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Human rights, the climate emergency, and the financial system:
Reflections on the relevance of the KlimaSeniorinnen ruling for Union
institutions and the European financial sector

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EUROPEAN CENTRAL BANK

EUROSYSTEM

Legal Working Paper Series

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Human rights, the climate emergency, and the financial system

Reflections on the relevance of the
KlimaSeniorinnen ruling for Union institutions
and the European financial sector.

No 23 / November 2025

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Abstract

On 9 April 2024, the European Court of Human Rights (ECtHR) delivered a landmark ruling in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*. The ruling was handed down together with two further rulings in *Duarte Agostinho and others v. Portugal* and others, and in *Carême v. France*. The ruling marked the first time the ECtHR held that insufficient climate action by a state constitutes a violation of human rights under the European Convention on Human Rights (ECHR). While primarily having an impact on Switzerland as a defending State, the ruling is expected to indirectly affect the legal order of the European Union and its institutions. Moreover, the findings of the ECtHR have been reinforced by recent advisory opinions of other international courts and tribunals, in particular the opinion of the International Court of Justice, handed down on 23 July 2025. This paper first recalls the key facts and outcomes from each of the three ECtHR climate rulings and explores the key findings in greater detail. Second, the paper outlines the climate rulings of other international courts and tribunals. Thereafter, the paper explains the relevance of the *KlimaSeniorinnen* ruling for the Union and its institutions. First, as a matter of substance, the paper explains how the ruling carries lessons for the ambition and implementation of the climate policies of the Union and its Member States. Second, the paper goes on to explore the procedural avenues for litigants to bring an action before the Court of Justice of the European Union (CJEU), to challenge Union policies on the basis of the ECtHR's ruling. The paper then outlines how the ruling may be relevant to the ECB, and for the national central banks (NCBs) and national competent authorities (NCAs) within the Eurosystem and Single Supervisory Mechanism. Finally, the paper explores how the ruling may be relevant to the financial sector, insofar as it increases the risk of litigation, and risks related to the process of adjustment towards a low-carbon economy (transition risk).

Executive summary

On 9 April 2024, the European Court of Human Rights (ECtHR) delivered a landmark ruling in Verein KlimaSeniorinnen Schweiz and Others v.

Switzerland. The ruling was handed down together with two further rulings in *Duarte Agostinho and others v. Portugal* and others, and in *Carême v. France*. The *KlimaSeniorinnen* ruling marked the first time the ECtHR held that insufficient climate action by a State constitutes a violation of human rights under the European Convention on Human Rights (ECHR). While primarily having an immediate impact on Switzerland as the defending State, the ruling is also expected to indirectly affect the Union legal order and Union institutions.

This paper recalls the key facts and outcomes from each of the three “climate” rulings and explores the findings in greater detail. *First*, it considers the matter of jurisdiction. While the jurisdiction of the ECtHR to hear the *KlimaSeniorinnen* case was uncontested, the ECtHR explained how its judgement fits into a series of other groundbreaking rulings related to climate change and human rights. The ECtHR acknowledged that even in climate-related litigation, the scope of its jurisdiction will remain strictly defined and unchanged, focusing on the interpretation of the ECHR. *Second*, the paper outlines how the ECtHR approached the matter of admissibility, by developing a new and more lenient approach when addressing the standing of associations and non-governmental organisations (NGOs) in climate-related cases. *Third*, the paper outlines the key substantive outcome of the *KlimaSeniorinnen* ruling, in that the ECtHR held that Article 8 ECHR (the right to respect for private and family life) encompasses a right to effective protection by State authorities from the serious adverse effects of climate change on the life, health, well-being and quality of life of individuals. *Fourth*, the paper outlines the ECtHR’s engagement with climate-related science and evidence. The ECtHR took it as a matter of fact that climate change exists and that it poses a serious threat to the current and future enjoyment of human rights guaranteed under the ECHR. *Fifth*, the paper outlines how the ECtHR considered the matter of ‘embedded emissions’, i.e. GHG emissions generated abroad and attributed to Switzerland through the import of goods for household consumption. *Finally*, the paper looks at the challenges and opportunities in the aftermath of the ruling, noting how it sets a powerful precedent for further climate-related and environmental cases.

Second, the paper outlines how the ECtHR findings in *KlimaSeniorinnen* have been further reinforced by recent advisory opinions delivered by international courts that have also assessed climate change from a human-rights perspective. Most notably, the recent advisory opinion of the International Court of Justice (ICJ) of 23 July 2025 found that States are under a binding obligation to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions. These obligations arise not only from international climate treaties, but also from customary international law, other environmental treaties, and international human rights law.

Thereafter, the paper explains the relevance of the *KlimaSeniorinnen* ruling for the Union and its institutions. The paper recalls that the Union is not party to the ECHR. However, it outlines that the case law of the ECHR is relevant for the Union legal order through its impact on the interpretation of the Charter of Fundamental Rights (the Charter).

As a matter of substance, the paper explains how the ruling carries lessons for the ambition and implementation of the climate policies of the Union and its Member States. The paper explains how the margin of appreciation test developed by the ECtHR could be applied to help devise, develop, and implement the relevant legislative and administrative framework to address climate change. The paper highlights two key aspects of the reasoning of the ECtHR that could be relevant to current discussions in Brussels: the importance placed by the ECtHR on establishing a carbon budget; and the finding that climate protection “should carry considerable weight in the weighing-up of any competing considerations.” These points are particularly salient in view of current negotiations on the Union’s 2040 climate target and in view of the focus on European competitiveness, insofar as the *KlimaSeniorinnen* ruling would imply that these considerations should not come at the detriment of effective climate policies.

The paper goes on to explore the procedural avenues for litigants to bring an action before the Court of Justice of the European Union (CJEU) and to challenge Union policies on the basis of the ECtHR’s interpretation. It outlines that direct avenues for bringing actions before the CJEU may be limited. *First*, the paper recalls that the rules governing legal standing before the CJEU significantly restrict the possibility to bring actions for annulment under Article 263 TFEU, as demonstrated in the *Carvalho* case. *Second*, it explains that while claimants may bring an action against the Union for non-contractual liability, alleging a breach of fundamental rights protected by the Charter, this strategy also proved unsuccessful in the *Carvalho* case: the case was rejected on the basis that the plaintiffs were seeking to obtain a result similar to annulment of an act, where an action for annulment was deemed inadmissible. The paper also outlines two indirect avenues for bringing such actions: procedural applications under the Aarhus Regulation, or the use of the preliminary reference procedure under Article 267 TFEU. The paper concludes that notwithstanding the high procedural barriers to bringing actions before the CJEU, the ruling of the ECtHR in *KlimaSeniorinnen* merits careful reflection by Union institutions.

The paper then outlines how the ruling may be relevant to the ECB, and for the national central banks (NCBs) and national competent authorities (NCAs) within the Eurosystem and Single Supervisory Mechanism. The paper notes that the immediate legal implications for the ECB, as a Union institution, may be limited. By contrast, the paper explains that the ruling may be more directly relevant for NCBs and NCAs, as they are part of the legal order of States which are party to the ECHR, with which they must comply when conducting their tasks. The paper notes it cannot be excluded that national courts might be asked to apply the interpretation by the ECtHR in the *KlimaSeniorinnen* case to the activities of NCBs or NCAs implementing Union law. It may therefore be beneficial for Member States and their

public authorities, along with the ECB to carefully consider the *KlimaSeniorinnen* ruling when exercising their respective mandates and carrying out their policies and activities.

Finally, the paper explores how the ruling may be relevant to the financial sector, through increased litigation risk and transition risk, i.e. risks related to the process of adjustment towards a low-carbon economy. In terms of litigation risk, the trend in climate-related litigation continues to expand, with litigants taking action not only against States and public authorities, but also against corporations and financial institutions, using human rights-based arguments. The *KlimaSeniorinnen* ruling can be expected to accelerate that trend. In terms of transition risk, it is essential to carefully anticipate how case law against States at national, regional or international level could develop further, based on the *KlimaSeniorinnen* ruling, as this may lead to States' being required to take more ambitious climate action within increasingly tight timeframes. Transition risk is most problematic for the economy and the financial sector when the process of adjustment is too steep. There are therefore considerable benefits to adopting appropriate policy and regulatory measures earlier, rather than later, thereby ensuring an orderly transition. This includes legislation that requires companies and financial institutions to prepare their business for the transition, in particular by adopting and putting into effect transition plans. This finding has considerable relevance for current Union legislative discussions.

This paper offers reflections on three rulings by the European Court of Human Rights (ECtHR)¹ on 9 April 2024 and how these may be relevant for Union institutions and the financial sector. These are the cases of *Verein*

KlimaSeniorinnen Schweiz and others v. Switzerland (the *KlimaSeniorinnen* case),² *Duarte Agostinho and others v. Portugal and others*,³ and *Carême v. France*.⁴ The paper places particular focus on the successful *KlimaSeniorinnen* case, as the ECtHR dismissed the other two cases as inadmissible.

These rulings are part of a broader trend of ‘systemic’ climate-related litigation brought by individuals and NGOs against States and public bodies. ‘Systemic’

climate-related litigation refers to climate-aligned cases against governments that challenge the overall effort of a State or its organs to mitigate or adapt to climate change.⁵ 28 such cases have been brought before national courts in Europe.⁶ These include the successful cases against the Netherlands in *Urgenda*,⁷ and against Germany in *Neubauer*.⁸ Such litigation aims to ensure that overall governmental action on climate change is more ambitious and better aligned with the need to avert or respond to climate impacts identified and predicted by the scientific community, increasingly relying on human rights arguments.⁹

¹ The ECtHR is the international court of the Council of Europe (which has 46 member states), responsible for interpreting the European Convention on Human Rights (ECHR). The ECtHR hears applications alleging that a Member State has breached one or more of the human rights enumerated in the ECHR, or its optional protocols. The EU itself is not a member of the Council of Europe (it did not accede to the ECHR) – but all EU Member States are. Domestic remedies must be exhausted before an application can be examined by the ECtHR.

² *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, No 53600/20, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020.

³ *Duarte Agostinho and Others v. Portugal and 32 Others*, No 39371/20, 9 April 2024, ECLI:CE:ECHR:2024:0409DEC003937120.

⁴ *Carême v. France*, No 7189/21, 9 April 2024, ECLI:CE:ECHR:2024:0409DEC000718921.

⁵ Navroz Dubash and Catherine Mitchell et al. (2022) National and sub-national policies and institutions, in IPCC (Ed.), Climate change 2022: Mitigation of climate change. Working Group III contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change. See also Andrew Jackson (2020) Ireland’s Climate Action and Low Carbon Development Act 2015: Symbolic Legislation, Systemic Litigation, Stepping Stone?, National Climate Change Acts: The Emergence, Form and Nature of National Framework Climate Legislation, Muinzer, TL (ed.), Bloomsbury, London.

⁶ Carlotta Garofalo, ‘Foot in the Door’ or ‘Door in the Face’? The development of legal strategies in European climate litigation between structure and agency. *Eur Law J.* 2023; 29(3-6): 340-361.

⁷ In *Urgenda Foundation v. State of the Netherlands*, a Dutch environmental group, along with individual citizens, filed a lawsuit against the Dutch government, claiming that its climate mitigation actions were insufficient to meet the state’s contribution towards the goal of keeping global temperature increase within 2°C compared to pre-industrialisation levels. The court in the Hague held that the Dutch state was acting unlawfully, violating its duty of care under Article 2 and 8 ECHR.

⁸ In *Neubauer et al. v. Germany*, a group of German youth sued the German state, claiming that the Federal Climate Protection Act (KSG)’s target of reducing GHG emissions by 55% until 2030 from 1990 levels did not sufficiently account for Germany and the EU’s obligations under the Paris Agreement, thereby violating their human rights as protected by the German Constitution (the Basic Law). The German Federal Court ruled that Article 20a of the Basic Law not only requires the legislature to set clear provisions for reduction targets aimed at achieving climate neutrality, but also mandates the distribution of the national carbon budget between present and future generations.

⁹ Joana Setzer and Catherine Higham (2023), [Global trends in climate change litigation: 2023 snapshot](#) and (2024), [Global trends in climate change litigation: 2024 snapshot](#).

Climate-related litigation has been identified as relevant to the financial system.

The Network for Greening the Financial System (NGFS) has published several reports on the topic, highlighting that corporations and financial institutions are also being targeted.¹⁰ Central banks and supervisors may also be directly challenged by litigants, or may be indirectly affected by such litigation, due to the cases' potential impact on the economy and financial system.¹¹

The ECtHR findings in *KlimaSeniorinnen* have been further reinforced by recent advisory opinions delivered by international courts, which have also assessed the implications of climate change for human rights.

Most notably, the recent advisory opinion of the International Court of Justice (ICJ) of 23 July 2025 found that States are under a binding obligation to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, by virtue of, *inter alia*, climate treaties such as the Paris Agreement, customary international law, other environmental treaties and international human rights law. In particular, the ICJ found that States have obligations under international human rights law to respect and ensure the effective enjoyment of human rights by taking necessary measures to protect the climate system and other parts of the environment. The ICJ found that a breach by a State of those obligations constitutes an internationally wrongful act entailing the responsibility of that State and emphasised that States are thus also required to exercise regulatory due diligence with respect to private actors whose activities contribute to climate change.

This working paper is structured as follows. Section 2 provides an overview of the three rulings and presents the key findings from the ECtHR rulings on the topics of the ECtHR's jurisdiction, the admissibility of claims, the establishment of a right for individuals to effective protection from the serious adverse effects of climate change under Article 8 ECHR, and the treatment by the ECtHR of climate science and embedded emissions. Section 3 outlines climate rulings of other international courts. Section 4 outlines how these rulings may be relevant for the Union and its institutions, while section 5 outlines the potential relevance of the rulings for the financial system, through litigation risk and transition risk. Section 6 sets out the conclusions.

¹⁰ Network for Greening the Financial System (2021), [Climate-related litigation: Raising awareness about a growing source of risk](#), November; Network for Greening the Financial System (2023), [Climate-related litigation: recent trends and developments](#), September; Network for Greening the Financial System (2024), [Nature-related litigation: Emerging trends and lessons learned from climate-related litigation](#), July.

¹¹ Ibid. A key example was the case of *ClientEarth v. NBB*, which was unsuccessfully brought against the National Bank of Belgium before the Belgian Courts.

2 Climate rulings of the European Court of Human Rights

2.1 Overview of the cases

2.1.1 Verein KlimaSeniorinnen Schweiz and others v. Switzerland

In 2016, four elderly women and the NGO Verein KlimaSeniorinnen Schweiz filed a legal action against the Swiss government. The plaintiffs alleged that the Swiss government had failed to comply with obligations to mitigate climate change under the Swiss Constitution and the ECHR. The applicants argued that their demographic group is especially vulnerable to the heat waves resulting from climate change. Their petition was dismissed by the Swiss government, the Federal Administrative Court, and the Supreme Court.

