

## **Legal briefing prepared for the WWF European Policy Programme**

### ***The International Court of Justice's Advisory Opinion of 23 July 2025 on States' Obligations on climate change and its relationship to the EU's regulation of the land-use sector***

*Disclaimer: The purpose of this briefing is to provide a legal analysis of the relationship between findings of the ICJ in the ICJ advisory opinion and potential changes to the carbon removal target in the LULUCF regulation. The views expressed in this briefing do not necessarily represent the views of WWF European Policy Programme or any affiliated organisations. This briefing is dated 25 June 2026 and does not include any information on developments, changes or information made available after this date.*

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## A. INTRODUCTION

### 1. Briefing overview

1.1 This legal briefing has been prepared at the request of the WWF European Policy Programme in relation to the impact of the recent advisory opinion issued by the International Court of Justice (ICJ) in July 2025 on States' obligations in respect of climate change (*Obligations of States in respect of climate change*)<sup>1</sup> on domestic legislation for the mitigation of climate change. The purpose of this legal briefing is to provide analysis on the relevance of *Obligations of States in respect of climate change* for European Union (EU) regulation in the land use, land-use change and forestry (LULUCF) sector.

1.2 On 9 February 2026, the European Commission opened a call for evidence concerning the revision of national targets and flexibilities in the EU climate policy framework after 2030.<sup>2</sup> It specifically seeks to consult on how national targets and efforts, including LULUCF sector targets beyond 2030, can promote the required GHG (GHG) emission reductions and removals to support achieving the EU's 2040 climate neutrality target of 90% compared to 1990 (see section 7 for an overview of the EU's climate targets). In the context of calls to move from “short-term carbon removals targets to long-term ecosystem resilience”,<sup>3</sup> this briefing responds to the following questions:

- i. Following the ICJ's findings in *Obligations of States in respect of climate change*, is the EU required under international law to set a 2040 sectoral net GHG removal target which is more ambitious than the current 2030 target? (**Question 1**)
- ii. If the EU were to reduce or revoke the 2030 net GHG removal target of 310 million tonnes of carbon dioxide equivalent (CO<sub>2</sub>e) as set out in Article 4(2) of EU Regulation 2023/839 amending Regulation (EU) 2018/841 (LULUCF Regulation),<sup>4</sup> would this represent a breach of international law following the ICJ's findings in *Obligations of States in respect of climate change*? (**Question 2**)

1.3 This briefing refers to carbon sinks and reservoirs as land use activities that contribute to the 2030 net GHG removal target under the LULUCF Regulation. Such references should be understood in accordance with the definitions of carbon sinks and reservoirs under the United Nations Framework Convention on Climate Change 1992 (UNFCCC):

*Article 1(7): “Reservoir” means a component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored.*

*Article 1(8): “Sink” means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.*

1.4 It is important to distinguish between measures for the reduction of carbon dioxide emissions, which prevent new emissions from entering the atmosphere, and measures for the removal of carbon dioxide emissions from

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<sup>1</sup> International Court of Justice, *Obligations of States in respect of climate change*, Advisory Opinion 23 July 2025 (**Obligations of States in respect of climate change**).

<sup>2</sup> European Commission, ‘National targets and flexibilities in the EU climate policy framework after 2030 – review’, Call for evidence for an impact assessment Ref. Ares(2026)1417227 (9 February 2026) (Website) <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/16692-National-targets-and-flexibilities-in-the-EU-climate-policy-framework-after-2030-review\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/16692-National-targets-and-flexibilities-in-the-EU-climate-policy-framework-after-2030-review_en)> accessed 22 April 2026.

<sup>3</sup> Council of the European Union, Note from the General Secretariat of the Council to Delegations concerning *AOB for the meeting of the Council (Environment) on 17 March 2026, Implementing the LULUCF Regulation - Information from Austria, Czechia, Estonia, France, Hungary, Latvia, Lithuania, Portugal and Slovakia*, 7302/26 (Brussels, 13 March 2026): <https://data.consilium.europa.eu/doc/document/ST-7302-2026-INIT/en/pdf>, page 2.

<sup>4</sup> Regulation (EU) 2023/839 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/841 as regards the scope, simplifying the reporting and compliance rules, and setting out the targets of the Member States for 2030, and Regulation (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review [2023] OJ L 107/1 (LULUCF Regulation).

the atmosphere whereby carbon dioxide is stored in geological, terrestrial or ocean reservoirs or in products.<sup>5</sup> While reservoirs and sinks can remove carbon dioxide from the atmosphere, permanent removal is not necessarily guaranteed. For example, where carbon dioxide is stored in a natural reservoir or sink (such as biomass or soils), if that reservoir or sink is disturbed or destroyed, the stored carbon dioxide may be released back into the atmosphere.

- 1.5 While carbon dioxide removals cannot substitute actual emission reductions, removals still play a central role in supporting GHG mitigation strategies, supporting the transition to net zero, and counterbalancing residual carbon dioxide emissions and, in the long-term, will be necessary to achieve net-negative emissions.<sup>6</sup> Even with deep, rapid emissions reductions across all sectors, the EU will experience a certain level of residual and unavoidable emissions remaining by 2050 and carbon dioxide removals, through mechanisms such as reservoirs and sinks, will be essential to achieve climate neutrality.<sup>7</sup>
- 1.6 Further, according to scenario modelling conducted by the Intergovernmental Panel on Climate Change (IPCC), there is high confidence that “warming will exceed 1.5°C during the 21<sup>st</sup> century” based on the implementation of nationally determined contributions announced prior to COP26.<sup>8</sup> Where overshoot is likely, carbon dioxide removals may play a key role in bringing global temperature back towards or under 1.5°C.<sup>9</sup> Therefore, while legislative frameworks often refer to climate change mitigation as a whole, emissions reductions and removals have distinct and complementary roles in achieving climate change mitigation and meeting the objectives of international treaties and domestic legislative frameworks alike.

## 2. Executive summary

- 2.1 This briefing considers how the ICJ's findings in *Obligations of States in respect of climate change* bear upon the EU's land-use framework, in particular the LULUCF Regulation, its 2030 net GHG removals target of 310 million tonnes of CO<sub>2</sub>e, and the role of a new net GHG removals target for 2040.
- 2.2 Although advisory opinions of international courts are not, of themselves, legally binding, they are capable of exerting substantial normative and interpretative influence. They may inform future judicial reasoning, shape legislative expectations, and clarify the content of existing treaty and customary obligations.
- 2.3 In *Obligations of States in respect of climate change*, the Court emphasises that mitigation obligations under both treaty law, including the UNFCCC and the Paris Agreement, and customary international law encompass not only limiting new GHG emissions, but also protecting and enhancing greenhouse gas sinks and reservoirs as integral to the protection of the climate system. In particular:
  - i. *As a matter of treaty law*, the Court confirmed that the 1.5°C threshold is the primary temperature goal and forms essential context for the interpretation of Parties' obligations, including those relating to nationally determined contributions (NDCs).
  - ii. The Court provided clarity on Parties' obligations under Article 4 to prepare, communicate and maintain successive NDCs and characterised the obligation to prepare and maintain NDCs as an obligation of result, whilst reiterating the importance of the need for States to ensure that NDCs are capable of making an adequate contribution to the achievement of the temperature goal.

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<sup>5</sup> Intergovernmental Panel on Climate Change (IPCC), 'Annex I: Glossary' in *Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems* (2019) (IPCC, Geneva, Switzerland), page 807.

<sup>6</sup> European Scientific Advisory Board on Climate Change, 'Scaling up carbon dioxide removals: Recommendations for navigating opportunities and risks in the EU' (21 February 2025), page 8 and 9.

<sup>7</sup> *Ibid*, page 30.

<sup>8</sup> IPCC, 'Summary for Policymakers' in *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023) (IPCC, Geneva, Switzerland) pp. 1-34 [A.4.3].

<sup>9</sup> Babiker, M., G. Berndes, K. Blok, B. Cohen, A. Cowie, O. Geden, V. Ginzburg, A. Leip, P. Smith, M. Sugiyama, F. Yamba, 2022: Cross-sectoral perspectives. In IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change; Rogelj, J., O. Geden, A. Cowie, and A. Reisinger, 2021: Three ways to improve net-zero emissions targets. *Nature*, 591, 365–368.

