In this edition of ESG Matters, we highlight the judgment in the Milieudefensie v. Shell case, as summarised in the recently published press release of the Court of Appeal of The Hague. Our Spotlight section updates you on the latest developments in ESG governance, disclosure, financial regulation and litigation.

1 Highlight – Hague court of appeal denies Milieudefensie's climate case against Shell

On 12 November, the Court of Appeal of The Hague handed down its judgment in the appeal proceedings between Milieudefensie and Shell. At issue in the appeal was whether Shell must have reduced the CO2 emissions it reports by 45% in 2030 compared to 2019. The Court of Appeal rejected the claims of Milieudefensie and therefore quashed the previous judgment of the District Court of The Hague in its entirety, which had previously granted Milieudefensie's claims.

According to Milieudefensie, Shell is acting unlawfully. Milieudefensie is of the opinion that under the social standard of care, Shell is obliged to reduce its CO2 emissions. Milieudefensie and several other environmental organisations submitted a claim for

Shell to reduce its CO_2 emissions by 45% in 2030 compared to 2019. This includes Shell's own CO_2 emissions as well as those of its suppliers and customers, known as scope 1, 2 and 3 emissions.

The District Court of The Hague had granted the claim of Milieudefensie, after which Shell lodged an appeal. The Stichting Milieu en Mens joined as a party in the proceedings before the court of appeal on the side of Shell.

The Court of Appeal held that pursuant to the human right to protection against the effects climate change companies like Shell have an obligation towards citizens to limit CO_2 emissions. The Court of Appeal further held that it is first and foremost up to governments to ensure the protection of human rights, but that indirectly those rights also have a bearing on the social standard of care which companies like Shell must observe. In its assessment of whether Shell is acting unlawfully, the Court of Appeal therefore took as a starting point that citizens also have a right vis-à-vis Shell to protection from the effects of climate change.

Nevertheless, the Court of Appeal denied the claims of Milieudefensie. The claim with regard to the Scope 1 and 2 emissions that Shell reports was denied, because Shell is already working to reduce its own Scope 1 and 2 emissions. Shell has concrete plans to achieve its Scope 1 and 2 targets, and has already largely achieved these targets. The claim with regard to Scope 3 emissions that Shell reports was denied, because the Court of Appeal was unable to establish that the social standard of care entails an obligation for Shell to reduce the Scope 3 emissions it reports by 45%, or any other percentage. There is insufficient consensus in climate science on a specific reduction percentage to which an individual company like Shell should adhere. Furthermore, the Court of Appeal is of the opinion that an obligation for Shell to reduce CO_2 emissions caused by buyers of Shell products, the Scope 3 emissions, by a particular percentage would be ineffective in this case. Shell could meet that obligation by restricting third-party fossil fuel sales to end users. Other companies would then take over that trade. This would consequently not result in a reduction in CO_2 emissions.

In conclusion, the Court of Appeal of The Hague overturned the District Court's judgment and denied the claims of Milieudefensie. A Supreme Court Appeal against this judgment may be brought before the Dutch Supreme Court.

2 Spotlight on ESG developments

Governance & transition

EC publishes timeline for preparation of CSDDD Guidelines

In October, the European Commission (EC) informally shared timelines for the preparation and publication of guidelines implementing the Corporate Sustainability Due Diligence Directive (CSDDD). Before the end of this year, the EC will conduct a public consultation to assess which guidelines have to be prioritised. Additionally, the EC will initiate a call for evidence, inviting stakeholders to provide input on the content of the guidelines. Following this, the EC will engage with stakeholders to develop specific guidance, followed by a public consultation on the draft guidelines. By 26 January 2027, the EC will publish final Guidelines on the due diligence process, model contract clauses, risk factor assessments, and data and digital tools. By 26 July 2027, the EC plans to publish Guidelines on climate transition plans, resource sharing, stakeholder engagement and sector-specific guidance.

NGFS publishes report 'Climate change, the macroeconomy and monetary policy'

On 29 October, the Network for Greening the Financial System (NGFS) released a report summarising key messages from three recent NGFS-publications on the macroeconomic impact of climate change. The reports focus on: (1) the impacts of acute physical hazards; (2) the green transition; and (3) climate macroeconomic modelling. They illustrate how physical hazards and transitioning to net zero can affect macroeconomic variables like output and inflation. They also outline how central banks can incorporate climate-related impacts into their modelling toolkits.