Having exhausted all available domestic legal remedies, the claimants filed an application to the ECtHR in 2020. The application outlined three main complaints: (i) inadequate climate mitigation policies infringing the right to life (Article 2 ECHR) and the right to respect for private and family life (Article 8 ECHR); (ii) the Federal Supreme Court's allegedly arbitrary rejection of their claim, violating the right of access to courts (Article 6 ECHR); and (iii) the Swiss authorities' failure to address their complaints, violating the right to an effective remedy (Article 13 ECHR).

In its ruling of 9 April 2024, the ECtHR granted legal standing to the NGO,¹² and held that Article 8 ECHR encompasses the right for individuals to effective protection from the serious adverse impacts of climate change on their life, health, well-being, and quality of life.¹³ It held that State Parties to the ECHR bear a positive obligation to ensure such protection. Hence, they must take substantial and progressive measures to reduce their greenhouse gas (GHG) emissions, with a view of achieving the 2050 carbon-neutrality objective and in line with a 1.5°C increase in temperature compared to 1990 levels.¹⁴

The ECtHR established a five-step test to evaluate the State's compliance with its (minimum) positive requirements under Article 8 ECHR.¹⁵ These five steps were relied on by the ECtHR to perform its judicial control, requiring Switzerland, as a Party to the ECHR to: (i) adopt general measures specifying targets for achieving carbon neutrality and the remaining carbon (or GHG) budget for that timeline, or equivalent, in line with national and/or global climate change mitigation commitments; (ii) lay down intermediate emissions reduction targets and pathways; (iii) provide evidence of compliance with relevant targets; (iv) update the relevant

¹² Para. 526, *KlimaSeniorinnen*.

¹³ Para. 544, *KlimaSeniorinnen*.

¹⁴ Paras. 544 to 554, *KlimaSeniorinnen*.

¹⁵ Para. 550, *KlimaSeniorinnen*.

targets with due diligence in line with the best available science; (v) act in good time and appropriately and consistently when implementing laws and measures. Applying these principles to Switzerland's regulatory framework, the ECtHR identified critical gaps, including the government's failure to quantify national GHG emissions limitations, whether through a carbon budget or alternative means.

2.1.2 Duarte Agostinho and others v. Portugal and others

In 2020, six Portuguese children and youths filed a complaint with the ECtHR against Portugal and thirty-two other states,¹⁶ alleging that they had violated the ECHR by failing to take sufficient action on climate change. The applicants invoked Articles 2, 8 and 14 (prohibition of discrimination) ECHR, outlining that their right to life is threatened by the effects of climate change in Portugal, such as forest fires; that their right to private life includes their physical and mental wellbeing, which is threatened by heatwaves which force them to spend more time indoors; and that, as young people, they are disproportionately affected by climate change, compared to other age groups. In addition, the ECtHR asked parties to comment on alleged violations of Article 3 ECHR (prohibition of torture and inhuman and degrading treatment) and on Article 1 of Protocol No. 1 to the ECHR (right to property).

The ECtHR held that the application in the Duarte case was inadmissible. First, as regards the thirty-two states other than Portugal, the ECtHR held that no jurisdiction could be established as regards those states, as there were no legal grounds to expand the extraterritorial jurisdiction as requested by the applicants, who are resident in Portugal. Second, as regards the complaint against Portugal, this was deemed inadmissible because the applicants did not exhaust domestic remedies.

2.1.3 Carême v. France

In 2019, the mayor of the municipality of Grande-Synthe applied to France's Conseil d'État for an order against the French government to take additional measures to meet its commitments under the Paris Agreement. The municipality is in an area considered at a very high risk of flooding due to climate change. The applicant brought the case in his capacity as mayor of Grande-Synthe and as a private citizen. The application was partly successful: the Conseil d'État ordered the government to take all necessary measures to curb GHG emissions, in order to meet France's climate targets¹⁷. However, the Conseil d'État rejected the applicant's individual claim as a private citizen, ruling that his interest in bringing proceedings was not justified, since the risk of climate change affecting him based on the location of his residence in an area prone to flooding was hypothetical.

The applicant brought his case before the ECtHR following the Conseil d'État's rejection of his individual claim as a private citizen. The applicant alleged that

¹⁶ All other EU Member States, plus Norway, Russia, Switzerland, Turkey, UK and Ukraine.

¹⁷ Conseil d'Etat, 19 nov. 2020, *Grande-Synthe*, req. n° 427301.

exposure to climate risks, including coastal erosion, floods, and coastal flooding, violated his rights under Articles 2 and 8 ECHR.

The ECtHR found that the case was inadmissible because the applicant was no longer resident in the municipality. The applicant had moved to Brussels after becoming a member of the European Parliament in May 2019 and no longer had relevant links to the area. Thus, the applicant lacked victim status under the ECHR.

2.2 Key findings

2.2.1 Jurisdiction

The ECtHR explained how its KlimaSeniorinnen judgment sits in a series of other groundbreaking rulings related to climate change and human rights.

These other rulings - delivered by either the highest courts in several State Parties to the ECHR¹⁸ or Union courts¹⁹ - were considered relevant by the ECtHR to inform the existing legal consensus. Similarly, the ECtHR noted other important advisory opinions on States' responsibilities for climate change from international courts were expected between 2024 and 2025²⁰ (see section 3).

Increased legal sensitivity in matters related to climate change could indirectly influence the assessment of the ECtHR in future cases. The ECtHR made clear that, considering the global dimension of climate change and the fact that the ECHR is a living instrument which needs to be interpreted in line with present-day societal needs,²¹ its ruling is necessarily affected by decisions from other courts – reflecting an evolving sensitivity towards the adverse effects of climate change on human rights at the level of international human rights courts and across individual jurisdictions – as well as developments in international law.

The ECtHR also clarified that, even in climate-related litigation, the scope of its jurisdiction will remain strictly defined and unchanged. The ECtHR recalled that it does not have authority to ensure compliance with international treaties or obligations other than the ECHR.²² This means, for instance, that the ECHR is not entitled to review the compliance with the Paris Agreement (see section 3).

¹⁸ From paras. 235 to 272, *KlimaSeniorinnen*. *Inter alia* : **France** (*Commune de Grande-Synthe v. France*); **Germany** (*Neubauer et al. v. Germany*); **Ireland** (*Friends of the Irish Environment v. Ireland*); **Netherlands**: (*Urgenda Foundation v. State of the Netherlands*); **Norway** (*Greenpeace Nordic and Nature & Youth v. Energy Ministry*); **Spain** (*Greenpeace v. Spain I*); **UK** (*Plan B Earth and Others v. Prime Minister*).

¹⁹ Para. 215, *KlimaSeniorinnen*: *Stichting Greenpeace Council (Greenpeace International) and Others v. Commission*.

²⁰ Paras. 187 and 188, *KlimaSeniorinnen*, refer to the requests for advisory opinions submitted to the *International Tribunal of the Law of the Sea* (ITLOS) and the *International Court of Justice* (ICJ), discussed in section 3 below. Another request was also submitted to the *Inter-American Court of Human Rights* (IACtHR).

²¹ Para. 434, *KlimaSeniorinnen*.

²² Para. 454, *KlimaSeniorinnen*.

In addition, the ECtHR was unwilling to alter its doctrine on jurisdiction or reconsider the territorial reach of the ECHR. In the *Duarte* case, the claimants contended that the ECtHR would need to review its long-established case law on territoriality²³ in order to adapt it to the global character of the climate change crisis²⁴, in line with some other international human-rights bodies.²⁵ The proposal was rejected by the ECtHR which refused to develop a special test for jurisdiction of transboundary harm caused by GHG emissions. Instead, it highlighted that Article 1 of the ECHR “requires control over the person himself or herself rather than the person’s interests.”²⁶ It noted that the application of an expanded test of ‘control over the applicants’ ECHR interests’ in the climate sphere would lead to significant uncertainties for State Parties and to unlimited expansion of their extraterritorial jurisdiction under the ECHR. As a result, the ECtHR concluded that it does not intend to turn the ECHR into a global climate change treaty.²⁷

2.2.2 Admissibility

Consistent with its past case law, the ECtHR embraced a restrictive approach to the admissibility of claims in climate-related cases in its 9 April 2024 rulings, in respect of both establishing victim status and exhausting domestic remedies. First, as regards victim status, the ECtHR strictly defined what the expected situation of the victim of climate change should be for a claim to be considered admissible. It rejected the possibility of an *actio popularis*²⁸ and clarified that a claimant’s anxiety due to the future impacts of climate change would not be sufficient to grant the claimant victim status under the ECHR²⁹. In *KlimaSeniorinnen*, the ECtHR specified that individual applicants are required to fulfil two conditions in order to bring climate-related cases: they must both be subject to high intensity exposure to adverse effects of climate change and to a pressing need to ensure their individual protection owing to the absence or inadequacy of any reasonable measure to reduce harm caused by GHG emissions.³⁰ Second, the ECtHR reiterated its long-standing case law regarding the prerequisite of an exhaustion of domestic remedies for an action to be admissible.

²³ The jurisdiction of the ECHR under Article 1 of the ECHR is strictly territorial. The only exception covers case where a Contracting States exercise physical power and control over a person outside its territory and more classic case of events taking place on board craft and vessels registered in, or flying the flag of, a Contracting State.

²⁴ The claimants tried to argue that the Court should recognise a theory of jurisdiction based on the cause-and-effect notion of jurisdiction. Under this theory, an individual causally affected by an act or omission of a State would be within the jurisdiction of the Court.

²⁵ This is the stance relied on by the Committee on the Right of Child in *Sacchi and Others v. Argentina*, 22 September 2021, UN Doc. CRC/C/88/D/104/2019 and the Inter-American Court of Human Rights in its *Advisory Opinion OC-23/17*, State Obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity.

²⁶ Para. 205, *Duarte*.

²⁷ Para. 208, *Duarte*.

²⁸ *Actio popularis* are actions that can be brought by a claimant in the public interest without them being directly and individually concerned.

²⁹ Para. 84, *Carême*.

³⁰ Paras. 478 to 488, *KlimaSeniorinnen*. The ECtHR also followed a restrictive reading of victim status in the *Carême* case by highlighting that it is necessary to demonstrate the existence of a relevant link between the alleged victim and the territory where the alleged breach took place.

In Duarte, the applicants claimed that it should be possible to bypass the requirement to exhaust the domestic remedies. The applicants argued that the ECtHR should consider that: (i) the remedies available in the Portuguese legal order were not adequate and/or effective; (ii) it would impose an unreasonable burden upon the applicants, given the number of respondent States, the urgency and gravity of the climate emergency and the financial and logistical difficulties related to the group age of the applicants; and (iii) it was a novel issue for which the ECtHR was expected to provide guidance to the contracting States.³¹ The ECtHR rejected these arguments, holding that cannot be considered that there were any special reasons for exempting the applicants from the requirement to exhaust domestic remedies in accordance with the applicable rules and the available procedures under domestic law.³²

The ECtHR embraced a novel approach in determining the standing of associations, including non-governmental organisations (NGOs) in climate-related cases. In its *KlimaSeniorinnen* ruling, the ECtHR developed a new test requiring associations to be lawfully established, have as a statutory objective the defence of human rights violations arising from adverse effects of climate change and demonstrate that they are qualified to act on behalf of their members or other affected individuals.³³ The ECtHR noted that collective action through associations or other interest groups is sometimes the only means for the voice of those at a distinct representational disadvantage to be heard and through which they can seek to influence the relevant decision-making processes.³⁴

This approach and the underlying reasoning stand in stark contrast to the much more restrictive stance of the CJEU regarding legal standing. In Case T-330/18, *Armando Carvalho v. Parliament and Council*,³⁵ the General Court of the European Union affirmed the restrictive case law of the CJEU on standing to bring climate change litigation. It ruled that an association did not have standing because it could not demonstrate that it was individually concerned by the Union directives and regulations implementing the Union's reduction in greenhouse emissions. With this case, the CJEU maintained its restrictive approach on standing for associations whereby they are given standing only in the three following cases: (i) where an association represents the interests of its members, who would themselves be entitled to bring proceedings; (ii) where a legal provision expressly grants a series of procedural powers to trade associations; or (iii) where the association is distinguished individually because its own interests as an association are affected, in particular because its negotiating position has been affected by the act in respect of which annulment is sought.

³¹ Paras. 129 to 133, *Duarte*.

³² Para. 226, *Duarte*.

³³ Paras. 489 to 503, *KlimaSeniorinnen*. It should be noted that the ECtHR took a more restrictive approach to the assessment of legal standing of associations in environmental pollution cases compared to climate-related cases (*Cannavacciuolo and others v. Italy*, paras. 215-222).

³⁴ Para. 554, *KlimaSeniorinnen*.

³⁵ Case T-330/18 *Armando Carvalho v. Parliament and Council*, ECLI:EU:T:2019:324.

2.2.3 Human rights and climate change

In the *KlimaSeniorinnen* case, the ECtHR held that Article 8 ECHR (the right to respect for private and family life) encompasses a right for individuals to effective protection by the State authorities from the serious adverse effects of climate change on their life, health, well-being and quality of life.³⁶ The ECtHR found that Switzerland had failed to fulfil its positive obligations to protect the health, well-being and quality of life of Swiss citizens from the impacts of climate change. This breach was attributed to the Swiss government's failure to implement a robust regulatory framework necessary for fulfilling its commitment to reduce GHG emissions in line with the Paris Agreement and the scientific evidence provided by the Intergovernmental Panel on Climate Change (IPCC).³⁷ The ECtHR decided to examine the plaintiffs' complaint only from the angle of Article 8 ECHR. However, it noted that similar considerations can apply to Article 2 ECHR (the right to life). The ECtHR stated that Articles 2 and 8 "when seen together, provide a useful basis for defining the overall approach to be applied in the climate change context under both provisions".³⁸

In particular, the ECtHR held that, in light of the urgency and the gravity of the climate crisis and because of States' commitments to achieve 'carbon neutrality', States have a reduced margin of appreciation when it comes to the setting of aims and objectives to combat climate change.³⁹ As noted above, the ECtHR set out five minimum requirements to assess whether the State has remained within its margin of appreciation:⁴⁰ (i) adoption of general measures specifying targets for achieving carbon neutrality and the remaining carbon budget for that timeline, or equivalent, in line with national and/or global climate change mitigation commitments; (ii) intermediate emissions reduction targets and pathways; (iii) evidence of compliance with relevant targets; (iv) updating the relevant targets with due diligence in line with the best available science; (v) acting in good time and appropriately and consistently when implementing laws and measures. Furthermore, the ECtHR highlighted that climate protection should carry considerable relevance in the weighing of any competing considerations.⁴¹

However, the ECtHR noted that States maintain a wider margin of appreciation regarding their choice of means to reduce GHG emissions. This includes policies and operational choices adopted in order to meet international climate targets and commitments based on their priorities and resources.⁴² While not addressed by the ECtHR, a number of intervenors noted that as the global (and State-specific) carbon budget depletes, the margin of appreciation of States regarding the choice of means might narrow. Eventually, this could lead to the

³⁶ Para. 519, *KlimaSeniorinnen*.

