BarentsKrans

568/138927

Supreme Court of the Netherlands
Hearing of 17 July 2026
Case number: 25/00497

WRITTEN REPLY

in the case of:

1. the association with full legal capacity **VERENIGING MILIEUDEFENSIE**, having its registered office in Amsterdam (the Netherlands)

2. the foundation **STICHTING GREENPEACE NEDERLAND**, having its registered office in Amsterdam

3. the association with full legal capacity **LANDELIJKE VERENIGING TOT BEHOUD VAN DE WADDENZEE** (Association for the preservation of the Wadden Wea), having its registered office in Harlingen (the Netherlands)

4. the foundation **STICHTING TER BEVORDERING VAN DE FOSSIELVRIJ-BEWEGING** (Foundation for the promotion of the fossil-free movement), having its registered office in Amsterdam

5. the foundation **STICHTING BOTH ENDS**, having its registered office in Amsterdam

6. the association with full legal capacity **JONGEREN MILIEU ACTIEF,** having its registered office in Amsterdam

appellants in the principal appeal in cassation and respondents in the cross-appeal in cassation,
to be jointly referred to hereafter (in the plural) as: “**Milieudefensie et al.**”,
counsel: P.A. Fruytier and J.P. Jas

versus:

the legal entity under foreign law
SHELL PLC,
having its registered office in London (United Kingdom),
respondent in the principal appeal in cassation and appellant in the cross-appeal in cassation,
to be referred to hereafter as: "**Shell**",
counsel: F.E. Vermeulen and
A.G. Colenbrander

and versus:

the foundation **STICHTING MILIEU EN MENS,**
having its registered office in Zwolle (the Netherlands),
party joining on Shell's side,
to be referred to hereafter as: "**M&M"**
counsel: Mr C.S.G. Janssens

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I INTRODUCTION

1 The Written Explanatory Submissions of Shell and M&M[1,2] give rise to a number of comments on the part of Milieudefensie et al., who maintain and refer to what they already observed in their Written Explanatory Submission dated 22 May 2026. In this context, Milieudefensie et al. will use the same definitions as in their Written Explanatory Submission. Given that the Written Explanatory Submissions of Shell and M&M jointly comprise 331 pages, the Written Reply of Milieudefensie et al. is, of course, also longer than is customary in cassation proceedings. However, with 58 pages (excluding the cover page and the table of contents), it is still less than 20 per cent smaller than the length of the Written Explanatory Submissions of Shell and M&M combined.

2 The Written Explanatory Submission of Shell is based to an important extent on a misrepresentation of what this court case is about. This case does not concern the question how states around the world should structure their climate and energy policies. The Court is also not being asked to devise a comprehensive energy transition or determine a global distribution of the emission reduction burdens.[3] The question to be answered by the Court is much more limited and more precise in legal terms: is Shell required, having regard to its position, its expertise and its influence on and control over the (fossil) energy products offered by it, to align its harmful contribution to climate change with what is needed to prevent or mitigate dangerous climate change?

3 This delineation is important because many of Shell's defences are directly linked to the assumption that a court injunction issued against Shell necessarily amounts to interference in state policies or to a shaping of the energy transition by a court of law. That assumption is incorrect. This case solely concerns the question whether limits can be placed on the choices made by Shell as a company. Shell itself, for example, determines which energy products it will offer and in which energy sources it will invest. As a commercial enterprise, Shell is, in principle, free to do so. However, the freedom that a commercial enterprise has, is not unlimited. This freedom is limited by (among other things) the societal standard of care of Article 6:162 Dutch Civil Code ("DCC"), particularly if the current and announced way in which Shell will exercise its freedom contributes to the grave danger posed by climate change. That is the essence of this court case.

4 This is not, or barely, addressed by Shell in its Written Explanatory Submission. In the same way as in the proceedings before the lower courts, Shell is mainly presenting a large number of policy-based defences related to the above-mentioned themes to the

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1 As an intervening party, M&M cannot lodge a cross-appeal in cassation. This means it is not able to raise objections to the Judgment of the Court of Appeal. Milieudefensie et al. will therefore not address the "*overwegingen en oordelen die heroverweging behoeven*" (the considerations and findings requiring reassment) as presented by M&M (Written Explanatory Submission of M&M dated 22 May 2026, Chapter 4).

2 In its Written Explanatory Submission, M&M refers to a large number of publications by Lucas Bergkamp. See, for example, the Written Explanatory Submission of M&M dated 22 May 2026, footnotes 7, 9, 15, 32, 33, 35, 50, 55, 60, 65, 66, 75, 81 up to and including 83, 86, 96, 109 and 120. It is important to note that Lucas Bergkamp has acted as legal adviser to M&M in these proceedings. See https://www.wyniasweek.nl/milieudefensie-heeft-ongelijk-klimaatbeleid-is-een-zaak-voor-de-wetgever-niet-voor-de-rechter/.

3 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 1 up to and including 13.

Supreme Court. Although these defences are each time presented in different forms, they essentially always amount to the same thing. They often play on fears that live in society, such as a lack of energy security, a decline in the attractiveness of the Netherlands as a country to make investments in, the creation of random reduction obligations thought up by a court for random companies and a lack of effectiveness of such obligations. According to Shell, all these factors mean that it cannot have a duty of care to prevent or mitigate dangerous climate change and – by extension – no specific reduction obligation can be determined for Shell. In this context, Shell is completely ignoring the disruptive consequences of climate change for society as well as the urgency of climate action.

5 With the above arguments, which, in reality, are based on a number of fundamental inaccuracies, Shell has once again made it clear that it has no real intention of making any meaningful contribution to the globally required CO_2 reductions. Furthermore, this perspective means that Shell's Written Explanatory Submission contains numerous extremes and contradictions. To illustrate this, Milieudefensie et al. will briefly highlight three of them.

(a) Shell argues that energy security will be seriously jeopardised if Shell is required to reduce its CO_2 emissions.[4] Yet at the same time, Shell objects to the existence of a court-issued reduction injunction on the grounds that it cannot be effective, as the same oil and the same gas will in that case be brought to market in a different way.[5] These two things cannot be true at the same time.

(b) According to Shell, a CO_2 reduction obligation would harm its competitive position, as that obligation would apply only to Shell and not to its competitors.[6] However, in other places in its Written Explanatory Submission, Shell actually argues that imposing a CO_2 reduction obligation on Shell would have far-reaching consequences, as this obligation would also apply to other companies.[7]

(c) In Shell's view, only the legislature can impose a CO_2 reduction obligation, because only the legislature is able – as opposed to a court of law – to weigh up all the relevant interests.[8] Yet in its defence, Shell also takes as its starting point that the global pace at which CO_2 emissions are being reduced is too slow, which actually shows that states cannot solve the climate problem on their own.[9]

6 These extreme positions and contradictions are caused by the fact that Shell is not basing its arguments on legal standards. It has not built its defence on any normative framework, but primarily on policy-based arguments. Its defence is therefore, in essence, *non-normative*. The Supreme Court cannot base its decision hereon in this case, as Shell's policy positions offer no normative guidance whatsoever. Drinking from the barrel of contradictions presented by Shell will therefore get the Supreme Court – and the world

4 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 107, 262, 263 and 377.
5 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 330, 447, 630 and 683.
6 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 75, 109 and 266.
7 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 13, 98 and 113.
8 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 23, 128 and 671.
9 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, para. 434.

– nowhere. The Supreme Court can and must hold on to the only guiding instrument available to it: the law and the fundamental rules following from it. The existence of legal standards prevents the contradictions outlined above from arising, as these standards stem from a carefully designed system that provides normative guidance. This also applies in this court case. All legal standards – the objective points of reference referred to by Milieudefensie et al. – point in one direction: the direction of a duty of care to prevent or mitigate dangerous climate change, and in this context Shell must have reduced its CO_2 emissions by a concrete percentage prior to 2030.

7 Milieudefensie et al. will further explain all of this in greater detail below. With a view to this, they consider it important to first make six more general observations in response to Shell's defence (Chapter II). Building on this, the fundamental flaws in Shell's core defences will be discussed. These points will be discussed from an overarching perspective, as they recur in and have implications across a wide range of themes (Chapter III). Subsequently, Milieudefensie et al. will respond, for each subject individually, to a number of more specific points made in the Written Explanatory Submissions of Shell and M&M that are not (or not fully) covered in chapters II and III. These subjects are related to Shell's duty of care (Chapter IV), Shell's concrete reduction obligation (Chapter V), the effectiveness of the reduction obligation (Chapter VI) and a number of other subjects (Chapter VII). Seeing that the case documents in these cassation proceedings are already very lengthy, Milieudefensie et al. will only address the most pressing points and end their Written Reply with a conclusion (Chapter VIII).

II SIX IMPORTANT PRELIMINARY OBSERVATIONS

8 The Written Explanatory Submission of Shell gives rise to six observations which are of fundamental importance, considered both individually and in relation to each other, for the assessment of Shell's defences and for a proper understanding of what will be set out below in this Written Reply.

II.1 Shell is painting an inaccurate and caricatured picture of the division of roles between states and companies in addressing climate change

9 Shell's defence is largely aimed at pushing the central question about its liability into the background. With this in mind, Shell is deliberately presenting the case in a different manner and making it larger than it actually is. Shell is making it appear as though this case is not about its liability, but about the global energy transition, how it should be shaped and who it should be shaped by.[10]

10 The picture painted by Shell for this purpose is that the global climate response and the energy transition can only truly succeed if states and energy companies jointly adopt a comprehensive global plan for the distribution of the emission reduction burdens, which must then be implemented in a harmonious and coordinated manner.[11] In the picture presented by Shell, legislation is adopted on the basis of a careful and balanced assessment of all relevant societal interests without any lobbying, political influence and public pressure from the side of (energy) companies. The latter companies wait until an optimally balanced regulatory framework has been established and then cooperate in its implementation and comply with it without putting up any resistance.

11 This picture painted by Shell has little bearing on reality and is therefore caricatural in nature, as the following two points will make clear.

12 Firstly, the supposed global plan, including the far-reaching coordination between states forming part of it, will not be realised in the real word. Such an approach was attempted in 2009 in the run-up to COP15, the Copenhagen Climate Conference, but ended in big disappointment. It was precisely this failure and the lessons learnt from it that prompted a fundamentally different approach in the Paris Agreement.[12]

13 For the reason described above, the Paris Agreement does not rely on a centrally coordinated system in which pre-determined climate burdens are allocated to states based on a global distribution. On the contrary, it is based on a decentralised approach in which each state independently formulates its own climate targets based on the principle of the highest possible ambition. These national climate commitments are recorded in what is known as Nationally Determined Contributions.[13]

[10] See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 1, 22 and 113.
[11] See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 3, 128 and 181.
[12] Statement of Defence on Appeal of Milieudefensie et al. dated 18 October 2022, paragraphs 997 and 998.
[13] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 92. See also the Oral Arguments on Appeal (Part 1) of Milieudefensie et al. dated 4 April 2024, para. 80; Summons of Milieudefensie et al. dated 5 April 2019, paras. 34, 411, 413 and 705.

14 As a result, the current global climate policies are not primarily based on coordinated action by states, but on the sum total of individual national efforts. These efforts are supplemented by an explicit call for businesses and other non-state actors to also take climate action. Their involvement is deemed essential under the UN climate regime, because the objectives of the Paris Agreement cannot be achieved without their contributions. Therefore states cannot tackle the climate challenge alone and require independent and proactive climate action from (large) companies in order to address climate change.[14]

15 The underlying principle of the Paris Agreement is that only the individual efforts of states, companies and other non-state actors can limit global temperature rise. The publication of commitments made by both states and non-state actors (NSAs) is intended to mobilise climate action.[15] In this way, a system of mutual benchmarking, public accountability and policy learning is created, with the expectation that those lagging behind will be encouraged to raise their ambitions and draw inspiration from the frontrunners. This will strengthen the mutual trust that everyone will fulfil their respective resonsibilities and form the basis for further cooperation and coordination between states and NSAs, as envisaged by the UN climate regime. After all, all of this will lead to a flywheel effect that accelerates the necessary climate action.[16]

16 The current climate regime therefore does not rely primarily on centrally coordinated top-down action, but is based on decentralised bottom-up actions by individual actors. As part of it, states and companies each have their own climate objective to fulfil and must each take climate action independently.

17 The second reason why Shell's portrayal of the situation does no justice to reality is that national and supranational legislators, including the EU, have so far not succeeded in establishing a regulatory framework that is sufficiently effective to guarantee the necessary emissions reductions. This cannot be viewed in isolation from the attitude of multinational oil and gas companies such as Shell, which use their economic, political and social influence to continually shape decision-making on climate policy and the energy transition. This is one of the reasons why it has not yet been possible to establish a legal framework that will actually lead to the achievement of the international climate targets set by states and the EU.[17]

18 The EU is also transparent about this. The European Commission has indicated that it has been the target of lobbying from the oil and gas industry following the adoption of the CSDDD and the climate plan obligation for large companies included in Article 22 CSDDD. In the words of the European Commission itself:

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[14] Written Explanatory Submssion of Milieudefensie et al. dated 22 May 2026, Section II.2. See also the Notes of the Oral Arguments of Milieudefensie et al. dated 22 May 2026, Chapter III.1. See, in the same vein, CSDDD, preamble (para. 10).

[15] For this purpose, among other purposes, the NAZCA was established. See the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 98.

[16] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section II.2.3.

[17] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections II.2.5 and II.3. See also the Notes of the Oral Arguments of Milieudefensie et al. dated 22 May 2026, paragraphs 19 up to and including 21 and 77 up to and including 95.

"Others, in particular from the oil and gas industry, called for the deletion of Article 22 CSDDD on combating climate change."[18]

19 The oil and gas lobby has been successful here, as evidenced by the Omnibus.[19] Although this did not come as a surprise, it *is* particularly striking in this case, because the EU itself had analysed, in its Impact Assessment for the CSDDD, that the EU's climate policies will not be effective without an emission reduction obligation for large companies. After all, the Impact Assessment shows that the EU's climate policies are being undermined by both a market failure and a regulatory failure as long as no emission reduction obligations are imposed for large companies.[20]

20 According to the EU, the market failure is caused by the fact that companies have insufficient eye for the risks of climate change and that voluntary human rights guidelines (such as the UNGP and the OECD Guidelines) are insufficiently effective. At the same time, regulatory failure will occur, according to the EU, without climate obligations for large companies, because multinational activities are not being regulated and because the EU frameworks are too fragmented to remedy the market failure.[21] This analysis of the EU has remained unchanged with the Omnibus and is therefore still valid.[22]

21 The fact that the oil and gas industry has managed to roll back the climate obligations for large companies despite this clear analysis demonstrates the sheer scale of the pressure it is able to exert on politicians in order to block unwelcome legislation. A similar pressure is being generated at the moment in order to weaken the EU-ETS.[23] It shows that, in reality and as opposed to the picture painted by Shell, there are no (supra)national legislators that are capable of drafting effective legislation while carefully weighing all societal interests against each other in peace and quiet and without pressure from the oil and gas industry. The opposite is true. Climate interests and other human rights and environmental interests invariably lose out in legislative processes for climate action and the energy transition as soon as they affect the commercial interests of oil and gas companies. This is part of the problem of the "governance gap".[24]

22 These two insights debunk the picture painted by Shell that only coordinated state action can solve the climate problem, that it is simply a matter of waiting for the adoption of the right legislation in which all the interests have been carefully balanced and that nothing can be expected of Shell until then, as Shell can only follow the path laid out by the

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[18] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 142, with reference to the Commission Staff Working Document of 26 February 2025, SWD(2025) 80, p. 33, available at https://commission.europa.eu/document/download/1da93ca2-7911-4e1f-9ce6-cecd09a85250_en?filename=SWD-Omnibus-80-81_En.pdf.

[19] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 140 up to and including 143 and 592.

[20] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 581 up to and including 586.

[21] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 581 up to and including 586.

[22] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 594.

[23] See, for instance, https://www.bloomberg.com/news/articles/2026-02-24/europe-s-biggest-business-lobby-calls-for-carbon-market-overhaul.

[24] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections II.2.5 and II.3. See also the Notes of the Oral Arguments of Milieudefensie et al. dated 22 May 2026, paragraphs 19 up to and including 21 and 77 up to and including 95.

legislature.[25] The fact that Shell's description of the situation is incorrect is also evident from the following.

II.2 States are painting a picture of the division of roles between states and companies in addressing climate change that is very different from that of Shell

23 All 198 states that are party to the UN Climate Convention (including the EU) recognise that it is of great importance that, alongside their own efforts, the private sector achieves emission reductions in a proactive and independent manner. Since the Paris Agreement (and the preparations made for it), climate action by companies and other non-state actors has even become a central pillar of the global climate response. The UN climate regime is therefore formed through both state and non-state action. Both types of action are crucial and indispensable,[26] which is not in dispute between the parties either.[27]

24 Against the backdrop of the need for non-state action, international soft-law sources have been adopted, partly on the basis of the UN climate regime.[28] They serve as normative principles for the adoption of corporate climate policies. Logically, they do not contain any specific reduction targets for specific companies, but rather a mechanism that clarifies how companies themselves can determine and realise an appropriate individual contribution. Just as for states, the UN climate regime does not rely on centralised top-down coordination for corporate climate action, but rather on decentralised, individual bottom-up action. In this way, both companies and states have their own individual climate challenges to meet. This is the mechanism upon which the UN climate regime has been built.

25 These climate obligations of states and companies that exist in parallel (and are therefore independent of each other) also link up with the human rights guidelines for companies established by the UN and the OECD as intergovernmental organisations. They also provide for specific responsibilities for companies in the field of climate change. Both sets of guidelines – the UNGP and the OECD Guidelines – make it clear that these responsibilities exist alongside and are independent of the responsibilities of states. This clearly follows from the UNGP:

> *"The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights."*[29]

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[25] See, for instance, the Written Explanatory Submission of Shell dated 22 May 2026, para. 181.

[26] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section II.2. See also the Notes of the Oral Arguments of Milieudefensie et al. dated 22 May 2026, Section III.1.

[27] The fact that the countries that are party to the UN Climate Convention have, since 2012, indicated that they cannot tackle the climate challenge alone and that proactive action by non-state actors (including companies) is required has been found by the Court of Appeal. See the Judgment of the District Court, ground 4.4.26. Shell has not challenged this finding on appeal. See also the Statement of Defence on Appeal of Milieudefensie et al. dated 18 October 2022, para. 25.

[28] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections II.2.4 and IV.5.4.

[29] Exhibit MD-220 (UNGP 2011), Principle 11 (Commentary). See also the Statement of Defence on Appeal of Milieudefensie et al. dated 18 October 2022, para. 128.

26 These are therefore responsibilities that companies always have, both when states fulfil their human rights obligations and when states fail to do so. The obligations of both parties exist independently of each other. Neither a state, nor a company can point to the acs or omissions of the other to walk away from their own responsibility. Shell has its own responsibility, which is separate from that of states and the balancing of interests conducted by them.

27 The CSDDD, which refers to the UNGP and the OECD Guidelines, is based on the same principle of human rights obligations of governments and companies that exist alongside each oth:

> *"All businesses* (…) *have a responsibility to respect human rights, which are universal, indivisible, interdependent and interrelated."*[30]

28 This serves to further clarify that the picture painted by Shell of the division of roles between states and companies in tackling climate change gives a false impression. They both have separate obligations for which they can be held accountable independently of each other. Given the market failure and the regulatory failure identified by the EU, this is all the more important.[31]

II.3 Shell has no legal obligation to supply oil and gas, but does have a legal obligation to reduce its CO_2 emissions

29 All objective points of reference, including those described above, point to a legal climate obligation on the part of Shell. In this case, there are no objective points of reference that indicate that Shell has a legal obligation to continue supplying oil and gas to the world. Nor are there any reasons for accepting that Shell's legal obligation to supply fossil fuels is such that it completely nullifies its legal climate obligation and reduces it to zero. Moreover, no objective points of reference have been presented that legally require Shell to pursue an energy policy that is at odds with global climate policies.[32]

30 There are no laws or regulations that prohibit Shell from reducing its oil and gas supply in line with the global climate targets or that prohibit Shell from starting to supply alternative energy. As a commercial enterprise, Shell itself determines which energy sources it will include in its energy mix and whether it will invest in gas or in wind turbines, petrol stations or charging points for electric vehicles (including trucks).

31 However, in view of the climate problems, the commercial freedom that Shell has, is not unlimited.[33] After all, the commercial choices made by Shell determine how much CO_2 emissions will be produced as a result of its energy mix and investments, both now and in the future. This court case demonstrates that Shell, when making these choices, must consider the need to reduce its CO_2 emissions and that it has a reduction obligation.

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30 CSDDD, recitals (para. 7).
31 See also, in this regard, paragraphs 19 and 20 of this Written Reply.
32 See the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 1003b.
33 See also, in this regard, paragraph 3 of this Written Reply.

