

Müllner v. Austria

Application no. 18859/21

OBSERVATIONS ON THE FACTS

Submitted on behalf of the Applicant

3 March 2025

Glossary

1.5°C-limit	Temperature goal of 1.5°C above pre-industrial levels enshrined in the Paris Agreement
AbgÄG	<i>Abgabenänderungsgesetz</i> (Tax Amendment Act)
APCC	Austrian Panel on Climate Change
AR 6	IPCC Sixth Assessment Report
Art	Article
AS	Additional Submission
B-VG	<i>Bundes-Verfassungsgesetz</i> (Federal Constitution/Federal Constitutional Act)
bcm	billion cubic metres
BMDW	<i>Bundesministerium/ Bundesminister für Digitalisierung und Wirtschaftsstandort</i> (Ministry/Minister for Digital and Economic Affairs)
BMF	<i>Bundesministerium/ Bundesminister für Finanzen</i> (Ministry/Minister of Finance)
BMK	<i>Bundesministerium/ Bundesministerin für Klimaschutz, Umwelt, Energie, Mobilität, Innovation und Technologie</i> (Ministry/Minister for Climate Protection, Environment, Energy, Mobility, Innovation and Technology)
BVG Kinderrechte	<i>Bundesverfassungsgesetz über die Rechte von Kindern</i> (Federal Constitutional Act on the Rights of the Child)
BVG Nachhaltigkeit	<i>Bundesverfassungsgesetz über die Nachhaltigkeit, den Tierschutz, den umfassenden Umweltschutz, die Sicherstellung der Wasser- und Lebensmittelversorgung und die Forschung</i> (Federal Constitutional Act on Sustainability, Animal Protection, Comprehensive Environmental Protection, on Water and Food Security as well as Research)
BVwG	<i>Bundesverwaltungsgericht</i> (Federal Administrative Court)
C	celsius
CBAM	Carbon Border Adjustment Mechanism

CBDR-RC	Common But Differentiated Responsibilities - Respective Capacities
CCS	Carbon Capture and Storage
CDR	Carbon dioxide removals
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CO₂e	CO ₂ (carbon dioxide) equivalent
CRPD	Convention on the Rights of Persons with Disabilities
Doc	Document
e.g.	exempli gratia
ECHR	Convention on the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EEA	European Environment Agency
EGR 2024	Emissions Gap Report 2024
EIA (Act)	Environmental Impact Assessment (Act) <i>(Umweltverträglichkeitsprüfung(-sgesetz), UVP(-G))</i>
ESABCC	European Scientific Advisory Board on Climate Change
ESD	Effort Sharing Decision
ESR	Effort Sharing Regulation
et al.	and others
ETS	Emissions Trading System
EU	European Union
Fn	footnote
GHG	greenhouse gas
Gt	Gigatonnes
GWL	Global Warming Level
i.e.	id est
IEA	International Energy Agency
IPCC	Intergovernmental Panel on Climate Change
ITLOS	International Tribunal for the Law of the Sea

KlimaSeniorinnen	<i>Verein Klimaseniorinnen Schweiz and Others v Switzerland</i> [GC] App no 53600/20 (ECtHR, 9 April 2024)
KSG	<i>Klimaschutzgesetz</i> (Climate Protection Act)
LFG	<i>Luftfahrtgesetz</i> (Aviation Act)
LULUCF	land use, land-use change, and forestry
mb/d	million barrels per day
MinStG	<i>Mineralölsteuergesetz</i> 1995 (Mineral Oil Tax Act)
MS	Multiple Sclerosis
Mt	megatonnes
Mtce	million tonnes of coal equivalent
NDC	Nationally Determined Contributions
NEKP/NECP	<i>Nationaler Energie und Klimaplan</i> / National Energy and Climate Plan
NHRI	National Human Rights Institute
OHCHR	Office of the United Nations High Commissioner for Human Rights
ÖNIP	<i>Integrierter österreichischer Netzinfrstrukturplan</i> (Austrian Grid Infrastructure Plan)
para(s)	paragraph(s)
RCP 8.5	Representative Concentration Pathway 8.5
Ref-NEKP	Reference-National Energy and Climate Plan
StGG	<i>Staatsgrundgesetz</i> (Basic Law on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm)
t	tonnes
TEDDY25C	Threshold Exceedance Degree Days per Year for 25°C
UBA	<i>Umweltbundesamt</i> (Austrian Environmental Agency)
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change

UstG	<i>Umsatzsteuergesetz</i> 1994 (Value Added Tax Act)
UTHOFF-IAF	UTHOFF Impairment Amplification Factor
VAT (Act)	Value Added Tax (Act)
VfGG	<i>Verfassungsgerichtshofsgesetz</i> (Constitutional Court Act)
VfSlg	<i>Sammlung der Erkenntnisse und wichtigsten Beschlüsse des Verfassungsgerichtshofes</i> (Collection of the most important judgments and rulings of the Constitutional Court)
WAM	with additional measures
WEM	with existing measures
WIFO	<i>Wirtschaftsforschungsinstitut</i> (Economic Research Institute)
WMP	World Meteorological Organization

Table of Contents

I. Background of this case	8
II. New developments since the submission of the Application.....	12
1. Recent relevant climate change law and policy developments	13
1.1 The 1.5°C-limit is the only relevant climate target	13
1.2 Recent international case law confirms the obligation to regulate GHG emissions.....	15
2. Latest science relevant to the case.....	16
2.1 Key climate science concepts.....	16
2.2 Key findings of the IPCC’s Sixth Assessment Report.....	23
2.3 The European Climate Risk Assessment report	25
2.4 Other recent international climate reports.....	26
2.5 Latest science on the adequacy of the EU’s climate action.....	29
a. The ESABCC report “Scientific advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030-2050”	29
b. The ESABCC report “Towards EU climate neutrality Progress, policy gaps and opportunities”	33
2.6 Latest data shows unprecedented levels of carbon emissions from fossil fuels	34
2.7 Quantification of Austria’s remaining carbon budget.....	38
2.8 Recent studies on temperature increase and worsened MS-symptoms.....	46
2.9 Enhanced climate change vulnerability for people with disabilities and chronic illnesses.....	48
2.10 Latest data recording the impacts of climate change at the Applicant’s place of residence	50
2.11 Latest relevant climate data for Austria.....	53
III. Corrections and Additions to the Facts presented by the Respondent.....	59
1. Austria’s constitutional framework	60
1.1 Environmental protection under the Austrian Constitution	60
1.2 Constitutional review mechanism in Austria.....	62
1.3 Examples of Constitutional Court case-law on environmental and climate matters	67
a. Decision on the third runaway of the Vienna Airport.....	68
b. Decision concerning oil-fired heating systems	69
c. Decision on the Repeal of the Nitrate Action Programme Regulation 2017.....	70
d. Decision on the second Uthoff individual application.....	71
e. Decision on the request to ban fossil fuels.....	73
f. Decision on an individual application challenging the Climate Protection Act	74
g. Decision on an individual application by minors against the Climate Protection Act	75
h. Decision on land consumption and soil sealing	76
i. Decision on a second individual application by minors against the Climate Protection Act	77
2. Examples of environmental protection and climate measures in Austria	79
2.1. The Climate Protection Act	79
2.2 Austria’s aspirational 2040 climate neutrality target	84
2.3 The Environmental Impact Assessment Act	85
2.4 The Expansion of Energy from Renewable Sources Act.....	86
2.5 Public participation in the implementation of climate measures	87
2.6 The flight tax	89
2.7 Calculation, monitoring and evaluation of climate action in Austria	90
2.8. Green Budgeting, Green Finance and Climate Finance	91
2.9 Key measures that could have strengthened Austria’s climate regulatory framework.....	94
a. Carbon Capture and Storage Act.....	94
b. Electricity Market Act.....	95
c. Energy Efficiency Act	96
d. Mineral Resources Act.....	96
e. Renewable Energy Expansion Acceleration Act	97

f. Renewable Heating Act.....	98
g. Renewable Natural Gas Law.....	98
2.10 Fossil fuel subsidies and projects counteracting climate action in Austria.....	99
3. European climate action.....	102
3.1 EU climate law.....	102
3.2 Austrias shortcomings regarding EU environmental and climate action.....	105
a. National Energy and Climate Plans.....	105
b. Access to justice for individuals in environmental matters.....	111
IV. Relevant domestic law.....	115
1. Relevant provisions in the Federal Constitutional Act (B-VG).....	115
2. Relevant provisions in the Constitutional Court Act 1953 (VfGG).....	126
3. Austrian Climate Protection Act (KSG).....	132
4. Relevant norms of the Value Added Tax Act (UstG).....	146
5. Relevant norms of the Mineral Oil Tax Act (MinStG).....	148

1. The Applicant fully maintains the submissions to this Court in his Application and the Additional Submission (“**AS**”) dated 25 March 2021. The Applicant begins by briefly recall the case’s background (**Section I**). Following this overview, the Applicant will update and supplement the Application with the most recent scientific, legal, and policy developments relating to climate change to accurately reflect the current situation, taking into account the Respondent’s submissions and subsequent developments (**Section II**). Lastly, the Applicant will address and rectify any inaccuracies or omissions in the Respondent’s Observations where necessary, to ensure an accurate and complete representation of the facts supporting his case (**Section III**).

I. Background of this case

2. The present legal dispute concerns the “*unprecedented issues*”¹ posed by climate change and its adverse impacts on the human rights of the Applicant, in particular his right to have his private and family life protected. The Applicant suffers from multiple sclerosis (“**MS**”), and his symptoms worsen as external temperatures increase – a condition known as the “Uthoff Syndrome” (see Additional Submission, “**AS**” paras 1-3; Observation on the Facts, “**OF**”, section II, 2.8).² As a result of this condition, the Applicant already presently incurs severe personal harm, directly caused by the adverse effects of climate change in Austria (see AS paras 1-9, Observations on the Law, “**OL**”, section II). These impacts are forecasted to gradually worsen, which means that the Applicant will most likely incur even more serious harm and suffering in the future (OL, section II).
3. Rapid greenhouse gas (“**GHG**”) emissions reduction in line with the global temperature goal enshrined in the Paris Agreement of 1.5°C above pre-industrial

¹ *Verein Klimaseniorinnen Schweiz and Others v Switzerland* [GC] App no 53600/20 (ECtHR, 9 April 2024), para 414.

² See the Second personal statement of the Applicant, submitted as Doc 32 in the Annex.

levels (“**1.5°C-limit**”) through an adequate climate regulatory framework is the only effective remedy for the Applicant. Indeed, to maintain temperatures at the global level in line with the 1.5°C-limit (and thereby temperatures in Austria), is the only way to limit the prospect of the Applicant’s harm from increasing further. Each increment of warming exposes the Applicant to the risk of suffering from more frequent and longer periods during which he is prevented from living a normal life.

4. This Court in its landmark decision *Verein KlimaSeniorinnen Schweiz v. Switzerland* (“*KlimaSeniorinnen*”) has confirmed that the 1.5°C-limit is the long-term temperature goal which must be adhered to if “*effective protection by the State authorities from serious adverse effects on their life, health, well-being and quality of life arising from the harmful effects and risks caused by climate change*”³ is to be guaranteed.
5. The prospect of a warming climate and the consequences this will have on the Applicant’s human rights is aggravated by the fact that, to this day, the Respondent has failed to regulate and mitigate GHG emissions in accordance with the 1.5°C-limit. Further, it failed to provide adequate procedural safeguards which would allow vulnerable individuals to challenge the Respondent’s inaction or request more stringent climate mitigation efforts. In addition to being confronted with a deficient and inadequate climate regulatory framework, the Applicant is also faced with a procedural lacuna in the Respondent’s legal system. Thus, the Applicant, in the given Austrian legal system, cannot seek redress for the harms caused through the inadequate regulation by the Respondent of its GHG emissions.
6. This double failure on the part of the Respondent lies at the heart of the present case. In 2021, impacted by the increase in warm and hot days, the Applicant decided to use the only legal avenue available to him at the time to claim, to the extent possible, the protection of his rights under Art 8.

³ *KlimaSeniorinnen* (n 1), para 544.

7. As will be explained in more details in the Observations on the Law, the Applicant claimed that his rights under Art 8 are violated through the **Respondent's omission** (to adopt an adequate climate framework) and **its action** (to subsidize fossil fuels by way of § 6 (1)(3)(d) of the Austrian Value Added Tax Act (“*Umsatzsteuergesetz 1994*” - “**UStG**”) and § 4 (1)(1) of the Mineral Oil Tax Act (“*Mineralölsteuergesetz 1995*”⁴ - “**MinStG**”) including all interrelated norms).⁵ The Applicant argued that these failures in the existing legal framework were infringing his right to family and private life in the context of the climate crisis. The individual application was, however, only a remedy available to challenge the Respondent's action, i.e. the adoption and implementation of two pieces of climate harmful legislation: the Kerosene tax privilege and the VAT-tax privilege for cross-border flights. These two fiscal norms incentivize the use of air travel, ultimately fostering an overall increase of GHG emissions.⁶ As raised with the Constitutional Court, the Applicant has no effective remedy to his claim concerning the Respondent's omission, that would ensure measures capable of effectively protecting him from the adverse consequences of climate change pursuant to Art 8.
8. Yet even his challenge of the Respondent's action, i.e. the adoption and implementation of fossil fuel subsidies was not straightforward. After all, individual applications are subject to very stringent criteria, including with respect to standing. One key issue is that only those directly addressed by a norm have standing to challenge it.
9. The Constitutional Court has previously determined that even an “indirect” impact, demonstrated through the “purpose and content” of a norm, can qualify a person as a legal addressee of that norm. (see section II, 1.2). Based on this, the Applicant claimed to have standing pursuant to Articles 139 and 140 of the Federal Constitution (“*Bundes-Verfassungsgesetz*”, “**B-VG**”) (“**Art 139/140 B-VG**”) as a

⁴ Version in force during original proceedings.

⁵ The Individual Application translated to English is submitted as Doc 20b in the Annex.

⁶ WIFO, ‘Analyse klimakonttraproduktiver Subventionen in Österreich’ (2022), 7 <<https://www.wifo.ac.at/publication/70096/>> accessed 28 February 2025.

consumer to challenge a harmful Kerosene tax exemption and a VAT tax provision, the latter is commonly understood to be a consumer tax.⁷ The Applicant argued that, as an already impacted individual, these norms infringed his legally protected sphere, in particular under Art 8, since they foster the increase of GHG-emissions by promoting fossil fuel dependent travel modes and thus contributed to increased global warming.

10. Concretely, the Applicant challenged the constitutionality of § 6 (1)(3)(d) of the Austrian Value Added Tax Act (“*Umsatzsteuergesetz 1994*” - “**UStG**”) and § 4 (1)(1) of the Mineral Oil Tax Act (“*Mineralölsteuergesetz 1995*”⁸ - “**MinStG**”) including all interrelated norms on the basis of Art 2 and 8 of the European Convention on Human Rights (“**ECHR**”), Art 2 and 7 of the Charter of Fundamental Rights of the European Union (“**CFREU**”) and Art 2 StGG/7 B-VG (both enshrining the general principle of objectivity, a subjective constitutional right).⁹
11. In filing his individual application to the Constitutional Court, about 8000 other individual petitioners joined the Applicant. However, the vast majority¹⁰ of them only filed their application based on the principle of equality under Art 7 B-VG/2 StGG. Despite the differences in claims on the merits, all applicants duly followed the stringent criteria for standing by establishing a link to the norms in question¹¹, as will be explained further below in Section III 1.2.

⁷ Ruppe/Achatz, *Umsatzsteuergesetz - Kommentar*⁵, Introduction para 35; Doralt/Ruppe/Ehrke-Rabel, *Grundriss des österreichischen Steuerrechtes II*⁸, para 200 with further references; see also Art 2 para 1 First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, OJ 1967/071, 1301.

⁸ Version in force during original proceedings.

⁹ Additionally, all Applicants requested the annulment of all norms containing cross-references made to the main norms, as well as the repeal of the “Luftfahrtbegünstigungsverordnung”. This is a regulation detailing the administrative implementation of aviation tax exemptions, arguing that it lacked a valid legal basis if the primary provisions were invalidated.

¹⁰ With the exception of three other especially impacted individuals.

¹¹ They all provided proof to the fact that they were frequent users of railway services.

12. Ultimately, in a decision dated 30 September 2020, the Constitutional Court dismissed all the individual applications, including the Applicant's, on the grounds that none of the applicants could be deemed as a direct legal addressee of the challenged provisions. The main rationale which guided the Constitutional Court's decision was that none of the applicants intended to resort to air travel but would only travel by train. The Applicant's claim under Art 8 was not differentiated from those of all the other applicants (which were only based on the principle of equality), despite the fact that the Applicant's claim raised specific arguments relating to the infringements of his constitutionally protected fundamental rights (which the other applicants did not raise).
13. In addressing the Applicant's standing to bring his case, the Constitutional Court adopted an excessively formalistic approach. Contrary to its more lenient case law, the Constitutional Court refused to consider that the Applicant's legal sphere was affected by the "purpose and content" of the norms under challenge (see also OF, section III, 1.2). Strikingly, the Constitutional Court gave no weight to the fact that the Applicant's medical condition had made him intensely exposed to the adverse effects of climate change. Nor did it consider the absence of any procedural safeguard available to the Applicant to effectively challenge the core conduct linked to the infringement of his rights under Art 8, namely the Respondent's failure to adopt an adequate climate regulatory framework capable of ensuring adequate protection.

II. New developments since the submission of the Application

14. The Applicant will now turn to address the most relevant legal, policy and scientific developments concerning climate change since the submission of his Application in March 2021.

1. Recent relevant climate change law and policy developments

15. Building on the comparative law part at para 103-120 of the *KlimaSeniorinnen* decision, the Applicant adds the latest, most relevant developments in climate change law and policy.

1.1 The 1.5°C-limit is the only relevant climate target

16. With reference to the Additional Submission of 25 March 2021 (paras 14 - 17), it is noted that in the last (almost) four years, the 1.5°C target of the Paris Agreement has become the only relevant climate target at the international and European level. For example, best available science - notably reflected in the findings of the Intergovernmental Panel on Climate Change (“IPCC”) - has repeatedly stressed that the impacts of climate change will be considerably less if global temperatures are maintained at 1.5°C instead of 2°C above pre-industrial levels.¹² Likewise, the political consensus regarding the 1.5°C-limit is expressly reflected in recent Conference of the Parties decisions, such as the Glasgow Climate Pact,¹³ the Sharm el-Sheikh Implementation Plan,¹⁴ and the first Global Stocktake.¹⁵ Several international and national human rights bodies, as well as UN Special Rapporteurs, have also flagged the importance of limiting global warming to 1.5°C.¹⁶

¹² See, e.g., IPCC, ‘Climate Change 2022: Impacts, Adaptation and Vulnerability’ (AR6 Working Group II, 2022) SPM B.6; IPCC, ‘Special Report on Global Warming of 1.5°C’ (2018) SPM B.1.

¹³ This refers to three decisions adopted during COP26 in Glasgow: 1/CP.26; 1/CMP.16, 1/CMA.3. See in particular, CMA.3, para 22; CP.26, para 17.

¹⁴ This refers to three decisions adopted during COP27 in Sharm el-Sheikh, and notably: 1/CP.27 para 1.5.

¹⁵ CMA.5, para 5.

¹⁶ Committee on the Rights of the Child, ‘General Comment on children’s rights and the environment, with a special focus on climate change’ GRC/C/GC/26 (2023), paras 97-98; Special Rapporteur on Human Rights and Climate Change, ‘Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry’ A/78/255 (2023), para 11; UN Special Rapporteur on Human Rights and the Environment, ‘Human rights obligations relating to the

17. Finally, in *KlimaSeniorinnen*, a number of this Court’s findings clearly indicate its reliance on this temperature goal, including a direct reference to “*the currently required 1.5°C limit.*”¹⁷ The 1.5°C-limit is, further, clearly endorsed by the Respondent (See AS paras 16). Most recently, this was further exemplified by the Respondent’s legal action seeking to annul the EU Taxonomy Regulation, arguing that the planned inclusion of natural gas in this Regulation would be inconsistent with the 1.5°C target.¹⁸ Accordingly, Austria’s climate actions should be assessed against the 1.5°C long-term temperature goal.

18. Finally, the National Human Rights Institutes (“**NHRI**”) of Norway and the Netherlands have published reports,¹⁹ and that of Switzerland has made a submission,²⁰ applying the legal framework as set out in *KlimaSeniorinnen* to their respective States. All three NHRIs have independently found that the Court’s judgment in *KlimaSeniorinnen* requires States to quantify a fair share carbon budget, in line with the 1,5°C-limit. Further, all three have found that their respective States fall short of that standard and must now take action to quantify a carbon budget

enjoyment of a safe, clean, healthy and sustainable environment’ A/74/161 (2019), paras 54, 75, 95; National Human Rights Commission of the Republic of Korea, ‘Opinion on the Constitutional Complaints on Constitutionality of Carbon Neutrality Act’ (2023) 18.

¹⁷ *KlimaSeniorinnen* (n 1), para 558; see also, e.g., paras 105-06, 139-40, 429, 436.

¹⁸ Austria v Commission (Case T-625/22), action brought on 7 October 2022, para 10.

¹⁹ Norwegian National Human Rights Institute, ‘The Norwegian climate change framework in light of Article 8 of the ECHR’ (1 November 2024) <<https://www.nhri.no/wp-content/uploads/2024/11/The-Norwegian-climate-change-framework-in-light-of-Article-8-of-the-ECHR.pdf>> accessed 27 February 2025; Netherlands National Human Rights Institute, ‘Realisatie van het recht op een schoon, gezond en duurzaam leefmilieu in Nederland. Deel 2: Klimaatverandering en mensenrechten - Nederlands mitigatiebeleid in het licht van artikel 8 EVRM’ (Realising the right to a clean, healthy and sustainable environment in the Netherlands. Part 2: Climate change and human rights - Dutch mitigation policies in light of Article 8 ECHR) (2024) <<https://publicaties.mensenrechten.nl/file/ec625eb6-0b4f-a061-1640-33edd102313c.pdf>> accessed 27 February 2025.

²⁰ Communication from an NHRI (L’Institution suisse des droits humains) (17/01/2025) in the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application No. 53600/20), <[https://hudoc.exec.coe.int/?i=DH-DD\(2025\)102E](https://hudoc.exec.coe.int/?i=DH-DD(2025)102E)> accessed 27 February 2025.

in line with human rights obligations and set new and more ambitious GHG reduction targets which ensure that the national carbon budget is respected.

1.2 Recent international case law confirms the obligation to regulate GHG emissions

19. The most prominent decision issued since *KlimaSeniorinnen* was the much-awaited **Advisory Opinion by the International Tribunal for the Law of the Sea (“ITLOS”)**, which the Court referred to at para 187 of *KlimaSeniorinnen*. In this Advisory Opinion, the ITLOS recognized that anthropogenic GHG emissions constitute a form of pollution of the marine environment.²¹ Most notably, it stated that “*States Parties to the [United Nations Convention on the Law of the Sea] have the specific obligations to take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions and to endeavor to harmonize their policies in this connection.*”²²
20. It concluded that the State’s duty to combat climate change “*is one of due diligence*”²³ pursuant to Art 194 United Nations Law of the Sea (“**UNCLOS**”). The ITLOS confirmed that States must determine their measures “*objectively, taking into account, inter alia, the best available science and relevant international rules and standards contained in climate change treaties such as the UNFCCC [United Nations Framework Convention on Climate Change] and the Paris Agreement.* Relying on the principle of Common But Differentiated Responsibilities - Respective Capacities (“**CBDR-RC**”),²⁴ the ITLOS concluded that “*the scope and content of necessary measures may vary in accordance with the means available to States Parties and their capabilities.*”²⁵ In reaching this conclusion, the ITLOS confirmed that the CBDR-RC principle means that “*States with greater means and capabilities must do more to reduce such emissions than States with less*

²¹ Advisory Opinion on Climate Change (Commission of Small Island States on Climate Change and International Law) (Advisory Opinion) [2024] ITLOS Reports, paras 179, 243.

²² Ibid, para 243.

²³ Ibid, para 400.

²⁴ Ibid, paras 225-229.

²⁵ Ibid, para 243.

means and capabilities.”²⁶ The principle of CBRD-RC informs the due-diligence obligation set out in Art 194 of the UNCLOS.

2. Latest science relevant to the case

21. The Applicant will briefly discuss the most relevant scientific developments of the last years, all of which stress the necessity to take urgent and immediate action to combat the adverse effects of climate change.

2.1 Key climate science concepts

22. The following concepts are necessary context for the scientific elements of both, Observation on the Fact and on the Law, submitted by the Applicant:

- a. “Climate neutrality” is defined by the IPCC as the “*state in which human activities result in no net effect on the climate system. Achieving such a state would require balancing of residual emissions with emission (carbon dioxide) removal as well as accounting for regional or local biogeophysical effects of human activities [...]*”.²⁷
- b. “Net zero” is defined under the Paris Agreement (Article 4) as “*a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases*”.
- c. “Carbon neutrality” or “net zero CO₂ emissions” is defined by the IPCC as, “*when anthropogenic CO₂ emissions are balanced globally by anthropogenic CO₂ removals over a specified period.*”²⁸
- d. The “carbon budget” is defined by the IPCC as “*the estimated cumulative amount of global carbon dioxide emissions that that is estimated to limit global surface temperature*

²⁶ Ibid, para 227.

²⁷ IPCC, ‘Special Report on Global Warming of 1.5°C - Glossary’ (2018) <<https://www.ipcc.ch/sr15/chapter/glossary/>> accessed 27 February 2025.

²⁸ Ibid.

*to a given level above a reference period, taking into account global surface temperature contributions of other GHGs and climate forcers”.*²⁹

- e. The “remaining carbon budget” is defined as the “*estimated cumulative net global anthropogenic CO₂ emissions from the start of [a reference year] to the time that anthropogenic CO₂ emissions reach net zero that would result, at some probability, in limiting global warming to a given level, accounting for the impact of other anthropogenic emissions.*”³⁰ Since the publication of AR6, the remaining size of the carbon budget has been updated in annual publications by Forster et al., based on more recent emissions and temperature data. The most recent publication of Forster et al. was released in June 2024.³¹ The paper notes that its updated carbon budget determination “*follow methods as close as possible to those used in the IPCC Sixth Assessment Report (AR6) Working Group One (WG I) report.*” Forster et al. estimates that the global remaining carbon budget to limit temperature rise to 1.5°C (with a 50% chance) from 2024 is just 200 Gt CO₂. Recent academic work estimates that, at current levels of emissions, the remaining carbon budget for 1.5°C will be depleted by 2029.³²
- f. “National carbon budget” refers to “*the distribution of the [global] carbon budget [...] to the [...] national [...] level based on considerations of equity, costs or efficiency.*”³³
- g. “Emission reduction pathways” used in climate science to explore possible future emissions developments and their related impacts. These emission pathways are based on what is considered cost-effective from a global

²⁹ Ibid.

³⁰ Ibid.

³¹ Forster et al., ‘Indicators of Global Climate Change 2023: annual update of key indicators of the state of the climate system and human influence’ (2024) 16(6) ESSD 2625, <<https://essd.copernicus.org/articles/16/2625/2024/>> accessed 27 February 2025.

³² Lamboll et al, ‘Assessing the size and uncertainty of remaining carbon budgets’ (2023) 13 Nature Climate Change 1360, <<https://www.nature.com/articles/s41558-023-01848-5>> accessed 27 February 2027.

³³ IPCC, ‘Special Report on 1.5C - Glossary’ (n 27).

perspective, and according to the IPCC therefore “do not make explicit assumptions about global equity, environmental justice or intra-regional income distribution.”³⁴

- h. “Overshoot” is defined by the IPCC as “[t]he temporary exceedance of a specified level of global warming, such as 1.5°C. Overshoot implies a peak followed by a decline in global warming, achieved through anthropogenic removal of CO₂ exceeding remaining CO₂ emissions globally.” It should be noted that there are major risks associated with overshoot. The IPCC has stated that “overshoot of a warming level results in more adverse impacts, some irreversible, and additional risks for human and natural systems compared to staying below that warming level, with risks growing with the magnitude and duration of overshoot.”³⁵ Likewise, it has stated that “pathways that overshoot 1.5°C run a greater risk of passing through ‘tipping points’, thresholds beyond which certain impacts can no longer be avoided even if temperatures are brought back down later on.”³⁶
- i. In this Application, unless otherwise stated, “exceedance”, refers to exceedance of either the global or national carbon budget (i.e., emissions that are produced after the relevant carbon budget has been depleted).
- j. “Negative emissions” is defined by the IPCC as “removal of greenhouse gases (GHGs) from the atmosphere by deliberate human activities, i.e., in addition to the removal that would occur via natural carbon cycle processes.”³⁷ The IPCC defines “net negative emissions” as “[a] situation [...] when, as result of human activities, more greenhouse gases are removed from the atmosphere than are emitted into it.”³⁸ Net negative emissions must take place in 1.5°C pathways that have any degree

³⁴ IPCC, ‘Synthesis Report’ (AR6) Cross-Section Box.2: Scenarios, Global Warming Levels, and Risks, 63 <<https://www.ipcc.ch/report/ar6/syr/>> accessed 28 February 2025.

³⁵ Ibid, 3.3.4.

³⁶ IPCC, ‘Special Report on 1.5C, FAQ Chapter 3’ <<https://www.ipcc.ch/sr15/faq/faq-chapter-3/>> accessed 27 February 2025.

³⁷ IPCC, Special Report on 1.5C - Glossary (n 27).

³⁸ Ibid.

of temperature overshoot (and, hence, any exceedance of the 1.5°C carbon budget).

- k. “Embedded emissions / consumption-based emissions” are defined by the IPCC as “*emissions released to the atmosphere to generate the goods and services consumed by a certain entity (e.g., a person, firm, country, or region).*”³⁹
- l. “Carbon dioxide removals” are defined by the IPCC as “*anthropogenic activities removing CO₂ from the atmosphere and durably storing it in geological, terrestrial, or ocean reservoirs, or in products. It includes existing and potential anthropogenic enhancement of biological or geochemical sinks and direct air capture and storage, but excludes natural CO₂ uptake not directly caused by human activities.*”⁴⁰ For context, the IPCC states that “*CDR could also be implemented at a large scale to generate global net negative CO₂ emissions (i.e., anthropogenic CO₂ removals exceeding anthropogenic emissions), which could compensate for earlier emissions as a way to meet long-term climate stabilization goals after a temperature overshoot.*”⁴¹ However, the IPCC has acknowledged that, “[t]he availability and scale of these and other CDR technologies and methods are uncertain and CDR technologies are, to varying degrees, associated with challenges and risks”.⁴² In this regard, it stated that, “*CDR methods have biogeochemical and technological limitations to their potential on the global scale. There is insufficient knowledge to quantify how much CO₂ emissions could be partially offset by CDR on a*

³⁹ IPCC, ‘Summary for Policymakers’ (AR 6, Working Group 3), 15 <https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SPM.pdf> accessed 27 February 2025.

⁴⁰ IPCC, Special Report on 1.5C - Glossary (n 27).

⁴¹ IPCC, ‘Technical Summary’ (AR6, Working Group 1), 99 <https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_TS.pdf> accessed 27 February 2025.

⁴² IPCC, ‘Synthesis Report’ (AR 5) 23 <https://ar5-syr.ipcc.ch/ipcc/ipcc/resources/pdf/IPCC_SynthesisReport.pdf> accessed 27 February 2025.

*century timescale. CDR methods may carry side effects and long-term consequences on a global scale.*⁴³

- m. “Domestic” emissions reductions and removals of GHG emissions refer to those that take place within the Respondent’s territory.
- n. “Equity” is defined by the IPCC as, *“the principle of fairness in burden sharing and is a basis for understanding how the impacts and responses to climate change, including costs and benefits, are distributed in and by society in more or less equal ways. It is often aligned with ideas of equality, fairness and justice and applied with respect to equity in the responsibility for, and distribution of, climate impacts and policies across society, generations, and gender, and in the sense of who participates and controls the processes of decision-making.”*⁴⁴
- o. “Common but differentiated responsibilities and respective capabilities” (“**CBDR-RC**”) is a principle that is laid down in Article 3 of the UNFCCC and Article 4 of the Paris Agreement. CBDR is based on notions of equity and justice. The IPCC defines CBDR-RC as, *“is a key principle in the United Nations Framework Convention on Climate Change (UNFCCC) that recognises the different capabilities and differing responsibilities of individual countries in tackling climate change. The principle of CBDR-RC is embedded in the 1992 UNFCCC treaty. The convention states: ‘... the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions.’ Since then the CBDR-RC principle has guided the UN climate negotiations.”*
- p. “Effort sharing” broadly refers to how the international community works together to meet its collective goals under the UNFCCC. For example, effort-sharing approaches can be used to divide up the global carbon budget between States, in order to define national carbon budgets. The IPCC has

⁴³ Ibid.

⁴⁴ IPCC, Special Report on 1.5C - Glossary (n 27).

noted that, “*international cooperation on climate change involves ethical considerations, including equitable effort-sharing.*”⁴⁵ The IPCC has referred to several approaches to effort sharing, including those based on equity principles. For example:

- i. “Responsibility” approaches consider “*historical emissions to derive emission goals.*”⁴⁶
- ii. “Capability” approaches rely on an “*allocation relating reduction goals or reduction costs to GDP or human development index*” and imply that “*effective responses [to climate change] require not only financial resources, but also technological, institutional and human capacity.*”⁴⁷
- iii. “Equality” approaches provide “*allocations based on immediate or converging per capita emissions*”, while “equal cumulative per capita emissions” approaches “*combines equality (per capita) with responsibility (cumulative accounting for historical emissions).*”⁴⁸
- iv. “Responsibility, capability, and need” approaches include those “*that put high emphasis on historical responsibility and at the same time on capability plus the need for sustainable development.*”⁴⁹
- v. “Grandfathering” approaches refer to the allocation of emissions rights or mitigation obligations to individual countries in amounts that are “*in proportion to [their] current emissions.*”⁵⁰

⁴⁵ IPCC, ‘Climate Change 2014 Mitigation of Climate Change’ (AR5, Working Group 3) TS.1, 38 <https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_full.pdf> accessed 27 February 2025.

⁴⁶ Ibid, Table 6.5, 458.

⁴⁷ Ibid, 319 and 458.

⁴⁸ Ibid, 458.

⁴⁹ Ibid.

⁵⁰ Ibid, Chapter 4, 320.

- vi. “Cost-optimal / cost-effectiveness” approaches imply that “*emissions are reduced where this is most cost-effective*” (for example, marginal mitigation cost is equalized across countries, as assessed by models or marginal abatement cost curves).⁵¹

23. It is important to note in this context, not all effort sharing approaches represent principles of equity. This notably applies to “cost optimal” and “grandfathering” approaches. In particular, “grandfathering” favours developed countries’ status quo, avoids any weight being given to the historical responsibility and capacity of these countries and is therefore deemed inconsistent with any principle of equity.⁵² Against this background, the European Scientific Advisory Board on Climate Change (“**ESABCC**”)⁵³ concluded that grandfathering and cost-effectiveness should not be considered a “standard of equity” since “*they are not underpinned by equitable principles, and grandfathering in particular maintains current patterns of uneven distribution of emissions.*”⁵⁴
24. Art 6 of the Paris Agreement provides for “*voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation [...] actions.*” Art 6(2) allows for Parties to “[engage] on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions.” Article 6(4) established an emissions crediting mechanism that is designed to “*contribute to the reduction of emission levels in the host*

⁵¹ As flagged by the European Scientific Advisory Board on Climate Change (ESABCC), see ESABCC, ‘Scientific advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030-2050’ (2023), 27. The ESABCC Report 2023 has been submitted as Doc 33 in the Annex.

⁵² Rajamani et al., ‘National “fair shares” in reducing greenhouse gas emissions within the principled framework of international environmental law’ (2021) 21 *Climate Policy* 983; Dooley et al., ‘Ethical choices behind quantifications of fair contributions under the Paris Agreement’ (2021) 11 *Nature Climate Change* 300.

⁵³ ‘About’ (ESABCC) <<https://climate-advisory-board.europa.eu/about>> accessed 28 February 2025.

⁵⁴ ESABCC (n 51), 27.

Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution.”