³⁷ Para. 542, *KlimaSeniorinnen*.

³⁸ Para. 537, *KlimaSeniorinnen*.

³⁹ Para. 543, *KlimaSeniorinnen*.

⁴⁰ Para. 550, *KlimaSeniorinnen*.

⁴¹ Para. 542, *KlimaSeniorinnen*.

⁴² Para 549, *KlimaSeniorinnen*.

necessity of more restrictive frameworks and measures including to regulate GHG emissions generated by private companies.

Arguments regarding intergenerational equity and future generations did not feature as prominently in the *KlimaSeniorinnen* case, as it has in other climate-related cases.⁴³ Nevertheless, and despite the fact that the case focused on the rights of senior Swiss citizens, the ECtHR demonstrated its high awareness of this aspect, noting that “the damaging effects of climate change raise an issue of intergenerational burden-sharing [...] and impact most heavily on various vulnerable groups in society, who need special care and protection from the authorities”.⁴⁴

2.2.4 Climate science and evidence

The ECtHR acknowledged that one of the key features of climate-related litigation is the necessity to engage with a body of complex scientific evidence.⁴⁵ In past cases, lack of evidence was one of the stated reasons for litigants failing to establish a causal link between a breach of the law by a State or a company and its impact climate change⁴⁶. This did not deter the ECtHR from examining complex issues of causation, both building on its existing case law on evidentiary proof in environmental cases and relying on scientific evidence of climate change to draw factual conclusions regarding climate change.

In particular, the ECtHR emphasised the importance of the reports of the IPCC. First, it recalled that the ECtHR can rely on studies and reports by relevant international bodies as regards the environmental impacts on individuals. Second, it pointed to the comprehensive and rigorous methodology of the IPCC reports.⁴⁷ Third, and most importantly, it noted that the findings of the IPCC were not challenged or called into doubt by Switzerland or the other intervening States. Moreover, it noted that the IPCC findings correspond to the position taken, in principle, by the States in the context of their international commitments to tackle climate change and they had not contested that there is a climate emergency.⁴⁸

On that basis, ECtHR took it as a matter of fact that there are sufficiently reliable indications that anthropogenic climate change exists and that it poses a serious threat to the current and future enjoyment of human rights guaranteed under the ECHR. It found that States are aware of the threat and capable of taking measures to effectively address it; that the relevant risks are

⁴³ In particular, the unsuccessful *Duarte* case, and in the case before the German Federal Constitutional Court in *Neubauer*. Aoife Nolan, [Inter-generational Equity, Future Generations and Democracy in the European Court of Human Rights’ *Klimasenioren* Decision](#), EJIL: Talk, 15 April 2024.

⁴⁴ Para. 410, *KlimaSeniorinnen*.

⁴⁵ Para. 427, *KlimaSeniorinnen*.

⁴⁶ Rupert F. Stuart-Smith, Friederike E.L. Otto, Aisha I. Saad, et al. Filling the evidentiary gap in climate litigation. *Nat. Clim. Chang.* 11, 651–655 (2021); Francis Menton, Issues of Proof in climate litigation, *New York Law Journal*, vol 242, (2009). See *infra* on the *Lliuya v. RWE* case.

⁴⁷ Para. 439, *KlimaSeniorinnen*.

⁴⁸ Para. 432 to 433, *KlimaSeniorinnen*.

projected to be lower if timely action is taken; and that current global mitigation efforts are not sufficient.⁴⁹

2.2.5 Embedded emissions

The ECtHR also considered the matter of ‘embedded emissions’, i.e. GHG emissions generated abroad and attributed to Switzerland through the import of goods for household consumption. First, the ECtHR held that the applicants’ complaint regarding Switzerland’s ‘embedded emissions’ fell within the scope of the complaint.⁵⁰ The ECtHR noted that embedded emissions constitute 70% of Switzerland’s overall GHG footprint. It determined that these emissions could be included in its assessment, noting that it would be “difficult, if not impossible, to discuss Switzerland’s responsibility for the effects of its GHG emissions on the applicants’ rights without considering the emissions generated through the import of goods and their consumption.” Second, the ECtHR confirmed that those ‘embedded emissions’ would fall within Switzerland’s jurisdiction.⁵¹ While addressing the issue solely at a procedural level, it rejected the Swiss government’s argument that “GHG emissions generated abroad could not be considered to attract the responsibility of Switzerland” since Swiss authorities “did not have direct control over the sources of emissions”. The ECtHR found “no genuine issue of jurisdiction” because all applicants are residents of Switzerland and thus under its territorial jurisdiction.

2.2.6 Follow-up to the ruling

While the ECtHR’s judgments are binding on Parties to the ECHR, their judgments are declaratory in nature. The ECtHR can adjudicate breaches of the ECHR but has limited power to ensure its rulings are complied with. Instead, supervision of the execution of judgments is carried out by the Council of Europe’s Committee of Ministers, which can ultimately refer continued non-compliance back to the ECtHR.

Thus, despite the success of the KlimaSeniorinnen case, Swiss policies and legislation have not yet addressed the ruling. In March 2025, the Committee of Ministers confirmed that Switzerland has not sufficiently complied with the decision. It has requested that Swiss authorities provide updated information on their plans to implement the judgment.⁵²

⁴⁹ Para. 436, *KlimaSeniorinnen*.

⁵⁰ Para. 275 to 283, *KlimaSeniorinnen*.

⁵¹ Para. 284 to 288, *KlimaSeniorinnen*.

⁵² See Decision of the Committee of Ministers, [H46-30 Verein KlimaSeniorinnen Schweiz and Others v. Switzerland \(Application No. 53600/20\)](#).

Nevertheless, the case sets a powerful precedent for further climate and environmental cases pending before the ECtHR.⁵³ The *KlimaSeniorinnen* ruling was already referred to by the ECtHR in the recent case of *Cannavacciuolo and Others v. Italy*,⁵⁴ which concerned environmental pollution in the so-called Terra dei Fuochi region of Italy. In the ruling, handed down on 30 January 2025, ECtHR found that environmental pollution can constitute a threat to the right to life as enshrined under Article 2 ECHR. The ECtHR established that Italian authorities had failed to protect the right to life of the affected citizens of the Terra dei Fuochi, by failing to address the issue of pollution with diligence and expedition, despite having known of such 'systemic' pollution issues at least since 1995. The ECtHR observed that when a State is required to undertake positive measures, the choice of means generally falls within the State's margin of appreciation. However, citing *KlimaSeniorinnen*, the ECtHR highlighted that, in certain contexts such as climate change and systemic environmental pollution, it is incumbent on the public authorities to act in good time and in an appropriate and consistent manner in order for measures to be effective.

⁵³ These include: *R(Friends of the Earth Ltd, Mr Kevin Jordan and Mr Doug Paulley) v. UK*; *Engels and Others v. Germany*; *Greenpeace Nordic and Others v. Norway*; *De Conto v. Italy and 32 other States*; *Uricchio v. Italy and 32 other States*; *Müllner v. Austria*. On 1 July 2024, the ECtHR announced that it will proceed to examine the application of *Müllner v. Austria*, which was adjourned until the outcome of *Duarte*, *KlimaSeniorinnen*, and *Carême*. On 26 November 2024, the case of *Soubeste and Others v. Austria and 11 Other States* was struck out at the request of the applicants, on the basis that the States concerned had withdrawn from the Energy Charter Treaty at issue.

⁵⁴ *Cannavacciuolo and Others v. Italy*, No 39742/14, 51567/14, 74208/14 and 24215/15, 30 January 2025, ECLI:CE:ECHR:2025:0130JUD005156714.

3 Human rights and climate change: perspectives of international courts and tribunals beyond Europe

International courts and tribunals are increasingly being asked to rule and advise on climate change. In their 2025 report,⁵⁵ Setzer and Higham noted that approximately 5% of the 2,967 climate-related cases filed in the period between 1986 and end-2024 have been filed before international and regional courts and tribunals. Of these, 37% have been filed before 'human rights' bodies,⁵⁶ 35% before investor-state dispute-settlement bodies, and 28% before other fora, including the International Court of Justice (ICJ), the International Tribunal on the Law of the Sea and the UNFCCC's dispute resolution bodies.

Since 2022, four international courts and tribunals have been requested to issue advisory opinions on states' responsibilities and climate change. These separate legal requests differ significantly in scope and potential impact. This is because each of the international tribunals in question has unique jurisdictional capacities, with distinct procedures and functions.⁵⁷

The first of these advisory opinions was handed down by the International Tribunal for the Law of the Sea (ITLOS) in May 2024. The Tribunal held that State Parties to the United Nations Convention on the Law of the Sea (UNCLOS) have specific obligations under Article 194 of UNCLOS to take all necessary measures to prevent, reduce, and control marine pollution caused by anthropogenic GHG emissions and to endeavour to harmonise their policies in this regard.

Two advisory opinions of the Inter-American Court of Human Rights (IACtHR) and by the ICJ were handed down in May and July 2025, respectively. These cases are described in further detail in this section. As anticipated, both the IACtHR and ICJ opinions referred to the ECtHR ruling in *KlimaSeniorinnen* and reinforced its findings.⁵⁸ Both advisory opinions affirmed the existence of an intrinsic nexus between climate change, nature, and human rights.

It is notable that both advisory opinions also opined on how States should approach the regulation of business conduct. The IACtHR highlights that, given the pivotal role of corporations in contributing to climate change, States have a direct duty to regulate business entities to prevent climate-related human rights violations.

⁵⁵ Joana Setzer and Catherine Higham (2025), *Global Trends in Climate Change Litigation: 2025 Snapshot*, Grantham Institute, London School of Economics.

⁵⁶ Setzer and Higham note that 'human rights bodies' refer to the European Court of Human Rights; European Committee on Social Rights; Inter-American Commission on Human Rights; Inter-American Court of Human Rights; UN Committee on the Rights of the Child; UN Human Rights Committee and UN Special Rapporteur.

⁵⁷ Joana Setzer and Catherine Higham (2024), *Global Trends in Climate Change Litigation: 2024 Snapshot*, Grantham Institute, London School of Economics.

⁵⁸ Annalisa Savaresi (2025), 'Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: Making climate change litigation history', *RECIEL*, 2025;34(1):279-287.

The ICJ explicitly states that a State's failure to regulate business activities – whether by adopting or enforcing legislative and regulatory measures – may constitute an internationally wrongful act.

A further case is pending before the African Court on Human and Peoples' Rights.

In May 2025, the Court was requested to issue an advisory opinion on the human rights obligations of African states in the context of climate change. The petition seeks the Court's interpretation of regional human rights instruments, notably the African Charter on Human and Peoples' Rights, the Maputo Protocol, the Kampala Convention and the African Charter on the Rights and Welfare of the Child as they relate to climate change. It argues that climate change poses a significant threat to numerous rights protected under these instruments, including the rights to life, health, food, water, housing, development, dignity, a healthy environment and the rights of vulnerable groups such as women, children, Indigenous peoples, people with disabilities and internally displaced persons.

Despite the fact that such advisory opinions are non-binding, they are seen as interpretive tools that can clarify States' legal obligations and inform both domestic courts and international political processes.⁵⁹

They hold considerable potential to influence domestic judicial decisions and policy development, generate new climate-related litigation and shape the understanding of state obligations under both treaty law and customary international law.⁶⁰ Moreover, they demonstrate the powerful legal influence exerted by the Paris Agreement in the interpretation of due diligence norms and standards of conduct applied to legal obligations contained in human rights treaties and international law.⁶¹ In doing so, the advisory opinions serve to clarify the obligations under the Paris Agreement and thereby enhance the – otherwise limited – enforcement possibilities (see Box)

These advisory opinions may exert varying degrees of influence on the Union institutions, Member States' authorities, and financial institutions.

The opinions delivered by the ITLOS and the ICJ, being issued by international judicial bodies, carry direct implications for the Union. The ICJ's opinion is of particular relevance to the present working paper as it addresses the relationship between human rights and the climate obligations of all States. By contrast, the opinion of the IACtHR and the forthcoming opinion of the African Court on Human and Peoples' Rights are regional in scope and may entail more indirect implications for the Union institutions and financial system. Nevertheless, their analysis holds considerable relevance as the legal reasoning that is employed by non-European regional human rights courts may influence the broader global jurisprudence on the nexus between climate, nature, and human rights. In this context, European courts may draw upon these

⁵⁹ Joana Setzer and Catherine Higham (2025), *Global Trends in Climate Change Litigation: 2025 Snapshot*, Grantham Institute, London School of Economics; Christina Voigt, 'The power of the Paris Agreement in international climate litigation' (2023) 32 *Review of European, Comparative & International Environmental Law* 2.

⁶⁰ Eran Stoecker (2023), *How do States React to Advisory Opinions? Rejection, Implementation, and what Lies in Between*, *AJIL Unbound*. 2023;117:292-297.

⁶¹ Christina Voigt (2023), 'The power of the Paris Agreement in international climate litigation' 32 *Review of European, Comparative & International Environmental Law* 2.

opinions when interpreting the scope of climate-related human rights under the Charter of Fundamental Rights and national constitutional frameworks.⁶²

3.1 Advisory opinion of the International Court of Justice

In March 2023, the United Nations General Assembly adopted a resolution requesting the ICJ to issue an advisory opinion on States' legal obligations regarding climate change.⁶³ The request was initiated by Vanuatu and supported by numerous countries, particularly small island developing states and youth movements. 96 States and 11 international organisations presented their arguments.

The request for an advisory opinion posed two main legal questions. First, it asked what are the obligations of States under international law to ensure the protection of the climate system and environment for present and future generations? Second, it asked what are the legal consequences under international law for States that, through their acts or omissions, have caused significant harm to the climate system and environment? The ICJ handed down its advisory opinion on 23 July 2025.

In answering the first question, the ICJ first identified the most directly relevant applicable law. It noted that, in addition to climate treaties – the UNFCCC, the Kyoto Protocol and the Paris Agreement – other sources of international law are pertinent to the interpretation of states' obligations. It stated that “when several rules bear on a single issue, they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations”.⁶⁴ Thus, in addition to the climate treaties, it considered that those sources included, first, customary international law – in particular the duty to prevent significant harm to the environment, and the duty to co-operate for the protection of the environment;⁶⁵ second, other environmental treaties; third, the UN Convention on the Law of the Sea (UNCLOS) due to the severe threat climate change poses to the marine environment; and fourth, international human rights law.⁶⁶

⁶² For instance, on the relationship between corporate climate-related harms and UNGPs, on which both the IACtHR opinion and the *Shell* case rely. See, respectively, Sections 3.2 and 5.1

⁶³ United Nations General Assembly, [Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change](#), Resolution 77/276, 29 March 2023

⁶⁴ Para. 165, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

⁶⁵ International customary law consists of legal norms that have evolved from the consistent and general practice of States, and which are binding on all States, regardless of whether they have explicitly consented to the rule, unless they have persistently objected to it from the outset. To establish a rule of customary international law, two key elements must be demonstrated: (i) State Practice: A widespread, representative, and consistent pattern of conduct by States. This includes acts such as diplomatic correspondence, legislation, judicial decisions, military manuals, and official statements; and (ii) *Opinio Juris*: The belief by States that such practice is carried out of a sense of legal duty, not merely for convenience, habit, or courtesy. International customary law is recognised under Article 38(1)(b) of the ICJ Statute.

