with that object."

By this recital, the Court grants the judge the right freely to identify the creditor of the penalty payment when it is the State which owes it. That freedom is nevertheless subject to conditions as far as if the court decides to assign a fraction of the penalty payment to a public person, it would not only have to have "sufficient autonomy vis-à-vis the State" but also exercise "tasks related to the subject-matter of the dispute."

The scope of this ruling is exceptional, but questionable. Indeed, in its *Barret and Honnet*[877] ruling, the Conseil d'État recognized that "the power of judges to impose a penalty payment for the execution of their ruling has the character of a general principle in law" and that consequently, "it is only for the legislator to determine, extend or restrict the limits of a general principle in law." However, by this ruling, the Council created a new mechanism for allocating the penalty payment, making it applicable, in the words of Louis Cofflard, as an "administrator who distributes the budget lines."[878] Thus, one may wonder whether, ultimately, that ruling does not operate a *contra legem* interpretation of Article L. 911-8 of the CJA[879] as far as there was nothing to suggest that the provisions of that article went in that direction.

Read in conjunction with the case law, Hoynck's conclusions contribute to an understanding of the evolving role of the administrative judge in climate litigation. By emphasizing the effectiveness of judicial review, the importance of scientific evidence, and the balance between judicial intervention and executive discretion, Hoynck articulates a vision of climate justice that is both ambitious and institutionally grounded. His analysis is essential for assessing the challenges and opportunities of implementing EU Climate Law in France and beyond. These developments also raise the question of

875 Conseil Constitutionnel, n ° 2014-455 QPC of 6 March 2015

876 Conseil d'Etat, 4 August 2021, ECLI:FR: CECHR:2021:428409.20210804, §2

877 Conseil d'Etat, Ass., 10 May 1974

878 NOTICE TO MEMBERS Petition No 1064/2021 by Louis Cofflard (French), on behalf of French Union Against Aircraft Nuisances (l'Union Française Contre les Nuisances des Aéronefs), on increased air traffic and its negative consequences in France - PE765.028v02-00

879 Article L. 911-8 of the CJA

the role played by the multiplication of national climate cases and the emerging dialogue[880] between European courts—a dimension that will be examined more closely in Subchapter 1.3.

Finally, Hoynck situates the *Grande-Synthe* litigation within a broader European and international context, referring to attempts to extend this litigative trajectory beyond the national level. In this respect, the application brought by Mr Carême before the ECtHR—arising from the same factual constellation as *Grande-Synthe*—was declared inadmissible for lack of victim status under Article 34 ECHR. Far from constituting a substantive precedent, this outcome highlights the procedural limits currently constraining the transnationalisation of climate litigation.[881] The implications of these admissibility barriers, as well as their contrast with comparative national developments such as *Urgenda*, will be analysed further in Subsection 1.3.

To sum up, the strengthening of the authority of *res judicata* constitutes a central condition for the effectiveness of climate litigation before national courts. By reinforcing the binding force and continuity of judicial rulings through enforcement proceedings and, where necessary, the imposition of periodic penalty payments, administrative judges ensure that climate rulings produce durable legal effects extending beyond the individual dispute. In this way, *res judicata* operates not merely as a procedural guarantee, but as an implementation tool that constrains State action over time and prevents the neutralisation of climate obligations through inertia or repeated non-compliance.

The analysis in subchapter 1.1. demonstrates that the recognition of a right to effective climate litigation before national courts emerges through the combined operation of substantive judicial review and the reinforcement of the authority of judicial rulings. By exercising control over the content and execution of State climate commitments, and by ensuring the durability of judicial outcomes through *res judicata*, administrative courts transform climate obligations into legally enforceable constraints. This demonstrates that the effectiveness of climate litigation is not grounded in the creation of new subjective rights, but in the capacity of existing judicial mechanisms to structure, stabilise, and implement EU Climate Law at national level.

While the strengthening of substantive judicial review and the authority of *res judicata* contribute decisively to the effectiveness of climate litigation, they also raise inherent questions regarding the scope and limits of judicial intervention. The consolidation of climate obligations through administrative adjudication cannot be assessed in isolation from the principles governing the separation of powers, judicial restraint, and institutional legitimacy. It therefore becomes necessary to examine the boundaries within which national courts operate, and the risks associated with an expanded judicial role in the implementation of substantial climate commitments.

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880 M-C. Ponthoreau : «Constitutions nationales et droit(s) sans frontières ; Jalons méthodologiques. « ; Constitutions, 2010, p. 61.

881 ECtHR, 9 April 2024, Damien Carême v. France, No 7189/21 ECLI:CE:ECHR:2024:0409DEC000718921

1.2. Substantive climate constitutionalism: *the Urgenda* case

The consolidation of effective climate litigation before national courts ultimately materialises through the emergence of landmark cases that structure judicial practice beyond the individual dispute. Such cases do not merely resolve specific claims but establish legal reference points capable of stabilising standards of review, remedies, and State obligations over time. This section examines how landmark climate rulings contribute to the implementation of EU Climate Law by transforming judicial experimentation into consolidated doctrine, while simultaneously exposing the limits and tensions inherent in an expanded judicial role.

This section examines how the Urgenda case, rendered by the Dutch courts, became a touchstone for climate justice worldwide – although inspired by the practice before the French Conseil d'État.[882] A landmark ruling *The Urgenda Foundation v. The State of the Netherlands* was the first case in which a national court ordered the government to take more ambitious action on climate change, grounding its reasoning in both international commitments and fundamental human rights. The Urgenda case played a structuring role in the transnational development of climate litigation, contributing to a broader circulation of rights-based arguments and judicial strategies. These elements subsequently re-emerged, in different institutional and legal configurations, in cases such as *Amis de la Terre* and *Grande-Synthe*.[883]

This case did not merely challenge the adequacy of Dutch climate policy; it established a new paradigm for judicial intervention, demonstrating that courts can and must play a decisive role in holding governments accountable for their climate obligations. The *Urgenda* litigation showcased the strategic use of public interest standing, the mobilization of scientific evidence, and the creative invocation of human rights law to overcome traditional barriers to environmental justice. It also highlighted, as Soulard aptly mentions, the evolving role of the judiciary: no longer a passive arbiter, but an active guardian of intergenerational equity and the rule of law in the face of the climate crisis.[884]

The significance of *Urgenda* lies in its ability to translate the abstract principles of international climate agreements—such as the Paris Agreement—into concrete, justiciable obligations at the national level. The Dutch courts, culminating in the Supreme Court's ruling, recognized that the State's duty to protect its citizens from the dangers of climate change is not simply a matter of political discretion, but a legal obligation rooted in the right to life and the right to private and family life as enshrined in the

882 H. Delzangles. Le «contrôle de la trajectoire « et la carence de l'Etat français à lutter contre les changements climatiques. Actualité juridique Droit administratif, 2021, 36, pp.2115. ⟨halshs-03407198⟩

883 H. Delzangles (2025). Libre-propos sur les régressions du droit de l'environnement.

884 Christophe Soulard, The Judiciary and Climate: a decade of quiet development since the Paris Agreement , Nov 2025, Climate Change: The Critical Decade Issue #6, Revue Européenne du Droit : https://geopolitique.eu/en/articles/the-judiciary-and-climate-a-decade-of-quiet-development-since-the-paris-agreement/

ECHR. By requiring the Netherlands to reduce its GHG emissions by at least 25% compared to 1990 levels by 2020, the Urgenda ruling set a powerful example for climate litigation across Europe and beyond.

Moreover, Urgenda's impact extends beyond its immediate legal consequences. It has sparked doctrinal debates on the separation of powers, the limits of judicial intervention in policy matters, and the interplay between national courts and supranational legal frameworks. The case was cited by courts and litigants across Europe, serving as a blueprint for the operationalization of climate law and the realization of climate justice at the national level. By doing so, the doctoral thesis aims to highlight the pathways through which national courts can drive the implementation of ambitious climate policies, bridge the gap between international commitments and domestic action, and contribute to the emergence of a robust, rights-based approach to climate governance in Europe.

Seized by the foundation Urgenda and 886 litigants on 24 June 2015, the District Court of The Hague decided that the Netherlands State had been obliged to take all appropriate measures to reduce the Netherlands' GHG emissions by at least 25% by 2020, compared with the 1990 emission levels.[885] In this regard, the Court based its reasoning on the general duty of the State to act with due diligence in order to prevent the materialisation of a sufficiently foreseeable risk. Thus, the Court established a legal link between climate change and the protection of human rights by construing Articles 2 and 8 of the ECHR as encompassing positive obligations to protect individuals against foreseeable and serious risks associated with climate change.[886] This was established, noticeably by the Dutch court in the (in)famous *Urgenda* case.

The Hague District Court considered that international obligations relating to climate change mitigation, although not directly invocable by *Urgenda*, could influence the interpretation of the State's general duty of care under domestic law. This indirect influence operated through a 'reflex effect,' whereby national legal concepts were interpreted in a manner consistent with the Netherlands' international obligations. Putting an end to more than five years of proceedings, the Supreme Court of the Netherlands rejected, on 20 December 2019, the appeal in cassation brought by the State against the ruling of the Court of Appeal. The ruling also emphasised the link between climate change and the protection of human rights. In particular, the Court held that the Netherlands had acted unlawfully in breach of Articles 2 (right to life) and 8 (right to respect for private and family life) of the ECHR, which impose positive duties of protection on the State.[887] Interpreted in light of the State's international climate commitments, these duties required the Netherlands to reduce its GHG emissions by at

885 Urgenda Foundation v. The State of the Netherlands, ECLI:NL: GHDHA:2018:2610, Ruling (Ct. App. The Hague Oct. 9, 2018)

886 Collin, C. (2020, January 29). *Suite et fin de l'affaire Urgenda : Une victoire pour le climat.* Dalloz Actualité. https://www.dalloz-actualite.fr/flash/suite-et-fin-de-l-affaire-urgenda-une-victoire-pour-climat

887 Misonne, D. (2020). *Pays-Bas c. Urgenda (2019).* In *Les grandes affaires climatiques*. DICE Éditions.

least 25% by the end of 2020.[888]

In its ruling, the Court adopted a significantly different line of reasoning by directly applying Articles 2 and 8 of the ECHR. This was important because it allowed the judges to derive positive obligations to mitigate climate change directly from human rights law, by characterising insufficient climate action as a foreseeable and serious risk to the right to life and to private and family life. Finally, in a ruling of 20 December 2019, dismissing the appeal brought by the Government of the Netherlands, the Supreme Court of the Netherlands confirmed the position of the Court of Appeal.[889]

The ruling is based on Articles 2 and 8 of the ECHR, and the commitments made by the EU as part of the global effort to mitigate climate change serve only to assist in the interpretation of these provisions. One could have imagined that the Dutch courts would limit themselves to noting that, by reducing the level of its ambitions, going from the objective of 25% reduction emissions in 2020 compared to the year 1990 at only 20%[890], the Netherlands violate the obligation of non-retrogression enshrined in the Paris Agreement, and identify in this renunciation a "fault" committing liability of the State according to the ordinary law of civil liability.

The Dutch courts recalled that the ECHR obliges States Parties to the Convention, such as the Netherlands, to guarantee to their residents the enjoyment of the rights and freedoms recognised therein. Article 2 protects the right to life, Article 8 the right to protection of private and family life. The case law of the Court of Strasbourg imposes on the State an obligation to take the necessary measures when the risk to the life and well-being of people is proven and immediate and known to the State.

The Dutch Court does not expand on the fact that this case law is actually quite cautious on the issues environmental, because, proceeding "*by ricochet*,"[891] it is concerned only with the most serious forms of environmental harm, namely those that are liable to interfere with the effective enjoyment of rights such as the right to life. Moreover, in environmental matters, the Court of Strasbourg is quicker to sanction breaches of the requirements of procedural nature, such as the absence or incompleteness of a preliminary study, that shortcomings material questioning the level of protection of fundamental rights actually guaranteed.[892] The trend, before national courts, so

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888 Urgenda Foundation v. The State of the Netherlands, ECLI:NL: GHDHA:2018:2610, Ruling (Ct. App. The Hague Oct. 9, 2018)

889 "We are faced with an exceptional situation in this case. Facing the threat of dangerous climate change and it is clear that urgent action is needed [...]. The State must do its part in this regard. This obligation derives from Articles 2 and 8 of the ECHR, which require the State to guarantee the right to life and the right to respect for their private and family life, towards the inhabitants of the Netherlands, whose interests Urgenda represents in these proceedings"

890 The first integrated national energy and climate strategy should be presented in the first period 2021-2030, with an update planned for 2024.

891 D. Misonne, «The Emergence of a Right to Clean Air. Transforming EU Law through Litigation and Citizen Science », RECIEL, 2020.

892 Article 53 of the ECHR: none of the provisions of this Convention shall be interpreted as limiting or infringing the human rights and fundamental freedoms which could be recognized under the laws of

far, was to guard the flood gates as closed as possible. Nonetheless, as a very dynamic litigation, the body of evidence tends to contradict the latter.

In the *Urgenda* case, the main argument advanced by the Dutch government consisted in challenging the legitimacy of judicial intervention in an area—namely, the setting of the timetable for the adoption of climate change- mitigation measures—which, according to the State, should, in a system based on the separation of powers, remain within the competence of the Executive. The separation of powers argument calls for three responses. First, such an argument is questionable as far as it seeks to prevent judicial oversight aimed at ensuring the effective protection of fundamental rights. By their very nature, fundamental rights require effective remedies.[893] Within the framework of the ECHR, this requirement is reflected in Article 13 of the Convention,[894] which, while not guaranteeing access to a judicial remedy for every arguable violation, presupposes at the very least that Convention rights are subject to review by an independent body. The relative vagueness of certain Convention provisions therefore cannot preclude such a form of control

Secondly, the intervention of the judge is even more legitimate in the situations where other bodies of the State cannot guarantee the protection of rights set out in the ECHR or refuse to do so. However, climate change is arguably an issue that traditional policies and governance mechanisms struggle to address: the impacts of GHG accumulation in the atmosphere are largely distant in time and space; because of the considerable latency—often spanning several decades—between emissions and their effects, political systems, which tend to operate on short time horizons shaped by immediate electoral concerns, are ill-equipped to respond adequately to this challenge.[895] Third, in the *Urgenda* case, the Dutch Supreme Court does not replace other State powers. It is content to note the violation an obligation, deduced from Articles 2 and 8 of the ECHR. The intervention of the judge, one could say, stems from a negative theology: the latter notes that the Dutch State does not even provide the minimum level of efforts to avoid global warming dangerous on a global scale, but at the same time it leaves the State the choice measures to be taken in order to fulfil the obligation imposed on it.[896]

The major contribution of the *Urgenda* case law results from the problematization of the climate with regard to the issue of fundamental rights, in a dialogue between the State and its citizens, in the light of the ECHR and, in the first instance, in support

any Contracting Party or any other Convention to which that Contracting Party is a party.

893 ECtHR, *Guide on Article 13 of the Convention: Right to an Effective Remedy*, updated 31 August 2025; ECtHR (GC), *Kudła v. Poland*, no. 30210/96, §§ 157-158, ECHR 2000-XI; see also L. Chanturia, "Right to an Effective Remedy in the ECHR", *Journal of Law*, no. 1/2023

894 Article 13 of the ECHR

895 Voy. R. Heede, «Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854-2010», Climatic Change, 2014, vol. 122, pp. 229-241.

896 Urgenda Foundation v. The State of the Netherlands, ECLI:NL: GHDHA:2018:2610, Ruling (Ct. App. The Hague Oct. 9, 2018), §6.3

of the Dutch Civil Code. The application of fundamental rights to this issue had been suggested for several years by the doctrine[897] and even within United Nations human rights bodies,[898] but it remained controversial.[899]

However, invoking fundamental rights is fraught with implications, because, on the one hand, it is a field in which the control operated by the judge is magnified and in which the margin of appreciation of the political ruling-maker, conversely, is restricted. The Supreme Court recalled that the protection of fundamental rights, including against the State itself, constitutes one of the essential functions of the judiciary in a democratic system governed by the rule of law.[900] Some situations, particularly those involving serious and direct interference with fundamental rights, are more closely connected to their protection than others. Where such interference occurs, the discretion of the decision-maker is correspondingly reduced, thereby justifying a more stringent standard of judicial review.[901]

For instance, in *Neubauer et al. v. Germany*, the German Federal Constitutional Court reviewed the constitutionality of Germany's climate protection legislation through the lens of fundamental rights.[902] While firmly grounded in the German Basic Law, the Court's reasoning reflects a doctrinal evolution comparable to that initiated in *Urgenda*, in that climate change was conceptualised as a foreseeable and serious threat to fundamental rights, thereby justifying judicially enforceable constraints on legislative discretion.[903] The Court went further by articulating an explicitly intertemporal dimension of rights protection, holding that insufficient mitigation efforts undertaken today impermissibly restrict the freedom rights of future generations. At the same time, in order to preserve the separation of powers, it refrained from imposing quantified emissions -reduction targets, instead requiring the legislature to specify adequate post2030 mitigation pathways in a forward-looking perspective.

A similar reliance on a rights-based framework can be observed- in Belgium. In

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897 A. Gouritin, «La Jurisprudence de la Cour européenne des droits de l'homme sur les obligations positives en matière environnementale peut-elle s'appliquer aux changements climatiques ? », in C. Cournil et C. Colard-Fabregoule (dir.), Les changements climatiques et les défis du droit, Bruylant, Bruxelles, 2010, p. 255-256 ; C. Cournil & C. Colard-Fabregoule, Changements environnementaux globaux et droits de l'homme, Bruylant, 2012, 646 p.

898 J. Knox, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Climate Change Report, United Nations Human Rights Council, A/HRC/31/52, 10 February 2016

899 Idem.

900 O. Pedersen, "The Ties that Bind: The Environment, the ECHR and the Rule of Law," European Public Law 2010 (vol. 16, no. 4), p. 571-595

901 ECtHR, *Guide on Article 13 of the Convention: Right to an Effective Remedy*, updated 31 August 2025

902 de Augustinis, J. (2024). Judicial approaches to science and the procedural legitimacy of climate rulings: Comparative insights from the Netherlands and Germany. European Law Journal, 30(1), 1–15. https://doi.org/10.1111/eulj.12483

903 De Bellis, M. (2023). *Adjudicating climate change (in)action from Urgenda to Neubauer: Minimum reasonableness and forward-oriented proportionality.* European Review of Public Law, 35(1), 1–19

Klimaatzaak v. Belgium[904] similarly builds on the rights based- framework inaugurated by *Urgenda*, grounding State responsibility in both civil law- duty of care and Articles 2 and 8 ECHR. While the Brussels Court of First Instance initially refrained from imposing a quantified emissions reduction- obligation on separation -of powers grounds, the Brussels Court of Appeal subsequently- went further. In its judgment of 30 November 2023, it held that persistent and structural failures in climate governance justified judicially mandated targets, ordering the Belgian authorities to reduce GHG emissions by at least 55 % by 2030.

The ruling delivered on 20 December 2019 by the Supreme Court of the Netherlands is of paramount importance, both because of the fundamental issues it addresses and because of its broader impact.[905] It recognises that climate change constitutes a serious threat to the enjoyment of fundamental rights and to living conditions compatible with their effective protection. Its significance also lies in its influence on subsequent climate litigation: an increasing number of cases brought before national courts invoke human rights in support of claims directed against States and, in certain instances, private actors, as illustrated by *Neubauer et al. v. Germany*,[906] *Klimaatzaak v. Belgium*,[907] and *Milieudefensie v. Shell*.[908] In this context, the *Urgenda* ruling operates not merely as a source of inspiration, but as an authoritative reference within a broader transnational judicial dialogue, in which human-rights based solutions circulate across jurisdictions- even in the absence of any hierarchical relationship between the courts concerned.[909]

To sum up, subchapter 1.2 demonstrates that the *Urgenda* judgment constitutes a foundational moment in climate litigation, as far as it translates States' positive human rights obligations into concrete and judicially enforceable climate mitigation duties.

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904 Brussels Court of First Instance, *VZW Klimaatzaak v. Kingdom of Belgium and Others*, Judgment of 17 June 2021, the court acknowledged breaches of the duty of care and of Articles 2 and 8 ECHR but declined to impose quantified emissions-reduction targets, invoking concerns related to the separation of powers.

; Brussels Court of Appeal, *VZW Klimaatzaak v. Kingdom of Belgium and Others*, Judgment of 30 November 2023: ordering the Federal State, the Flemish Region and the Brussels-Capital Region to reduce greenhouse gas emissions by at least 55 % by 2030 compared to 1990 levels, on the basis that persistent and structural deficiencies in climate governance justified judicially enforceable targets. In both cases, the courts found the State liable both in the Belgian civil-law duty of care and in Articles 2 and 8 of the ECHR (right to life and right to respect for private and family life).

905 Supreme Court of the Netherlands, *State of the Netherlands v. Urgenda Foundation*, Judgment of 20 December 2019, ECLI:NL:HR:2019:2007.

906 Federal Constitutional Court of Germany, *Neubauer et al. v. Germany*, Judgment of 24 March 2021, EC LI:DE:BVerfG:2021:rs20210324.1bvr265618.

907 Brussels Court of Appeal, *VZW Klimaatzaak v. Kingdom of Belgium and Others*, Judgment of 30 November 2023, ECLI:BE:CABR:2023:ARR.1282

908 The Hague Court of Appeal, *Shell plc v. Milieudefensie et al.*, Judgment of 12 November 2024, ECLI:NL:GHDHA:2024:2100

909 M.-C. Ponthoreau, *Droit(s) constitutionnel(s) comparé(s)*, 2e éd., Economica, 2021, spéc. p. 53-56 et p. 403

By grounding climate action directly in Articles 2 and 8 ECHR, the Dutch Supreme Court moved beyond symbolic review and adopted an interventionist remedial approach aimed at ensuring the effectiveness of climate commitments. At the same time, the judgment reveals the structural tensions inherent in judicial implementation of climate obligations, as the affirmation of binding duties necessarily operates within constitutional constraints, in particular those relating to democratic legitimacy and the separation of powers.

The *Urgenda* judgment illustrates how climate litigation can serve as a vehicle for enforcing States' positive human rights obligations. Yet the practical relevance of such judicial developments presupposes that affected actors are able to bring climate-related claims before national courts. Subchapter 1.3 therefore shifts the focus from the substance of judicial intervention to its procedural preconditions, by examining the progressive broadening of access to climate justice through adaptations in standing and admissibility rules.

1.3. Procedural climate constitutionalism: the *Friends of the Irish Environment* case

Once consolidated through substantive judicial review and landmark adjudication, climate litigation before national courts extends beyond the confines of individual proceedings. Its implementation effects progressively diffuse across administrative practice, governmental decision-making, and judicial reasoning, reshaping the legal environment in which State climate action unfolds. Rather than constituting a self-standing enforcement mechanism, climate litigation operates as a structuring element within the implementation of EU Climate Law. By rendering climate obligations judicially cognisable and by stabilising their interpretation through binding rulings, courts contribute to the legal framework governing State action, without assuming a role of ongoing supervision or policy-management.[910]

The evolution of climate litigation in Europe has not been marked solely by landmark rulings articulating substantive climate obligations, but also by the growing constitutional salience of procedural justice in climate matters. National courts have increasingly been required to determine whether, and under what conditions, climate obligations may be judicially invoked by individuals, non-governmental organisations, or local authorities, thereby placing questions of standing, justiciability, and effective remedies at the centre of climate adjudication.

The Irish Supreme Court's ruling in *Friends of the Irish Environment v. Government of Ireland*[911] constitutes a particularly instructive illustration of this procedural

910 J. Setzer & R. Higham, "Global trends in climate change litigation: 2022 snapshot", *Grantham Research Institute*, pp. 6–9.

911 Irish High Court, 21 November 2017, Merriman v Fingal County Council; Friends of the Irish Environment Clg v Fingal County Council, IEHC 695

dimension of climate constitutionalism. Rather than expanding access to courts in an unqualified manner, the Court engaged in a careful delineation of the admissibility conditions governing climate litigation, emphasising the constitutional limits imposed by standing requirements, the separation of powers, and the role of courts within democratic decision making-.

This section analyses the procedural reasoning developed by the Irish Supreme Court,[912] situating it within the broader European landscape of climate litigation. It examines how national courts address standing and justiciability in climate cases, how they conceptualise the relationship between climate obligations and effective judicial protection, and how procedural rules operate as constitutional gateways that both enable and constrain judicial intervention.[913] In doing so, the analysis sheds light on the tensions inherent in procedural climate constitutionalism, where access to justice is recognised as essential to climate governance, yet remains subject to structurally restrictive admissibility criteria.

By focusing on the Irish case law, this section demonstrates that procedural climate constitutionalism does not necessarily entail a progressive widening of access to courts, but rather a constitutional structuring of access conditions that decisively shapes the scope and limits of climate litigation.[914]

The High Court refused to quash the ruling of the government (the respondent) to adopt the plan, considering that the margin of discretion given by the 2015 Act to the executive for the preparation of the mitigation plan and the fact that the latter is an "evolving document"[915] that would change over time did not allow to consider that it was insufficiently precise in the light of this plan. The respondent's ruling to approve this plan was therefore not unreasonable.[916]

The applicant association turned to the Supreme Court to invalidate the plan and

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912 Friends of the Irish Enviroment CLG -v -The Government of Ireland, [2019] IEHC 747, 19 September 2019

913 *Friends of the Irish Environment v. Government of Ireland*, Supreme Court of Ireland, Judgment of 31 July 2020, [2020] IESC 49. See esp. §§ 8.6–8.8 and §§ 9.18–9.22, where the Court rejects an actio popularis approach and emphasises constitutional limits linked to standing and institutional competence.

914 .J Peel & H. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy*, Cambridge University Press, 2015, pp. 63–70; see also S. Torre-Schaub, "Le juge et la gouvernance climatique", *Revue juridique de l'environnement*, 2021, pp. 281–296

915 Friends of the Irish Environment CLG v. The Government of Ireland, High Court, Judgment of 19 September 2019, [2019] IEHC 747 (MacGrath J).

916 Friends of the Irish Environment CLG v. The Government of Ireland, High Court, Judgment of 19 September 2019, [2019] IEHC 747 (MacGrath J), § 5.1–5.15 and § 6.9–6.17: «ultra vires the powers of the Minister under the Act «: The High Court's ruling is part of a judicial review scenario, which in Irish law corresponds to the situation in which the judge is asked to review an administrative act (i.e. a ruling taken by the executive) against a statute. In the hierarchy of norms, whether in French or Irish law, the law is above the administrative act. Thus, all administrative rulings can only be taken because they have been authorized by a law. In the context of a judicial review, the Irish judge will therefore examine the administrative act in the light of the law on the basis of which it was adopted. If

recognise a violation of the rights conferred by the Irish Constitution and the ECHR on the population. The environmental NGO argued that the plan was insufficiently detailed and failed to set out a credible pathway to achieving Ireland's statutory and international climate commitments. The association mainly relied on the fact that the plan did not mention any adequate GHG emission mitigation measures to achieve the National Transition Objective (hereinafter NTO) defined by section 3 of the 2015 law.[917] On the contrary, the trajectory of the plan lead to an increase in GHG emissions over the time it defined. It added that the plan did not comply with the transparency conditions laid down in section 4 of the 2015 legal act since it did not give any precise indication as to how the NTO would be achieved. The act would therefore be *ultra vires* since it violates the 2015 legal act.

In addition, the applicant association considered that by adopting a plan whose measures are insufficient to effectively mitigate the country's GHG emissions, the State failed in its obligation to protect people from climate change.[918] The act would therefore violate the Irish Constitution (implicit right to an environment compatible with human dignity; explicit rights to life and physical integrity) and Article 2 and 8 of the ECHR (right to life and the right to respect for private and family life).

A central feature of the procedural reasoning advanced by the Government and ultimately reflected in the structure of the Supreme Court's judgment, lies in the strict sequencing between statutory legality and fundamental-rights review. According to the respondent, only if the decision to adopt the National Mitigation Plan were found to be unlawful, that is to say adopted ultra vires the Climate Action and Low Carbon Development Act 2015, could the Government be required to adopt a new plan in conformity with the statutory framework. The annulment of the Plan on grounds of unreasonableness or statutory non-compliance thus constituted a necessary precondition for any further judicial intervention.

On this view, questions relating to the alleged violation of constitutional or Convention rights could not arise independently of a finding that the Plan lacked a valid legal basis. Even where such a finding was made, the Court would still be required, as a separate and prior matter, to determine whether the applicant association was entitled to act in order to invoke those rights. In other words, rights-based claims were procedurally subordinated both to a finding of ultra vires conduct and to the strict conditions governing standing under Irish law.

The Supreme Court's judgment reflects this logic. It first confined its analysis to the statutory framework, holding that compliance with the requirements laid down

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the executive (in this case, the Minister) acted outside the framework set by law in taking this act, it is said that the act is outside its powers, that it is *ultra vires*.

917 Climate Action and Low Carbon Development Act 2015, s. 3 (definition of the "national transition objective"); Government of Ireland, *National Mitigation Plan*, 19 July 2017

918 *Friends of the Irish Environment v. Government of Ireland*, Supreme Court of Ireland, 31 July 2020, [2020] IESC 49, §§ 7.9–7.12 and §§ 10.1–10.4 (ultra vires finding and quashing of the Plan)

in section 4 of the 2015 Act constituted a question of law susceptible to judicial review.[919] Only after concluding that the National Mitigation Plan was *ultra vires*—and quashing it on that basis—did the Court examine the rights-based arguments, which it ultimately rejected on standing grounds.[920] This approach illustrates a form of procedural climate constitutionalism in which judicial protection is real but carefully sequenced, and in which access to constitutional or Convention-based claims remains strictly conditioned by both legality review and admissibility requirements. As regards the rights to life, physical integrity and respect for private and family life protected by the Irish Constitution[921] and the ECHR, the Court considered that the applicant association was not entitled to act to invoke their violation on behalf of the population in general, since it is an entity which did not itself enjoy these rights and the *actio populari* was a form of action that did not exist in Irish law.[922]

The Irish Supreme Court's ruling in the *Friends of the Irish Environment* case is historic. This is the second ruling of last instance after that in the Netherlands in the *Urgenda* case,[923] to question a government's climate action line. This undoubtedly represents a significant development for climate justice. Nevertheless, the quashing of the Government's mitigation plan was not based on a violation of human rights, but on the Plan's failure to provide sufficient specificity and transparency regarding how the reduction targets were to be attained. Indeed, the Court, using the "reasonable person" standard,[924] found that the level of detail provided in the plan by the Government did not allow "a reasonable and interested person to judge whether the plan in question is realistic or to know whether he or she approves of the policy choices put in place to achieve the National Transition Objective specified by the plan."[925] As accurately observed by O'Gorman, this revocation of an administrative act for lack of transparency reinforces the democratic aspect of the fight for climate justice.[926]

The *Friends of the Irish Environment* encountered a procedural problem: the Supreme Court considered that the association, as an entity which did not itself enjoy

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919 Irish Climate Action and Low Carbon Development Act 2015

920 Friends of the Irish Enviroment CLG -v -The Government of Ireland, [2019] IEHC 747, 19 September 2019, 12 «ultra vires the powers of the Minister under the Act «: The High Court's ruling is part of a judicial review scenario, which in Irish law corresponds to the situation in which the judge is asked to review an administrative act (i.e. a ruling taken by the executive) against a statute.

921 Article 40.3.1 of the Constitution of the Republic of Ireland. (1945). Bunreacht na hÉireann = Constitution of Ireland. Dublin: Oifig an tSoláthair

922 *Friends of the Irish Environment v. Government of Ireland*, Supreme Court of Ireland, 31 July 2020, [2020] IESC 49

923 Urgenda Case, HA ZA 13-1396 Official Case No C/09/456689, ECLI:NL: RBDHA:2015:7145

924 Irish Supreme Court, 31 July 2020, Friends of the Irish Environment CLG v the Government of Ireland, Ireland, and the Attorney General, 205/19, 71

925 Irish High Court, 21 November 2017, Merriman v Fingal County Council; Friends of the Irish Environment Clg v Fingal County Council, IEHC 695

926 R. O'Gorman, 'Environmental Constitutionalism: A Comparative Study,' (2017) 6/3 *Transnational Environmental Law* 435-462

the rights to life, physical integrity and respect for private and family life, could not invoke the violation of these same rights in the name of the population *lato sensu*.[927] On the other hand, although this was not necessary for the outcome of the ruling, it is interesting to note that the Supreme Court expressed an opinion as to the existence of an implied right to a healthy environment which would flow from the text of the Irish Constitution. The *Friends of the Irish Environment* had alleged a violation of this right based on a previous High Court ruling, which had inferred from the Constitution a right "to an environment compatible with human dignity."[928] The Supreme Court considered that the recognition of a free-standing right to a healthy environment raised significant difficulties of interpretation. Where such a right merely replicated the protection already secured by the constitutional rights to life and bodily integrity, it lacked any autonomous legal content. Where, on the other hand, it was understood as encompassing broader guarantees, its substance and limits would need to be clearly articulated, lest judicial review encroach upon matters more properly falling within the legislative domain. As it stands, the Supreme Court concluded that it could not consider that a right to a healthy environment derived from the Irish Constitution.[929]

The *Friends of the Irish Environment* ruling is ultimately quite different from that taken in the context of the *Urgenda* one. The former does not join the latter in a recognition of a duty for States to protect their citizens in the face of climate change stemming from Articles 2 and 8 of the ECHR. Without completely ruling out the relationship between constitutional rights and environmental protection, the Dublin judges left this question open, pending a case whose outcome would depend on it.

The *Friends of the Irish Environment* case is emblematic of the broader challenges and opportunities in expanding access to climate justice. It highlights the importance of procedural clarity, transparency, and the role of civil society in holding governments accountable for climate action. At the same time, it reveals the limitations of current legal frameworks, particularly regarding the recognition of environmental rights and the ability of NGOs to act in the public interest. The Irish Supreme Court's reasoning underscores the need for clear statutory mandates and robust participatory mechanisms to ensure that climate litigation can serve as an effective tool for democratic oversight and environmental protection. The access to climate litigation must be broadened to litigants in order to ensure an effective legal climatic practice.[930] As seen in the case-study in Ireland, the current practice from national courts tend to close the

927 Idem

928 Irish High Court, 21 November 2017, Merriman v Fingal County Council; Friends of the Irish Environment Clg v Fingal County Council, IEHC 695

929 *Friends of the Irish Environment v. Government of Ireland*, Supreme Court of Ireland, Judgment of 31 July 2020, [2020] IESC 49, §§ 9.15–9.28, where the Court expressly declined to recognise an unenumerated or implied constitutional right to a healthy environment, emphasising that the recognition of any such right would require explicit constitutional endorsement rather than judicial inference

930 H. Keller & V. Gurash, "Expanding NGOs' Standing: Climate Justice through Access to the ECtHR", *Journal of Human Rights and the Environment*, vol. 14, no. 2, 2023, pp. 194–218

gates to claims regarding climate-related cases.[931]

To sum up, subchapter 1.3 demonstrates that the contribution of climate litigation to the implementation of climate obligations before national courts is decisively conditioned by procedural considerations. Through the analysis of *Friends of the Irish Environment v. Government of Ireland*, it shows that national courts may accept the justiciability of statutory climate obligations while simultaneously imposing strict limits on access to judicial review. The Irish Supreme Court subjected the National Mitigation Plan to legality review on the basis of statutory requirements, quashing it as ultra vires due to insufficient specificity. At the same time, the Court clearly circumscribed the scope of judicial intervention by refusing to entertain rights-based claims brought by a corporate applicant lacking standing, and by rejecting the recognition of a free-standing constitutional right to a healthy environment.

This case illustrates a form of procedural climate constitutionalism in which judicial protection is real but carefully structured. Climate litigation may compel the executive to comply with legally binding statutory frameworks, yet access to constitutional or Convention-based review remains subject to strict admissibility criteria and to a clear sequencing of judicial review. Subchapter 1.3 thus shows that, rather than broadly opening the courts to climate claims, national judges play a filtering role that both enables and constrains climate litigation within constitutionally defined limits.

Synthesis – Chapter 1, Part III: National Courts as Laboratories for the emergence of climate litigation

This chapter has examined the role of national courts in the emergence of climate litigation, showing how judicial review has contributed to the operationalisation of climate obligations within domestic legal orders. Through the analysis of landmark litigation—including *Urgenda* in the Netherlands, *Grande-Synthe* in France, and *Friends of the Irish Environment* in Ireland—it has demonstrated that climate commitments are no longer confined to the political sphere but may give rise to legally enforceable duties capable of grounding judicial scrutiny of State action.

The chapter has shown, however, that national courts engage with climate litigation through markedly different legal logics. In Urgenda, the Dutch courts adopted a substantive rights-based approach, deriving concrete positive obligations from Articles 2 and 8 ECHR and ordering a quantified reduction of GHG emissions within a defined timeframe. By contrast, the Irish Supreme Court in *Friends of the Irish Environment* adopted a procedurally restrained approach: while accepting the justiciability of statutory climate obligations and quashing the National Mitigation Plan as ultra vires due to insufficient specificity, it refused to derive autonomous climate obligations from constitutional or Convention rights, rejected the recognition of a free-standing right

931 R. S. Abate, "Standing", in M. Wewerinke-Singh & S. Mead (eds.), *The Cambridge Handbook on Climate Litigation*, Cambridge University Press, 2025, pp. 105–130.

to a healthy environment, and imposed strict limits on standing.

Alongside these contrasting approaches, the chapter has highlighted the importance of remedial techniques developed in specific national contexts. The *Grande-Synthe* litigation illustrates how injunctive measures requiring the State to adopt additional mitigation actions within a specified timeframe, combined with follow-up and monitoring mechanisms, may strengthen the effectiveness of judicial review without leading to continuous judicial supervision or the substitution of courts for the executive. These tools demonstrate how climate litigation can enhance compliance with legally binding climate objectives through targeted and carefully circumscribed forms of judicial intervention.

At the same time, the analysis has underscored the structural limits of judicial climate governance. The effectiveness of climate litigation remains conditioned by admissibility rules, institutional constraints linked to the separation of powers, and the absence of autonomous coercive enforcement mechanisms. National courts may compel legal clarification and impose obligations of action, but the execution of judicial rulings ultimately depends on executive compliance. This chapter thus shows that climate litigation before national courts contributes to climate governance not through permanent judicial involvement or uniform judicial activism, but through context-dependent and legally structured forms of intervention that both enable and constrain the judicial enforcement of climate obligations.

As this chapter has shown, national courts constitute crucial sites for the emergence of climate litigation, yet the construction of an effective right to climate litigation remains uneven and incomplete at the domestic level. While national adjudication has brought climate obligations within the scope of judicial review, its effectiveness continues to be shaped by procedural constraints, limits on access to justice, and the dependence of judicial rulings on executive compliance. These findings point to the limits of climate litigation when confined to the national level and provide the point of departure for Chapter 2, which turns to the supranational dimension of climate adjudication. Chapter 2 examines how EU Climate Law, through the case law of the CJEU and evolving legislative frameworks, seeks to frame access to judicial review and to structure the justiciability of climate obligations within the Union legal order. The transition from national judicial practice to supranational adjudication raises renewed questions concerning standing, admissibility, and the effectiveness of remedies, as well as the relationship between national courts and supranational judicial oversight. The lessons drawn from national case law in this chapter therefore inform the subsequent analysis of supranational mechanisms, as the thesis explores the conditions under which an effective right to climate litigation may be articulated within the broader framework of EU law.

CHAPTER 2. THE INTEGRATION OF EU CLIMATE LAW BEFORE THE CJEU

Beyond national litigation, the implementation of EU Climate Law is decisively shaped by its integration within the Union's own institutional architecture. At Union level, implementation operates through the allocation of steering, monitoring, and corrective functions, raising structural questions of discretion, accountability, and institutional balance. Rather than the multiplication of climate objectives or litigation opportunities, this chapter argues that the effectiveness of EU Climate Law lies in the legal architecture of the Union itself: namely, the organisation of institutional powers and the procedural gateways that condition whether climate obligations can be translated into enforceable judicial standards.

The integration of EU Climate Law at the supranational level has fundamentally reshaped the landscape of environmental governance and access to justice for litigants across Europe. As demonstrated in Part I of this thesis, the progressive assertion of EU climate objectives has gone hand in hand with the development of an increasingly complex and multi-layered legal framework. The integration of climate considerations across Union law has produced a legal architecture characterised by multiple institutional actors and procedural pathways, within which climate obligations may be implemented and, where appropriate, brought before courts.

The appropriation of this new kind of litigation arose from the enactment of the Paris Agreement, in 2016, strengthening the procedural aspects provided by the Aarhus Convention.[932] However, it is the implementation of the European Green Deal—crystallised in the adoption of the EU Climate Law—that has significantly altered the legal landscape, equipping both litigants and the CJEU with a more articulated set of legal instruments capable of supporting more intensive climate-related judicial review.[933] This chapter explores how EU Climate Law and related legal instruments have been operationalized within the EU legal order, focusing on the evolving opportunities and challenges for litigants—ranging from individuals and NGOs to local authorities and Member States—seeking to enforce climate obligations and hold institutions accountable before the CJEU.

EU Climate Law's cross-cutting nature means that climate objectives now allow a wide array of policy domains, from energy and transport to agriculture and finance (see Part II, Chapter 2). This integration has significant procedural implications: it requires the alignment of national and EU-level measures, the harmonization of reporting and accountability mechanisms, and the creation of participatory channels for stakeholders to influence decision-making and seek redress. The procedural hurdles

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932 K.F. Kuh, The Law of Climate Change Mitigation: An Overview, Editor(s): Dominick A. Dellasala, Michael I. Goldstein, Encyclopedia of the Anthropocene, Elsevier, 2018, Pages 505-510, ISBN 9780128135761, https://doi.org/10.1016/B978-0-12-809665-9.10027-8.

933 Peeters, M. and Nóbrega, S. (2014), Climate Change-Related Aarhus Conflicts. Rev Euro Comp & Int Env Law, 23: 354-366. https://doi.org/10.1111/reel.12076

faced by litigants—particularly NGOs and individuals—have been the subject of intense doctrinal debate. The restrictive interpretation of standing under Article 263 TFEU[934] often limited direct access to the CJEU, prompting calls for reform and greater alignment with the Aarhus Convention's access to justice provisions. The central theme of this chapter is the evolving role of the CJEU in shaping the contours of climate litigation at the EU level. The CJEU has long been recognized as a guardian of the rule of law and a catalyst for the development of environmental jurisprudence. In the context of climate law, the Court's case law has addressed critical questions regarding standing, admissibility, and the scope of judicial review for litigants seeking to challenge EU acts or omissions.

If national courts have acted as laboratories for climate litigation (see chapter 1 part III) Union level litigation confronts the constitutional position of the CJEU. The CJEU is not simply another forum for climate claims; it is a court whose jurisdictional design—standing rules, admissibility filters, and remedial logic—structures what can count as enforceable climate legality. The question is therefore not whether climate objectives are binding, but how far they can be translated into justiciable constraints within a system built to preserve institutional balance. Unlike national courts, which operate within diverse domestic procedural frameworks and constitutional traditions, the CJEU is governed by uniform and tightly framed rules on standing, admissibility, and judicial review. These constraints decisively shape the conditions under which climate objectives may be invoked and enforced at EU level.

Two procedural architectures are central to this analysis. Subsection 2.1 first examines the current state of play before the CJEU, analysing how climate-related claims have been addressed within the EU system of judicial protection through a range of procedural avenues—including actions for annulment, failure to act, non-contractual liability and related corrective mechanisms—and how their combined structure constrains access to judicial review, particularly for non-privileged applicants.[935]

Subsection 2.2 then turns specifically to indirect access to climate litigation before the CJEU through the preliminary ruling procedure. It analyses the procedural gateways available to environmental actors via national courts, with particular attention to the Aarhus framework and the internal review mechanism established by Regulation (EC) No 1367/2006 as amended, assessing whether these mechanisms meaningfully expand access to justice or merely reconfigure the structural constraints of EU judicial review.[936]

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934 CJEU, 4 September 2019, ClientEarth v European Commission, Case C-57/16, ECLI:EU:C:2018:660

935 Article 263(4) TFEU, distinguishing between privileged and non-privileged applicants; Plaumann & Co. v Commission, Case 25/62, EU:C:1963:17, establishing the restrictive test of "individual concern"; see also Inuit Tapiriit Kanatami v Parliament and Council, Case C-583/11 P, EU:C:2013:625, confirming the limited access of private applicants to annulment actions.

936 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the Aarhus Convention to Union institutions and bodies, OJ 2006 L 264/13, as amended by Regulation (EU) 2021/1767 of 6 October 2021, OJ 2021 L 356/1, extending the scope of internal review under Article 10. See also European Commission, *Proposal for amending the Aarhus*

One of the most significant developments in recent years has been the gradual broadening of *locus standi* for climate litigants at the EU level. While the traditional approach has been restrictive, recent doctrinal and judicial trends point toward a more inclusive and participatory model. The Aarhus Regulation[937] and its recent amendments have sought to enhance access to justice for NGOs and members of the public, particularly in the context of administrative review and environmental decision-making. The CJEU has emphasised the importance of effective judicial protection in environmental matters primarily in the context of national judicial review and the implementation of the Aarhus Convention, requiring national courts to interpret standing and procedural rules in a manner that does not render environmental obligations ineffective. This approach is reflected, inter alia, in cases such as *Lesoochranárske zoskupenie* (*Slovak Brown Bear*) and *Protect Natur, Arten und Landschaftsschutz*,[938] where the Court relied on Article 47 of the Charter to require access to judicial review in environmental matters, while maintaining a restrictive approach to standing in direct actions before the EU courts.[939]

The integration of EU Climate Law has redefined the relationship between national courts and the CJEU, such that EU-level climate litigation cannot be analysed in isolation from domestic judicial practice.[940] Indirect challenges to EU Climate Law materialise primarily through the preliminary ruling procedure, whereby national courts refer questions of interpretation to the CJEU under Article 267 TFEU.[941] It is through this procedurally mediated interaction—rather than through direct judicial review—that the CJEU shapes the interpretation of EU climate legislation, thereby influencing the consolidation or containment of judicial innovations developed at national level. This chapter analyses this dialogical dimension and its implications for the uniformity

Regulation, COM(2020) 642 final, and analysis of post-amendment practice in ClientEarth, *The amended EU Aarhus Regulation one year in*, 2023

937 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

938 Case C-240/09, *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* (*Slovak Brown Bear*), EU:C:2011:125, paras 43–51, where the Court held that national courts must interpret procedural rules to ensure effective judicial protection in line with Article 9(3) of the Aarhus Convention and Article 47 of the Charter; Case C-664/15, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Zwettl*, EU:C:2017:987, paras 34–45 and 52–58, confirming that national courts must disapply national procedural rules that prevent environmental NGOs from obtaining effective review of decisions potentially contrary to EU environmental law.

