



Climate litigation against companies: the Shell-judgement as a ground-breaking template?

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Brussels Climate Centre, *Climate litigation in Belgium and beyond*, 11 September 2024

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1. The Shell-case: an injunction

Injunction: “the court orders”

District Court The Hague, 26 May 2021, *Vereniging Milieudefensie et al. v. Royal Dutch Shell PLC* (‘RDS’)

*"The court (...) **orders** RDS, 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 CO2 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% at the end of 2030, relative to 2019 levels;**" (§ 5.3) (own emphasis)*

A first worldwide.

Provisionally enforceable. Appeal pending with the The Hague Appeal Court.

2. “Sire, there are only climate lawyers”

J. Destrée, 1912.

“Questions about EPC agreements find their way to real estate colleagues. Purchase contracts for carbon offset credits (to offset carbon emissions by investing in carbon-reducing projects) go to commercial contracts. And it is the Banking & Finance team that gets to guide companies and financial institutions on their ESG policies and with the avalanche of legislation on sustainability reporting, which is upon European companies.

The sudden uncertainty - ‘Did I lose sight of my initial area of interest so much along the way in my career that my colleagues now know more about it than I do?’ - is slowly giving way to the realisation that there may no longer be a single lawyer or advocate who has mastered all climate-related issues to perfection. Climate policy and law today permeate all branches of law, and it has therefore become self-evident that every specialized lawyer masters the finer points applicable to her or his field.”

J. Van Orshoven, “Sire, er zijn geen klimaatjuristen”, MER 2024/02, 3.

3. The Emperor and the ENGO

Code Civil 1804 ('Code Napoleon')

Art. 6.162 Dutch Civil Code / Art. 1382-1383 our Old Civil Code

"Every act of man, by which damage is caused to another, obliges the person through whose fault the damage was caused to compensate him."

"Each one is liable not only for the damage caused by his act, but also for that caused by his negligence or carelessness."

Shell-verdict: negligence or carelessness

Yardstick?

4. A ‘Duty to care’, but how much?

An unwritten social standard of care

The permeability of the social standard of care

Shell verdict:

*“In the following assessment, the court interprets the unwritten standard of care from the applicable Book 6 Section 162 Dutch Civil Code on the basis of the relevant **facts and circumstances**, the best available **science** on dangerous climate change and how to manage it, and **the widespread international consensus** that **human rights** offer protection against the impacts of dangerous climate change and that **companies must respect human rights**.” (§ 4.1.3)*

5. A global standard of conduct

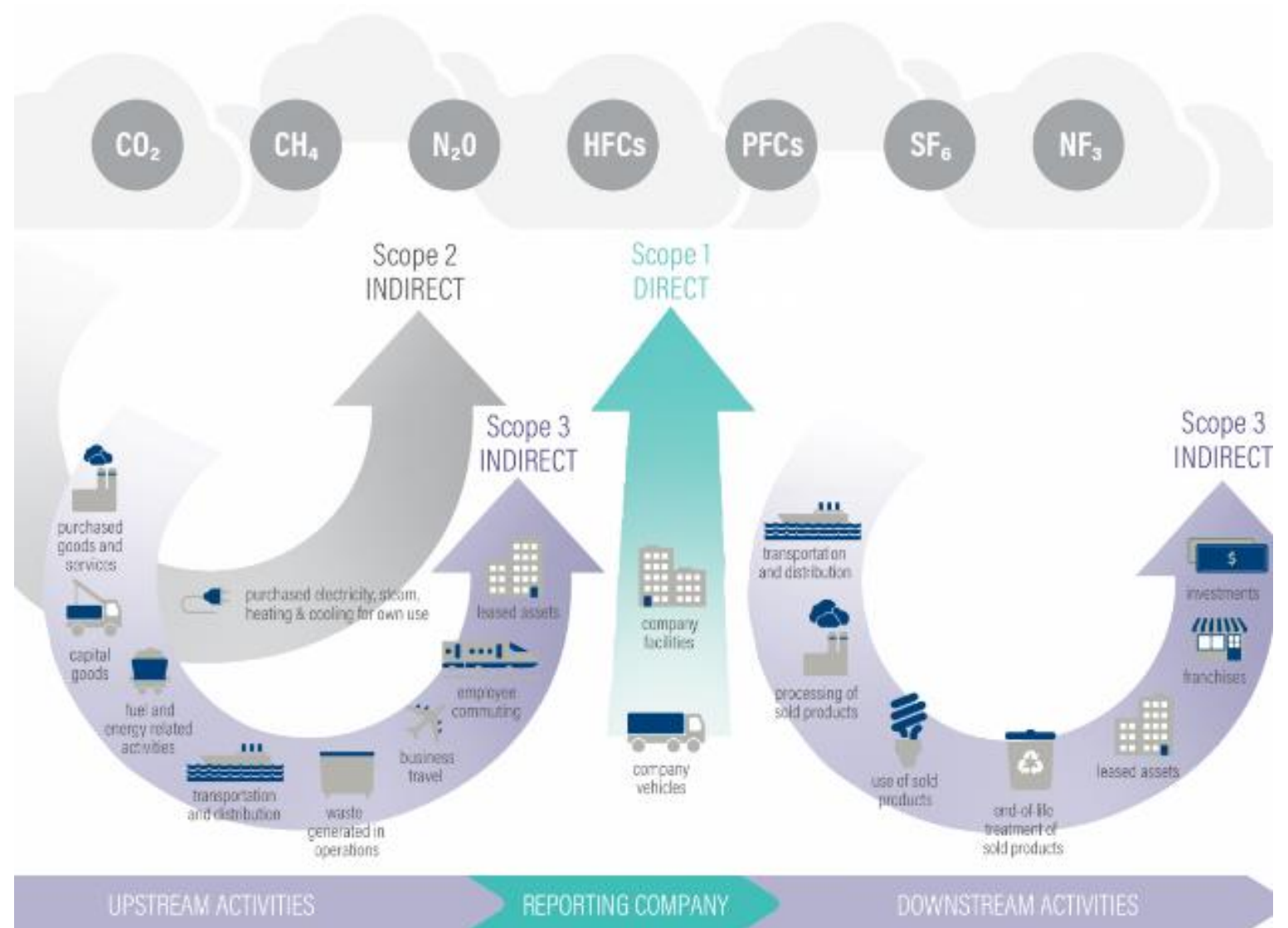
Companies should respect Human Rights throughout their value chain