32 The inevitable consequence of fulfilling this reduction obligation is that Shell cannot supply as much oil and gas as it may consider to be desirable for commercial reasons. However, this restriction of Shell's commercial freedom is necessary and justified, because a reduction in the fossil-fuel supply is necessary to protect human and non-human life on earth from an otherwise inevitable, existential climate crisis.[34]

33 Within the parameters of the CO_2 emissions to be reduced by Shell, however, Shell retains its commercial freedom. If Shell, as a company, wishes to grow by scaling up alternative energy, then it is free to do so. If it wishes to make its customers switch from fossil fuels to renewable energy in that way, then it is free to do so. If it simply wishes to produce and sell less oil and gas, then it is free to do so. All these options are available to Shell and have also been discussed in this court case.[35]

34 The only thing that matters is that Shell reduces the CO_2 emissions associated with its activities and energy mix. As Shell has full control over both its activities and its energy mix, this can be required of Shell. For the remainder, Shell's commercial freedom remains unaffected. In this way it is ensured, on the one hand, that Shell runs its business within the boundaries of the law, and, on the other, that the law does not impose restrictions on Shell that exceed what is necessary for Shell to fulfil its duty of care to respect human rights and the environment.

II.4 The climate response cannot succeed unless the supply of oil and gas is reduced

35 As explained above,[36] the global climate response is not based on a centralised and coordinated top-down approach and distribution, but on a decentralised bottom-up approach. The same applies to the global energy transition. Here too, there is no central coordination or distribution by either countries or (energy) companies.[37] This means there is no international coordinating body that manages the global energy transition, distributes the reduction burdens across sectors and equally phases out the supply of and demand for oil and gas in a balanced way. Such a international body is not expected to be established either.[38]

36 Because oil and gas are produced, traded and sold for global and regional markets, states are also unable to manage the reduction in both global demand for oil and gas and the supply of oil and gas in a coordinated way. As opposed to what Shell is suggesting, States even have little or no control over pricing or the availability of oil and gas within their own borders. To be able to handle the high price volatility and supply uncertainty of oil and gas, states can only take emergency measures.[39] This lack of coordination and

[34] See also, in this regard, Section II.4 of this Written Reply .
[35] See, for example, the Notes of the Oral Arguments on Appeal (Part 1) of Milieudefensie et al. dated 4 April 2024, paragraphs 19 up to and including 34; Notes of the Oral Arguments (8) in the First Instance of Milieudefensie et al. dated 15 December 2020, paragraphs 73 up to and including 91; Summons of Milieudefensie et al. dated 5 April 2019, paras. 816 up to and including 822.
[36] See, in this regard, Section II.1 of this written Reply.
[37] Statement of Defence on Appeal following Joinder of Milieudefensie et al. dated 10 October 2023, para. 52; Statement of Defence on Appeal of Milieudefensie et al. dated 18 October 2022, paragraphs 35(108), 520, 543 and 583; Notes of the Oral Arguments (8) in the First Instance of Milieudefensie et al. dated 15 December 2020, paragraph 26.
[38] See the Statement of Defence on Appeal of Milieudefensie et al. dated 18 October 2022, para. 35 under (108) and 520.
[39] Statement of Defence on Appeal following Joinder of Milieudefensie et al. dated 10 October 2023, paras. 50 up to and including 73.

control once again highlights why it is so important that every relevant public and private actor fufils their own responsibility in the area of the climate by setting and adhering to their own emission reduction targets.

37 By setting emission reduction targets, states and companies that consume oil and gas will reduce their demand for oil and gas and start to focus more on the use of alternative energy sources.[40] By setting emission reduction targets, companies that supply oil and gas will start to produce and sell less oil and gas. If each party acts within their own sphere of control – by means of emission reductions of their own - dynamics will emerge in which the supply of and demand for oil and gas are automatically reduced globally. There is no other solution.

38 The IEA has also confirmed and emphasised that oil and gas companies must exert their control over the supply side to reduce the supply of oil and gas, and that this is the only way in which climate action and the energy transition can succeed. The IEA has even pointed out that the narrative of the oil and gas industry – i.e. that society must first change its demand for oil and gas before supply can decrease – is one of the most important misconceptions about the energy transition:

> *"A productive debate about the oil and gas industry in transitions needs to avoid two common misconceptions. The first is that transitions can only be led by changes in demand. 'When the energy world changes, so will we' is not an adequate response to the immense challenges at hand* (...)*. In practice, no one committed to change should wait for someone else to move first."*[41]

39 As a result, there is only one solution for the climate response and the associated energy transition to be succesful and that is that oil and gas companies reduce their emissions by decreasing their supply of oil and gas independently in line with the global 1.5°C target. This is also consistent with the need for non-state action under the UN climate regime and with the need for companies to fulfil their human rights obligations independently, alongside states. Oil and gas companies are not excepted from this.

40 These climate and human rights obligations apply both to private oil and gas companies and to state-owned oil and gas companies. These are the National Oil Companies (**NOCs**) referred to by Shell.[42] As far as the latter companies are concerned, these obligations also apply to them via the climate and human rights obligations of the relevant states themselves. After all, states that produce oil and/or gas are not exempt from these obligations either and must also comply with their climate obligations. These obligations also extend to their state-owned enterprises.

40 Replacing oil and gas with electrification will also automatically lead to a lower energy consumption, as this will allow energy efficiency to increase by up to 40%. See Exhibit S-140 (IPCC AR6 WGIII), p. 1187.

41 Exhibit MD-528 (IEA, The Oil and Gas Industry in Net Zero Transitions 2023), p. 16. See, in this regard, the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 163. See also the Notes of the Oral Arguments on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, para. 125.

42 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, para. 75.

41 Furthermore, there are three additional reasons why limiting the supply of oil and gas is necessary to achieve the climate goals. These reasons are widely endorsed, both by the scientific community and at institutional level.

42 Firstly, if the supply of oil and gas is not decreased, oil and gas companies will continue to invest excessively in expanding their fossil-fuel infrastructure, which will cause the carbon lock-in effect to increase.[43] The CO_2 emissions that are locked in for the future by that infrastructure are incompatible with the global 1.5°C target.[44] In this way, the carbon lock-in effect leads to the forced use of oil and gas as established by the Court of Appeal and will thereby influence the demand for oil and gas.[45]

43 Secondly, if the supply of oil and gas is not limited, the carbon lock-in effect will make the energy system unnecessarily inflexible. As a result, the fossil-fuel infrastructure will become an increasingly larger barrier to the further scaling up of renewable energy sources across all sectors, making it even harder to achieve the global climate target. On this subject, the IPCC stated:

> *"Still-existing locked-in infrastructures and business models advantages fossil fuel industry over renewable and energy efficient end use industry. The fossil fuel energy generation and delivery system therefore epitomises a barrier to the acceptance and implementation of new and cleaner renewable energy technologies."*[46]

44 Thirdly, if the supply of oil and gas is not brought down, the widely recognised inhibiting influence of oil and gas companies on climate action will not be reduced, as they will continue to wield their economic, political, legal and societal influence and power to be able to continue their investments in oil and gas.[47] A reduction obligation will lead to the phasing out of the interests in oil and gas and will help to reduce the power and influence that oil and gas companies have over politics. According to the IPCC, this is crucial for effective climate policies and the necessary energy transition:

> *"Overcoming the carbon lock-in is not simply a matter of the right policies or switching to low-carbon technologies. Indeed, it would mean a radical change in the existing power relations between fossil fuel industries and their governments."*[48]

45 In a nutshell: Shell can continue to emphasise the importance of reducing the *demand* for oil and gas, but forgets to mention that reducing the *supply* of oil and gas is at least as crucial. This will also help to counter the forced use of oil and gas. Reducing the supply

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43 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section II.3.3. See also the Notes of the Oral Arguments of Milieudefensie et al. dated 22 May 2026, Section V.3.

44 Written Explanatory Submission of Milieudefensie et al. Dated 22 May 2026, para. 160. See also the Notes of the Oral Arguments on Appeal (part 4) of Milieudefensie et al. Dated 4 April 2024, paras. 101, 102, 106 and 111.

45 Judgment of the Court of Appeal, grounds 7.58 and 7.59.

46 Exhibit MD-496C (IPCC AR6 WGIII H5), pp. 557 and 558. See also the Opening Arguments on Appeal (Part 2) of Milieudefensie et al. dated 2 April 2024, para. 16.

47 See also, in this regard, Section II.1 of this Written Reply.

48 Exhibit MD-496F (IPCC AR6 WGIII H17), p. 1745. See also the Notes of the Oral Arguments on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, para. 100; Opening Arguments on Appeal (Part 2) of Milieudefensie et al. dated 2 April 2024, para. 17. This is underlined by other sources. See also, in this regard, the Notes of the Oral Arguments (8) in the First Instance of Milieudefensie et al. dated 15 December 2020, paras. 64 and 65.

of oil and gas is important not only for decreasing the demand for these fuels and the CO_2 emissions, but also for overcoming the obstacle formed by the oil and gas industry and by the associated infrastructure to the scaling up of renewable energy. Breaking through this oil and gas barrier will promote the rise of alternative energy sources across all sectors. The world needs both lower CO_2 emissions and more alternative energy. Limiting the supply of oil and gas is a crucial solution for both these needs. The market cannot achieve that on its own without a court order.

II.5 States have their own obligations to implement sound climate policies, and an effective climate policy of Shell would not interfere with such state obligations

46 As opposed to what Shell is arguing, a reduction order issued by a court of law against Shell would not constitute interference with state policies. As explained above,[49] all 198 states that are signatories to the UN Climate Convention (including the EU) agree that, for several reasons, the climate response cannot be succesful without independent corporate climate action. States will therefore not be surprised if companies take climate action, whether voluntarily or as a result of a court order. This will provide states with precisely the private climate action they are calling for. For this reason, it cannot be argued that private climate action interferes with state policies. After all, as part of such state policies, companies are called upon to take climate action independently.

47 Even apart from that call on companies, the argument that a court order issued against Shell would interfere with state policies is illogical. After all, if Shell were to decide voluntarily to align its global corporate activities with a sound climate policy, it could never be concluded that Shell would thus be encroaching upon the sovereignty of states or be interfering with state policies. If Shell is ordered by a court to adopt an effective climate policy, the situation will, of course, be no different.

48 What Shell has also lost sight of in its line of reasoning is that states also have individual climate obligations. As the ICJ confirmed in its Advisory Opinion, states’ climate obligations – including the obligation to reduce emissions in line with the 1.5°C target – are not optional and are even based on customary law, in terms of their nature.[50] Every state therefore has a climate obligation, regardless of whether it is a developed or a developing country, and regardless of whether it has or does not have a state-owned enterprise of its own that operates in the oil and gas sector.

49 Under public international law, it is also assumed that states are willing to comply with their obligations that are based on international law. From a legal and normative perspective, this is the only starting-point that can be taken when Shell’s climate obligations are assessed. It must be assumed that states comply with the law. Any other starting-point would be incompatible with the international legal order and the rule of law.

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49 See also, in this regard, Section II.2 of this Written Reply.

50 See, for example, ICJ 23 July 2025, No. 187 (Obligations of States in respect of climate change), paras. 272 up to and including 279. See also the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 84.

50 In this context, it cannot go unmentioned that an overwhelming majority of states endorsed the findings in the ICJ's Advisory Opinion in the UN resolution of 20 May 2026.[51] With 141 votes in favour, 8 against and 28 abstentions, it was declared that countries must fulfil their climate obligations. The Netherlands and all other EU countries, amongst others, supported the resolution, as did China, for example. The vast majority of the developing countries also supported the resolution and wish to commit themselves to their climate obligations and to be able to hold other states accountable for theirs.[52]

51 Therefore a legal obligation to be imposed on Shell to reduce its CO_2 emissions in line with the 1.5°C target would not "land" in a vacuum, but in a world where all countries have an obligation to achieve emission reductions in line with that same target. To achieve that target, it is necessary and inevitable that the global production and sale of oil and gas must be phased out accordingly. For this reason too, it is difficult to imagine that there would be any interference with national (energy) policies.

52 The Impact Assessment for the CSDDD also demonstrates this, as it shows that an emission reduction obligation for large companies is a necessary complement to existing state policies and does not interfere with them. Furthermore, not one single state has indicated, in response to the reduction iorder issued against Shell by the District Court in 2021, that a court-issued order against Shell poses a problem for their own climate and energy policies. The Dutch State has not indicated this either. In a letter to the Dutch Parliament dated 6 December 2021, the Dutch Minister for Economic Affairs and Climate Policy concluded that the District Court's judgment did not give rise to an adjustment of the government climate policies and offered companies an opportunity to gain a competitive edge.[53]

53 Finally, the fact that a court order against Shell will not result in any (unjustified) interference with government policies can also be clarified by the following. If a state decides, in view of its climate obligations (or for other reasons), to stop issuing new oil and gas extraction concessions to market players, this will not constitute interference with the policies of other states, let alone unjustified interference. If an oil-producing country decides to start reducing its oil production or to close an oil field, this does not constitute (unjustified) interference with the policies of other countries either.

54 It is worth noting that all this is already being done by the states and the (US and Canadian) constitutent states that have joined the Beyond Oil and Gas Alliance.[54] A large number of countries and (constitutent) states are thereby taking the initiative to restrict the supply of oil and gas for the purpose of the climate response. There is no evidence

[51] Resolution A/RES/80/263 of the UN General Assembly dated 20 May 2026.
[52] See https://nos.nl/artikel/2615197-verenigde-naties-stemmen-in-tegengaan-klimaatverandering-is-juridische-plicht. See also https://news.un.org/en/story/2026/05/1167561.
[53] Exhibit MD-341 (Letter from the Dutch Minister to the Dutch Lower House concerning the "Analysis of the Shell Decision" dated 6 December 2021), p. 4. See, in this regard, the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 682 and 741.
[54] The participating countries and states (or constituent states) are Belize, the State of California, Chile, Colombia, Costa Rica, Denmark, Fiji, Finland, France, Greenland, Ireland, Italy, Kenya, Luxembourg, the Marshall Islands, Portugal, Québec, Samoa, Spain, Tuvalu, Vanuatu, Wales, the State of Washington and Sweden. See the Statement of Defence on Appeal of Milieudefensie et al. dated 18 October 2022, para. 913. For the latest developments, see https://beyondoilandgasalliance.org/members.

whatsoever that the (constitutent) states that have joined the Beyond Oil and Gas Alliance are undermining the energy policies of other countries through this supply restriction, that they are forcing an energy transition on other countries by reducing the supply of oil and gas, encroaching on other countries' balancing of interests, dictating how the global energy transition should be shaped and/or are thereby infringing the sovereignty of other countries.

55 This is also understandable, as these countries are doing nothing more than fulfilling the climate commitments incumbent upon each of them. These specific supply-related measures are announced and communicated so that everyone can adapt to them. This is not very different from a court order requiring Shell to reduce emissions, which would also result in a reduction in the supply of oil and gas and to which other parties could likewise adapt.

II.6 The fulfilment of one's own share of responsibility is the measure of all things and the only effective solution for the collective problem of climate change

56 What follows from the considerations discussed above is that the global approach to climate change is founded on one central guiding principle, which is that both states and non-state actors must take responsibility for their own actions and for the matters over which they have control. No one can hide behind someone else in this respect. Everyone must assume their share of the responsibility.[55]

57 Based on that central guiding principle, everyone has a responsibility to contribute to solving the climate problem. However, that does not mean that everyone can be held accountable for it in court. This will be the case for states, but, in many instances, not for companies. Many companies simply have a CO_2 footprint that is too small to be legally relevant. For Shell, however, the situation is different. Of all the states in the world, only China, the United States, India and Russia have a larger CO_2- footprint than Shell.[56]

58 All objective points of reference suggest that Shell can and must be legally forced to assume its share of the responsibility. The question how others will react to a transforming Shell is irrelevant in this context. The fulfilment of one's own share of the responsibility is the central guiding principle in the climate regime. That is the only thing that, according to the UN climate regime, is effective and the only thing that can actually solve the problem posed by climate change. Consequently, the question regarding the effectiveness must be limited to the question whether the CO_2 emissions attributable to Shell will decrease as a result of the reduction order sought by Milieudefensie et al. This is the case and is not in dispute between the parties either, which means that both the importance and the effectiveness of the relief sought have been established.

59 The fact that shared responsibility is the underlying principle of global climate policies was also explicitly formulated by the Dutch Supreme Court in its *Urgenda* judgment.[57] In

[55] See, in this connection, in great detail the Statement of Defence on Appeal after Joinder of Milieudefensie et al. dated 10 October 2023, paras. 79 up to and including 110; Statement of Defence on Appeal of Milieudefensie et al. Dated 18 October 2022, para. 888 up to and including 904.
[56] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 126, 503, 740, 763, 843 and 1418.
[57] Judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), grounds 5.7.1 up to

that context, the Supreme Court held that the partial responsibility, in a general sense, is line with what is accepted in many other countries and at international level in the event of unlawful acts that give rise to only a part of the cause of the damage. According to the Supreme Court, the widely accepted rule is that *"partial fault also justifies partial responsiblity*".[58] The ground of appeal raised by the State, in which the State argued that it could not be legally bound by the claimed reduction target because it would have no measurable effect on global temperature rise, was therefore rejected with a reference to the partial responsibility.[59]

60 Against this background, it does not make any difference whether it is a state or a private party that is held accountable for its "share in fault" in respect of the climate problem. In this context, the Dutch Supreme Court has also referred to the private-law grounds in liability law for accepting the partial responsibility of the Dutch State, including the *Kalimijnen* judgment and the Principles of European Tort Law.[60] In both cases, it is necessary that the acceptance of such a partial responsibility is justified and effective.

61 It is virtually impossible to imagine any other judgment. A judgment stating that the fulfilment by a private party of the responsibility (or partial responsibility) for a collective problem such as climate change is neither effective nor meaningful would be extremely destructive and lead to numerous breaches of the law. It would send the message that nobody needs to concern themselves with this existential, collective problem that affects us all, even though it can only be resolved if everyone does their bit.[61] Such a ruling would not only undermine the willingness of individual parties to take responsibility, but would also undermine the confidence that collective action can actually bring about change. The consequences of this are incalculable.[62]

62 If there is one thing that the preceding considerations demonstrate, it is that such a judgment would strike at the very root of the entire global climate response and also of many other human rights and environmental issues. The above makes it clear that Shell's effectiveness defences are invalid and cannot be accepted.

III SHELL'S KEY DEFENCES ARE FUNDAMENTALLY FLAWED

63 In Chapter II of this Written Reply, Milieudefensie et al. have described the true picture of the necessary role of companies – which is endorsed by the international community – in solving the climate crisis. This in itself already largely refutes Shell's line of defence. In this Chapter, Milieudefensie et al. will more specifically discuss the key defences raised

and including 5.7.9.

58 Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), ground 5.7.6.

59 Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), grounds 3.4 and 5.7.6 up to and including 5.7.9.

60 Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006, ground 5.7.6, with reference to A.M. Honoré, *Causation and Remoteness of Damage, International Encyclopedia of Comparative Law*, Vol. XI, Torts Chapter 7, no. 112; A.J. Akkermans, "*Veroorzaking van deelschade*" (Causation of partial damage) in *WPNR* 6043 (1992), pp. 249 up to and including 255; Article 3:105 of the Principles of European Tort Law; Judgment of the Dutch Supreme Court of 23 September 1988, ECLI:NL:HR:1988:AD5713 (*Kalimijnen*), ground 3.5.1. See also the Opinion of Procurator General Langemeijer and Advocate General Wissink prior to the judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), paras. 2.12 and 2.13.

61 See ICJ 23 July 2025, No. 187 (Obligations of States in respect of climate change), para. 456.

62 See the Notes of the Oral Arguments of Milieudefensie et al. dated 22 May 2026, para. 107.

by Shell throughout its Written Explanatory Submission. Milieudefensie et al. will address the fundamental flaws of each key defence. Where possible, Milieudefensie et al. will refer back to the preceding Chapter.

64 All that Shell, essentially, outlines in its Written Explanatory Submission is its own policy-based view of its role within the direction in which the ”real world” is moving, according to Shell. To this end, it is painting a picture of a world in which global demand for energy is increasing, which must be met by oil and gas in particular. Building on this, Shell collectively dismisses all the reduction scenarios aiming for the 1.5°C target as being unrealistic and merely “normative”, with a desired, pre-determined outcome.

65 In support of its policy-based arguments, Shell presents two (other) IEA scenarios: the Stated Policies Scenario (**STEPS**) and the Announced Pledges Scenario (**APS**).[63] According to Shell, these alternative scenarios provide a more accurate picture of the real world in which Shell must fulfil its role. This, in turn, also colours Shells’ non-normative perspective that it cannot be forced to comply with any reduction obligation.