- iii. The Court confirmed that States are required, under Article 4(2) of the Paris Agreement, to “*pursue domestic mitigation measures, with the aim of achieving the objectives*” of their NDCs, and that compliance with this obligation is to be assessed against a stringent standard of due diligence.
- iv. *Regarding customary international law*, the Court confirmed that the obligation to prevent significant harm to the environment applies to “*global environmental concerns*” and is therefore not confined to cases of cross-border harm.<sup>10</sup>
- v. This is an obligation of conduct, assessed by reference to a stringent due diligence standard, requiring the adoption and enforcement of appropriate rules and measures to prevent significant harm to the climate system.

2.4 Against that backdrop, this briefing addresses the two questions set out at paragraph 1.2. In summary, it finds:

- i. *In relation to Question 1*, international law does not impose a freestanding requirement to adopt sector-specific targets; the relevant obligations are instead to prepare, communicate and maintain progressive NDCs reflecting highest possible ambition, and to pursue domestic measures capable of achieving them.
- ii. *In relation to Question 2*, reducing or revoking the 2030 LULUCF removals target may indicate non-alignment with the findings of the ICJ where it is not accompanied by measures that maintain ambition and continue to protect and enhance sinks and reservoirs. In the case of revocation, whether an equivalent policy and regulatory package is introduced to fill any resulting ambition gap and to perform the governance function presently served by the target will be central to the assessment.

2.5 This briefing concludes that whether the (i) reduction or removal the 2030 net GHG removals target and (ii) setting a net GHG removals target for 2040 that represents a stagnation or regression of the present target is in alignment with the findings of the ICJ rests on whether any compensatory countermeasures are introduced, designed to fulfil the role of a target. Further, it notes that reducing or removing a net GHG removals target is likely to invite close scrutiny of the EU’s overall climate ambition and may precipitate legal challenge, particularly if not accompanied by credible compensatory measures within the wider EU climate-law architecture.

## **B. ICJ advisory opinion – *Obligations of States in respect of climate change***

### **3. Legal weight of the advisory opinion**

3.1 Advisory opinions, such as those issued by the ICJ (the UN’s highest judicial body), are not directly legally binding. However, they are highly influential and can have an indirect legal effect, acting as a catalyst for change, generating increased public interest, and creating political pressure on States to align their domestic policies with standards set out in opinions. In the case of *Obligations of States in respect of climate change*, the potential influence of the opinion is strengthened by both its unanimous adoption by the bench of 15 judges and the exceptionally high level of State and international organisation participation in the proceedings.

3.2 Practically, *Obligations of States in respect of climate change* may shape future domestic legislation by providing a normative expectation or benchmark for policymakers. Further, domestic, regional and international courts may cite the advisory opinion in their decisions or rely on it as an authority in the interpretation of climate-related obligations (see paragraphs 6.1 and 6.2 below). In addition, the opinion offers authoritative interpretation and clarification of existing law. For example, it provides important guidance on

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<sup>10</sup> *Obligations of States in respect of climate change*, (n 1) [440].

the standards applicable to adherence with States' legally binding obligations under international treaties, which is likely to inform the interpretation of these obligations by future courts and lawmakers.

- 3.3 The UN General Assembly has since adopted a resolution which welcomes the ICJ's advisory opinion in its entirety and affirms its "importance as an authoritative contribution to the clarification of existing international law".<sup>11</sup> The resolution calls upon all States to "*comply with their respective obligations under international law to ensure the protection of the climate system*", including through the prevention of significant harm to the environment by acting with due diligence, cooperating with each other in good faith, and ensuring the effective enjoyment of human rights by taking measures to protect the climate system.<sup>12</sup> Further, the resolution calls on "*all parties to the Paris Agreement to comply with their respective treaty obligations*" and "*implement measures to achieve the collective temperature goal of holding the increase in the global average temperature to 1.5°C*".<sup>13</sup> The resolution was adopted by a vote of 141-8, with 28 abstentions.<sup>14</sup> All EU Member States voted in favour of the resolution with the exception of Czechia which abstained. Resolutions of the UN General Assembly are also considered 'soft law' as they are not legally binding, but they may be deemed an expression of customary international law, provided that voting does not show that some States are persistent objectors. Accordingly, the adoption of this resolution, and its recognition of *Obligations of States in respect of climate change*, adds to the normative authority of the opinion.

#### 4. States' obligations in respect of climate change

- 4.1 In *Obligations of States in respect of climate change*, the ICJ considered a wide range of sources of international law in determining States' obligations to protect the climate system. For the purposes of this briefing, the focus is on the Court's comments on States' obligations to mitigate climate change, particularly through the protection and enhancement of natural sinks and reservoirs.

##### *Mitigation obligations under the UNFCCC*

- 4.2 Noting that mitigation lies "*at the heart*" of the UNFCCC's objective,<sup>15</sup> the Court highlighted the mitigation obligations for developed countries set out at Article 4(2)(a):

*"... [Annex I] Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs..."* (emphasis added)

- 4.3 The Court found that Article 4(2)(a) provides a number of distinct but interrelated obligations for States, including obligations to adopt national policies for the mitigation of climate change, periodic communication on those policies and measures (Article 4(2)(b)), to coordinate with other parties for the achievement of the goals of the UNFCCC (Article 4(2)(e)(i), and the periodic review of policies and practices leading to GHG emissions (Article 4(2)(e)(ii)).<sup>16</sup>
- 4.4 In assessing these obligations, the Court noted that obligations of conduct and obligations of result are both legally binding, and the distinction between types of obligations is not necessarily strict in nature.<sup>17</sup> For example, Article 4(1)(d) of the UNFCCC places an obligation of conduct on States to promote the enhancement of natural sinks and reservoirs. While this specific objective itself does not have to be achieved, to comply with this obligation of conduct a State must use "*all means at its disposal*" to bring about the

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<sup>11</sup> United Nations General Assembly, UNGA Res 'Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change' (20 May 2026) UN Doc A/80/L.65. (UN General Assembly Resolution).

<sup>12</sup> UN General Assembly Resolution, note 11, paragraph 2.

<sup>13</sup> UN General Assembly Resolution, note 11, paragraphs 3 and 4.

<sup>14</sup> United Nations, 'General Assembly backs historic World court climate crisis ruling', *UN News* (20 May 2026) <<https://news.un.org/en/story/2026/05/1167561>>

<sup>15</sup> International Court of Justice, *Obligations of States in respect of climate change*, (n 1) [200].

<sup>16</sup> *Obligations of States in respect of climate change*, (n 1) [206].

<sup>17</sup> *Obligations of States in respect of climate change*, (n 1) [207].

promotion of enhancement of sinks and reservoirs.<sup>18</sup> Comparatively, the obligation under Article 4 (2)(a), to adopt national policies and take corresponding measures to preserve and enhance sinks and reservoirs, is an obligation of result. However, a State cannot discharge this obligation by simply adopting any policies – rather, the policies and measures adopted must be “*able to achieve the required goal*”.<sup>19</sup> In particular, the Court highlighted that adopting policies and taking measures “*as a mere formality*” will not suffice in discharging an obligation of result.<sup>20</sup>

- 4.5 A table of obligations pertaining to the enhancement and protection of carbon sinks and reservoirs in the UNFCCC is set out at the end of this briefing.

*Mitigation obligations under the Paris Agreement*

- 4.6 The ICJ found that the threshold of 1.5°C under the Paris Agreement is the agreed primary temperature goal for State parties, rather than the aim to limit the global average temperature increase to well below the threshold of 2°C.<sup>21</sup> The ICJ further noted that this temperature goal represents a means for achieving the ultimate goal of the UNFCCC, namely the stabilisation of GHG concentrations through limiting emissions and preserving and enhancing sinks and reservoirs.<sup>22</sup> In addition, the Court noted that the temperature goal constitutes the context relevant for the interpretation of obligations under the Paris Agreement, including obligations relating to NDCs under Article 4.<sup>23</sup>
- 4.7 Article 5 of the Paris Agreement, which provides that Parties *should* take action to conserve and enhance, as appropriate, carbon sinks and reservoirs of GHGs, reinforces the obligations relating to the promotion and enhancement of sinks and reservoirs in Article 4 of the UNFCCC.<sup>24</sup> This provision concerns both conduct, to promote the enhancement of sinks and reservoirs, and result, to take action.
- 4.8 The ICJ also provided further clarity in relation to the obligations on States to prepare, communicate and maintain successive NDCs. At the outset, the Court clarified that while the obligation to prepare and maintain these NDCs is an obligation of result, this did not mean that “*mere formal*” preparation would suffice in meeting this obligation.<sup>25</sup>
- 4.9 Notably, the Court stressed that the content of a party’s NDC must be “*capable of making an adequate contribution to the achievement of the temperature goal*” and emphasised that the discretion of parties in preparing NDCs is “*limited*”.<sup>26</sup> The Court explained its opinion that in exercising their discretion, parties have a due diligence obligation to ensure that the NDCs they submit are capable of achieving the objective of stabilising GHG emissions.<sup>27</sup> The applicable standard of due diligence in this context is “*stringent*”, and each party must do its “*utmost*” to ensure that the NDC it submits represents its “*highest possible ambition*” in achieving the objectives of the Paris Agreement.<sup>28</sup> Practically, this means in the opinion of the Court that States have a binding obligation to use their best efforts to achieve the commitments made in their NDCs through the pursuit of domestic mitigation measures.<sup>29</sup> These measures may include putting in place a national system for mitigation, including legislation, administrative procedures and an enforcement mechanism, and exercising adequate vigilance to make such a system function effectively, with a view to achieving the objectives in their NDCs.<sup>30</sup>

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<sup>18</sup> *Obligations of States in respect of climate change*, (n 1) [208], [457](3)(B)(a).

