The EU's Proposed 2040 Climate Target is Illegal: The European Parliament Must Act Accordingly

Venzke, I.; Eckes, C.

DOI
10.21428/9885764c.0dbd142d

Publication date
2025

Document Version
Final published version

European Law Blog

The EU's Proposed 2040 Climate Target is Illegal: The European Parliament Must Act Accordingly

Ingo Venzke Christina Eckes

European Law Blog

Published on: Nov 18, 2025

URL: https://www.europeanlawblog.eu/pub/tt160gmg

After arduous negotiations, the European Union (EU) is on the verge of adopting a new 2040 climate target. The current proposal would violate the Union's legal obligations. The European Parliament (EP) must therefore use its democratic mandate to push back, keeping the Union from reneging on its rule of law commitments.

Human rights law and international law require that the EU and its Member States meet two obligations: first, *stay within their fair share* of the 1.5°C global carbon budget that is in line with principles such as common but differentiated responsibilities and respective capabilities (CBDR-RC); and second, pursue their *highest possible ambition* when cutting emissions and do what is *feasible* in terms of reducing territorial emissions.

The 2040 target is what the EU and its Member States take to COP30 as their nationally determined contribution (NDC). It meets neither their *fair share* obligation under human rights as determined by the European Court of Human Rights (ECtHR)'s 2024 ruling in *KlimaSeniorinnen* and confirmed by the international Court of Justice (ICJ) in its 2025 Advisory Opinion. Nor does it comply with the threshold of feasibility as articulated by the latter. The UNGP Emissions Gap Report 2025 has made abundantly clear that the NDCs, when taken together, fall far below what is necessary to realize the binding temperature target of 1,5˚C (even on the hopelessly optimistic assumption that the NDCs will be realized as submitted).

The Council's Proposal

If adopted, the current proposal of the Council, giving effect to the guidelines formulated in the October 2025 European Council meeting, would breach the EU's legal obligations both on fair share and feasibility. This breach may entail all the consequences of a wrongful act, including a potential obligation to pay compensation (Article 36 ARSIWA) and legal responsibility for human rights violations. In both cases, this does not only concern the EU as such but also its Member States.

In stark contrast to the EU's previous climate targets, the current one foresees the use of *carbon credits* to meet the EU's climate goals. The EU and its Member States could finance reduction projects outside the Union or buy reduction certificates to count reductions realized elsewhere in the world towards its own emission reductions.

Carbon offsetting is highly problematic: First of all, it goes against the EU's legal duty to pursue maximum feasible emission reductions as outlined by the ICJ. Second, it clashes head-on with principles such as common but differentiated responsibilities (CBDR-RC). The EU, as a high historical emitter with greater capacity, is expected to do more domestically and not to shift its burden to lower-emitting countries. Third, it weakens the possibilities to track what happens to the dedicated public money as reductions abroad often suffer from untransparent reporting and lack of enforcement.

Carbon credits are riddled with scandals. A recent study published in *Nature Communications* reached the conclusion that merely 16% of all carbon credits deliver on their promises! The EU has also been critical in the past. Until now it had therefore defined its climate targets in *domestic* terms; that is, *without* the use of international carbon credits. What is more, the current compromise not only lowers *domestic* reduction efforts, but also includes a "revision clause", which would allow the Union to further weaken its target in the future by vague references to economic considerations. Yet, this is what the Council endorsed.

The EP must now do the right thing: It should not rubber-stamp the Council's diluted target but insist on compliance with international and human rights law, even in the face of strong political pushback. It has the weight of legal and moral reasons on its side, and the political legitimacy to push back.

Parliament's Democratic Mandate and National Pressure

National leaders, including Germany's Chancellor Friedrich Merz, have strongly pressured the EP, suggesting that members of the European Parliament (MEPs) follow the position of their country of nationality. This is deeply troubling and fundamentally mistaken regarding the basics of European democracy. Merz, a former MEP, should have known this.