66 To understand what Shell means here, it is crucial to understand what these scenarios presented by Shell entail. They identify the consequences for the climate if the world fails to take any further climate action and the stated government policies (STEPS) and/or the announced government policies (APS) are continued. According to the IEA, following these scenarios will lead to catastrophic global warming of (well) over 2°C. The STEPS scenario, for instance, will result in global warming of 2.4°C.[64]

67 These scenarios underline the most important reasons why Shell’s key defences are fundamentally flawed. They demonstrate that, in reality, governments cannot solve the climate problem on their own. The argument presented by Shell as a key defence – i.e. that only governments can shape the energy transition – will lead to a rise in temperature with disastrous consequences. That is also recognised by governments and that is precisely why all 198 parties to the UN Climate Convention are calling for the crucial private-sector action. The “real world” depicted by Shell is precisely the world that the international community is trying to prevent through, amongst other things, the UN climate regime, human rights and soft-law sources. To this end, all these international normative sources link up with the best available science, which calcluates how this can and must be achieved: the 1.5°C reduction scenarios. The Supreme Court cannot disregard this normative framework.

68 In its Written Explanatory Submission, Shell also clarifies for which reasons it does not wish to be bound by any reduction obligation:

> “Companies must be able to set reduction targets and ambitions without such targets and ambitions being translated into obligations based on civil law. Shell’s targets and ambitions have been reviewed, adapted and adjusted over time as

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63 Written Explanatory Submisson of Shell dated 22 May 2026, para. 432.

64 Exhibit MD-525 (IEA Net Zero Roadmap 2023), p. 64. See also the Notes of the Oral Arguments on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, para. 104; Written Arguments of Milieudefensie et al. dated 19 March 2024, para. 115. Incidentally, UNEP has calculated that the world is in fact heading for even greater global warming. See the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 82.

> Shell's commercial strategies and the market conditions evolved, as befits a private company.'[65]

69 Shell's commercial strategies and the market conditions must therefore allow Shell to adjust its climate policy. What Shell means by this is that it must be able to significantly increase its oil and gas production and sales if this is commercially interesting. The fact that these commercially driven considerations lead to the catastrophic global warming projected by the IEA in the STEPS and APS scenarios and run directly counter to the direction indicated by all objective points of reference is, in Shell's view, of secondary importance.[66]

70 In light of the foregoing, it is already broadly clear why Shell's key defences are fundamentally flawed. These defences are all based on a norm-free world and are essentially aimed at preventing Shell from having to abandon its commercially driven ambitions. Milieudefensie et al. will discuss these defences in greater depth below.

III.1 The objective points of reference determine the private-law reduction obligations of Shell and other key players

71 Shell's first key defence can be summarised as follows. Only states can have climate obligations, because they are able and allowed to weigh up all the interests involved. A reduction obligation for Shell would be based on normative choices and considerations of Milieudefensie et al. regarding the global energy system and the interests involved, but these have not yet been definitively established and are still subject to change. Furthermore, a reduction obligation would amount to a general rule which a court of law is not allowed to establish. Moreover, it is unclear, according to Shell, to whom the obligation concerned is applicable. Shell was allegedly chosen arbitrarily.[67] In this context, Shell continues to repeat as a mantra that it is the only company required to make reductions.[68]

72 This key defence has already been addressed in detail in Chapter II of this Written Reply. This court case is about Shell's *own* climate obligation based on Section 6:162 DCC. That obligation does not lead to any interference with government policies, but to the action based on private law that the states concerned require and demand. Shell's independent liability does not follow from the *Urgenda* judgment, the positive obligations for states under the ECHR or the direct effect of Articles 2 and 8 ECHR.[69] Milieudefensie et al. are therefore not attempting to "verticalise" a private horizontal relationship and to

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[65] Written Explanatory Submission of Shell dated 22 May 2026, para. 501. See also the Written Explanatory Submission of M&M dated 22 May 2026, para. 3.14.

[66] See also the Notes of the Oral Arguments on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, paras. 104 and 105; Written Arguments of Milieudefensie et al. dated 19 March 2024, paras. 114 and 115, in which Milieudefensie et al. demonstrated that Shell is investing even more in oil and gas than the investments forecast by the IEA in STEPS. With these investments, Shell is actively steering towards a greater carbon lock-in effect and catastrophic global warming, based on its commercial vision.

[67] See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 5 up to and including 7, 12, 13, 21, 22, 67, 98, 103, 107, 113, 117, 185, 343, 345, 355, 356, 363, 392, 436, 448, 556, 611, 622, 708 and 709.

[68] See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 84 up to and including 90, 330, 332, 338, 443 up to and including 448, 630 and 683 up to and including 689.

[69] Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 423 up to and including 428.

transpose vertical legal obligations of states into a horizontal legal obligation of a company.[70]

73 The framework applicable to Shell's climate obligation is clear in this regard: the objective points of reference. Only that normative system – and not Milieudefensie et al., Shell or a court – determines whether and to what extent Shell has a reduction obligation. That is also the only system that a court can and must apply. Therefore the requirements thought up by Shell regarding the compatibility with the system, foreseeability, legal equality, proportionality or effectiveness are irrelevant.[71] Shell does not cite a single source that supports the relevance of these requirements.[72] The "political question" doctrine to be applied by the Court,[73] as M&M is arguing, is not recognised in the Netherlands.[74]

74 The objective points of reference further indicate which companies can be held accountable in court for their partial responsibility. They in any event include system players such as Shell, which have a large CO_2 footprint and actually have the size, capabilities, power and political and practical influence to help turn the tide and which are even *more* able than most states to contribute effectively to emission reductions and the necessary adjustments to the fossil-energy system.[75] Governments cannot achieve this on their own, partly due to the governance gap. M&M also acknowledges that governments are failing to conduct adequate climate policies.[76] If the crucial non-state players do not take action, a timely and effective climate response will never materialise.[77] Shell has therefore not been randomly chosen.

75 This means that the assumption that only Shell would be required to make reductions, whilst other oil and gas companies, in particular non-Dutch ones, could and would continue to operate without any norms after the Supreme Court renders its decision[78] is mistaken. That view is based on a normative vacuum. Other key players will also have to comply, in addition to Shell, with the reduction obligations indicated by the objective points of reference or their foreign equivalents. This applies even more strongly to national oil and gas companies via the climate obligations applicable to states. Moreover, many climate court cases are pending everywhere in the world against all kinds of companies, for which the outcome of this court case will also be relevant.[79] The Supreme Court cannot, of course, base its decision on the normative vacuum described by Shell. In that case the Supreme Court would not do justice to the only instrument at its disposal: the applicable law.

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70 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 180, 182 and 459.
71 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 99, 100, 140 and 178.
72 See, in this regard, the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section IV.3.
73 For a detailed discussion, see R. van der Hulle, "*Naar een Nederlandse political-question doctrine*" (Towards a Dutch 'political question' doctrine), Deventer: Wolters Kluwer 2020.
74 Written Explanatory Submission of M&M dated 22 May 2026, para. 4.15.
75 See also, in this regard, Section II.6 of this Written Reply.
76 Written Explanatory Submission of M&M dated 22 May 2026, para. 2.8. See also the Written Explanatory Submission of M&M dated 22 May 2026, para. 2.4.
77 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections II.2.2 up to and including II.2.4.
78 Written Explanatory Submission of Shell dated 22 May 2026, paras. 2, 117 and 317. Also see the Notes of the Oral Arguments of Shell dated 22 May 2026, para. 6211.
79 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 680 and 1411.

76 By determining that Shell has a reduction obligation, the Court would be acting well within its constitutional discretion and would not be encroaching upon the policy-making or administrative discretion of governments.[80] The Court would not be establishing a climate policy that actually exends beyond the specific case, as Shell is arguing.[81] The establishment of a duty of care based on private law merely constitutes an application of Article 6:162 DCC. This does not encroach upon the powers of states and does not deprive national legislators of any options.[82] This means that, as opposed to what Shell keeps arguing with a different formulation each time, the Court would not be making any political or policy-based choices or be engaging in any balancing or enacting legislation; and it would certainly not be establishing Nationally Determined Contributions for the countries in which Shell operates.[83] This court case is therefore not a climate policy case and does not concern judicial policy decisions either, as M&M is assuming.[84]

77 Milieudefensie et al. have set out the specific effect of the objective points of reference and the 1.5°C reduction scenarios in great detail in Chapters IV up to and including VI of their Written Explanatory Submission. Without exception, the objective points of reference indicate that Shell must reduce its CO_2 emissions in line with the climate target and that it has an important role of its own to play in achieving the climate target. This conclusion was therefore reached by both the District Court and the Court of Appeal. The objective points of reference and the relevant 1.5°C reduction scenarios subsequently also point the way forward, because they specify what reductions the oil and gas industry – and its key players in particular – can be required to make in order to keep the binding climate targets within reach. The objective points of reference therefore do not make a "correction" for any "inherent unsuitability" of reduction scenarios, as Shell is also arguing.[85] Furthermore, those reduction scenarios do not form the basis of Shell's reduction obligation and are not elevated to being a legal standard.[86] The objective points of reference form the basis for the reduction obligation. Incidentally, a source may also have normative value even if it is not a directly binding legal standard.[87]

78 The inevitable normative outcome is that Shell must reduce its CO_2 emissions within the range set out by those reduction scenarios. The lower limit of that range (rounded to 30%) implies – when transposed to the real world – that the oil and gas industry is being heavily spared at the expense of *all other* sectors. In that scenario, all other sectors are

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80 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section VIII.2.2.
81 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 342 and 357.
82 Written Explanatory Submission of Shell dated 22 May 2026, para. 424a. See also, in this regard, para. 52 of this Written Reply.
83 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 351, 352, 372, 373, 382, 383, 475, 559, 671 and 674a.
84 Written Explanatory Submission of M&M dated 22 May 2026, paragraphs 1.3, 1.4, 2.11, 2.12, 4.12, 4.15, 4.19 and 5.2.
85 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 460 up to and including 501, 504 to 507, 512, 513, 516, 523, 597 and 609.
86 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 61, 369, 417, 421, 422, 429, 462, 475, 537, 574, 600 and 622.
87 See, for example, the Opinion of Procurator General Langemeijer and Advocate General Wissink prior to the judgment of the Supreme Court of 20 December 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), paras. 4.92 up to and including 4.104 and 4.133.

being asked to make an excessive contribution.[88] This explains why a more effective reduction percentage will, in reality, be 45% or more.

III.2 The 1.5°C reduction scenarios model on a binding 1.5°C target and provide guidance on achievable reduction percentages for oil and gas

79 Shell's second key defence is that the 1.5°C reduction scenarios are "normative", as they take the desired outcome of the 1.5°C target as their starting-point and work backwards from that target to changes in the energy system. Furthermore, Shell argues that they are policy-driven and contain distribution choices (which have been left to politicians) which take central stage in the energy transition. According to Shell, the 1.5°C reduction scenarios are not based on the *"current trajectory of the energy system*", as evidenced by STEPS and APS. Adopting the 1.5°C reduction scenarios would mean that a company such as Shell would be obliged to reduce its emissions at a rate that does not reflect the global rate of reduction.[89] By extension, Shell argues that achieving the 1.5°C reduction scenarios will require major infrastructural and technological investments, that demand for fossil fuels must decrease and that demand for sustainable alternatives must increase.[90]

80 This key defence raises particular cause for serious concern regarding Shell's intentions, plans and vision for the energy transition. After all, stripped of all the rhetoric, Shell argues that the lack of sufficiently effective action and sufficient regulatory capacity on the part of governments worldwide and the resulting *"current trajectory of the energy system*" (read: an excessive clinging to fossil fuels) mean that Shell, too, is allowed to sit still and may even increase its oil and gas supply. The binding 1.5°C target and all the dramatic consequences hidden behind it are therefore subordinate to this.

81 The Supreme Court cannot accept this alarming line of reasoning. It is precisely because of the limited capacity of governments and the inaction of key players such as Shell that we are rapidly heading towards dramatic temperature rises of (well) above 2°C calculated by the IEA in STEPS and APS. This movement therefore involves the continued investment in oil and gas and the associated infrastructural and institutional "carbon lock-in" effect, which further accelerates this course that the world has embarked upon.[91] This leads to a forced use of fossil fuels and obstructs the further scaling up of renewable energy sources across all sectors.[92] This, in turn, results in a delay in the energy transition, which will consequently become increasingly far-reaching, costly and risky. This has also been confirmed by the IPCC, the IEA and the European Central Bank (ECB) .[93] The Supreme Court reached a similar conclusion in its *Urgenda* judgment.[94]

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88 See, in this regard, the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 934, 965 and 971.

89 Written Explanatory Submission of Shell dated 22 May 2026, paras. 59 up to and including 69 and 432 up to and including 435.

90 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 71 up to and including 74, 429 to 436, 481, 543 up to and including 546, 563, 576 and 582 up to and including 584.

91 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section II.3.3. See also, in this connection, Exhibit S-140 (IPCC R6 WGII, pp. 267 and 298).

92 See, in this regard, paragraphs 42 and 45 of this Written Reply.

93 Notes of the Oral Arguments on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, paragraphs 110 and 111

82 The *"current trajectory of the energy system"* cited by Shell is, therefore, a very urgent reason for actually requiring Shell to take action *in line with* the 1.5°C target and thus on the basis of the corresponding reduction scenarios. This is an absolute prerequisite for keeping the climate targets within reach and for creating room for sustainable alternatives. This need for an accelerated energy transition is not something Milieudefensie et al. have simply made up themselves, but has been recognised by, among other organisations, the UN, the IPCC, the IEA, the EU, the ECB and the International Monetary Fund (IMF).[95]

83 Furthermore, the 1.5°C emission reduction scenarios are not simpy "normative". They model the reductions that are in fact necessary to achieve the 1.5°C target prescribed as a binding target by the UN climate regime, human rights, the soft-law sources, the Dutch Supreme Court, many other national supreme courts, the European Court of Human Rights (ECHR), the Inter-American Court of Human Rights (IAHRM) and the ICJ. These scenarios naturally demonstrate that the production and use of oil and gas will decrease, as this is a necessary prerequisite for achieving the 1.5°C target. They also calculate by how much the production and use of oil and gas must and can decrease in the various possible reduction pathways. The 1.5°C target cannot simply be abandoned because government policies are lagging far behind. That target is, and remains, the unwavering starting-point when climate obligations are established.

84 Moreover, reduction scenarios are not only "normative". The 1.5°C reduction scenarios represent the best available science that, for instance, the Paris Agreement,[96] the UN Expert Report,[97] the OECD Guidelines[98] and the Net Zero Guidelines[99] refer to as the basis for climate measures, which is central to the design of the climate obligations prescribed by the ECHR[100] and which the ICJ also identifies as the decisive source for this purpose.[101] The CSRD and the CSDDD also require – via the European Sustainability Reporting Standards (ESRS) – that reduction targets are based on scenarios.[102] They are the only sources available to the world for identifying in a scientific manner what oil and gas reductions must be achieved in order to keep the 1.5°C target within reach. There are no other sources. If these sources are insufficient for this purpose for a court, then they will also be insufficient for states.

85 For the remainder, it is untrue that 1.5°C reduction scenarios do not take into account the possibilities for oil and gas reduction that exist in the real world or the expected global developments in areas such as, for instance, the energy demand and technological developments. For example, the lowest percentages from the Hawkes Report

(referring to the findings of the IEA and the IPCC); Written Arugments of Milieudefensie et al. dated 19 March 2024, para. 13 (referring to the findings of the ECB). See also the Judgment of the Court of Appeal, ground 3.8 under C.2.

94 Judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), ground 7.4.3.

95 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections III.2.5, III.3 and V.6.3. See also the Notes of the Oral Argunets of Milieudefensie et al. dated 22 May 2026, Sections IV.2 and IV.3.

96 Article 4 Paris Agreement.

97 Exhibit MD-487 (UN Expert Report), p. 17.

98 Exhibit MD-492 (OECD Guidelines 2023), paras. 76 and 77.

99 Exhibit MD-488 (ISO Net Zero Guidelines 2022), paragraphs 8.2.2, 8.2.5 and 8.2.6.

100 ECHR 9 April 2024, no. 53500/20 (*Verein KlimaSeniorinnen Schweiz/Switzerland*), paras. 427 and 546.

101 ICJ 23 July 2025, No. 187 (Obligations of States in respect of climate change), paras. 224, 280 up to and including 286, 298 and 347.

102 See Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU as regards sustainability reporting standards, Application Requirements 26 and 27.

(recalculated) are the result of certain distribution choices that almost invariably favour the oil and gas industry very heavily and are therefore, by their very nature, entirely feasible.[103] The NZE Scenario, for example, also allows for the global energy demand, global population growth, access to energy in developing countries and the feasibility and scalability of CDR technologies.[104] According to the IEA, the threefold increase in renewable energy by 2030 required by the NZE Scenario is within reach.[105] The IEA also notes that the scaling up of the global electricity grids runs almost in line with the pace required by the NZE Scenario.[106]

86 Moreover, it is not the case that Milieudefensie et al. are arguing that CDR technologies should not be relied on in any way and should be completely disregarded;[107] all they argue is that the modelled reduction scenarios with lower reduction percentages for oil and gas rely far too heavily on them, because the large-scale deployment of CDR technologies is highly uncertain. This is not something Milieudefensie have made up themselves, but is widely recognised in science.[108] Shell is also downplaying the consequences of a heavy reliance on CDR technologies by referring to it as *"a mere assumption*".[109] That assumption could lead to enormous climate risks. Therefore, this must be given considerable consideration, as the Dutch Supreme Court also did in the *Urgenda* case.[110]

87 So contrary to what Shell is suggesting, following the 1.5°C reduction scenarios and the oil and gas reductions calculated therein is not only necessary to keep the binding 1.5°C target within sight, but is also feasible in the real world. This requires the key players to act in line with that target. Milieudefensie et al. have also already explained this in detail in their Written Explanatory Submission.[111]

88 Incidentally, the Supreme Court does not have to concern itself with the precise contents of the various modelled reduction scenarios and the assumptions on which they are based. After all, due to its focus on scientific consensus, the Court of Appeal has not examined the assumptions in the various reduction scenarios and how these should be treated from a normative perspective in any way whatsoever. All the Court of Appeal has done is – in summary - note that the percentages vary and that, consequently, the scientific consensus required by the Court of Appeal does not exist. This means that the debate about the contents and relevance of the assumptions underlying the 1.5°C

103 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 972 up to and including 976.
104 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 979 up to and including 1000.
105 Exhibit MD-525 (IEA Net Zero Roadmap 2023), p. 40 and – regarding the scaling up of solar energy, electric vehicles and batteries – pp. 42, 55 and 71. See also the IEA's Renewables 2025 report, available at https://www.iea.org/reports/renewables-2025. See, in this regard, the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 284. See also the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 68; and the Notes of the Oral Arguments on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, para. 93.
106 Exhibit MD-525 (IEA Net Zero Roadmap 2023), p. 147.
107 Written Explanatory Submission of Shell dated 22 May 2026, paras. 548 up to and including 552.
108 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections III.2.4 and VI.3.7, in which it is explained (particularly from paragraph 977 onwards) how the various reduction scenarios account for the uncertainty surrounding CDR technologies.
109 Written Explanatory Submission of Shell dated 22 May 2026, paragraph 582.
110 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 62 and 384.
111 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section III.3.

reduction scenarios will have to be resolved by the court of appeal to which the case is remitted, and not by the Supreme Court.

III.3 States have limited control over their national energy mix

89 Throughout its Explanatory Submission, Shell also relies heavily on the central premise that states determine their own national energy mix and are able to exercise full control over it.[112] That is not the case. States are dependent on the markets and mostly only create the parameters within which energy suppliers can operate, for example by granting concessions. Energy companies such as Shell operate in global markets and ultimately determine themselves to whom and where they will offer their products, in which countries they will and will not invest, where they roll back their investments, where refineries will be closed or opened and which energy products they will offer. For example, during the Iran crisis, oil tankers radically changed course when prices were higher elsewhere in the world.[113] In those decisions, the wishes of governments or societal interests played no part whatsoever. Energy companies make their decisions on a commercial basis and are not an extension of states.[114] It is therefore an illusion to assume that states are able to fully determine the composition of the energy mix through policy measures and to unilaterally resolve the carbon lock-in effect caused by the market. This requires corporate action, which governments started to call for many years ago.

90 The action that is really necessary – reducing the supply of fossil fuels, scaling up the offer of sustainable products and, by extension, steering demand towards sustainable alternatives – will therefore really have to come from the important companies that co-determine the energy system and the global energy mix, such as Shell.

III.4 A reduction order is wider than a restriction of the sale of oil and gas produced by third parties

91 Shell's fourth key defence is that it could simply comply with a reduction injunction by reducing its sales of oil and gas produced by third parties (via Shell Trading), without reducing its own oil and gas production. To this defence, Shell then links its effectiveness defence: if the sales by Shell of oil and gas produced by third parties decrease, other oil and gas companies will step in to fill the gap. As a result, global emissions will not be reduced.[115] With this defence, Shell tries to create the impression that Milieudefensie et al. have only focused on such a restriction on sales all the time and have not pointed to any other modes of compliance.[116]

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112 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paras. 198, 431 and 436. See, in the same vein, the Written Explanatory Submission of M&M dated 22 May 2026, Sections 2.3, 2.4, 2.9 and 2.19.