2011. UN Guiding Principles on Business and Human Rights / The OECD Guidelines for Multinational Enterprises

Shell verdict: the integration of this soft law into the *Duty of care*

- ✓ The responsibility of businesses to respect human rights applies to **all companies** "*regardless of their size, sector, operational context, ownership and structure*" (§ 4.4.16)
- ✓ "*Respecting human rights is **not a passive responsibility: it requires action** on the part of businesses.*" (§ 4.4.15)
- ✓ "*Companies may be expected to identify and assess any actual or potential adverse human rights impacts with which they may be involved either **through their own activities or as a result of their business relationships.** (Principles 17 en 18 UNGP) Regardless of the extent of its control and influence on these emissions, RDS may be expected to identify and assess the adverse effects of its **Scope 1 through to 3 emissions.***" (§ 4.4.20)

Scope 1, 2 and 3 emissions



6. The many facets of transparency

Know Thyself, Apollo Temple in Delphi, 500 BC. On GHG accounting & reporting and liability.

- ✓ The **CSRD** (Corporate Sustainability Reporting Directive) (**2022**), amending Art. 29 Directive 2013/34/EU: *“The sustainability reporting standards shall, taking into account the subject matter of a particular sustainability reporting standard: (a) specify the information that undertakings are to disclose about the following environmental factors: (i) climate change mitigation, including as regards **scope 1**, **scope 2** and, where relevant, **scope 3** greenhouse gas emissions;”*
- ✓ The **CSDDD** (Corporate Sustainability Due Diligence Directive) (**2024**), Art. 22.1: *“(…) The design of the transition plan for climate change mitigation referred to in the first subparagraph shall contain: (a) time-bound targets related to climate change for **2030** and **in five-year steps up to 2050** based on conclusive scientific evidence and, where appropriate, **absolute emission reduction targets for greenhouse gas for scope 1, scope 2 and scope 3 greenhouse gas emissions for each significant category**; (b) a description of decarbonisation levers identified and **key actions planned to reach the targets referred to in point (a)** (...);*
- ✓ Flanders, Climate Roadmaps (**2022**): *“The climate roadmap and set targets for both the intermediate and long term should have at least the following scope: **scope 1** emissions (...); **scope 2** emissions (...); optionally, **scope 3** emissions (...).”*

7. The Shell judgement in the tide of time

Shell: from a template for Carbon Majors to a template for a wider range of companies

Shell verdict in 2021:
“Carbon Majors”

E.g. The Belgian Farmers Case, 13
March 2024

The permeability of social
standards of care – 2024:
A wider outreach through
obligations achieving
transparency

The Shell judgment in the tide
of time: an upcoming tide



**Thank you.
Questions?**