<sup>19</sup> *Obligations of States in respect of climate change*, (n 1) [208].

<sup>20</sup> *Obligations of States in respect of climate change*, (n 1) [208].

<sup>21</sup> *Obligations of States in respect of climate change*, (n 1) [224].

<sup>22</sup> *Obligations of States in respect of climate change*, (n 1) [225].

<sup>23</sup> *Obligations of States in respect of climate change*, (n 1) [231].

<sup>24</sup> *Obligations of States in respect of climate change*, (n 1) [232].

<sup>25</sup> *Obligations of States in respect of climate change*, (n 1) [236].

<sup>26</sup> *Obligations of States in respect of climate change*, (n 1) [242] and [245].

<sup>27</sup> *Obligations of States in respect of climate change*, (n 1) [245].

<sup>28</sup> *Obligations of States in respect of climate change*, (n 1) [242], [246].

<sup>29</sup> *Obligations of States in respect of climate change*, (n 1) [253].

<sup>30</sup> *Obligations of States in respect of climate change*, (n 1) [253].

*Adaptation obligations under the Paris Agreement*

- 4.10 The ICJ considered that Article 7(9) of the Paris Agreement, which mandates that parties shall engage in adaptation planning processes and the implementation of actions, including the development or enhancement of plans, policies, or contributions, establishes legally binding obligations on State parties.<sup>31</sup> It considers that compliance with this obligation is assessed against a due diligence standard: parties must enact appropriate measures to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change. The Court noted that there are adaptation measures that exist that are effective in reducing climate risks in certain contexts, explicitly citing restoration of ecosystems, regenerative farming, crop diversification, and managing land to reduce wildfire risks, implemented through the adoption of appropriate measures, as possible means of meeting this due diligence obligation.<sup>32</sup>

*Customary international law*

- 4.11 In addition to treaty obligations, the Court considered States' obligations to protect the environment and the climate system under customary international law. In particular, the Court found that States have an obligation to prevent significant harm to the environment, which is an obligation of conduct, subject to a stringent level of due diligence. Compliance of States with this obligation includes the establishment and enforcement of legislation and mechanisms to prevent harm to the environment, such as the regulation of harmful activities.<sup>33</sup> Specifically, the Court noted that such rules and measures include “*regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions*” needed to prevent significant harm to the environment.<sup>34</sup> In addition, the ICJ considered that adaptation measures, which reduce the risk of harm occurring, are also relevant in an assessment of a State’s adherence to this due diligence obligation.<sup>35</sup> The Court stated that these rules and measures must regulate the conduct of public and private operators within the States’ jurisdiction or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation.<sup>36</sup> The Court considered that this duty applies to the entire climate system and not just to the environment of another State.<sup>37</sup>
- 4.12 The Court further considered that the standard of due diligence may become more demanding in the light of new scientific or technological knowledge,<sup>38</sup> and that the obligation for a State “*to use all means at its disposal*” necessarily means that the specific capabilities of individual States are key factors in determining the standard applicable.<sup>39</sup> In this regard, the Court noted its Opinion that developed States must take more demanding measures to prevent environmental harm and must satisfy a more demanding standard of conduct.<sup>40</sup>
- 4.13 On the relationship between international treaties and customary international law, the Court noted that treaties need to be interpreted by taking into account rules of international law and treaties may also “*shed light on the content of customary international law*”.<sup>41</sup> This means that State practice in implementing obligations under the treaties, such as the UNFCCC and the Paris Agreement, informs customary international law obligations, and customary law obligations provide “*guidance for the interpretation of the climate change treaties*”.<sup>42</sup>

*Applicability of international human rights law to States' obligations to mitigate and adapt to climate change*

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<sup>31</sup> *Obligations of States in respect of climate change*, (n 1) [256] and [257].

<sup>32</sup> *Obligations of States in respect of climate change*, (n 1) [258].

<sup>33</sup> *Obligations of States in respect of climate change*, (n 1) [281].

<sup>34</sup> *Obligations of States in respect of climate change*, (n 1) [282].

<sup>35</sup> *Obligations of States in respect of climate change*, (n 1) [282].

<sup>36</sup> *Obligations of States in respect of climate change*, (n 1) [282].

<sup>37</sup> *Obligations of States in respect of climate change*, (n 1) [273].

<sup>38</sup> *Obligations of States in respect of climate change*, (n 1) [284].

<sup>39</sup> *Obligations of States in respect of climate change*, (n 1) [290].

<sup>40</sup> *Obligations of States in respect of climate change*, (n 1) [292].

<sup>41</sup> *Obligations of States in respect of climate change*, (n 1) [311], [312].

<sup>42</sup> *Obligations of States in respect of climate change*, (n 1) [313].

4.14 The Court noted that States have obligations under international human rights law to respect, protect and ensure the enjoyment of human rights, and considered that the adverse effects of climate change may “*significantly impair*” the enjoyment of certain human rights,<sup>43</sup> including the right to life, the right to health, the right to an adequate standard of living, and the right to privacy, family and home.<sup>44</sup> While the Court stopped short of recognising a standalone right to a clean, healthy and sustainable environment, it took the view that a healthy and sustainable environment is a “*precondition*” for and “*essential*” to the enjoyment of many human rights, and that States could not comply with their obligations to protect human rights without ensuring protection of the right to a clean, healthy and sustainable environment.<sup>45</sup>

## 5. Legal consequences for failure to fulfil obligations

5.1 The Court stated that a breach of an obligation by a State is an internationally wrongful act, and that the rules on State responsibility under customary international law are applicable to determining legal consequences on States, with the International Law Commission’s Articles on State Responsibility reflecting the customary international law position.<sup>46</sup>

5.2 In exploring what constitutes an internationally wrongful act, the Court stated that it may range from “*breaches to treaty obligations... under Article 4 of the Paris Agreement... to breaches of obligations under customary international law*”.<sup>47</sup> Importantly, the Court made a distinction between a breach by a State of an obligation at law to protect the climate system and the emission of GHGs, the latter of which does not constitute an internationally wrongful act.<sup>48</sup>

5.3 Accordingly, in the opinion of the Court, the failure of a State to prepare an NDC which reflects its highest possible ambition, and which is capable of “*making an adequate contribution to the achievement of the temperature goal*”<sup>49</sup> and to subsequently take necessary measures to achieve the objectives contained therein,<sup>50</sup> could constitute an internationally wrongful act and cause legal consequences under customary law. As noted above, the Court explicitly recognised the need for land use policy and protective measures as integral to “*achieving the net balance between GHG emissions and carbon sinks*”.<sup>51</sup> The failure of a State to adequately protect and enhance carbon sinks, such that it limits a State’s ability to fulfil its obligations under Article 4 of the Paris Agreement and to meet the objectives of the same, may, in accordance with the Court’s findings on legal consequences, constitute a breach of its conventional obligations. However, it is noted that the implementation of an NDC is unlikely to rest entirely on the protection and enhancement of carbon sinks and reservoirs.

5.4 While the ICJ acknowledged that it could not assess the specific consequences arising from a State’s breach of an international obligation (since those consequences necessarily depend on the nature of the breach), it emphasised that a violation may trigger the full range of legal consequences recognised under the law of State responsibility.<sup>52</sup> Such consequences include duty of performance, cessation, compensation, and reparation (including compensation and restitution). For example, the Court noted that a State would have a continuing duty of performance, to take action to preserve and improve the absorption capacity of sinks and reservoirs, notwithstanding any prior breach of obligations under the UNFCCC, Paris Agreement or other applicable treaties.<sup>53</sup>

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<sup>43</sup> *Obligations of States in respect of climate change*, (n 1) [376]

<sup>44</sup> *Obligations of States in respect of climate change*, (n 1) [377], [379], [380] and [381].

