

# The design of an independent expert advisory mechanism under the European Climate Law: What are the options?

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September 2020



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### **About the authors and acknowledgements**

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This work has been commissioned by the European Climate Foundation (ECF) and has been supported by the Net-Zero 2050 series, an initiative of the ECF with contributions from a consortium of experts and organisations, although it is not part of the series of reports itself. For more information, please visit: <https://europeanclimate.org/net-zero-2050/>. The report was prepared in collaboration with the Elcano Royal Institute.

Alina Averchenkova acknowledges financial support from the Grantham Foundation for the Protection of the Environment, and from the UK Economic and Social Research Council through its support of the Centre for Climate Change Economics and Policy.

The authors are grateful to the experts of the European Climate Law hub for their valuable feedback in the course of the project. In particular, the authors thank the following for their input: Mathias Duwe and Nils Meyer-Ohlendorf, Ecologic Institute; Elisa Giannelli, E3G; Erica Hope and David Lopez Morales, European Climate Foundation; Barbara Mariani, European Environment Bureau; Alex Mason, WWF; and Sharon Turner, consultant to the European Climate Foundation. The authors are also grateful to Aradhna Tandon and Felix Koninx for their research assistance to the project. Georgina Kyriacou copyedited the paper.

This policy paper is intended to inform decision-makers in the public, private and third sectors. It has been reviewed by internal and external referees before publication.

The views expressed in the paper are those of the authors and are independent of the funding institutions. No potential conflict of interest was reported by the authors.

This paper was first published in September 2020 by the Grantham Research Institute on Climate Change and the Environment and the Centre for Climate Change Economics and Policy.  
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Suggested citation: Averchenkova A, Lazaro L (2020) *The design of an independent expert advisory mechanism under the European Climate Law: What are the options?* London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science

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# Summary of key messages

## The need for an independent expert advisory mechanism

**Independent expert advisory mechanisms or bodies on climate change are essential for enhancing the legitimacy and accountability** of the policymaking process and helping to strengthen public trust and political support for climate action. This is necessary for a successful transition to 'climate neutrality' (net-zero greenhouse gas emissions) in Europe: there must be political buy-in and public support for both the objectives and policies needed to achieve it, from across the EU.

**The use of independent expert advice through specialised mechanisms or bodies in the EU is not new.** Advisory bodies have been established at the EU level to advise on environment, energy regulation, social policy, transition to 'best available techniques' to reduce emissions, human rights, sustainable finance and financial stability, among others.

**Most national climate change laws in Europe establish or assign responsibilities to an independent expert advisory body** that broadly aims to strengthen the credibility and legitimacy of climate change policies. The EU could take inspiration and learn from governance innovations and experience at the national level. The specific governance dividends produced by such bodies are also likely to be particularly important to EU climate policymaking, given the Union's persistent problems with ensuring direct accountability to and legitimacy with citizens.

**There is a clear need for an independent expert advisory mechanism on climate change at the European level** to enable an *independent* scientific review of targets and policy proposals, to review the implementation of the European Climate Law, and to give a pan-European perspective on progress and policy consistency.

**An independent expert advisory mechanism on climate change would enhance the credibility of the analysis and policy proposals prepared by the European Commission**, rather than undermining or duplicating the Commission's mandate. By providing independent, highly qualified and non-politicised review and advice, the independent mechanism would strengthen political buy-in to the proposals by the Commission and the overall legitimacy and public acceptability of the implementation of the EU's transition to climate neutrality.

**The mandate of a European advisory mechanism on climate change would be complementary to the Intergovernmental Panel on Climate Change (IPCC);** it would not overlap with or undermine the Panel. The IPCC's mandate is to determine the state of knowledge on climate change, identifying areas of agreement in the scientific community and topics for further research. The IPCC does not provide advice on specific targets and policy proposals, nor does it assess progress with implementation in a specific geography.

**Failure to establish a credible independent advisory mechanism** in the EU would expose the process of the implementation of the legislation to additional political pressure. It would create greater scope for questioning analytical validity and legitimacy of the assumptions and proposed policy options. Countries currently lacking an advisory body on climate change at the national level would continue to be at a disadvantage.

## Composition of the advisory mechanism's membership

**The composition of any independent advisory mechanism has a major bearing on the likelihood of it having substantial policy influence.** Effective bodies are comprised of prominent experts who are recognised as authorities in their respective fields internationally, covering climate science, economics, behavioural sciences and relevant sectoral expertise.

**A body with a very large membership is unlikely to be effective** and succeed in proposing substantial policy change (as demonstrated by various authors).<sup>1</sup>

**The members selected must be trusted by most interested parties**, including the European Commission, the Parliament, the Council, civil society, business and climate policy experts and decision-makers in the Member States. This can be achieved through requiring a high level of independence and expertise and selection through a transparent and competitive process, avoiding selection based on affiliation with a particular stakeholder group or institution.

**The preferable model for the design of the independent advisory mechanism is a permanent standalone body**, composed of independent technical experts that serve for a specific term (e.g. four to five years), selected through a transparent, competitive, open call process.

**An informal network of national experts or ad hoc sourcing of expert information by the Commission would fail to meet the key criteria** for effective independent advisory mechanisms on climate change.

**A European body comprised of the nominated representatives of national expert bodies raises concerns with ensuring independence and a variety of technical expertise.** It limits the pool of technical and geographical expertise to that already present in the national advisory bodies on climate change (e.g. limiting the expertise from Eastern and Southern Europe and in recently emerging thematic areas).

**By incorporating the responsibility to coordinate information exchange with the national bodies** into the mandate of the European body, greater engagement of national expertise already present in the national bodies could be achieved.

### **Strengthening mandate and accountability**

**Strong parliamentary oversight** further enhances the prominence and effectiveness of independent expert advice and strengthens the accountability of policymakers for implementation.

**Recent experience with the technical expert group on sustainable finance** can inform the debate on the advisory body. This group is assisting the Commission in developing the EU taxonomy on sustainable finance, a Green Bond Standard and methodologies for climate benchmarks; and on disclosure of climate-related information.

### **Recommendations**

**The European Climate Law must include provisions for a permanent standalone independent expert advisory body on climate change, rather than informal mechanisms for soliciting expert input:**

- The Law should specify the body's institutional form, mandate, and how it would be composed and funded to ensure independence and a high quality of expertise.
- It should also determine the body's accountability to and relationships with the European Commission, Parliament, Council and Member States. Further operational details can be determined through delegated legislation.

**The mandate of the European independent expert advisory body on climate change should include independent reviews of:**

- The proposals by the Commission on the *emissions trajectories* for achieving climate neutrality (net-zero emissions) (Article 3 of the Commission's proposal); and/or the proposals

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<sup>1</sup> E.g. see Tsebelis G (2002) *Veto Players: How Political Institutions Work*, Princeton, NJ: Princeton University Press; Marier P (2009) The power of institutionalized learning: the uses and practices of commissions to generate policy change, *Journal of European Public Policy* 16:8: 1204-1223.

on the level of *the carbon budget* (the Proposal by the Committee on the Environment, Public Health and Food Safety)

- *The assumptions and models* that provide the basis for the development of climate change policies
- *The consistency of policies* proposed by the Commission (Article 4 of the Commission's proposal) with the climate neutrality and adaptation objectives
- *The national measures* (Article 6 of the Commission's proposal)
- *The reports on the EU's progress in implementing* measures on mitigation and adaptation (Article 5 of the Commission's proposal) and *preparation of recommendations* on how to address the gaps.

The main goal of the independent reviews should be to ensure the alignment of the proposals with the latest scientific findings and the agreed targets, enhancing their credibility and political buy-in.

#### **Defining progress criteria:**

- The body could usefully define criteria or indicators for assessing the progress of implementation to inform the work of the Commission and the Member States.

#### **Facilitating stakeholder interaction:**

- The body could usefully assist the Commission in facilitating interaction with stakeholders and national advisory bodies and integrating their input into the policymaking process.
- The European Climate Law should task the expert advisory body with developing a proposal on how it would engage with external stakeholders, including national advisory bodies on climate change, energy and climate dialogues, and eventually with the European Climate Pact.

#### **Conducting independent analysis and progress assessments:**

- A *broader mandate* could ask the advisory body to conduct its own independent analysis and present proposals to the Commission on emissions trajectories or carbon budgets and the underlying policies, and/or to produce its own *assessments of progress*.
- This could further strengthen the legitimacy and political buy-in to the EU's climate policy. However, it would require greater resourcing and clear delineation of duties to avoid duplication.

#### **Independence, expertise and autonomy:**

- The body's design should ensure the independence of the individual experts and of the institution as a whole from political influences and constituency pressures, which can be achieved by selection through a transparent and competitive process of calls for experts.
- These independent experts should possess a high level of technical expertise in the disciplines central to climate change policy, including climate science, economics, social and behavioural sciences, and relevant sectoral expertise.
- Selecting experts based on an open call could be delegated to an external board, comprised of either representatives of national advisory bodies on climate change or the Member States' governments (the former would ensure greater independence from politics) and the Commission.
- This could help address the demands for Member States' engagement made by the proponents of the model based on national nomination.
- However, it would be important to ensure that the political independence of the experts and the advisory body as a whole is not compromised.

- The funding arrangement for the advisory body should not jeopardise the independence of the body and there should be a protected right to sufficient funding provisions.
- The mechanism should have the autonomy to determine its own work programme (in line with its statutory mandate) and to manage its budget independently.

**Permanency and size:**

- The design of a European advisory mechanism should ensure institutional permanency.
- The size of the body should be small enough to ensure effective operation and be in line with national experiences in the Member States, where bodies vary from five to 15 members.

**Secretariat and budgetary/administrative independence:**

- The body would benefit from support from a secretariat, which could be established specifically for this purpose or hosted by one of the existing institutions, such as the European Environment Agency (EEA).
- If the EEA or another existing institution hosts the secretariat, clear arrangements should be put in place to preserve budgetary and administrative independence of the independent advisory body and its secretariat.
- The secretariat should be a self-contained, newly established unit, funded from a dedicated budget for the independent advisory body and guided by the body itself rather than being carved out from the existing work programme.

**Requirements for the European Commission, Parliament and Council:**

- The European Climate Law should introduce a statutory requirement for the European Commission to respond formally to recommendations made by the expert body to ensure the advice is considered and given prominence.
- The EU Parliament and the Council should introduce parliamentary oversight into the Law through the requirement for the reports on progress and other key pieces of advice by the independent advisory mechanism on climate change to be laid before Parliament and/or the Council for these bodies to consider and respond to the advice.



## List of abbreviations

|        |   |
|--------|---|
| ACER   | Agency for the Cooperation of Energy Regulators   |
| ASC    | Adaptation Sub Committee  |
| BAT    | best available techniques   |
| BREFs  | best available technique reference documents  |
| CCC    | Committee on Climate Change [of the United Kingdom]   |
| COM    | Covenant of Mayors for Climate and Energy [of the EU]   |
| CoM    | Committee of Members under the Advisory Committee on the Framework Convention for the Protection of National Minorities |
| EASAC  | European Academies Science Advisory Council   |
| EC     | European Commission   |
| EEA    | European Environment Agency   |
| EEB    | European Environment Bureau   |
| EU     | European Union  |
| EIONET | European Environment Information and Observation Network  |
| EPCC   | European Panel on Climate Change  |
| ESMA   | European Securities and Markets Authority   |
| FISMA  | Financial Stability, Financial Services and Capital Markets Union   |
| IED    | Industrial Emissions Directive [of the EU]  |
| IPCC   | Intergovernmental Panel on Climate Change   |
| JRC    | Joint Research Centre [of the EU]   |
| LTS    | long-term strategies  |
| NGO    | non-governmental organisation   |
| TEG    | Technical Expert Group on Sustainable Finance   |
| TWG    | Technical Working Group   |
| WHO    | World Health Organization   |



# 1. Introduction

## Why is an independent expert advisory mechanism needed under the European Climate Law?

The European Parliament and Council are currently discussing the draft European Climate Law that establishes a framework for achieving 'climate neutrality' (that is, net-zero greenhouse gas emissions) for the European Union. The legislative proposal by the European Commission from 4 March 2020<sup>2</sup> outlines the key elements of the framework. An important gap in the proposal is the lack of a mechanism for independent expert advice that would propose climate goals and assess implementation of the Law.