939 Case T-330/18, *Carvalho and Others v Parliament and Council* (*People's Climate Case*), EU:T:2019:324, paras 61–94, confirmed on appeal in Case C-565/19 P, EU:C:2021:252, in which the EU Courts reaffirmed the restrictive standing requirements for non-privileged applicants under Article 263 TFEU and rejected the admissibility of a direct action challenging EU climate legislation

940 Christina Eckes, *Strategic Climate Litigation before National Courts: Can EU Law be Used as a Shield?*, German Law Journal, vol. 25, Special Issue 6 (2024), pp. 1022–1042, esp. pp. 1024–1028

941 Aydın Clara Orberk, *Access to Courts in the EU and Climate Litigation* (ECA Maastricht, 2022)

and effectiveness of EU Climate Law.

Preliminary references under Article 267 TFEU have become a crucial mechanism for ensuring the uniform interpretation and application of climate law across Member States.[942] National courts, acting as "guardians of EU law," are increasingly called upon to assess the compatibility of national measures with EU climate objectives and to refer questions of interpretation to the CJEU. The relationship between national climate litigation and the jurisprudence of the CJEU is not one of direct procedural dialogue in all cases, but rather one of structural interaction within a shared EU legal framework.[943] While the CJEU provides authoritative guidance on the requirements of effective judicial protection under Article 47 of the Charter, the application of climate obligations remains primarily mediated through national courts operating within their own constitutional and procedural limits. Consistently with the analysis above, national courts frequently engage with EU-derived climate obligations without activating the preliminary ruling mechanism. This is illustrated by *Friends of the Irish Environment v. Government of Ireland*, where the national court assessed the adequacy of a national mitigation plan without recourse to Article 267 TFEU (see Chapter 1, Subchapter 1.3).[944] The contrast between national judicial restraint in such cases and the CJEU's broader principles on effective judicial protection highlights the indirect and uneven nature of interaction between national climate litigation and EU judicial standards.[945]

This chapter will critically examine these developments, drawing on recent case law, doctrinal analysis, and policy debates. It will assess the extent to which the integration of EU Climate Law has empowered litigants, enhanced accountability, and contributed to the effectiveness and legitimacy of climate governance in Europe. By situating these issues within the broader context of the European Green Deal and the EU's international commitments, the chapter aims to provide a nuanced and forward-looking analysis of the opportunities and obstacles facing climate litigants at the EU level. The challenge is therefore to assess how climate litigation can be harmonised at EU level within the constraints of the CJEU's jurisdiction. While national courts have addressed climate litigation within their own procedural and constitutional

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942 Imelda Maher, *The CILFIT Criteria Clarified and Extended for National Courts of Last Resort under Article 267 TFEU*, European Papers, vol. 6, no. 3 (2021), pp. 1589–1602

943 Case C-664/15, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Zwettl*, EU:C:2017:987, paras 34–45 and 52–58, where the Court required national courts to interpret or disapply restrictive procedural rules to ensure effective access to justice in environmental matters

944 *Friends of the Irish Environment CLG v. Government of Ireland*, Supreme Court of Ireland, Judgment of 31 July 2020, [2020] IESC 49, in particular paras 7.9–7.12 and 9.15–9.28, where the Court quashed the National Mitigation Plan on statutory grounds while declining to derive autonomous climate obligations from constitutional or Convention rights and without referring questions to the CJEU under Article 267 TFEU

945 I. Hadjiyianni, "The CJEU as the Gatekeeper of International Law: The Cases of WTO Law and the Aarhus Convention", *International and Comparative Law Quarterly* 70 (2021), pp. 895–933

frameworks, the CJEU approaches climate -related claims through the distinct lens of EU judicial protection.[946] The analysis must therefore focus on how EU procedural law reframes access to climate litigation, rather than treating CJEU case law as a continuation of national judicial practice.[947]

On this basis, the chapter examines, first, the current state of play of climate litigation before the CJEU through direct actions and related judicial remedies, with particular attention to the structural logic governing standing, admissibility and judicial review under EU procedural law (2.1), and, second, the interaction between national courts and the CJEU through the preliminary ruling procedure and Charter-based environmental adjudication (2.2).

2.1. Direct climate-related actions before the CJEU

This subsection examines, at EU level, the implementation of climate law through judicial means is conditioned by a complex and restrictive procedural framework governing access to the CJEU. Unlike national systems, Union's judicial protection is not designed to facilitate broad enforcement of public interest obligations, but to preserve EU institutional balance and procedural discipline. This section examines the current state of play for litigants seeking to act before the CJEU in climate matters, showing that while judicial avenues formally exist, their structure and logic significantly constrain their capacity to support effective implementation of EU Climate Law. A core function of the Court is to review the legality of EU acts and omissions, including those related to climate policy. However, access to direct judicial review under Article 263 TFEU has traditionally been restrictive, as only applicants who are "directly and individually concerned" may challenge EU acts.[948] This narrow interpretation of standing has severely limited the ability of individuals and environmental NGOs to bring climate-related actions directly against EU institutions. As a result, despite the adoption of ambitious climate objectives and procedural frameworks at EU level, access to the CJEU remains largely constrained by procedural barriers—most notably the restrictive standing requirements under Article 263 TFEU, which are examined further in Subsection 2.1.1.[949]

The question arises whether the current procedural framework of EU judicial

946 Article 2 and 8 ECHR

947 Armstrong, Anne K., Marianne E. Krasny, and Jonathon P. Schuldt. "CLIMATE CHANGE SCIENCE: The Facts." In Communicating Climate Change: A Guide for Educators, 7–20. Cornell University Press, 2018. http://www.jstor.org/stable/10.7591/j.ctv941wjn.5.

948 I. Hadjiyianni, "Access to Justice in Environmental Matters in the EU Legal Order – Too Little, Too Late?", *European Law Blog*, 4 November 2020; and M. Eliantonio & J. Richel, "Access to Justice in Environmental Matters in the EU Legal Order", *European Papers* (2020)

949 Peeters, M., & Athanasiadou, N. (2020). The continued effort sharing approach in EU Climate Law: Binding targets, challenging enforcement? *Review of European Community and International Environmental Law*, *29*(2), 201-211. https://doi.org/10.1111/reel.12356

protection provides litigants with sufficient means to bring climate-related claims before the CJEU. Although the CJEU has consistently reaffirmed the principle of effective judicial protection under Article 47 of the Charter of Fundamental Rights, this has not led to a general relaxation of standing requirements in direct actions under Article 263 TFEU. Notable cases such as *ClientEarth v. Commission*[950] have clarified and, in some instances, expanded the possibilities for judicial review through direct actions before the EU Courts, while other judgments—such as *Deutsche Umwelthilfe v. Freistaat Bayern*[951]—illustrate the strengthening of effective judicial protection primarily through indirect litigation mechanisms and the preliminary ruling procedure, and are therefore examined in subsection 2.2 rather than as part of the analysis of direct actions in this section.

As a result, access to climate litigation before the EU Courts remains structurally constrained, despite the increasing density of EU climate obligations.

This structural tension frames the analysis that follows. Subsection 2.1.2 examines actions brought in the individual interest of applicants, which are premised on the protection of subjective legal positions and conditioned by restrictive admissibility requirements. Subsection 2.1.3 then turns to collective or representative actions, whose procedural logic seeks to reflect the diffuse and long-term nature of climate harm, while remaining constrained by institutional and standing based limits. Finally, Subsection 2.1.4 addresses actions challenging Union inaction or unlawful action, assessing the extent to which these corrective mechanisms offer an alternative—yet equally limited—avenue for holding EU institutions accountable in climate matters.

2.1.1. Judicial review as a structurally constrained framework

This subsection provides an overview of the legal and procedural landscape governing access to the CJEU (A), highlighting recent doctrinal debates, landmark cases, and the ongoing tension between the need for effective judicial protection and the limitations imposed by EU procedural law. It sets the stage for a critical analysis of how these constraints shape the enforcement of climate obligations at the EU level and the prospects for a more inclusive and participatory model of climate litigation (B). Still, the notion of interest to act before the CJEU remained unchanged. Nevertheless, climate litigation has brought renewed attention to the limitations of access to courts for litigants at EU level.

Through this process, the CJEU has clarified the scope and meaning of key climate law provisions, such as those found in EU Climate Law, the Effort Sharing Regulation, and the Emissions Trading System. The Court's jurisprudence has also reinforced the principle of effective judicial protection, requiring Member States to provide remedies

950 CJEU, 4 September 2019, ClientEarth v European Commission, Case C-57/16, ECLI:EU:C:2018:660

951 CJUE, 19 December 2019, Deutsche Umwelthilfe contre Freistaat Bayern, aff. C-752/18, ECLI:EU:C:2019:1114.

that are sufficiently robust to ensure compliance with EU climate objectives.

A. *Structural limitations to access to judicial review at EU level*

In the context of EU Climate Law, these structural features raise significant questions regarding the justiciability of climate obligations. Although climate objectives enshrined in EU law are legally binding, their enforcement before Union courts is mediated through procedural thresholds that determine who may challenge Union acts or omissions and under what conditions.[952] The following analysis examines how these procedural constraints shape access to judicial review at EU level and explores the extent to which judicial protection operates as an effective mechanism for the implementation of EU climate obligations.

This structural restraint reflects the constitutional balance of the Union legal order, in which judicial protection is designed to coexist with, rather than displace, political and administrative governance.[953] Under the Maastricht Treaty,[954] the Union process was to create close cooperation between the peoples of Europe, while respecting the national identity of the Member States. Union law must be applied in conjunction with national law, avoiding undermining national constitutional identities.[955] The Member States, their institutions and individuals in the EU have an interest in acting in the EU. They have an interest in bringing proceedings before the CJEU, since it has the monopoly on the interpretation of EU law,[956] to obtain compensation individually in the event of a prejudice suffered under EU law, to act collectively for the legality of European acts or to act against the inaction of the Union. EU law allows applicants to act through numerous actions: actions for compensation, exceptional, action for annulment and finally action for failure to act.

Under EU law, applicants before the CJEU may include Member States, EU institutions, and, under certain conditions, natural or legal persons.[957] Depending on their procedural status, these applicants may challenge the legality of EU acts or omissions on the basis of alleged infringements of substantive or procedural rules of EU law,

952 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"), OJ L 243, 9.7.2021; see also Case C-5/14, *Kernkraftwerke Lippe-Ems*, EU:C:2015:354, para. 45, confirming that objectives laid down in EU environmental legislation form part of binding Union law

953 Jarašiūnas, Egidijus. (2022). Importance of the Concept of Constitutional Identity for Ensuring EU Law in Lithuania. Teisė. 125. 8-26. 10.15388/Teise.2022.125.1.

954 Treaty on EU, OJ C 191, 29.7.1992

955 Francisco de Abreu Duarte, 'But the Last Word Is Ours': The Monopoly of Jurisdiction of the CJEU in Light of the Investment Court System, European Journal of International Law, Volume 30, Issue 4, November 2019, Pages 1187–1220, https://doi.org/10.1093/ejil/chz064

956 Article 344 TFEU

957 Article 263 TFEU, first to fourth paragraphs, defining the categories of applicants entitled to bring actions for annulment before the CJEU, including privileged applicants (Member States and EU institutions) and non-privileged applicants (natural and legal persons), subject to conditions of direct and individual concern

including provisions of primary law (the Treaties) and secondary law (such as regulations and directives).[958] In other words, it gives individuals the possibility of invoking Union law in court if a community rule is contrary to a constitutional rule or if a national rule is contrary to a community rule. Thus, it is up to the CJEU to ensure the proper application of EU law, while recognizing a right for EU litigants to invoke this right in court. The invokability of this right may be beneficial to a particular claimant in the context of a dispute, as well as to the collective interest in the interests of States or institutions. This right is based on a principle of subsidiarity, according to which the EU only acts if the action or objective envisaged cannot be fulfilled by the Member States.

Originally, the treaties set up the CJEU to ensure respect for the law in the interpretation and application of treaties, in particular in Article 19 TFEU.[959] This Article aims to ensure that the Community remains a Community governed by the rule of law, with many tools at its disposal to offer many applicants remedies or judicial procedures for the application of Community law within the Union. On the one hand, every State must comply with Union law, which can be appealed. On the other hand, EU law must be applied equally and uniformly to ensure that EU law is interpreted throughout the Union.

Under the Treaties, the CJEU is endowed with extensive powers of judicial review, including the review of the legality of EU acts, the control of unlawful inaction by Union institutions, and the interpretation of EU law to ensure its uniform application across Member States.[960] However, the availability of these mechanisms does not translate into unrestricted access for litigants. Their exercise is governed by procedural frameworks designed to preserve institutional balance and to limit judicial intervention to specific forms of review.[961] In the context of EU Climate Law, this means that, although the Court possesses the authority to scrutinise climate--related acts and omissions,[962] access to such review remains tightly framed by admissibility rules and procedural thresholds.

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958 Article 263 TFEU; see also Article 277 TFEU (plea of illegality), and Article 268 in conjunction with Article 340(2) TFEU (non-contractual liability of the Union). On the scope of judicial review and the grounds on which EU acts may be challenged, see Case 294/83, *Les Verts v European Parliament*, EU:C:1986:166, para. 23, establishing that the EU is a Community based on the rule of law in which the legality of acts adopted by the institutions is subject to judicial review; see also Case 25/62, *Plaumann & Co. v Commission*, EU:C:1963:17

959 Article 19(1) TEU, which entrusts the CJEU with ensuring that the law is observed in the interpretation and application of the Treaties; see also Articles 263 TFEU (action for annulment), 265 TFEU (action for failure to act), and 267 TFEU (preliminary rulings)

960 Articles 258 to 260 TFEU

961 On the principle of institutional balance and the limits of judicial intervention within the EU legal order, see Case 294/83, *Les Verts v European Parliament*, EU:C:1986:166, para. 23; see also Case C-50/00 P, *Union de Pequeños Agricultores v Council*, EU:C:2002:462, paras 38–45.

962 Article 263(4) TFEU; Case 25/62, *Plaumann & Co. v Commission*, EU:C:1963:17; Case T-330/18, *Carvalho and Others v Parliament and Council* (*People's Climate Case*), EU:T:2019:324, confirmed on appeal in Case C-565/19 P, EU:C:2021:252.

B. *Judicial review as a constrained corrective mechanism in EU climate governance*

These structural limitations do not render judicial review irrelevant in the implementation of EU Climate Law, but they decisively shape the role it can play. Within the Union legal order, judicial review operates primarily as a corrective mechanism, intervening at the margins of administrative action rather than driving implementation directly. Climate litigation before Union courts thus contributes to institutional accountability by clarifying legal obligations, signalling interpretative boundaries, and, in limited circumstances, sanctioning manifest failures to act.

Legal remedies are then available before the CJEU aimed at perfecting the Union based on the rule of law. First of all, the exception of legality is possible for ordinary applicants, if they do not use the remedy of an action for annulment. It may relate to legislative acts of the Union or acts which are not addressed to such persons. Secondly, an action for non-contractual liability may also be sought to challenge EU law.[963] An action for annulment also makes it possible to challenge any act of legal right, but is nevertheless favourable to privileged requisitioners, such as States or institutions, which limits its use. Finally, a control of the legality, by the termination of the action for annulment and for failure to act, makes it possible to refer to the failure of the institutions or bodies of the Union to act. These various remedies have an interesting role in calling into question acts or inactions of the EU. Thus, any EU act can be questionable and contested. The EU is not the producer of a non-derivable and imperative right which prevents any dispute.[964] Moreover, these remedies are open to a wide variety of applicants, which makes it possible to broaden the scope of these remedies and their coverage.[965]

In the context of EU Climate Law, the multiplicity of judicial remedies has not resulted in effective enforcement of climate obligations. Although Union law formally provides a range of procedural avenues—such as actions for annulment, failure to act, and non-contractual liability—their use in climate-related disputes remains structurally limited. These remedies operate on a reactive and applicant-dependent logic, requiring litigants to overcome strict admissibility thresholds and to frame diffuse, long-term climate harms within individualized procedural categories.

As a result, the availability of remedies does not translate into systematic judicial oversight of EU climate action. Instead, climate litigation exposes disparities in the

963 Eicke, Tim. "Climate Change and the Convention: Beyond Admissibility", ECHR Law Review 3, 1 (2022): 8-16, doi: https://doi.org/10.1163/26663236-bja10033 : there was no legal basis for the environment but the protocol 1 (with right to property) helped the judges to use it as another tool to protect the environment.

964 Florencia Ortuzar Greene, «what makes a litigation a climate litigation ?", Interamerican Association for Environmental Defense (AIDA), https://aida-americas.org/en/blog/what-makes-a-litigation-a-climate-litigation

965 La pensée indisciplinée de la démocratie écologique, L. Blondiaux, D. Bourg, M.-A. Cohendet, J.-M. Fourniau (dir.), 2020.

practical use of these remedies across Member States, shaped by national judicial cultures, the profile of claimants, and unequal familiarity with EU procedural mechanisms.[966] Climate claims may thus be brought in individual or collective interests, or aimed at challenging institutional inertia, yet their effectiveness remains uneven and contingent. This reinforces the conclusion that, in climate matters, judicial remedies at EU level function as selective corrective tools rather than as instruments of comprehensive implementation.[967]

To sum up, judicial review and access to justice at EU level operate as structural parameters rather than as driving forces of climate law implementation: they define the procedural boundaries, admissibility conditions, and remedial limits within which climate obligations may be judicially invoked, without actively directing or ensuring their substantive implementation. The restrictive conditions governing standing and admissibility before Union courts limit the capacity of climate litigation to function as a primary enforcement mechanism. As a result, judicial review at EU level plays a corrective role, contributing to institutional accountability without ensuring comprehensive implementation. These limitations suggest that, within the Union legal order, the effectiveness of EU Climate Law is unlikely to be secured primarily through expanded access to judicial remedies but instead depends more fundamentally on the organisation and exercise of administrative and governance mechanisms upstream. Consequently, judicial review cannot operate as a primary mechanism for the implementation of EU Climate Law.

In recent years, a growing body of case law has prompted questions as to whether and to what extent the CJEU contributed to clarifying the scope and meaning of climate-related provisions of EU law, including those contained in EU Climate Law,[968] the Effort Sharing Regulation,[969] and the Emissions Trading System.[970] This jurisprudence also raises the issue of the role played by Article 47 of the Charter of Fundamental

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966 Articles 263, 265 and 340(2) TFEU; see also Case T-330/18, *Carvalho and Others v Parliament and Council* (*People's Climate Case*), EU:T:2019:324, paras 61–94, confirmed on appeal in Case C-565/19 P, EU:C:2021:252, illustrating the difficulty of framing climate harms within individualized admissibility criteria

967 Findings of the Aarhus Convention Compliance Committee in Case ACCC/C/2015/128 (EU), adopted on 17 March 2017; see also M. Eliantonio & J. Richel, "Access to Justice in Environmental Matters in the EU Legal Order", *European Papers* (2020); I. Hadjiyianni, "Access to Justice in Environmental Matters in the EU Legal Order – Too Little, Too Late?", *European Law Blog*, 4 November 2020

968 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ("European Climate Law"), OJ L 243, 9.7.2021

969 Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement ("Effort Sharing Regulation"), OJ L 156, 19.6.2018, as amended by Regulation (EU) 2023/857

970 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union ("EU Emissions Trading System"), OJ L 275, 25.10.2003, as subsequently amended, in particular by Directive (EU) 2023/959

Rights in shaping judicial protection in climate-related disputes, particularly as regards the remedies that Member States are required to ensure. The following analysis examines these developments and assesses their systemic significance for the justiciability of EU climate objectives.

2.1.2. Climate litigation through individual interest–based actions: scope and limits

Actions brought before the CJEU are traditionally structured around the protection of individual legal interests, and the admissibility of such actions is conditioned upon the applicant demonstrating direct and individual concern. In the context of climate litigation, this procedural logic encounters specific difficulties. As Eckes aptly observes, EU climate obligations are typically articulated through general regulatory instruments and target setting frameworks that address systemic risks and -long-term objectives, rather than conferring individualised rights capable of being directly invoked in judicial proceedings.[971]

This sub-section therefore analyses how reliance on individual interest as the foundation for judicial action constrains the ability of climate litigants—particularly individuals and NGOs—to challenge EU climate measures through direct actions. While judicial review at EU level is not designed to facilitate broad public interest enforcement, actions brought in the individual interest of the applicant nonetheless constitute a potential, albeit limited, avenue for climate litigation. Their suitability for addressing climate-related claims must be assessed in light of the nature of the obligations at stake and the structure of EU judicial remedies.

This individual interest paradigm therefore constrains the capacity of climate litigants—particularly individuals and environmental organisations—to rely on direct actions as effective avenues for enforcement. While EU judicial review is designed to safeguard subjective legal positions and ensure respect for institutional balance, it is ill-adapted to claims relating to diffuse and collective climate harm. As Semarcelle argued in relation to standing in climate litigation, the bilateral structure of adjudication based on individual harm sits uneasily with a phenomenon characterised by cumulative, transboundary, and temporally extended impacts.[972]

At EU level, climate litigation is formally channelled through a limited set of judicial actions defined by the Treaties. While these procedural avenues offer potential

971 Christina Eckes, *Strategic Climate Litigation before National Courts: Can EU Law be Used as a Shield?*, German Law Journal, vol. 25, Special Issue 6 (2024), pp. 1022–1042, esp. pp. 1025–1029, noting that the general and programmatic nature of EU climate obligations limits their suitability for enforcement through individual-interest-based direct actions before the EU Courts

972 Charlotte Semarcelle, *Standing for Climate Change Litigation: A Tort Law Approach and the Way Forward* (2024), Athens Journal of Law, arguing that traditional standing requirements premised on bilateral harm struggle to accommodate the diffuse, collective and long-term nature of climate change impacts.

points of access to the CJEU, their design reflects objectives of institutional balance rather than comprehensive enforcement. This subsection examines the types of judicial actions available in climate-related disputes, highlighting the gap between formal procedural availability and their practical capacity to support the implementation of EU Climate Law.

The CJEU has had jurisdiction to deal with numerous appeals and referrals. It seeks to ensure an effective and consistent application of EU law. In the event of divergent interpretation, national courts have the possibility of resorting to the appropriate referral and turning to the CJEU to verify the conformity of a national rule with an EU disposition. The preliminary ruling makes it possible to avoid divergent interpretations between the States and the Court and makes it possible to check the validity of an act of EU law.

A. *The basis of the applicants' right to bring proceedings before the CJEU*

In this context, the Court gives a ruling or an order stating the reasons on which it is based, which is binding on the national court when it must decide the dispute. If, in another State, a similar problem arises, then the States may follow that ruling or order in deciding the dispute in respect of which they have intervened. As a result of this mechanism, European citizens have an interpretation of EU law and then understand the rules that apply to them, even though only States have the possibility to act on a specific matter. The latter provided a basis for EU litigation and opened a break-in the possibility of effective recourse to an impartial tribunal under EU law. This possibility has not only been opened to States, but to individuals and institutions. Any request may now be cost to a court of national jurisdiction or the CJEU for the application of EU law and the consequences thereof.

In climate litigation, this raises the question whether general guarantees of effective judicial protection are capable of compensating for the absence of individually enforceable climate rights at Union level. Article 47 of the Charter of Fundamental Rights of the Union provides for a "right to an effective remedy and to a fair trial." Indeed, if rights and freedoms guaranteed by EU law have been violated, then every person whose rights have been violated has the right to an effective remedy before a tribunal. That person has the opportunity to have his or her case heard publicly and equitably in a reasonable manner by an "independent and impartial" tribunal established by law. In addition, "everyone has the possibility to be advised, defended and represented," with legal aid in case of insufficient resources to ensure effective access to justice.[973] The rights referred to in this article are those of Article 13 of the ECHR.[974] In the various texts this fundamental right to bring any action before a court has therefore been recognized.

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973 Article 13 of the EU Charter of Fundamental Rights

974 Christel Cournil. L'environnement dans la Cour européenne des droits de l'Homme. La Convention européenne des droits de l'Homme, Commentaire article par article, inPress. Ffhal-04546175f

It may be mentioned that EU law nevertheless ensures a remarkably high degree of opportunity and a guarantee of the right to an effective remedy before a court. In its ruling of 15 May 1986, *Johnston v Chief Constable of the Royal Ulster Constabulary* (Case 222/84),[975] the CJEU recognised the right to an effective remedy before a tribunal as a general principle of EU law. This principle applies to both EU institutions and Member States when implementing Union law, in order to guarantee the rights deriving therefrom. As Paul Craig aptly argues, this principle functions as a constitutional guarantee ensuring that rights derived from Union law are judicially enforceable whenever EU law is implemented, whether by Member States or by Union institutions.[976] This understanding has since been consistently reaffirmed in the Court's case law and underpins the contemporary interpretation of Article 47 of the Charter of Fundamental Rights.[977]

From this perspective, actions grounded in individual interest may offer only marginal opportunities for climate litigation before the EU Courts. Remedies such as the exception of illegality or actions for noncontractual liability presuppose a sufficiently direct causal link and an identifiable personal injury, requirements that are particularly difficult to satisfy in climate-related disputes. As a result, while these remedies remain formally available under the Treaties, their practical utility for climate litigation is structurally limited by the design of EU procedural law.

One of the founding decreasing recognizing this right to any person applying for EU law is the ruling of the *Greens v European Parliament* of 23 April 1986.[978] As the EU is a community governed by the rule of law, disputes over rights and obligations cannot only be civil.

Finally, under the third paragraph of this article, legal aid granted to certain individuals strengthens the possibility of an effective remedy before a judge of EU law. The legal aid provided by the EU legal system allows any category of person, company, or State, more or less favoured, to have access to justice. Through this article, it is possible to see that all means are implemented to allow access to a judge of EU law.[979]

The right to have recourse to a judge has been granted to any applicant for invoking EU law, for the application or non-application of that law. The voice is given to the queries and their expression is fundamental. Preference is given to adapting EU

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975 CJEU, 15 May 1986, Case 222/84, Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary. Reference for a preliminary ruling: Industrial Tribunal, Belfast (Northern Ireland) - United Kingdom. Equal treatment for men and women - Armed member of a police reserve force. ECLI :EU :C :1986 :206

976 P. Craig, *EU Administrative Law*, 3rd edn (Oxford University Press 2018), pp. 378–381

977 K. Lenaerts, *The Principle of Effective Judicial Protection in EU Law*, (2013) Harvard International Law Journal, vol. 54, pp. 1–26, esp. pp. 6–9

978 CJEU, 23 April 1986. Parti écologiste «Les Verts» v European Parliament. Action for annulment - Information campaign for the elections to the European Parliament. Case 294/83. *European Court Reports 1986 -01339* ECLI identifier: ECLI:EU:C: 1986:166

979 ECtHR, 09 October 1979, App. No. 6289/73, Airey v. Ireland, ECLI:CE:ECHR:1979:1009JUD000628973

law to take account of the factual circumstances concerning the applicants. The basis therefore gives individuals many means of acting equally, in particular to obtain compensation or invoke the illegality of an act, even if it means calling into question the primacy of EU law.

B. *An opportunity for the applicant to act in one's individual interest, in the context of a dispute, to obtain compensation or to plead the illegality of an act*

From the perspective of climate litigation, these remedies offer only indirect and contingent possibilities for judicial intervention. The exception of illegality and actions for noncontractual liability presuppose individualised harm and a sufficiently direct causal link, which are particularly difficult to establish in cases concerning diffuse, long-term climate damage or regulatory climate inaction. As a result, while such remedies formally remain available, their practical deployment in climate-related- disputes is structurally constrained. Applicants, in particular individual applicants, may act in their individual interests to invoke an exception of legality[980] or bring an action for compensation to obtain damages and interests.

First, the individual applicant may act individually in particular in the context of an exception under Article 277 TFEU.[981] In that context, the applicant relies on the application of an EU act in the context of the current proceedings concerning oneself. It is a very limited remedy in that it cannot be relied on solely by one of the parties to a dispute, unlike an action for annulment or failure to act, which can be invoked in the absence of a dispute and without being a party to a dispute. The objection of legality is therefore raised by one of the parties to the dispute before the CJEU and allows the Court to review the legality of the act incidentally, in so far as that act is applicable in the context of the proceedings.[982] This act must have an general effect and must have been adopted by a body of EU law, an institution or a body. In other words, the exception of legality is an indirect action called an incidental remedy of control. If the act is recognised as illegal, then it cannot be applied in the context of the dispute. In recognizing the right of equal, the applicant is not subject to the illegal. However, to avoid abusive and excessively recurrent claims invoking the plea of legality, there must be a sufficient link between the act in respect of which the objection is raised and the act challenged. It cannot be said that the exception of legality applies to all subsequent rulings of the Court. The act cannot have the act itself finally annulled. It is only rendered inapplicable for the parties to the dispute concerned. This remedy therefore applies only to the parties. It is therefore a remedy which can be invoked by the applicants, but individually and to protect their individual interests.

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980 CJEU, 10 June 1993, Commission v. Greece, Case C-183/92, ECR I-3131

981 Article 277 TFEU: provides that any party may, in proceedings in which an EU act of general application is at issue, plead the illegality of that act.

982 CJEU, *Case 92/78, Simmenthal v Commission*, EU:C:1979:53, para. 39 — confirming that Article 277 TFEU enables incidental review without leading to annulment of the act

Subsequently, the applicants may bring an action for compensation. This type of action, provided for in Articles 268[983] and 340(2) TFEU,[984] may be invoked by Member States, individuals, or legal persons of the Union where they have suffered an error committed by EU bodies, institutions, or officials. It is therefore possible to request compensation for the damage suffered at the CJEU. Case law, general principles of ordinary law and treaties provide conditions for EU liability. As a first step, the action committed by an EU institution or servant in the course of his duties must be unlawful and violate a norm of EU law, recognising the rights of individuals, Member States, or legal persons (such as companies), in particular if the Union exceeds its competences. The injury suffered must reach a certain level. In addition, the damage must be sufficiently real. Finally, there must be a sufficiently substantial causal link between the damage suffered and the action of the Union. The action for liability therefore makes it possible to obtain compensation for damage for which the Union is liable. Repair cannot therefore be easily obtained. The conditions must be fulfilled cumulatively.

There are then two types of remedies available to claimants to obtain compensation. The first is the contractual liability of the Union when it is a party to a contract. In that case, the institutions and servants of the Union may conclude contracts committing the responsibility of the Union. To claim EU liability before the CJEU, the contract concluded must include an arbitration clause. Otherwise, jurisdiction will rest with the national courts.

Other possible remedies are those for holding the Union liable outside the contract in the event of damage caused by its institutions or other servants in the performance of their duties.[985] Damage caused by EU officials or institutions in the performance of their duties will engage EU liability. In the *Francovich* ruling of 19 November 1991,[986] it was held that it was for national law to make good damage caused by the actions of EU institutions or servants, in breach of EU law. Thus, if a State has not transposed a directive in time, the abovementioned conditions must be met in order to obtain compensation: the grant of rights to individuals as a result of the directive, a legal content identifiable with the directive and a causal link between the damage suffered and the breach of the State's obligations to transpose. Subsequently, in the Factortame case of 5 March 1996,[987] any infringement of EU law by a Member State could be remedied within five years of the occurrence of the damage.

These actions for liability brought before the CJEU are useful in bringing into

983 Article 268 TFEU: confers jurisdiction on the CJEU in disputes relating to compensation for damage

984 Article 340(2) TFEU: provides that, in the case of non-contractual liability, the Union shall make good any damage caused by its institutions or servants

985 CJEU, 26 February1986, Krohn case 175/84, ECR I-753

986 CJEU, 19 November 1991, Francovich and Danila Bonifaci and others v Italian Republic. Joined cases C-6/90 and C-9/90. ECLI:EU:C: 1991:428

987 CJEU, Case C-46/93, [1996] and CJEU C-46/93, ECLI:EU:C:1996:79, EU:C:1996:79, [1996] IRLR 267, [1996] ECR I-1029, [1996] QB 404, [1996] All ER (EC) 301, [1996] 2 WLR 506, [1996] 1 CMLR 889, [1996] CEC 295

play the liability of the Union, which has no immunity from jurisdiction. Individuals, States, or institutions are awarded damages and are interested in compensation for the claim suffered, giving them all their importance to act and have their present represented. The division of jurisdiction between the courts has been a way of hearing, as accurately as possible, the claims of the prejudiced person. In the present context, jurisdiction over direct actions brought by individuals lies with the General Court at first instance, pursuant to Article 256 TFEU, whereas actions brought by Member States or Union institutions fall within the jurisdiction of the CJEU. However, both bodies may rule on actions establishing the contractual liability of the Union. Engaging the responsibility of the Union and obtaining the inapplicability of an unlawful act in the context of a dispute are strong derogations available to the applicants, giving them a fairly high degree of prerogatives. However, these remedies are conditional on preventing any abuse in their use. Applicants may also act in a collective interest.

To sum up, the individual interest paradigm governing direct actions before the CJEU conditions both access to judicial protection and the scope of judicial review in a manner that is poorly aligned with the nature of EU climate obligations. This does not reflect an intention to exclude climate claims as such, but rather the structural logic of a judicial system oriented towards the protection of individual rights and institutional balance, rather than the judicial implementation of systemic policy objectives such as climate mitigation and adaptation.

2.1.3. Collective interest–based actions in EU climate litigation: scope and limits

For the purposes of this subsection, "collective interest" does not refer to a general public interest litigation model or to class actions, which remain largely absent from the system of direct actions before the EU Courts.[988] At Union level, collective interest designates situations in which environmental organisations, local authorities, or groups of applicants seek to challenge Union acts—primarily through actions for annulment under Article 263 TFEU—by invoking interests that extend beyond an individual legal position. While such actions may appear, at first sight, more compatible with the collective nature of climate obligations, they remain formally anchored in the traditional structure of EU judicial review and subject to the same standing and admissibility constraints.[989]

The limits of collective interest litigation at EU level become particularly visible when contrasted with national climate litigation such as *Urgenda Foundation v State*

988 Justice and Environment, *Climate Litigation Case Study Collection (CJEU & ECtHR)* (2024), pp. 3–10

989 C. Eckes, *Strategic Climate Litigation before National Courts: Can EU Law be Used as a Shield?*, German Law Journal, vol. 25, Special Issue 6 (2024), pp. 1022–1042, esp. pp. 1030–1034

of the Netherlands.[990] In *Urgenda*, the Dutch courts relied on national tort law and the State's obligations under Articles 2 and 8 ECHR to accommodate a claim grounded in collective climate harm and to assess the adequacy of mitigation policy. That judgment did not operate on the basis of a collective interest doctrine in EU procedural law, nor did it concern access to the EU Courts. Instead, it illustrates the capacity of national courts to adapt liability frameworks and human rights- obligations to systemic climate risks—a flexibility that is structurally constrained in the context of direct actions before the EU Courts.

Unlike certain national systems, EU law does not provide for a generalised form of public interest litigation or class actions before the EU Courts.[991] Collective climate claims are therefore channelled through actions for annulment brought by non-privileged applicants, whose admissibility is assessed through the stringent criteria of individual concern rather than through an autonomous collective standing doctrine.

Under Articles 263 and 264 TFEU, the action for annulment constitutes the principal mechanism through which the legality of acts adopted by Union institutions may be reviewed. As Craig aptly explains, annulment performs an objective function within the EU legal order, aimed at ensuring compliance with EU law and safeguarding institutional balance rather than enforcing public policy objectives as such.[992] Where an act is found to be unlawful, its annulment has *erga omnes* effect, removing it from the Union legal order and, where appropriate, requiring the adopting institution to address any ensuing regulatory gap in compliance with the judgment.[993]

Access to this remedy further depends on the procedural status of the applicant. While Member States and Union institutions benefit from privileged standing, individuals and other non-privileged applicants must satisfy restrictive standing and admissibility requirements. Direct actions brought by individuals are heard at first instance by the General Court pursuant to Article 256 TFEU, whereas actions brought by Member States or Union institutions may be brought directly before the CJEU under Article 263 TFEU. This allocation of jurisdiction reflects the functional specialisation of the EU judicial system, which seeks to reconcile effective judicial review with respect for institutional balance and democratic legitimacy.[994]

Article 263 TFEU establishes a differentiated system of standing based on the procedural status of the applicant. Member States and the main Union institutions enjoy privileged standing and may bring actions for annulment without demonstrating any

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990 *Urgenda Foundation v State of the Netherlands* (Supreme Court of the Netherlands, 20 December 2019), ECLI:NL:HR:2019:2007

991 J. Setzer, H. Narulla, C. Higham and E. Bradeen, *Climate Litigation in Europe* (Grantham Research Institute / EU Forum of Judges for the Environment, 2022), pp. 18–24

992 CJEU, *Case C-565/19 P Carvalho and Others v Parliament and Council* EU:C:2021:252

993 Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials*, 7th edn (Oxford University Press 2020), pp. 552–556

994 Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials*, 7th edn (Oxford University Press 2020), pp. 552–556

specific interest, while certain bodies—including the Court of Auditors, the European Central Bank, and the Committee of the Regions—may bring actions for annulment to protect their institutional prerogatives. By contrast, individuals and other non-privileged applicants must satisfy the stringent requirements of direct and individual concern as defined in *Plaumann*. This asymmetry in access to annulment proceedings is central to the difficulties encountered by climate litigants at Union level, who overwhelmingly fall within the category of non-privileged applicants and are therefore structurally excluded from effective judicial review of general climate measures.

The restrictive interpretation of individual concern laid down in *Plaumann v Commission* has proven particularly consequential in the field of climate litigation. Because EU climate measures are typically addressed to the Union or the Member States as a whole and formulated in general, regulatory terms, applicants seeking to challenge such measures rarely satisfy the requirement of being differentiated individually in the same way as the addressee of the contested act. This structural feature of EU Climate Law has repeatedly resulted in the inadmissibility of direct actions brought by individuals and environmental organisations.

A prominent illustration is provided by *Carvalho and Others v Parliament and Council*,[995] where individual applicants and NGOs sought the annulment of core EU climate legislation on the ground that insufficient mitigation measures violated their fundamental rights. Both the General Court and, on appeal, the CJEU held that the applicants failed to meet the Plaumann criterion of individual concern, notwithstanding the severity and scientific certainty of climate change impacts.[996] The Courts thus reaffirmed that widespread and serious harm, even when foreseeable and rights affecting-, does not suffice to establish standing under Article 263 TFEU where the contested act applies in a general manner.

From the perspective of climate litigation, *Plaumann* therefore operates as a structural gatekeeping device that renders direct judicial review largely inaccessible for claims addressing collective and long-term climate harm. This does not reflect a denial of the binding character of EU climate obligations, but rather the persistence of a model of judicial protection centred on individualized legal concern, which sits uneasily with the systemic and diffuse nature of climate risks.

The differentiated standing regime established under Article 263 TFEU results in a functional hierarchy among applicants. Member States and Union institutions enjoy expansive access to annulment proceedings, while individuals and other non-privileged applicants are subject to significantly more demanding admissibility requirements. As the Court has consistently held since *Plaumann*, this asymmetry is not

995 CJEU, Case T-330/18 *Carvalho and Others v Parliament and Council* EU:T:2019:324, paras 41–64; Case C-565/19 P *Carvalho and Others v Parliament and Council* EU:C:2021:252, paras 51–73, applying the Plaumann test and declaring the action inadmissible despite alleged climate-related fundamental-rights violations

996 Jan-Herman Reestman and Maurice Adams, 'Climate Change Litigation and Access to Justice in the EU', (2021) Common Market Law Review 58, pp. 1445–1476, arguing that the persistence of *Plaumann* creates a structural mismatch between EU procedural law and the nature of climate-related harm

intended to discourage judicial review but to preserve institutional balance and the distribution of competences within the Union legal order.[997]

Accordingly, actions for annulment operate as carefully circumscribed instruments of objective legality review, offering a powerful corrective remedy—namely, the *erga omnes* annulment of unlawful acts—while remaining structurally controlled. This architecture ensures legal certainty and stability of Union action, even as it limits the capacity of individual applicants to challenge general measures. Beyond annulment, EU procedural law also provides mechanisms to address institutional inertia, notably through actions for failure to act, which are examined in the following sub-section.

To sum up, subsection 2.1.3 illustrates that collective or representative configurations do not overcome the *Plaumann* standing barrier in EU climate litigation. Even where applicants aggregate interests through an association or group action, admissibility remains assessed through individual concern under Article 263(4) TFEU. The inadmissibility of the *Carvalho* action—targeting the 2030 climate-energy package—illustrates that collective structuring does not open direct access to the EU Courts for diffuse climate harm, leaving annulment actions a limited, corrective mechanism of legality review rather than a comprehensive instrument of climate law implementation.

2.1.4. The limits of challenging EU inaction and inadequate action in climate governance

Beyond questions of standing and interest, EU law provides specific judicial mechanisms enabling applicants to challenge the inaction or inadequate action of Union institutions in the implementation of EU Climate Law. EU law provides a specific judicial mechanism enabling applicants to challenge the inaction of Union institutions in the implementation of EU Climate Law. Actions for failure to act constitute the principal avenue through which institutional inertia may be judicially contested. This sub-section examines the extent to which actions for failure to act allow litigants to react to institutional inertia or inadequate action in the implementation of EU Climate Law, while showing that their essentially *ex post* and reactive character is a structural expression of the EU's constitutional architecture. Designed as mechanisms of legality control rather than instruments of policy direction, these remedies are constitutionally confined to corrective intervention and therefore cannot ensure systematic or forward-looking implementation of climate obligations.

In the context of EU Climate Law, actions for failure to act provide a judicial avenue through which applicants may challenge situations in which Union institutions have allegedly failed to fulfil legally binding climate-related obligations. As codified in Articles 265 and 266 TFEU, this mechanism allows the CJEU to review whether an institution was under a clear and specific duty to act in order to ensure compliance

997 CJEU, Case 25/62 *Plaumann & Co v Commission* EU:C:1963:17; see also Koen Lenaerts, Effective Judicial Protection in the EU, (2013) 54 Harvard International Law Journal 1, at 11–15

with EU climate legislation, such as -target setting-, planning, or reporting obligations arising from EU Climate Law and related instruments.[998] However, as Craig observes, the action for failure to act is constitutionally designed as a mechanism of *ex post* legality control, rather than as a tool for directing substantive policy choices or accelerating regulatory action.[999]

This *ex post* and reactive character is not merely a functional limitation, but reflects the constitutional architecture of the Union legal order, in which judicial review is confined to ensuring compliance with existing legal commitments while preserving institutional balance.[1000] As Koen Lenaerts has emphasised, the Court may declare the existence of unlawful institutional inertia, but it may not substitute its own assessment for that of the institution responsible for climate policymaking. In climate matters, where effective implementation depends on dynamic, forward -looking governance and continuous regulatory adaptation, this constitutional constraint significantly limits the capacity of actions for failure to act to contribute to the systematic and proactive implementation of EU climate obligations.

To sum up, this subsection shows that actions for failure to act provide litigants with a formal judicial mechanism to challenge Union inaction or inadequate action in the implementation of EU Climate Law. However, their constitutionally *ex post* and reactive character confine their impact to the correction of unlawful institutional inertia, rather than enabling systematic or forward-looking implementation of climate obligations. These remedies therefore contribute to accountability within the Union legal order without functioning as instruments of proactive climate law enforcement.

Overall, subchapter 2.1 demonstrates that the current state of climate litigation before the CJEU is characterised by a structural mismatch between the nature of EU climate obligations and the constitutional design of judicial review. While climate law is inherently indeterminate and forward looking—relying on evolving targets, policy trajectories, and iterative governance frameworks—the Court's intervention depends on the existence of clearly defined and legally binding obligations capable of judicial determination. The combined effect of restrictive access to justice, the predominance of individual and only limited collective interests, and the *ex post*, reactive character of actions against Union inaction confines judicial intervention to a fragmented and corrective role. As a result, effective implementation of EU Climate Law at Union level cannot rely primarily on judicial avenues and must instead be secured through administrative, regulatory and governance mechanisms operating beyond the courts.

The structural limits identified in subchapter 2.1 do not signify an absence of judicial engagement with EU Climate Law but rather indicate that direct access to the

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998 K. Lenaerts, *Effective Judicial Protection in the EU*, (2013) Harvard International Law Journal, vol. 54, pp. 1–26, esp. pp. 12–16

999 P. Craig, *EU Administrative Law*, 3rd edn (Oxford University Press 2018), pp. 471–474

1000 K. Kulovesi and S. Oberthür, *Assessing the EU Climate Law*, (2021) Review of European, Comparative & International Environmental Law, highlighting that effective climate implementation in the EU relies primarily on governance and administrative mechanisms rather than judicial enforcement.

CJEU offers only a partial and constrained avenue for climate litigation. These limitations shift the centre of gravity of climate adjudication away from direct actions before the EU Courts and towards indirect forms of judicial control. The following subchapter therefore turns to the role of national courts and the preliminary ruling procedure under Article 267 TFEU, examining how climate disputes may reach the CJEU through decentralised litigation pathways and how this model of indirect access reshapes the judicial contribution to the interpretation and application of EU Climate Law.

2.2. Indirect access to climate litigation through the preliminary ruling procedure

Subsection 2.2 examines indirect access to climate litigation through the preliminary ruling procedure by focusing on how national courts enforce EU environmental and climate relevant obligations and how the CJEU, through interpretative rulings, shapes the effectiveness of such obligations without expanding direct access to the Union courts. In that respect, the preliminary ruling procedure under Article 267 TFEU constitutes a central avenue through which climate-related questions may reach the CJEU. When national courts are confronted with disputes involving the interpretation or validity of EU Climate Law, they may—or, in certain circumstances, must—refer questions to the CJEU. This mechanism enables national courts to act as decentralised enforcers of EU climate obligations while ensuring the uniform interpretation of EU law across Member States, including in situations where litigants are excluded from direct actions under Article 263 TFEU.

It must nevertheless be acknowledged that access to the CJEU through the preliminary ruling procedure under Article 267 TFEU remains inherently indirect and contingent upon the discretion of national courts. As has long been emphasised in EU constitutional scholarship, the preliminary ruling mechanism does not confer an autonomous right of access on litigants, but presupposes the intermediation of domestic courts acting within their own jurisdiction.[1001] This mediated character limits its effectiveness as an access-opening mechanism for climate litigation, particularly where national courts choose not to refer questions or where disputes do not crystallise into justiciable claims at domestic level.