<sup>45</sup> *Obligations of States in respect of climate change*, (n 1) [393]

<sup>46</sup> *Obligations of States in respect of climate change*, (n 1) [444] and [407]

<sup>47</sup> *Obligations of States in respect of climate change*, (n 1) [444].

<sup>48</sup> *Obligations of States in respect of climate change*, (n 1) [429]

<sup>49</sup> *Obligations of States in respect of climate change*, (n 1) [242]

<sup>50</sup> *Obligations of States in respect of climate change*, (n 1) [252]; Paris Agreement, Article 2(4).

<sup>51</sup> *Obligations of States in respect of climate change*, (n 1) [232]

<sup>52</sup> *Obligations of States in respect of climate change*, (n 1) [445]

<sup>53</sup> *Obligations of States in respect of climate change*, (n 1) [446].

- 5.5 The Court stated that under customary international law, a State responsible for an internationally wrongful act is under an obligation to cease that act if it is continuing and if the breached obligation is still in force.<sup>54</sup> This duty of cessation may require States to employ all means at their disposal to reduce their GHG emissions and take other measures in a manner, and to the extent, that ensures compliance with their obligations.<sup>55</sup>
- 5.6 In relation to restitution, which requires re-establishment of the situation that existed before the breach, the Court noted that this may involve reconstructing damaged infrastructure or restoring ecosystems and biodiversity.<sup>56</sup>
- 5.7 The Court clarified that it is not necessary to establish that a wrongful act or omission caused damage in order to determine a State's responsibility, it is the attribution of the act or omission to the State which is important.<sup>57</sup> However, where reparation is sought as a legal consequence of the wrongful act (which implies the existence of damage), it will be necessary to demonstrate that a causal link exists between the act or omission of the State and the damage.<sup>58</sup>
- 5.8 The Court specifically noted that while it may be difficult to establish causation due to the diffuse nature of climate change,<sup>59</sup> the fact that the damage was the result of concurrent causes is not sufficient to exempt a State from any obligation to make reparation.<sup>60</sup>
- 5.9 In terms of causation, the Court observed that there are two elements that must be demonstrated: (i) whether a given climatic event or trend can be attributed to anthropogenic climate change (this can be addressed by recourse to science), and (ii) to what extent damage caused by climate change can be attributed to a particular State or group of States.<sup>61</sup> Recent case law referencing *Obligations of States in respect of climate change* demonstrates that it is possible to establish this causal link.

## 6. References to *Obligations of States in respect of climate change* in recent case law

- 6.1 As noted above, one of the ways that advisory opinions have normative power is through their application by domestic, regional and other international courts. Since its delivery in July 2025, *Obligations of States in respect of climate change* has been referred to in several cases and decisions of domestic courts. The reception has been predominantly positive, with courts treating the opinion as persuasive authority that reinforces and expands existing climate obligations. The following cases are examples from European courts only:
- (a) ***Stichting Greenpeace Nederland et al. v. De Staat Der Nederlanden (C/09/659832 / HA ZA 24-53)***:<sup>62</sup> This case was brought by Greenpeace Netherlands against the Netherlands, claiming that the State had failed to take appropriate mitigation and adaptation measures to protect Bonaire's residents from the effects of climate change. The Hague District Court ordered the State to comply with its international emission reduction obligations and to adopt an adaptation plan by 2030. In doing so, it expressly relied upon the ICJ's advisory opinion in finding that the Netherlands had breached its due diligence obligations of conduct and obligations of result by not reducing emissions in line with international obligations and failing to prepare adaptation measures.
- (b) ***Greenpeace Nordic and Others v. Norway (Application no. 34068/21), European Court of Human Rights***:<sup>63</sup> This case involved two NGOs and six individuals claiming that the Norwegian

<sup>54</sup> *Obligations of States in respect of climate change*, (n 1) [447].

<sup>55</sup> *Obligations of States in respect of climate change*, (n 1) [448].

<sup>56</sup> *Obligations of States in respect of climate change*, (n 1) [451].

<sup>57</sup> *Obligations of States in respect of climate change*, (n 1) [433].

<sup>58</sup> *Obligations of States in respect of climate change*, (n 1) [433].

<sup>59</sup> *Obligations of States in respect of climate change*, (n 1) [434].

<sup>60</sup> *Obligations of States in respect of climate change*, (n 1) [435], citing *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment, I.C.J. Reports 2022 (I), p. 49, [97].

<sup>61</sup> *Obligations of States in respect of climate change*, (n 1) [437].

<sup>62</sup> *Stichting Greenpeace Nederland and others v De Staat der Nederlanden* (Rechtbank Den Haag, C/09/659832 / HA ZA 24-53, 28 January 2026).

<sup>63</sup> *Greenpeace Nordic and Others v Norway* (Application no 34068/21) (ECtHR, 28 October 2025).

government did not sufficiently consider potential climate impacts when issuing ten disputed petroleum production licenses, violating the applicants' rights to life and to private and family life under the European Convention on Human Rights. The European Court of Human Rights cited the ICJ advisory opinion as one of multiple persuasive authorities establishing that environmental impact assessments must be conducted for projects that risk generating significant GHG emissions and must take into account climate risks.<sup>64</sup>

- 6.2 The reliance of European courts on *Obligations of States in respect of climate change* is demonstrative of the opinion's widespread normative influence. While each case must be considered in its context, both of these European cases offer a clear indication as to how domestic and regional courts may interpret the obligations of the EU to mitigate climate change and protect the environment under international law, and how they may use *Obligations of States in respect of climate change* as an interpretative tool for evidencing the obligation to do so.

## C. Status of LULUCF Regulation and 2030 expiry of carbon removal targets

### 7. LULUCF Regulation within EU climate law and policy

- 7.1 The LULUCF Regulation is a sector-specific instrument that sits within the broader framework of the EU's climate law and policy, which includes a strategic framework, a legislative framework, the EU's NDC (in accordance with Article 4 of the Paris Agreement), and a range of sector-specific instruments. The key LULUCF Regulation target is to increase land-based net removals in the EU by an additional -42 million tonnes of CO<sub>2</sub>e by 2030, as compared to the yearly average over the period 2016-2018.<sup>65</sup> In order to properly analyse the potential consequences of revising or revoking the 2030 GHG emissions reduction target provided in the LULUCF Regulation (Question 2), and the setting of a new binding target by 2040 (Question 1), it is important to set out the wider structure in which the LULUCF Regulation sits.<sup>66</sup>

#### *EU Climate Law (Regulation (EU) 2021/1119)*

- 7.2 The EU Climate Law functions as the central legislative pillar of EU climate law and policy, enshrining the EU's long-term climate commitments in law, including the legally binding emissions reduction targets.<sup>67</sup> It represents a codification of policy commitments on climate mitigation, including commitments made by the EU in previous NDCs.
- 7.3 The EU Climate Law establishes three binding targets:
- (a) Article 2(1) provides that Union-wide GHG emission and removals shall be balanced at the latest by 2050;

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<sup>64</sup> *Greenpeace Nordic and Others v Norway*, [136], [137] and [138].

<sup>65</sup> European Commission, Report from the Commission to the European Parliament and the Council on the operation of Regulation (EU) 2018/841 pursuant to Article 17(2) as amended by Regulation (EU) 2023/839, COM(2024) 195 final (Brussels, 15 May 2024), s 2.

<sup>66</sup> The instruments considered in this section form the current legal architecture around the LULUCF removals target. The foundations for this legal architecture were laid by the 2030 Climate and Energy Framework, adopted in 2014, which set out the EU's overall policy direction and targets for the period 2021-2030 (*Conclusions (23 and 24 October 2014)* CO EUR 13 CONCL 5, EUCO 169/14 (Brussels, 24 October 2014)). While predating the LULUCF Regulation, it did refer to the inclusion of the LULUCF sector in the greenhouse gas mitigation framework. Further, in December 2019, the European Green Deal provided a starting point for the EU's political programme of commitments in relation to legislative and non-legislative initiatives for transitioning the EU economy, including commitments to introduce legislation enshrining a climate neutrality objective and review and revise climate policy instruments including the regulation LULUCF (*Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions*, COM(2019) 640 final (Brussels, 11 December 2019)).

<sup>67</sup> 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**), Article 2 and Article 14.