⁶⁶ In respect of international human rights law, the ICJ considered that the core human rights treaties, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, adopted in 1966, and the human rights recognized under customary international law formed part of the most directly relevant applicable law.

The ICJ then outlined the obligations of States under each of those sources of law. As regards the climate change treaties, it considered that those treaties establish stringent obligations upon States to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions. As regards customary international law, it considered that regardless of whether a State is a party to the climate treaties, it is still under a customary obligation to prevent significant harm to the environment and to cooperate for the protection of the environment.⁶⁷ Other environmental treaties, in particular the Ozone Layer Convention, the Montreal Protocol, the Convention on Biological Diversity and the UN Convention to Combat Desertification, as well as the UNCLOS, must, according to the ICJ, be taken into account when interpreting States' obligations concerning climate change, since they form part of the protection of the climate system and other parts of the environment under international law.

As regards international human rights law, the ICJ held that the adverse effects of climate change may significantly impact the effective enjoyment of human rights.⁶⁸ In particular, it may impact the right to life (e.g. in case of forced displacement), the right to health and the right to an adequate standard of living, including access to food, water and housing. The ICJ confirmed the existence of a right to a clean, healthy and sustainable environment under international law as a pre-condition for the enjoyment of many climate-related human rights.⁶⁹ The ICJ considered that the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment.

In answering the second question, the ICJ clarified that a failure of a State to take appropriate action to protect the climate system from the effects of GHG emissions might constitute a breach of their obligations under international law. In assessing the question of attribution, it held that States are required to exercise regulatory due diligence with respect to private actors whose activities contribute to climate change. A failure to adopt or enforce adequate legislative or administrative measures to control or reduce GHG emissions from entities under a State's jurisdiction or control – including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies - may constitute a breach of this obligation. The obligation to put an end to the wrongful act may require a State to revoke all administrative, legislative, and other measures that constitute an internationally wrongful act of that State.

⁶⁷ States who are not party to climate treaties, and who do not cooperate with other states who are party to the climate treaties, will bear the full burden of demonstrating that its policies and practices are in conformity with their customary obligations (para. 315, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025).

⁶⁸ Para. 376, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

⁶⁹ Para. 393, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

Box: The Paris Agreement: legal nature and enforceability

The Paris Agreement is a treaty within the definition of the Vienna Convention on the Law of Treaties (VCLT) and is thus binding upon its signatories.⁷⁰ However, the legal nature and enforceability of the Paris Agreement is complex and debated by scholars.⁷¹ Not every provision of the Paris Agreement creates a legally binding obligation. Rather, the Paris Agreement contains a mix of 'mandatory and non-mandatory provisions' and 'hard, soft, and non-obligations'⁷².

Article 2 of the Paris Agreement sets out three goals, which aim to strengthen the global response to the threat of climate change. The three goals comprise:

- Holding 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 (the 'long-term temperature goal' or 'climate change mitigation goal');
- Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production (the 'global adaptation goal'); and
- Making finance flows consistent with a pathway towards low GHG emissions and climate-resilient development (the 'finance flows goal').

The ICJ, in its advisory opinion, emphasised the 1.5°C threshold is the Parties' agreed primary temperature goal for limiting the global average temperature increase under the Paris Agreement.⁷³ This followed from the agreement at COP26, whereby 1.5°C became the scientifically based consensus target and was supported by the requirement in the Paris Agreement to refer to the best available science.

The Paris Agreement follows a bottom-up approach to mitigation, whereby each Party must submit and regularly update NDCs towards those goals, with flexibility to determine the content of those NDCs. As noted by the ICJ in its advisory opinion, two of the key 'legally binding' obligations on Parties concern NDCs.⁷⁴ These obligations are to (i) prepare, communicate and maintain NDCs in respect of the long-term temperature goal; and (ii) pursue domestic mitigation

⁷⁰ Article 2 VCLT: 'treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

⁷¹ This is because the legal character of the Paris Agreement – like any international agreement – has several dimensions. While the legal form of the Paris Agreement is a treaty within the meaning of the Vienna Convention on the Law of Treaties (VCLT), other dimensions are also relevant in establishing legally binding obligations. These include the mandatory or prescriptive nature of its provisions; and their specificity and precision – whereby different provisions of the Paris Agreement are drafted with different phrasing and with degrees of prescription and specificity. In addition, the rules, procedures, and institutions to hold Parties accountable for commitments and compel compliance are relevant. There, the Paris Agreement establishes a due diligence standard and a transparency framework, including an expert review process and peer review process.

⁷² Daniel Bodansky (2016), 'The Legal Character of the Paris Agreement', 25 Rev. Eur. Community and Int'l Envtl. L. 142; Jacob Werksman (2019), 'Remarks on the international Legal Character of the Paris Agreement', 34 MD. J. Int'l. 343; Lavanya Rajamani, (2016) 'The 2015 Paris Agreement: Interplay between Hard, Soft and Non-Obligations' 28 J Envtl L 337; Christina Voigt (2023), 'The power of the Paris Agreement in international climate litigation' 32 Review of European, Comparative & International Environmental Law 2

⁷³ Para. 224, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

⁷⁴ Para. 234, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

measures, with the aim to achieve the objectives of the NDCs. These are set out under Article 4(2) and are enforced through the transparency framework under Article 13 of the Paris Agreement, rather than a binding international enforcement mechanism or penalties.

The ICJ noted, as regard the obligation to prepare, communicate and maintain NDCs, that this is an obligation of result: failure to do so would constitute a breach of the Paris Agreement.⁷⁵ Moreover, the content of a party's NDCs must, in fulfilment of its obligations under the Paris Agreement, be capable of making an adequate contribution to the achievement of the goal of limiting the increase in temperatures to 1.5°C. Thus, rather than being entirely discretionary, NDCs must satisfy certain standards under the Paris Agreement. All NDCs prepared, communicated and maintained by parties under the Paris Agreement must, when taken together, be capable of realising the objectives of the Paris Agreement.⁷⁶ NDCs must reflect progression over time and reflect each Party's "highest possible ambition" with respect to the goal of limiting global warming to 1.5°C. Moreover, consistent with the varying character of due diligence and the principle of common but differentiated responsibilities and respective capabilities, the standard to be applied when assessing the NDCs of different parties will vary depending, *inter alia*, on historical contributions to cumulative GHG emissions and the level of development and national circumstances of the party in question.⁷⁷

The ICJ noted, as regard the obligation to pursue domestic mitigation measures, that this is an obligation of conduct.⁷⁸ Thus, compliance with that obligation is to be assessed on the basis of whether the parties exercised due diligence in their efforts and in deploying appropriate means to take domestic mitigation measures, including in relation to activities carried out by private actors. The ICJ considered that the standard of due diligence is stringent on account of the fact that the best available science indicates that the risks and projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming.

The ICJ advised that any breach of these obligations can lead to the responsibility of States for an internationally wrongful acts, regardless of their characterisation as an obligation of conduct or result.⁷⁹

The Paris Agreement and the European Union

Both the Union itself and all its Member States are parties to the Paris Agreement, as it takes the form of a 'mixed agreement'. Such mixed agreements have the same status in the European legal order "as purely Community agreements in so far as the provisions fall within the scope of Community competence".⁸⁰ Moreover, Article 216(2) TFEU states "agreements concluded by the Union are binding upon the institutions of the Union and on its Member States."

⁷⁵ Para. 236, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

⁷⁶ Para. 245, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

⁷⁷ Paras. 246 to 248, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

⁷⁸ Paras. 251 to 254, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

⁷⁹ Para. 236, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

⁸⁰ Case C-239/03, *Commission of the European Communities v. French Republic*, at para. 25 with further references.

The Union's NDC sets out the goal of reducing GHG emissions by at least 55% by 2030 (compared to 1990 levels), with a view to reaching climate neutrality by 2050. The Union itself considers such NDC as (internationally) binding and declared it as such when it transmitted the Union's NDC to the Secretariat of the UNFCCC.⁸¹ The Council of the European Union, in 2020, adopted a long-term low GHG development strategy of the Union and its Member States, reflecting in the NDC its objective to reach climate neutrality by 2050. The Union's updated NDC submission in 2023 requires it to cut these emissions by at least 55% by 2030 (compared to 1990 levels).⁸²

The Union has adopted several legal acts⁸³ that give effect to its commitments under the Paris Agreement, and to implement its NDC, most notably the European Climate Law.⁸⁴ The European Climate Law sets out the overall framework for the Union's contribution to the Paris Agreement. The European Climate Law implements the climate change mitigation goal and the global adaptation goal into Union law via the binding objective to achieve climate neutrality by 2050 and the intermediate target to achieve a domestic reduction in net greenhouse gas emissions (emissions after deduction of removals) by at least 55% compared to 1990 levels by 2030. On 2 July 2025, the European Commission published its proposal to amend the European Climate Law, with a view to setting a 90% emission reduction target by 2040.⁸⁵

3.2 Advisory opinion of the Inter-American Court of Human Rights (IACtHR)

In 2023, Chile and Colombia requested an advisory opinion from the IACtHR on the obligations of states under the American Convention on Human Rights and other related treaties in the context of the climate crisis. The IACtHR's advisory opinion was delivered in May 2025.⁸⁶

The IACtHR recognised that States are under a 'jus cogens' obligation not to contribute to irreversible harm to the environment. In international law, *jus cogens* refers to fundamental principles that are universally recognised and accepted by the international community, from which no derogation is permitted. Any treaty or agreement violating a *jus cogens* norm is considered null and void under Article 53 of the Vienna Convention on the Law of Treaties.

⁸¹ [EU NDC 2015](#), [EU updated NDC 2020](#), [EU updated NDC 2023](#).

⁸² See [Council of the EU](#), Press Release, 16 October 2023.

⁸³ In particular, a number of measures were adopted as part of [the EU's 'Fit for 55' legislative package](#), to revise and update EU legislation with the aim of ensuring EU policies are in line with the EU's 2030 climate targets set out in the European Climate Law.

⁸⁴ 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, p. 1, ELI: <http://data.europa.eu/eli/reg/2021/1119/oj>).

⁸⁵ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality, COM/2025/524 final.

⁸⁶ Inter-American Court of Human Rights, [Advisory Opinion OC-32/25 of 29 May 2025](#). The advisory opinion is an authoritative statement of binding international law. Contrary to other international law courts, the advisory opinions of the IACtHR have strong legal effect on State Parties. While the Convention itself does not expressly state the binding nature of the advisory opinions of the IACtHR, the Court stressed that states must act per its interpretations and that the opinions have undeniable legal effects ([Case of Almonacid-Arellano et al v. Chile](#), para 124 and '[The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law](#)', OC-16/99, para 48).

The IACtHR found that states have three separate obligations in relation to the climate emergency. First, under the obligation to respect fundamental rights, States must refrain from any type of behaviour that leads to further harm. Second, under the obligation to protect the most vulnerable communities, States must adopt all necessary measures to decrease risk derived from degradation of the global climate system and the exposure and vulnerability to climate change impacts. This is an enhanced due diligence standard, which requires States to: (i) identify and evaluate all risks; (ii) adopt preventative measures; (iii) use best available science; (iv) integrate a human rights to all policies and actions; (v) monitor constantly; (vi) ensure transparency and accountability; (vii) regulate and supervise business due diligence; (viii) reinforce international cooperation for technology transfer and capacity building. Third, States must cooperate to put an end to any conduct that violates prohibitions under international law protecting a healthy environment. They must interpret the obligation to cooperate in light of the principles of equity and common but differentiated responsibilities⁸⁷ and with regard to human rights that may be threatened or affected by the climate emergency.

Specifically, the IACtHR affirmed that ‘companies are called upon to play a fundamental role in addressing the climate emergency’ and that doing so ‘is an obligation that must be fulfilled by companies and regulated by states’.⁸⁸ It suggested that the so-called Carbon Majors – the world’s largest oil, gas, coal, and cement producers – should be subject to stricter obligations. It supported a holistic interpretation of the UN Guiding Principles on Business and Human Rights (UNGPs). As an authoritative and internationally endorsed soft law instrument which delineates the responsibilities of both states and businesses with respect to human rights, linking corporate climate-related harms to international human rights law.

The IACtHR also recognised that every individual has the right to live within a climate system free from dangerous anthropogenic interference. This right, understood collectively, also safeguards future generations and supports the balance among species. Furthermore, the Court acknowledged the right of nature to maintain its essential ecological processes. States therefore have a positive obligation to adopt measures that guarantee the restoration and regeneration of ecological systems, while recognising and incorporating local Indigenous knowledge.

⁸⁷ According to the principle of common but differentiated responsibilities, all states share a common responsibility to protect the environment, since environmental problems are global in nature; but not all states have contributed equally to environmental degradation, nor do they have the same capabilities to address it. Therefore, they have common but differentiated responsibilities in terms of their capacities and resources to take action (Principle 7 of the Rio Declaration on Environment and Development and Article 3(1) of the UN Framework Convention on Climate Change).

⁸⁸ Para. 345, Inter-American Court of Human Rights, *Advisory Opinion OC-32/25* of 29 May 2025.

4 Relevance for the Union and its institutions

The ruling in *KlimaSeniorinnen* has relevance to the Union and its institutions - albeit in an indirect and legally nuanced manner. The Union is not a party to the ECHR and despite a clear reference in the Treaties,⁸⁹ the likelihood of the Union's accession to the ECHR remains uncertain.⁹⁰ However, this does not mean that the ECHR is meaningless in the Union legal order. The CJEU has long referred to the ECHR to help interpret and protect human rights in its own case law. More recently, the Lisbon Treaty helped clarify that the ECHR is a relevant source of law in the Union.⁹¹ Indeed, in the context of its intervention as third party in the *Duarte* case, the European Commission emphasised that the ruling would affect the European Union.⁹²

The case law of the ECHR is relevant for the Union legal order through its impact on the interpretation of the Union's Charter of Fundamental Rights (the Charter). In accordance with Article 52(3) of the Charter, in so far as the rights contained under the Charter correspond to the fundamental rights guaranteed by the ECHR, the meaning and scope of those rights shall be the same as those laid down by the ECHR. In other words, the Charter must be interpreted in view of the ECtHR's case law. The CJEU considers rights enshrined in the ECHR as the minimum threshold of protection and not as a ceiling.⁹³

In the *KlimaSeniorinnen* case, the ECtHR upheld a new and comprehensive interpretation of the right to respect for private and family life under Article 8 ECHR (together with Article 2 ECHR) in the light of climate change, which can be expected to influence the CJEU. The rights guaranteed in Articles 2 and 8 ECHR correspond, respectively, to those guaranteed by Articles 2 and 7 of the

⁸⁹ Article 6(2) TEU.

