
Legal Report on the Implementation of the *KlimaSeniorinnen* Judgment

Legal Entrenchment and Institutional Design of a National Climate Advisory Body in Switzerland

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The authors of the report bear sole responsibility for its content. The legal assessment was conducted in their independent academic capacity.

This English version is a translation of the German original. In case of discrepancies, ambiguities, or divergences in interpretation, the German version shall prevail.

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Summary

On 9 April 2024, the European Court of Human Rights (ECtHR) held in *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* that Switzerland had violated Article 8 of the European Convention on Human Rights (ECHR) due to deficiencies in its climate policy. The supervision of the execution of the judgment lies with the Committee of Ministers of the Council of Europe. In its decision of 17 September 2025, the Committee invited Switzerland to consider the possibility of establishing an independent national body to monitor its climate policy and issue recommendations to political authorities.

This report was commissioned by Greenpeace Switzerland and complements Dr Alina Averchenkova's policy report (*National Climate Advisory Bodies: Lessons Learnt on Effective Design*). It answers two questions: (i) whether and in what form a national climate advisory body can be established under Swiss constitutional law and the law governing administrative organisation in Switzerland, and (ii) how such a body would need to be designed legally, in substantive and functional terms, in order to be effective.

The *KlimaSeniorinnen* judgment does not, by itself or directly, oblige Switzerland to establish a climate council. Nor has the Committee of Ministers ordered the creation of such a body. It has, instead, invited Switzerland to consider this possibility. Establishing a climate council is therefore not the only conceivable form of implementing the judgment. However, the requirements developed in the judgment provide a central legal benchmark for determining which institutional arrangements are necessary to ensure the effectiveness, coherence, and continuous reviewability of State climate policy. In addition, the decisions of the Committee of Ministers, the Paris Principles, the Advisory Opinion of the International Court of Justice (ICJ) on the Obligations of States in respect of Climate Change, comparative experience with scientific climate advisory bodies, and the Swiss experience with the former Advisory Body on Climate Change (OcCC) must be taken into account.

These sources show that an effective climate council should not be conceived as a loose, consultative body, or as an expert group convened on an *ad hoc* basis. It would need to be established permanently, scientifically broad in composition, sufficiently funded, and equipped with a clear statutory mandate to observe, assess, and publicly contextualise climate policy. Its task would not be to replace political decision-making or to order binding climate measures. Rather, it should provide scientific foundations, identify deviations from targets at an early stage, assess the compatibility of the country's climate policy with statutory and international climate targets, formulate recommendations for corrective action, and thereby strengthen political and public accountability for the achievement of targets.

Measured against these requirements, the existing Swiss architecture is not capable of assuming the function of such a climate advisory body. The Federal Office for the Environment (FOEN),

the National Centre for Climate Services (NCCS), ProClim, and fora for parliamentary exchange fulfil important tasks in the field of climate policy, knowledge transfer, networking, and political debate. They are not, however, designed to monitor and assess federal climate policy on a permanent, independent, scientifically broad-based, and publicly visible basis. In particular, they lack the combination of institutional independence, a statutory mandate for monitoring and evaluation, independent authority over publications, permanent resourcing, and the power to ensure political uptake. As such, they can complement, but not replace, a national climate advisory body.

This report shows that neither the Federal Constitution nor the Swiss law on government and administrative organisation precludes the establishment of a national climate council. Rather, they leave considerable flexibility as to its establishment and design. The key point is that the legal entrenchment and institutional design of the body are tailored to its function: providing independent scientific advice, monitoring and evaluating climate policy, public reporting, and issuing recommendations for corrective action. The climate advisory body would not operate as a political decision-making body but it would, instead, be an independent scientific body that provides expert support for political and administrative decision-making and ensures transparency about the achievement of targets through those processes. The appropriate organisational structure for the body is that of an extra-parliamentary commission (more specifically, an administrative commission).

The climate council should not be established merely under the ordinary model of a consultative extra-parliamentary commission, nor should it simply revive the former OcCC. What is needed is a special statutory basis that regulates, in binding fashion, its establishment, mandate and independence, access to information, publication and communication rights, composition, appointment procedure, term of office, and funding. The general rules on extra-parliamentary commissions provide a starting point, but they are, by themselves, insufficient for the specific requirements of an independent climate advisory body.

Seven requirements are central to its legal design; their legal bases and designs are set out in Parts III and IV.

1. Independence and political uptake

The climate council must be able to carry out its analyses and assessments and issue recommendations independently of any instructions from the Federal Council and the public administration. This requires, in particular, autonomy over methods and agenda-setting, a transparent appointment procedure, fixed terms of office, sufficient resources, and limited possibilities for removal from office. At the same time, the climate advisory body must be formally integrated into the political process: its reports and recommendations must reach the

Federal Council, the public administration, and parliament at defined points in time and trigger a public, time-bound, and substantiated statement by the Federal Council as well as formal consideration of the reports and recommendations by the competent parliamentary bodies. Should the climate advisory body determine that Switzerland is unlikely to achieve its statutory climate targets, its international climate obligations, or a scientifically derived pathway compatible with fair share obligations, there should be a presumption that corrective action is required; any decision to refrain from such action would have to be justified transparently and in a comprehensible manner on the basis of current projections and quantified impact analyses.

2. Broad and systemic mandate

A central task of the climate council in the field of mitigation is to continuously review Switzerland's performance in reducing emissions and, at the same time, to assess whether existing and planned reduction targets, measures, and timelines are sufficient to meet Switzerland's national and international climate obligations. However, its mandate should not be limited to such action. It should also encompass climate adaptation, sectoral transformation pathways, and the coherence of other policies with long-term climate targets. The climate advisory body should scientifically assess planned and ongoing climate measures with regard to the remaining global greenhouse gas (GHG) budget, a science-based national GHG budget, Switzerland's fair share and international climate targets; monitor their implementation; identify deviations from targets at an early stage; and publicly report on these and related developments. In order to perform these functions, the climate advisory body requires a right of initiative and comprehensive access to the relevant data and decision-making materials.

3. Permanent institution

Climate policy requires continuity across legislative periods. The climate council should therefore be permanently anchored in law. Members' terms of office should be staggered to ensure that institutional knowledge and independence are preserved. A professional scientific secretariat is indispensable for this purpose.

4. Interdisciplinary composition

The climate advisory body should draw on a broad range of scientific expertise and, in particular, combine expertise in climate science, climate impacts and adaptation, governance, economics, law and human rights as well as social, behavioural, and human sciences. Requirements relating to gender as well as linguistic and regional balance must also be taken into account.

5. Transparent and independent appointment procedure

Members should be selected through a public call, clear suitability criteria, and an independent expert pre-selection process. The Federal Council may formally appoint members but should be bound by a transparent procedure when doing so. Political proportionality in the composition of the body, voting seats for the administration or delegations of organised interests are incompatible with the function of an independent scientific body. Instead, parliament, the administration, the cantons, the business community, and civil society should be involved through hearings and consultations.

6. Reliable funding

An effective climate advisory body requires its own budget with guaranteed multi-year funding, a permanent scientific secretariat, as well as sufficient resources for its own analyses and external expertise. Its funding must not depend on the administrative unit whose policies it evaluates. Private or sector-specific funding should likewise be excluded.

7. Clear and specific statutory entrenchment

These requirements should not merely be laid down in an ordinance, an appointment decision establishing the body, or internal administrative regulations. What is required is a specific statutory basis that bindingly regulates the purpose and legal status of the climate council, its mandate and tasks, freedom from instructions, access to information, publication rights, the authority to take up matters on its own initiative, qualified obligations to respond for the Federal Council and the Federal Assembly, composition, appointment procedure, term of office, staggered appointment and renewal, interests and affiliations, secretariat, and funding.

Overall, the analysis shows that establishing a national climate advisory body is legally possible in Switzerland and that there is a clear legal and institutional need for such a body. In order for such an advisory body to have a meaningful impact, it must be permanent, independent, interdisciplinary and adequately funded, and must have a clear mandate for monitoring, evaluation, reporting, and corrective action. Depending on the relevant competence, its reports and recommendations must trigger a public, time-bound and substantiated statement by the Federal Council or the competent administrative units as well as formal consideration by the competent parliamentary bodies. Should the climate council find that achievement of relevant targets is not sufficiently likely, the Federal Council must provide a comprehensible explanation as to whether additional initiatives will be taken or why such action will be refrained from. What matters, therefore, is not merely the creation of another regular advisory body, but the institutional safeguarding of independent scientific scrutiny of climate policy. Only if the

climate advisory body possesses the necessary independence, resources, information rights, and binding integration into the political process can it contribute in the long term to the quality, transparency, and effectiveness of Swiss climate policy.

I. Introduction and background

- 1 In its judgment of 9 April 2024 in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (No. 53600/20), the European Court of Human Rights (ECtHR) held for the first time, in a binding judgment, that State climate policy and legislation are relevant for assessing whether Convention rights are being respected.¹ In substantive terms, the judgment clarified for the first time the scope and content of Article 8 of the European Convention on Human Rights (ECHR)² in the climate context: Contracting States are required to provide a legal and administrative framework for reducing greenhouse gas (GHG) emissions in such a way as to prevent serious and irreversible adverse effects on private and family life. This requires, in particular, scientifically grounded reduction targets with a timetable and a CO₂ budget, binding interim targets, and their effective implementation and updating.³ In procedural terms, the Court further confirmed that Article 6(1) ECHR guarantees effective access to a court to review the implementation of national mitigation. This applies to affected associations and – under strict conditions⁴ – also to individuals.⁵
- 2 The ECtHR concluded that Switzerland had violated both guarantees. Under Article 8 ECHR, the Court identified significant gaps in Switzerland’s domestic climate regulatory framework, including the absence of a quantified limit on future GHG emissions, gaps in the regulation of intermediate reduction targets and implementing measures, and the failure to meet previous emissions reduction targets.⁶ Under Article 6(1) ECHR, the Court found that the domestic courts had failed to assess the association’s standing separately from that of the individual applicants and had dismissed its complaints without adequately examining their merits.⁷
- 3 Since then, the execution proceedings before the Committee of Ministers of the Council of Europe have set a number of developments in motion. Some of the deficiencies identified by the Court have meanwhile been addressed;⁸ overall, however, it remains unclear whether

¹ ECtHR (Grant Chamber), judgment No. 56300/20 of 9 April 2024, *Verein KlimaSeniorinnen and Others v. Switzerland*.

² Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, entered into force for Switzerland on 28 November 1974 (ECHR; SR 0.101).

³ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 550 lit. a–e.

⁴ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 488.

⁵ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), §§ 616, 638.

⁶ More specifically, Switzerland had failed to establish and implement, in a timely and coherent manner, an effective legal and administrative framework capable of protecting the population from the serious effects of climate change. The Court cited in particular the absence of a quantified CO₂ budget, the failure to meet the 20% reduction target by 2020, a regulatory gap for the years 2025–2030 at the time the judgment was issued and the absence of sufficiently specific measures – factors suggesting that the legal and administrative framework overall was inadequate: ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 573.

⁷ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 638.

⁸ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20), 17 September 2025.

Switzerland has taken sufficient steps to address the structural requirements arising from the judgment and ensure sustained compliance with them. This uncertainty carries particular weight given that, under Article 46 ECHR, Switzerland is obliged to remedy the Convention violations found by the Court.⁹ The obligation to execute the judgment is directed primarily at the member State itself: in accordance with the principle of subsidiarity, it is for the State to take the necessary legal and institutional measures to ensure Convention-compliant climate policy on a lasting basis.¹⁰

- 4 Against this backdrop, the question arises whether the existing domestic structures are sufficient for this purpose. In its decision of 17 September 2025, the Committee of Ministers invited Switzerland, *inter alia*, “to consider the opportunity of establishing an independent national body suited to the national political structure to monitor its climate policy, mandated *inter alia* to issue recommendations to the political authorities, drawing as appropriate on good practices of other member State; [...]”).¹¹ The need for institutionalised monitoring and evaluation structures addressed in this passage is, moreover, not limited to the context of the implementation of the ECHR. Rather, it corresponds to the general understanding in international law of effective climate governance.¹² Thus, in its recent Advisory Opinion on the Obligations of States in respect of Climate Change, the International Court of Justice (ICJ) emphasized that climate policy objectives and measures must be underpinned by appropriate mechanisms for monitoring, evaluation, and corrective action.¹³
- 5 With the Advisory Body on Climate Change (OcCC), Switzerland already had, at an early stage, a scientific expert body in the climate field. The OcCC existed from 1996 to 2021 and was perceived internationally as exemplary.¹⁴ It was conceived as an interdisciplinary expert commission and had the mandate to provide scientific advice to the federal authorities – in particular the Federal Department of Environment, Transport, Energy and Communications (DETEC) – and to assess the relevance of developments in climate policy for Switzerland. In

⁹ Article 46(1) ECHR.

¹⁰ The principle of subsidiarity has been expressly enshrined in the Preamble to the ECHR since Protocol No. 15 (Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms, 24 September 2013) and assigns primary responsibility for securing Convention rights to the High Contracting Parties, under the supervision of the ECtHR; the obligation to comply with final judgments arises under Article 46(1) ECHR.

¹¹ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3 (original emphasis).

¹² By “climate governance”, we refer to the entirety of the legal, institutional, and political structures, procedures, and governance instruments by which climate targets are set and measures are adopted, implemented, monitored, and adapted. The term thus encompasses both climate law in a strict sense as well as the political decision-making, coordination, monitoring and accountability processes required for effective climate policy.

¹³ International Court of Justice (ICJ), Advisory Opinion on the Obligations of States in respect of Climate Change, 23 July 2025, § 282.

¹⁴ E.g., Stefan Brönnimann *et al.*, Climate Change in Switzerland: A Review of Physical, Institutional, and Political Aspects, WIREs Climate Change 2014, p. 461 ff.

practice, the body performed several of the key functions of a climate council: it developed climate policy ideas at an early stage – such as the call for a target of net zero by 2050 as early as 2012¹⁵ – and repeatedly introduced innovative instruments into the political debate, such as personal CO₂ budgets¹⁶ or alignment of financial flows with climate targets.¹⁷ In this way, the OcCC served as a scientifically grounded source of policy impulses and contributed to the substantive development of Swiss climate policy.

- 6 At the same time, the experience with the OcCC shows that the mere existence of such a body is not sufficient to remedy the structural deficits identified by the ECtHR. Over the years, the OcCC's mandate had been institutionally weakened, in particular because it lacked statutory entrenchment and depended on internal administrative funding and commissioning decisions. There were also deficiencies in the systematic performance of monitoring and evaluation tasks as well as its integration into the political decision-making process. The analysis below of the relevant documents and interview statements therefore shows that, although the body was effective in certain respects, it lacked both a sufficiently strong mandate as well as the necessary institutional force required to influence climate policy on a continuous and binding basis.
- 7 Against this backdrop, merely re-establishing the OcCC in its former form does not appear sufficient to meet the requirements of the ECtHR judgment. Rather, previous experience suggests that a future climate advisory body must meet significantly higher standards, in particular with regard to its independence, legal entrenchment, resources, and functional integration into the political process. As international experience and recent developments in international law indicate, a carefully conceived and designed body of this kind can make an important contribution to addressing existing deficiencies. In particular, through continuous, scientifically grounded monitoring, assessment of target achievement, and early identification of the need for action, it should be capable of ensuring a form of institutionalised, interdisciplinary peer review that is central to effective and long-term coherent climate governance.
- 8 As the Ministers' deputies of the Committee of Ministers of the Council of Europe noted in September 2025, Switzerland currently lacks an effective institutional mechanism of this type for systematically reviewing progress, assessing it from a scientific perspective, and identifying

¹⁵ Advisory Body on Climate Change (OcCC), OcCC-Empfehlungen 2021: Herausforderung "Netto Null 2050" für die Schweiz Beurteilung der aktuellen Situation und klimapolitische Massnahmen (2021), available at <<http://www.occc.ch/documents/OcCC-Empfehlungen2021d.pdf>> (last accessed 20 September 2026).

¹⁶ Advisory Body on Climate Change (OcCC), OcCC-Empfehlungen – "Persönliche CO₂- Budgets", 20 July 2017, available at <<http://www.occc.ch/documents/OcCC-Empfehlungen-2017-CO2-Budgets.pdf>> (last accessed 20 September 2026).

¹⁷ Advisory Body on Climate Change (OcCC), Klimakompatible Finanzflüsse in der Schweiz: Aktueller Stand der Diskussionen, 24 June 2020, available at <http://www.occc.ch/pdf/3449a_Klimakompatible%20Finanzfluesse_Bericht_final_200716-1.pdf> (last accessed 20 September 2026).

remaining deficiencies.¹⁸ This contrasts with a majority of States, which today have a national climate advisory body.¹⁹ In this respect, Switzerland is therefore – especially since the dissolution of the OcCC – isolated in the European context. With a view to the further domestic implementation of the ECtHR judgment, the question thus arises whether such a body should be established – referred to in what follows as the “national climate advisory body” or “climate council.” This is not merely a matter of making targeted amendments to individual legal provisions, but of institutionally safeguarding a climate policy that is scientifically informed and effective in the long term, as well as climate law that is permanently sustainable. A climate council can contribute to making climate risks visible at an early stage, continuously reviewing target pathways and measures, and providing Switzerland with guidance over the medium to long-term on how to deal appropriately with the consequences and causes of climate change.

- 9 From the perspective of the ECHR, this demand is at the same time primarily concerned with the lasting assurance of Convention-compliant climate policy. Such policy must effectively integrate human rights obligations into Swiss climate governance to protect individuals, thereby giving effect to the principle of subsidiarity, according to which the protection of Convention rights is primarily the responsibility of the Contracting States.²⁰ In this sense, the Swiss Human Rights Institution (SHRI), in its policy brief of May 2026, also recommends the creation of a corresponding independent body, relying on its own legal analysis of human rights obligations in the climate context.²¹ What is therefore required are solutions that are anchored in the Swiss institutional context while reliably guaranteeing the minimum requirements arising from the ECHR. This report examines the legal and institutional conditions under which a national climate advisory body can be established in Switzerland so as to make a structural contribution to the effective implementation of the judgment while remaining compatible with the fundamental principles of Switzerland’s constitutional and administrative legal system.

¹⁸ See also Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), p. 8.

¹⁹ These are, specifically, Australia, Austria, Belgium, Bulgaria, Cambodia, Canada, Chile, China, Denmark, the Dominican Republic, the European Union, Finland, France, Germany, Greece, Guatemala, Hungary, Iceland, India, Ireland, Kenya, Luxembourg, Mexico, New Zealand, the Philippines, Puerto Rico, South Africa, Spain, Sweden, the United Kingdom, and the United States: *Cynthia Elliott/Clea Schumer/Katherine Ross/Juan Carlos Altamirano/Kelly Levin/Rebecca/Gasper/Kati Kulovesi*, Climate Advisory Bodies: Experiences and Approaches for Effective Climate Change Policy, Annex to the Main Discussion Paper, Including Methodology, Case Studies and Mapping of Climate Advisory Bodies around the World, World Resources Institute (WRI) 2021, p. 27 ff.

²⁰ Accordingly, this report focuses on domestic compliance with the obligations arising under the ECHR; broader developments in international law are only considered to the extent that they are relevant for interpretation and further specification.

²¹ Swiss Human Rights Institution (SHRI), Menschenrechtliche Verpflichtungen im Kontext des Klimawandels, Policy Brief (Fribourg 2026), p. 9, available at <https://www.isdh.ch/assets/2026_pdf/etudes-recherche/klima-und-menschenrechte/smri_policybrief.pdf> (last accessed 20 September 2026); Swiss Human Rights Institution (SHRI), Klimawandel als Menschenrechtsfrage: Die Perspektive der Menschenrechte auf Klimaschutz und Klimaanpassung (Fribourg 2026), available at <https://www.isdh.ch/assets/2026_pdf/etudes-recherche/klima-und-menschenrechte/smri_studie.pdf> (last accessed 20 September 2026).

II. Mandate of the report, legal framework and methodological approach

1. Questions and mandate of legal opinion

- 10 This report builds on the policy report prepared by Dr Alina Averchenkova of the Grantham Research Institute, which defines the overarching requirements for such bodies in light of international best practices.²² Greenpeace Switzerland, as the commissioning party, instructed the undersigned on 11 March 2026 to prepare the present legal opinion. Based on the parameters defined in the mandate, the analysis centres on the following overarching question:
- 11 *Under what legal and institutional conditions can a national climate advisory body be established in Switzerland in such a way as that it makes a structurally effective contribution to the implementation of the ECtHR judgment in KlimaSeniorinnen while remaining compatible with Swiss constitutional law and administrative organisation law?*
- 12 This guiding question is specified through four central aspects: (i) the legal admissibility and possible organisational forms of a climate council within the Swiss institutional framework; (ii) the requirements for its effective design in light of the execution of the ECHR judgment; (iii) its compatibility with the fundamental principles of Swiss constitutional law and administrative organisation law; and (iv) its functional design and delimitation vis-à-vis existing or former bodies – in particular the Advisory Body on Climate Change (OcCC), the Forum for Climate and Global Change of the Swiss Academy of Sciences (ProClim), and the National Centre for Climate Services (NCCS). In what follows, these aspects are not examined in a strictly schematic order, but transversally along the central sets of issues.
- 13 The questions addressed in this legal report are answered based on the academic and practical experience of the undersigned. In addition to their academic activities, the authors serve on various federal extra-parliamentary commissions;²³ however, they prepared this legal opinion in an independent academic capacity. The present draft was completed in June 2026 and was commented on in July 2026 by the accompanying experts;²⁴ their comments were taken into account to the extent that they were compatible with the substantive independence of the legal assessment.

²² Alina Averchenkova, Policy Report “National Climate Advisory Bodies: Lessons Learnt on Effective Design”, revised version of 15 August 2026, available at <<https://www.lse.ac.uk/granthaminstitute/publication/submission-to-the-committee-of-ministers-of-the-council-of-europe-in-verein-klimaseniorinnen-schweiz-and-others-v-switzerland/>> (last accessed 20 September 2026).

²³ Daniela Thurnherr is a member of the Federal Commission for Air Hygiene (FCAH) and the Federal Office for Spatial Development (ARE); Charlotte Blattner is a member of the Federal Ethics Committee for Animal Experimentation (ECAE).

²⁴ See impressum.

- 14 The present report is intended to be submitted to the Committee of Ministers of the Council of Europe in the context of the execution proceedings.