Moreover, the preliminary ruling procedure operates on an *ex post*, case-by-case basis, which sits uneasily with the forward-looking, programmatic and systemic nature of climate obligations. As climate scholars have noted, EU Climate Law relies on iterative targets, planning cycles and long-term policy trajectories that are not easily translated into discrete legal questions suitable for preliminary reference.[1002] For these

1001 P. Craig, *EU Administrative Law*, 3rd edn (Oxford University Press 2018), pp. 437–442

1002 Kulovesi, K., & Oberthür, S. (2021). Assessing the EU Climate Law: Governance, objectives, and legal implications. *Review of European, Comparative & International Environmental Law, 30*(2), 151–163. https://doi.org/10.1111/reel.12390

reasons, this subsection does not assess Article 267 TFEU as an autonomous or sufficient mechanism for ensuring access or enforcement in climate matters. Instead, it focuses on how the CJEU contributes indirectly to climate law effectiveness through interpretative guidance, Charter based-reasoning, and the reinforcement of national courts' duties as decentralised enforcers of EU environmental and climate obligations. Indeed, the CJEU has interpreted both the Charter and the Aarhus Regulation as requiring Member States and EU institutions to provide meaningful access to justice for those seeking to challenge climate inaction or insufficient implementation of climate policies. This approach is evident in the Court's willingness to interpret standing requirements in light of the objectives of environmental protection and the right to an effective remedy.

The case-law analysed in this subsection does not concern access to climate litigation before the CJEU in the procedural sense. Instead, it illustrates how climate relevant issues reach the Court indirectly through national litigation under Article 267 TFEU and how the Court exercises its constitutional role within these constraints. In particular, cases- such as *Deutsche Umwelthilfe*[1003] and *Ilva*[1004] are scrutinised not because they open access to the CJEU, but because they reveal how EU environmental obligations are enforced at national level and how the Court strengthens their normative content through interpretation.

Deutsche Umwelthilfe is primarily an air quality enforcement case grounded in Directive 2008/50/EC and concerns national compliance with EU environmental law. It is examined here because it demonstrates how national courts, through preliminary references, invoke EU law and fundamental rights to compel compliance with clear and unconditional obligations, thereby functioning as decentralised enforcers of climate relevant regulatory frameworks. Similarly, while *Ilva* does not concern climate law as such and does not modify the procedural rules governing access to the CJEU, it provides valuable insight into how the Court reinforces the substantive density of environmental obligations through Charter based interpretation. Its relevance for climate litigation lies therefore not in access, but in illustrating the Court's role as a normative intensifier operating through interpretation rather than procedural expansion.

The ruling in *Deutsche Umwelthilfe*[1005] is analysed here not as a case of access to climate litigation before the CJEU, but as an illustration of indirect judicial engagement with climate-relevant obligations through national enforcement and the preliminary ruling procedure. The case arose from persistent non-compliance by the Land of Bavaria with a final judicial order requiring the adoption of measures to meet air

1003 CJEU, 19 December 2019. Deutsche Umwelthilfe eV v Freistaat Bayern. Case C-752/18. ECLI identifier: ECLI:EU:C: 2019:1114

1004 CJEU, C. Z. and Others v Ilva SpA in Amministrazione Straordinaria and Others, Case C-626/22, EU:C:2024:542, ruling of 25 June 2024

1005 CJEU, 19 December 2019. Deutsche Umwelthilfe eV v Freistaat Bayern. Case C-752/18. ECLI identifier: ECLI:EU:C: 2019:1114

quality limit values under Directive 2008/50/EC.[1006] Faced with continued refusal by the competent authorities to implement those obligations,[1007] the referring German court sought guidance from the CJEU on the scope of effective judicial protection under EU law, including in light of Article 47 of the Charter and the Aarhus Convention.[1008] Although the dispute concerned air quality- enforcement rather than climate mitigation as such, the case is examined because it demonstrates how national courts, acting under Article 267 TFEU, may compel compliance with clear and unconditional obligations derived from EU environmental law, and how the CJEU reinforces the effectiveness of such obligations through interpretative guidance without modifying the procedural conditions for access to the Union courts.

Similarly, the judgment in *Ilva* (Case C626/22) does not concern climate law in the strict sense nor does it expand access to the CJEU. It is nevertheless considered here because it illustrates the Court's role as a normative intensifier, strengthening the substantive content of environmental obligations through Charter based interpretation while leaving unchanged the restrictive architecture governing access to judicial review at Union level.

In responding to the preliminary reference, the CJEU not only clarifies, in a manner relevant to this subsection, how national law must be interpreted in conformity with EU law in order to ensure effective judicial protection under Article 19(1) TEU[1009] (as analysed in subsection 2.2.1), but also articulates broader principles concerning the conditions under which fundamental rights guaranteed by the Charter—such as the right to liberty—may be limited through coercive enforcement measures. This latter dimension, examined in subsection 2.2.2, is analysed more generally through the Court's caselaw on Charter-based balancing,[1010] including but not limited to *Deutsche Umwelthilfe*.

2.2.1. The need for effective judicial protection in climate litigation

Access to climate litigation before the CJEU is grounded in a set of normative foundations that define the scope and limits of judicial protection within the Union legal order. Rooted in the Treaties, general principles of EU law, and fundamental rights guarantees, these bases articulate a right of access that is neither absolute nor enforcement oriented. This subsection examines the legal foundations governing access to the

1006 Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, *OJ L 152, 11.6.2008*

1007 CJEU, 19 December 2019, Deutsche Umwelthilfe eV v Freistaat Bayern, Case C-752/18. ECLI:EU:C:2019:1114, §14 and 18

1008 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

1009 Article 19.1 TEU

1010 Article 6 of the EU Charter of Fundamental Rights

CJEU in climate matters, highlighting how they frame judicial protection primarily as a safeguard of legality rather than as an instrument of climate law implementation.

In its analysis, after expressing its opinion on the need for States to ensure respect for the right to an effective remedy enshrined in Article 47(1) of the Charter (A), the CJEU, investigating domestic constitutional law, considers the possibility of requiring a measure of imprisonment also on a holder of a public office (B).

A. *A systematic and comparative interpretation of domestic law in the light of EU law*

In order to preserve the objective of the Charter, the Court uses a purposive interpretation of the text because the right to an effective remedy "would be infringed if the ruling of a court remained ineffective, failing that court to have at its disposal any means of enforcing it to the detriment of one of the parties." The Court reiterates that, when implementing EU law, States are required to ensure respect for the right to an effective remedy enshrined in Article 47(1) of the Charter. In particular, according to the case-law of the Court,[1011] national legislation which leads to a situation in which the ruling of a court or tribunal remains ineffective, if that court does not have any means of enforcing it, disregards the essence of the right to an effective remedy enshrined in Article 47 of the Charter.[1012]

First, the Court proceeds to a systematic approach and comparison with other sources in the context of an action relating to a very sensitive area - respect for environmental law - the right to an effective remedy is also enshrined in Article 9 § 3 and 4 of the Aarhus Convention.[1013] According to Article 9 of the Aarhus Convention, EU members must ensure that national law allows a challenge to be lodged under certain conditions (sufficient interest and infringement of a right). In this recital, the judge correctly describes the interest as "sufficient" and the infringement of the rights of the NGO *Deutsche Umwelthilfe*. Then, underlines the dialogue with the ECtHR.[1014] Article 47 of the Charter must be interpreted in the light of Article 6(1) of the ECHR. The failure of public authorities to comply with a final and enforceable judicial ruling "deprives that provision of all practical effect." The German national court thus asks the CJEU whether the abovementioned European provisions must be interpreted as meaning that, in circumstances characterised by a persistent refusal by a national authority to comply with a judicial ruling requiring it to fulfil a clear, precise and unconditional obligation arising from EU law, in particular Directive 2008/50/EC,[1015] that directive empowers or even obliges the competent national court to impose

1011 CJEU, 26 June 2019, Kuhar, C407/18, ECLI:EU:C:2019:537, § 35

1012 CJEU, 29 July 2019, Torubarov v Bevándorlási és Menekültügyi Hivatal, Case C-556/17. ECLI:EU:C:2019:626

1013 CJEU, 26 June 2019, Kuhar, C407/18, ECLI:EU:C:2019:537, § 3

1014 CJEU, 26 June 2019, Kuhar, C407/18, ECLI:EU:C:2019:537, § 37

1015 Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, *OJ L 152, 11.6.2008*

imprisonment on holders of an official office.

In the words of the Court, where national law cannot be interpreted in conformity with the requirements of EU law, the national court seized, acting as an organ of a Member State, is required to disapply any provision of national law contrary to an EU rule with direct effect in the dispute before it.[1016] This requirement follows from the principle of primacy of EU law and obliges national courts to ensure the effectiveness of Union law as far as possible.[1017] In this respect, the Court emphasises that it is not the legislature as such that is directly constrained, but rather the interpretative task of national judges, who must interpret domestic law in conformity with EU objectives, including the requirement of effective judicial protection.[1018]

The Court further recalls that, in the absence of harmonised EU rules on enforcement mechanisms, the detailed procedural arrangements for giving effect to EU obligations fall within the domestic legal order of the Member States, by virtue of their procedural autonomy, subject to the principles of equivalence and effectiveness.[1019] However, the Court has also held that where national authorities persistently fail to comply with binding judicial decisions, national courts must be able to set aside domestic rules that prevent them from ensuring effective compliance.[1020] In *Deutsche Umwelthilfe*, the Court observed that financial penalty payments proved ineffective where they did not entail any real budgetary impact, leading it to examine whether more coercive measures—such as imprisonment of holders of public office—could be required to safeguard the effectiveness of EU law.

B. *The difficulty associated with holding a public office*

The Court must answer the question whether it is possible to use imprisonment against holders of public authority in Bavaria to obtain compliance with the obligation to update an air quality plan. *A priori*, the Court reiterates and deepens the reasoning of the referring court, which points out that, under domestic law, for holders of an office in the exercise of official authority, it cannot ensure compliance with the principle of effectiveness of EU law and the right to an effective remedy.[1021] The necessary (and sufficient) condition for such a measure is that EU law empowers or obliges it to set aside constitutional grounds preventing the application of imprisonment against.

The Court then adopts an approach which justifies that measure. In the present case, in order to preserve effective legal protection, the reasoning emphasises Article 19(1) TEU, interpreting the European provisions at issue "as meaning that a German

1016 CJEU, 26 June 2019, Kuhar, C407/18, ECLI:EU:C:2019:537, § 42 and 47

1017 CJEU, 26 June 2019, Kuhar, C407/18, ECLI:EU:C:2019:537, § 28

1018 CJEU, 26 June 2019, Kuhar, C407/18, ECLI:EU:C:2019:537, § 28

1019 CJEU, 26 June 2019, Kuhar, C407/18, ECLI:EU:C:2019:537, § 3

1020 S. Grigonis, Jurisdictional Interaction between the CJEU and International Dispute Settlement Bodies: EU Law Perspective, 2020

1021 CJEU, 26 June 2019, Kuhar, C407/18, ECLI:EU:C:2019:537, §41

court is empowered to order imprisonment in respect of holders of an office in the exercise of official authority in a Land."[1022] From the Court's identification of Article 19 as a legal basis, it is clear that national law does not offer more effective means of coercion than imprisonment. But this is open to criticism because the court does not analyse the range of alternative instruments.

The principle of effective judicial protection is indeed the leitmotif of its reasoning. It is then necessary to ascertain whether the obligation imposed by EU law on the national court to take "all measures necessary" to ensure compliance with the Directive may include the obligation to apply a measure involving deprivation of liberty, such as imprisonment.

To sum up, subsection 2.2.1 demonstrates that indirect climate relevant litigation before the CJEU is structured around the constitutional requirement of effective judicial protection rather than around an expansion of access to the Union courts. Through its interpretation of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the EU, the Court clarifies the obligations incumbent upon national courts to ensure the effectiveness of clear and unconditional obligations derived from EU law. The analysis thus shows that judicial intervention operates primarily through the reinforcement of national enforcement duties and interpretative guidance, while leaving unchanged the procedural conditions governing access to the CJEU and the limits of judicial involvement in the implementation of EU Climate Law.

While subsection 2.2.1 has shown how the requirement of effective judicial protection structures the obligations of national courts under Article 19(1) TEU, the Court's reasoning does not stop at issues of enforceability. The preliminary ruling caselaw further raises questions concerning the limits of judicial enforcement where compliance with EU law entails interference with fundamental rights guaranteed by the Charter of Fundamental Rights of the EU. Subsection 2.2.2 therefore examines how the Court adopts a conciliatory interpretation of the Charter, balancing effective judicial protection against competing fundamental rights, and the implications of this approach for climate-related litigation at EU level.

2.2.2. A conciliatory interpretation of the Charter towards an effective climate litigation at the EU level

The Charter provides an essential normative reference for access to justice within the Union legal order, yet its application in climate litigation requires careful interpretative calibration. Rather than mandating an expansion of judicial access, the Charter has been interpreted in a conciliatory manner that seeks to reconcile effective judicial protection with the constitutional constraints of Union competences and institutional balance. This subsection examines how a restrained interpretation of the Charter

1022 CJUE, 19 December 2019, Deutsche Umwelthilfe contre Freistaat Bayern, aff. C-752/18, ECLI:EU:C:2019:1114.

contributes to the recognition of climate-related claims before the CJEU, while simultaneously confirming the limits of judicial intervention in the implementation of EU Climate Law.

The CJEU takes a position on the legal classification of the right to effective judicial protection: while on the one hand it recalls that the right to effective judicial protection is not an absolute right (A), on the other hand it evokes the need to balance the rights of the Charter in order to identify the conditions under which a right contained therein may be limited (B).

A. *Effective judicial protection: a non-absolute right*

The CJEU recalls, by a literal interpretation of Article 52(1) of the Charter, that the right to effective judicial protection is not absolute and may be subject to limitations where necessary to protect other fundamental rights.[1023] In that context, the Court observes that coercive measures such as imprisonment constitute a limitation on the right to liberty guaranteed by Article 6 of the Charter. Referring to the case-law of the ECtHR, in particular *Del Río Prada v. Spain,*[1024] the Court reiterates that any measure empowering a judge to deprive an individual of liberty must be based on a sufficiently accessible, precise and foreseeable legal basis, in accordance with Article 52(1) of the Charter.[1025] The balancing of Charter rights thus serves to identify the conditions under which such limitations may be justified, while ensuring protection against arbitrariness. By holding EU institutions and Member States accountable within the limits of its constitutional role, the CJEU contributes to clarifying the legal significance of EU climate objectives and reinforces the binding character of certain obligations derived from EU climate and environmental law,[1026] without itself ensuring the implementation or judicial enforcement of long term- policy targets such as climate neutrality by 2050.[1027]

The CJEU's caselaw provides national courts with interpretative guidance for assessing compliance with EU environmental and climate relevant obligations, particularly in situations involving persistent administrative inaction or insufficient implementation. Through the preliminary ruling mechanism, the Court contributes to clarifying the scope and legal effects of such obligations, while leaving their concrete enforcement to domestic courts acting within their own procedural frameworks. The interaction between the CJEU and national courts thus supports the integration of

1023 CJEU, 26 June 2019, Kuhar, C407/18, ECLI:EU:C:2019:537, § 44

1024 ECtHR, Case of Del Rio Prada v. Spain, n° 42750/09, Oct. 21, 2013

1025 ECtHR, Case of Del Rio Prada v. Spain, n° 42750/09, Oct. 21, 2013

1026 Kulovesi, K., & Oberthür, S. (2021). Assessing the EU Climate Law: Governance, objectives, and legal implications. *Review of European, Comparative & International Environmental Law, 30*(2), 151–163. https://doi.org/10.1111/reel.12390

1027 Eckes, C. (2024). Strategic climate litigation before national courts: Can EU law be used as a shield? *German Law Journal, 25*(6), 1022–1042. https://doi.org/10.1017/glj.2024.54

EU Climate Law primarily by reinforcing interpretative coherence and the duties of national judicial authorities, rather than by ensuring uniform or systematic enforcement across the Union.

The CJEU's role is complemented by ongoing dialogue with national courts and, increasingly, with the ECtHR. This multi-level judicial interaction is essential for the effective integration and enforcement of EU Climate Law, ensuring that climate justice is not only a matter of national concern but a shared European responsibility. This confirms that the Charter operates not as a vehicle for expanding judicial access, but as a framework for calibrating the intensity and limits of judicial intervention once EU climate relevant obligations are engaged.

B. *Balancing EU Law and the ECHR*

To answer the question raised, the Court relies on its *Al Chodor* ruling[1028] which takes up the case-law of the ECtHR on the legality of sentences. It follows that EU law (and also German law) provides for the possibility of imposing imprisonment, but there must be a precise legal basis whose application is foreseeable. That argument makes it possible to avoid any arbitrary assessments, which would not justify such a restrictive measure.

Then, the Court states that such a limitation is conceivable only on two conditions which it is for the referring court to ascertain: there must be a legal basis empowering the domestic court to deprive a person of one's liberty, which is sufficiently accessible, precise and foreseeable in its application to avoid any danger of arbitrariness;[1029] The interference with the right to liberty must be proportionate, i.e. imprisonment may be imposed only where there is no less onerous measure to adequately achieve the objective pursued.[1030]

Thus, the Court concludes that it is only if the referring court were to conclude that, in the context of the balancing of the rights enshrined in Article 52 and Article 6 of the Charter, the limitation which would be imposed on the right to liberty by virtue of the imposition of imprisonment complies with the conditions laid down in that regard in Article 52 § 1 of the Charter, whereas EU law not only authorises but requires the use of such a measure.[1031] However, the last part of the Court's reasoning, which is based on the ability of Member States to effectively have an appropriate legal basis in their legal systems, may be criticised for being too theoretical.

It is appropriate in this regard to recall, on the one hand, that Article 35 of the Charter provides that a high level of human health protection is ensured by the definition

1028 CJEU, 15 March 2017, C-528/15, ECLI :EU :C :2017 :213, recital 46

1029 CJEU, 15 March 2017, C-528/15, ECLI :EU :C :2017 :213, recital 48

1030 CJEU, 15 March 2017, C-528/15, ECLI :EU :C :2017 :213, recital 50

1031 CJEU, 15 March 2017, C-528/15, ECLI:EU:C:2017:213, recital 52

and implementation of all the Union's policies and actions.[1032] The CJEU recently held that on the other hand, in accordance with Article 37 of the Charter, a high level of environmental protection and improvement of its quality must be integrated into Union policies and ensured in accordance with the principle of sustainable development. The distinction brought by the Court between human health and the protection of environment, both enshrined in different articles, are not always combined and tend to confirm a schism between human health and the environment – in hindsight between environmental and climate law.

Nonetheless, regarding to the close link between the protection of the environment and that of human health, the CJEU interpreted the Directive 2010/75[1033] as a way, not only to facilitate the application of Article 37 of the Charter, as indicated in recital 45 of this directive, but also the application of Article 35 of the Charter, a high level of protection of human health cannot be achieved without a high level of environmental protection, in accordance with the principle of sustainable development.[1034] It is one of the few example where the judge tries to reconcile the two imperatives. By holding that Directive 2010/75 thus contributes to safeguarding the right of everyone to live in an environment suitable for ensuring their health and well-being, the CJEU opted for a consolidation of the two.[1035] This illustrates the Court's commitment to preserving institutional balance by defining legal thresholds rather than prescribing concrete enforcement techniques.

C. *The CJEU as a normative intensifier rather than an access-opening actor*

In line with the Court's conciliatory interpretation of the Charter, the case-law also illustrates how fundamental rights are balanced in a manner that strengthens the normative content of environmental obligations without altering the procedural conditions governing access to the CJEU. The ruling of the CJEU in Case C626/22 *(Ilva)*,[1036] represents an important development in the judicial articulation of environmental protection and human health within the Union legal order. The case, however, does not concern the direct justiciability of EU Climate Law as such, nor does it alter the procedural conditions governing access to the Union courts. Instead, it illustrates how

1032 Article 35 of the Charter of Fundamental Rights

1033 The closest protection to a healthy environment embedded as such could be found in Protocol n°1 regarding the right to property. The Court's case-law enshrines an indirect protection of a right to the environment by confining itself to punishing only environmental offences which simultaneously entail a violation of other human rights already recognised in the Convention. The Court therefore favours an anthropocentric and utilitarian approach to the environment which prevents any per se protection of the natural elements.

1034 CJEU, 25 June 2024, C-626/22, ECLI :EU :C :2024 :542

1035 Recital 27, Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions

1036 CJEU, C. Z. and Others v Ilva SpA in Amministrazione Straordinaria and Others, Case C-626/22, EU:C:2024:542, ruling of 25 June 2024

the Court reinforces the *normative substance* of environmental obligations through a Charter-based interpretative approach, while leaving the structural architecture of access to justice unchanged.

In *Ilva*, the Court interpreted Directive 2010/75 in light of Articles 35 and 37 of the Charter,[1037] holding that environmental permitting procedures must ensure a high level of protection of *both human health and the environment*.[1038] The ruling confirms that EU environmental law may generate *clear, precise and enforceable obligations* at national level, which domestic courts are required to uphold through effective remedies. In doing so, the Court strengthens the substantive density of environmental norms and the duties of national authorities and courts.

The ruling illustrates a distinctive mode of judicial intervention. By confirming that EU environmental law may generate clear, precise, and enforceable obligations at national level, the Court strengthens the duties incumbent upon national authorities and courts, while refraining from altering the restrictive conditions governing direct actions before the CJEU. Enforcement is thus displaced downwards: national courts are required to ensure effective remedies, but access to the Union courts remains filtered through the preliminary reference mechanism under Article 267 TFEU. Crucially, however, this normative intensification does not translate into an expansion of access to climate litigation before the CJEU itself.

The *Ilva* case operates entirely within the framework of preliminary references under Article 267 TFEU, reinforcing the role of national courts as decentralised enforcers of EU environmental law, rather than transforming the standing requirements or admissibility rules applicable to direct actions before the Union courts. It therefore confirms a central feature of Union climate litigation: while the CJEU may significantly enhance the effectiveness of environmental and climate obligations through interpretation, Charter-based balancing, and the reinforcement of national judicial duties, it does so without relaxing the procedural filters that govern access to the CJEU.

Read in conjunction with earlier case law such as *Deutsche Umwelthilfe*, the *Ilva* ruling illustrates the dual movement that characterises EU -level climate adjudication: a strengthening of substantive environmental protection and effective judicial protection at national level, combined with the preservation of restrictive access to judicial review at Union level. This confirms that, within the EU legal order, the effectiveness of climate law is enhanced primarily through interpretative and governance mechanisms, rather than through the expansion of direct access to climate litigation before the CJEU.[1039] Arguably, the CJEU's reasoning in this case builds upon earlier rulings

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1037 On the absence of any modification of standing or admissibility rules in Ilva, see the scope of the preliminary ruling procedure under Article 267 TFEU, as applied in Case C-626/22

1038 Ilva, Case C-626/22, paras 29–45, interpreting Directive 2010/75/EU in light of Articles 35 and 37 of the Charter of Fundamental Rights of the EU

1039 On the obligation of national courts to ensure effective judicial protection of clear and unconditional environmental obligations, see *Ilva*, paras 52–56; see also CJEU, *Deutsche Umwelthilfe eV v Freistaat Bayern*, Case C-752/18, EU:C:2019:1114.

such as *Deutsche Umwelthilfe* [1040] which confirmed the duty of national courts to ensure the effectiveness of EU environmental law.

This broader trend of judicialisation illustrates a common pattern across jurisdictions: courts are increasingly called upon to assess the adequacy of public authorities' responses to climate risks by relying on existing legal obligations, fundamental rights, and principles of effectiveness.[1041] In national cases such as *Urgenda* or *Grande-Synthe*, courts have been willing to engage directly with mitigation pathways and quantitative targets, drawing on human rights obligations and domestic constitutional law.[1042] Similarly, the ECtHR, in *KlimaSeniorinnen Schweiz*, has recognised that insufficient climate action may engage Convention rights, thereby strengthening the justiciability of climate obligations at supranational level (see Chapter 3).

By contrast, within the EU legal order, the CJEU participates in this judicialisation process in a more constrained and indirect manner.[1043] Rather than assessing the adequacy of climate policies or substituting itself for political decision-makers, the Court intervenes primarily through interpretative clarification, the reinforcement of effective judicial protection, and the consolidation of enforceable obligations at national level. This confirms that, while the CJEU forms part of a broader judicial landscape increasingly attentive to climate change, its contribution remains shaped by the constitutional limits of EU judicial review and does not amount to a direct judicial steering of EU climate policy.

To sum up, subsection 2.2.2 demonstrates that it is through the CJEU's conciliatory interpretation of the Charter that climate-related claims are judicially accommodated within the Union legal order. By reconciling the requirement of effective judicial protection with the constitutional constraints of EU judicial review, the Court reinforces the normative relevance of environmental and climate-related obligations without mandating an expansion of judicial access or assuming a role in the enforcement of EU climate policy. The Charter thus operates, as interpreted by the Court, as a normative safeguard that frames and limits judicial intervention, rather than as a driver of EU Climate Law implementation.

1040 CJEU, 19 December 2019, Deutsche Umwelthilfe contre Freistaat Bayern, aff. C-752/18, ECLI:EU:C:2019:1114.

1041 Mayer, B. (2023). *The contribution of Urgenda to the mitigation of climate change*. Journal of Environmental Law, 35(2), 167–184. https://doi.org/10.1093/jel/eqac016

1042 Bétaille, J., & Chapron, G. (2025). *KlimaSeniorinnen case: Climate change legal scholarship needs empiricism, not hype*. PLOS Climate, 4(3), e0000589. https://doi.org/10.1371/journal.pclm.0000589

1043 Eckes, C. (2024). *Strategic climate litigation before national courts: Can EU law be used as a shield?* German Law Journal, 25(6), 1022–1042. https://doi.org/10.1017/glj.2024.54

Synthesis – Chapter 2, Part III: The Integration of EU Climate Law before the CJEU

This chapter has examined the integration of EU Climate Law at Union level through the prism of access to judicial protection, focusing on the position of litigants before the CJEU. The analysis demonstrates that, while judicial avenues formally exist, the EU legal order structures access to climate litigation in a manner that prioritises institutional balance, legality, and the protection of defined legal interests over the enforcement of collective climate objectives.

The examination of judicial review mechanisms has shown that access to justice at EU level is constitutionally constrained and functionally limited. Whether grounded in individual interest, collective interest, actions against Union inaction or unlawful action, climate litigation before the CJEU remains reactive, fragmented, and ill-suited to address the systemic and long-term nature of climate obligations. These limitations do not reflect a failure of judicial protection, but rather the deliberate design of a legal system in which courts play a corrective role within a broader institutional framework.

The analysis of access to climate litigation further confirms that the legal foundations of judicial protection—rooted in the Treaties, general principles of EU law, and the Charter do not transform access to justice into a mechanism of climate law implementation. Even when interpreted in a conciliatory manner, the Charter reinforces judicial protection within existing constitutional boundaries, without overcoming the structural constraints that limit the capacity of litigation to drive implementation at Union level.

Within the limited and still evolving body of EU climate-related caselaw, the CJEU has played a restrained but normatively significant role in shaping the judicial contours of climate litigation at Union level. Rather than acting as a central enforcement authority or policymaker, the Court has intervened primarily through interpretative clarification, reinforcing procedural guarantees and elucidating the legal implications of environmental and climate relevant obligations arising under the Treaties, secondary legislation, and the Charter. Through preliminary references and Charter based reasoning, the Court has contributed to strengthening the normative coherence of EU Climate Law and to guiding national courts in their assessment of compliance and effective judicial protection, while remaining within the constitutional limits of EU judicial review and without ensuring the uniform or systematic implementation of climate policy across all Member States.

A landmark illustration of this dynamic is provided by the Court's recent caselaw, which confirms that, in light of the restrictive standing requirements established since *Plaumann*, the effectiveness of EU environmental and climate relevant obligations cannot be pursued through an expansion of direct actions before the Union courts. Instead, the Court has reinforced such obligations primarily through interpretative guidance addressed to national courts acting under Article 267 TFEU. By preserving the *Plaumann* doctrine and the admissibility constraints governing access to annulment proceedings, while simultaneously strengthening the normative content of

environmental duties and the obligations of domestic authorities, the Court consolidates EU climate governance through institutional coordination and judicial dialogue rather than through judicial centralisation at Union level.

The preliminary reference procedure under Article 267 TFEU has become a cornerstone of this system, enabling national courts to seek authoritative interpretations from the CJEU and ensuring the uniform application of climate law throughout the Union. The CJEU's willingness to interpret standing requirements and procedural barriers considering the objectives of environmental protection and the right to an effective remedy has gradually broadened access to justice for climate litigants, even as challenges remain regarding restrictive standing rules and the complexity of multilevel governance.

Despite these advances, the journey toward full and effective integration is ongoing. The fragmentation of procedural rules, the persistence of restrictive standing requirements, and the evolving relationship between national courts and the CJEU.

Taken together, this chapter demonstrates that the integration of EU Climate Law for litigants before the CJEU operates primarily as a mechanism of accountability and boundary-setting, rather than as an instrument of effective implementation. The limits identified do not diminish the relevance of judicial intervention, but they reveal that EU Climate Law cannot rely on litigation alone to ensure its operational effectiveness. This conclusion makes it necessary to shift the analytical focus towards the administrative and governance mechanisms through which EU Climate Law is implemented, coordinated, and enforced beyond the courts.

The analysis conducted in this chapter demonstrates that, at Union level, access to climate litigation before the CJEU is structured around institutional balance, legality, and restrained judicial intervention. While EU judicial protection contributes to accountability and boundary-setting, its structural limits confine the role of litigation within the Union legal order and prevent it from ensuring the effective implementation of climate obligations. These internal constraints inevitably raise questions regarding the interaction between EU Climate Law and external systems of human rights protection, particularly the ECtHR, whose judicial logic and remedial scope differ fundamentally from those of the Union. It therefore becomes necessary to examine how EU Climate Law interacts with the ECHR framework, and whether climate litigation before the ECtHR operates as a complementary, corrective, or tension-producing dimension of climate law implementation.

CHAPTER 3. THE INTERACTION OF EU CLIMATE LAW BEFORE THE ECTHR

The environment is deemed to have an effect on the individual. Indeed, the quality of the air, the water, the sound environment, but also the fauna and flora, are all

elements that can act on the health and well-being of everyone.[1044] From this observation, environmental protection was born. The purpose of environmental law is the study or elaboration of legal rules concerning the use, protection, management, or restoration of the environment in all its forms; terrestrial, aquatic, and marine, natural, and cultural. The notion of a right to a healthy environment has progressively emerged in international and regional practice.[1045] It has progressively been recognised as having fundamental and transversal dimensions in international and regional practice.

The right to a healthy environment is very recent in modern culture, hence is more attached to the idea of climate law.[1046] Developed at different scales and legal systems, environmental law covers the hierarchy of norms, particularly in international law, EU law, and national law. Climate litigation covers different areas, such as air, water and sea law, soil law, biodiversity, nature protection, but also fishing, hunting, energy, noise, and sanitation law. According to the Universal Declaration of Human Rights[1047] and ICESCR[1048], "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family," read jointly with article 28, "everyone has the right to a social and international order such as his rights and freedoms [...] can be fully effected."[1049] Damage to the environment is likely to undermine these rights. Similarly, apart from any harm caused by humans to the environment, the poor state of the environment can be harmful to humans. The most telling and current example is that of global warming. Environmental degradation increasingly affects the effective enjoyment of individual rights, a reality that has progressively drawn climate change into the realm of human rights adjudication.

Many treaties have been signed in recent years; International environmental law now includes more than three hundred multilateral conventions or treaties, such as the CITES,[1050] known as the Washington Convention, signed on 3 March 1973, the Convention for the Protection of the Marine Environment of the Baltic Sea Area,[1051] the so-called Helsinki Convention, signed on 22 March 1974 and entered into force in 1980, and the Stockholm Convention on Persistent Organic Pollutants, signed on 22

1044 Sands, P., Peel, J., Fabra, A., & Mackenzie, R. (2018). *Principles of international environmental law* (4th ed.). Cambridge University Press. https://doi.org/10.1017/9781316949039

1045 Prieur, M. (2023). *Droit de l'environnement* (9e éd.). Lefebvre Dalloz

1046 P. Sands, J. Peel, A. Fabra & R. Mackenzie, *Principles of International Environmental Law*, 4th ed., Cambridge University Press, 2018, pp. 25–30; M. Prieur, *Droit de l'environnement*, 9e éd., Lefebvre Dalloz, 2023, pp. 1–10; see also P. de Vilchez & A. Savaresi, 'The Right to a Healthy Environment and Climate Litigation: A Game Changer?', *Yearbook of International Environmental Law*, vol. 32, 2023, pp. 3–19.

1047 Article 25, Universal Declaration of Human Rights

1048 Article 12(2)(b) ICESCR requires states parties to improve 'all aspects of environmental and industrial hygiene'.

1049 Article 28, Universal Declaration of Human Rights

1050 Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973

1051 Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992

May 2001, aimed at banning certain pollutants. The main one is the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,[1052] signed on 25 June 1998, which is an international agreement on public information in environmental matters. Many countries have also created an Environmental Code, although there is so far no specialized jurisdiction. This brief overview does not aim to survey international environmental law as such, but to explain why human rights adjudication—despite the absence of an explicit right to a healthy environment under the ECHR—has become a central vector for climate-related claims in Europe.

Climate change has progressively entered the realm of human rights adjudication, not through the recognition of an autonomous right to a healthy environment under the ECHR, but through the interpretation of existing Convention rights affected by environmental and climate-related harm. While the ECHR does not enshrine environmental protection as such, the ECtHR has increasingly acknowledged that serious environmental degradation and climate change may interfere with the effective enjoyment of rights such as the right to life, the right to respect for private and family life, and the right to an effective remedy.

This development has particular significance for the implementation of EU Climate Law. Although the EU is not a party to the ECHR, its legal order is deeply interconnected with the Convention system. Member States remain bound by the ECHR when implementing EU law, and the Convention increasingly operates as a normative reference point against which the adequacy of climate governance is assessed. As a result, climate litigation increasingly unfolds in a multilevel judicial landscape that extends beyond EU courts to include the jurisdiction of the ECtHR.

This chapter examines the interaction between EU Climate Law and the ECHR, focusing on the ways in which human rights adjudication complements, constrains, and occasionally challenges the implementation of climate objectives within the EU legal order. Rather than treating the Convention system as an alternative enforcement mechanism, the analysis explores the dynamics of normative convergence, judicial dialogue, and constitutional tension between two distinct legal orders. By situating EU Climate Law within the broader European human rights framework, Chapter 3 demonstrates that the implementation of EU climate commitments is shaped not only by internal EU judicial mechanisms, but also by external pressures emanating from the Convention system.

Beyond national courts and the CJEU, climate litigation increasingly engages the ECHR and the jurisdiction of the ECtHR. While access to the CJEU remains closely circumscribed by the Treaties and shaped by concerns of institutional balance and judicial restraint, the ECtHR follows a distinct rights based- adjudicative model, in which individual applicants, victimhood, and State responsibility for human rights

1052 Kravchenko, S (2007). "The Aarhus convention and innovations in compliance with multilateral environmental law and Policy". Colorado Journal of International Environmental Law and Policy.

violations form the core of its jurisdictional logic.[1053] This chapter examines how EU Climate Law interacts with the ECHR framework, analysing the ways in which climate-related claims are articulated, received, and assessed before the ECtHR. Rather than presenting the Convention system as an alternative enforcement mechanism, the analysis in Chapter 3 focuses on the interaction between two legal orders, revealing how human rights adjudication both complements and challenges the implementation of EU Climate Law.

The relevance of the ECHR to EU Climate Law stems from the growing recognition that climate change implicates fundamental rights protected by the Convention. Claims relating to life, private and family life, property, and access to justice have progressively been mobilised to challenge insufficient climate action. While the EU is not yet a party to the ECHR, its legal order is deeply interconnected with the Convention system. Member States remain bound by the ECHR when implementing EU law, and the Convention increasingly operates as a reference point for assessing the adequacy of climate governance across Europe. The ECtHR has emerged as a pivotal actor in the landscape of climate litigation, providing a unique forum for individuals, NGOs, and communities to seek redress for state inaction or insufficient action on climate change. While the ECHR does not explicitly enshrine a right to a healthy environment, the Court's dynamic and evolving jurisprudence has increasingly recognized the profound impact of environmental harm—and, by extension, climate change—on the enjoyment of fundamental rights such as the right to life, the right to private and family life, and the right to an effective remedy.

This chapter proceeds from the premise that the interaction between EU Climate Law and the ECHR is neither hierarchical nor uniform. Rather, it is characterised by normative convergence and judicial dialogue, shaped by parallel but distinct constitutional logics. The Strasbourg Court does not review EU acts as such, yet its case law influences the interpretation of climate obligations by national courts and indirectly informs the jurisprudence of the CJEU. Climate litigation thus becomes a site of cross-fertilisation between legal orders, where human rights reasoning intersects with regulatory climate objectives.

The analysis also addresses the constitutional tensions inherent in this interaction, which form a transversal thread running throughout the Introduction and the dissertation as a whole. The use of human rights litigation to advance climate claims challenges traditional boundaries between judicial review and political decision-making. It raises concerns about judicial overreach, democratic legitimacy, and the appropriate role of courts in addressing systemic and long-term policy issues. At the same time, the ECHR framework provides a language of protection and accountability that may compensate for gaps in regulatory enforcement and procedural access at the EU level. This ambivalence lies at the heart of the interaction examined in this chapter. The role of the ECtHR in climate-related litigation is multifaceted and must be understood within the limits of the Convention framework. While the ECtHR does not function

1053 Craig, P., & de Búrca, G. (2020). *EU law: Text, cases, and materials* (7th ed.). Oxford University Press

as a forum for autonomous climate rights, it provides a judicial avenue through which individuals and, in narrowly defined circumstances, associations may challenge State inaction where environmental or climate-related harm affects the enjoyment of Convention rights.[1054]

Access to the Court remains governed by strict admissibility requirements, in particular the necessity of victim status under Article 34 ECHR. Recent developments, most notably in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*,[1055] indicate a cautious evolution rather than a general broadening of standing, confirming the Court's reluctance to embrace *actio popularis* in climate matters.

Within these constraints, the ECtHR has increasingly emphasised the role of procedural guarantees—such as access to information, public participation, and the availability of effective remedies—where they are instrumental to the protection of substantive Convention rights in environmental and climate contexts.[1056] At the same time, the Court has recognised that climate related- harm may directly threaten rights such as the right to life and the right to respect for private and family life, thereby giving rise to positive obligations requiring States to adopt reasonable and adequate preventive and remedial measures.

Within the ECHR, there is no explicit right to a clean and healthy environment, but when an individual is directly and seriously affected by noise or pollution, a question may arise under Article 8 of the Convention.[1057] Can the findings of the ECtHR be complementary in the lack thereof effective climate litigation at the EU level? It is necessary to assess the practice of the ECtHR in this regard.

Historically, the ECtHR's approach to environmental issues was indirect, relying on a so called "*ricochet*" effect, whereby environmental harm was actionable only insofar as it infringed upon rights already protected by the Convention, most notably Article 8 (right to respect for private and family life) and, in more limited circumstances, Article 2 (right to life) and Article 10 (freedom of expression).[1058] As analysed in subsections 3.1 and 3.2, this indirect technique allowed the Court to address environmental harm without recognising an autonomous right to a healthy environment within the Convention framework. Over time, however, the ECtHR has developed an increasingly structured body of case law that extends this ricochet logic to climate-related harm, progressively articulating States' positive obligations to prevent, regulate, and remedy

1054 Wewerinke-Singh, M. (2025). *Climate protection obligations under the ECHR: The KlimaSeniorinnen judgment*. *European Constitutional Law Review*, 21(2), 356–374

1055 ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App no. 53600/20, Grand Chamber judgment, 9 April 2024, paras 519–521

1056 Sefkow-Werner, V. (2025). *Consistent inconsistencies in the ECtHR's approach to victim status and locus standi*. *European Journal of Risk Regulation*, 16(2), 814–823

1057 Eicke, Tim. "Climate Change and the Convention: Beyond Admissibility", ECHR Law Review 3, 1 (2022): 8-16, doi: https://doi.org/10.1163/26663236-bja10033; and ECtHR, *Greenpeace Nordic and Others v. Norway*, App no. 34068/21, judgment of 28 October 2025

1058 ECtHR, *Lopez Ostra v. Spain*, App no. 16798/90, judgment of 9 December 1994

environmental risks where such harm poses a serious threat to health, well-being, or life itself.[1059] This jurisprudential evolution, which culminates in the Court's recent climate change- case law examined in subsections 3.3.1 and 3.3.2, marks a cautious shift from traditional environmental nuisance cases towards a nascent form of climate justice grounded in existing Convention rights rather than in the proclamation of new substantive entitlements.[1060]

This jurisprudential evolution has laid the groundwork for the ECtHR's engagement with climate change as a phenomenon presenting specific and unprecedented risks for the effective enjoyment of Convention rights.[1061] Recent landmark cases, most notably *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*,[1062] have marked a turning point: for the first time, the Court held that inadequate State action on climate change may constitute a violation of Article 8 ECHR, recognising a right to effective protection against serious climate-related harm. This judgment affirms the justiciability of climate-related claims under the Convention and sets out detailed criteria for assessing State compliance with climate obligations, including the need for clear targets, transparent monitoring, and timely- action.

The ECtHR's jurisprudence has clarified that States may incur positive obligations under the Convention to take reasonable and adequate measures to protect individuals from foreseeable environmental and climate-related- harm, particularly where such harm directly affects the enjoyment of rights guaranteed under Articles 2 and 8 ECHR.[1063] These obligations do not amount to a general duty to prevent environmental or climate damage as such, but require States to regulate hazardous activities, enforce relevant standards, and strike a fair balance between economic interests and the protection of fundamental rights.

In this context, EU Climate Law operates as an important normative reference point rather than as a source of direct Convention obligations.[1064] As EU Member States remain bound by the ECHR when implementing EU law, they must ensure that their execution of EU climate commitments complies with Convention standards of human rights protection. This dual accountability contributes to a dynamic, albeit indirect, interaction between the EU legal order and the Convention system.[1065]

The ECtHR's evolving case law on climate justice informs the interpretation and

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1059 ECtHR, *Hatton and Others v. United Kingdom* [GC], App no. 36022/97, judgment of 8 July 2003

1060 M. Prieur, *Droit de l'environnement* (9th ed., Dalloz, 2023), pp. 85–90

1061 Sefkow-Werner, V. (2025). *Consistent inconsistencies in the ECtHR's approach to victim status and locus standi*. European Journal of Risk Regulation, 16(2), 814–823, on describing climate change as a legally distinct context without creating new Convention rights

1062 ECtHR, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, No 53600/20, 2024, §§ 519 and 544 ECLI: CE: ECHR:2024:0409JUD005360020

1063 ECtHR, *Öneryıldız v. Turkey* [GC], App no. 48939/99, judgment of 30 November 2004, paras 89–90

1064 Wewerinke-Singh, M. (2025), *European Constitutional Law Review*

1065 ECtHR, *Hatton and Others v. United Kingdom* [GC], App no. 36022/97, judgment of 8 July 2003, paras 97–103

application of EU Climate Law, encouraging a rights-based approach to climate governance. Conversely, the binding targets and procedural mechanisms established by the Regulation on EU Climate Law provide concrete benchmarks for assessing state compliance under the Convention. The appearing body of climate litigation before both the CJEU and the ECtHR fosters a dialogue between supranational and regional courts. This interaction enhances the coherence and effectiveness of climate governance, ensuring that climate action is not only ambitious but also anchored in the protection of human rights.

Despite these advances, significant challenges remain. The ECtHR's approach to standing and victim status, while carefully calibrated to preserve the subsidiary nature and judicial legitimacy of the Convention system, continues to function as a structural constraint on climate litigation. Although the Court's restrictive admissibility criteria prevent actio popularis and reinforce its role as a court of individual complaint, they may nevertheless limit access to judicial protection for individuals and groups affected by diffuse and long-term climate-harm.[1066]

A similar ambivalence characterises the Court's reliance on the margin of appreciation doctrine. While this doctrine enables the ECtHR to respect national democratic processes and to avoid substituting itself for domestic authorities in matters involving complex socioeconomic assessments and regulatory balancing, it also allows States considerable discretion in the manner and pace with which they fulfil their climate related- obligations. This discretion may, in turn, temper the transformative potential of climate litigation under the Convention.[1067]

The ECtHR raises the hopes of some environmental defenders, but also their disappointment. The Court's contribution to the implementation of international environmental law remains limited, due to the characteristics of this branch of law; it does, however, offer an indirect contribution in this area. Its recent developments constitute an increasingly precise contribution to the implementation of international environmental law. In its ruling in *Fredin v. Sweden,*[1068] the Court acknowledged for the first time that it was "not unaware that today's society is increasingly concerned about the environment." The countries that make up the European Community first asked themselves whether it was not possible to protect environmental rights in the same way as human rights. However, this was never done; as no European right to the environment is recognised as such, the protections granted are merely indirect (3.1). Furthermore, only a narrow recognition of European right to a healthy environment (3.2) allows the

1066 ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App no. 53600/20, Grand Chamber judgment, 9 April 2024, paras 478–488, 483–485: high threshold for victim status; rejection of actio popularis

1067 Auner, A. B. (2025). *Legal standing and victim status of individuals and associations after the "KlimaSeniorinnen" case*. Facta Universitatis: Law and Politics, 22(2), 131–146

1068 ECtHR, Fredin v. Sweden [1991], App. No 18928/91, ECLI: CE: ECHR:1993:0209REP001892891; although in 2020, the Court pointed that "the environmental conservation was an […] important consideration in today's society". (ECHR, Kaminskas v. Lithuania [2020], App No 44817/18, ECLI: CE: ECHR:2020:0804JUD004481718)

very existence of this right as a bridge recognised by the ECtHR and referenced as a fundamental one. However, the current practice developed by the ECtHR pushes oneself to ask whether the inclusion of a third player – climate law, into the protection of the environment will provoke an evitable schism ahead (3.3), where the CJEU tended to join both by using the right to a healthy environment.