⁹⁰ By an Opinion rendered in 1996, the CJEU concluded that, as Community law stood at the time, the European Community had no competence to accede to the ECHR. Following the adoption of the Lisbon Treaty and the amendment to Article 6 TEU, this competence was granted to the Union. However, in its *Opinion 2/13*, the CJEU ruled that the draft agreement on the accession of the EU to the ECHR is not compatible with Union law. The CJEU mentioned four grounds to support its decision (judicial review in matters of the common foreign and security policy, the co-respondent mechanism, division of competences for violation of EU law, procedure for the prior involvement of the CJEU). A working group composed of representatives of the 46 Member States of the Council of Europe and a representative of the European Union ("46 +1 format") is still trying to negotiate a path for the EU to join the ECHR.

⁹¹ Article 6(3) TEU.

⁹² Para. 142, *Duarte*: "The European Commission, on behalf of the European Union, elaborated on the principles that govern the implementation, at European Union level, of its obligations under the Paris Agreement. EU climate policy and the current legislative framework, as well as the development of the EU acquis, were in compliance with the EU's obligations under the Paris Agreement and even went beyond those obligations, while fully respecting the precautionary principle and the principle of intergenerational equity. The level of protection of human rights in the environmental domain in the European Union was equivalent to that of the Convention".

⁹³ According to Article 52(3) of the Charter, Union law may provide for more extensive protection.

Charter. The CJEU has ruled that the interpretation of Article 7 of the Charter should align with Article 8 ECHR.⁹⁴

It is thus instructive to explore the manner in which the KlimaSeniorinnen case may influence Union law and policies. First, this section explores the substantive implications of the ECtHR's interpretation of Article 8 ECHR for the Union's climate policies. Second, this section looks at the procedural avenues for litigation before the CJEU.

4.1 Substantive considerations: Relevance for the Union's climate policies

The ECHR and its case law are an interpretative tool, which, by reason of the Charter of Fundamental Rights, forms an integral part of the legal framework with which Union institutions must comply. As noted above, the ECtHR set out five criteria to assess whether the State has remained within its 'margin of appreciation' to secure the rights and freedoms of its citizens under Article 8 ECHR. The ECtHR will examine whether the competent domestic authorities have had due regard to the need to:

- (a) *adopt general measures* specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments;
- (b) *set out intermediate GHG emissions reduction targets and pathways* (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies;
- (c) *provide evidence* showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see subparagraphs (a)-(b) above);
- (d) *keep the relevant GHG reduction targets updated* with due diligence, and based on the best available scientific evidence; and
- (e) *act in good time and in an appropriate and consistent manner* when devising and implementing the relevant legislation and measures.⁹⁵

On the basis of the 'margin of appreciation' test, the ECtHR concluded that there were some critical lacunae in the Swiss authorities' process of establishing the relevant domestic regulatory framework. This included a failure to quantify, through a carbon budget or otherwise, national GHG emissions

⁹⁴ Case C-69/21, *Staatssecretaris van Justitie en Veiligheid (Éloignement – Cannabis thérapeutique)*, EU:C:2022:913

⁹⁵ Para. 550, *KlimaSeniorinnen*.

limitations. Furthermore, the ECtHR noted that, as recognised by the relevant authorities, the State had previously failed to meet its past GHG emission reduction. By failing to act in good time and in an appropriate and consistent manner regarding the devising, development and implementation of the relevant legislative and administrative framework, the ECtHR held that Switzerland exceeded its margin of appreciation and failed to comply with its positive obligations.⁹⁶

This carries lessons for the European Union and its Member States as regards the margin of appreciation that will be afforded to their efforts to devise, develop and implement the relevant legislative and administrative framework to address climate change. This will be relevant, in particular if arguments are brought based on Article 7 of the Charter. Two key aspects of the reasoning of the ECtHR in respect of States' margin of appreciation are relevant. The first is the importance placed by the ECtHR on establishing a carbon budget.⁹⁷ The second is that climate protection be given appropriate weight, considering States' human rights obligations, when weighing up competing interests.⁹⁸

These aspects could be applied to argue that to remain within their margin of appreciation, the Union and its Member States should – at the very least – avoid any retrenchment from its current climate commitments and policies. Indeed, it could even be argued that the Union and Member States need to adopt stronger mitigation measures than what is currently required under Union law to meet their obligations under the Charter and ECHR, respectively.⁹⁹

First, in coming to its conclusions as regard Switzerland, the ECtHR noted that it was instructive, for comparative purposes, that the European Climate Law provides for the establishment of indicative carbon budgets. The ECtHR was likely referring to the obligation under Article 4(4) of the European Climate Law. This sets out that when making its legislative proposal for the Union 2040 climate target, the Commission must, at the same time, publish in a separate report the projected indicative Union GHG budget for the 2030-2050 period,¹⁰⁰ which must be based on the best available science and take into account the advice of the European Scientific Advisory Board on Climate Change, as well as, where adopted, the relevant Union legislation implementing the Union 2030 climate target. The Commission must also publish the methodology underlying the projected indicative Union greenhouse gas budget.

⁹⁶ Para. 573, *KlimaSeniorinnen*.

⁹⁷ Ibid.

⁹⁸ Para. 543, *KlimaSeniorinnen*.

⁹⁹ Eckes (2024), based on the rulings in *Urgenda* and *Neubauer*.

¹⁰⁰ The indicative Union GHG budget is defined as the indicative total volume of net greenhouse gas emissions (expressed as CO₂ equivalent and providing separate information on emissions and removals) that are expected to be emitted in that period without putting at risk the Union's commitments under the Paris Agreement.

This is relevant in view of the ongoing discussions on the Union's interim climate target to reduce net GHG emissions by 90% by 2040.¹⁰¹ The

Commission published its legislative proposal to amend the European Climate Law to introduce the Union's interim climate targets on 3 July 2025. Discussions on the interim climate targets have drawn controversy, in view of criticism of the Commission by the European Scientific Advisory Board on Climate Change. The Advisory Board has advised against international carbon credits being used to meet the 2040 target, as they risk diverting resources from domestic investments and could undermine environmental integrity.¹⁰²

Second, the ECtHR noted that when examining a State's margin of appreciation, climate protection should carry considerable weight in the weighing-up of any competing considerations. This is relevant insofar as a narrative has developed to suggest that the Union's legislative framework to implement its climate commitment – especially through the sustainable finance framework – needs to be balanced against the need to enhance European competitiveness and other Union priorities.

For example, the Commission's Communication on a Competitiveness Compass¹⁰³ **announced far-reaching simplification in the fields of sustainable finance reporting, sustainability due diligence and taxonomy.** This has taken the form of an Omnibus Simplification Package, published on 26 February 2025.¹⁰⁴ The Commission's stated objective is to reduce the burden on undertakings resulting from the Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive, without undermining the policy objectives of the European Green Deal and the Sustainable Finance Framework. However, the proposals will result in an 80% reduction in the number of companies subject to an obligation to report sustainability information. There are concerns that this could significantly limit stakeholders' access to important information, including on GHG emissions produced by undertakings.¹⁰⁵ The proposals could thereby undermine the Union's efforts to direct investments towards supporting the Union's climate goals and to manage climate and environmental risks.

The Commission's Omnibus Simplification package is already the subject of an inquiry by the European Ombudswoman, arising from concerns about the

¹⁰¹ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality, COM(2025)524 final. See also European Commission, [Securing our future: Europe's 2040 climate target and path of climate neutrality by 2050 building a sustainable, just and prosperous society](#), COM(2024) 63 final, Brussels, 6 February 2024.

¹⁰² European Scientific Advisory Board on Climate Change, [Staying the course on climate action essential to EU security and competitiveness](#), Press Release, 2 June 2025.

¹⁰³ European Commission, 'A Competitiveness Compass for the EU', COM(2025) 30 final, 26 February 2025.

¹⁰⁴ Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements, COM(2025) 80 final; and proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, COM(2025) 81 final.

¹⁰⁵ ECB [Opinion CON/2025/10](#) on proposals for amendments to corporate sustainability reporting and due diligence requirements.

procedures and consultations followed in preparing the proposed legislation.¹⁰⁶

This followed a complaint by eight civil society organisations who argue that the Commission breached its Better Regulation Guidelines by failing to justify why it did not carry out a public consultation or impact assessment on the draft legislation. The complainants also argue that the Commission should have conducted a climate consistency assessment as foreseen by the European Climate Law. The questions raised in the inquiry also centre on the stakeholder consultations conducted by the Commission, in particular which companies and stakeholders were invited to meetings with the Commission. Moreover, legal opinions have outlined other possible legal arguments to challenge the Omnibus Simplification package, including based on the Charter.¹⁰⁷ For example, one refers, *inter alia*, to the *KlimaSeniorinnen* ruling, and raises concerns about amendments that weaken the corporate transition plan requirements of the CSDDD.

These legislative amendments are particularly vulnerable to criticism, in light of the advisory opinion of the ICJ.¹⁰⁸

The ICJ emphasised that States have an obligation to regulate the activities of private actors as a matter of due diligence. Failure to adopt or enforce adequate legislative or administrative measures to control or reduce GHG emissions from entities under a State's jurisdiction or control may constitute a breach of their obligations under international law.¹⁰⁹

4.2 Procedural considerations: Avenues for litigation before the CJEU

The requirement to comply with fundamental rights, as interpreted by ECtHR case law, is evidenced in many cases before the CJEU concerning Union institutions.

Indeed, in the context of the *Carvalho* case,¹¹⁰ the European Parliament and the Council were challenged, alleging that insufficient reduction in greenhouse gas emissions under a relevant package of Union legislation¹¹¹ infringed the applicants' fundamental rights enshrined in the Charter. While the General Court dismissed that action as inadmissible, it demonstrates how the Charter may be utilised to challenge the ambition of climate measures adopted by Union institutions. In that respect, it may be illustrative to look at two key direct avenues for litigation pursued in the *Carvalho* case: an action for annulment and an action for damages.

¹⁰⁶ European Ombudsman, [Ombudswoman opens inquiry concerning how Commission prepared a legislative proposal as part of its omnibus package of simplification measures](#), 23 May 2025.

¹⁰⁷ Cirio (2025a), [Renegotiations of EU sustainability law: constitutional constraints and missed opportunities](#), May; Baldon Avocats (2025), [Potential legal challenges under EU law to the proposed Omnibus Directive amending the CSRD and CSDDD](#), June.

¹⁰⁸ Cirio (2025b), [International Court of Justice opinion on state obligations related to climate change: An analysis of the opinion and its implications](#), July; McVey and Savaresi (2025), [The ICJ Advisory Opinion on Climate Change: A Business and Human Rights Perspective](#), *Opinio Juris*, 4 August

¹⁰⁹ Para. 427, *Obligations of States in Respect of Climate Change (Advisory Opinion)*, ICJ Rep, 23 July 2025.

¹¹⁰ Case T-330/18, *Armando Carvalho and Others v. Parliament and Council*, ECLI:EU:T:2019:324.

¹¹¹ The package comprised amendments to Directive 2003/87/EC (the Emissions Trading Scheme Directive); and the adoption of Regulation (EU) 2018/842 (the Effort Sharing Regulation); and Regulation (EU) 2018/841 on emissions from and removals by land use, land use change, and forestry (the LULUCF Regulation).

First, under Article 263 TFEU, both natural and legal persons, may bring an action for annulment against a Union institution. Such action may allege that a decision or other legal act adopted by a Union institution breaches fundamental rights protected by the Charter. However, as demonstrated in the *Carvalho* case, applicants in such cases will struggle to establish that they have standing to bring such a claim.¹¹² Under Article 263 (4) TFEU, natural or legal persons may institute proceedings against an act addressed to that person or that is of direct and individual concern to them, and against a regulatory act that is of direct concern to them and does not entail implementing measures. The General Court in *Carvalho* noted, first, that the applicants were not addressees of the legislative package in question. Second, it noted that the legislative package did not constitute a 'regulatory act' within the meaning of Article 263 TFEU. Third, it held that the applicants were not individually concerned by the contested acts: the applicants failed to establish that the contested provisions of the legislative package infringed their fundamental rights and distinguished them individually from all other natural or legal persons concerned by those provisions.

Thus, the rules governing standing before the CJEU significantly restrict the possibility to bring actions for annulment under Article 263 TFEU. Associations and/or individuals are unlikely to meet the conditions to have standing before the CJEU to challenge a measure adopted by a Union institution by means of an action for annulment.¹¹³

Second, under Article 340 TFEU, claimants may bring an action against the Union for non-contractual liability, alleging a breach of fundamental rights protected by the Charter. Article 340 TFEU states that in the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. CJEU case law has set out three conditions that must be fulfilled to establish such non-contractual liability: (i) the existence of a sufficiently serious breach of a rule of Union law that is intended to confer rights on individuals; (ii) actual harm suffered; and (iii) the existence of a causal link between the institution's conduct and the alleged damage.

A further restriction applies to actions under Article 340 TFEU. An applicant may not, by means of an action for damages, attempt to obtain a result similar to the result of annulling the act where an action for annulment concerning that act would be inadmissible. It was on that basis that the General Court dismissed the action for damages in *Carvalho*. The Court ruled that the action for damages was not seeking

¹¹² Paras. 33 to 55. A further example is Case T-141/19, *Peter Sabo and Others*, ECLI:EU:T:2020:179. The applicants sought the annulment of part of Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources. The CJEU likewise confirmed that the applicant had to be able to demonstrate that they were individually concerned by the impugned acts.

¹¹³ Christina Eckes, (2024), 'Strategic Climate Litigation before National Courts: Can European Union Law be used as a Shield?', German Law Journal, 25, 1022-1042.

compensation for damage attributable to an unlawful act or omission but, rather, an amendment of the legislative package.¹¹⁴

In addition to the direct channels pursued by the applicants in Carvahlo, it is worth mentioning two indirect channels that could be used to bring climate-related challenges before the CJEU.¹¹⁵ The first channel arises from the Aarhus Regulation.¹¹⁶ The Aarhus Regulation implements an international agreement – the Aarhus Convention – by establishing the requirements for access to information, public participation and access to justice in environmental matters where those are of relevance to Union institutions and bodies. The Aarhus Regulation gives NGOs or members of the public that meet certain criteria the right to make a request for internal review to a Union institution or body that has adopted an administrative act (or that has made an administrative omission), that ‘contravenes environmental law’.¹¹⁷ The Aarhus Regulation further facilitates such applicants to institute proceedings before the CJEU, in accordance with the relevant provisions of the Treaty.¹¹⁸ Key recent examples include the case of *EIB v. ClientEarth*,¹¹⁹ and a number of pending cases against the Commission, where NGOs are requesting an internal review in order to be able to challenge the Commission’s assessment of nuclear and fossil gas-based activities as ‘transitional’ under the Taxonomy Delegated Act.¹²⁰ However, it remains unclear whether further access to information and/or public participation in the decision-making processes of Union institutions will offer a successful avenue for substantive – as opposed to procedural – aspects of

¹¹⁴ Para. 65 to 73. Similarly, in case C-177/19 P *Ville de Paris and Others v. Commission*, ECLI:EU:C:2022:10, several European cities brought an action for annulment against Commission delegated acts concerning vehicle emissions, claiming that the delegated acts directly affected their powers concerning air quality and traffic regulation. The CJEU held that municipalities must meet the same requirements as individuals, and on that basis declared the applications inadmissible, for failing to meet the criteria of Article 263(4) TFEU.