UNEP publishes emissions gap report 2024

On 24 October, the United Nations Environment Programme (UNEP) published the UN Emissions Gap Report 2024, which annually reports on the gap between greenhouse gas emission levels consistent with the Paris Agreement and current and projected emission levels under the Nationally Determined Contributions (NDCs) to the Paris Agreement. It notes that the implementation of current NDCs would result in a 2.6-3.1°C temperature rise by 2100, slightly higher than the 2023 report's prediction of 2.5-2.9°C. Global emissions increased by 1.3% from 2022 to 2023. To stay on track for the 1.5°C target, countries must reduce their emissions by 42% by 2030 and 57% by 2035. The report will guide the next round of NDCs for 2035, due to be submitted before COP29 in Azerbaijan.

European Parliament approves Single European Sky rules reform

On 22 October, the European Parliament (EP) approved the reform of Single European Sky rules. This reform aims to enhance national performance plans for air navigation services and improve EU airspace management. The plans will include binding targets and incentives for more efficient and environmentally friendly flights. An independent review board will assist in decision-making regarding the implementation of these plans. The EC will set EU performance targets on capacity, cost efficiency, climate and environmental factors, subject to review at least every three years. The rules will enter into force 20 days after publication in the Official Journal.

European Council agrees to postpone Deforestation Regulation application date

On 16 October, the Council agreed to the EC proposal to delay the application date of the EU Deforestation Regulation by one year. This would make the regulation applicable from 30 December 2025 for large companies and from 30 June 2026 for micro- and small enterprises. On 2 October, the EC published guidance documents and an international cooperation framework. The EP now needs to approve the proposal in a plenary vote.

IEA publishes World Energy Outlook 2024

On 16 October, the International Energy Agency (IEA) published its World Energy Outlook 2024. This report analyses the global energy system outlook. Geopolitical tensions highlighted existing energy security risks and the role of cleaner energy in reducing them. Clean energy transitions have accelerated, with low-emission sources expected to generate over half of the world's electricity by 2030. Investment in clean energy projects nearly doubled the amount spent on fossil fuel supply due to its increasing cost-effectiveness. However, clean energy deployment varies across technologies and countries, and two thirds of new energy demand is still met by fossil fuels. Current policies align with a 2.4°C temperature rise by 2100, and climate inaction costs are increasing.

Council adopts updated product liability rules

On 10 October, the Council adopted the updated Directive on EU product liability rules. The improvements address challenges in the digital and circular economy, holding companies or persons repairing or upgrading products outside the original manufacturer's control liable for their modifications. The rules also tackle difficulties faced by injured persons in gathering evidence, particularly when it comes to new technologies. They encourage the adoption of new technologies and give legal clarity and a level playing field to producers.

Eumedion publishes focus letter 2025 and green paper on Dutch stakeholder model

On 9 October, Dutch institutional investor association Eumedion published its annual Focus Letter for the 2025 Dutch proxy and reporting season. It calls on Dutch listed companies to align their climate action plan with the CSDDD requirements by 2025, and to issue a high-quality sustainability statement under the CSRD for the first time in 2025. A separate letter requests the six largest audit firms to pay increased attention to the double materiality assessment (DMA) in their assurance work and include the assurance report as part of an integrated auditor's opinion on both the financial and the sustainability statement. On 17 October, Eumedion also published a green paper on the Dutch stakeholder model and the role of Dutch institutional investors. It includes recommendations for institutional investors to enhance engagement at Dutch listed companies, and on recalibration of the Dutch stakeholder model. Eumedion will present a final position paper in 2025 based on input from interested parties.

Disclosure

AFM publishes focal points for reporting by listed companies

On 31 October, the Netherlands Authority for the Financial Markets (AFM) released new focal points for its supervision of (ESG-)reporting by listed companies. The AFM expects companies to focus on recent ESMA supervisory priorities and sustainability when preparing their 2024 reporting. It will scrutinise materiality considerations, scope and structure, and Article 8 Taxonomy Regulation disclosures in sustainability reporting. Additionally, the AFM expects clear communication on how companies plan to achieve net-zero by 2050, including uncertainties and challenges. For ESRS reporting, companies are referred to publications such as the ESMA 'Off to a good start' statement.