- (b) Article 4(1) establishes an interim target of domestic reduction of net GHG emissions by at least 55% compared to 1990 levels by 2030; and
- (c) Article 4(3) requires the European Commission to make a legislative proposal for a Union 2040 target following the first global stocktake under the Paris Agreement.
- 7.4 In accordance with Article 4(3), an amendment to the EU Climate Law that sets a 2040 target of a 90% net GHG emission reduction compared to 1990, comprised of (i) a “*domestic reduction of net greenhouse gas emissions by 85% compared to 1990 levels*” and (ii) a “*contribution of high-quality international credits under Article 6 of the Paris Agreement of up to 5% of 1990 EU net emissions*”<sup>68</sup> was formally adopted and published in the Official Journal of the European Union on 18 March 2026 (**2040 Amendment**).<sup>69</sup> There are currently two open public consultations and calls for evidence for the preparation of the EU climate policy framework for the period after 2030, focusing on the role of national climate targets and flexibilities,<sup>70</sup> and the possible use of international credits.<sup>71</sup> This framework will serve to implement the 2040 emissions reduction target.
- 7.5 The EU Climate Law specifically notes that carbon sinks play an essential role in the transition to climate neutrality in the EU, and in particular the agriculture, forestry and land use sectors make an important contribution in that context.<sup>72</sup> Additionally, the EU Climate Law states that the restoration of ecosystems would assist in maintaining, managing and enhancing natural sinks and promote biodiversity while fighting climate change.<sup>73</sup> Article 4(1) of the EU Climate Law also provides that when implementing the 2030 target, Member States must prioritise swift and predictable emission reductions and, at the same time, enhance removals by natural sinks.
- 7.6 Further, while the operational framework beyond 2030 is yet to be decided, the European Commission was required under Article 4(5) of the EU Climate Law to consider a range of factors when proposing the 2040 climate target, including “*the need to maintain, manage and enhance natural sinks in the long term and protect and restore biodiversity*”.<sup>74</sup> To that end, the 2040 Amendment specifically notes that in order to propose the EU 2040 climate target the European Commission considered the need to maintain, manage and enhance natural sinks in the long term and protect and restore biodiversity, including in the marine environment.<sup>75</sup>
- 7.7 The 2040 Amendment also identified the LULUCF Regulation as part of the regulations that implement the framework to achieve the EU's 2030 climate target.<sup>76</sup> The 2040 Amendment states that the European Commission should assess how relevant EU legislation would need to be amended in order to achieve the 2040 climate target, also taking into account declining natural sink capacity.<sup>77</sup> To that end, the 2040 Amendment includes in the new Article 4(5) an obligation for the European Commission to ensure that the need to maintain, manage and enhance natural sinks in the long term and protect and restore biodiversity, to promote sustainable and circular bioeconomy, and to take into account the effects of differences in forest age structure, natural variability and uncertainties, especially those linked to the impacts of climate change and

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<sup>68</sup> Regulation (EU) 2026/667 Article 1(2), amending the EU Climate Law Article 4(5)(a)

<sup>69</sup> See, for example: European Commission, '2040 climate target: Reducing the EU's net emissions by 90% by 2040' (European Commissions, March 2026) <[https://climate.ec.europa.eu/eu-action/climate-strategies-targets/2040-climate-target\\_en](https://climate.ec.europa.eu/eu-action/climate-strategies-targets/2040-climate-target_en)> Regulation (EU) 2026/667 entered into force 20 days after its publication in the Official Journal of the European Union and applies directly in all EU countries.

<sup>70</sup> N 2.

<sup>71</sup> European Commission, 'Legal framework for the possible use of international carbon credits towards the 2040 EU climate law target' (Have your say initiative) <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/16632-Legal-framework-for-the-possible-use-of-international-carbon-credits-towards-the-2040-EU-climate-law-target\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/16632-Legal-framework-for-the-possible-use-of-international-carbon-credits-towards-the-2040-EU-climate-law-target_en)> accessed 22 April 2026.

<sup>72</sup> *EU Climate Law* (n 67), recital 22.

<sup>73</sup> *EU Climate Law* (n 67), recital 23.

<sup>74</sup> *EU Climate Law* (n 67), Article 4(5)(j).

<sup>75</sup> Regulation (EU) 2026/667 Recital (4).

<sup>76</sup> Regulation (EU) 2026/667 Recital (12).

<sup>77</sup> Regulation (EU) 2026/667 Recital (12).

natural disturbances in the land use, land-use change and forestry sector is appropriately reflected in legislative proposals to review relevant EU legislation to achieve the new 2040 climate target.<sup>78</sup>

- 7.8 While the EU Climate Law caps the level of GHG removals at 225 million tonnes of CO<sub>2e</sub> in respect of removals that can be counted towards the 2030 climate target under the EU Climate Law, the 2040 Amendment does not include a contribution cap for removals that can be counted towards the 2040 climate target.

*EU NDC 3.0 (Submission to the UNFCCC, 5 November 2025)*

- 7.9 The EU's Third NDC, submitted in accordance with Article 4 of the Paris Agreement, represents a plan for the EU's climate actions through to 2035. This document has some normative authority, although it does not create a legally binding obligation on the EU to achieve any commitments made therein. Rather, as explained earlier in this briefing, the EU is subject to a binding obligation to communicate successive NDCs, which are capable of achieving the Paris Agreement temperature goal and to use all means at its disposal to achieve commitments, including through the implementation and enforcement of domestic measures. NDCs are successive because they should be communicated every five years and each NDC should represent a progression compared to the previous NDC.

- 7.10 The EU's Third NDC reflects the commitments already established at the EU level through the EU Climate Law. In addition, it provides an indicative contribution of net GHG emissions reductions by 2035 of between 66.25% and 72.5% compared to 1990 levels.<sup>79</sup> It refers to the regulation of the LULUCF sector several times, including the 2030 target for carbon sinks under the LULUCF Regulation,<sup>80</sup> but does not provide an indication of how the LULUCF target may be revised or updated for 2040, although the “*central and multifunctional role of forests*” is explicitly recognised.<sup>81</sup>

## 8. Overview of the LULUCF Regulation

- 8.1 The LULUCF Regulation establishes rules for the LULUCF sector to contribute to achieving the objectives of the Paris Agreement, rules concerning the accounting of GHG emissions and removals (specifically carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and nitrous oxide (N<sub>2</sub>O)) from land use, land-use change, and forestry sectors, and rules regarding the LULUCF sector's contribution towards the EU's 2030 climate targets. It is an example of a sector-specific instrument that implements the land use sector's contribution to the net GHG reduction targets set out in the EU Climate Law.

- 8.2 The scope of the LULUCF Regulation is broad, covering a range of land accounting categories such as afforested land, deforested land, managed cropland, managed grassland, managed forest land, managed wetland, forest land, cropland, grassland, wetlands and settlements. The LULUCF Regulation is legally binding and directly applicable to all Member States.<sup>82</sup>

- 8.3 The LULUCF Regulation consists of two periods:

- (a) **2021 to 2025:** Member States must comply with the “no-debit rule”, under which accounted emissions from the land use sector must not exceed accounted removals; and
- (b) **2026 to 2030:** Member States are subject to binding national targets contributing to an EU-wide net removals target of 310 million tonnes of CO<sub>2e</sub> by 2030, and compliance is assessed primarily on the basis of reported GHG inventory data.

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<sup>78</sup> Regulation (EU) 2026/667 Article 1(2).

<sup>79</sup> European Union, 'The nationally determined contribution of the European Union and its Member States', Submission by the Danish Presidency of the Council of the European Union and the European Commission on behalf of the European Union and its Member States (5 November 2025) (**EU Third NDC**), [15] page 4.

<sup>80</sup> *EU Third NDC*, (n 79), [65] page 13.

<sup>81</sup> *EU Third NDC*, (n 79), [73] page 15.

<sup>82</sup> *LULUCF Regulation* (n 4). See also: European Parliament, 'Sources and scope of European Union law' (Fact Sheets on the European Union) (Website) <<https://www.europarl.europa.eu/factsheets/en/sheet/6/sources-and-scope-of-european-union-law>> accessed 22 April 2026.