¹¹⁵ Eckes (2024).

¹¹⁶ 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 (OJ L 264, 25.9.2006, p. 13, ELI: <http://data.europa.eu/eli/reg/2006/1367/oj>) (the Aarhus Regulation).

¹¹⁷ Article 10 of the Aarhus Regulation.

¹¹⁸ Article 12 of the Aarhus Regulation.

¹¹⁹ Joined Cases C-212/21 P and C-223/21 P, *EIB v. ClientEarth*, EU:C:2023:546. In that case, the CJEU held that a European Investment Bank (EIB) resolution approving the financing of a biomass power generation plant was subject to the provisions of the Aarhus Regulation regarding requests for internal review. ClientEarth based its request for internal review, inter alia, on the grounds that the EIB had made a manifest error of assessment in considering that the project would contribute to the EU’s environmental policies and be in line with the EIB’s priority for renewable energy loans and combating climate change. The CJEU held, inter alia, that both the EIB’s Statement of Environmental and Social Principles and Standards and the EIB’s climate strategy fall within the concept of “environmental law” within the meaning of the Aarhus Regulation, and, therefore, that the resolution was adopted “under environmental law” within the meaning of the Aarhus Regulation, and thus subject to the provisions on internal review.

¹²⁰ Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities, OJ L 188, 15.7.2022, pp. 1. See Case T-215/23, *ClientEarth and Others v. Commission*; Case T-214/23, *Greenpeace and Others v. Commission*. See also Case T-579/22 *ClientEarth v. Commission*. See Linklaters (2024), ‘NGOs take the European Commission to court to step up the EU’s climate ambition’, 29 August.

climate-related litigation,¹²¹ and thus whether it will offer opportunities to raise arguments arising from Articles 2 and 7 of the Charter.

The second indirect channel is via the preliminary reference procedure under Article 267 TFEU. Where questions concerning the interpretation of the Treaties or Charter, or the validity and interpretation of Union acts, are raised before a national court and a decision on the question is necessary to enable the national court to give a decision, it may request the CJEU to give a ruling. The national court must request a preliminary ruling, in the case of courts of final instance. Litigants have used this strategy in the past, with a view to challenging Union legal acts and circumventing the restrictive standing requirements under Article 263(4) TFEU.

A key example where such a strategy was attempted – albeit unsuccessfully – was the case of ClientEarth v. National Bank of Belgium (NBB).¹²² The NGO ClientEarth brought a case before the Belgian courts, seeking an order against the NBB to cease purchasing corporate bonds under the ECB's Corporate Sector Purchase Programme (CSPP). It argued that by implementing the CSPP, the NBB violated Articles 11 and 127 TFEU, as well as Article 3 TEU. The plaintiffs argued that the Treaties mandate that environmental protection, as a fundamental objective of the European Union, must be integrated into the ECB's policies both substantively and procedurally. In addition, they claimed that the CSPP violated Articles 2 (right to life), 7 (respect for private and family life) and 37 (protection of the environment) of the Charter. However, the case never made it as far as a preliminary reference: the Brussels Court of First Instance dismissed ClientEarth's application on procedural grounds.¹²³

Notwithstanding the high procedural barriers to bringing actions before the CJEU, the ruling of the ECtHR in *KlimaSeniorinnen* merits careful reflection by Union institutions. The Union is bound by the rule of law and must comply with the Charter as an integral part of the Treaties. In complying with the Charter, Union institutions should give a broader interpretation to Articles 2 and 7 of the Charter, taking into account the interpretation provided by the ECtHR in *KlimaSeniorinnen* on the right for individuals to be protected effectively from the serious adverse effects of climate change. Such broader interpretation is likely to be considered by the CJEU, should the matter every be litigated. Moreover, it is important to carefully assess and

¹²¹ Maria Pagano (2024), Climate Legal Mobilization Under the New Aarhus Regulation. German Law Journal, 25, 919-934.

¹²² [ClientEarth v. Belgian National Bank](#).

¹²³ ClientEarth withdrew all claims following the new green monetary policy measures announced by the ECB in July 2022: European Central Bank, [ECB takes further steps to incorporate climate change into its monetary policy operations](#), Press Release, 4 July 2022.

monitor further developments in the case law of the ECtHR,¹²⁴ such as the recent judgement in *Greenpeace Nordic and others v. Norway*.¹²⁵

4.3 Relevance for the ECB and SSM

4.3.1 Relevant aspects for the ECB

It is worth recalling that the ECB needs to ensure that its actions fall within the limits of its competences, which – when it comes to monetary policy – are laid down in the “objectives” and “tasks” of the ECB set out in Article 127 TFEU.

Thus, actions will fall within the ECB’s mandate where these are necessary to pursue the ECB’s primary objective to maintain price stability under Article 127(1) TFEU, as well as by the instruments provided for in EU law. In that respect, when it comes to climate and environmental policy, the ECB is a policy-taker, not a policymaker.

Thus, from the perspective of the ECB, the immediate legal implications and litigation risk stemming from this new interpretation of Article 7 of the Charter remains limited. Several cases against the ECB have confirmed that the Charter’s provisions are addressed to the Union institutions, including the ECB, which are required under Article 51(1) of the Charter to respect the rights, observe the principles and promote the application of the Charter.¹²⁶ However, cases against the ECB invoking the Charter have tended to focus on rights such as the right to property, the right to good administration and the right of access to documents, and to procedural rights such as the right to an effective remedy and a fair trial.

In particular, in respect of actions for non-contractual liability, claimants may encounter significant challenges in demonstrating: (i) a sufficiently serious breach, by the ECB, of a rule of Union law intended to confer rights on individuals, (ii) the actual harm suffered by those individuals, and (iii) a causal link between the ECB’s conduct and the damage suffered. First, it is unclear

¹²⁴ Annalisa Savaresi (2025), ‘Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: Making climate change litigation history’, RECIEL, 2025;34(1):279-287.

¹²⁵ *Greenpeace Nordic and Others v. Norway*. In this case, the plaintiffs claimed that the Norwegian government’s decision issuing new licenses for oil and gas exploration in the Arctic (Barents Sea) that will allow new fossil fuels to market from 2035 and beyond, violated the plaintiffs’ rights. In the judgment delivered on 28 October 2025, the ECtHR held that State authorities have a duty to carry out an adequate, timely and comprehensive environmental impact assessment, including Scope 3 emissions, in good faith and based on the best available science before authorising any potentially dangerous activity that may adversely affect individuals’ right to effective protection by State authorities from serious climate-related harms to their well-being and quality of life. The ECtHR further noted that this procedural safeguard is a crucial element in assessing whether a State has remained within its margin of appreciation under the ECHR. Based on the facts of the case, the ECtHR held that while the processes leading to the government’s decision had not been fully comprehensive and, in particular, the assessment of the activity’s climate impacts had been deferred, there was no indication that deferring such an assessment had been inherently insufficient to support the State’s guarantees of respect for private and family life within the meaning of the ECHR.

¹²⁶ Joined cases C-8/15P to C-10/15P, *Ledra Advertising and others v. Commission and ECB*, ECLI:EU:C:2016:701; Case T-79/13, *Accorinti v. ECB*, ECLI:EU:T:2015:756; Case T-749/15, *Nausicaa Anadyomène SAS v. ECB*, ECLI:EU:T:2017:21; Case T-107/17, *Frank Steinhoff and Others v. ECB*, ECLI:EU:T:2019:353.

whether the ECB can be alleged to have breached the right to life and the right to private and family life under Articles 2 and 7 of the Charter, especially as the ECB is not a policymaker but, rather, a policy-taker in the field of climate change.¹²⁷ In the wake of the fall-out from the Greek and Cypriot financial crises, the unsuccessful cases brought against the ECB under Article 340 TFEU relied solely upon breaches of the right to property under Article 17(1) the Charter. Even if a link could be established between the ECB's actions and Articles 2 and 7 of the Charter, establishing a 'sufficiently serious breach' would require the claimant to demonstrate that the ECB, by its acts or its omissions, had "manifestly and gravely disregarded the limits on its discretion".¹²⁸

As concerns monetary policy aspects, this may also be difficult to establish in view of the ECB's careful consideration of climate change in recent years. This was evidenced in the context of its Monetary Policy Strategy Review,¹²⁹ and its subsequent Climate Action Plan,¹³⁰ Climate and Nature Action Plan,¹³¹ and Operational Framework Review,¹³² and subsequent measures to incorporate climate considerations into its corporate bond holdings¹³³ and its collateral framework.¹³⁴ Moreover, in terms of the ECB's non-monetary policy portfolios, it has put in place a strategy to align the portfolios with the EU's long-term decarbonisation objective in support of the Paris Agreement and the European Climate Law.¹³⁵

4.3.2 Relevance for national central banks or national competent authorities implementing Union law

By contrast, the ECHR may be more directly relevant for national institutions and courts. NCBs and NCAs have a double nature. While they are institutions that are highly integrated in both the ESCB and the SSM, NCAs and NCBs also remain

¹²⁷ ECB (2021), [An overview of the ECB's monetary policy strategy](#), Frankfurt am Main, July, emphasised that governments have the primary responsibility and tools for addressing climate change. See also, Elderson, F. (2023), [Policymakers as policy takers – accounting for climate-related and environmental factors in banking supervision and monetary policy](#), Speech, Washington DC, April.

¹²⁸ Case T-107/17, *Frank Steinhoff and Others v. ECB*, ECLI:EU:T:2019:353, at paragraph 53.

¹²⁹ ECB (2021), [An overview of the ECB's monetary policy strategy](#), Frankfurt am Main, July.

¹³⁰ ECB (2021), [ECB presents action plan to include climate change considerations in its monetary policy strategy](#), Press Release, Frankfurt am Main, July.

¹³¹ ECB (2024a), [ECB steps up climate work with focus on green transition, climate and nature-related risks](#), Press Release, Frankfurt am Main, January.

¹³² ECB (2024b), [Changes to the operational framework for implementing monetary policy](#), Press Release, Frankfurt am Main, March.

¹³³ In July 2022, the ECB decided to gradually decarbonise its corporate bond holdings on a path that supports the goals of the Paris Agreement and the EU's climate neutrality objectives by 'tilting' the reinvestment of redemptions towards issuers with a better climate performance. See ECB (2022), [ECB takes further steps to incorporate climate change into its monetary policy operations](#), Press Release, Frankfurt am Main, July. The tilting framework applied from October 2022, until reinvestments of corporate bond holdings were discontinued in December 2024. The ECB has subsequently set an emission intensity reduction target of 7%, on average, per year for its remaining corporate portfolio holdings. If, on aggregate, these portfolio holdings deviate from this path, the Governing Council will assess, within the limits of its mandate, whether remedial action is warranted. See ECB (2025a), [ECB adds indicator of nature loss in climate-related financial disclosures as portfolio emissions continue to decline](#), Press Release, Frankfurt am Main, June.

¹³⁴ ECB (2025b), [ECB to adapt collateral framework to address climate-related transition risks](#), Press Release, Frankfurt am Main, July.

¹³⁵ ECB (2025a).

national authorities that are part of the legal order of States which are themselves party to the ECHR. They are therefore required to comply with the ECHR while conducting their tasks.

This obligation includes tasks mandated by Union law for which these authorities enjoy a margin of discretion to adopt a decision.¹³⁶ Based on the *Cantoni* case law¹³⁷, it can be inferred that whenever national authorities enjoy a margin of discretion to transpose or implement a norm of Union law in their national legal order, this may be sufficient for the ECtHR to have jurisdiction to assess the compliance of the measure with the ECHR. National courts which are competent to hear challenges against decisions from NCBs or NCAs may be required to directly review the decisions from these institutions in light of the ECHR.

NCBs and NCAs adopting a legally binding decision or act will need to comply with the ECHR. For instance, in the field of banking supervision, decisions by NCAs regarding the supervision of less significant institutions, including the autonomous adoption of pecuniary penalties, could be considered to fall within the *Cantoni* case law. Similarly, decisions by NCAs following a request to act by the ECB could also be covered if it is demonstrated that the NCA enjoys a margin of discretion to adopt the measure and/or change its content.

Thus, it cannot be excluded that national courts might be asked to apply the interpretation by the ECtHR in the *KlimaSeniorinnen* case to activities of NCBs or NCAs implementing Union law. If all remedies are exhausted at national level, it cannot be excluded that claimants may ultimately bring an action before the ECtHR against the State of the NCB or NCA claiming that decisions from these institutions violated the ECHR. Such a scenario was already observed in the field of bank resolution (a field largely covered by Union law), where Union Member States have been challenged before the ECtHR due to NCBs and NCAs' actions.¹³⁸

Litigants may also seek to use another avenue to circumvent the CJEU's restrictive rules on standing in order to challenge actions by the ECB implemented at national level. Another option could indeed be to challenge a national measure implementing an ECB decision, claiming an alleged breach of the Charter as interpreted in the light of the case law of the ECHR. As noted above, this strategy was already attempted in *ClientEarth v. National Bank of Belgium* (NBB).¹³⁹

As the carbon budget depletes over time, it cannot be excluded that Member States might be required to take regulatory measures in respect to the actions of NCBs, NCAs and the private entities they supervise. State Parties to the ECHR must implement a robust regulatory framework in order to fulfil their commitment to reduce GHG emissions, in line with Union and Member States' 2030

¹³⁶ See in this respect *Cantoni v. France*, 17862/91

¹³⁷ Joël Rideau, Jean-François Renucci (1997), 'Dualité de la protection juridictionnelle européenne des droits fondamentaux: atout ou faiblesse de la sauvegarde des droits de l'homme?' *Justices*, p. 95.

¹³⁸ *Pintar and Others v. Slovenia*, Judgment of 14 September 2021, (Applications nos. 49969/14 and 4 others); *Capital Bank Ad v. Bulgaria*, Judgment of 24 November 2005, (Application no. 49429/99), *Credit and Industrial Bank v. The Czech Republic*, Judgment of 21 October 2003 (Application no. 29010/95).