2.2 Key findings of the IPCC’s Sixth Assessment Report

25. Between August 2021 and April 2022, the IPCC released its 6th Assessment Report (“AR6”), consisting of three sub-reports from the three thematic working groups. These reports review the latest scientific literature on climate change, evaluate the certainty of the findings, and offer regional analyses. Shorter overviews are provided in the Summary for Policymakers⁵⁵. After the publication of all three working group reports, a synthesis report, together with its own Summary for Policymaker⁵⁶, compiling the findings from all three working group reports were released as part of the AR6.

26. The reports confirm for instance the increase in extreme weather events, the accelerated rise in sea levels⁵⁷ and the current status of GHG emissions⁵⁸, temperature rise and future projections⁵⁹. The IPCC also emphasizes that “*Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in*

⁵⁵ IPCC, ‘Summary for Policymakers’ (AR 6, Working Group 1) <https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf> accessed 28 February 2025; IPCC, ‘Summary for Policymakers’ (AR 6, Working Group 2) <https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf> accessed 28 February 2025; IPCC, ‘Summary for Policymakers’ (AR 6, Working Group 3) <https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf> accessed 28 February 2025.

⁵⁶ IPCC, ‘Synthesis Report – Summary for Policymakers’ (AR 6) <https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf> accessed 28 February 2025.

⁵⁷ IPCC, ‘Summary for Policymakers’ (AR 6, Working Group 1), 22 <https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf> accessed 28 February 2025.

⁵⁸ IPCC, ‘Summary for Policymakers’ (AR 6, Working Group 3), 7 and 9 <https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf> accessed 28 February 2025.

⁵⁹ Ibid, 22.

*CO₂ and other greenhouse gas emissions occur in the coming decades.*⁶⁰ Projections based on the Nationally Determined Contributions (“NDC”) announced before COP26 indicate that warming is likely to exceed 1.5°C in the 21st century and actual policies lag behind these already insufficient targets⁶¹. Whilst climate change is causing significant damage to ecosystems and threatening human livelihoods, one of the reports crucial findings is that some human and natural systems have already reached adaptation limits, and with further warming, more systems will exceed their capacity to adapt.⁶²

27. In terms of impacts relevant to the Applicant, the IPCC has found for instance, with high levels of scientific confidence, that in Europe “*mean and maximum temperatures, frequencies of warm days and nights, and heatwaves have increased since 1950, while the corresponding cold indices have decreased.*”⁶³

28. The Applicant points out that the AR6 states, fossil fuels are primary cause of emission and rising global temperature. “*Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020*”⁶⁴ and states that “*Global net anthropogenic GHG emissions have been estimated to be 59 ± 6.6 GtCO₂-eq in 2019, about 12% (6.5*

⁶⁰ IPCC, ‘Summary for Policymakers’ (AR 6, Working Group 1), 14 <https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf> accessed 28 February 2025.

⁶¹ IPCC, ‘Summary for Policymakers’ (AR 6, Working Group 3), 14 <https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf> accessed 28 February 2025.

⁶² IPCC, ‘Summary for Policymakers’ (AR 6, Working Group 2), 9 and 46 <https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf> accessed 28 February 2025.

⁶³ IPCC, ‘Europe’ (AR6, Working Group 2) 13.1.4 <https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter13.pdf> accessed 27 February 2025.

⁶⁴ IPCC, ‘Synthesis Report – Summary for Policymakers’ (AR 6), 4 <https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf> accessed 28 February 2025.

GtCO₂-eq) higher than in 2010 and 54% (21 GtCO₂-eq) higher than in 1990, with the largest share and growth in gross GHG emissions occurring in CO₂ from fossil fuels combustion and industrial processes (CO₂-FFI) [remark: FFI - fossil fuel and industry] followed by methane (...).⁶⁵

29. The summary for policymakers for each of the working group reports in AR6 were all published in a review process involving all IPCC Member Countries. As such, 195 governments, including Austria, reviewed every paragraph of these reports and are thus fully familiar with its – in parts devastating – content.

2.3 The European Climate Risk Assessment report

30. On 11 March 2024, the European Environment Agency (“**EEA**”) released its first ‘European Climate Risk Assessment’.⁶⁶ In this Assessment, the EEA recalled, *inter alia*, that “*Europe is the fastest-warming continent in the world. Extreme heat, once relatively rare, is becoming more frequent while precipitation patterns are changing.*”⁶⁷ It also found that “*[m]ost climate hazards in Europe will further increase during the 21st century, even under optimistic scenarios compatible with the Paris Agreement.*”⁶⁸ Amongst the biggest risks arising from climate change, the EEA emphasized extreme heat and labeled it as one of the top concerns for Europe.⁶⁹ It noted, *inter alia*, that “*[i]n the period 2018-2022, the average surface temperature worldwide was about 1.2°C higher than in the period 1850-1900, but in Europe it was about 2.2°C higher. Europe’s five warmest years on record have all occurred since 2014 and the summer of 2022 was the hottest ever recorded.*”⁷⁰
31. Particularly relevant to the Applicant’s case, the EEA noted that “*[u]nder a 1.5°C global warming level (GWL) in the near to mid-term future, 100 million people/year in the EU and the UK are expected to be exposed to extreme heatwaves (one with a 2% probability of*

⁶⁵ Ibid.

⁶⁶ European Environment Agency, ‘European Climate Risk Assessment (EUCRA)’ (11 March 2024).

⁶⁷ Ibid, 11.

⁶⁸ Ibid, 14.

⁶⁹ Ibid, 207.

⁷⁰ Ibid, 206.

occurring in any given year), compared to 10 million people/year under the 1981-2010 baseline. Population exposure to extreme heat is projected to increase to 172 million/year by 2100 under a low-emissions scenario and to nearly 300 million/year under a high-emissions scenario in the long term (Cammalleri et al., 2020).’’⁷¹

2.4 Other recent international climate reports

32. On 19 March 2024, the **World Meteorological Organization** (“WMO”) published its ‘State of the Global Climate 2023 Report’. A key finding, which the Applicant wishes to emphasize, is that despite scientific recommendations, global GHG emissions have continued to rise.⁷²

33. Similarly, on 22 April 2024, the **EU Copernicus Climate Change Services and the WMO** released the ‘European State of the Climate Report 2023’. Particularly relevant to Applicant’s case is its point regarding rising temperatures in Europe. The summary of the report stressed that “*[t]he three warmest years on record for Europe have all occurred since 2020, and the ten warmest since 2007. At 1.02-1.12°C above average, and 2.48-2.58°C above the pre-industrial level, 2023 was the second-warmest year on record for Europe. It was 0.13-0.17°C cooler than the previous warmest year on record, in 2020. For most of Europe, 2023 was amongst the top 10 warmest years on record. Much of southeastern Europe, and parts of western and central Europe, saw their warmest year on record. Temperatures in Europe were above average for 11 months of the year, and September was the warmest on record.*”⁷³ The report also highlighted that “*2023 reached a record number of days with ‘extreme heat stress’, which is equivalent to a ‘feels like’ temperature of more than 46°C. Summer also saw the largest area of Europe affected by at least ‘strong heat stress’ of any day on record, with 13% of the continent, and 41% of southern Europe, experiencing ‘strong’, ‘very strong’ or ‘extreme heat stress’ on 23 July.*”⁷⁴

⁷¹ Ibid, 152.

⁷² WMO, ‘State of the Global Climate 2023’ (19 March 2024), 2.

⁷³ Copernicus Climate Change Service (C3S)/WMO, ‘European State of the Climate Report 2023’ (22 April 2024).

⁷⁴ Ibid, 8.

34. On 24 October 2024, the **United Nations Environment Programme** (“**UNEP**”), issued its annual **Emissions Gap Report 2024** (“**EGR 2024**”), in which it analyzes and stresses the insufficiency of the various NDCs submitted by countries in the framework of the UNFCCC, including the EU’s submission.⁷⁵ The EGR 2024 warns that immediate emissions reductions are urgently required and that further delaying mitigation efforts might render the 1.5°C-limit unachievable. It states: “[u]nless global emissions in 2030 are brought below levels resulting from current policies and from the full implementation of the current NDCs, it will become impossible to get to a pathway that limits global warming to 1.5°C with no or limited overshoot (>50 per cent chance), and strongly increase the challenge of limiting warming to 2°C. Starting from the global emissions implied by the current unconditional NDCs for 2030 would double the required rate of annual emission cuts between 2030 and 2035, relative to immediately enhanced action.”⁷⁶
35. Failing such immediate emissions reductions and increases in mitigation ambition, the EGR 2024 confirms that “[i]f the mitigation ambition implied by current policies and NDCs continues, then there is virtually no chance of limiting warming to 1.5°C. The chance of warming ending up close to or below 1.5°C increases tremendously in response to two factors: an increase in the delivery of emission reductions over the next years, and the continuation thereof towards the achievement of net-zero targets by mid-century and beyond. The current most optimistic case sees median (50 per cent) warming projections capped at about 1.7°C (figure 4.2). Overachieving 2030 NDC targets i.e. bringing emission levels in 2030 below those implied by the current NDCs, and submission of ambitious new 2035 NDCs are therefore key to keeping warming as close to 1.5°C as possible.”⁷⁷
36. More alarmingly, the EGR 2024 stresses that a “continuation of the mitigation effort implied by current policies limits global warming to a maximum of 3.1°C over the century with a 66 per cent chance, while there remains a 10 per cent likelihood that warming could exceed 3.6°C. Continuations of either unconditional or conditional NDCs lower these projections, but even the more ambitious of these projections does not keep warming below 2.5°C with at least a

⁷⁵ UNEP, ‘Emission Gap Report’ (24 October 2024), 30.

⁷⁶ Ibid, xv.

⁷⁷ Ibid, 33.

66 per cent chance. By 2050, these scenarios see global warming well above 1.5°C and with up to a 1-in-3 likelihood (34 per cent) that warming already exceeds 2°C by then.”⁷⁸

37. On 28 October 2024, the United Nations Framework Convention on Climate Change (“UNFCCC”) released the 2024 **Nationally Determined Contributions (“NDC”) Synthesis Report**, assessing the collective impact of current national climate plans on projected global emissions by 2030. If fully implemented, current NDCs would result in global GHG emissions of approximately 51.5 Gt of CO₂ equivalent (“CO_{2e}”) by 2030. This represents only a 2.6% reduction from 2019 levels, far below the 43% decrease by 2030 that the IPCC deems necessary to maintain the 1.5°C target. While 94% of Parties to the UNFCCC have set quantified mitigation targets, only 81% have established economy-wide goals covering all or most sectors. The report emphasizes the need for more comprehensive and ambitious targets to achieve significant emission reductions.
38. On 31 October 2024, the EU Commission presented its **EU Climate Action Progress Report 2024 to the European Parliament and Council**.⁷⁹ The Commission, relying on the most recent available scientific evidence, reported that *“[t]o limit warming to the 1.5 °C Paris Agreement temperature target, secure a livable future for all, and avoid the worst impacts of climate change, global greenhouse gas emissions should fall by 43% below 2019 levels by 2030 and by 84% by 2050. Climate change makes extreme events, including deadly heatwaves, extreme rainfall, hurricanes, forest fires and droughts more frequent and intense. After 60 000 - 70 000 heat-related deaths in Europe in 2022, heatwaves in 2023 killed nearly 50 000 Europeans.”⁸⁰*

⁷⁸ Ibid.

⁷⁹ EU Commission, ‘EU Climate Action Progress Report 2024’ (Report to the European Parliament and the Council, 31 October 2024).

⁸⁰ Ibid 2.

2.5 Latest science on the adequacy of the EU's climate action

a. The ESABCC report “Scientific advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030-2050”

39. The **European Scientific Advisory Board on Climate Change** (“**ESABCC**”) was established as an independent scientific advisory body under Regulation No 401/2009 of the European Parliament and of the Council.⁸¹ The ESABCC was given a central position as “*a point of reference for the Union on scientific knowledge relating to climate change, based on its ‘independence and scientific and technical expertise.’*”⁸² It thus provides the EU with scientific knowledge, expertise and advice relating to climate change, based on the “*best available and most recent scientific evidence.*”⁸³

40. On 15 June 2023, the ESABCC, as part of the requirements under the European Climate Law,⁸⁴ published its report entitled ‘Scientific advice for the determination of an EU-wide 2040 climate target and a GHG budget for 2030-2050’ (“**ESABCC Report**”).⁸⁵ The findings of the report have an implication for this case, which is why the Applicant will provide a short overview prior to addressing the implications for the Respondent in the following section.

41. The ESABCC Report advises on the EU's 2040 emissions reduction target. Its analysis focuses on (1) the EU's equitable share of the remaining global carbon budget necessary for staying within the 1.5°C-limit and (2) EU emissions reduction pathways that can be implemented within its borders and aligned with global emissions pathways for 1.5°C. Although the ESABCC's mandate centered on the

⁸¹ 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 [2009] OJ L 126, art 10a.

⁸² Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law) [2021] OJ L 243, art 3(1).

⁸³ Ibid art 3(3).

⁸⁴ Ibid art 4.

⁸⁵ ESABCC (n 51). Submitted as Doc 33 in the Annex.

2040 target, its report also explores the implications of these findings for the present EU's 2030 emissions reduction goals.

42. Using the IPCC's estimate of the global CO₂ budget for 1.5°C as a starting point, the ESABCC applied a range of effort-sharing methodologies to determine the EU's carbon budget. The ESABCC took into account legal principles such as the obligation under Article 2 of the Paris Agreement to pursue the temperature goals in accordance with their highest possible ambition, CBDR-RC, fairness,⁸⁶ as well as principles enshrined in the European Climate Law, including the polluter pays, precautionary, and do no significant harm principles.⁸⁷ It also acknowledged relevant ethical principles for effort sharing, covering principles such as sovereignty, equality, responsibility, capability, need, and cost-effectiveness.⁸⁸
43. For reference, an effort-sharing methodology based on sovereignty (grandfathering) allocates carbon budgets based on current emission shares. An effort-sharing methodology based on equality allocates national carbon budgets based entirely on population shares (which can be present day or projected cumulative population). Effort-sharing methodologies based on responsibility/capability/need allocate reduced carbon budgets (compared to baseline) for countries with high historical responsibility and high capacity. An effort-sharing methodology based on cost-effectiveness assumes that emissions will be reduced based on the lowest cost (for example, marginal mitigation cost is equalized across countries, as assessed by models or marginal abatement cost curves).⁸⁹
44. As mentioned above, "grandfathering" and "cost-optimal" methodologies were excluded by the ESABCC, as neither of these approaches are considered to reflect a "standard of equity".⁹⁰ The ESABCC estimated that the EU's remaining carbon

⁸⁶ Ibid, 26.

⁸⁷ Ibid.

⁸⁸ Ibid, 27. The ESABCC also engaged with combinations of these principles.

⁸⁹ Ibid.

⁹⁰ Ibid, 27-28.

budget was at most 27 gigatonnes (“Gt”) CO₂ from 2020, using an equal per capita approach.⁹¹ Most of the methodological approaches that reflected other principles such as equity and capability resulted in negative budgets (that is, budgets that have already been depleted).⁹² Notably, the ESABCC did not define one single method for defining fairness and feasibility, but rather provided for a range of approaches in accordance with best available science.

45. The ESABCC then considered “*feasible climate-neutral pathways for the EU and their implications.*”⁹³ The ESABCC notes that the term *feasibility* refers to an assessment of whether the scale of transformation implied in emission reduction scenario’s is within or outside of the range of what could be considered feasible in the real world. As noted above under key concept, according to the IPCC such emission reduction pathways do not take into account principles of equity and fairness, which is also evident from the fact that the ESABCC assesses the EU’s fair share of emissions separately in a different section of the report.

46. The ESABCC started with over one thousand scenarios and filtered them based on a range of factors (including feasibility, data availability, consistency with the EU’s climate objectives, and environmental and technological risks). Out of the remaining scenarios, the report concluded that the EU could feasibly achieve up to a 95% reduction in GHG emissions by 2040.⁹⁴ This pathway can be interpreted as the highest level of ambition of emissions reductions within the EU’s own territory that the EU (based on currently available scientific knowledge) can feasibly achieve. The ESABCC found that this feasible 95% reduction by 2040 pathway would result in cumulative emissions of 52 Gt of CO₂ equivalent (CO₂e) by 2050.⁹⁵

⁹¹ Ibid, 28.

⁹² Ibid.

⁹³ Ibid, 32.

⁹⁴ Ibid, 45.

⁹⁵ Ibid, 47.

47. The ESABCC then compared this feasible 95% reduction by 2040 pathway (which considers all GHGs) with the EU's remaining fair share carbon budget (which only pertains to CO₂).⁹⁶ Taking all GHG's into account, the ESABCC concluded that an emissions pathway towards a 95% reduction in GHG emissions by 2040 and net-zero by 2050 would lead to cumulative emissions of at least 12 Gt CO₂e more than the most lenient interpretation of the EU's fair share (reflecting an equal per capita allocation).⁹⁷ For the most stringent fair share allocation (reflecting an ability to pay allocation), the gap between the 95% by 2040 pathway and the EU's fair share would consist of 137 Gt CO₂e.⁹⁸

48. On the basis of this analysis, the ESABCC in its recommendations concluded that: *“because none of the assessed pathways towards climate neutrality fully align with the fair share estimates, additional measures need to be pursued to account for this shortfall.”*⁹⁹ The ESABCC concluded that the EU therefore must ensure that it *”1. Aims for the highest level of ambition in domestic emission reductions and carbon dioxide removal [...] 2. Contribute to direct emission reductions outside of the EU, in light of the shortfall identified between the feasible pathway and fair share estimates. 3. Pursue net negative emission after 2050, as required under the European Climate Law, which would help manage temporary temperature overshoots [...].”*¹⁰⁰(emphasis added).

49. Whereas the ESABCC was not mandated to advise on the fairness of the EU's 2030 targets and therefore stopped short of offering a formal conclusion on this, it did note that the shortfall that needs to be compensated for could be considerably reduced by increasing the EU's 2030 target to *“well beyond 55%”*, which would *“increase the fairness of the EU's contribution to global mitigation of climate change.”*¹⁰¹ Specifically, the ESABCC estimated that if the EU adopted a higher

⁹⁶ Ibid, 46.

⁹⁷ Ibid, 47.

⁹⁸ Ibid.

⁹⁹ Ibid, 10.

¹⁰⁰ Ibid, 15.

¹⁰¹ Ibid, 42.

target of up to 75% by 2030, it would be able to limit cumulative GHG emissions to 32 Gt CO₂e by 2050, thereby closing the gap between its domestic emissions and the most lenient interpretation of its fair share.¹⁰² This is reflected in the ESABCC’s recommendation that “[a]dditional efforts to increase the ambition beyond 55% (up to 70% or more by 2030) would considerably decrease the EU’s cumulative emissions until 2050, and thus increase the fairness of the EU’s contribution to global mitigation.”¹⁰³

50. ESABCC also recommended that the EU keep its “greenhouse gas emissions budget within a limit of 11 to 14 Gt CO₂e between 2030 and 2050. Staying within this budget requires emission reductions of 90-95% by 2040, relative to 1990. This range considers multiple dimensions of fairness and feasibility of the emission reductions.”¹⁰⁴ The report added that “pursuing the more ambitious end of the 2040 target range improves the fairness of the EU’s contribution. Ambitious domestic emission reductions need to be complemented by measures outside the EU to achieve a fair contribution to climate change mitigation.”¹⁰⁵

51. Put shortly, the EU’s own scientific advisory body has found (1) that the highest feasible emissions reductions within the EU still fall short on the most-lenient fair share estimates, and (2) that this shortfall should be compensated for.

b. The ESABCC report “Towards EU climate neutrality Progress, policy gaps and opportunities”

52. The report was published on 18 January 2024 and assesses the EU’s progress toward climate neutrality by 2050. It evaluates whether current policies are sufficient to meet the 2030 and long-term climate targets and identifies policy gaps and inconsistencies. The report contains specific recommendations and observations, many of which concern Austria, such as the slow decarbonization of road transport, the lack of a plan to phase out fossil fuel subsidies and the insufficient renovation rates of buildings, to name just three. The report

¹⁰² Ibid, 43.

¹⁰³ Ibid, 10.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid, 10.

recommends for all Member States, and therefore also for Austria, that the final NECP should have a clear phase-out plan for fossil fuel subsidies.

53. In its “key recommendation” the report states “*Member States should fully and urgently phase out fossil fuel subsidies. In line with the 8th Environment Action Programme (8th EAP), they should set a deadline for phasing out such subsidies, and their updated NECPs should include a clear plan and timeline to achieve this.*”¹⁰⁶ The Respondent has not complied with this recommendation. The report additionally draws attention to the fact that the EU carbon sink is on the decline and that this trend must be reversed. For context, the latest calculations by the Austrian Environment Agency showed that the land use, land-use change, and forestry (“**LULUCF**”) sector was a **source** of 7.5 million tons of CO₂ in 2023 and not a sink.¹⁰⁷

2.6 Latest data shows unprecedented levels of carbon emissions from fossil fuels

54. It is widely acknowledged, including by the Respondent,¹⁰⁸ that the main driver of climate change is emissions of CO₂, and the main source of CO₂ emissions is the use of fossil fuel.¹⁰⁹ In its previous 2021 ‘Net Zero Roadmap’ dated 2021, the International Energy Agency (“**IEA**”) had warned that, fossil fuel “*holds the key to averting the worst effects of climate change*”, and “[*n*]et zero by 2050 hinges on an unprecedented

¹⁰⁶ ESABCC, ‘Towards EU climate neutrality Progress, policy gaps and opportunities’ (18 January 2024) <<https://climate-advisory-board.europa.eu/reports-and-publications/towards-eu-climate-neutrality-progress-policy-gaps-and-opportunities>> accessed 28 February 2025.

¹⁰⁷ Umweltbundesamt, ‘Austria’s Annual Greenhouse Gas Inventory 1990-2023’ (20 January 2025) <<https://www.umweltbundesamt.at/fileadmin/site/publikationen/rep0841bfz.pdf>> accessed 28 February 2025.

¹⁰⁸ Umweltbundesamt, ‘Klimaschutzbericht 2024’ (2024), 14 <<https://www.umweltbundesamt.at/fileadmin/site/publikationen/rep0913.pdf>> accessed 28 February 2025.

¹⁰⁹ Oxford Net Zero, Energy and Climate Intelligence Unit, NewClimate Institute, and Data-Driven EnviroLab, ‘In the pipeline: The status of fossil fuel phase-out commitments across nations, regions, cities, and companies with net zero targets’ (December 2023), 1 <<https://zerotracker.net/analysis/in-the-pipeline>> accessed 28 February 2025.

clean energy technology push to 2030”; and that “*net zero means a huge decline in the use of fossil fuels.*”¹¹⁰

55. In its 2023 update of its report ‘Net Zero Roadmap A Global Pathway to Keep the 1.5°C Goal in Reach’,¹¹¹ the IEA noted that fossil fuel demand has not yet started to fall.¹¹² The IEA also stressed that “[e]nergy sector CO₂ emissions [i.e. CO₂ emissions from fossil fuel combustion, industrial processes, and fugitive and flaring CO₂ from fossil fuel extraction¹¹³] remain worryingly high, reaching a new record of 37 gigatonnes (Gt) in 2022. Instead of starting to fall as envisaged in the 2021 report, demand for fossil fuels has increased - spurred by the energy crisis of 2022 after Russia’s invasion of Ukraine - and so have investments in supply.”¹¹⁴

56. The think-tank the Global Carbon Project released its ‘Global Carbon Budget 2024’ on 13 November 2024, noting that global carbon emissions from fossil fuels and cement carbonisation reached a record high in 2024 and there was still “no sign”¹¹⁵ that the world has reached a peak.¹¹⁶ These emissions are projected to have increased by 0.8% (37.4 Gt CO₂) from 2023.¹¹⁷

57. To keep the 1.5°C-limit in reach, the IPCC Special Report on 1.5°C found that the proportion of the global primary energy supply dependent upon fossil fuels will

¹¹⁰ IEA, ‘Net Zero Roadmap: A Roadmap for the Global Energy Sector’ (2021), 13.

¹¹¹ IEA, ‘Net Zero Roadmap A Global Pathway to Keep the 1.5 °C Goal in Reach (2023 Update)’ (Revised version: November 2024) <<https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach>> accessed 28 February 2025.

¹¹² Ibid, 21.

¹¹³ Ibid, 20, footnote 1.

¹¹⁴ Ibid, 19.

¹¹⁵ ‘Fossil fuel CO₂ emissions increase again in 2024’ (globalcarbonbudget.org) <<https://globalcarbonbudget.org/fossil-fuel-co2-emissions-increase-again-in-2024/>> accessed 28 February 2025.

¹¹⁶ Pierre Friedlingstein et al., ‘Global Carbon Budget 2024’ (Global Carbon Project, 13 November 2024).

¹¹⁷ Ibid, 6.

have to be reduced from 82.53% in 2020 to 66.58% in 2030, and 32.79% in 2050.¹¹⁸ In the updated Net Zero Emission scenario provided by the IEA in its 2023 Update to its ‘Net Zero Roadmap’, the IEA finds that, for the 1.5°C-limit to remain achievable in the energy sector, fossil fuel demand must be cut by 25% by 2030 and 80% by 2050.¹¹⁹

58. The IEA calculated what this cut would represent for each of the main sources of fossil fuels. It found that demand for coal would drastically need to drop from around 5,800 million tonnes of coal equivalent (“**Mtce**”) in 2022 to 3,250 Mtce by 2030 and around 500 Mtce by 2050. For oil, the demand would need to decline from around 100 million barrels per day (“**mb/d**”) to 77 mb/d by 2030 and 24 mb/d by 2050. For natural gas, the demand would need to decline from 4,150 billion cubic metres (“**bcm**”) in 2022 to 3,400 bcm in 2030 and 900 bcm in 2050.¹²⁰ These numbers make clear that an immediate, sharp decline of the fossil fuel demand is crucial, which can only be achieved through a clear and binding legislative framework, promoting an even faster transition to renewable energies.
59. The 2024 UN EGR 2024 confirms that the full deployment of the mitigation potential in the power sector and fossil fuel production would reduce the emissions from the energy sector by 65% in 2030 and 76% in 2035 compared with the current policy baseline projections.¹²¹
60. According to the latest data of the IEA, the Respondent has emitted 56.796 Mt CO₂ from fossil fuels in 2022, which amounts to 0.2% of the world’s fossil fuel CO₂ emissions, and 7.07 t CO₂ per capita.¹²² Under its current GHG mitigation scenarios, the Respondent confirms that it would not be able to achieve the cut in

¹¹⁸ IPCC, Special Report (n 12), 132.

¹¹⁹ IEA, Update Net Zero Roadmap (n 111), 16.

¹²⁰ Ibid.

¹²¹ UNEP (n 75), 52.

¹²² IAE, ‘Emissions per countries, “Austria”’ <<https://www.ica.org/countries/austria/emissions>> accessed 27 February 2025.

fossil fuel consumption required by the Paris Agreement’s goal.¹²³ The Environment Agency Austria expressly stated that:

“In the WEM [“with existing measures”] scenario, the share of renewable energy in gross final energy consumption increases only slowly. Even by mid-century, it is only 50.7 %. This means that without additional measures in 2050, almost half of the energy supply would still be based on fossil energy under the underlying assumptions. This is not compatible with the requirements of the Paris Agreement. In contrast, the share in the WAM [“with additional measures”] scenario rises to 78 % in 2050. This scenario is therefore also not compatible with the Paris targets. In the Transition scenario, a share of 105 % is achieved, due to high exports of renewable energy sources.”¹²⁴

61. The Respondent acknowledges that the fossil fuel phase out scenarios that it has in place (WEM scenario) or is considering (WAM scenario) are not meeting the Paris Agreement target. Nor do these scenarios meet the required 80% cut in fossil fuel demand by 2050 as recommended by the IAE, necessary to keep the 1.5°C-limit in reach.¹²⁵
62. Moreover, despite recommendations by the UNEP in the EGR 2024 and by the wider scientific community, the Respondent - including through the partly state-owned enterprise OMV – has been pursuing exploration and development of fossil fuels production projects in Austria and overseas. For instance, in July 2023, OMV announced a significant natural gas find with the Wittau Tief-2a exploration well in Lower Austria and drilled to a depth of 5,000 meters over five months, this represents Austria’s largest natural gas discovery in four decades.¹²⁶ Similarly, OMV is due to commence production at the Neptun Deep Black Sea project in 2027, a

¹²³ Umweltbundesamt, Klimaschutzbericht (n 108), 59.

¹²⁴ Ibid.

¹²⁵ IEA (n 111), 16.

¹²⁶ ‘OMV announces new gas discovery in Austria’ (OMV, 28 July 2023) <<https://www.omv.com/en/media/press-releases/2023/230728-omv-announces-new-gas-discovery-in-austria>> accessed 28 February 2025.

major offshore gas development located in the Romanian Black Sea and estimated to host around 100 billion cubic meters of recoverable gas.¹²⁷

2.7 Quantification of Austria's remaining carbon budget

63. To facilitate the Court to assess the Respondent's compliance with the criteria identified in para 550 of *KlimaSeniorinnen*, the Applicant requested scientific experts to produce two reports relating to Austria's national carbon budget.

64. The first report, 'Estimates of fair share carbon budgets for Austria' ("**Pelz et al. 2025**")¹²⁸, was authored by three scientific experts who have published extensively in international academic literature concerning carbon budgets and emissions reductions pathways (Dr Setu Pelz, Dr Yann Robiou du Pont and Dr Zebedee Nicholls). This report took the same methodological approach as the **ESABCC** in its report, 'Scientific advice for the determination of an EU-wide 2040 climate target and a GHG budget for 2030-2050' see paras 40 *et. seq.*, above).para 39 *et seq.*, above). While the ESABCC did not provide a breakdown of the EU's budgets between individual EU Member States, it provided information in respect of its methodology to calculate the EU's fair share of the remaining carbon budget. It presented results on the EU's fair share that were calculated in an underlying study authored by Pelz et al. in 2023.¹²⁹ Notably, the author of the underlying report, Dr Setu Pelz, is also an author of this expert report. The same methodological approach as the results in the ESABCC's report has been used to calculate the Respondent's national budget.

65. The second report, 'Austria's remaining carbon budget Calculations of Austria's carbon budget from 2023 in line with the methodical approaches taken in the relevant academic literature' ("**Kirchengast & Steininger 2025**"), was authored

¹²⁷ 'Romania's OMV Petrom quarterly profit sinks 57% on weaker prices, regulatory pressure' (*Reuters*, 4 February 2025) <<https://www.reuters.com/business/energy/omv-petroms-operating-profit-slumps-57-weaker-prices-regulatory-pressures-2025-02-04/>> accessed 28 February 2025.

¹²⁸ Submitted as Doc 34 in the Annex.

¹²⁹ Pelz et al., 'Evaluating equity in European climate change mitigation pathways for the EU Scientific Advisory Board on Climate Change' (IIASA 2023).

by Professors Gottfried Kirchengast and Karl Steininger, two Austrian scientists with extensive experience in Austria's carbon budget analysis. For example, they have been co-authors on the first Austrian carbon budget analysis¹³⁰ and all later analyses and updates.¹³¹ They co-authored the science community summary paper on the Austrian carbon budget,¹³² as well as policy advice documents related to them, such as the Reference-National Energy and Climate Plan (“**Ref-NEKP**”)¹³³ or the Evaluation of Measures for the Update of the NECP¹³⁴ and of the international literature discussing the underlying concepts and applying them for

¹³⁰ Steininger, Mayer, ‘Das Treibhausgas-Budget für Österreich’ (2017) <<https://wegcwww.uni-graz.at/publ/wegcreports/2017/WCV-WissBer-Nr72-LMeyerKSteininger-Okt2017.pdf>> accessed 28 February 2025.

¹³¹ Kirchengast, Steininger, ‘Wegener Center Statement 9.10.2020—ein Update zum Ref-NEKP der Wissenschaft: Treibhausgasbudget für Österreich auf dem Weg zur Klimaneutralität 2040’ <[RefNEKP-TreibhausgasbudgetUpdate_WEGC-Statement_Okt2020.pdf](#)> accessed 28 February 2025; Kirchengast, Steininger, ‘Wegener Center Statement September 2021—ein Update zum Statement vom 9.10.2020: Treibhausgasbudget für Österreich auf dem Weg zur Klimaneutralität 2040’ <<https://wegcloud.uni-graz.at/s/ezopLM6ycRk8Txo>> accessed 28 February 2025; Kirchengast, Steininger, ‘Wegener Center Statement Juli 2022—ein Update zum Statement vom September 2021: Treibhausgasbudget für Österreich auf dem Weg zur Klimaneutralität 2040’ <<https://wegcloud.uni-graz.at/s/LoLkG7YkGoJ9ZwR>> accessed 28 February 2025.

¹³² CCCA, ‘+1,5°C: Wieviel Treibhausgase dürfen wir noch emittieren?’ (2022) <https://ccca.ac.at/fileadmin/00_DokumenteHauptmenue/02_Klimawissen/Papiere/THG-Budget_Hintergrundpapier_CCCA.pdf> accessed 28 February 2025.

¹³³ Kirchengast et al., Referenzplan als Grundlage für einen wissenschaftlich fundierten und mit den Pariser Klimazielen in Einklang stehenden Nationalen Energie- und Klimaplan für Österreich (Ref-NEKP) (2019) <https://ccca.ac.at/fileadmin/00_DokumenteHauptmenue/02_Klimawissen/RefNEKP/Ref-NEKP_Gesamtband_Nov2019_VerlOeAW.pdf> accessed 28 February 2025.

¹³⁴ Steininger et al, ‘Nationaler Energie- und Klimaplan (NEKP) für Österreich - Wissenschaftliche Bewertung der in der Konsultation 2023 vorgeschlagenen Maßnahmen’ (2024) <https://ccca.ac.at/fileadmin/00_DokumenteHauptmenue/02_Klimawissen/RefNEKP/Bericht/NEKP_Wissenschaftliche_Bewertung_der_Massnahmen_der_Stellungnahmen_Februar2024.pdf> accessed 48 February 2025.

Austria as well as all countries across the globe.¹³⁵ This “Kirchengast & Steininger 2025” report provides updated estimates of the Respondent’s carbon budget from these previous reports.

66. Despite slight differences in methodological approaches, both reports come to aligned conclusions. The slightly different estimates of the Respondent’s remaining carbon budget by the two reports are essentially due to slight differences in how normative principles are applied as part of the calculations. There are a few key reasons for this. First, Pelz et al. 2025, like the ESABCC, used 2015 (the year the Paris Agreement was signed) as the baseline year for allocating the global carbon budget between states. By comparison, Kirchengast & Steininger 2025 used 2017 (the first year after the Paris Agreement had come into force in late 2016) as the baseline year. This discrepancy accounts for two additional years of global emissions in Pelz et al. 2025, during which industrialized countries like Austria contributed a disproportionate share. Consequently, Kirchengast & Steininger 2025 estimates a higher remaining equal-per-capita budget for Austria from 2023 onward. Second, while Pelz et al. 2025 relied on a more recent estimate of the remaining global carbon budget for 1.5°C,¹³⁶ Kirchengast & Steininger 2025 used a slightly larger estimate of the global budget from a study by Williges et al. 2022¹³⁷.

¹³⁵ Williges, Meyer, Steininger, Kirchengast, ‘Fairness critically conditions the carbon budget allocation across countries’ (2022) 74 Global Environmental Change, 102481 <<https://doi.org/10.1016/j.gloenvcha.2022.102481>> accessed 28 February 2025;

Steininger, Meyer, Nabernegg, Kirchengast, ‘Sectoral carbon budgets as an evaluation framework for the built environment’ (2020) 1(1) Buildings and Cities 337-360 <<https://doi.org/10.5334/bc.32>> accessed 28 February 2025.

¹³⁶ Pelz et al. 2025 built on the estimates provided by Forster et al. (2023), which seeks to apply a methodology as close as possible to the IPCC AR6, but updated with the latest data and updates to best available science. See Forster et al. (n 31)

¹³⁷ Kirchengast & Steininger 2025 built on the estimates provided by Williges et al. (2022), which bases its calculations on estimates of the global remaining carbon budget from the IPCC’s Special Report on 1.5C from 2018. See Williges et al., ‘Fairness critically conditions the carbon budget allocation across countries’ (2022) 74 global Environmental Change 102481

This also results in Kirchengast & Steininger 2025 estimating an accordingly higher equal-per-capita budget for Austria. Finally, although both studies incorporate normative principles of “equity”, “responsibility”, “capability”, and “responsibility and capability”, in their national carbon budget estimates, their methodologies differ. Nevertheless, despite these methodological variations, both reports reach consistent conclusions.