- 8.4 The second period is subject to an EU wide target of 310 million tonnes of CO<sub>2</sub>e in net GHG removals and introduces a framework for the achievement of that target. This consists of specific emission removal targets for each Member State, to be achieved by 2030, based on an average of each Member State's GHG emissions for the period 2016-2018.<sup>83</sup> Each Member State must ensure that the sum of its GHG emissions and removals across all relevant land reporting categories does not exceed its individual national target.<sup>84</sup> While the EU Climate Law caps the level of GHG removals at 225 million tonnes of CO<sub>2</sub>e in respect of removals that can be counted towards the 2030 climate target, in line with the stated intention in the EU Climate Law to aim to achieve a higher volume of its net carbon sink in 2030 than the cap,<sup>85</sup> the LULUCF Regulation target exceeds the net removal cap.
- 8.5 In addition, the LULUCF Regulation establishes a compliance budget for Member States for the years 2026-2029 leading up to the 2030 target, creating an interim accountability mechanism to ensure that Member States make steady progress toward their 2030 targets rather than deferring all necessary action until the final year. Member States must ensure that the sum of the differences between (i) GHG emissions and removals across relevant categories and (ii) the average value of its GHG inventory data for 2021, 2022 and 2023 does not exceed a defined budget. This budget is calculated using a linear trajectory that starts in 2022 at the average value for GHG inventory data for 2021-2023 and ends in 2030 at the value set for each Member State in column C of Annex IIA of the LULUCF Regulation, added to the average value of 2016-2018 inventory data. Following a review carried out by the European Commission with the assistance of the European Environment Agency, an implementing regulation setting out annual limit values for net GHG removals of Member States for the second period of the LULUCF Regulation was adopted in April of this year.<sup>86</sup>
- 8.6 In recent years, a number of bodies and organisations, including the European Commission, have assessed the EU's progress towards reaching its 2030 net removals target.
- (a) In January 2024, the European Scientific Advisory Board on Climate Change published a report on the EU's progress in achieving climate neutrality.<sup>87</sup> In relation to the land use sector, the report found that the EU's LULUCF net carbon sink has declined significantly in recent years, and to meet the “*legally binding target of 310 million tonnes of CO<sub>2</sub>e net removals per year by 2030*” under the LULUCF Regulation, the EU's carbon sink will need to remove an additional 8 million tonnes of CO<sub>2</sub>e each year in the 2023–2030 period.<sup>88</sup>
- (b) In May 2024, in accordance with its obligation under Article 29(5)(b) of Regulation (EU) 2018/1999,<sup>89</sup> the European Commission communicated a report to the European Parliament and the Council on the operation of the LULUCF Regulation.<sup>90</sup> It noted that the EU was not on track to meet the 2030 net removal target under the LULUCF Regulation and, noting the likelihood of more frequent natural disturbances due to the impacts of climate change, stated that “*[it] will be essential to revert this negative trend rapidly to meet the EU climate objectives, while at the same time increasing the resilience of the EU land sector to ensure stable long-term sinks*”.<sup>91</sup>

<sup>83</sup> LULUCF Regulation (n 4), Article 4(3).

<sup>84</sup> LULUCF Regulation (n 4), Article 4(4).

<sup>85</sup> EU Climate Law (n 67), Article 4(1).

<sup>86</sup> Implementing Regulation (EU) 206/893 of 24 April 2026 setting out annual limit values for net greenhouse gas removals of Member States for the period 2026-2029 pursuant to Article 4(5) Regulation (EU) 2018/841 of the European Parliament and of the Council.

<sup>87</sup> European Scientific Advisory Board on Climate Change, 'Towards EU climate neutrality: progress, policy gaps and opportunities' (18 January 2024) (Report) <<https://climate-advisory-board.europa.eu/reports-and-publications/towards-eu-climate-neutrality-progress-policy-gaps-and-opportunities>> accessed 22 April 2026.

<sup>88</sup> N 87, page 181.

<sup>89</sup> Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, art 29(5)(b) [2018] OJ L 328/1. Article 29(5)(b) requires the Commission to assess whether the EU and Member States have made sufficient progress towards meeting the obligations set out in Article 4 of Regulation (EU) 2018/841.

<sup>90</sup> N 65.

<sup>91</sup> N 65, page 6.

- (c) In May 2025, the European Commission published an EU-wide assessment of Member States' national energy and climate plans, concluding that Member States were not doing enough to reduce emissions in the land use sector.<sup>92</sup> While some Member States have stepped up efforts to meet their 2030 target in the land use sector, and nine States were projected to reach their LULUCF targets, the European Commission noted that many plans lacked “*sufficient details on the actions needed to reach the targets and quantification of their impacts*”.<sup>93</sup> Overall, the projections provided by Member States in their national energy and climate plans show that the EU is not on track to meet its 2030 target of generating an additional 42 million tonnes of CO<sub>2</sub>e of net removals by 2030 and a gap remains of 45-60 million tonnes of CO<sub>2</sub>e.<sup>94</sup>

## **D. Analysis - LULUCF Regulation review and compatibility with *Obligations of States in respect of climate change***

### **9. Revision of the LULUCF Regulation**

- 9.1 Article 17 of the LULUCF Regulation requires the European Commission to assess the contribution of the LULUCF Regulation to the objective of climate neutrality and the climate targets set out in the EU Climate Law. The EU Climate Law, in turn, recognises the importance of enhancing the EU's carbon sink through a more ambitious LULUCF regulation.<sup>95</sup> As part of this review mechanism, and as noted above at paragraph 1.2, the European Commission is consulting on how national targets, including LULUCF sector targets, can support the EU's 2040 climate neutrality target.
- 9.2 For the EU and its Member States, alignment with the ICJ's findings in *Obligations of States in respect of climate change* would mean: (i) taking action to meet the objectives of the UNFCCC and the Paris Agreement, including through the implementation of NDC commitments through domestic regulation; (ii) fulfilling the customary international law duty to prevent significant harm to the climate system; and (iii) taking action on climate change which is consistent with fulfilling human rights obligations.
- 9.3 The paragraphs that follow assess the alignment of the review package that is expected to follow the public consultation, including the possibility of the EU either adopting a 2040 target which is the same as or lower than the 2030 target (as considered in Question 1), or revoking a GHG removal target altogether (as considered in Question 2), with the characterisation of the international law obligations set out by the ICJ in *Obligations of States in respect of climate change*.

### **10. The role of a GHG removal target in the LULUCF sector**

- 10.1 Climate mitigation targets, in the form of net zero pledges or carbon dioxide removal or reduction targets with specific timeframes or deadlines, are a popular policy tool.<sup>96</sup> The use of targets provides a benchmark against which progress can be measured and governments can be held accountable for climate action, as well as certainty and specificity for a range of stakeholders.<sup>97</sup> The existence and maintenance of targets, across the short, medium and long term, creates certainty for the market, and can drive the creation of policy frameworks

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<sup>92</sup> European Commission, 'EU-wide assessment of the final updated national energy and climate plans', *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, COM (2025) 274 Final (Brussels, 27 May 2025) (Communication) <[https://eur-lex.europa.eu/resource.html?uri=cellar:61de6ed0-3b8d-11f0-8a44-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:61de6ed0-3b8d-11f0-8a44-01aa75ed71a1.0001.02/DOC_1&format=PDF)> accessed 22 April 2026.

<sup>93</sup> N 92, page 5.

<sup>94</sup> N 92, page 5.

<sup>95</sup> *EU Climate Law* (n 67), Article 4(1).

<sup>96</sup> See for example: United Nations, 'For a livable climate: Net-zero commitments must be backed by credible action' (Net Zero Coalition, United Nations) <<https://www.un.org/en/climatechange/net-zero-coalition>> accessed 21 April 2026.

<sup>97</sup> UNDP Climate Promise, 'What is climate change mitigation and why is it urgent?' (United Nations, 29 February 2024) <<https://climatepromise.undp.org/news-and-stories/what-climate-change-mitigation-and-why-it-urgent#:~:text=Shifting%20away%20from%20fossil%20fuels,modes%20of%20transportation,%20is%20crucial.>> access 21 April 2026.

and investment which support efforts to meet specific targets. The action of codifying climate targets in legislation can demonstrate a commitment to fulfilling international customary and conventional law obligations, including the objectives of the Paris Agreement and UNFCCC, but the development of policy and legal frameworks that are aligned with climate targets and support their achievement will be essential to turning commitment into compliance. The LULUCF Regulation is an example of one such target and, relevant to this briefing, is an example of legislation reflecting the obligation to protect and enhance carbon sinks and reservoirs.