3.1. Environmental harm under the Convention: an indirect technique of protection

This section examines how the absence of an explicit environmental right has shaped the procedural and substantive strategies of litigants, the interpretative techniques of the ECtHR, and the broader trajectory of climate justice in Europe. By taking account EU Climate Law as part of the broader legal context in which climate related claims arise, this analysis highlights the challenges of articulating traditional human rights adjudication with emerging climate obligations. In doing so, it sets the stage for a deeper investigation into the evolving relationship between EU Climate Law and the ECHR, and the prospects for a more integrated and effective framework for climate litigation in Europe.

3.1.1. The absence of an explicit right to a healthy environment in the Convention

Although the concern to protect the environment is ancient, the development of the right to the environment is relatively recent. Indeed, concern about the environment did not emerge in international relations until the Stockholm Conference of 1972. For this reason, neither the ECHR, adopted in Rome on 4 November 1950, nor its Protocols, contain any reference to a right to the environment as such or allude to the concept of the environment. This is because, when the Convention was drafted, environmental issues were not a major concern, and international environmental law did not yet exist.

In response to the growing concern of States for the environment, several attempts have been made to enshrine this right in the ECHR. However, all of them failed. In 2003, the Parliamentary Assembly floated the idea of an additional protocol to the ECHR, but the Council of Ministers rejected this proposal. The protection of this right is, however, indirectly taken into account by the ECtHR when an environmental offence infringes a right guaranteed by the ECHR.

However, the ECtHR remains limited in its scope for intervention in environmental matters. This limitation is explained by the fact that it is competent only under certain conditions. Thus, while the Court's mechanisms open great prospects for environmental defenders, due to the substantial number of people to whom it is addressed, they are limited by the condition that their application be admissible.

3.1.2. The "ricochet" technique: indirect protection from environmental harm through substantive Convention rights

Because the concept of the environment is not recognised as such within the Convention, the ECtHR initially declared many environment-related applications inadmissible for lack of jurisdiction- *ratione materiae*. Early complaints directed at alleged infringements of environmental law were rejected on the ground that the protection of nature or the environment, as an autonomous interest, fell outside the scope of the Convention. A clear illustration is provided by the decision of 25 February 1993 in *X and Y v. Germany*,[1069] in which the Court held that environmental protection was not among the interests safeguarded by the ECHR and emphasised that, for an application to be admissible, the applicant had to demonstrate that environmental damage amounted to a violation of a right explicitly guaranteed by the Convention or its Protocols.

It was against this background of restrictive admissibility that the Court progressively articulated what is now commonly described as protection *by ricochet*.[1070] As Morrow observed, this indirect technique is often presented as a structural solution to the Convention's individual-rights architecture: environmental harm is not protected *as such*, but becomes justiciable insofar as it interferes with a right guaranteed by the Convention.[1071]

Early Strasbourg case law already shows environmental considerations entering Convention adjudication through other rights, notably property. In *Fredin v. Sweden (No. 1)*,[1072] the dispute concerned the withdrawal of a permit to extract gravel, examined under Article 1 of Protocol No. 1 (and procedural complaints),[1073] and illustrates how environmental protection may operate as a legitimate public interest within proportionality-based review.

The doctrinal significance of *López Ostra v. Spain*[1074] lies in its role as a seminal Article 8 judgment. The Court held that severe environmental pollution/nuisance may affect individuals' well-being and prevent enjoyment of the home in a manner that

1069 ECtHR, *X and Y v. Germany*, decision of 25 February 1993, DR 74, p. 193

1070 Boyle, A. (2011). *Human rights and international environmental law: Some current problems*. European University Institute.

1071 Morrow, K. (2019). The ECHR, environment-based human rights claims and the search for standards. In S. J. Turner, D. Shelton, J. Razzaque, O. McIntyre, & J. R. May (Eds.), *Environmental rights: The development of standards* (pp. 41–59). Cambridge University Press. https://doi.org/10.1017/9781108612500.003

1072 ECtHR, 1991, No. 12033/86, Fredin v. Sweden, ECLI: CE: ECHR:1991:0218JUD001203386

1073 Kobylarz, N. (2023). Anchoring the right to a healthy environment in the ECHR: What concretised normative consequences can be anticipated for the Strasbourg Court? In *Environmental law before the courts* (pp. 153–199). Springer. https://doi.org/10.1007/978-3-031-41527-2_7

1074 ECtHR, López Ostra v. Spain, judgment of 9 December 1994, Series A no. 303-C.

interferes with private and family life, finding a violation of Article 8.[1075] This judgment is widely treated in the literature as an early anchor of Strasbourg's "environmental dimension" of Convention rights and as a key step in consolidating Article 8 as the principal substantive gateway for indirect protection from environmental harm. In *López Ostra*, the Court held that a failure to control industrial pollution may violate Article 8 where there is a sufficiently serious interference with enjoyment of the home and private life.[1076]

As Lavrysen and Boyle aptly observe,[1077] this indirect protection mechanism does not denote an implicit recognition of an autonomous environmental right, but rather a *translation of environmental harm into the language of individual rights already protected by the Convention*. The ricochet technique thus reflects a deliberate structural choice. By requiring environmental harm to be refracted through a protected individual interest, the ECtHR preserves the individual-centred architecture of the Convention system and avoids transforming the ECHR into a general instrument of environmental regulation. Simultaneously, as Kobylarz persuasively explains,[1078] this technique allows the Court to maintain its institutional legitimacy by adjudicating environmental disputes without assuming a regulatory mandate better suited to political or legislative bodies.[1079]

The ricochet technique therefore operates as a dual device. On the one hand, it functions as an enabling mechanism, opening access to judicial protection for individuals affected by serious environmental degradation where State action or inaction interferes with Convention rights. On the other hand, it acts as a limiting device, confining judicial intervention through admissibility requirements, severity thresholds, and a strict conception of victim status. As Keller, Heri and Piskóty underline,[1080] indirect protection under the ECHR simultaneously expands the reach of human rights

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1075 Keller, H., Heri, C., & Piskóty, R. (2022). Something ventured, nothing gained? Remedies before the ECtHR and their potential for climate change cases. *Human Rights Law Review, 22*(1), 1–31. https://doi.org/10.1093/hrlr/ngab030

1076 Boyle, A. (2011). *Human rights and international environmental law: Some current problems*. European University Institute. https://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/WorkingGroups/08-03-HumanRights.pdf

1077 Boyle, A. (2018). Human rights and the environment: Where next? *European Journal of International Law, 29*(3), 613–642. https://doi.org/10.1093/ejil/chy043; and Lavrysen, L. (2016). *Human rights in a positive state: Rethinking the relationship between positive and negative obligations under the ECHR*. Intersentia. https://doi.org/10.1017/9781780685311

1078 Kobylarz, N. (2023). Anchoring the right to a healthy environment in the ECHR: What concretized normative consequences can be anticipated for the Strasbourg Court? In *Environmental law before the courts* (pp. 153–199). Springer. https://doi.org/10.1007/978-3-031-41527-2_7

1079 Lavrysen, L. (2016). *Human rights in a positive state: Rethinking the relationship between positive and negative obligations under the ECHR*. https://doi.org/10.1017/9781780685311

1080 Keller, H., Heri, C., & Piskóty, R. (2022). Something ventured, nothing gained? Remedies before the ECtHR and their potential for climate change cases. *Human Rights Law Review, 22*(1), 1–34. https://doi.org/10.1093/hrlr/ngab030

litigation and constrains it through doctrinal filters designed to prevent abstract or *actio popularis* type-claims.

As a consequence, protection *by ricochet* is inherently selective and fragmented. Its availability depends on the nature of the right invoked, the proximity and seriousness of the alleged harm, and the applicant's capacity to demonstrate a sufficiently individualised impact. Environmental degradation as such remains legally invisible unless it can be refracted through these doctrinal filters and connected to a concrete impairment of Convention rights. As Buys and Lewis note,[1081] while this indirect approach may function adequately in classical environmental nuisance cases, it reveals significant structural limits when confronted with broader patterns of environmental harm that resist individualisation.

Despite these constraints, the ECtHR has succeeded in developing an important and increasingly sophisticated body of environmental caselaw by treating environmental harm indirectly, through other rights recognised by the ECHR. The implications of this constrained architecture become particularly significant when the same technique is applied to climate-related- claims, an issue examined in Subsection 3.3.

3.1.3. Convention rights engaged through indirect protection from environmental harm

Within this indirect technique of protection, the ECtHR has relied on a limited set of substantive and procedural Convention rights, each performing a distinct function in the judicial treatment of environmental harm. These rights mediated- approach produces a differentiated architecture: some provisions function as *substantive gateways* (A – Articles 2 and 8), others operate as *procedural enablers* (B – Articles 6, 10, 13), and still others primarily structure *balancing exercises* (C – Article 1 of Protocol No. 1). As Boyle classically argues,[1082] this translation mechanism is the distinctive feature of environmental human rights litigation in Strasbourg: it centres the legal inquiry on the effect of environmental conditions on human life, private life, and property rather than on environmental protection as an autonomous objective.

A. *Substantive gateways from severe environmental harm*

The Court's substantive environmental jurisprudence is defined by a threshold logic: environmental harm is relevant only once it reaches a degree of seriousness capable of interfering with the applicant's protected interests. The ECHR-KS *Guide on*

1081 Buys, E., & Lewis, B. (2022). Environmental protection through European and African human rights frameworks. *International Journal of Human Rights, 26*(6), 949–977. https://doi.org/10.1080/13642987.2021.1986011

1082 Boyle, A. (2012). *Human rights and the environment: Where next? European Journal of International Law, 23*(3), 613–642. https://doi.org/10.1093/ejil/chs054

the case-law – Environment[1083] makes clear that the Court's approach under Articles 2 and 8 is structured around foreseeability of risk, severity of impact, and the State's regulatory diligence, with the margin of appreciation shaping the intensity of review.

a) *Article 2 ECHR (right to life): exceptional engagement, high threshold*

Article 2 ECHR functions as an exceptional gateway, reserved for environmental hazards that create a real and immediate risk to life. The Grand Chamber judgment in *Öneryıldız v. Turkey*[1084] is the foundational authority: a methane explosion at a municipal landfill caused deaths, and the Court held that the State violated Article 2 ECHR by failing to take preventive measures despite known risks. The case is doctrinally important because it clarifies that Article 2 entails positive obligations requiring an effective legislative and administrative framework for regulating dangerous environmental activities, such as the operation of waste collection sites, so as to- deter threats to life and prevent avoidable loss of life. Following a methane explosion that killed numerous residents, the ECtHR found a violation of Article 2 because the authorities knew (or ought to have known) of the risk and failed to take preventive measures. The case is doctrinally important because it clarifies that Article 2 entails positive obligations requiring States to maintain an effective legislative and administrative framework governing dangerous environmental activities, such as waste collection- sites, and to implement preventive operational measures where authorities knew or ought to have known of a real and immediate risk to life.[1085]

However, the Court was careful not to turn Article 2 ECHR into a general environmental safeguard. The fact that Article 2 ECHR is not routinely applied in pollution cases reflects an institutional calibration: the Court preserves Article 2 ECHR for extreme factual configurations while routing most environmental complaints through Article 8 interference framework. This division of labour is visible in *Tătar v. Romania*,[1086] where the environmental accident and alleged health risks were addressed under Article 8 rather than Article 2, reinforcing the high threshold for "life" engagement even where environmental harm is serious.

b) *Article 8 ECHR (private life and home): the primary gateway and the "threshold of seriousness"*

Article 8 is the principal doctrinal vehicle for indirect environmental protection. As mentioned previously, *López Ostra v. Spain* established the key proposition: severe environmental pollution may affect well-being and prevent enjoyment of the home in a manner that interferes with private and family life. Importantly, the Court did not require the applicant to prove a concrete health injury; what mattered was the degree

1083 Council of Europe/ECtHR. (2025). *Guide to the case-law of the ECtHR: Environment* (updated 17 September 2025)

1084 ECtHR (GC), *Öneryıldız v. Turkey*, no. 48939/99, judgment of 30 November 2004

1085 ECtHR (GC), *Öneryıldız v. Turkey*, no. 48939/99, judgment of 30 November 2004, §§ 71–101

1086 ECtHR, *Tătar v. Romania*, no. 67021/01, judgment of 27 January 2009, §§ 88–97

to which the nuisance undermined the effective enjoyment of home life.[1087]

Arrondelle v. the United Kingdom is often invoked in this context but must be used carefully.[1088] It is a Commission admissibility decision, not a final judgment, and its relevance lies in showing that aircraft noise and adjacent infrastructure can raise issues under Article 8 and Article 1 of Protocol No. 1 at the admissibility stage. It should therefore be treated as evidence that environmental nuisance can be framed under Convention rights, not as a definitive merits' authority.[1089]

Later case-law refines this through a combination of severity, duration, and proximity requirements. In *Fadeyeva v. Russia*,[1090] the Court treated prolonged industrial emissions as capable of engaging Article 8 but emphasised that Article 8 is not violated by "every" environmental deterioration: the interference must directly affect the applicant's private life or home and meet a seriousness threshold.

The Grand Chamber judgment in *Hatton and Others v. the United Kingdom* is crucial for the doctrinal limits of Article 8 environmental protection.[1091] The Court acknowledged that environmental protection should be taken into account within the margin of appreciation but rejected any "special status" for environmental human rights; instead, the legal structure remains the fair balance- test between individual rights and competing community interests.

This rights based- approach to environmental harm under Article 8 was reaffirmed in *Hamer v. Belgium*,[1092] where the Court observed that the environment is a value whose defence arouses "constant and sustained interest" in public opinion and public authorities, and may therefore be taken into account when assessing interferences with Convention rights, particularly under Article 8.[1093] In doing so, the Court indicated that other bodies of environmental law could inform its reasoning, not as independent sources of jurisdiction, but as contextual elements relevant to the interpretation and balancing of existing Convention rights.

As Lavrysen notes in doctrinal terms,[1094] this makes Article 8 the Court's "workhorse" provision: it allows environmental harm to be framed as a rights interference

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1087 ECtHR, *López Ostra v. Spain*, no. 16798/90, judgment of 9 December 1994, §§ 51–58

1088 European Commission of Human Rights, *Arrondelle v. the United Kingdom*, no. 7889/77, decision of 15 July 1980 (admissibility)

1089 Buys, E., & Lewis, B. (2022). *Environmental protection through European and African human rights frameworks*. *International Journal of Human Rights, 26*(6), 949–977. https://doi.org/10.1080/13642987.2021.1986011

1090 ECtHR, *Fadeyeva v. Russia*, no. 55723/00, judgment of 9 June 2005, §§ 69–88

1091 ECtHR, *Hatton and Others v. the United Kingdom*, no. 36022/97, judgment of 8 July 2003, §§ 96–129.

1092 ECtHR, *Hamer v. Belgium*, no. 21861/03, judgment of 27 November 2007, § 79

1093 Buys, E., & Lewis, B. (2022). Environmental protection through European and African human rights frameworks. *International Journal of Human Rights, 26*(6), 949–977.https://doi.org/10.1080/13642987.2021.1986011

1094 Lavrysen, L. (2016). *Human rights in a positive state: Rethinking the relationship between positive and negative obligations under the ECHR*. Cambridge University Press

without converting the Convention into an environmental charter, while simultaneously keeping protection conditional on individualised harm and proportionality review.

B. **Procedural and participatory guarantees (Articles 6, 10 and 13 ECHR)**

While Articles 2 and 8 ECHR provide substantive entry points, a significant part of Strasbourg environmental protection is mediated through procedural guarantees. Boyle emphasises that procedural rights—information, participation, remedies—are central to the human rights- framing of environmental governance because they enable accountability and access to justice even where substantive protection is limited by thresholds and margins of appreciation.[1095]

a) *Article 10 ECHR (freedom of expression): protecting environmental debate and public scrutiny*

Article 10 ECHR does not protect the environment directly; it protects the democratic conditions under which environmental risks can be discussed and contested. In *Mamère v. France*,[1096] the Court held that criminal defamation proceedings against an elected representative for statements relating to Chernobyl violated Article 10, stressing that environmental protection and public health are matters of general interest and that political/ecological speech attracts heightened protection.

This line of reasoning matters for environmental litigation because it reinforces the Convention's role in safeguarding public scrutiny of environmental decision making and the circulation of information in contexts where States may have incentives to minimise or control public narratives about environmental harm.

b) *Articles 6 and 13 ECHR: access to justice and effective remedies as enabling conditions*

Article 6 (fair trial) and Article 13 (effective remedy) do not create substantive environmental standards, but they condition whether environmental harm can be judicially contested at all. *Zimmermann and Steiner v. Switzerland*[1097] illustrates the procedural pathway: the ECtHR found a violation of Article 6 § 1 ECHR due to excessive length of proceedings in a dispute concerning compensation for harm linked to environmental nuisance (noise and pollution), signalling that procedural delay can undermine the effectiveness of rights protection in environmental contexts.

Procedural environmental protection is also reinforced in later jurisprudence dealing with proportionality and the availability of domestic remedies, such as *Ghailan*

1095 Boyle, A. (2012). *Human rights and the environment: Where next? European Journal of International Law, 23*(3), 613–642. https://doi.org/10.1093/ejil/chs054

1096 ECtHR, *Mamère v. France*, no. 12697/03, judgment of 7 November 2006

1097 ECtHR, *Zimmermann and Steiner v. Switzerland*, no. 8737/79, judgment of 13 July 1983.

and Others v. Spain,[1098] where the Court's Article 8 proportionality analysis turned in part on the applicants' failure to use domestic legal remedies that would have enabled an examination of proportionality prior to demolition and eviction.

C. Property rights and balancing of collective interests (Article 1 of Protocol No. 1)

While Article 1 of Protocol No. 1 protects a substantive Convention right, its role in environmental cases differs from that of Articles 2 and 8. Rather than functioning as a gateway through which environmental harm becomes cognisable, it primarily structures the balancing of individual property interests against environmental protection understood as a legitimate aim pursued in the general interest. Property rights jurisprudence plays a structurally different role: environmental protection typically appears as a legitimate general interest capable of justifying restrictions on property, rather than as an individual entitlement to environmental quality. In *Fredin v. Sweden*,[1099] the Court accepted that the revocation of a gravel extraction permit could be justified in the general interest for environmental reasons, illustrating the Convention's balancing approach where environmental aims can support state regulation of property use.

Conversely, *Öneryıldız* also shows the other side: where environmental hazards destroy possessions, the State's failure to prevent foreseeable harm can engage Protocol No. 1.[1100] This demonstrates the dual function of property rights in environmental contexts: they can constrain environmentally justified interferences through proportionality, but they can also trigger state responsibility where environmental risk management fails.

As Buys and Lewis observe,[1101] this development confirms the anthropocentric orientation of Convention environmental protection: the environment matters legally primarily as far as it affects human interests (health, home, possessions), with limited capacity to address wider ecological degradation that is not easily individualised.

The doctrinal state of the art therefore supports three core propositions. First, the Convention does not recognise environmental protection as an autonomous interest; indirect protection operates only through existing rights and remains conditioned by seriousness thresholds and individualisation requirements. Second, Article 8 is the primary substantive gateway, with Article 2 reserved for exceptional, life-threatening risks and Protocol No. 1 primarily structuring balancing between collective environmental aims and property interests. Third, procedural rights (Articles 6, 10, 13) provide enabling conditions for contestation, transparency, and accountability, but

1098 ECtHR, *Ghailan and Others v. Spain*, no. 36366/14, judgment of 23 March 2021

1099 ECtHR, *Fredin v. Sweden (No. 1)*, no. 12033/86, judgment of 18 February 1991

1100 ECtHR (GC), *Öneryıldız v. Turkey*, no. 48939/99, judgment of 30 November 2004, §§ 71–101

1101 Buys, E., & Lewis, B. (2022). *Environmental protection through European and African human rights frameworks*. *International Journal of Human Rights, 26*(6), 949–977. https://doi.org/10.1080/13642987.2021.1986011

do not transform the Convention into a comprehensive environmental governance instrument. Whether this fragmented architecture can respond adequately to climate-related harm—diffuse, cumulative, and temporally extended—will be examined in the subsequent subsections (3.2 and 3.3.).

3.1.4. Case study – Băcilă v Romania: refinement of indirect protection from environmental harm

A pivotal illustration of this jurisprudential evolution is found in the *Băcilă vs Romania* case,[1102] which stands as a landmark in the recognition of climate justice within the ECHR framework. It refines the ECtHR's indirect technique of protection and illustrates the conditions under which environmental harm becomes legally cognisable — conditions that will be tested most acutely in the context of climate-related claims.

The applicant lived for many years in the vicinity of a highly polluting industrial plant operated by the Sometra company, which released sulphur dioxide and heavy metals into the surrounding environment. Despite extensive evidence of air, soil and water contamination and demonstrable adverse effects on human health, the plant continued to operate under renewed environmental permits.[1103] After exhausting domestic remedies, the applicant complained before the ECtHR that the authorities' failure to regulate the industrial activity effectively, and their continued tolerance of the pollution, interfered with her right to respect for private life and home under Article 8. The respondent government, for its part, argued that the measures adopted were sufficient and that the economic interests linked to the industrial activity justified its continued operation.

The ECtHR examined the applicant's complaints under Article 8 ECHR by applying its established environmental nuisance framework. Rather than addressing environmental harm *per se*, the Court assessed whether the severity and persistence of the pollution, combined with the authorities' regulatory failures, constituted a disproportionate interference with the applicant's right to respect for her private life and home.[1104] Central to this assessment was the requirement that the state strike a fair balance between the economic interests associated with the industrial activity and the applicant's effective enjoyment of her Convention rights. The Court concluded that the Romanian authorities had failed to discharge this obligation, finding that the prolonged tolerance of serious pollution, despite evidence of health risks, resulted in a violation of Article 8.

Consistent with its earlier case law, the ECtHR began by assessing whether the effects of industrial pollution had reached a sufficient level of seriousness to interfere with the applicant's private life and home, focusing on the intensity, duration, and

1102 ECtHR, *Bacila v. Romania*, no. 19234/04, judgment of 30 March 2010

1103 ECtHR, *Bacila v. Romania*, no. 19234/04, judgment of 30 March 2010, §§ 10–28, 63–70

1104 ECtHR, *Bacila v. Romania*, no. 19234/04, judgment of 30 March 2010

health consequences of her exposure. As Lavrysen notes,[1105] this threshold-based inquiry is characteristic of the Court's indirect environmental jurisprudence, in which environmental harm is legally relevant only to the extent that it produces concrete and individualised interference with a protected right.

Notably, the Court refrained from grounding its reasoning in any autonomous environmental entitlement and instead relied on a proportionality assessment under Article 8, examining whether the Romanian authorities had struck a fair balance between the economic interests associated with industrial activity and the applicant's effective enjoyment of her private and family life. This approach confirms that, as Boyle emphasises,[1106] Strasbourg environmental protection operates through the *translation* of environmental degradation into violations of existing human rights, rather than through the recognition of a substantive right to environmental quality.

In this sense, *Băcilă* does not expand the substantive scope of the Convention but consolidates the established indirect technique of protection. Environmental harm becomes actionable only once refracted through a recognised Convention right, and judicial intervention remains circumscribed by proportionality and margin of appreciation reasoning.[1107] As Buys and Lewis underline, this method enables a certain responsiveness to environmental harm while simultaneously constraining the Court's role—a tension that becomes particularly salient when the same technique is later applied to diffuse and long term phenomena such as climate change.[1108] In doing so, the analysis highlights how the reasoning developed in *Băcilă* later acquires renewed relevance in the context of climate related- litigation, although the judgment itself predates the adoption of EU Climate Law.

The reasoning in *Băcilă* is consistent with the Court's earlier Article 8 jurisprudence in environmental cases, notably *López Ostra v. Spain*[1109] and *Tătar v. Romania*,[1110] where serious pollution was held to interfere with private life and home, even absent a direct threat to life, and where State responsibility arose from regulatory failures rather than direct action.[1111] The Court thus concluded that the State failed to fulfil its obligation to assess the risks of the activity and to take measures guaranteeing the rights of individuals to respect for their private life and their homes and, more generally, to the

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1105 Lavrysen, L. (2016). *Human rights in a positive state: Rethinking the relationship between positive and negative obligations under the ECHR*. Intersentia, pp. 287–295

1106 Boyle, A. (2018). Human rights and the environment: Where next? *European Journal of International Law, 29*(3), 613–642, esp. pp. 620–624.

1107 ECtHR, *Bacila v. Romania*, no. 19234/04, judgment of 30 March 2010, §§ 63–70

1108 Buys, E., & Lewis, B. (2022). Environmental protection through European and African human rights frameworks. *International Journal of Human Rights, 26*(6), 949–977, esp. pp. 966–970.

1109 ECtHR, *López Ostra v. Spain*, no. 16798/90, judgment of 9 December 1994, §§ 51–58

1110 ECtHR, *Tătar v. Romania*, no. 67021/01, judgment of 27 January 2009, §§ 88–97, 116

1111 Buys, E., & Lewis, B. (2022). *Environmental protection through European and African human rights frameworks*. *International Journal of Human Rights, 26*(6), 949–977. https://doi.org/10.1080/13642987.2021.1986011

enjoyment of a healthy and protected environment within the scope of Article 8.[1112]

At the same time, the relationship is evolutionary rather than merely repetitive: from early recognition that severe environmental nuisance may engage Article 8, the Court progressively articulated more structured positive obligations—especially duties of risk assessment and regulatory diligence in relation to hazardous activities—before applying those requirements to cases of prolonged industrial pollution and administrative passivity such as *Băcilă*.

In *Băcilă*, the Court thus treated the State's responsibility as arising primarily from regulatory failures, concluding that the authorities had not taken adequate measures to secure the applicant's effective enjoyment of her Article 8 rights in the face of persistent industrial pollution affecting her health and habitat. *Băcilă* further illustrates the conditional nature of *ricochet* protection. Although the pollution originated in structural industrial activity affecting a wider population, the Court confined its analysis to the applicant's personal situation and required proof of a direct impact on her health and living conditions. In doing so, the Court avoided engaging with environmental harm *in abstracto* and preserved the individual complaint logic of the Convention. As Kobylarz observes,[1113] such restraint reflects a broader institutional choice to prevent the ECHR from evolving into an instrument of general environmental regulation while still allowing judicial scrutiny of environmentally harmful State conduct where individual rights are at stake.

At the same time, this interpretative technique has not remained static. The accumulation of case law suggests a cautious refinement of the Court's reasoning, particularly in how it calibrates the seriousness threshold under Article 8 and articulates State duties of regulation, information, and procedural fairness. This evolution does not amount to the recognition of a broad or explicit right to a healthy environment. Rather, it points toward a narrowly circumscribed environmental dimension within the Convention, shaped by judicial restraint, contextual interpretation, and the fact specific nature of Article 8 proportionality review. While firmly anchored in existing Convention provisions and the logic of indirect protection, these developments nevertheless raise the question of whether the Court's jurisprudence can be understood as giving rise to a limited and carefully constructed acknowledgment of environmental interests within the Convention framework. It is within this constrained architecture that questions of victim status, standing, and positive obligations — and, more broadly, the contours of a narrow recognition of the right to a healthy environment — will be examined in the next subsection (3.2).

1112 Marguénaud, J.-P., & Nadaud, S., "Les arrêts *Tătar c. Roumanie* et *Băcilă c. Roumanie* : vers la consolidation d'un droit à un environnement sain sous l'angle de l'article 8 de la CEDH," *Revue juridique de l'environnement*, 2010, pp. 657–672.

1113 Kobylarz, N. (2023). Anchoring the right to a healthy environment in the ECHR: What concretized normative consequences can be anticipated for the Strasbourg Court? In *Environmental law before the courts* (pp. 153–199). Springer.

3.2. A constrained recognition of the right to a healthy environment

The indirect integration of environmental and climate considerations into the Convention framework has progressively raised the question of whether the ECtHR is moving towards the recognition of a right to a healthy environment. This evolution, however, remains cautious, fragmented, and closely tied to the interpretation of existing rights rather than the proclamation of an autonomous environmental entitlement. This section examines the contours and limits of this constrained recognition, demonstrating that any acknowledgment of a right to a healthy environment under the Convention remains narrow in its legal structure and effects, being context dependent, mediated through existing rights, and shaped by judicial restraint rather than by the proclamation of an autonomous entitlement.

As discussed above, the ECtHR in its jurisprudence established that serious pollution or environmental hazards, when they reach a certain threshold of severity, may constitute an "effective interference" with the right to respect for one's home and private life. Subsection 3.2.1. analyses how the notion of "effective interference" operates as a legal filter, enabling the ECtHR to address environmental harm within a narrowly defined human rights framework while maintaining judicial restraint and preserving the structure of the Convention. It is explored how the ECHR has interpreted and applied Article 8 in cases where applicants have suffered from unhealthy environmental conditions, such as industrial pollution, hazardous waste, or persistent noise.

3.2.1. An "effective interference" with the right to respect for one's home and private life due to an unhealthy environment

Through an analysis of landmark cases, this subsection examines how the Court approaches the balancing of economic development and environmental protection against the protection of individual rights under Article 8. It focuses in particular on the criteria used by the ECtHR to assess whether environmental harm gives rise to negative or positive obligations, including the role of severity thresholds, regulatory diligence, and proportionality review.

By examining the threshold for "effective interference" and the evidentiary requirements governing State responsibility, this subsection underscores the strictly circumscribed role of Article 8 ECHR in cases of environmental harm. The Court's approach confirms that environmental protection under the Convention operates only indirectly, as far as ecological damage translates into a sufficiently serious and individualised impairment of private or family life or the enjoyment of one's home.

This case law illustrates the conditional and limited nature of environmental protection within the Convention system: rather than recognising a self-standing right to a healthy environment, the ECtHR confines intervention to situations where established Convention rights are concretely affected, thereby preserving both the individual-centred structure of the ECHR and the State's margin of appreciation. This

case law shows that the ECtHR protects against environmental harm only insofar as it causes a serious, individualised interference with Article 8 rights, and only once strict thresholds are met.

In order to uphold the application of Article 8 of the Convention, the ECtHR recalled the case-law *Lopez Ostra v. Spain*[1114] which concluded that "serious damage to the environment can affect the well-being of people and deprive them of the enjoyment of their homes in such a way as to harm their private and family life". The ECtHR therefore held that when the surrounding environment does not allow people to fully enjoy their homes and affects their health, this amounts to a violation of Article 8 of the Convention by the States concerned.[1115] This approach was further clarified in *Fadeyeva v. Russia*,[1116] where the Court emphasised that the applicability of Article 8 depends on the intensity of the nuisance, its proximity to the applicant's home, and the existence of a direct interference with private life, while leaving States a margin of appreciation in balancing competing interests. Similarly, in *Băcilă v. Romania*,[1117] the Court reiterated that it is the direct and substantiated impact of harmful emissions on the applicant's health and daily life that triggers the protection of Article 8. In the Court's view, therefore, the existence of a causal relationship between environmental harm and the impairment of private or family life constitutes a decisive element in finding a violation of the Convention.

The ECtHR, after holding that Article 8 of the Convention was applicable in the present case because serious damage to the environment could harm the private and family life of individuals, recalled that a state could not give priority to the economic interests of its country over those of persons exposed to risks because of an activity causing pollution.

To sum up, the ECtHR has addressed environmental and climate-related harm under the Convention primarily through the notion of effective interference with the right to respect for private and family life and the home. By requiring a sufficient threshold of severity, proximity, and impact on the individual's concrete enjoyment of protected rights, the Court confines environmental protection to situations where harm translates into a tangible impairment of Article 8 interests. This approach confirms that, under the Convention, environmental considerations do not give rise to an autonomous right but operate as a narrowly framed basis for protection grounded in individual harm and judicial restraint.

1114 ECtHR, 1994, No. 16798/90, López Ostra v. Spain, ECLI: CE: ECHR:1994:1209JUD001679890

1115 It became of constant jurisprudence with ECtHR, 24 January 2019, Cordella v. Italy, CE: ECHR :2019 :0124JUD 005441413.

1116 ECtHR, *Fadeyeva v. Russia*, no. 55723/00, judgment of 9 June 2005

1117 ECtHR, *Bacila v. Romania*, no. 19234/04, judgment of 30 March 2010

3.2.2. The fair balance requirement between economic interests and individual rights

Even where environmental degradation constitutes an effective interference with protected Convention rights, the ECtHR does not operate in an absolutist manner. The assessment of climate and environment-related claims is embedded within a broader balancing exercise, requiring the Court to weigh the interests of affected individuals against the economic and social interests pursued by the State. This subsection examines how the requirement of a fair balance functions as a limiting principle in the Court's case law, demonstrating that environmental protection under the ECHR remains contingent upon proportionality, margin of appreciation, and the preservation of State discretion in matters of economic policy.

The ECtHR recalls that there must be a fair balance between the different competing interests at stake.[1118] Thus, there must be a fair balance between the interests of those affected and the interests of the community.[1119] However, the damage to the environment must be sufficiently serious and create actual harm to the people who suffer it. It is necessary here to analyse the principle of proportionality, which is to say that if the damage to the environment is disproportionate to the interests it gives rise to, the balance between interests will not be respected. In *Fadeyeva v. Russia*,[1120] although the ECtHR emphasised that the steel plant constituted the largest employer in the region and played a significant role in the local economy, it nevertheless held that the environmental damage caused by the factory was sufficiently serious and detrimental to the applicant's well-being to conclude that a fair balance had not been struck between the interests of the community and those of the applicant. The government has thereby put the economic interest of the city before that of the residents of the plant.[1121]

It is therefore certain for the ECtHR that even if the local authorities rightly wanted to maintain economic activity in the region, this interest cannot outweigh the right of people affected by pollution to enjoy a balanced and health-friendly environment.

In upholding the application of Article 8 of the Convention, the ECHR recalls that this article gives rise to positive obligations for States and relies on precaution-oriented reasoning in assessing the State's positive obligations in the present case. This subsection shows how positive obligations under Article 8 function as a judicial response to climate change (A), and how their extension to a global and systemic risk necessarily brings precaution-oriented reasoning into the Court's assessment of regulatory diligence and its limits (B).

1118 ECtHR, 2 November 2006, Giacomelli v. Italy, Application no. 59909/00

1119 ECtHR, 25 March 2008, Fagerskiold v. Sweden and ECHR Hatton v. the United Kingdom, 2 October 2001

1120 ECtHR, *Fadeyeva v. Russia*, no. 55723/00, judgment of 9 June 2005

1121 ECtHR, *Băcilă v. Romania*, judgment of 30 March 2010, no. 19234/04, §§ 72–74.

A. *The Conditional Nature of State positive obligations under Article 8*

The Court's environmental jurisprudence under Article 8 is premised on the idea that effective respect for private and family life cannot be secured solely through non-interference. As scholarship on the Convention's "positive state" has long underlined, the boundary between negative and positive obligations is porous: in practice, Article 8 often requires States to organise regulatory frameworks capable of preventing, mitigating, and supervising harms generated by hazardous activities.[1122] In the environmental context, this translates into duties of prevention, regulation, and oversight designed to ensure that individuals are not left to bear a disproportionate burden of pollution-related risks.[1123]

This logic is illustrated by the Court's treatment of prolonged industrial pollution in *Băcilă v. Romania*. In that case, the relevant plant operated for a period without the environmental authorisation required under domestic law, while the authorities were aware of the pollution-related problems. The Court assessed the situation through the lens of State regulatory diligence and held that, given the serious and established health consequences of exposure, the authorities were under an obligation to take reasonable and effective measures to secure the applicant's Article 8 rights.[1124] The key point is not that Article 8 creates a free-standing right to environmental quality, but that failures of regulation and enforcement may amount to a breach of the State's positive obligations where pollution reaches a sufficient level of seriousness and directly affects the enjoyment of private life and the home.[1125]

Doctrinally, the Court's approach is consistent with the broader environmental-hazards case-law. The Grand Chamber judgment in *Öneryıldız v. Turkey* remains a foundational authority for the proposition that States must maintain an adequate legislative and administrative framework to regulate dangerous activities and prevent avoidable harm where risks are known or foreseeable.[1126] Under Article 8, the same structural logic has been refined through cases such as *Fadeyeva v. Russia* and *Tătar v. Romania*, in which the Court emphasised that the fair-balance assessment is not satisfied by the mere existence of rules "on paper": what matters is whether regulatory measures are implemented effectively in practice and whether the decision-making

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1122 Lavrysen, L. (2016). *Human rights in a positive state: Rethinking the relationship between positive and negative obligations under the ECHR*. Cambridge University Press. https://doi.org/10.1017/9781780685311

1123 Boyle, A. (2012). "Human rights and the environment: Where next?" *European Journal of International Law*, 23(3), 613–642. https://doi.org/10.1093/ejil/chs054

1124 ECtHR, *Băcilă v. Romania*, no. 19234/04, Judgment (Third Section), 30 March 2010

1125 Marguénaud, J.-P., & Nadaud, S. (2010). "Les arrêts *Tătar c. Roumanie* et *Băcilă c. Roumanie* : vers la consolidation d'un droit à un environnement sain sous l'angle de l'article 8 de la CEDH." *Revue juridique de l'environnement*, 2010, 657–672

1126 ECtHR (GC), *Öneryıldız v. Turkey*, no. 48939/99, Judgment, 30 November 2004

process demonstrates due diligence in addressing environmental risks.[1127] This is precisely why doctrinal commentary characterises Strasbourg environmental protection as a "translation" of ecological harm into individual-rights interferences, rather than the recognition of an autonomous environmental entitlement.[1128]

At the same time, the Court has acknowledged that positive obligations may take on a more structural dimension where exposure persists over time and institutional inaction becomes entrenched. *Cordella and Others v. Italy* exemplifies this development in the context of long-standing industrial pollution affecting a wider population: the Court did not change the nature of Article 8 obligations, but it treated persistent governmental failure to address known health risks as a breach of the duty to secure effective protection in practice.[1129] Cordella therefore illustrates how Article 8 can capture patterns of ineffective enforcement without abandoning the Convention's individual-rights architecture.

A qualitative shift occurs, however, when Article 8 positive obligations are operationalised in relation to climate change as a cumulative, long-term, and systemic risk. In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the Grand Chamber expressly considered that the Court's existing environmental nuisance case-law was not, in itself, an adequate template for climate-change adjudication and articulated a more tailored approach to victim status and to the State's protective duties under Article 8.[1130] Without abandoning the logic of positive obligations, the Court reinterpreted them in governance terms: it focused not on the regulation of a single polluting activity, but on whether the State had put in place and applied an adequate framework capable of delivering timely and effective mitigation, including the identification of measurable objectives and the existence of monitoring and implementation mechanisms.[1131]

This evolution confirms both the adaptability and the limits of Article 8. It strengthens the Convention's capacity to address climate-related harm through a rights-based lens, yet it also raises questions—already highlighted in the literature—about institutional competence, remedial feasibility, and the preservation of judicial restraint when obligations are formulated at the level of national climate policy as a whole.[1132] These

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1127 ECtHR, *Fadeyeva v. Russia*, no. 55723/00, Judgment, 9 June 2005; ECtHR, *Tătar v. Romania*, no. 67021/01, Judgment, 27 January 2009

1128 Buys, E., & Lewis, B. (2022). "Environmental protection through European and African human rights frameworks." *International Journal of Human Rights*, 26(6), 949–977. https://doi.org/10.1080/13642987.2021.1986011

1129 ECtHR, *Cordella and Others v. Italy*, nos. 54414/13 and 54264/15, Judgment, 24 January 2019

1130 ECtHR (GC), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, Judgment, 9 April 2024

1131 See *Verein KlimaSeniorinnen*, cited above

1132 Keller, H., Heri, C., & Piskóty, R. (2022). "Something ventured, nothing gained? Remedies before the ECtHR and their potential for climate change cases." *Human Rights Law Review*, 22(1), 1–34 https://doi.org/10.1093/hrlr/ngab030

tensions will be examined further below, together with the role that precaution-oriented reasoning plays in shaping the Court's assessment of regulatory diligence and fair balance under Article 8.[1133]

While positive obligations define the structural conditions under which environmental harm may engage Article 8, the assessment of regulatory diligence is further informed by precaution-oriented reasoning in situations characterised by scientific uncertainty.

B. *Precaution Oriented Reasoning as a Constraint on State Discretion*

The precautionary principle is traditionally framed as a response to scientific uncertainty: where there are credible grounds to anticipate serious or irreversible harm, the absence of definitive proof is not, by itself, a sufficient reason for regulatory inaction. In this sense, Larrère defines precaution as requiring action where there are "sufficient grounds to believe" that an activity is likely to cause serious and irreversible harm, even if a causal link cannot be irrefutably established.[1134] In EU environmental-law doctrine, De Sadeleer similarly explains precaution as targeting risks for which there is no definitive proof that damage will materialise, and as a central organising concept of contemporary risk regulation.[1135]

Within the Convention system, however, the decisive doctrinal point is not to claim that the ECtHR constitutionalises the precautionary principle as an autonomous standard. Rather, the Court's environmental case-law suggests that precaution-oriented reasoning may inform the assessment of whether the State has acted with due diligence and ensured "effective" protection of Convention rights when faced with environmental risk. This is consistent with the Court's general approach in environmental matters, which is structured around foreseeability of risk, severity of impact, and regulatory diligence, with the margin of appreciation shaping the intensity of review.[1136]

Tătar v. Romania illustrates this preventive/due-diligence logic under Article 8. According to the Court's case-law information note, the violation stemmed from the State's failure to assess the risks and consequences of a hazardous industrial process and to keep the public informed.[1137] In doctrinal terms, *Tătar* is best read as an Article 8 review of the quality of decision-making and risk governance: authorisations and economic justifications do not suffice if the risk assessment and oversight process is inadequate.

1133 Kobylarz, N. (2023). "Anchoring the right to a healthy environment in the ECHR…" in *Environmental law before the courts*, Springer, 153–199

1134 C. Larrère, "Le principe de précaution et ses critiques", *Innovations*, no 18(2), 2003, 9–26. https://doi.org/10.3917/inno.018.0009

1135 N. de Sadeleer (ed.), *Implementing the Precautionary Principle: Approaches from the Nordic Countries, EU and USA*, Routledge/Earthscan (1st ed. 2007; eBook ed. 2012), description and overview

1136 Council of Europe / ECtHR, *Guide to the case-law – Environment* (updated 17 September 2025)

1137 ECtHR, *Tătar v. Romania*, no. 67021/01, Judgment 27 January 2009

A similar (but more classic) reasoning can be observed in *Băcilă v. Romania*, where Article 8 was engaged by sustained pollution affecting health and home life. While Băcilă is not framed in the language of "precaution" as such, it supports one narrow proposition: once serious harm is plausible and substantiated, the State cannot rely on abstract regulatory assurances; it must demonstrate effective implementation and enforcement of protective measures.[1138] This is precisely where precaution-oriented reasoning becomes relevant within Article 8: not as a stand-alone principle, but as a lens reinforcing the requirement of credible protection in practice.

Recent developments under Article 2 confirm that Strasbourg is willing, in exceptional situations, to treat large-scale environmental degradation as engaging preventive duties even where uncertainty persists as to the precise health outcomes. In *Cannavacciuolo and Others v. Italy*, the Court held that the State's protective duty under Article 2 was not negated by the lack of scientific certainty as to the precise effects of pollution on individual health, and criticised the lack of a "systematic, coordinated and structured response".[1139] Commentators have described this as a significant step in the "greening" of the right to life, particularly because it relaxes the evidentiary pressure typically associated with causation in pollution cases.[1140]

Finally, the Grand Chamber's judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* provides the clearest illustration of a forward-looking risk logic in the climate context. The Court held that Article 8 encompasses a right to effective protection from the serious adverse effects of climate change and required States to adopt and effectively apply measures capable of mitigating those effects, while also emphasising the need for a "more appropriate and tailored approach" in climate-change adjudication.[1141] Although the judgment does not formally invoke the "precautionary principle," its insistence on timeliness, scientific grounding, and an adequate regulatory framework reflects a precaution-like orientation in the way risk is judicially assessed.[1142]

This evolution marks the extension of the Court's precaution-oriented reasoning beyond case specific environmental nuisances, toward an examination of whether the State has put in place a regulatory framework capable of addressing long term and foreseeable climate risks, without departing from the Convention's individual centred structure.

To sum up, even where environmental degradation constitutes an effective

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1138 ECtHR, *Băcilă v. Romania*, no. 19234/04, Judgment 30 March 2010

1139 ECtHR, *Cannavacciuolo and Others v. Italy*, applications nos. 51567/14 and others, Judgment 30 January 2025

1140 S. Zirulia, "A New Step in the Greening of the Right to Life: The ECtHR Judgment on the Land of Fires", *VerfBlog*, 20 February 2025

1141 ECtHR (GC), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, Judgment 9 April 2024

1142 M. Wewerinke-Singh, "Climate Protection Obligations under the ECHR: The KlimaSeniorinnen Judgment", *European Constitutional Law Review*, 21(2), 2025, 356–374

interference with Convention rights, the ECtHR subjects such claims to a balancing exercise between the interests of affected individuals and the economic and social objectives pursued by the State. Through the application of proportionality and the margin of appreciation, the Court preserves State discretion in matters of economic policy and development. This requirement of a fair balance operates as a decisive limiting principle, ensuring that environmental protection under the Convention does not evolve into an absolute or overriding entitlement, but remains contingent upon contextual assessment and judicial restraint.

Overall, the subchapter 3.2 illustrates that through the combined use of indirect protection under existing rights, threshold requirements of effective interference, and a balancing exercise that preserves State discretion, the Court integrates environmental concerns within the Convention framework without altering its normative architecture. This analysis demonstrates that any recognition of a right to a healthy environment remains fragmented, context-dependent, and shaped by judicial restraint, confirming its limited contribution to climate law implementation when compared to legislative and governance-based mechanisms.

3.3. Climate change as a stress test for environmental jurisprudence: a "schism ahead"?

Section 3.2 showed that environmental protection under the ECHR is largely mediated through existing rights and structured by severity thresholds, fair-balance review, and judicial restraint. The emergence of climate litigation does not simply extend this environmental line of authority: it tests whether the Convention framework can accommodate a form of harm that is cumulative, forward -looking, and only partly individualizable. In climate law doctrine, this tension has been described as a potential "schism ahead", namely the risk that climate change may generate a distinct normative and adjudicatory trajectory that cannot be fully contained within traditional environmental categories and techniques.[1143] In other words, climate change may progressively detach itself from traditional environmental law categories, both normatively and institutionally, unless carefully integrated within existing legal frameworks. This section therefore examines whether the ECtHR's move from classic environmental nuisance cases to climate litigation constitutes a doctrinal rupture, or whether the Court's adaptations remain legally manageable within the Convention's individual centred- architecture.