113 See https://www.transport-online.nl/124808/zeker-vijf-tankers-verleggen-koers-van-rotterdam-naar-azie/.

114 Statement of Defence following Joinder of Milieudefensie et al. dated 10 October 2023, paragraphs 50 up to and including 66.

115 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 198, 325, 362, 386, 664, 666, 672, 673 and 682 up to and including 686. See, in the same vein, the Written Explanatory Submission of M&M dated 22 May 2026, para. 2.23.

116 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 424b, 710, 711 and 714.

92 What Shell, in essence, does with this argument is to elevate the modality of execution which Shell itself (wrongly, incidentally[117]) expects to be least effective to the only possible execution modality in the cassation proceedings and then argues that a reduction order is ineffective. In reality, Shell is not restricted in the way in which it is allowed to comply with the reduction iorder, provided it can reasonably be assumed that the reductions will be effective. Neither Milieudefensie et al., nor the Court determine what choices Shell should make. They merely find, on the basis of the objective points of reference and the 1.5°C reduction scenarios, that Shell has a reduction obligation. That is the position that Milieudefensie et al. have always taken. Shell kan comply with its reduction obligation in various ways. Shell could achieve this by solely reducing the production and sales of oil and gas, but also, for example, by reorienting its product range towards sustainable alternatives and – by extension – via a change on the demand side.[118]

93 Without wanting to bind Shell in any way to a specific execution modality, it is not very obvious in the meantime that Shell would choose to merely decrease its oil and gas sales – to the detriment of its own customer base – in order to comply with the reduction order. One would expect Shell to also examine which sustainable alternatives it can offer to its current and new customers in order to retain its customers and possibly even increase its market share. By extension, Shell will probably increasingly shift its capital flows towards sustainable alternatives. Its supply of fossil fuels will then decline and will be replaced, to that extent, by a supply of sustainable alternatives, whilst oil and gas sales remain possible within the limits of the reduction order.

94 This execution modality will further reduce the carbon lock-in effect that stands in the way of combating dangerous climate change. Moreover, this will make financiers more willing to invest in sustainable alternatives and to share the costs of this with Shell. That is precisely the flywheel effect that all reputable institutions expect when the private sector takes action.[119] This approach will lead to lower CO_2 emissions into the atmosphere. This applies even more strongly because this movement will also lead other oil and gas companies down that path, partly due to the threat of liability.

95 Shell itself has also been explicitly acknowledging for a very long time that – given its position, capital, technical capabilities and influence on both the supply and demand sides of the market – it can and must move away from fossil fuels and towards sustainable alternatives with its product range.[120] Shell can therefore embark on that sustainable path (again). That is not a matter of effectiveness, but a matter of willingness.

96 Building on its “reduction iorder as a sales restriction” argument, Shell makes a caricature of the Judgment of the Court of Appeal and leaves important parts of it undiscussed. After all, in the context of Shell’s influence on its Scope 3 emissions and its effectiveness

[117] See, in this regard, Sections II.4, II.6 and VI.2 of this Written Reply.
[118] See, for example, the Statement of Defence on Appeal of Milieudefensie et al. dated 18 October 2022, paras. 124, 349, 410 and 462. See also the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 862 and 1208 up to and incluing 1212.
[119] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections II.2.3 and VII.5.1.
[120] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 844 up to and including 848. See also the Judgment of the Court of Appeal, grounds 3.25 and 3.26.

defence, the Court of Appeal has made a distinction between Shell's influence on the demand side and on the supply side of the oil and gas market.

(a) The demand side is addressed in grounds 7.97 up to and including 7.99. These considerations therefore *also* encompass Shell's influence in shifting the demand of its customers from fossil fuels to sustainable alternatives by providing such alternatives. In that context, the Court of Appeal rightly found in ground 7.99 – a finding that was not challenged in the cassation proceedings – that Shell has influence on the demand side. So in the view of the Court of Appeal, too, that mode of compliance would therefore be effective.

(b) The supply side is discussed in grounds 7.100 up to and including 7.110. In those grounds, the Court of Appeal does *not* rule – as Shell keeps suggesting – that a reduction order is ineffective by definition because it *must* take the form of a sales restriction. What the Court of Appeal held is that Shell *could* comply with the reduction injunction by restricting its sales (or resales) via Shell Trading and that the effectiveness of that *potential* mode of compliance had not been established. In particular, grounds 7.102 (*"can be complied with"*) and 7.110 (*"can meet the obligation"*) leave no room for doubt about this. Furthermore, in ground 7.106, the Court of Appeal agreed with the District Court[121] – which Shell did not challenge in the cassation proceedings – that a production restriction could also be effective.

97 As a result, the Court of Appeal did certainly not rule that a reduction order necessarily entails a restriction of the sales of oil and gas produced by third parties, but merely regarded it as a possible mode of compliance in the context of the question of Article 3:303 DCC.[122] The point that Milieudefensie et al. are making in the proceedings before the Supreme Court is that, in this context, the Court of Appeal should not have limited its discussion to that possible mode of compliance, not least because the Court of Appeal itself acknowledged that there are other modes of compliance which *could* actually be effective. This is not altered by Shell's argument that Milieudefensie et al. have allowed Shell the freedom to determine how it will comply with the injunction sought.[123]

98 The contention that the halting of investments in oil and gas production will not reduce Shell's Scope 3 emissions[124] is also not true in light of the above. After all, if such investments are not made, less oil and gas will be produced, so that less oil and gas will be sold by Shell and (therefore) less CO_2 will be emitted. Such a production restriction could actually be effective, according to the Court of Appeal. This would only be different if Shell would compensate the lower sales of oil and gas produced by Shell itself by increasing its sale of oil and gas produced by third parties. That, however, is not permitted by the reduction order.

[121] Decision of the District Court, ground 4.4.50.
[122] See in detail the Written Explanatory submission of Milieudefensie et al. dated 22 May 2026, Sections VII.2.1 up to and including VII.2.4.
[123] Written Explanatory Submission of Shell dated 22 May 2026, para. 699a.
[124] Written Explanatory Submission of Shell dated 22 May 2026, pars. 711a and 747.

III.5 Shell's execution modality of the reduction order will determine its effects and the reduction order incorporates societal interests

99 Whilst Shell's fourth main defence still argued that a reduction order cannot have any effect whatsoever on a global scale, Shell tries to instil fear in this Court with its fifth main defence, which is inconsistent with its fourth defence. Shell does so by suggesting that the impact of a reduction order on the availability of oil and gas will be such that the energy security, the functioning of the harder-to-abate sectors and various societal and security interests – particularly also those of developing countries – will be placed at risk. To this end, Shells refers to, amongst other things, the market effects of the Ukraine crisis and the closure of the Strait of Hormuz.[125]

100 This account also distorts reality. First of all, it suggests that oil and gas would suddenly vanish from the energy system in one fell swoop following a reduction order. That is simply not true. Partly due to the interests involved in the energy transition, it would concern a gradual phase-out to reach net zero by 2050, with an intermediate step in 2030. The use of oil and gas will therefore continue to be possible.[126] It is only by 2050 that net zero must have been reached. So even at that point in time, the use of oil and gas will remain possible, provided such use is compensated for with effective measures. Shell, incidentally, also believes that not only global CO_2 emissions, but also its own CO_2 emissions must be net zero by 2050.[127] A gradual phase-out of oil and gas is therefore also necessary according to Shell. In this connection, a CO_2 emission eduction for 2030 is a necessary intermediate target. This is recognised by, for instance, the UN climate regime, soft-law sources and climate science.[128] The feasibility of the reductions required in this regard and their benefits for energy security and other societal interests have long been recognised by the relevant renowned institutions.[129] Moreover, the consequences of a reduction order are not in any way comparable to the market effects of crises such as the Ukraine crisis and the closure of the Strait of Hormuz.[130]

101 Furthermore, Shell *itself* will determine how it will comply with the reduction order issued against it, in the same way as Shell, in general, determines itself how it operates as a commercial enterprise within the boundaries of the law. This is where its argument is crucially flawed. Firstly, Shell is assuming that it will comply with the order by, for example, ceasing to serve the harder-to-abate sectors or by restricting the supply of kerosene to Schiphol or to NATO bases. It then argues that such consequences are unacceptable. In reality, Shell will, of course, always continue to prefer sectors that are prepared to pay the highest prices for oil and gas, including the sectors that find it more difficult to become sustainable or that are relevant in connection with the protection of security interests. It

[125] Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 29 up to and including 34, 159, 262, 263, 280, 377, 378, 384 up to and including 388, 436 and 519.
[126] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 626, 747c, 806, 1008, 1039 and 1399.
[127] After all, it endorses the objectives of the Paris Agreement. See, for example, Shell's Statement of Defence on Appeal dated 7 November 2025, paras. 4 and 5. See also the Judgment of the Court of Appeal, grounds 3.34 and 3.45.
[128] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections II.2.4 and III.1.2.
[129] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections III.3 and VI.4.3. See also the Notes of the Oral Arguments of Milieudefensie et al. dated 22 May 2026, Sections IV.2 and IV.3.
[130] See the Statement of Defence on Appeal following Joinder of Milieudefensie et al. dated 10 October 2023, paragraphs 26 up to and including 33.

is likely that Shell will first focus on the much larger part of the market and of its customer portfolio that actually *can* easily manage with less oil and gas. The harder-to-abate sectors account for only a limited part of Shell's customer base and therefore do not stand in the way of this.[131]

102 In this context, it is important to note that even the harder-to-abate sectors can be made more sustainable. These are not impossible-to-abate sectors. The efforts required to increase their sustainability are simply greater than for other sectors. In this light, the NZE Scenario also shows that the industrial, transportion and real estate sectors can achieve CO_2 reductions of 20%, 25% and 40% respectively by 2030.[132] These are still substantial reduction percentages.

103 Incidentally, Shell never backs up its scare stories with concrete numbers . A glance at the available numbers makes clear why. The total emissions from the *entire* European military apparatus, for example, amount to just 25 Mt,[133] whilst total EU emissions stand at 2.9 Gt.[134] So it concerns less than 1% of the total European CO_2 emissions. Shell can therefore also continue to supply the entire European military apparatus without any problems.

104 Furthermore, Shell has not presented any source showing that climate action should be scaled back due to security concerns. The report No Fuel, No Fight by the Hague Centre for Strategic Studies cited by Shell does also not show this.[135] This report, which was commissioned by the fossil-fuel lobby group VEMOBIN,[136] sets out five recommendations on the final page for improved strategic access to fuels in the event of a conflict.[137] None of these recommendations concerns a slowing down of climate action or of the energy transition.

105 Also, Shell is remaining silent about the fact that climate change is actually posing a real and growing risk to military security. This is widely recognised by international security experts, including the International Military Council on Climate and Security and the UK's Joint Intelligence Committee.[138] In its Climate Strategy, the Dutch Ministry of Defence has also recently emphasised the major security risks of climate change.[139] In this context, the Ministry also highlighted the significant opportunities that moving away from fossil fuels will offer to the defence apparatus in terms of (among other things) independence and combat effectiveness.[140]

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131 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 1007 up to and including 1013.
132 Judgment of the Court of Appeal, ground 7.76.
133 See https://ceobs.org/the-eu-military-sectors-carbon-footprint/.
134 See https://www.eea.europa.eu/en/analysis/indicators/total-greenhouse-gas-emission-trends.
135 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 31, 262, 377 and 435b.
136 VEMOBIN was previously named "Vereniging Nederlandse Petroleum Industrie" (Dutch Petroleum Industry Association). The President Director of Shell Netherlands is a member of the board. See https://vemobin.nl/over-ons/#board-section.
137 See https://hcss.nl/wp-content/uploads/2026/05/No-Fuel-No-Fight-HCSS-2026.pdf, pp. 40 up to and including 42.
138 Written Explanatory submission of Milieudefensie et al. dated 22 May 2026, para. 26. See also the Statement of Defence on Appeal of Milieudefensie et al. dated 18 October 2022, paras. 618 and 619.
139 See https://www.tweedekamer.nl/downloads/document?id=2026D35375, pp. 14 up to and including 17.
140 See https://www.tweedekamer.nl/downloads/document?id=2026D35375, pp. 27 and 28.

106 Finally, Shell is suggesting that Dutch businesses would experience negative effects from a reduction order and that companies might even have to downsize as a result[141]. In the letter to the Dutch Parliament dated 6 December 2021, the Dutch Minister of Economic Affairs and Climate Policy in fact indicated, in response to the Decision, that independent climate action by companies will be beneficial to the competitive position of Ducth businesses.[142] The EU also takes the position that sustainable entrepreneurship is necessary for innovative capacity, productivity, the growth potential and the resilience of individual companies and the European economy as such. This also applies to the competitve position in the long term.[143] Therefore the energy transition will not lead to downsizing, but to more sustainable business practices. Only the supply of fossil fuels will necessarily shrink.

107 These examples show why Shell's lack of substantiation keeps appealing to unrealistic fears, whilst the very realistic fear of the consequences of climate change is ignored. It is also telling in this context that not a single sector or party presented by Shell has ever suggested that a reduction obligation for Shell would put their interests at risk in any way. If they had genuinely believed that a reduction order would affect societal or security interests, they would, of course, have made this clear after the District Court delivered its judgment. That has not happened.[144]

108 Furthermore, it is ironic that Shell points to the position of developing countries as a reason for not having to reduce its emissions. It is also with a view to their own interests that the developing countries support the fact that binding climate obligations will cause the supply of fossil fuels to be replaced by sustainable alternatives as quickly as possible. The UN resolution in which the ICJ's Advisory Opinion was accepted as binding international law was endorsed and welcomed to the largest possible extent by the developing countries.[145] The same applies to the recent summit in Colombia on the need to phase out fossil fuels. A large group of developing countries has also been the driving force behind this.[146] This, in turn, is consistent with what the UN Sustainable Development Goals (SDGs) provide, which have also been endorsed by the developing countries.[147]

109 The fear Shell is spreading is also unfounded in other respects. Liability law already takes societal and public interests into account, both when the level of the reduction percentage is determined via Article 6:168 DCC and via the justification ground of Article 6:162 DCC.

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[141] Written Explanatory Submission of Shell dated 22 May 2026, paras. 75, 117, 360 and 448.
[142] Exhibit MD-341 (Letter from the Minister to the Dutch Lower House regarding the "Analysis of the Shell Decision" dated 6 December 2021), p. 4. See, in this connection, the Written Explanatory Submision of Milieudefensie et al. Dated 22 May 2026, paras. 682 and 741, and also para. 52 of this Written Reply.
[143] See the Impact Assessment for the CSDDD dated 23 February 2022, COM(2022) 71 final – SWD(2022) 42 final, part 1/2, pp. 8 and 11 with an elaboration in paras. 2.1.2, pp 1 up to and including 14 and pp. 60 up to and including 62.
[144] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 741.
[145] Resolution A/RES/80/263 of the UN General Assembly dated 20 May 2026. The votes against the resolution came mainly from Russia, Saudi Arabia, the United States and Iran.
[146] The participating countries were Angola, Australia, Bangladesh, Belgium, Brazil, Cambodia, Canada, Chile, Costa Rica, Denmark, the Dominican Republic, Germany, Fiji, the Philippines, Finland, France, Ghana, Guatemala, Ireland, Iceland, Italy, Jamaica, Cameroon, Kiribati, Luxembourg, the Maldives, the Marshall Islands, Mauritius, Mexico, Mongolia, the Netherlands, Nigeria, Norway, Austria, Palau, Panama, Papua New Guinea, Portugal, Senegal, Singapore, Slovenia, Spain, Sri Lanka, Trinidad and Tobago, Turkey, Tuvalu, Uruguay, Vanuatu, the United Kingdom, Tanzania, Vietnam, Sweden and Switzerland. The EU also took part. See https://transitionawayconference.com/participants.
[147] See, in this regard, the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section III.3.1.

If Shell actually demonstrates that such interests are at risk, then this can allowed for via these roads. Shell's unsubstantiated scaremongering cannot and must not lead to the automatic elimination of any reduction obligation when all objective points of reference actually indicate that such a reduction obligation exists and all relevant reputable institutions consider such an obligation to be necessary and feasible.[148]

III.6 The conduct of third parties is irrelevant to the effectiveness of a reduction order

110 To its key defence that a reduction order is ineffective[149], Shell adds a prediction as to how others will act in response to such an order. This is a necessary step in its substitution argument. Shell argues that other players, including the national oil companies of Saudi Arabia, Qatar and Russia in particular, will step into the gap that Shell would leave behind. According to Shell, the Court of Appeal rightly considered the conduct of others in its judgment.[150]

111 There is only room for this argument within the non-normative approach to this case advocated by Shell. In Sections II.4 up to and including II.6 of this Written Reply, it was already discussed that we may and must assume that the parties will comply with their obligations (under national and international law). The effectiveness of a reduction obligation must be assessed within that broad normative framework. In line with this, the Supreme Court has rejected the consideration of potential non-normative conduct of third parties with good reason, in its *Pirate* Bay judgment in general and in its *Urgenda* judgment in particular, for the collective problem posed by climate change.[151] In that latter judgment, the Supreme Court held (among other things) that *"no reduction (…) is negligible*" and that everyone is obliged *to "do its* part".[152] Each party must focus on its own capabilities and obligations. It is impossible to see why this should suddenly be any different for Shell's obligations.

IV SHELL HAS A DUTY OF CARE TO PREVENT OR MITIGATE DANGEROUS CLIMATE CHANGE

112 In the following Chapters IV up to and including VII of this Written Reply, Milieudefensie et al. will provide a response, for every subject individually, to a number of more specific points from the Written Explanatory Submissions of Shell and M&M which were not (fully) covered by the preceding chapters.

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[148] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 751 up to and including 758, 807, 1368d, 1378, 1390, 1414 and 1422.

[149] See, in this regard, Section III.4 of this Written Reply.

[150] See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 677 up to and including 680, 683 up to and including 689, 700 up to and including 715, 737 and 738.

[151] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section VII.3.

[152] Judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), grounds 5.7.1, 5.7.8 and 8.3.4. See also the Written Explanatory Submission of Shell dated 22 May 2026, para. 333.

IV.1 Duty of care for Shell and EU law

IV.1.1 EU policies permit the duty of care for Shell

113 In support of its argument that EU policies preclude the duty of care established by the Court of Appeal, Shell is referring to various EU measures.[153] A large part of these measures is not mentioned in the complaints in ground no. 1 of Shell's conditional cross-appeal in cassation. It is not possible to expand these complaints in a Written Explanatory Submission in cassation. Furthermore, a large part of these measures are merely proposed, upcoming or non-legislative in nature.[154] It is not clear how these measures could in that case conflict with a national duty of care to reduce CO_2 emissions.

114 Furthermore, these measures do not constitute a coordinated climate framework or coherent whole, but rather a patchwork of sector-specific (potential) measures that are related – directly or indirectly – to the climate in some way. This is also evident from the fact that these measures have different legal foundations.[155] As Milieudefensie et al. have explained in their Written Explanatory Submission,[156] all relevant EU instruments start out from minimum harmonisation and do not affect the analysis set out in the Impact Assessment – namely that EU policies are insufficiently effective in themselves and have led to a market failure and a regulatory failure. It is precisely in that light that EU policies permit the duty of care for Shell.

115 What is also not true, as Shell is also arguing[157], is that a duty of care to reduce CO_2 emissions conflicts with all five "pillars" of the Energy Union, which means, according to Shell, that EU policies do not permit such a duty for that reason. Not to mentionthe fact that Shell is basing the alleged conflict of its duty of care with those pillars on selective quotes taken out of context from the recitals of the Governance Regulation,[158] which also starts out from minimum harmonisation, the pillars highlighted by Shell are, in reality, "dimensions" which jointly constitute a general policy framework within which policies are formulated by the EU.[159] This also applies to the integration principle referred to by M&M.[160] These policies serve to fulfill the EU's own climate obligations.[161] This bears no relation to a national duty of care to prevent or mitigate dangerous climate change. Such an obligation cannot, therefore, be tested against those dimensions or that principle. It is also not possible to infer from these dimensions or that principle that EU policies preclude such an obligation in a general sense.