ESMA publishes statement on accounting for carbon allowances in financial statements

On 8 October, ESMA published a public statement titled 'Clearing the smog: Accounting for Carbon Allowances in Financial Statement'. It reviews various accounting approaches observed in the financial statements of European listed issuers regarding carbon pricing programmes. It encourages issuers to consider which IFRS Accounting Standards could be applied to account for carbon allowances in their financial reporting. Additionally, the statement calls for consistency by recommending that issuers carefully align the information provided regarding carbon allowances in their financial statements with the disclosures required under the European Sustainability Reporting Standards (ESRS).

Financial institutions & regulation

ESAs publish joint report on SFDR PAI disclosures

On 30 October, the three European Supervisory Authorities (ESMA, EBA and EIOPA) published a joint report on Principal Adverse Impact (PAI) disclosures under the SFDR. This third annual report on PAI notes progress on several issues, including improvements in the accessibility of PAI disclosures for retail investors, and the level and quality of information disclosed. However, the level of compliance with SFDR provisions (both Level I and Level II) remains insufficient, indicating that additional efforts are required. The report also offers recommendations for national authorities on convergent supervision and the review of the SFDR.

ESMA updates sustainable finance timeline

On 30 October, ESMA published an updated implementation timeline until 2029 for the Sustainable Finance legislative framework. It covers the SFDR, the Taxonomy Regulation, the CSRD, the Benchmark Regulation and the European Green Bonds Regulation.

ESAs publish final report on ESAP rules

On 29 October, the ESAs published the final report on draft implementing technical standards (ITS) regarding tasks of the collection bodies and functionalities of the European Single Access Point (ESAP). The ITS on the tasks of collection bodies specify detailed requirements such as the timing and format for information submission, validation checks and metadata inclusions. The ITS on the ESAP functionalities outline the requirements for making information easily accessible to users, such as categorizing reporting entities by industry and size, determining identifiers, and specifying the type of information to be made available. These ITS represent the first milestone towards establishing a fully operational ESAP.

AFM publishes report on ESG data risk management by asset managers

On 28 October, AFM published a report on ESG data risk management by asset managers. The report relates to UCITS Directive, AIFMD and MIFID II requirements for integrating sustainability risks into risk management processes and the consideration thereof in investment policies. Key observations include: (i) governance structures for managing ESG data risks differ among asset managers; (ii) many asset managers use third-party data providers for most of their ESG data needs; (iii) clear definitions of 'data' risk help asset managers identify and manage this risk; (iv) asset managers have both proactive and reactive policies and control processes to ensure ESG data quality. The observations assist asset managers in establishing processes, systems and internal controls for managing ESG data risk.

ESMA publishes enforcement priorities for 2024 annual financial reports

On 24 October, ESMA published its European Common Enforcement Priorities (ECEP) for the 2024 annual financial reports of issuers listed on EEA regulated markets. Regarding sustainability statements, the priorities include (i) materiality considerations in ESRS reporting; (ii) the scope and structure of the sustainability statement; and (iii) disclosures relating to Article 8 Taxonomy Regulation, with several format and substance recommendations.

EP adopts corrigendum to proposed ESG rating agencies regulation

On 22 October, the EP adopted a corrigendum to the proposed regulation on ESG credit rating agencies. The initial proposal was approved at first reading on 24 April 2024, but translation issues necessitated a corrigendum procedure. The Council is now expected to accept it, after which it will be published in the Official Journal.

UNEP FI publishes guidance on nature target setting

On 21 October, the United Nations Environmental Programme Financial Initiative (UNEP FI) released new Principles for Responsible Banking (PRB) sector action guidance for nature. This document translates the PRB Nature Target Setting Guidance into sector-specific actions for the agricultural, forestry and mining sectors. It outlines priority actions on risk management, client relationships, and the acceleration of a nature-positive future in relation to six key commodities: bauxite, copper, cattle, wood, soy and palm oil.

New carbon footprint data on Dutch institutional investors

On 10 October, the Dutch central bank (DNB) published an article on CO2 emissions relating to the investments of Dutch insurance companies and pension funds. It provides data on direct investments in listed equity and corporate bonds and indirect investments via investment funds, offering a more comprehensive carbon footprint picture. The relative emissions related to economic output for 2020-2021 are lower when indirect investments are included, but absolute emissions are higher due to the inclusion of investment funds.

ESMA publishes TRV Risk Analysis on portfolio exposures to physical climate risks

On 9 October, the European Securities and Markets Authority (ESMA) published an article based on an analysis of EU investment fund portfolio holdings, showing how two different assessment methodologies and data sources reveal insights into physical climate risk exposures. The results emphasise the need to evaluate climate risks at the individual hazard level due to their differing characteristics. Despite their differences, both approaches show that water-related risks are the most prominent for EU funds, with northern European funds more exposed to flood risks. ESMA will include some of these indicators into its ongoing risk assessments.