67. The key findings of the reports are as follows:

- a. The “**equal per capita**” budget from 2023 to the time Austria reaches net zero is estimated to be between **50 Mt CO₂** (Pelz et al. 2025) and **164 Mt CO₂** (Kirchengast & Steininger 2025) from 2023. Given that the Respondent reported that annual CO₂ emissions in 2022 were **61 Mt CO₂**¹³⁸, this implies that if emissions remained at about the same level in 2023 and 2024, **both estimates** of the Respondent’s “equal per capita” carbon budget would already be exhausted, or would be imminently **exhausted during 2025**.
- b. Pelz et al. 2025 and Kirchengast & Steininger 2025 both provide estimates of when the Respondent would need to **reach net-zero CO₂ emissions**, on a straight-line basis, to comply with the “equal per capita” carbon budget (based on global carbon budget with 50% chance of remaining below 1.5°C). Pelz et al. 2025 estimates that **net-zero CO₂** would need to be reached in **2025**, implying an annual decline equivalent to approximately 38.6% of year-2022-emissions, starting in 2023 every year until net zero. Kirchengast & Steininger 2025 estimates that **net-zero CO₂** would need to be reached in **2029** implying an annual decline equivalent to approximately 16% of 2022

<<https://www.sciencedirect.com/science/article/pii/S095937802200019X#s0030>> accessed 27 February 2025.

¹³⁸ “Treibhausgas-Emissionen nach CRF” (data.gv.at) <<https://www.data.gv.at/katalog/dataset/78bd7b69-c1a7-456b-8698-fac3b24f7aa5>> accessed 28 February 2025. OLI 2023, emissions for 1990-2022. This is the official publicly available dataset of the Austrian environment agency.

emissions per year, every year between 2023 and net zero. Kirchengast & Steininger 2025 estimate that **net-zero GHG** emissions would need to be reached in **2033**, implying an annual decline equivalent to approximately 10% of the 2022 GHG emissions, every year until net zero. As such, all estimates of Austria’s “equal per capita” carbon budget would require measures much more stringent than the Respondent currently has in place domestically or under its obligations derived from EU law.

- c. The experts also analysed the size of the Austrian national carbon budget based on methods for calculating it under other fairness principles, reflecting the principles of “responsibility”, “capability”, and “responsibility and capability”. Across both Pelz et al. 2025 and Kirchengast & Steininger 2025, **only a single methodological approach provided a small positive estimate** of the Respondent’s remaining national carbon budget.¹³⁹ **All the other methodological approaches** estimated that the Respondent’s remaining national carbon budget has already been depleted, **ranging from minus 280 Mt CO₂ to minus 1,630 Mt CO₂**. This volume of emissions in excess of the national carbon budget is significant and would mean that **the Respondent’s remaining budget was already exhausted several years ago**. Pelz et al. 2025 estimates that the lowest estimate of Austria’s national carbon budget (reflecting “responsibility and capability”) would have been depleted as long ago as 1998.
- d. Kirchengast & Steininger 2025 went on to consider how many GHG emissions the Respondent would produce if it meets domestic and EU targets, and how this compares to an “equal per capita” national GHG budget:
 - i. If the Respondent reduces its national emissions (incl. LULUCF) in line with the EU’s 2030 target (minus 55% by 2030, compared to 1990 levels)

¹³⁹ This was the “basic needs” approach in the Kirchengast & Steininger 2025, which estimated the Respondent’s national carbon budget from 2023 onward to be 143 Mt CO₂.

and achieves its aspirational net zero by 2040 target – and assuming a straight-line reduction between current emissions and 2030, and between 2030 and 2040 – the Respondent will emit 512 Mt CO₂e between 2023 and 2040. Given that Kirchengast & Steininger 2025 estimates that Austria’s “equal per capita” GHG budget would equate to approximately 309 Mt CO₂e, this would imply that Austria would exceed its national “equal per capita” GHG budget by 203 Mt CO₂e by the time it reaches net zero. Assuming Austria’s emissions reductions are aligned with the EU’s 2030 target, Kirchengast & Steininger 2025 estimates that Austria’s “equal per capita” budget would be used up by 2028.

- ii. If the Respondent reduces its national missions (incl. LULUCF) in line with the EU’s legislated and proposed targets (minus 55% by 2030 compared to 1990 levels, minus 90% by 2040 compared to 1990 levels and net zero by 2050) – and assuming a straight-line reduction between current emissions and 2030, between 2030 and 2040, and between 2040 and 2050 – Austria will emit 580 Mt CO₂e between 2023 and 2050. This means that if Austria reduces its emissions in line with EU targets, **it will still produce at least 271 Mt CO₂e more emissions than its “equal per capita” GHG budget would allow.**
- iii. The Applicant notes that that Austria does not have an economy-wide emissions reduction target for 2030 (only a sectoral target derived from the ESR: -48% compared to 2005 levels in non-ETS sectors). In the absence of any binding, economy-wide targets after 2020 under Austrian law, Kirchengast & Steininger 2025 have assumed that Austria will reduce its emissions in line with the (economy-wide) EU-targets of– a 55% reduction by 2030 and a 90% reduction by 2040, both compared to 1990 levels, and achieve net zero by 2050, to calculate their projections. The Applicant notes that this assumption is generous towards Austria, as Austria is not individually bound to achieve the EU’s

economy-wide targets (these must be achieved collectively by EU Member States - see paras 197 *et. seq.*) and the EU is yet to formally adopt a 2040 target.

- e. Kirchengast & Steininger 2025 reflect also on the consumption-based emissions attributable to Austria and state that they are around 50% higher than its territorial emissions.
- f. Kirchengast & Steininger 2025 also considers the Respondent's implementation of government policy. As discussed at paras 209 *et. seq.*, even if the Respondent adopts additional measures, it would not be able to achieve anywhere near the EU's emissions reduction targets for 2030, 2040 or 2050. Assuming additional measures under the WAM scenario¹⁴⁰ are fully implemented, Kirchengast & Steininger 2025 estimate that Austria would emit 1.125 Gt CO₂e between 2023 and 2050. This implies that **Austria would emit approximately 816 Mt CO₂e in excess of its GHG budget by 2050**, and that **Austria's GHG budget would be depleted in 2028**. This would imply that **Austria is on track to produce at least 3.6 times more emissions than under the highest estimate of its "equal per capita" GHG budget**.
- g. One key diagram from Pelz et al. 2025 and two key diagrams from Kirchengast & Steininger 2025 are reproduced here:

¹⁴⁰ BMK, 'Integrierter nationaler Energie- und Klimaplan für Österreich' (Final Updated Version, 3 December 2024), 230, table 26, find the english and german version here <https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-energy-and-climate-plans_en> accessed 28 February 2025.

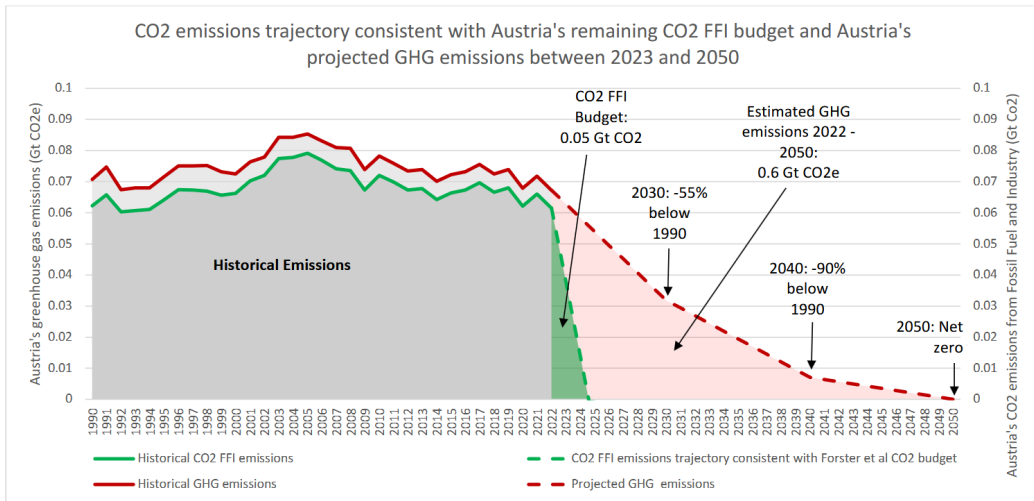


Figure note for figure 2 of the Pelz et al. 2025 report:

Austria's historical **CO₂ emissions** from fossil fuels and industry are shown by the green solid line, while the green dashed line represents the estimated net-zero trajectory within its 'equal per capita' carbon budget from the start of 2023 (0.05 Gt CO₂, which equals 50 Mt CO₂). Percentage reductions are relative to 1990.

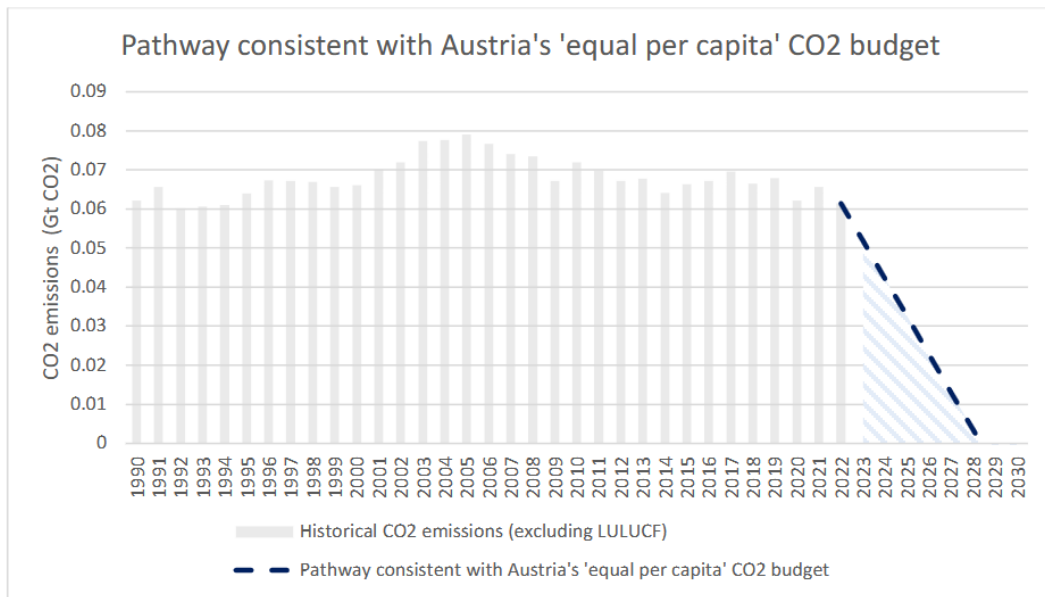


Figure note for the figure 5 of the Kirchengast & Steininger 2025 report:

Austria's historical **CO₂ emissions** (excluding LULUCF) are shown as grey bars. The dark blue dashed line and blue hatched area indicate projected CO₂ emissions consistent with Austria's 'equal per capita' **CO₂ budget of 164 Mt CO₂**. (1 Gt = 1,000 Mt.)

Both diagrams above are included to compare the remaining equal per capita CO₂ budget from Pelz et al. 2025 (50 Mt CO₂) with the equal per capita CO₂ budget from Kirchengast & Steininger 2025 (164 Mt CO₂), both from 2023 onwards. The diagram below is displayed to show by **how many million tonnes of greenhouse gases Austria would exceed its equal per capita budget if it met the EU targets or if it met its current WAM emissions pathway.**

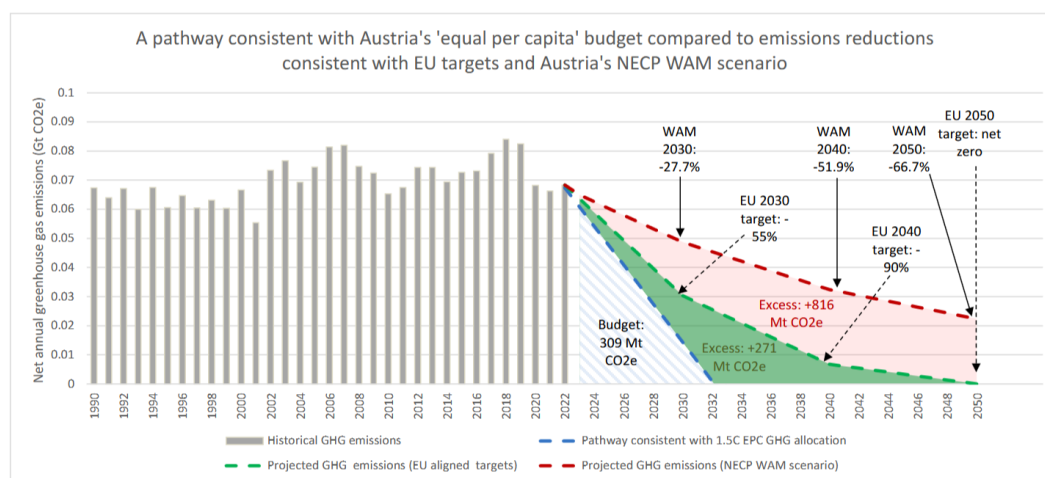


Figure note for the figure 6 of the Kirchengast & Steininger 2025 report:

Austria's historical annual **GHG emissions** (including LULUCF) are shown as grey bars. The dark blue dashed line represents a straight-line pathway aligned with Austria's '**equal per capita' GHG budget of (309 Mt CO₂e)**, with cumulative emissions hatched in blue. Percentage reductions are relative to 1990. Projected emissions from 2023–2050, following EU targets, are shown by the dark green dashed line and shading, totalling 580 Mt CO₂e (**+271 Mt CO₂e** over 'equal per capita' GHG budget). Under Austria's NECP WAM (incl. LULUCF) scenario (2024), represented by the dark red dashed line and light red shading, cumulative emissions would reach 1,125 Mt CO₂e (**+816 Mt CO₂e** over 'equal per capita' budget). As the EU targets are in GHG, this diagram is included to make Austria's emissions comparable to Austria's remaining equal per capita GHG Budget. (1 Gt = 1,000 Mt.)

2.8 Recent studies on temperature increase and worsened MS-symptoms

68. Currently, MS affects around 2.9 million persons worldwide, and about 1.2 million within the jurisdictions of the Contracting States of the Council of Europe. As

such it represents a significant public health challenge.¹⁴¹ Around 80 per cent of the population suffering from MS are also affected by the Uhthoff Syndrome.¹⁴² People with MS show heightened sensitivity to external temperature changes. Rising temperatures trigger various adverse symptoms, including vision loss and temporary paralysis. This occurs because heat exposure further reduces nerve conduction in already impaired nerve pathways.¹⁴³

69. Several recent studies have reaffirmed the link between temperature increases and worsened MS symptoms, a few of which are:

- a. A 2022 study by Grothe et al. which established a strong correlation between average monthly temperatures and fatigue severity, indicating that higher outdoor temperatures exacerbate fatigue symptoms of MS patients.¹⁴⁴
- b. A 2022 study by Christogianni et al. which assessed 757 individuals with MS found that temperature sensitivity to be a prevalent impact of MS patient. 58% of the cases displayed heat sensitivity only, 29% had sensitivity to both heat and cold, and 13% cold sensitivity only. Environmental conditions, specifically hot and cold days, served as primary triggers for symptom

¹⁴¹ Multiple Sclerosis International Federation, 'Atlas of MS' (3rd Edition, 2020); European MS Platform, 'MS Barometer 2020' (2021).

¹⁴² Christogianni et al., 'Heat and cold sensitivity in multiple sclerosis: A patient-centred perspective on triggers, symptoms, and thermal resilience practices' (2022) 67 Multiple Sclerosis and Related Disorders; Austrian Association for Multiple Sclerosis, 'Uhthoff-Phänomenon' (*oemsg*) <<https://www.oemsg.at/multiple-sklerose/leichter-leben-mit-ms/uhthoff-phaenomen/>> accessed 27 February 2025.

¹⁴³ Roberts, 'Handling the heat - latest research' (*MS Society*, 19 June 2017) <<https://www.mssociety.org.uk/research/latest-research/research-blog/handling-heat-latest-research>> accessed 27 February 2025; Association for Multiple Sclerosis, 'Uhthoff-Phänomenon' (n 142); Christogianni et al., 'Temperature sensitivity in multiple sclerosis: An overview of its impact on sensory and cognitive symptoms' (2018) 5 Temperature 208 (Submitted as Doc 2 in the Annex).

¹⁴⁴ Grothe et al., 'The seasonal fluctuation of fatigue in multiple sclerosis.' (2022) 13 Frontiers in neurology 900792.

exacerbation, particularly impacting walking ability, fatigue and concentration.¹⁴⁵

- c. A June 2024 literature review by Sisodiya et al., published in the *Lancet Neurology*, confirmed that **climate change has the potential to intensify MS symptoms**.¹⁴⁶

2.9 Enhanced climate change vulnerability for people with disabilities and chronic illnesses

70. As an individual with MS and Uhthoff Syndrome, the Applicant is part of the **particularly vulnerable group** of people with disabilities that is recognized to face disproportionate harm from climate change.¹⁴⁷ Their vulnerability stems from a multitude of factors: heat-related symptom exacerbation,¹⁴⁸ heightened mortality rates during extreme weather events,¹⁴⁹ and amplified existing inequalities.¹⁵⁰
71. Rising temperatures present serious health challenges for individuals with disabilities. Heatwaves significantly affect people with heat-sensitive conditions

¹⁴⁵ Christogianni et al. (n 143) 208.

¹⁴⁶ Sisodiya et al., 'Climate change and disorders of the nervous system' (2024) 23 *Lancet Neurology* 636-648, 639.

¹⁴⁷ Stein et al., 'Advancing disability-inclusive climate research and action, climate justice, and climate-resilient development' (2024) 8 *The Lancet Planetary Health* e242; Stein and Stein, 'Climate change and the right to health of people with disabilities' (2022) 10 *The Lancet Global Health* e24; OHCHR, 'Analytical Study on the promotion and protection of the rights of people with disabilities in the context of climate change' (2020).

¹⁴⁸ OHCHR (n 147), 4.

¹⁴⁹ Lindsay et al., 'The impact of climate change related extreme weather events on people with pre-existing disabilities and chronic conditions: a scoping review.' (2023) 45(25) *Disability and Rehabilitation* 4338-4358.

¹⁵⁰ See, e.g., OHCHR, Resolution 41/21; OHCHR (n 147); Gaskin et al., 'Factors Associated with the Climate Change Vulnerability and the Adaptive Capacity of People with Disability: A Systematic Review' (2017) 9 *Weather, Climate, and Society* 801.

such as multiple sclerosis, spinal cord injuries, and Parkinson’s disease.¹⁵¹ These temperature increases also worsen respiratory and cardiovascular diseases.¹⁵² Additionally, heat exposure impacts mental health, potentially causing lethargy, apathy, depression, and cognitive decline. People with chronic illnesses, particularly those with neurodegenerative diseases, are especially vulnerable to temperatures above average.¹⁵³

72. Beyond direct health effects, climate-related events pose specific risks for individuals with disabilities. During heatwaves, people with disabilities often face barriers accessing critical risk information. This limited access, combined with inaccessible evacuation procedures and inadequate disaster preparedness, **increases mortality risks during natural disasters.**¹⁵⁴

73. A recent study from Korea also confirmed that **individuals with disabilities face higher relative risks from heatwaves than non-disabled individuals and other vulnerable groups.**¹⁵⁵ This issue was already prominently recognized in the Report of the Office of the United Nations High Commissioner for Human Rights “Panel discussion on promoting and protecting the rights of persons with

¹⁵¹ See Austrian Association for Multiple Sclerosis (n 142); Christogianni et al. (n 143); Hunt et al., ‘Evidence of heat sensitivity in people with Parkinson’s disease’ (2024) 68 Int J Biometeorol 1169.

¹⁵² Cheng et al., ‘Cardiorespiratory effects of heatwaves: A systematic review and meta-analysis of global epidemiological evidence’ (2019) 177 Environmental Research 1.

¹⁵³ Christogianni et al. (n 142), 1; S. Louis et al., ‘Impacts of Climate Change and Air Pollution on Neurologic Health, Disease, and Practice A Scoping Review’ [2023] Neurology, 478: “*Elser et al.* examined 106,225 individuals with MS over 15 years and found a positive association between anomalously warm weather and ED visits.”; Jevotovskiy et al., ‘Weathering the Pain: Ambient Temperature’s Role in Chronic Pain Syndromes.’ (2025) 29 (1) Current pain and headache reports 31.

¹⁵⁴ See Stein and Stein, ‘Disability, Human Rights, and Climate Justice’ (2022) 44 HRQ 81; Österreichischer Behindertenrat, ‘Menschen mit Behinderungen im Katastrophenfall’ (*Behindertenrat*, July 2023) <<https://www.behindertenrat.at/2023/07/menschen-mit-behinderungen-im-katastrophenfall/>> accessed 19 February 2025.

¹⁵⁵ Kang, Baek and Park, ‘Assessing heatwave effects on disabled persons in South Korea’ (2024) 14 Sci Rep 3459.

disabilities in the context of climate change”¹⁵⁶ The report underscores that climate action must be human rights-based, in line with the Convention on the Rights of Persons with Disabilities (“CRPD”),¹⁵⁷ emphasizing the need to strengthen the protection and inclusion of persons with disabilities in the face of the climate crisis.¹⁵⁸

2.10 Latest data recording the impacts of climate change at the Applicant’s place of residence

74. The Application submitted to this Court in April 2021 contained data describing the climatic conditions for the Applicant’s area of residence, using a comprehensive data set obtained from the weather station (located in [REDACTED] (“ZAMG/Kalcher Report”)¹⁵⁹ (AS paras 3-8). In support of the present Observations on the Law, the Applicant requested a new expert report, describing the most recent climatic conditions in [REDACTED] (“Rieder et al. 2025”).¹⁶⁰

75. The Rieder et al. 2025 use grid points representing the area of [REDACTED] to determine the past and future (projected) climate conditions and heat variations for [REDACTED] The analysis contained in the Rieder et al. 2025 report and relied upon in these Observations provides data regarding the Applicant’s place of residence rather than just for the weather station in [REDACTED] (which is located at a distance of approximately 25 km from the Applicant’s home) and is therefore considered **more accurate** than the data submitted with the Application.

76. The Rieder et al. 2025 evaluate the same indicators as did the data relied upon in the Application, namely the number of summer days (days where temperatures

¹⁵⁶ OHCHR, ‘Summary of the panel discussion on the rights of persons with disabilities in the context of climate change’ (12 July 2023) UN Doc A/HRC/46/46.

¹⁵⁷ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

¹⁵⁸ OHCHR (n 156), 9.

¹⁵⁹ Submitted as Doc 8 in the Annex.

¹⁶⁰ Submitted as Doc 36 in th Annex.

reach at least 25°C) and the number of hot days (days where temperatures reach at least 30°C). A new indicator, which was not mentioned in the Application, is the number of days in heatwaves. The purpose of this indicator is to show the number of days occurring consecutively during which the Applicant is severely affected by the heat. This indicator is defined by the occurrence of at least three consecutive days with maximum temperatures of at least 30°C, whereby this period can be extended if the maximum temperature on the following days does not fall below 25°C, and secondly if the average daily maximum temperature of the heatwave does not fall below 30°C.

77. The Rieder et al. 2025 calculate the number of summer days, hot days and days in heatwaves for [REDACTED] using observation data for the period 1961-1990, and then for the period 2001-2020, which it affiliates with a Global Warming Level (“GWL”) of 1.0°C above pre-industrial levels. It offers projections of future temperature developments, using different GWLs: 1.5°C, 2.0°C, 3.0°C and 4.0°C.
78. For each of these GWLs, the **Rieder et al. 2025** provide average numbers of summer days, hot days and days in heatwaves as well as numbers reflecting these indicators for each of the respective GWL in extreme years. Extreme years consist of a number of heat events far exceeding the average.¹⁶¹ In this regard, the report notably concludes that “*the more extreme indicators hot days and days in heat waves rise relatively faster than the more moderate indicator summer days.*”¹⁶²
79. In order to fully demonstrate his victim status, the Applicant applies the data provided by the Rieder et al. 2025 as evidence of heat and temperature increases and explains the adverse effects these increases have on his private and family life. For a summary of the findings most relevant to his present case, the Applicant refers this Court to Section I above.
80. For this Court to understand the difference between the data provided in the Application and the data used in Rieder et al. 2025, the Applicant will briefly

¹⁶¹ Submitted as Doc 36 in the Annex

¹⁶² Doc 36, 7.

explain the different indicators used. The data submitted in the Application accounts for the mean annual temperature (1883-2020), summer days and hot days (1961-2020) at the [REDACTED] weather station. The study referred to in the Application projects two indicators, namely summer days and hot days into the future for the periods 2021-2050 and 2071-2100 and the IPCC emissions scenario pathway of Representative Concentration Pathway 8.5 (“**RCP 8.5**”).¹⁶³

81. In addition, the Application also outlines the four parameters presented in the ZAMG/Kalcher Report¹⁶⁴: TEDY25C (“**Threshold Exceedance Days per Year for 25°C**”), TEDDY25C (“**Threshold Exceedance Degree Days per Year for 25°C**”), UTHOFF-FAF (“**UTHOFF Frequency Amplification Factor**”) and UTHOFF-IAF (“**UTHOFF Impairment Amplification Factor**”).¹⁶⁵

- a. The first parameter TEDY25C, calculates the number of days per year when the maximum temperature is above 25°C (summer days).
- b. The second parameter TEDDY25C, calculates the sum of all temperature differences above 25°C in a year.
- c. The third parameter UTHOFF-FAF shows how the number of summer days (TEDY25C) has changed over time compared to the 1961–1990 reference period.
- d. The fourth parameter, the UTHOFF-IAF represents how TEDDY25C has changed over time relative to the reference period (1961–1990).

¹⁶³ RCP 8.5 refers to the concentration of carbon that delivers global warming at an average of 8.5 watts per square meter across the planet. The RCP 8.5 pathway delivers a temperature increase of about 4.3°C by 2100, relative to pre-industrial temperatures. See: ‘RCP 8.5: Business-as-usual or a worst-case scenario?’ (Climate Nexus) <https://climatenexus.org/climate-change-news/rcp-8-5-business-as-usual-or-a-worst-case-scenario/#:~:text=RCP%208.5%20refers%20to%20the,relative%20to%20pre%2Dindustrial%20temperatures.>

¹⁶⁴ Submitted as Doc 8 in the Annex.

¹⁶⁵ Submitted as Doc 8 in the Annex, page 3.

- e. Both parameters, TEDDY25C and UTHOFF-IAF, the ZAMG/Kalcher Report notes, “*serve as an indicator for the length of a period in which the outside temperature exceeds 25°C.*”
82. The ZAMG/Kalcher Report concluded on page 5 and 6 that “[w]hile the average TEDDY25C value in the reference period (1961-1990) is around 74 (± 17.6), the decade average for 1986-1995 exceeds the 100 mark for the first time and subsequently increases significantly in some cases. The decade average of the last decade (2011-2020) is already just over 200. This almost triples the length of the period with outside temperatures above 25 °C compared to the reference value. This corresponds to a UTHOFF-LAF of 2.7.”
83. Both the ZAMG/Kalcher and the Rieder et al. 2025 reports look at the number of summer days. **Both reports come to the same conclusion that, in recent years and decades, the time during which the Applicant cannot go outside has increased significantly.** While the ZAMG/Kalcher report is based on summer days and focusses solely on the past, the Rieder et al. 2025 report looks at two other indicators in addition to summer days, namely hot days and days in heatwaves, for the past and for different global warming levels in the future. **Rieder et al. 2025 show that the consequences for the Applicant will be much worse if harmful climate change is not mitigated.**

2.11 Latest relevant climate data for Austria

84. Relying on the Austrian Environmental Agency’s press release dated 22 August 2024 concerning the latest available climate data, the Respondent purports that this data “*shows that the climate action taken by Austria is effective.*”¹⁶⁶ While Austria’s recent efforts have shown some positive effects, the overall situation remains unsatisfactory.

¹⁶⁶ Respondent Observations III.4.1.7.3.

85. Austrian territorial emissions excluding LULUCF fell by 5.8% in 2022 compared to 2021¹⁶⁷ and by 6.4% in 2023 compared to 2022¹⁶⁸ and are expected to fall only by 2.7% in 2024¹⁶⁹ compared to 2023. On the one hand, climate protection measures had an effect, yet the Federal Environment Agency noted for the year 2022: *“Warm weather and high energy prices due to the war in Ukraine played a decisive role in the decline in emissions in 2022. A sustainable reduction to meet the climate protection targets based on long-term effective climate protection measures in 2030 and 2040 is not guaranteed.”*¹⁷⁰
86. The Applicant would also like to point out that net emissions (total including LULUCF) increased by 4% in 2023 compared to 2022, as the Austrian forests generated 5.4 Mt CO₂e emission due to climate change damage¹⁷¹ (instead of absorbing CO₂e as would otherwise be expected from a carbon sink). This puts the previously mentioned 2023 emission reduction of 6.4% in a different light. In 2023, Austrian net emissions were 76.2 Mt CO₂e; to give the Court perspective: emissions were even lower in 1990 (65.7 Mt CO₂e), at a time were forests were a sink and not a source of CO₂e.¹⁷²

¹⁶⁷ ‘Treibhausgas-Bilanz Österreichs 2022’ (Umweltbundesamt, 16 January 2024) <<https://www.umweltbundesamt.at/news240116>> accessed 28 February 2025.

¹⁶⁸ ‘Treibhausgas-Emissionen gehen um 6,4% zurück’ (Umweltbundesamt, 24 August 2024) <<https://www.umweltbundesamt.at/news220824-treibhausgasemissionen-2023>> accessed 28 February 2025.

¹⁶⁹ ‘Für 2024 Rückgang der Treibhausgase um ca. 2,7% erwartet’ (Umweltbundesamt, 28 February 2025) < <https://www.umweltbundesamt.at/news250228-update-treibhausgas-emissionen>> accessed 2 March 2025.

¹⁷⁰ Umweltbundesamt, ‘Nahzeitprognose der österreichischen Treibhausgas-Emissionen für das Jahr 2022’ (2023) <https://www.umweltbundesamt.at/fileadmin/site/publikationen/rep0869.pdf> accessed 28 February 2025.

¹⁷¹ Umweltbundesamt, ‘Austria’s Greenhouse Gas Inventory 1990-2023’ (2025) <<https://www.umweltbundesamt.at/fileadmin/site/publikationen/rep0952.pdf>> accessed 28 February 2025.

¹⁷² Ibid, 51

87. Austrian emissions (excl. LULUCF) amounted in 2022 to 72.8 Mt CO₂e and were divided as follows¹⁷³:

- a. Energy & Industry: ETS (36.6%) 26.6 Mt; Non-ETS (8.2%) 6.0 Mt CO₂e
- b. Transport (28.3%): 20.6 Mt CO₂e
- c. Buildings (10.1%): 7.4 Mt CO₂e
- d. Agriculture (11.3%): 8.2 Mt CO₂e
- e. Waste (3.0%): 2.2 Mt CO₂e
- f. Fluorinated Gases (2.5%): 1.8 Mt CO₂e

88. The most recent data on the development of each emission-sector dates back to 2022.¹⁷⁴ The Applicant highlights several key trends to illustrate the Respondent's insufficient pace of climate mitigation.

- a. In 2022, emissions from industrial sectors were primarily driven by the metal production industry (41%) and the mineral industry (12%). Since 2010, emissions from metal production have remained relatively stable, ranging between 9.5 and 11.2 Mt CO₂e, while emissions from the mineral extraction industry have fluctuated between 2.6 and 3.3 Mt CO₂e over the past three decades. Greater political ambition is required to decarbonize the industrial sector, including the development of robust electricity grids, sufficient renewable energy sources, and incentives for both existing and emerging sustainable technologies.¹⁷⁵

¹⁷³ Umweltbundesamt, 'Klimaschutzbericht 2024' (n 108), 84 ff.

¹⁷⁴ "Treibhausgas-Emissionen nach CRF" (data.gv.at) <<https://www.data.gv.at/katalog/dataset/78bd7b69-c1a7-456b-8698-fac3b24f7aa5>> accessed 28 February 2025. OLI 2023, emissions for 1990-2022. Official publicly available dataset of the Austrian environment agency.

¹⁷⁵ Ibid.

- b. In the transport sector, cars (58% in 2022) as well as lorries and buses (32% in 2022) have been the primary sources of emissions since 1990, with both subsectors still exceeding 1990 levels.¹⁷⁶ In 2024, the Austrian Environmental Agency (“**UBA**”) was commissioned by the Ministry of Climate Protection (“**BMK**”) to identify and assess measures for decarbonizing the transport sector.¹⁷⁷ The resulting report also analysed the GHG effects of fossil fuel subsidies which are relevant for the transportation sector. However, the measures proposed in the report are not new, they have been advocated by NGOs and transport research institutes for years.
- c. New registrations of battery-electric cars declined in 2024 (18%) compared to 2023 (20%),¹⁷⁸ raising concerns that the transport sector may not decarbonize quickly enough, potentially slowing the country’s overall decarbonization efforts. Since internal combustion engine cars having an average lifespan of 15 years,¹⁷⁹ many will remain in use until at least 2040.
- d. The Federal Roads Act, which governs the expansion of federal roads, still includes major projects despite the availability of climate-friendly

¹⁷⁶ Ibid.

¹⁷⁷ Umweltbundesamt, ‘Maßnahmenbericht für eine sozial- und klimaverträgliche Mobilitätswende: Sachstand Mobilität 2024’ (2024) <<https://www.umweltbundesamt.at/fileadmin/site/publikationen/rep0928.pdf>> accessed 28 February 2025.

¹⁷⁸ ‘Kfz-Neuzulassungen’ (Statistik.at), section ‘Historische Daten’ <<https://www.statistik.at/statistiken/tourismus-und-verkehr/fahrzeuge/kfz-neuzulassungen>> accessed 28 February 2025; ‘Collected Vehicle Registration Data’ (Robbie Andrew, CICERO) <<https://robbieandrew.github.io/carsales/>> accessed 28 February 2025.

¹⁷⁹ Agora Energiewende, ‘Der CO2-Preis für Gebäude und Verkehr. Ein Konzept für den Übergang vom nationalen zum EU-Emissionshandel’ (2023), 38 <https://www.agora-energiewende.de/fileadmin/Projekte/2023/2023-26_DE_BEH_ETS_II/A-EW_311_BEH_ETS_II_WEB.pdf> accessed 28 February 2025.

alternatives.¹⁸⁰ Additionally, the share of freight transport by rail has declined in recent years – from 30% in 2017 to 27% in 2023 – moving further away from the government’s strategic target of 34-40%.¹⁸¹

- e. According to the transport NGO VCÖ, in 2023 emissions from aircraft refuelling in Austria have risen to their second-highest level since 2000, with only the pre-pandemic year 2019 recording higher levels.¹⁸²
- f. Emissions in the energy sector have been declining since 2005, primarily due to the decarbonization of electricity generation and heat production. In 2022, approximately 4.8 Mt of GHG were emitted, accounting for around 60% of energy sector emissions and 7% of total national emissions. Meanwhile, emissions from refineries have remained relatively stable, fluctuating between 2.2 and 2.9 Mt GHG over the past 30 years.¹⁸³
- g. Over the past 22 years, emissions from the agriculture sector have remained between 8 and 9 Mt GHG. In 2022, 50% of these emissions originated from the digestive processes of animals, while 21% resulted from fertilizer use. Fertilizer-related emissions have remained stable, fluctuating between 1.7 and 2 million tonnes of GHG for the past 29 years.¹⁸⁴

¹⁸⁰ BMK, ‘Wiener Außenring Schnellstraße Schwechat-Süßenbrunn Strategische Prüfung Verkehr - Umweltbericht’ (2025) <https://www.bmk.gv.at/dam/jcr:b2c25693-eac7-43e0-8a79-df98574ce6d4/SP-V_S1_Umweltbericht.pdf> accessed 28 February 2025.