The primary objectives of independent advisory bodies are to ensure consistency of climate change policy with the latest scientific findings and to hold governments to account for the policies' implementation, through independent scrutiny of progress made. Independent expert advice therefore plays an important role in ensuring the credibility of climate targets and underlying policies and strengthens their implementation. Many existing national framework climate change laws establish new or designate existing independent advisory bodies on climate change (see Appendix 1 for examples). The European Union could take inspiration and learning from governance innovations and experience at the national level (e.g. see Ecologic Institute, 2020; Fankhauser et al., 2018).

Independent advisory bodies on climate change have also been shown to increase the transparency and legitimacy of policymaking, contributing to greater political and public support for the legislation (e.g. see Fankhauser et al., 2018; Averchenkova et al., 2018). They have also been instrumental in providing the analytical basis for more ambitious climate action. This is achieved by making available a high quality of expertise and separating the analytical advice from politics. In fulfilling their objectives, independent advisory bodies enhance the credibility and acceptability of climate change policy in the eyes of the general public, businesses, civil society and politicians. They can also provide cover and reinforcement to governments in case of political resistance to the adoption of the required targets and policies.

The UK's Committee on Climate Change (CCC) – the first of its kind – over the past 10 years-plus has been shown to have made a material difference to climate policy by helping to keep focus on objectives through carbon targets, improving the quality of the political debate and influencing relevant policies (e.g. new laws on energy, infrastructure, housing and water) (Averchenkova et al., 2018; Barreira and Ruiz-Bautista, 2020). The CCC's analysis is used in the UK Parliament to provide justification for political arguments for greater accountability and more ambitious action (see Box 2.1 below for more details).

A number of further scientific advisory bodies on climate change have been set up at the national level in the decade since the establishment of the UK's CCC (see Appendix 1 for some examples in Europe). However, the situation across Europe is very uneven. Not all Member States have such bodies. Furthermore, the level of expertise, financial means and the mandate of the bodies vary, which leads to varied levels of contribution to the policymaking process. A well-designed independent advisory mechanism on climate change at the European level could help address some of these gaps as well as provide a benchmark for national expert bodies that are being designed.

The Rapporteur of the Committee on the Environment, Public Health and Food Safety of the European Parliament, Jutte Guteland, proposed in the Draft report on the proposed regulation

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<sup>2</sup> Proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), COM(2020)0080 – C9-0077/2020 – 2020/0036(COD).

from 29 April 2020<sup>3</sup> the creation of an independent European Panel on Climate Change (EPCC) to ensure that “*scientific expertise and the best available up-to-date evidence and information are fully taken into account when setting the Union’s measures to reach climate neutrality as well as in the assessments of these measures*”. As the debate on the proposal for the EPCC unfolds, much detail on the functions, mandate and operation of the body will need to be fleshed-out and discussed.

## **Aim of this report**

The aim of this report is to inform the debate on the need for, and the design of, an independent expert advisory mechanism under the European Climate Law, based on experiences with the implementation of national climate change legislation. It discusses the following questions:

- *What are the key functions of an independent expert advisory mechanism on climate change?*
- *Can the independent advisory functions be covered by existing European institutions?*
- *What decisions on the design of an independent expert advisory mechanism need to be taken prior to adopting the European Climate Law?*
- *How could the mechanism be designed and what are the pros and cons of different design options?*

Our analysis is based on the review of previous studies on the experience with independent advisory bodies, selected interviews with climate change policy experts and European policymakers, discussions at the European Climate Law Hub, and discussions on the review of the initial exchange of views and proposed amendments in the European Parliament on the draft European Climate Law, which aimed to identify emerging issues, contentious points and potential solutions.

## **Structure of the report**

- **Section 2** outlines the key functions of an independent advisory mechanism on climate change and why it is required at the European level.
- **Section 3** reviews the existing European institutions active in the climate sphere and argues there is a gap in the ability of existing institutions to provide independent review of policies and independent assessment of progress on policy implementation.
- **Section 4** highlights the key decisions on an expert advisory mechanism that should be taken prior to adopting the European Climate Law.
- **Section 5** offers a discussion on the mandate that an expert advisory mechanism could have to ensure its completeness.
- **Section 6** presents options for the membership composition and institutional identity of an advisory mechanism.
- **Section 7** synthesises the recommendations, and thereby highlights the key conditions for a successful and effective European expert advisory mechanism on climate change.

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<sup>3</sup> Available at [https://www.europarl.europa.eu/doceo/document/ENVI-PR-648563\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/ENVI-PR-648563_EN.pdf).

## 2. What are the key functions of an independent expert advisory mechanism on climate change?

The overall political momentum for implementing climate neutrality in Europe is currently strong, with more than 90 per cent of Europeans viewing climate change as a "serious problem" and agreeing that greenhouse gas emissions should be reduced to make the EU carbon neutral (European Commission, 2019). There is also a growing understanding of the technological, economic and behavioral solutions required to reduce emissions and adapt to climate change impacts.

However, there is still a deficit in the political buy-in and public support for the sustained implementation of concrete policy solutions (Finnegan, 2019). Diverse interests of the Member States, some of which still depend on coal, concerns about competitiveness and jobs raised by industrial lobbyists, and insufficient mechanisms for monitoring and compliance pose significant risks to the Union's ability to adopt and implement the ambitious climate change policies required to meet climate neutrality goals (Grabbe and Lehne, 2019). These challenges call for urgent strengthening of European climate governance and of policy legitimacy and accountability in the eyes of the general public and the key political actors required to secure greater support to climate change policy.

Independent advisory bodies on climate change are widely expected to bring a longer-term and evidence-based perspective to climate policy, thereby strengthening climate governance and policy credibility. By making climate change policy more informed, more predictable and less prone to political cycles, independent advisory bodies are expected to enhance the legitimacy and acceptability of climate policies (Brunner et al., 2012; Helm et al., 2003; Hovi et al., 2009; Nemet et al., 2017). A parallel can be drawn with monetary policy, where the control of inflation is typically the responsibility of technocratic central banks, rather than politicians (Blackburn and Christensen, 1989; Egebo and Englander, 1992). Through independent assessments of progress, climate change advisory bodies are also expected to enhance the accountability of policymakers for policy implementation.

Evidence from recent studies suggests that there is strong recognition of the importance of independent advisory bodies on climate change. For example, SEO-Birdlife, an environmental NGO based in Spain, conducted a survey among the country's main political parties to understand their views on a future national Climate Change and Energy Transition Law (SEO-Birdlife, 2018). Representatives of all the parties surveyed agreed that an independent advisory body should be introduced into Spain's legislation.

Most national framework climate change laws in Europe establish or assign responsibilities to an independent expert advisory body that broadly aims to ensure consistency between climate policies and scientific findings, strengthening the credibility and legitimacy of climate change policies (see Appendix 1).

### Three main areas of function

While the specific mandates of the bodies vary, the key functions they fulfil fall broadly into three areas:

- Scientific advisory through independent evaluation and guidance on the options for climate change targets and policies
- Assessing the progress of implementation through independent reviews of greenhouse gas emissions data, pathways and the effectiveness of policies
- Facilitating public debate and stakeholder engagement.

**The independent scientific advisory function** involves providing input into the formulation of a climate policy itself, ranging from the analyses of specific mitigation and adaptation targets to providing concrete policy recommendations. For example, the UK government must consider recommendations made by the Committee on Climate Change on carbon budgets before it puts a proposal before Parliament and must produce a public statement if it deviates from the recommendations (see Box 2.1 for more details). Similar provisions are in place in Denmark and France, whose governments are required to respond to the recommendations of their respective advisory bodies in relation to climate policy formulation. The German Expert Council is asked to verify the assumptions underlying the projected impact of measures proposed by sectoral ministries before a climate policy programme or a new 2050 plan is adopted. Similarly, Sweden's Climate Policy Council must evaluate the analytical methods and models that provide the basis for policies.

**The independent assessment of progress in the implementation** of climate change targets and policies with parliamentary oversight provides for a stronger accountability mechanism for climate change laws. Most national climate laws in Europe require annual progress reports on implementation to be submitted to their respective parliament, with the main incentive for compliance being the threat of a judicial review. In some countries the primary reporting requirements rest with the government, but the reports are scrutinised by the independent advisory bodies (e.g. in Sweden, Germany, Denmark and Ireland). In Germany, the expert council verifies the accuracy of the data used by government for reporting. Other countries fully delegate reporting on progress to the independent advisory bodies (e.g. France, the Netherlands and Spain in its draft law). In the UK, the CCC issues a report on progress in implementation to which the government is required to respond by law. The UK government also produces its own annual report on emissions (see Appendix 1).

**Helping to facilitate public debate and stakeholder engagement on climate change** falls within the remit of independent advisory bodies in some countries. For example, Denmark's climate change law mandates the creation of a Climate Dialogue forum as one of the tasks for its independent advisory body (Weaver et al., 2019). A recent assessment of the UK's CCC over 10 years showed that its outputs have contributed to improving the quality of the political debate on climate change in the UK (Fankhauser et al., 2018). Similarly, an evaluation of the work of the Finnish Climate Panel found that it had a significant impact on public and political debate (Weaver et al., 2019).

### **Consequences of a failure to establish an independent advisory mechanism**

A strong independent advisory mechanism would help the European Commission in fulfilling its role under the European Climate Law by ensuring independence and hence helping to foster acceptability of climate and energy transition targets and policies. It would do this by undertaking data coordination (drawing on the information from the IPCC, European Environment Agency [EEA], Member States and their advisory bodies); raising the profile and understanding of scientific issues and filling strategic knowledge gaps by expanding analyses on adaptation and the EU's potential policy responses; assessing consistency of Member States' targets; and serving as a scientific advisory body to those Member States that do not have such an institution.

Failure to establish a credible independent advisory mechanism in the EU would have multiple consequences for the implementation of the European Climate Law. Firstly, it would expose the European Commission and the process of the implementation of the legislation more broadly (including potentially at the Member State level) to additional political pressure. It would create greater scope for questioning analytical validity and legitimacy of the assumptions and proposed policy options.

Secondly, it would miss an opportunity to strengthen the quality of the political debate on climate change at the European and national level that the creation of an independent, non-political and trusted knowledge broker and credible information provider provides. A study of the

independent expert policy advice provided to the European Parliament revealed that by default committee rapporteurs, having limited resources of their own, rely on advice from the secretariat officials assigned to their legislative report (Marshall, 2012). As the secretariat officials are generalists with limited technical in-house expertise, the advice often gets outsourced to “actively participating organised interests” as well as to the Commission, resulting in rapporteurs receiving information that is “likely to be derived from a subset of entrenched policy interests” (ibid.). These risks are higher in relation to climate change policy given the complexity of the issues involved. Experience of the UK’s national independent advisory body, the CCC, shows that its analysis has been used by all the major political parties in Parliament in their interventions since 2008 (Fankhauser et al., 2018). The CCC’s influence on parliamentary debates (in the Houses of Commons and Lords) has grown over time. In 2010, about 7 per cent of parliamentary speeches related to climate change referred to the CCC. By 2017 this number had almost doubled to 13 per cent (ibid.), pointing to the growing salience of the analysis by the CCC in the political debate.

Finally, in the absence of an independent expert advisory mechanism at the European level, countries currently lacking an advisory body on climate change at the national level would continue to be at a disadvantage. Furthermore, an opportunity would be missed to utilise the collective expertise of the existing national advisory bodies on climate change through their coordinated input to inform the work of the dedicated EU body and collaboration in the pan-European context.



### Box 2.1. The experience of the UK's Committee on Climate Change

The Committee on Climate Change (CCC) was established in the UK under the 2008 Climate Change Act and is one of the Act's most innovative institutional features. The CCC has been central to the UK's climate policy, having introduced a long-term perspective into climate policy and helped to enhance the credibility of targets and policymaking.

The CCC is an independent expert body with an annual average budget of £3.7 million. Its members do not represent particular interest groups but were chosen for their technical expertise. The Committee is supported by a 30-strong secretariat with expertise in all aspects of the climate problem. Funding for the CCC is provided by the UK Government and the devolved administrations of Scotland, Wales and Northern Ireland.