Drawing on the "schism ahead" thesis developed in climate law doctrine, this section examines whether the integration of climate change into environmental jurisprudence under the Convention entails a risk of doctrinal discontinuity, or whether such tensions remain legally manageable. Subsection 3.3.1 analyses climate change as

1143 A. Zahar, *Climate Law, Environmental Law, and the Schism Ahead*, SSRN Working Paper, 11 February 2020, available at: https://doi.org/10.2139/ssrn.3536096

a *sui generis* phenomenon and explains why its cumulative, transboundary, and long-term characteristics strain legal categories originally developed for localised environmental harm. Subsection 3.3.2 then turns to the structural limits of the Convention framework, focusing on victim status, temporality, and the individual centred logic of human rights adjudication as constraints on climate litigation before the ECtHR. Subsection 3.3.3 concludes by examining the Court's incremental adaptive strategies—particularly the development of governance oriented positive obligations—and assesses whether these developments amount to a doctrinal transformation or, instead, confirm the absence of a genuine schism within the Convention system.

3.3.1. Climate change as a *sui generis* challenge under the risk of doctrinal discontinuity

Climate change differs from traditional environmental harm in legally relevant ways. Unlike localised pollution where exposure, causation, and affected persons can often be identified with relative precision, climate change is characterised by cumulative causation, transboundary emission sources, long temporal horizons, and harm patterns that are probabilistic and unequally distributed. This *sui generis* profile is not merely descriptive: it directly interferes with the conventional tools through which courts evaluate interferences, responsibility, and remedies.[1144]

The interaction between environmental law and climate law is thus not merely a matter of empirical convergence but raises structural questions of legal coherence. Legal scholarship has emphasised that, while climate mitigation measures may generate co-benefits for environmental protection—such as improved air quality, public health outcomes, or ecosystem resilience—these synergies are contingent and not automatic.[1145] At the same time, the pursuit of climate objectives may generate normative tensions with environmental protection where decarbonisation imperatives prioritise scale, speed, and technological deployment over site specific ecological safeguards. As Hilson observes, climate law increasingly operates- through economywide targets and transformation pathways, whereas environmental law remains grounded in territorially defined protections and precaution-based constraints.[1146]

This divergence explains why climate measures may, in certain configurations, strain environmental law requirements. Peel and Zahar both highlight that climate governance often relies on instruments—such as large-scale infrastructure deployment, land -use transformation, or resource extraction—that can conflict with

1144 J. Peel, "Climate Change Law: The Emergence of a New Legal Discipline", *Melbourne University Law Review*, vol. 32, no. 3, 2011, pp. 922–936, esp. pp. 927–930

1145 J. Peel, *Climate Change Law: The Emergence of a New Legal Discipline*, *Melbourne University Law Review*, vol. 32, no. 3, 2011, pp. 922–936

1146 C. Hilson, "It's All About Climate Change, Stupid! Exploring the Relationship between Environmental Law and Climate Law", *Journal of Environmental Law*, vol. 25, no. 3, 2013, pp. 359–370

established environmental standards relating to biodiversity, habitats, and landscape protection.[1147] These tensions are not accidental but reflect the distinct regulatory logics of the two fields: climate law is oriented towards systemic risk reduction and future harm avoidance, while environmental law traditionally focuses on the prevention of localised and immediate damage.[1148] De Sadeleer similarly notes that climate objectives may recalibrate the application of precaution, shifting it from an absolute constraint towards a proportionality based- balancing exercise in which environmental trade-offs- are increasingly tolerated in the name of climate urgency.[1149]

From a legal perspective, these dynamics do not necessarily imply a contradiction between climate and environmental protection, but they do reveal a risk of fragmentation if courts and legislators fail to articulate clear principles for managing conflicts between the two. It is precisely this risk—identified by Zahar as a potential "schism ahead"—that becomes salient when climate considerations are integrated into legal regimes originally designed for environmental protection.[1150]

Legal scholarship has long argued that this difference matters for the internal coherence of environmental and climate law. Hilson, for example, shows that climate law cannot simply be treated as a subset of environmental law without distortion, because its instruments, targets, and enforcement logic tend to be structurally distinct – quantified trajectories, economy-wide transformation, and governance mechanisms rather than site-specific- controls.[1151] Peel similarly describes climate change law as an emerging discipline precisely because it demands legal techniques calibrated to systemic risk and long-term- governance rather than isolated environmental harms.[1152] In the ECHR context, these features put pressure on the "ricochet" technique identified in section 3.2, because the Convention's indirect approach presupposes a sufficiently individualised interference that climate harm does not always permit.

In this sense, the "*schism ahead*" thesis does not claim that climate change is outside environmental law altogether. Rather, it functions as a warning that climate change may detach itself doctrinally if courts are pushed to develop climate specific admissibility criteria, causation approaches, and governance-oriented obligations that are not easily reconciled with the earlier environmental nuisance framework.[1153]

1147 J. Peel; A. Zahar, *Climate Law, Environmental Law, and the Schism Ahead*, SSRN Working Paper, 2020

1148 C. Hilson, "It's All About Climate Change, Stupid! Exploring the Relationship between Environmental Law and Climate Law", *Journal of Environmental Law*, vol. 25, no. 3, 2013, pp. 359–370

1149 N. de Sadeleer, Environmental Principles: From Political Slogans to Legal Rules, Oxford University Press, 2nd ed., 2020, pp. 91–118.

1150 A. Zahar, *Climate Law, Environmental Law, and the Schism Ahead*, SSRN Working Paper, 2020

1151 C. Hilson, "It's All About Climate Change, Stupid! Exploring the Relationship between Environmental Law and Climate Law", *Journal of Environmental Law*, vol. 25, no. 3, 2013, pp. 359–370, esp. pp. 361–365

1152 J. Peel, *ibid.*, pp. 930–934

1153 H. Keller, C. Heri & R. Piskóty, "Something Ventured, Nothing Gained? Remedies before the ECtHR and their Potential for Climate Change Cases", *Human Rights Law Review*, vol. 22, no. 1, 2022, pp. 1–34, esp. pp. 6–10 and 27–30

3.3.2. Structural limits of the convention framework: victim status, temporality, and judicial function

The Convention system is structurally individual centred- and reactive. Access to the ECtHR depends on victim status under Article 34 ECHR and the Court's refusal of *actio popularis*. These features are not accidental: they protect subsidiarity and preserve the Court's function as a court of individual complaint rather than a general regulator. In climate matters, however, they operate as immediate constraints, because climate harm is diffuse, often future oriented-, and rarely traceable to a single act or omission in the way classical nuisance cases are.[1154]

The Grand Chamber in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* makes this tension explicit. On the one hand, it held that Article 8 encompasses a right to effective protection by State authorities from the serious adverse effects of climate change on life, health and well-being. On the other hand, it reiterated that the Convention system excludes *actio popularis* and therefore required a tailored approach to victim status and standing in the climate context, accepting the applicant association's standing while rejecting the individual applicants' victim status on the facts.[1155] This indicates a structural compromise rather than a general opening of the floodgates: climate claims can be accommodated, but only under carefully delimited admissibility conditions.

A second structural constraint concerns temporality. The ECtHR typically evaluates whether an interference has occurred (or whether a sufficiently imminent risk has materialised) rather than conducting a broad *ex ante* review of policy adequacy. Climate change complicates this logic because effective protection often requires anticipatory action long before harms become fully visible. This is precisely why climate remedies and remedial feasibility have become central in the literature. Keller, Heri and Piskóty show that the Court's remedial practice and its institutional role place limits on how far Strasbourg can translate climate obligations into enforceable outcomes, even where a violation is found.[1156]

Recent Article 2 developments confirm both adaptation and constraint. In Cannavacciuolo and Others v. Italy, the Court found that the State's protective duty under Article 2 was not negated by the lack of scientific certainty as to the precise effects of pollution on individual health, and required a systematic response through general measures.[1157] Yet the same judgment also illustrates the Court's continued attention to

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1154 ECtHR (Grand Chamber), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, Judgment of 9 April 2024, esp. §§ 421, 499, 552–555

1155 ECtHR, *Cannavacciuolo and Others v. Italy*, nos. 51567/14 et al., Judgment of 30 January 2025, esp. §§ 435–470

1156 ECtHR, *Tătar v. Romania*, no. 67021/01, Judgment of 27 January 2009, esp. §§ 88–107 (

1157 ECtHR, *Cordella and Others v. Italy*, nos. 54414/13 and 54264/15, Judgment of 24 January 2019, esp. §§ 161–172 and 180–189

admissibility limits and the careful differentiation it makes between contexts.[1158] The overall picture is therefore not doctrinal liberation but calibrated expansion: the Court adapts its risk-logic, while maintaining the architecture of victimhood, subsidiarity, and restraint.

3.3.3. Incremental judicial adaptation: from environmental nuisance to climate governance duties

Although the Convention does not recognise a self-standing right to a healthy environment, the Court has progressively developed techniques that allow environmental—and now climate—harms to be addressed through existing rights. In environmental cases, this was achieved mainly through Article 8 and the fair balance structure analysed in section 3.2. In climate cases, the central adaptation is the Court's increasing focus on governance frameworks and State capacity to prevent foreseeable harm.

This evolution can be traced through the Court's environmental jurisprudence on risk and diligence. In *Tătar v. Romania*, the Court criticised deficiencies in risk assessment and public information in relation to a hazardous industrial activity, indicating that Article 8 protection can turn on the adequacy of decision-making- processes and regulatory oversight.[1159] In *Cordella and Others v. Italy*, the Court treated prolonged institutional inaction in the face of known health risks as a failure to secure effective protection in practice, thereby acknowledging that Article 8 obligations may capture structural enforcement deficits without converting the Convention into a general environmental code.[1160]

The climate ruling in *Verein KlimaSeniorinnen* marks a further step. The Grand Chamber considered that the Court's existing environmental nuisance case-law was "neither adequate nor appropriate" as a template for climate litigation and articulated a more tailored approach to Convention issues arising in the climate change- context.[1161] Without abandoning Article 8, the Court operationalised positive obligations in governance terms, focusing on whether the State had adopted and effectively applied a regulatory framework capable of mitigating serious climate harm, while preserving a margin of appreciation as to choice of means.[1162] Scholarly commentary reads this as

1158 M. Wewerinke-Singh, "Climate Protection Obligations under the ECHR: The *KlimaSeniorinnen* Judgment", *European Constitutional Law Review*, vol. 21, no. 2, 2025, pp. 356–374, esp. pp. 365–371

1159 O. De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 3rd ed., 2019, pp. 488–491

1160 M. Wewerinke-Singh, "Climate Protection Obligations under the ECHR: The *KlimaSeniorinnen* Judgment", *European Constitutional Law Review*, vol. 21, no. 2, 2025, pp. 356–374

1161 ECtHR (Grand Chamber), Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, no. 53600/20, Judgment of 9 April 2024, §§ 543, 549–550

1162 M. Wewerinke-Singh, "Climate Protection Obligations under the ECHR: The *KlimaSeniorinnen* Judgment", *European Constitutional Law Review*, vol. 21, no. 2, 2025, pp. 356–374.

a significant constitutional development: it increases the rights-based- justiciability of climate protection while simultaneously emphasising admissibility limits and the ECtHR's institutional role.[1163]

By contrast, the CJEU addresses climate–environment tensions from an institutional position fundamentally oriented towards systemic coherence and policy integration. EU law explicitly recognises both environmental protection and climate action as Treaty objectives, and climate measures are routinely assessed not through individual rights but through principles such as proportionality, coherence, and consistency across policy domains. As Hilson and Peel have shown, this allows the CJEU to accommodate trade-offs- between climate ambition and environmental protection through regulatory integration, rather than through individualised balancing.[1164] Climate objectives may thus justify restrictions on internal market freedoms, modifications of competition rules, or differentiated regulatory treatment, provided that such measures remain proportionate and non-discriminatory.[1165]

This divergence helps explain why the climate–environment tension identified in doctrine does not generate the same type of "schism" in EU law as it potentially does under the Convention. Whereas the ECtHR must continuously translate systemic climate risks into individual rights interferences—thereby risking doctrinal strain—the CJEU operates within a legal order that is structurally equipped to manage cross sectoral- conflicts *ex ante*, through legislative frameworks and regulatory design.[1166] Zahar's warning of a "schism ahead" is therefore more immediately relevant to human rights adjudication than to EU constitutional law, where climate integration is pursued through governance mechanisms rather than -rights based- mediation.[1167]

This comparison underscores that the challenges posed by climate change are not merely substantive, but institutional. The ECtHR's contribution to climate protection remains necessarily constrained by its mandate and procedural structure, while the CJEU plays a complementary role by shaping the legal conditions under which climate and environmental objectives are balanced within the Union's normative order. Taken together, these two judicial approaches illustrate that climate change does not produce a uniform legal response but instead exposes the differing capacities of human rights adjudication and constitutional economic governance to absorb systemic environmental risk.

1163 C. Hilson, "It's All About Climate Change, Stupid! Exploring the Relationship between Environmental Law and Climate Law", *Journal of Environmental Law*, vol. 25, no. 3, 2013, pp. 359–370

1164 J. Peel, Climate Change Law: The Emergence of a New Legal Discipline, *Melbourne University Law Review*, vol. 32, no. 3, 2011, pp. 922–936

1165 CJEU, Case C-573/12, *Ålands Vindkraft*, EU:C:2014:2037, §§ 76–84 ; see also G. van Calster, "Significant EU Environmental Law Cases: 2023", *Journal of Environmental Law*, vol. 36, no. 3, 2024, pp. 425–435.

1166 ECtHR & FRA, *Climate Change and Human Rights – Joint Factsheet ECtHR/CJEU Case-Law*, updated 15 November 2025

1167 A. Zahar, Climate Law, Environmental Law, and the Schism Ahead, Routledge, 2020

At the heart of this analysis lies a deeper question about the future of EU governance: Can the Union achieve a truly integrated approach to sustainability – one that reconciles the imperatives of climate action with the foundational values of environmental protection, social justice, and democratic legitimacy? Or will the "climate trilemma"—the challenge of balancing environmental integrity, economic growth, and social equity—prove insurmountable within existing legal and institutional frameworks?

These conflicts are not merely theoretical. They are playing out in courtrooms, regulatory agencies, and local communities across Europe. Landmark cases such as the "*Danish Bottles*" ruling, the litigation over wind farm siting, and disputes over the compatibility of state aid for green technologies with competition law illustrate the practical and legal dilemmas at stake. The jurisprudence of the CJEU has been pivotal in mediating these tensions, developing doctrines of proportionality, non-discrimination, and the integration of environmental requirements into other policy areas. Yet, as the climate crisis intensifies and the demands on legal and governance systems multiply, the balancing act is becoming ever more complex.

Synthesis – Chapter 3, Part III: The Interaction of EU Climate Law before the ECtHR

Chapter 3 has shown that the interaction between EU Climate Law and the ECHR contributes to climate governance not by creating an alternative enforcement pathway, but by structuring *how* climate obligations are articulated, reviewed, and constrained within European legal orders. The Convention system does not replace EU Climate Law; rather, it shapes the conditions under which climate commitments are implemented by Member States through identifiable normative, procedural, and institutional effects.

First, the ECtHR contributes normatively by clarifying minimum standards of State conduct in situations where environmental and climate-related harm affects Convention rights. Through indirect protection under Articles 2 and 8 ECHR, and most clearly in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the Court has articulated criteria relating to regulatory adequacy, scientific grounding, target-setting, monitoring, and timeliness. These standards do not amount to autonomous climate obligations, but they provide a rights-based benchmark against which the adequacy of national climate governance — including measures adopted pursuant to EU Climate Law — may be assessed. Second, the ECtHR contributes procedurally by reinforcing procedural climate justice. Articles 6, 10, and 13 ECHR operate as enabling rights that secure access to courts, public debate, information, and effective remedies in environmental and climate contexts. These procedural guarantees enhance accountability by obliging States to justify climate-related choices and by ensuring that affected individuals and associations are not excluded from contesting regulatory failure. In doing so, the ECtHR strengthens the procedural environment in which EU Climate

Law is implemented, without dictating substantive policy outcomes. Third, the ECtHR contributes institutionally, by disciplining governance rather than directing it. Judicial intervention remains confined to *ex post* review and individual complaints, but it can expose regulatory gaps, prolonged inaction, or deficiencies in enforcement. This generates normative pressure on national administrations and legislators, fostering institutional learning and reinforcing the credibility of climate commitments derived from EU law.

At the same time, Chapter 3 demonstrates that this contribution is deliberately constrained. Strict admissibility requirements, the rejection of *actio popularis*, and the margin of appreciation doctrine preserve the subsidiary role of the Court and prevent judicial substitution for political decision-making. Climate litigation before the ECtHR thus operates as a *selective and corrective* mechanism, not as a comprehensive instrument of climate governance.

Overall, the interaction between EU Climate Law and the ECHR is best understood as a relationship of coexistence and mutual constraint. The Convention framework complements EU Climate Law by adding a human-rights-based layer of procedural accountability and normative discipline, while simultaneously highlighting the limits of litigation as an implementation tool. Effective climate governance therefore depends not on judicial centralisation, but on the coordination of legislative, administrative, and judicial pathways within a polycentric architecture of implementation.

This evolving relationship raises the spectre of a "schism" between climate and environmental law, as the demands of rapid decarbonization and systemic transformation challenge established legal doctrines and governance structures. The jurisprudence of both the CJEU and the ECtHR has been pivotal in mediating these tensions, but the balancing act is becoming ever more complex as the climate crisis intensifies. Ultimately, the interaction between EU Climate Law and the ECHR reflects a broader shift towards integrated and rights-based climate governance in Europe. The recognition of positive obligations under the Convention empowers individuals, communities, and civil society organizations to hold states accountable for climate inaction or insufficient action and provides a legal framework for challenging policies that fail to meet the minimum standards of protection required by the Convention. At the same time, the ongoing dialogue between the CJEU and the ECtHR, and the interplay between EU law and the ECHR, are essential for ensuring that climate law is not merely aspirational, but enforceable and effective—a living instrument for climate governance and justice in Europe.

As the Union moves forward in its quest for climate neutrality, the challenge will be to ensure that the pursuit of one set of objectives does not come at the expense of others, and that the legal order remains both coherent and responsive to the evolving demands of sustainability. The ongoing dialogue between climate ambition and environmental protection, between EU law and the ECHR, will continue to shape the contours of European integration, demanding vigilance, creativity, and a renewed commitment to the values that underpin the EU's fight against climate change. The interaction of EU Climate Law towards the ECtHR is not merely a matter of legal harmonization,

but a dynamic process that is redefining the boundaries of rights, responsibilities, and governance in the Anthropocene era. It is through this process that Europe can hope to achieve a just, effective, and sustainable response to the climate crisis.

Synthesis – Part III: the implementation of EU Climate Law: reshaping climate litigation at the European level?

Part III critically examined the role of litigation in the implementation of EU Climate Law, understood not as a substitute for legislative or administrative governance, but as a mechanism that reshapes accountability, procedural guarantees, and the articulation of climate obligations across legal levels. While the adoption of EU Climate Law has established ambitious and legally binding objectives—most notably climate neutrality by 2050—litigation has contributed to their implementation by clarifying minimum standards of State conduct, disciplining decision-making- through procedural requirements, and exposing governance deficits where regulatory action proves insufficient.

A central theme emerging from this Part is the increasing judicialisation of climate policy at national level. Landmark cases such as *Urgenda* in the Netherlands, *Grande-Synthe* and *Notre Affaire à Tous* in France, and *Friends of the Irish Environment* in Ireland demonstrate that climate obligations are no longer treated as mere political aspirations. Through injunctions, deadlines, and supervisory remedies, national courts have contributed by stabilising legal baselines, requiring governments to justify climate policies against scientific evidence and legal commitments, and generating institutional learning within administrative and legislative processes. This transformation is grounded in a multi-level legal architecture combining international commitments (notably the Paris Agreement), EU law (including the Regulation on EU Climate Law and the Effort Sharing Regulation), and national constitutional and statutory provisions.

Strategic litigation has also contributed procedurally, by strengthening access to justice and participation in climate governance. Civil society organisations, NGOs, municipalities, and groups of citizens have increasingly been able to bring climate claims before domestic courts. Procedural innovations—such as the systematic use of scientific expertise, expert reports, and ongoing judicial supervision—have reinforced transparency, reason giving-, and public scrutiny, thereby enhancing the legitimacy and effectiveness of climate law implementation.

At supranational level, the contribution of courts is necessarily differentiated. The CJEU contributes primarily through systemic and *ex ante* mechanisms: reinforcing the principle of effective judicial protection and ensuring coherence between EU climate objectives and other areas of Union law through proportionality, consistency, and integration review. At the same time, the CJEU has maintained restrictive rules on standing and access to the Union courts, confirming that the effectiveness of EU Climate Law is realised chiefly through national judicial and administrative enforcement

rather than direct litigation at EU level.

The ECtHR contributes through a distinct, rights based- channel. Chapter 3 has shown that climate related- harm may engage multiple Convention rights: Article 8 ECHR as the principal substantive gateway; Article 2 ECHR in situations of serious and foreseeable risk to life; and Articles 6, 10, and 13 ECHR as procedural guarantees ensuring access to courts, environmental information, public debate, and effective remedies. Through indirect protection and the doctrine of positive obligations—most notably in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*—the ECtHR contributes by setting human rights benchmarks for regulatory adequacy, timeliness, and diligence, while preserving strict admissibility criteria, the rejection of *actio popularis*-, and the subsidiary nature of its review.

These judicial contributions remain structurally constrained. The absence of robust enforcement mechanisms, the dependence on executive compliance, and the margin of appreciation doctrine all limit the transformative reach of litigation. Climate litigation can therefore risk becoming primarily symbolic if not embedded within broader governance frameworks. Nevertheless, it performs a crucial corrective function by preventing regulatory backsliding, disciplining discretion, and keeping climate commitments legally contestable.

Overall, Part III establishes that climate litigation reshapes implementation across levels but does not replace governance. National adjudication stabilises legal constraints and generates institutional learning; the CJEU ensures systemic coherence within EU law; and the ECtHR supplies a complementary yet narrowly circumscribed human rights layer of accountability. The originality of this Part lies in demonstrating that the effectiveness of EU Climate Law depends less on the multiplication of substantive objectives- than on the architecture of implementation – namely the interaction between judicial pathways, institutional design, and governance mechanisms capable of translating legal commitments into sustained practice.

The analysis underscores the need for polycentric governance—an approach that distributes authority across multiple levels and institutions, fosters mutual learning, and encourages active participation from a diverse range of stakeholders. The creation of independent climate authorities, both at the national and European levels, is proposed as a means of ensuring impartiality, expertise, and accountability in the implementation of climate law. Procedural climate justice—ensuring equal access to justice, transparency, and participation for all stakeholders—remains a central challenge and a key criterion for the legitimacy and effectiveness of climate governance. The development of robust mechanisms for monitoring, reporting, and enforcing climate obligations, as well as the harmonization of procedural rules and the broadening of standing requirements, are essential for realizing the full potential of litigation-driven climate governance.

The journey toward effective climate governance is ongoing and dynamic. Litigation, while not a panacea, has proven to be a vital catalyst for change, driving the evolution of legal norms, empowering civil society, and holding governments to account. The future of climate litigation in Europe will depend on the continued commitment

of all actors—judges, legislators, policymakers, and citizens—to the principles of justice, equity, and the rule of law. The EU stands at the forefront of global efforts to address the climate crisis. By embracing a holistic, polycentric, and participatory approach to climate governance, and by ensuring that litigation remains a tool for both accountability and innovation, the EU can continue to lead by example and inspire transformative change worldwide.

In conclusion, the implementation of EU Climate Law has fundamentally reshaped the landscape of climate litigation in Europe, transforming courts into key arenas for the enforcement, interpretation, and evolution of climate obligations. While significant challenges remain, the dynamic interplay between legislative ambition, judicial innovation, and civil society mobilization offers a partial but instructive model for advancing climate justice within existing legal constraints. As the climate crisis intensifies, the continued evolution of litigation-driven climate governance—grounded in robust legal frameworks, participatory mechanisms, and a commitment to justice—will be essential for realizing the EU's vision of a sustainable, resilient, and equitable future. The lessons drawn from the European experience have global relevance, offering insights and inspiration for other jurisdictions seeking to harness the power of law in the fight against climate change. Figure 1 conceptualises the implementation of EU Climate Law as a polycentric system in which judicial pathways (national courts, the CJEU, and the ECtHR) interact with legislative, administrative, and governance mechanisms rather than replacing them. It illustrates how climate litigation functions as a catalyst for accountability, coordination, and procedural justice within a broader institutional architecture, while remaining structurally limited in its capacity to ensure implementation on its own.

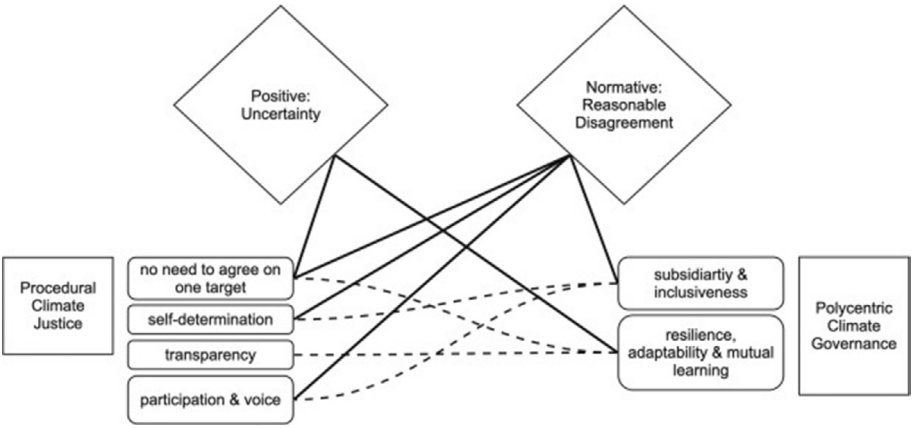


Fig. 1 Polycentric climate governance and procedural climate justice[1168]

1168 Ridder, Kilian & Schultz, Felix Carl & Pies, Ingo. (2023). Procedural climate justice : Conceptualizing a polycentric solution to a global problem. Ecological Economics. 214. 10.1016/j.ecolecon.2023.107998.

Figure 1 visually consolidates the analytical conclusions reached in Chapters 2 and 3. Chapter 2 demonstrated that access to climate litigation before the CJEU is structurally constrained and functions primarily as a selective filter rather than an implementation engine. Chapter 3 showed that climate litigation before the ECtHR operates through indirect protection and positive obligations, offering a complementary but narrowly circumscribed human -rights-based- channel. The figure captures this dual limitation by situating courts as nodes within a polycentric system: they generate normative pressure, procedural guarantees, and interpretative guidance, but depend on legislative and administrative actors for effective implementation. In this configuration, procedural climate justice—access to courts, participation, transparency, and reason giving—emerges as the principal contribution of litigation to EU climate governance.

Importantly, the figure does not suggest an expansion of judicial power or the emergence of courts as primary climate regulators. On the contrary, it reflects the restrained role identified in the case law: litigation enhances accountability and procedural fairness while preserving institutional balance and democratic legitimacy. The effectiveness of EU Climate Law therefore depends on the coordination of multiple centres of authority rather than on judicial centralisation. By adopting a polycentric governance lens, the figure provides an analytical bridge between doctrinal analysis and institutional design, allowing climate litigation to be assessed not in isolation, but as part of the broader implementation architecture of EU Climate Law.

CONCLUSIONS AND RECOMMENDATIONS

Ultimately, EU Climate Law has revealed the limits of governing climate change through traditional institutional and procedural paradigms. If climate neutrality is to be effective, legitimate, and legally enforceable, it must be supported by governance structures and procedural mechanisms capable of reconciling ambition with accountability, urgency with the rule of law, and executive action with judicial control. It is on this integrated basis—and only on this basis—that the Recommendations must be understood. They are set out in the relevant numbered conclusion accordingly.

1. The research highlighted that implementation of EU Climate Law—centred on Regulation (EU) 2021/1119—cannot be assessed as a sectoral environmental policy. It operates as a constitutional and procedural regime: it redistributes power, reorders policy priorities, and structures the conditions under which climate commitments become legally contestable and administratively enforceable. It constitutes a systemic legal regime that reshapes competences, redistributes institutional power, reorganises enforcement mechanisms, and conditions the legal coherence of the Union's internal and external action. While EU Climate Law formally strengthens the Union's climate ambition, its implementation reveals structural tensions that affect not only institutional balance but also the effectiveness and justiciability of climate obligations. The issue is therefore not one of ambition, but of capacity of the current EU Climate governance framework to ensure competence integrity, external coherence, internal consistency, procedural legitimacy, and enforceability under the rule of law. The current architecture is not designed to carry the legal, institutional, and procedural weight of climate neutrality.

Accordingly, the research *recommends* recalibrating EU climate action in an appropriate competence framework. EU climate policy should no longer be treated as a mere extension of environmental law. A recalibration of the current legal basis—whether through reinterpretation or amendment of Article 191 TFEU—is necessary to reflect the autonomous, systemic, and transversal nature of climate objectives, and to restore coherence between ambition, competence allocation, and legal effects.

2. EU Climate Law is transversal—and destabilises inherited competence logics. The thesis confirms that EU Climate Law functions as a crosscutting vector affecting the vertical allocation of competences (Union/Member States) and the horizontal distribution of powers (Commission/Parliament/Council). Because the climate objective permeates multiple policy fields, it pushes shared competence dynamics toward *de facto* centralisation, thereby increasing constitutional friction with the principle of conferral and the Treaty framework traditionally used for environmental action. The legal consequence is not merely complexity, but instability: climate neutrality behaves like a foundational objective while remaining embedded in structures not built for systemic steering. The adoption of EU Climate Law has significant implications for the distribution of competences within the EU legal framework. It challenges the existing balance between the Union and its Member States, potentially intensifying functional centralisation within a formally shared competence. If the test legally performed by

the CJEU as in Opinion 1/03, on climate-related sphere, it is likely to shift the nature of the competence, from shared to exclusive in favour of the EU. EU Climate Law aims to integrate the climate neutrality as one's objective in the Treaties. By affecting the institutional distribution of powers, EU Climate Law contributes to a recalibration of the exercise of competences.

To limit the affectation of the legal disequilibrium, the research *recommends* the establishment of an independent administrative authority dedicated to climate regulation at the EU level. This authority would play a crucial role in monitoring the implementation of EU Climate Law, ensuring transparency, accountability, and effective enforcement of climate-related measures.

3. The implementation of EU Climate Law depends on coherence both internally (competition, state aid, public procurement, environmental policies tensions) and externally (trade, WTO constraints, climate clauses in FTAs, CBAM exposure). The duty of coherence allows the EU's participation to the UNFCCC and its ability to be a party to the Paris Agreement. It is a novelty with great implications regarding the climate governance internally. "Coherence" is the condition under which EU climate action remains legally defensible and politically sustainable across intersecting regimes. Externally, the Union's climate ambition must operate within the constraints of international economic law. WTO disciplines, particularly the strict proportionality and non-discrimination requirements under Article XX GATT, expose instruments such as the CBAM and climate-conditioned trade measures to legal uncertainty. Climate clauses in FTAs reinforce normative alignment with the Paris Agreement, but their limited enforceability underscores the gap between declared ambition and operational coherence. Across these dimensions, the thesis shows that inconsistency is not merely inefficiency: it undermines the legal sustainability of EU climate action. Yet the current framework produces asymmetries—particularly between flexible public intervention (e.g., state aid climate facilitation) and stricter constraints on private coordination—creating fragmentation risks and legal uncertainty for actors expected to deliver the transition.

The analysis of EU external action demonstrates that the effectiveness of climate policy increasingly depends on its capacity to ensure coherence between trade liberalisation and climate objectives. FTAs constitute a particularly sensitive interface in this respect, as they expose potential tensions between economic openness and the Union's climate commitments. The progressive inclusion of climate-related provisions in FTAs reflects an attempt to address these tensions, yet their content and legal effects remain uneven, raising questions as to the consistency and enforceability of the EU's external climate action.

Accordingly, the research *recommends* the systematic integration of climate clauses in EU FTAs. Such clauses should explicitly anchor trade commitments to the Union's climate objectives and international obligations—particularly under the Paris Agreement—while providing structured cooperation mechanisms and, where appropriate, dedicated dispute resolution pathways. Systematising climate clauses would not only enhance the credibility of EU climate leadership but also contribute to aligning trade

policy with the Union's broader climate governance framework.

These clauses aim to ensure that trade liberalization does not come at the expense of environmental protection and climate action. They typically reaffirm the parties' commitments to maintaining environmental standards, refer to international frameworks such as the Paris Agreement and the Sustainable Development Goals, and incorporate climate-related objectives into sectoral cooperation. The inclusion of dedicated dispute resolution or consultation procedures strengthens the legal visibility of environmental commitments. Taken together, these clauses shape a coherent external climate strategy without formally altering the distribution of competences in EU external trade policy. Through these mechanisms, FTAs may operate as vectors for aligning trade policy with broader climate and sustainability objectives.

4. The integration of EU Climate Law necessitates a consistent approach across various policy areas. Internally, EU Climate Law interacts asymmetrically with competition law, state aid control, public procurement, and environmental protection. While climate objectives increasingly justify flexibility for public intervention, private entities coordination (to avoid anti-competitive conducts) remains more strictly constrained, producing fragmentation and uneven incentives. The duty of consistency is inextricably linked to the shared nature of the competence. This includes aligning climate objectives with economic policies, trade regulations, and environmental protection measures. The research underscores the critical need for all EU policies to align seamlessly with the overarching goal of achieving climate neutrality by 2050, ensuring a consistent and unified approach to combating climate change.

Legally, it materialises through the tension between climate-driven obligations and pre-existing policy objectives that were historically treated as either neutral or dominant. As a transversal legal framework, EU Climate Law does not operate within a single policy field, but intersects simultaneously with internal market rules, industrial policy, transport law, consumer protection, and social considerations. This multi-sectoral interaction challenges the traditional logic of the EU legal order, which is structured around sector-specific competences and differentiated regimes of justification.

Measures adopted under the European Green Deal—such as the progressive phase-out of internal combustion engine vehicles—illustrate this shift. While such measures pursue the climate-neutrality Treaty objective enshrined in Regulation (EU) 2021/1119, they simultaneously affect the free movement of goods, legitimate expectations of economic operators, consumer choice, and social equity considerations. The postponement and repeated adjustment of the 2035 deadline for thermic vehicles further reveal the difficulty of ensuring temporal, material, and normative consistency across policy domains. Tensions between climate mitigation measures and environmental protection further illustrate that climate law cannot substitute environmental law without generating conflicts of norms and objectives.

This evolution raises a fundamental question for EU law: whether consistency can still be ensured through *ex post* reconciliation mechanisms, or whether EU Climate Law is progressively reshaping the very framework within which consistency is assessed.

Accordingly, the research *recommends* ensuring internal consistency through relevant incentives and disincentives mechanism. Incentives and disincentives are crucial tools in climate governance to encourage or discourage certain behaviours and practices. These mechanisms can be designed to promote sustainable practices, reduce GHG emissions, and achieve climate goals. Rather than privileging a single regulatory technique, EU Climate Law mobilises economic incentives, market-based mechanisms, regulatory obligations, and liability-oriented principles.

Incentive based instruments—such as financial support schemes, research funding, public procurement policies, and market mechanisms—operate primarily by facilitating and accelerating behavioural change, while disincentive-based instruments—such as emission limits, fiscal charges, and the polluter pays principle—function as corrective tools aimed at internalising environmental costs. The coexistence of these mechanisms illustrates the EU's attempt to reconcile economic integration with climate ambition without resorting to purely prohibitive regulation.

This dual architecture, however, places particular strain on the requirement of legal consistency. The effectiveness of climate governance depends on the compatibility of incentives or disincentives with internal market rules, proportionality, and legal certainty. The analysis thus confirms that incentive and disincentive-based instruments constitute not merely policy choices, but structural components of EU climate governance whose coordination is central to the legitimacy and effectiveness of EU Climate Law.

5. The implementation of EU Climate Law reveals a trilemma, displaying persistent tension between three interdependent objectives: deep environmental integration, preservation of the internal market and climate equity. The systematic incorporation of climate objectives across EU policies already challenges the functioning of the internal market where climate measures introduce differentiated regulatory requirements, sector-specific constraints, or asymmetrical obligations across Member States. Conversely, the preservation of internal market principles, in particular the free movement of goods and the avoidance of regulatory fragmentation, limit the scope or intensity of climate integration measures. These tensions are further compounded by climate equity considerations, as climate policies often produce uneven social, economic, and territorial effects, raising questions of fairness both within and between Member States and equality before courts.

The climate trilemma thus provides a unifying analytical framework for understanding recurring tensions and why EU Climate Law is frequently characterised by calibrated compromises rather than full alignment, advocating for a partial accommodation rather than systemic recalibration.

6. EU Climate Law increases executive steering capacity through monitoring, progress assessment, consistency checks, recommendations, and accelerated infringement dynamics, while also relying on reputational mechanisms akin to "*naming and shaming*." This can improve momentum, but it also raises rule of law concerns when broad discretion, opacity, or uncertain benchmarks are combined with pressure mechanisms. A polycentric approach is preferred to seize the most complete aspects of the

climate law sphere, with the implementation of an independent administrative authority to monitor the effectivity of the implementation of EU Climate Law. A shift in the nature of the competence, would, however, legitimize the empowerment of the Commission in this regard. To address these challenges the thesis offers recommendations, such as reinterpreting Article 191 TFEU to reflect the distinct nature of climate policies and creating a more explicit strategy for delegated acts to the Commission.

Accordingly, the research *recommends* clarifying and constrain the delegation of powers to the European Commission. The effectiveness of EU climate governance requires clearer limits on executive discretion. Delegated and implementing powers under EU Climate Law must be structured through explicit strategies, precise benchmarks, and robust accountability safeguards, to prevent overbroad delegation incompatible with Article 290 TFEU and to reinforce legal certainty for Member States and stakeholders.

7. The thesis explicitly identifies delegation and accountability tensions (including the risk of overbroad delegation *vis-à-vis* Article 290 TFEU) and the limits of executive-centred implementation when transparency, adversarial safeguards, and reviewability are insufficiently secured. Through the analysis of EU Climate Law and its implementing mechanisms, the research has shown how the increasing reliance on monitoring, assessment, and recommendation powers vested in the European Commission tests the constitutional limits of delegation under Article 290 TFEU.

The examination of delegated and implementing acts has revealed a risk of overbroad delegation, especially where essential elements of climate policy—such as the definition of trajectories, benchmarks, or evaluative criteria—are shaped through secondary instruments with limited parliamentary involvement. These developments were further assessed against the requirements of transparency, adversarial safeguards, and judicial review, highlighting structural weaknesses where procedural guarantees remain insufficiently articulated.

The executive centred implementation, while functionally attractive in a field marked by urgency and technical complexity, encounters clear limits from the perspective of accountability and the rule of law. The cumulative effect of dense delegation, soft law instruments, and limited reviewability illustrates a structural tension between effective climate action and constitutional safeguards, confirming that the legitimacy of EU climate governance ultimately depends on the robustness of its procedural and institutional checks.

8. EU Climate Law has made climate neutrality legally central, but the current governance design remains incomplete. A climate regime that is transversal, contested, and enforceable cannot rely on executive concentration and *ex post* judicial correction alone. It requires a governance architecture that integrates institutional balance, procedural climate justice, and judicial reviewability as coequal pillars of implementation. It is in this precise sense that the Recommendations that follow must be read: not as optional improvements, but as structural conditions for making EU climate neutrality governable under the rule of law.

9. The thesis supports a polycentric, networked model capable of distributing expertise and responsibility while preserving legal accountability and institutional balance. Concretely, the proposed European Climate Council—conceptualised as an independent administrative authority coordinated with national climate councils, and inspired by networked enforcement models such as the European Competition Network—should be understood primarily as a procedural guarantee: a body that stabilises standards, organises transparency, ensures adversarial processes, and produces reasoned outputs that are contestable and reviewable. Its value lies not in technocracy, but in restoring the conditions for lawful, credible implementation: clarity of benchmarks, integrity of monitoring, and fairness of enforcement.

Accordingly, the research *recommends* establishing an independent European Climate Council within a polycentric governance network. To address structural implementation deficits, an independent European Climate Council should be created and coordinated with national climate bodies. Conceived as a procedural stabiliser rather than a technocratic authority, this body would enhance consistency, transparency, and reason-giving in monitoring and enforcement, while preserving institutional balance and judicial reviewability. The creation of AAI at the national level, independently coordinated at the EU level for climate and environmental affairs to rebalance the attribution of powers amongst European institutions and monitoring *a posteriori* regulations, directives, and common practices.

10. The thesis demonstrates that procedural climate justice functions as the infrastructure that converts climate objectives and ambition into lawful implementation. At Union level, the CJEU has strengthened the normative density and interpretative authority of EU climate obligations, clarifying the duties incumbent upon national authorities and courts when implementing climate law, without transforming EU climate targets into directly enforceable claims before the Union courts. The thesis shows that climate law litigation fills governance gaps: it pressures governments to adopt sufficiently precise plans, justifies scrutiny of delay, and transforms climate commitments into administratively reviewable duties. National courts have become laboratories of enforcement and procedural innovation (standing, supervision, penalty mechanisms), while the CJEU and the ECtHR increasingly define minimum obligations through rights-based and rule of law frames (including procedural dimensions under Article 8 ECHR and access to justice logics). The CJEU joins climate and environmental protections in a collective effort to preserve a coherent legal arsenal. The ECtHR tends to create a clear distinction between the environment and climate legal instruments, insisting on the vast array of areas that climate change is impacting. Nonetheless, the casuistic approach that the ECtHR encourages this reading where climate is a *sui generis* category, although linked to the environment, but not exclusively.

11. The doctoral thesis underscores urgent need for well-defined and accessible legal remedies to empower individuals, private and public entities (stakeholders) in pursuing climate litigation, thereby ensuring the rigorous enforcement of EU Climate Law. The latest developments by the EU and ECtHR are heading in different directions, which brings uncertainties and lack of legal security for the litigants, as mentioned

above (conclusion 10). However, trends established by notable domestic cases such as "*Grande Synthe*" in France, the "*Urgenda Foundation*" case in the Netherlands and the "*Friends of the Irish Environment*" case in Ireland highlight the role of the judiciary in holding governments accountable for their climate commitments and ensuring that climate policies are effectively implemented. National courts are still the most reachable and consistent in their approach, by implementing new mechanisms – such as penalty payments in France, to make sure that commitments are upheld. This seems, at the moment, the most reliable legal remedy available, although it fractionates the global effort to mitigate climate change. A dialogue between judges based on trust and mutual listening is the first key to fruitful cooperation in mitigating climate change by harmonic and systematic proceedings. This judicial role must therefore be recognized as part of the governance ecosystem—not treated as a pathology—while ensuring that courts are not left to substitute for political and administrative architecture.

Accordingly, the research *recommends* recognising courts as structured actors within climate governance. Judicial review should be acknowledged as an integral component of climate governance. Mechanisms enabling judicial monitoring, follow-up, and effectiveness control—while respecting the separation of powers—are essential to prevent symbolic compliance and to transform climate commitments into legally enforceable obligations.

Accordingly, the research *recommends* embedding procedural climate justice at the core of EU climate governance. Climate ambition must be supported by procedural guarantees. Transparency, participation, access to information, reason-giving, and access to effective remedies should be treated as constitutive elements of EU Climate Law implementation, ensuring that enforcement mechanisms remain legitimate, contestable, and socially acceptable.

12. Overall, the dissertation underscores the transformative potential of EU Climate Law in shaping a sustainable and climate-resilient future. Ultimately, EU Climate Law has revealed the limits of governing climate change through traditional environmental and institutional paradigms. If climate neutrality is to function as a genuine legal objective rather than a symbolic horizon, it must be supported by a governance model that reconciles ambition with accountability, effectiveness with legitimacy, and urgency with the rule of law.

LIST OF ANNEXES

The annexes form an integral part of the present thesis and are included for reference purposes in direct support of the analysis developed in the main body of the text.