- 10.2 A target does not on its own demonstrate compliance but, together with supporting policy, can signal intention to fulfil such obligations. It should be noted that it is not simply the existence of a target that demonstrates the compliance of a State with international law obligations, including meeting the requisite standard of due diligence. Rather, the existence of a target, together with measures to support the achievement of such a target, and measures to support compliance, will all be important factors in determining whether a State has met a required due diligence standard as required by treaty or custom.
- 10.3 Considering the impact of the LULUCF Regulation at the Member State level, a GHG removal target expressed through land-use regulation can perform an important governance function by requiring Member States to translate climate objectives into legally operative duties that cascade through multiple levels of decision-making and governance frameworks. At the EU level, the removals targets for Member States in the LULUCF Regulation create an obligation on Member States to plan, regulate and manage land in ways that achieve compliance with the LULUCF Regulation. Those obligations, in turn, necessarily “flow down” into national strategies, spatial planning instruments and individual land-use decisions.
- 10.4 An example of this “flow down” effect can be seen in the recent Irish Supreme Court case of *Coolglass Windfarm Limited v An Comisiún Pleanála* [2026] IESC 5 (**Coolglass**). In this case the Supreme Court confirmed that planning authorities must demonstrably consider statutory climate objectives when assessing local development proposals, to ensure that the decision to approve or not to approve the development application is, insofar as is practicable, consistent with Irish statutory climate objectives.
- 10.5 In practical terms, Coolglass demonstrates that where a Member State adopts a general climate target, or an GHG or carbon removal target grounded in land-use outcomes, there must be measures in place that ensure that the target is practically able to be achieved. This requires the development of legal policy and frameworks, which guide and influence the considerations of decision-makers such as government departments and local authorities to achieve alignment with codified climate and land-use targets and outcomes. Coolglass illustrates the role of climate and land-use targets, whether general or sectoral, in providing a yardstick for decision-making which is consistent with, or at least does not undermine, the achievement of climate neutrality. It makes clear that decision-makers at a range of levels (including local and national) can and should refer to codified targets to aid their decision-making and, in doing so, can create a bridge between international climate ambition and domestic governance.
- 10.6 In view of the foregoing, revocation of carbon removal targets from the LULUCF Regulation could result in a gap in policy and a weakening of the EU framework to protect and enhance carbon sinks and reservoirs. This may call into question whether the EU and Member States would be able to demonstrate alignment with the ICJ's findings in *Obligations of States in respect of climate change* in the absence of clear legal obligations and frameworks, which can be relied upon as evidence of actions taken to meet the objectives of the UNFCCC and the Paris Agreement. An additional commercial consequence of the revocation of GHG removals targets under the LULUCF Regulation is the possible reduction in direct investment in the removal or reduction of emissions due to lack of certainty around policy and long-term legal obligations.

## **11. Treaty obligations to mitigate and adapt to climate change**

- 11.1 As noted at paragraph 4.9, the ICJ has determined, in *Obligations of States in respect of climate change*, that under the Paris Agreement States have a substantive obligation to “pursue domestic mitigation measures with the aim of achieving the objectives of successive NDCs”. Such measures must be reasonably capable of

achieving NDC targets, informed by the best available science, and must include the regulation of private actors. The applicable standard of due diligence in this context is “*stringent*”, and that each party must do its “*utmost*” to ensure that the NDC it submits represents its “*highest possible ambition*” in achieving the objectives of the Paris Agreement.<sup>98</sup>

- 11.2 It follows that domestic mitigation measures which include provisions for future amendment and ongoing review, such as the LULUCF Regulation, should be designed and intended to meet the threshold of “*highest possible ambition*”, in order to align with the ICJ’s findings as to the requisite standards for a State’s NDC.
- 11.3 As discussed above at paragraphs 10.1 to 10.3, while the ICJ did not opine on the role of targets in demonstrating adequate ambition, an appropriately ambitious target, or multiple sectoral targets, supported by implementing measures, may demonstrate a State using best efforts to satisfy its obligations under the UNFCCC and the Paris Agreement. Equally, considering Question 2, it is arguable that the regression or revocation of a sector-specific carbon dioxide removal target such as the 2030 target under the LULUCF Regulation may impair a State’s ability to demonstrate that it is meeting this “*highest possible ambition*” standard. Should a State fail to take appropriate action to meet its obligations under the Paris Agreement, this may constitute a breach of their obligations at international law.
- 11.4 Accordingly, and as considered in Question 1, a decrease in ambition under the LULUCF Regulation for the period after 2030, in the form of a reduced target for removals or the revocation of a target altogether, may also demonstrate a failure to meet obligations under Article 4 of the Paris Agreement when judged against the standards described by the Court, namely the preparation of an NDC which reflects “*highest possible ambition*” and pursuing domestic measures with the aim of achieving national contributions.
- 11.5 The EU’s Third NDC notes the net emissions reduction target of 90% by 2040 and an interim target of 66.25 – 72.5% by 2035, compared to 1990 levels. While the NDC acknowledges the existing LULUCF Regulation target which expires in 2030, it does not elaborate on how emissions reductions in the LULUCF sector are anticipated to contribute to the economy-wide 2035 and 2040 targets respectively. As the EU’s Third NDC is applicable to the period up to 2035, the absence of confirmation on the target under the LULUCF Regulation for 2040 is not pertinent to the EU’s Third NDC. Rather, the trajectory in line with the 2030 target under the LULUCF Regulation is indicative of whether ambition is maintained or enhanced to 2035. This will then provide a benchmark against which the ambition of the 2040 target may be assessed. A downward revision of the 2030 target would likely disrupt the current trajectory for removals and may indicate that the commitments made under the EU’s Third NDC have not been adequately implemented.
- 11.6 As explained above at paragraphs 1.4 to 1.6, it is necessary to distinguish between the roles of emissions reductions and carbon removals in achieving climate neutrality. While there is a strong focus on emissions reductions, which are required to be deep and rapid to meet both the EU’s climate neutrality target and to meet the Paris Agreement temperature goal, carbon removals have a central role in bridging gaps in emissions reductions in hard to abate sectors. This particular role of carbon removals should also be considered in assessing the ambition level of NDCs.
- 11.7 While this is subject to ongoing discussion within the EU, without clarity on this issue it remains difficult to assess the extent to which the adoption of a 2040 LULUCF net GHG removal target which is either lower or the same as the 2030 target would represent a failure of the EU to take appropriate domestic steps to implement its NDC commitments when compared against the standards articulated by the Court in its opinion.<sup>99</sup> While it is arguable that a 2040 sectoral target which is less ambitious than the current 2030 target could also conflict with the UNFCCC obligation to protect and enhance carbon sinks and reservoirs, it is

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<sup>98</sup> *Obligations of States in respect of climate change*, (n 1) [246].

<sup>99</sup> There are many reports, including those referenced at n 87 and n 92, which indicate that EU Member States are not on track to meet the 2030 target under the LULUCF Regulation. This trajectory, which is below what is currently required under EU law, could indicate that the EU is at risk of failing to implement the commitments made in its second and third NDCs. This question is beyond the scope of this briefing and is therefore not considered in full in this footnote or elsewhere in this briefing.

difficult at this stage to say with clarity whether this would be a breach of international law in accordance with the ICJ's findings.

- 11.8 In the event that a State was to revoke or reduce a GHG removal target, it may be expected that countermeasures are introduced (in the place of a target) to demonstrate continued and increasing ambition, as required to achieve the objectives of the Paris Agreement.
- 11.9 Carbon sinks and reservoirs play an essential role in both mitigation of and adaptation to climate change. The importance of adaptation is recognised throughout the UNFCCC and the Paris Agreement.<sup>100</sup> As noted above at paragraph 4.10, specific obligations for States regarding adaptation are found at Article 7 of the Paris Agreement and compliance with them is, in the opinion of the Court, to be assessed against a standard of due diligence, which requires parties to use their “*best efforts, in line with the best available science, with a view to achieving*” the enhancement of adaptive capacity.<sup>101</sup> As already explored in this briefing, the mitigation benefits of protecting carbon sinks and reservoirs are well documented. Indeed, there is established scientific evidence that makes the case for pursuing emissions reductions and removals in parallel<sup>102</sup> and also scientific advice that concludes that the EU must urgently halt and reverse the ongoing decline of its land sink.<sup>103</sup> In addition to the central role of GHG removals for achieving net zero commitments, the protection of carbon sinks and reservoirs also has an important role in maintaining and enhancing adaptive capacity and climate resilience. This is recognised in the EU Strategy on Adaptation to Climate Change, which provides that “*protecting and restoring wetlands, peatlands...; promoting and sustainably managing forests and farmland will help to adapt to climate change in a cost-effective way*”.<sup>104</sup> The absence of measures to protect and enhance carbon sinks and reservoirs may demonstrate a failure to comply with the standards of due diligence identified by the Court in relation to both mitigation *and* adaptation.
- 11.10 The failure of a State to take appropriate action to promote and protect carbon sinks and reservoirs could be argued to contribute to a breach of human rights obligations. As acknowledged by the ICJ in *Obligations of States in respect of climate change*, and by regional human rights courts including the European Court of Human Rights (ECHR),<sup>105</sup> there is a strong relationship between the protection of the environment, climate change and the fulfilment of human rights. The failure of a State to take appropriate action to promote and protect carbon sinks and reservoirs, where that failure contributes to climate change, could be argued to breach human rights obligations. As demonstrated by the case described in paragraph 6.1(b) above, infringements on human rights can be one of the determining factors in climate litigation cases against Member States.