The CCC combines analytical rigour with extensive stakeholder engagement. It derives its recommendations from an exploration of the technological, economic and behavioural changes that are possible and required, based on detailed modelling and long-term scenario planning.

**The statutory duties of the CCC** are set out in the Climate Change Act and include to:

- Recommend to Parliament appropriate emissions reduction targets or carbon budgets that are set at five-year periods and define the path to 2050. The targets are recommended by the CCC and set by Parliament. Carbon budgets are set 12 years in advance, which helps to avoid decisions driven by short-term political cycles, allows stakeholders to adapt and provides regulatory certainty for investments.
- Advise the Government on the risks and opportunities from climate change and evaluate its National Adaptation Programme through the Adaptation Sub-Committee.
- Monitor and assess progress on reducing emissions and on climate resilience through an annual progress report by CCC to Parliament, to which the Government has a statutory obligation to respond.
- Provide on-demand advice to the UK Government and the devolved administrations on specific questions of climate policy. The CCC has advised, for example, on aviation emissions, renewable energy, the climate impact of shale gas extraction and devolved climate policy, and on the adoption of the 2050 net-zero target.

The CCC does not have any formal powers to change the Government's approach to climate policy. Instead it relies on the political embarrassment that its assessments may cause and the threat of a judicial review.

#### What has the CCC achieved to date?

- **The CCC's statutory advice on carbon targets** has generally been followed, albeit not always to the letter.
- **CCC analysis is used in Parliament to push for greater ambition.** Most political parties in Parliament, including all the major parties, have mentioned the CCC in their interventions since 2008. The assessment of parliamentary debates on the carbon budgets, energy and flooding over 10 years shows that CCC analysis often provides a technical justification to political arguments for greater accountability and more ambitious action.
- **The CCC's advice reaches beyond recommendations on carbon targets** and was mentioned in the parliamentary debates on 21 Government bills. It was referred to most often in the context of the four Energy Bills that have been passed since 2008, but also during the debates on the Infrastructure Bill (2014–15), the Water Bill (2013–14), the Civil Aviation Bill (2012) and the Housing and Planning Bill (2016). The CCC has gained a reputation as an authoritative advisor not only on matters of climate policy, but also on climate-smart public policy more generally that integrates climate change concerns into related policy areas. For example, the CCC was instrumental in bringing about the 2013 Electricity Market Reform.

Source: Averchenkova et al. (2018)

### 3. Can independent advisory functions be covered by the existing European institutions?

In considering the need for and the scope of the mandate of an independent expert advisory mechanism on climate change it is important to understand the key gaps in the current climate governance infrastructure and to ensure the expert body has a complementary rather than overlapping mandate. In the discussions on the need for a European expert advisory body on climate change, specific concerns have been raised over what value it would add to the work undertaken by the European Commission, and whether the creation of a body may potentially duplicate or undermine the Commission's mandate. Below we discuss the key functions of the independent advisory bodies on climate change outlined in Section 2 above, in relation to the mandates of the existing EU institutions.

#### **Independent scientific advice on climate change targets, mitigation and adaptation options or policy recommendations**

The European Commission acts as an executive body of the EU and has similar responsibilities in the context of climate change legislation at the level of the Union that governments would have at the national level. Specifically, the Commission is in charge of preparing legislative and policy proposals and ensuring the legislation is implemented. While in some Member States the underlying analysis on the level of targets and policy options is delegated to the independent advisory bodies, at the European level this function is well covered by the European Commission.

The Commission undertakes much of the underlying analysis with input from the European Environment Agency and other relevant organisations.

However, the Commission is not entirely technocratic; it is also a political body and is perceived as such by stakeholders and the public. Sound political judgement is essential for formulating legislative and policy proposals and influencing the positions of the Member States, which is at the core of the Commission's mandate. Yet in a highly complex policy area such as climate change, to be credible the policy proposals should also be backed by sound assessment that is regarded as independent, non-partisan and driven by science.

Previous studies from other policy areas (e.g. on the World Health Organization) have shown that combining technical and political mandates within a single institution can fail (Hoffman and Røttingen, 2014). They argue that separating the scientific body from the political one, making a clear mandate with independence and legal safeguards from political actors, leads to better quality advice for decision-making and facilitates consensus-building, which is critical to reaching net-zero emissions.

There is a clear gap in the provision of an *independent* expert review of the Commission's proposals on targets, emissions trajectories or carbon budgets and policies to meet the targets, envisioned under the European Climate Law. There is also a need to streamline key assumptions used in building policy scenarios across various policy areas. An independent expert advisory body on climate change could fill these gaps. By offering high-quality, relevant expertise, the body would act as a peer reviewer for the European Commission and thereby strengthen the credibility in the eyes of stakeholders and politicians of the analysis and policy proposals prepared by the Commission, without duplicating the work. Being backed by credible independent expert advice would also reduce the likelihood for the proposals by the European Commission to be challenged on political grounds.



## **Independent assessment of progress in the implementation of climate change targets and policies**

The European Commission is responsible for holding the Member States to account for the implementation of climate change legislation and underlying policies. The European Environment Agency plays a central role in supporting the Commission in preparing the EU's greenhouse gas emissions inventory, and under the current proposals for the European Climate Law it may support the Commission in preparing an assessment of measures undertaken at the national level and of the progress of the Union in implementing the legislation.

At the moment no institution is responsible for providing an independent assessment of progress made. As a major contributor to the Commission's analysis, the EEA would hardly be able to provide an *independent* assessment of the analysis it is contributing to. Similarly, the European Commission is not suited to fulfil the functions of an independent evaluation of its own reports on progress made in implementation. This calls for a third-party, independent expert advisory mechanism that could provide such an assessment.

## **Facilitation of public debate and stakeholder engagement on climate change**

While not being its core function, a European independent expert advisory mechanism on climate change could support the Commission in facilitating stakeholder engagement by providing expert input into the multilevel climate and energy dialogue (Article 11 in the Commission's proposal) and the European Climate Pact process (Article 8 in the Commission's proposal), as well as by providing advice to the Commission on how to reflect the input from these processes. It could also facilitate informal interactions and information exchange with the national independent expert advisory bodies on climate change in the Member States. A European expert advisory body could also be asked to coordinate a network of the national independent advisory bodies to share and diffuse best practice.

## **Relationship with the Intergovernmental Panel on Climate Change**

During the initial exchange of views on the legislative proposals in the European Parliament in summer 2020, concern was expressed about the risk that an expert advisory mechanism for Europe could overlap in its mandate and potentially undermine the findings of the Intergovernmental Panel on Climate Change (IPCC).

To respond to these concerns, it is important to review the mandate of the IPCC: it was created to provide policymakers with regular scientific assessments on climate change, its implications and potential future risks, and adaptation and mitigation options. Through its assessments, the IPCC determines the state of knowledge on climate change. It identifies where there is agreement in the scientific community on topics related to climate change, and where further research is needed. The IPCC does not provide advice on specific targets or policy proposals, nor is it able to assess progress made in the implementation of climate policy in a specific geography.

Empirical analysis of past experiences with the UK's Committee on Climate Change and equivalent bodies in other countries clearly shows these concerns to be misplaced: independent advisory bodies on climate change have in fact improved the understanding and raised the profile of international scientific findings among policymakers, legislators, the private sector and NGOs (e.g. see Fankhauser et al., 2018; Averchenkova et al., 2018; Weaver et al., 2019).

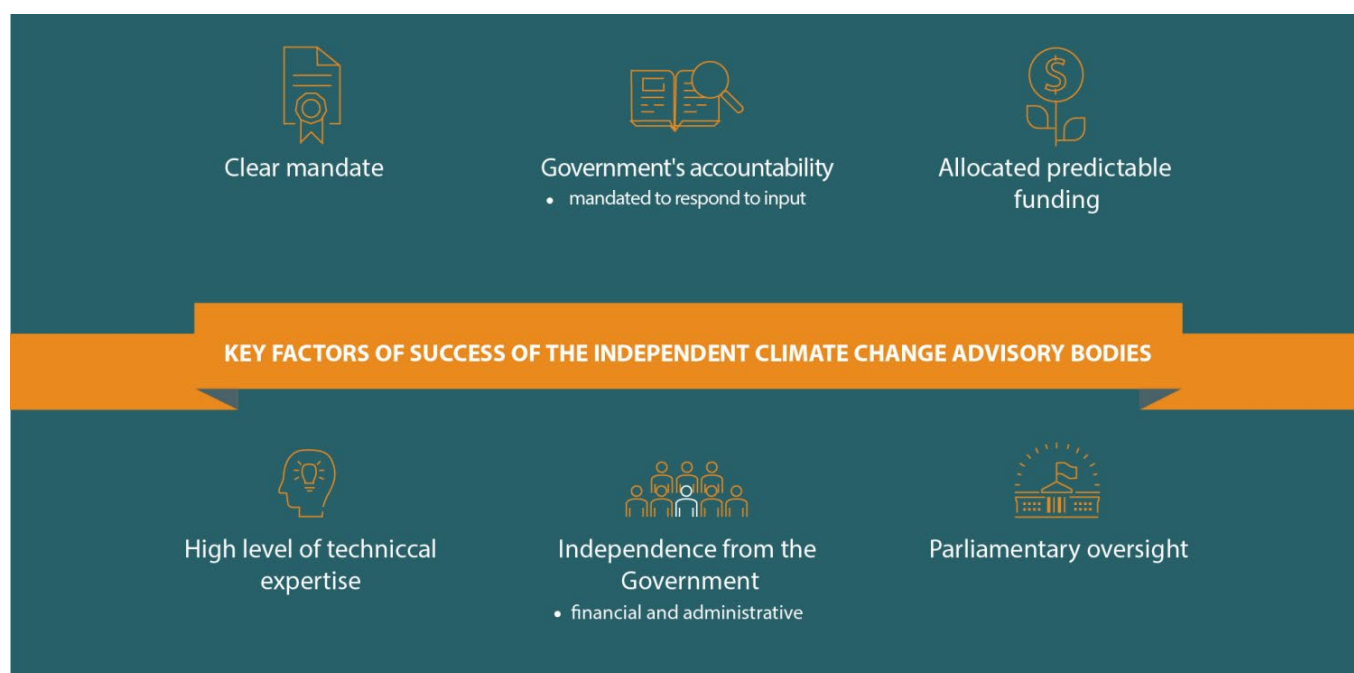
To fully address this concern, the mandate of the advisory body should make it clear that the latest scientific evidence, including the findings of the IPCC, should serve as the point of departure for the advice to be provided, in line with the current call in the EU Climate Law for including the IPCC's findings in the assessment and decarbonisation trajectories of the European Commission.

## 4. Key decisions on the advisory mechanism to be taken prior to adopting the European Climate Law

Previous studies have shown that there are several factors that determine the relative success of independent advisory bodies, including a clear and comprehensive mandate, composition and membership, to ensure a high level of expertise and independence, provisions for the executive branch to formally respond to the advice, and predictable funding and parliamentary oversight (see Figure 4.1). While some of the details in the design of the body can be determined at a later stage through delegated Acts, certain critical decisions in relation to the mandate of the body, key accountabilities, the requirements for independence and high-level expertise need to be enshrined in the framework legislation (into the European Climate Law) from the outset.

The selection of members and the mandate are two important tools to steer the activities of an advisory mechanism, to set the terms of what is to be learnt, as well as to establish the type of influence a body can have (Marier, 2009). An advisory body with a large and diversified membership, a vague mandate, and a short timeframe for operation is unlikely to lead to the achievement of substantive results in terms of learning and policy output. In contrast, the creation of an advisory mechanism with a selective membership, consisting mostly of a small group of highly respected experts with substantial, independently managed resources and time to conduct its analysis is far more likely to have influence and strengthen political buy-in to its advice.

**Figure 4.1. Factors in the success of independent expert advisory bodies on climate change**



Source: Averchenkova (2019)

### Clarity and scope of the mandate

To be effective, independent advisory mechanisms must have appropriate status, defined in legislation. Studies show that it is more difficult for governments and other political actors to dismiss an advisory body with a clear mandate, and sufficient time and resources allocated to performing its duties (Marier, 2009; Averchenkova, 2019). This includes:

- **Specifying the scope** of the mandate of the advisory mechanism (and its duties and obligations) in relation to: the independent scientific assessments of targets, emission

trajectories or carbon budgets and policy proposals; the independent assessment of progress made; and its role in the public debate and stakeholder engagement.