116 For that matter, the vast majority of Shell's CO_2 emissions (approximately 83.4%) occur outside the EU. These emissions are not covered by EU law.[162] Furthermore, Shell does

[153] Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 38 up to and including 45, 234 up to and including 247, 255, 256, 346 and 671c. See also the Written Explanatory Submission of M&M dated 22 May 2026, paragraph 2.18.
[154] Written Explanatory Submission of Shell dated 22 May 2026, p. 27 (illustration).
[155] Written Explanatory Submission of Shell dated 22 May 2026, para. 244.
[156] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections V.6.2 and V.6.3.
[157] Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 41 and 252.
[158] Regulation (EU) 2018/1899 of 11 December 2018 on the Governance of the Energy Union and Climate Action.
[159] Article 1(2) of the Governance Regulation. See also the Governance Regulation, preamble (para. 2).
[160] Written Explanatory Submission notes of M&M dated 22 May 2026, Section 2.9.
[161] Article 1(1) of the Governance Regulation. See also the Governance Regulation, recitals (para. 1).
[162] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 554, 701 and 719.

not cite any legislation from outside the EU that would preclude a duty of care to reduce CO_2 emissions for that part of its CO_2 emissions. The fact that (conversely) approximately 16.6% of Shell's CO_2 emissions occur within the EU already puts the relevance of EU law into perspective to a significant degree in this case.

117 The above is not altered by the fact that, according to the European Commission, EU law is Paris-proof[163]. That is not a matter to be decided by the Supreme Court in this case, but it may be doubted.[164] Moreover, all the CO_2 reductions mentioned by Shell which the EU has allegedly already achieved[165] are greenhouse gases and use 1990 as the base year. So relative to 2019, those percentages are much lower for CO_2.[166] This is quite apart from the fact that, as M&M argues, part of the EU's emission reductions is neutralised by the emissions associated with EU imports.[167] If Shell achieves CO_2 reductions simply by complying with EU policies, this would only help Shell to fulfil its duty of care.

118 Shell is trying to circumvent this limited relevance of EU law in its Written Explanatory Submission. To that end, it argues that a national duty of care regarding CO_2 emissions occurring outside the EU still undermines EU law, for example by affecting the level playing field in the European market.[168] That argument cannot be accepted as being valid. The connection between a national duty of care regarding CO_2 emissions occurring outside the EU and EU law is too remote. Such a duty essentially has nothing to do with EU law anymore. The consequence of Shell's view would be that all foreign rules that might have even the slightest effect on what parties within the EU can do would be in breach of EU law. With this view, Shell is giving too much effect to EU law; as a result, this can also not be a reason for dismissing the relief sought by Milieudefensie et al. due to a breach of EU law.

IV.1.2 The duty of care does not interfere with specific EU rules

119 In its Written Explanatory Submission, Shell (once again) argues[169] that a duty of care to reduce CO_2 emissions would interfere with EU law.[170] Milieudefensie et al. have already addressed the falsenss of that argument in their Written Explanatory Submission. They have also described the relevant assessment framework there.[171] Again, Shell's Written Explanatory Submission fails to provide an assessment framework. It merely cites a number of arbitrary circumstances, such as the nature of the relief sought,[172] which do not belong there. From this alone it follwes that there can no question of the intereference referred to by Shell.

163 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 45, 245 and 246.
164 Written Explanatory Submission of Milieudefensie et al. Dated 22 May 2026, footnote 998.
165 Written Explanatory Submission of Shell dated 22 May 2026, paras. 40, 42, 235 and 671c.
166 See the Response to the questions of the Court of Appeal of Milieudefensie et al. dated 12 April 2024, p. 27.
167 Written Explanatory Submission of M&M dated 22 May 2026, footnote 8 and Annex 3.
168 Written Explanatory Submission of Shell dated 22 May 2026, para. 258.
169 Statement of Defence on Appeal of Shell dated 7 November 2025, paragraphs 28(i) up to and including (v), 31 up to and including 33, 43 up to and including 48, 51 up to and including 53, 55 up to and including 62 and 66 up to and including 68.
170 Written Explanatory Submission of Shell dated 22 May 2026, paras. 248 up to and including 267.
171 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section V.6.7.
172 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 256 and 257.

120 Whether an emission reduction obligation interferes with EU law must always be determined at the level of a specific provision from a specific instrument.[173] The CJEU case law cited by Shell underlines this.[174] In all those cases, the CJEU ruled at the level of a provision within a specific EU instrument on the question whether a national rule was or was not compatible with it. In this case, Shell has not submitted anything about the incompatibility of its duty of care with specific provisions of specific instruments. It has each time confined itself to the general argument that EU law is being interfered with, without addressing the question on which point exactly such interference occurs. As a result, Shell is overlooking the nature and substance of the interference test.

IV.1.3 The deletion of Article 22 CSDDD does not stem from a reassessment of the balance of interests

121 In the view of Shell and M&M, the climate obligations of Article 22 CSDDD were removed from the CSDDD via Omnibus, because the EU considered these obligations to be too far-reaching in light of other interests. In other words, a reassessment of the balance of interests allegedly took place.[175] That is not true. The obligations in question were lobbied out.[176] It was partly in this light that the European Ombudsman also levelled strong criticism at the way in which Omnibus was adopted.[177] Therefore the deletion of Article 22 CSDDD does not allow for the inference that EU policies (now) oppose a duty of care on the part of Shell. The situation that existed, according to the Impact Assessment, prior to the introduction of the CSDDD – namely that EU climate policies and the accompanying measures do not preclude a national CO_2emission reduction obligation and even require such an obligation – continues to exist in full.[178] Both before and after Omnibus, the CSDDD does not affect national liability law.[179]

IV.2 The duty of care of Shell and unwritten law

IV.2.1 National legislation allows a duty of care of Shell

122 According to Shell, the Dutch National Energy System Plan, the Dutch Climate Agreement and the Dutch Sector Agreement on Gas Extraction in the Energy Transition oppose the duty of care of Shell as established by the Court of Appeal.[180] In this context, M&M is also referring to the National Energy System Plan and to an opinion issued by the Social and Economic Council of the Netherlands (**SER**).[181] These sources, which, incidentally, differ from the sources cited by Shell in its complaints in ground no. 2.1 of its conditional cross-appeal,[182] do not constitute legislation. They are all policy

[173] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 643 up to and including 648.
[174] Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 251a and 252a up to and including 252c.
[175] Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 246 and 270a; Written Explanatory Submission of M&M dated 22 May 2026, Section 2.10.
[176] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 140 up to and including 143.
[177] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 592, with reference to the Recommendation, available at https://www.ombudsman.europa.eu/en/recommendation/en/215920.
[178] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 593 up to and including 595, with reference to paragraphs 582 up to and including 586.
[179] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 590 and 595.
[180] Written Explanatory Submissio of Shell dated 22 May 2026, paragraphs 46 up to and including 48.
[181] Written Explanatory Submission of M&M dated 22 May 2026, Sections 1.3, 3.4 and 3.5.
[182] Statement of Defence on Appeal of Shell dated 7 November 2025, paragraphs 81 up to and including 87.

instruments. The SER opinion cited by M&M cannot even be characterised as a policy. These sources do also not preclude the acceptance of a CO_2 reduction obligation. The fact that Milieudefensie et al. may have played a role in the conclusion of the Climate Agreement[183] is entirely unrelated to this.

123 It is also not possible, of course, to infer from the CO_2 reductions already achieved in the Netherlands, as mentioned by Shell, that a duty of care relating to global CO_2 emissions cannot exist.[184] Those CO_2 reductions, incidentally, are less impressive than Shell is making them out to be. The percentages cited relate in part to greenhouse gases other than CO_2 and use 1990 as the reference year. So relative to 2019, those percentages for CO_2 are much lower.[185] Moreover, after the *Urgenda* target was narrowly met in 2020, Dutch greenhouse gas emissions have remained stable in recent years. Dutch CO_2 emissions have even risen again recently.[186] In light of this, the Netherlands Environmental Assessment Agency considers it "highly unlikely" that the Netherlands will meet its interim climate target for 2030.[187]

IV.2.2 The legislature has not deliberately refrained from creating a corporate reduction obligation

124 Contrary to what Shell is arguing again in its Written Explanatory Submission,[188] there is no evidence whatsoever that the Dutch legislature intended to prevent courts from determining reduction obligations based on private law for individual companies. The Dutch legislature has also not deliberately refrained from creating them.[189] The absence of an explicit reduction obligation for individual companies in national legislation does not indicate either that the Dutch legislature does not wish companies to have a duty of care or is even actively blocking it, as Shell is further suggesting.[190] Its argument is, essentially, again based on a hodgepodge of disparate and non-representative sources and quotes taken out of context. Milieudefensie et al. have already explained this in their Written Explanatory Submission.[191]

125 The reason why governments have not yet adopted reduction obligations for individual companies cannot be viewed in isolation from the governance gap. Although Shell for the first time argued, without any substantiation, in its oral rejoinder in the cassation proceedings that the governance gap does not exist, its existence is well-established

183 Written Explanatory Submission of Shell dated 22 May 2026, para. 47.
184 Written Explanatory Submission of Shell dated 22 May 2026, para. 49.
185 See the Response to the questions of the Court of Appeal of Milieudefensie et al. dated 12 April 2024, p. 27.
186 See https://www.cbs.nl/nl-nl/dossier/dossier-broeikasgassen/hoe-groot-is-onze-broeikasgasuitstoot-wat-is-het-doel-.
187 Decision of the District Court of the Hague of 28 January 2026, ECLI:NL:RBDHA:2026:1344 (*Bonaire*), grounds 6.6 and 11.14.1. See https://www.pbl.nl/actueel/nieuws/kans-op-halen-klimaatdoel-2030-heel-erg-klein-stevig-structureel-extra-beleid-nodig.
188 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 364 up to and including 374, 381, 453 and 671c. Shell had previously raised this argument in its Statement of Defence in the cassation proceedings dated 7 November 2025, paragraphs 81 up to and including 87 and 221 up to and including 224.
189 Courts do, however, regard this as a requirement. See, for example, Exhibit MD-570A (Supreme Court of New Zealand, 7 February 2024, SC 149/2021 [2024] NZSC 5 (*Smith/Fonterra*)), paras. 98 and 101. See also the Opening Arguments on Appeal (Part 1) of Milieudefensie et al. dated 2 April 2024, paras. 69 up to and including 74.
190 Written Explanatory Submission of Shell dated 22 May 2026, paras. 365 up to and including 368.
191 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 739 up to and including 748 and 1393.

within the scientific community.[192] Its existence is, incidentally, confirmed by Shell's contention that Milieudefensie et al. cannot confine themselves to suing its policy-making top holding, but should have issued a writ of summons against all 1,100 separate entities within the Shell group, which are, moreover, spread across 70 countries.[193] This illustrates how Shell time and again tries to evade a commercially undesirable obligation by making use of its multinational character.[194]

IV.2.3 The horizontal application of human rights underpins the duty of care

126 According to Shell, human rights can only have *indirect* horizontal effect if the requirements for the *direct* effect of human rights from the Dutch *Rookverbod* judgment are met. Otherwise, in Shell's view, those requirements could simply be circumvented.[195] That argument reflects a misconception of the doctrine of the indirect horizontal effect of human rights. Based on that doctrine, values protected by human rights may be considered in the balancing exercise to be performed under Article 6:162 DCC. It concerns interests that must be take into consideration within that standard. Human rights are therefore not *directly applied* to a private party. This means that the outcome achieved is not automatically the same as in cases where human rights have direct effect, as Shell would have us believe.[196] As a result, no margin of appreciation applies either.[197] This doctrine directed at states is entirely separate from the consideration of values protected by human rights within Article 6:162 DCC.

127 The *Fliegenschnee* judgment of the ECtHR cited by Shell[198] – which is merely a decision on standing – does not oppose the role played by Articles 2 and 8 ECHR within Shell's duty of care either. The fact that the ECtHR found in that judgment that Article 8 ECHR "*cannot be read to guarantee a right to a particular mitigation measure"* does not confer a right to a specific mitigation measure[199] is rather obvious, given the margin of appreciation afforded to states.[200] In that context, the ECtHR had already ruled in its *KlimaSeniorinnen* judgment that states are afforded a *wide* margin of appreciation to take specific mitigation measures to achieve their national reduction targets.[201] By contrast, when it comes to *setting* their reduction targets, states only have a limited margin of appreciation.[202] Naturally, all the above says nothing about what a system player such

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192 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section II.2.5. See also the Notes of the Oral Arguments of Milieudefensie et al. dated 22 May 2026, paragraphs 19 up to and including 21 and 77 up to and including 95.

193 Written Explanatory Submission of Shell dated 22 May 2026, para. 311, an argument which the District Court and the Court of Appeal rightly rejected. See also, in this regard, the judgment of the Supreme Court of 24 November 1989, *NJ* 1992, 404 (*Interlas/Lincoln*).

194 For specific examples, see the Opening Arguments on Appeal (Part 1) of Milieudefensie et al. dated 2 April 2024, paras. 32 up to and including 34; Notes of the Oral Arguments (1) in the First Instance of Milieudefensie et al. dated 1 December 2020, paras. 112 up to and including 123.

195 Written Explanatory Submission of Shell dated 22 May 2026, paras. 204 and 548.

196 Written Explanatory Submission of Shell dated 22 May 2026, para. 204.

197 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 187 up to and including 191 and 203; Written Explanatory Submission of M&M dated 22 May 2026, Section 2.13.

198 ECHR 18 November 2025, no. 40054/23 (*Fliegenschnee/Austria*).

199 Written Explanatory Submission of Shell dated 22 May 2026, paras. 7, 188, 203 and 223.

200 The fact that Article 8 ECHR cannot be read to guarantee a right to a particular mitigation measure does not, however, mean that specific mitigation measures are categorically ruled out. There is simply a wider margin of appreciation. If a specific mitigation measure is necessary to provide effective protection, such a measure would also be admissible.

201 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 764 up to and including 766.

202 See also the judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), ground

as Shell must or must not do to combat dangerous climate change. It also says nothing about the assessment standards to be used by national courts in this connection.

IV.3 The duty of care of Shell and Scope 3 emissions

IV.3.1 Shell is not being held accountable for the conduct of end-users

128 As a counterargument to the existence of a duty of care in relation to Scope 3 emissions, Shell is arguing that such a duty would essentially amount to an attribution of the conduct of end users to Shell itself.[203] M&M also takes this view.[204] This is not true. With regard to its Scope 3 emissions, too, the obligation concerns Shell's own conduct. This independent obligation relates solely to its own actions. After all, contrary to what Shell is suggesting,[205] Shell has full control over the CO_2 emissions associated with its products, in particular because Shell determines which products it will offer for sale to users.[206] It is therefore the direct source of its own Scope 3 emissions.[207] Any actions of end users are not a constitutive element here. This means there is no question – not even in fact – of any strict liability or partial responsibility of Shell for the conduct of third parties.[208]

IV.3.2 The reduction obligation for Scope 3 emissions is not conceptually flawed

129 In its Written Explanatory Submission, Shell frequently takes the view that a CO_2 emission reduction obligation for Scope 3 emissions is conceptually flawed or even "fundamentally unsuitable". Shell bases this on the argument that there is no direct relationship between a CO_2 emission reduction reported by Shell and a reduction in the actual CO_2 emissions into the atmosphere.[209] This thought relies, amongst other things, on Shell's fundamentally incorrect key defences that (i) only Shell has a CO_2 reduction obligation and that others may continue to operate without any standard to adhere to, and (ii) a reduction order issued against Shell can be complied with by simply reducing the sale of oil and gas produced by third parties. This has already been addressed in Sections III.1 and III.4 of this Written Reply. The Scope 3 emissions reported by Shell are the atmospheric CO_2 emissions associated with its activities and products. Shell's Scope 3 emissions thus reflect its negative impact on the climate. If Shell is obliged to reduce its reported CO_2 emissions, it will reduce this negative impact on the climate and fulfil its share of the responsibility.[210]

130 Furthermore, it is important in this context that the global CO_2 emissions from fossil fuels must fall in order to be able to prevent or mitigate dangerous climate change. This applies in particular to CO_2 emissions caused by the use of oil and gas, as oil and gas jointly

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5.3.2.

203 Written Explanatory Submission of Shell dated 22 May 2026, para. 327.

204 Written Explanatory Submission of M&M dated 22 May 2026, Section 3.18.

205 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 329 up to and including 333, 677 and 717.

206 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 511, 512, 833 up to and including 853 and 857.

207 See the judgment of the *Tribunal Judiciaire de Paris*, 25 June 2026, No. RG 22/03403 (*Notre Affaire à Tous et others/TotalEnergies*).

208 Written Explanatory Submission of Shell dated 22 May 2026, paras. 327 and 333.

209 Written Explanatory Submission of Shell dated 22 May 2026, paras. 322 up to and including 325, 334, 437 up to and including 442, 605, 670, 711b and 717.

210 See also, in this regard, Section II.6 of this Written Reply.

account for 48% of the annual global CO_2 emissions.[211] This is not only recognised at institutional level, but is also evident from all relevant modelled reduction scenarios.[212] Contrary to what Shell wants,[213] there is simply no room left to keep the CO_2 associated with oil and gas at the same level or even to allow to increase them, not even in a scenario in which the use of coal is phased out first and, as a result, more gas will be used.[214]

131 To the extent that gas can be used as an alternative to coal, that has already been factored into the modelled reduction scenarios.[215] On balance, these scenarios still lead to significant reductions in gas use by 2030. The switch from coal to gas can therefore only take place with due observance of the reduction percentages required for gas. If every gas company were to do what Shell is now doing – namely, focusing in full on the growth of gas – the carbon budget would be seriously exceeded.[216] Shell will therefore have to reduce its gas emissions.

132 In this context, it should not be forgotten, for that matter, that Shell has a long period of time in which it can comply with its duty of care. This means Shell can achieve a reduction in its CO_2 emissions gradually and across its entire portfolio. Shell is not required, as it seems to be assuming, to reduce its CO_2 emissions in every facet of its business by a fixed percentage in absolute terms overnight.[217] This means that Shell will also have time and room to adapt its conduct and choices.

133 Finally, the fact that investmens in sustainable alternatives are accompanied by certain emissions is not relevant. This, too, has already been factored into the modelled reduction scenarios. This also applies, for example, to the emissions that are now still caused by the construction and transport of wind turbines.[218] As a result, a CO_2 emission reduction obligation for Scope 3 emissions is not counterproductive, as Shell would have us believe.[219] For this reason too, investing in the energy transition does not provide Shell with a defence for being allowed to emit *more* Scope 3 emissions and for not having to realise the required emission reductions for oil and gas.

IV.4 The Dutch electricity grid congestion does not preclude the duty of care

134 As a practical objection to the duty of care, Shell and M&M are also arguing that the Dutch electricity grid is at full capacity and that its expansion is only possible to a limited extent in the short term.[220]

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211 Written Explanatory Submssion of Milieudefensie et al. dated 22 May 2026, paragraphs 20, 183, 223b, 266, 493a, 762, 837, 932, 957, 965, 1003a and 1400.
212 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section VI.4.1.
213 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 437, 438 and 605.
214 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 160 up to and including 162.
215 See, for example, the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 985.
216 See the Notes of the Oral Arguments on Apeal (Part 4) of Milieudefensie et al. dated 4 April 2024, paras. 113 and 124; Opening Arguments (Part 2) of Milieudefensie et al. dated 2 April 2024, para. 84; Notes of the Oral Arguments (9) in the First Instance of Milieudefensie et al. dated 17 December 2020, para. 14.
217 See also, in this regard, Section III.5 of this Written Reply.
218 See, for example, the Notes of the Oral Argumetns on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, para. 82.
219 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 439, 440 and 711b.
220 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 26 up to and including 28, 435a and 435c; Written Explanatory Submission of M&M dated 22 May 2026, Sections 1.3, 2.5, 2.6 and 2.9.

135 In making this argument, Shell and M&M are overlooking the fact that neither the energy transition, nor Shell's reduction obligation are limited to the Netherlands. As already discussed in Section III.2 of this Written Reply, the IEA has established that the scaling up of electricity grids worldwide is almost in line with the speed required under the NZE Scenario. The fact that the Dutch electricity grid still continues to face capacity constraints does not mean that no duty of care to achieve global CO_2 reductions could be established for Shell.

136 Furthermore, electricity is not the only source of renewable energy that can serve as an alternative to fossil fuels. There are many more alternative energy sources. Moreover, the phasing out of fossil fuels must, in fact, go hand in hand with the scaling up of renewable energy. This scaling up is already taking place and will therefore result in an even larger and cheaper electricity grid in future.[221] Contrary to what M&M is suggesting,[222] the energy transition will also lead to less energy poverty in this way.[223]

IV.5 Cross-border effects do not affect the duty of care

137 Finally, Shell is arguing, with regard to the established duty of care, that such duty cannot exist in light of the cross-border effects it will have. This argument recurs in various forms in Shell's Written Explanatory Submission: by way of illustration, Milieudefensie et al. would like to mention the context of the level playing field,[224] energy security[225] and the free movement of trade.[226] However, Shell's core argument is, each time, that a national duty of care may not have any effects on other countries.

138 Apart from the fact that the actual (cross-border) effects of the duty of care imposed on Shell depend on how Shell will comply with it,[227] Dutch law does not preclude (potential) cross-border effects from a national measure. No such effects are created by the measure in question either. After all, Shell's actions are already having cross-border effects even without a reduction order. All that the duty of care achieves is that Shell's cross-border actions take place within the bounds of the law.