2. Legal framework and delimitation of the subject matter

a. Implementation of the judgment of the ECtHR in the *KlimaSeniorinnen* case

- 15 The starting point for the present analysis is the legal framework governing the execution of the ECtHR judgment in *KlimaSeniorinnen*. The binding force of this case follows from Article 46(1) ECHR, which provides that “[t]he High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.”²⁵ This obligation encompasses not only a duty to remedy the specific Convention violation identified by the Court, but also the adoption of general measures to prevent future violations of the same kind. According to Article 46(2) ECHR, supervision of execution lies with the Committee of Ministers of the Council of Europe.²⁶
- 16 At its second meeting on the *KlimaSeniorinnen* case, the Committee of Ministers of the Council of Europe (in practice acting through the Ministers’ Deputies, i.e., the permanent representatives of the High Contracting Parties)²⁷ invited Switzerland *inter alia* “to consider the opportunity of establishing an independent national body [...]”²⁸ This invitation to examine the possibility of creating an independent national body is not legally binding as such.²⁹ Its normative significance lies in the fact that it specifies the expectations of the body responsible for supervision and will serve as a benchmark in the further proceedings: any decision not to follow it must be justified before the Committee of Ministers and will feed into its overall assessment of the state of execution, with the latent consequence of further measures

²⁵ Article 46(1) ECHR.

²⁶ Article 46(2) ECHR.

²⁷ The Ministers’ Deputies are the permanent representatives (i.e., ambassadors) of the High Contracting Parties to the Council of Europe in Strasbourg (CM Res (52) 24 (19 March 1952), Powers of the Ministers’ Deputies; cf. *Simon Palmer*, The Committee of Ministers, in: Stefanie Schmahl/Marten Breuer (eds.), *The Council of Europe: Its Law and Policies*, Oxford 2017, p. 137 ff., p. 144 f.). The Deputies carry out the everyday tasks of the Committee of Ministers and, in place of the foreign ministers, regularly decide on the execution of judgments of the ECtHR, in particular within the context of supervision under Article 46 ECHR. Decisions of the Committee of Ministers within execution procedures are therefore taken in practice by the Ministers’ Deputies, although are legally attributable to the Committee of Ministers.

²⁸ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3.

²⁹ Decisions taken by the Deputies include the reference “CM/Del/Dec”. If the decision is an interim resolution or a final resolution in accordance with Articles 16 or 17 respectively of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements (adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers’ Deputies and Amended on 18 January 2017 at the 1275th meeting of the Ministers’ Deputies), this is indicated accordingly in the title (“IntResDH” or “ResDH”).

– in particular an interim resolution or, as a last resort, infringement proceedings pursuant to Article 46(4) ECHR.

- 17 Domestic implementation of the judgment is incumbent on the Confederation, under the primary responsibility of the Federal Council, which coordinates the necessary measures within the federal administration – with the involvement of the Federal Department of Justice and Police (FDJP) as well as the substantively competent departments, specifically the DETEC and the relevant specialised offices – and, where necessary, initiates the required legislative amendments through the Federal Assembly.

b. Organisational form

- 18 Proposals for the institutional embedding of a national climate council must be guided by the principles of Swiss law on administrative organisation. This area of law is characterised by a function-oriented and fundamentally open design of organisational forms. There is no *numerus clausus* of permissible organisational forms.³⁰ Rather, the legislature and – within the limits of the law – also the Federal Council have a certain margin of discretion regarding the so-called “institutional form” (*Behördenkleid*).³¹ In addition to “classic” extra-parliamentary commissions under Articles 57 *et seq.* of the Swiss Government and Administration Organisation Act (GAOA), other forms are possible in principle, including administrative commissions, public-law corporations or institutions, foundations, funds, or other legally autonomous entities. The organisational form must appropriately serve the intended functions and be tailored to the specific requirements of the relevant regulatory context.
- 19 The choice of organisational form also determines the allocation of competences. If the climate advisory body is established as an extra-parliamentary commission merely by way of an executive decision (i.e., appointment order by the Federal Council), competence rests exclusively with the Federal Council;³² if, by contrast, its establishment requires a specific statutory basis, the decision on its existence will be taken by the Federal Assembly. This question is not merely formal. It determines whether the normative requirements of institutional independence, permanence, and clarity of mandate can be adequately met at all.

³⁰ Giovanni Biaggini, in: Bernhard Ehrenzeller et al. (eds.), *Die schweizerische Bundesverfassung*, St. Galler Kommentar, Art. 1–72, 4th edn., Zurich/St. Gallen 2023, Article 178 No. 1, 18; Jacques Dubey/Jean-Baptiste Zufferey, *Droit administratif général*, Basel, 2nd edn. 2025, No. 88; Stefan Vogel, *Einheit der Verwaltung – Verwaltungseinheiten*, Zurich/Basel/Geneva 2008, p. 76 ff.

³¹ Biaggini (cited in footnote 30), No. 18; Dubey/Zufferey (cited in footnote 30), No. 88; Vogel (cited in footnote 30), p. 76 ff.

³² Article 8e(1) of the Government and Administration Organisation Ordinance (GAOO).

c. Further issues requiring clarification

- 20 In addition to the choice of organisational form, numerous further elements determine the overall institutional and administrative law framework of a national climate council and are central to its ability to function effectively. The first question concerns the body's *legal basis* or *entrenchment*. It must be clarified, in particular, whether and to what extent an appointment decision by the Federal Council is sufficient, or whether a specific statutory basis is required to meet the requirements of permanence, clarity of mandate, and institutional safeguarding. This is linked to questions concerning the necessary content, in particular with regard to the body's tasks, competences, and position within the institutional framework.
- 21 Closely related to this is the *institutional independence* of the climate advisory body. This raises, in particular, the question of the extent to which the body must be removed from the hierarchical system of administrative instructions, how its position vis-à-vis the Federal Council and the administration is to be defined, and which mechanisms are necessary to safeguard its institutional independence while ensuring its effective integration into political and administrative processes.
- 22 The *substantive scope of the mandate* is also of central importance. It must be clarified which specific tasks should be assigned to the climate advisory body, for example, with regard to the *ex ante* assessment of targets and measures, the monitoring of implementation, and the formulation of recommendations. This also raises the question concerning the legal quality and effect of its reports and their integration into the political decision-making process. Finally, its public visibility and role in societal debate must be taken into account. The question here is whether and how the climate council communicates its findings to the public, how it contributes to making public debate more evidence-based, and what role it assumes in interacting with political institutions and social actors.
- 23 A further element concerns the *temporal design* of the body. In particular, questions relating to the permanence of the institution, the terms of office of its members and their renewal must be clarified, taking into account the relationship with existing rules of administrative organisation law, for example those relating to legislative cycles. *Composition and appointment procedures* are likewise of considerable importance. It must be examined what requirements apply to the professional expertise, interdisciplinary grounding, and personal independence of the members, and how these can be institutionally safeguarded in the selection procedure without falling into a logic of political proportionality.
- 24 This is inseparably related to the question of *funding, budgeting, and resources*. It must be clarified, in particular, to what extent the climate advisory body will have to be furnished with its own financial resources, personnel, or secretariat, in order to perform its tasks independently and on a sound professional basis.

- 25 Overall, the following analysis therefore primarily deals with questions of external administrative organisation, supplemented by certain aspects of internal organisation insofar as these are legally relevant for the effective functioning of the climate council. The present analysis is limited to the points that are central to the questions addressed and does not claim to provide a complete account of all detailed issues of administrative organisation law. Moreover, the elements set out above should not be considered in isolation but stand in close functional relationship. Their specific design will determine whether a national climate council merely fulfils its tasks formally or whether it can in fact make an effective contribution to implementation of the judgment in the *KlimaSeniorinnen* case.
- 26 By contrast, the accountability mechanisms of the climate advisory body itself, as well as the judicial uptake of its activities, will not be examined in depth.³³ This is not to suggest that these questions are irrelevant. On the contrary, an independent monitoring and consultative body must, for its part, operate transparently, according to clear, pre-defined rules, and in an accountable manner. Likewise, the question may arise as to what legal significance should attach to its reports and recommendations in administrative, legislative or judicial proceedings. It is conceivable, for example, that reports of the climate council may be relied upon as scientifically grounded bases for decision-making, or that the absence of a required response may make it more difficult to assess whether the administration and legislature have complied with their duty of periodic review and corrective adjustment. These questions, however, concern the downstream governance and judicial integration of a climate advisory body. The present report focuses on the prior question of which minimum legal and institutional requirements should govern the establishment, mandate, independence, composition, and resourcing of a national climate council.
- 27 The question of the political feasibility of a climate advisory body likewise is not the subject of this report. A brief contextualisation nevertheless appears appropriate, because two recent and ongoing developments are shaping public perceptions of potential institutional models: first, the parliamentary initiative to establish a climate council, members of which are selected at random from amongst the general public, and second, the ongoing re-organisation of extra-parliamentary commissions.
- 28 First, the earlier parliamentary proposal to establish a climate council must be situated in this context. Parliamentary Initiative 20.467 of 2020 predated both the *KlimaSeniorinnen* judgment and the invitation from the Committee of Ministers to examine the possibility of an independent national climate body. It also aimed at a significantly different model from the one examined in this report: a climate council with members selected at random from amongst the general

³³ The notion of “judicial uptake” refers to the issue as to whether, and in what manner, the work of a climate advisory body can subsequently be taken into account in legal terms within administrative or judicial proceedings. It does not mean that the climate council itself has legislative or legally binding decision-making powers.

public and vested with far-reaching democratic and policy powers, including the ability to adopt resolutions, motions, and parliamentary initiatives addressed to parliament, as well as submitting constitutional amendments directly to the People and the cantons by qualified majority.³⁴ The initiative was rejected largely due to concerns that such a body might be perceived as an institution competing with parliament, without sufficient democratic legitimacy of its own.³⁵ These objections relate exclusively to the model proposed there, namely a deliberative citizens' or parallel body,³⁶ and do not call into question the need for a consultative climate body as such. Nor do they answer the question raised in this report, specifically whether and how a scientific, independent climate council should be legally organised as a consultative, monitoring and evaluation body.

- 29 A further distinction should be drawn between the above issue and the ongoing re-organisation of extra-parliamentary commissions.³⁷ That reform takes place against the background of repeated criticism regarding the composition, performance, costs, and benefits of such bodies, while retaining commissions as an established instrument of governance. The Parliamentary Control of the Administration (PCA) and the Control Committees of the Council of States (CC-CS) note that administrative commissions are, in principle, a flexible instrument; that their work is for the most part professionally sound, broadly based and timely; and that external mandates could replace their work more appropriately or efficiently only in a few cases.³⁸ The ongoing

³⁴ 20.467, Parliamentary Initiative by the Green Parliamentary Group, "Als Antwort auf die Klimakrise die Demokratie erweitern. Einen durchs Los bestimmten Klimarat schaffen," 24 September 2020.

³⁵ 20.467, Parliamentary Initiative by the Green Parliamentary Group, "Als Antwort auf die Klimakrise die Demokratie erweitern. Einen durchs Los bestimmten Klimarat schaffen," preliminary examination by the National Council, 15 December 2021, Official Bulletin 2021 No. 2635-8.

³⁶ Experience in Austria shows that citizens' assemblies selected at random can indeed provide deliberative added value, but are particularly vulnerable on a political level as they can be branded as lacking democratic legitimacy when adopting a stance at odds with parliament or the government. *Clair et al.* note that, in public debate, the Austrian climate advisory body has not been perceived primarily as a source of input for the legislative or parliamentary process, but rather largely as a parallel arrangement insufficiently embedded in the constitutional order. Criticism has focused in particular on the issues of representativeness, legitimation, transparency, and lack of a statutory foundation: *Christoph Clair/Ines Omann/Patrick Scherhauser*, *Der österreichische Klimarat - Ein Beitrag zur Weiterentwicklung von Demokratie und Politik?*, SWS-Rundschau 2023 63(3), p. 259 ff.

³⁷ The starting point is the report of the Parliamentary Control of the Administration (PCA) of 20 June 2022 (Federal Gazette 2022 3007, p. 28) along with the five recommendations of the Control Committees of the Council of States (CC-CS) of 15 November 2022 (Federal Gazette 2022 3006), which the Federal Council approved in its Opinion of 29 March 2023 (Federal Gazette 2023 835). In its consultation draft entitled "Neuordnung der ausserparlamentarischen Kommissionen im Rahmen der Überprüfung 2025" of 28 January 2026, the Federal Council proposes dissolving nine commissions and merging nine others into three, along with additional structure adjustments. The proposals also include a clarification of Article 57a GAOA concerning the purpose of extra-parliamentary commissions as well as the introduction of a new Article 57g^{bis} of the draft version of the GAOA, according to which extra-parliamentary commissions would only be permitted to communicate with members or bodies from the Federal Assembly through the authorities with competence over them (background: 25.3018, Motion Political Institutions Committees of the National Council (PIC-NC), "Zahl der ausserparlamentarischen Kommissionen reduzieren," 31 January 2025).

³⁸ Report of the Control Committees of the Council of States (CC-CS) of 15 November 2022 (Federal Gazette 2022 3006), ch. 3, p. 19 and ch. 2.5.1; Federal Chancellery, Neuordnung der ausserparlamentarischen

reform is therefore directed primarily at commissions that rarely or hardly ever meet, at duplication of functions, and at unclear appointment decisions by the Federal Council. From these ongoing efforts at re-organization does not follow that a climate council would be politically or institutionally excluded. On the contrary, precisely because the reform emphasises necessity, clear tasks, transparency and effective oversight, a climate council must be measured against these criteria. A body that closes a clearly identified institutional gap, provides permanent expertise, does not act as an interest group or seek to substitute parliament, and is legally defined with precision in terms of mandate, independence, working methods, and accountability mechanisms is fully compatible with the re-organisation of the commission system. Extra-parliamentary commissions remain a recognised mechanism for linking scientifically qualified expertise to government and administration on a permanent basis and at comparatively low cost.³⁹ For these reasons, the ongoing revisions do not speak against the establishment of a national climate advisory body; rather, they underscore the need to design such a body in a legally precise, transparent and functionally clear manner.

3. Methodological approach, sources and structure of the analysis

- 30 The question(s) addressed in this report are answered on the basis of a systematic analysis of the relevant domestic legal bases and case law in the field of Swiss law on administrative organisation, as well as the applicable rules of international law and human rights law. Particular attention is paid to the ECHR and the case law of the ECtHR, as well as the relevant decisions and practice of the Committee of Ministers in the context of the execution proceedings. The analysis also draws on relevant scholarship concerning Swiss administrative organisation law, the international and human rights law framework, and the execution of ECtHR judgments. Guidelines, official communications, and other relevant materials are also taken into account.
- 31 In order to situate the institutional questions more fully, semi-structured interviews were conducted with selected experts. The interviews helped to incorporate practical experience with existing bodies and to inform the analysis of how a climate council could be institutionally embedded within Swiss law on administrative organisation and broader climate governance. Interviewees included former members of the Advisory Body on Climate Change (OcCC), former and current members of the Forum for Climate and Global Change of the Swiss

Kommissionen im Rahmen der Überprüfung 2025, Erläuternder Bericht zur Eröffnung des Vernehmlassungsverfahrens, 28 January 2026, 2025, para. 2.1.1, p. 11 ff.

³⁹ The OcCC received around CHF 205,000 in funding each year, including CHF 30,000 in project funds – a total amount that was barely sufficient for the tasks it was supposed to perform: OcCC, internal working paper: Wissenschaftliche Klimaberatung für das UVEK – Zukunft, 1 December 2020, p. 2. This issue will be returned to below in section IV.10.

Academy of Sciences (ProClim), and representatives of the Swiss Human Rights Institution (SHRI). The interviews were used as background knowledge and to contextualize the analysis, without themselves being the subject of a separate empirical evaluation.

- 32 The following analysis starts by considering the normative requirements applicable to a national climate advisory body. The requirements developed in the literature – in particular by Dr Averchenkova – provide an important starting point but are not exhaustive. From a legal perspective, the relevant requirements must be determined through the interplay of international law, constitutional law, and administrative organisation law, as well as the specific function that a national climate council is intended to perform within the Swiss institutional framework.
- 33 These normative requirements derive from different, mutually complementary sources. First, they arise from the *human rights requirements* of the Council of Europe, in particular the ECtHR judgment in *KlimaSeniorinnen*⁴⁰ and the subsequent decisions in the execution proceedings, that is, decisions of the Committee of Ministers and the accompanying materials, such as the Notes on the Agenda.⁴¹ In other words, the question of the need for and design of a national climate council cannot and must not be answered solely based on “narrow” parameters drawn from political science and the law on administrative organisation. Account must also be taken of the requirements arising from the ECHR for effective climate protection, as well as institutional guidelines that can be derived from comparison with other independent institutions. At the same time, it must be borne in mind that the *KlimaSeniorinnen* judgment does not require the creation of a national climate council. The human rights requirements developed in that judgment rather serve as a benchmark for how such a council would have to be designed in order to contribute to the effective and continuous fulfilment of the obligations arising from the ECHR in the field of climate change.
- 34 Second, the general principles governing the design of independent State institutions with a human rights dimension need to be taken into account, including, notably, the Paris Principles Relating to the Status of National Institutions.⁴² Although not directly binding, the Paris Principles provide recognised criteria for independence, clarity of mandate, resources, and institutional entrenchment. The General Observations of the Sub-Committee on Accreditation (SCA) constitute a practice-based specification of the Paris Principles that emerged from the accreditation process and are regarded as a form of institutional best practice.⁴³ The Paris

⁴⁰ ECtHR, *KlimaSeniorinnen* (cited in footnote 1).

⁴¹ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8); Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application No. 53600/20), 17 September 2025.

⁴² UNGA 48/134 “National institutions for the promotion and protection of human rights”, A/RES/48/134, 20 December 1993, Annex “Principles Relating to the Status of National Institutions” (“Paris Principles”).

⁴³ Global Alliance of National Human Rights Institutions (GANHRI), General Observations of the Sub-Committee on Accreditation, adopted by the GANHRI Bureau at its Meeting Held in Geneva, 21 February 2018. See also the European Network of National Human Rights Institutions (ENNHRI)/Commission nationale consultative des

Principles are relevant for national climate councils not because such bodies would themselves be human rights institutions but because their underlying premise – that human rights obligations must be institutionally safeguarded, independently accompanied, and effectively monitored – also applies to climate governance. In light of the human rights dimension of State climate obligations, climate councils should therefore be understood as institutional safeguards for ensuring that climate governance is consistent with fundamental and human rights obligations.

- 35 Third, *requirements of international climate law* must be considered. These are currently limited in number. Particular attention should be paid to the 2025 Advisory Opinion of the International Court of Justice (ICJ) on the Obligations of States in respect of Climate Change,⁴⁴ which contains selective but important guidance on the significance of scientifically grounded and institutionally safeguarded climate policy.
- 36 Fourth, the *political science and comparative legal literature* on climate (change) councils must be taken into account – as the Committee of Ministers itself suggested.⁴⁵ This literature identifies the institutional features that have emerged in other countries as “best practices” for effectively accompanying and monitoring climate policy and climate law. We also rely here, among others, on the report by Dr Averchenkova.⁴⁶
- 37 Fifth and finally, the *Swiss experience with relevant bodies* should be considered, including specifically the Advisory Body on Climate Change (OcCC), which was active until 2021. This experience illustrates, by way of example, which institutional limitations – for instance in terms of clarity of mandate, institutional safeguards, or integration into political decision-making processes – can impair the effectiveness of such a body, and thus provides important positive and negative reference points for the concrete design of a future climate council. The sources for this assessment are the interviews mentioned above, documents of the OcCC itself, official information, and media reporting on its work.
- 38 Methodologically, the report does not follow a strict two-stage structure in which the normative requirements are first addressed in the abstract and only then their legal implementation is examined separately. Such an approach would not sufficiently reflect the question at hand, since

droits de l’homme de la République Française (CNCDDH), The Accreditation of National Human Rights Institutions: Practical Guide, 19 October 2018. The ENNHRI-CNCDDH Practical Guide further elaborates the Paris Principles with reference to practical experience from accreditation procedures and shows how their requirements can be implemented in different institutional contexts. Although it has no independent normative authority, it provides valuable guidance on established best practices in terms of the concrete design and institutional arrangements of independent bodies.

⁴⁴ ICJ Advisory Opinion (cited in footnote 13).

⁴⁵ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3: “drawing as appropriate on good practices of other member States.”

⁴⁶ Averchenkova (cited in footnote 22).

the concrete significance of the requirements applicable to a national climate council becomes visible only in connection with the respective institutional design questions. Instead, the analysis proceeds in an integrated manner: for each element under examination – such as institutional form, legal basis for the mandate, independence, scope of the mandate, etc. – the relevant requirements are identified summarily with regard to the respective design question and then assessed and specified in light of Swiss administrative organisation law.

- 39 The legal design is based on the current state of legislation and case law in Swiss administrative organisation law, takes account of the relevant literature and guidelines as well as guidelines and information letters issued by authorities, and clarifies only those points relevant to the establishment of a climate advisory body – without claiming to resolve all questions of administrative organisation law.
- 40 The following analysis is structured around the central design elements of a national climate advisory body that determine its legal status and practical effectiveness. Part III addresses the legal and institutional framework of a possible climate council. It begins with the institutional form and organisational structure (section 4), which determine the body's position within the Swiss State structure. Section 5 then examines the legal basis and mandate of the body, focusing in particular on whether an appointment decision is sufficient or whether specific statutory anchoring is required. Part IV then turns to the substantive design and functioning of the climate council. It first examines how to safeguard institutional independence while ensuring integration into the policy cycle (section 6). This involves defining the climate advisory body's position vis-à-vis the Federal Council, the administration and parliament, as well as the conditions for its effective operation. Section 7 explores the substantive scope of the council's mandate, including its specific tasks and the legal framework governing them. The analysis then considers how the council's temporal design can ensure institutional stability and continuity (section 8). It next addresses the requirements relating to expertise, composition and appointment (section 9), which are central to the climate council's professional competence and personal independence. Adequate funding, budgeting and resources are equally essential to its capacity to fulfil its mandate effectively (section 10). Part IV concludes with a brief discussion of the remaining questions requiring clarification (section 11).

