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## Regulatory Update

# Dutch Appeal Court Overturns Emissions Reduction Targets on Shell

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On April 5th, 2019, environmental activist group Milieudefensie (Friends of the Earth) Netherlands and co-plaintiffs served Shell a court summons alleging Shell's contributions to climate change violated its duty of care under Dutch law and human rights obligations.

On May 26th, 2021, the Hague District Court ordered "both directly and via the companies and legal entities it commonly includes in its consolidated annual accounts and with which it jointly forms the Shell group, to limit or cause to be limited the aggregate annual volume of all CO<sub>2</sub> emissions into the atmosphere (Scope 1, 2 and 3) due to the business operations and sold energy-carrying products of the Shell group, to such an extent that this volume will have reduced by at least net 45% by the end of 2030, relative to 2019 levels" (The Hague District Court, May 26, 2021, no. C/09/571932 / HA ZA 19-379).

Shell lodged an appeal before the Court of Appeal of The Hague, which **partially overturned the decision** on November 12th, 2024 (The Hague Court of Appeal, Civil Law Division, November 12, 2024, no. 200.302.332/01).

The Court of Appeal confirmed that protection from the dangerous consequences of climate change is a human right that can be invoked against governments and private companies by citizens (§ 7.17-7.18). Therefore, the principles set out in various declarations, such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, can give substance to general standards such as the Dutch social standard of care. Article 2 (right to life) and Article 8 (right to a family life) prescribed by the European Convention on Human Rights are specifically noted. The Court of Appeal also concluded that, as a company that contributes significantly to the climate problem, Shell **has an obligation to limit CO<sub>2</sub> emissions** to counter climate change. Chapter VI of the OECD Guidelines (on environmental protection and climate change) is specifically cited.

Having reviewed several legal instruments that address climate change by creating binding obligations on private companies (including Chapter VI of the OECD Guidelines and EU legislation such as the EU ETS regime, CSRD and CSDDD) the court deemed that, although "the fulfilment of the duty of care takes into account obligations that companies have under that existing legislation," such as the EU ETS (§7.54), it did not matter that an obligation to limit CO<sub>2</sub> emissions is not specified in any of these rules. This is because they are not exhaustive and do not preclude a duty of care on the part of individual companies to reduce their emissions. Accordingly, companies like Shell "have their own responsibility in achieving the targets of the Paris Agreement." (§7.24-27). This responsibility takes the form of setting (and respecting) its own reduction targets in relation to Scope 1, 2 and 3 emissions.

Milieudefensie et al. tried to argue that Shell should be ordered to achieve a 45% reduction in its Scope 1, 2 and 3 emissions. However, overturning the previous decision, **the Court of Appeal ruled that it is unable to order Shell to respect any specific emissions reduction target.**

**As to Scope 1 and 2 emissions**, the Court of Appeal rejected the claim, notably by holding that:

- Shell's European Scope 1 and 2 emissions are largely covered by the EU ETS system. It added that "the EU ETS system cannot easily be reconciled with the claims of Milieudefensie et al." as "the EU ETS system does not achieve the reduction of CO<sub>2</sub> emissions by forcing companies to reduce their emissions by a certain percentage. The goal is achieved through an emissions cap combined with freely tradable emission allowances" (§ 7.33 to 7.35).
- Besides, Shell had set itself a goal of reducing these Scope 1 and 2 emissions by 50% by the end of 2030 compared to 2016, which was more ambitious than the 45% goal demanded by Milieudefensie et al. Shell has already largely achieved this target, and the Court of Appeal considered that given the "concrete plans and the measures Shell has already taken to implement those plans," no impending violation of any legal obligation could be established (§7.63 to 7.66).

**As to Scope 3 emissions** (mostly those derived from the consumption of the oil and gas produced or sold by Shell), Milieudefensie cited the Science Based Target Initiative: "Best practices in defining Scope 3 target ambition would entail setting targets that are, at a minimum, in line with the percentage reduction of absolute GHG emissions required at a global level over the target timeframe." The Court of Appeal stated that:

1. A specific emissions reduction obligation is not provided for in national or European legislation (which chooses for now to incentivise companies through price incentives rather than imposing strict emissions reduction targets).
2. Climate science has been unable to reach a consensus on emissions reduction targets applicable to companies, including for companies in the specific segment of oil and gas production.
3. It could not be established that an obligation on Shell to reduce its Scope 3 emissions by a certain percentage would be effective.

The Court of Appeal added that, although companies must consider the negative consequences of a further expansion of the production and supply of fossil fuels, the court did not have to answer the question of whether Shell's planned investments in new oil and gas fields were in violation of its Dutch social standard of care (§7.61).

Most importantly, the Court of Appeal found that Shell could not be bound by the 45% reduction target (or any other percentage) agreed by climate science because this percentage did not apply to every country and every business sector individually. It also concluded that it could not be established that an obligation on Shell to reduce its Scope 3 emissions by a certain percentage would be effective (§ 7.111).

Perhaps most interestingly of all, the decision noted that the longstanding precautionary principle does not justify ignoring uncertainty about the consequences of carbon dioxide emission reductions at the expense of a private party through setting a legal standard for that private party. This case will be surely cited in multiple future contentious climate actions as placing a ceiling on the expectations of activists focused on marshalling the scientific analyses produced in recent years on tackling the climatic impact of the oil and gas sector.

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