ANNEX 1. International Data regarding Climate Change

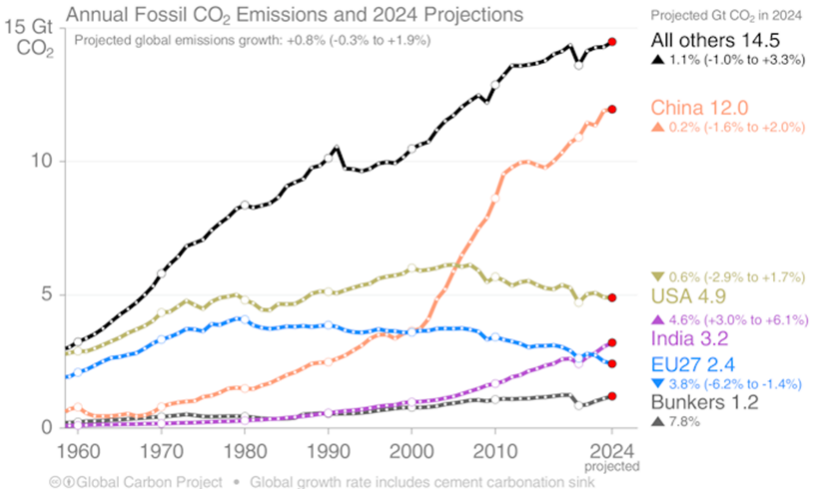


Fig.1 The top four emitters in 2023 and 2024 Projections[1169]

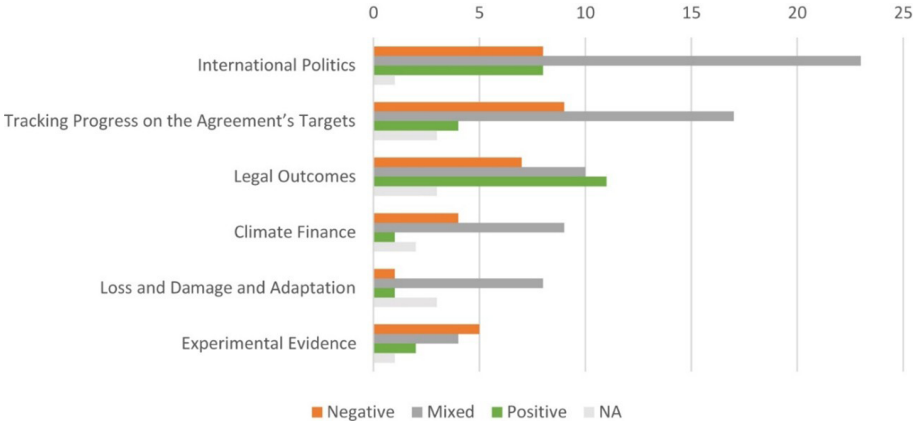
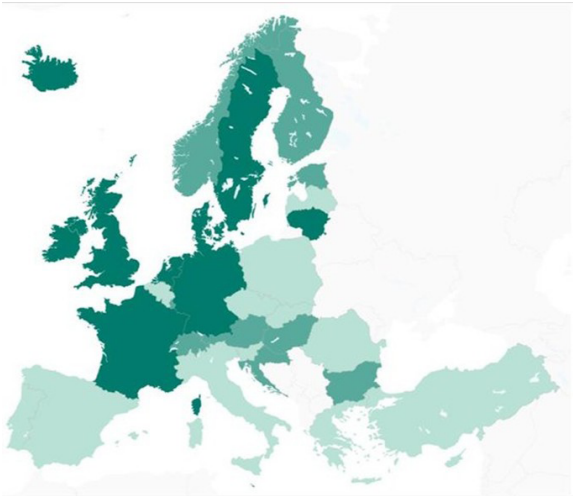


Fig 2. Paris Agreement general appraisal[1170]

1169 Individual country emissions vary widely, but there are some signs of progress towards decarbonisation. Global Carbon Budget 2024/Global Carbon Project, CC BY-ND

1170 Kilian Raiser *et al* 2020 *Environ. Res. Lett.* **15** 083006**DOI** 10.1088/1748-9326/ab865c

ANNEX 2. Climate Governance in Europe



Baseline
System defined largely by higher level **climate commitments** (e.g. EU and UN)

Light framework
System defined by a **climate law** or other **government document**, may be missing key elements, such as transparency mechanisms or target-setting processes

Robust framework
Formal system defined by a **climate law** or other **government document**, **regular action** and **planning cycles** and strong **monitoring** and **transparency** processes

Name	Description	Determining criteria: Measures for formality, accountability, specificity*	#	Countries
Category 1: EU/UN Baseline (13 countries)				
EU/UN baseline	*No system other than dedicated ministry; policy system defined by EU policy cycles; no national monitoring other than EU/UN requirements; NECP serves as policy package (may have additional sectoral policies or plans)*	LLL, MLL, LML, LLM	7	Belgium, Greece, Italy, Poland, Slovakia, Slovenia, Turkey
EU/UN baseline plus	*Little or no formalised governance structure, follows the EU cycle but with additional elements, such as, e.g., national monitoring, a dedicated stakeholder dialogue, national action plan, internal coordination mechanism etc.*	LML, MLL, MMM (without climate law)	6	Cyprus, Czechia, Latvia, Portugal, Romania, Spain
Category 2: Light framework (11 countries)				
Formal, weak spot	*Governance system set forth in law or other form but accountability and/or detail is low.*	HLM, HML, MMM, MML (with climate law)	5	Bulgaria, Hungary, Liechtenstein, Luxembourg, Malta
Informal, without *some* detail or transparency	*Governance system somewhat formally established but missing one or more key elements in practice*	MMH, MHM	3	Estonia, Norway, Switzerland
Formal, without *some* detail and transparency	*Strong law or coherent governance system on paper missing one or more key elements in practice*	HMM	3	Austria, Croatia, Finland
Category 3: Robust framework (9 countries)				
Informal, strong	*No law or weak or low detail in law but otherwise robust institutions, policy-processes and accountability mechanisms*	MHH	2	Lithuania, Netherlands
Formal, without *some* detail	*Strong framework but specifics on, e.g., long-term planning or target setting process could be stronger*	HHM	3	Iceland, Ireland, Sweden
Formal, without *some* transparency	*Formalised governance system with strong detail but room for improvement on accountability*	HMH	1	Germany
Formal, strong	*Robust framework with high level of detail and degree of accountability*	HHH	3	Denmark, France, United Kingdom

Fig.1 Three 'tiers' of climate governance in Europe[1171]

1171 Evans, Nick & Duwe, Matthias. (2021). Climate governance systems in Europe: the role of national advisory bodies.

ANNEX 3. Comparison of Key National, EU and ECHR Climate Cases[1172]

CASE NAME & JURISDICTION	FACTS	OUTCOME	LEGAL BASIS	SIGNIFICANCE	SOURCE
Urgenda Foundation v. The Netherlands (Dutch Supreme Court, 2019)	NGO and citizens sued the Dutch government for insufficient climate action.	Court ordered the government to reduce emissions by at least 25% by 2020 (vs. 1990).	Dutch civil law (duty of care), ECHR (Articles 2 & 8)	First case to hold a government legally accountable for climate inaction based on human rights.	Supreme Court Ruling
Notre Affaire à Tous v. France (Administrative Court of Paris, 2021)	NGOs sued the French government for failing to meet climate commitments.	Court recognized State responsibility for climate inaction and ordered additional measures.	French Charter for the Environment, ECHR, Paris Agreement	Demonstrates national courts' willingness to enforce climate obligations and recognize climate rights.	Court Ruling
Friends of the Irish Environment v. Government of Ireland (Irish Supreme Court, 2020)	NGO challenged the National Mitigation Plan as too vague.	Supreme Court quashed the plan, requiring a more detailed and transparent policy.	Irish constitutional law, statutory law	Highlights the importance of procedural clarity and transparency in national climate governance.	Supreme Court Ruling
Milieudefensie v. Shell (District Court of The Hague, 2021; Court of Appeal, 2024)	NGOs and citizens sued Shell for failing to reduce emissions in line with the Paris Agreement.	District Court ordered Shell to reduce emissions by 45% by 2030; Court of Appeal overturned the specific target but upheld Shell's duty of care.	Dutch civil code, ECHR, Paris Agreement	First case to impose a duty of care on a private company for global emissions; clarified corporate climate responsibility.	District Court Ruling
Neubauer et al. v. Germany (Federal Constitutional Court, 2021)	Youth activists challenged Germany's climate law as insufficient to protect future generations.	Court found parts of the law unconstitutional for failing to protect future generations and ordered stricter targets.	German Basic Law (Articles 1, 2, 20a), Paris Agreement	Landmark for intergenerational equity and constitutional climate protection.	Court Ruling

1172 Composed by the author

Grande Synthe v. France (Conseil d'État, 2021–2025)	Municipality of Grande-Synthe and its mayor sued the French State for insufficient action to meet climate targets.	Conseil d'État ordered the government to take additional measures to ensure compliance with climate commitments; imposed deadlines and financial penalties for non-compliance.	French Energy Code, EU Regulation 2018/842, Paris Agreement, ECHR	Landmark for judicial enforcement of climate obligations; established the right of municipalities to challenge state inaction and set precedent for judicially mandated climate policy.	Conseil d'État Rulings (2021, 2022, 2025)
Verein KlimaSeniorinnen Schweiz v. Switzerland (ECHR, 2024)	Swiss association of elderly women claimed Switzerland's climate inaction violated their rights.	ECtHR found Switzerland violated Article 8 ECHR by failing to take sufficient climate action.	ECHR (Article 8), Paris Agreement	First international court ruling that state inaction on climate change violates human rights.	ECHR Ruling
Duarte Agostinho and Others v. Portugal and 32 Others (ECHR, 2024)	Six Portuguese youth sued 33 countries for insufficient climate action.	ECtHR declared the case inadmissible for lack of jurisdiction and exhaustion of remedies.	ECHR (Articles 2, 8, 14)	Clarified limits of extraterritorial jurisdiction for climate claims at the ECHR.	ECHR Ruling
ClientEarth v. Commission (CJEU, 2018, 2021)	NGO challenged Commission's refusal to grant access to environmental documents and review of EIB financing.	CJEU ruled in favour of ClientEarth, strengthening access to justice and environmental scrutiny of EU institutions.	Aarhus Regulation, EU Charter, TFEU	Landmark for NGO access to justice and transparency in EU environmental governance.	CJEU Ruling

Deutsche Umwelthilfe v. Freistaat Bayern (CJEU, 2019)	NGO sought enforcement of air quality standards in Germany.	CJEU confirmed national courts must ensure effective enforcement, including coercive measures.	EU environmental law (Air Quality Directive), Charter of Fundamental Rights	Shows the CJEU's role in ensuring effectiveness of EU law and empowering national courts to act.	CJEU Ruling
Case C-626/22, ILVA (CJEU, 2024)	Whether national authorities may allow continued industrial activity despite serious environmental and health risks, and the extent of judicial protection required.	The CJEU held that Member States must ensure effective protection of health and the environment, and that national courts must be able to review whether continued operation complies with EU environmental obligations.	Directive 2010/75 (Industrial Emissions), Articles 35 and 37 of the EU Charter of Fundamental Rights	Although not a climate case, ILVA illustrates how the CJEU strengthens the procedural effectiveness and normative density of EU environmental obligations, requiring national authorities and courts to ensure effective implementation. The case confirms that EU courts enhance accountability without transforming EU policy objectives into directly enforceable individual climate rights. Analytical significance: ILVA exemplifies the EU-level model of procedural enforcement and governance-oriented judicial control, which informs—but does not replace—climate litigation pathways under EU Climate Law.	CJEU Ruling

ANNEX 4. Understanding a polycentric climate governance

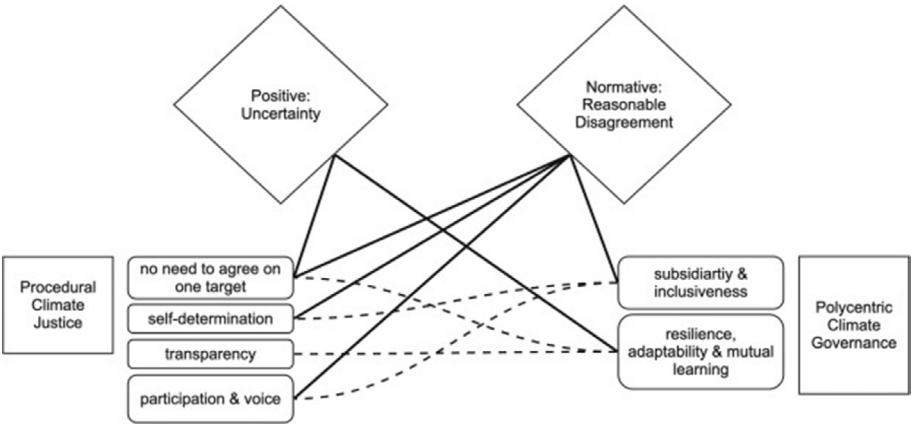


Fig.1 Procedural climate justice[1173]

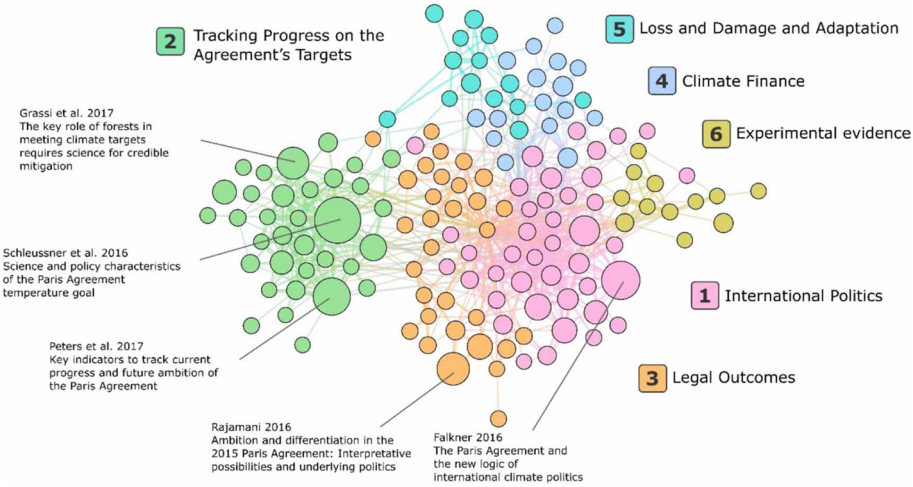


Fig.2 Coupling networks in Climate governance[1174]

1173 Ridder, Kilian & Schultz, Felix Carl & Pies, Ingo. (2023). Procedural climate justice : Conceptualizing a polycentric solution to a global problem. Ecological Economics. 214. 10.1016/j.ecolecon.2023.107998.

1174 Kilian Raiser *et al* 2020 *Environ. Res. Lett.* **15** 083006**DOI** 10.1088/1748-9326/ab865c

ANNEX 5. Mapping of the Consolidated Scientific Literature by Analytical Function[1175]

Mapping Axis	*Scientific Literature Clusters (Illustrative References)*	*Function in the Thesis*	*Main Thesis Parts Concerned*
Foundational constitutional and democratic theory	Montesquieu; Tocqueville; Locke; Carré de Malberg; Kelsen; Rosanvallon; Capitant; Wilson; Feldman; Hansen; Eskridge; Ackerman; Gargarella; Sajó & Uitz; Salzberger & Voigt; Lindseth	Provides the conceptual framework on separation of powers, democracy, legitimacy, and constitutional balance. Justifies analysing EU Climate Law as affecting the structural distribution of power rather than merely sectoral regulation.	Introduction; Part I, Chapter 1
EU constitutional law and allocation of competences	Craig & de Búrca; Chalmers et al.; Kuijper et al.; Jacqué; Dubouis & Blumann; Martucci; Platon; Mangiameli; Chevallier; Conway	Establishes the Treaty framework (principle of conferral, shared competences, subsidiarity, institutional balance). Serves as the legal baseline for assessing the effects of EU Climate Law.	Part I
EU external action, coherence, and institutional balance	Cremona; Hillion; Bosse-Platière; Delile; Eckes; Alter; Flavier; Sweet & Brunell; Jacobs; Grigonis; Platon;	Supports the analysis of EU external competences, coherence of action, and the evolving role of EU institutions—particularly the Commission and the Court—in climate-related external relations.	Part I, Chapter 2; Part III
Environmental law and climate law doctrine	Prieur; Bétaille; Delzangles; de Sadeleer; Orlando; Sjåfjell; Rehbinder; Larrère	Provides the substantive legal foundations of environmental and climate law, including core principles such as precaution, integration, and non-regression. Demonstrates doctrinal continuity and differentiation.	Part II
Climate law as an emerging legal field	Peel; Zahar; Hilson; Kuh; Woolley; Bodansky	Supports the analysis of climate law as an autonomous legal field with specific objectives, instruments, and enforcement mechanisms relevant to EU climate regulation.	Part II, Chapter 1
Climate litigation and human rights	Peel & Osofsky; Cournil; Perruso; Torre-Schaub; Eicke; Marguénaud; Desgagné; Knox	Frames the judicialisation of climate law and the interaction between climate obligations and fundamental rights within EU and regional human rights systems.	Part II, Chapter 2

1175 Composed by the author

International climate regime and global governance	Rajamani; Jordan et al.; Setzer & Higham; Biermann; Aykut & Dahan; McLean & Stone; Robiou du Pont	Situates EU Climate Law within the international climate regime and supports the analysis of multilevel and polycentric climate governance.	Part III, Chapter 1
WTO law and trade–environment interaction	Charnovitz; Pavoni; Green; Clarke & Horlick; Lydgate; Vossenaar; Tarr; Stuart	Provides the analytical framework for examining tensions and mutual supportiveness between WTO law and EU climate measures.	Part III, Chapter 2
EU governance, institutions, and implementation	Ripoll Servent & Costa; Kelemen; Becker et al.; Longo; Poptcheva; Idoux; Delzangles; Cengiz; Wilkinson	Explains how EU climate objectives reshape governance mechanisms, institutional practices, and regulatory implementation, including enhanced coordination and monitoring.	Part III, Chapter 3
Methodological and interdisciplinary support	Charmaz; Strauss & Corbin; Saldaña; governance and qualitative methodology literature	Provides methodological grounding for the controlled use of interdisciplinary sources while preserving the legal core of the analysis.	Methodology (transversal)

Note. *The table reflects the mapping of the consolidated and technically supplemented scientific literature according to its analytical function within the thesis. References are listed illustratively rather than exhaustively.*

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3. Universal Declaration of Human Rights (UDHR), adopted on 10 December 1948.
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MYKOLAS ROMERIS UNIVERSITY

UNIVERSITY OF BORDEAUX

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EUROPEAN CLIMATE LAW: EFFECTS ON COMPETENCES, NORMATIVE SUBSTANCE, AND GOVERNANCE OF THE EUROPEAN UNION

Summary of Doctoral Dissertation
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The doctoral dissertation was prepared during the period 2020–2026 at Mykolas Romeris University and the University of Bordeaux (France) and was jointly supervised under a cotutelle contract:

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SUMMARY

Introduction and Research Context

Climate change has progressively transformed from a predominantly scientific and political concern into a central legal issue, reshaping regulatory frameworks, institutional competences, and governance structures at both domestic and international levels. Within the European Union, this transformation has culminated in the emergence of a distinct EU climate law regime, crystallised in particular by Regulation (EU) 2021/1119 establishing the objective of climate neutrality by 2050.

This dissertation examines how EU climate law operates as a legally binding and enforceable regime within an EU legal order whose constitutional architecture was not originally designed to accommodate long-term, economy-wide environmental objectives. Rather than analysing the ambition of EU climate policy as such, the research focuses on the legal effects of climate neutrality as a norm, and on the transformations, it induces in competence allocation, normative coherence, and governance mechanisms.

The central premise of this study is that EU climate law does not constitute a mere sectoral extension of EU environmental policy. Instead, it functions as a structural and transversal legal framework, operating across traditional policy areas such as energy, transport, competition, the internal market, and external trade. This transversal operation raises fundamental legal questions concerning the limits of the principle of conferral, the balance of powers between EU institutions and Member States, and the compatibility of climate objectives with other foundational principles of EU law.

Research Object, Questions, and Hypotheses

The object of the research is the implementation of EU climate law, understood not merely as the adoption of climate-related legislation, but as the effective integration of climate objectives into the functioning of the EU legal order. The dissertation is structured around the following central research question:

How does EU climate law become legally effective and enforceable within the existing constitutional framework of the European Union, without formally amending the EU Treaties?

The research problem addressed in this thesis concerns the difficulty of balancing the scope and effects of EU climate law within the internal and external legal framework of the European Union. Climate change constitutes a cross-cutting challenge that affects multiple policy areas and levels of governance, while the EU legal system remains structured around a constitutionally limited system of attributed competences and sector-specific regulatory frameworks. As a result, the implementation of EU climate law raises legal questions that extend beyond environmental policy stricto sensu and touch upon the constitutional architecture, internal consistency, procedural effectiveness, and external coherence of the Union legal order.

This general research problem gives rise to four interrelated sub-problems, which structure the analysis conducted in the dissertation.

(1) Constitutional allocation of competences

The first sub-problem concerns the constitutional allocation of competences within the European Union. The principle of conferral establishes that the Union may act only within the limits of the competences attributed to it by the Treaties. Environmental policy, including climate-related action, falls within a shared competence, while the sectors most directly implicated in climate change—such as energy, transport, and industry—are governed by a fragmented set of legal bases.

EU climate law therefore relies on the mobilisation of existing competences that only partially cover climate-relevant sectors. This creates a structural tension between the scope of the Union's climate ambitions and the constitutional limits of its competences. Climate change thus constitutes an exceptional laboratory for examining the evolving balance between the Union and the Member States, as well as between EU institutions themselves.

(2) Internal consistency of the EU legal framework

The second sub-problem relates to internal consistency within the EU legal order. EU climate action is inherently cross-cutting and interacts with multiple policy areas, including internal market law, competition law, and environmental regulation. The pursuit of climate objectives may generate tensions between competing EU objectives, such as environmental protection, economic growth, and market integration.

The research examines how the Union can guarantee the consistency of climate objectives with existing EU policies and Treaty obligations, and how conflicts—particularly with internal market freedoms, competition rules, and environmental norms—are addressed through legal interpretation and institutional practice.

(3) Compliance and procedural effectiveness

The third sub-problem concerns compliance and enforcement mechanisms applicable to EU climate law. While EU climate objectives are increasingly framed in legally binding terms, the procedures available to ensure compliance remain fragmented. Structural difficulties arise in climate litigation due to standing requirements, causation, evidentiary burdens, and the justiciability of long-term commitments.

The dissertation therefore examines the possibilities and limits of judicial enforcement before national courts, the CJEU, and the ECtHR, as well as the relevance of international dispute settlement mechanisms.

(4) External coherence of EU climate law

The fourth sub-problem concerns the external coherence of EU climate law, in particular in relation to international trade law. The Union seeks to project its climate objectives internationally while remaining bound by WTO disciplines and international commitments. The research explores how conflicts between EU climate objectives and international economic obligations may be legally managed without undermining the autonomy and consistency of the EU legal order.

The central hypothesis of the dissertation is that EU climate law operates as a procedural and governance-based constitutional regime rather than as a traditional sectoral policy. It does not formally redefine the allocation of competences established by the Treaties but instead reconfigures the exercise of existing competences through

coordination mechanisms, planning obligations, monitoring procedures, and judicial review.

Methodological Framework

This dissertation adopts a legal and structural methodology designed to analyse the implementation of EU climate law as a phenomenon embedded within the constitutional and institutional architecture of the European Union. Climate change is approached as a legal stress test for the EU legal order, revealing tensions between ambition, competence allocation, normative coherence, and governance capacity.

Methodologically, the research relies primarily on qualitative doctrinal legal analysis of EU primary and secondary law, with particular attention paid to Regulation (EU) 2021/1119 as a structural legal instrument. This doctrinal analysis is complemented by a law-in-action approach, which examines how EU Climate Law operates in practice through litigation, governance mechanisms, and implementation processes.

The research follows an inductive analytical process inspired by grounded theory, allowing recurrent legal issues, governance patterns, and normative effects to emerge progressively from the analysis of case-law, institutional practice, and policy development, rather than being defined *ex ante*. A systematic examination of jurisprudence from the CJEU, the ECtHR, selected national courts, and the WTO dispute settlement system forms a central component of the analysis.

A comparative legal method is employed in relation to national implementation, focusing on selected Member States representing different legal traditions and governance models, notably France, the Netherlands, and Ireland. This comparative perspective is combined with systemic, functional, and linguistic methods of interpretation in order to assess the interaction between EU Climate Law, the allocation of competences, internal market and competition rules, and the Union's external commitments.

The dissertation is characterised by normative restraint. It does not advocate specific policy outcomes, but seeks to clarify the legal constraints, structural tensions, and procedural conditions that shape the effectiveness and legitimacy of EU Climate Law. By foregrounding law in action while remaining anchored in doctrinal and constitutional analysis, the thesis bridges legal theory and practice and provides a holistic assessment of the implementation and governance of EU Climate Law.

Part I – Competence Allocation and Constitutional Framework

EU climate law is implemented within a constitutional framework defined by the principle of conferral and by a complex distribution of competences between the European Union and its Member States. Regulation (EU) 2021/1119, which establishes climate neutrality by 2050 as a legally binding objective, does not modify the formal allocation of competences laid down in the Treaties. Instead, it introduces a transversal objective that must operate within an existing and sector-based competence structure. This raises a fundamental constitutional question: how can a long-term, economy-wide climate objective be implemented effectively without Treaty amendment?

The starting point of the dissertation is that EU climate law does not create an

autonomous "climate competence." Environmental policy remains a shared competence, while other climate-relevant sectors—such as energy, transport, industry, and internal market regulation—are governed by distinct and fragmented legal bases. EU climate law must therefore function **through the mobilisation and coordination of existing competences**, rather than through their reallocation.

Vertical Allocation of Competences: Climate Law and EU–Member State Relations

At the vertical level, the impact of EU climate law is primarily felt in the **exercise**, rather than the distribution, of competences. The European Climate Law does not transfer new powers to the Union, but it constrains national discretion by embedding Member State action within a common climate trajectory defined at EU level.

Climate neutrality operates as a binding reference point against which national policies are assessed. Member States retain competence over the choice of instruments and policy mixes, yet their regulatory autonomy is progressively framed by EU-defined objectives, planning obligations, reporting requirements, and review mechanisms. This produces a form of **functional reconfiguration** of competences: while formal competence boundaries remain intact, the scope of national discretion is narrowed in practice.

The dissertation demonstrates that this vertical effect transforms climate law into a constitutional stress test for the principle of conferral. EU climate law respects the formal limits of attributed competences yet achieves systemic steering through coordination and proceduralisation. Climate objectives thus reshape the relationship between the Union and the Member States without undermining the constitutional foundations of the EU legal order.

Horizontal Allocation of Competences: Institutional Balance and Polycentric Governance

Beyond EU–Member State relations, EU climate law also affects the horizontal distribution of powers among EU institutions. The implementation of climate neutrality relies on governance mechanisms that intensify coordination, supervision, and long-term planning. Within this framework, the European Commission emerges as a central actor.

The Commission's role extends beyond classical enforcement functions. It is responsible for monitoring progress toward climate neutrality, assessing national plans, issuing recommendations, and coordinating implementation across policy sectors. Although many of these instruments lack direct binding force, they exert **significant normative and political pressure** on Member States and structure national climate policies over time.

This institutional configuration reflects a shift toward **polycentric governance**, in which climate law is implemented through a network of actors operating at different levels and within different institutional logics. Executive steering is enhanced, while legislative and judicial controls continue to operate within constitutionally defined limits. The balance between effective coordination and democratic accountability thus

becomes a central concern of EU climate governance.

Functional Asymmetry and the Role of Independent Climate Expertise

A distinctive feature of EU climate governance is the increasing reliance on **independent expertise and monitoring bodies**. The dissertation analyses the emergence of a functional asymmetry in favour of technical and evaluative actors, which complements the Commission's coordinating role.

Independent climate bodies contribute to the credibility and stability of climate objectives by providing scientific assessments, evaluating policy coherence, and informing institutional decision-making. Their role does not involve direct regulatory authority, but rather the production of benchmarks and analyses that shape governance processes.

The dissertation argues that this evolution reflects a broader transformation of EU governance in response to long-term systemic challenges. Climate law relies on expertise and iterative evaluation to compensate for the limitations of short-term political cycles and fragmented competences. The emergence of such bodies raises questions concerning democratic legitimacy and institutional accountability yet also enhances the capacity of the Union to sustain long-term commitments.

Competence Allocation as a Structural Condition for EU Climate Law Implementation

Taken together, the analysis of vertical and horizontal competence allocation demonstrates that competence distribution constitutes a **structural condition** for the implementation of EU climate law. Climate neutrality becomes legally effective not through the reallocation of legal bases, but through governance mechanisms that reshape how competences are exercised.

EU climate law thus operates as a constitutional framework that combines binding objectives with procedural coordination and institutional steering. This mode of operation strengthens the Union's capacity to pursue climate objectives while maintaining fidelity to the principles of conferral and institutional balance.

This competence-based analysis provides the foundation for the subsequent examination of the **normative substance** of EU climate law in Part II. Once the governance architecture and competence constraints are clarified, the question turns to how climate objectives interact with existing substantive norms of EU law and reshape their interpretation and application.

Part II – Normative Substance of EU Climate Law

Beyond its effects on competence allocation, EU climate law exerts a profound influence on the normative substance of the European Union legal order. Climate objectives do not operate in isolation but interact with a dense and pre-existing body of EU law, structured around internal market integration, competition, environmental protection, and external economic relations. The implementation of EU climate law therefore raises a central normative question: how can climate objectives be integrated

into this complex legal framework without undermining its internal coherence and consistency?

The dissertation approaches this question through the twin principles of **coherence and consistency**, which function as structuring tools of EU law. Rather than creating a new normative hierarchy, EU climate law progressively reshapes the interpretation and application of existing norms. Climate neutrality operates as a transversal constraint that must be reconciled with other Treaty objectives and policy requirements, often through legal balancing rather than normative substitution.

Normative substance, in this context, does not refer to the creation of autonomous climate rights or the displacement of established legal regimes. Instead, it concerns the re-orientation of existing legal norms in light of legally binding climate objectives. The European Climate Law thus contributes to a gradual transformation of substantive EU law by influencing how norms are interpreted, justified, and limited across policy areas.

Internal Consistency of EU Climate Law

At the internal level, EU climate law interacts with a range of policy areas governed by distinct legal logics. Internal market law, competition law, energy regulation, and environmental protection are all directly affected by measures adopted in pursuit of climate neutrality. These interactions generate potential tensions between climate objectives and other core principles of EU law, such as market integration, legal certainty, and economic freedom.

The pursuit of climate objectives may justify restrictions on internal market freedoms, the reconfiguration of competition rules, or differentiated regulatory treatment of economic actors. However, such restrictions cannot be presumed lawful solely on the basis of their climate rationale. They must be assessed under established EU law doctrines governing justification, proportionality, and non-discrimination. Climate objectives therefore enter the legal analysis as relevant but non-absolute considerations, requiring judicial balancing rather than automatic precedence.

The dissertation shows that internal consistency is not achieved through uniform climate regulation, but through the judicial and administrative articulation of climate objectives with existing legal standards. Courts and institutions increasingly recognise climate protection as a legitimate public interest, yet they remain bound by the structural constraints of EU law. As a result, climate objectives reshape substantive norms incrementally, through contextual interpretation and case-specific assessment.

This approach preserves the integrity of the EU legal order while allowing climate considerations to acquire normative weight. Internal consistency thus emerges as a dynamic process of adjustment rather than as a static state of harmony. Climate law modifies the internal normative landscape of EU law by influencing the interpretation of existing rules, without formally rewriting them.

Normative Tensions in Competition and Internal Market Law

The integration of climate objectives into EU competition law and internal market

regulation illustrates the complexity of normative recalibration. Competition law, in particular, is traditionally oriented toward preserving market efficiency and preventing distortions of competition. Climate-driven cooperation between undertakings, state interventions through subsidies, and differentiated regulatory burdens challenge this paradigm.

EU climate law does not suspend competition rules, but it affects their application by introducing climate-related justifications into the legal assessment. State aid control, for example, increasingly accommodates environmental and climate objectives, provided that the measures remain proportionate and compatible with the internal market. Similarly, cooperation agreements pursuing climate goals may be assessed with greater flexibility, without abandoning core antitrust principles.

Internal market law exhibits a comparable pattern. Measures adopted to pursue climate objectives may restrict the free movement of goods or services, but such restrictions must be justified under established Treaty exceptions or overriding reasons in the public interest. Climate protection thus becomes a relevant normative factor within existing legal doctrines, rather than a self-standing ground for derogation.

The dissertation argues that these developments reflect an asymmetrical integration of climate objectives into substantive EU law. Climate considerations are increasingly recognised, but their normative force varies depending on the policy domain, the legal basis invoked, and the institutional context. This asymmetry is not a defect of the system, but a manifestation of the differentiated structure of EU law itself.

External Coherence and International Constraints

The normative effects of EU climate law extend beyond the internal legal order of the Union. Climate measures adopted at EU level must be compatible with the Union's international obligations, particularly in the field of international trade law. External coherence thus constitutes a key dimension of the normative substance of EU climate law.

The dissertation analyses this external dimension primarily through the framework of the World Trade Organization. The WTO legal order imposes constraints on trade-restrictive measures, while allowing for exceptions based on environmental protection. The logic governing this framework—based on justification, necessity, and proportionality—closely resembles internal EU law balancing mechanisms.

This structural affinity allows the Union to pursue climate objectives externally without abandoning its international commitments. However, external coherence is neither automatic nor guaranteed. Climate measures may give rise to legal disputes where the compatibility of EU objectives with WTO disciplines is contested. In such cases, the Union must navigate between its climate ambitions and the requirements of international economic law.

The dissertation shows that EU climate law does not override external commitments but must be articulated in a manner consistent with them. External coherence therefore reinforces the need for legal precision, proportionality, and justification in the design and application of EU climate measures. Climate objectives shape the

normative substance of EU external action but remain subject to structural legal constraints.

Normative Substance as a Structural Effect of EU Climate Law

Overall, the analysis demonstrates that the normative substance of EU climate law is defined by recalibration rather than replacement. Climate objectives acquire normative significance through their integration into existing legal frameworks, influencing how norms are interpreted and applied across policy areas.

EU climate law thus contributes to a transformation of the substantive content of EU law, not by creating a new normative order, but by inserting climate neutrality as a transversal legal constraint. This process preserves the coherence and stability of the EU legal system while allowing it to respond to the systemic challenge of climate change.

The examination of normative substance provides the necessary foundation for analysing governance mechanisms and judicial enforcement in the following part of the dissertation. Once climate objectives are understood as integrated into the normative fabric of EU law, the question arises as to how these objectives can be effectively governed and enforced through institutional practice and judicial review.

Part III – Judicial Enforcement and Climate Litigation in the Implementation of EU Climate Law

Beyond institutional governance mechanisms, the implementation of EU climate law increasingly engages judicial actors. Climate obligations enshrined in EU law give rise to claims before national and supranational courts, raising questions about justiciability, access to justice, standards of review, and the remedial capacity of judicial institutions. Part III of the dissertation therefore examines **climate litigation as a mode of implementation**, distinct from administrative governance, and subject to its own structural constraints.

Judicial enforcement does not operate as a centralised system capable of directing climate policy. Instead, it constitutes a **fragmented and procedurally mediated form of implementation**, whereby courts contribute to the legal effectiveness of climate obligations by clarifying legal duties, constraining discretion, and reinforcing accountability, without substituting themselves for legislative or executive authorities.

The analysis focuses on three levels of adjudication: national courts, the CJEU, and the ECtHR. Each of these fora plays a distinct and limited role in the judicialisation of climate law.

National Courts as Laboratories for Climate Litigation

National courts constitute the primary forum in which climate-related claims are currently brought and adjudicated. Operating at the intersection of domestic law, EU law, and international climate commitments, they play a crucial role in translating abstract climate objectives into legally cognisable obligations.

The dissertation treats national climate litigation as a set of **laboratories**, in which

courts experiment with different legal techniques to address the challenges posed by climate change. These challenges include standing, causation, evidentiary uncertainty, temporal distance between conduct and harm, and the constitutional limits of judicial intervention.

Judicial responses across Member States exhibit significant diversity. In some jurisdictions, courts have adopted rights-based approaches, grounding climate obligations in fundamental rights and imposing concrete duties on public authorities. In others, courts have preferred procedurally restrained approaches, focusing on legality, proportionality, and the adequacy of administrative decision-making processes.

Despite these divergences, national climate litigation contributes to the implementation of EU climate law by **enhancing the legal visibility of climate commitments** and by reshaping administrative discretion. Even where courts refrain from prescribing specific policy measures, their judgments alter the legal context in which climate policy is formulated and executed. National courts thus function as decentralised enforcement actors, without forming a uniform or hierarchical system of climate adjudication.

Access to Climate Litigation before the CJEU

At EU level, judicial enforcement of climate law is subject to significant procedural constraints. Access to the CJEU remains structured around standing requirements that restrict the ability of individuals and non-governmental organisations to bring direct actions challenging EU climate measures.

The dissertation shows that these standing requirements operate as a **structural filter**, preserving institutional balance while limiting the justiciability of climate obligations at EU level. Direct actions for annulment challenging EU climate acts rarely succeed on admissibility grounds, even when such acts produce widespread and long-term effects.

As a result, the **preliminary ruling procedure** assumes particular importance. Through references from national courts, climate-related legal questions may reach the Court of Justice indirectly. This procedural pathway integrates climate litigation into the ordinary judicial dialogue of EU law, allowing issues of interpretation and validity to be addressed without transforming the Court into a general climate tribunal.

Judicial review at EU level thus contributes to implementation primarily through **clarification and coordination**, rather than through direct enforcement. The Court's role remains bounded by procedural design and constitutional limits, reinforcing the idea that climate litigation complements, rather than replaces, political and administrative processes.

Climate-Related Claims before the ECtHR

The judicialisation of climate obligations also extends to the ECtHR, where applicants increasingly seek to link climate change to Convention rights. Climate-related applications raise complex questions concerning victim status, causation, and the scope of positive obligations under the Convention.

The dissertation shows that the ECtHR has adopted a **cautious and incremental approach**. Rather than recognising a free-standing right to climate protection, the Court has examined climate-related claims through existing rights and procedural guarantees. This approach preserves the integrity of the Convention system while acknowledging the legal relevance of climate change.

From the perspective of EU climate law, recourse to the ECtHR does not constitute a parallel enforcement mechanism, but rather an **indirect reinforcement** of climate obligations through human-rights reasoning. Its contribution to implementation remains limited and context-dependent, shaped by admissibility requirements and the subsidiarity principle.

Structural Limits of Climate Litigation as an Enforcement Mechanism

Overall, the analysis demonstrates that climate litigation constitutes an **auxiliary mode of implementation** of EU climate law. Courts contribute to accountability, legal clarification, and procedural discipline, but they do not provide a comprehensive enforcement mechanism capable of steering climate policy independently.

Judicial enforcement is constrained by standing rules, institutional balance, and the long-term and diffuse nature of climate harm. These constraints are not accidental but reflect deliberate constitutional choices within both the EU and the Convention legal orders.

The central finding of this part of the dissertation is that **climate litigation enhances the legal effectiveness of EU climate law without transforming courts into climate governors**. Judicial intervention operates within clearly delineated boundaries, reinforcing legality while preserving political responsibility for climate action.

This judicial analysis completes the examination of the effects of EU climate law on competences, normative substance, and implementation, and prepares the ground for the final synthesis of the dissertation.

Main findings and contributions

This dissertation has analysed **EU climate law** as a legally binding regime whose effects extend beyond environmental policy into the constitutional and institutional functioning of the European Union. It has shown, first, that EU climate law reshapes the **exercise** of competences without formally reallocating them, and does so through transversal steering effects embedded in planning, coordination, monitoring, and review obligations. Second, it has demonstrated that climate neutrality operates as a **transversal normative constraint** that recalibrates the coherence and consistency of EU law across internal market, competition, environmental, and external trade domains. Third, the dissertation has established that judicial enforcement contributes to implementation primarily through **selective, procedurally mediated** pathways, with national courts functioning as laboratories and EU-level adjudication remaining structurally filtered through access and admissibility constraints.

Beyond these substantive findings, the dissertation makes two principal original contributions:

(i) the formulation of a **European Climate Trilemma** as an analytical framework for understanding the structural tensions inherent in EU climate law, and
(ii) the proposal for a **European Climate Network** as a governance response designed to manage those tensions within the constitutional limits of the Union legal order.

The European Climate Trilemma: Structural Tensions in EU Climate Law

The central conceptual contribution of this dissertation is the formulation of a **European Climate Trilemma**, which captures the structural tensions that characterise the implementation of EU climate law. This trilemma arises from the difficulty of simultaneously achieving three objectives that are all normatively central to the European Union:

1. **Deep environmental integration**, meaning the effective and transversal integration of climate objectives across all EU policies and sectors;
2. **Preservation of the internal market**, including the protection of free movement, competition, legal certainty, and economic integration;
3. **Climate equity**, encompassing distributive fairness between Member States, economic actors, and social groups, as well as intergenerational considerations.

The dissertation demonstrates that EU climate law cannot fully and uniformly maximise these three objectives at the same time. Advancing deep environmental integration may require differentiated treatment, regulatory constraints, or state intervention that challenge internal market principles. Conversely, strict preservation of market uniformity may limit regulatory ambition and the scope for equity-oriented measures. Likewise, equity-driven mechanisms may complicate legal coherence and introduce asymmetries within the internal market.

The European Climate Trilemma is **not a normative claim about what the EU should choose**, nor a prescriptive model. It is an **analytical framework** that explains why EU climate law operates through incremental integration, legal balancing, and procedural coordination rather than through hierarchical supremacy of climate objectives. The trilemma clarifies that tensions observed in competences, normative coherence, governance, and litigation are not anomalies or failures, but structural features of EU climate law as embedded in the Union's framework.

Normative Integration, Governance Lead – the Role of a European Climate Network

The dissertation also advances a **governance-oriented contribution** through the proposal of a **European Climate Network**.

This proposal is developed not as a solution to the climate trilemma and not as a claim that structural tensions can be eliminated. Rather, it reflects a **governance observation and normative reflection** grounded in the analysis conducted in Parts I and II, particularly regarding polycentric governance, the role of the European Commission, and the increasing importance of independent expertise in climate action.

The European Climate Network is conceived as a **coordination framework**, not as a new regulatory authority and not as a substitute for political decision-making.

Its purpose is to enhance transparency, coherence, and mutual awareness among EU institutions, national authorities, and independent climate bodies involved in the implementation of EU climate law.

By facilitating information exchange, methodological alignment, and early identification of legal and policy tensions, such a network could improve the **manageability** of climate governance within the existing legal framework. Importantly, the proposal remains fully compatible with the principle of conferral and institutional balance. It does not claim to resolve the inherent tensions identified by the climate trilemma, but to **make them more visible, intelligible, and institutionally tractable**.

Limitations and Future Research Perspectives

This dissertation is characterised by normative restraint. It does not evaluate the substantive adequacy of EU climate targets nor advocate specific policy instruments. Its contribution lies in clarifying legal mechanisms, institutional constraints, and structural tensions shaping implementation.

The persistence of the climate trilemma also sheds light on the **structural limits of judicial enforcement**, analysed in Part III. Climate litigation can reinforce deep environmental integration by constraining administrative discretion and enhancing accountability. However, courts remain bound by internal market law, procedural admissibility requirements, and principles of judicial restraint. Their capacity to address climate equity is particularly limited, as distributive choices lie primarily within the political domain.

These limits do not undermine the value of climate litigation, but they confirm that judicial mechanisms function as **complements rather than substitutes** to governance and legislative action. Climate litigation contributes to the legal visibility and enforceability of climate objectives, while remaining structurally incapable of resolving the trilemma in its entirety.

Future research could build on this framework by examining how fiscal instruments, social policy integration, or differentiated economic governance interact with EU climate law and the climate trilemma. The conceptual model developed in this dissertation may also be applied to other domains characterised by cross-cutting and long-term objectives, such as digital governance or health policy.

The limits of the study follow from this design. First, it does not provide an empirical assessment of emissions outcomes or policy performance. Second, the comparative national dimension is selective rather than exhaustive and serves primarily to illustrate legal mechanisms and structural divergences. Third, climate litigation and climate governance remain rapidly evolving domains, and future case law—particularly at supranational levels—may further refine access to justice, standards of review, and the interaction between EU and ECHR systems.

Future research could apply the climate trilemma framework to emerging EU instruments and new domains of climate governance (including fiscal and social policy integration) or examine more systematically how equity-oriented mechanisms interact with internal market disciplines in specific regulatory contexts.

Concluding Synthesis

The dissertation demonstrates that **EU climate law** constitutes a structural legal regime within the EU legal order, producing effects on competences, normative substance, and governance without Treaty amendment. Climate neutrality functions as a binding objective yet operates within a legal system defined by shared competences, internal market foundations, and plural governance levels.

The analytical and methodological contribution of this work lies in showing that implementation depends less on formal competence transfer than on the legal system's capacity to manage structural tensions. The **EU Climate Trilemma** provides a framework for understanding those tensions, while the proposal for a **European Climate Network** offers a legally grounded governance response that improves coherence and coordination without undermining conferral or institutional balance.

Taken together, the findings confirm that EU climate law advances through proceduralisation, coordination, and legal balancing rather than judicial or institutional centralisation. Its effectiveness depends on how successfully the Union can reconcile deep environmental integration with internal market preservation and climate equity, within the constitutional boundaries of the EU legal order.

This dissertation has shown that **European climate law constitutes a distinct legal regime**, operating within and reshaping the EU constitutional framework without formal Treaty amendment. Its effects on competences, normative substance, and implementation reveal a legal order adapting incrementally to a systemic environmental challenge.

EU climate law does not resolve the tensions between environmental ambition, market integration, and equity. Instead, it institutionalises these tensions through legal mechanisms that prioritise coordination, proceduralisation, and legal balancing. The climate trilemma identified in this research captures the structural limits and possibilities of this approach.

The central conclusion of the dissertation is that **the effectiveness of EU climate law depends less on the expansion of competences than on the capacity of the legal system to manage trade-offs coherently and legitimately**. Understanding this dynamic is essential not only for climate law, but for the future evolution of EU public law confronted with long-term, cross-cutting challenges.

LIST OF SCIENTIFIC PUBLICATIONS

- **Anyssa FATMI**, "*Des cultures climatiques ? Dissonances et unisson – Étude comparée des cadres juridiques français et lituanien*" (*"Climate Culture(s)? Comparative Legal Approach between Lithuania and France"), Le droit face à la diversité Culturelle*, Mare & Martin, 2025, https://cris.mruni.eu/cris/handle/007/50154.
- **Anyssa FATMI**, *"From Climate Litigation towards Climate Justice: A Climate Catalogue of Rights," Journal of Academic Discourse on Environment (JADIE)*, 2025 (peer-reviewed, English), https://doi.org/10.20870/revue-jadie.2025.9781.
- **Anyssa FATMI**, *"EU Climate Law Governance: A Glance at the Climate Trilemma," Environmental Liability: Law, Policy, and Practice* (peer-reviewed, English) (accepted for publishing).

OTHER PUBLICATIONS

- **Anyssa FATMI**, *"Statelessness – Insights from International, European and National Perspectives,"* Faculty of Law, Centre for European Research and Education, University of Pécs, 2019 (peer-reviewed article, English). ISBN: 9789634294214.
- **Regina Valutytė, Michael Friedewald, Ralf Lindner, Thomas Jackwerth-Rice, Manon Knockaert, Pauline Lapointe, Darius Stitilis, Andrius Bambalas, Anyssa FATMI**, *"SPARTA – D2.3. Key Challenges and Promising Solution Approaches,"* Fraunhofer Institute, 2021 (peer-reviewed research deliverable, English). DOI: 10.24406/publicafhg301383.

CONFERENCE PRESENTATIONS AND ACADEMIC EVENTS

As speaker

- SPARTA Project (2020–2021): workshops and presentations on responsible cybersecurity research, and regulatory challenges.
- Bordeaux European Summer School – *First Climate Moot Court*: speaker and course co-designer (15 September 2021).
- European House of Bordeaux: keynote intervention on the EU and Democracy (17 November 2021).
- First Colloquium of Young Researchers in Environmental Law: keynote speaker and contribution to the creation of the first French network of young environmental law researchers (15 April 2024).
- Débat d'idées 2024, presentation of climate cultures in the EU, comparative approach between France and Lithuania (May 2024)

- SOCIN 2024 Conference: presentation of a climate catalogue of rights (25–27 June 2024).
- University College Cork, 15th Postgraduate Research Symposium on Environmental Law: presentation on the EU climate trilemma (30 April 2025).