¹⁸¹ BMK, ‘Masterplan Güterverkehr 2030 Eine Umsetzungsstrategie des Mobilitätsmasterplans 2030 für den klimaneutralen Güterverkehr’ (2023) <https://www.bmk.gv.at/dam/jcr:135c7db3-1cd3-476d-bdcc-45124250ab0c/BMK_Masterplan_Gueterverkehr_UA.pdf> accessed 28 February 2025.

¹⁸¹ Kontext Institut, ‘Gütertransport Straße’ (Kontext Institut, 10 October 2024) <<https://kontext-institut.at/inhalte/guetertransport-strasse/>> accessed 28 February 2025.

¹⁸² ‘VCÖ: Klimaschädliche Emissionen des Flugverkehrs in Österreich im Vorjahr um 40 Prozent gestiegen’ (VCÖ) <<https://vcoe.at/presse/presseaussendungen/detail/vcoe-klimaschaedliche-emissionen-des-flugverkehrs-in-oesterreich-im-vorjahr-um-40-prozent-gestiegen>> accessed 28 February 2025.

¹⁸³ Umweltbundesamt, ‘Klimaschutzbericht 2024’ (n 108), 109, 119.

¹⁸⁴ ‘Treibhausgas-Emissionen nach CRF’ (n 174).

- h. A report by the Federal Environment Agency analyzed measures to reduce agricultural emissions by 40% by 2040 compared to 2005 levels.¹⁸⁵ To achieve this goal, more than 0.270 Mt GHG would need to be reduced annually from 2022 onward – representing a significant shift from the sector’s historically stable emissions over the last two decades.¹⁸⁶
- i. The renovation rate has stagnated at 1.5% since 2015, yet a higher rate is necessary to effectively decarbonize the building sector.¹⁸⁷ While the number of district heating connections and heat pumps continues to grow, the phase-out of climate-damaging heating systems is not progressing quickly enough. Gas heating systems have remained relatively stable, fluctuating between 870,000 and 930,000 units from 2004 to 2022. Oil heating systems saw a decline from 626,000 to 508,000 between 2018 and 2020 but increased again to 521,000 in 2022.¹⁸⁸

89. In view of these shortcomings, a number of scientific studies have been published that show Austria could nevertheless become climate neutral by 2040. In December 2023, the institutions IIASA, Boku and the Austrian Energy Agency published their ‘Netzero2040’ project.¹⁸⁹ The Austrian Environment Agency published its ‘Transition Scenario’ in 2023.¹⁹⁰ In September 2021, a study by four Austrian institutions on the decarbonisation of the industrial sector was

¹⁸⁵ Umweltbundesamt, ‘Reduktion von Treibhausgasen in der Landwirtschaft - Emissionsszenarien’ (2023) <<https://www.umweltbundesamt.at/fileadmin/site/publikationen/rep0856.pdf>> accessed 28 February 2025.

¹⁸⁶ Ibid.

¹⁸⁷ Umweltbundesamt, ‘Klimaschutzbericht 2024’ (n 108), 182.

¹⁸⁸ ‘Energieeinsatz der Haushalte’ (Statistik Austria) <<https://www.statistik.at/statistiken/energie-und-umwelt/energie/energieeinsatz-der-haushalte>> accessed 28 February 2025.

¹⁸⁹ ‘Szenarien zur Erreichung der Klimaneutralität in Österreich bis 2040’ (NetZero2040) <<https://www.netzero2040.at/>> accessed 27 February 2025.

¹⁹⁰ Umweltbundesamt, ‘Energie- und Treibhausgas-Szenario Transition 2040: Bericht für das Szenario Transition 2040 mit einer Zeitreihe von 2020 bis 2050’ (2023) <<https://www.umweltbundesamt.at/fileadmin/site/publikationen/rep0880.pdf>> accessed 28 February 2025.

published.¹⁹¹ And in 2024, a report by the Austrian Grid Infrastructure Plan (“ÖNIP”) showed what needs to be done with regard to the transmission grids in order to achieve climate neutrality by 2040.¹⁹²

90. Existing analyses make clear that the measures currently in place are insufficient to fulfil Austria’s climate commitments under its EU targets. Even with additional policies under discussion, the **Respondent remains off track to achieve climate neutrality by 2050**, underscoring the urgent need for further action. Despite these concerns, there is **no government-led monitoring system for Austria’s CO₂ budget or any comparable framework to track progress systematically**.
91. The above demonstrates the feasibility of the Respondent drastically reducing its GHG emissions; however, the Respondent has, to date, failed to adopt the required measures to implement the necessary reductions in a timely manner.

III. Corrections and Additions to the Facts presented by the Respondent

92. In its Observations and accompanying enclosures, the Respondent presents an analysis of its purported climate change mitigation measures. However, the Applicant has identified significant omissions and inaccuracies. This section will systematically address the material discrepancies and gaps in the Respondent’s Observations.

¹⁹¹ Diendorfer et al., ‘Studie Klimaneutralität Österreichs bis 2040: Beitrag der Österreichischen Industrie’ (September 2021) <https://www.bmk.gv.at/dam/jcr:0ac604d1-7928-492f-991a-4845dce78c27/Begleitstudie_Endbericht.pdf> accessed 28 February 2025.

¹⁹² BMK, ‘Integrierter österreichischer Netzinfrasturkturplan (ÖNIP) Veröffentlichung der finalen Fassung’ (BMK) <<https://www.bmk.gv.at/themen/energie/energieversorgung/netzinfrasturkturplan.html>> accessed 27 February 2025.

1. Austria's constitutional framework

1.1 Environmental protection under the Austrian Constitution

93. The Respondent states that the national objectives enshrined in the Constitution¹⁹³ “gained certain importance as guiding principles for the interpretation of national laws.”¹⁹⁴ To this point, the Applicant first notes that environmental protection is one of many constitutionally enshrined national objectives which serve as overall guiding principles.¹⁹⁵ These objectives function specifically as guidelines for the legislator and the executive when balancing competing interests and exercising discretionary powers.¹⁹⁶ Their practical relevance is, however, severely limited.

94. Contrary to what is alleged by the Respondent,¹⁹⁷ the guiding nature of such principles is particularly restricted when it comes to the environment (and the climate), as demonstrated by case law. In its important ruling regarding Vienna Airport's third runway (see paras 110 *et. seq.* above) the Constitutional Court held that national objectives are to be accorded legal relevance only where the legislator has expressly articulated such intention.¹⁹⁸ This decision effectively suggests that national objectives lack independent, self-executing character.¹⁹⁹ Furthermore, no individual, subjective rights can be directly derived from these objectives.²⁰⁰ As a

¹⁹³ Find a translation of the Austrian Constitution here ‘Federal Constitutional Law - B-VG’ (ris) <https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1930_1> accessed 28 February 2025.

¹⁹⁴ Respondent Observations II. 1.2.

¹⁹⁵ See, e.g., Federal Constitutional Act on Sustainability, Animal Protection, Comprehensive Environmental Protection, on Water and Food Security as well as Research (BVG Nachhaltigkeit), Federal Law Gazette I 111/2013, last updated Federal Law Gazette I 82/2019.

¹⁹⁶ See Zahrl, *Staatszielbestimmungen* (Verlag Österreich, 2024), 35.

¹⁹⁷ Respondent Observations II. 1.2.

¹⁹⁸ VfSlg 20185/2017, para 226.

¹⁹⁹ Mayer, ‘Die Verfassung ist kein Lesebuch’ (2028) 2018(50) ÖBl, 181 (181).

²⁰⁰ See, e.g., Gutknecht, ‘BVG Umwelt’, in: Korinek/Holoubek, *Bundesverfassungsrecht* (19. Lfrg, 2024), para 24; Ennöckl, ‘Klimaschutz und Verfassung’, in: Ennöckl, *Klimaschutzrecht* (2023), 80; Zahrl (n 196) 1 ff.

result, the Applicant cannot rely on any such principles to challenge the Respondent's inadequate climate action.

95. In contrast, subjective rights to environmental protection can be established via the ECtHR and its case law, as the ECHR forms part of the Austrian constitutional framework.²⁰¹ Due to this constitutional status, the case law of the ECtHR has a particularly strong impact on the domestic interpretation and application of the Convention's rights.²⁰² As the Constitutional Court itself stated in 1987: "*In principle, the Constitutional Court considers itself obliged to give the Human Rights Convention, as a constitutional norm, the same content as it has as an international instrument for the protection of human rights and fundamental freedoms. When interpreting it, it must therefore give particular weight to the case law of the European Court of Human Rights as the body primarily responsible for interpreting the Human Rights Convention.*"²⁰³ The jurisprudence of the

²⁰¹ Bertel, 'Klimaschutz und Klimawandelanpassung' (2023) 1a ZfV 42-46, 43. See further, Ennöckl, 'Möglichkeiten einer verfassungsrechtlichen Verankerung eines Grundrechts auf Klimaschutz' (2022) 71 ZöR, 361; Poltschak, 'Verfassungsrechtliche Bindungen des Gesetzgebers im Kontext der Energiewende' (2022) 30 JRP, 353.

²⁰² See thereto generally, Christoph Grabenwarter, '§ 102. Der österreichische Verfassungsgerichtshof', in: Bogdandy/Huber, *Handbuch Ius Publicum Europaeum* (2016), 123; Anna Katharina Struth, "'Principled Resistance' to ECtHR Judgments in Austria', in: Marten Breuer, *Principled Resistance to ECtHR Judgments - a New Paradigm?* (Springer, 2019), 89 ff; BlgNR III-365 XXVII. GP (Bericht Ennöckl, 'Kurzstudie „Möglichkeiten einer verfassungsrechtlichen Verankerung eines Grundrechts auf Klimaschutz“' (2021); Katharina Pabel, 'Rechtliche Implikationen der Völkerrechtsfreundlichkeit: Sonderfall EMRK und EGMR - Österreich' (2023) 83 ZaöRV, 827 ff; Edith Seeber, *Die Bedeutung der Judikatur des Europäischen Gerichtshofs für Menschenrechte in der Judikatur der österreichischen Höchstgerichte über den entschiedenen Fall hinaus* (Dissertation, 2015); Madner, 'Climate Change as a Challenge for Constitutional Courts: Fundamental Freedoms and Duties of Protection – A perspective from Austria' (2023) 42(10-12) HRLJ, 355.

²⁰³ VfSlg 11500/1987: "Der VfGH sieht sich zwar grundsätzlich gehalten, der MRK als Verfassungsnorm jenen Inhalt zu unterstellen, der ihr auch als internationalem Instrument zum Schutze der Menschenrechte und Grundfreiheiten zukommt. Er hat daher bei ihrer Auslegung insbesondere der Rechtsprechung des Europäischen Gerichtshofes als dem zur Auslegung der MRK zunächst berufenen Organ besonderes Gewicht einzuräumen."

Constitutional Court demonstrates a close alignment with the established case law of the ECtHR.²⁰⁴

1.2 Constitutional review mechanism in Austria

96. With regards to constitutional review proceedings, particularly individual applications, such as the constitutional challenge available to individuals under Art 139/140 B-VG, the Applicant wishes to complement the Respondent's remarks²⁰⁵ by referencing the doctrine of **indirect legal addressee** ("*indirekter Normadressat*"). This is noteworthy as the Applicant based its individual application before the Constitutional Court precisely on this doctrine.

97. As per Art 139/140 B-VG, only a person who is directly and legally impacted by an allegedly unconstitutional norm can directly request the Constitutional Court to review the constitutionality of the norm via an individual application (requirement of "*direct affectedness*").²⁰⁶ As outlined by the Respondent, "*direct affectedness*" is determined formally in the Constitutional Court's case law and is dependent upon the wording of the norm under challenge. Thus, to be able to challenge a norm, the person claiming to be affected by it must be directly (i.e., explicitly) addressed by the norm. By this token, the Constitutional Court distinguishes between those "*directly affected*" by the norm and those who are merely affected *de facto/economically*. It generally considers that mere economic impact does not

²⁰⁴ Struth (n 202), 98 ff; Pabel (n 202), 836 ff; see VfSlg 19240/2010, 20306/2019, VfGH 29.09.2022, SV 1/2021 as examples. Grabenwarter/Pabel, *Europäische Menschenrechtskonvention* (C.H. Beck, 6th ed, 2016), 120. Seeber (n 202), 110: "Zweitens sind die Höchstgerichte verpflichtet, die Urteile des EGMR (auch solche, die gegen andere Staaten ergangen sind), als vorrangiges Auslegungsmittel für die Bestimmungen der EMRK heranzuziehen, also der Auslegung der EMRK durch den EGMR in seiner ständigen Judikatur zu folgen." [„Secondly, the supreme courts are obliged to refer to the judgments of the ECtHR (including those handed down against other states) as the primary means of interpreting the provisions of the ECHR, i.e. to follow the interpretation of the ECHR by the ECtHR in its established case law“].

²⁰⁵ Respondent Observations II.2.

²⁰⁶ See Respondent Observations, section III. 3.1.2.

constitute sufficient “affectedness” for the purpose of a review under Art 139/140 B-VG.²⁰⁷

98. In a growing number of cases, the Constitutional Court has expanded its approach to “direct affectedness” by moving away from a strictly formal understanding of who may be considered the addressee of a norm. As such, it accepted that applicants could qualify as “directly affected” by a norm even though they were not explicit (i.e., direct) addressees of the provision,²⁰⁸ if the norm, in its purpose and content, affects the applicant’s legal sphere.²⁰⁹
99. Thus, the Constitutional Court accepted to consider applicants as “*indirect legal addressees*” of challenged norms in numerous cases.²¹⁰ For example, in a case involving the Female Night Working Time Act, female employees successfully challenged provisions of the Act, claiming being indirect legal addressees, despite the Act addressing only employers and not employees. Similarly, phone users successfully challenged data retention measures, even though these norms were directly addressed to telecommunication companies rather than end-users.²¹¹

²⁰⁷ See Rohregger, ‘Art 140 B-VG’, in: Korinek/Holoubek (eds), *Bundesverfassungsrecht, Kommentar* (17. Lfg, 2022), para 169: “The distinction between the addresses of a norm and those merely factually affected by it in practice often entails problems of demarcation. The Constitutional Court’s case law - which has been criticized in this regard - can be qualified as largely formal; only occasionally does the Constitutional Court focus on the normative intent of the provision.” [„Die Unterscheidung zwischen den Adressaten einer Norm und den von ihr bloß faktisch Betroffenen bringt in der Praxis oft schwierige Abgrenzungsprobleme mit sich. Die - diesbezüglich kritisierte⁴⁵⁵ - Rechtsprechung des VfGH ist als weitgehend formal zu qualifizieren; nur gelegentlich stellt der VfGH auf den normativen Sinn der Regelung ab.“]

²⁰⁸ See VfSlg VfSlg. 13.038/1992, 13.558/1993, 15305/1998, 19.349/2011, 19.892/2014, 20.541/2022; VfGH 29.04.2022, V35/2022; VfGH 29.06.2022, V324/2021; VfGH 13.06.2023, V161/2022.

²⁰⁹ VfSlg. 19.349/2011; see also Madner (n 202), 355.

²¹⁰ VfSlg 19.892/2014, sec 1.5.5.

²¹¹ Ibid.

100. The Vice President of the Constitutional Court recently summarized the “current comprehensive review formula applied by the Constitutional Court”²¹² with regard to the doctrine of ‘direct affectedness’ as follows:

*“In Austrian law, an individual application for constitutional review (Individualantrag) can only be filed by persons to whom the legal provision in question, based on its content and purpose, is directed. Thus, a case is admissible only if the claimants can substantiate that the provisions are affecting them directly and presently. However, the Austrian Constitutional Court has held that - depending on the purpose and content of the contested law - even individuals who are not directly addressed by a regulation may be regarded as being directly affected. This is the case if the regulation not only affects the personal (economic) situation of the applicants, but also interferes with their legal sphere. Fundamental rights may constitute a legal sphere in this respect.”*²¹³ [emphasis added]

101. The distinction between non-addressees and “indirect addressees” of a norm is, however, often applied with a lack of transparency, making it difficult to discern upfront if and when an individual might be considered directly impacted in their “legal sphere” by the Constitutional Court.²¹⁴

²¹² Respondent Observations II.4.1.5.

²¹³ Madner (n 202), 355.

²¹⁴ Rohregger, (n 207), para 169; Schäffer/Kneihs, ‘Art 140 B-VG’, in: Kneihs/Lienbacher, *Rill-Schäffer-Kommentar Bundesverfassungsrecht* (29. Lfg, 2022), para 56. See further, e.g., VfGH 29.06.2022, V324/2021 where the Constitutional Court merely points out that direct affectedness is established “[...] because the Applicant has sufficiently demonstrated his current affectedness with his submission regarding his sports activities in a tennis club, whereby it is of no detriment that the contested provision is addressed to the operator of sports facilities” [“(...) weil der Antragsteller mit seinem Vorbringen zu seinen sportlichen Aktivitäten in einem Tennisklub seine aktuelle Betroffenheit hinreichend dargelegt hat, wobei nicht schadet, dass sich die angefochtene Bestimmung an den Betreiber von Sportstätten wendet.“]

102. The Respondent’s reference²¹⁵ to the precedent VfSlg. 8009/1977²¹⁶ regarding the Court’s jurisprudence on individual applications is also valuable in this context. This judgment clearly shows that the strict limits for individual applicants to be granted standing are not derived from the wording of the relevant constitutional provisions (Art 139/140 B-VG) or the VfGG²¹⁷ alone. Notably, the Constitutional Court’s approach to standing has undergone significant evolution since the incorporation of this remedy in the Constitution in 1975.²¹⁸
103. Despite its doctrine of “direct affectedness”, it remains true that it is only possible to address the impacts on a person’s rights via an individual application provided that that person can demonstrate a close connection between a specific provision and the interference with his / her legal sphere. This requirement confirms that there is no possibility to file an *actio popularis* before the Constitutional Court using an individual application.
104. Cases brought by numerous applicants (such as the application filed by the Applicant, which was also filed by over 8,000 applicants,²¹⁹ or a case on data retention from 2012 with over 11,000 applicants²²⁰) are in fact proceedings with a large number of individual applicants addressing the same issue. Despite the appearances, these proceedings are brought individually by each applicant separately, not collectively. In such proceedings the standing of each of the applicants is assessed individually by the Constitutional Court. Any application that does not meet the stringent standing requirements set out above will be declared

²¹⁵ See Respondent observations III. 3.1.6.

²¹⁶ Respondent Observations II.4.1.5; III.3.1.2.

²¹⁷ Find a translation of the VfGG here , Constitutional Court Act 1953 - VfGG’ (ris) <https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1953_85> accessed 28 February 2025.

²¹⁸ Federal Law Gazette 302/1975.

²¹⁹ VfGH 30. September 2020, G 144-145/2020-13, V 332/2020-13, 2.

²²⁰ VfSlg 19892/2012, para 45.

inadmissible.²²¹ On this basis, and unlike the Respondent seems to imply in its Observations,²²² the Applicant reiterates that his individual application before the Constitutional Court was not an *actio popularis* (it is also worth noting that the Constitutional Court itself did not raise any concern in that regard when presented with the application).

105. Additionally, an individual application is also subject to numerous other stringent requirements: Whilst the scope of the challenged norm(s) must not be too narrowly defined in the request, as to render the repeal incapable of eliminating the alleged unconstitutionally,²²³ it must also not be defined too broadly.²²⁴ As otherwise, the applicant is not able to establish an infringement in his legal sphere through these norm(s). Furthermore, any request for repeal must lead to an improvement of the applicant's situation and a remedy of the alleged infringement.²²⁵ Not all inadequacies or partial omissions by the legislator can be addressed by the Constitutional Court in its clearly defined role as "negative legislator"²²⁶ The Constitutional Court tends to apply (also) these additional criteria with *almost surgical precision*²²⁷, as can also be exemplified by case law. To put this

²²¹ See VfGH 10. June 2014 G 62/2012-36, G 70/2012-30, G 71/2012-26 where the Constitutional Court rejects a number of applicants in, as they have not met the admissibility criteria.

²²² Respondent Observations III.3.1.6.

²²³ Grabenwarter/Frank, *B-VG (2020) Art 140*, para 51; VfSlg 5986/1969, 8155/1977, 10.701/1985.

²²⁴ Grabenwarter/Frank, *B-VG (2020) Art 140*, para 52; VfSlg 14.498/1996, 19.894/2014.

²²⁵ Grabenwarter/Frank, *B-VG (2020) Art 140*, para 51; VfSlg 13.299/1992, 14.498/1996, 16.191/2001, 18.776/2009.

²²⁶ The Constitutional Court only has the competence to repeal norms without entirely changing the original intention of the legislator.

²²⁷ Bergthaler, *Klimaklagen - die Hoffnung pendelt zwischen Wien und Straßburg* (Der Standard, 19 July 2024): „Dabei verlangt der VfGH - und das ist die größte formelle Hürde - fast chirurgische Präzision [...]“

in perspective, in 2023, only 4 out of 88 individual applications filed (Art 139 and 140 B-VG combined) were successful in fulfilling the admissibility criteria.²²⁸

106. It is particularly challenging to meet all these criteria in climate cases, as “*on the basis of the previous case law of the Constitutional Court on the strict admissibility requirements for individual applications, it seems almost impossible to demonstrate that the applicant is directly affected.*”²²⁹ Further, the alleged unconstitutionality must be remedied by repealing the contested norm, which is difficult if norms such as the Austrian Climate Protection Act (“**KSG**”)²³⁰ cannot be improved by way of partial repeal of some of its provisions.²³¹

107. All these aspects therefore have cast doubt over the effectiveness of the individual application procedure regarding climate-related claims.²³²

1.3 Examples of Constitutional Court case-law on environmental and climate matters

108. The Respondent states that the Austrian Constitutional Court has set out “*in extensive detail its settled case law*” which it claims provides a “*de facto guidance for the formal design of an individual application, which allows it to deal with the substances of the*

²²⁸ Verfassungsgerichtshof, ‘Tätigkeitsbericht 2023’ (22 May 2023), 105, <<https://www.vfgh.gv.at/verfassungsgerichtshof/publikationen/taetigkeitsberichte.de.html>> accessed 21 February 2025.

²²⁹ Fuchs et al., ‘Studie “Klimaklagen“ in Österreich Rahmenbedingungen und Grenzen des Zugangs zum Verfassungsgerichtshof’ (2025, commissioned by the BMK), 35 [‘Study “Climate Lawsuits” in Austria: Framework and Limits of Access to the Constitutional Court’] <https://www.bmk.gv.at/dam/jcr:8581707c-bf0a-4ec6-b19e-0f627bf8601c/Studie_Klimaklagen-in-Oesterreich_20250224_final.pdf> accessed 28 February 2025: “*so erscheint es auf dem Boden der bisherigen Rechtsprechung des VfGH zu den strengen Zulässigkeitsvoraussetzungen von Individualanträgen für Einzelpersonen als nahezu unmöglich, eine unmittelbare rechtliche Betroffenheit darzutun.*”

²³⁰ Find a translation below in section IV of this document.

²³¹ See, e.g., VfGH, 27 June 2023, G 123/2023-12, para 52.

²³² See, e.g., Blecha, ‘Die gescheiterte Klimaklage’, in: *Jahrbuch Öffentliches Recht* (2021), 168 ff; Ennöckl, *Klimaschutzrecht* (2023) 94.

*concerns in more detail.”*²³³ On this basis, the Respondent concludes, that “[t]herefore, it should be possible for a legal counsel specializing in climate matters to submit an appropriate application.”²³⁴

109. The Applicant strongly disputes the existence of this alleged “*de facto*” guidance. To the contrary: as can be derived from the summary below, all cases similar to Applicant’s have been rejected on procedural grounds and were never examined on the merits, and none of these cases provide for the the so-called guidance which the Respondent claims they do.

a. Decision on the third runaway of the Vienna Airport

110. On 29 June 2017, the Constitutional Court, in proceedings E 875/2017-32 and E 886/2017-31, overturned the decision of the Federal Administrative Court (“**BVwG**”) concerning the construction of a third runaway at the Vienna-Schwechat Airport. The BVwG had refused to approve the construction of a parallel additional runway. In doing so, it took into account the national objectives of climate protection and land consumption enshrined in § 3 BVG Nachhaltigkeit (see above para 93) as in its interpretation of § 71 of the Austrian Aviation Act (“**LFG**”). Since the application of § 71 LFG required a balancing act to be done across different public interests, the BVwG held that public interests must be interpreted consistently with constitutional requirements and the national sustainability objectives established in the BVG Nachhaltigkeit, which forms part of Austria’s constitutional law framework addressing environmental and climate matters (see section III, 1.1 above).

111. In its ruling, the Constitutional Court - contrary to the BVwG - clarified that not all national objectives had to be taken into account when interpreting § 71 para. 1 LFG. Instead, the focus had to be exclusively on the interests expressly prescribed in the LFG itself. According to the Constitutional Court, neither climate

²³³ Respondent Observations II.3.1.5.

²³⁴ Respondent Observations II.3.1.5.5.

protection nor land consumption “*correspond to the provisions of the LFG.*”²³⁵ They should therefore not be included in the balancing of public interests required when deciding if the permit to build a civil airfield should/can be granted.

112. The Constitutional Court also criticized the Federal Administrative Court’s application of international agreements (such as the Kyoto Protocol and the Paris Agreement) and of the KSG, noting that the former are not directly applicable, while the latter does not apply to air traffic. The Respondent’s Observations²³⁶ incorrectly characterize the decision as strengthening environmental interests in the balancing process. Instead, the decision actually diminishes the weight given to environment-related national objectives in legal decisions involving competing interests.

113. Moreover, this decision arose from a procedure concerning an environmental impact assessment and therefore did not engage an individual’s rights to climate protection. Such decision therefore could not have served as guidance in any way whatsoever to the Applicant back in 2020.

b. Decision concerning oil-fired heating systems

114. As the Respondent correctly mentions,²³⁷ the Constitutional Court, in its Decision G 144/2018 dated 10 October 2018, ruled that prohibiting the replacement of oil-fired heating systems with oil condensing boilers for the purpose of energy efficiency is constitutional.²³⁸ The Respondent however omits that this case is fundamentally different from human rights-based climate challenges such as the present one.

²³⁵ VfGH 29 June 2017, E 875/2017-32 ua, para 224.

²³⁶ Respondent Observations II.4.2.1, II.7.3.2. and II.7.3.4.

²³⁷ Respondent Observations II. 4.2.2.

²³⁸ VfGH, 10 October 2018, G 144/2018.

115. More importantly, unlike in the Applicant's case, the norms in question were directly addressing the applicants.²³⁹ Therefore, the applicants did not face the same hurdles regarding "direct affectedness" when it came to demonstrate their standing to file the individual application. Thus, this case could not serve the Applicant as guidance when he filed his individual application with the Constitutional Court. After all, the Applicant's case was premised on a norm that did not directly address him and was therefore fundamentally different from the one that gave rise to Decision G 144/2018.

c. Decision on the Repeal of the Nitrate Action Programme Regulation 2017

116. With regards to the Nitrate Action Programme 2017, the Constitutional Court repealed it in its Decision VfSlg 20.583/2022 from the 10 October 2018, following a ruling from the CJEU,²⁴⁰ that made the Programme no longer compatible with EU law. For several reasons, this case cannot serve as guiding blueprint for the Applicant.

117. First, it did not originate from an individual application, but from an appeals procedure in an ordinary administrative proceeding,²⁴¹ which is not available to the Applicant. In this appeal procedure, the Constitutional Court had doubts as to the conformity of the Programme with EU law, leading to the Constitutional Court to initiate a review procedure *ex officio*.²⁴²

118. Second, the Constitutional Court, with this decision, simply implemented binding EU law. Upon finding that the Nitrate Action Programme was in breach of the CJEU's case law, it was under the obligation to rectify the legal situation

²³⁹ All applicants were Energy suppliers faced with the duty to provide evidence of the annual implementation of eligible energy efficiency measures as per § 10 and 27 EffG, which were the challenged norms.

²⁴⁰ *Wasserleitungsverband Nördliches Burgenland and Others* (Case C-197/18) 3 October 2019.

²⁴¹ VfGH, 5 December 2022, E 394/2021.

²⁴² VfSlg 20.583/2022, paras 17 ff.

with no margin of appreciation.²⁴³ No such claim is available to the Applicant under the EU climate framework, setting out minimum set of obligations.

d. Decision on the second Uthoff individual application

119. In its decision G 106-107/2022-10, V 140/2022-10 dated 27 June 2023,²⁴⁴ the Constitutional Court rejected another application by a different individual suffering from the Uthoff Syndrome seeking, just like the Applicant, to repeal the same tax subsidies for air travels (“**second Uthoff challenge**”).²⁴⁵ However, unlike the Applicant, that individual also occasionally travelled by plane.

120. Relying on the Court’s reasoning in the Applicant’s case, she argued that the tax subsidies granted to the aviation industry pursuant to § 6 (1)(3)(d) VAT Act 1994 and § 4 (1)(1) Mineral Oil Tax Act 1995 were legally addressed to her. She argued that the Respondent’s failure to repeal those harmful measures was interfering with the State’s duty to protect her given that these norms had for effect to incentivize the use by consumers of climate-harmful air travels and in the absence of an overall adequate climate framework. The applicant based her constitutional challenge on her right to protection from the adverse effects of climate change under Art 2 and 8 ECHR/Art 7 CFREU as well as on the infringement of the principle of objectivity (Art 2 StGG/ Art 7 B-VG).

121. The Constitutional Court rejected the application on the ground that the first of these two norms under challenge (§ 6 (1)(3)(d) VAT Act 1994) had been repealed in the meantime (“AbgÄG 2022”²⁴⁶) and that as a result, the applicant was not deemed to be affected, and her application was dismissed for lack of standing.

²⁴³ VfSlg 20.583/2022, paras 38 f and 45; which is undisputed by the Respondent II.4.2.3.

²⁴⁴ Submitted as Doc 37 in the Annex.

²⁴⁵ See Respondent Observations III. 3.1.2., III.3.1.4 and II.4.2.4.

²⁴⁶ With this, tax benefits have been extended to the railways. This however does not affect the applicant’s claim under Art 8, but only his claim under the principle of equality, as climate harmful behaviour is still subsidized by the Respondent.

Despite being competent to do so,²⁴⁷ the Constitutional Court refrained from retrospectively ruling on the constitutionality of the abrogated norm, on the ground that “*the Applicant [was] not affected by this provision [...] and thus [lacked] the legitimacy to challenge it.*”²⁴⁸ With regard to the second norm under challenge, the Constitutional Court upheld its previous reasoning that the obligation to pay mineral oil tax was only born by commercial traders. Therefore, the impact on the applicant was merely economic and did not amount to an infringement of her legal sphere. In deciding so, the Constitutional Court adopted a reasoning contradicting the one it held in the Applicant’s case,²⁴⁹ namely that the choice of means of transportation was not a relevant factor for establishing “direct affectedness” under Art 139/140 B-VG.

122. Like in the Applicant’s case, in the second Uthoff individual application, the Court did not differentiate between the claims under Art 8 (Art 7 CFREU) and Art 2 StGG/Art 7 B-VG - the principle of equality. The Constitutional Court again did not address the merits of the applicant’s claim under Art 8 ECHR/Art 7 CFREU.

123. More generally, this decision created uncertainty as to who could challenge such tax measures altogether,²⁵⁰ as the only party who is directly addressed by the

²⁴⁷ As per Art 140 para 4 B-VG.

²⁴⁸ VfGH, 27 June 2023, G 106-107/2022-10, V 140/2022-10, para 28.

²⁴⁹ Holoubek, *Grundrechtsschutz vor neuen Herausforderungen* (21. ÖJT Band I/1, 2022), 101, Fn 526: "526 Sie seien, da sie ihren Angaben zufolge nicht die Leistungen von Luftfahrtunternehmen, sondern jene von Eisenbahnunternehmen in Anspruch nehmen, jedenfalls keine Adressaten der nur für den Flugverkehr maßgeblichen steuerrechtlichen Vorschriften, VfGH 30. 9. 2020, G 144/2020 ua, Rz 68 ff; **der VfGH ließ es offen, ob dies bei Flugverkehrsteilnehmern anders zu sehen wäre**, siehe VfGH 30. 9. 2020, G 144/2020 ua, Rz 68 [...]." [526 Since, according to their statements, they do not use the services of air carriers but rather those of railway companies, they are in any case not the addressees of the tax regulations that are only relevant for air traffic, VfGH 30.9.2020, G 144/2020 ua, para. 68 ff; **the VfGH left open whether this would be viewed differently for air traffic participants**, see VfGH 30.9.2020, G 144/2020 et al., para. 68 (...)."]

²⁵⁰ See thereto Krömer, ‘VfGH zur Zulässigkeit von Gesetzesprüfungsanträgen betreffend Steuergesetze iZm Klimaschutz’ (2023) 6 RdU 260.

norm is the direct taxpayer (i.e., the aviation company). However, since the aviation sector benefits from the measure, it is unlikely that companies would challenge these measures, let alone be successful.²⁵¹ While railway companies are disadvantaged by the tax exemption on airplane fuel, they too would not be considered affected by the contested norms as they are not directly addressed by them.²⁵² As a result, currently neither individuals nor companies would qualify for legal standing to challenge these tax measures through individual applications under Article 139/140 B-VG.²⁵³ The Applicant maintains that this decision fails to provide any new guidance for future individual applications.

e. Decision on the request to ban fossil fuels

124. In its decision E 1517/2022-14 dated 27 June 2023, the Constitutional Court dealt with an appeal against the decision of the Vienna Administrative Court, confirming the rejection of a challenge to an ordinance by the Federal Minister for Digital and Economic Affairs (“**BMDW**”). Five complainants, including private individuals, a municipality and an environmental organization, requested that the sale of fossil fuels and heating oil to be banned past a certain future cut-off date or for alternative equivalent measures to be taken.

125. Despite the clear wording of § 69 of the Trade Act (“*Gewerbeordnung*”), which expressly grants the respective Minister the *competence* (but not the *obligation*) to issue an ordinance, the applicants in this case requested that an ordinance banning the sale of fossil fuels and heating oil be adopted. They based their arguments on two main points: firstly, they argued that they had a subjective right to claim that the State adopt the requested ordinance on the basis of the Effort Sharing Regulation (Regulation (EU) 2018/842). Second, they invoked the protection granted under the ECHR and argued that the dangers caused by the climate crisis to life, health

²⁵¹ Their claim would have to be considered inadmissible for lack of a detrimental interference with their legal sphere.

²⁵² Marhold, *Klimaklagen* (1st ed, 2024), 48.

²⁵³ *Ibid.*

and the environment obliged the State to take protective measures, including such an ordinance.

126. The Constitutional Court dismissed the appeal and endorsed the decisions issued by the lower instance court. It clarified that the Effort Sharing Regulation does create any subjective rights for citizens to demand the adoption of national measures. With regard to the duty to protect fundamental rights, the Constitutional Court acknowledged the State's obligation to ensure protection against environmental damage but emphasized the legislator's broad scope of action when implementing these duties. A subjective right to a specific measure, such as a request to ban the sale of fossil fuels, cannot be derived from this right to protection against environmental damage.

127. As this case was not premised on any enforceable right and was framed as a "classical" public law responsibility claim, it cannot be considered to provide guidance for the filing an individual application.

f. Decision on an individual application challenging the Climate Protection Act

128. In its ruling G 139/2021-11 dated 27 June 2023, the Constitutional Court declared inadmissible an individual application to abrogate § 3 KSG.²⁵⁴ The applicant argued that § 3 KSG was unconstitutional as it did not set any specific limits or thresholds for GHG emissions and therefore did not ensure the achievement of climate protection targets. He claimed that this violated his fundamental rights, as more drastic, freedom-restricting measures would be necessary in future in order to achieve the climate targets to compensate for the lack of current ambition.

129. The Federal Government replied that the application was inadmissible, as the KSG is a "self-binding law", (i.e., as such only binding the federal and state governments), and does not create any rights or obligations for individuals. It

²⁵⁴ Respondent Observations II.4.2.4; VfGH 27 June 2023, G 139/2021-11.

emphasized that the GHG emissions targets for Austria were stipulated by EU law and that Austria was likely to meet these targets.

130. The Constitutional Court dismissed the application on the ground that the applicant had failed to specify which future measures would allegedly infringe upon particular fundamental rights. Pursuant to § 62 (1) VfGG, an application to abrogate a law as unconstitutional must set out in detail the objections raised against the law and the Court found that the applicant had not sufficiently substantiated these objections in his present case.