139 The cross-border effects of Shell's duty of care are a consequence of an increasingly globalised world, in which such effects are commonplace. This is all the more true in this case, given that Shell is a multinational company. So through its conduct and decisions, Shell is giving rise to cross-border effects almost by definition.[228] This also applies to its CO_2 emissions. Moreover, it is not uncommon for court rulings to have cross-border effects. For example, the *Kalimijnen* judgment of the Dutch Supreme Court – which also concerned a cross-border environmental issue – was not limited to the borders of the Netherlands either. The *Interlas* judgment also shows that cross-border effects of a

221 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections III.3.2 and III.3.3.
222 Written Explanatory Submission of M&M dated 22 May 2026, Sections 1.3, 2.4 and 2.9.
223 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section III.3.3.
224 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 258, 266b and 360.
225 See, for example, the Written Explanatory Submission dated 22 May 2026, paragraphs 107, 242 and 263.
226 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 277 up to and including 287.
227 See, in this regard, Section III.5 of this Written Reply.
228 See the Statement of Defence on Appeal of Milieudefensie et al. dated 18 October 2022, paragraphs 134 up to and including 138.

national judgment are permissible, particularly in the case of an unlawful act which is international in nature.[229] There is no reason why a duty of care of Shell would *not* be allowed to have cross-border effects in that case.

[229] Judgment of the Dutch Supreme Court if 24 November 1989, *NJ* 1992, 404 (*Interlas/Lincoln*), ground 4.2.4.

V SHELL'S DUTY OF CARE REQUIRES THE IMPOSITION OF A CONCRETE REDUCTION OBLIGATION

V.1 The modelled reduction scenarios are relevant to determining the reduction percentage

V.1.1 The variability of the reduction scenarios does not preclude a reduction obligation

140 Shell is arguing that the percentages calculated by the modelled reduction scenarios are variable, meaning that the Court of Appeal could not have arrived at a reduction percentage.[230] With this argument, Shell is overlooking the fact that the Court of Appeal merely found, in ground 7.91, that the NZE Scenario is variable. The background to these variations and the reasons why this variability is not problematic from a normative perspective have already been explained by Milieufdefensie et al. in great detail in their Written Explanatory Submission.[231]

141 What is also not true, as M&M is suggesting[232], is that the IPCC has recently withdrawn a modelled reduction scenario, from which it follows that the reduction percentages mentioned therein can or should not be achieved anymore. This withdrawn scenario (the RCP8.5 scenario) is not a reduction scenario, but merely describes the most extreme possible climate consequences if no climate action is taken. This scenario also has nothing to do with the present court case. After all, Milieudefensie et al. are not basing themselves on the consequences of the RCP8.5 scenario in these proceedings, but on the consequences of overshooting the 1.5°C threshold.

V.1.2 The back-calculation of the reduction scenarios does not preclude the reduction obligation

142 Shell is further arguing that the reduction percentages relative to 2019 as mentioned by Milieudefensie et al. cannot be found in any scientific report. Based on this, Shell concludes that the Court of Appeal could not have arrived at a reduction percentage.[233]

143 However, the reduction percentages from the modelled reduction scenarios have only been back-calculated with the base year 2019 to that year to allow the Court to judge the reduction injunction sought by Milieudefensie et al. The Court is, of course, also free to work with the reduction percentages prescribed by the scenarios themselves, without any back-calculation. This will not have much effect on the reduction percentage.[234]

144 Before the lower courts, Milieudefensie et al. have explained why a back-calculation of reduction percentages is appropriate and what the most scientifically sound approach is for this purpose.[235] What Milieudefensie et al. have done in these proceedings is (i)

230 Written Explanatory Submission of Shell dated 22 May 2026, paras. 568 and 570.
231 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 988 up to and including 997.
232 Written Explanatory Submission of M&M dated 22 May 2026, Section 2.11. See also the Notes of the Oral Arguments of M&M dated 22 May 2026, Section 2.13.
233 Written Explanatory Submission of Shell dated 22 May 2026, paras. 585, 586 and 589.
234 See, in this regard, the Notes of the Oral Argumetns on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, para. 51 (table).
235 Response to the questions of the Court of Appeal of Milieudefensie et al. dated 12 April 2024, pp. 35 up to and including 38; Notes of the Oral Arguments on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, paras. 52 up to and

provide insight into the reduction percentages as they directly follow from the various modelled reduction scenarios presented by Milieudefensie et al. (and which are not in dispute between the parties)[236] and (ii) provide insight into the precise method for the back-calculation of the reduction percentages to the reference year of the reduction order sought by them.

145 In essence, the used method boils down to the following. Based on the reduction percentage to be achieved in 2030 under the relevant modelled reduction scenario and the number of years lying between the reference year and the year 2030, a backcalculation is made to determine the average annual reduction required between the reference year and the year 2030. That annual percentage can then be applied to the period from 2019 up to and including 2030. In this way, the annual reduction effort to be made according to the discussed modelled reduction scenarios is extrapolated to the period from 2019 up to and including 2030.[237]

146 Whatever the case may be, it is irrelevant to your decision, as the Court of Appeal has left this debate about the accuracy of the calculated reduction percentages entirely open. So in the cassation proceedings, these percentages have a factual basis, at least hypothetically. A Court to which the case is remitted may need to consider this factual debate when it determines the concrete reduction percentage.

<u>V.1.3 The phase-out of coal comes at the expense of developing countries in the reduction scenarios and works in favour of the oil and gas industry.</u>

147 In Shell's view, the phase-out of coal in the IAM models is not mostly at the expense of the developing countries.[238] That is not right. As the UNEP and IEA have also established, the phase-out of coal in modelled reduction scenarios is not realistic for developing countries that are highly dependent on coals, such as China and South Africa.[239] The same applies to CO2 reductions in the country sectors. These reductions, too, are also attributed at the expense of the developing countries in particular in the IAM models. That is therefore what Milieudefensie et al. have also argued, as opposed to what Shell is starting out from.[240]

148 As a result, no relevance can be attached either to two reduction scenarios published by the IPCC which, according to Shell, proceed on the basis of much lower oil and gas

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including 55 and footnote 62.

[236] Written Explanatory Submission on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, paragraphs 12 and 19 (on the Tyndall Report), paragraphs 27 up to and including 31 (on the Hawkes Report), paragraphs 47 up to and including 49 (on the IISD Report, the Low Demand Scenario and the NZE Scenario) and the table in paragraph 51, which provides an overview of all the original reduction percentages and their original base years.

[237] Response to the questions of the Court of Appeal of Milieudefensie et al., dated 12 April 2024, pp. 35 up to and including 38; Notes of the Oral Arguments on Appeal (Part 4) of Milieudefensie et al., dated 4 April 2024, paras. 52 up to and including 55 and footnote 62.

[238] Written Explanatory Submission of Shell dated 22 May 2026, paras.541 and 542.

[239] Written Epxlanatory Submission of Shell dated 22 May 2026, paras. 222 up to and including 228. See also the Oral Arguments on Appeal (Part 3) of Milieudefensie et al. Dated 4 April 2024, paras. 15 up to and including 17; Motion in Reply to Motion commenting on Exhibits of Milieudefensie et al. dated 19 December 2023, paras. 56 up to and including 59.

[240] See, for instance, the Oral Arguments on Appeal (Part 3) of Milieudefensie et al. dated 4 April 2024, para. 39, footnote 33.

reductions that the Low Demand Scenario[241] relied on by Milieudefensie et al. Shell only relid on these scenarios in its Reply on the last hearing day in the appeal proceedings, meaning that Milieudefensie et al. have not been able to give a reaction hereto anymore. If they *had* had the opportunity to give a reaction, they would have explained that those reduction scenarios start out from reductions in the use of coal of 76% and 90% by 2030 respectively[242]. So these scenarios actually also proceed on the basis of a phase-out of coal that is unrealistic, as also established by the UNEP and the IEA. In fact, Milieudefensie et al. have mainly referred to the Low Demand Scenario to demonstrate that in IAM models high reductions of oil and gas (of 47% by 2030) are *also* realised[243].

V.2 Other aspects relevant to determining the reduction percentage

V.2.1 No scientific consensus on the reduction percentage for Shell is required

149 Contrary to what Shell and M&M are arguing,[244] Milieudefensie et al. have never contended that consensus on a specific reduction percentage for Shell exists or must be decisive within climate science. Therefore this requirement, which is also wrong in the view of M&M[245], could not be used by the Court of Appeal as a basis for its decision for that reason. On the contrary, what Milieudefensie et al. have each time argued is that the relevant modelled reduction scenarios must also be interpreted and used in light of the objective points of reference. This should be clear from the complaints set out in grounds nos. 3 and 4 of the principal appeal in cassation of Milieudefensie et al. based thereon and from the long list of references included in those complaints. In reality, the Court of Appeal probably (wrongly) derived that criterion (in an erroneous manner) from the *Urgenda* judgment, in which the Supreme Court, using the Common Ground method, looked for international normative consensus (so not for *scientific* consensus) on the minimum reduction percentage applicable to the Dutch State.[246]

150 Furthermore, the lack of consensus within climate science regarding a reduction percentage applicable to Shell *is* actually the fundamental ground on which the Court of Appeal based its dismissal of the claims brought by Milieudefensie et al. The different reading of the Judgment by Shell[247] is untenable. Grounds 7.67 and 7.111 leave no room for doubt on this point. Nowhere in the judgment can anything to the contrary be read.

V.2.2 The Common Ground method can also play a part in horizontal relationships

151 Shell is further arguing that the Common Ground method cannot be applied to ECHR rights with (indirect) horizontal effect and, in any event, does not point to a reduction

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[241] Written Explanatory Submission of Shell dated 22 May 2026, para 584.
[242] This follows from the AR6 Scenarios Database hosted by IIASA International Institute for Applied Systems Analysis, 2021: data.ece.iiasa.ac.at/ar6/, to which Shell refers in its Written Explanatory Submission dated 22 May 2026, para. 585 in the Speaking Notes on Appeal (hearing day no. 4 – Reply) of Shell dated 12 April 2024, para. 4.1.14.
[243] Written Explanatory Submission of Shell dated 22 May 2026, para. 977b. See als the Notes of the Oral Arguments on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, para. 47.
[244] Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 450 and 452; Written Explanatory Submission of M&M dated 22 May 2026, Section 3.9.
[245] Written Explanatory Submission of M&M dated 22 May 2026, Sections 2.8, 3.2, 3.3, 3.6, 3.7 and 3.9.
[246] Judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), ground 7.2.11.
[247] Written Explanatory Submission of Shell dated 22 May 2026, para. 451.

percentage for Shell.[248] It should first of all be noted that the Common Ground method concerns the interpretation of ECHR rights. As Articles 2 and 8 ECHR have (indirect) horizontal effect, that method also plays a part outside state contexts. After all, in the end, it is about the determination of what is required by Articles 2 and 8 ECHR. Also, it is generally accepted that this is a broad test in which all widely supported normative views are considered. Non-binding instruments may also be taken into consideration.[249] This broad test bears similarities with the assessment framework applicable under Dutch law.[250] So even if the relevant criterion were actually whether there is Common Ground regarding a reduction obligation for a company such as Shell, then that would actually have to be decided by reference to that broad method.

V.2.3 Effective protection is relevant to determining the reduction percentage

152 Articles 2 and 8 ECHR require that *effective protection* is afforded against dangerous climate change. Milieudefensie et al. have complained, for example in grounds nos. 1.25 up to and including 1.34 of their principal appeal in cassation, about the fact that the Court of Appeal *has* actually established a duty of care to reduce CO_2 emissions partly in view of Articles 2 and 8 ECHR, but has failed to set a reduction percentage in line with these Articles. These two things are incompatible, because in that case no effective protection is being afforded – indeed, in that case no protection at all is being afforded – against dangerous climate change.

153 Shell twists this argument and narrows it down into a reliance on effective legal protection under Article 13 ECHR and then builds a lengthy story on this, arguing that this legal protection can only be afforded by a state, that Shell is not a state body required to afford legal protection and that Shell has no control over its (Scope 3) emissions, whereas states do have such control.[251] This twisting of the argument completely fails to address the complaints of Milieudefensie et al. After all, the complaints are also concerned with *effective protection against dangerous climate change* guaranteed by Articles 2 and 8 ECHR. That aspect naturally also makes itself felt in the horizontal effect of Articles 2 and 8 ECHR. Shell's response contains no substantive defence on that point.

V.2.4 The role of general principles of law in determining the reduction percentage

154 Shell is reducing the precautionary principle, the principle of intergenerational justice and the CBDR principle relied on by Milieudefensie et al. to "points of view" from which no reduction percentage for Shell can be derived and which can not be used to correct or select modelled reduction scenarios either.[252]

155 It should first of all be noted that it is generally accepted that these principles, which are deeply embedded normatively, are binding and have an effect on climate obligations.

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[248] Written Explanatory Submssion of Shell dated 22 May 2026, paras. 177 up to and including 179 and 454 up to and including 459.
[249] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paragraphs 920 up to and including 928.
[250] Opinion of Procurator General Langemeijer and Advocate General Wissink prior to the judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), paras. 2.31 and 2.72.
[251] Written Explanatory Submission of Shell dated 22 May 2026, paras. 166 up to and including 176.
[252] Written Explanatory Submission of Shell dated 22 May 2026, paras. 474 up to and including 476, 478, 479, 482, 484, 485, 505 up to and including 507, 512, 513, 516, 517, 521 and 527.

They are not merely points of view. As a result, they also serve as objective points of reference of course. Milieudefensie et al. have already explained this at length. In that context, they have also explained that courts use these principles to find concrete reduction percentages and also to exclude reduction scenarios that, for example, rely too heavily on uncertain CDR technologies.[253] It is worth noting that the Court of Appeal applied this latter method in the *Urgenda* case, with the approval of the Supreme Court.[254] Shell's argument is therefore ignoring legal reality.

156 With the Court of Appeal's general reference to "equity" in grounds 7.81 and 7.93, Shell is also trying to maintain that the Court of Appeal *also* considered the principle of intergenerational justice in determining the reduction percentage.[255] In reality, that principle was simply forgotten by the Court of Appeal. It is not possible to infer from the judgment that when the Court of Appeal referred to "equity", it also had the principle of intergenerational justice in mind. Not even Shell does so. After all, earlier on in its Written Explanatory Submission, Shell itself also acknowledged that the Court of Appeal had the CBDR principle in mind when referring to "equity".[256]

157 By further suggesting that the Court of Appeal has adequately responded to the arguments of Milieudefensie et al. by merely mentioning equity and the CBDR principle, Shell is doing a disservice to their grounds of appeal.[257] Milieudefensie et al. are not complaining about the fact that the Court of Appeal forgot the CBDR principle, but are arguing that it failed to sufficiently respond to their detailed submissions concerning (among other things) what effect that principle has on the determination of the reduction percentage. As a result, these complaints are not lacking a factual basis either.

158 Finally, Shell has not provided a substantive response to the complaint by Milieudefensie et al. that, in ground 7.95, the Court of Appeal wrongly considered the precautionary principle to be entirely irrelevant to the determination of a reduction percentage.[258] M&M has not provided such a response either.[259] Milieudefensie et al. have already explained in detail why that principle *is* actually relevant for that purpose and how it contributes to the determination of a reduction percentage.[260] Moreover, the precautionary principle is not compatible with the scientific consensus requirement applied by the Court of Appeal. In a recent article, De Jong – in addition to the publications cited by Milieudefensie et al. in their Written Explantory Submission – reaches the same conclusion.[261]

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253 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections IV.5.3, V.4.3 and VI.3.7.
254 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections 383 up to and including 385.
255 Written Explanatory Submission of Shell dated 22 May 2026, paras. 486, 512, 513, 516 and 517.
256 Written Explanatory Submission of Shell dated 22 May 2026, para. 476.
257 Written Explanatory Submission of Shell dated 22 May 2026, para. 521.
258 Written Explanatory Submission of Shell dated 22 May 2026, paras. 479, 505 and 506.
259 Written Explanatory Submission of M&M dated 22 May 2026, para. 3.13.
260 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Sections IV.5.3.1 and VI.3.7, in particular paras. 371 up to and including 387 and 1062.
261 E.R. de Jong, "*Voorzorgperikelen in het civiele aansprakelijkheidsrecht*" (Precautionary issues in civil liability law) in: P. van Aardenne et al., "*Naar een betere verankering van het voorzorgsbeginsel?*" (Towards a better anchoring of the precautionary principle?), The Hague: Boom 2026, pp. 171 up to and including 176.

V.2.5 Soft law is relevant to determining the reduction percentage

159 Shell's argument regarding the relevance of soft law to determining its reduction obligation is, essentially, a flanking manouvre to circumvent Article 6:162 DCC and the objective points of reference. According to Shell, no meaning can be attached to these sources, as they are "voluntary initiatives" that are not binding. For the remainder, Shell keeps wanting to suggest that the initiatives are of dubious origin.[262]

160 The fact that soft law is non-binding goes without saying. That is why it is called soft law. However, this does not mean that soft-law sources cannot serve as objective points of reference. Indeed, this is widely accepted, including by the Dutch Supreme Court. After all, these sources reflect widely held views. It is also not required for this purpose that soft law specifically considers every imaginable interest[263] or provides for specific calculation methods for Shell.[264] Therefore the soft-law sources are not being independently elevated to legally binding sources either.[265] Moreover, these soft-law sources originate from reputable institutions.[266] Shell itself has also endorsed several of these sources.[267] The Court of Appeal should therefore have taken all these soft-law sources into account in determining the reduction percentage. It has failed to do so, as opposed to what Shell is now starting out from.[268]

161 Shell is also conveying the impression that the new 2023 version of the Oxford Report – which examines and collates various soft-law sources – implies that there is "little consensus" on what an individual company may be required to do in the context of climate targets.[269] This paints a misleading picture. The sentence referred to by Shell is a reference to an article that lists all manner of sources, including protocols on other subjects, such as how to deal with nature-based solutions or offsets. Logically, not all of these sources provide guidance for the setting of emission reduction targets based on modelled reduction scenarios; in many cases, that is not what these sources are about. All sources that do provide such guidance emphasise the need for alignment with the necessary global halving of emissions by 2030 or with an ambitious sectoral reduction pathway.[270]

162 Furthermore, the new version of the Oxford Report – and even the table pointed out by Shell – indicates a *"high level of convergence*" regarding the need for individual companies to base their reduction targets on the 1.5°C reduction scenarios, such as those of the IPCC or the IEA.[271] This conclusion is based on the most authoritative soft-law sources specifically highlighted by the Oxford Report, including the Race to Zero

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[262] Written Explanatory Submission of Shell dated 22 May 2026, paras. 489a, 491 up to and including 496, 597, 609 and 709.
[263] Written Explanatory Submission of Shell dated 22 May 2026, paras. 489a and 492.
[264] Written Explanatory Submission of Shell dated 22 May 2026, para. 495.
[265] Written Explanatory Submission of Shell dated 22 May 2026, para. 494.
[266] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section IV.5.4.
[267] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 367 and 539.
[268] Written Explanatory Submission of Shell dated 22 May 2026, para. 493.
[269] Written Explanatory Submission of Shell dated 22 May 2026, paras. 496 and 595.
[270] Exhibit MD-489 (Oxford Net Zero et al., Net Zero Stocktake 2023), p. 34: *"Those that specify a reduction pace (only 8/33) all recommend compliance with a global 50% reduction of emissions by 2030, or at least as ambitious as the minimum of the approved range of compatibility with the 1.5°C goal as appropriate for sectors*."
[271] Exhibit MD-489 (Oxford Net Zero et al., Net Zero Stocktake 2023), p. 32 (table and paragraph below the table).

Initiative, the Net Zero Guidelines and the UN Expert Report. In this context, the Report notes that the consensus on the need to move away from fossil fuels by NSAs has grown even further since the initial Oxford Report, and that there is a high degree of consensus that Scope 3 emissions must be taken into account when setting corporate reduction targets.[272] The new version of the Oxford Report is therefore even much clearer about the common direction of the soft-law sources and the obligations of a crucial player in the oil and gas industry such as Shell: Shell must make substantial reductions.

V.3 The Court of Appeal should have issued a concrete reduction order

V.3.1 The reduction order follows from Shell's duty of care

163 Shell is further arguing that Article 3:296 DCC did not require the Court of Appeal to issue an order in line with the duty of care established by the Court of Appeal. According to Shell, the Court of Appeal could not have established a concrete legal duty based on the modelled reduction scenarios. Consequently, according to Shell, it cannot be established that Shell is threatening to act unlawfully.[273]

164 What Shell is overlooking with this argument is that it follows from the circumstances that the Court of Appeal *did* actually establish that Shell has a reduction obligation that must be consistent with the binding 1.5°C target. Article 3:296 DCC requires the isssue of an injunction corresponds with that obligation. In every other case, this would go without saying. If a Court establishes that an open cellar hatch in a pub poses a hazard, it must also establish that the pub owner must take such effective measures as may reasonably expected of them. In that case, the Court will not simply throw up its hands because it cannot establish precisely which measures will provide sufficient protection in this situation. It is no different in this court case. If the Court establishes that Shell must reduce emissions in line with the 1.5°C target and must do *more* than most other companies, it must also determine or estimate the corresponding reduction percentage. Article 3:296 DCC prevents a claimant from being sent home completely unprotected.