UNEP FI publishes Responsible Banking Blueprint

On 8 October, the UNEP FI released a Responsible Banking Blueprint outlining a strategic roadmap for action on themes including climate, nature and biodiversity, healthy and inclusive economies, and human rights. This blueprint aims to inspire banks in their transformation journeys by prioritising (i) strategy, (ii) policies & processes, portfolio composition and financial flows, client engagement, and advocacy & partnerships, (iii) targets, (iv) target implementation, and (v) disclosure. These elements serve as building blocks for integration across thematic areas, with leading practices combining efforts across different thematic areas.

ESAs released joint working programme 2025

On 7 October, the joint committee of the European Supervisory Authorities (ESAs) published their working programme for 2025. The press release highlights a particular focus on ongoing collaboration to address cross-sectoral risks, promote sustainability within the EU financial system, and enhance digital resilience. The ESAs will continue their role under the Sustainable Finance Disclosure Regulation (SFDR), drafting additional Q&As on sustainability disclosures and publishing a report on the reporting of Principal Adverse Impacts (PAIs) under Article 18. They may also develop new technical standards for ESG rating disclosures.

EBA publishes work programme for 2025

On 2 October, the European Banking Authority (EBA) published its work programme for 2025. Key priorities include the work on prudential treatment of exposures to ESG by building an ESG risk monitoring framework and working on methodology for its stress tests.

NZBA publishes 2024 progress report

On 1 October, the Net-Zero Banking Alliance (NZBA) published its 2024 progress report, providing an overview of overview of the NZBA member banks' efforts towards reaching net zero by 2050. The report consolidates information received from 122 member banks until the end of May 2024, focusing on target setting and transition planning. The NZBA states that banks are working to understand and finance the transition to net zero. According to the report, nearly two-thirds of the 91 banks required to publish transition plans by May 2024 have done so, with an additional 25% planning to release their transition plans by the end of 2024. However, setting decarbonisation targets remains a complex task due to data quality issues relating to clients' greenhouse gas emissions and ambiguous decarbonisation pathways. The report concludes with a call-to-action for policymakers, urging them to remove barriers to bankability, improve access to data, level the playing field, and incentivise investment.

Litigation

NGOs file complaint with UNEP over support for TNFD

On 24 October, a global group of NGOs filed a complaint with the UNEP over its support of the Taskforce on Nature-related Financial Disclosures (TNFD). The complaint describes the TNFD as a 'new frontier for corporate greenwashing'. It alleges that UNEP breached its own policies on environmental defenders, gender, and access to information.

SEC addresses sustainability claims of US investment manager

On 21 October, the SEC announced that US asset manager WisdomTree has agreed to pay USD 4 million to settle greenwashing charges. The asset manager had marketed three ETFs as having an ESG investment strategy and had stated in prospectuses that the ETFs would not invest in activities relating to fossil fuels and tobacco. The SEC however found that the funds invested in coal mining, natural gas extraction, and tobacco companies. There were also no procedures or policies in place to exclude such companies from the funds.

NGO files complaint at French financial supervisor against asset manager for greenwashing

On 17 October, ClientEarth lodged a complaint with French financial supervisor AMF against US asset manager BlackRock, challenging 18 investment funds being marketed as 'sustainable' in France, the EU and the UK. It is based on an analysis of the funds' characteristics and applicable legislation, including ESMA guidance, national supervisory guidance and SFDR disclosure requirements. The focus is on the inclusion of fossil fuel investments by the funds, which is alleged to be in breach of these rules.

ACM addresses sustainability claims of parcel delivery companies

On 3 October, the Netherlands Authority for Consumers and Markets (ACM) announced that DHL, DPD and PostNL will revise their sustainability claims. The claims 'GoGreen', 'Naturally on the road' and 'Sustainably delivered' will be removed. The claim 'Your parcel will be sustainably delivered' has been changed to 'For the final stretch to your front door, we increasingly drive electrically or on biofuel'. This follows 'normative discussions' based on the ACM Guidelines regarding sustainability claims.

Do you have any questions or comments on a specific ESG topic? Do not hesitate to contact our Sustainable Business & Climate Change team. If you or members of your team would like to receive our updates, please subscribe.

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