III. Form: Legal design of the climate advisory body

4. Institutional form and organisational structure

a. Normative requirements

- 41 The relevant international and comparative materials overall point clearly towards the creation of an institutionally independent, permanently established and functionally autonomous climate council. The later decision of the Committee of Ministers of the Council of Europe confirms this assessment by calling for an “independent national body suited to the national political structure.”⁴⁷ The decision highlights independence as a central functional and institutional requirement; however, it deliberately leaves the specific organisational form open, which can be adapted to the respective national administrative and constitutional culture. Although this does not exclude integrating a climate council into existing State structures, it does rule out a purely hierarchical and fully instruction-bound administrative unit. Rather, the body must be able to act autonomously and formulate independent scientific assessments, even while embedded in the national institutional framework
- 42 The explanatory Notes likewise emphasise the importance of institutional independence.⁴⁸ They expressly state that existing bodies in the Swiss structure, such as the FOEN, the NCCS or ProClim, do not meet these requirements.⁴⁹ A separate question concerns the climate council’s mandate and the powers and resources required to fulfil it. According to the *Notes*, Switzerland currently lacks – at least since the abolition of the OcCC – a body with sufficient “capacity and authority”⁵⁰ to perform the envisaged monitoring, evaluation, and advisory functions on a continuous basis.
- 43 The Paris Principles point in a similar direction. They serve internationally as a reference framework for independent institutions in the human rights context. Although they directly concern national human rights institutions, their underlying institutional logic also guides other State-based bodies that operate – as a national climate council would – at the intersection of State action, independent oversight, and human-rights-relevant protection duties.⁵¹ The Paris Principles expressly emphasise that each State may choose the institutional form best suited to its own constitutional and administrative specificities.⁵² At the same time, the chosen structure must allow the body to perform its tasks independently, effectively, and credibly. Independence

⁴⁷ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3.

⁴⁸ Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37 (cited in footnote 41), p. 3 and 8.

⁴⁹ Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37 (cited in footnote 41), p. 8.

⁵⁰ Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37 (cited in footnote 41), p. 3.

⁵¹ See further above II.3.

⁵² Paris Principles (cited in footnote 42), para. 12.

and effectiveness therefore form the central guiding principles.⁵³ States thus enjoy considerable discretion, but only as long as the minimum institutional requirements remain safeguarded.

- 44 The Advisory Opinion of the ICJ emphasises States’ duty to put in place “effective enforcement and monitoring mechanisms”⁵⁴ for implementing their climate obligations. An explicit obligation to establish a climate council cannot be derived from these principles. However, an independent climate council may be understood as one institutional concretisation of such due-diligence requirements, particularly with regard to monitoring, evaluation and public accountability.
- 45 Dr Averchenkova’s expert report further confirms that independent climate advisory bodies have now become established internationally as a distinct institutional category and are regarded as a “cornerstone of effective climate governance”⁵⁵. They typically take the form of permanent expert bodies that are functionally close to climate policy, while maintaining institutional distance from the central administration.⁵⁶ The concrete organisational form varies considerably between States. What remains constant, however, are the elements of institutional autonomy, scientific independence, and long-term stability.⁵⁷
- 46 Finally, experience with the OcCC speaks against establishing a loosely organised, informal consultative body. The interviews repeatedly emphasised that the OcCC increasingly lost influence because of its weak mandate, financial dependence and loose institutional anchoring. Interviewees referred in particular to its dependence on DETEC and FOEN, the absence of safeguards against political and administrative resistance, and its limited institutional consolidation. Moreover, several interviewees warned against establishing a mere “fig-leaf commission” and expressly called for a “strong mandate” and a more institutionally robust design.
- 47 Within the framework of administrative organisation law, independence does not mean that the climate advisory body should have binding political decision-making powers. An independent climate council should not take on any political decision-making function of its own, but provide scientific foundations, evaluate the effectiveness of measures, carry out assessments of target achievement, make undesirable developments visible, and identify possible courses of action – including where these are politically inconvenient. This requires, in particular, transparent appointment procedures, sufficient and secured resources, scientific quality

⁵³ Paris Principles (cited in footnote 42), para. 2 and the Annex “Principles Relating to the Status of National Institutions” (“Paris Principles”), Composition and Guarantees of Independence and Pluralism, para. 2; GANHRI (cited in footnote 43), p. 2 and 13.

⁵⁴ ICJ Advisory Opinion (cited in footnote 13), § 282.

⁵⁵ *Averchenkova* (cited in footnote 22), p. 1.

⁵⁶ *Averchenkova* (cited in footnote 22), p. 1-2, 7, 12.

⁵⁷ *Averchenkova* (cited in footnote 22), p. 2, 7, 12.

standards, and the ability to publish reports and recommendations without prior political approval.⁵⁸ In the field of climate policy, such institutional distance is especially important so that long-term scientific findings and requirements can be made visible and fed into the political decision-making process independently of short-term political priorities.

- 48 The performance of these functions also requires permanent institutional entrenchment. A climate council must not be conceived merely as a time-limited project or an advisory body convened on an *ad hoc* basis. Only a long-term institution can build the institutional memory, professional continuity and experiential basis required for effective monitoring and for consistent evaluation and support of climate policy across several legislative periods.

⁵⁸ See further below IV.6.

Infobox 1: Limits of existing structures of scientific climate policy advice

At first glance, one might argue that existing institutions such as the Federal Office for the Environment (FOEN), the National Centre for Climate Services (NCCS) or the Forum for Climate and Global Change (ProClim) could assume the tasks of a climate advisory body in future. On closer inspection, however, these models reveal structural limits.⁵⁹

FOEN forms part of the federal administration and is itself responsible for developing, implementing, and accompanying climate policy.⁶⁰ It therefore naturally lacks the institutional distance required for independent evaluation and public scrutiny of governmental climate policy. As part of the executive, it is embedded in hierarchical structures of responsibility and instruction. At the same time, it participates in preparing, implementing and communicating the very policy that would have to be evaluated. An independent climate council would instead provide an institutionally autonomous perspective capable of critically reviewing existing political and administrative assessments and, where necessary, feeding new scientifically grounded impulses into the political process.

This gap is particularly visible with regard to Article 40 of the CO₂ Act. Although the Act provides for regular review of the effectiveness of climate policy,⁶¹ no comprehensive public evaluation of all measures and instruments has yet taken place.⁶² FOEN does regularly publish

⁵⁹ See on this issue Council of Europe (CoE), Communication from the authorities concerning the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20), 24 June 2025, p. 11. Switzerland's submission to the Committee of Ministers of the Council of Europe indirectly confirms that there is currently no dedicated institution performing the functions of an independent climate council. Although the federal government refers to various existing actors and platforms, such as ProClim, the NCCS, and the parliamentary group "Klima", the very description of these institutions indicates that they perform different functions. ProClim is characterised as a scientific network and platform for knowledge transfer, the NCCS as a coordination and innovation body for climate services, and the parliamentary group primarily as a forum for political exchange (ibid.). None of these structures has an autonomous statutory mandate to independently evaluate climate policy, to systematically monitor achievement of targets or to publicly formulate scientifically grounded recommendations for the Federal Council and parliament. It is also noteworthy that the federal government explicitly describes the former OcCC as a body that was supposed to have formal powers to evaluate Swiss climate policy and its targets.

⁶⁰ Organisational Ordinance for the Federal Department of Environment, Transport, Energy and Communications (OO-DETEC, SR 172.217.1, of 6 December 1999, Article 12; Federal Office for the Environment (FOEN), FOEN Strategy 2030 (2024), available at <<https://www.bafu.admin.ch/dam/de/sd-web/MNdyfnWI4toO/FOEN-Strategie%202030.pdf>> (last accessed 20 September 2026).

⁶¹ Article 40(1) of the CO₂ Act.

⁶² Switzerland has in fact carried out specific evaluations of individual climate policy instruments and measures. These include, for example, impact assessments of the CO₂ levy, evaluations of the building programme, studies on emissions regulations in the transport sector, and periodic reports on the achievement of targets in individual sectors. External bodies such as INFRAS, Ecoplan, and Prognos have been involved in some cases. However, these assessments have been specific to individual sectors or instruments and have been carried out primarily within the ambit of administrative implementation and impact assessments. See Federal Office for the Environment (FOEN), Studien Klima, available at <<https://www.bafu.admin.ch/de/studien-klima>> (last accessed 20 September 2026). A comprehensive, independent and regular overall evaluation of Swiss climate policy – particularly with regard to the interactions between all measures, their aggregate emissions-reduction effects, and their compatibility with long-term climate targets – has not yet been undertaken. See also more recently: *Leistungsvereinbarung 2026 zwischen dem Eidgenössischen Departement für Umwelt, Verkehr und*

detailed data on the development of GHG emissions, yet, they are not consistently assessed with regard to whether Switzerland as a whole is on track to achieve its respective climate targets. Communication on target achievement and emissions trends has likewise lacked consistency: failure to meet the 2010 reduction target received little public attention;⁶³ failure to meet the target for 2020 was announced at a very late stage,⁶⁴ and based on the current GHG inventory, the 2025 interim target also appears out of reach.⁶⁵ More recently, a senior FOEN official indicated that Switzerland is likely to fall substantially short of its 2030 emissions reduction target under the current policy framework.⁶⁶ Switzerland has therefore not yet carried out a systematic and independent overall evaluation of its past climate policy, the statutory measures adopted, or their actual and expected reduction effects – whether retrospectively or

Kommunikation (UVEK) und dem Bundesamt für Umwelt (BAFU), 1 January 2026, available at <https://www.bafu.admin.ch/dam/it/sd-web/YEH7ht5oA-Z-/LVB%202026%20FOEN%20sign_.pdf> (last accessed 20 September 2026), along with the respective detailed information.

⁶³ According to Article 2(1a) of the CO₂ Act (of 8 January 1999), Switzerland was supposed to reduce its GHG emissions by 10% (below 1990 levels) by 2010. In fact, no reduction in GHG emissions was achieved during this period. Instead, GHG emissions rose by around 0.5% in that period (in 1990 the figure for Switzerland's GHG emissions was 55.17 millions of tonnes of CO₂ equivalent, whereas in 2010 the total was 55.44 millions of tonnes of CO₂ equivalent). See Federal Office for the Environment (FOEN), Changes in Switzerland's Greenhouse Gas Emissions since 1990 (April 2026), available at <https://www.bafu.admin.ch/dam/de/sd-web/C71YhQGTYfR7/Tabelle-Inventar-2026_DE.xlsx> (last accessed 20 September 2026). The failure to meet the 2010 interim target received little political or public attention, which was likely due at least in part to the fact that Switzerland was ultimately able to fulfil its commitments under the Kyoto Protocol over the 2008–2012 commitment period – amongst other things by offsetting foreign emissions reduction certificates: Federal Office for the Environment (FOEN), Kyoto Protocol: Switzerland fulfils its commitment for 2008-2012, 10 April 2014, available at <<https://www.admin.ch/en/nsb?id=52619>> (last accessed 20 September 2026).

⁶⁴ Switzerland narrowly missed its national target of reducing greenhouse gas emissions by 20% compared with 1990 levels by 2020, achieving a reduction of just under 19%. In 2019, emissions had been reduced by 14% below 1990 levels, leading the FOEN to anticipate that actual figures would fall short of this target by a more substantial margin. The stronger decline in emissions in 2020, which ultimately resulted in the target being missed only narrowly was attributable in particular to mild weather conditions during the winter months as well as the emissions-reducing effects of measures implemented to contain the COVID-19 pandemic: Federal Office for the Environment (FOEN), 2020 Reduction Target (for the years 2013 to 2020), 11 April 2022, available at <<https://www.bafu.admin.ch/en/klimaziel-2020>> (last accessed 20 September 2026).

⁶⁵ In its Intended Nationally Determined Contribution (INDC) submitted to the UNFCCC in 2015, Switzerland was supposed to reduce its greenhouse gas emissions by 35% compared to 1990 levels by 2025 (Switzerland's Intended Nationally Determined Contribution (INDC) and Clarifying Information, 27 February 2015, available at <https://www.ctc-n.org/sites/default/files/UNFCCC_docs/15_02_27_indc_contribution_of_switzerland.pdf> [last accessed 20 September 2026]). The 2025 figure was not, however, enshrined in law as a self-standing national target. According to the GHG inventory, emissions in 2024 were only 27.3% below 1990 levels (in 1990 Switzerland's GHG emissions amounted to 55.17 million tonnes of CO₂ equivalent; 40.11 million tonnes of CO₂ equivalent in 2024). Taking the GHG balance from land use into account, emissions were 22.3% below 1990 levels, making it apparent that the targeted reduction for 2025 is likely to be missed by a substantial margin. See Federal Office for the Environment (FOEN), Changes in Switzerland's Greenhouse Gas Emissions since 1990 (April 2026), available at <https://www.bafu.admin.ch/dam/de/sd-web/C71YhQGTYfR7/Tabelle-Inventar-2026_DE.xlsx> (last accessed 20 September 2026).

⁶⁶ Annika Bangerter, “Wir werden die Klimaziele 2030 massiv verfehlen” – der oberste Klimabeamte geht mit dem Parlament hart ins Gericht, Aargauer Zeitung, 8 November 2025; Watson, “Werden Klimaziele 2030 massiv verfehlen”: Oberster Klimabeamter kritisiert das Parlament, 8 November 2025. See also Jurek Müller, *Wie die Schweiz ihre Klimaziele aufs Spiel setzt*, SRF News, 21 May 2026, available at <<https://www.srf.ch/news/schweiz/klimaziele-bis-2030-wie-die-schweiz-ihre-klimaziele-aufs-spiel-setzt>> (last accessed 20 September 2026).

prospectively. This is precisely where an independent climate advisory body would close an institutional gap by ensuring monitoring, evaluation and public reporting on a permanent, independent and transparent basis.

The National Centre for Climate Services (NCCS) also performs a different function. Its primary role is to coordinate the provision of scientific evidence, climate scenarios, and knowledge on adaptation among federal authorities, researchers, and practitioners.⁶⁷ Its focus lies on climate change adaptation rather than climate mitigation, and on knowledge transfer and coordination rather than independent policy evaluation or public accountability.⁶⁸ Moreover, the NCCS is closely integrated into the federal administration in organisational terms and is not designed as an external oversight or as an advisory body with its own mandate. It therefore lacks both institutional distance and an explicit mandate to independently assess the achievement of climate targets, the effectiveness of Switzerland's climate policy, and any shortcomings in that policy.

The Forum for Climate and Global Change (ProClim) likewise does not meet the requirements of an independent climate council. ProClim primarily operates as a scientific network and platform for the coordination and dissemination of knowledge.⁶⁹ It does not have a self-standing statutory mandate but is organisationally embedded, as a Forum of the Swiss Academy of Sciences (SCNAT), within the framework of the general service agreement between the Confederation and the academies. Neither its existing mandate nor its available resources and expertise are designed for continuous monitoring, evaluation of climate policy, or independent public reporting. Moreover, ProClim has a pronounced institutional proximity to the administration: ProClim does not have a separate legal personality, is organisationally embedded in existing structures, and works on the basis of fixed-term agreements with federal offices, especially FOEN. Several interviewees expressly stated that ProClim is not suitable to perform the function of an independent climate council, given its self-understanding, institutional embedding, and lack of resources and competences.

⁶⁷ National Centre for Climate Services (NCCS), Organisation, available at <<https://www.nccs.admin.ch/nccs/de/home/das-nccs/das-nccs-im-portrait/organisation.html>> (last accessed 20 September 2026).

⁶⁸ The NCCS was established under the terms of the Federal Council Decree of 9 April 2014 on “Adaptation to Climate Change in Switzerland” and serves primarily to coordinate and provide scientific knowledge and climate services in the field of climate adaptation. See National Centre for Climate Services (NCCS), Mandate and goals, available at <<https://www.nccs.admin.ch/nccs/en/home/the-nccs/about-the-nccs/mandate-and-goals.html>> (last accessed 20 September 2026).

⁶⁹ Forum for Climate and Global Change (ProClim), About us, available at <<https://proclim.scnat.ch/en/about-proclim>> (last accessed 20 September 2026).

Similar weaknesses can be identified, in retrospect, in the former OcCC. Although the body provided important impulses – for instance on the net-zero target⁷⁰ – it lacked a strong statutory mandate, institutional safeguards, and financial independence. Its mandate became increasingly weakened over time, its funding remained dependent on federal offices, and its relationship with the administration was repeatedly described as tense. Various interviewees pointed out that the OcCC’s formal independence was, in practice, significantly constrained by institutional and financial dependencies.

Moreover, the requirements for scientific climate advice have evolved considerably since the establishment of the OcCC in 1996. Today, the focus extends beyond the natural scientific foundations of climate change to the ongoing assessment of concrete transformation pathways, cross-sectoral measures, and their social, economic and human rights implications. This creates a need for a permanently institutionalised body with a clear statutory mandate, sufficient resources, an interdisciplinary composition, and demonstrable independence from the administration. Against this background, merely developing or adapting pre-existing structures appears to be insufficient.

The “Parliamentary Climate Group”⁷¹ likewise cannot perform the functions of an independent climate council. It is constituted as a parliamentary group under Article 63 of the Federal Act on the Federal Assembly (Parliament Act, ParlA) and primarily serves as a forum for exchange between members of parliament and actors from academia, business, civil society, and directly affected stakeholders. Its purpose is to facilitate knowledge transfer, networking, and support for constructive, coherent and broad-based climate policy; in particular, it envisages information, networking, and panel events during parliamentary sessions. The Parliamentary Climate Group is not an independent scientific evaluation body with a statutory mandate, its own resources, and institutional distance from parliament and interest groups. It can strengthen parliamentary exchange and feed scientific and civil-society impulses into the political process. However, it has neither a mandate for continuous monitoring and evaluation of climate policy nor a public-law reporting and accountability function. It can therefore usefully complement, but not replace, a climate advisory body.

⁷⁰ Advisory Body on Climate Change (OcCC), OcCC-Empfehlungen 2021: Herausforderung “Netto Null 2050” für die Schweiz, Beurteilung der aktuellen Situation und klimapolitische Massnahmen (2021), available at <<http://www.occc.ch/documents/OcCC-Empfehlungen2021d.pdf>> (last accessed 20 September 2026).

⁷¹ Climate Alliance Switzerland, Parliamentary Working Group on the Climate, 2026, available at <<https://www.klima-allianz.ch/arbeitsgruppen/parlamentarische-gruppe-klima/>> (last accessed 20 September 2026).

Infobox 2: The New Scientific Climate Advisory Body for French-speaking Switzerland

Through an inter-cantonal agreement, the six cantons of French-speaking Switzerland – Neuchâtel, Jura, Freiburg, Vaud, Valais, and Geneva – established the “Scientific Climate Advisory Body for French-speaking Switzerland” in August 2025.⁷² Since the beginning of 2026, it has operated as an advisory body composed of representatives from research across sixteen thematic areas, including soils, forests, and innovation. Its purpose is to provide the cantonal governments with scientifically grounded decision-making bases for developing and assessing their climate strategies and measures.⁷³ Its remit is limited to natural science and technical expertise *stricto sensu* and does not institutionally integrate social science, legal, ethical, or participatory perspectives, even though precisely these perspectives are necessary for a comprehensive interdisciplinary assessment of climate policy measures.⁷⁴ The initiative clearly demonstrates the cantons’ need for scientific support in policymaking and policy implementation, as well as their willingness to take action. It also underscores the need for a nationwide body capable of providing coherent and interdisciplinary guidance on climate matters and increases the pressure to establish such a body at the federal level.

b. Legal design

- 49 Against this background, the question arises as to which institutional forms are available for a climate council and which legal structure is most appropriate in light of its mandate. The following analysis considers an extra-parliamentary commission in the form of an administrative commission, an administrative oversight body, a public-law corporation, and private entities entrusted with the performance of public tasks.

- Extra-parliamentary commission in the form of an administrative commission

- 50 Since a climate council should primarily advise the government and the administration, and critically monitor their actions, it would appear appropriate to establish it as an administrative commission. Extra-parliamentary commissions are generally established where the State must perform tasks for which the necessary expertise is not available, or only partly available, within

⁷² Convention instituant le Conseil scientifique romand pour le climat, entre le Canton de Fribourg, la République et Canton de Genève, la République et Canton du Jura, le Canton de Vaud, le Canton de Valais et la République et Canton de Neuchâtel, 22 August 2025, in force since 1 October 2025.

⁷³ Canton of Valais, Klimapolitik: Gründung des Wissenschaftlichen Rates der Romandie, 3 October 2026, available at <<https://www.vs.ch/de/web/communication/w/politique-climatique-cr%C3%A9ation-du-premier-conseil-scientifique-intercantonal>> (last accessed 20 September 2026).

⁷⁴ On the normative requirements and legal framework applicable to the members of the Commission see below IV.9.

the federal administration, or where institutionally independent expert advice and support appear warranted. A further advantage of extra-parliamentary commissions lies in their personal independence from the administration. Although they are administratively assigned to a department or to the Federal Chancellery as decentralised administrative units, they perform their tasks free from instructions (Article 8(2) GAOO).⁷⁵

- 51 Article 57(1) GAOA provides the statutory basis for the Federal Council to engage external experts. According to Article 57a GAOA, extra-parliamentary commissions may be entrusted with decision-making powers in addition to advisory functions. In the present context, however, the delegation of decision-making powers appears neither necessary nor appropriate from a constitutional perspective. For reasons of democratic legitimacy, responsibility for determining the essential principles and measures of climate policy rests with the legislature. The preparation of such decisions falls within the competence of the Federal Council and the federal administration, while the role of a climate council should be limited to providing independent expert advice and critically monitoring government climate policy.
- 52 Under the terms of Article 57b GAOA, one prerequisite for establishing an extra-parliamentary commission is the need for specialised expertise. They should only be established on a subsidiary basis, including where the relevant functions can be performed by private actors. However, as will be explained below, private actors are less suited to perform this task.
- 53 In order to keep the administrative burden to a minimum, it would be appropriate to structure the climate council as an administrative commission without separate legal personality. As such, it would not form part of the decentralised administration – at least according to part of the literature.⁷⁶ Independence in the sense of freedom from instructions or non-subordination to instructions can, however, also exist where a body is assigned to the central administration. In that case, independence must be secured by other means.⁷⁷ Appropriate statutory foundations must therefore ensure that the climate council can perform its tasks effectively and free from instructions. It would thus be administratively assigned to a department — sensibly DETEC — but would not be hierarchically subordinate to it.
- 54 Under Article 57d GAOA, extra-parliamentary commissions undergo a review every four years, at the time of the general renewal elections, with regard to their necessity, tasks, and composition. The question of how the legislature can ensure the long-term existence of the

⁷⁵ On the significance of advisory administrative commissions, see amongst many *Felix Strebel*, Was bringen beratende Kommissionen der Exekutive?, LeGes 34 (2023) 2, No. 1.