As organiser

- NordPlus Network Summit: coordination of an international academic event involving participants from 12 countries (October 2019).
- Bordeaux European Summer School: co-organisation of the first climate moot court (2021).

As participant

- French Society for Environmental Law (SFDI), Annual Colloquium on Commons under Environmental Law, Bordeaux (2021).
- UCC Law and the Environment Conference, 21st edition (May 2025)
- Doctoral seminar on Environmental Law with Corinne Lepage (September 2024)

CURRICULUM VITAE

Education

- **Double Doctorate in Law (cotutelle)**, University of Bordeaux (France), and Mykolas Romeris University (Lithuania), 2020–2025.
- Doctoral research on the implementation and governance of European climate law within the internal and external legal framework of the EU.
- **Double master's degree (LL.M.) in EU Law and Governance**, University of Bordeaux, and Mykolas Romeris University, 2020, *summa cum laude*. master's thesis on EU and WTO compliant green subsidies
- **Master's degree in European Law**, University of Bordeaux, 2018, *magna cum laude*.
- **Master's degree in international law**, University of Bordeaux, 2017, *cum laude*.

Teaching and Academic Activities

- Teaching in EU Foreign and External Relations (master's level) between 2020 and 2025.
- Judge in EU law moot courts (2019–2024).
- Co-supervision of master's theses and student mentoring in EU law and governance programmes.

Research Interests

EU law and governance; EU climate and environmental law; climate litigation and climate justice; EU institutional and constitutional law; international trade law (WTO); comparative law.

MYKOLO ROMERIO UNIVERSITETAS

BORDO UNIVERSITETAS

Anyssa Fatmi

EUROPOS SĄJUNGOS KLIMATO TEISĖ: POVEIKIS KOMPETENCIJŲ, REGULIAVIMO IR EUROPOS SĄJUNGOS VALDYSENOS SRITYSE

Mokslo daktaro disertacijos santrauka
Socialiniai mokslai, teisė (S 001)

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- pagal Mykolo Romerio universitetui ir Vytauto Didžiojo universitetui Lietuvos Respublikos švietimo, mokslo ir sporto ministro 2019 m. vasario 22 d. įsakymu Nr. V 160 „Dėl doktorantūros teisės suteikimo" suteiktą doktorantūros teisę;
- vadovaujantis doktorantūros studijų vykdymą reglamentuojančiais teisės aktais, nustatytais 2016 m. gegužės 25 d. įsakymu, su vėlesniais jo pakeitimais, visų pirma 2016 m. liepos 1 d., 2020 m. spalio 27 d., 2021 m. spalio 11 d. ir 2022 m. rugpjūčio 26 d. įsakymais, kuriais nustatoma nacionalinė doktorantūros studijų sistema ir tvarka, pagal kurią Prancūzijoje suteikiamas nacionalinis daktaro laipsnis.

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SANTRAUKA

Įvadas ir tyrimo kontekstas

Klimato kaita palaipsniui transformavosi iš daugiausia mokslinės ir politinės problemos į esminį teisinį klausimą, iš esmės pertvarkantį teisinį reguliavimą, institucinį kompetencijų paskirstymą ir valdymo struktūras tiek nacionaliniu, tiek tarptautiniu lygmenimis. Europos Sąjungoje (ES) ši transformacija suformavo savitą Europos klimato teisės režimą, kurio pagrindinis atskaitos taškas yra Reglamentas (ES) 2021/1119, nustatantis teisiškai privalomą klimato neutralumo tikslą iki 2050 m.

Šioje disertacijoje nagrinėjama, kaip ES klimato teisė veikia kaip teisiškai privalomas ir įgyvendinamas režimas ES teisinėje sistemoje, kurios konstitucinė architektūra iš pradžių nebuvo pritaikyta ilgalaikiams, visą ekonomiką apimantiems aplinkosauginiams tikslams. Tyrime sąmoningai nesiekiama vertinti ES klimato politikos ambicijų; dėmesys sutelkiamas į klimato neutralumo tikslo sukeltus teisinius padarinius bei į transformacijas, sukeliamas kompetencijų paskirstymui, norminiam turiniui ir valdymo mechanizmams.

Pagrindinė šio tyrimo prielaida: ES klimato teisė nėra vien sektorinis ES aplinkos teisės tęsinys. Ji veikia kaip struktūrinė ir tarpsektorinė teisės normų sistema, apimanti tokias tradicines politikos sritis kaip energetika, transportas, konkurencijos teisė, vidaus rinka ir išorinė prekyba. Toks tarpsektorinis veikimas kelia esminius teisinius klausimus dėl suteiktos kompetencijos principo ribų, valdžių pusiausvyros tarp ES institucijų ir valstybių narių bei klimato tikslų suderinamumo su kitomis pamatinėmis ES teisės normomis.

Tyrimo objektas, klausimai ir hipotezės

Tyrimo objektas – ES klimato teisės įgyvendinimas, suprantamas ne vien kaip su klimato politika susijusių teisės aktų priėmimas, bet kaip faktinis klimato tikslų integravimas į ES teisės sistemos funkcionavimą. Disertacija grindžiama šiuo pagrindiniu tyrimo klausimu:

Kaip ES klimato teisė tampa teisiškai veiksminga ir vykdytina egzistuojančioje Europos Sąjungos konstitucinėje sistemoje, formaliai nepakeitus ES sutarčių?

Tyrimo problema kyla iš sudėtingo uždavinio subalansuoti ES klimato teisės apimtį ir poveikį vidinėje ir išorinėje ES teisinėje sistemoje. Klimato kaita yra iš prigimties tarpsektorinis iššūkis, paveikiantis kelias politikos sritis ir valdymo lygmenis, tuo tarpu ES teisinė sistema išlieka grindžiama konstituciškai ribotų, suteiktų kompetencijų bei sektorinių reguliavimo režimų struktūra. Dėl to ES klimato teisės įgyvendinimas kelia teisinius klausimus, peržengiančius aplinkos teisės *stricto sensu* ribas ir liečiančius Sąjungos konstitucinę sandarą, teisinio reguliavimo nuoseklumą ir suderinamumą, procedūrinį veiksmingumą bei išorinę sanglaudą.

Ši bendra tyrimo problema išskaidoma į keturias tarpusavyje susijusias potemes.

(1) Konstitucinis kompetencijų paskirstymas

Pirmoji potemė susijusi su konstituciniu kompetencijų paskirstymu ES. Pagal suteiktos kompetencijos principą Sąjunga gali veikti tik sutarčių jai suteiktų įgaliojimų ribose. Aplinkos politika, įskaitant su klimato kaita susijusią veiklą, priskiriama bendrosios kompetencijos sričiai, o su klimato kaita tiesiogiai susiję sektoriai – energetika, transportas ir pramonė – reglamentuojami fragmentuotai. Todėl ES klimato teisė remiasi esamų kompetencijų mobilizavimu, kurios tik iš dalies apima klimatui reikšmingus sektorius. Tai sukuria struktūrinę įtampą tarp ES klimato ambicijų masto ir konstitucinių jos kompetencijos ribų. Klimato kaitos režimas tampa išskirtine teisine analitine laboratorija, leidžiančia nagrinėti kintančią pusiausvyrą tarp ES ir valstybių narių, taip pat tarp pačių ES institucijų.

(2) ES teisinio reguliavimo suderinamumas

Antroji potemė susijusi su ES teisinio reguliavimo nuoseklumu ir suderinamumu. ES klimato politika yra iš esmės tarpsektorinė, o ES klimato teisė sąveikauja su vidaus rinkos teise, konkurencijos teise bei aplinkosauginiu reguliavimu. Klimato tikslų siekimas gali sukelti įtampą tarp skirtingų ES tikslų, tokių kaip aplinkos apsauga, ekonominė integracija ir augimas.

Disertacijoje nagrinėjama kaip Sąjunga gali užtikrinti klimato tikslų suderinamumą su esamomis ES politikomis ir sutarčių įsipareigojimais, bei kaip teisinio aiškinimo ir institucinio taikymo būdu sprendžiami konfliktai, pirmiausia susiję su vidaus rinkos laisvėmis, konkurencijos taisyklėmis ir aplinkosaugos normomis.

(3) Atitiktis ir procedūrinis veiksmingumas

Trečioji potemė susijusi su ES klimato teisės įgyvendinimo ir laikymosi priežiūros mechanizmais. Nors klimato tikslai vis dažniau formuluojami kaip teisiškai privalomi, jų įgyvendinimo procedūros išlieka fragmentuotos. Bylose teismuose dėl ES klimato teisės įgyvendinimo kyla esminių sunkumų dėl teisės kreiptis į teismą reikalavimų, priežastinio ryšio nustatymo, įrodinėjimo naštos bei į ateitį nukreiptų valstybės įsipareigojimų įgyvendinimo užtikrinimo.

Todėl disertacijoje nagrinėjamos teisių, susijusių su klimato kaita, užtikrinimo galimybės ir ribos nacionaliniuose teismuose, Europos Sąjungos Teisingumo Teisme (ESTT) ir Europos Žmogaus Teisių Teisme (EŽTT), taip pat tarptautinių ginčų sprendimo mechanizmų, tokių kaip Pasaulio prekybos organizacijos (PPO) tinkamumas.

(4) ES klimato teisės išorinė sanglauda

Ketvirtoji potemė susijusi su ES klimato teisės išorine sanglauda, ypač tarptautinės prekybos teisės kontekste. Europos Sąjunga siekia tarptautinės lyderystės klimato srityje, tačiau tuo pačiu išlieka saistoma Pasaulio prekybos organizacijos taisyklių ir tarptautinių ekonominių įsipareigojimų. Disertacijoje analizuojama, kaip galimi konfliktai tarp ES klimato tikslų ir tarptautinės ekonominės teisės normų gali būti teisiškai valdomi nepažeidžiant ES teisės sistemos autonomijos ir nuoseklumo.

Pagrindinė disertacijos hipotezė teigia, kad **ES klimato teisė veikia kaip**

procedūriškai struktūruotas ir specialia valdysena grindžiamas konstitucinis režimas, o ne kaip tradicinė sektorinė politika. Ji formaliai nekeičia sutarčių nustatyto kompetencijų paskirstymo, tačiau rekonstruoja esamų kompetencijų įgyvendinimą per koordinavimo, planavimo, stebėsenos ir teisminės kontrolės mechanizmus.

Metodologija

Disertacijoje taikoma doktrininė teisinė metodologija, papildyta struktūrine ir institucine analize, kuria siekiama atskleisti ES klimato teisės įgyvendinimą kaip reiškinį, funkcionuojantį ES konstitucinės ir institucinės sandaros rėmuose. Klimato kaita analizuojama kaip ES teisinės sistemos atsparumo testas, leidžiantis identifikuoti įtampas tarp reguliavimo tikslų ambicingumo, kompetencijų paskirstymo, norminio nuoseklumo ir valdymo pajėgumų.

Tyrimas daugiausia remiasi ES pirminės ir antrinės teisės doktrinine analize, ypatingą dėmesį skiriant Reglamentui (ES) 2021/1119 kaip struktūriniam teisiniam dokumentui. Šią analizę papildo sisteminė ESTT, EŽTT, pasirinktų nacionalinių teismų ir PPO ginčų sprendimo sistemos praktikos analizė.

Vertinant ES klimato teisės įgyvendinimą nacionaliniame lygmenyje, taikomas lyginamasis metodas, orientuotas į pasirinktų valstybių narių – Prancūzijos ir Airijos – teisinės ir institucinės praktikos vertinimą, atsižvelgiant į skirtingas jų teisines tradicijas ir valdymo modelius.

Disertacijai būdingas normatyvinis santūrumas: joje neginčijami konkretūs viešosios politikos sprendimai, bet siekiama sistemiškai identifikuoti teisinius ribojimus, struktūrines įtampas ir procedūrinius aspektus, darančius įtaką ES klimato teisės veiksmingumam įgyvendinimui.

I disertacijos dalis – Kompetencijų paskirstymas ir konstitucinė sandara

ES klimato teisė įgyvendinama konstitucinėje sistemoje, apibrėžtoje suteiktos kompetencijos principu ir sudėtingu kompetencijų paskirstymu tarp ES ir valstybių narių. Reglamentas (ES) 2021/1119, nustatantis klimato neutralumą iki 2050 m. kaip teisiškai privalomą tikslą, nekeičia sutarčių nustatyto formalaus kompetencijų paskirstymo. Jis įveda tarpsektorinį tikslą, kuris turi veikti esamoje, sektorine logika paremtoje kompetencijų struktūroje. Tai kelia esminį konstitucinį klausimą: kaip ilgalaikis, visą ekonomiką apimantis klimato tikslas gali būti veiksmingai įgyvendintas be formalaus sutarčių keitimo?

Disertacijos atspirties taškas yra tai, kad ES klimato teisė nesukuria savarankiškos „klimato kompetencijos“. Aplinkos politika išlieka bendrosios kompetencijos sritimi, o kiti klimatui reikšmingi sektoriai: energetika, transportas, pramonė ir vidaus rinkos reguliavimas – reglamentuojami atskiromis, fragmentuotomis teisės normomis. Todėl ES klimato teisė turi veikti per esamų kompetencijų koordinavimą, o ne per jų perskirstymą.

Vertikalus kompetencijų paskirstymas: klimato teisė ir ES – valstybių narių santykiai

Vertikaliuoju lygmeniu ES klimato teisės poveikis pirmiausia pasireiškia

kompetencijų įgyvendinime, o ne jų paskirstyme. ES klimato teisė neperduoda naujų įgaliojimų Sąjungai, tačiau riboja nacionalinę diskreciją, įtvirtindama valstybių narių veiklą bendroje ES lygmens klimato trajektorijoje.

Klimato neutralumas veikia kaip teisiškai privalomas atskaitos taškas, pagal kurį vertinama nacionalinė politika. Valstybės narės išlaiko kompetenciją pasirinkti politikos priemones ir jų derinius, tačiau jų reguliavimo autonomija palaipsniui struktūruojama per ES nustatytus tikslus, planavimo įpareigojimus, ataskaitų teikimo reikalavimus ir peržiūros mechanizmus. Tai sukuria funkcionalų kompetencijų pokytį: nors formalios kompetencijų ribos išlieka nepakitusios, nacionalinės diskrecijos apimtis praktikoje siaurėja.

Disertacijoje parodoma, kad šis vertikalus poveikis paverčia klimato teisę savotišku konstituciniu suteiktos kompetencijos principo „atsparumo patikros testu". ES klimato teisė gerbia formalius suteiktų kompetencijų apribojimus, tačiau kartu pasiekia sisteminį koordinavimą per procedūras ir bendradarbiavimą. Tokiu būdu klimato tikslai pertvarko ES ir valstybių narių santykį nepažeisdami ES teisės konstitucinių pamatų.

Horizontalus kompetencijų paskirstymas: institucinė pusiausvyra ir policentrinis valdymas

Be ES ir valstybių narių santykių, ES klimato teisė daro poveikį ir horizontaliam įgaliojimų paskirstymui tarp ES institucijų. Klimato neutralumo įgyvendinimas remiasi valdymo mechanizmais, stiprinančiais koordinavimą, priežiūrą ir ilgalaikį planavimą. Šiame kontekste Europos Komisija iškyla kaip centrinis veikėjas.

Komisijos vaidmuo peržengia tradicines vykdymo funkcijas. Ji atsakinga už pažangos klimato neutralumo tikslų link stebėseną, nacionalinių planų vertinimą, rekomendacijų teikimą ir įgyvendinimo koordinavimą tarp įvairių politikos sričių. Nors daugelis šių priemonių neturi tiesioginio teisiškai privalomo pobūdžio, jos daro reikšmingą teisinį ir politinį spaudimą valstybėms narėms bei laikui bėgant struktūruoja nacionalines klimato politikas.

Ši institucinė konfigūracija atspindi poslinkį policentrinio valdymo link – režimo, kuriame klimato teisė įgyvendinama per įvairių institucijų tinklą, veikiantį skirtingais lygmenimis ir pagal skirtingas institucines logikas. Vykdomosios valdžios koordinavimo vaidmuo sustiprėja, tuo tarpu teisėkūros ir teisminės kontrolės funkcijos ir toliau veikia konstituciškai apibrėžtų ribų rėmuose. Taigi, veiksmingo koordinavimo ir demokratinės atskaitomybės pusiausvyra tampa centriniu ES klimato valdymo klausimu.

Funkcinė asimetrija ir nepriklausomos klimato ekspertizės vaidmuo

Išskirtinis Europos Sąjungos klimato valdymo bruožas yra vis didėjanti priklausomybė nuo nepriklausomų ekspertinės kompetencijos ir stebėsenos institucijų. Disertacijoje analizuojamas funkcinės asimetrijos formavimasis ekspertinių ir vertinimo funkcijas vykdančių subjektų, kurie papildo Komisijos koordinuojamąjį vaidmenį, naudai.

Nepriklausomos klimato kaitos srityje veikiančios institucijos prisideda prie klimato tikslų patikimumo ir stabilumo, teikdamos mokslinius vertinimus, analizuodamos politikos nuoseklumą ir informuodamos institucijas, priimančias sprendimus. Jų vaidmuo nesusijęs su tiesiogine reguliacine galia, tačiau šios institucijos įtakoja valdymo procesus per metodikas, rodiklius ir analitines išvadas.

Disertacijoje teigiama, kad ši raida atspindi platesnę ES valdysenos transformaciją atliepiant ilgalaikius sisteminius iššūkius. Klimato teisė remiasi ekspertize ir pakartotine vertinimo logika tam, kad kompensuotų trumpalaikių politinių ciklų ir fragmentuotų kompetencijų ribotumus. Tuo pačiu šių institucijų atsiradimas kelia klausimų dėl demokratinio teisėtumo ir institucinės atskaitomybės, tačiau kartu stiprina Sąjungos gebėjimą išlaikyti ilgalaikius įsipareigojimus.

Kompetencijų paskirstymas kaip struktūrinė ES klimato teisės įgyvendinimo sąlyga

Apibendrinant, vertikalaus ir horizontalaus kompetencijų paskirstymo analizė rodo, kad kompetencijų struktūra sudaro esminę struktūrinę sąlygą ES klimato teisės įgyvendinimui. Klimato neutralumas tampa teisiškai veiksmingas ne per teisinių pagrindų perskirstymą, bet per valdymo mechanizmus, kurie pertvarko kompetencijų įgyvendinimo būdus.

Tokiu būdu ES klimato teisė veikia kaip konstitucinė sistema, jungianti teisiškai privalomus tikslus su procedūriniu koordinavimu ir instituciniu valdymu. Toks veikimo modelis stiprina Sąjungos pajėgumą siekti klimato tikslų, kartu išlaikant ištikimybę suteiktos kompetencijos ir institucinės pusiausvyros principams.

Ši kompetencijomis grindžiama analizė sudaro pagrindą tolesniam ES klimato teisės norminio turinio nagrinėjimui II dalyje. Išaiškinus valdymo architektūrą ir kompetencijų ribojimus, kyla klausimas, kaip klimato tikslai sąveikauja su esamomis ES teisės normomis ir keičia jų aiškinimą bei taikymą.

II disertacijos dalis – ES klimato teisės reguliavimas

Be poveikio kompetencijų paskirstymui, ES klimato teisė daro reikšmingą įtaką ES teisės norminiam turiniui. Klimato tikslai neveikia izoliuotai – jie veikia egzistuojantį teisinį reguliavimą, struktūruotą aplink vidaus rinkos integraciją, konkurenciją, aplinkos apsaugą ir išorinius ekonominius santykius. Dėl to ES klimato teisės įgyvendinimas kelia esminį klausimą: kaip klimato tikslai gali būti integruoti į šią sudėtingą teisinę sistemą, nepažeidžiant jos vidaus nuoseklumo ir užtikrinant suderinamumą?

Šis klausimas disertacijoje nagrinėjamas remiantis dviem pagrindiniais principais – **nuoseklumo** ir **darnumo**, kurie ES teisėje atlieka struktūruojančių instrumentų funkciją. Vietoje naujos teisinės hierarchijos kūrimo ES klimato teisė palaipsniui pertvarko esamų normų aiškinimą ir taikymą. Klimato neutralumas veikia kaip tarpsektorinis teisinis apribojimas, kuris turi būti derinamas su kitais sutarčių tikslais ir politikos reikalavimais, dažniausiai taikant teisinio balansavimo mechanizmą, o ne kuriant naują teisinį reguliavimą.

Toks kelias remiasi ne savarankiškų klimato teisių sukūrimu ar nusistovėjusių teisinių režimų išstūmimu. Jis reiškia esamų teisės normų **perorientavimą**, atsižvelgiant

į teisiškai privalomus klimato tikslus. Taigi, Europos klimato teisė prisideda prie laipsniško ES materialinės teisės transformacijos, darydama įtaką tam, kaip normos aiškinamos, pagrindžiamos ir ribojamos skirtingose politikos srityse.

ES klimato teisės vidaus nuoseklumas

Vidaus lygmeniu ES klimato teisė sąveikauja su politikos sritimis, kurioms būdinga skirtinga teisinė logika. Vidaus rinkos teisė, konkurencijos teisė, energetikos teisė ir aplinkos apsauga yra tiesiogiai veikiami priemonių, priimamų siekiant klimato neutralumo. Tokia sąveika gali sukelti įtampą tarp klimato tikslų ir kitų esminių ES teisės principų, tokių kaip rinkos integracija, teisinis tikrumas ir ekonominės laisvės.

Klimato tikslų siekimas gali pateisinti vidaus rinkos laisvių ribojimus, konkurencijos taisyklių pertvarkymą arba diferencijuotą ekonominių subjektų teisinį reguliavimą. Tačiau tokie ribojimai negali būti laikomi teisėtais vien dėl jų klimato kaita grįsto pagrindo. Jie turi būti vertinami pagal nusistovėjusias ES teisės doktrinas, reglamentuojančias pagrindimą, proporcingumą ir nediskriminavimą. Todėl klimato tikslai teisiniame vertinime veikia kaip reikšmingi, tačiau ne absoliutūs argumentai, reikalaujantys teisminio balansavimo, o ne automatinės pirmenybės.

Disertacijoje parodoma, kad vidaus teisinio reguliavimo nuoseklumas pasiekiamas ne per vienodą klimato reguliavimą, bet per klimato tikslų ir esamų teisės standartų teisminį bei administracinį derinimą. Teismai ir institucijos vis dažniau pripažįsta klimato apsaugą kaip teisėtą viešąjį interesą, tačiau lieka saistomi struktūrinių ES teisės ribojimų. Dėl to klimato tikslai palaipsniui pertvarko materialines teisės normas, taikant kontekstinį aiškinimą ir individualų atvejų vertinimą.

Toks požiūris leidžia išsaugoti ES teisės sistemos integralumą, kartu suteikiant klimato argumentams teisinę reikšmę. Todėl vidaus teisinio reguliavimo nuoseklumas suvokiamas kaip dinamiškas prisitaikymo procesas, o ne kaip statiška harmonija. Klimato teisė keičia ES vidaus normatyvinį kraštovaizdį, darydama įtaką esamų taisyklių aiškinimui, formaliai jų neperrašydama.

Normatyvinės įtampos konkurencijos ir vidaus rinkos teisėje

Klimato tikslų integravimas į ES konkurencijos teisę ir vidaus rinkos reguliavimą atskleidžia teisinio suderinamumo sudėtingumą. Konkurencijos teisė tradiciškai orientuota į rinkos efektyvumo išsaugojimą ir konkurencijos iškraipymų prevenciją. Klimato tikslais grindžiamas įmonių bendradarbiavimas, valstybės intervencijos per subsidijas, ir diferencijuota reguliacinė našta meta iššūkį šiai paradigmai.

ES klimato teisė nesustabdo konkurencijos taisyklių taikymo, bet daro įtaką jų vertinimui, įtraukdama klimato kaitos argumentus kaip teisėtus pateisinimo pagrindus. Pavyzdžiui, valstybės pagalbos kontrolė vis dažniau leidžia aplinkosauginius ir klimato kaitos tikslus, jeigu taikomos priemonės išlieka proporcingos ir suderinamos su vidaus rinka. Panašiai, klimato kaitos tikslų siekiantys įmonių susitarimai gali būti vertinami lanksčiau, neatsisakant pagrindinių konkurencijos teisės principų taikomo.

Vidaus rinkos teisėje pastebimas analogiškas modelis. Priemonės, skirtos klimato tikslams įgyvendinti, gali riboti prekių ar paslaugų laisvą judėjimą, tačiau tokie

ribojimai turi būti pateisinami pagal nusistovėjusias sutarčių išimtis arba imperatyvius viešojo intereso pagrindus. Taigi klimato kaitos prevencija tampa reikšmingu teisiniu faktoriumi esamose teisės doktrinose, o ne savarankišku nukrypimo nuo taisyklių pagrindu.

Disertacijoje teigiama, kad šie pokyčiai atspindi asimetrinę klimato tikslų integraciją į ES materialinę teisę. Su klimato kaita susijusių argumentų pripažinimas didėja, tačiau jų teisinė galia skiriasi priklausomai nuo politikos srities, teisinio pagrindo ir institucinės aplinkos. Ši asimetrija nėra sistemos trūkumas – ji atspindi pačios ES teisės diferencijuotą struktūrą.

Išorinis darnumas ir tarptautiniai apribojimai

ES klimato teisės poveikis peržengia Sąjungos vidaus teisinės sistemos ribas. ES lygmeniu priimtos klimato priemonės turi būti suderinamos su Sąjungos tarptautiniais įsipareigojimais, ypač tarptautinės prekybos teisės srityje. Todėl išorinis darnumas laikytinas esmine ES klimato teisės turinio dimensija.

Disertacijoje ši išorinė dimensija nagrinėjama pirmiausia PPO kontekste. PPO teisinė sistema nustato apribojimus prekybą ribojančioms priemonėms, tačiau kartu leidžia aplinkosaugines išimtis. Šios sistemos logika – pagrįsta pagrįstumu, būtinumu ir proporcingumu – glaudžiai atspindi ES vidaus teisėje taikomas balanso taisykles.

Šis struktūrinis panašumas leidžia Sąjungai siekti klimato tikslų išorėje neatsisakant tarptautinių įsipareigojimų. Tačiau išorinė darna nėra nei automatinė, nei garantuota. Klimato priemonės gali tapti teisinių ginčų objektu, kai kyla klausimų dėl jų suderinamumo su PPO normomis. Tokiais atvejais Sąjunga turi laviruoti tarp savo klimato ambicijų ir tarptautinės ekonominės teisės reikalavimų.

Disertacija parodo, kad ES klimato teisė nepaneigia tarptautinių įsipareigojimų, bet turi būti formuluojama juos derinant. Dėl to išorinė darna sustiprina teisinio tikslumo, proporcingumo ir pagrindimo poreikį kuriant ir taikant ES klimato priemones. Klimato tikslai formuoja ES išorinių veiksmų teisinį turinį, tačiau išlieka saistomi struktūrinių teisinių apribojimų.

Norminis turinys kaip struktūrinis ES klimato teisės padarinys

Apibendrinant, analizė parodo, kad ES klimato teisės turinys yra formuojamas ne pakeitimu, o persiderinimu. Klimato tikslai įgyja normatyvinę reikšmę per jų integravimą į esamas teisines sistemas, darydami įtaką normų aiškinimui ir taikymui įvairiose politikos srityse.

ES klimato teisė prisideda prie ES materialinės teisės transformacijos ne kurdama naują teisinę tvarką, bet įtvirtindama klimato neutralumą kaip tarpsektorinį teisinį apribojimą. Toks procesas leidžia išsaugoti ES teisės sistemos stabilumą ir darną, kartu sudarant sąlygas reaguoti į sisteminį klimato kaitos iššūkį.

Teisinio reguliavimo turinio tyrimas yra pagrindas trečiosios disertacijos dalies analizei, skirtai valdymo mechanizmams ir įgyvendinimui. Kai klimato tikslai suvokiami kaip integruoti į ES teisės turinį, kyla klausimas, kaip šie tikslai gali būti veiksmingai valdomi ir įgyvendinami per institucinę praktiką ir teisminę kontrolę.

III disertacijos dalis – Teisminis užtikrinimas ir bylinėjimasis įgyvendinant ES klimato teisę

Be administracinių valdymo mechanizmų, ES klimato teisės įgyvendinimas vis dažniau įtraukia teismines institucijas. Dėl ES teisėje įtvirtintų klimato įsipareigojimų nacionaliniuose ir viršnacionaliniuose teismuose kyla ginčai dėl pagrįstumo, teisės kreiptis į teismą, peržiūros standartų ir teisinių gynybos priemonių apimties. Todėl III disertacijos dalyje bylinėjimasis nagrinėjamas kaip savarankiškas klimato teisės įgyvendinimo būdas, atskirtas nuo administracinio valdymo ir veikiamas savitų struktūrinių ribojimų.

Teisminis užtikrinimas neveikia kaip centralizuota sistema, galinti savarankiškai formuoti klimato politiką. Priešingai, jis veikia kaip fragmentuotas ir procedūriškai medijuojamas įgyvendinimo mechanizmas, kai teismai prisideda prie klimato įsipareigojimų teisinio veiksmingumo, aiškindami teisines įsipareigojimus, ribodami diskreciją ir stiprindami atskaitomybę, tačiau nepakeisdami teisėkūros ar vykdomosios valdžios funkcijų.

Analizė sutelkta į tris teisminės peržiūros lygmenis: nacionalinius teismus, ESTT ir EŽTT. Kiekviena iš šių institucijų atlieka savitą ir ribotą vaidmenį, įgyvendindama klimato teisės teisminę priežiūrą.

Nacionaliniai teismai kaip laboratorijos bylinėjimuisi dėl klimato teisės įgyvendinimo

Nacionaliniai teismai sudaro pagrindinį forumą, kuriame šiandien nagrinėjami su klimato kaita susiję ieškiniai. Veikdami vidaus teisės, ES teisės ir tarptautinių klimato įsipareigojimų sankirtoje, šie teismai atlieka svarbų vaidmenį paversdami abstrakčius klimato tikslus teisiškai apčiuopiamomis pareigomis.

Disertacijoje nacionalinis bylinėjimasis dėl klimato teisės įgyvendinimo traktuojamas kaip „laboratorijų“ visuma, kurioje teismai eksperimentuoja su skirtingais teisiniais instrumentais spręsdami klimato kaitos keliamus iššūkius. Šie iššūkiai apima teisės kreiptis į teismą klausimus, priežastinio ryšio nustatymą, įrodymų neapibrėžtumą, laiko atotrūkį tarp veiksmų ir žalos bei konstitucinius teisminės intervencijos apribojimus.

Teisminės reakcijos valstybėse narėse labai skiriasi. Kai kuriose jurisdikcijose teismai taiko teisėmis grindžiamą požiūrį, siedami klimato įsipareigojimus su pagrindinėmis teisėmis ir nustatydami konkrečias pareigas valdžios institucijoms. Kitose jurisdikcijose teismai renkasi procedūriškai santūresnį požiūrį, daugiausia dėmesio skirdami teisėtumui, proporcingumui ir administracinių sprendimų priėmimo procesų adekvatumui.

Nepaisant šių skirtumų, bylinėjimasis dėl klimato teisės įgyvendinimo nacionaliniu mastu prisideda prie ES klimato teisės įgyvendinimo, didindamas klimato įsipareigojimų teisinį matomumą ir keisdamas administracinės diskrecijos ribas. Net tais atvejais, kai teismai susilaiko nuo konkrečių politinių priemonių įvardijimo, jų sprendimai pakeičia teisinį kontekstą, kuriame formuojama ir įgyvendinama klimato politika. Tokiu būdu nacionaliniai teismai veikia kaip decentralizuoti užtikrinimo subjektai,

nesudarydami vieningos ar hierarchinės klimato teisminės sistemos.

Galimybė dėl klimato kaitos įsipareigojimų nevykdymo kreiptis į ESTT

ES lygmeniu teisminis klimato teisės užtikrinimas susiduria su reikšmingais procedūriniais apribojimais. Galimybė kreiptis į ESTT išlieka grindžiama *locus standi* reikalavimais, kurie riboja asmenų ir nevyriausybinių organizacijų galimybes pareikšti tiesioginius ieškinius, ginčijant ES klimato priemones.

Disertacijoje parodoma, kad šie *locus standi* reikalavimai veikia kaip struktūrinis filtras, skirtas institucinei pusiausvyrai išsaugoti, tačiau kartu apribojantis klimato įsipareigojimų teismingumą ES lygmeniu. Tiesioginiai ieškiniai dėl ES klimato teisės aktų panaikinimo dažnai atmetami kaip nepriimtini, net kai ginčijami aktai kelia plačius ir ilgalaikius padarinius.

Dėl to prejudicinio sprendimo procedūra įgauna ypatingą reikšmę. Šis procesinis kelias integruoja klimato bylinėjimąsi į įprastą ES teisės teisminį dialogą, sudarydamas galimybę nagrinėti aiškinimo ir galiojimo klausimus, nepaverčiant ESTT bendru klimato ginčų teismu.

Taigi ES lygmens teisminė peržiūra prie ES klimato teisės įgyvendinimo prisideda pirmiausia per teisinį išaiškinimą ir suderinimą, o ne per tiesioginį vykdymą. Teismo vaidmuo išlieka aiškiai apribotas procedūrinių ir konstitucinių ribų, patvirtinančių, kad klimato bylinėjimasis papildo, o ne pakeičia politinius ir administracinius procesus.

Klimato kaitos bylos EŽTT

Klimato kaitos įsipareigojimų teisminė institucionalizacija pasiekia ir EŽTT, kuriame pareiškėjai vis dažniau siekia susieti klimato kaitą su Europos žmogaus teisių ir pagrindinių laisvių konvencijos garantijomis. Šios bylos kelia sudėtingus klausimus dėl pareiškėjo statuso, priežastinio ryšio ir pozityviųjų pareigų apimties pagal Konvenciją.

Disertacijoje parodoma, kad EŽTT taiko atsargų ir laipsnišką požiūrį. Vietoje savarankiškos teisės į klimato apsaugą pripažinimo, Teismas nagrinėja klimato klausimus per jau egzistuojančias teises ir procedūrines garantijas. Toks požiūris leidžia išsaugoti Konvencijos sistemos integralumą, kartu pripažįstant klimato kaitos teisinę reikšmę.

ES klimato teisės požiūriu kreipimasis į EŽTT nesukuria paralelinio užtikrinimo mechanizmo, o veikiau netiesiogiai sustiprina klimato pareigas per žmogaus teisių argumentaciją. Šio Teismo indėlis į įgyvendinimą išlieka ribotas ir priklausomas nuo konteksto, jį formuoja priimtinumo reikalavimai ir subsidiarumo principas.

Bylinėjimosi dėl klimato kaitos įsipareigojimų kaip įgyvendinimo užtikrinimo mechanizmo struktūrinės ribos

Apibendrinant, analizė rodo, kad bylinėjimasis dėl klimato kaitos įsipareigojimų sudaro pagalbinį ES klimato teisės užtikrinimo mechanizmą. Teismai prisideda prie atskaitomybės, teisinio aiškumo ir procedūrinės drausmės, tačiau nesudaro visapusiškos užtikrinimo sistemos, galinčios savarankiškai formuoti klimato politiką.

Teisminį užtikrinimą riboja *locus standi* taisyklės, institucinė pusiausvyra ir

ilgalaikis bei išsklaidytas klimato žalos pobūdis. Šie ribojimai nėra atsitiktiniai – jie atspindi sąmoningus konstitucinius pasirinkimus tiek ES, tiek Konvencijos teisės sistemose.

Pagrindinė III dalies išvada yra ta, kad bylinėjimasis dėl klimato kaitos įsipareigojimų didina ES klimato teisės veiksmingumą, nepaversdamas teismų klimato teisės valdytojais. Teisminė intervencija veikia aiškiai apibrėžtose ribose, stiprindama teisėtumą ir kartu išsaugodama politinę atsakomybę už klimato veiksmus.

Ši teisminė analizė užbaigia ES klimato teisės poveikio kompetencijoms, kitam norminiam turiniui ir įgyvendinimui tyrimą ir parengia pagrindą baigiamajai disertacijos sintezei.

Pagrindinės išvados

Šioje disertacijoje ES klimato teisė analizuojama kaip teisiškai privalomas režimas, kurio poveikis peržengia aplinkos politikos ribas ir pasireiškia ES konstitucinės bei institucinės sistemos veikime.

Pirmiausia, disertacija parodė, kad ES klimato teisė keičia kompetencijų įgyvendinimą jų formaliai neperskirstydama, tai darydama per tarpsektorinius koordinavimo mechanizmus, įtvirtintus planavimo, koordinavimo, stebėsenos ir peržiūros įpareigojimuose. Antra, tyrimas atskleidė, kad klimato neutralumas veikia kaip tarpsektorinis teisinis apribojimas, pertvarkantis ES teisės nuoseklumą ir suderinamumą vidaus rinkos, konkurencijos, aplinkos apsaugos ir išorinės prekybos srityse. Trečia, disertacija nustatė, kad teisminis užtikrinimas prisideda prie įgyvendinimo daugiausia per selektyvius, procedūriškai medijuojamus kelius: nacionaliniai teismai veikia kaip „laboratorijos“, o ES lygmens teisminė peržiūra išlieka struktūriškai filtruojama per priimtinumo ir prieigos reikalavimus.

Be šių pagrindinių tyrimo rezultatų, disertacija prisideda prie mokslo dviem esminiais originaliais indėliais:

(i) Europos klimato trilemos suformulavimu kaip analitiniu pagrindu, leidžiančiu atskleisti ES klimato teisėje kylančias struktūrines įtampas, ir

(ii) Europos klimato tinklo koncepcijos pasiūlymu kaip valdymo sprendiniu, skirtu šioms įtampoms valdyti ES teisinės sistemos konstitucinių ribų rėmuose.

Europos klimato trilema: struktūrinės įtampos ES klimato teisėje

Esminis šios disertacijos konceptualus indėlis yra *Europos klimato trilemos* suformulavimas, atspindintis struktūrines įtampas, būdingas ES klimato teisės įgyvendinimui. Ši trilema kyla iš sudėtingumo tuo pačiu metu pasiekti tris tikslus, kurie visi yra normatyviai centriniai ES:

1. **Gili aplinkosaugos integracija**, suprantama kaip veiksmingas ir tarpsektorinis klimato tikslų integravimas į visas ES politikos sritis;
2. **Vidaus rinkos išsaugojimas**, apimantis laisvo judėjimo, konkurencijos, teisinio tikrumo ir ekonominės integracijos apsaugą;

3. **Klimato teisingumas** (*angl. equity*), apimantis sąžiningą paskirstymą tarp valstybių narių, ekonominių subjektų ir socialinių grupių, taip pat kartų teisingumo aspektus.

Disertacija parodo, kad ES klimato teisė negali visiškai ir tolygiai maksimaliai įgyvendinti visų šių trijų tikslų vienu metu. Gilios aplinkosaugos integracijos siekis gali reikalauti diferencijuoto reglamentavimo, reguliacinių apribojimų ar valstybės intervencijos, kurie kelia iššūkių vidaus rinkos principų įgyvendinimui. Priešingai, griežtas rinkos vientisumo išsaugojimas gali riboti reguliacinį ambicingumą ir klimato teisingumo priemonių apimtį. Panašiai, klimato teisingumu grindžiami mechanizmai gali apsunkinti teisinę darną ir įvesti asimetrijų vidaus rinkoje.

Europos klimato trilema nėra normatyvinis teiginys apie tai, kokį pasirinkimą ES turėtų padaryti, ir nėra aprašomasis modelis. Tai analitinis karkasas, paaiškinantis, kodėl ES klimato teisė veikia per laipsnišką integraciją, teisinį subalansavimą ir procedūrinį koordinavimą, o ne per hierarchinę klimato tikslų viršenybę. Trilema atskleidžia, kad kompetencijų, teisinio nuoseklumo, valdymo ir teisminio užtikrinimo kontekstuose stebimos įtampos nėra anomalijos ar nesėkmės, bet struktūrinės ES klimato teisės savybės, įtvirtintos pačios Sąjungos sistemoje.

Teisinė integracija, valdysenos kryptis – Europos klimato tinklo vaidmuo

Disertacija taip pat pateikia su valdysena susijusį indėlį per *Europos klimato tinklo* koncepcijos pasiūlymą.

Šis pasiūlymas nėra traktuojamas kaip klimato trilemos sprendimas ir nėra grindžiamas prielaida, kad struktūrinės įtampos gali būti panaikintos. Priešingai, jis kyla iš valdymo stebėsenos ir teisinės refleksijos, pagrįstos I ir II dalyse atlikta analize, ypač policentrinio valdymo, Europos Komisijos vaidmens ir vis didėjančios nepriklausomo ekspertinio vertinimo reikšmės klimato veiksmuose kontekste.

Europos klimato tinklas suvokiamas kaip koordinavimo sistema, o ne kaip nauja reguliavimo institucija ar politinių sprendimų pakaitalas. Jo paskirtis – didinti skaidrumą, nuoseklumą ir ES, nacionalinių valdžios institucijų ir nepriklausomų klimato organizacijų, dalyvaujančių ES klimato teisės įgyvendinime, tarpusavio informuotumą.

Skatindamas informacijos mainus, metodologinį derinimą ir ankstyvą teisinių bei politikos įtampų identifikavimą, toks tinklas galėtų pagerinti klimato valdyseną esamoje teisinėje sistemoje. Svarbu pabrėžti, kad šis pasiūlymas visiškai dera su suteiktos kompetencijos principu ir institucine pusiausvyra. Jis nesiekia išspręsti klimato trilemos identifikuotų įtampų, bet padaryti jas labiau matomas, suprantamas ir institucišKai valdomas.

Apribojimai ir būsimos tyrimų kryptys

Šiai disertacijai būdingas teisinis santūrumas. Joje nevertinamas ES klimato tikslų pakankamumas ir nepropaguojamos konkrečios politikos priemonės. Jos indėlis pasireiškia teisinių mechanizmų, institucinių ribojimų ir struktūrinių įtampų, formuojančių įgyvendinimą, išaiškinimu.

Klimato trilemos išlikimas taip pat atskleidžia struktūrines teisminio užtikrinimo ribas, analizuotas III dalyje. Teisminis užtikrinimas gali padidinti aplinkos integraciją, ribodamas valstyvių diskreciją ir didindamas atskaitomybę. Tačiau teismai lieka saistomi vidaus rinkos teisės, procedūrinių priimtinumo reikalavimų ir teisminio santūrumo principų. Jų gebėjimas spręsti klimato teisingumo klausimus yra ypač ribotas, nes „paskirstomieji" sprendimai pirmiausia priklauso politinei sričiai.

Šie apribojimai nenuvertina klimato bylinėjimosi reikšmės, tačiau patvirtina, kad teisminiai mechanizmai veikia kaip papildantys, o ne pakeičiantys valdysenos ir teisėkūros. Klimato bylos didina klimato įsipareigojimų teisinį matomumą ir įgyvendinimą, bet struktūriškai nepajėgia išspręsti trilemos kaip visumos.

Būsimi tyrimai galėtų plėtoti šį analitinį modelį, nagrinėdami fiskalinių priemonių, socialinės politikos integracijos ar diferencijuoto ekonominio valdymo sąveiką su ES klimato teise ir klimato trilema. Disertacijoje suformuluotas konceptualus modelis taip pat galėtų būti taikomas kitoms sritims, kurioms būdingi tarpsektoriniai ir ilgalaikiai tikslai, pavyzdžiui, skaitmeniniam valdymui ar sveikatos politikai.

Apibendrinimas

Disertacija atskleidžia, kad ES klimato teisė sudaro struktūrizuotą teisinį režimą ES teisės sistemoje, darantį poveikį kompetencijoms, teisiniam turiniui ir valdysenai, nepakeičiant sutarčių. Klimato neutralumas veikia kaip teisiškai privalomas tikslas, tačiau funkcionuoja teisės sistemoje, grindžiamoje bendrųjų kompetencijų, vidaus rinkos pamatų ir daugialypio valdymo logika.

Pagrindinis šio darbo analitinis ir metodologinis indėlis yra parodymas, kad įgyvendinimo veiksmingumas dėlto priklauso mažiau nuo formalaus kompetencijų išplėtimo, o labiau nuo teisės sistemos gebėjimo nuosekliai ir teisėtai valdyti struktūrines įtampas. Europos klimato trilema suteikia pagrindą šioms įtampoms suprasti, o Europos klimato tinklo koncepcija pasiūlo teisiškai pagrįstą valdymo kryptį, kuri didina nuoseklumą ir koordinavimą nepažeisdama suteiktos kompetencijos principo ar institucinės pusiausvyros.

Disertacijos išvados patvirtina, kad ES klimato teisė vystosi per procedūrų peržiūrą, koordinavimą ir teisinį balansavimą, o ne per teisminę ar institucinę centralizaciją. Jos veiksmingumas priklauso nuo to, kaip sėkmingai Sąjunga geba stiprinti aplinkosauginę integraciją su vidaus rinkos išsaugojimu ir klimato teisingumu, laikydamasi ES teisės konstitucinių ribų.

Disertacijoje pademonstruota, kad ES klimato teisė sudaro savitą teisinį režimą, veikiantį ES konstitucinėje sistemoje ir ją koreguojantį be formalaus sutarčių keitimo. Jos poveikis kompetencijoms, norminiam turiniui ir įgyvendinimui atskleidžia teisinę sistemą, kuri palaipsniui prisitaiko prie sisteminio klimato kaitos iššūkio.

ES klimato teisė neišsprendžia įtampų tarp aplinkosaugos ambicijų, rinkos integracijos ir teisingumo. Vietoje to ji institucionalizuoja šias įtampas per teisinius mechanizmus, grindžiamus koordinavimu, procedūrų peržiūra ir teisiniu subalansavimu. Šioje disertacijoje identifikuota klimato trilema atskleidžia tiek struktūrines šio požiūrio ribas, tiek jo galimybes.

Pagrindinė disertacijos išvada yra ta, kad ES klimato teisės veiksmingumas mažiau priklauso nuo kompetencijų išplėtimo, o labiau nuo teisinės sistemos gebėjimo nuosekliai ir teisėtai derinti tarpusavyje konkuruojančius interesus. Šios dinamikos supratimas yra esminis ne tik klimato teisės srityje, bet ir tolesnei ES viešosios teisės raidai, susiduriant su ilgalaikiais, kompleksiniais ir įvairias politikos sritis apimančiais iššūkiais.