- **Clarifying the frequency** of such assessments and **interaction** with other bodies (e.g. the European Commission, the Parliament, the Council, the EEA and the national climate advisory bodies).

### **Ensuring independence and a high level of technical expertise**

The composition of an independent advisory mechanism has a major bearing on the likelihood of its having substantial policy influence (Marier, 2009). Studies show that the greater the number of diverse interests and the greater members' ideological distance from one another, the less likely it is that a commission or an advisory body will be effective and change the status quo (Tsebelis, 2002). A body with a very large membership is unlikely to succeed in proposing substantial policy change (Marier, 2009). Similarly, if a body is comprised of a mixture of experts and stakeholders, its role is muddled and unlikely to succeed. If a government creates a panel of experts, it is imperative that the members selected can be trusted by most interested parties. In the case of the EU, this includes the European Commission, the Parliament, the Council, civil society, business, and climate policy experts and decision-makers in the Member States. This can be achieved through requiring a high level of independence and expertise.

It is also important to determine who will make the decisions on the selection of experts based on the call. Prior experiences show that in some cases the selection is delegated to the executive branch (e.g. it could be delegated to the European Commission based on a clear set of criteria for the selection). Alternatively, the selection could be made by an external board composed of representatives of the national climate change committees or Member States' governments, the European Commission, the Parliament and the Council, as discussed in Section 6 below.

### **Requirement for the Commission to formally respond to the independent expert reviews**

Previous studies on the national expert advisory bodies on climate change found that the lack of a statutory requirement for the executive branch to respond to the body's reviews and recommendations significantly undermines their effectiveness. It is therefore critical for the European Climate Law to include a statutory requirement for the European Commission to formally consider and respond to the recommendations provided by the independent expert advisory body on climate change. Ideally this should include a requirement to provide a reasoned explanation if there are divergences in analysis or decisions over any action deemed necessary on the basis of analysis. It should also be considered whether any reports or outputs should be considered by the Parliament and/or the Council, and if so, when and which ones.

## 5. Options for the mandate of the European advisory mechanism on climate change

In detailing the mandate of the independent expert advisory mechanism on climate change it is important to specifically determine its role in relation to key steps in the policy cycle. These include setting emissions reduction and climate change adaptation objectives (e.g. through emissions trajectories or carbon budgets, and adaptation strategy objectives), proposals for specific policies on decarbonisation and adaptation to meet these objectives and the review of progress towards meeting them. It is also necessary to determine how the work of the advisory mechanism would relate to other actors and how it should draw on external input (e.g. from national advisory bodies).

The following sections are structured around questions that relate to the core features of the mandate and discuss potential options for its design.

### **Mandate in relation to emissions trajectories or carbon budgets and proposed policies to meet them**

*Would the independent advisory mechanism on climate change be tasked with undertaking its own independent analysis on emissions trajectories or carbon budgets and policy options for achieving them at the EU level, or would it be limited to providing an independent review of the analysis conducted by the Commission?*

Under the current proposals for the European Climate Law, the European Commission would be responsible for developing the trajectory for achieving climate neutrality (Article 3 of the Commission's proposal), and for proposing the level of the carbon budget (the Proposal by the Committee on the Environment, Public Health and Food Safety).

At the very least the mandate for the advisory mechanism should include an independent assessment of the Commission's proposals on the trajectory or on the proposed levels at which to set the carbon budgets and the policies to achieve them. The main goals of the independent review would be to ensure the alignment of the Commission's proposals with the latest scientific findings, to ensure their credibility and to enhance political buy-in. Specifically, this could include reviews of the assumptions and models that provide the basis for the trajectory or carbon budgets and the proposed climate change policies in line with practice at the national level. It would be important to determine whether the European advisory mechanism would focus on the review of the overall policy outlook for the EU as a whole or would also comment on the proposed policies at the Member State and sectoral level.

A broader mandate would ask the independent advisory mechanism to conduct its own independent analysis and present proposals to the European Commission on emissions trajectories or carbon budgets and the underlying policies. This model is close to the one used in the UK, where the CCC proposes the levels of carbon budgets to the government, although rather than proposing policies to meet them, the CCC reviews the proposed policies put forward by the government and then issues recommendations, identifying gaps and proposing options for addressing them.

The benefits of the broader mandate are that it could further strengthen legitimacy and political buy-in to the Commission's proposals on emissions trajectory and the underlying policies. It would also help strengthen the work of the Commission in enabling it to focus on selecting the most politically viable proposals within the scientifically sound proposals provided by the independent advisory mechanism.

However, feasibility to undertake this work by the independent advisory body should be carefully considered in the design of the body and determination of its budget, to ensure it has sufficient resources to commission additional analysis if required, and that the duties of the body and the Commission are clearly delineated to avoid duplication of efforts. The broader mandate might be more challenging to achieve politically, as it would require commitment of greater financial resources to support the advisory body.

## **Mandate in relation to progress in implementing decarbonisation measures**

*Would the advisory mechanism on climate change be tasked with producing its own comprehensive assessments of progress on implementation and with proposing additional measures to fill the gaps, or would its mandate be limited to an independent review of the report on progress by the Commission and the European Environment Agency?*

National experiences with the implementation of climate change laws offer examples for both a narrow and broader mandate for independent advisory bodies in terms of assessing progress with implementation. As discussed earlier, all European countries that have Climate Change Acts in place require annual progress reports, the majority of which are submitted to their respective parliaments (Ecologic Institute, 2020). In some countries the reports are prepared by the government (Sweden, Germany, Denmark, Ireland) with varying degrees of independent assessment, while in other countries independent bodies are tasked with preparing progress reports (e.g. France, the Netherlands, Spain, UK).

In the pan-European context it is crucial that the European Climate Law at the minimum includes the mandate for the independent expert advisory mechanism to review the report on progress being produced by the Commission and the EEA<sup>4</sup> (as per Articles 5 and 6 of the Commission's draft) and provide its own recommendations on how to address gaps in implementation. Under this option the Commission's assessments of progress would gain stronger credibility if they were based on a set of criteria or indicators derived from the long-term strategies that would show progress (or otherwise) on the key structural transformations required to meet climate neutrality. An independent advisory mechanism could support the Commission in developing such indicators and could potentially inform evaluation of progress at the European, sectoral and national levels. This would help to streamline the EU's climate governance framework, ensuring that detailed planning on how to reach climate neutrality is structurally embedded in the functioning of the Climate Law.

A broader mandate would task the independent advisory mechanism with conducting its own independent analysis of progress with implementation and propose measures to the European Commission to address the gaps. Similar to the discussion above on emissions trajectories and the underlying policies, the broader mandate would contribute to enhancing governments' and the Commission's accountability for implementation. At the same time, it would put greater pressure on the time commitment and resources of the advisory body.

Under the current proposals for the European Climate Law, the European Commission would be responsible for the assessment of the EU's progress in implementing its measures (Article 5 of the Commission's proposal) and the assessment of Member States' national measures (Article 6).

At the very least the mandate of the independent advisory mechanism should include an independent assessment of the key technical outputs for each of the above processes.

The proposal by the Committee on the Environment, Public Health and Food Safety for the European Panel on Climate Change (EPCC)<sup>5</sup> suggests that the EPCC would monitor "on an annual basis the greenhouse gas emission reductions in the Union and all Member States in order

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<sup>4</sup> It is important to note that the EEA's current annual 'Trends and projections' reports, which include an assessment of progress towards climate change targets in Europe, do not provide policy recommendations on how to close implementation gaps. This is an important area that the independent advisory body should cover.

<sup>5</sup> Amendment 15, Proposal for a regulation Recital 18a (new).



to ensure a gradual reduction over time, and the respect of the Union carbon budget. The expert panel should also assist the Commission in the assessment of the consistency of Union and national measures and progress made to reach the goal of achieving climate neutrality by 2050 at the latest and to honour the Union's commitments under the Paris Agreement."

The above proposal should be further clarified to determine whether the EPCC is tasked with preparing its own independent annual report on emissions and progress towards meeting emissions targets, or whether it is tasked with reviewing the reports prepared by the Commission and the EEA. Similarly, it should be clarified whether the EPCC is to 'assist' the Commission in determining the adequacy of policy response e.g. by providing technical input, or whether it should provide an independent review of the Commission's assessments and recommendations and policy proposals to meet it. To be effective, the EPCC must be legally independent and able to speak independently and transparently; therefore, its role in 'assisting' the Commission should be framed as ensuring such independence. It would also be useful to clarify whether or not the proposal envisions the EPCC having a role in providing an independent scientific assessment of the European carbon budget.

### **Mandate in relation to adaptation objectives, policies and progress in implementation**

*Would the European advisory mechanism on climate change be asked to develop proposals for adaptation policies and produce regular independent assessments of progress on implementation, or would its role be limited to assessing the proposals and reviewing the progress reports on adaptation prepared by the European Commission?*

Climate change adaptation overall has been given less attention than mitigation in the national framework Climate Change Acts in Europe, with a few notable exceptions, such as the UK Climate Change Act.<sup>6</sup> Not surprisingly, the mandates of the national independent expert advisory bodies on climate change are more focused on the decarbonisation agenda. However, advisory bodies can and should play a similarly important role in informing development and implementation of adaptation policies and assessing their progress. Arguably, being a complex policy area that is highly dependent on scientific assessments of climate risks and vulnerabilities, and one that involves multi-sectoral interactions, there is an even greater need for involvement of an independent expert advisory body in the case of adaptation.

Inspiration for structuring the mandate of the European independent expert mechanism on adaptation could be drawn from the experience of the UK's independent advisory body, the Committee on Climate Change. The duties of the CCC with respect to adaptation are carried out by its Adaptation Sub-Committee (ASC). The ASC advises the Government on the risks from climate change and opportunities to address them. The UK's Climate Change Act establishes a framework of adaptation planning, which includes five-yearly Climate Change Risk Assessments followed by a National Adaptation Programme that outlines its strategy for dealing with identified risks. The ASC is mandated by law to assess the quality of the Government's adaptation response through biennial assessments of the National Adaptation Programme. It can also be asked by the devolved administrations to review their programmes. Since there is considerable overlap between the mitigation and adaptation agenda in areas such as agriculture, land use and the built environment, the two parts of the CCC are collaborating increasingly closely.

The mandate of the European independent expert advisory mechanism should include an independent review of the reports to be prepared by the European Commission every five years on the collective progress made by the Member States in adaptation that is envisioned under the Articles 4 and 5 of the draft of the European Climate Law (as per the draft proposed by the Commission). A broader mandate could task the independent advisory body with undertaking its own independent assessment of progress and preparing the report for the Commission. The latter

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<sup>6</sup> In the UK adaptation is addressed by the Adaptation Sub-Committee within the Committee on Climate Change. While the Climate Change Act (2008) did address adaptation, it has been acknowledged that greater attention was focused on mitigation (e.g. see Fankhauser et al., 2018).

would require larger capacity on adaptation among the experts appointed. Furthermore, the body could also, on request and subject to funding, advise Member States on their national adaptation strategies.

### **Coordination of expert input and interaction with national expert bodies**

*Would the European advisory mechanism on climate change be tasked with coordinating expert input from a variety of sources and interacting with the national advisory bodies on climate change?*

Evidence from health policy shows that regional and international expert advisory bodies can aid the work of national advisory bodies (Duclos et al., 2011; Bryson et al., 2010) and vice versa. For example, the World Health Organization (WHO) actively prioritises the establishment and strengthening of national technical advisory groups, which can convert global and regional policy recommendations into national policy (Duclos et al., 2011). Another study finds that national technical advisory groups on immunization actively use the WHO's position papers, technical documents and recommendations as sources of information and mention them as factors that influence their own recommendations to national governments (Bryson et al., 2010).

The UK's Climate Change Act created the independent advisory body, the CCC, as a common analytical resource shared between the national and devolved administrations (Northern Ireland, Scotland and Wales) to assist in the development and implementation of subnational policy frameworks. The subnational governments can draw on the CCC and commission technical assistance from the body.