⁷⁶ See *Müller*, in: Bernhard Waldmann/Eva Maria Belser/Astrid Epiney (eds.), Bundesverfassung, Basler Kommentar, 2nd edn., Basel 2025, Article 178 No. 47; see contra *Biaggini* (cited in footnote 30), Article 178 No. 9; *Sägesser*, Regierungs- und Verwaltungsorganisationsgesetz (RVOG) of 21 March 1997, Stämpflis Handkommentar SHK, 2nd edn., Bern 2022, Article. 2 No. 66 ff., who assign extra-parliamentary commissions to the decentralised federal administration, with reference to Article 2 GAOA.

⁷⁷ *Müller* (cited in footnote 76), Article 178 No. 47.

climate council and thereby protect it from administrative discretion is therefore addressed in the section of this legal report dealing with its legal basis.⁷⁸ It should be emphasised that the periodic review of tasks and composition is an essential element of effective oversight and control and is therefore consistent with the orientation of the climate advisory body. It ensures that the climate council's mandate, expertise and working methods can be continuously adapted to new scientific findings, legal requirements and climate policy challenges. These tasks, too, can and should be defined more closely by law in order to ensure that the executive cannot limit the climate council's capacity to act.

- 55 The literature sometimes distinguishes between authorities with a monocratic structure and those with a collegial structure.⁷⁹ In the former, ultimate responsibility lies with a single person; in the latter, decisions are generally taken jointly. Since the climate council would be composed of experts from different disciplinary backgrounds,⁸⁰ a collegial structure is more appropriate. Designing the climate council as a collegial authority should not, however, mean that it takes its decisions by majority vote. The focus should lie on deliberative decision-making and consensus-oriented understanding. The aim should be to bring different expert perspectives together into a shared assessment process; where consensus cannot be reached, divergent assessments can be made transparent vis-à-vis the authorities and the public.

- Administrative oversight body

- 56 Since one of the climate council's tasks would be to oversee the administration from a climate policy perspective and to examine whether administrative activity is capable of achieving the climate policy objectives set and complies with treaty obligations, the question arises whether it could sensibly be established wholly or partly as an administrative oversight body. It must be taken into account, however, that administrative oversight bodies – as the term itself indicates – are entrusted with overseeing administrative activity.⁸¹ By contrast, the functions and tasks of the climate advisory body are considerably broader, as it should not only perform oversight tasks but also assess developments, formulate recommendations, and make climate policy target and implementation gaps visible. As such, its addressees include the public administration and lawmakers as well as the general public.⁸² When formulating the mandate of the climate council, the evaluation of the effects of climate policy efforts as a whole must therefore play an important role. Classifying it as an administrative oversight body would frame this mandate too

⁷⁸ See further below III.5.

⁷⁹ See further *Vogel* (cited in footnote 30), p. 205 ff.

⁸⁰ See further below IV.9.

⁸¹ See further *Vogel* (cited in footnote 30), p. 247 ff.

⁸² On the recommended scope of its tasks, see IV.7.

narrowly and institutionally reduce the function of the climate council. This institutional form is therefore not recommended.

- Public-law corporation

- 57 In theory, establishing an institution governed by public law would also be conceivable. Public-law corporations are membership-based legal persons under public law. They are established by an act of public authority to perform public tasks on a self-governing basis. Their defining feature is their membership-based structure, which gives members a role in shaping the decisions of the corporation. As associations of persons, they thus derive much of their legitimacy from the participation of their members.⁸³
- 58 The public-law corporation is addressed here above all because the Swiss Human Rights Institution (SHRI) was given this legal form. This legal form was chosen to reflect the institution's distinctive position between the State and civil society. The legal form of a public-law corporation reflects the institution's independence and enables it to cooperate with various authorities, non-governmental organisations (NGOs), private actors and international organisations. The Paris Principles, which emphasise the importance of civil society participation and pluralistic composition, also played a significant role in the choice of this legal form. A climate council with the characteristics outlined above,⁸⁴ however, serves a different purpose. Neither the institutional model nor the emphasis on cooperation is central to its role. Its purpose is not to establish an organisation with broad civil society representation, but to harness scientific expertise.
- 59 Establishing a public-law corporation therefore does not appear appropriate. Nor would it be suitable, for several reasons, to integrate the tasks of the climate council into the SHRI. First, the structural features typical of a public-law corporation are neither necessary nor useful in the present context. In particular, a membership-based organisation would tend to relativise the central importance of scientific expertise for the climate council's performance of its tasks. Second, the task of the climate council differs fundamentally from that of the SHRI. While the SHRI primarily provides public services, the function of the climate council lies in scientific policy accompaniment and evaluation in its various forms. In addition, the SHRI performs numerous tasks without any natural-scientific dimension. Integrating the climate council would therefore require building up an additional body of staff, including natural-scientific expertise. Finally, members of the climate council must maintain and develop their scientific qualifications through their own continuous research activity. Such integration into natural-

⁸³ Amongst many, see *Pierre Tschannen/Markus Müller/Markus Kern*, *Allgemeines Verwaltungsrecht*, 5th edn., Bern 2022, No. 190 ff.

⁸⁴ See above II.4.a.

scientific research would hardly be possible, or only to a limited extent, within the organisational structures of the SHRI.

- Delegation of functions to private actors

- 60 Finally, public tasks may in principle also be transferred to private actors, i.e., actors outside the administration. In theory, this might also be conceivable for the preparation of recommendations and the scientifically grounded assessment of a State's climate policy. Transferring these tasks to private third parties – for instance, to specialised environmental or consulting firms – would have the advantage that an external body, institutionally independent from the federal administration, would perform the tasks.
- 61 Significant disadvantages, however, stand against such an approach. Outsourcing the task would require the award of a corresponding contract through a procurement procedure, which would entail considerable administrative effort. Since the contract would have to be tendered again at regular intervals, neither institutional continuity nor gradual renewal of the members would be ensured. Moreover, the Confederation as contracting authority would have only limited influence over the personal composition of the team entrusted with performing the task; that influence would essentially be confined to the key persons identified in the procurement process. It also matters that the persons entrusted with performing the tasks within private contractors would generally be embedded in hierarchical organisational structures. This would run counter to the model of an independent, collegially organised scientific body. In addition, outsourcing would reduce professional flexibility: new questions could be addressed only insofar as they fell within the scope of the contract, or the contractors possessed the relevant expertise. Short-term adaptation to new scientific or climate policy developments would therefore be possible only to a limited extent. Overall, the disadvantages of transferring the climate council's tasks to private actors clearly outweigh the advantages. Outsourcing the tasks assigned to the Climate Advisory Board to external private third parties is therefore strongly discouraged.
- 62 It follows from the foregoing that an extra-parliamentary commission – more specifically, an administrative commission – represents the ideal organisational form for a national climate council. It allows the climate advisory body to be institutionally embedded in the federal administration without compromising its professional independence and its ability to perform its tasks free from instructions. This legal opinion addresses further questions, in particular concerning legal basis, composition, funding and mandate, elsewhere.

5. Legal basis of the mandate

a. Normative requirements

- 63 The international and comparative materials discussed below overall indicate that a national climate council must rest on a sufficiently robust, permanent, and legally secure foundation. Although there are differences in how specific features of a legal mandate should be designed, a consistent requirement is that the mandate, tasks, and institutional position of a prospective climate council should not be regulated merely informally or through purely administrative arrangements.
- 64 The Committee of Ministers has not formulated specific requirements regarding the legal nature of a climate council; nor did the ECtHR itself address such a body in *KlimaSeniorinnen*. The judgment nevertheless establishes, in general terms, that Contracting States must create and effectively apply a “relevant legislative and administrative framework” in order to ensure the protection afforded by Article 8 ECHR in the climate change context.⁸⁵ This at least implies that institutional mechanisms for monitoring and evaluating climate policy measures must rest on a sufficiently robust legal basis. The analysis carried out by the Department for the Execution of Judgments (DEJ) in the explanatory Notes for the Committee of Ministers points in the same direction, stating that the effective fulfilment of States’ positive obligations requires “robust safeguards at the national level.”⁸⁶
- 65 The Paris Principles formulate this point particularly clearly. They require that the mandates of independent institutions. to be “clearly set forth in a constitutional or legislative text.”⁸⁷ Although the Principles primarily concern national human rights institutions, the underlying considerations are also relevant for climate councils insofar as they perform permanent oversight, monitoring, and advisory functions with a human rights dimension. What matters is less the specific institutional category than the safeguarding of institutional stability, independence, and legitimacy. The international accreditation practice of the Global Alliance of National Human Rights Institutions (GANHRI) further specifies these requirements by stipulating that a “legislative basis” refers in principle to legislation enacted by parliament. By contrast, the mere establishment of a body by executive act or administrative decision is regarded as insufficient, because the executive can restrict, amend or abolish the mandate relatively easily and at any time.⁸⁸ State practice likewise demonstrates that bodies established

⁸⁵ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 538(a) and (b).

⁸⁶ Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37 (cited in footnote 41), p. 8.

⁸⁷ Paris Principles (cited in footnote 42), Competence and responsibilities, para. 2.

⁸⁸ GANHRI (cited in footnote 43), p. 5: “The creation of an NHRI in other ways, such as by a decision of the Executive (through a decree, regulation, motion, or administrative action) and not by the legislature raises concerns regarding permanency, independence from government and the ability to exercise its mandate in an unfettered manner. This is because instruments of the Executive may be modified or cancelled at the whim of the Executive, and such decisions do not require legislative scrutiny. Changes to the mandate and functions of an independent

solely by executive decision are more vulnerable to political influence, institutional instability, resource insecurity.⁸⁹ For bodies that are to perform an independent oversight and advisory function vis-à-vis government and administration, stronger statutory entrenchment therefore appears appropriate.

- 66 The ICJ's Advisory Opinion points in the same direction. The duty it emphasises – to take appropriate measures within the framework of climate-related due diligence obligations – expressly encompasses regulatory, administrative, and institutional measures.⁹⁰ This supports the view that central monitoring and evaluation mechanisms should not be organised merely informally but must be sufficiently secured institutionally and legally.
- 67 Dr Averchenkova's expert report finally confirms that the effectiveness of independent climate councils depends significantly on clear legal entrenchment. Independence and mandate should therefore be "legally anchored through laws or regulations" and should not rest on merely informal arrangements.⁹¹ Particularly effective models regulate the mandate, tasks, and status of the body directly in the law itself.⁹² This increases institutional stability while protecting against short-term political influence. For these reasons, among others, climate councils have become increasingly institutionalised in recent years.⁹³ In addition, many models provide for statutory duties requiring the government to respond to recommendations issued by climate councils ("duty to respond"), which further strengthens the practical effectiveness of its mandate.⁹⁴
- 68 The experience with the OcCC confirms these findings from a Swiss perspective. The interviews repeatedly emphasised that establishing the OcCC merely by appointment decision by the Federal Council made the body institutionally vulnerable. The then head of DETEC, former Federal Councillor Simonetta Sommaruga, ultimately decided not to continue the OcCC's mandate, thereby bringing its activities to an end without any parliamentary procedure or legislative involvement.⁹⁵ These events illustrate the volatility and lack of institutional

agency of state charged with the promotion and protection of human rights should be scrutinised by the legislature and not be at the fiat of the Executive. Any amendment or repeal of the constitutional or legislative text establishing the NHRI must require the consent of the legislature to ensure its guarantees of independence and powers do not risk being undermined in the future."

⁸⁹ ENNHRI-CNCDH Practical Guide on the Accreditation of NHRIs (cited in footnote 43).

⁹⁰ ICJ Advisory Opinion (cited in footnote 13), §§ 281-282.

⁹¹ Averchenkova (cited in footnote 22), p. 1.

⁹² Averchenkova (cited in footnote 22), p. 9. See also Elena Cirkovic/Ole W. Pedersen, Climate Advisory Committees in European Climate Governance: Expertise, Representation and Co-production, RECIEL 2025 34, p. 598 ff., p. 603.

⁹³ Valentin Schatz/Jens Newig/Janosch Pfeffer, Die Institutionalisierung von Klimaräten durch Klimaschutzgesetzgebung, NuR 2024 46, 433 ff.

⁹⁴ Averchenkova (cited in footnote 22), p. 10-11. For more detail, see below IV.6.

⁹⁵ Neue Zürcher Zeitung (NZZ), Sommaruga gerät unter Druck, 5 September 2021. The reasons for this are not publicly known. In an interview with the newspaper *Blick*, the then Federal Councillor stated that ProClim would "play a key role" in the future (Camilla Alabor, "Forderung nach Benzinauto-Verbot bringt uns nicht weiter",

safeguards that accompany a body created solely by the executive. Several interviewees therefore expressly described a strong, clear and long-term mandate as a central condition for the effectiveness of a future climate advisory body. The OcCC, they noted, suffered from a mandate that was too weak, too short-term and too dependent on the commissioning authority. Some interviewees also pointed out that independent bodies within the executive branch are often less politically welcome, and therefore require a parliamentary or statutory basis. By way of comparison, they referred to the Federal Electricity Commission (ElCom), which was ultimately created by statute despite the Federal Council's initial resistance.⁹⁶ The public debate likewise called at an early stage for any future climate body to be institutionally more broadly anchored and not merely located within a single department.⁹⁷

- 69 Overall, the core requirement is therefore a statutorily anchored, clearly defined, institutionally broad-based, and long-term secured mandate that effectively enables the independent performance of monitoring, evaluation, and advisory functions.

b. Legal design

- 70 For commissions with an exclusively advisory function, a basis in an ordinance or a Federal Council decision (i.e., appointment order) is generally sufficient.⁹⁸ It should be noted in this regard that, under the terms of Article 8(1) GAOA, the Federal Council has the power to determine the appropriate organisation of the federal administration. In exercising this organisational competence, the Council may depart from the organisational provisions laid down in other federal acts, unless the Federal Assembly (i.e., parliament) has expressly limited its organisational powers. Where commissions perform merely advisory functions, it is therefore not impossible that the Federal Council may abolish them on the basis of its organisational competence, if it concludes that the relevant tasks can be performed more appropriately or efficiently within the federal administration.

Blick, 3 October 2025). However, it was not clear whether she was referring to enhancing cooperation, a functional replacement for the OcCC, or of an institutional downgrading. In her answer to a question posed by National Councillor Kurt Egger, Sommaruga stated that “organisational and substantive duplication should be avoided” (21.7665 Question Time, Question by Egger Kurt “OCCC: Ist die Wissenschaft nicht mehr gefragt?”, 20 September 2021). It should be borne in mind here that the OcCC and ProClim performed different functions: whereas ProClim was primarily conceived of as a scientific network and a platform for coordination, the task of the OcCC was to provide independent advice and assessment and to formulate climate policy recommendations for policymakers and the public administration (see Infobox 1). Precisely this uncertainty highlights the risks of informal or merely administratively supported structures: responsibilities, the scope of the mandate, and institutional continuity ultimately remain dependent on political decisions and internal administrative preferences.

⁹⁶ See also the Swiss Federal Act on the Supply of Electricity (Electricity Supply Act, ESA), SR 734.7, of 23 March 2007, Article 21 ff.

⁹⁷ Neue Zürcher Zeitung (NZZ), Sommaruga beendet Mandat mit prominenten Forschern, 5 September 2021.

⁹⁸ Sägemesser (cited in footnote 79), Article 57a No. 9.

- 71 If the existence of the climate council and its independence are to be secured in the long term, a statutory basis is needed that expressly limits the Federal Council's organisational competence to that extent (cf. Article 8(1) GAOA) in this manner. Against this background, the establishment of a specific statutory basis is recommended for the climate council. Several further reasons support this conclusion. First, binding obligations requiring the Federal Council, the federal administration and, where appropriate, the legislature to take note of or consider the recommendations of the climate advisory body can only be imposed on a statutory basis. Second, a statutory entrenchment gives the climate council greater institutional weight and ensures greater organisational and personal stability. Third, it should be borne in mind that even purely advisory administrative commissions can in practice exert considerable influence over State decision-making. Finally, it should be stressed that the climate advisory body is supposed to advise and inform not only the Federal Council and the public administration but also parliament and the public at large. This cross-institutional advisory function alone speaks in favour of an express statutory basis.
- 72 It should be noted that the establishment of an exclusively advisory extra-parliamentary commission on a statutory footing represents an exception to the ordinary organisational model. According to Article 8e(1) GAOO, extra-parliamentary commissions are normally appointed by the Federal Council. The Federal Council accordingly takes the view that parliamentary influence over the creation and design of advisory commissions stands in tension with the organisational autonomy granted to it by the GAOA.⁹⁹ One may respond that the legislature is entitled to depart from the general rules of administrative organisation by means of specific legislation. A specific statutory framework for the climate council therefore constitutes a permissible *lex specialis*, provided that a sufficient public interest justifies it and the constitutional requirements are respected. Given the long-term importance of climate policy and the special requirements of institutional independence and continuity, there are weighty reasons for such a specific statutory design.
- 73 Although administrative commissions are rarely established by statute, further examples exist. One example is the National Advisory Commission on Biomedical Ethics (NCE), which is based on Article 28 of the Swiss Federal Act on Medically Assisted Reproduction (RMA).¹⁰⁰ That provision states that the Federal Council shall establish a national ethics commission (para. 1). Paragraph 2 outlines its tasks in general terms, while paragraph 3 specifies them more closely. The Federal Council determines the commission's further tasks in the field of human medicine and has the power to issue implementing provisions (para. 4). On this basis, the Federal Council enacted the Ordinance on the National Advisory Commission on Biomedical

⁹⁹ Sägesser (cited in footnote 79), Article 57c No. 6.

¹⁰⁰ Swiss Federal Act on Medically Assisted Reproduction (Reproductive Medicine Act, RMA) of 18 December 1998 (SR 810.11).

Ethics.¹⁰¹ The ordinance lays down provisions governing its tasks (Article 1), cooperation (Article 3), the annual report (Article 4), membership (Articles 5–7), organisation (Articles 8–12), the Secretariat (Article 13) and compensation (Article 14).

- 74 A statutory basis also exists for the advisory body on the Value Added Tax Act (Article 109 of the Swiss Value Added Tax Act, VATA).¹⁰² There, however, the legislature merely empowers the Federal Council to establish such a body but does not impose any obligation on it to do so. By contrast, a statutory basis establishing the climate council and regulating key aspects of its organisation and functioning would strengthen its institutional stability and continuity. In that case, only the legislature could decide on its establishment and abolition.
- 75 In answering the question of which aspects of the climate council's work require a statutory basis, the primary guiding principle is an appropriate allocation and division of functions between the legislature, the Federal Council and the climate advisory body. The following matters require statutory foundation in particular: (1.) the purpose and legal status of the climate advisory body; (2.) its substantive mandate and tasks; (3.) its professional freedom from instructions and institutional independence (4.); its reporting, publication, and communication rights; (5.) its access to information; (6.) its right of initiative; (7.) any duties to respond of the Federal Council and the Federal Assembly; (8.) its composition and expertise profile; (9.) the appointment procedure and terms of office; (10.) staggered appointments and renewal; (11.) the handling of interests, recusal, and incompatibilities; (12.) the secretariat, budget and use of resources; and (13.) the duty to adopt rules of organisation and procedure. The climate advisory body itself should regulate, in its rules of organisation, matters such as its organisation and working methods, work programme, data access, publication of findings, communication, quality assurance, handling of uncertainties and minority positions, involvement of external expertise, and the procedure for handling conflicts of interest. The statutory provisions may be specified at ordinance level. Such specification must, however, remain limited to subordinate questions; in particular, the ordinance must not interfere with the autonomous decision-making sphere of the climate council.

IV. Substance and functioning: Operational effectiveness of the climate advisory body

- 76 Building on the preceding assessment of where a national climate council would sit within the Swiss State structure, the next step concerns its concrete legal design. While the choice of institutional form and legal basis sets the structural framework, the following elements

¹⁰¹ Ordinance on the National Advisory Commission on Biomedical Ethics of 4 December 2000 (SR 810.113).

¹⁰² Swiss Federal Act on Value Added Tax (Value Added Tax Act, VATA) of 12 June 2009 (SR 641.20).

determine whether and how the body can perform its functions effectively. The sections below examine the key elements of this legal design individually. For each element, they first summarise the relevant requirements and then analyse and assess the options available in the Swiss context.

6. Institutional independence combined with integration in policy process

a. Normative requirements

- 77 The international and comparative materials consistently indicate that a national climate advisory body must be institutionally independent, while also remaining closely functionally integrated into the climate policy-making process. What is required, therefore, is neither a purely internal administrative body nor an expert body entirely detached from the political process, but a structure that combines scientific autonomy with institutionalised connectivity to politics and administration.
- 78 The ECtHR held in *KlimaSeniorinnen*, that State decision-making in complex areas of environmental and climate policy must be based on “appropriate investigations and studies” so that authorities can properly balance the interests at stake.¹⁰³ According to the Court, it is particularly important that the effects of potentially harmful environmental activities can be scientifically examined and assessed in advance.¹⁰⁴ While the Court does not expressly require the scientific evidence underpinning climate policy decisions to be developed independently, its findings imply that such evidence must be objective, independent and scientifically robust.
- 79 The subsequent execution proceedings before the Committee of Ministers further specified this institutional dimension. The Committee invited Switzerland to consider establishing an *independent* national body to monitor climate policy.¹⁰⁵ The explanatory Notes on the Agenda make clear that existing platforms do not fulfil this function, precisely because they lack the requisite mandate as well as the necessary institutional authority and independence.¹⁰⁶ It follows that a climate council should not simply form part of existing administrative or scientific networks, but requires its own institutional position.
- 80 At the same time, the execution proceedings show that a climate council must be functionally integrated into the climate policy decision-making process. The Committee of Ministers expressly proposed an independent body mandated, *inter alia*, to issue recommendations to the

¹⁰³ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 539(c).

¹⁰⁴ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 539(c).

¹⁰⁵ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3.

¹⁰⁶ Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37 (cited in footnote 41), p. 8.

political authorities¹⁰⁷ Its role therefore cannot be limited to scientific observation or analysis. Rather, the function of a climate council presupposes that scientific findings are systematically fed back into political decision-making processes and that institutionalised mechanisms for communication and response are put in place.