131. The Constitutional Court did not address standing requirements. This case therefore does not provide any new guidance to the Applicant either.

g. Decision on an individual application by minors against the Climate Protection Act

132. In its decision G 123/2023-12 dated 27 June 2023, the Constitutional Court declared inadmissible an individual application filed pursuant to 139/140 B-VG by twelve minors, requesting the abrogation of certain sections of the KSG. In the main application, the applicants sought to repeal several provisions located in § 3 (2) KSG relating to the duty to negotiate and not implement measures. In an additional motion filed in the alternative, they sought the abrogation of provisions contained in § 3 (1) and § 6 KSG.²⁵⁵

133. They argued that the contested provisions would make it impossible to take effective climate protection measures and thus violated their constitutionally guaranteed rights under the Federal Constitutional Act on the Rights of the Child (“*BVG Kinderrechte*”). The BVG Kinderrechte in its Art 1 also stipulates a right to intergenerational equity. However, the BVG Kinderrechte does not provide for a specific remedy mechanism to enforce these rights. Thus, the minors addressed

²⁵⁵ VfGH 27 June 2023, G 123/2023-12, para 2. Submitted as Doc 38 in the Annex.

the interference with their constitutionally protected rights by filing an individual application challenging the KSG.

134. The Constitutional Court dismissed the case on procedural grounds, finding that the scope of the application was too narrow and that repealing specific phrases alone would not eliminate the alleged unconstitutionality. Moreover, the proposed abrogation would constitute inappropriate positive legislation by the Constitutional Court, as it would assign a new meaning to the law that exceeds the legislator's original intent.

135. The Constitutional Court did not engage with the merits of the arguments or objections raised. Besides, it was based on constitutional rights exclusively granted to children. This case also does not provide any new guidance to the Applicant.

h. Decision on land consumption and soil sealing

136. In its decision A 17/2023 dated 12 March 2024, the Constitutional Court dismissed a State liability claim claiming that the federal government and the states of Lower Austria and Upper Austria had inadequately implemented EU law obligations pertaining to land consumption and soil sealing.

137. The claimant, an association, sued the defendants for damages and a declaration of liability for future damages due to "legislative injustice". It argued that the defendants had not taken sufficient legal measures to curb land consumption and soil sealing in Austria, thereby violating their obligations under EU law. Concretely, the claimant claimed inadequate implementation of various EU directives for the protection of the environment, soil and water, including the Habitats Directive, the Birds Directive, the Nitrates Directive, the Water Framework Directive and the EIA Directive.

138. The claimant based its argument on several points: it referred to the high level of land consumption in Austria, which, according to the Federal Environment Agency, averages 11.9 hectares per day and is therefore well above the target value set out in the federal government's sustainability strategy. It also cited the negative

effects of land consumption on the climate, environment and health, such as noise, particulate pollution and the loss of agricultural land.

139. However, the Constitutional Court rejected the claim for lack of specificity: the submission did not clearly specify which particular instances of damage were directly caused by which specific alleged violations of EU law. Additionally, the Constitutional Court stated that it only had jurisdiction to hear State liability claims when the damage claimed was directly attributable to the legislator. However, in this case, the action was largely directed against acts of the executive, for which the ordinary courts have jurisdiction. In any event, this case does not provide any new guidance to the Applicant either, as it did not concern an individual application to the Constitutional Court nor the Respondent's omission to adopt an adequate climate framework.

i. Decision on a second individual application by minors against the Climate Protection Act

140. The Constitutional Court's decision G 2274/2023-7 dated 18 June 2024²⁵⁶ concerns the second individual application by seven of the twelve above-mentioned minor applicants,²⁵⁷ through which they sought to repeal different provisions of the KSG based on the court's first decision on the matter. The applicants argued that the time-limited obligation to conduct negotiations on effective GHG reduction measures, which ended in 2020, rendered the Act *de facto* inoperative and infringed their constitutionally guaranteed rights under the Federal Constitutional Act on the Rights of Children and Equality before the Law.

141. The Constitutional Court rejected the application as inadmissible, this time considering that the scope of the first two motions contained in the application

²⁵⁶ VfGH, 18 June 2024, G 2274/2023-7 (A translation is submitted as Doc 39 in the Annex).

²⁵⁷ Individual application by the 12 minors (A translation is submitted as Doc 40 in the Annex).

was too narrow whereas the scope of the third motion was too broad.²⁵⁸ The Court held that the isolated challenge of individual parts of sentences of § 3 (1) and § 6 of the KSG was inadmissible, as these provisions were inextricably linked to the negotiation mechanism provided for in § 3 (2) of the KSG and could thus not be challenged individually.²⁵⁹

142. As for the second alternative motion raised in the application, i.e., the challenge of the entire KSG,²⁶⁰ the Court considered it inadmissible, finding that the scope was too broad since not all provisions in the KSG were inextricably linked with one another.²⁶¹ Further, the Constitutional Court held that not all provision of the KSG could be viewed unconstitutional. Pursuant to these two reasons, the KSG as a whole can therefore not be repealed.

143. The Constitutional Court did not engage with the merits of the arguments based on constitutionally granted children's rights or on the objections raised in the application. It also did not comment on whether other standing requirements were met.²⁶² If anything, this case made clear that, given the structure of the KSG, it is virtually impossible to remedy any alleged unconstitutionality of the Act through judicial review.

144. Considering all the foregoing, the Applicant maintains that neither earlier nor subsequent case law provide any *de facto* guidance that would have influenced the admissibility of his individual application or enabled him to effectively address the legislator's omissions regarding climate mitigation using a different remedy. Rather

²⁵⁸ In order to illustrate the complexity that needed to be addressed by these challenges given the interplay between KSG and Art 139/140 B-VG, the Applicant hereby refers to the application filed in this case of the seven minors Doc 39, section 4, p 19 ff.

²⁵⁹ VfGH, 18 June 2024, G 2274/2023-7, para 30.

²⁶⁰ Indicated as a viable scope in its first decision in VfGH 27.06.2023, G 123/2023-12 paras 52 f

²⁶¹ The Constitutional Court argued that the provision on the National Climate Committee on Climate Protection was not inextricably linked to the other provision and was thus not burdened with the same concerns as to its constitutionality. G 2247/2023-7 para 32.

²⁶² VfGH, 18 June 2024, G 2274/2023-7, para 33.

they all demonstrate that, until today, no attempt by individuals to uphold one's rights to protection against the adverse effects of climate change was successfully addressed by an Austrian domestic court, and that all attempts to that effect were declared inadmissible.

2. Examples of environmental protection and climate measures in Austria

145. The Respondent claims to have “*taken a number of ambitious measures in order to both comply with the requirements of EU law and to put various other environmental measures into action.*”²⁶³

146. Importantly, the Respondent fails to present a fully adequate, and to some extent correct, representation of the current climate-related regulatory framework. The Applicant will address each of the listed examples in turn and will clearly indicate where (additional) facts need to be considered or corrected. Additionally, the Applicant will complement the existing list with relevant examples representing the current state of affair. This aims at demonstrating that the Respondent's current regulatory framework falls short of its claimed ambitions.

2.1. The Climate Protection Act

147. The Austrian Climate Protection Act (“*Klimaschutzgesetz*”, hereinafter “**KSG**”)²⁶⁴ is a federal law consisting of 10 paragraphs which was adopted in 2011 and last updated in 2017. As per § 1 KSG, the Act is aimed at implementing effective measures for climate protection and adhering to GHG emission limits resulting from obligations set out under international or EU law. As such, it establishes a framework for coordinated implementation of climate protection measures until 2020, which must, according to § 2 KSG, “*result in quantifiable,*

²⁶³ Respondent Observations II. 7.1.

²⁶⁴ The full title of the Act is *Federal Act on Compliance with Caps on Greenhouse Gas Emissions and Development of Effective Climate Action*, Federal Law Gazette I 106/2011 last updated Federal Law Gazette I 58/2017.

*reportable, and verifiable reductions of greenhouse gas emissions or enhancement of carbon sinks.*²⁶⁵ The KSG is only addressed at federal and state governments and therefore does not create any (indirect) rights for individuals.²⁶⁶ The key provisions of the KSG are the following:

- a. § 3 (1) KSG states that the relevant GHG emission limits are determined in accordance with international and EU obligations. The maximum limits can be allocated across different sectors (e.g., agriculture, traffic/transportation, fluorinated gases etc.) by the competent minister. Sectoral allocations of GHG emissions reductions are listed in the annex to the KSG mirroring Austria's obligations under the Effort Sharing Decision (“**ESD**”), however this allocation only covers the period 2013 - 2020 and has since not been renewed nor revised. Even the stricter EU targets for 2017-2020 were not adopted in the Act²⁶⁷ (see AS para 25). The KSG itself does not provide for an obligation to review these targets.
- b. § 3 (2) KSG set outs a negotiation mechanism to develop such framework and measures as defined under § 2. The results of negotiations and agreed measures must be promptly implemented (§ 3 (3) KSG) and the Federal Minister of Agriculture, Forestry, Environment and Water Management shall report to the National Committee on Climate Protection on the outcome of the negotiations.
- c. § 4 KSG creates the National Committee on Climate Protection and determines who shall be included and how recommendations shall be adopted. The purpose of this Committee is to advise on fundamental issues of Austrian climate policy.

²⁶⁵ § 2 KSG.

²⁶⁶ Ennöckl, ‘Climate Change Litigation in Austria and Germany: Climate Change Litigation in Germany and Austria - Recent Developments’ (2020) 14 CCLR 306, 311.

²⁶⁷ The 2017 renewal of the KSG did not renew the Annexes. See Federal Law Gazette I 58/2017.

- d. § 6 KSG obliges the Federal Minister of Agriculture, Forestry, Environment and Water Management to submit annual written reports to the National Council and the National Committee on Climate Protection on the progress made in complying with the maximum quantities of GHG emissions.
- e. § 7 KSG sets out that a separate agreement shall define a responsibility mechanism for situations where GHG emission limits as set out in the Annex are exceeded.

148. Several factual and structural problems concerning the KSG exist. First and foremost, the KSG is *de facto* obsolete since the end of 2020, since GHG emission limits are only laid down in the Act for the period of 2013-2020. No binding emission limits have been established for the subsequent period(s),²⁶⁸ which means that the new climate measures will not even be negotiated, let alone set.²⁶⁹ The KSG does not contain any obligation to quantify limitations of remaining GHG-emissions through any sort of methodology, nor does it require Austria to adopt binding climate mitigation intermediary economy-wide targets. It also does not contain Austria's aspirational goal to reach climate neutrality by 2040.²⁷⁰

149. The KSG does not set out any formal or substantial requirements regarding climate measures. Hence, there is no way of assessing their efficacy.²⁷¹ This has

²⁶⁸ Ennöckl, *Klimaschutzrecht* (2023), 112.

²⁶⁹ *Ibid*, 116

²⁷⁰ 'Regierungsprogramm 2020-2024 (Government Program 2020-2024)', 73, available in German at <https://www.dievolkspartei.at/Download/Regierungsprogramm_2020.pdf> accessed 27 February 2025.

²⁷¹ Schulev-Steindl/Hofer/Franke, 'Gutachten zur Evaluierung des Klimaschutzgesetzes' (2020), 18: "Under the KSG system, measures are generally developed before the start of a commitment period, starting with the 2013-2020 commitment period. In practice, however, the planning of measures has so far been divided into several implementation stages (2013 - 2014, 2015 - 2018, 2019 - 2020). On closer inspection of the programmes of measures, it is striking that no estimate of the savings potential has been made for the majority of the measures listed. This makes it impossible to make a well-founded assessment of the contribution of the measures to reducing emissions and thus their suitability in terms of meeting the target values in the individual sectors (as well as the total maximum limits)."

been subject to multiple criticisms and most recently by the Austrian Court of Audit which stated that: “*The measures often lacked clear targets. Information on the estimated impact of each measure, details of implementation, financing and information on whether the measures were new or already in place was not included. Several measures were imprecisely formulated.*”²⁷² In a subsequent follow-up report, the Austrian Court of Audit determined that, of the twenty recommendations made in the sphere of climate protection, only two were implemented fully throughout the duration of the preceding legislative term.²⁷³

150. The National Committee on Climate Protection, meant to advise the Federal Government on climate policy measures, proved to be similarly ineffective, failing to adopt any (non-binding) resolutions.²⁷⁴

151. Additionally, the KSG includes no mechanisms to ensure compliance with the set targets and lacks a system that provides for clear responsibilities and sanction mechanisms in case of non-compliance.²⁷⁵ Also, an agreement as per § 7 KSG, establishing financial responsibility mechanism to sanction missed targets has never been concluded.²⁷⁶ Safeguards against inaction and omission as well as procedural safeguards for individuals or environmental organizations are completely missing. The KSG is thus inadequate to efficiently regulate the reduction of GHG emissions.²⁷⁷

²⁷² Rechnungshof Österreich, ‘Klimaschutz in Österreich - Maßnahmen und Zielerreichung 2020’ (2021), 70 and 71.

²⁷³ Rechnungshof Österreich, ‘Klimaschutz in Österreich; Follow-up-Überprüfung’ (Reihe BUND 2024/37, 2024), 7
<https://www.rechnungshof.gv.at/rh/home/home/home_7/2024_37_Kimaschutz_Oesterreich_FuP.pdf> accessed 27 February 2025.

²⁷⁴ Schulev-Steindl/Hofer/Franke (n 271), 20.

²⁷⁵ Ennöckl (n 268), 114

²⁷⁶ Ibid.

²⁷⁷ Ibid, 120.

152. With the KSG expiring at the end of 2020, various attempts have been made by the civil society to initiate a fundamental revision of the Act. One of these interventions was the climate referendum (*“Klimavolksbegehren”*), a citizen’s initiative, which in 2020 called for, *inter alia*, the adoption of more ambitious targets, a monitoring mechanism and procedural safeguards.²⁷⁸ Although the demands of the citizen’s initiative were discussed in Parliament, no legislative action or revision of the KSG have been initiated to this day. While three draft amendments to the KSG were discussed within the government,²⁷⁹ none of these drafts were ever submitted to the Parliament and none resulted in any legislative action.²⁸⁰ At present, there is no plan for a fundamental revision of the KSG. To this day, all three individual applications to seek a revision of the KSG brought before the Constitutional Court were unsuccessful (see paras 121 *et seq.*).

153. The Respondent’s assertion that *“currently the Climate Act is undergoing fundamental revision regarding the more stringent requirement of achieving climate neutrality in Austria by 2040”*²⁸¹ is therefore wholly misleading and falls short of reflecting the reality of

²⁷⁸ The climate referendum notably called for climate protection to be enshrined in the Constitution, for binding targets to be set for reducing GHG and for the introduction of a “climate check” for laws. In addition, an eco-social tax reform was called for that places a burden on climate-harmful behavior and at the same time relieve the burden on people with low incomes. Finally, massive investment in sustainable mobility and energy supply was called for in order to create a nationwide climate-friendly infrastructure (see Klimavolksbegehren, ‘Unsere Forderungen’ [*Klimavolksbegehren*] <<https://klimavolksbegehren.at/forderungen/>> accessed 27 February 2025). Regarding the Austrian Climate Protection Act, the referendum called for with a Paris-compliant GHG budget, clear responsibilities and countermeasures if targets are not met, for scientific monitoring by an independent body and a fundamental right to climate protection to be enshrined in the Constitution, including a legal protection mechanism for citizens. It also called for a “climate check” for all climate-relevant laws and regulations (see Klimavolksbegehren, ‘Klimaschutzgesetz’ [*Klimavolksbegehren*] <<https://klimavolksbegehren.at/projekte-und-erfolge/klimaschutzgesetz/>> accessed 27 February 2025).

²⁷⁹ See Rechnungshof, Follow-up Überprüfung (n 273), 34.

²⁸⁰ See thereto several calls from the Parliament to finally submit a draft for the KSG, e.g. Entschließungsantrag 1075/UEA XXVII. GP or Entschließungsantrag 712/UEA-BR/2024.

²⁸¹ Respondent Observations II.7.2.1.

Austria's (lack of) progress in adopting an adequate climate mitigation regulatory framework.

2.2 Austria's aspirational 2040 climate neutrality target

154. The Respondent claims to have set a climate neutrality target for 2040,²⁸² which - if effectively implemented - would be even more ambitious than the EU's goal of reaching climate neutrality by 2050. This target was suggested as part of the non-binding government proposal covering the period 2020-2024.²⁸³ The Respondent has yet to transform this political commitment into a legally binding obligation and to adopt legislation establishing the 2040 climate neutrality target.

155. The most recent update of the National Energy and Climate Plan ("**Updated NECP**"), published in December 2024, clarifies that the 2040 climate neutrality target in fact only applies to emissions covered by the ESR and not the ETS sector.²⁸⁴ Thus the 2040 climate neutrality target, in addition to being merely a political aspiration, is also no longer an economy-wide target.

156. At present, the parties currently negotiating a new coalition have not communicated a new agenda concerning the revision or adoption of the 2040 target.²⁸⁵

²⁸² Respondent Observations II.7.1.

²⁸³ Respondent Observations II.7.1.

²⁸⁴ BMK, 'Integrierter nationaler Energie- und Klimaplan für Österreich' (Final Updated Version, 3 December 2024), 39, footnote 21: "im NEKP umfasst das Ziel der Klimaneutralität 2040 die gesamten THG-Emissionen der Sektoren außerhalb des EU Emissionshandelssystems (nicht-EHS) sowie eine Kompensation von verbleibenden Emissionen durch natürliche und technische THG-Senken." ["In the NECP, the target of climate neutrality by 2040 includes all GHG emissions from sectors outside the EU Emissions Trading System (non-ETS) and offsetting of remaining emissions through natural and technical GHG sinks."].

²⁸⁵ There has been outspoken disagreement with the 2040 target by numerous members of the - now former - government, including the former chancellor himself.

2.3 The Environmental Impact Assessment Act

157. In section I. para 7.3.2 of its Observations, the Respondent states that “*EIA procedures focus on the implementation of the goals of the Paris Agreement and climate change and climate action in general.*”²⁸⁶ On this aspect, the Applicant points out that although the Environmental Impact Assessment Act 2000 (“**EIA Act**”) contains some provisions concerning GHG emissions,²⁸⁷ these are limited to the recording and assessment of project-related emissions and their limitation are determined so as “to comply with the state-of-the-art”.²⁸⁸ EIA procedures are project-specific and are resorted to in situations where a project may cause environmental impacts.²⁸⁹ These procedures focus specifically on targeted interventions rather than implementing comprehensive emissions reduction targets or pursuing general

²⁸⁶ Respondent Observations II.7.3.2.

²⁸⁷ See § 6 Abs 1 Z 1 lit e UVP-G: “The environmental impact statement shall contain the following information: 1. a description of the project in terms of location, type and extent, in particular: [...] e) a climate and energy concept: energy needs, broken down by plants, machines and tools as well as by fuels, available energetic ratios, presentation of energy flows, measures on energy efficiency, presentation of the climate-relevant greenhouse gases caused by the project (§ 3 no. 3 of Emissionszertifikatesgesetz (Emission Allowance Trading Act)), and measures aiming at their reduction for the purpose of climate protection, confirmation of an authorised civil engineer or technical office that the measures contained in the climate and energy concept comply with the state-of-the-art; [...]” and § 6 Abs 1 Z 3 UVP-G: “The environmental impact statement shall contain the following information: [...] a description of the aspects of the environment likely to be significantly affected by the project, including, in particular, human beings, biological diversity, including fauna, flora and their habitats, the land used, water, air, climate, landscape, material assets, including the cultural heritage, as well as the inter-relationship between these subjects; [...]”.

²⁸⁸ This is set out in § 17 Abs 2 Z 1 EIA Act and not only, as the Respondent cites, in § 24f, which is only applicable to projects relating to roads. § 17 Abs 2 Z 1 EIA Act states: “Unless already included in applicable administrative provisions, the following additional requirements shall be met with regard to effective precautions to protect the environment: 1. Emissions of polluting substances [...] shall be controlled in accordance with the state of the art” and § 24f Abs 1 Z 1 UVP-G: “Development consents (paragraph 6) shall only be granted if, in addition to the applicable administrative provisions, the following requirements are met with regard to effective precautions to protect the environment: 1. Emissions of polluting substances [...] shall be controlled in accordance with the state of the art; [...]”.

²⁸⁹ Baumgartner/Niederhuber, ‘Klimaschutz und UVP’, in: Ennöckl (ed), *Klimaschutzrecht* (2023), 268 f.

climate objectives. The cumulative effect of various projects and global climate impacts are not considered in the procedures established under the EIA Act.²⁹⁰

158. A project subject to the EIA Act cannot be successfully challenged on the basis of its overall GHG-emissions.²⁹¹ It must be noted that the legality of the project pursuant to the EIA Act is assessed independently of its GHG-footprint. This means that even if a project is GHG-intensive, it can still get approved. There is also no obligation to choose a less GHG-intensive alternative. The disregard to GHG emissions in an EIA proceeding can also be derived from the ruling on the third runway at Vienna Airport (see paras 110 *et. seq.*).²⁹²

159. Thus, the claim that EIA procedures focus on “*the implementation of the goals of the Paris Agreement and climate change and climate action in general*”²⁹³ is plainly false. The EIA Act and the procedures implemented thereunder certainly do not amount to the required climate mitigation regulatory framework the Respondent ought to have in place.

2.4 The Expansion of Energy from Renewable Sources Act

160. The Expansion of Energy from Renewable Sources Act (“*Bundesgesetz über den Ausbau von Energie aus erneuerbaren Quellen, or Erneuerbaren-Ausbau-Gesetz*” - “**EAG**”),²⁹⁴ mentioned by the Respondent at para II. 7.1 and II. 7.5 of its Observations, represents a significant step towards the increase of renewable energies in Austria. However, it presents substantial deficiencies. The goal of achieving 100% renewable electricity supply by 2030 on the balance sheet,²⁹⁵ is purely aspirational. The expansion targets currently in place are insufficient to meet

²⁹⁰ Ibid, 275.

²⁹¹ As emitting CO₂ is not a deciding factor in § 17 and 24f EIA Act.

²⁹² See Baumgartner/Niederhuber (n 289), 289 ff; VfGH 29.6.2017, E 875/2017, E 886/2017.

²⁹³ Respondent Observations II.7.3.2.

²⁹⁴ Erneuerbaren-Ausbau-Gesetz, Federal Law Gazette I 150/2021, last updated Federal Law Gazette I 123/2024.

²⁹⁵ See § 4 (2) Erneuerbaren-Ausbau-Gesetz.

these objectives. The Austrian Network Infrastructure Plan (“ÖNIP”) and the Updated NECP demonstrate that significantly higher targets for solar and wind energies are necessary.²⁹⁶ Besides, the 100% renewable electricity goal is not to be equated with 100% renewable energy across all categories. Currently, electricity consumption accounts for approximately one quarter of Austria’s gross overall energy consumption.²⁹⁷ Furthermore, the EAG lacks concrete measures to promote energy efficiency and reduce energy consumption.

161. Austria’s federal structure poses an additional challenge with respect to implementation of the EAG. Approval procedures greatly differ across federal states.²⁹⁸ This complicates the planning and implementation of projects and leads to delays in the expansion of renewable energies.

2.5 Public participation in the implementation of climate measures

162. The Respondent asserts that “*all programmes, plans and strategies concerned with climate action have been and will be subjected to broad public participation.*”²⁹⁹

163. The Respondent proceeds to enumerate a series of legal acts and associated consultation processes. Based on this enumeration, the Respondent claims that the public is involved in the adoption of all climate protection measures and that their concerns are duly taken into account. However, this assertion is accurate only in the most rudimentary and basic terms. In this context, the Respondent deliberately omits information that essential for the assessment of the status quo.

164. It is indeed the case that the Austrian legal framework allows for comments from the public on proposed legislative instruments, and that social partners are, in principle, involved in the legislative process on an informational basis.

²⁹⁶ NECP (n 140), 92-93; ÖNIP (n 192).

²⁹⁷ Dießner/Neumann, ‘Erneuerbarer Wasserstoff: Ein Streifzug durch die nationale und europäische Förderlandschaft’ (2023) 280 *ecolex* 471.

²⁹⁸ See Stangl, ‘Klimaschutz und erneuerbare Energien’, in: Ennöckl, *Klimaschutzrecht* (2023).

²⁹⁹ Respondent Observations III.4.1.7.7.

Nevertheless, the Respondent conspicuously fails to acknowledge that the public's participatory capacity is, in practical terms, largely confined to the right of providing comments.³⁰⁰ There exists neither a mechanism for the legal enforcement of adherence to such comments, nor a basis upon which a legislative act may be impugned for failure to consider them. The comments are merely required to be published online.³⁰¹ The legality of the enactment is, in essence, wholly separated from the extent to which submitted representations are addressed.

165. This principle extends broadly to the other climate-specific consultation processes cited. While the public was ostensibly engaged in both the Austrian Citizen's Climate Council ("*Klimarat*") and the drafting of the NECP, the actual implementation or adoption of their submissions was, in practical terms, negligible. In essence, formal engagement did not translate into substantive influence. In these consultative processes, too, the participating public lacked any means to compel the legislator to take into consideration their positions. Similarly, no legal recourse is available to challenge the adoption of inadequate measures. This is particularly evident in the criticisms raised by the public, notably NGOs, following the promulgation of the relevant legislative acts and policy programmes.³⁰²

³⁰⁰ § 23b Geschäftsordnungsgesetz 1975, Federal Law Gazette 410/1975 last updated Federal Law Gazette I 81/2024.

³⁰¹ § 23b para 1 and 2 Geschäftsordnungsgesetz.

³⁰² See for example: Global2000, '#Mission2030. Die österreichische Klima- und Energiestrategie' <<https://www.global2000.at/sites/global/files/Analyse-KlimaEnergiestrategie2018.pdf>> accessed 25 February 2025; Climate Change Center Austria (CCCA), 'Stellungnahme von Wissenschaftler:innen zum Entwurf des integrierten nationalen Energie- und Klimaplanes für Österreich (Periode 2021-2030)' <https://ccca.ac.at/fileadmin/00_DokumenteHauptmenue/02_Klimawissen/Offene_Briefe_und_Stellungnahmen/NEKP-Stellungnahme_Wissenschaft_20230829.pdf> accessed 25 February 2025.

166. In this context it is pertinent to observe that, by December 2022, only two of the 93 recommendations of the Austrian Citizens' Climate Council had been fully implemented, while only 28 percent had received partial implementation.³⁰³

167. Also, despite numerous critiques from scientists and NGOs concerning the insufficiency of the mobility strategy "Mission#2030" none of these concerns have been taken into account.³⁰⁴

2.6 The flight tax

168. The Respondent argues that it has "*taken countermeasures and raised the flight tax to promote greener alternatives to air transport, in particular on the 'shortest haul'.*" This flight tax ("*Flugabgabe*")³⁰⁵ requires passengers to pay an additional tax of EUR 30 for flights under 350 km, while flights over 350 km incur a tax of EUR 12.³⁰⁶ However, frequently used short-distance air travels routes, which could be easily done using railways travels, such as Vienna-Munich (356 km) or Vienna-Innsbruck (403 km), fall outside this scope³⁰⁷. Additionally, short haul flights that constitute the first leg of a long-distance flight are also excluded.

169. The Economic Research Institute ("*Wirtschaftsforschungsinstitut*" - hereinafter "**WIFO**") criticized the low tax as constituting a negligible ecological incentive.³⁰⁸

³⁰³ See 'Was wurde eigentlich aus den Forderungen des Klimarats?' (profil, 27 February 2025) <<https://www.profil.at/wissenschaft/was-wurde-eigentlich-aus-den-forderungen-des-klimarats/402282383>> accessed 27 February 2025.

³⁰⁴ Global2000 (n 302).

³⁰⁵ Flugabgabegesetz (Flight Tax Act) Federal Law Gazette I 111/2010, last updated Federal Law Gazette I 96/2020.

³⁰⁶ Respondent Observations II.7.4.

³⁰⁷ Flugabgabegerichtlinien (Flight Tax Guidelines), para 19c <[https://findok.bmf.gv.at/findok/volltext\(suche:Standardsuche\)?segmentId=e52dbd82-25da-4d0e-8f79-1f7b388fc3ab#segmentHeadline1](https://findok.bmf.gv.at/findok/volltext(suche:Standardsuche)?segmentId=e52dbd82-25da-4d0e-8f79-1f7b388fc3ab#segmentHeadline1)> accessed 27 February 2025.

³⁰⁸ WIFO, Klimakonstruktiver Subventionen (n 6), 106: "Im Rahmen eines interkontinentalen Fluges wird ein durchschnittlicher Fluggast seine Entscheidung kaum von der aktuellen Flugabgabe in Höhe von 12 € abhängig machen, entsprechend ist davon auszugehen, dass der ökologische

The Respondent has also not taken any effective measures to reduce emissions from private aircraft. A Greenpeace report³⁰⁹ from 2023 shows that 116,100 private flights took place between 2019 and 2022: 66% of all private flights were shorter than 750 km, and 44% were shorter than 500 km; yet, these flights generated 407,000 t CO₂.³¹⁰

170. Despite the fact that domestic flights are generally subject to VAT tax, the flight tax for short distance flights “includes any applicable VAT.”³¹¹ This arrangement effectively masks the VAT component in the price in domestic short-distance flights, as the same total amount is due for short distance domestic flights (flight tax inclusive of VAT) as is due for international short distance flights (flight tax only), creating a situation where most domestic flights appear to be *de facto* VAT-exempt in practice (even though in theory, they are not).

171. In 2022, the Austrian Environmental Agency reported that domestic flights emissions amounted to 30,000 tonnes GHG, despite Austria having an excellent public transportation infrastructure, and measures such as the “*Klimaticket*”, which incentivize the use of railway travels by making them accessible and affordable.

2.7 Calculation, monitoring and evaluation of climate action in Austria

172. The Respondent claims that “*the actual volume of greenhouse gas emissions and compliance with targets are constantly calculated and monitored.*”³¹² And that therefore “[t]his

Lenkungseffekt bei einer Flugabgabe von 12 € (bzw. 30 € bei "Kürzeststrecken) vernachlässigbar ist.” [“In the context of an intercontinental flight, an average passenger is unlikely to base their decision on the current flight tax of €12, so it can be assumed that the ecological incentive effect of a flight tax of €12 (or €30 for short-haul flights) is negligible.”]

³⁰⁹ Greenpeace, ‘Die Konzerne hinter den österreichischen Privatjets: Eine Greenpeace-Analyse zu den in Österreich gemeldeten Privatjets und Privatflugzeugen’ (Greenpeace, May 2023), 4 <https://greenpeace.at/uploads/2023/08/20230516_die-konzerne-hinter-den-sterreichischen-privatjets.pdf> accessed 27 February 2025.

³¹⁰ Ibid.

³¹¹ § 5 (3) Flugabgabegesetz, § 5 Flugabgabenrichtlinie.

³¹² Respondent Observations III.4.1.7.3.

*shows that the climate action taken by Austria is effective, so that even with deficits still prevailing or improvement potential that is not yet used sufficiently there has been no violation of a positive obligation pursuant to Article 8 of the Convention.*³¹³

173. Whilst the Respondent correctly describes the responsibility of the Austrian Environment Agency (“Umweltbundesamt”) for calculating annual emissions, as well as monitoring past, current and future emissions up to 2050 in accordance with EU law requirements contained in the ESR and the ECL,³¹⁴ the Applicant stresses that the Austrian Environment Agency has, to date, not quantified Austria’s limitation of future domestic GHG-emissions in any many way whatsoever.³¹⁵

174. The Austrian Environment Agency also estimates GHG emissions trajectories and develops scenarios projecting the evolution of Austria’s GHG emissions: (a) based on the mitigation measures and policies the Respondent has currently in place, *i.e.*, scenario with existing measures (“**WEM-scenario**”); and (b) based on mitigation measures and policies currently implemented as well as planned policies that are judged to have a realistic chance to be adopted and implemented in the future by the Respondent, *i.e.*, scenario with additional measures (“**WAM-scenario**”).³¹⁶ The Austrian Environmental Agency has developed an additional, more ambitious scenario (“**Transition Scenario**”)³¹⁷ showing how Austria can achieve climate neutrality by 2040 and how individual sectors will have to develop accordingly (see para 210).

2.8. Green Budgeting, Green Finance and Climate Finance

175. With the ratification of the Paris Climate Agreement, Austria has also agreed on Art 2.1(c) which requires Contracting States to make *“finance flows consistent with*

³¹³ Ibid.

³¹⁴ Respondent Observations II.7.1, III.4.1.7.3.

³¹⁵ *KlimaSeniorinnen*, (n 1) 550.a.

³¹⁶ See Umweltbundesamt, *Klimaschutzbericht* (n 108).

³¹⁷ Umweltbundesamt, *Transition Scenario* (n 190).

a pathway towards low greenhouse gas emissions and climate-resilient development.”³¹⁸ This entails aligning both, government spending and financial systems at large, with international climate targets. The Applicant would like to point out that three areas need to be distinguished in that regard: Green Budgeting, Green Finance and Climate Finance.

176. Green budgeting tracks and analyses the climate impact of budgetary, regulatory, and tax policies. The Ministry of Finance has indeed set up a Green Budgeting division which acknowledges climate-related budget risks, such as high costs for certificates, inadequate adaptation, and stranded assets. In the past years, the division published numerous reports, yet all of them do not provide an assessment of the GHG effects of the analyzed measures.³¹⁹ Due to the lack of data, it is not possible to analyse budget measures and therefore effective green budgeting is not (yet) possible.

177. Green Finance: In its submission, the Respondent mentions its Green Finance Agenda.³²⁰ At present, this agenda is only a non-binding document. It established a voluntary alliance that is committed to aligning its business activities with sustainable principles (the “Green Finance Alliance”). Yet, as of 2023, 9 out of the

³¹⁸ Article 2 para 1 (c) Paris Agreement 2015.

³¹⁹ Bundesministerium für Finanzen, ‘Spending Review Modul 1: Grüne Finanzströme im Bundeshaushalt’ (2022) <https://www.bmf.gv.at/dam/jcr:932718e0-485a-4332-a503-c54364bb1873/Spending%20Review%20Modul%201%20_%20Klima-%20und%20Energie.pdf> accessed 27 February 2025; Bundesministerium für Finanzen, ‘Klima- und Umweltschutz: Übersicht gemäß § 42 Abs. 4 BHG 2013’ (2023) <https://service.bmf.gv.at/Budget/Budgets/2024/beilagen/Klima-_und_Umweltschutz_2024.pdf> accessed 27 February 2025; Bundesministerium für Finanzen, ‘Counterproductive Measures’ (2024) <<https://www.bmf.gv.at/dam/jcr:c23cb74e-2528-465a-a493-07969f7656b3/AT%20Contribution%20for%20COFFIS.pdf>> accessed 27 February 2025.

³²⁰ Respondent Observations III. 4.1.7.5.

10 largest banks³²¹ (2023) in Austria are not members.³²² The Alliance membership still allows financing for the expansion of new fossil fuel infrastructure. The Alliance is a valuable initiative, but nine years after the ratification of the Paris Climate Agreement, significantly more effort is needed to achieve the goal of Art 2.1 (c). For example, Austria's largest bank³²³ invested USD 9.1 billion (loans and underwritings) in fossil fuel companies between 2016 and 2023.³²⁴

178. Climate Finance: Climate finance in Austria is organised via the climate finance strategy³²⁵ and the guidelines³²⁶ issued by the Ministry for Climate Protection. As laid out in the experts reports (section II, 2.7), the excess emissions if Austria would be climate neutral in 2050 and has reduced its emissions by 55% in 2030 and by 90% in 2040 would amount to ad 271 million tons CO₂e compared to its remaining equal per capita carbon budget.³²⁷ The Respondent's climate financing strategy³²⁸ does not provide any targets or concrete mechanisms to compensate for

³²¹ 'Größte Banken Österreichs 2023' (*Statista*) <<https://de.statista.com/statistik/daten/studie/288090/umfrage/banken-in-oesterreich-nach-ihrer-bilanzsumme/>> accessed 27 February 2025.

³²² Ibid.

³²³ Ibid.