Including a provision in the mandate of the European climate advisory mechanism allowing it to assist Member States on the issues under its remit by request and subject to resource availability could help countries currently lacking an advisory body on climate change at the national level. Furthermore, it would be important to include in the mandate of the body coordination of expert input with the existing national advisory bodies on climate change in the pan-European context. At the moment such coordination happens on an informal, ad hoc basis.



## 6. Options for the composition and institutional identity of the European advisory mechanism on climate change

Once the mandate for the European independent advisory mechanism on climate change has been clarified, it will be necessary to determine what institutional form the mechanism should take, how it should be composed and how it would relate to other key institutions. To detail and critically evaluate potential options, this section considers the design of expert advisory bodies at the European level in other policy areas and looks at lessons learnt from the experiences of designing and running national climate change advisory bodies. It concludes with recommendations for the composition of the European independent advisory mechanism on climate change, its key accountabilities and relationships with other institutions.

### **Lessons learnt from other expert advisory bodies at the European level**

The use of independent expert advice through specialised bodies or mechanisms is not new for the EU. Advisory bodies have been established to advise on environment, energy regulation, social policy, transition to best available techniques, human rights, sustainable finance and financial stability, among others (see Appendix 2 for examples of bodies and details of their mandates and composition). These bodies differ from one another in their core purposes, scope and mandates; there are some examples of good practice and some that are less positive. The precise combination of a body's characteristics should be determined by the issue in question. However, while there is no blueprint for the design of an advisory mechanism at the EU level, these bodies provide useful examples on the combination of characteristics that are important.

### ***Technical expertise vs. politically balanced representation***

Our analysis of existing European bodies that have an expert advice function (as presented in Appendix 2) suggests that their composition varies depending on whether they are guided by achieving the highest level of technical expertise as their main selection principle or by aiming to achieve balanced political representation, ensuring that key types of interests or types of stakeholders (or individual Member States) are represented among the experts.

Expert advisory bodies guided by technical selection principles appoint members solely based on their high technical merit and the relevance of their expertise (e.g. the Advisory Committee on the Framework Convention for the Protection of National Minorities; the EU Committee on Social Rights; the Scientific Committee of the EEA). Experts are usually selected through open calls. This kind of selection process has the greatest transparency and potential to ensure political independence of expertise.

Bodies based on politically balanced representation considered in this report have a broader remit of coordinating expertise and sharing best practice among the Member States and other stakeholders, alongside providing expert advice (e.g. the European Academies' Science Advisory Council; the Agency for the Cooperation of Energy Regulators). Members of these bodies are nominated, by either Member States or respective constituencies.

The main concerns over expert bodies that are composed based on nomination are ensuring independence from the political influences of the nominating constituencies and securing a high level of technical expertise, which could be challenging in the absence of an open and competitive selection process.

## Hybrid approach

Several bodies adopt a hybrid approach, combining the requirement for technical expertise with representation in their selection of members (e.g. the TEG – see Box 6.1; and the Article 13 Forum under the Sevilla process of the EU Industrial Emissions Directive – see Appendix 2). Some of these bodies combine open calls for experts with nomination (e.g. the TEG), while others appoint experts nominated by the respective constituency. The hybrid approach is also implemented in some cases through a tiered governance structure of the body. For example, the EEA's Scientific Committee, comprised of independent scientists, is selected and appointed by the Management Board, which in turn is composed of representatives of each Member State, the Commission and the European Parliament.

The main concern with the hybrid model, similar to the representational design discussed above, is how to ensure that expert advice is independent and free from the political influence of nominating constituencies and/or from a politically dominated management board. These concerns have been recently raised in the context of the critique of the composition of the TEG by some observers, who argued that the group is dominated by financiers, leading to some inconsistencies in the advice it provides (Simon, 2019a). Similarly, the independence of the Sevilla process under the EU Industrial Emissions Directive was criticised by NGOs due to over-representation of industry interests (Schaible, 2018; Myllyvirta, 2015). The European Environment Bureau (EEB) has argued that Technical Working Groups are overrepresented by the industries concerned, as some Member States' delegates have had industry affiliations. Countries with high numbers of industry-associated delegates have tended to weaken or oppose the adoption of stricter 'best available techniques' to reduce emissions.

## Permanency

Most of the bodies are established on a permanent basis. The Technical Expert Group on Sustainable Finance (TEG) is a notable exception and provides a useful case study given its close proximity to the European

### Box 6.1. A hybrid approach – example of the Technical Expert Group on Sustainable Finance (TEG)

Created by the European Commission under the action plan on sustainable finance in 2016, the TEG was set up as a temporary group, operational from July 2018 to September 2020. After September 2020 a permanent platform on sustainable finance will be created to oversee and update the taxonomy periodically and revise the criteria as and when required.

The objective of the TEG is to assist the European Commission in developing an EU classification system on sustainable finance (see Appendix 2 for more details). The Group is chaired by a representative of the Director General (DG) of the Financial Stability, Financial Services and Capital Markets Union (FISMA) and vice-chairs from the DG of Environment and DG of Climate Action. The Commission provides secretarial support for the group and its sub-groups. The TEG has 35 members from civil society, academia, business and the finance sector, as well as additional members and observers from the EU and international public bodies who work through both formal plenaries and subgroup meetings for each workstream.

The experts were appointed through an open call for experts, selected by the chair and vice-chairs. The subgroups of the TEG also involve relevant additional experts and stakeholders through workshops, roundtables, targeted interviews, open calls for feedback and other outreach activities.

The experts were selected based on a hybrid model combining criteria related to their technical expertise (individuals with proven knowledge and experience in the specific areas) and representation of stakeholder groups in a specific policy area. The selection process needed to ensure a high level of expertise along with a balanced representation of relevant areas of interest.

*See Appendix 2 for more details about the TEG.*

Climate Change Policy (see Box 6.1). While the TEG has operated on a temporary basis, it has proved its value and thus will be replaced with a permanent equivalent mechanism. Studies suggest that permanent bodies that are mandated through legislation to make recommendations are more successful at influencing policy than temporary expert advisory groups that disband after the issuance of their reports (Marleau and Girling, 2017).

### ***Dedicated finance***

The bodies have dedicated financial resources allocated to them. Some (such as the EEA) are funded by contributions from the Member States, some by the member institutions (e.g. the EASAC is funded by the Member States' Academies of Science), some (e.g. the TEG) are funded by the European Commission and the relevant DGs, or from the general EU budget (e.g. ACER).

## **Lessons learnt from the national advisory bodies on climate change**

### ***Technical expertise***

Past experiences with independent expert advisory bodies on climate change at the national level show that effective bodies are comprised of prominent experts who are recognised as authorities in their respective fields internationally, covering climate science, economics, behavioural sciences and relevant sectoral expertise (Ecologic Institute, 2020; Fankhauser et al., 2018; Averchenkova, 2019). Many of them come from academia, although some may have experience in other sectors. The experts in such bodies are not selected based on their affiliation with a particular stakeholder group or a political party, but purely on their technical merit. Some national legislation explicitly requires the members of the body to disclose and address any conflicts of interest (e.g. in Ireland). Advisory councils with academic members were seen to have the most independence due to less pressure from institutions to limit their focus on specific areas (Weaver et al., 2019).

### ***Permanency***

Most national independent expert advisory bodies are set up on a permanent basis. Some are established through the relevant Climate Change Acts (e.g. in the UK), while others through separate Acts (e.g. Sweden and Ireland). In some countries (e.g. Finland and the Netherlands) the independent advisory bodies existed prior to the adoption of a framework climate change law. The climate change legislation amended their mandate, placing new duties and powers in the context of the implementation of the law. A recent study that compared Climate Change Acts in seven EU countries found that advisory bodies formed by separate Acts rather than being set through the framework climate change legislation are less independent and potentially more vulnerable to political change, as it is easier to make changes to the constitution of a body when it is not enshrined in a framework Act (e.g. in Ireland and Sweden) (Nash and Steurer, 2019).

This suggests that while some details on the design of the independent advisory mechanism could be left to the delegated Acts, the fundamental elements concerning its mandate and the principle on which it will be composed and financed should be determined by the European Climate Law. It is, however, important that the Law specifies what details should be fleshed out later, through what channel (e.g. by the European Commission through a delegated Act or by the advisory mechanism itself through its rules of procedure, etc.) and by when.

### ***Selection, composition and size***

Members of the national independent expert bodies on climate change are usually nominated by the executive branch of government or selected using a competitive process through calls for experts. The composition and size of the national advisory bodies on climate change varies from five to 15 members, and in some countries the bodies have access to a sizeable technical secretariat (e.g. the secretariat to the CCC in the UK has 30 staff members). Some national laws explicitly highlight the importance for members to come from a diversity of technical

backgrounds (Ecologic Institute, 2020), with Denmark and the UK recently expanding the scope of expertise to include social and behavioural sciences.

A recent study that interviewed members of the national advisory bodies on climate change within the EU found that for the smaller bodies it was easier to reach consensus and organise the work (Weaver et al., 2019). It was also noted that in smaller bodies experts work closer together and there is greater positive pressure for everyone to put in equal effort to the body's work. Larger bodies sometimes faced a challenge of getting everyone together, as decisions could only be made when enough members were present. Yet they had the benefit of covering more fields of expertise than the smaller ones.

### **Time commitments and secretariats**

Experts usually serve on the independent advisory bodies part-time. The time requirement depends on the breadth of the mandate and the resources that are allocated to support the body (e.g. whether there is a secretariat supporting the body and a budget to commission additional analysis). The size and tasks of the secretariats of the national expert advisory bodies on climate change vary, depending on their mandate and available resources (e.g. from about five staff in Hungary to more than 30 in the UK) (Weaver et al., 2019). Smaller secretariats focus mainly on administrative support, while a greater work burden falls on the members of the body. The larger secretariats (e.g. in the UK) provide research support, write the reports and manage communication and outreach, while the members of the advisory body initiate the reports, oversee the work and contribute to the analysis, rather than doing all the drafting themselves. The members of the UK's CCC commit two to three days a month to the Committee's work, while the members of the Adaptation Sub-Committee contribute on average five days a month (Committee on Climate Change, 2018).

### **Institutional identity and composition of the European advisory mechanism on climate change**

Based on the discussions of the experiences with expert advisory bodies at the national and European level outlined above, there are several criteria that the composition and operational design of a European advisory mechanism should aim to meet:

- Independence of the individual experts and of the institution as a whole from political influences and constituency pressures
- A high level of technical expertise in the disciplines central to climate change policy, including climate science, economics, social and behavioural sciences, and relevant sectoral expertise
- Institutional permanency and clear funding provisions.

During the discussions on the draft European Climate Law in the European Parliament in summer 2020 several potential options for the mechanism's design were discussed. These included:

1. A permanent standalone body composed of independent technical experts selected through a competitive process based on open calls for experts, who serve for a specific term
2. A permanent body comprised of nominated representatives of national expert bodies on climate change, who serve for a specific term
3. An informal network of national experts
4. Ad hoc sourcing of expert information by the European Commission (e.g. through calls for evidence or by convening technical panels).

To understand the merit of each of the proposed options it is important to assess them against their ability to meet the criteria outlined above. Table 6.1 below assesses each of the options using a traffic light system.

**Table 6.1. Assessment of proposals for the design of a European advisory body on climate change**

| Proposals   | Assessment criteria/design options  |  |                          |   |
|---|---|--|--------------------------|---|
|   | Independence of experts and of the mechanism                              | High level of technical expertise  | Institutional permanency | Sustainable funding   |
| 1. A permanent standalone body composed of independent technical experts selected through a competitive process based on open calls for expertise | High potential to be fully met  | High potential to be fully met   | Fully met                | High potential to be fully met                              |
| 2. A permanent body comprised of nominated representatives of national expert bodies on climate change that serve for a specific term             | Concerns about independence of nominated experts from their governments   | Concerns about limited coverage of expertise with selection limited to experts already serving on national bodies; no expertise from Eastern and Southern Europe would be permitted by default | Fully met                | High potential to be fully met                              |
| 3. An informal network of national experts  | Concern about independence if no formal selection procedure would be used | Concern about high level of expertise, as no formal selection procedure would be used, and highly regarded experts would not likely have capacity to engage in an informal setting             | Not met                  | More likely to have intermittent or no funding arrangements |
| 4. Ad hoc sourcing of expert information by the European Commission   | Concern about independence if no formal selection procedure would be used | Concern about high level of expertise, as no formal selection procedure would be used, and highly regarded experts would not likely have capacity to engage in an informal setting             | Not met                  | More likely to have intermittent or no funding arrangements |

Notes: **Green** = criterion can be fully met, provided it is explicitly incorporated in the design provisions. **Yellow** = serious risk of criterion not being met unless specific safeguards are introduced. **Red** = criterion not met.

