Unofficial translation

Milieudefensie et al.'s appendix with speaking notes for session day 3

1. I would like to briefly respond to the questions of the Court of Appeal and Shell's answers regarding the policy and Shell's intended investments. This is to prevent misunderstandings.

2. First: Shell presents its climate policy, and in essence all its public statements – including the marketing film with which it concluded the opening argument – with a disclaimer. This disclaimer makes it clear that Shell's targets and ambitions are conditional. The disclaimer makes it clear that Shell's future-oriented statements are based on the current expectations and assumptions of the management board and that these are subject to change.

3. In Shell's words, these future-oriented judgments can be recognised by the following terms: "*These forward-looking statements are identified by their use of terms and phrases such as "aim", "ambition", "anticipate", "believe", "could", "estimate", "expect", "goals", "intend", "may", "milestones", "objectives", "outlook", "plan", "probably", "project", "risks", "schedule", "seek", "should", "target", "will" and similar terms and phrases.*"[1]

4. What Shell 'expects', 'aims for' or claims as a 'target' is therefore conditional, inter alia on government policy and a non-exhaustive series of 13 other circumstances.

Shell's target for Scope 1 and 2 emissions

5. The disclaimer thus also applies to Scope 1 and 2 emissions. Shell announced in 2022 that it wanted to halve Scope 1 and 2 emissions in 2030 compared to 2016. There is no guarantee that Shell will actually realise that reduction. The importance of awarding the claim therefore remains.[2]

6. In any event, if Shell realises this target, this concerns a reduction of approximately 40 Mt, which is equal to only 2.4% of the total emissions of the Shell Group based on the total emissions in 2019.[3],[4] Nor does the target lead to a reduction in Shell's production, as previously explained.[5] Nor does the target lead to a reduction in the sale of oil and gas by Shell.

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[1] Shell Annual Report 2023, p. v, available on: https://reports.shell.com/annual-report/2023/_assets/downloads/shell-annual-report-2023.pdf and Exhibit S-288, Shell plc, 14 March 2024, Energy Transition Strategy 2024, p. 60. For the disclaimer from Shell's Energy Transition and Progress Report 2021 (Exhibit MD-380), Milieudefensie et al.'s Statement of Defence on Appeal of 18 October 2022, paras. 708-709.

[2] Statement of Defence on Appeal, paras. 1103 et seq.

[3] Statement of Defence on Appeal, para. 662. Exhibit MD-534A, Shell plc, Shell Annual Report 2022, p. 97.

[4] Naturally this target depends on the previously mentioned disclaimer. In the Shell 2023 annual report a number of other reservations are mentioned. See Shell Annual Report 2023, p.108: "*Scope 1 and 2 progress towards target. The chart below shows our progress since 2016 in reducing our Scope 1 and 2 emissions and gives an indication of how we expect to achieve our target in 2030. The actions we will take to achieve our target will depend on the evolution of our asset portfolio and the continued development of technologies which reduce carbon emissions. We expect that on a net portfolio basis, new investments across our portfolio will increase our Scope 1 and 2 emissions between 2024 and 2030, but this increase will be outweighed by reductions associated with planned divestments and natural decline. Our investments in producing low-carbon energy such as biofuels will increase our Scope 1 and 2 emissions, while reducing the NCI of the products we sell. Subsequent reductions in our emissions are reflected in the mechanisms outlined below and reflect an expected path to meeting our target in 2030*." See Milieudefensie et al.'s Written Arguments, para. 109.

[5] Milieudefensie et al.'s Written Arguments of 19 March 2024, para. 110, as well as Statement of Defence on Appeal, section 6.2.5.