¹³⁹ [ClientEarth v. Belgian National Bank](#).

and 2050 climate mitigation targets. While, at present, States have a wide margin of appreciation regarding the choice of means to fulfil those obligations, as the global (and State-specific) carbon budget depletes, this margin might become narrower. Eventually, this could lead to the need for more restrictive frameworks and measures in line with the proportionality test outlined by the ECtHR, which requires States and their public authorities to give special attention to climate change in the weighting of diverging interests.¹⁴⁰

NCBs and NCAs might be required to apply the 5-step margin of appreciation test developed in the *KlimaSeniorinnen* case to comply with positive obligations under Article 8 ECHR. State entities, such as NCBs and NCAs, might be directly required to demonstrate that they have taken adequate climate mitigation actions within their margin of appreciation, by setting medium- and long-term targets and pathways for achieving climate neutrality, in line with Member States' and Union climate mitigation goals; producing evidence of compliance with relevant targets; updating the relevant targets with due diligence and in line with the best available science; and acting timely, appropriately, and consistently when implementing laws and measures.¹⁴¹

For these reasons, it may be beneficial for Member States and their public authorities, such as NCBs and NCAs, along with the ECB to give careful consideration to the *KlimaSeniorinnen* ruling in the exercise of their respective mandates. This includes acting in a timely, appropriate, and consistent manner for those authorities responsible for designing and enforcing climate-related legislation and policy measures.

¹⁴⁰ Para. 542, *KlimaSeniorinnen*.

¹⁴¹ Para. 550, *KlimaSeniorinnen*.

5 Relevance for the financial sector

5.1 Litigation risk

Both financial institutions and their supervisory authorities should give due consideration to the risks that climate-related litigation may pose to the financial sector. As noted by the NGFS, litigants, particularly NGOs, are adopting a strategic approach to build on and expand judicial precedents within and across jurisdictions, utilising transnational networks.¹⁴² Some instances¹⁴³ have now been observed where NGOs are relying on successful cases against States to ground actions against corporations – and even banks¹⁴⁴ – in the same jurisdiction.¹⁴⁵ A recent report by the London School of Economics highlights that banks are exhibiting divergent and inconsistent approaches to the management of risks posed by exposure to climate-related litigation, both in terms of litigation taken directly against the banks, or by litigation affecting them indirectly, i.e. where States, public institutions or their commercial counterparties are targeted.¹⁴⁶ The report recommends that both banking institutions and their supervisors intensify efforts to identify, monitor and manage climate-related litigation risks. Specifically, it advises close tracking of high-profile climate-related litigation cases that might impact the financial sector directly or indirectly.

The implications of the KlimaSeniorinnen ruling are of particular relevance for the banking supervision activities of the ECB and of NCBs, as it may influence both ongoing and future litigation involving entities within the financial sector.

Specifically, the ruling could be invoked by plaintiffs to strengthen legal arguments against banks and financial institutions concerning their alleged contributions to climate change. A relevant example is the legal action initiated by the Dutch NGO Milieudefensie against ING Bank, in which the plaintiffs allege that ING Bank has

¹⁴² NGFS (2023). See also Joana Setzer, Catherine Higham, Andrew Jackson and Javier Solana (2021) [Climate change litigation and central banks](#), ECB Legal Working Paper Series, No 21.

¹⁴³ This is particularly the case in the Netherlands, as outlined in detail in this section. This has also been attempted in Germany, where the constitutional case in *Neubauer v. Germany* has been cited as a basis for, *inter alia*, the claims in [Barbara Metz et al. v. Wintershall Dea AG](#); [Kaiser et al. v. Volkswagen AG](#); [Deutsche Umwelthilfe v. Bayerische Motoren Werke AG \(BMW\)](#) and [Deutsche Umwelthilfe v. Mercedes-Benz AG](#). It is understood that while the *Wintershall* and *VW* cases have been unsuccessful, the cases against BMW and Mercedes are still pending before the German Federal Court of Justice (Bundesgerichtshof), with a ruling due in autumn 2025.

¹⁴⁴ See the cases *Notre Affaire à Tous Les Amis de la Terre*, and *Oxfam France v. BNP Paribas* (pending); *Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas* (pending); and *SUD PTT v. La Poste* (decided) where claimants rely on the French Duty of Vigilance Law. In the case *SUD PTT v. La Poste*, the parent company of La Banque Postal, which concerned social, rather than environmental considerations, the Paris Court of Appeal confirmed that La Poste's vigilance plan was insufficiently detailed and lacked the necessary precision required under the law. See *Le Figaro* (2025), '[La Poste appelle à une «application cohérente et proportionnée des obligations de vigilance» après sa condamnation](#)', 17 June.

¹⁴⁵ Chiara Macchi and Josephine van Zeben (2021) Business and human rights implications of climate change litigation: *Milieudefensie et al. v. Royal Dutch Shell*, *Review of European, Comparative and International Environmental Law*, 2021; 30(3): 409-415; Pim Heemskerk and Roger Cox (2023) *Bancaire klimaataansprakelijkheid onder invloed van duurzaamheidswetgeving*, *Maandblad voor Vermogensrecht*.

¹⁴⁶ Agnieszka Smoleńska et al. (2025), '[Banks and climate litigation risk: navigating the low-carbon transition](#)', CETEx, London School of Economics.

breached its duty of care by failing to take adequate action in addressing climate-related risks through its policies, financing activities, and services, particularly concerning Scope 3 (financed) emissions. Milieudéfensie advances a "fair share" approach¹⁴⁷, arguing that globally systemically important banks (G-SIBs) like ING play a substantial role in global GHG emissions and are therefore obligated to do their proportional part in mitigating climate change. This strategy shifts the focus away from proving direct causation of specific climate harms and instead emphasises the bank's contribution to overall emissions and the collective duty to reduce them.¹⁴⁸ Moreover, the plaintiffs ask the court to order ING to cease all financing and investments in companies starting new oil and gas projects, as well as to require large corporate clients to submit science-based and credible transition plans.¹⁴⁹ The *ING* case is inspired by two earlier cases before the Dutch courts: the *Urgenda* case, and the case of *Milieudéfensie v. Shell*.

The Urgenda case was based on the 'duty of care' of the Dutch government towards the human rights of its citizens.¹⁵⁰ Pursuant to Book 6, Section 162 of the Dutch Civil Code, 'an act or omission breaching a rule of unwritten law pertaining to proper social conduct are unlawful'. This open norm is known as 'the unwritten standard of care' and its obligations are determined by weighing all relevant facts and circumstances of the relevant case. In *Urgenda*, the Dutch Supreme Court determined that Articles 2 and 8 of the ECHR offer protection from dangerous climate change and consequently provide a duty of the State to take measures against this threat.

In the Milieudéfensie v. Shell case, the applicants extended the same argument to private companies.¹⁵¹ The District Court of The Hague held that Shell owes a climate-related duty of care to Dutch citizens to reduce its GHG emissions, based on Articles 2 and 8 of the ECHR. The Court acknowledged that Shell, as a non-State actor, is not bound *de jure* by international human rights law. As a consequence, Articles 2 and 8 ECHR cannot be invoked *vis-à-vis* Shell directly. However, the Court observed that these provisions play a role in the relationship between the plaintiffs and Shell. To give shape to the contours of this relationship, the Court had regard to the UN Guiding Principles on Business and Human Rights (UNGPs). The Court interpreted Shell's obligation in light of the UNGPs, in conjunction with other international frameworks, including the UN Global Compact, the UN Sustainable Development Goals and the OECD Guidelines for Multinational Enterprises. Collectively, these instruments were used to construe the unwritten standard of care as encompassing a universally endorsed corporate responsibility to respect and avoid infringing upon human rights. On this basis, the Court found that Shell carries an individual responsibility to protect climate-related human rights.

¹⁴⁷ See Maria Antonia Tigre (2022), '[The Meaning of "Fair Share" in Climate Ambition Litigation under the Paris Agreement](#)', Climate Law: A Sabin Center blog, 29 September, for an analysis of how the 'fair share' strategy was first employed in Paris-aligned cases against States, such as *Urgenda*.

¹⁴⁸ The summons highlights that the doctrine of endangerment typically requires four elements: (i) the ability to be aware of the danger; (ii) the chance that the danger will arise; (iii) the severity of the danger; (iv) the onerousness and proportionality of measures to be taken by the company to prevent the danger.

¹⁴⁹ Milieudéfensie, '[Detailed summary of Milieudéfensie's summons for ING](#)', 28 March 2025.

¹⁵⁰ *Urgenda Foundation v. State of the Netherlands*. ECLI:NL:HR20192007

¹⁵¹ *Milieudéfensie et al. v. Royal Dutch Shell plc*.

Subsequently, the Hague Court of Appeal declined to impose a specific emission reduction target for Shell. The Court noted that there is currently no sufficiently established scientific consensus on a precise emissions reduction percentage or trajectory that a single company is required to follow. Nonetheless, it upheld the lower court's determination that the duty of care concerning climate-related human rights is applicable to private entities. Milieudefensie is currently appealing the ruling of the Hague Court of Appeal to the Dutch Supreme Court.¹⁵²

The Milieudefensie v. Shell case has significant implications for the proceedings against ING. Milieudefensie asserts that ING's inadequate climate actions constitute an unlawful breach of its societal duty of care. Although the summons does not elaborate extensively on these arguments, Milieudefensie explicitly references the same provisions of the ECHR, as well as international soft law frameworks such as the UNGPs.¹⁵³ Consequently, it is reasonable to anticipate that Milieudefensie will seek to present these various elements in a manner closely aligned with the legal arguments presented in the *Milieudefensie v. Shell* case. In this context, it is expected that the *KlimaSeniorinnen* ruling will be employed by both the parties and the Court to inform and refine their respective positions. In the judgment of the Hague Court of Appeal in the *Milieudefensie v. Shell* case, the Court affirmed that the margin of appreciation afforded to States does not negate the existence of a concrete legal obligation under Dutch law incumbent upon Shell to address climate change, grounded in its societal duty of care.¹⁵⁴

The KlimaSeniorinnen case offers further arguments to support litigants bringing climate-related actions against corporates and banks, using human rights arguments. The Netherlands serves as a particularly illustrative example to demonstrate the potential impact of the *KlimaSeniorinnen* ruling on the financial sector. However, this approach may have ramifications extending beyond Dutch law. First, "corporate framework cases"¹⁵⁵ grounded in human rights considerations and inspired by *Milieudefensie v. Shell* have already been replicated in other Union jurisdictions,¹⁵⁶ with potential applicability to financial institutions. Second, in the *Shell* case, the Hague Court of Appeal, *obiter*, indicated that Shell's investments in new oil and gas fields might conflict with its social duty of care to reduce GHG emissions, based on Articles 2 and 8 of the ECHR and relevant international soft law

¹⁵² Milieudefensie, 'Explainer Supreme Court appeal in the Milieudefensie v. Shell climate case', 12 February 2025.

¹⁵³ The summons presented by Milieudefensie also refer to the UN warning against the oil and gas company Saudi Aramco and its financiers for their role in driving climate-related human rights violations. The UN experts underscored that the banks backing Saudi Aramco's activities are contributing the financial services they provide to causing climate-related human rights violations based on the UNGPs. Please refer to [UN Communication AL OTH 53/2023](#), 26 June 2023.

¹⁵⁴ Para 7.12 of Court of Appeal The Hague, *Milieudefensie v. Shell*, [ECLI:NL:GHDHA:2024:2100](#).

¹⁵⁵ Setzer and Higham (2025) describe corporate framework cases as cases challenging companies-group wide strategies. They observe that legal diversity is increasing, ranging from tort-based claims (see below [Luciano Liuyya v. RWE AG](#)) to due diligence obligation based on climate-related human rights grounds.

¹⁵⁶ See in France [Notre Affaire à Tous v. Total](#) and in Italy [Greenpeace Italia, ReCommon et al. v. ENI S.p.A., il Ministero dell'Economia e delle Finanze e Cassa Depositi e Prestiti S.p.A \(ENI\)](#). The Italian Supreme Court issued a decision confirming that the Italian judge has jurisdiction on claims related to damages caused by private actors. The case will continue in its merits in front of the Court of First Instance of Rome.

frameworks.¹⁵⁷ As explained *supra*, the ICJ Advisory Opinion significantly strengthened the findings of *KlimaSeniorinnen* in relation to regulation of business conduct.¹⁵⁸ In light of this, the approach pursued by Milieudefensie in the *ING* case, which challenges the financing and investments in companies initiating new oil and gas projects, may be duly considered by Dutch courts and could serve as a precedent for replication in other Union jurisdictions.

5.2 Transition risk

The *KlimaSeniorinnen* ruling may generate broader transition risks for the economy and financial sector. The NGFS defines transition risks as those related to the process of adjustment towards a low-carbon economy, including the introduction of policy and regulation measures, developments in technology and changed consumer preferences. Transition risks affect the profitability of businesses and the wealth of households, creating financial risks for lenders and investors. They also affect the broader economy through investment, productivity and relative price channels, particularly if the transition leads to stranded assets or activities.¹⁵⁹ Such transition risks may occur, *inter alia*, where States are required to adopt more ambitious climate measures within tight timeframes, following further rights-based climate-related litigation in the wake of the *KlimaSeniorinnen* ruling.¹⁶⁰ Transition risks could also occur where States seek to pre-empt such litigation by adopting more ambitious climate action.

As noted in the introduction, the number of rights-based cases brought against states at national level has grown exponentially since the *Urgenda* case. This trend can be expected to accelerate following the *KlimaSeniorinnen* ruling. Many of the cases brought prior to 2024 already relied on arguments that States' failure to take adequate actions to reduce GHG emissions are breaching fundamental rights, including Articles 2 and 8 ECHR. These include *VZW Klimaatzaak v. Kingdom of Belgium and Others*,¹⁶¹ and the Italian case *Giudizio*

¹⁵⁷ Para 7.61 of Court of Appeal The Hague, *Milieudefensie v. Shell*, [ECLI:NL:GHDHA:2024:2100](#). On this basis, Milieudefensie has announced the '*Shell 2.0*' case, asking the Dutch courts to order Shell to (i) stop drilling for new oil and gas fields and (ii) be given concrete targets imposed by the court to reduce its CO2 emissions between 2030 and 2050: Milieudefensie (2025), Letter to Shell, 13 May.

¹⁵⁸ On the impact of the ICJ Advisory Opinion on private entities, see McVey and Savaresi (2025), [The ICJ Advisory Opinion on Climate Change: A Business and Human Rights Perspective](#), *Opinio Juris*, 4 August.

¹⁵⁹ NGFS (2021).

¹⁶⁰ NGFS (2023).

¹⁶¹ [VZW Klimaatzaak v. Kingdom of Belgium & Others](#). The Court of Appeal of Brussels handed down its decision on 30 November 2023. The Court confirmed the finding of breaches established at first instance and in addition, ordered the authorities to reduce their GHG emissions. Competent Belgian public authorities (the Federal State, Flemish Region, and the Brussels-Capital Region) have been ordered to reduce their GHG emissions of 55% compared to the 1990 level by 2030. The grounds of this decision are based on the breach of human rights (articles 2 and 8 of the ECHR) and civil liability rules (articles 1382 and 1383 of the (Former) Civil Code). The case is subject to appeal before the Belgian Court of Cassation.