MOKSLINĖS PUBLIKACIJOS DISERTACIJOS TEMA

- **Anyssa FATMI**, "*Des cultures climatiques ? Dissonances et unisson – Étude comparée des cadres juridiques français et lituanien*" (*"Climate Culture(s)? Comparative Legal Approach between Lithuania and France"), Le droit face à la diversité Culturelle*, Mare & Martin, 2025, https://cris.mruni.eu/cris/handle/007/50154.
- **Anyssa FATMI**, *"From Climate Litigation towards Climate Justice: A Climate Catalogue of Rights," Journal of Academic Discourse on Environment (JADIE)*, 2025 (peer-reviewed, English), https://doi.org/10.20870/revue-jadie.2025.9781.
- **Anyssa FATMI**, *"EU Climate Law Governance: A Glance at the Climate Trilemma," Environmental Liability: Law, Policy, and Practice* (peer-reviewed, English) (priimta spaudai).

KITOS PUBLIKACIJOS

- **Anyssa FATMI**, *"Statelessness – Insights from International, European and National Perspectives,"* Faculty of Law, Centre for European Research and Education, University of Pécs, 2019 (peer-reviewed article, English). ISBN: 9789634294214.
- **Regina Valutytė, Michael Friedewald, Ralf Lindner, Thomas Jackwerth-Rice, Manon Knockaert, Pauline Lapointe, Darius Stitilis, Andrius Bambalas, Anyssa FATMI**, *"SPARTA – D2.3. Key Challenges and Promising Solution Approaches,"* Fraunhofer Institute, 2021 (peer-reviewed research deliverable, English). DOI: 10.24406/publicafhg301383.

DALYVAVIMAS KONFERENCIJOSE IR MOKSLINIUOSE RENGINIUOSE

Kaip pranešėja:

- SPARTA Project (2020–2021): workshops and presentations on responsible cybersecurity research, and regulatory challenges.
- Bordeaux European Summer School – *First Climate Moot Court*: speaker and course co-designer (15 September 2021).
- European House of Bordeaux: keynote intervention on the EU and Democracy (17 November 2021).
- First Colloquium of Young Researchers in Environmental Law: keynote speaker and contribution to the creation of the first French network of young environmental law researchers (15 April 2024).
- Débat d'idées 2024, presentation of climate cultures in the EU, comparative approach between France and Lithuania (May 2024)

- SOCIN 2024 Conference: presentation of a climate catalogue of rights (25–27 June 2024).
- University College Cork, 15th Postgraduate Research Symposium on Environmental Law: presentation on the EU climate trilemma (30 April 2025).

Kaip organizatorė:

- NordPlus Network Summit: coordination of an international academic event involving participants from 12 countries (October 2019).
- Bordeaux European Summer School: co-organisation of the first climate moot court (2021).

Kaip dalyvė:

- French Society for Environmental Law (SFDI), Annual Colloquium on Commons under Environmental Law, Bordeaux (2021).
- UCC Law and the Environment Conference, 21st edition (May 2025)
- Doctoral seminar on Environmental Law with Corinne Lepage (September 2024)

CURRICULUM VITAE

Išsilavinimas

- **Teisės mokslo krypties doktorantūros studijos (*cotutelle*)**, Bordo universitetas (Prancūzija) ir Mykolo Romerio universitetas, 2020–2025 m.
- Daktaro disertacija apie Europos klimato teisės aktų įgyvendinimą ir valdymą ES vidaus ir išorės teisinėje sistemoje.
- **Dvigubas magistro laipsnis (LL.M.), ES teisė ir valdymas (EU Law and Governance),** Bordo universitetas ir Mykolo Romerio universitetas, 2020 m., *summa cum laude,* magistro darbas apie ES ir PPO reikalavimus atitinkančias ekologiškas subsidijas;
- **Europos teisės magistro laipsnis**, Bordo universitetas, 2018 m., *magna cum laude*;
- **Tarptautinės teisės magistro laipsnis,** Bordo universitetas, 2017 m., *cum laude*.

Akademinė veikla

- Dėstymas magistratūros programoje „EU Foreign and External Relations" (2020-2025 m.);
- EU law moot courts teisėja (2019–2024 m.).
- Bendras vadovavimas magistro darbams ir studentų mentorystė ES teisės ir valdymo programose.

Moksliniai interesai

ES teisė ir valdymas; ES klimato ir aplinkos teisė; su klimatu susiję teisminiai ginčai ir klimato teisingumas; ES institucinė ir konstitucinė teisė; tarptautinė prekybos teisė (PPO); lyginamoji teisė.

UNIVERSITÉ MYKOLAS ROMERIS

UNIVERSITÉ DE BORDEAUX

Anyssa Fatmi

LE DROIT EUROPEEN DU CLIMAT INCIDENCES SUR LES COMPETENCES, LA SUBSTANCE NORMATIVE ET LA GOUVERNANCE DE L'UNION EUROPEENNE

Résumé de thèse de doctorat
Sciences sociales, droit (S 001)

Vilnius, 2026

Cette thèse de doctorat a été préparée durant la période 2020-2026 dans le cadre d'études doctorales menées conjointement à l'Université Mykolas Romeris (Lituanie) et à l'Université de Bordeaux (France), dans le cadre d'une cotutelle signée le 14 octobre 2021, telle que modifiée ultérieurement, et conformément à la réglementation accordant le droit de mener des études doctorales telle qu'établie par :

- *En France* : L'arrêté du 25 mai 2016 fixant le cadre national de la formation et les modalités conduisant à la délivrance du diplôme national de doctorat, complété par l'arrêté du ler juillet 2016 et l'arrêté du 27 octobre 2020 ;
- *En Lituanie* : L'arrêté du ministre de l'Éducation, des Sciences et du Sport de la République de Lituanie "Concernant l'octroi du droit aux études doctorales", daté du 22 février 2019, n° V-160.

Directeurs scientifiques:
Prof. Regina Valutytė (Université Mykolas Romeris, sciences sociales, droit, S 001);
Prof. Hubert Delzangles (Université de Bordeaux, sciences sociales, droit, S 001).

La thèse de doctorat est soutenue devant le Comité de soutenance de thèse, désigné conjointement par l'Université de Bordeaux et l'Université Mykolas Romeris, conformément à l'article 5.2 du contrat de cotutelle signé le 14 octobre 2021, tel que modifié ultérieurement :

Présidente:
Prof. Dr. Lyra Jakulevičienė (Université Mykolas Romeris, sciences sociales, droit, S 001).

Membres du jury (par ordre alphabétique):
Prof. Dr. Julien Bétaille (Université d'Adour, sciences sociales, droit, S 001);
Prof. Dr. Indrė Isokaitė (Université de Vilnius, sciences sociales, droit, S 001);
Prof. Dr. Owen McIntyre (Université College Cork, sciences sociales, droit, S 001);
Prof. Dr. Sébastien Platon (Université de Bordeaux, sciences sociales, droit, S 001).

La thèse de doctorat sera soutenue lors d'une séance publique du Conseil de la faculté de droit le 25 mai 2026 à 15 heures à l'université Mykolas Romeris, salle I-414.
Adresse : Ateities g. 20, 08303 Vilnius.

RÉSUMÉ

Introduction et contexte de la recherche

Le changement climatique s'est progressivement transformé, d'une question principalement scientifique et politique, en un enjeu juridique central, remodelant les cadres réglementaires, la répartition des compétences institutionnelles et les structures de gouvernance aux niveaux national et international. Au sein de l'Union européenne, cette évolution a culminé avec l'émergence d'un régime spécifique de droit européen du climat, cristallisé notamment par le règlement (UE) 2021/1119 établissant l'objectif juridiquement contraignant de neutralité climatique à l'horizon 2050.

La présente thèse examine la manière dont le droit européen du climat fonctionne comme un régime juridiquement contraignant et justiciable au sein d'un ordre juridique de l'Union dont l'architecture constitutionnelle n'avait pas été initialement conçue pour intégrer des objectifs environnementaux de long terme s'étendant à l'ensemble de l'économie. Plutôt que d'analyser l'ambition de la politique climatique de l'Union en tant que telle, la recherche se concentre sur les effets juridiques de la neutralité climatique en tant que norme, ainsi que sur les transformations qu'elle induit en matière de répartition des compétences, de cohérence normative et de mécanismes de gouvernance.

L'hypothèse centrale de ce travail est que le droit européen du climat ne constitue pas une simple extension sectorielle du droit de l'environnement de l'Union. Il fonctionne au contraire comme un cadre juridique structurel et transversal, opérant à travers des domaines de politique publique traditionnellement distincts, tels que l'énergie, les transports, le droit de la concurrence, le marché intérieur et le commerce extérieur. Cette transversalité soulève des questions juridiques fondamentales relatives aux limites du principe d'attribution, à l'équilibre des pouvoirs entre les institutions de l'Union et les États membres, ainsi qu'à la compatibilité des objectifs climatiques avec les autres principes fondamentaux du droit de l'Union.

Objet de la recherche, problématique, méthodologie et hypothèses

L'objet de la recherche est la mise en œuvre du droit européen du climat, entendue non comme la seule adoption de normes relatives au climat, mais comme l'intégration effective des objectifs climatiques dans le fonctionnement de l'ordre juridique de l'Union. La thèse s'articule autour de la question de recherche centrale suivante :

Comment le droit européen du climat devient-il juridiquement effectif et exécutoire dans le cadre constitutionnel existant de l'Union européenne, sans modification formelle des traités ?

La problématique analysée tient à la difficulté de concilier la portée et les effets du droit européen du climat avec les cadres juridiques internes et externes de l'Union. Le changement climatique constitue un défi intrinsèquement transversal, affectant plusieurs domaines de politique publique et niveaux de gouvernance, tandis que le système juridique de l'Union demeure structuré autour de compétences attribuées, constitutionnellement limitées, et de régimes réglementaires sectoriels. Dès lors, la

mise en œuvre du droit climatique de l'Union soulève des questions juridiques qui dépassent la politique environnementale *stricto sensu* et touchent à l'architecture constitutionnelle, à la cohérence interne, à l'effectivité procédurale et à la cohérence externe de l'ordre juridique de l'Union.

Cette problématique générale se décline en quatre sous-problèmes interconnectés qui structurent l'analyse de la thèse.

(1) Répartition constitutionnelle des compétences

Le premier sous-problème concerne la répartition constitutionnelle des compétences au sein de l'Union européenne. Le principe d'attribution implique que l'Union n'agisse que dans les limites des compétences qui lui sont conférées par les traités. La politique environnementale, y compris l'action en matière de climat, relève d'une compétence partagée, tandis que les secteurs les plus directement concernés par le changement climatique – tels que l'énergie, les transports et l'industrie – sont gouvernés par une base juridique fragmentée.

Le droit européen du climat repose ainsi sur la mobilisation de compétences existantes qui ne couvrent que partiellement les secteurs climatiquement pertinents. Il en résulte une tension structurelle entre l'ampleur des ambitions climatiques de l'Union et les limites constitutionnelles de ses compétences. Le changement climatique constitue dès lors un laboratoire juridique singulier permettant d'observer l'évolution de l'équilibre entre l'Union et les États membres, ainsi qu'entre les institutions de l'Union elles-mêmes.

(2) Consistance interne de l'ordre juridique de l'Union

Le second sous-problème concerne la cohérence interne de l'ordre juridique de l'Union européenne. L'action climatique de l'Union est par nature transversale et interagit avec de multiples domaines de politique publique, notamment le droit du marché intérieur, le droit de la concurrence et le droit de l'environnement. La poursuite des objectifs climatiques est susceptible de générer des tensions entre différents objectifs de l'Union, tels que la protection de l'environnement, la croissance économique et l'intégration du marché.

La recherche examine la manière dont l'Union peut garantir la cohérence des objectifs climatiques avec les politiques existantes et les obligations découlant des traités, ainsi que la façon dont les conflits – en particulier ceux liés aux libertés du marché intérieur, aux règles de concurrence et aux normes environnementales – sont résolus par l'interprétation juridique et la pratique institutionnelle.

(3) Respect du droit et effectivité procédurale

Le troisième sous-problème porte sur les mécanismes de conformité et de mise en œuvre applicables au droit européen du climat. Si les objectifs climatiques sont de plus en plus formulés en termes juridiquement contraignants, les procédures permettant d'en assurer le respect demeurent fragmentées. Le contentieux climatique soulève des difficultés structurelles liées à la qualité pour agir, à l'établissement du lien de causalité, à la charge de la preuve et à la justiciabilité des engagements climatiques de long terme.

La thèse analyse ainsi les possibilités et les limites de l'exécution juridictionnelle devant les juridictions nationales, la Cour de justice de l'Union européenne (CJUE) et

la Cour européenne des droits de l'homme (CEDH), ainsi que la pertinence des mécanismes internationaux de règlement des différends.

(4) Cohérence externe du droit européen du climat

Le quatrième sous-problème concerne la cohérence externe du droit européen du climat, en particulier au regard du droit international du commerce. L'Union cherche à projeter ses objectifs climatiques sur la scène internationale tout en restant liée par les disciplines de l'Organisation mondiale du commerce (OMC) et par ses engagements économiques internationaux. La recherche explore la manière dont les conflits entre objectifs climatiques européens et obligations économiques internationales peuvent être gérés juridiquement sans compromettre l'autonomie et la cohérence de l'ordre juridique de l'Union.

L'hypothèse centrale de la thèse est que **le droit européen du climat fonctionne comme un régime constitutionnel procédural et fondé sur la gouvernance**, plutôt que comme une politique sectorielle traditionnelle. Il ne redéfinit pas formellement la répartition des compétences établie par les traités, mais reconfigure l'exercice des compétences existantes au moyen de mécanismes de coordination, d'obligations de planification, de procédures de suivi et de contrôle juridictionnel.

Cette dissertation adopte une **méthodologie juridique et structurelle** visant à analyser la mise en œuvre du droit de l'Union européenne en matière de climat en tant que phénomène inscrit dans l'architecture constitutionnelle et institutionnelle de l'Union européenne. Le changement climatique est appréhendé comme un test de résistance juridique pour l'ordre juridique de l'Union, révélant des tensions entre ambition normative, répartition des compétences, cohérence normative et capacité de gouvernance.

Sur le plan méthodologique, la recherche repose principalement sur une **analyse doctrinale qualitative** du droit primaire et secondaire de l'Union européenne, avec une attention particulière portée au règlement (UE) 2021/1119 en tant qu'instrument juridique structurant. Cette analyse doctrinale est complétée par une approche dite de "**law in action**", qui examine le fonctionnement concret du droit climatique de l'Union à travers le contentieux, les mécanismes de gouvernance et les processus de mise en œuvre.

La recherche s'inscrit dans un **raisonnement analytique inductif, inspiré de la grounded theory**, permettant de faire émerger progressivement, à partir de l'analyse de la jurisprudence, des pratiques institutionnelles et de l'évolution des politiques publiques, les principales tensions juridiques, configurations de gouvernance et effets normatifs, plutôt que de les poser a priori. L'examen systématique de la jurisprudence de la Cour de justice de l'Union européenne, de la Cour européenne des droits de l'homme, de certaines juridictions nationales ainsi que du système de règlement des différends de l'OMC constitue un élément central de l'analyse.

Une méthode comparative est mobilisée en matière de mise en œuvre nationale, à partir de l'étude de plusieurs États membres représentatifs de traditions juridiques et de modèles de gouvernance différents, en particulier la France, la Lituanie et l'Irlande. Cette perspective comparative est combinée à des méthodes d'interprétation

systémique, fonctionnelle et linguistique afin d'analyser les interactions entre le droit climatique de l'Union, la répartition des compétences, les règles du marché intérieur et de la concurrence, ainsi que les engagements externes de l'Union.

La dissertation se caractérise par une retenue normative. Elle n'a pas pour objet de promouvoir des choix de politique publique spécifiques, mais vise à clarifier les contraintes juridiques, les tensions structurelles et les conditions procédurales qui influencent l'effectivité et la légitimité du droit climatique de l'Union européenne. En plaçant la pratique juridique au cœur de l'analyse tout en s'ancrant fermement dans une approche doctrinale et constitutionnelle, la thèse établit un pont entre théorie et pratique du droit et propose une évaluation globale de la mise en œuvre et de la gouvernance du droit climatique de l'Union.

Première partie – Répartition des compétences et cadre constitutionnel

Le droit européen du climat est mis en œuvre au sein d'un cadre constitutionnel structuré par le principe d'attribution et par une répartition complexe des compétences entre l'Union européenne et les États membres. Le règlement (UE) 2021/1119, qui érige l'objectif de neutralité climatique à l'horizon 2050 en obligation juridiquement contraignante, ne modifie pas la répartition formelle des compétences telle qu'elle résulte des traités. Il introduit en revanche un objectif transversal appelé à s'inscrire dans une architecture de compétences existante, fondée sur une logique sectorielle. Cette situation soulève une interrogation constitutionnelle fondamentale : comment un objectif climatique de long terme, à portée économique générale, peut-il être mis en œuvre efficacement sans révision des traités ?

Le point de départ de la thèse est que le droit européen du climat ne crée pas une « compétence climatique » autonome. La politique de l'environnement demeure une compétence partagée, tandis que d'autres domaines déterminants pour l'action climatique — tels que l'énergie, les transports, l'industrie ou la régulation du marché intérieur — reposent sur des bases juridiques distinctes et fragmentées. Le droit climatique de l'Union doit dès lors fonctionner par la mobilisation et la coordination de compétences existantes, et non par leur reconfiguration formelle.

La répartition verticale des compétences : droit climatique et relations Union–États membres

Sur le plan vertical, l'impact du droit européen du climat se manifeste principalement dans l'exercice des compétences plutôt que dans leur attribution formelle. Le règlement climat ne transfère pas de nouveaux pouvoirs à l'Union, mais encadre la marge d'appréciation nationale en inscrivant l'action des États membres dans une trajectoire climatique commune définie au niveau de l'Union.

La neutralité climatique constitue un point de référence juridiquement contraignant à l'aune duquel les politiques nationales sont évaluées. Les États membres conservent la compétence quant au choix des instruments et des combinaisons de politiques, mais leur autonomie réglementaire est progressivement structurée par des objectifs définis à l'échelle de l'Union, des obligations de planification, des exigences de

notification et des mécanismes de révision. Il en résulte une reconfiguration fonctionnelle des compétences : si leurs limites formelles demeurent inchangées, l'étendue de la discrétion nationale se trouve réduite dans la pratique.

La thèse montre que cet effet vertical transforme le droit climatique en un véritable test de résistance constitutionnel pour le principe d'attribution. Le droit européen du climat respecte les limites formelles des compétences conférées, tout en produisant un pilotage systémique par la coordination et la procéduralisation. Les objectifs climatiques remodèlent ainsi les relations entre l'Union et les États membres sans remettre en cause les fondements constitutionnels de l'ordre juridique de l'Union.

La répartition horizontale des compétences : équilibre institutionnel et gouvernance polycentrique

Au-delà des relations entre l'Union et les États membres, le droit européen du climat affecte également la répartition horizontale des pouvoirs entre les institutions de l'Union. La mise en œuvre de la neutralité climatique repose sur des mécanismes de gouvernance renforçant la coordination, la supervision et la planification de long terme. Dans ce cadre, la Commission européenne occupe une position centrale.

Le rôle de la Commission excède les fonctions classiques d'exécution. Elle est chargée du suivi des progrès accomplis vers la neutralité climatique, de l'évaluation des plans nationaux, de l'adoption de recommandations et de la coordination de la mise en œuvre entre différents secteurs d'action. Bien que nombre de ces instruments ne soient pas dotés d'un effet juridiquement contraignant direct, ils exercent une pression normative et politique significative sur les États membres et structurent, dans le temps, les politiques climatiques nationales.

Cette configuration institutionnelle traduit une évolution vers une gouvernance polycentrique, dans laquelle le droit climatique est mis en œuvre par un réseau d'acteurs intervenant à différents niveaux et selon des logiques institutionnelles distinctes. Si le pilotage exécutif s'en trouve renforcé, les contrôles législatif et juridictionnel continuent de s'exercer dans le cadre de limites constitutionnellement définies. L'articulation entre coordination effective et responsabilité démocratique devient dès lors un enjeu central de la gouvernance climatique de l'Union.

Asymétrie fonctionnelle et rôle de l'expertise climatique indépendante

Une caractéristique majeure de la gouvernance climatique européenne réside dans le recours croissant à l'expertise indépendante et à des organismes de suivi. La thèse analyse l'émergence d'une asymétrie fonctionnelle au bénéfice d'acteurs techniques et évaluatifs, venant compléter le rôle de coordination de la Commission.

Ces organismes indépendants contribuent à la crédibilité et à la stabilité des objectifs climatiques par la production d'évaluations scientifiques, l'appréciation de la cohérence des politiques et l'éclairage des processus décisionnels institutionnels. Leur intervention n'implique pas l'exercice d'un pouvoir réglementaire direct, mais repose sur la production de référentiels, d'analyses et d'indicateurs structurant les pratiques de gouvernance.

La thèse soutient que cette évolution reflète une transformation plus large de la gouvernance de l'Union face à des défis systémiques de long terme. Le droit climatique s'appuie sur l'expertise et l'évaluation itérative afin de compenser les limites des cycles politiques de court terme et la fragmentation des compétences. Si l'émergence de ces acteurs soulève des interrogations relatives à la légitimité démocratique et à la responsabilité institutionnelle, elle renforce également la capacité de l'Union à soutenir des engagements climatiques durables.

La répartition des compétences comme condition structurelle de la mise en œuvre

Pris dans leur ensemble, les développements relatifs à la répartition verticale et horizontale des compétences montrent que l'architecture des compétences constitue une condition structurelle de la mise en œuvre du droit européen du climat. La neutralité climatique acquiert une effectivité juridique non par la redéfinition des bases juridiques, mais par des mécanismes de gouvernance qui reconfigurent les modalités d'exercice des compétences.

Le droit climatique de l'Union fonctionne ainsi comme un cadre constitutionnel combinant des objectifs juridiquement contraignants avec des formes de coordination procédurale et de pilotage institutionnel. Ce mode de fonctionnement renforce la capacité de l'Union à poursuivre ses objectifs climatiques tout en demeurant fidèle aux principes d'attribution et d'équilibre institutionnel.

Deuxième partie – Substance normative du droit européen du climat

Au-delà de ses effets sur la répartition des compétences, le droit européen du climat exerce une influence déterminante sur la substance normative de l'ordre juridique de l'Union. Les objectifs climatiques n'opèrent pas isolément : ils interagissent avec un ensemble dense et préexistant de normes européennes, structuré autour du marché intérieur, du droit de la concurrence, de la protection de l'environnement et des relations économiques extérieures. La mise en œuvre du droit climatique soulève dès lors une question normative centrale : comment intégrer les objectifs climatiques dans ce cadre juridique complexe sans en compromettre la cohérence et la consistance internes ?

La thèse aborde cette problématique au prisme des principes de cohérence et de consistance, qui remplissent une fonction structurante en droit de l'Union. Plutôt que d'instaurer une hiérarchie normative nouvelle, le droit climatique opère une transformation progressive de l'interprétation et de l'application des normes existantes. La neutralité climatique agit comme une contrainte transversale devant être conciliée avec les autres objectifs des traités et les exigences de politique publique, généralement par des opérations d'équilibrage juridique plutôt que par une substitution normative.

La substance normative ne renvoie ainsi ni à la création de droits climatiques autonomes ni à l'éviction de régimes juridiques établis. Elle concerne la réorientation des normes existantes à la lumière d'objectifs climatiques juridiquement contraignants. Le règlement sur le climat contribue de ce fait à une transformation graduelle du droit matériel de l'Union en influençant la manière dont les normes sont interprétées, justifiées et limitées dans divers domaines d'action.

Consistance interne du droit européen du climat

Sur le plan interne, le droit climatique interagit avec des domaines régis par des logiques juridiques distinctes. Le droit du marché intérieur, le droit de la concurrence, la régulation de l'énergie et la protection de l'environnement sont tous affectés par les mesures adoptées en vue d'atteindre la neutralité climatique. Ces interactions sont susceptibles de générer des tensions entre les objectifs climatiques et d'autres principes fondamentaux du droit de l'Union, tels que l'intégration du marché, la sécurité juridique et les libertés économiques.

La poursuite des objectifs climatiques peut justifier des restrictions aux libertés du marché intérieur, la reconfiguration de règles de concurrence ou l'adoption de régimes réglementaires différenciés. De telles restrictions ne sauraient toutefois être présumées licites sur le seul fondement de leur justification climatique : elles doivent être appréciées à l'aune des doctrines établies relatives à la justification, à la proportionnalité et à la non-discrimination. Les objectifs climatiques interviennent ainsi dans l'analyse juridique comme des considérations pertinentes mais non absolues, appelant un équilibre juridictionnel plutôt qu'une primauté automatique.

La thèse montre que la cohérence interne n'est pas atteinte par une harmonisation uniforme, mais par l'articulation juridictionnelle et administrative des objectifs climatiques avec les standards juridiques existants. Les juridictions et les institutions reconnaissent de plus en plus la protection du climat comme un objectif d'intérêt public légitime, tout en demeurant liées par les contraintes structurelles du droit de l'Union. Les objectifs climatiques reconfigurent ainsi progressivement les normes substantielles par une interprétation contextuelle et une appréciation au cas par cas.

Tensions normatives en droit de la concurrence et du marché intérieur

L'intégration des objectifs climatiques en droit de la concurrence et du marché intérieur illustre la complexité du recalibrage normatif en cours. Le droit de la concurrence est traditionnellement orienté vers la préservation de l'efficience du marché et la prévention des distorsions concurrentielles. La coopération entre entreprises à des fins climatiques, les interventions étatiques par voie de subventions et l'imposition de charges réglementaires différenciées remettent en question cette logique.

Le droit climatique de l'Union ne suspend pas l'application des règles de concurrence, mais en infléchit la mise en œuvre par l'introduction de justifications climatiques dans l'analyse juridique. Le contrôle des aides d'État tend, par exemple, à intégrer de manière accrue les objectifs environnementaux et climatiques, dès lors que les mesures demeurent proportionnées et compatibles avec le marché intérieur. De même, les accords entre entreprises poursuivant des objectifs climatiques peuvent faire l'objet d'une appréciation plus souple sans remise en cause des principes fondamentaux du droit antitrust.

Des raisonnements comparables s'observent en droit du marché intérieur. Les mesures adoptées pour atteindre des objectifs climatiques peuvent restreindre la libre circulation des marchandises ou des services, mais ces restrictions doivent être justifiées au regard des exceptions prévues par les traités ou des raisons impérieuses d'intérêt général. La protection du climat devient ainsi un facteur normatif pertinent au sein des

doctrines existantes, plutôt qu'un fondement autonome de dérogation.

La thèse soutient que ces évolutions traduisent une intégration asymétrique des objectifs climatiques dans le droit matériel de l'Union. Si la reconnaissance des considérations climatiques s'affirme, leur portée normative varie selon les domaines, les bases juridiques mobilisées et les contextes institutionnels. Cette asymétrie ne constitue pas une défaillance du système, mais l'expression de la structure différenciée du droit de l'Union.

Cohérence externe et contraintes internationales

Les effets normatifs du droit climatique de l'Union excèdent le cadre juridique interne. Les mesures climatiques adoptées au niveau de l'Union doivent être compatibles avec ses engagements internationaux, notamment en matière de droit international du commerce. La cohérence externe constitue dès lors une dimension centrale de la substance normative du droit européen du climat.

La thèse analyse cette dimension principalement à travers le cadre juridique de l'Organisation mondiale du commerce. Le droit de l'OMC impose des contraintes aux mesures restrictives du commerce tout en prévoyant des exceptions fondées sur la protection de l'environnement. La logique de ce cadre — fondée sur la justification, la nécessité et la proportionnalité — présente de fortes analogies avec les mécanismes d'équilibrage du droit interne de l'Union.

Cette affinité structurelle permet à l'Union de poursuivre ses objectifs climatiques au-delà de ses frontières sans renoncer à ses engagements internationaux. Toutefois, la cohérence externe n'est ni automatique ni garantie. Les mesures climatiques peuvent susciter des différends lorsque leur compatibilité avec les disciplines de l'OMC est contestée. Dans de telles hypothèses, l'Union doit arbitrer entre ses ambitions climatiques et les exigences du droit économique international.

La thèse montre que le droit climatique de l'Union ne prévaut pas sur ses engagements externes, mais doit être articulé avec ceux-ci. La cohérence externe renforce ainsi les exigences de précision juridique, de proportionnalité et de motivation dans la conception et l'application des mesures climatiques. Les objectifs climatiques façonnent la substance normative de l'action extérieure de l'Union tout en demeurant soumis à des contraintes juridiques structurelles.

Troisième partie – Mise en œuvre juridictionnelle et contentieux climatique

Outre les mécanismes de gouvernance administrative, la mise en œuvre du droit européen du climat mobilise de manière croissante les juridictions. Les obligations climatiques consacrées par le droit de l'Union donnent lieu à des recours devant les juridictions nationales et supranationales, soulevant des questions relatives à la justiciabilité, à l'accès au juge, aux standards de contrôle et à l'étendue des voies de recours disponibles. La présente partie examine le contentieux climatique comme un mode spécifique de mise en œuvre, distinct de la gouvernance administrative et soumis à des contraintes structurelles propres.

L'exécution juridictionnelle ne fonctionne pas comme un dispositif centralisé apte

à piloter la politique climatique. Elle constitue une forme fragmentée et procéduralement médiatisée de mise en œuvre, dans laquelle les juridictions contribuent à l'effectivité juridique des obligations climatiques par la clarification des devoirs juridiques, l'encadrement de la discrétion administrative et le renforcement de l'obligation de rendre compte, sans se substituer aux autorités législatives et exécutives.

L'analyse se concentre sur trois niveaux juridictionnels : les juridictions nationales, la Cour de justice de l'Union européenne et la Cour européenne des droits de l'homme. Chacun de ces niveaux exerce un rôle distinct et circonscrit dans la juridictionnalisation du droit climatique.

Les juridictions nationales comme laboratoires du contentieux climatique

Les juridictions nationales constituent aujourd'hui le principal forum du contentieux climatique. Agissant à l'intersection du droit interne, du droit de l'Union et des engagements climatiques internationaux, elles jouent un rôle décisif dans la traduction d'objectifs climatiques abstraits en obligations juridiquement appréhendables.

La thèse considère le contentieux climatique national comme un ensemble de « laboratoires », au sein desquels les juridictions expérimentent diverses techniques juridiques pour répondre aux défis posés par le changement climatique (*Grande-Synthe, Urgenda, Friends of the Irish Environment*). Ces défis concernent notamment la qualité pour agir, l'établissement du lien de causalité, l'incertitude probatoire, l'écart temporel entre les comportements et les dommages, ainsi que les limites constitutionnelles de l'intervention juridictionnelle.

Les réponses varient sensiblement selon les États membres. Dans certaines juridictions, les tribunaux adoptent des approches fondées sur les droits fondamentaux, rattachant les obligations climatiques à des garanties constitutionnelles ou conventionnelles et imposant des devoirs concrets aux autorités publiques. Dans d'autres, des approches procéduralement plus retenues prévalent, centrées sur la légalité, la proportionnalité et la qualité des processus décisionnels administratifs.

Malgré ces divergences, le contentieux climatique national contribue à la mise en œuvre du droit climatique de l'Union en renforçant la visibilité juridique des engagements climatiques et en reconfigurant la portée de la discrétion administrative. Même lorsque les juridictions s'abstiennent de prescrire des mesures politiques précises, leurs décisions modifient le cadre juridique dans lequel les politiques climatiques sont élaborées et mises en œuvre. Les juridictions nationales fonctionnent ainsi comme des acteurs d'exécution décentralisés, sans constituer un système juridictionnel climatique uniforme ou hiérarchisé.

L'accès au contentieux climatique devant la CJUE

Au niveau de l'Union, l'exécution juridictionnelle du droit climatique est soumise à des contraintes procédurales importantes. L'accès à la Cour de justice demeure structuré par des exigences strictes en matière de qualité pour agir (*locus standi*), qui limitent la capacité des personnes physiques et des organisations non gouvernementales à contester directement les actes climatiques de l'Union.

La thèse montre que ces contraintes fonctionnent comme un filtre structurel destiné à préserver l'équilibre institutionnel, tout en restreignant la justiciabilité des obligations climatiques au niveau de l'Union. Les recours directs tendant à l'annulation d'actes climatiques échouent fréquemment au stade de l'admissibilité, y compris lorsque les actes en cause produisent des effets étendus et de long terme.

Dans ce contexte, la procédure de renvoi préjudiciel acquiert une importance majeure. Les questions posées par les juridictions nationales permettent aux problématiques du contentieux climatique d'accéder indirectement à la Cour de justice. Cette voie procédurale intègre le contentieux climatique dans le dialogue juridictionnel ordinaire de l'Union, sans transformer la Cour en juridiction climatique générale *(Ilva, Deutsche Umwelthilfe)*

La contribution de la Cour de justice à la mise en œuvre du droit climatique s'opère dès lors principalement par la clarification et la coordination juridiques, plutôt que par une exécution directe. Le rôle de la Cour demeure encadré par la conception procédurale de l'ordre juridictionnel et par des limites constitutionnelles, confirmant que le contentieux climatique complète — sans s'y substituer — les processus politiques et administratifs.

Le contentieux climatique devant la Cour EDH

La juridictionnalisation des obligations climatiques s'étend également à la Cour européenne des droits de l'homme. Les requérants y invoquent de plus en plus le changement climatique au regard des droits garantis par la Convention européenne des droits de l'homme, soulevant des questions complexes relatives au statut de victime, à la causalité et à l'étendue des obligations positives imposées aux États.

La thèse montre que la Cour adopte une approche prudente et progressive. Plutôt que de reconnaître un droit autonome à la protection du climat, elle examine les griefs climatiques au regard de droits existants et de garanties procédurales établies. Cette démarche permet de préserver l'intégrité du système conventionnel tout en reconnaissant la pertinence juridique du changement climatique.

Du point de vue du droit européen du climat, le recours à la Cour européenne des droits de l'homme ne constitue pas un mécanisme d'exécution parallèle, mais agit comme un renforcement indirect des obligations climatiques par le prisme des droits fondamentaux. Sa contribution à la mise en œuvre demeure limitée et dépendante du contexte, structurée par les exigences d'admissibilité et par le principe de subsidiarité.

Les limites structurelles du contentieux climatique comme mécanisme d'exécution

L'ensemble de l'analyse conduit à constater que le contentieux climatique constitue un mode accessoire de mise en œuvre du droit européen du climat. Les juridictions contribuent à l'obligation de rendre compte, à la clarification juridique et à la discipline procédurale, sans offrir un mécanisme d'exécution exhaustif susceptible d'orienter de manière autonome la politique climatique.

L'exécution juridictionnelle demeure limitée par les règles relatives à la qualité pour agir, par l'équilibre institutionnel et par la nature diffuse et de long terme des

dommages climatiques. Ces contraintes ne sont pas contingentes ; elles reflètent des choix constitutionnels délibérés tant dans l'ordre juridique de l'Union que dans le système conventionnel européen.

La conclusion centrale de cette partie est que le contentieux climatique renforce l'effectivité juridique du droit climatique de l'Union **sans transformer les juridictions en gouverneurs climatiques**. L'intervention juridictionnelle opère dans des limites clairement délimitées, consolidant la légalité tout en préservant la responsabilité politique de l'action climatique.

Principales conclusions et apports de la recherche

La thèse analyse le droit européen du climat comme un régime juridiquement contraignant dont les effets dépassent le champ de la politique environnementale et se déploient dans le fonctionnement constitutionnel et institutionnel de l'Union européenne. Elle montre, en premier lieu, que le droit climatique de l'Union reconfigure l'exercice des compétences sans en modifier formellement la répartition, au moyen d'effets de pilotage transversaux intégrés dans des obligations de planification, de coordination, de suivi et de révision. En second lieu, elle établit que la neutralité climatique opère comme une contrainte normative transversale, recalibrant la cohérence et la consistance du droit de l'Union à travers les domaines du marché intérieur, de la concurrence, de l'environnement et du commerce extérieur. En troisième lieu, la thèse démontre que l'exécution juridictionnelle contribue à la mise en œuvre du droit climatique principalement par des voies sélectives et procéduralement médiatisées, les juridictions nationales agissant comme des « laboratoires », tandis que le contrôle juridictionnel au niveau de l'Union demeure structurellement filtré par les règles d'accès au juge.

Au-delà de ces constats, la thèse apporte deux contributions originales principales :

1. **La formulation d'un trilemme climatique européen** comme cadre analytique permettant de comprendre les tensions structurelles inhérentes au droit européen du climat,
2. **La proposition d'un Réseau européen du climat** en tant qu'orientation de gouvernance destinée à rendre ces tensions plus intelligibles et gérables dans les limites constitutionnelles de l'Union.

Le trilemme climatique européen : tensions structurelles du droit européen du climat

La contribution conceptuelle centrale de cette thèse consiste en la formulation d'un **trilemme climatique européen**, qui met en lumière les tensions structurelles caractérisant la mise en œuvre du droit climatique de l'Union. Ce trilemme résulte de la difficulté à poursuivre simultanément trois objectifs qui sont tous normativement centraux pour l'Union européenne :

1. Une **intégration environnementale profonde**, entendue comme l'intégration effective et transversale des objectifs climatiques dans l'ensemble des politiques de l'Union ;

2. La **préservation du marché intérieur**, incluant la protection des libertés de circulation, de la concurrence, de la sécurité juridique et de l'intégration économique ;
3. La **justice climatique**, comprenant l'équité distributive entre les États membres, les acteurs économiques et les groupes sociaux, ainsi que les considérations intergénérationnelles.

La thèse montre que le droit européen du climat ne peut maximiser pleinement et uniformément ces trois objectifs simultanément. La poursuite d'une intégration environnementale profonde peut impliquer des traitements différenciés, des contraintes réglementaires ou des interventions étatiques susceptibles de remettre en cause les principes du marché intérieur. À l'inverse, la préservation stricte de l'uniformité du marché peut limiter l'ambition réglementaire et la portée des mécanismes de justice climatique. De même, des dispositifs fondés sur l'équité peuvent compliquer la cohérence juridique et introduire des asymétries au sein du marché intérieur.

Le trilemme climatique européen ne constitue pas un énoncé normatif ni un modèle prescriptif. Il s'agit d'un **cadre analytique** expliquant pourquoi le droit européen du climat opère par intégration progressive, équilibrage juridique et coordination procédurale, plutôt que par la primauté hiérarchique des objectifs climatiques. Les tensions observées en matière de compétences, de cohérence normative, de gouvernance et de contentieux ne sont ainsi ni des anomalies ni des échecs, mais des caractéristiques structurelles du droit climatique de l'Union tel qu'inséré dans son cadre institutionnel.

Intégration normative et orientation de gouvernance – le rôle du Réseau européen du climat

La thèse propose également une contribution de nature gouvernantielle à travers la proposition d'un **Réseau européen du climat**.

Cette proposition n'est conçue ni comme une solution au trilemme climatique, ni comme la prétention à éliminer les tensions structurelles qu'elle met en évidence. Elle procède plutôt d'une observation de la gouvernance et d'une réflexion normative fondée sur l'analyse développée dans les parties I et II, notamment en ce qui concerne la gouvernance polycentrique, le rôle de la Commission européenne et l'importance croissante de l'expertise indépendante en matière climatique.

Le Réseau européen du climat est envisagé comme un **cadre de coordination**, et non comme une nouvelle autorité de régulation ou un substitut à la décision politique. Son objectif est de renforcer la transparence, la cohérence et la circulation de l'information entre les institutions de l'Union, les autorités nationales et les organismes climatiques indépendants participant à la mise en œuvre du droit européen du climat.

En facilitant l'échange d'informations, l'alignement méthodologique et l'identification précoce des tensions juridiques et politiques, un tel réseau pourrait améliorer la gouvernabilité de l'action climatique dans le cadre juridique existant. Il demeure pleinement compatible avec le principe d'attribution et l'équilibre institutionnel, et n'a pas vocation à résoudre les tensions identifiées par le trilemme climatique, mais à les rendre plus visibles, compréhensibles et institutionnellement traitables.

Limites et perspectives de recherche

La thèse adopte un positionnement méthodologique volontairement modéré voire restreint. Elle n'évalue pas la suffisance des objectifs climatiques de l'Union et ne préconise pas d'instruments spécifiques de politique publique. Sa contribution réside dans l'élucidation des mécanismes juridiques, des contraintes institutionnelles et des tensions structurelles qui façonnent la mise en œuvre du droit climatique.

La persistance du trilemme climatique met également en lumière les limites structurelles de l'exécution juridictionnelle analysées dans la troisième partie. Si le contentieux climatique peut renforcer l'intégration environnementale en contraignant la discrétion administrative et en renforçant l'obligation de rendre compte, les juridictions demeurent liées par le droit du marché intérieur, les exigences procédurales d'admissibilité et les principes de retenue juridictionnelle. Leur capacité à traiter les questions de justice climatique reste particulièrement limitée, les choix redistributifs relevant d'abord du politique.

Ces limites n'entament pas la valeur du contentieux climatique, mais confirment que les mécanismes juridictionnels fonctionnent comme des **compléments** à l'action législative et à la gouvernance, et non comme des substituts. Le contentieux contribue à la visibilité et à l'effectivité juridique des engagements climatiques, tout en demeurant structurellement incapable de résoudre le trilemme dans son ensemble.

Des recherches futures pourraient prolonger ce cadre analytique en étudiant l'articulation entre le droit climatique de l'Union et les instruments fiscaux, l'intégration des politiques sociales ou les formes différenciées de gouvernance économique. Le modèle conceptuel développé dans cette thèse pourrait également être transposé à d'autres domaines caractérisés par des objectifs transversaux de long terme, tels que la gouvernance numérique ou les politiques de santé.

Synthèse de la recherche

La thèse démontre que le droit européen du climat constitue un **régime juridique structurel** au sein de l'ordre juridique de l'Union, produisant des effets sur les compétences, la substance normative et la gouvernance sans modification formelle des traités. La neutralité climatique y fonctionne comme un objectif juridiquement contraignant, mais s'inscrit dans un système fondé sur des compétences partagées, les fondements du marché intérieur et une gouvernance à niveaux multiples.

L'apport analytique et méthodologique majeur de ce travail consiste à montrer que l'effectivité de la mise en œuvre dépend moins de l'élargissement formel des compétences que de la capacité du système juridique à gérer de manière cohérente et légitime des tensions structurelles persistantes. Le trilemme climatique européen fournit un cadre de compréhension de ces tensions, tandis que la proposition d'un Réseau européen du climat esquisse une orientation de gouvernance juridiquement fondée permettant d'améliorer la cohérence et la coordination sans remettre en cause le principe d'attribution ni l'équilibre institutionnel.

Dans son ensemble, la thèse confirme que le droit européen du climat progresse par procéduralisation, coordination et équilibrage juridique, plutôt que par centralisation

institutionnelle ou juridictionnelle. Son efficacité dépend de la capacité de l'Union à concilier intégration environnementale profonde, préservation du marché intérieur et justice climatique, dans le respect des limites constitutionnelles de l'ordre juridique européen.

Le droit européen du climat ne résout pas les tensions entre ambition environnementale, intégration économique et équité. Il les institutionnalise à travers des mécanismes juridiques fondés sur la coordination, la procéduralisation et l'équilibrage. Le trilemme climatique mis en évidence dans cette recherche révèle à la fois les limites structurelles et les potentialités de cette approche.

La conclusion centrale de la thèse est que l'effectivité du droit européen du climat dépend moins de l'expansion des compétences que de la capacité de l'ordre juridique à **la gouvernance de son équilibre** de manière cohérente et légitime. Comprendre cette dynamique est essentiel non seulement pour le droit du climat, mais aussi pour l'évolution future du droit public de l'Union européenne confronté à des défis transversaux et de long terme.

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EUROPEAN CLIMATE LAW: EFFECTS ON COMPETENCES, NORMATIVE SUBSTANCE, AND GOVERNANCE OF THE EUROPEAN UNION: daktaro disertacija. – Vilnius: Mykolo Romerio universitetas, 2026. P. 468.

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Šioje daktaro disertacijoje analizuojamas Europos klimato teisės įgyvendinimas, vertinant kompetencijų pasiskirstymą, teisinį nuoseklumą ir darnumą bei Europos Sąjungos valdymą. Tyrimas grindžiamas Reglamento (ES) 2021/1119, kuriuo nustatytas teisiškai privalomas klimato neutralumo tikslas iki 2050 m., analize ir nagrinėja, kaip klimato tikslai keičia galių pasidalijimą tarp Sąjungos, jos institucijų ir valstybių narių. Disertacijoje parodoma, kad nors Europos klimato teisė formaliai nekeičia kompetencijų suteikimo principo, jos reguliacinis tankis reikšmingai apriboja nacionalinę diskreciją ir sustiprina Europos Komisijos vaidmenį klimato politikos koordinavimo, stebėsenos ir vykdymo srityse. Tai kelia iššūkių institucinei pusiausvyrai ir lemia policentrinį valdymą, kuriam būdinga galių koncentracija ir fragmentuota atskaitomybė. Remiantis ES teisės, klimato bylų ir Sąjungos išorinių (tarptautinių) įsipareigojimų, ypač PPO sistemoje, analize, darbe siūloma (su)kalibruoti Europos Sąjungos klimato valdymą ir įsteigti nepriklausomą Europos klimato tinklą, siekiant sustiprinti ekspertiškumą, geresnį koordinavimą ir atskaitomybę, kartu išlaikant ES konstitucinį balansą.

Reikšminiai žodžiai: klimato kaita, Europos klimato teisė, klimato teisingumas, ES išorės santykiai, ES teisė, tarptautinė teisė

This doctoral thesis examines the implementation of EU Climate Law through the analysis of competence allocation, legal coherence and consistency, and governance within the EU. Focusing on Regulation (EU) 2021/1119 establishing the objective of climate neutrality by 2050, the study explores how binding climate targets reshape the vertical and horizontal distribution of powers between the Union, its institutions, and the Member States. Although EU Climate Law does not formally alter the principle of conferral, its dense regulatory framework significantly constrains national discretion and strengthens the significant role of the European Commission in steering, monitoring, and enforcing climate action. Its implementation challenges traditional institutional balances and contributes to a form of polycentric governance marked by power concentration, fragmented accountability, and uneven implementation. Based on a doctrinal analysis of EU law, climate litigation, and the Union's external commitments—particularly within the WTO framework—the thesis argues for a recalibration of EU climate governance and proposes the creation of an independent European Climate Network to enhance expertise, coordination, and accountability, while preserving the constitutional balance of the Union.

Keywords: Climate Change - EU Climate Law – Climate Justice – EU external relations – EU law – International law

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