A brief reminder for Merz and others: The EP, as the EU's only directly elected institution, has a democratic mandate to act in the interest of EU citizens (Articles 10(2) and 14(2) TEU). Climate mitigation lies firmly within EU competences (Articles 191–192 TFEU), exercised through instruments such as the European Climate Law, Effort Sharing Regulation, and Emissions Trading System. If the EP yields to pressure from national capitals and accepts a weakened 2040 target, it undermines this autonomous democratic mandate.

Moreover, even if national leaders represent national constituencies, their arguments are not immune to logical or legal scrutiny. One argument appears to tower above the others: economic competitiveness. The Draghi-Report seems to singlehandedly define the *zeitgeist*. "We are being pragmatic and flexible … for economic, security and geopolitical reasons", Wopke Hoekstra, Commissioner for Climate, Net-Zero and Clean Growth, had already opined during the press conference when the proposal for the new targets was released. "It's about regaining competitiveness", he added.

More recently, Chancellor Merz chimed in, insisting that climate ambitions must be tempered by concerns about economic competitiveness. The Council heeded these calls and even demanded that the mentioned "revision clause" be introduced so that the 2040 goal could be lowered even further in the future if technological developments lag behind or economic conditions worsen.

If anything, however, the balance of economic arguments suggests strong climate ambitions make perfect economic sense, even for European industry, since clean energy is already cheaper and clean technologies are bound to create lasting economic value. In times of pressure on public coffers, one might startle at the thought

of all the great things that could be done with the incredible sums with which fossil fuels are subsidized – even by conservative assessments we are talking of around EUR 111 billion in 2023 alone!

One can continue to bicker about the validity of the economic arguments and the weakening of climate ambitions that they are supposed to support. This does not distract from the fundamental legal point: The European Council's and the Council's framing of competitiveness above all else – besides being vague and contested – is but one set of arguments that is not determinative for the EP. Importantly, when debating its own considerations, the EP must remain committed to the EU's *legal obligations*. The *European* Parliament's authority rests on its genuine democratic legitimacy. As a body of the European Union, it is legally committed to respect the law binding on the Union, irrespective of the wishes of national governments.

Legal Obligations and Litigation Risks

If the EP were to accept the weakened 2040 target, it would act against the very legal obligations to which it previously committed. Thus, the EP not only has the right but also the responsibility to refuse an excessively diluted climate target. This is even more important given that the EU's authority, both internationally and vis-à-vis the Member States, rests on its claim to democratic decision-making beyond the nation-state and its commitment to the rule of law.

In April 2024, the European Court of Human Rights (ECtHR) affirmed in its *KlimaSeniorinnen* judgment that states have the human rights obligation to protect people (especially vulnerable groups like the elderly) from the climate crisis. In July 2025, the ICJ confirmed that states (and the EU) must each do "their part" to keep global temperatures below increases of 1.5°C. They must do so by, first, staying within a fair share of the global carbon budget and, second, taking all feasible emission reduction measures. In relation to the latter, the ICJ placed a high burden of justification on governments, explicitly stating that each party must *"do its utmost to ensure"* its climate target reflects its highest possible ambition (ICJ, AO, para 246).

The European Union, as a party to the Paris Agreement and other climate treaties, is bound by these norms – both internationally and via EU law (Treaty obligations). This means a too-weak 2040 target puts the EU *out of legal alignment* with emerging climate obligations, under international law and the ECHR as interpreted in *KlimaSeniorinnen*.

The EU's European Scientific Advisory Board on Climate Change (ESABCC) has notably recommended that a 95% domestic emissions reduction by 2040 be fair, feasible and aligned with the EU's strategic interests. This is significantly more ambitious than the Council's position. Adopting anything less or relying on offsets, *certainly without offering relevant justification* why the ESABCC is wrong and higher ambitions are not feasible, would flout what Europe's own scientists contend and hence also go against the obligation to rely on "best available science".