The analysis clearly shows that the proposals for the independent expert advisory mechanism on climate change for Europe to take the form of an informal network of national experts or to be managed through ad hoc sourcing of expert information by the European Commission fail to meet all of the criteria for effective independent advisory bodies on climate change. Specifically, the credibility and impact of the mechanism under either of the options would be affected by the lack of institutional permanency and sustainable funding, limited scope for ensuring the best



technical expertise is available and committed consistently to provide advice, and serious concerns over independence with the mechanism operating in an informal setting. While these options may seem attractive from the point of view of less financial resource being required, their shortcomings would defeat the purpose of creating an independent advisory mechanism on climate change. Lacking in institutional identity, expertise and independence, these options would unlikely lead to the emergence of a mechanism that becomes the trusted provider of analysis and is able to improve political buy-in to climate change policy.

### ***Preferable model and alternatives***

The preferable model for the design of the European independent advisory mechanism on climate change is clearly a permanent standalone body composed of independent technical experts that serve for a specific term (e.g. four to five years), selected using a transparent competitive process of open calls for experts. Such a process could be open to both European and international experts, increasing the possibility of securing the best experts in the required field. It would also provide flexibility for sourcing technical expertise in any area that is deemed desirable at a given point in time.

An alternative proposal for the composition of the body is that it would be comprised of the nominated representatives of national expert bodies on climate change. This option raises concerns about ensuring independence and the required variety of technical expertise. It significantly limits the pool of technical expertise to experts already serving on national expert advisory bodies. This is potentially problematic in several ways. Firstly, with very few expert advisory bodies on climate change being in place in Eastern and Southern Europe, there would be an outright limitation on engaging expertise from these regions. Secondly, nominated experts may not be able to cover all technical areas required, in particular in relation to the recently emerging demands for expertise in behavioural sciences. Finally, experts already serving on national advisory bodies may have limited availability to commit to a new role. If the main rationale behind this model is greater engagement of the national expertise already present in the national bodies, then this objective could be met through incorporation into the mandate of the European body a responsibility for coordinating information exchange with the national bodies. Furthermore, a hybrid model could be considered, where part of the membership of the European body is selected through the open calls for experts, while some members are selected from the pool of experts nominated by the national advisory bodies.

### ***Who leads the selection process?***

The next critical decision concerns who is in charge of the selection process of experts for the body. At the national level this function is usually left to the respective government. At the European level some bodies (e.g. the TEG) are appointed by the European Commission, others have a management board composed from the Member States' representatives who are in charge of appointing the experts to the advisory body (e.g. the EEA's Scientific Committee is appointed by the Management Board), while in some cases (e.g. ACER) experts are nominated in a certain proportion by the European Commission, Parliament and Council.

Delegating the selection based on an open call for experts to an external board, comprised for example of either representatives of national advisory bodies on climate change or the Member States' governments (the former would ensure greater independence from politics) and the Commission, could potentially address the demands for engagement of Member States made by proponents of the model based on national nomination. It would, however, be important to ensure that the political independence of the experts and of the advisory body as a whole is not compromised.

### ***Size, funding and secretariat***

As previously discussed, it is important that the membership of the body is not too large. The body needs to have dedicated financial resources to support its work, therefore the funding channel

should be determined for that. The funding arrangement should not jeopardise the independence of the body. The body requires the autonomy to determine its own work programme (in line with its statutory mandate) and to manage its budget independently. Furthermore, the body would benefit from the support of a secretariat, which could be established specifically for this purpose or hosted by one of the existing institutions (e.g. by the EEA).

If the EEA or another existing institution hosts the secretariat, clear arrangements should be put in place to preserve budgetary and administrative independence of the independent advisory body and its secretariat. The secretariat should be a self-contained, newly established unit, funded from a dedicated budget for the independent advisory body and guided by the body itself rather than being carved out from the existing work programme.

## **Key accountabilities and relationships**

*Who would the body be accountable to and what would be its relationship with the Commission, the Parliament, the Council and the Member States? Could Member States that do not have their own national advisory bodies request expertise from the European advisory body?*

Under some of the national framework laws governments are required to engage with their respective advisory body by issuing a formal response to the body's recommendations (e.g. in Denmark, France and the UK) (Ecologic Institute, 2020). The draft Spanish law also obliges the government to participate in a debate on the report by the advisory body. In Denmark the government must respond every year to recommendations from the Climate Council in its own reporting. This ensures that high prominence is given to the findings, which cannot simply be ignored.

Other laws require governments to consult directly with the advisory body during specific phases of policy processes. In some instances, where the requirement for a government to formally engage with the recommendations of its independent expert advisory body was missing, the effectiveness of advisory bodies has been undermined (e.g. under Mexico's General Law on Climate Change and initially under France's Energy Transition Law of 2015) (Rüdinger, 2018; Averchenkova and Guzman Luna, 2018).

Based on experiences at the national level to date, to enhance the impact of the European advisory mechanism on climate change the European Climate Law should introduce a statutory requirement for the European Commission to respond formally to the reviews, analysis and recommendations of the expert body to ensure the advice is considered and given prominence.

The European Parliament and Council should consider introducing parliamentary oversight into the Law by requiring the reports on progress and other key pieces of advice by the body to be laid before Parliament and/or the Council and asking these bodies to consider the recommendations and the Commission's response to them.

*What would be the role of the body in facilitating interaction with stakeholders and integrating their input into the policymaking process (i.e. what role would it have in engaging with climate and energy dialogue and the European Climate Pact)?*

When problems are complex, as in the case of climate change, a higher degree of stakeholder engagement is required. Engagement of experts can help facilitate constructive conflict resolution between various stakeholders and increase the acceptance of policy measures through acknowledgement of the plurality of views and their consideration (Spruijt et al., 2014). With the increasing calls for participatory deliberation in climate change politics, outputs of the independent expert body could be provided for the use of citizens' assemblies and juries. The European Climate Law should task the expert advisory body with developing a proposal on how it would engage in the above processes and eventually with the European Climate Pact and institutions such as the Platform on Sustainable Finance.



## 7. Recommendations

1. **The European Climate Law must include provisions for a permanent standalone independent expert advisory body on climate change, rather than an informal mechanism for soliciting feedback.** The Law should specify the body's institutional form, mandate, and how it would be composed and funded, to ensure independence and high quality of expertise. It should also determine the body's accountability to and relationships with the Commission, the Parliament, the Council and the Member States. Further operational details can be determined through delegated legislation.

2. **The mandate of the European independent expert advisory body on climate change should include independent reviews of:**

- The proposals by the Commission on the *emission trajectories* for achieving climate neutrality (Article 3 of the Commission's proposal); and/or the proposals on the level of *the carbon budget* (the Proposal by the Committee on the Environment, Public Health and Food Safety)
- The *assumptions and models* that provide the basis for the development of climate change policies
- The *consistency of policies* proposed by the Commission (Article 4 of the Commission's proposal) with the climate neutrality and climate change adaptation objectives
- *National measures* (Article 6 of the Commission's proposal)
- The *reports on the EU's progress in implementing* measures on climate change mitigation and adaptation (Article 5 of the Commission's proposal) and *preparation of recommendations* on how to address the gaps.

**The main goals of the independent reviews should be** to ensure the alignment of the proposals with the latest scientific findings and the agreed targets, enhancing their credibility and political buy-in.

3. **The body could usefully define criteria or indicators for assessing the progress** of implementation, which could inform the work of the Commission and the Member States; **and assist the Commission in facilitating interaction with stakeholders and national advisory bodies** and integrating their input into policymaking process.

4. **The European Climate Law should task the expert advisory body with developing a proposal on how it would engage with external stakeholders**, including national advisory bodies on climate change, energy and climate dialogues, and eventually with the European Climate Pact.

5. **A broader mandate could ask the advisory body to conduct its own independent analysis** and present proposals to the Commission on emission trajectories or carbon budgets and the underlying policies, and/or to produce its own *assessments of progress*. This could further strengthen its legitimacy and political buy-in to the EU's climate policy. However, it would require greater resources and clear delineation of duties to avoid duplication.

6. **The design of a European advisory mechanism should ensure:**

- *Independence* of the individual experts and of the institution as a whole from political influences and constituency pressures, which can be achieved by selection through *transparent and competitive processes* via calls for experts.
- *A high level of technical expertise* in the disciplines central to climate change policy, including climate science, economics, social and behavioural sciences, and relevant sectoral expertise.

- *Institutional permanency and a protected right to sufficient funding provisions.*
- 7. The selection of experts based on an open call could be delegated to an external board,** comprised of either representatives of national advisory bodies on climate change or the Member State governments (the former would ensure greater independence from politics) and the Commission. This could help address the demands for Member States' engagement from the proponents of the model based on national nomination. However, it would be important to ensure that the political independence of the experts and the advisory body as a whole is not compromised.
  - 8. The funding arrangement for the advisory body should not jeopardise independence of the body.** The body should have autonomy to determine its own work programme (in line with its statutory mandate) and to manage its budget independently.
  - 9. The size of the independent advisory body should be small enough to ensure effective operation** and be in line with national experiences where bodies vary between five and 15 members.
  - 10. The body would benefit from the support of a secretariat,** which could be established specifically for this purpose or hosted by one of the existing institutions, such as the European Environment Agency (EEA).
  - 11. Clear arrangements should be put in place to preserve budgetary and administrative independence** of the independent advisory mechanism and its secretariat, if the EEA or another existing institution hosts the secretariat. The secretariat should be a newly established, self-contained unit, funded from a dedicated budget for the independent advisory body and guided by the body itself rather than being carved out from the existing work programme.
  - 12. The European Climate Law should introduce a statutory requirement for the European Commission to respond formally to recommendations** made by the expert body to ensure the advice is considered and given prominence.
  - 13. The EU Parliament and the Council should introduce parliamentary oversight** into the Law through the requirement for the reports on progress and other key pieces of advice from the independent advisory body on climate change to be laid before the Parliament and/or the Council for these bodies to consider and respond to the advice.

## Appendix 1. Examples of independent expert advisory bodies on climate change in Europe

|   | <b>Mandate</b>  | <b>Established</b>   |
|---|---|--|
| <b>The UK's Committee on Climate Change</b>                       | To advise the UK Government and devolved administrations on emissions targets and report to Parliament on progress made in reducing greenhouse gas emissions and preparing for the impacts of climate change. This includes independent advice on setting and meeting carbon budgets, monitoring progress in reducing emissions and achieving carbon budgets and targets. The CCC also advises the Government on the risks and opportunities from climate change and evaluates its National Adaptation Programme. | In 2008 by the UK's Climate Change Act   |
| <b>The Climate Change Council of Denmark – Klimarådet</b>         | To evaluate the implementation of national climate objectives and international climate commitments; to analyse potential means of transitioning to a low-carbon society by 2050 and identify measures to reduce greenhouse gas emissions; to draw policy recommendations, including selection of potential mechanisms and transition scenarios; to contribute to the public debate.  | In 2014 by the Danish Climate Act  |
| <b>The Climate Change Council of Ireland</b>                      | To assess and advise on how Ireland is making the transition to a low carbon, climate resilient and environmentally sustainable economy by 2050. The Council provides contributions in critiquing, informing and shaping the response to climate change.  | In 2015 by the Climate Action and Low Carbon Development Act   |
| <b>The Finnish Climate Change Panel – Suomen ilmastopaneeli</b>   | A scientific and independent expert body to support climate policy planning and decision-making. The Panel is responsible for compiling and identifying scientific information on climate change mitigation and adaptation as well as for planning and monitoring of climate policy. The Panel may also perform other tasks related to the production of a knowledge base on climate change.  | In 2015 by the Finnish Climate Change Act, preceded by a council with the same name in 2011–13 and 2013–15.  |
| <b>The Swedish Climate Policy Council – Klimatpolitiska rådet</b> | To assess if the Government's overall policy is compatible with climate goals by evaluating whether the policies in different areas contribute to or counteract the achievement of climate goals, reviewing the effects of both existing and planned policies from a broad societal perspective, and identifying policy areas where additional measures need to be taken to achieve climate goals.  | Not included in the Climate Act of 2017, but established through the subsidiary policy to implement the Act. |

Source: Adapted from Weaver et al. (2019)

## Appendix 2. Examples of European institutions that provide expert advice in other policy areas as part of their mandate

### European Environment Agency (EEA)

The EEA is a body of the European Union that aims to support the EU's goal of sustainable development by providing objective, reliable, timely and relevant information to policymakers and the public. The Agency was set up by a regulation of the European Parliament in 2009.<sup>7</sup> The members of the EEA include the 27 EU Member States along with Iceland, Liechtenstein, Norway, Switzerland and Turkey. The EEA is funded by contributions from member countries.