³²⁴ 'Fossile Geschäfte der Erste Group' (*Fridays For Future Austria*) <<https://fridaysforfuture.at/erste-group/finanzierungen-details>> accessed 27 February 2025; Rainforest Action Network and others, 'Banking on Climate Chaos: Fossil Fuel Finance Report 2024' (March 2024) <https://www.bankingonclimatechaos.org/wp-content/uploads/2024/07/BOCC_2024_vF3.pdf> accessed 27 February 2025.

³²⁵ Bundesministerium für Klimaschutz, Umwelt, Energie, Mobilität, Innovation und Technologie, 'Strategie Österreichs zur Internationalen Klimafinanzierung Für die Jahre 2024 bis 2030' (2024).

³²⁶ Bundesministerin für Klimaschutz, Umwelt, Energie, Mobilität, Innovation und Technologie, 'Richtlinien der Bundesministerin für Klimaschutz, Umwelt, Energie, Mobilität, Innovation und Technologie für die internationale Klimafinanzierung' (2022) <<https://www.evi.gv.at/a/4911753>> accessed 27 February 2025.

³²⁷ Submitted as Doc 35 in the Annex.

³²⁸ BMK, Klimafinanzierungsstrategie (n 325).

its projected excess emissions. Also, Austria includes³²⁹ its climate finance in its development finance contribution even though these two budgets should be separated as they do not serve the same purpose.

2.9 Key measures that could have strengthened Austria’s climate regulatory framework

179. The Respondent repeatedly asserts that it has adopted all the necessary measures to comply with its EU law obligations and its obligations under the Convention, and that it therefore has an adequate climate regulatory framework in place.³³⁰

180. For the sake of completeness, the Applicant will point to several crucial climate measures which were considered for adoption by the Respondent but were ultimately rejected solely due to lack of political will. None of these measures are mentioned by the Respondent in its Observations. Had these measures been adopted, they would have significantly improved the Respondent’s framework to mitigate climate change. This section therefore serves to show that the Respondent is not taking urgent action in due time concerning the mitigation of the adverse effect of climate change.

a. Carbon Capture and Storage Act

181. A discussion to amend the Carbon Capture and Storage Act (“**CCS Act**”) took place in the government but was never followed through. Currently the CCS Act prohibits Carbon Capture and Storage (“**CCS**”) in Austria for economic purposes, except for scientific purposes.³³¹ Nonetheless, the Austrian NECP (see section III, 3a), referencing to the “Transition Scenario” developed by the Austrian

³²⁹ Bundesministerium Europäische und Internationale Angelegenheiten, ‘Bessere Lebensperspektiven weltweit, mehr Sicherheit in Österreich - Dreijahresprogramm’ (2022).

³³⁰ Respondent Observations III. 4.1.7. and III.7.1.

³³¹ § 2 (2) 1 Rechtsvorschrift für Verbot der geologischen Speicherung von Kohlenstoffdioxid, Federal Law Gazette I 144/2011.

Environment Agency³³² acknowledges that viable CO₂ storage solutions, including CCS, are essential for addressing emissions from hard-to-abate sectors and achieving its climate targets.³³³ Consequently, Austria's Updated NECP aims to store 0.5 million tons of CO₂ through CCS by 2030.³³⁴ Yet, until today no legislative action has been taken to lift the ban. The Applicant emphasizes that the efficiency of CCS technologies remains largely speculative at present. Therefore, it should not be heavily relied upon when developing climate mitigation strategies.

b. Electricity Market Act

182. The Electricity Market Act ("*Elektrizitätswirtschaftsgesetz*" - "**EIWG**") in Austria contains outdated provisions that hinder the transition to renewable energies, e.g., by disadvantaging new technologies like battery storage systems.³³⁵ The EIWG was meant to establish clear guidelines for the efficient and targeted expansion of power grids, as well as regulations for grid access and operation, to address outdated provisions in the current law.³³⁶ Despite its necessity to guide the transition to renewable energies, the ministerial draft was never adopted.³³⁷

³³² Umweltbundesamt, Transition Scenario (n 190).

³³³ Updated NECP (n 140), 89.

³³⁴ Updated NECP (n 140), 276. The Applicant questions the Respondent's approach to the use of CCS in the ESR sector, given that most of the CO₂-intensive industries amenable to CCS are included under the ETS framework. It would therefore not be cost-effective to implement CCS technologies in the ESR sector.

³³⁵ Raho, 'Entwurf zum Elektrizitätswirtschaftsgesetz (EIWG) geht in Beutachtung' (*positionen.wienenergie.at*, 12 January 2024) <<https://positionen.wienenergie.at/blog/elwg-begutachtung/>> accessed 27 February 2025.

³³⁶ 'Elektrizitätswirtschaftsgesetz, Energiearmuts-Definitions-Gesetz; Energie-Control-Gesetz, Änderung' (Parlament Österreich) <<https://www.parlament.gv.at/gegenstand/XXVII/ME/310>> accessed 27 February 2025.

³³⁷ Ibid; 'Entwurf 2024-01-10' 310/ME XXVII.GP

c. Energy Efficiency Act

183. The Energy Efficiency Act (“*Energie Effizienz Gesetz*” - “**EEG**”) ³³⁸ aims to implement the EU Energy Efficiency Directives,³³⁹ which set ambitious targets for reducing energy consumption across member states. EED II requires Austria to limit its final energy consumption to 904 petajoules by 2030.³⁴⁰ Initially, the government sought to pass an ambitious Act with binding targets for both federal and state levels.³⁴¹ However, only a drastically reduced version has been adopted. The weakened EEG cannot meet the requirements set out in Austria’s energy policy. In this regard, the updated NECP recognizes that even with additional measures (WAM scenario), the country would fall short of achieving the necessary reduction in energy consumption by 2030.³⁴² The European Commission has also noted that Austria’s final energy consumption remains above the target.³⁴³

d. Mineral Resources Act

184. Geothermal energy could play a key role in Austria’s efforts to decarbonize the heating sector, with deep geothermal potential estimated between 450 and 700 MWh.³⁴⁴ However, the current regulatory framework poses significant barriers to

³³⁸ Bundes-Energieeffizienzgesetz - EEffG, Federal Law Gazette I 72/2014 last updated Federal Law Gazette I 29/2024.

³³⁹ 2018/2002/EU (EED II) and 2023/1791/EU (EED III).

³⁴⁰ Updated NECP (n 140), 30.

³⁴¹ See thereto ‘Nationalrat: Energieeffizienzgesetz durch mangelnde Zweidrittelmehrheit abgelehnt’ (Parlamentskorrespondenz Nr 565, 24 May 2023) <https://www.parlament.gv.at/aktuelles/pk/jahr_2023/pk0565> accessed 27 February 2025.

³⁴² Updated NECP (n 140), 86.

³⁴³ European Commission, ‘Factsheet: Highlights of the Commission’s assessment of Austria’s draft updated National Energy and Climate Plan’ <https://commission.europa.eu/publications/commission-recommendation-assessment-swd-and-factsheet-draft-updated-national-energy-and-climate-25_en> accessed 27 February 2025.

³⁴⁴ ‘GeoTief EXPLORE (3D) - Integrative Maßnahmen zur systematischen Erforschung und Nutzbarmachung der Tiefen Geothermie im Wiener Becken’ (Energieforschung) <<https://energieforschung.at/projekt/geotief-explore-3d/>> accessed 27 February 2025.

the swift development of this resource. Recognizing these challenges, the Council of Ministers³⁴⁵ as well as the Ministry of Finance³⁴⁶ stressed the need for revisions to the Mineral Resources Act (“*Mineralrohstoffgesetz*” - “**MinRoG**”) to unlock Austria’s geothermal potential. Despite these acknowledgments, no legislative amendments have been introduced.

e. Renewable Energy Expansion Acceleration Act

185. The Renewable Energy Expansion Acceleration Act (“*Erneuerbaren Ausbau Beschleunigungsgesetz*” - “**EABG**”) was aimed at accelerating and simplifying the expansion of renewable energy in line with the Renewable Energy Directive.³⁴⁷ Despite being announced by the government in January 2023, the EABG has not been enacted to this date. The law is seen as a crucial step in accelerating Austria’s energy transition³⁴⁸

³⁴⁵ ‘Tiefengeothermie’ (bmf.gv) < <https://www.bmf.gv.at/themen/klimapolitik/tiefengeothermie.html>> accessed 28 February 2025.

³⁴⁶ Bundesministerium für Finanzen, ‘BMF Positionspapier Tiefengeothermie’ (2024) <<https://www.bmf.gv.at/dam/jcr:193e1af3-8b40-4945-b6d4-9dad0e6c2d3d/BMF%20Positionspapier%20Tiefengeothermie.pdf>> accessed 27 February 2025.

³⁴⁷ Vortrag an den Ministerrat, ‘Erneuerbaren-Ausbau-Beschleunigungsgesetz (“EABG”) 43a/16 ‘ (11 January 2023) <https://www.bundestkanzleramt.gv.at/dam/jcr:fc0aacef-064c-4d36-b317-d2475a4ba4e4/43a_16_mrv.pdf> accessed 27 February 2025.

³⁴⁸ See, e.g., Leonore Gewessler, ‘Anfragebeantwortung: Regierung blockt Energiewende: Was wird aus dem Erneuerbaren-Ausbau-Beschleunigungsgesetz?’ (18671/AB XXVII. GP, 10 September 2024) <https://www.parlament.gv.at/dokument/XXVII/AB/18671/imfname_1654311.pdf> accessed 27 February 2025; Arbeiterkammer Wien, ‘Energiewende: Regierung säumig bei wichtigen Gesetzen’ (26 June 2024) <https://wien.arbeiterkammer.at/service/presse/Energiewende_Regierung_saeumig.html> accessed 27 February 2025.

f. Renewable Heating Act

186. The Renewable Heating Act (“*Erneuerbaren Wärme Gesetz*” - “**EWG**”) has finally been adopted in 2024,³⁴⁹ however, in a significantly watered-down version compared to the initial ministerial draft. Whilst the initial draft foresaw a total ban of fossil fuel heating systems,³⁵⁰ the law now only bans the installation of gas heating systems in newly constructed buildings.³⁵¹ Also, the phase out period for non-renewable heating systems in existing builds was not incorporated into the new Act. Since fossil heating systems typically last 15-20, sometimes even 30 years,³⁵² their continued installation conflicts with the Respondent’s ESR goal of a 48% emissions reduction by 2030.

g. Renewable Natural Gas Law

187. The Renewable Natural Gas Law (“*Erneuerbaren Gase Gesetz*” - “**EGG**”) in Austria aimed to promote the production and use of renewable gas, particularly biogas, in the country’s energy supply.³⁵³ It would have included the ambitious

³⁴⁹ Erneuerbare-Wärme-Gesetz, Federal Law Gazette I 8/2024. Existing oil heating systems, however, should have been decommissioned by 2035 and gas heating systems by 2040 as shown by the original decision in the Council of Ministers ‘Erneuerbaren-Wärme-Gesetz im Ministerrat beschlossen’ (BMK, 3 November 2022) <https://www.bmk.gv.at/service/presse/gewessler/2022/20221103_ewg.html> accessed 27 February 2025.

³⁵⁰ ‘Ministerialentwurf betreffend Bundesgesetz zum Ausstieg aus der fossil betriebenen Wärmebereitstellung (Erneuerbare-Wärme-Gesetz - EWG)’ (Parlament Österreich) <<https://www.parlament.gv.at/gegenstand/XXVII/ME/212>> accessed 27 February 2025.

³⁵¹ § 3 (1) Erneuerbare-Wärme-Gesetz.

³⁵² Fraunhofer IWES/IBP, ‘Wärmewende 2030: Schlüsseltechnologien zur Erreichung der mittel- und langfristigen Klimaschutzziele im Gebäudesektor’ (Agora Energiewende 2017) <https://www.agora-energiewende.de/fileadmin/Projekte/2016/Sektoruebergreifende_EW/Waermewende-2030_WEB.pdf> accessed 27 February 2025.

³⁵³ ‘Ministerialentwurf betreffend Bundesgesetz über die Einführung einer Versorgerverpflichtung für Gas aus erneuerbaren Quellen (Erneuerbares-Gas-Gesetz - EGG)’ (Parlament Österreich) <<https://www.parlament.gv.at/gegenstand/XXVII/ME/251>> accessed 27 February 2025.

requirement for domestic renewable gas production to increase from 0.14 TWh to 7.5 TWh by 2030 through stringent quotas.³⁵⁴ The Act never came into force.³⁵⁵

2.10 Fossil fuel subsidies and projects counteracting climate action in Austria

188. While the Respondent lists public measures supporting the transition to a carbon neutral society, the Respondent fails to mention that a total of up to EUR 5.7 billion in environmentally counterproductive fossil fuel subsidies are directly financed out of the public budget every year.³⁵⁶ If a broader definition of environmentally counterproductive subsidies is applied, such as the definition used by the Austrian Ministry of Finance (which includes the effects of regulatory policy, tax and levy systems and funding and transfer systems),³⁵⁷ then the total amounts to EUR 15 billion per year.³⁵⁸

189. The Economic Research Institute (*“Wirtschaftsforschungsinstitut”* - **“WIFO”**) noted that *“no systematic reform or reduction in the area of subsidies can be identified and the overall volume has increased compared to the 2016 study.”*³⁵⁹ 61% of these subsidies go to the transport sector, which has been responsible for over 20 million tons of GHG emissions annually for the past 22 years. In 2023, Austrian transport emissions were higher by 43% on an absolute comparison, and by 21% on a per capita comparison than in 1990.³⁶⁰

³⁵⁴ Ibid.

³⁵⁵ ‘Grün-Gas-Quote: Bundesrat schickt lückenhaftes Gesetz zurück an den Nationalrat’ (Parlamentsskorrespondenz Nr 817, 10 July 2024) <https://www.parlament.gv.at/aktuelles/pk/jahr_2024/pk0817#XXVII_I_02455> accessed 27 February 2025.

³⁵⁶ WIFO, Klimakontraproduktive Subventionen (n 6), 3 and 161.

³⁵⁷ BMF, Counterproductive Measures (n 319).

³⁵⁸ Steininger et al., ‘Klimapolitik in Österreich: Innovationschance Coronakrise und die Kosten des Nicht-Handelns’ (Wegener Center Research Briefs 1/2020, June 2020), 18, 44.

³⁵⁹ WIFO, Klimakontraproduktive Subventionen (n 6), 3 161.

³⁶⁰ ‘Dashboard Klimadaten’ (Umweltbundesamt) <<https://www.umweltbundesamt.at/klima/dashboard>> accessed 27 February 2025.

190. Austria has adopted several anti-inflationary measures since the beginning of 2022. The rise in energy prices was a major driver of inflation. The WIFO found that no measures were taken to incentivise energy savings. Climate-counterproductive measures totaled EUR 16.9 billion (over 35% of the total relief volume or 93.3% of all energy-related measures), while climate-productive measures amounted only to EUR 530 million.³⁶¹

191. The Austrian Parliament (“*Nationalrat*”) adopted a non-binding resolution (“*Entschließungsantrag*”)³⁶² to abolish these climate-counterproductive subsidies in order to address the requests emerged in the climate referendum (as mentioned above, para 152). However, there has been minimal progress so far in that regard. As flagged in the Application, these are longstanding shortcomings: the EU Commission had already criticized the lack of a list of fossil subsidies in its assessment of Austria’s first NECP in 2019.³⁶³

192. In October 2024, the European Commission³⁶⁴ and, in December 2024, the Austrian Court of Auditors³⁶⁵ (“*Rechnungshof*”) criticized the lack of a concrete plan for reducing these subsidies. Despite the European Commission’s request that the Respondent include a plan or measures in the final version of its NECP showing how it intends to phase out fossil fuel subsidies, no such plan was included in Austria’s final version of its NECP submitted in December 2024.³⁶⁶ In that regard, the Respondent noted in its Updated NECP that “[i]he process of setting up the inter-

³⁶¹ Kettner, Schratzenstaller and Sutrich, ‘Österreichs Anti-Teuerungsmaßnahmen 2022 bis 2026. Treffsicherheit und ökologische Aspekte’ (WIFO Research Briefs 7/2023, May 2023), 4.

³⁶² ‘Entschließung des Nationalrates vom 26. März 2021 betreffend Maßnahmen im Zusammenhang mit dem Klimavolksbegehren’ (160/E XXVII. GP).

³⁶³ European Commission, ‘Commission Staff Working Document: Assessment of the Final National Energy and Climate Plan of Austria’ (14 October 2020), 24 <https://energy.ec.europa.eu/system/files/2021-01/staff_working_document_assessment_necp_austria_en_0.pdf> accessed 27 February 2025.

³⁶⁴ European Commission, ‘Factsheet’ (n 343).

³⁶⁵ Rechnungshof, Follow-up-Überprüfung (n 273).

³⁶⁶ Updated NECP (n 140).

*ministerial working group ('WG counterproductive') has already been launched by the BMF. A more detailed assessment of the concrete implementation is not yet possible as it is not possible to prejudge the outcome of the working group.”*³⁶⁷ As of March 2025, none of the fossil subsidies mentioned in the WIFO analysis of 2022 has been abolished.

193. As mentioned in the Application, the EU Commission already criticized the lack of a list of fossil subsidies in its assessment³⁶⁸ of the final NECP (2019).

194. Furthermore, a January 2025 report by the European Commission, clearly shows that Austria has set not set an end date or only an end date after 2030 for almost 70% of the subsidies analysed.³⁶⁹ The report concludes that “[t]he information currently available on end-dates for these subsidies makes it evident that the EU is not on track to phase out fossil fuel subsidies consistent with its climate ambitions.”³⁷⁰

195. In order to avert an excessive deficit procedure, the Austrian minister of finance had to send a programme concerning savings measures to the EU Commission. The list of measures amounted to EUR 6.39 billion in savings and included the abolishment of 4 decarbonisation-relevant measures and no fossil fuel subsidy.³⁷¹

³⁶⁷ Updated NECP Annex, 8 <[https://commission.europa.eu/document/download/bf386fb1-9b06-4588-93a5-](https://commission.europa.eu/document/download/bf386fb1-9b06-4588-93a5-7e1e6d61d677_en?filename=AT%20%E2%80%93%20FINAL%20UPDATED%20NECP%20%28ANNEX%29%202021-2030%20%28English%29.pdf)

[7e1e6d61d677_en?filename=AT%20%E2%80%93%20FINAL%20UPDATED%20NECP%20%28ANNEX%29%202021-2030%20%28English%29.pdf](https://commission.europa.eu/document/download/bf386fb1-9b06-4588-93a5-7e1e6d61d677_en?filename=AT%20%E2%80%93%20FINAL%20UPDATED%20NECP%20%28ANNEX%29%202021-2030%20%28English%29.pdf)> accessed 28 February 2025.

³⁶⁸ European Commission, ‘Commission Staff Working Document’ (n 363), 24.

³⁶⁹ European Commission, ‘2024 Report on Energy subsidies in the EU’ (COM/2025/17 final), *Figure 15: Fossil fuel subsidies by end-date, share of total FFS (%), 2023* <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52025DC0017>> accessed 27 February 2025.

³⁷⁰ *Ibid*, 14.

³⁷¹ Bundesministerium für Finanzen, ‘Maßnahmenliste’ (16 January 2025) <<https://www.bmf.gv.at/services/startseite-budget.html>> accessed 27 February 2025:

1. Abolition of the climate bonus (€ 1.97 bn). This is paid out annually to compensate for the CO2 tax. The amount varies from region to region and is divided into four levels depending on the accessibility of the municipality by public transport.

3. European climate action

196. The Respondent claims in its Observations that “*Austria has taken exactly such measures as described in II.6.2 above in the EU context*”³⁷² and that “*Austria has taken a number of ambitious measures in order to both comply with the requirements of EU law.*”³⁷³ In light of these unequivocal statements, the Applicant finds it necessary to rectify this matter based on factual evidence.

3.1 EU climate law

197. As The Respondent correctly states, Austria is bound by numerous European legislations relating to environmental and climate protection, particularly the European Green Deal and the “Fit for 55” package.³⁷⁴ This framework setting out minimum standards is also designed to ensure the EU’s compliance with the Paris Agreement.³⁷⁵

- a. The European Climate Law sets the overarching target of climate neutrality by 2050 and requires member states to take necessary measures to meet this

-
2. Abolition of free climate tickets for 18 year old adults (€ 0.44 bn)
 3. abolition of the tax exemption on PV systems, from April 2025 (€ 0.17 bn)
 4. The respondent refers to this measure in its observation
 5. the exemption of e-cars from the motor-related insurance tax are exempted, Austria would like to tax heavy e-cars but the wording is imprecisely chosen (€ 0.07 bn) .

³⁷² Respondent Observations III.4.1.6.

³⁷³ Respondent Observations II. 7.1.

³⁷⁴ ‘A European Green Deal’ (European Commission) <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en> accessed 27 February 2025; ‘Fit for 55’ (Council of the European Union) <<https://www.consilium.europa.eu/en/policies/fit-for-55/>> accessed 27 February 2025.

³⁷⁵ ‘Paris Agreement on climate change’ (Council of Europe, 21 February 2025) <<https://www.consilium.europa.eu/en/policies/paris-agreement-climate/>> accessed 28 February 2025.

goal.³⁷⁶ Both, the European Climate Law and the updated INDC, submitted by the EU and its Member States (“**EU INDC**”), enshrine a new target of 55% emissions reduction by 2030, compared to 1990 levels.³⁷⁷

- b. The EU Emissions Trading System (“**EU ETS**”) establishes a cap-and-trade system for GHG emissions from large industrial installations, requiring covered entities to surrender allowances for their emissions.³⁷⁸
- c. The extended ETS (often referred to as “**EU ETS 2**”) will come into force in 2027 and will cover emissions from buildings and road transport, further expanding the scope of emissions reduction efforts.³⁷⁹
- d. The Effort Sharing Regulation (“**ESR**”) assigns binding minimum annual GHG emissions targets to member states for sectors not covered by the EU ETS.³⁸⁰ The updated ESR requires Austria to reduce its GHG emissions in the non-ETS sector by 48% by 2030, compared to 2005 levels (“**ESR target**”).³⁸¹
- e. The Land Use, Land Use Change and Forestry (“**LULUCF**”) Regulation requires member states to ensure that accounted emissions from land use

³⁷⁶ ‘European Climate Law’ (European Commission) <https://climate.ec.europa.eu/eu-action/european-climate-law_en> accessed 28 February 2025.

³⁷⁷ Respondent Observations II.61.3, II.6.2.1.

³⁷⁸ ‘About the EU ETS’ (European Commission) <https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/about-eu-ets_en> accessed 28 February 2025.

³⁷⁹ ‘ETS2: Buildings, Road Transport and Additional Sectors’ (European Commission) <https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/ets2-buildings-road-transport-and-additional-sectors_en> accessed 28 February 2025.

³⁸⁰ ‘Effort Sharing: Member States’ Emission Targets’ (European Commission) <https://climate.ec.europa.eu/eu-action/effort-sharing-member-states-emission-targets_en> accessed 28 February 2025.

³⁸¹ ‘Effort Sharing 2021-2030: Targets and Flexibilities’ (European Commission) <https://climate.ec.europa.eu/eu-action/effort-sharing-member-states-emission-targets/effort-sharing-2021-2030-targets-and-flexibilities_en> accessed 28 February 2025.

are entirely compensated by an equivalent removal of CO₂ from the atmosphere.³⁸²

- f. The Governance Regulation mandates that member states develop integrated National Energy and Climate Plans (NECP, see section III, 3a) and long-term strategies, ensuring coherent planning and reporting.³⁸³
- g. The Carbon Border Adjustment Mechanism (“**CBAM**”) aims to prevent carbon leakage by putting a carbon price on imports of certain goods from outside the EU.³⁸⁴
- h. The Renewable Energy Directive sets binding minimum targets for renewable energy use.³⁸⁵
- i. The Energy Efficiency Directive establishes measures to improve energy efficiency across the EU.³⁸⁶ For Austria’s EEG, see para 183).

198. Together, these legislative acts create a comprehensive set of minimum obligations for Austria to reduce GHG emissions, increase renewable energy use, improve energy efficiency, and contribute to the EU’s overall climate objectives.

³⁸² ‘Land Use Sector’ (European Commission) <https://climate.ec.europa.eu/eu-action/land-use-sector_en> accessed 28 February 2025.

³⁸³ ‘Governance of the Energy Union and Climate Action’ (European Commission) <https://climate.ec.europa.eu/eu-action/climate-strategies-targets/governance-energy-union-and-climate-action_en> accessed 28 February 2025.

³⁸⁴ ‘Carbon Border Adjustment Mechanism’ (European Commission) <https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en> accessed 28 February 2025.

³⁸⁵ ‘Renewable Energy Directive’ (European Commission) <https://energy.ec.europa.eu/topics/renewable-energy/renewable-energy-directive-targets-and-rules/renewable-energy-directive_en> accessed 28 February 2025.

³⁸⁶ ‘Energy Efficiency Directive’ (European Commission) <https://energy.ec.europa.eu/topics/energy-efficiency/energy-efficiency-targets-directive-and-rules/energy-efficiency-directive_en> accessed 28 February 2025.

199. Lastly, the EU, alongside its members, is party to the Aarhus Convention,³⁸⁷ which obligates its parties to guarantee public rights to access environmental information, participate in environmental decision-making, and seek justice in environmental matters.³⁸⁸

200. In this context it must also be observed that in February 2024, the European Commission presented its assessment for a 2040 EU-wide emissions reduction target for the EU. The Commission recommended reducing the EU’s net GHG emissions by 90% by 2040 relative to 1990 levels. As of February 2025, no legislative development has taken place with respect to this proposal.³⁸⁹

3.2 Austrias shortcomings regarding EU environmental and climate action

201. The Respondent seems to imply that its obligations under EU legislation effectively prevent any non-compliance with EU climate targets.³⁹⁰ However, it is essential to clarify that while these targets constitute a minimum binding regulatory framework, Member States are still required to actively implement national measures to achieve them.

a. National Energy and Climate Plans

202. National Energy and Climate Plans (“NECPs”) are 10-year strategic documents to outline how Member States intend to address the five dimensions of the energy union: decarbonization, energy efficiency, energy security, internal

³⁸⁷ ‘Aarhus’ (European Commission) <https://environment.ec.europa.eu/law-and-governance/aarhus_en> accessed 28 February 2025.

³⁸⁸ ‘Introduction’ (UNECE) <<https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>> accessed 28 February 2025.

³⁸⁹ Additional information available at ‘2040 climate target’ (European Commission) <https://climate.ec.europa.eu/eu-action/climate-strategies-targets/2040-climate-target_en> accessed 28 February 2025.

³⁹⁰ Respondent Observations III.4.1.7.1.

energy market, and research, innovation and competitiveness.³⁹¹ EU Member States were required to submit draft NECPs for 2021-2030 by 31 December 2018, with final versions due by 31 December 2019 and draft updates were due by 30 June 2023, with final updated NECPs to be submitted by 30 June 2024. In Austria, the timely submission of the NECP and more importantly its implementation cannot be enforced.

203. Initially, Austria demonstrated promptness in submitting both its draft and final NECPs for the 2021-2030 period.³⁹² However, the draft update of Austria's NECP was significantly delayed. It did not arrive "*several months*" late as alleged by Respondent³⁹³, but on 20 August 2024 which amounts to a delay of more than a year (417 days). The final updated NECP, originally due on 30 June 2024, was, then, submitted on 20 December 2024 - thus, with another 173-day delay. This led to the European Commission initiating infringement proceedings against Austria on 14 November 2024 ("formal letter of notice" under Art. 258 TFEU), for failing to submit its final updated NECP as required by the Governance Regulation.³⁹⁴

204. In this context, the European Commission officially addressed the shortcomings in Austria's draft updated NECP. On 18 December 2023, the Commission issued Recommendation (EU) 2024/638 on the consistency of

³⁹¹ 'National Energy and Climate Plans' (European Commission) <https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-energy-and-climate-plans_en> accessed 28 February 2025.

³⁹² Find all deadlines and submissions here 'National Energy and Climate Plans' (European Commission) <https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-energy-and-climate-plans_en> accessed 28 February 2025.

³⁹³ Respondent Observations III.2.3.2.

³⁹⁴ INFR(2024)2251, Infringement Proceeding Database <[https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?langCode=EN&version=v1&typeOfSearch=byDecision&page=1&size=10&order=desc&sortColumns=decisionDate&refId=INFR\(2024\)2251&memberState=AT](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?langCode=EN&version=v1&typeOfSearch=byDecision&page=1&size=10&order=desc&sortColumns=decisionDate&refId=INFR(2024)2251&memberState=AT)> accessed 28 February 2028.

Austria's measures with the Union's climate-neutrality objective and with ensuring progress on adaptation.³⁹⁵ The Commission's assessment showed that Austria's progress towards the Union's climate neutrality objective appeared insufficient and criticized that Austria had not submitted a draft update of its latest notified integrated national energy and climate plan, which was essential for achieving the climate-neutrality objective.³⁹⁶

205. The Commission issued several recommendations for Austria to take specific actions, including:

“1. Step up climate mitigation efforts, by making tangible progress on the existing and planned policies and consider additional, urgent measures to align the expected greenhouse gas emission reductions and projections with the climate neutrality objective.”;

and

“4. Establish an appropriate legal framework for climate change adaptation policy and action. [...]”³⁹⁷

206. The Updated NECP, finally submitted on 20 December 2024, outlines three scenarios measuring Austria's ability to comply with its GHG emissions reductions targets. These scenarios are derived from a report commissioned to the Ministry for Climate Protection, the Environment, Energy, Mobility, Innovation and Technology (“*Bundesministerium für Klimaschutz, Umwelt, Energie, Mobilität, Innovation und Technologie*”, hereinafter “**BMK**”), whose final version was still under preparation at the time the Updated NECP was issued.³⁹⁸ The scenarios analysed in this report consist of: (i) Austria's WEM Scenario; (ii) Austria's WAM Scenario;

³⁹⁵ Commission Recommendation (EU) 2024/638 of 18 December 2023 on the consistency of Austria's measures with the Union's climate-neutrality objective and with ensuring progress on adaptation [2024] OJ L 2024/638 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202400638> accessed 28 February 2028.

³⁹⁶ Ibid.

³⁹⁷ Ibid. Notably, the Respondent introduced a new, revised adaptation strategy in 2024, but this did not result in any legally binding framework until today.

³⁹⁸ Updated NECP (n 140), 79, see footnote 33.

and a third scenario, named (iii) Transition Scenario, described as a scenario for which “far-reaching political and socio-economic change is modelled with a view to Austria’s climate neutrality target by 2040.”³⁹⁹ The Updated NECP adds that the Transition Scenario is “*not based on any political decision regarding the necessary measures.*”⁴⁰⁰

207. In respect of each of these scenarios, the Updated NECP notes the following:

208. Under the WEM Scenario, Austria is projected to achieve a GHG emissions reduction in the non-ETS sector of 30% by 2030 compared to 2005 levels.⁴⁰¹ In

³⁹⁹ Updated NECP (n 140), 79.

⁴⁰⁰ Ibid.

⁴⁰¹ Updated NECP (n 140), 79-80: “*Im Jahr 2022 lagen die österreichischen THG-Emissionen im Bereich außerhalb des EU- EHS bei rund 46,2 Mio. t CO₂-Äquivalent. Das Ziel für 2030 liegt (ohne Berücksichtigung der EHS- Flexibilität) bei etwa 29,6 Mio. t CO₂-Äquivalent, was einem Reduktionserfordernis um rund 36 % gegenüber 2022 entspricht. **Das Szenario WEM (2024) weist einen Rückgang der THG-Emissionen bis 2030 auf rund 40,0 Mio. t CO₂-Äquivalent aus, was in etwa einer Reduktion um 30 % gegenüber 2005 entspricht** und eine wesentliche Verbesserung gegenüber dem Szenario WEM 2019 (Grundlage NEKP 2019), v.a. durch inzwischen umgesetzte Maßnahmen, darstellt. Der Modellierung liegen makroökonomische (im Wesentlichen preisliche) sowie demographische Annahmen zugrunde, welche mit diesbezüglichen Empfehlungen der Europäischen Kommission sowie mit Stakeholdern im Inland abgestimmt wurden (s. Tabelle 4). Die Entwicklung des BIP aus den Szenarien entspricht im WEM einer zuvor festgelegten Annahme in Ableitung jüngster Wirtschaftsprognosen; im WAM-Szenario ergibt sich die Variation des BIP durch die ökonomischen Effekte induziert durch die zusätzlichen Klimaschutzmaßnahmen.” [“In 2022, Austrian GHG emissions outside the EU ETS were around 46.2 million tons of CO₂ equivalent. The target for 2030 (excluding the use of ETS flexibilities) is around 29.6 million tons of CO₂ equivalent, which corresponds to a reduction requirement of around 36% compared to 2022. **The WEM (2024) scenario shows a decrease in GHG emissions to around 40.0 million t CO₂ equivalent, which corresponds to a reduction of around 30 % compared to 2005** and represents a significant improvement over the WEM 2019 scenario (based on the NEKP 2019), mainly due to measures that have since been implemented. The modeling is based on macroeconomic (mainly price-related) and demographic assumptions that have been aligned with the relevant recommendations of the European Commission and with domestic stakeholders (see Table 4). In the WEM, the development of GDP from the scenarios corresponds to a previously defined assumption derived from the latest economic forecasts; in the WAM scenario, the variation in GDP results from the economic effects induced by the additional climate protection measures.”]*

other words, with existing measures, Austria's current climate mitigation pathways will lead to miss its ESR target by 18 percentage points.

209. Under the WAM Scenario, Austria is projected to achieve a GHG emissions reduction in the non-ETS sector of 42% by 2030 compared to 2005 levels.⁴⁰² The Updated NECP adds that an additional 4% GHG emissions reduction can be achieved through the implementation of CCS technologies, and the abolition of counter-productive subsidies. In other words, even under the highly speculative WAM Scenario, Austria would still miss its ESR target by 2 percentage points.⁴⁰³ Whilst the gap might appear small in numbers, the Applicant wants to stress that these scenarios are also dependent on technologies which are not yet currently existing or fully developed, which are currently forbidden for commercial use in Austria, such as CCS.⁴⁰⁴ Given the uncertainties surrounding CCS-technologies,

⁴⁰² Updated NECP (n 140), 81: “Das Szenario (WAM) weist die modellgestützten Auswirkungen der in Kapitel 3 dargestellten Maßnahmen auf THG-Emissionen, Energieverbrauch und Wirtschaft (Beschäftigung und Wertschöpfung) auf. Die Detailergebnisse dieses Szenarios sind in Abschnitt 5 dargestellt. Für die Sektoren, welche der ESR unterliegen, weisen die zur Anwendung gebrachten Modelle eine Reduktion der Treibhausgasemissionen bis zum Jahr 2030 auf einen Wert von 33,2 Mio. t CO₂-Äquivalent auf. Dies entspricht einer Reduktion um 42% gegenüber 2005. Durch die Umsetzung von CCS-Projekten und die Abschaffung von kontraproduktiven Förderungen soll ein zusätzliches Potenzial von 2,5 Mio. t CO₂-Äquivalent 2030 im ESR (entsprechend einem Reduktionswert von 46 % gegenüber 2005) realisiert werden. Die verbleibende Lücke von 2 Prozentpunkten zum Zielwert 2030 (-48 % gegenüber 2005) soll durch die Nutzung der sog. ETS-Flexibilität nach Artikel 6 Effort Sharing-Verordnung geschlossen werden.” [“The scenario (WAM) shows the model-based effects of the measures on GHG emissions, energy consumption and the economy (employment and value added) presented in Chapter 3. The detailed results of this scenario are presented in Section 5. For the sectors subject to the ESR, the applied models show a reduction in greenhouse gas emissions to 33.2 million tons of CO₂ equivalent by 2030. This corresponds to a 42% reduction compared to 2005. The implementation of CCS projects and the abolition of counterproductive subsidies should realize an additional potential of 2.5 million t CO₂-eq in 2030 in the ESR (corresponding to a reduction of 46% compared to 2005). The remaining gap of two percentage points to the 2030 target (-48% compared to 2005) is to be closed by using the so-called ETS flexibility under Article 6 of the Effort Sharing Regulation.”]

⁴⁰³ An emission gap that the Respondent wants to close by relying on the flexibility granted to Member States under Art 6 ESR, see *ibid*.