The proposed insufficient target exposes the EU and its Member States to legal challenges – before the ECtHR but also before national courts. Indeed, we are already witnessing a wave of climate cases across Europe. A diluted 2040 goal only substantiates claims that governments (and the EU itself) are breaching the right to life and health by not doing enough. In addition, they accumulate "carbon debt" when they exceed their fair share carbon budget. This may arguably result in "carbon take back obligation".

"Just Transition" Does Not Justify Watering Down Ambition

Those arguing for a weaker 2040 target often point to the need for a "just transition", ensuring climate action is fair, especially for poorer or coal-dependent Member States. Fairness is essential, but it does not require lowering ambition. In fact, delaying the transition will only deepen injustices, both within the EU and globally.

We already have better tools to ensure fairness: the Effort Sharing Regulation and EU funding mechanisms allow for differentiated responsibilities. Wealthier countries take on steeper cuts, while others get lighter targets or support. A strong EU-wide target does not mean equal burdens. It means a shared ambition tailored to capacity.

Watering down the collective target in fact harms the most vulnerable communities in the long run. Slower emission cuts will result in more severe climate impacts (heatwaves, droughts, floods) that disproportionately affect vulnerable communities and poorer regions, particularly those relying on crop farming. It also delays economic modernization in regions currently reliant on high-emitting industries, potentially *exacerbating* inequality if they fall behind in the green transition.

Legitimate justice considerations in the transition are undermined if justice claims serve as a fig leaf for ulterior interests. Debates in the Council have shown less concern for considerations of fairness, and more signs of industry capture. Also, Commissioner Hoekstra backed the shift towards international credits by reference to the need of European industry for "more breathing space." A truly just transition would instead pair a strong climate target with support measures (funding, technology transfers, retraining programs) to help all Member States reach it.

There is nothing to this, alas. History shows that "flexibility mechanisms" like the use of international carbon offsets, carbon removal credits, and cross-sector compensations have served to defer real emission cuts. Even by the EU, those mechanisms were once seen as a ruse to weaken commitments. Allowing generous offsets or future revisions in the 2040 target sends a signal that short-term economic fears and, at best, short-term competitive considerations override citizens' human rights and commitments to the rule of law. Incidentally, they also betray the siren calls of science, as drawn together by the Intergovernmental Panel on Climate Change (IPCC) and the ESABCC.

Upholding Democracy and the Rule of Law

A watered-down climate target not only sends the wrong political signal at the Conference of the Parties in Bélém (COP30) but also fails to meet the Union's legal obligations. The EP enjoys autonomous democratic legitimacy and also has to take responsibility for the EU's climate targets and their *just* implementation, irrespective of short-term ulterior interests that might exist within individual Member States.

It cannot be that "competitiveness first" is taken so far that it means "law second". The German Federal Constitutional Court (GFCC) and other national courts have clarified states' obligations to protect human rights in the context of the climate crisis, including the interests of future generations. If the EP allows the Union to violate these rights – which are also enshrined in European human rights law, binding on the Union – national courts may find themselves in the position that they must uphold their state's commitments to international law and human rights at the expense of the primacy and effectiveness of Union law.

Post scriptum

On 13 November, the European Parliament adopted its position on the 2040 climate target and, contrary to our intervention, it endorsed the watered-down version of the proposal. Rather than holding the EU and its Member States to its international legal commitments, Parliament agreed to lowered ambitions and increased flexibilities instead, including greater reliance on carbon credits and possible adjustments in light of the EU's international competitiveness. As we showed above, this is a wrong decision in more than one register. Not the least, it exposes the EU and its Member States to litigation risks.

Ingo Venzke is Professor for International Law and Social Justice at the University of Amsterdam and Director of the Amsterdam Research Institute for Legal Studies (ARILS).

Christina Eckes is Professor of European Law at the University of Amsterdam and Principal Investigator of the ERC research project 'Strategic Climate Litigation's Direct and Indirect Consequences for Democracies' (https://climatelitigation.uva.nl/).