165 Shell's contention that the Court of Appeal could not have established any threatening unlawful conduct is therefore also wrong. Nothing of the sort was actually found by the Court of Appeal either. After all, the fact that Shell must reduce its emissions in line with the 1.5°C target, according to the Court of Appeal, remains standing. The fact that the Court of Appeal threw up its hands because it wrongly required scientific consensus on the concrete precautionary measures does not, of course, mean that Shell is not threatening to breach the established standard. To continue the analogy with the cellar hatch: the cellar hatch that poses a danger is still open and no adequate safety measures are being put in place. That is unlawful and calls for the issue of an order. That also applies in this court case.[274]

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[272] Exhibit MD-489 (Oxford Net Zero et al., Net Zero Stocktake 2023), pp. 30 and 35. See also the Notes of the Oral Arguments on Appeal (Part 2) of Milieudefensie et al. dated 4 April 2024, para. 44.
[273] Written Explanatory Submission of Shell dated 22 May 2026, paras. 632 up to and including 640 and 650.
[274] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section VI.6.4.

V.3.2 The reduction order can provide for a minimum reduction percentage

166 Shell is also submitting that the Court of Appeal could not have set a minimum percentage based on, for example, the reduction percentages from the Hawkes Report (recalculated) either. According to Shell, Milieudefensie et al. have carried out that recalculation themselves. Looking for a minimum reduction percentage, according to Shell, is based on arbitrariness.[275]

167 That is not true. After all, the minimum level is formed by reduction percentages recalculated on the basis of the assumptions and methodology of Shell's own expert, because Hawkes had made errors. Milieudefensie et al. have not carried out this recalculation themselves. It was carried out by Prof. Rogelj, one of the world's most prominent climate scientists.[276] Two other prominent and independent climate scientists subsequently reviewed that recalculation and found it to be correct. This means that the recalculation is very soundly based in climate science.[277] However, this scenario provides relatively low reduction percentages for the oil and gas industry and requires excessively high efforts of all other sectors for the benefit of the oil and gas industry. It therefore represents the minimum level of reduction that may be required of Shell. So there is no question of any arbitrariness. In that light, the Court of Appeal should at least have tried to find a minimum level.[278]

V.4 A concrete reduction obligation concerns the current situation and is sufficiently flexible

168 Shell also keeps asserting that a percentage-based reduction obligation is static in nature and is therefore incompatible with the dynamic energy market and developments in society and the world. That, in turn, leads to the argument that Shell can therefore not be held to anything.[279]

169 On this point, too, the Supreme Court must not allow itself to be misled. By its very nature, every prospective injunction will involve uncertainties. For example, it is conceivable that the access road behind Sint Maarten airport is closed or rerouted, which would make the warning sign in the *Jetblast* judgment superfluous. Who knows, perhaps a sound and effective method of removing salt from the Rhine will be developed in the future, meaning that an injunction prohibiting salt discharges as issued in the *Kalimijnen* judgment is longer necessary. However, the fact that circumstances change can never lead to the conclusion that no reduction order can be issued *at this point in time*. After all, that order is based on the current circumstances, on the direction now indicated by the objective points of reference in that light and on sound scientific assumptions and the possibilities for achieving the binding 1.5°C target. Moreover, substantial oil and gas emission reductions are required in *every scenario.*

275 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 589, 591, 592 and 625.
276 Notes of the Oral Arguments on Appeal (Part 3) of Milieudefensie et al dated 4 April 2024, para. 29.
277 Written Explanatory Statement of Milieudefensie and others dated 22 May 2026, para. 974.
278 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 971 et seq.
279 Written Explanatory Submission of Shell dated 22 May 2026, paras. 77, 102, 424a, 568 and 706 up to and including 708.

170 The foregoing applies all the more strongly because Shell, when referring to the “dynamic energy market”, essentially means that – in a world where insufficient climate action is being taken – Shell must be free to increase its oil and gas production.[280] This conflicts with all the obligations that Shell has to contribute to the binding 1.5°C target and actually *necessitates* the issue of a reduction order. It is precisely the investments in oil and gas that will keep the energy system inflexible for many decades to come.[281]

171 Incidentally, Milieudefensie et al. have already set out that liability law also provides for a range of instruments to mitigate the effects of a court order if the defendant’s compliance with it actually threatens to cause problems in society. These instruments offer ample flexibility and offer a path that is far preferable to allowing Shell to continue unchecked along the path chosen by it.[282]

280 See also, in this regard, Section III.2 of this Written Reply.
281 See also, in this regard, Section II.4 of this Written Reply.
282 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section VI.7.

VI EFFECTIVENESS OF THE REDUCTION OBLIGATION

VI.1 Effectiveness of the reduction obligation and interest within the meaning of Article 3:303 DCC

VI.1.1 The assessment of the effectiveness hinges on the incorrect application of Article 3:303 DCC

172 Contrary to what Shell is suggesting,[283] the burden of pleading and the burden of proof regarding the existence of a sufficient interest within the meaning of Article 3:303 DCC rest, *in principle,* solely on the claimant and only if that interest is disputed or if the Court requests a clarification *ex officio*.[284] As a starting-point, however, a sufficient interest is presumed to exist.[285] Furthermore, this rule does not imply that the claimant must prove that the injunction sought by them *will have* a relevant effect.[286] That criterion does not follow from either the legislation or case law. The criterium is that a sought court order *can have* a relevant effect. So in the context of this court case, the requirement to be met is not that the order sought *will lead* to a reduction of the global CO_2 emissions into the atmosphere, but *can contribute* to such a reduction.[287] Milieudefensie et al. have also explained this in their Written Explanatory Submission.[288]

173 The foregoing is not altered by Shell's assertion that Milieudefensie et al. have formulated their statement of claim very broadly and should therefore have provided more detail regarding the effectiveness of the relief sought by them.[289] Quite apart from the fact that this assertion is incorrect, it is irrelevant in the present cassation proceedings. After all, the judgment of the Court of Appeal does not hinge on the application of the rules on the burden of pleading and the burden of proof or on other factual findings that are or are not in the cassation proceedings, as Shell is also arguing,[290] but on the application of an overly strict "Article 3:303 DCC" criterion. The wrought reinterpretation of the considerations of the Court of Appeal presented by Shell in its Written Explanatory Submission as the Court of Appeal's actual findings cannot remedy the incorrectness of the Court of Appeal's Judgment.[291]

VI.1.2 The indirect effects of the reduction obligation also constitute a sufficient interest

174 According to Shell, positive action by third parties in response to an injunction cannot constitute an interest within the meaning of Article 3:303 DCC for a claimant.[292] At the same time, Shell is arguing, in the context of its substitution defence, that negative actions by third parties in response to an injunction *can* remove the claimant's interest within the meaning of Article 3:303 DCC.[293] These two things cannot be true at the same time. In

[283] Written Explanatory Submission of Shell dated 22 May 2026, paras. 693 and 695.
[284] Judgment of the Dutch Supreme Court of 12 April 2019, ECLI:NL:HR:2019:590 (*Dexia*), ground 4.1.2.
[285] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 1162.
[286] Written Explanatory Submission of Shell dated 22 May 2026, paras. 692, 695 and 702.
[287] Written Explanatory Submission of Shell dated 22 May 2026, para. 671a.
[288] Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section VII.2.
[289] Written Explanatory Submission of Shell dated 22 May 2026, para. 696.
[290] Written Explanatory Submission of Shell dated 22 May 2026, para. 699.
[291] Written Explanatory Submission of Shell dated 22 May 2026, paras. 698 and 699.
[292] Written Explanatory Submission of Shell dated 22 May 2026, para. 750.
[293] Written Explanatory Submission of Shell dated 22 May 2026, paras. 701 and 702.

this way, Shell is trying to have it both ways. Either the actions of third parties are not relevant at all when the existence of a sufficient interest within the meaning of Article 3:303 DCC is considered (in which case ground no. 6.5 of the principal appeal in cassation of Milieudefensie et al. is succesful), or the actions of third parties *are* always relevant in this context (meaning that the complaints set out in ground no. 8 of the principal appeal in cassation of Milieudefensie et al. are successful).

175 Moreover, the assertion that Milieudefensie et al. did not complain about the Court of Appeal's finding that the effects alleged by Milieudefensie et al. are too far removed from Shell's conduct[294] is incorrect. Milieudefensie et al. are actually complaining about this finding in grounds nos. 8.3 and 8.4 of their principal appeal in cassation. Moreover, that finding does not constitute an independent ground for the Court's decision.[295] In ground 7.109 of its Judgment, the Court of Appeal considers the connection that is *'"too far removed*", in combination with the *"overly speculative* nature" of a signalling function of a reduction order as the basis for its Judgment. The lack of reasoning in the Judgment as pointed out by Milieudefensie et al. can also not be remedied by Shell by challenging the merits of arguments of Milieudefensie et al. (which were ignored by the Court of Appeal) itself, and partly on the basis of the party debate .[296] The Court of Appeal should have considered those arguments.

VI.2 Shell's defence regarding the effectiveness of a sales restriction is based on a one-sided and limited account of the party debate

176 With regard to the effectiveness of a sales restriction, Shell is once again attempting to get the Court of Appeal's judgment upheld on the basis of a one-sided repetition of arguments raised by Shell in the lower courts, without setting out the opposing defence put forward by Milieudefensie et al. in this context.[297] To this end, Shell relies on the NERA Report. This is the same report that Milieudefensie et al. referred to as the Druce Report in the case documents in the first-instance and appeal proceedings.

177 Contrary to what Shell is suggesting in its Written Explanatory Submission, Milieudefensie et al. have levelled detailed criticism at the Druce Report, which was only submitted by Shell before the oral hearing on appeal took place. They have done this not only by devoting a complete pleading document to this Report in the appeal proceedings,[298] but also by submitting various scientific responses to the Druce Report in court.[299] On that basis, Milieudefensie et al. have explained (among other things) that the Druce Report contains several major errors and is also not representative otherwise, meaning that no value can be attached to it in these proceedings.[300] The picture painted by Shell, namely that Milieudefensie et al. have consistently failed to substantiate their arguments

[294] Written Explanatory Submission of Shell dated 22 May 2026, para. 753.
[295] Written Explanatory Submission of Shell dated 22 May 2026, para. 753.
[296] Written Explanatory Submission of Shell dated 22 May 2026, paras. 755 up to and including 757.
[297] Written Explanatory Submission of Shell dated 22 May 2026, paras. 88, 684 up to and including 686 and 688.
[298] Notes of the Oral Arguments on Appeal ("Effectiveness") of Milieudefensie et al. dated 4 April 2024.
[299] Exhibit MD-561 (Expert Letter from Erickson et al. dated 24 February 2024); Exhibit MD-562 (Expert Letter from Van Wijnbergen and Van der Ploeg dated 25 February 2024).
[300] Notes of the Oral Arguments on Appeal ("Effectiveness") of Milieudefensie et al. dated 4 April 2024.

regarding the effectiveness of a sales restriction with concrete evidence, is therefore far from correct.

178 Furthermore, in ground no. 7 of their principal appeal in cassation, Milieudefensie et al. are not seeking a reassessment of the facts, which is prohibited in cassation proceedings.[301] They merely wish to obtain a substantive, comprehensible and sufficiently reasoned consideration of their arguments regarding the effectiveness of a sales restriction. That is something that the Court of Appeal has failed to provide. Shell cannot remedy this lack of reasoning by challenging the merits of the arguments of Milieudefensie et al. in the cassation proceedings itself. Shell's defence essentially amounts to an account of how, in Shell's view, the discussion of the effectiveness should play out.[302] The Court of Appeal should have resolved this discussion on the basis of the full debate between the parties, and not on the basis of the arguments selectively presented by Shell.

VI.3 Shell is not allowed not comply with the reduction order in an ineffective manner

VI.3.1 The Court of Appeal *has* actually established a duty of care

179 In Shell's view, the Court of Appeal has not established a duty of care, because it has not set a reduction percentage or target year, as the District Court had done.[303] However, these are two different things. The Court of Appeal has established a duty of care to prevent or limit dangerous climate change, meaning that Shell must reduce its Scope 1, 2 and 3 CO_2 emissions to a greater extent than most other companies and in line with the 1.5°C target. That is not, as Shell and M&M would have us believe,[304] a general legal CO_2 reduction duty, but a much more concrete obligation.[305] The fact that the Court of Appeal "fundamentally failed to answer" what specific conduct Shell must display[306] is precisely the crux of the appeal in cassation brought by Milieudefensie et al.

180 The judgment of the Court of Appeal thus differs from that of the District Court. The "freedom" which Shell has, according to the District Court, when it comes to complying with the reduction obligation established by the District Court therefore says nothing about how Shell must comply with the (different type of) duty of care established by the Court of Appeal. For that reason, it is also irrelevant that Milieudefensie et al. have not lodged a cross-appeal regarding that freedom to choose the mode of compliance.[307] For the same reason, the prohibition on *reformatio in peius* is not applicable in this context.[308]

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301 Written Explanatory Submission of Shell dated 22 May 2026, para. 737.
302 Written Explanatory Submission of Shell dated 22 May 2026, paras. 740 and 744.
303 Written Explanatory Submission of Shell dated 22 May 2026, para. 723.
304 See, for example, the Written Explanatory Submission of Shell dated 22 May 2026, paras. 115, 185, 186, 211 and 640; Written Explanatory Submission of M&M dated 22 May 2026, para. 3.21.
305 See also the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 728 and 729.
306 Written Explanatory Submission of Shell dated 22 May 2026, para. 115.
307 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 724 and 725.
308 Written Explanatory Submission of Shell dated 22 May 2026, para. 727.

VI.3.2 Shell is misrepresenting the claims of Milieudefensie et al. and the contents of the Judgment

181 In the context of the complaints of Milieudefensie et al. regarding the interpretation of the operative part of the Judgment,[309] Shell is misrepresenting or providing a limited rendering of the arguments and claims of Milieudefensie et al. and the contents of the Judgment.[310] After all, Shell is failing to mention that both the arguments and the claims of Milieudefensie et al. and the operative part of the Judgment always include the words "*into the atmosphere*".[311] Milieudefensie et al. have each time argued that Shell must use its control and influence to reduce its contribution to dangerous climate change. In this context, the CO_2 emissions reported by Shell reflect Shell's emissions into the atmosphere that are associated with its activities and products.[312] It goes without saying that the way in which Shell will comply with the duty of care established by the District Court – also in light of these arguments and the operative part of the Decision – must be aimed at reducing its actual CO_2 emissions into the atmosphere.

182 The fact that the District Court also found, within that context, that Shell has "complete freedom" to comply with its reduction obligation as it sees fit does not, therefore, mean that the complaints raised by Milieudefensie et al. fail.[313] It follows indisputably from the remaining considerations and the operative part of the Decision that Shell is not allowed to comply with its reduction obligation in a manner that is ineffective by definition; what follows from them is that this mode of compliance – within the control and influence that Shell has – must be capable of contributing to the reduction of CO_2 emissions into the atmosphere. In this context, Milieudefensie et al. have also relied on "effective protection",[314] i.e. effective protection against dangerous climate change, and not, as Shell is insinuating in this context, in relation to the availability or non-availability of a legal remedy.[315]

VI.3.3 Milieudefensie et al. are not seeking to remedy a defect in their reduction claim

183 Finally, Shell is presenting the complaints of Milieudefensie et al. regarding Shell's mode of compliance with the injunction sought by them as an attempt to remedy an inherent flaw in a CO_2 reduction injunction.[316] No such attempt is being made. A reduction order can certainly be effective in limiting CO_2 emissions into the atmosphere. This was addressed in Sections III.4 and VI.2 of this Written Reply. Shell is also overlooking the fact that an injunction must, of course, always be complied with in a manner that may reasonably be expected to be effective from the outset. If an execution modality is chosen that is ineffective from the outset, the legal obligation in question will simply not be complied with.[317] That reasoning is not tautological, as Shell is also arguing.[318] After all,

309 See, in this regard, grounds nos. 6.24 up to and including 6.33 of the principal appeal in cassation of Milieudefensie et al.
310 Written Explanatory Submission of Shell dated 22 May 2026, para. 730.
311 See, in particular, grounds nos. 6.25 and 6.29 of the principal appeal in cassation of Milieudefensie et al.
312 See also, in this regard, para. 128 of this Written Reply.
313 Written Explanatory Submission of Shell dated 22 May 2026, para. 732.
314 See also, in this regard, Section V.2.3 of this Written Reply.
315 Written Explanatory Submission of Shell dated 22 May 2026, para. 733.
316 Written Explanatory Submission of Shell dated 22 May 2026, paras. 717, 726 and 733.
317 Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, Section VII.2.

behind the reduction order lies a normative and scientific world that starts out from the premise that Shell's CO_2 reductions are effective. Milieudefensie et al. are merely arguing that the execution modality chosen by Shell must not negate that inherent effectiveness.

[318] Written Explanatory Submission of Shell dated 22 May 2026, para. 719.

VII OTHER SUBJECTS

VII.1 Scope 1 and 2 emissions

184 In ground no. 2 of their principal appeal in cassation, Milieudefensie et al. object to, amongst other things, the standard of "likelihood" used by the Court of Appeal to answer the question whether Shell is threatening to breach its legal obligation regarding its Scope 1 and 2 emissions. The defence raised by Shell against this standard lacks factual basis. The Court of Appeal has not ruled that Shell's conduct must be unlawful at all times within the period covered by the order.[319] There is nothing in the Judgment of the Court of Appeal on which Shell can base this. Furthermore, Shell is selectively summarising the arguments put forward by it in the lower courts, without paying any attention to the counter-arguments presented by Milieudefensie et al.[320] This does no justice whatsoever to the party debate. This means that the Court of Appeal has not taken Shell's arguments as its starting-point, as Shell would have us believe.[321]

185 With its standard of likelihood, the Court of Appeal has also not disregarded the standard of a "threatening breach of a legal duty", according to Shell. After all, that standard requires a "real and concrete threat",[322] partly because "the fact that a legal duty may be breached at some point in the future is insufficient", as Shell argues.[323] However, this does still not make the Court of Appeal's finding that it must be "likely" that Shell will fail to meet its Scope 1 and 2 reduction obligations correct. "Likely" is still a (much) higher threshold than the required "threatening breach of a duty". The arguments of Milieudefensie et al. must therefore be tested again and against the right standard, which is less stringent, as opposed to what Shell is assuming[324].

VII.2 No ruling on the declaratory decision sought by Milieudefensie et al.

186 Ground no. 9 of the principal appeal in cassation of Milieudefensie et al. concerns the fact that the Court of Appeal has not ruled on the declaratory decision sought by Milieudefensie et al. In Shell's view, the Court of Appeal has dismissed that relief sought. According to Shell, this is also logical, as it has not been established that Shell is threatening to act unlawfully with regard to its Scope 3 emissions.[325] That defence holds no water. After all (as also discussed in Section VI.3.1 of this Written Reply), the Court of Appeal has established a duty of care to prevent or limit dangerous climate change amounting to the fact that Shell must reduce its Scope 3 CO_2 emissions. That ruling is based on the finding that Shell is threatening to act unlawfully with its current and planned Scope 3 emissions.[326] That is precisely why the Court of Appeal subsequently went in search – albeit on the basis of an overly narrow criterion – for a reduction percentage

319 Written Explanatory Submission of Shell dated 22 May 2026, para. 392.
320 Written Explanatory Submission of Shell dated 22 May 2026, paragraphs 393 up to and including 396.
321 Written Explanatory Submission of Shell dated 22 May 2026, para. 395.
322 Written Explanatory Submission of Shell dated 22 May 2026, para. 399.
323 Written Explanatory Submission of Shell dated 22 May 2026, para. 401.
324 Written Explanatory Submission of Shell dated 22 May 2026, para. 402.
325 Written Explanatory Submission of Shell dated 22 May 2026, paras. 758a and 761.
326 See also, in this regard, Section V.3.1 of this Written Reply.

applicable to Shell. Had this been otherwise, then that exercise would have been pointless.