- 81 The Paris Principles and the GANHRI's accreditation practice emphasise that independence must be guaranteed in practice and be visibly apparent, rather than existing merely on paper.¹⁰⁸ Independence requires legally secured appointment procedures, institutional distance from the executive, adequate resources, and the freedom to set one's own working programmes and publish reports without political interference. At the same time, the GANHRI stresses that recommendations by independent institutions should be systematically followed up and acted upon.¹⁰⁹ Governments should respond to recommendations in a timely manner and account for the measures taken. Moreover, reports issued by those institutions should be considered by parliament.¹¹⁰ Also per GANHRI, independence must therefore not be equated with institutional isolation; it requires structured integration into political and parliamentary processes.
- 82 Dr Averchenkova's analysis confirms this model. International practice shows that effective climate councils do not merely assert their independence in declaratory fashion, but secure it through concrete legal safeguards.¹¹¹ These include, in particular, independent appointment procedures, autonomy over working programmes, and separate, secure budgets.¹¹² At the same time, these bodies remain closely connected to the political decision-making process: they advise governments on targets, strategies and measures, evaluate their implementation and formulate recommendations on a regular basis.¹¹³ What characterises them, therefore, is a combination of structural independence and operational integration into the policy cycle.
- 83 The experience with the former OcCC illustrates these tensions. In the interviews, several participants criticised the fact that FOEN funding limited the OcCC's practical independence and that reports or publications could only be published after substantial "polishing," effectively subject to reservations by the commissioning authority. At the same time, several interviewees emphasised that an effective climate council requires institutionally secured access to the Federal Council, parliament, the public administration, and relevant actors at the cantonal level

¹⁰⁷ Ministers' Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3: "mandated *inter alia* to issue recommendations to the political authorities" (original emphasis).

¹⁰⁸ Paris Principles (cited in footnote 42), Competence and responsibilities, para. 2; GANHRI (cited in footnote 43), p. 24-25.

¹⁰⁹ GANHRI (cited in footnote 43), p. 17.

¹¹⁰ GANHRI (cited in footnote 43), p. 30-31.

¹¹¹ See also *Cirkovic/Pedersen* (cited in footnote 92).

¹¹² *Averchenkova* (cited in footnote 22), p. 1, 7-8, 12.

¹¹³ *Averchenkova* (cited in footnote 22), p. 3-4.

– feeding its findings into the political process. Some also stressed that a certain degree of “co-design” is necessary in the initial stages of a mandate if political authorities are to take up and process the results at all. Interviewees made equally clear that the administration must not co-author or otherwise substantively influence the product during the actual scientific work. Overall, a regulated mutual flow of information appears preferable, while preserving scientific autonomy.

b. Legal design

- 84 In the Swiss context, the dual requirement of institutional independence and integration into the political decision-making process stands in a certain tension with the classical hierarchy principle of administrative organisation law.¹¹⁴ The federal administration is generally structured as a system of hierarchical relationships, in which superior authorities exercise powers of instruction, supervision, and control. This model is appropriate for conventional executive and administrative tasks. However, full integration into this hierarchical structure would not appear to be suitable for a body whose function consists in independently observing, evaluating and critically reflecting on State climate policy.
- 85 However, the principle of hierarchy is not absolute. The Swiss law governing administrative organisation recognises numerous situations in which functional independence is provided for where the nature of the task so requires¹¹⁵ and a sufficient statutory basis exists.¹¹⁶ This is particularly common for administrative commissions with regulatory or oversight functions. Article 21(2) of the Electricity Supply Act (ESA), concerning the Federal Electricity Commission (ElCom), provides an example: it provides that ElCom is not “subject, when taking its decisions, to any instructions” of the Federal Council or the DETEC and is “independent of the administrative authorities.”¹¹⁷ The provision shows that, where independent control, oversight or regulatory credibility appear necessary, the legislature deliberately allows departures from the classical hierarchy principle.

¹¹⁴ At the federal level, Article 174 of the Swiss Federal Constitution designates the Federal Council as the supreme executive and governing authority. Under Article 178(1), sentence 1, and (2), phrase two, of the Federal Constitution, the federal administration is directed by the Federal Council, or, respectively, the head of the relevant department.

¹¹⁵ *Vogel* (cited in footnote 30), p. 39. Independence may also be required directly by virtue of the Constitution (e.g., Article 93(3) of the Swiss Federal Constitution for state radio and television broadcasters or Article 99(2) for the Swiss National Bank).

¹¹⁶ Article 178(3) of the Swiss Federal Constitution.

¹¹⁷ ESA, Article 21(2). See also Article 6 of the Swiss Federal Act on the Swiss National Bank (NBA, SR 951.11, of 3 October 2003) on the Central Bank.

- 86 Even though a climate council would typically not exercise decision-making or ruling powers comparable to those of ElCom,¹¹⁸ similar functional considerations warrant that its independence be legally secured. Unlike the former OcCC, a future climate advisory body should be expressly vested with monitoring and evaluation functions.¹¹⁹ The distinctive feature of a climate council lies precisely in the fact that it observes, assesses and, where appropriate, questions State action from a scientific perspective. Its activity therefore relates directly to the targets, strategies, and measures for which the Federal Council, the public administration, and parliament themselves bear responsibility.
- 87 It is precisely for this reason that institutional distance is necessary. If such a body were fully embedded in the hierarchical structure of the federal administration, the very bodies subject to assessment could structurally influence the object, prioritisation, intensity, or publication of the evaluation. The risk lies probably less in concrete instructions than in more subtle forms of administrative or political steering, for example through agenda-setting, resource dependencies, or control over publication. The experience with the former OcCC demonstrates that this is not merely a theoretical risk but rather a genuine institutional tension.
- 88 Institutional independence requires, in particular, freedom from instructions in substantive matters, autonomous agenda-setting, and safeguards against political and administrative influence. The body must have the power to prepare and publish analyses, assessments, and recommendations without prior approval by the executive or parliament. This includes autonomy over the agenda and over the publication of reports, statements, and recommendations.¹²⁰ Safeguards against hierarchically superior administrative units include

¹¹⁸ In our view, the question of whether the climate council should be granted binding decision-making powers analogous to those of ElCom must be answered in the negative. While ElCom operates within a clearly defined regulatory sector (grid regulation, market access and tariff supervision) and can base its decisions on precise legal criteria (in particular, cost-recovery requirements and prohibitions of discrimination), climate policy is inherently cross-sectoral and involves fundamental distributive and justice-related choices that require political judgment. These choices include the distribution of burdens between sectors and generations, the choice of transition pathways, and the relationship between mitigation and adaptation. In a representative democracy, responsibility for such decisions rests with parliament under Articles 148 *et seq.* of the Federal Constitution and the politically accountable executive under Articles 174 *et seq.* of the Federal Constitution. Entrusting these decisions to a body composed of scientific experts without a direct democratic mandate would therefore be functionally inappropriate and constitutionally problematic.

Granting the climate council binding decision-making powers would also compromise its independent monitoring and evaluation functions. The council would have to assess its own decisions and thus become responsible for reviewing the very measures whose scientific adequacy it is supposed to evaluate. The federal dimension raises further concerns: the cantons hold key responsibilities for implementing climate policy, and granting the council decision-making powers at the federal level could give rise to additional conflicts of competence. Internationally established models, including the UK Climate Change Committee (CCC), the German Advisory Council on the Environment (*Sachverständigenrat für Umweltfragen*) and the French *Haut Conseil pour le Climat*, likewise rely on scientific advice and monitoring rather than binding administrative decisions.

¹¹⁹ See above IV.7.

¹²⁰ See also Swiss Human Rights Institution (SHRI), *Klimawandel als Menschenrechtsfrage: Die Perspektive der Menschenrechte auf Klimaschutz und Klimaanpassung* (Fribourg 2026), p. 39, available at

statutory freedom from instructions, independent appointment procedures, guaranteed resources, and organisational autonomy within the decentralised federal administration.¹²¹ Safeguards against political influence should include transparent appointment procedures, pluralistically composed selection bodies, fixed terms of office and narrowly defined possibilities for dismissal.¹²²

- 89 Institutional independence, however, does not mean complete organisational detachment from the political process. A climate advisory body should not operate outside the institutional framework but must be systematically integrate into the climate policy cycle. It must be able to feed its analyses and recommendations into target-setting, legislative, and evaluation processes at defined points in time. This requires legally regulated points of interaction with the administration, the Federal Council, and parliament, for example through regular reporting, rights to be heard, consultation duties, and assessment of proposals relevant for climate policy. Administrative attachment within the decentralised federal administration is conceivable, provided that this does not impair the body's independence.
- 90 In this context, particular importance attaches to the question whether “political authorities”¹²³ should be required to respond to recommendations issued by a climate advisory body. The literature discussed above indicates that merely publishing scientific reports “into the void” can significantly weaken the practical effectiveness of such bodies.¹²⁴ The German Expert Council on Climate Issues, in particular, long faced criticism that the absence of binding feedback

<https://www.isdh.ch/assets/2026_pdf/etudes-recherche/klima-und-menschenrechte/smri_studie.pdf> (last accessed 20 September 2026).

¹²¹ See further below IV.6.

¹²² See further below IV.8, 9.

¹²³ Ministers' Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3.

¹²⁴ See above IV.6.

mechanisms limited its political impact.¹²⁵ The German Climate Change Act now requires the federal government to take the council's expert opinions into account.¹²⁶

- 91 What matters is not only the existence of a formal duty to respond but also how that duty is structured in substantive and temporal terms. A formulaic acknowledgement of scientific reports does not meet the requirements of effective feedback mechanisms. Rather, competent political authorities must engage substantively with the findings, recommendations, and any identified deviations from targets, and must give comprehensible reasons where they depart from them.
- 92 Overall, the literature emphasises the importance of formal feedback loops ("duty to respond"), under which the government and/or parliament must publicly respond to recommendations and reports within a specified period and to justify any deviations from them.¹²⁷ If the response or political consideration occurs only after key legislative, budgetary, or planning processes have concluded, scientific advice loses much of its steering and early-warning function. The experience with the German Council of Experts on Climate Change – in particular in connection with repeated findings of failure to meet targets in the transport sector¹²⁸ – shows that the practical effectiveness of a climate council depends significantly on whether its findings feed into political feedback mechanisms effectively and in good time. Against this background, the law should provide not only for a duty to respond as such, but also for appropriate time limits and minimum requirements for substantive engagement. The French *Haut Conseil pour le climat* should be mentioned in this context.¹²⁹ The government must publicly respond to its annual reports within six months and explain which measures it has taken or plans to take to

¹²⁵ § 12(5) of the German Federal Climate Action Act (Bundes-Klimaschutzgesetz, KSG, of 12 December 2019 (Federal Law Gazette I p. 2513), most recently amended by Article 1 of the Act of 15 July 2024 [Federal Law Gazette 2024 I No. 235]), empowers the German Council of Experts on Climate Change to draw up reports on the further development of climate protection measures. These reports must be submitted by it to the federal government and the Bundestag. The federal government is required to "take into account" the reports of the Council of Experts when adopting certain climate-policy decisions and measures – specifically under §§ 8 and 9 KSG. The provision thus formalises the involvement of the Council of Experts in the political decision-making process, but does not establish any general obligation for the federal government or the Bundestag to respond publicly and with reasons to all findings or recommendations within a specified period. A distinction must be drawn here with the legal position applicable prior to the 2024 reform. At that time, statutory mechanisms for corrective action were triggered in the event that targets were exceeded in particular sectors, with the Council of Experts repeatedly identifying inadequate measures and calling for corrective action in the transport sector in particular. Since the 2024 reform, corrective action has been more closely linked to overall developments across sectors. This development illustrates that the institutional impact of scientific advice is largely dependent on the specific statutory framework governing the political feedback mechanism. See further: *Cirkovic/Pedersen* (cited in footnote 92), p. 602 ff.

¹²⁶ § 12(5), sentence 2 KSG (cited in footnote 125).

¹²⁷ See above IV.6.a.

¹²⁸ *Cirkovic/Pedersen* (cited in footnote 92).

¹²⁹ French Environmental Code (Code de l'environnement), Article L132-4(2), sub-paragraph 3, introduced by French Act No. 2019-1147 of 8 November 2019 on Energy and the Climate (France).

implement the recommendations, or why it follows them only in part or not at all.¹³⁰ Such mechanisms strengthen the political effectiveness of a climate council while also promoting transparency, institutional learning, and democratic accountability.

- 93 In some countries – Denmark, for example – the duty to respond is supplemented by a duty to take corrective action (“duty to act”). The climate council assesses whether State climate protection efforts are likely to achieve the climate targets. If the competent minister concludes, in the corresponding assessment, that the targets are likely to be missed, the minister must present new initiatives.¹³¹ This model goes beyond the duty to respond or provide reasons, by linking expert evaluation to a political corrective-action mechanism. While a minister is thus required to propose additional initiatives, they retain discretion over their substance, and are neither obliged to adopt specific recommendations of the climate council nor to guarantee that the climate targets will ultimately be met. In the comparative literature, such combinations of monitoring, response, and corrective-action duties are considered particularly suitable for institutionalising continuous review of climate policy and reducing the risk that deviations from identified objectives remain politically without consequence.
- 94 For Switzerland, this opinion does not propose a fully-fledged default “duty to act,” but rather a more restrained, yet still qualified “duty to respond.” A comprehensive “duty to act” would be conceivable but does not appear necessary for Switzerland. Such a model would directly link a finding that climate targets are unlikely to be met to a duty to present new initiatives, thereby interfering more strongly with the political decision-making processes of the Federal Council and parliament. Specifically in the Swiss context, it must be borne in mind that the *KlimaSeniorinnen* judgment triggered substantial political backlash. So a model that could be perceived as allowing a scientific body to impose an automatic obligation to take further climate action would risk undermining acceptance of the climate council from the outset. By contrast, a “qualified duty to respond” – which is explained just below – appears sufficiently robust in legal terms and more compatible with Switzerland’s institutional framework. It preserves the decision-making authority of the competent political bodies while requiring them to provide more detailed reasons if they choose not to take additional corrective action despite the climate council’s finding that the targets are unlikely to be met.
- 95 Choosing a “qualified duty to respond” as the more moderate measure does not mean that the competent political authorities could remain inactive where deviations from objectives, specifically targets, have been identified. Although the *KlimaSeniorinnen* judgment does not prescribe any specific mechanism for corrective action, the ECtHR emphasises with particular force that a State’s climate protection framework must be effective, coherent, and continuously

¹³⁰ Ibid.

¹³¹ Article 4(2), Article 7(3) and (4) of the Danish Climate Act, Act No. 965 of 26 June 2020 (Denmark); *Averchenkova* (cited in footnote 22), p. 10.

updated.¹³² It follows that if the climate advisory body finds, on a scientific basis, that Switzerland is unlikely to achieve its statutory climate targets, its international climate obligations or a scientifically derived “fair share”-compatible pathway with existing or planned measures, that finding cannot remain without a substantiated political response. A negative assessment by the climate council should therefore trigger a legally structured response obligation: if the body finds that target achievement is not sufficiently likely in this sense, there should be a presumption that additional initiatives are necessary. The Federal Council, involving the competent departments and administrative units, would have to explain within a specified period, and on the basis of current projections and quantified impact analyses, which additional measures or initiatives it intends to take, or why the measures already adopted nevertheless make target achievement sufficiently likely. Where legislative action is required, the competent parliamentary bodies would also have to consider the climate council’s reports and recommendations formally. This would be the case, for instance, if new emissions projections showed that the 2030 target, the legally prescribed reduction pathway, or a scientifically justified national GHG budget would likely be exceeded under existing measures. In such a case, the authorities would have to explain publicly which additional measures or initiatives they will take, or why they will refrain from doing so despite that prognosis. Responsibility for prioritising, designing, and adopting concrete climate policy targets and measures thus remains with the Federal Council, the administration and parliament, according to their respective competences. At the same time, this ensures that the climate council’s findings trigger genuine political and public accountability.

- 96 The term “political authorities” (i.e., those authorities at which the climate advisory body’s activities would be directed), as used for instance in proceedings before the Committee of Ministers,¹³³ must be understood functionally and not in pure institutional terms. It encompasses all public bodies involved in shaping, implementing and developing climate policy, including the Federal Council, the administration, and parliament. The climate council must therefore be able to address its recommendations to all these bodies, including parliamentary committees.
- 97 For the Federal Council and the administration, such response and reporting duties fit readily into existing structures. In many areas, statutory duties already require information, reporting and consultation vis-à-vis parliament, oversight bodies or specialised expert bodies. Comparable examples include the Federal Council’s duty to report on adopted postulates or to the parliamentary control committees.¹³⁴ These examples do not establish any general duty of

¹³² *KlimaSeniorinnen* (cited in footnote 1), §§ 538–550, in particular § 550 letters a–e; specifically on updating and corrective action, id., §§ 538(b), 548, 550 letters a–e.

¹³³ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3.

¹³⁴ The Federal Council is obliged to report to the Federal Assembly when a postulate is accepted (Article 124 ParlA). Likewise, the Federal Council and the administration are subject to comprehensive duties of disclosure and to provide information to the parliamentary oversight committees and the designed body “Parliamentary Control of the Administration” (Articles 153 ff. ParlA). Moreover, Article 170 of the Swiss Federal Constitution

the executive to respond substantively to the assessment of an independent expert body. They do show, however, that Swiss law governing the organisation of the administration is familiar with statutory feedback and accountability mechanisms. A statutory qualified “duty to respond” by the executive vis-à-vis the climate advisory body would therefore not be alien to Swiss administrative law – even if it would require a sufficient and sufficiently precise statutory basis.

- 98 A statutory duty of the Federal Assembly to receive, consider, or otherwise engage appropriately with reports and recommendations from the climate council appears, in principle, compatible with the Swiss Constitution. It should be noted that proposed Article 57g^{bis} E-GAOA seeks to restrict direct contact between commissions and the Federal Assembly. A reporting and response obligation of the Federal Assembly vis-à-vis the climate council would therefore have to be provided for in a specific piece of legislation.
- 99 Article 148(1) of the Federal Constitution describes the Federal Assembly as the “supreme authority of the Confederation.” However, this provision does not establish a general precedence of parliament over the other branches of government and, in particular, does not release the Federal Assembly from compliance with the principles governing the rule of law under Article 5 of the Constitution.¹³⁵ Nor does Article 148(1) preclude statutory procedural or accountability duties, provided that they do not materially prejudice parliamentary decision-making freedom. Indeed, Article 173(3) of the Constitution and Article 30 ParlA expressly provide that the Constitution or legislation may assign further tasks and powers to the Federal Assembly.¹³⁶ This may also encompass an accountability obligation (“qualified duty to respond”) in the field of climate policy. Comparable institutionalised feedback mechanisms already exist today, for example in the field of parliamentary evaluations under Article 170 of the Constitution,¹³⁷ parliamentary oversight,¹³⁸ or statutory reporting duties of the Federal

also imposes regular obligations to carry out, support, or submit impact analyses and evaluations of government measures. In addition, in a number of cases specific legislation imposes periodic reporting and evaluation obligations for the Federal Council, for example in the areas of environmental, energy, financial market, and health law. The Federal Council is also subject to specific statutory obligations in the areas of emergency law and crisis management, which require it to provide the Federal Assembly with timely and comprehensive information.

¹³⁵ *Stefan G. Schmid*, in: Bernhard Ehrenzeller et al. (ed.), *Die schweizerische Bundesverfassung*, St. Galler Kommentar, Articles 1–72, 4th edn., Zurich/St. Gallen 2023, Article 148 No. 1, 18. See also 18.4050, motion by Gregor Rutz, The public administration as the supreme authority within the state? 28 September 2018.

¹³⁶ “Further tasks and powers” refer here specifically to those falling outside the competences provided for under Article 153-173(2) of the Swiss Federal Constitution, specifically under Article 173(3) of the Constitution. On the dividing line between them, see *Martin Graf*, in: Martin Graf/Andrea Caroni (eds.), *Parlamentsrecht und Parlamentspraxis der Schweizerischen Bundesversammlung: Kommentar zum Parlamentsgesetz (ParlG)*, Basel 2024, Article 30 N 3.

¹³⁷ Article 170 of the Swiss Federal Constitution expressly obliges the Federal Assembly to evaluate the efficacy of State action (see also Article 27 ParlA).

¹³⁸ The Federal Assembly and its committees regularly consider reports from the parliamentary oversight committees and the designed body “Parliamentary Control of the Administration,” as well as the Federal Council’s own opinions in relation to them (Articles 52 ff. ParlA).

Council.¹³⁹ Against this background, there are no constitutional objections in principle to requiring, by statute, that the reports of a climate advisory body be periodically considered by parliament, referred to the competent commissions, and formally responded to by both the Federal Council and parliament.

7. Substantive scope of the mandate

a. Normative requirements

- 100 The international and comparative materials discussed below consistently indicate that a climate council's substantive mandate must be broad, long-term and systemic. Such a body should not merely provide occasional scientific advice or carry out technical emissions control. Rather, a climate council should provide expert support across the entire climate policy steering cycle: from preparing the scientific foundations and assessing planned measures *ex ante*, to monitoring, evaluation, early warning, public communication and recommendations for corrective action.
- 101 In *KlimaSeniorinnen*, the ECtHR held that governmental decision-making processes in complex areas of environmental and economic policy must be based on “appropriate investigations and studies,”¹⁴⁰ so that authorities can strike a fair balance between competing interests. According to the Court, it is particularly important that the effects of potentially harmful activities on the environment can be predicted and assessed in advance. This does not create an express duty to establish a specific type of institution. It does, however, require that the scientific foundations needed for governmental decisions can be produced independently, reliably, and continuously, and that assumptions and scenarios can be reviewed. The case law of the ECtHR demonstrates its orientation towards long-term effectiveness, continuous review, and timely governmental action. The Court has expressly referred to the particular urgency of the climate crisis, the rapidly closing window of opportunity for securing a liveable future, and the risk of irreversible damages caused by climate change.¹⁴¹ This underscores the need for continuous evaluation, ongoing monitoring, and early corrective action within governmental climate policy. Closely connected to this are the need to assess long-term target pathways, to examine coherence between short-term measures and long-term climate targets, and to identify

¹³⁹ The Parliament Act provides, in various contexts, for institutionalised mechanisms for reporting, information-sharing, and participation among the Federal Council, the public administration and the Federal Assembly. For instance, the Federal Council is obliged to report on postulates transmitted (Article 124 ParlA); in addition, Article 141 ParlA regulates reporting to the Federal Assembly in general terms. Parliamentary committees also have rights established by law to information, to be heard, and to involvement vis-a-vis the Federal Council and the public administration, in particular under Articles 45, 47 and 153 ff. ParlA.

¹⁴⁰ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 539(c).