#### **Mandate and goals**

The key objectives of the Agency are for it to become the primary source of environmental information and knowledge, help members in building capacity by providing scientific and technical assistance, and supporting the EU's goal for a long-term transition to sustainable forms of living. In order to achieve these goals, the EEA collects data and information and maintains an extensive network of sources such as environmental agencies of Member States and research institutions. It also organises and gathers data on various aspects of the environment and is responsible for publishing a state of the environment report on the outlook, prospects and status of the environment in the EU every five years.

#### **Target audience**

The EEA primarily provides information to the European Commission, the European Parliament and the Council of the European Union, and engages with members of the public sector, NGOs and other experts from the scientific community.

#### **Institutional and governance structure**

- **Management Board:** Determines the main course of the EEA. It consists of one representative of each of the 33 member countries, two representatives of the European Commission and two scientific experts assigned by the European Parliament. The Management Board adopts a work programme outlining the main objectives of the EEA for a specific period.
- **Scientific Committee:** Composed of 20 independent scientists from the Member States with expertise in various environmental aspects, appointed for four years by the Management Board through an open selection process. The Scientific Committee advises the EEA on its strategic directions and its work programmes and ensures that the work of the EEA meets the standards of the scientific community.
- **European Environment Information and Observation Network (EIONET):** Established by the same EU regulation, as a partnership network of national institutions and experts to provide data, information and expertise on various aspects of the environment. It provides institutional cooperation across various levels of governance through:
  - **National Focal Points:** Experts from Member States' national environmental organisations or ministries act as the main points of contact in providing data to the EEA and for coordination within their own state.

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<sup>7</sup> Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network.

- **National Reference Centres:** Comprised of nominated experts from national environmental organisations in the Member States and Topic Centres with expertise in specific topics.
- **European Topic Centres:** Consortia of various organisations from the Member States with specialisation in specific environmental aspects.

### **Evaluation**

Regular evaluations of the EEA and EIONET take place every five years. The last evaluation was conducted by the European Commission in 2018 and is published online.<sup>8</sup>

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## **European Academies Science Advisory Council (EASAC)**

EASAC is an association of national science academies from the EU Member States, plus academies from Norway and Switzerland. It was founded in 2001 to enable national science academies to coordinate their provision of science-based advice on a variety of technical subjects to policymakers and the public. EASAC aims to mobilise the scientific community to engage in regional policy formation and to provide a platform to bring together scientists and policymakers. EASAC represents the consensus among national science academies in the EU, Norway and Switzerland, giving its opinions considerable authority among the scientific community (Simon, 2019b).

EASAC is funded by the member academies of science, thereby making it independent from any kind of political or economic interests.

### **Council and Bureau**

The Council is responsible for setting the overall strategic direction of EASAC. It is composed of 29 members, one nominated representative of each member academy. The Bureau is responsible for implementing the decisions and strategies of the Council and oversees the workings of the Steering Panels and working groups. The Council meets twice a year and initiates projects, monitors their progress, and reviews and approves reports for publication. The Council is also responsible for monitoring and evaluating the progress of activities in the core areas of Energy, Bioscience and Environment and monitors the activities of the Bureau. The Council nominates experts to steering panels and working groups (see below).

### **Steering panels**

EASAC has three core steering panels – Bioscience, Environment and Energy. Panel members are nominated by the member academies on the basis of experience and knowledge in the specific fields and experience in policymaking and meet twice a year. The steering panels advise EASAC on new and future projects that would have an impact on EU policymaking. The steering panels also assist in disseminating information on the results of the projects at national and regional levels to the member academies, policymakers and civil society.

### **Working groups**

Once the Steering Panel recommends a new project, it is then reviewed by the Bureau and the Council. After obtaining approval by the Council, a working group is set up for the project. The members of the working group are nominated by the member academies and the Council on the basis of their expertise and knowledge. The working group meets two to three times to produce a draft report which is then peer reviewed and sent to the Council for approval and endorsement. Once approved, the drafts are then published as EASAC documents.

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<sup>8</sup> <https://www.eea.europa.eu/about-us/documents/evaluation-of-the-european-environment/view>

## Technical Expert Group on Sustainable Finance (TEG)

The TEG was created by the European Commission under its action plan on sustainable finance. Formulated under the Horizontal Rules for the creation and operation of commission expert groups, 2016,<sup>9</sup> the TEG is a temporary group, operational from July 2018 to September 2020.

### **Mandate and scope**

The objective of the TEG is to assist the European Commission in developing an EU classification system on sustainable finance (providing legislative and policy recommendations), including:

1. A taxonomy to determine whether an economic activity is environmentally sustainable
2. An EU Green Bond Standard
3. Benchmarks for low-carbon investment strategies
4. Guidance to improve corporate disclosure of climate-related information.

The subgroups of the TEG also involve relevant additional experts and stakeholders through workshops, roundtables, targeted interviews, open calls for feedback and other outreach activities.

### **Composition**

The group is chaired by a representative of the Director General (DG) of the Financial Stability, Financial Services and Capital Markets Union (FISMA) and vice-chairs from the DG of Environment and the DG of Climate Action. The European Commission provides secretarial support to the group and its sub-groups. It has 35 members from civil society, academia, business and the finance sector, as well as additional members and observers from the EU and international public bodies. They work through both formal plenaries and subgroup meetings for each workstream. The experts were appointed through an open call for experts,<sup>10</sup> selected by the chair and vice-chairs, using the following selection criteria:

- Individuals with proven knowledge and experience in their specific areas of expertise, both in the EU and internationally
- Individuals that have been appointed to represent shared interests of stakeholders in a specific policy area
- Representatives of organisations such as NGOs, research institutes and universities.

When looking at the composition, the DGs were required to ensure a high level of expertise along with a balanced representation of relevant areas of interest and to keep in mind the outcome of the procedure. Individuals or representatives of organisations can be granted an observer status with the TEG through an invitation in accordance with the Horizontal Rules. The observers are allowed to participate in discussions but do not have voting rights and cannot participate at the recommendation stage.

### **Independence**

The Horizontal Rules for expert groups promote political independence for the TEG by requiring the avoidance of conflict of interest, and the appointment of experts through open calls. It is also financially independent, being financed by the EU Commission and DG of FISMA.

### **Meetings**

The TEG met 17 times between July 2018 and the end of 2019 and was to meet once every two months from February 2020.

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<sup>9</sup> See Commission Decision of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups [https://ec.europa.eu/transparency/regexpert/PDF/C\\_2016\\_3301\\_F1\\_COMMISSION\\_DECISION\\_PLUS\\_ANNEXES\\_EN.pdf](https://ec.europa.eu/transparency/regexpert/PDF/C_2016_3301_F1_COMMISSION_DECISION_PLUS_ANNEXES_EN.pdf)

<sup>10</sup> See [https://ec.europa.eu/info/publications/180308-sustainable-finance-call-for-applications\\_en](https://ec.europa.eu/info/publications/180308-sustainable-finance-call-for-applications_en)



The secretariat is provided by the departments of FISMA, Climate and Environment together.

### **Who uses the TEG's reports?**

The reports of the various sub-groups are to act as building blocks for Delegated Acts to be passed by the Commission in accordance with the Taxonomy Regulations by the end of 2020. The recommendations and reports published by the TEG will be used by the Commission to inform further legislation but are not binding in nature.

### **Key outputs and outcomes**

The TEG comprises four sub-groups, which have different timelines and outputs:

- *EU Taxonomy*: This group released its final report on 9 March 2020. Subsequently, the Commission organised stakeholder consultations in March 2020 to get feedback from stakeholders before drafting the legislation, which has been adopted and came into force in July 2020.
- *EU Green Bonds*: This group also released its final report on 9 March 2020. The Commission is conducting further consultations and seeking feedback from stakeholders before it develops its final standards on climate change adaptation and mitigation.
- *Benchmarks*: On 20 December 2019 the TEG published its final *Handbook on climate benchmarks and benchmark ESG disclosures*. After the publication, the Commission drafted the delegated regulation on 'EU Climate Transition and EU Paris-Aligned Benchmarks' and completed its stakeholder consultations before it was officially adopted by the Commission.
- *Climate Related Disclosures*: This group published its final report in January 2019. Based on that report, the Commission has developed its new *Guidelines on reporting climate related information* and the regulation on climate related disclosure came into effect at the end of 2019.

### **Future steps**

All the Delegated Acts are to enter into force by the end of 2020. The term of the TEG has been extended until September 2020, after which a permanent platform on sustainable finance will be created to oversee and update the taxonomy periodically and revise the criteria as and when required.

### **Review**

From 2021, every three years the Commission will publish a report on the application of the Regulations.

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## **Agency for the Cooperation of Energy Regulators – ACER**

Created by the Third Energy Package in 2011, ACER is an independent union body with a permanent status.<sup>11</sup>

### **Mandate and scope**

- To improve coordination between the various energy regulatory bodies of the Member States by providing a framework for coordination and cooperation.
- To monitor the internal markets for electricity and natural gas and inform the European Parliament, the Commission and the national authorities of its findings where appropriate.

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<sup>11</sup> Regulation (EC) No 713/2009 of the European Parliament and of the Council, recast Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators.

- To contribute to the establishment of high-quality common regulatory and supervisory practices to achieve the EU's climate and energy goals.
- To assist in the development and implementation of network codes and guidelines (non-binding).
- To monitor wholesale energy markets

### **Composition**

- The Administrative Board is composed of nine members, with each member having an alternate. Members of the Administrative Board are in rotation. The members are appointed by the EU Commission (two members), the EU Parliament (two), the Council (five), along with their alternates. The Administrative Board meets twice a year at least and may be assisted by experts if required.<sup>12</sup>
- The Board of Regulators are senior representatives of the regulatory authorities of Member States, appointed by the Member States themselves.<sup>13</sup>
- A member from the EU Commission can also be represented in the Board of Regulators without any voting rights.

### **Independence**

In terms of political independence, the Board of Regulators should act independently from any market interest, should avoid conflicts of interests and should not seek or follow instructions or accept recommendations from a government of a Member State, from an EU institution or another public or private entity or person. Financially, the operations are financed directly from the EU's general budget.<sup>14</sup>

### **Meetings**

The Board of Regulators meets at least once a month.<sup>15</sup> The meeting agenda is set by the Board of Regulators and the European Parliament is informed of upcoming meeting agendas two weeks in advance.

### **Who does it report to?**

The minutes of meetings and final agendas of the Board of Regulators are sent to the European Parliament.<sup>16</sup> ACER should be accountable to the European Parliament, to the Council and to the Commission due to the significant economic effects of its work on the Member States.

### **Assessments/evaluation**

The Commission, through independent external experts, evaluates the performance of the Agency every five years to assess ACER's performance in relation to its objectives, mandate and tasks. The findings of the report are presented to the European Parliament, the EU Council and ACER's Board of Regulators.<sup>17</sup>

<sup>12</sup> Article 18 of Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019

<sup>13</sup> Article 21 of Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019

<sup>14</sup> Chapter III, Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019

<sup>15</sup> Article 4 of The Rules of Procedure of the Board of Regulators of the European Union Agency for the Cooperation for Energy Regulators

<sup>16</sup> Article 5.4 of The Rules of Procedure of the Board of Regulators of the European Union Agency for the Cooperation for Energy Regulators

<sup>17</sup> Article 45 of Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators

## The 'Sevilla Process' in the EU Industrial Emissions Directive

The EU Industrial Emissions Directive (IED) is a piece of EU legislation that regulates pollution caused by approximately 55,000 installations in all 28 Member States. Part of the regulation is to ensure installations use 'best available techniques' (BAT) to reduce emissions. Under the directive, permits for operations should in most cases only be allocated to installations following best available techniques.