7. The conditionality of Shell's targets also clearly appears from the fact that Shell scrapped some targets last month. I explained this in the written arguments.[6]

Shell's other targets

8. Shell has no targets for reducing its total Scope 1, 2 and 3 emissions by 2030 in an absolute sense. Shell only uses intensity targets for Scope 1, 2 and 3, which leaves room for an increase in the total Scope 1, 2 and 3 emissions. We also explained this in the written submissions.[7] Shell itself does not expect a decrease in its absolute Scope 1, 2 and 3 emissions.[8]

9. For 2030 that intensity target is 15-20%. Shell adjusted this target for 2030 downward compared to the previous climate strategy, this was 20%.[9]

10. I would like to remind you that lowering carbon intensity can simply be effected by adding renewable energy to the energy portfolio and using carbon credits, without actually selling fewer fossil fuel products.[10] The CEO called this the "dilution" of carbon intensity.

11. On 14 March, Shell also presented the new ambition to reduce its absolute Scope 3 emissions from oil products by 15-20% in 2030 compared to 2021.[11] Two remarks must be made in this respect.

12. First, in the same announcement Shell made it clear it wanted to expand LNG sales by 20-30% in 2030 compared to 2022. Shell confirmed this again yesterday. This growth in LNG sales can set off the reduction in CO_2 emissions from oil products.[12]

13. Second, Shell makes it clear in unambiguous wording that this "ambition" is no more than a forecast of the change that it expects in the market. I would like to recall the words of *mr.* Lunsingh Scheurleer in response to the questions of the Court:

    "*And that is why Shell thinks with regard to a part of the market: the circumstances are now such that we can take advantage of this and we expect to be able to realise this ambition in this manner.*

    There is a good reason, however, why it calls it an ambition, in order to express that the matter concerns emissions that it fundamentally does not control, but it is its expectation, based on estimations of external factors like those that have an effect on Shell's business."

14. *mr.* Lunsingh Scheurleer again confirmed what Shell's disclaimer makes clear: Shell's ambitions or targets are subject to change and are not binding.

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[6] Milieudefensie et al.'s Written arguments of 19 March 2024, para. 124.

[7] Statement of Defence on Appeal, sections 6.2.3. – 6.2.5.

[8] Statement of Defence on Appeal, section 6.2.4.

[9] Exhibit S-288, Shell plc, 14 March 2024, Energy Transition Strategy 2024, p.7

[10] Ibid, p. 50: "The decrease in Shell's NCI in 2023 was mainly achieved through a reduction in the average intensity of power sold and the use of carbon credits" Milieudefensie et al.'s Statement of Defence on Appeal, para. 653, p. 136: "The biggest driver for reducing our net carbon intensity is increasing our sales of low-carbon products and services." "We are diluting our carbon intensity by adding low-carbon products to our existing portfolio."

[11] Ibid, p. 7.

[12] Milieudefensie et al.'s Written Arguments of 19 March 2024, section 3.3, paras. 126 and 127.

15. The figure that Shell showed yesterday of the "estimated share of energy sales 2016-2030" does not provide any insight whatsoever into the absolute volumes of oil and LNG that Shell intends to sell.

The ambitions that Shell has let go

16. Shell's non-committal attitude to the ambitions and plans in the area of sustainability appear time and again from the plans that Shell regularly lets go as well. This too is explained in the written arguments. I just mentioned a few things:
    - On 14 March 2024, Shell withdrew the reduction target from 2021 for carbon intensity of 45% in 2035.[13]
    - The target from 2021 to sell on average 1-2% less oil per year by 2030 was let go in 2023. Shell now wants to keep its oil production at the same level.[14]

Shell's investments in oil and gas

17. A few remarks about the investments in oil and gas that Shell intends to make in the coming years. Shell expects to invest a good 40 billion dollars in oil and gas between 2023 and 2025 and in total 100 billion dollars from 2023 to 2030.[15]

18. According to research of Oil Change International based on Rystad data, 60% of all of Shell's investments in oil and gas between 2024 and 2030 goes to new projects.[16]

19. Shell has an interest in 813 undeveloped oil and gas projects.[17]

20. In conclusion, all targets are conditional, the bulk of Shell's investments goes to oil and gas and a large part of this goes to new oil and gas fields. According to Shell's own expectation, Shell's current climate ambition will not lead to absolute emission reductions.