## 12. Customary international law duty to prevent significant harm to the environment

- 12.1 The ICJ stated that the customary international law duty to prevent significant harm to the environment is not confined to instances of direct cross-border harm and applies to “*global environmental concerns*”.<sup>106</sup> This obligation is stated to be binding on all States, regardless of whether they are parties to the climate change treaties, and to require States to use “*all means at their disposal*” to avoid activities causing significant harm. Paragraphs 4.11 and 4.12 above set out the relevant factors identified by the ICJ for determining whether a State has complied with this obligation.
- 12.2 Applying these factors to the revision of LULUCF Regulation as foreseen in Questions 1 and 2, any amendment should be consistent with the achievement of deep, rapid and sustained reductions in GHG emissions, the best available science and technological knowledge, and the precautionary principle in order

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<sup>100</sup> See for example: Paris Agreement, Article 2(1)(b), Article 7 and UNFCCC, Article 4(1)(b).

<sup>101</sup> *Obligations of States in respect of climate change* (n 1), [258].

<sup>102</sup> N 6.

<sup>103</sup> N 6, page 20.

<sup>104</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 'Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change', COM(2021) 82 final (24 February 2021, Brussels), page 11.

<sup>105</sup> See, for example: *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

<sup>106</sup> *Obligations of States in respect of climate change*, (n 1) [134].

to align with the findings of the Court. Further, because the EU is a developed State with high levels of historical emissions and significant financial and regulatory capacity, it is subject to a higher standard of due diligence when assessing its compliance with customary international law.

- 12.3 While the ICJ did not comment on whether the regression or downward revision of a target could constitute a failure of a State to comply, it did note that “*failure of a State to take appropriate action to protect the climate system from GHG emissions... may constitute an internationally wrongful act which is attributable to that State*”.<sup>107</sup> The ICJ cited examples related to fossil fuel production, consumption and exploration, rather than the importance of carbon sinks and reservoirs. However, as already noted in this briefing, the centrality of carbon sinks in mitigating and adapting to climate change is well documented, including in the operative provisions of the UNFCCC and the EU's Third NDC, and it is therefore possible that similar arguments could be made in relation to a failure to take appropriate action for the protection and enhancement of carbon sinks and reservoirs.
- 12.4 The ICJ stressed that due diligence “*entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control*”.<sup>108</sup> A weakening of the compliance architecture around the LULUCF Regulation, inclusive of individual Member State targets, could represent a failure not only to adopt appropriate rules and measures, but also a failure to appropriately enforce and control compliance with these measures when judged against the standards articulated by the Court.
- 12.5 Of significant relevance is the strength of the framework which surrounds the LULUCF Regulation and any assessment of the consequences of amending the LULUCF Regulation should not be done in a vacuum. As already noted in this briefing, there is a significant political and legal focus on achieving emissions reductions and, as a result, the downward revision or removal of a net GHG *removals* target while strong, ambitious frameworks for emissions *reductions* remain in place may be considered defensible. However, this approach risks understating the role of carbon removals in addressing emissions from hard to abate sectors and protecting the climate system. As noted above, the revocation of a target with no alternative or mitigating approaches which seek to fill the role of that target is likely to fall short of the due diligence standards articulated by the Court. However, the revocation of a target with the introduction of alternative compensatory measures, designed to fulfil the role of that target, may still be considered “*appropriate action*” in accordance with the ICJ's findings. There is scientific evidence that emissions reductions and carbon removals should be pursued in parallel,<sup>109</sup> and also scientific evidence that carbon removals will play a key role in the EU being able to achieve the objectives under the Paris Agreement.<sup>110</sup> This scientific evidence suggests that a reduction in the level of ambition under the LULUCF Regulation would not support the achievement of the EU's conventional and customary obligations under international law.

### 13. Concluding remarks

- 13.1 To return to the questions that this briefing originally set out to answer:
- i. Following the ICJ's findings in *Obligations of States in respect of climate change*, is the EU required under international law to set a 2040 sectoral net GHG removal target which is more ambitious than the current 2030 target?
  - ii. If the EU were to reduce or revoke the 2030 net GHG removal target of 310 million tonnes of CO<sub>2e</sub> as set out in Article 4(2) of the LULUCF Regulation, would this represent a breach of international law following the ICJ's findings in *Obligations of States in respect of climate change*?

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<sup>107</sup> *Obligations of States in respect of climate change*, (n 1) [427].

<sup>108</sup> *Obligations of States in respect of climate change*, (n 1) [138], citing *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I), p. 79, [197].

<sup>109</sup> N 6, page 14.

<sup>110</sup> N 6, page 29 and Figure 2, page 31.

- 13.2 First, there is no legal requirement for States to set sector-specific emissions reduction or removal targets. There is a strong argument, as discussed earlier in this briefing, that targets are a useful policy tool which many States do employ as part of their implementation of NDCs and fulfilment of obligations under international law to protect the climate system. While beyond the scope of this briefing, it is relevant to note that Parties to the Paris Agreement have specific reporting requirements to provide information necessary to track progress under their NDCs which includes a summary of removals, projections of future removals, approaches for addressing removals and the contribution from the LULUCF sector.<sup>111</sup> Accordingly, whether sectoral targets exist or not, States must collect and communicate certain data relating to removals in accordance with Article 13 of the Paris Agreement. As to the ambition level of that target, States are required in accordance with Article 4 of the Paris Agreement to prepare successive NDCs which are progressive and reflect the highest possible ambition for the period to which they apply (NDCs communicated in 2025 apply to the period up to 2035). To the extent that a State is able meet this standard while maintaining the level of a previous sectoral target there will be no breach of this obligation.
- 13.3 Second, the reduction of the existing 2030 removals target under the LULUCF Regulation, to the extent it is not supplemented or supported by policy measures to promote and enhance the protection of carbon sinks and reservoirs, may indicate non-alignment with international law obligations to protect the climate system insofar as those obligations fall to be interpreted in accordance with the Court's opinion. It is notable that the LULUCF sector represents only one of several sectors relevant to the achievement of the EU's economy-wide climate neutrality target. Should corresponding reductions in targets or ambitions be made to other sectoral frameworks, there may be a stronger argument for a potential breach of international law. In any event, the reduction or revocation of the 2030 target under the LULUCF Regulation is likely to trigger a forensic examination by interested stakeholders in the EU's climate ambition and could lead to legal challenges in respect of the same.

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<sup>111</sup> Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 2 to 15 December 2018, decision 18/CMA.1 and Annex to decision 18/CMA.1, [47]-[56].

## Annex 1 – UNFCCC Obligations

	Obligation	UNFCCC Article
<b>Mitigation</b>		
1.	Parties shall formulate and regularly update national and regional programmes containing measures to mitigate climate change by addressing emissions by sources and removals by sinks of greenhouse gas emissions	Article 4(1)(b)
2.	Parties shall promote the conservation and enhancement of sinks and reservoirs including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems	Article 4(1)(d)
3.	Parties shall adopt national policies and take corresponding measures on the mitigation of climate change by limiting its emissions and protecting and enhancing sinks and reservoirs	Article 4(2)(a)
<b>Adaptation</b>		
4.	Parties shall formulate and regularly update national and regional programmes containing measures to facilitate adequate adaptation to climate change	Article 4(1)(b)
5.	Parties shall cooperate in preparing for adaptation to the impacts of climate change; develop plans for coastal zone management, water resources and agriculture	Article 4(1)(e)
6.	Parties shall employ appropriate methods, for example, impact assessments, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, or projects or measures undertaken to mitigate or adapt to climate change	Article 4(1)(f)
<b>Reporting</b>		
7.	Parties shall develop and update national inventories of emissions by sources and removals by sinks of greenhouse gas emissions	Article 4(1)(a)
8.	Parties shall communicate detailed information on policies and measures adopted as well as on its resulting projected emissions by sources and removals by sinks of greenhouse gas emissions	Article 4(2)(b)