### **Mandate and scope**

The Sevilla Process is the process by which these 'best available techniques' are codified and agreed upon and published in *Best Available Technique Reference Documents* (BREFs).

### **Composition and structure**

- The preparation of the BATs and the BREFs is coordinated by the European Integrated Pollution Prevention Bureau at the EU Joint Research Centre (JRC) in Seville. The Bureau is located within the Sustainable Production and Consumption Unit, one of the seven scientific institutes of the JRC. The Bureau was set up to organise and facilitate the Sevilla Process.
- The Article 13 Forum is the formal expert group established by Commission Decision (2011/C 146/03) based on the IED to generally oversee the information exchange process on BAT. The Forum is composed of representatives from Member States, industry and environmental NGOs. The Forum has a crucial role in delivering opinion on the rolling work programme for the elaboration and review of BREFs and on the proposed content of the final draft BREFs. The Forum may, if deemed necessary, suggest specific aspects that should be addressed during the drawing up or reviewing of a BREF.
- Technical Working Groups (TWGs) are composed of members from the European Commission, EU Member States and representatives from industry and NGOs. TWG members are nominated to participate based on their technical, economic, environmental or regulatory expertise (especially in permitting or inspecting industrial installations), as well as on their ability to bring into the information exchange process the BREF end-user perspective. TWGs provide input towards the drafting and reviewing of BATs and BREFs. They consist of between 100 and 200 experts, and must be nominated by the Forum. Members are either nominated by their Member State, by a European industrial association (Business Europe) or by the environmental NGO the European Environmental Bureau (EEB).
- Member State Committees: Before implementation the Commission asks a committee of Member State representatives to vote on the proposal (a so-called vote on 'implementing acts'). The vote takes place by qualified majority.

### **Key outputs**

The 'best available technique' reference documents – BREFs – are a key output. These contain their description and their associated emissions, consumption, and monitoring levels, and, where appropriate, relevant site remediation measures. At the time of writing, 34 BREFs are at either final draft stage, have been published, are undergoing review or have been formally adopted. Eleven out of 34 BREFs are now 'formally adopted' (European IPCC Bureau n.d., a).

The European IPCC Bureau has said of the process: "The elaboration of BREFs at EU level is considered to be an efficient exercise because in their absence, each Member State would have to conduct a similar exercise" (European IPCC Bureau n.d., b).

### **Independence**

Critics point out that the Sevilla Process is not strictly independent. Some Member States have been accused of sending industry affiliated persons as their 'delegates' to the technical working groups. The European Environment Bureau also criticises the Sevilla Process, arguing that industry interests are over-represented (Schaible, 2018). The EEB further argues that the Technical Working

Groups have an overrepresentation of the industries concerned. Some Member States' delegates to the Technical Working Groups have had industry affiliations.

Member States' delegations to the Technical Working Groups are treated in a preferential manner by having access to business information and having voting power that can overrule consensus achieved at the Technical Working Group level.

Greenpeace agrees with these assessments. In its 2015 report it notes that at least 46 government delegates were industry lobbyists, on top of the 137 'official' lobbyists (Myllyvirta, 2015). The cases of Greece, Croatia, Spain, the UK, Poland and Germany were particularly noted. Those countries with high numbers of industry associated delegates also tended to weaken or oppose the adoption of stricter BATs that would reduce key pollutants. The Commission has since clarified that industry affiliated groups should not attend meetings as Member States' delegations.

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## **Advisory Committee on the Framework Convention for the Protection of National Minorities**

The Advisory Committee was set up in 1998 under Article 24 of the Framework Convention to monitor the implementation of the Convention by Member States. The Advisory Committee was established to assist the Committee of Ministers in evaluating the effectiveness of the measures taken by its members to give effect to the principles laid out in the Framework Convention.

### ***Mandate and scope***

To ensure that the Framework Convention is being followed by the Member States. In order to ensure that the Member States are applying the principles, the Advisory Committee can conduct state visits and get additional information from representatives of Member States and to engage in constructive dialogue with both authorities and civil society of the Member State.

### ***Composition***

The Committee of Members (CoM) determines the composition of the Advisory Committee. The members are experts in the field of the protection of national minorities. The Advisory Committee has 12–18 members, who serve in their individual capacity. The Committee has the power to make its own rules of procedure. The Member States nominate two experts to the Secretary General. The CoM elects one of these experts onto a list of experts eligible for serving on the Advisory Committee as a representative of that Member State. The members are either elected as ordinary members or additional members. The ordinary members are appointed from the list in chronological order in which the names were received on the list. If the number of people on the list is greater than the number of vacancies, members are selected from the drawing of lots and are elected for a period of four years. During the examination of the implementation of the Framework Convention by a Member State for which there is no ordinary member, the expert of the Member State who is on the list is invited to sit as an additional member without any rights to vote.

### ***Meetings***

The Advisory Committee meets at least three times a year and the agenda of the meeting is sent beforehand by the secretariat.

### ***Independence***

The CoM provides the Advisory Committee with adequate financial, human and technical resources to undertake the work required and the Advisory Committee is free to decide its budget and resources.

## **Key outputs and outcomes**

Member states submit periodic reports to the Secretary General who sends it to the CoM, and they are made public. The Advisory Committee considers the periodic state reports and sends its opinion to the CoM. The CoM takes the opinion of the Advisory Committee into consideration and may adopt its conclusions and recommendations regarding the adequacy of measures taken by the Member States concerned.

### **Review**

The Advisory Committee has to publish an activity report every two years, providing an update of new challenges being faced by the member countries and an overview of the developments of the implementation of the Framework Convention for the two-year period, and provide an update on the country-specific monitoring conducted by the Advisory Committee. The report also contains details on the works undertaken by the Advisory Committee in those two years, such as the follow-up activities undertaken by the Advisory Committee, the steps taken for media outreach and coordination efforts with other EU bodies.

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## **EU Committee on Social Rights**

This Committee was formed to oversee compliance with the Social Charter by managing a State reporting system and a collective complaints procedure. It was established under Articles 24 and 25 of the Social Charter. The Committee oversees the protection of the social and economic rights enshrined under the Social Charter in Europe.

### **Mandate and scope**

The Committee oversees the compliance of the rights in the 1961 Social Charter, the 1988 Additional Protocol and the 1996 Revised Social Charter by establishing a state reporting mechanism and a collective complaints procedure. However, the Charter allows Member States to have article-specific reservations, restricting the scope of the Committee with respect to the application of certain provisions. The Member States can also decide to opt out of the collective complaints procedure.

The Member States submit a national report on the status of implementing specific provisions of the charter. The provisions have been divided into four sections and the states report on one section each year. The sections cover:

- Employment and equal opportunities
- Health, social security, and social protection
- Labour rights
- Migrants, families and children

The Committee is also empowered to hear collective complaints against those Member States that have adopted the collective complaints procedure. Complaints can be made by international organisations, NGOs and trade unions.

### **Composition**

The Committee is composed of 15 members, elected for a period of six years by the Committee of Ministers, which is composed of the Foreign Affairs Ministers of all the Member States. The members of the Committee are required to be “independent experts of the highest integrity and of recognized competence in international social questions” and are nominated by the Member States.

The Committee also has a member from the International Labour Organization, to participate in a consultative capacity without any voting rights.

### **Meetings**

It conducts approximately seven sessions per year, with each session lasting three to five days.

## Independence

The Committee is financially independent and decides on its own budgets.

## Key outputs and outcomes

- The Committee evaluates the reports sent by the Member States and publishes reports on whether the states are complying with the provisions of the Charter. The Committee can also give states recommendations in case they are found to be non-compliant.
- The Committee adjudicates on the complaints received under the collective complaints procedure by holding hearings and preparing a report on the implementation of the charter with respect to the complaint. The report is then sent to the Committee of Members and the relevant states and is made available to the public. Subsequently, the Committee of Ministers considers the report and adopts a resolution by taking a majority vote.
- The Committee also publishes an activity report every year, outlining the progress made by the Committee, the complaints addressed, and the reports made by the states.

## Review

Once the Committee publishes its conclusions, a Governmental Committee discusses the reports. The Governmental Committee sits twice a year and is formed of one representative of each of the Member States along with two representatives of international organisations of employers and workers, but without any rights to vote. The decisions of the Governmental Committee are sent to the Committee of Ministers, who may issue individual recommendations to the parties.

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## European Securities and Markets Authority (ESMA)

ESMA is an independent EU Authority that works towards protection of investors and stable financial markets to ensure the overall financial stability of the EU. It was founded in 2011 in accordance with a regulation passed by the EU Parliament and Council (Regulation (EU) No. 1095/2010).

## Mandate

ESMA has three main objectives: Protecting investors, maintaining market stability and maintaining the financial stability of the EU Member States. ESMA achieves these objectives by:

- Assessing risks to investors and markets
- Formulating a single rulebook for EU financial markets and developing technical standards for other institutions across the EU
- Promoting supervisory convergence on the application of similar rules and approaches across Member States for ensuring orderly markets
- Directly supervising specific financial entities and sharing best practice among national Credit Rating Agencies (CRAs) and Trade Repositories (TRs), which form essential parts of the EU's market infrastructure.

## Composition

ESMA is composed of the following bodies:

- **Board of Supervisors:** The Board guides the work of ESMA and is responsible for making final decisions regarding matters such as technical standards, opinions, and guidelines given to the European Parliament. The Board is supported by Standing Committees on technical issues. It is composed of the heads of the national competent authorities of the Member States. Additionally, there are non-voting representatives from the EU Commission, the EU Systemic Risk Board, the EU Banking Authority, the European Insurance and Occupational



Pensions Authority and the European Free Trade Association Surveillance Authority. The Board meets twice a year at least.

- **Management Board:** The Chair and the Executive Director and Vice-Chair form the Management Board. The Management Board along with members of the Management Team are responsible for the daily activities of the Authority.
- **Securities and Markets Stakeholder Group:** The Stakeholder Group was formed to help with facilitating consultations by the Authority with stakeholders in relevant issue areas and to ensure that stakeholders have a say in the development of policy. It is composed of 30 members from its Member States, including academics (four members), consumers, representatives of financial institutions, financial market participants, representatives from small and medium sized firms and end-users of financial services. The Stakeholder Group meets a minimum of four times a year. The members of the group formulate and send opinions to ESMA on any issue related to ESMA's tasks. The Group also publishes an annual work programme that lays out the priorities for the upcoming year.
- **Standing Committees:** These support the work of the Board of Supervisors on specific issues. The Committees are chaired by senior national representatives and comprise national experts on technical issues. The Standing Committee then goes on to form a consultative Working Group of participants such as practitioners and consumers to provide technical advice during the process of drafting. The participants are generally experts from Member States, but do not represent their national interests.
- **Board of Appeal:** The Board of Appeal is an independent and impartial body of the European Supervisory Authorities, which aims to protect the rights of parties affected by decisions adopted by the Authorities. It is composed of six members and six other alternates, appointed by the EU Banking Authority, ESMA and European Insurance and Occupational Pensions Authority on the basis of their professional experience in related and relevant fields.

### **Independence**

ESMA is accountable to the European Parliament and Council (as per Article 3 of the founding regulation).

### **Reporting**

The Board of Supervisors sends an annual report on the activities of the Authority to the European Parliament, Council and Commission, the Court of Auditors and the EU Economic and Social Committee. This report is also published and made available to the public. On receiving the report, the EU Parliament holds a hearing on the performance of the Authority annually and can ask specific questions about its activities.

### **Outputs and outcomes**

ESMA is responsible for producing and publishing a range of outputs related to its mandate:

- Proposing draft regulations and technical standards (later approved by the European Parliament), guidelines and opinions given to the Parliament on request.
- Maintaining an up-to-date EU supervisory handbook on supervision of financial market participants.
- Publishing reports on consumer trends and risk indicators.
- Publishing reports to increase financial literacy.

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