⁴⁰⁴ Currently only allowed for scientific purposes as per § 2 (2) 1 Rechtsvorschrift für Verbot der geologischen Speicherung von Kohlenstoffdioxid, which essentially hinders its development.

best available scientific evidence advises against relying on them as a key solution in emission reduction pathways.⁴⁰⁵ The incorporation of CCS in the WAM Scenario projections therefore calls for a very cautious approach to the projections forecasted under this scenario. The Applicant would also like to question how 0.5 million tonnes of CCS are to be implemented in the ESR sector. The emission-intensive sectors are included under the ETS framework. The waste sector could also fall under the ETS from 2028 onwards,⁴⁰⁶ which is why it is unclear which CO₂ sources are to be equipped with CCS facilities or CO₂-pipelines. The NECP from 2024 does not provide an answer to this.

210. In the Transition Scenario, the Austrian Environment Agency sought to assess the feasibility of reaching climate neutrality by 2040. Under the Transition Scenario, Austria is projected to achieve an economy-wide emissions reduction of 48% and 86% CO₂e by, respectively, 2030 and 2040 compared to 1990 levels.⁴⁰⁷ This amounts to a 57% GHG emissions reduction in the non-ETS sector by 2030 compared to 2005 levels.⁴⁰⁸ These numbers show that the Transition Scenario would enable Austria to meet its ESR 2030 target, however it would not be able to meet its overall goal of climate neutrality in 2040. Indeed, according to the Transition Scenario, Austria would be left with a remainder of 11 million tonnes CO₂e in 2040, and with 9.04 million tonnes CO₂e in 2050 (in both the ETS and

⁴⁰⁵ See thereto UNEP, 'Can carbon dioxide storage help cut greenhouse emissions?' <https://www.ipcc.ch/site/assets/uploads/2018/12/CCS_guide.pdf> accessed 28 February 2025.

⁴⁰⁶ FEAD, 'The ongoing assessment of the potential inclusion of municipal waste incineration and other waste management processes, notably landfilling, in the EU ETS' (28 February 2025) <<https://fead.be/position/fead-position-paper-on-the-ongoing-assessment-of-the-potential-inclusion-of-municipal-waste-incineration-and-other-waste-management-processes-notably-landfilling-in-the-eu-ets/>> accessed 28 February 2025; German Environment Agency, 'Alignment of the EU ETS with the new EU climate target for 2030 and reform of the Market Stability Reserve (MSR)' (16 October 2023) <https://www.umweltbundesamt.de/sites/default/files/medien/11850/publikationen/factsheet_cap_msr_2023_en_v2.pdf> accessed 28 February 2025.

⁴⁰⁷ Umweltbundesamt, 'Transition Scenario' (n 190), 73.

⁴⁰⁸ Umweltbundesamt, 'Transition Scenario' (n 190), 73.

non-ETS sectors).⁴⁰⁹ The report by the Environment Agency Austria notes that there will be no sufficient natural carbon sinks in 2040 to absorb the remaining emissions, which will require Austria to resort to - yet forbidden and sparsely developed -- CCS to eliminate the remainder of these emissions and to reach full climate neutrality.⁴¹⁰

211. Notably, the scientific community in Austria had been proactive in addressing climate challenges. In 2019, scientists developed a Reference-NECP to showcase potential solutions for Austria's decarbonization pathways⁴¹¹ which was submitted as annex to the original application.⁴¹² This effort, involving over seventy climate and transformation research experts, aimed to provide a scientifically sound basis for an ambitious and comprehensive NECP aligned with the Paris climate targets.⁴¹³ The existence of this reference plan highlights that the necessary knowledge and expertise concerning adequate climate mitigation has been widely available.

b. Access to justice for individuals in environmental matters

212. Repeatedly, the Austrian legislator has failed to implement EU law concerning environmental standards and standing requirements. This is an issue of compliance with EU law, as well as, in the latter case, with the Aarhus Convention, to which both the EU and the Respondent are contracting parties. The Applicant lists a few examples demonstrating Austria's repeated failures to comply with these obligations.

⁴⁰⁹ Ibid, 76.

⁴¹⁰ Ibid, 76.

⁴¹¹ Gottfried Kirchengast and others, 'Referenz-Nationaler Energie- und Klimaplan (Ref-NEKP)' (Climate Change Centre Austria, 2019) <https://ccca.ac.at/wissenstransfer/uninetz-sdg-13-alt/referenz-nationaler-klima-und-energieplan-ref-nekp> accessed 28 February 2025

⁴¹² This document was submitted as Doc 15 in the Annex of the original application.

⁴¹³ Kirchengast et al. (n 411), 9.

213. As of 1 March 2025, there are 18 active⁴¹⁴ infringement proceedings started by the EU Commission against Austria in environmental, energy and climate matters. The Respondent has, *inter alia*, been cited for non-conformity in transposing key directives, including the Habitats Directive and Birds Directive (INFR(2023)2045), and the Water Framework Directive (INFR(2024)2162). Austria has also been found to have incorrectly implemented the Waste Directive (INFR(2023)2142) and the National Emission reduction Commitments Directive (INFR(2022)2067). Infringement proceedings were further initiated for the lack of transposition of the RED III Directive, aiming at the substantial expansion of renewable energy (INFR(2024)0208).

214. Regarding access to justice matters, three infringement proceedings shall be highlighted.

⁴¹⁴ INFR(2014)4095, INFR(2014)4111, INFR(2020)0127, INFR(2020)2094, INFR(2020)2104, INFR(2020)2265, INFR(2021)0005, INFR(2021)0133, INFR(2021)2088, INFR(2022)2056, INFR(2022)2067, INFR(2023)2045, INFR(2023)2142, INFR(2024)0208, INFR(2024)2012, INFR(2024)2120, INFR(2024)2162, INFR(2024)2251, see Infringement Database, available at <https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?langCode=EN&version=v1&typeOfSearch=byCase&activeCase=true&dg=CLIMA,ENER,ENV&memberState=AT&page=1&size=10&order=desc&sortColumns=refId> accessed 28 February 2025. Find another 157 closed cases in environmental and climate matters, refuting Respondents claim of full compliance here <https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?langCode=EN&version=v1&typeOfSearch=byCase&activeCase=false&dg=CLIMA,ENV&memberState=AT&page=1&size=10&order=desc&sortColumns=refId> accessed 28 February 2025.

- a. In INFR(2005)0257,⁴¹⁵ Austria failed to communicate the full transposition of Directive 2003/4/EC,⁴¹⁶ which mandates access to environmental information. The CJEU found a violation of EU-Law in C-340/06.⁴¹⁷
- b. INFR(2014)4111,⁴¹⁸ concerns Austria's restriction of access to justice in environmental matters thereby infringing the Aarhus Convention. In several aspects, Austrian law fails to ensure the right to challenge, through judicial review, decisions that may violate environmental regulations through judicial review. This infringement case is active to this day.
- c. In INFR(2020)2094,⁴¹⁹ the Commission issued a reasoned opinion to Austria for failing to fully align its national laws with the EU's Industrial Emissions

⁴¹⁵ See infringement decision database <[https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=DE&typeOfSearch=byDecision&active_only=0&nocom=0&r_dossier=INFR\(2022\)2067&decision_date_from=&decision_date_to=&submit=Search&langCode=EN&version=v1&refId=INFR\(2005\)0257&page=1&size=10&order=desc&sortColumns=decisionDate](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=DE&typeOfSearch=byDecision&active_only=0&nocom=0&r_dossier=INFR(2022)2067&decision_date_from=&decision_date_to=&submit=Search&langCode=EN&version=v1&refId=INFR(2005)0257&page=1&size=10&order=desc&sortColumns=decisionDate)> accessed 28 February 2025.

⁴¹⁶ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.02.2003, 26-32.

⁴¹⁷ CJEU C-340/06, *Commission/ Austria*, ECLI:EU:C:2007:416.

⁴¹⁸ See infringement decision database <[https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=DE&typeOfSearch=byDecision&active_only=0&nocom=0&r_dossier=INFR\(2022\)2067&decision_date_from=&decision_date_to=&submit=Search&langCode=EN&version=v1&refId=INFR\(2014\)4111&page=1&size=10&order=desc&sortColumns=decisionDate](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=DE&typeOfSearch=byDecision&active_only=0&nocom=0&r_dossier=INFR(2022)2067&decision_date_from=&decision_date_to=&submit=Search&langCode=EN&version=v1&refId=INFR(2014)4111&page=1&size=10&order=desc&sortColumns=decisionDate)> accessed 28 February 2025.

⁴¹⁹ See infringement decision database <[https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=DE&typeOfSearch=byDecision&active_only=0&nocom=0&r_dossier=INFR\(2022\)2067&decision_date_from=&decision_date_to=&submit=Search&langCode=EN&version=v1&refId=INFR\(2020\)2094&page=1&size=10&order=desc&sortColumns=decisionDate](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=DE&typeOfSearch=byDecision&active_only=0&nocom=0&r_dossier=INFR(2022)2067&decision_date_from=&decision_date_to=&submit=Search&langCode=EN&version=v1&refId=INFR(2020)2094&page=1&size=10&order=desc&sortColumns=decisionDate)> accessed 28 February 2025.

Directive⁴²⁰. Despite previous notices in 2020 and 2022 and Austria's subsequent measures, gaps remain in areas such as permit conditions, breach protocols, as well as public access to information and justice. The case is still pending and might end up before with the CJEU.⁴²¹

215. In addition to these infringement procedures, the Aarhus Convention Compliance Committee (“**ACCC**”) has repeatedly found Austria to be in breach of the Convention, most recently in October 2021.⁴²² Thus, the claim that “*Austria is meeting its obligations pursuant to the Aarhus Convention*”⁴²³ does not accurately reflect the *status quo*. Rather, these cases demonstrate that Austria does not provide full and adequate standing to individuals in environmental matters.

⁴²⁰ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) [2010] OJ L334/17.

⁴²¹ ‘Industrial Emissions: Commission calls on AUSTRIA to fully transpose EU legislation on industrial emissions’ (European Commission Infringement decisions, 7 February 2024) <https://ec.europa.eu/commission/presscorner/detail/en/inf_24_301> accessed 28 February 2025.

⁴²² See Decision VI/8b concerning compliance by Austria with its obligations under the Convention (Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Sixth session, Budva, Montenegro, 11-13 September 2017) and Decision VII/8b concerning compliance by Austria with its obligations under the Convention (Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Seventh session, Geneva, 18-20 October 2021) available at https://unece.org/env/pp/cc/documents#accordion_1 accessed 28 February 2025.

⁴²³ Respondent Observations II. 7.3.3.

IV. Relevant domestic law

1. Relevant provisions in the Federal Constitutional Act (B-VG)⁴²⁴

<p>Artikel 139. (1) Der Verfassungsgerichtshof erkennt über Gesetzwidrigkeit von Verordnungen</p> <ol style="list-style-type: none">1. auf Antrag eines Gerichtes;2. von Amts wegen, wenn er die Verordnung in einer bei ihm anhängigen Rechtssache anzuwenden hätte;3. auf Antrag einer Person, die unmittelbar durch diese Gesetzwidrigkeit in ihren Rechten verletzt zu sein behauptet, wenn die Verordnung ohne Fällung einer gerichtlichen Entscheidung oder ohne Erlassung eines Bescheides für diese Person wirksam geworden ist;4. auf Antrag einer Person, die als Partei einer von einem ordentlichen Gericht in erster Instanz	<p>Article 139. (1) The Constitutional Court pronounces judgement on whether or not ordinances based on law</p> <ol style="list-style-type: none">1. on application by a court2. ex officio in so far as the court will have to apply the ordinance in a suit pending before him3. on application by a person who alleges to have infringement in her rights directly by the lack of a basis in law, if the ordinance has become effective without a judicial decision having been rendered or a ruling having been rendered has become effective for this person;
---	---

⁴²⁴ Find the whole Federal Constitutional Act translated here 'Federal Constitutional Law - B-VG' (ris) <https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=ErV&Titel=b-vg&Quelle=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Position=1&SkipToDocumentPage=true&ResultFunctionToken=4cba7e51-a4ba-4fa3-85da-a73cc9478d71&Dokumentnummer=ERV_1930_1> accessed 28 February 2025.

<p>entschiedenen Rechtssache wegen Anwendung einer gesetzwidrigen Verordnung in ihren Rechten verletzt zu sein behauptet, aus Anlass eines gegen diese Entscheidung erhobenen Rechtsmittels;</p> <p>5. einer Bundesbehörde auch auf Antrag einer Landesregierung oder der Volksanwaltschaft;</p> <p>6. einer Landesbehörde auch auf Antrag der Bundesregierung oder, wenn landesverfassungsgesetzlich die Volksanwaltschaft auch für den Bereich der Verwaltung des betreffenden Landes für zuständig erklärt wurde, der Volksanwaltschaft oder einer Einrichtung gemäß Art. 148i Abs. 2;</p> <p>7. einer Aufsichtsbehörde nach Art. 119a Abs. 6 auch auf Antrag der Gemeinde, deren Verordnung aufgehoben wurde.</p> <p>Auf Anträge gemäß Z 3 und 4 ist Art. 89 Abs. 3 sinngemäß anzuwenden.</p> <p>(1a) Wenn dies zur Sicherung des Zwecks des Verfahrens vor dem ordentlichen Gericht erforderlich ist,</p>	<p>4. on application by a person who, as a party in a legal matter that has been decided by a court of justice of first instance, alleges infringement of his rights because of the application of an ordinance that lacks a basis in law, on the occasion of an appeal filed against that decision;</p> <p>5. in the case of ordinances of a Federal authority also upon application by a Provincial Government or the Ombudsman;</p> <p>6. in the case of ordinances of an authority of a province also at the request of the Federal Government or, to the extent the constitutional law of a province has declared competent the Ombudsman also for the sphere of competence of the administration of the respective province, the Ombudsman or an institution pursuant to Art. 148i para 2.</p>
--	--

<p>kann die Stellung eines Antrages gemäß Abs. 1 Z 4 durch Bundesgesetz für unzulässig erklärt werden. Durch Bundesgesetz ist zu bestimmen, welche Wirkung ein Antrag gemäß Abs. 1 Z 4 hat.</p> <p>(1b) Der Verfassungsgerichtshof kann die Behandlung eines Antrages gemäß Abs. 1 Z 3 oder 4 bis zur Verhandlung durch Beschluss ablehnen, wenn er keine hinreichende Aussicht auf Erfolg hat.</p> <p>(2) Wird in einer beim Verfassungsgerichtshof anhängigen Rechtssache, in der der Verfassungsgerichtshof eine Verordnung anzuwenden hat, die Partei klaglos gestellt, so ist ein bereits eingeleitetes Verfahren zur Prüfung der Gesetzmäßigkeit der Verordnung dennoch fortzusetzen.</p> <p>(3) Der Verfassungsgerichtshof darf eine Verordnung nur insoweit als gesetzwidrig aufheben, als ihre Aufhebung ausdrücklich beantragt wurde oder als er sie in der bei ihm anhängigen Rechtssache anzuwenden hätte. Gelangt der</p>	<p>7. in the case of ordinances of a supervisory authority according to Art. 119a para 6 also on application of the municipality whose ordinance has been rescinded.</p> <p>Art. 89 para 3 shall apply accordingly to applications pursuant to subparas 3 and 4.</p> <p>(1a) If it is required to safeguard the purpose of the proceedings before the court of justice, filing an application pursuant to para 1 subpara 4 can be declared inadmissible by a federal law. A federal law has to specify the effects of an application pursuant to para 1 subpara 4.</p> <p>(1b) The Constitutional Court can refuse, by order, to deal with an application pursuant to para 1 subpara 3 or 4 until the time of the hearing if the application does not have sufficient prospects of success.</p> <p>(2) If the litigant in a suit lodged with the Constitutional Court, entailing application of an ordinance by the Constitutional Court, receives satisfaction, the proceedings initiated to</p>
--	---

<p>Verfassungsgerichtshof jedoch zur Auffassung, dass die ganze Verordnung</p> <ol style="list-style-type: none"> 1. der gesetzlichen Grundlage entbehrt, 2. von einer unzuständigen Behörde erlassen wurde oder 3. in gesetzwidriger Weise kundgemacht wurde, <p>so hat er die ganze Verordnung als gesetzwidrig aufzuheben. Dies gilt nicht, wenn die Aufhebung der ganzen Verordnung offensichtlich den rechtlichen Interessen der Partei zuwiderläuft, die einen Antrag gemäß Abs. 1 Z 3 oder 4 gestellt hat oder deren Rechtssache Anlass für die Verordnungsprüfungsverfahren gegeben hat. amtswegige Einleitung des</p> <p>(4) Ist die Verordnung im Zeitpunkt der Fällung des Erkenntnisses des Verfassungsgerichtshofes bereits außer Kraft getreten und wurde das Verfahren von Amts wegen eingeleitet oder der Antrag von einem Gericht oder von einer Person gestellt, die durch die Gesetzwidrigkeit der Verordnung in ihren Rechten verletzt zu sein behauptet, so hat der</p>	<p>examine the ordinance's accordance with the law shall nevertheless continue.</p> <p>(3) The Constitutional Court may rescind an ordinance as lacking a basis in law only to the extent that its rescission was expressly requested or he would have had to apply it in the pending suit. If the Constitutional Court reaches the conclusion that the whole ordinance</p> <ol style="list-style-type: none"> 1. has no foundation in law, 2. was issued by an authority without competence in the matter, or 3. was published in a manner not in accordance with the law, <p>it shall rescind the whole ordinance as not based on law. This does not hold well if rescission of the whole ordinance manifestly runs contrary to the legitimate interests of the litigant who has filed an application pursuant to the para 1 subpara 3 or 4 above or whose suit has been the occasion for the ex officio initiation of examination proceedings into the ordinance.</p> <p>(4) If the ordinance has at the time of the Constitutional Court's delivery of its</p>
---	---

<p>Verfassungsgerichtshof auszusprechen, ob die Verordnung gesetzwidrig war. Abs. 3 gilt sinngemäß.</p> <p>(5) Das Erkenntnis des Verfassungsgerichtshofes, mit dem eine Verordnung als gesetzwidrig aufgehoben wird, verpflichtet die zuständige oberste Behörde des Bundes oder des Landes zur unverzüglichen Kundmachung der Aufhebung. Dies gilt sinngemäß für den Fall eines Ausspruches gemäß Abs. 4. Die Aufhebung tritt mit Ablauf des Tages der Kundmachung in Kraft, wenn nicht der Verfassungsgerichtshof für das Außerkrafttreten eine Frist bestimmt, die sechs Monate, wenn aber gesetzliche Vorkehrungen erforderlich sind, 18 Monate nicht überschreiten darf.</p> <p>(6) Ist eine Verordnung wegen Gesetzwidrigkeit aufgehoben worden oder hat der Verfassungsgerichtshof gemäß Abs. 4 ausgesprochen, dass eine Verordnung gesetzwidrig war, so sind alle Gerichte und Verwaltungsbehörden an den Spruch des Verfassungsgerichtshofes gebunden. Auf die vor der Aufhebung verwirklichten Tatbestände mit Ausnahme des Anlassfalles ist jedoch</p>	<p>ruling has already ceased to be in force and the proceedings were initiated ex officio or the application was filed by a court or an applicant alleging infringement of his personal rights through the ordinance's lack of a basis in law, the Constitutional Court must pronounce whether the ordinance lacked a basis in law. Para 3 above applies accordingly.</p> <p>(5) The ruling of the Constitutional Court which rescinds an ordinance as lacking a basis in law imposes on the highest competent federal or provincial authority in the obligation to publish the rescission without delay. This applies accordingly in the case of a pronouncement pursuant to para 4 above. The rescission enters into force upon expiry of the day of publication if the Constitutional Court does not set a deadline, which may not exceed six months or if legal dispositions are necessary 18 months, for the rescission.</p> <p>(6) If an ordinance has been rescinded as lacking a basis in law or if the Constitutional Court has pursuant to para 4 above pronounced an ordinance to have lacked a basis in law, all courts and administrative authorities are bound</p>
--	--

<p>die Verordnung weiterhin anzuwenden, sofern der Verfassungsgerichtshof nicht in seinem aufhebenden Erkenntnis anderes ausspricht. Hat der Verfassungsgerichtshof in seinem aufhebenden Erkenntnis eine Frist gemäß Abs. 5 gesetzt, so ist die Verordnung auf alle bis zum Ablauf dieser Frist verwirklichten Tatbestände mit Ausnahme des Anlassfalles anzuwenden.</p> <p>(7) Für Rechtssachen, die zur Stellung eines Antrages gemäß Abs. 1 Z 4 Anlass gegeben haben, ist durch Bundesgesetz zu bestimmen, dass das Erkenntnis des Verfassungsgerichtshofes, mit dem die Verordnung als gesetzwidrig aufgehoben wird, eine neuerliche Entscheidung dieser Rechtssache ermöglicht. Dies gilt sinngemäß für den Fall eines Ausspruches gemäß Abs. 4.</p>	<p>by the Constitutional Court's decision, the ordinance shall however continue to apply to the circumstances effected before the rescission, the case in point excepted, unless the Constitutional Court in its rescissory ruling decides otherwise. If the Constitutional Court has in its rescissory ruling set a deadline pursuant to para 5 above, the ordinance shall apply to all the circumstances effected, the case in point excepted, until expiry of this deadline.</p> <p>(7) For legal matters that gave reason to file an application pursuant to para 1 subpara 4, a federal law has to specify that the ruling by the Constitutional Court with which the ordinance is rescinded as lacking a basis in law allows for a new decision to be made in that matter. The same shall apply accordingly in the case of a pronouncement pursuant to para 4.</p>
--	--

<p>Artikel 140. (1) Der Verfassungsgerichtshof erkennt über Verfassungswidrigkeit</p> <p>1. von Gesetzen</p> <p>a) auf Antrag eines Gerichtes;</p>	<p>Article 140. (1) The Constitutional Court pronounces judgement on the unconstitutionality</p> <p>1. of laws</p> <p>a) on application by a court;</p>
---	--

<p>b) von Amts wegen, wenn er das Gesetz in einer bei ihm anhängigen Rechtssache anzuwenden hätte;</p> <p>c) auf Antrag einer Person, die unmittelbar durch diese Verfassungswidrigkeit in ihren Rechten verletzt zu sein behauptet, wenn das Gesetz ohne Fällung einer gerichtlichen Entscheidung oder ohne Erlassung eines Bescheides für diese Person wirksam geworden ist;</p> <p>d) auf Antrag einer Person, die als Partei einer von einem ordentlichen Gericht in erster Instanz entschiedenen Rechtssache wegen Anwendung eines verfassungswidrigen Gesetzes in ihren Rechten verletzt zu sein behauptet, aus Anlass eines gegen diese Entscheidung erhobenen Rechtsmittels;</p> <p>2. von Bundesgesetzen auch auf Antrag einer Landesregierung, eines Drittels der Mitglieder des</p>	<p>b) ex officio in so far as he will have to apply such a law in a suit pending before him;</p> <p>c) on application by a person who alleges to have infringement of his rights directly by unconstitutionality, if the ordinance has become effective without a judicial decision having been rendered or a ruling having been rendered has become effective for this person;</p> <p>d) on application by a person who, as a party in a legal matter that has been decided by a court of justice of first instance, alleges infringement of his rights because of the application of an unconstitutional law, on the occasion of an appeal filed against that decision;</p> <p>2. of federal laws also on application by a Provincial Government, a third of the members of the National Council or a third of the members of the Federal Council.</p>
--	--

<p>Nationalrates oder eines Drittels der Mitglieder des Bundesrates;</p> <p>3. von Landesgesetzen auch auf Antrag der Bundesregierung oder, wenn dies landesverfassungsgesetzlich vorgesehen ist, auf Antrag eines Drittels der Mitglieder des Landtages.</p> <p>Auf Anträge gemäß Z 1 lit. c und d ist Art. 89 Abs. 3 sinngemäß anzuwenden.</p> <p>(1a) Wenn dies zur Sicherung des Zwecks des Verfahrens vor dem ordentlichen Gericht erforderlich ist, kann die Stellung eines Antrages gemäß Abs. 1 Z 1 lit. d durch Bundesgesetz für unzulässig erklärt werden. Durch Bundesgesetz ist zu bestimmen, welche Wirkung ein Antrag gemäß Abs. 1 Z 1 lit. d hat.</p> <p>(1b) Der Verfassungsgerichtshof kann die Behandlung eines Antrages gemäß Abs. 1 Z 1 lit. c oder d bis zur Verhandlung durch Beschluss ablehnen, wenn er keine hinreichende Aussicht auf Erfolg hat.</p> <p>(2) Wird in einer beim Verfassungsgerichtshof anhängigen</p>	<p>3. of provincial legislation also at the request of the Federal Government or, if the constitutional law of a province so provides, at the request of a third of the members of the Provincial Parliament.</p> <p>Art. 89 para 3 shall apply accordingly to applications pursuant to subpara 1 (c) and (d).</p> <p>(1a) If it is required to safeguard the purpose of the proceedings before the court of justice, filing an application pursuant to para 1 subpara 1 (d) can be declared inadmissible by a federal law. A federal law has to specify the effects of an application pursuant to para 1 subpara 1 (d).</p> <p>(1b) The Constitutional Court can refuse, by order, to deal with an application pursuant to para 1 subpara 1 (c) or (d) until the time of the hearing if the application does not have sufficient prospects of success.</p> <p>(2) If the litigant in a suit lodged with the Constitutional Court, entailing application of a law by the Court, receives satisfaction, the proceedings initiated to examine the law's</p>
---	---

<p>Rechtssache, in der der Verfassungsgerichtshof ein Gesetz anzuwenden hat, die Partei klaglos gestellt, so ist ein bereits eingeleitetes Verfahren zur Prüfung der Verfassungsmäßigkeit des Gesetzes dennoch fortzusetzen.</p> <p>(3) Der Verfassungsgerichtshof darf ein Gesetz nur insoweit als verfassungswidrig aufheben, als seine Aufhebung ausdrücklich beantragt wurde oder als der Verfassungsgerichtshof das Gesetz in der bei ihm anhängigen Rechtssache anzuwenden hätte. Gelangt der Verfassungsgerichtshof jedoch zu der Auffassung, dass das ganze Gesetz von einem nach der Kompetenzverteilung nicht berufenen Gesetzgebungsorgan erlassen oder in verfassungswidriger Weise kundgemacht wurde, so hat er das ganze Gesetz als verfassungswidrig aufzuheben. Dies gilt nicht, wenn die Aufhebung des ganzen Gesetzes offensichtlich den rechtlichen Interessen der Partei zuwiderläuft, die einen Antrag gemäß Abs. 1 Z 1 lit. c oder d gestellt hat oder deren Rechtssache Anlass für die amtswegige Einleitung des</p>	<p>constitutionality shall nevertheless continue.</p> <p>(3) The Constitutional Court may rescind a law as unconstitutional only to the extent that its rescission was expressly requested or the Constitutional Court would have to apply the law in the suit pending with it. If however the Constitutional Court concludes that the whole law was enacted by a legislative body unqualified in accordance with the allocation of competence or published in an unconstitutional manner, it shall rescind the whole law as unconstitutional. This does not apply if rescission of the whole law manifestly runs contrary to the legitimate interests of the litigant who has filed an application pursuant to para 1 subpara 1 (c) or (d) above or whose suit has been the occasion for the ex officio initiation of examination proceedings into the law.</p> <p>(4) If the law has at the time of the Constitutional Court's delivery of its ruling has already ceased to be in force and the proceedings were initiated ex officio or the application filed by a court or an applicant alleging infringement of his rights through the law's</p>
---	---

<p>Gesetzesprüfungsverfahrens gegeben hat.</p> <p>(4) Ist das Gesetz im Zeitpunkt der Fällung des Erkenntnisses des Verfassungsgerichtshofes bereits außer Kraft getreten und wurde das Verfahren von Amts wegen eingeleitet oder der Antrag von einem Gericht oder von einer Person gestellt, die durch die Verfassungswidrigkeit des Gesetzes in ihren Rechten verletzt zu sein behauptet, so hat der Verfassungsgerichtshof auszusprechen, ob das Gesetz verfassungswidrig war. Abs. 3 gilt sinngemäß.</p> <p>(5) Das Erkenntnis des Verfassungsgerichtshofes, mit dem ein Gesetz als verfassungswidrig aufgehoben wird, verpflichtet den Bundeskanzler oder den zuständigen Landeshauptmann zur unverzüglichen Kundmachung der Aufhebung. Dies gilt sinngemäß für den Fall eines Ausspruches gemäß Abs. 4. Die Aufhebung tritt mit Ablauf des Tages der Kundmachung in Kraft, wenn nicht der Verfassungsgerichtshof für das Außerkrafttreten eine Frist bestimmt.</p>	<p>unconstitutionality, the Constitutional Court must pronounce whether the law was unconstitutional. Para 3 above applies accordingly.</p> <p>(5) The ruling by the Constitutional Court which rescinds a law as unconstitutional imposes on the Federal Chancellor or the competent Provincial Governor the obligation to publish the rescission without delay. This applies accordingly in the case of a pronouncement pursuant to para 4 above. The rescission enters into force upon expiry of the day of publication if the Constitutional Court does not set a deadline for the rescission. This deadline may not exceed eighteen months.</p> <p>(6) If a law is rescinded as unconstitutional by a ruling of the Constitutional Court, the legal provisions rescinded by the law which the Constitutional Court has pronounced unconstitutional enter into force again unless the judgement pronounces otherwise, on the day of entry into force of the rescission. The publication on the rescission of the law</p>
---	--

<p>Diese Frist darf 18 Monate nicht überschreiten.</p> <p>(6) Wird durch ein Erkenntnis des Verfassungsgerichtshofes ein Gesetz als verfassungswidrig aufgehoben, so treten mit dem Tag des Inkrafttretens der Aufhebung, falls das Erkenntnis nicht anderes ausspricht, die gesetzlichen Bestimmungen wieder in Kraft, die durch das vom Verfassungsgerichtshof als verfassungswidrig erkannte Gesetz aufgehoben worden waren. In der Kundmachung über die Aufhebung des Gesetzes ist auch zu verlautbaren, ob und welche gesetzlichen Bestimmungen wieder in Kraft treten.</p> <p>(7) Ist ein Gesetz wegen Verfassungswidrigkeit aufgehoben worden oder hat der Verfassungsgerichtshof gemäß Abs. 4 ausgesprochen, dass ein Gesetz verfassungswidrig war, so sind alle Gerichte und Verwaltungsbehörden an den Spruch des Verfassungsgerichtshofes gebunden. Auf die vor der Aufhebung verwirklichten Tatbestände mit Ausnahme des Anlassfalles ist jedoch das Gesetz weiterhin anzuwenden, sofern der Verfassungsgerichtshof nicht</p>	<p>shall also announce whether and which legal provisions again enter into force.</p> <p>(7) If a law has been rescinded on the score of unconstitutionality or if the Constitutional Court has pursuant to para 4 above pronounced a law to be unconstitutional, all courts and administrative authorities are bound by the Constitutional Court's decision. The law shall however continue to apply to the circumstances effected before the rescission the case in point excepted, unless the Constitutional Court in its rescissory ruling decides otherwise. If the Constitutional Court has in its rescissory ruling set a deadline pursuant to para 5 above, the law shall apply to all the circumstances effected, the case in point excepted until expiry of this deadline.</p> <p>(8) For legal matters that gave reason to file an application pursuant to para 1 subpara 1 (d), a federal law has to specify that the ruling by the Constitutional Court with which the law is rescinded as unconstitutional allows for a new decision to be made in that matter. The same shall apply</p>
---	--

<p>in seinem aufhebenden Erkenntnis anderes ausspricht. Hat der Verfassungsgerichtshof in seinem aufhebenden Erkenntnis eine Frist gemäß Abs. 5 gesetzt, so ist das Gesetz auf alle bis zum Ablauf dieser Frist verwirklichten Tatbestände mit Ausnahme des Anlassfalles anzuwenden.</p> <p>(8) Für Rechtssachen, die zur Stellung eines Antrages gemäß Abs. 1 Z 1 lit. d Anlass gegeben haben, ist durch Bundesgesetz zu bestimmen, dass das Erkenntnis des Verfassungsgerichtshofes, mit dem das Gesetz als verfassungswidrig aufgehoben wird, eine neuerliche Entscheidung dieser Rechtssache ermöglicht. Dies gilt sinngemäß für den Fall eines Ausspruches gemäß Abs. 4.</p>	<p>accordingly in the case of a pronouncement pursuant to para 4.</p>
---	---

2. Relevant provisions in the Constitutional Court Act 1953 (VfGG)⁴²⁵

§ 15.	§ 15.
-------	-------

⁴²⁵ Find the whole Constitutional Court Act 1953 translated here ‘Constitutional Court Act 1953 - VfGG’ (ris)
<https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Titel=VfGG&Quelle=&ImRisSeitVonD>

<p>(1) Die an den Verfassungsgerichtshof gemäß den Art. 126a, 127c Z 1, 137 bis 145, 148f und 148i B-VG gerichteten Anträge sind schriftlich zu stellen.</p> <p>(2) Der Antrag hat zu enthalten die Bezugnahme auf den Artikel des B-VG, auf Grund dessen der Verfassungsgerichtshof angerufen wird, die Darstellung des Sachverhaltes, aus dem der Antrag hergeleitet wird, und ein bestimmtes Begehren.</p>	<p>(1) Requests addressed to the Constitutional Court under Arts. 126a, 127c sub-para 1, 137 through 145, 148f and 148i of the Federal Constitutional Act shall be in writing.</p> <p>(2) The appeal shall contain the reference to the article of the Federal Constitutional Act on the basis of which recourse is sought with the Constitutional Court, the presentation of the facts being the basis of the request and a substantiated request for a decision.</p>
---	--

<p>F. Bei Prüfung der Gesetzmäßigkeit von Verordnungen (Art. 139 B-VG)</p> <p>§ 57. (1) Der Antrag, eine Verordnung als gesetzwidrig aufzuheben, muss begehren, dass entweder die Verordnung ihrem ganzen Inhalt nach oder dass bestimmte Stellen der Verordnung als gesetzwidrig aufgehoben werden. Der Antrag hat die gegen die Gesetzmäßigkeit der Verordnung sprechenden Bedenken im Einzelnen</p>	<p>F. In the case of a review of the lawfulness of regulations (Art. 139 of the Federal Constitutional Act)</p> <p>§ 57. (1) The request to repeal a regulation because of being unlawful shall claim that either the full contents of the regulation or certain parts of it is unlawful. The request shall detail the objections put forward against the lawfulness of the regulation. If such request is filed by a person claiming</p>
---	--

atum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Position=1&SkipToDocumentPage=true&ResultFunctionToken=1cdf9ef3-3966-4bf7-a820-a692df111c06&Dokumentnummer=ERV_1953_85> accessed 28 February 2025.