Shell's "sustainable" investments

21. A few short remarks about Shell's investments in "*low-carbon energy solutions*"

22. Despite the fact that Shell booked record profits in the past few years, Shell is keeping its investments in "*low-carbon energy solutions*" at the same level with 10-15 billion over a period of 3 years (2023, 2024, 2025).[18] This comes down to 3.3 to 5 billion per year. Shell has already spent 5.6 billion of this amount.[19] Of that 5.6 billion, 2 billion went toward the acquisition of the biogas company Nature Energy.[20] A considerable part of these investments thus relates to the acquisition and the purchase of activities that already exist and were developed by others. This money was therefore spent on something that does not add anything to what already existed. If Shell were to sit at the lower side of that bandwidth of 10-15 billion dollars, only 2-3 billion dollars will be added in the coming two years.

[13] Exhibit S-288, Shell plc, 14 March 2024, Energy Transition Strategy 2024, p. 49.

[14] Milieudefensie et al.'s Written Arguments of 19 March 2024, section 3.3, para. 116.

[15] Exhibit MD-536A, Shell, Capital Markets Day 14 June 2023, pages 20 and 22-23.

[16] Exhibit MD-573A, p. 23. This concerns projects for which Shell had not yet made a final investment decision as of 1 January 2024 (43% of the total expected investments) and oil and gas fields that are under construction but are not yet in production (17% of the total expected investments).

[17] Exhibit MD-573A, Oil Change International Report, March 2024, Shell vs. the Climate, Expanding Oil and Gas, Fueling the climate crisis, p. 4.

[18] Exhibit MD-536A, p. 20. See also Milieudefensie et al.'s Written Arguments of 19 March 2024, section 3.3, para. 118.

[19] Shell Annual Report 2023, p. 95.

[20] Ibid.

23. I am saying it like it is, as yesterday Shell presented these intended ('expected') investments for a period of three years, in addition to the annual investments in oil and gas.

24. Yesterday the Court referred to an earlier statement by Shell from 2021, that in 2025 it would invest 50% of its investments in the transition. It called this "*Energy Transition Spend*." It was explained in the Statement of Defence on Appeal that this is a very broad definition that covers a wide range of expenditure, including the trade in gas and fossil fuel electricity, marketing expenditure for the petrol stations, even up to the sandwiches mentioned by *mr.* Drenth yesterday.[21] Aside from the fact that this definition has nothing to do with investments in the energy transition, Shell apparently also let this policy intention go, as it can no longer be found in the documents.

25. In 2023 Shell invested 2.3 billion dollars in the Renewables and Energy Solutions branch of total capital investments of 24.4 billion dollars, this is 9.4% of the total capital investments. This is less than in 2022. Last year the investments were higher due to an acquisition.[22]

26. In 2023 Shell invested 1.59 billion dollars in solar and wind energy, compared to 2.8 billion dollars in 2022.[23] This is 6.6% of the total capex (24 billion euros) in 2023, compared to 8% in 2022.

27. Lastly, Shell made it an important point that there was no room for a reduction obligation in the Dutch climate policy and that this followed from decisions of the Dutch House of Representatives, the Council of State and the government. This position is untenable. For the moment we would only like to remark that Shell presents a distorted picture of what these statements mean and of the context in which they were made. I would like to discuss and explain this on behalf of Milieudefensie et al. next week. Whatever the case may be, these statements do not in any way stand in the way of finding there is a legal obligation and upholding the Judgment.

[21] Milieudefensie et al.'s Statement of Defence on Appeal of 18 October 2022, para. 691.

[22] Shell Annual Report 2023, p. 76.

[23] Ibid, p. 341: "*Solar and wind was a combined $1,596 million in 2023 compared with $2,862 million in 2022 due to capital relocation in the renewable power business compared with material acquisitions in 2022*"