¹⁴¹ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 542.

looming target failures at an early stage (“early warning”).¹⁴² Requirements concerning access to information and scientific foundations, as well as effective participation and transparency mechanisms, are also relevant.¹⁴³

- 102 The subsequent execution proceedings before the Committee of Ministers further specify the mandate that can be derived from the ECtHR judgment. Switzerland was expressly invited to consider establishing an independent body, adapted to the national political structure, to monitor climate policy and issue recommendations to the political authorities.¹⁴⁴ The Deputies emphasised the “paramount importance”¹⁴⁵ of ensuring the effective and efficient implementation of adopted climate targets and measures and of updating them on an ongoing basis. A climate council should therefore not merely exercise retrospective control, but should actively contribute to the continuous review and further development of a State’s climate policy.¹⁴⁶ The explanatory Notes on the Agenda also make clear that an effective mandate must necessarily include the assessment of target achievement and of the underlying measures, and must allow for corrective adjustment.¹⁴⁷ A body that merely observes emissions, without being able to assess policy instruments, strategies and implementation deficits, cannot effectively safeguard the positive obligations arising from Article 8 ECHR.¹⁴⁸
- 103 The Paris Principles likewise support a broad and systemic mandate. National human rights institutions should have “as broad a mandate as possible”¹⁴⁹ and, in particular, be empowered to examine legislative and administrative measures, issue recommendations and reports to government, parliament or other competent authorities, and publicly identify problematic developments.¹⁵⁰ The institution should also be able to take up issues on its own initiative,

¹⁴² ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 548.

¹⁴³ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), §§ 539(d) and (e), 538(f).

¹⁴⁴ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3: “invited Switzerland to consider the opportunity of establishing an independent national body suited to the national political structure to monitor its climate policy, mandated *inter alia* to issue recommendations to the political authorities, drawing as appropriate on good practices of other member States” (emphasis maintained).

¹⁴⁵ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3: “recalling the global approach used to determine whether the country’s climate policy falls within the limits of the wide margin of appreciation afforded under Article 8, underlined the paramount importance of ensuring the effective and efficient implementation of the objectives and measures adopted, and of ensuring in the future their updating as necessary; underlined also that providing effective protection to individuals from the serious adverse effects of climate change is a legal obligation under the Convention and international law.”

¹⁴⁶ I.e., through the observation, evaluation, and monitoring of previous measures and targets as well as climate policy recommendations: Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3.

¹⁴⁷ Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37 (cited in footnote 41), p. 8.

¹⁴⁸ Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37 (cited in footnote 41), p. 8.

¹⁴⁹ Paris Principles (cited in footnote 42), Competence and responsibilities, para. 2. See also GANHRI (cited in footnote 43), p. 7-8.

¹⁵⁰ Paris Principles (cited in footnote 42), Competence and responsibilities, para. 3(a)(i).

without any need for prior referral.¹⁵¹ Independent agenda-setting, continuous situation assessment and active problem identification form an integral part of this.¹⁵² Applied to climate councils, this means that their mandate should not be narrowed to individual technical questions or sector-specific controls. It should encompass an overall assessment of State climate policy insofar as that policy is relevant to the promotion and protection of human rights in the context of climate change.¹⁵³ This includes, in particular, the analysis of existing legislation, the assessment of new proposals, the evaluation of administrative practice, the monitoring of target achievement, and the formulation of recommendations for corrective action.¹⁵⁴

- 104 The Paris Principles also expressly emphasise the importance of public communication. Independent institutions should be able to publish their work autonomously,¹⁵⁵ promote public awareness and understanding,¹⁵⁶ and communicate actively with the media and society.¹⁵⁷ Transparency, public access to scientific findings and the promotion of societal debate appear especially important in the climate field, where the effectiveness of long-term transformation processes depends heavily on public comprehensibility, democratic accountability, and societal learning. Access to information and documentation¹⁵⁸ is equally important, as it forms the precondition for any serious monitoring and evaluation function.
- 105 The ICJ's Advisory Opinion confirms and further strengthens these requirements. The Court emphasises that States must not assess their climate measures only retrospectively but must align them systematically with target achievement in advance. In the context of nationally determined contributions (NDCs), the ICJ expressly held that the remaining discretion of States is limited by the duty to be able actually to achieve the goals of the Paris Agreement – in particular the limitation of global warming to 1.5°C.¹⁵⁹ The relevant benchmark for this is the “best available science.”¹⁶⁰ This implicitly requires institutionalised scientific expertise that can continuously review the effectiveness and adequacy of planned measures. The ICJ expressly specifies this institutional dimension for the implementation of NDCs: States must provide appropriate domestic structures, which may include legislation, administrative procedures and enforcement mechanisms, and must exercise due vigilance to ensure that the system functions

¹⁵¹ Paris Principles (cited in footnote 42), Competence and responsibilities, para. 3(a) and Methods of operation, letter (a).

¹⁵² Paris Principles (cited in footnote 42), Competence and responsibilities, para. 3(a)(iv).

¹⁵³ Paris Principles (cited in footnote 42), para. 1.

¹⁵⁴ Paris Principles (cited in footnote 42), Competence and responsibilities, para. 3(a).

¹⁵⁵ Paris Principles (cited in footnote 42), Competence and responsibilities, para. 3(a).

¹⁵⁶ Paris Principles (cited in footnote 42), Competence and responsibilities, para. 3(g).

¹⁵⁷ Paris Principles (cited in footnote 42), Methods of operation, letter (c).

¹⁵⁸ Paris Principles (cited in footnote 42), Methods of operation, letter (b); GANHRI (cited in footnote 43), p. 7.

¹⁵⁹ ICJ Advisory Opinion (cited in footnote 13), §§ 243-245.

¹⁶⁰ ICJ Advisory Opinion (cited in footnote 13), §§ 246, 258.

effectively.¹⁶¹ The implementation of NDCs – like State mitigation efforts more generally – is subject to a “stringent” duty of due diligence.¹⁶² These requirements establish a continuous cycle of climate governance that links the *ex ante* assessment of planned measures, ongoing monitoring of their effectiveness, and iterative policy adjustment. The ICJ also foregrounded that States must actively obtain and evaluate the scientific information needed for risk assessment.¹⁶³ This requires permanently available, highly qualified, and interdisciplinary expertise, as a climate council with an appropriate design can typically provide. More generally, the ICJ also refers to the obligations under Article 12 of the Paris Agreement, according to which States must promote climate education, training, public awareness, public participation, and access to information.¹⁶⁴ This too shows that effective climate governance cannot be reduced to internal administrative expertise, but requires institutionalised forms of scientific communication, transparency, and societal knowledge transfer.

- 106 Dr Averchenkova’s comparative analysis confirms this broad understanding of function. Effective climate councils regularly perform several complementary tasks: evidence-based policy advice on target pathways and policy options;¹⁶⁵ review of the compatibility of national climate targets and measures with international obligations, as well as contextualisation of the ambition and fairness of the national contribution in the global context;¹⁶⁶ *ex ante* assessment of planned measures;¹⁶⁷ continuous monitoring and evaluation of progress towards targets;¹⁶⁸ regular reporting;¹⁶⁹ and the active promotion of transparency and public debate.¹⁷⁰ A particularly characteristic feature is the substantive autonomy of such bodies, especially their ability to set work programmes independently and take up issues on their own initiative.¹⁷¹ International experience also shows that an overly narrow mandate can seriously impair the effectiveness of such institutions. This point is often made about the German Expert Council

¹⁶¹ ICJ Advisory Opinion (cited in footnote 13), § 253.

¹⁶² ICJ Advisory Opinion (cited in footnote 13), § 253; on the standard of due diligence in relation to the implementation of NDCs, *id.*, § 254. Cf. as a supplement to effective monitoring and implementing mechanisms within the ambit of general standards of due diligence under international law, *id.*, § 282. The ICJ also emphasises effective monitoring with regard to Article 7(9) of the Paris Agreement (SR 0.814.012 of 12 December 2015, in force for Switzerland since 5 November 2017), specifically in relation to adaptation to climate change: ICJ Advisory Opinion (cited in footnote 13), § 257.

¹⁶³ ICJ Advisory Opinion (cited in footnote 13), §§ 283-4. This applies both to adaptation to climate change (*ibid.*, § 258) and mitigation (*ibid.*, § 284).

¹⁶⁴ ICJ Advisory Opinion (cited in footnote 13), § 260.

¹⁶⁵ *Averchenkova* (cited in footnote 22), p. 3.

¹⁶⁶ *Averchenkova* (cited in footnote 22), p. 2, 11, 13.

¹⁶⁷ *Averchenkova* (cited in footnote 22), p. 3.

¹⁶⁸ *Averchenkova* (cited in footnote 22), p. 3-4.

¹⁶⁹ *Averchenkova* (cited in footnote 22), p. 3-4.

¹⁷⁰ *Averchenkova* (cited in footnote 22), p. 4-5.

¹⁷¹ *Averchenkova* (cited in footnote 22), p. 7, 12.

on Climate Issues, whose competence – primarily limited to emissions monitoring – has repeatedly been criticised as functionally too narrow.¹⁷²

- 107 The experience with the former OcCC illustrates the limits of a comparatively narrow institutional model and mandate. In the interviews, several participants pointed out that the OcCC had no expressly defined monitoring, oversight, or systematic evaluation function, which they regarded as an institutional weakness. Several interviewees emphasised that a future climate council should expressly be entrusted with continuous monitoring of target achievement, scientific assessment of State measures and *ex ante* review of climate policy proposals. In this context, they stressed that terms such as “monitoring” or “oversight” must be defined with sufficient precision in the statutory mandate in order to avoid later functional narrowing.
- 108 In substantive terms, interviewees generally understood the mandate of a future climate council broadly. They mentioned, in particular, the independent preparation of scientific foundations, the analysis of national and international climate policy, the assessment of Federal Council strategies, the review of climate-relevant legislation in other policy areas, as well as regular analyses of the *status quo* and scientific outlooks. They also emphasised the importance of maintaining a sense of functional autonomy: the council should be able to identify problem areas and new developments independently and take up relevant issues on its own initiative. Several interviewees further stressed that an effective climate council should not primarily advocate political positions, but – similarly to the working method of the Intergovernmental Panel on Climate Change (IPCC) – transparently present scientifically grounded policy options, trade-offs, effectiveness assessments and implementation problems.

b. Legal design

- 109 Overall, international requirements as well as political and comparative experience support giving a future climate council a broad, permanent and systemic statutory mandate. The statutory basis should not limit the council’s mandate to occasional scientific advice or the technical recording of emissions data. Rather, it should cover the entire climate policy steering cycle. The law should design the climate council as an independent institution for scientific advice, continuous evaluation, and public accountability.

¹⁷² Cirkovic/Pedersen (cited in footnote 92).

- Substantive scope: mitigation and adaptation

- 110 Climate protection (“mitigation”) should lie at the heart of the council’s mandate. Both the ECtHR judgment in *KlimaSeniorinnen* and the subsequent execution proceedings before the Committee of Ministers focus, in the context of a possible climate council, primarily on the adequacy of GHG emissions reductions and the effectiveness of State mitigation measures.¹⁷³ This focus appears substantively justified. Switzerland has repeatedly missed national emissions targets in the past;¹⁷⁴ at the same time, significant differences remain regarding the scientific derivation of national target pathways, the remaining GHG budget,¹⁷⁵ and the effectiveness of the measures already adopted.¹⁷⁶ The statutory basis should therefore expressly empower the climate advisory body to establish and review scientifically grounded national GHG budgets by reference to the remaining global, 1.5°C-compatible GHG budget, and to assess scientifically the national target pathways, State scenarios, and assumptions derived from them. This also includes the transparent contextualisation of different scientific approaches to international burden-sharing, such as “fair share,” taking into account historical emissions, Switzerland’s economic capacity and international responsibility, as well as the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC).¹⁷⁷

¹⁷³ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), introductory part of para. 5.

¹⁷⁴ See above III.4.a, Infobox 1.

¹⁷⁵ Criticisms have been levelled in the literature that Switzerland has so far failed to derive a science-based national GHG budget focusing on physical limits, the 1.5°C temperature target, and principles of equitable burden sharing of burdens internationally. Instead, existing political target pathways are subsequently presented as a “CO₂ budget,” without substantiating their compatibility with the temperature target under the Paris Agreement as well as the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC). See, e.g., *Charlotte E. Blattner/Tobias Cadalbert/Corina Heri*, Zurückhaltung oder Aushöhlung? Präcedenzwirkung auf dem Prüfstand: Das Ministerkomitee des Europarats im Umsetzungsverfahren des *KlimaSeniorinnen*-Urteils, Institut für Justizforschung (IJF), Working Paper 1/2026.

¹⁷⁶ See above III.4.a, Infobox 1.

¹⁷⁷ The question of international burden-sharing (“fair share”) was a central point of contention in the *KlimaSeniorinnen* case. The applicants argued that the compatibility of Switzerland’s climate targets with Article 8 ECHR had to be determined through a quantitative assessment of Switzerland’s “fair share,” taking account of the objective of limiting global warming to 1.5°C, the remaining global CO₂ budget and Switzerland’s international responsibility and capacity. In this regard, they relied in particular on the CBDR-RC principle and the “highest possible ambition” according to Article 3(1) and 4(1) of the Framework Convention on Climate Change and Article 2(2) and Article 4(3) and (4) of the Paris Agreement. The ECtHR held that considerations of fairness and international burden-sharing must be taken into account when determining national emissions pathways and CO₂ budgets and referred in this context to a per-capita approach as a possible benchmark (ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 569). Cf. *Cordelia Christiane Bähr*, *KlimaSeniorinnen*-Urteil: Menschenrechtliche Pflicht der Schweiz, ihren fairen Anteil am global verbleibenden CO₂-Budget zu quantifizieren, URP 2025 2, p. 114 ff. p. 118 f., according to whom the association *KlimaSeniorinnen Schweiz* argued before the ECtHR that a simple per capita allocation did not constitute a valid method for determining fair national shares and that a fair contribution would instead have to reflect CBDR-RC, equity, historical responsibility and economic capacity; at p. 120 f. she is argued that a national CO₂ budget must form the basis of a climate strategy and conversely that existing target pathways must not subsequently be presented as a budget; at p. 125 it is stated that States should demonstrate that they have a national CO₂ budget representing their fair share of the global budget, as well as a climate strategy compatible with that budget. For a similar argument, see *Dennis van Berkel/Floris Tan/Joë*

- 111 At the same time, it is questionable whether the statutory mandate should be limited exclusively to mitigation. The growing importance of adaptation,¹⁷⁸ cross-sectoral climate risks, and coherence between climate, energy, agriculture, finance and infrastructure policy¹⁷⁹ speaks in favour of a broader mandate. The statutory basis should therefore not narrow the substantive competence to mitigation, but should expressly also cover adaptation strategies, climate-related risks and the coherence of other policy areas with long-term climate targets.¹⁸⁰
- 112 The climate council's mandate should expressly cover at least three functional core areas:

Udell/April Williamson, Quantifying a 1.5°C Fair Share Carbon Budget: Human Rights Obligations on Climate Change after *KlimaSeniorinnen*, German Law Journal 2026, p. 1 ff., p. 2, according to whom Article 8 ECHR obliges States to base their emissions-reduction targets on the quantification of a “fair share” of national CO₂ budgets in relation to the remaining global 1.5°C budget; p. 10–15 discuss the obligation to quantify national CO₂ budgets in accordance with CBDR-RC and principles of fairness, the inadequacy of mere references to NDCs or net-zero-by-2050 targets as well as the significance of the per-capita calculation relied upon by the ECtHR as a benchmark that Switzerland at least has not yet complied with; it is argued at p. 18 f. that States must demonstrate that their national budget is consistent with their “fair share” and effectively offset any gaps between domestically feasible reductions and a budget compatible with the country’s “fair share.” See also *Corina Heri*, Mattering in the Anthropocene: the ECtHR’s Domesticating Framing of Climate Change, The International Journal of Human Rights 2025, p. 1 ff., p. 5–7 and 11 f., arguing that although the judgment establishes minimum requirements rooted in human rights concerning regulation, quantification and interim targets, at the same time its “domesticating framing” focuses strongly on domestic stakeholders, national decision-making processes and methods chosen by States – engaging with questions of global equity and climate justice only minimally. These different methodological and normative requirements among the literature underscore the need for a scientifically and legally rigorous examination, based on a secure institutional footing, of different “fair share” approaches, and their implications for Swiss climate targets.

¹⁷⁸ “Adaptation” in line with the adverse effects of climate change was for a long time considered to be a comparatively peripheral issue within the international climate regime, compared to mitigation, but has gained considerably in importance, at least since the adoption of the Paris Agreement. The Paris Agreement is the first to expressly place mitigation and adaptation on an equal footing and recognises adaptation as an integral aspect of the long-term global response to climate change (cf. in particular Article 2(1)(b) and Article 7(1) and 4 of the Paris Agreement; see also *Irene Suárez Pérez/Angela Churie Kallhauge*, Adaptation (Article 7), in: Daniel Klein/Maria Pia Carazo/Meinhard Doelle/Jane Bulmer/Andrew Higham (eds.), The Paris Agreement on Climate Change: Analysis and Commentary, Oxford 2017, p. 196 ff., p. 196 and 202. It is now widely recognised that mitigation and adaptation are not opposing but rather complementary and mutually reinforcing strategies. The more successful emissions reductions are, the lower future adaptation needs will be; conversely, adaptation and resilience requirements will increase substantially as warming intensifies (cf. Intergovernmental Panel on Climate Change (IPCC), Inter-Relationships between Adaptation and Mitigation, in: R.J.T. Klein/S. Huq, F. Denton/T.E. Downing/R.G. Richels/J.B. Robinson/F.L. Toth (eds.), Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge UK/New York NY 2022, p. 745 ff., p. 747. Against this backdrop, one might question whether it is a good idea for the mandate of a climate council to be limited from the outset exclusively to mitigation. The ECtHR likewise does not limit positive obligations arising under Article 8 ECHR to emissions reductions (“mitigation”), but expressly requires effective “adaptation measures” in order to mitigate particularly serious or imminent impacts of climate change. Such measures must be designed and effectively implemented on the basis of the “best available evidence.” It follows that an institutionalised climate advisory body should also be able to address questions of adaptation, resilience, and preparedness for climate-related risks. Cf. ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 552.

¹⁷⁹ Cf. ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 418.

¹⁸⁰ See also Swiss Human Rights Institution (SHRI), Klimawandel als Menschenrechtsfrage: Die Perspektive der Menschenrechte auf Klimaschutz und Klimaanpassung (Fribourg 2026), p. 19 ff., p. 27 ff., available at <https://www.isdh.ch/assets/2026_pdf/etudes-recherche/klima-und-menschenrechte/smri_studie.pdf> (last accessed 20 September 2026).

- Scientific advice and independent expertise

- 113 First, the law should expressly assign the climate advisory body the task of providing independent scientific advice and expert analysis. The climate council should be required to prepare scientific foundations independently, to establish or analyse national emissions pathways and GHG budgets, and to assess planned climate policy measures *ex ante* with regard to their effectiveness, their compatibility with national climate targets, and international climate obligations – in particular the temperature limits of the Paris Agreement – and their long-term coherence. This includes, notably, the authority to critically evaluate State modelling, assumptions, and scenarios against the “best available science.” The council should also be able to scientifically assess the ambition and fairness of Switzerland’s contribution in the global context. The task of a climate advisory body therefore does not consist merely in supporting existing administrative policy; it expressly includes the independent scientific review of Switzerland’s assumptions and strategies.

- Monitoring, evaluation and early warning

- 114 Second, the law should assign the climate advisory body an autonomous monitoring, evaluation, and accountability function. The legislature must define the term “monitoring” and clarify that it does not require the council to collect administrative information and inventory emissions data – which remains the task of the competent federal bodies. What is needed, rather, is the independent scientific contextualisation and assessment of those data. More specifically, the climate advisory body should perform ongoing scientific assessment of target achievement, of the effectiveness of governmental measures, and of the coherence between short-, medium- and long-term national climate targets and their compatibility with the relevant international climate obligations and global targets. The statutory description of tasks should therefore include the continuous monitoring of national target pathways, the identification of deviations from targets and structural implementation deficits, and the formulation of recommendations for corrective action. The law should also provide that the climate council performs early-warning functions and must draw attention in good time to foreseeable target failures or insufficient measures.

- Publicity, transparency and communication

- 115 Third, the climate council should expressly have its own publicity and transparency function.¹⁸¹ The law must safeguard the body's autonomous publication authority. Reports, statements, and recommendations should be capable of publication without prior substantive approval by the Federal Council, departments, the wider administration, or the Federal Assembly. The statutory basis should expressly grant the climate council the right to create publicity independently, prepare scientific findings in a generally understandable manner, and communicate actively with parliament, the media, academia, civil society, and the public. This too includes disclosing methods and scientific uncertainties, and communicating identified deviations from statutory or political climate targets transparently. Institutionally, the climate council should therefore be conceived not merely as an internal advisory body of the administration, but as an independent interface between the State, science and the public.
- 116 International practice demonstrates the importance of this communication function. Comparative experience shows that climate advisory bodies with strong public visibility – such as for instance the UK's Climate Change Committee (CCC) or Denmark's *Klimarådet* – make a significant contribution to the quality of public discourse while also providing a counterweight to short-term political interests.¹⁸² This function is of particular importance in Switzerland as the political response to the *KlimaSeniorinnen* judgment revealed, at times, significant deficits in communication and public mediation.¹⁸³ In such an environment, the law should all the more equip a future climate council with autonomous publication rights, independent communication infrastructure, and the power to communicate proactively with the public.¹⁸⁴

¹⁸¹ Swiss Human Rights Institution (SHRI), *Klimawandel als Menschenrechtsfrage: Die Perspektive der Menschenrechte auf Klimaschutz und Klimaanpassung* (Fribourg 2026), p. 39, available at <https://www.isdh.ch/assets/2026_pdf/etudes-recherche/klima-und-menschenrechte/smri_studie.pdf> (last accessed 20 September 2026).

¹⁸² *Averchenkova* (cited in footnote 22), p. 3.

¹⁸³ Public and political debate surrounding the *KlimaSeniorinnen* judgment has at times focused heavily on institutional and sovereignty-related issues while the Court's substantive requirements concerning science-based climate governance and effective monitoring mechanisms have received comparatively little attention. This underscores the importance of institutionalised arrangements for scientific communication and dissemination of knowledge in the field of climate policy. Recent empirical research by *Lukas Fesenfeld/Laurie Durel/Leon Sistik*, *The Mass Public Effects of International Court Decisions*, TBP, available at <<https://zenodo.org/records/22091568>> (last accessed 20 September 2026) points towards the same conclusion, indicating that information and scientifically grounded communication on the judgment could significantly increase societal acceptance and trust in the decision.