<p>darzulegen. Wird ein solcher Antrag von einer Person gestellt, die unmittelbar durch die Gesetzwidrigkeit der Verordnung in ihren Rechten verletzt zu sein behauptet (Art. 139 Abs. 1 Z 3 B-VG), so ist auch darzutun, inwieweit die Verordnung ohne Fällung einer gerichtlichen Entscheidung oder ohne Erlassung eines Bescheides für sie wirksam geworden ist.</p> <p>(2) Von einem Gericht und einer Person gemäß § 57a kann der Antrag auf Aufhebung einer Verordnung oder von bestimmten Stellen einer solchen nur dann gestellt werden, wenn die Verordnung vom Gericht in der anhängigen Rechtssache unmittelbar anzuwenden bzw. wenn die Gesetzmäßigkeit der Verordnung eine Vorfrage für die Entscheidung der beim Gericht anhängigen Rechtssache ist oder nach Ansicht der Antragsteller wäre. Der Antrag hat darzulegen, inwiefern das Gericht die Verordnung anzuwenden und welche Auswirkungen die Entscheidung des Verfassungsgerichtshofes auf die beim Gericht anhängige Rechtssache hätte.</p> <p>(3) Hat ein Gericht (Art. 139 Abs. 1 Z 1 B-VG) einen Antrag auf Aufhebung</p>	<p>direct infringement of his rights by the unlawfulness of the regulation (Art. 139 para 1 sub-para 3 of the Federal Constitutional Act), it shall also state to what extent the person has been affected by such regulation without a court decision having been rendered or administrative decision having been issued.</p> <p>(2) A court and a person according to § 57a can file a request to repeal a regulation or certain parts of it only if the court must directly apply the regulation in the pending legal matter or if the lawfulness of the regulation is, or in the applicant's opinion was, a preliminary issue for the decision of the legal matter pending before the court. The request must describe to which extent the court would have to apply the regulation and which effects the decision of the Constitutional Court would have on the legal matter pending before the court.</p> <p>(3) If a court (Art. 139 para 1 sub-para 1 of the Federal Constitutional Act) has filed a request to repeal a regulation or certain parts of it, in the proceeding pending before that court until the decision of the Constitutional Court is rendered and served, only such action is</p>
---	--

<p>einer Verordnung oder von bestimmten Stellen einer solchen gestellt, so dürfen in dem bei ihm anhängigen Verfahren bis zur Verkündung bzw. Zustellung des Erkenntnisses des Verfassungsgerichtshofes nur solche Handlungen vorgenommen oder Anordnungen und Entscheidungen getroffen werden, die durch das Erkenntnis des Verfassungsgerichtshofes nicht beeinflusst werden können oder die die Frage nicht abschließend regeln und keinen Aufschub gestatten.</p> <p>(4) Hat das Gericht (Art. 139 Abs. 1 Z 1 B-VG) die Verordnung, deren Aufhebung beantragt wurde, nicht mehr anzuwenden, so ist der Antrag unverzüglich zurückzuziehen.</p>	<p>allowed to be taken or instruction to be issued and decision to be rendered that cannot be affected by the decision of the Constitutional Court or does not finally settle the issue and cannot be delayed.</p> <p>(4) If the court (Art. 139 para 1 sub-para 1 of the Federal Constitutional Act) is no longer required to apply the regulation which was requested to be reviewed, the request shall be withdrawn without delay.</p>
--	---

<p>H. Bei Prüfung der Verfassungsmäßigkeit von Gesetzen (Art. 140 B-VG)</p> <p>§ 62. (1) Der Antrag, ein Gesetz als verfassungswidrig aufzuheben, muss begehren, dass entweder das Gesetz seinem ganzen Inhalt nach oder dass bestimmte Stellen des Gesetzes als verfassungswidrig aufgehoben werden.</p>	<p>H. In the case of examining the constitutionality of statutes (Art. 140 of the Federal Constitutional Act)</p> <p>§ 62. (1) The request to repeal a statute on the grounds of being unconstitutional shall claim that either the full contents of the statute or certain of its parts be repealed on the grounds of being unconstitutional. The request shall detail</p>
--	--

<p>Der Antrag hat die gegen die Verfassungsmäßigkeit des Gesetzes sprechenden Bedenken im Einzelnen darzulegen. Wird ein solcher Antrag von einer Person gestellt, die unmittelbar durch die Verfassungswidrigkeit des Gesetzes in ihren Rechten verletzt zu sein behauptet (Art. 140 Abs. 1 Z 1 lit. c B-VG), so ist auch darzutun, inwieweit das Gesetz ohne Fällung einer gerichtlichen Entscheidung oder ohne Erlassung eines Bescheides für sie wirksam geworden ist.</p>	<p>the objections put forward against the constitutionality of the statute. If such request is filed by a person claiming direct infringement of his rights by the unconstitutionality of the statute (Art. 140 para 1 sub-para 1 letter c of the Federal Constitutional Act), it shall also state to what extent the person has been affected by such statute without a court decision having been rendered or administrative decision having been issued.</p>
<p>(2) Von einem Gericht oder einer Person gemäß § 62a kann der Antrag auf Aufhebung eines Gesetzes oder von bestimmten Stellen eines solchen nur dann gestellt werden, wenn das Gesetz vom Gericht in der anhängigen Rechtssache unmittelbar anzuwenden bzw. wenn die Verfassungsmäßigkeit des Gesetzes eine Vorfrage für die Entscheidung der beim Gericht anhängigen Rechtssache ist oder nach Ansicht der Antragsteller wäre. Der Antrag hat darzulegen, inwiefern das Gericht das Gesetz anzuwenden und welche Auswirkungen die Entscheidung des Verfassungsgerichtshofes auf die</p>	<p>(2) A court or a person according to § 62a can file a request to repeal a statute or certain parts of it only if the court must directly apply the statute in the pending legal matter or if the constitutionality of the statute is, or in the applicant's opinion was, a preliminary issue for the decision of the legal matter pending before the court. The request must describe to which extent the court would have to apply the statute and which effects the decision of the Constitutional Court would have on the legal matter pending before the court.</p>
	<p>(3) If a court (Art. 140 para 1 sub-para 1 letter a of the Federal Constitutional Act) has filed a request to repeal a statute or</p>

<p>beim Gericht anhängige Rechtssache hätte.</p> <p>(3) Hat ein Gericht (Art. 140 Abs. 1 Z 1 lit. a B-VG) einen Antrag auf Aufhebung eines Gesetzes oder von bestimmten Stellen eines solchen gestellt, so dürfen in dem bei ihm anhängigen Verfahren bis zur Verkündung bzw. Zustellung des Erkenntnisses des Verfassungsgerichtshofes nur solche Handlungen vorgenommen oder Anordnungen und Entscheidungen getroffen werden, die durch das Erkenntnis des Verfassungsgerichtshofes nicht beeinflusst werden können oder die die Frage nicht abschließend regeln und keinen Aufschub gestatten.</p> <p>(4) Hat das Gericht (Art. 140 Abs. 1 Z 1 lit. a B-VG) das Gesetz, dessen Aufhebung beantragt wurde, nicht mehr anzuwenden, so ist der Antrag unverzüglich zurückzuziehen.</p>	<p>certain parts of it, in the proceeding pending before that court until the decision of the Constitutional Court is rendered and served, only such action is allowed to be taken or instruction to be issued and decision to be rendered that cannot be affected by the decision of the Constitutional Court or does not finally settle the issue and cannot be delayed.</p> <p>(4) If the court (Art. 140 para 1 sub-para 1 letter a of the Federal Constitutional Act) is no longer required to apply the statute which was requested to be repealed, the request shall be withdrawn without delay.</p>
--	---

3. Austrian Climate Protection Act (KSG)

<p>Gesamte Rechtsvorschrift für Klimaschutzgesetz, Fassung vom 23.02.2025</p> <p>Langtitel</p> <p>Bundesgesetz zur Einhaltung von Höchstmengen von Treibhausgasemissionen und zur Erarbeitung von wirksamen Maßnahmen zum Klimaschutz (Klimaschutzgesetz – KSG) StF: BGBl. I Nr. 106/2011 (NR: GP XXIV RV 1255 AB 1456 S. 124. BR: AB 8596 S. 801.)</p> <p>Änderungen</p> <p>BGBl. I Nr. 94/2013 (NR: GP XXIV RV 2295 AB 2313 S. 203. BR: AB 8993 S. 821.) BGBl. I Nr. 128/2015 (NR: GP XXV RV 800 AB 804 S. 96. BR: AB 9461 S. 846.) BGBl. I Nr. 58/2017 (NR: GP XXV RV 1456 AB 1568 S. 171. BR: 9748 AB 9754 S. 866.) [CELEX-Nr.: 32009L0128, 32010L0075]</p> <p>Ziel</p>	<p>Complete version of the legislation for the Climate Protection Act as of 23.02.2025</p> <p>Long Title</p> <p>Federal Act on Compliance with Maximum Quantities of Greenhouse Gas Emissions and on the Development of Effective Measures for Climate Protection (Climate Protection Act – KSG)First publication: BGBl. I No. 106/2011 (NR: GP XXIV RV 1255 AB 1456 S. 124. BR: AB 8596 S. 801.)</p> <p>Amendments</p> <p>BGBl. I No. 94/2013 (NR: GP XXIV RV 2295 AB 2313 p. 203. BR: AB 8993 p. 821.) BGBl. I No. 128/2015 (NR: GP XXV RV 800 AB 804 p. 96. BR: AB 9461 p. 846.) BGBl. I No. 58/2017 (NR: GP XXV RV 1456 AB 1568 p. 171. BR: 9748 AB 9754 p. 866.) [CELEX-No.: 32009L0128, 32010L0075]</p>
---	--

<p>§ 1. Dieses Bundesgesetz soll eine koordinierte Umsetzung wirksamer Maßnahmen zum Klimaschutz ermöglichen.</p> <p>Maßnahmen</p> <p>§ 2. Maßnahmen im Sinne dieses Bundesgesetzes sind solche, die eine messbare, berichtbare und überprüfbare Verringerung von Treibhausgasemissionen oder Verstärkung von Kohlenstoffsenken zur Folge haben, die in der österreichischen Treibhausgasinventur gemäß den geltenden völkerrechtlichen und unionsrechtlichen Berichtspflichten abgebildet werden. Darunter fallen hoheitliche und privatwirtschaftliche Maßnahmen des Bundes und der Länder.</p> <p>Aufteilung der festgelegten Höchstmengen von Treibhausgasemissionen; Verhandlungen zur Erarbeitung von Maßnahmen</p> <p>§ 3. (1) Die gemäß völkerrechtlichen oder unionsrechtlichen Verpflichtungen für die Republik Österreich geltenden Höchstmengen von</p>	<p>Objective</p> <p>§ 1. This federal law is intended to enable the coordinated implementation of effective climate protection measures.</p> <p>Measures</p> <p>§ 2. Measures within the meaning of this Federal Act are those that result in a measurable, reportable and verifiable reduction of greenhouse gas emissions or enhancement of carbon sinks, which are reflected in the Austrian greenhouse gas inventory in accordance with the applicable reporting obligations under international and Union law. These include sovereign and private-sector measures by the federal government and the federal states.</p> <p>Distribution of the specified maximum quantities of greenhouse gas emissions; negotiations for the development of measures</p> <p>§ 3. (1) The maximum quantities of greenhouse gas emissions applicable to the Republic of Austria in accordance with obligations under international or Union law shall be specified as shown</p>
---	---

<p>Treibhausgasemissionen werden gemäß den Anlagen festgelegt. Die Höchstmengen können auch auf Sektoren aufgeteilt festgelegt werden. Die Ausarbeitung von Planungsgrundlagen für die Aufteilung von Höchstmengen von Treibhausgasemissionen auf Sektoren für Verpflichtungszeiträume ab dem Jahr 2013 erfolgt jeweils auf Grundlage eines Vorschlags des Bundesministers für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft auf Basis von im Inland wirksamen Maßnahmen. Dieser Vorschlag ist auch dem Nationalen Klimaschutzkomitee (§ 4) vorzulegen. Die endgültige Aufteilung ist in einer Anlage zu diesem Gesetz festzuhalten.</p> <p>(2) Zur Erarbeitung von Maßnahmen zur Einhaltung der Höchstmengen in den jeweiligen Sektoren haben Verhandlungen stattzufinden. In den Verhandlungen sind insbesondere Maßnahmenmöglichkeiten in den folgenden Bereichen zu berücksichtigen: Steigerung der Energieeffizienz, Steigerung des Anteils erneuerbarer Energieträger am Endenergieverbrauch, Steigerung der Gesamtenergieeffizienz im</p>	<p>in the Annexes. The maximum quantities may also be distributed among sectors. The development of a basis for planning the allocation of greenhouse gas emission limits to sectors for commitment periods starting in 2013 shall be carried out on the basis of a proposal by the Federal Minister for Agriculture and Forestry, Environment and Water Management based on measures effective domestically. This proposal shall also be submitted to National Committee on Climate Protection (Art. 4). The final distribution shall be set forth in an annex to this Act.</p> <p>(2) Negotiations shall be held to develop measures to comply with the maximum quantities in the respective sectors. In the negotiations, particular consideration shall be given to possible measures in the following areas: increasing energy efficiency, increasing the share of renewable energy sources in final energy consumption, increasing the overall energy efficiency of buildings, integrating climate protection into spatial planning, mobility management, waste prevention, protecting and expanding natural carbon sinks, and economic incentives</p>
---	--

<p>Gebäudebereich, Einbeziehung des Klimaschutzes in die Raumplanung, Mobilitätsmanagement, Abfallvermeidung, Schutz und Erweiterung natürlicher Kohlenstoffsenken sowie ökonomische Anreize zum Klimaschutz.</p> <p>Maßnahmen können auch in Form von mehrjährigen Maßnahmenprogrammen sowie als gemeinsame Maßnahmen der Gebietskörperschaften ausgearbeitet werden. Die Verantwortlichkeit zur Führung von Verhandlungen in den jeweiligen Sektoren obliegt den analog zu den Klimastrategien 2002 und 2007 zuständigen Bundesministern, subsidiär den gemäß Bundesministeriengesetz 1986 (BMG), BGBl. Nr. 76 in der jeweils geltenden Fassung zuständigen Bundesministern. Die Verhandlungen sind jeweils einen Monat nach Vorliegen eines Vorschlags des Bundesministers für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft gemäß Abs. 1 aufzunehmen. Die Verhandlungen sind jeweils innerhalb von neun Monaten vor Beginn eines Verpflichtungszeitraums, das ist für den Verpflichtungszeitraum 2013 bis 2020 der 31. März 2012, abzuschließen.</p>	<p>for climate protection. Measures can also be developed in the form of multi-year programs of measures and as joint measures by the local authorities. The responsibility for conducting negotiations in the respective sectors lies with the competent federal ministers, analogous to the climate strategies of 2002 and 2007, and, subsidiarily, with the competent federal ministers pursuant to the Federal Ministries Act 1986 (BMG), Federal Law Gazette No. 76, as amended. The negotiations shall be commenced one month after the Federal Minister of Agriculture, Forestry, Environment and Water Management has submitted a proposal in accordance with subsection 1. The negotiations shall be concluded within nine months before the start of a commitment period, i.e. by March 31, 2012 for the commitment period from 2013 to 2020. If the maximum levels of greenhouse gas emissions applicable to the Republic of Austria from 2013 under international or EU law are exceeded, further negotiations to strengthen existing measures or introduce additional ones shall be held immediately on the basis of an evaluation of the measures taken. These</p>
---	--

<p>Bei Überschreiten der gemäß völkerrechtlichen oder unionsrechtlichen Verpflichtungen für die Republik Österreich ab dem Jahr 2013 geltenden Höchstmengen von Treibhausgasemissionen sind auf Basis einer Evaluierung der gesetzten Maßnahmen umgehend weitere Verhandlungen über die Stärkung bestehender oder Einführung zusätzlicher Maßnahmen zu führen. Diese Verhandlungen sind jeweils binnen sechs Monaten abzuschließen.</p> <p>(3) Das Ergebnis der Verhandlungen gemäß Abs. 2 ist gesondert festzuhalten. Die festgelegten Maßnahmen sind umgehend umzusetzen.</p> <p>(4) Der Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft hat dem Nationalen Klimaschutzkomitee (§ 4) über den Ausgang der Verhandlungen gemäß Abs. 2 und die festgelegten Maßnahmen gemäß Abs. 3 zu berichten.</p> <p>Nationales Klimaschutzkomitee</p> <p>§ 4. (1) Der Bundesminister für Land- und Forstwirtschaft, Umwelt</p>	<p>negotiations shall be concluded within six months in each case.</p> <p>(3) The result of the negotiations pursuant to subsection 2 shall be recorded separately. The measures determined shall be implemented immediately.</p> <p>(4) The Federal Minister for Agriculture and Forestry, Environment and Water Management shall report to the National Committee on Climate Protection (§ 4) on the outcome of the negotiations pursuant to subsection 2 and the measures determined pursuant to subsection 3.</p> <p>National Committee on Climate Protection</p> <p>§ 4. (1) The Federal Minister for Agriculture and Forestry, Environment and Water Management has to establish a National Committee on Climate Protection.</p> <p>(2) The National Committee on Climate Protection shall discuss fundamental issues of Austrian climate policy in the light of the objectives of the Paris Agreement, in particular the long-term reduction of greenhouse gas emissions</p>
---	--

<p>und Wasserwirtschaft hat ein Nationales Klimaschutzkomitee einzurichten.</p> <p>(2) Das Nationale Klimaschutzkomitee berät über Grundsatzfragen zur österreichischen Klimapolitik im Lichte der Zielvorgaben des Übereinkommens von Paris, insbesondere über die langfristige Reduktion der Treibhausgasemissionen hin zu einer kohlenstoffarmen Gesellschaft, die Anpassung an unvermeidbare Folgen des Klimawandels sowie über langfristige Szenarien zur Steigerung der Energieeffizienz und des Anteils erneuerbarer Energieträger am Endenergieverbrauch.</p> <p><i>(Anm.: Abs. 3 aufgehoben durch Art. 4 Z 4, BGBl. I Nr. 58/2017)</i></p> <p>(4) Das Nationale Klimaschutzkomitee setzt sich aus je einem Vertreter der im Nationalrat vertretenen politischen Parteien, je einem hochrangigen Vertreter des Bundesministeriums für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft, des Bundesministeriums für Finanzen, des</p>	<p>towards a low-carbon society, adaptation to unavoidable consequences of climate change, and long-term scenarios for increasing energy efficiency and the share of renewable energy sources in final energy consumption.</p> <p>(Note: Para. 3 repealed by Art. 4 Z 4, BGBl. I No. 58/2017)</p> <p>(4) The National Committee on Climate Protection shall be composed of one representative of each of the political parties represented in the National Council, one high-ranking representative each of the Federal Ministry of Agriculture and Forestry, Environment and Water Management, the Federal Ministry of Finance, the Federal Chancellery, the Federal Ministry of Justice, the Federal Ministry of Transport, Innovation and Technology, the Federal Ministry of Science, Research and Economy, the Federal Ministry of Labor, Social Affairs and Consumer Protection, the Federal Ministry of Health and Women, the nine federal states, the Austrian Federal Economic Chamber, the Federal Chamber of Labor, the Presidential Conference of the</p>
--	---

<p>Bundeskanzleramtes, des Bundesministeriums für Justiz, des Bundesministeriums für Verkehr, Innovation und Technologie, des Bundesministeriums für Wissenschaft, Forschung und Wirtschaft, des Bundesministeriums für Arbeit, Soziales und Konsumentenschutz, des Bundesministeriums für Gesundheit und Frauen, der neun Bundesländer, der Wirtschaftskammer Österreich, der Bundeskammer für Arbeiter und Angestellte, der Präsidentenkonferenz der Landwirtschaftskammern, des Österreichischen Gewerkschaftsbunds, der Vereinigung der Österreichischen Industrie, des Vereins für Konsumenteninformation, des Österreichischen Städtebundes, des Österreichischen Gemeindebundes, des Umweltbundesamtes, von Österreichs Energie, des Verbandes Erneuerbare Energie Österreich, der Wissenschaft sowie drei Vertretern österreichischer Umweltschutzorganisationen zusammen. Es fasst seine Empfehlungen mit einer Stimmenmehrheit von drei Vierteln bei Anwesenheit von mindestens der Hälfte der Vertreter. Für die Tätigkeit</p>	<p>Chambers of Agriculture, the Austrian Trade Union Federation, the Federation of Austrian Industries, the Consumer Information Association, the Austrian Association of Cities and Towns, the Austrian Association of Municipalities, the Austrian Environment Agency, of Austria Energy, the Austrian Association for Renewable Energy, the scientific community and three representatives of Austrian environmental protection organizations. It adopts its recommendations by a majority vote of three quarters in the presence of at least half of the representatives. No compensation is provided for the activities of the representatives. The details are regulated by rules of procedure, which are to be decided by the National Committee on Climate Protection.</p> <p>(5) The representative of the Federal Ministry of Agriculture, Forestry, Environment and Water Management shall be the chairperson of the National Committee on Climate Protection. The deputy chairperson shall be the representative of the federal province holding the chair of</p>
---	---

<p>der Vertreter wird keine Entschädigung geleistet. Die näheren Modalitäten regelt eine Geschäftsordnung, welche vom Nationalen Klimaschutzkomitee zu beschließen ist.</p> <p>(5) Vorsitzender des Nationalen Klimaschutzkomitees ist der Vertreter des Bundesministeriums für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft. Stellvertretender Vorsitzender ist der Vertreter jenes Bundeslandes, das den Vorsitz im Rahmen der Landesumweltreferentenkonferenz führt.</p> <p>(6) Das Nationale Klimaschutzkomitee tritt mindestens einmal im Jahr zusammen.</p> <p>Fortschrittsbericht</p> <p>§ 6. Über den Fortschritt bei der Einhaltung der gemäß § 3 Abs. 1 festgelegten Höchstmengen von Treibhausgasemissionen hat der Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft dem Nationalrat sowie dem Nationalen Klimaschutzkomitee jährlich einen schriftlichen Bericht vorzulegen. Der</p>	<p>the Conference of Environmental Advisors of the Federal Provinces.</p> <p>(6) The National Committee on Climate Protection shall convene at least once a year.</p> <p>Progress report</p> <p>§ 6. The Federal Minister of Agriculture, Forestry, Environment and Water Management shall submit a written report on the progress made towards compliance with the maximum quantities of greenhouse gas emissions specified under § 3 Par. 1 to the National Council and to the National Committee on Climate Protection. The report shall be broken down by sectors as specified in the Annexes.</p> <p>Climate protection liability mechanism</p> <p>§ 7. The responsibilities in the event of the Republic of Austria exceeding the greenhouse gas emission limits applicable under international or EU law from 2013 onwards shall be set out in a separate agreement. The federal states shall not incur any financial obligations in the event of the</p>
--	--

<p>Bericht ist nach Sektoren gemäß den Anlagen zu untergliedern.</p> <p>Klimaschutz- Verantwortlichkeitsmechanismus</p> <p>§ 7. Die Verantwortlichkeiten im Falle eines Überschreitens der gemäß völkerrechtlichen oder unionsrechtlichen Verpflichtungen für die Republik Österreich ab dem Jahr 2013 geltenden Höchstmengen von Treibhausgasemissionen sind in einer gesonderten Vereinbarung festzuhalten. Für den Verpflichtungszeitraum 2008 bis 2012 fallen für die Bundesländer keine finanziellen Verpflichtungen im Falle der Überschreitung der in der Anlage 1 festgelegten Höchstmengen von Treibhausgasen an. Allfällige Verpflichtungen des Bundes im Falle der Überschreitung der in der Anlage 1 festgelegten Höchstmengen von Treibhausgasen sind unter Einhaltung des jeweils geltenden Bundesfinanzrahmengesetzes zu bedecken.</p> <p>Vollziehung</p> <p>§ 8. (1) Mit der Vollziehung dieses Bundesgesetzes ist, soweit Abs. 2 nicht</p>	<p>greenhouse gas limits set out in Appendix 1 being exceeded during the 2008-2012 commitment period. Any federal obligations that may arise from the greenhouse gas limits set out in Appendix 1 being exceeded shall be covered in accordance with the applicable Federal Budgetary Framework Act.</p> <p>Implementation</p> <p>§ 8. (1) Unless para 2 provides otherwise, the Federal Minister for Agriculture and Forestry, Environment and Water Management shall be entrusted with the implementation of this Federal Act.</p> <p>(2) Implementation of Art. 3 para 2 shall be entrusted to the competent Federal Minister pursuant to the Federal Ministry Act.</p> <p>§. 9. The designations of functions used in this Federal Act shall be understood as gender-neutral.</p> <p>Entry into force</p> <p>§ 10. (1) Annex 2 in the version of the Federal Act, Federal Law Gazette I No. 94/2013, shall enter into force at</p>
---	--

<p>anderes bestimmt, der Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft betraut.</p> <p>(2) Mit der Vollziehung des § 3 Abs. 2 ist der gemäß BMG jeweils zuständige Bundesminister betraut.</p> <p>§ 9. Die in diesem Bundesgesetz verwendeten Funktionsbezeichnungen sind geschlechtsneutral zu verstehen.</p> <p>Inkrafttreten</p> <p>§ 10. (1) Die Anlage 2 in der Fassung des Bundesgesetzes BGBl. I Nr. 94/2013 tritt mit Ablauf des Tages der Kundmachung in Kraft.</p> <p>(2) Artikel 1 des Bundesgesetzes BGBl. I Nr. 128/2015 tritt mit Ablauf des Tages der Kundmachung in Kraft.</p> <p>(3) § 3 Abs. 1 und 2 sowie § 4 Abs. 2 und 4 in der Fassung des Verwaltungsreformgesetzes BMLFUW, BGBl. I Nr. 58/2017, treten mit Ablauf des Tages der Kundmachung in Kraft; gleichzeitig treten § 4 Abs. 3 und § 5 samt Überschrift außer Kraft.</p>	<p>the end of the day of the announcement.</p> <p>(2) Article 1 of the Federal Act, Federal Law Gazette I No. 128/2015, shall enter into force at the end of the day of the announcement.</p> <p>(3) Article 3 para 1 and 2 as well as Article 4 para 2 and 4 in the version of the Federal Ministry of Agriculture, Forestry, Environment and Water Management, Federal Law Gazette I No. 58/2017, shall enter into force at the end of the day of the announcement; at the same time, Article 4 para 3 and Article 5 together with the heading shall cease to have effect.</p>
---	--

Anlage 1

Höchstmengen von Treibhausgasemissionen nach Sektoren für den Verpflichtungszeitraum 2008 bis 2012 in Millionen Tonnen

**Kohlenstoffdioxidäquivalent (berechnet nach den revidierten 1996 IPCC-
Richtlinien für Nationale Treibhausgasinventuren)**

Sektor	Höchstmengen von Treibhausgasemissionen 2008 bis 2012
Raumwärme CRF-Sektoren 1A4a, 1A4b und 1A4c	59,5
Energieaufbringung CRF-Sektor 1A1	Nicht- Emissionshandel: 8,9
Abfallwirtschaft CRF-Sektor 6	10,5
Verkehr CRF-Sektor 1A3	94,5
Industrie und produzierendes Gewerbe CRF-Sektoren 1A2 und 2A, 2B, 2C, 2D und 2G	Nicht- Emissionshandel: 18,4
„Fluorierte Gase“ CRF-Sektoren 2E und 2F	7,0
Sonstige Emissionen CRF-Sektoren 1A5, 1B und 3	4,5
Landwirtschaft CRF-Sektor 4	35,5

Annex 1

**Maximum greenhouse gas emissions by sector for the 2008-2012
commitment period in million metric tons of carbon dioxide equivalent
(calculated in accordance with the revised 1996 IPCC Guidelines for
National Greenhouse Gas Inventories)**

Sector	Maximum greenhouse gas emissions from 2008 to 2012
Indoor heating CRF sectors 1A4a, 1A4b and 1A4c	59,5
Energy generation CRF sector 1A1	non-emissions trading : 8,9
waste management CRF-Sector 6	10,5
Traffic CRF-Sector 1A3	94,5
Industry and manufacturing CRF-Sectors 1A2 und 2A, 2B, 2C, 2D and 2G	Non-emissions trading: 18,4
“Fluorinated gases” CRF-Sectors 2E und 2F	7,0
other emissions CRF-Sectors 1A5, 1B and 3	4,5
Agriculture CRF-Sector 4	35,5

Anlage 2

Jährliche Höchstmengen von Treibhausgasemissionen nach Sektoren für den Verpflichtungszeitraum 2013 bis 2020 in Millionen Tonnen Kohlenstoffdioxidäquivalent (berechnet nach den 2006 IPCC-Richtlinien für Nationale Treibhausgasinventuren)

Sektor	2013	2014	2015	2016	2017	2018	2019	2020
Abfallwirtschaft	3,1	3,0	3,0	2,9	2,9	2,8	2,8	2,7
CRF-Sektoren 1A1a - other fuels; und 6								

Energie und Industrie (Nicht-Emissionshandel) CRF-Sektoren 1A1 (abzüglich 1A1a - other fuels), 1A2, 1A3e, 1B, 2A, 2B, 2C, 2D, 2G und 3	7,0	6,9	6,9	6,8	6,7	6,6	6,6	6,5
Fluorierte Gase CRF-Sektoren 2E und 2F	2,2	2,2	2,2	2,2	2,1	2,1	2,1	2,1
Gebäude CRF-Sektoren 1A4a und 1A4b	10,0	9,7	9,4	9,1	8,8	8,5	8,2	7,9
Landwirtschaft CRF-Sektoren 1A4c und 4	8,0	8,0	8,0	7,9	7,9	7,9	7,9	7,9
Verkehr CRF-Sektoren 1A3a (abzüglich CO ₂), 1A3b, 1A3c, 1A3d und 1A5	22,3	22,3	22,2	22,1	22,0	21,9	21,8	21,7
Gesamtsumme	52,6	52,1	51,5	51,0	50,4	49,9	49,4	48,8

Annex 2

Annual maximum greenhouse gas emissions by sector for the 2013-2020 commitment period in million metric tons of carbon dioxide equivalent (calculated in accordance with the 2006 IPCC Guidelines for National Greenhouse Gas Inventories)

Sektor	2013	2014	2015	2016	2017	2018	2019	2020
--------	------	------	------	------	------	------	------	------

waste management CRF-Sectors 1A1a - other fuels; and 6	3,1	3,0	3,0	2,9	2,9	2,8	2,8	2,7
Energy and Industry (non-emissions trading) CRF-Sectors 1A1 (minus 1A1a - other fuels), 1A2, 1A3e, 1B, 2A, 2B, 2C, 2D, 2G and 3	7,0	6,9	6,9	6,8	6,7	6,6	6,6	6,5
fluorinated gases CRF-Sectors 2E and 2F	2,2	2,2	2,2	2,2	2,1	2,1	2,1	2,1
Buildings CRF-Sectors 1A4a and 1A4b	10,0	9,7	9,4	9,1	8,8	8,5	8,2	7,9
Agriculture CRF-Sectors 1A4c and 4	8,0	8,0	8,0	7,9	7,9	7,9	7,9	7,9
Traffic CRF-Sectors 1A3a (minus CO ₂), 1A3b, 1A3c, 1A3d and 1A5	22,3	22,3	22,2	22,1	22,0	21,9	21,8	21,7
Total	52,6	52,1	51,5	51,0	50,4	49,9	49,4	48,8

4. Relevant norms of the Value Added Tax Act (UstG)⁴²⁶

Steuerbefreiungen	Tax exemptions
<p>§ 6. (1) Von den unter § 1 Abs. 1 Z 1 fallenden Umsätzen sind steuerfrei:</p> <ol style="list-style-type: none"> 1. Die Ausfuhrlieferungen (§ 7) und die Lohnveredlungen an Gegenständen der Ausfuhr (§ 8); 2. die Umsätze für die Seeschifffahrt und für die Luftfahrt (§ 9); 3. <ol style="list-style-type: none"> a) die Beförderungen von Gegenständen im grenzüberschreitenden Beförderungsverkehr und im internationalen Eisenbahnfrachtverkehr und andere sonstige Leistungen, wenn sich die Leistungen <ol style="list-style-type: none"> aa) auf Gegenstände der Einfuhr in das Gebiet eines Mitgliedstaates der Europäischen Union beziehen und die Kosten für diese Leistungen in der Bemessungsgrundlage für die Einfuhr (§ 5) enthalten sind oder bb) unmittelbar auf Gegenstände der Ausfuhr beziehen oder auf eingeführte Gegenstände beziehen, die im externen Versandverfahren in das Drittlandsgebiet befördert werden; b) die Beförderungen von Gegenständen nach und von den Inseln, die die autonomen Regionen Azoren und Madeira bilden; c) sonstige Leistungen, die sich unmittelbar auf eingeführte Gegenstände beziehen, für die zollamtlich eine vorübergehende 	<p>§ 6. (1) The following transactions falling under § 1 para. 1 no. 1 are exempt:</p> <ol style="list-style-type: none"> 1. export deliveries (§ 7) and contract processing of goods for export (§ 8); 2. transactions for ocean and air transport (§ 9); 3. <ol style="list-style-type: none"> a) the transportation of goods in cross-border transportation traffic and in international railway freight traffic and other miscellaneous services, if the services <ol style="list-style-type: none"> aa) relate to goods imported into the territory of a member state of the European Union and the costs for these services are included in the tax base for the import (§ 5) or bb) directly relate to the exported goods or relate to imported goods that are transported under the external transit procedure to the territory of third countries; b) the transportation of goods to and from the islands that form the autonomous regions of the Azores and Madeira; c) other services directly related to imported goods for which customs approval has been granted for temporary use in the country, excluding the Jungholz and Mittelberg areas, and

⁴²⁶ In force at time of Individual Application filing (2020).

<p>Verwendung im Inland, ausgenommen die Gebiete Jungholz und Mittelberg, bewilligt worden ist, und der Leistungsempfänger ein ausländischer Auftraggeber (§ 8 Abs. 2) ist. Dies gilt nicht für sonstige Leistungen, die sich auf Beförderungsmittel, Paletten und Container beziehen;</p> <p>d) die Beförderungen von Personen mit Schiffen und Luftfahrzeugen im grenzüberschreitenden Beförderungsverkehr, ausgenommen die Personenbeförderung auf dem Bodensee.</p> <p>Lit. a bis c gelten nicht für die im § 6 Abs. 1 Z 8, 9 lit. c und 13 bezeichneten Umsätze und für die Bearbeitung oder Verarbeitung eines Gegenstandes einschließlich der Werkleistung im Sinne des § 3a Abs. 3. Die Voraussetzungen der Steuerbefreiung der lit. a bis c müssen vom Unternehmer buchmäßig nachgewiesen sein;</p> <p>[...] ⁴²⁷</p>	<p>the recipient of the service is a foreign client (§ 8 (2)). This does not apply to other services related to means of transport, pallets and containers;</p> <p>d) the transportation of persons by ship and aircraft in cross-border transportation, except for the transportation of persons on Lake Constance.</p> <p>Lit (a) to (c) shall not apply to the transactions specified in § 6 (1) Z 8, 9 (c) and 13 and to the processing or treatment of an object, including work performance, as defined in § 3a (3). The conditions for the tax exemption of (a) to (c) must be proven by the entrepreneur in his accounting records;</p> <p>[...]</p>
--	--

⁴²⁷ The remainder of the provision is omitted, as it is not relevant to the case. It can be accessed here <<https://www.ris.bka.gv.at/eli/bgbl/1994/663/P6/NOR40219074?Abfrage=Bundesnormen&Kundmachungorgan=&Index=&Titel=Ustg&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=6&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=20.02.2020&VonInkrafttredatum=&BisInkrafttredatum=&VonAusserkrafttredatum=&BisAusserkrafttredatum=&NormabschnittnummerKombination=Und&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Position=1&SkipToDocumentPage=true&ResultFunctionToken=adc42a0f-44e2-4847-9691-a80194887e73>> accessed 28 February 2025.

5. Relevant norms of the Mineral Oil Tax Act (MinStG)⁴²⁸

Steuerbefreiungen	Tax exemptions
<p>§ 4.</p> <p>(1) Von der Mineralölsteuer sind befreit:</p> <p>1. Mineralöl, das als Luftfahrtbetriebsstoff an Luftfahrtunternehmen aus Steuerlagern oder Zolllagern abgegeben wird und unmittelbar der entgeltlichen Erbringung von Luftfahrt-Dienstleistungen dient; als Luftfahrt-Dienstleistungen gelten die gewerbsmäßige Beförderung von Personen oder Sachen und sonstige gewerbsmäßige Dienstleistungen, die mittels eines Luftfahrzeuges unmittelbar an den Kunden des Luftfahrtunternehmens erbracht werden;</p> <p>[...] ⁴²⁹</p>	<p>§ 4.</p> <p>(1) The following are exempt from the mineral oil tax:</p> <p>1. mineral oil supplied from tax warehouses or customs warehouses to aviation companies as aviation fuel for the purpose of providing aviation services in return for payment; aviation services are deemed to be the commercial transportation of persons or goods and other commercial services provided directly to the aviation company's customers by means of an aircraft;</p> <p>[...]</p>

⁴²⁸ in force at the time of filing (February 2020).

⁴²⁹ The remainder of the provision is omitted, as it is not relevant to the case. It can be accessed here <https://www.ris.bka.gv.at/eli/bgbl/1994/630/P4/NOR40219031?Abfrage=Bundesnormen&Kundmachungorgan=&Index=&Titel=MinStG&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=4&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=20.02.2020&VonInkrafttretedatum=&BisInkrafttretedatum=&VonAusserkrafttretedatum=&BisAusserkrafttretedatum=&NormabschnittnummerKombination=Und&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Position=1&SkipToDocumentPage=true&ResultFunctionToken=0582c8e0-7635-4e74-887d-6ab0068fb214> accessed 28 February 2025.

On behalf of the Applicant,

Yours faithfully,



Mag^a Michaela Krömer, LL.M

Attorney-at-Law