Universale.¹⁶² In this regard, the advisory opinion of the ICJ is also relevant, insofar as it has strengthened the findings of *KlimaSeniorinnen* in relation to States' obligations to regulate business conduct, in particular with regard to fossil fuel production, consumption, the granting of exploration licenses and the provision of subsidies.

It is essential to carefully anticipate how case law against States at national, regional, or international level could develop further, based on the *KlimaSeniorinnen* case. For example, the acceptance by the ECtHR of arguments related to the inclusion of 'embedded emissions' in the calculation of the overall GHG emissions of a state could impact how courts view the ambition of state action.

Embedded emissions were understood by the ECtHR as GHG emissions generated abroad and attributed to Switzerland through the import of goods for household consumption. Even if the ECtHR addressed the matter only at a procedural level, this could pave the way for a substantive consideration of the issue of embedded emissions either by the ECtHR or domestic courts. If so, States may be held accountable for failing to reduce the extraterritorial GHG footprints of their economies,¹⁶³ or for failing to include embedded emissions in their regulatory frameworks and national carbon budgets.

The development of case law may result in obligations on States to better address such 'embedded emissions' within tight timeframes. This may result in transition risks, with an impact on corporations and potentially also on financial institutions and the financial sector. In particular, this could require States to ensure measures to address embedded emissions are better reflected into their national mitigation targets. Given that States retain a wide margin of appreciation in choosing the means to comply with their positive obligations under Article 8 ECHR, this could involve measures such as carbon border adjustment mechanisms, mandatory corporate climate due diligence along global supply chains,¹⁶⁴ as well as engaging in international climate negotiations to promote more ambitious global action.¹⁶⁵

While the ECtHR referred to embedded emissions with respect to imported goods, the claimants in *KlimaSeniorinnen* had also noted that the financial sector had a considerable influence on Switzerland's GHG emissions.¹⁶⁶ The further development of climate-related litigation may place stronger emphasis on

¹⁶² [A Sud et al. v. Italy](#). In the case *Giudizio Universale*, the Civil Court of Rome dismissed the applicants for absolute lack of jurisdiction. On the matter of law, the Court pointed out: (i) the absence of jurisdiction of the civil judge over activities pertaining to the legislative and executive powers of the State; (ii) the lack of standing rights of the applicants; and (iii) the impossibility of placing an individual responsibility on the Italian State for climate change and its impacts. However, in the *ENI* case, the Italian Supreme Court ruled that Italian courts have jurisdiction for climate-related cases. The NGO A Sud is currently appealing the case.

¹⁶³ Andreas Buser (2024), A Human Right to Carbon Import Restrictions? On the Notion of 'Embedded Emissions' in *Klimaseniorinnen v. Switzerland*, EJIL: Talk, 16 April.

¹⁶⁴ Note that the EU's Corporate Sustainability Due Diligence Directive (CSDDD) focuses on imposing due diligence obligations in respect of actual and potential human rights adverse impacts and environmental adverse impacts. These 'adverse impacts' are defined with reference to breaches of specific rights listed in the Annexes. These adverse impacts do not currently encompass 'climate adverse impacts,' which was a conscious choice on the part of the legislator not to introduce climate-related due diligence obligations within the CSDDD.

¹⁶⁵ Paras. 149 and 199 of *Neubauer et al. v. Germany*.

¹⁶⁶ Paras. 71 and 80, *KlimaSeniorinnen*.

states' responsibilities under the Paris Agreement to ensure the relevance of finance flows in respect of "making finance flows consistent with a pathway towards low greenhouse gas (GHG) emissions and climate-resilient development."

In addition, climate attribution science in civil claims is advancing, with potential implications for the climate responsibility of corporate emitters.

These developments are particularly relevant because they can contribute to establishing the necessary causation link between actions or omissions of private actors and the violation of climate-related human rights. In the *Lliuya v. RWE* case, a Peruvian farmer, Luciano Lliuya, brought a lawsuit against the German energy company RWE claiming that the company shares partial responsibility for the impacts of climate change affecting his hometown of Huaraz. While the ruling delivered by the Higher Regional Court of Hamm, in Germany, dismissed the appeal as it found that there was no factual evidence of the concrete or substantial danger for Luciano Lliuya's property, the ruling was significant in how it addressed the matter of causation, opening the way for further similar claims.

The Court held, in principle, that major GHG emitters can be found liable under German civil law for the transboundary impacts of their emissions.¹⁶⁷

First, the Higher Regional Court of Hamm rejected the argument that a causal link could not be established on the grounds that RWE's emissions did not substantially increase the risk of climate change or that the resulting harm was unforeseeable. The Court clarified that RWE's contribution to climate change is substantial not only in terms of its absolute share of global emissions, but also relative to the emissions of other individual actors. Moreover, it emphasised that the harmful effects of GHG emissions have been scientifically evident since at least 1958; and that by 1965 major emitters such as RWE could reasonably foresee the potential risks of ongoing GHG emissions. Second, the Court stated that, if a claimant can demonstrate a credible and imminent threat of damage, corporate emitters may be obligated to take "appropriate" preventive action.¹⁶⁸ Failure to do so could result in proportional liability tied to the emitter's share of global emissions. Third, the court emphasised that the fact that RWE's emissions occurred in Germany, while the alleged damage was located in Peru, was not seen as a legal impediment to the claim.

It is essential to note that transition risk is most problematic for the economy and the financial sector when the process of adjustment is too steep.¹⁶⁹

There are considerable benefits to adopting appropriate policy and regulatory measures earlier, rather than later, and thereby ensuring an orderly transition. This includes legislation that requires companies and financial institutions to comply with climate-related human rights by preparing their businesses for the transition, in particular by adopting and putting into effect transition plans.

¹⁶⁷ [Luciano Lliuya v. RWE AG](#).

¹⁶⁸ Section 1004(1) of the German Civil Code.

¹⁶⁹ Network for Greening the Financial System (2022a), [NGFS Scenarios for central banks and supervisors](#), September 2022; Network for Greening the Financial System (2022b) [Not too late – Confronting the growing odds of a late and disorderly transition](#), September 2022.

Within the Union, there is already a substantive obligation¹⁷⁰ for companies to adopt transition plans under the Corporate Sustainability Due Diligence Directive (CSDDD).¹⁷¹ The CSDDD imposes an obligation on companies falling within its scope¹⁷² to adopt and put into effect a transition plan for climate change mitigation (Article 22). Such transition plans must ensure, through best efforts, that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement and the objective of achieving climate neutrality as established in the European Climate Law, including its intermediate and 2050 climate neutrality targets, and where relevant, the exposure of the company to coal-, oil- and gas-related activities. This transition plan must address the company's scope 1, scope 2 and scope 3 emissions.¹⁷³

In view of the KlimaSeniorinnen ruling, and broader trends in climate-related litigation, the benefits of the transition plan requirements under Union law should not be underestimated.¹⁷⁴ There have been recent suggestions to go beyond the Omnibus Simplification Package, to significantly amend the scope or even repeal the CSDDD.¹⁷⁵ However, the impact on the transition plan requirement may need to be carefully considered, to avoid depriving European companies and financial institutions of protection against transition risks.

In addition, litigation concerning physical climate risks, particularly when linked to Article 8 of the ECHR, is likely to grow in significance as such risks materialise and their magnitude increases due to delays in transition measures. Research suggests that banks often underestimate potential litigation drivers arising from physical risks.¹⁷⁶ Legal actions may directly involve financial institutions in cases such as “polluter pays” claims, seeking monetary damages for alleged contributions to climate-related harms,¹⁷⁷ or “failure to adapt” cases, challenging governments, companies, or directors for not adequately considering physical climate risks¹⁷⁸ (e.g. in relation to residential mortgage portfolios).

¹⁷⁰ In addition, Article 19a of the Corporate Sustainability Reporting Directive requires companies to report their transition plan, if they have such a plan in place, while Article 76 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (OJ L 176, 27.6.2013, pp. 338, ELI: <http://data.europa.eu/eli/dir/2013/36/oj>) requires banks to prepare prudential transition plans.

¹⁷¹ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (OJ L, 2024/1760, 5.7.2024, ELI: <http://data.europa.eu/eli/dir/2024/1760/oj>).

¹⁷² The scope of the CSDDD currently applies to companies with more than 1 000 employees on average and had a net worldwide turnover of more than EUR 450 000 000 in the last financial year. See Article 2(1) of the CSDDD for further details.

¹⁷³ The Greenhouse Gas Protocol distinguishes between direct greenhouse gas emissions of companies from owned or controlled sources (scope 1); indirect emissions from purchased or acquired electricity, steam, heating or cooling (scope 2); and all other indirect emissions, including in particular those occurring along the corporate value chain, either upstream or downstream (scope 3): see the Greenhouse Gas Protocol website at ghgprotocol.org.

¹⁷⁴ Frank Elderson (2023) “‘Come hell or high water’: addressing the risks of climate and environment-related litigation for the banking sector”, Speech, Frankfurt am Main, 4 September.

¹⁷⁵ Politico, *Macron and Merz call to abolish EU law on ethical supply chains*, 20 May 2025.

¹⁷⁶ Agnieszka Smoleńska et al. (2025), ‘Banks and climate litigation risk: navigating the low-carbon transition’, CETEx, London School of Economics.

¹⁷⁷ *Luciano Lliuya v. RWE AG.; California v. Exxon*.

¹⁷⁸ *Assad v. Seu; Conservative Law Foundation v. Shell Oil Co*.

The KlimaSeniorinnen ruling issued by the ECtHR on 9 April 2024 represents a significant advancement in climate-related litigation. The ECtHR affirmed that Article 8 ECHR encompasses a right for individuals to effective protection by State authorities from the serious adverse effects of climate change on their life, health, well-being, and quality of life. The ruling in *KlimaSeniorinnen* has been further reinforced by the recent advisory opinions of the ICJ and the IACtHR. These rulings also affirmed the existence of an intrinsic nexus between climate change, nature and human rights, and the obligations on States to take appropriate action to protect the climate system from the effects of GHG emissions. At first glance, the broader implications of these judgments for Union institutions, Member States' public authorities, or corporations and financial institutions may not be immediately apparent. Moreover, in view of the declaratory nature of ECHR rulings, and the limited means for enforcement, some may argue that the weight and impact of the ruling in *KlimaSeniorinnen* will be muted. However, this paper argues that on closer analysis the rulings carry substantial and wide-ranging consequences.

From the perspective of the Union and its institutions, the KlimaSeniorinnen case can be seen as bridging two prominent trends in the current landscape of litigation. By this ruling, the ECtHR effectively connects the recent surge in climate-related litigation observed across Europe, at both national and European levels, with the more established trend of using fundamental rights in European litigation. This trend, which has been particularly evident since the enactment of the Charter, highlights the increasingly decisive role of fundamental rights, especially in the realms of finance and company law.

The Eurosystem and the ECB have been navigating this latter trend for nearly 15 years. Initially prompted by post-financial crisis litigation and more recently by SSM-related cases, fundamental rights have become a cornerstone of the CJEU's review and a frequent plea in law raised by applicants. While the ECB has not been directly challenged in climate-related litigation, in *ClientEarth v. NBB*¹⁷⁹ an attempt was made to challenge the participation of an NCB in a monetary policy measure that was alleged to fail to take into account climate considerations. Even though the case was unsuccessful, it serves as a vivid illustration of the dynamic litigation environment at play.

Two elements of the KlimaSeniorinnen ruling are particularly relevant for Union institutions. First is the ECtHR's emphasis on implementing a carbon budget framework. Second is the Court's affirmation that climate protection, as a fundamental right, must carry stronger weight in policy decisions involving competing interests. These considerations are particularly relevant amid growing narratives suggesting that the Union's climate commitments - especially those embedded in the sustainable finance framework - should be balanced against economic competitiveness and other policy priorities. Even though procedural hurdles currently

¹⁷⁹ [ClientEarth v. Belgian National Bank](#).

limit the ability of litigants to challenge Union institutions before the CJEU for climate-related human rights claims, it remains essential for these institutions to consider the potential ripple effects of the *KlimaSeniorinnen* judgment, in judicial contexts at national, Union, and ECtHR levels.

These considerations carry even greater weight for Member States and their public authorities, such as NCBs and NCAs, which are directly bound by the ECHR, including when implementing Union law. In this context, national authorities may be required to apply the five-step margin of appreciation test established in *KlimaSeniorinnen* to fulfil their positive obligations under Article 8 ECHR. For these reasons, Member States and their public authorities, along with the ECB, would benefit from proactively assessing and integrating the implications of the *KlimaSeniorinnen* case, where appropriate within their mandates. This includes acting in a timely, appropriate, and consistent manner for those authorities responsible for designing and enforcing climate-related legislation and policy measures.

The ruling may also be relevant for the economy and the financial sector, through increased litigation and transition risk. These risks can be relevant to the ECB, as they may impact the implementation of its banking supervision and monetary policy mandates.

In terms of litigation risk, the *KlimaSeniorinnen* case may affect financial institutions both directly, as potential defendants in climate-related litigation, or indirectly, where States, public institutions or their commercial counterparties are targeted. In particular, it may strengthen the arguments used by NGOs and other claimants to assert that businesses, including financial entities, have a duty of care regarding climate-related human rights under the ECHR and international soft law standards. Combined with advances in climate attribution science, due to increasing materialisation of physical risks,¹⁸⁰ the ruling could amplify transition risks for the financial system and for individual institutions.

In terms of transition risk, it is essential to anticipate how case law against states at national, regional, or international level could develop further, based on the *KlimaSeniorinnen* ruling. Such cases, if successful may result in obligations on States to take more ambitious climate action within tight timeframes. Transition risk is most problematic for the economy and the financial sector when the process of adjustment is too steep. Thus, there are considerable benefits to adopting appropriate policy and regulatory measures earlier, rather than later, and thereby ensuring an orderly transition. This includes legislation that requires companies and financial institutions to prepare their businesses for the transition, in particular by adopting and putting into effect transition plans.

While the Union's sustainable finance framework currently faces headwinds, courts are steadily advancing climate-related jurisprudence. This divergence between policy and judicial developments heightens both litigation and transition risks for Union institutions, Member State authorities and private-sector actors. The

¹⁸⁰ Yann Quilcaille, Lukas Gudmundsson, Dominik L. Schumacher, et al (2025), 'Systematic attribution of heatwaves to the emissions of carbon majors', *Nature* 645, 392–398.

most prudent response is to closely monitor emerging trends in climate-related litigation, thereby enhancing governance, transparency, and accountability in the face of legal challenges. Such an approach also enables public and private institutions to respond to and communicate with a growing cross-section of society, who view climate change as a threat to their fundamental rights. While this may help build greater societal trust and cohesion, it is no substitute for robust, forward-looking policies and legislation that squarely addresses the human rights dimensions of climate change.

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