¹⁸⁴ This would represent a departure from Article 81^{ter} GAOO. The provision stipulates that commissions which, under the terms of the executive's appointment decision establishing them, are allowed to communicate without prior consultation with the competent authority must exercise due restraint when providing public information on political matters.

- Own right of initiative and access to information

- 117 The climate council's mandate should not be limited to requests from the Federal Council, the administration, or parliament. Rather, the law should expressly grant the climate council a right of initiative. The climate council must be able to independently identify and take up problem areas, new scientific developments, and structural deficits, and publish reports, assessments, and recommendations on them. Comparative literature in particular emphasises that the effectiveness of such institutions is largely dependent upon whether they are able to determine their own agenda at least in part or whether they are functionally reduced to carrying out assignments commissioned by others.¹⁸⁵
- 118 Finally, the law should secure the climate council's own access to information.¹⁸⁶ Effective monitoring and meaningful evaluation of government climate policy require the climate advisory body to have access to the scientific evidence, data, modelling, and administrative information necessary to perform its tasks.¹⁸⁷ Such access to information is a functional precondition for effective monitoring and evaluation powers.

8. Temporal dimensions: Permanence, continuity and term of office

a. Normative requirements

- 119 The temporal design of a climate council is central to its effectiveness. The climate law logic of the ECtHR judgment in *KlimaSeniorinnen* requires State climate policy to operate not merely through isolated interventions, but on a permanent, coherent, and reviewable basis.¹⁸⁸ The Court put particular emphasis on the long-term effectiveness of climate measures and their continuous updating.¹⁸⁹ Against this background, a climate council cannot be conceived as a merely temporary, project-based, or *ad hoc* advisory body. It requires permanent institutional entrenchment that ensures continuous scientific support for climate policy across legislative periods and changes in government. The execution proceedings confirm this. When they emphasise the need to ensure “effective and efficient implementation”¹⁹⁰ and the ongoing updating of measures, they presuppose institutional structures that do not merely issue

¹⁸⁵ See above IV.7.a.

¹⁸⁶ The general right of access to information under the Swiss Federal Act on Freedom of Information in the Administration (Freedom of Information Act, FoIA, SR 152.3, of 17 December 2004) is only a partial substitute for this type of institutional access, as it is primarily designed to provide individuals with transparency rights and does not guarantee continuous or secure access to scientific evidence, modelling, and internal administrative assessment processes.

¹⁸⁷ See also Section 39(3)(a) of the UK Climate Change Act 2008 (UK).

¹⁸⁸ See implicitly ECtHR, *KlimaSeniorinnen* (cited in footnote 1), §§ 538(b), 539(c).

¹⁸⁹ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), §§ 538(b), 539(c).

¹⁹⁰ Ministers' Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3.

recommendations periodically or once, but continuously and permanently observe, assess, and accompany the implementation of State climate policy. Climate law requirements concern time horizons spanning decades. The advisory and reviewing body must therefore also have a certain degree of temporal stability.

- 120 The Paris Principles and their specification by GANHRI also support such temporal stability. They require a stable mandate for the members of independent institutions and emphasise that fixed terms of office are essential to secure continuity, independence, and institutional capacity.¹⁹¹ For a climate advisory body, longer terms of office within this range (for example, five to seven years) appear appropriate. They allow a certain degree of detachment from shorter-term political cycles and reflect the longer-term nature of climate policy steering and evaluation processes. Such temporal security matters not only for the existence and continuity of the body as an institution, but also for the independent position of its individual members: a person who performs their function only for a short period, or subject to revocation at any time, can hardly exercise the same professional and institutional independence as a member whose term of office is legally secured.¹⁹²
- 121 Dr Averchenkova's report confirms this orientation. Climate advisory bodies serve precisely to bridge the tension between short-term political decision-making cycles and long-term climate targets.¹⁹³ Their function consists, not least, in securing climate policy continuity across changes in government and in making long-term target pathways visible despite short-term political opportunities or pressures.¹⁹⁴ Such bodies are therefore usually designed as permanent institutions. Fixed terms of office and staggered renewal of members ("staggered terms") at the same time protect the independence of the body and preserve its institutional memory.¹⁹⁵
- 122 These requirements align with the experience of the OcCC. The interviews suggest that a future climate advisory body should be established permanently, rather than on a project or contract basis. Several interviewees criticised the fact that the OcCC's institutional position had ultimately been weakened by the short duration of its mandate agreements with the DETEC or FOEN; they referred in particular to the shift from longer to two-year mandates and the resulting

¹⁹¹ Paris Principles (cited in footnote 42), Composition and guarantees of independence and pluralism, para. 3; GANHRI (cited in footnote 43), p. 35.

¹⁹² A term of office lasting for several years is highlighted as established practice: GANHRI (cited in footnote 43), p. 35.

¹⁹³ *Averchenkova* (cited in footnote 22), p. 10, 12.

¹⁹⁴ *Averchenkova* (cited in footnote 22), p. 2, 12; *Alina Averchenkova/Lara Lazaro*, *The Design of An Independent Expert Advisory Mechanism under the European Climate Law: What Are the Options?* London 2020, p. 4.

¹⁹⁵ *Averchenkova* (cited in footnote 22), p. 12. For a similar view see *Geraldine Tallon/Sharon Turner/Halldór Thorgeirsson*, *Independent Evaluation of the Climate Change Advisory Council (of Ireland)*, December 2020, p. 20, available at <<https://www.climatecouncil.ie/aboutthecouncil/governance/independentevaluation/Independent%20Evaluation%20of%20the%20Climate%20Change%20Advisory%20Council%20web.pdf>> (last accessed 20 September 2026).

loss of continuity. Several interviewees emphasised that climate policy is not a punctual task but concerns a permanent crisis that requires a permanent structure and the preservation of institutional knowledge. As possible concrete arrangements, they proposed multi-year terms of office and staggered renewal of members; one interviewee, for example, mentioned a four-year term with the possibility of one or two reappointments as a sensible model.

b. Legal design

- 123 For the legal design, the current law on extra-parliamentary commissions provides the obvious starting point. Under the terms of Article 57c(3) GAOA, members of permanent commissions are generally appointed for a term of office of four years; the members of standing commissions are generally elected for a four-year term, which regularly coincides with the legislative period of the National Council.¹⁹⁶ For each new term of office, that is every four years, the Federal Council carries out general renewal elections under Article 57d GAOA.¹⁹⁷ As a general rule, terms of office are limited to twelve years, although this may be extended to sixteen years in justified individual cases.¹⁹⁸
- 124 These rules should only partly be adopted for the climate advisory board. There are good reasons for limiting the terms of office of individual members. Term limits prevent entrenchment, facilitate renewal and contribute to the body's capacity for innovation. In principle, the standard rules under the GAOA and the Government and Administration Organisation Ordinance (GAOO) can therefore be adopted without difficulty for the climate council: a four-year term, with the possibility of renewal up to twelve years, and exceptionally up to sixteen years.
- 125 The logic of complete periodic renewal of the entire body, which Article 57d GAOA provides as the default, requires a different assessment. For a climate council, it is problematic in two respects: first, as a model of complete personnel renewal; and second, as an expression of an understanding of commissions under which the existence and necessity of extra-parliamentary commissions are reviewed periodically.

¹⁹⁶ Article 8g(1), 2nd sentence, GAOO.

¹⁹⁷ See also Article 8h GAOO.

¹⁹⁸ Article 8i(1) and (2) GAOO. Previously, 16 years had been the standard. In its statement on the Aeby recommendation, the Federal Council expressly noted that reducing the maximum term of office from 16 to 12 years was intended to increase rotation and thereby improve the representation of women and younger generations: Opinion of the Federal Council of 9 September 1998 on Recommendation (98.3313) Aeby of 25 June 1998, AB 1998 p. 1133. No term limit applies to federal employees whose membership is necessary for the performance of their duties or is mandatory under another legislative instrument (Article 8i(3) GAOO).

- 126 As to the latter point, the general renewal elections under Article 57d GAOA form part of an order in which extra-parliamentary commissions are used restrictively and selectively and are periodically reviewed as to their necessity.¹⁹⁹ The task of a climate advisory board, however, does not consist in advice that the Federal Council may draw on or dispense with according to the situation. Rather, it consists in the permanent, independent accompaniment of a long-term cross-cutting State task. The statutory basis should therefore ensure that the climate council's existence and core mandate are not jeopardised through the ordinary periodic review of extra-parliamentary commissions. This also raises an issue of independence: a climate advisory body that critically monitors, assesses, and publicly contextualises the federal government's climate policy should not have its institutional existence depend entirely on one single political body, in particular the executive, whose policy it accompanies from a professional perspective. Complete detachment from democratically legitimised State bodies is, of course, neither possible nor appropriate: the climate council also accompanies the legislature's climate policy, while the legislature at the same time decides on its statutory basis and essential institutional framework. What is needed are institutional safeguards that limit one-sided dependencies and prevent inconvenient opinions from being indirectly sanctioned through decisions on the body's continuation, composition, or resources.²⁰⁰ The statutory entrenchment should therefore provide particular safeguards for the existence and core mandate of the climate council; a rule departing from the general order under Article 57d GAOA appears appropriate for this purpose.
- 127 As to the former point, a climate advisory board differs from many extra-parliamentary commissions because its task does not consist in occasional advice on individual technical questions, but in the permanent scientific accompaniment of a long-term cross-cutting governmental task. Precisely for that reason, its composition should not be completely renewed at regular intervals. The climate council must be able to assess long-term target pathways, emissions budgets, scenarios, indicators, and implementation deficits across several periods according to comprehensible and consistent standards. Comparative studies on commissions

¹⁹⁹ Thomas Säggerer, in: Thomas Säggerer (ed.), *Regierungs- und Verwaltungsorganisationsgesetz RVOG* vom 21. März 1997, 2nd edn., Bern 2022, Article 57d No. 1.

²⁰⁰ This is not altered by comparison with decision-making commissions such as ElCom. It is true that, under Article 21(1) of the Electricity Supply Act (ESA), the Federal Council appoints the members of ElCom. That solution, however, belongs to a different institutional context: ElCom has sovereign decision-making powers, and the law expressly secures its independence; in particular, it is not subject to instructions from the Federal Council or the department in its decisions (Article 21(2) ESA). The issue is different for a climate council designed as an administrative commission. Precisely because it has no binding decision-making powers and instead operates primarily through scientific assessment, its independence is particularly vulnerable. Its authority rests on institutional distance, professional credibility, and the ability to openly identify State inaction, missed targets, or insufficient measures. In climate law, this function is especially sensitive because climate policy omissions and delays themselves form the object of scrutiny, while climate policy is also highly politicised. If the Federal Council alone appointed the members of such a body, there would be a risk that the very executive whose climate policy the climate council is meant to accompany critically would decide on its composition and thus indirectly on the body's critical capacity. For a climate council, therefore, there is a stronger case than for classic decision-making commissions for designing the appointment procedure in a parliamentary, pluralistic, or at least executive-independent manner.

show that their effectiveness depends significantly on their ability to accumulate knowledge, data and negotiation results across different commission phases and feed them into the political process. What matters, in other words, is “institutionalized learning,”²⁰¹ meaning the institutionalised consolidation and transmission of expertise and experience.

- 128 A model that distinguishes between the permanence of the institution and the renewal of its members therefore appears preferable.²⁰² The climate council should be established under statute as a permanent institution; by contrast, individual members should serve fixed but time-limited terms, with staggered renewal so that only some members are replaced at any one time. In addition, the council needs a professionally qualified and permanent secretariat with an express mandate for documentation, archiving, and knowledge transfer.²⁰³ Such a model also corresponds to comparative experience. Climate advisory bodies in the United Kingdom,²⁰⁴ at the level of the European Union (EU),²⁰⁵ and in Denmark²⁰⁶ do not rely on complete periodic renewal of the entire body, but operate with fixed mandates and staggered renewal. This preserves institutional knowledge without entrenching membership permanently.

9. Expertise, composition, and appointment

a. Normative requirements

- 129 The requirements concerning the expertise, composition, and appointment of a climate council follow from its function. If the climate council is to provide scientific support for federal climate policy and provide an independent assessment of it, its composition must ensure that it has the necessary breadth of expertise, authority and independence. The ECtHR’s emphasis in *KlimaSeniorinnen* on the need for a scientifically grounded basis for climate policy decision-making²⁰⁷ necessarily also shapes the institutional design: a body tasked with assessing target achievement, effectiveness, and coherence in climate policy must itself be composed in such a way that its assessments are scientifically robust, interdisciplinary, and institutionally credible.

²⁰¹ Patrik Marier, The Power of Institutionalized Learning: The Uses and Practices of Commissions to Generate Policy Change, *Journal of European Public Policy* 2020 16(8), p. 1204 ff.

²⁰² For a similar view see *Averchenkova/Lazaro* (cited in footnote **Fehler! Textmarke nicht definiert.**), p. 4.

²⁰³ See also Article 8ⁱ^{bis} GAOO.

²⁰⁴ Framework Document of the UK Climate Change Committee, January 2024, para. 9.7, available at <<https://www.theccc.org.uk/wp-content/uploads/2024/01/CCC-Framework-Document-January-2024.pdf>> (last accessed 20 September 2026).

²⁰⁵ Article 10a(3) of 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 (Codified version) (OJ L 126 of 21 May 2009, p. 13).

²⁰⁶ Article 10(6) of the Danish Climate Act, Act No. 965 of 26 June 2020 (Denmark).

²⁰⁷ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 539(c).

- 130 For Switzerland (or any other CoE country, for that matter), an additional point follows: In the context of the *KlimaSeniorinnen* judgment, a climate council cannot be understood as a climate council *tout court*. Its function is notably shaped by the fact that it should also contribute to the lasting, coherent, and reviewable fulfilment of the State protection duties arising from the ECHR. Human rights requirements therefore provide a substantive frame of reference for the ongoing assessment of climate policy. More specifically, the climate advisory board would have to examine whether national measures comply with the requirements formulated by the ECtHR concerning target pathways, GHG budgets, interim targets, monitoring, corrective action, and procedural guarantees.²⁰⁸ The Notes on the Agenda of the Committee of Ministers state that the effective protection of individuals from the serious consequences of climate change constitutes a “legal obligation under the Convention and international law” and requires “robust safeguards at national level.”²⁰⁹ The “capacity and authority” emphasised in the execution proceedings, together with the reference to “good practices of other member states”²¹⁰ also implies that such a body must have a composition capable of carrying its professional authority in practice – a point which we consider below in more detail.
- 131 The Paris Principles and GANHRI’s specification of them point towards a pluralistic, professionally broad, and, at the same time, independent composition.²¹¹ They mention, in particular, NGOs, trade unions, professional associations, ethical expertise, universities and qualified experts, parliament, and representatives of government – the latter, however, only in an advisory capacity.²¹² GANHRI also emphasises the importance of a transparent, merit-based selection process with a public call, objective criteria, and broad participation.²¹³ For climate councils, this means that professional qualification, independence, and disciplinary breadth should be secured either by law or at least through procedural rules.
- 132 In her report, Dr Averchenkova emphasises that the effectiveness of climate councils is largely dependent on the quality and breadth of expertise among their members. Effective models rely on multidisciplinary composition and transparent, merit-based selection procedures that minimise political influence.²¹⁴ Combining different disciplines allows climate policy measures

²⁰⁸ See in particular the criteria laid down by the ECtHR in *KlimaSeniorinnen* (cited in footnote 1), §§ 544-550.

²⁰⁹ Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37 (cited in footnote 41), p. 8.

²¹⁰ Ministers’ Deputies, Decision CM/Del/Dec(2025)1537/H46-37 (cited in footnote 8), para. 5.3; Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37 (cited in footnote 41), p. 8.

²¹¹ Paris Principles (cited in footnote 42), Composition and guarantees of independence and pluralism, para. 1; GANHRI (cited in footnote 43), p. 20-21, 22-23.

²¹² GANHRI (cited in footnote 43), p. 24.

²¹³ GANHRI (cited in footnote 43), p. 22.

²¹⁴ *Averchenkova* (cited in footnote 22), p. 1, 7-9, 12-13.

to be proposed and assessed not only in terms of their natural-scientific plausibility, but also with regard to their economic, social, political, and legal conditions and effects.²¹⁵

- 133 Further literature points out that the impact of a climate council does not depend solely on the formal expertise of its members. A purely academic body may, despite high professional quality, gain only limited acceptance beyond academia if it lacks relational proximity to relevant actor groups, in particular parliament, the administration, civil society, and affected sectors.²¹⁶ The composition and working methods of a climate council must therefore ensure not only scientific excellence, but also institutional connectivity.
- 134 The experience with the OcCC points in the same direction, while also revealing the need for further development. In the interviews, the scientific and regional breadth of the former body was generally assessed positively. It represented, in particular, climate science, risks, natural hazards, behavioural economics, political science, economics, adaptation, and hydrology.²¹⁷ However, several interviewees stressed that humanities, legal, and notably human rights perspectives had not been anchored (or not sufficiently anchored) in the body. There is therefore a clear need to broaden the composition.
- 135 This, too, follows from the changed function of a future climate council. Its task would not merely be to provide climate-scientific findings or trace emissions trends.²¹⁸ Rather, it would be required to assess whether Swiss climate policy is designed in a coherent, effective, legally adequate and socially sustainable manner. Its work would therefore concern not only target pathways, emissions budgets and scenarios, but also transformation pathways, sectoral measures, distributional effects, political steering problems, implementation deficits, questions of acceptance, and fundamental and human rights requirements. Whether a package of measures is effective, socially viable, legally adequate, and politically feasible must be assessed from a multidisciplinary perspective drawing on expertise in economics, political science, sociology, behavioural sciences, law, and the humanities. And precisely because the institutional impetus for a climate council is substantially shaped by the *KlimaSeniorinnen* judgment, the human rights perspective must not merely be brought in occasionally, *ad hoc*; it must be permanently represented within the body itself.
- 136 At the same time, the composition should remain scientifically shaped. The interviews supported involving perspectives from politics, the administration, civil society, and business in the work of the climate council, for example through hearings, consultations, or thematic

²¹⁵ Averchenkova (cited in footnote 22), p. 8-9.

²¹⁶ Cirkovic/Pedersen (cited in footnote 92), p. 604.

²¹⁷ OcCC, Internal working paper: Wissenschaftliche Klimaberatung für das UVEK – Zukunft, 1 December 2020, p. 3.

²¹⁸ For the sake of clarity and completeness, it should be noted – as explained above – that the GHG inventory would in any event continue to be drawn up by the public administration.

working formats. By contrast, interviewees mostly took a cautious view of formal membership for such actors. On this view, the climate advisory body should not become an interest-representation or negotiation body but must remain an independent scientific expert body that can take up external perspectives in a structured and transparent manner without losing its professional role.

- 137 This point emerged particularly clearly with regard to the administration. Interviewees mostly rejected voting seats for the administration. They described the executive proximity of the OcCC – especially because the administration appointed it and because of factual dependencies in relation to mandate, resources, and publication – as a central weakness of the previous model. For a future climate council, at most a non-voting connection to individual administrative offices may be considered, insofar as it serves the flow of information and coordination. Any more extensive participatory power would hardly be compatible with the institutional independence of a climate council.
- 138 As regards the appointment of individual members, the interviewees clearly support a transparent selection procedure that is appropriate for science and based on reputation. Interviewees repeatedly stressed that members should be selected on the basis of their professional qualification and scientific authority, comparable to scientific selection processes or standards known, for instance, from Swiss National Science Foundation (SNSF) procedures. Decisive criteria would include proven expertise, disciplinary complementarity, personal independence, and the ability to contribute beyond one's own field to an integrated climate policy assessment. A parliamentary connection was also discussed; overall, this seems useful as a bridge or observer function, rather than as party-political representation within the body itself.

b. Legal design

- 139 The professional requirements for members of the climate council and the essential rules on its composition should be laid down at statutory level. This applies in particular to securing an interdisciplinary composition and defining incompatibilities, especially with regard to functions within the federal administration. The incompatibility rule should, however, be limited to functions within the central administration and should not extend to employees of outsourced administrative units. Otherwise, members of the ETH domain, for example, would be excluded from membership, even though they possess scientific expertise that may be particularly relevant to the climate council's tasks.

- Principle: Statutorily defined expertise profile

- 140 The composition of a climate council is not a secondary organisational question but concerns the body's very ability to function. The statutory basis should define an expertise profile that reflects the areas of knowledge required to assess modern climate policy. This profile should be defined functionally: the starting point is the task of scientifically accompanying Swiss climate policy, evaluating its achievement of targets and effectiveness, assessing its compatibility with the broader requirements of climate law, and publicly contextualising its results.²¹⁹
- 141 The body as a whole must possess the expertise necessary to coherently assess target pathways, GHG budgets, scenarios, the effects of measures, implementation deficits, social and ecological consequences, sectoral transformation pathways, and legal requirements. What matters is the overall picture: not every field necessarily deserves its own seat, but the members of the climate council, taken together, must ensure the necessary minimum breadth of expertise. This understanding also corresponds to comparative models, in particular the UK Climate Change Committee (CCC),²²⁰ the European Scientific Advisory Body on Climate Change (ESABCC)²²¹ as well as the Danish *Klimarådet*,²²² which each align their composition with the breadth of expertise relevant to climate policy. For the Swiss climate advisory body, relevant expertise should include, in particular:
- 142 *Natural sciences*: The council needs in-depth knowledge of climate science in the narrower sense, of emissions trends, climate modelling, GHG inventories, GHG budgets, and climate scenarios. This expertise forms the basis for any assessment of national reduction targets and their compatibility with scientific knowledge. It must be complemented by expertise on climate impacts, risk and adaptation, including hydrology, glaciology, natural hazards, ecology, and land use. For Switzerland, this dimension carries particular weight because of the special vulnerability of the Alpine region and the importance of adaptation and precautionary measures.
- 143 *Health sciences*: This perspective is particularly important in the Swiss context because the *KlimaSeniorinnen* judgment places the protection of vulnerable persons from serious risks and consequences of climate change at the centre.²²³ Climate-sensitive patterns of illness and

²¹⁹ See further above IV.7.

²²⁰ Alina Averchenkova/Sam Fankhauser/Jared Finnegan, *The Role of Independent Bodies in Governance: The UK's Climate Change Committee*, London 2018, p. 9.

²²¹ Point (c) of Article 10a(3) of 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 (Codified version) (OJ L 126 of 21 May 2009, p. 13).

²²² Article 10(3) of the Danish Climate Act, Act No. 965 of 26 June 2020 (Denmark).

²²³ See also Swiss Human Rights Institution (SHRI), *Klimawandel als Menschenrechtsfrage: Die Perspektive der Menschenrechte auf Klimaschutz und Klimaanpassung* (Fribourg 2026), p. 27 ff., available at

mortality, heat exposure, air quality, psychological stress, and health inequalities are integral to the protective dimension relevant from a human rights perspective.

- 144 *Climate policy and governance research*: Specific climate policy expertise has a central role. Climate policy concerns the design of target architectures, policy mixes, sectoral measures, institutional coordination, implementation and policy evaluation. Precisely because a climate council must assess the coherence and effectiveness of climate policy as a whole, this expertise must be represented in the body.
- 145 *Social and behavioural sciences*: The effectiveness of climate policy measures depends significantly on whether society understands, accepts, and implements them, and whether they experience them as fair and just. Questions of behaviour, communication, acceptance, social inequality, institutional trust, and democratic mediation therefore form part of climate policy design and assessment. This expertise is also central because climate policy today is no longer merely technical emissions steering, but societal transformation policy.²²⁴
- 146 *Sectoral transformation and adaptation expertise*: The climate advisory body must be able to assess measures with regard to the sectors actually affected. This requires, in particular, knowledge of energy, transport, buildings, industry, agriculture, financial flows, health, and adaptation. Some of this expertise may be represented within the body itself and, for specific questions, supplemented through expert panels, working groups, hearings or thematic involvement of additional experts.
- 147 *The humanities and human sciences*: This expertise is relevant in particular for questions of ethics, intergenerational justice, risk management, allocation of responsibility, societal transformation, and democratic legitimacy.²²⁵ Climate policy concerns fundamental decisions about responsibility for the future, burden-sharing, and ways of life – dimensions that cannot be captured through natural science or economics alone.
- 148 *Economics*: Climate policy affects investments, costs, incentive structures, distributional effects, sectoral transformation pathways, and macroeconomic framework conditions. A climate advisory body must be able to assess whether climate policy instruments are economically viable, whether they create effective incentives, and which social or sectoral

<https://www.isdh.ch/assets/2026_pdf/etudes-recherche/klima-und-menschenrechte/smri_studie.pdf> (last accessed 20 September 2026).

²²⁴ See also Alexandra Buylova/Gunilla Reischl/Malin Wolters, Diversifying Climate Policy Advice: Research Agenda on the Expertise of National Climate Councils, Earth System Governance 2024 22, 100226.

²²⁵ In this context, the SHRI recommends taking into account *inter alia* extraterritorial effects, the principle of common but differentiated responsibilities as well as intergenerational justice: Swiss Human Rights Institution (SHRI), Menschenrechtliche Verpflichtungen im Kontext des Klimawandels, Policy Brief (Fribourg 2026), p. 6, available at <https://www.isdh.ch/assets/2026_pdf/etudes-recherche/klima-und-menschenrechte/smri_policybrief.pdf> (last accessed 20 September 2026).

consequences they entail. The strong role of economic expertise in various foreign climate councils confirms this need.

- 149 *Legal scholarship and specifically human rights expertise:* Legal expertise is required to assess competences, target pathways, instruments, procedures, and responsibility. In Switzerland, in light of the *KlimaSeniorinnen* judgment, a climate council must examine whether GHG budgets, interim targets, monitoring, corrective action, and procedural guarantees meet the requirements arising from the ECHR.²²⁶ Broader legal and more specific human rights expertise should therefore be permanently represented within the body.
- 150 The fields of knowledge mentioned above should not lead to a fixed distribution of seats. Not every discipline necessarily needs its own seat. However, certain areas of expertise, particularly climate science, climate policy and human rights law, must be represented at all times to ensure that the council can fulfil its core functions. Beyond these essential areas, what matters is that the necessary expertise is present in the body as a whole and can be supplemented when members are renewed, for example to reflect emerging priorities such as adaptation, health or transformation.

- Number of members and balance

- 151 The breadth of expertise required on a climate advisory body calls for a sufficiently large number of members. Under Article 57e(1) GAOA, extra-parliamentary commissions may generally have no more than fifteen members.²²⁷ This order of magnitude also appears sensible for a climate council. It allows for a broad interdisciplinary composition without making the body too large and cumbersome.
- 152 The general requirements on balanced representation remain important. Administrative organisation law requires extra-parliamentary commissions to be balanced, taking account of their tasks, in terms of gender, language, region, age, and affected interest groups.²²⁸ This has been specified most concretely for gender and language: women and men must each account

²²⁶ See also Swiss Human Rights Institution (SHRI), *Klimawandel als Menschenrechtsfrage: Die Perspektive der Menschenrechte auf Klimaschutz und Klimaanpassung* (Fribourg 2026), p. 50-51, available at <https://www.isdh.ch/assets/2026_pdf/etudes-recherche/klima-und-menschenrechte/smri_studie.pdf> (last accessed 20 September 2026).

²²⁷ According to Article 8d(2) GAOO, a higher number of members would only be permissible under special circumstances, for example where a balanced composition cannot otherwise be achieved or where the importance of the policy area calls for the broader incorporation of different perspectives. Such considerations could, in principle, apply to a climate council. It would nevertheless appear more appropriate to keep voting members at a workable level and to take on board additional expertise through expert panels, working groups, hearings, or consultations.

²²⁸ Article 57e(2) GAOA.

for at least 40% of the members; in the longer term, parity should be pursued;²²⁹ and where possible, German-, French-, and Italian-speaking regions of Switzerland should be represented, and efforts should be made to ensure representation of the Romansh-speaking community.²³⁰ These requirements strengthen the climate council's connectivity in a multilingual, federal, and socially diverse environment. Overall, the selection process should therefore bring together professional suitability, disciplinary breadth, and linguistic, regional, age-related and gender balance.

- Involvement of external actors

- 153 The climate advisory body should be composed of scientific experts while maintaining strong institutional links. Studies on climate councils suggest that a purely academic body, despite high professional quality, may lose impact if it has too little connection to parliament, the administration, the cantons, civil society, business, and affected sectors.²³¹
- 154 This connection should take place through structured exchange formats. Public hearings, sectoral consultations, thematic working groups, a stakeholder forum, and regular exchanges with parliamentary committees, cantons, the administration, academia, business, and civil society would all be conceivable. In this way, the climate council can take up implementation knowledge, practical experience, and societal perspectives without losing its role as an independent scientific expert body. The involvement of external advisers in this way is permissible by analogy with Article 29(1)(d) GAOO, provided that the climate council's rules of procedure provide for it.²³²

²²⁹ Article 8c(1) GAOO. The scientific climate council in French-speaking Switzerland shows why gender balance should not be regulated merely as a matter of principle. Its convention states only that gender balance should be pursued "dans la mesure du possible." By contrast, the list of members for the 2026–2029 term includes only four women among the 16 planned seats, with one seat currently vacant. See Conseil scientifique romand pour le climat, Liste des membres pour la période 2026-2029, available at <https://www.vd.ch/fileadmin/user_upload/themes/environnement/climat/fichiers_pdf/2026_01_CSR_ListeExperts_web_v2.pdf> (last accessed 20 September 2026). This puts the proportion of women at 25% at present, demonstrating that non-binding provisions setting out a target do not reliably ensure balanced composition.

²³⁰ Article 8c^{bis} GAOO.

²³¹ See above note 227.

²³² See also below V.11. On arrangements for involving external experts, see *Bernhard Rütsche/Marc M. Winistörfer*, Einbezug der Wissenschaft in Krisenzeiten, AJP 2023, p. 165 ff.

- Selection and appointment procedure

- 155 The appointment procedure for members should – as set out above – be designed to be transparent, merit-based, and appropriate to the scientific nature of the body.²³³ For Switzerland, a multi-stage procedure would be suitable. First, the expertise profile should be publicly advertised. The call should clearly state the climate council's tasks, the expertise sought, the independence requirements, the expected time commitment, the remuneration, the length of the term of office, whether reappointment is possible, and which interests must be disclosed. The call should be published in the official languages and should incorporate the suitability criteria from the statutory expertise profile.
- 156 An independent selection committee should then assess the applications on the basis of published criteria, and draw up a shortlist. This selection committee should be professionally credible and independent from the administration whose policy the council will assess. It could include the Swiss Academies of Arts and Sciences (SAAS), the Swiss National Science Foundation (SNSF), or comparable scientific institutions. Persons with expertise in public law, ethics, governance, and scientific policy advice could also be involved. International peer expertise could further strengthen professional credibility.
- 157 Under Article 57c(2) GAOA, the Federal Council generally appoints the members of extra-parliamentary commissions and determines their function, unless special legislation provides otherwise.²³⁴ If this rule were retained in principle, the specific legislation on the climate council should clarify that the Federal Council must make the appointment based on a transparent selection procedure. The Federal Council could formally appoint the members but would either be bound by the shortlist prepared by the selection committee or would have to give public and qualified reasons for any departure from it. This would keep the appointment embedded in the Swiss institutional framework without turning it into a free political choice.
- 158 For the presidency, additional parliamentary involvement could be provided. One option would be a prior hearing before the Environment, Spatial Planning and Energy Committees of both chambers (ESPEC-N and ESPEC-S). Such a hearing would increase democratic visibility without filling the body along party-political lines. Parliamentary involvement should create transparency and institutional linkage, not party-political nomination of the members.
- 159 The selection procedure should, overall, focus on professional suitability, transparent criteria, reasoned justification, and personal independence. The decisive criteria are proven expertise, scientific reputation, experience in interdisciplinary work, independence, complementarity with

²³³ See above IV.9.a.

²³⁴ For criticisms, see above IV.8.b.

the expertise profile, and the ability to contribute beyond one's own field to an integrated climate policy assessment.

- Eligibility, independence, and conflicts of interest

- 160 The professional suitability of members must be complemented by rules governing personal independence and conflicts of interest. Article 8b GAOO provides the starting point: a person is eligible if they meet the requirements for employment in the federal administration. For the climate advisory board, however, specific requirements on independence, disclosure, and incompatibilities are also needed.
- 161 Members should act in a personal capacity and should not be bound by instructions. They should not represent institutional mandates or appear as delegates of particular interests. Article 8f(1) GAOO already contains a differentiated rule on the disclosure of interests: commission members must disclose, in particular, their professional activities, management, supervisory, advisory and expert functions, activities for interest groups, and involvement in other federal bodies.²³⁵ These requirements should expressly apply to the climate advisory body and, where necessary, be specified in the relevant statute.
- 162 In addition, the familiar rules on recusal and incompatibilities should apply. Members should recuse themselves in individual matters where personal, institutional, or economic interests could impair independent assessment. In principle, voting membership of the climate council appears incompatible in particular with ongoing leadership roles in political parties, paid lobbying or association mandates with a direct climate policy interest, operational management functions in heavily affected companies, and active mandates in one of the federal chambers. Prior activities in the administration, politics, or affected economic sectors should not automatically exclude eligibility, but they should be disclosed and may, depending on the function, trigger cooling-off duties.

²³⁵ In addition, any changes occurring during the term of office must be reported without delay (Article 8f(3) GAOO), and the incomplete disclosure of such changes, or failure to disclose them at all, may result in removal from office (Article 8f(4)) GAOO).

10. Funding, budgets, and resources

a. Normative requirements

- 163 A body that is to provide scientific support for climate policy, review target achievement and effectiveness, and report publicly can perform these tasks only if it has sufficient human, financial, and organisational resources. The requirements formulated by the ECtHR in *KlimaSeniorinnen* for effective climate policy that is compatible with fundamental rights²³⁶ are premised not only on legal targets and monitoring duties but also on institutions that can actually perform these tasks continuously and with the necessary professional depth. Without adequate resources, a climate council would be formally established, but could hardly fulfil the expected analysis, monitoring, and evaluation functions effectively.
- 164 The execution proceedings did not formulate express requirements concerning the resources of a climate council. However, when the “capacity and authority” of a national mechanism are emphasised,²³⁷ this necessarily includes its financial and human capacity. Authority does not arise from a statutory mandate alone, but also from the body’s ability to prepare analyses independently, evaluate data, draw on external expertise, draft reports, and communicate publicly. Resources are therefore a precondition for the effective performance of the mandate.²³⁸
- 165 Under the Paris Principles, independent institutions must have sufficient funding to allow them to maintain their own staff and infrastructure.²³⁹ The purpose of such funding is precisely to secure institutional independence from government, where dependence could negatively affect that independence.²⁴⁰ GANHRI correspondingly emphasises the importance of a separate budget, autonomous use of funds, and protection against financial influence.²⁴¹ It expressly treats insufficient resources as a risk to the effective performance of the mandate.²⁴² The climate advisory body thus needs effective financial means that correspond to the breadth and intensity of its mandate. A climate council tasked with monitoring, evaluation, its own analyses, public reporting, and the involvement of external expertise needs a budget that effectively enables

²³⁶ ECtHR, *KlimaSeniorinnen* (cited in footnote 1), § 538(b).

²³⁷ Ministers’ Deputies, Notes on the Agenda CM/Notes/1537/H46-37 (cited in footnote 41), p. 3.

²³⁸ See also Swiss Human Rights Institution (SHRI), *Klimawandel als Menschenrechtsfrage: Die Perspektive der Menschenrechte auf Klimaschutz und Klimaanpassung* (Fribourg 2026), p. 50-51, available at <https://www.isdh.ch/assets/2026_pdf/etudes-recherche/klima-und-menschenrechte/smri_studie.pdf> (last accessed 20 September 2026).

²³⁹ Paris Principles (cited in footnote 42), Composition and guarantees of independence and pluralism, para. 2.

²⁴⁰ Paris Principles (cited in footnote 42), Composition and guarantees of independence and pluralism, para. 2.

²⁴¹ GANHRI (cited in footnote 43), p. 27-28.

²⁴² GANHRI (cited in footnote 43), p. 22.

these activities. Merely symbolic or minimal funding would formally preserve institutional independence but materially undermine the mandate.

- 166 The ICJ Advisory Opinion, too, makes clear that fulfilling climate-related due diligence obligations depends not only on setting appropriate targets and measures, but also on the availability and actual use of sufficient resources. States must, within their means, use all means available to them to comply with their climate protection obligations.²⁴³ For the question of financial resources examined here, this means that a State may not merely provide formally for the institutional capacities needed for monitoring, scientific evaluation, and corrective action. It must fund the body in a way that allows it to perform its tasks effectively in practice.
- 167 In her report, Dr Averchenkova emphasises that the effectiveness of climate advisory bodies is largely dependent on adequate and reliable funding.²⁴⁴ Best practices provide for multi-year budgets secured by law with protection against short-term political interference, enabling such bodies to conduct analyses independently and carry out their tasks autonomously.²⁴⁵ Conversely, absent or insecure resources directly affect the scope, continuity, and quality of the body's work.
- 168 The experience with the OcCC illustrates this particularly clearly. Interviewees repeatedly described its budgetary dependence on the administration, especially FOEN, as a factor that weakened the OcCC's real independence and visibility. Several interviewees pointed out that budget cuts or insecure mandate and funding periods can function in practice as steering instruments, even where no express instructions are issued. They therefore called for autonomous and secured funding.
- 169 The OcCC experience also shows the limits that inadequate resources impose on effective performance. According to an internal paper, the former OcCC worked with approximately CHF 205,000 per year, including CHF 30,000 for project funds. According to its own assessment, the OcCC performed its tasks "selectively" and "with a large proportion of work carried out on a voluntary, part-time basis."²⁴⁶ These funds allowed occasional statements and selected work, but they are not appropriate for comprehensive, continuous monitoring or systematic evaluation of climate policy. A future climate council should therefore not be modelled on the former OcCC's "minimal model." In light of the requirements emphasised by the ECtHR and the ICJ, a climate advisory body needs resources that actually allow it to conduct

²⁴³ ICJ Advisory Opinion (cited in footnote 13), §§ 282-283.

²⁴⁴ *Averchenkova* (cited in footnote 22), p. 2.

²⁴⁵ *Averchenkova* (cited in footnote 22), p. 7-8, 12-13.

²⁴⁶ OcCC, Internal working paper: Wissenschaftliche Klimaberatung für das UVEK – Zukunft, 1 December 2020, p. 3-4. The budget allowed for three meetings each year as well as an annual 1.5-day retreat: *id.*, p. 4.

independent analyses, commission external studies, carry out continuous monitoring, report publicly, and operate a professional scientific secretariat.

b. Legal design

- 170 For the legal design, this first means that the essential elements of the climate council's funding must be secured by law. First, the budget must cover the body's ongoing activities, including remuneration of members, meetings, publications, communication, and administrative support. Second, the council needs funding for a permanent, professionally qualified secretariat. This secretariat should not merely perform organisational tasks, but must also ensure scientific coordination, data preparation, draft reports, documentation, and institutional memory. Third, the climate council needs its own project funds, enabling it to commission external studies, modelling, expert opinions, or sectoral analyses independently.
- 171 The amount of the budget should not be based on the former funding level of the OcCC, but on the statutory mandate and on functional comparative models. International comparison shows that climate councils with serious monitoring, evaluation, and reporting mandates regularly have significantly more extensive resources. The UK Climate Change Committee (CCC) reported total operating expenditure of approximately GBP 6.7 million for 2024/25, including substantial staff and research expenditure.²⁴⁷ The total expenditure of the Australian Climate Change Authority amounted to approximately AUD 13 million in the same period, mainly for staff and external services.²⁴⁸ The Dutch Scientific Climate Council had a budget of EUR 3.9 million in 2024.²⁴⁹ These amounts cannot be transferred directly to Switzerland because tasks, organisational forms, and recorded staff costs differ. They do show, however, that scientific climate advice with continuous analytical capacity, public reporting, and independent commissioning of studies typically cannot operate with staff resources of only a few hundred thousand francs and project funds of only a few tens of thousands of francs. For Switzerland, it follows that the funding of a climate council must correspond to the breadth of its mandate and would have to lie clearly above the former funding level of the OcCC.
- 172 The budget should be secured on a multi-year basis and shown separately in the federal budget, for example as its own budget item within the competent department or the administratively

²⁴⁷ UK Climate Change Committee (CCC), Annual Report and Accounts 2024-25, December 2025, available at <<https://www.theccc.org.uk/publication/annual-report-and-accounts-2024-2025/>> (last accessed 20 September 2026).

²⁴⁸ Australian Climate Change Authority, Annual Report 2024-2025, 2025, p. 38, available at <<https://www.climatechangeauthority.gov.au/sites/default/files/documents/2025-10/2024-25%20Annual%20Report.pdf>> (last accessed 20 September 2026).

²⁴⁹ Wetenschappelijke Klimaatraad, Jaarverslag 2025, April 2026, p. 12, available at <<https://www.wkr.nl/documenten/2026/04/01/jaarverslag-2025>> (last accessed 20 September 2026).

assigned administrative unit. Funding through short-term contracts, project-based mandates, or the ordinary operating funds of the administrative unit whose policy the climate council assesses would be difficult to reconcile with the required independence. The statutory basis should therefore provide that the climate council has access to an adequate multi-year commitment or payment framework. Cuts and substantial changes should be justified transparently. This prevents financial uncertainty or discretionary budget reductions from functioning in practice as a steering instrument against inconvenient scientific criticism.

- 173 Within the approved budget, the climate council or its office should have autonomous control over the use of funds, meaning that it should manage the approved funds independently within the scope of its statutory mandate, as Article 57 of the Federal Financial Budget Act (FBA) already requires. The decisive point is that neither the competent department nor a federal office should decide, in individual cases, which analyses, studies, or publications receive funding.
- 174 Private or sector-specific funding should be excluded. A climate advisory board that assesses measures in areas such as energy, transport, buildings, industry, agriculture, or financial flows must not depend on funding from actors that are themselves substantially affected by its assessments. Earmarked contributions from individual industries, foundations, or interest groups would also create the impression of financial dependence. Funding should therefore come entirely from public funds and be approved by parliament, while remaining professionally independent in its use.

11. Further matters

- 175 Finally, it should be noted that Swiss law on administrative organisation has so far developed the general governance of scientific advisory bodies only to a limited extent. The GAOA and GAOO regulate institutional matters such as composition, appointment, terms of office, and interests, but they say little about further aspects of good commission practice. For a climate council, these questions are particularly important: its independence and credibility also depend on how it organises its work programme, access to data, publications, communication, the handling of uncertainties, minority positions, conflicts of interest, and external expertise. The climate council should therefore regulate these matters in its own rules of organisation and procedure.
- 176 From a comparative perspective, the UK Code of Practice for Scientific Advisory Committees and Councils (CoPSAC)²⁵⁰ in particular shows that questions concerning the role of the chair,

²⁵⁰ UK Code of Practice for Scientific Advisory Committees and Councils (CoPSAC 2021), available at <<https://www.gov.uk/government/publications/scientific-advisory-committees-code-of-practice/code-of-practice-for-scientific-advisory-committees-and-councils-copsac-2021>> (last accessed 20 September 2026).

members, and secretariat, working methods, transparency, independence, conflicts of interest, communication, and quality assurance can be regulated in much greater detail.²⁵¹ Whether Switzerland should create such a general guideline for scientific advisory bodies goes beyond the question examined here, but appears worth considering from a comparative perspective.

V. Summary answers to the questions addressed in the legal report

- 177 Overall, this legal opinion shows that a national climate council can be established within the Swiss legal and institutional framework and does not require a constitutional amendment. The legal requirements and comparative experience examined above show that such a council can perform its function only if it is designed as a body with a clear statutory mandate, professional independence, permanent institutional status, adequate resources, and political connectivity. A specific statutory basis is required. It must regulate the mandate, freedom from instructions, access to information, composition, appointment procedure, terms of office, funding, and the handling of the council's reports and recommendations in a binding manner. Designed in this way, the climate advisory board can perform the monitoring, evaluation, and advisory function that appears appropriate in light of the *KlimaSeniorinnen* judgment, the execution process before the Committee of Ministers, the Paris Principles and GANHRI practice, and the relevant comparative experience. It does not replace democratic decision-making procedures but creates an independent institutional structure that permanently feeds scientific evidence, human rights requirements, and public accountability into climate policy, thereby making deviations from targets, implementation deficits, and the need for corrective action visible.

²⁵¹ The Audit and Risk Assurance Committee (ARAC) of the UK Climate Change Committee (CCC) is also relevant in this context. The ARAC supports the Committee in particular on matters relating to risk, control, governance, accounting, the annual report, and internal and external audits. This does not necessarily mean that a Swiss climate council would be required to establish an identical sub-committee. However, its organisational and procedural rules should contain provisions on risk management, financial controls, the commissioning of external studies, auditing, annual financial statements, documentation and transparency.