187 What is also not true, as Shell is also arguing, is that the District Court's refusal of the declaratory decision sought was *also* based on the finding that Shell was not acting unlawfully at that time.[327] With that defence, Shell is losing sight of the distinction between the separate parts of the declaratory decision sought - a distinction which the District Court rightly has made. The *first part* of the declaratory decision concerns Shell's current unlawful conduct (i.e. at the time of the Decision of the District Court),[328] whilst the *second part* of the declaratory decision sought, just like the reduction order, concerns Shell's obligation to realise CO_2 reductions in line with the 1.5°C target.[329] The declaratory decision that the Court of Appeal wrongly refused, according to Milieudefensie et al., concerns the *second part*. This part therefore relates precisely to the duty of care established by the Court of Appeal, for which Milieudefensie et al. are seeking a declaratory decision.

VII.3 Foreign case law on the relationship between the courts and the legislature

VII.3.1 Judgment of the *Bundesgerichtshof* of 23 March 2026

188 To explain their argument that private law and the civil courts play no role in determining climate obligations, Shell and M&M are relying very heavily on a judgment of the German *Bundesgerichtshof* ("**BGH**").[330] They are trying to convince the Supreme Court that what the BGH held, in general, in that judgment is that climate obligations based on private law are precluded, because combating dangerous climate change requires a balancing of multiple societal and political interests, for which civil proceedings are not suited.[331]

189 It should first be noted that the judgment of the BGH, if interpreted as Shell and M&M are suggesting, would run counter to a strong body of other climate case law in which civil climate obligations *are* actually recognised. Apart from the judgment of the Dutch District Court and the contested Judgment of the Court of Appeal, they include, for example, the New Zealand Supreme Court,[332] a Swiss court,[333] the Italian *Corte Suprema di Cassazione*,[334] a French court[335] and other German courts.[336] These courts have ruled

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[327] Written Explanatory Submission of Shell dated 22 May 2026, para. 766.
[328] Decision of the District Court, ground 4.5.8.
[329] Decision of the District Court, ground4.5.9.
[330] *Bundesgerichtshof* 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0. On the same date, the *Bundesgerichtshof* delivered another judgment with the same contents: BGH 23 March 2026, VI ZR 334/23, ECLI:DE:BGH:2026:230326UVIZR334.23.0.
[331] Written Explanatory Submission of Shell dated 22 May 2026, paras. 8, 67, 128, 136, 186, 229, 343, 345, 346, 357, 363, 424a, 431 and 452; Written Explanatory Submission of M&M dated 22 May 2026, Sections 2.12 up to and including 2.17, 2.20, 2.21, 4.9, 4.11 and 5.3.
[332] Judgmetn of the Supreme Court of New Zealand, 7 February 2024, SC 149/2021 [2024] NZSC 5 (*Smith/Fonterra*), grounds 154, 157 and 164.
[333] Judgmetn of the *Kantongericht Zug* of 17 December 2025, A1 2023 9 (*Asmania et al./Holcim*), grounds 1.4, 3.7.2 and 3.7.3.
[334] Judgment of the *Core Suprema di Cassazione of* 21 July 2025, No. 13085/2024 (*Greenpeace et al./Eni*). In the Swiss and Italian cases, the court referred to climate obligations based on civil law in the context of standing and jurisdiction issues. See on this subject E.R. De Jong in "*Klimaatperikelen in Karlsruhe*", *NTBR* 2026/16, under "*Rechtsvergelijkende lessen: competentie van de civiele rechter*", footnote 28.
[335] *Tribunal Judiciaire de Paris* 25 June 2026, No. RG 22/03403 (*Notre Affaire à Tous et others/TotalEnergies*).
[336] See, for example, the judmgnet of the *Oberlandesgericht Essen* of 25 May 2025, 5 U 15/17 (*Lliuya/RWE*).

that although multiple interests are involved in addressing the climate crisis, this does not mean that it is a purely political issue that precludes the acceptance of the existence of separate obligations for companies based on private law. So according to the interpretation of Shell and M&M, the judgment of the BGH would be the odd one out.

190 A more careful reading of the judgment reveals that Shell and M&M are not interpreting the judgment in the right way and fail to mention its very specific framework (which is formed by fundamental rights and is focused on government obligations. That framework, however, fully determines and explains the purpose and outcome of that court case. Milieudefensie et al. will discuss this judgment in detail below, partly because of the fundamental role that Shell and M&M have attributed to it.

191 In that court case, the claimants had sought an injunction requiring car manufacturers BMW and Mercedes to phase out cars with internal combustion engines earlier than required by EU law (Regulation 2023/851). To this end, and building on the *Neubauer* case (in which the German state was forced to take reduction measures based on the German constitution)[337], they relied on their personality rights, which are protected by the German constitution. They argued that the defendants' continued sale of cars with internal combustion engines would result in the German carbon budget being depleted more rapidly than permitted under constitutional and international law, meaning that the German state would inevitably adopt government climate measures in the future which, in turn, would infringe the claimants' constitutional personal rights.[338] The BGH also interpreted the claimants' claim in that sense.[339]

192 This "hop, skip and jump" structure links up with a specific doctrine under German law. Under German law, an act or omission of a private party may constitute an infringement of a personality right protected by the constitution, if it will force the state to take measures that will inevitably lead to an infringement of that personality right.[340] In this context, it must therefore be established, both factually and in law, that infringements of the personality right by the state will occur if the defendant is not compelled to take action at the time of the legal proceedings.[341]

193 The BGH assessed this issue in two steps. First, the BGH examined whether – partly in light of Regulation 2023/851 – a direct legal duty of care existed for BMW and Mercedes to phase out the internal combustion engine sooner.[342] Next, the BGH considered whether a Court is able to assess whether future climate measures taken by the German

[337] Judgment of the BGH of 24 March 2021, ECLI:DE:BVERFG:2021:RS20210324.1BVR265618.
[338] Judgment of the BGH of 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, (in particular) grounds 19 and 23. See also E.R. de Jong and M. Reiff in their blog post on the judgment https://verfassungsblog.de/the-bmw-and-mercedes-climate-cases/, under "The private life of the Neubauer ruling?".
[339] Judgment of the BGH of 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, (in particular) grounds 23 and 43.
[340] Judgment of the BGH of 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, grounds 24 et seq.
[341] Judgment of the BGH of 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, ground 25.
[342] Judgment of the BGh of 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, grounds 36 up to and including 42.

government will result in an infringement of the personality right relied on by the claimants.[343]

194 In the context of the first step, the BGH first of all established that German law does not provide for a carbon budget for individual companies.[344] EU law does not provide for one either.[345] Consequently, no duty of care can be directly linked to such law. The BGH then examined the general duties of care under German law in greater depth. In doing so, the BGH took as its starting-point that German duty-of-care standards may require measures to be taken in order to prevent a dangerous situation. According to the BGH, this obligation exists, regardless of the nature of the danger (so also in the case of dangerous climate change). All the circumstances of the case are relevant in determining this. Furthermore, the existence of public-law rules does not, as a matter of principle, preclude this.[346] In this context, the BGH also took as its starting-point that carbon majors (such as Shell) may also have duties of care relating to the climate. For this purpose, the BGH referred to, among other things, the Judgment appealed against in these cassation proceedings.[347]

195 It was only then that the BGH focussed its assessment on the question whether the duty of care could also require the manufacturers to phase out the internal combustion engine faster than required by Regulation 2023/851. The BGH ruled that there was no scope for this, as this matter is already regulated by a specific provision of EU law. According to the BGH, there were no specific individual circumstances in this case that required BMW and Mercedes to phase out the internal combustion engine earlier than prescribed by EU law nevertheless.[348]

196 In the second step, the BGH addressed the issue of the indirect infringement of the claimants' constitutional personality rights. This concerned the question whether the continued marketing of cars with internal combustion engines would inevitably lead to government measures being taken that have *"eingriffsähnliche Vorwirkung"* (anticipatory effect akin to interference) that would infringe the claimants' personality rights *regardless*. In ground 43, the BGH formulated the question and then answered in grounds 44 up to and including 46. In this specific construct under German law, the claimants were demanding *more* from the civil court than it could provide, according to the BGH, because the assessment of the government measures to be taken by the German government as a direct infringement of those personality rights would occupy center stage in it. A court should observe constraint when considering what the considerations of the legislature will be in that context:

> *"43 (2) The responsibility for the infringement of their general personality right as feared by the claimants as a result of radical climate protection legislation in the*

[343] Federal Court of Justice (BGH) 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, grounds 43 up to and including 47.
[344] Federal Court of Justice (BGH) 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, ground 37 (aa).
[345] Federal Court of Justice 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, grounds 38 (bb).
[346] BGH 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, ground 40.
[347] BGH 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, ground 39.
[348] BGH 23 March 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0, grounds 41 and 42.

future would lie with the legislature, which would directly cause the infringement in the case.[349]

44 Only legislation provides the right framework for striking a balance, in a democratically responsible way, between climate protection and the tension between that and potentially conflicting interests (see BVerfGE 157, 30 para. 213). Determining this complex balance – which is embedded within the European and international multi-level systems (see BVerfGE 157, 30 para. 201 et seq.; Schlacke, NVwZ 2022, 905 et seq.) – between conflicting ecological, social, societal, economic, fiscal and other political interests, both collective and individual – and thus the distribution of the emission avoidance burden – requires difficult balancing and allocation decisions, for which the legislature enjoys considerable discretion under Article 20a of the Constitution (see BVerfGE 157, 30 para. 207, 262). The considerable discretion of the State in choosing the operational and political means to combat climate change is also emphasised in the case law of the European Court of Human Rights (NJW 2024, 1931 para. 543).[350]

45 The exercise by the legistlature of its mandate and prerogative to make the provision concrete is, admittedly, subject to a constitutional review within certain limits. In principle, however, it is not the task of the courts to determine specifically quantifiable limits on global warming – and so the corresponding emission levels or reduction targets – from the open-ended wording of Article 20a of the Constitutoin (see BVerfGE 157, 30, para. 207 et seq.) and, even less so, to reduce it to the bipolar civil procedural dispute between private individuals whilst disregarding the ultimately limited scope of findings available in civil proceedings (see Gärditz, JZ 2025, 727, 732; Wagner, NJW 2021, 2256, 2261 et seq.).[351]

46 Against this background, the legal responsibility for future climate legislation could not be attributed to the defendant - even in view of the emission levels attributed to it by the claimants - without exceeding the limits of the permissible

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[349] The quotation reads as follows in German: “43 (2) *Die Verantwortung für die – von den Klägern befürchtete – Beeinträchtigung ihres allgemeinen Persönlichkeitsrechts durch zukünftige radikale Klimaschutzgezetgebung läge beim Gesetzgeber als dem dann unmittelbaren Storer*.”

[350] The quotation reads as follows in German: *“44 Allein die Gesetzgebung bietet den geeigneten Rahmen dafür, den Klimaschutz und dessen Spannungsverhältnis zu etwaigen gegenläufigen Belangen in demokratischer Verantwortung zu einem Ausgleich zu bringen (vgl. BVerfGE 157, 30 Rn. 213). Die Aushandlung diese komplexen und in das europäische und internationale Mehrebenensystem eingebundenen (vgl. BVerfGE 157, 30 Rn 201 ff; Schlacke, NVwZ 2022, 905 ff). Ausgleichs konfligierender ökologischer, sozialer, gesellschaftlicher, ökonomischer, fiskalischer und sonstiger politischer Kollektiv- und Individualinteressen und damit die Aufteilung der Emissionsvermeidungslast erfordert schwierige Abwägung- und Allokationsentscheidungen, für die dem Gesetzgeber auch nach Art. 20a GG ein erheblicher Gestaltungsspielraum zukommt (vgl. BVerfGE 157, 30 Rn. 207, 262). Der weite Gestaltungsspielraum des Staates bei der Wahl der operativen und politischen Mittel zur Bekämpfung des Klimawandels wird auch in der Rechtsprechung des Europäischen Gerichtshof for Menschenrechte betont (NJW 2024, 1931, Rn. 543).”*

[351] *The quotation reads as follows in German: “45 Die Wahrnehmung seines Konkretiserungsauftrags and seiner Konkretiserungsprärogative durch den Gesetzgeber unterliegt zwar in gewissem Rahmen verfassungsgerichtlicher Kontrolle. Grundsätzlich ist es aber nicht Aufgabe der Gerichte, aus der offenen Formulierung des Art. 20a GG konkret quantifizierbare Grenzen der Erderwarmung und damit korrespondierende Emissionsmengen oder Reduktionsvorgaben abzuleiten (vgl. BVerfGE 157, 30 Rn 207 f) und gar, unter Ausblendung der letztlich doch begrenzten Erkenntnismöglichkeiten des Zivilprozesses, auf das zweipolige zivilprozessuale Streitverhältnis zwischen Privaten herunterzubrechen (vgl. Gärditz, JZ 2025, 727, 732; Wagner, NJW 2021, 2256, 2261 f.)ten herunterzubrechen (vgl. Gärditz, JZ 2025, 727, 732; Wagner, NJW 2021, 2256, 2261 f.)”*

development of the law by courts (see, most recently, BVerfG [K] NJW 2026, 305 para. 51 et seq.) in the form of indirect liability of the defendant.”[352]

197 The BGH therefore did not rule that private parties can never have climate obligations, because the interests involved make this too complex in general terms. The BGH simply sees no role whatsoever for itself with regard to the claimants’ claim, because it would have to assess in the case to be decided by it which measures the German state would take. The civil court cannot involve itself with this. If the BGH had genuinely believed that civil law had no role whatsoever to play, it would not have started out by finding that the duty of care can indeed lead to climate obligations and that carbon majors can also have climate obligations. After all, in that case the BGH could have simply ruled that there was no place for civil law at all. That is not what the BGH has done.

198 The independent legal literature[353] published on the judgment also interprets it in the above-mentioned sense. De Jong points out that the claimants have formulated their claim in a roundabout and indirect manner via the personality right, and thus base it on a future intervention by the legislature rather than directly via the responsibilities that companies have themselves.[354] According to him, the question about companies’ own responsibility is drowned out as a result.[355] According to De Jong and Reiff, this formulation has determined this outcome.[356] De Jong further points out that if the BGH had intended its decision to be so absolute, it would be in direct contradiction with the Dutch, Swiss, Italian and German rulings already cited above.[357]

199 German commentaries likewise assume that the ruling has very limited relevance to climate claims based on other grounds.[358] The Berlin-based European Center for Constitutional and Human Rights succinctly summarised the above:

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352 *The quotation reads as follows in German: “46 Vor diesem Hintergrund ließe sich die rechtliche Verantwortung for künftige Klimagesetzgebung auch in Ansehung der von den Klägern der Beklagten zugeschriebenen Emissionsmengen nicht ohne Überschreitung der Grenzen zulässiger richterlicher Rechtsfortbildung (vlg. Hierzuletzt BVerfG [K] NJW 2026, 305 Rn. 51 f) im Wege der mittelbaren Störerschaft der Beklagten zuordnen.*

353 A colleague of Shell’s appeal lawyers, who attended the oral hearing in this case on 22 May 2026, also recently published an article in the NJB journal devoted to the judgment of the BGH. The contents of the article are incomprehensible to Milieudefensie et al. and are also virtually impossible to summarise. See A.Ch.H. Franken, “*Bundesgerichtshof: CO_2-reductie is een staatsplicht* (CO_2 reductoin is a state obligation) in *NJB* 2026/1249.

354 E.R. de Jong, “*Klimaatperikelen in Karlsruhe”* (Climate Turmoil in Karlsruhe), *NTBR* 2026/16, under “*Rechtsvergelijkende lessen: competentie van de civiele rechter”* (Comparative law lessons: jurisdiction of civil courts). See also E.R. de Jong and M. Reiff in their blog on the ruling https://verfassungsblog.de/the-bmw-and-mercedes-climate-cases/, under ‘The private life of the Neubauer ruling?’.

355 E.R. de Jong and M. Reiff in their blog on the ruling https://verfassungsblog.de/the-bmw-and-mercedes-climate-cases/, under ‘The meaning of governmental (in)action’.

356 E.R. de Jong and M. Reiff in their blog post on the https://verfassungsblog.de/the-bmw-and-mercedes-climate-cases/ ruling, under ‘Outlook’.

357 E.R. de Jong, ‘*Klimaatperikelen in Karlsruhe*’, *NTBR* 2026/16, under “Rechtsvergelijkende lessen: competentie van de civiele rechter”’.

358 See, for example, M. Reiff, ‘*Kein intertemporaler Schutz des Allgemeinen Personichkeitsrechts im Privatrecht “ (*No intertemporal protection of general personality rights in private law), *Neue Juristische Wochenschrift* 2026/21, pp. 1465-1468; S. Simanovski, “Federal Court of Justice ruling on the climate lawsuit against BMW and Mercedes: Limited significance for ongoing proceedings”, 27 May 2026, available at https://www.rae-guenther.de/aktuelles/climate-lawsuit-against-bmw-and-mercedes; J. Schäffer, “*DUH unterliegt gegen Autohersteller: Kein vorzeitiges Verbrenner-Aus*” (DUH loses case against car manufacturers: no premature end to internal combustion engines), beck-aktuell 23 May 2026, available at https://beck-online.beck.de/Dokument?vpath=bibdata%2Freddok%2Fbecklink%2F2037675.htm.

> *"The central question for the BGH was not who is liable for climate-related damage such as floods or droughts. It was also not about a direct infringement of the plaintiffs' rights as a result of the consequences of climate change itself. Rather, it concerned the question who bears responsibility for future restrictions by the state – that is, for laws that the state will eventually have to enact to protect the climate. The BGH replied: the legislature, not companies. This means that this case differs fundamentally from those climate-related lawsuits concerning damage and infringements of rights that have already occurred or are specifically imminent as a result of climate change itself (and not as a result of possible future legislation) – and for which this BGH ruling therefore has no precedential effect."*[359]

200 Therefore the Supreme Court cannot allow itself to be guided by the judgment of the BGH. It is relevant only within the very specific context of German law, which, moreover, concerns the concretisation of state climate policy.

VII.3.2 Judgment of the *Tribunal Judiciaire de Paris* of 25 June 2026

201 Finally, Milieudefensie et al. point out that a very recent ruling of the Paris District Court in the case *Notre Affaire à Tous et al./TotalEnergies* refutes all of Shell's key defences.[360] Conversely, the ruling actually endorses the view that non-state action is necessary and effective. Milieudefensie et al. will briefly explain this.

202 In this French case, the non-governmental organisation Notre Affaire à Tous had taken legal action against the French oil and gas company TotalEnergies – which, incidentally, is smaller than Shell. In this context, Notre Affaire à Tous had (among other things) claimed that TotalEnergies should draw up and implement a plan to reduce its Scope 1, 2 and 3 CO_2 emissions in line with the 1.5°C target.

203 The French court first of all found that large companies such as TotalEnergies have their own climate obligations under French law, as partly interpreted in light of human rights, the CSDDD, the OECD Guidelines and the UNGP.[361] The removal of Article 22 CSDDD does not alter this and does not affect the possibility of national climate obligations.[362] TotalEnergies is obliged to draw up and implement a climate plan aimed at reducing

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[359] European Center for Constitutional and Human Rights, "Q&A on the Federal Court of Justice's ruling regarding the early phase-out of fossil fuel-fired power stations: Ongoing climate change lawsuits remain unaffected", available at https://www.ecchr.eu/fileadmin/Q_As/Q_A_BGH_Verbrenner-Aus_Klimaklagen.pdf. The quotation reads as follows in German. "*Die Zentrale Frage für den BGH war nicht, wer for Klimaschaden wie Überschwemmungen oder Dürren haften. Genauso wenig ging es um eine unmittelbare Beeinträchtigung von Rechten der Klager durch die Folgen des Klimawandels selbst. Es ging vielmehr darum, wer die Verantwortung tragt für künftige staatliche Einschränkungen – also for Gesetze, die der Staat irgendwann erlassen muss, um das Klima zu schützen. Der BGH antwortete: der Gesetzgeber, nicht die Unternehmen. Damit unterscheidet sich dieser Fall grundsätzlich von solchen Klimaklagen, in denen es um bereits eingetretene oder konkret drohende Schaden under Rechtsverletzungen durch den Klimawandel selbst (und nicht durch eine mögliche künftige Gesetzgebung) geht – und für die diese BGH-Entscheidung deshalb keine Präzedenwirkung hat.*

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[360] Tribunal Judiciaire de Paris 25 June 2026, Case No. RG 22/03403 (*Notre Affaire à Tous et al./TotalEnergies*).

[361] Tribunal Judiciaire de Paris 25 June 2026, Case No. RG 22/03403 (*Notre Affaire à Tous et al./TotalEnergies*), grounds 112 up to and including 150.

[362] Tribunal Judiciaire de Paris 25 June 2026, Case No. RG 22/03403 (*Notre Affaire à Tous et al./TotalEnergies*), grounds 91, 92, 144 and 145.

emissions. That plan must cover its Scope 1, 2 and 3 emissions based on the GHG Protocol. The French court considered the GHG Protocol to be suitable for this purpose.[363] The French court also rejected the objections of TotalEnergies to the existence of reduction obligations relating to Scope 3 emissions, such as those concerning liability for the Scope 1 emissions of third parties and the possibility of double counting.[364] Shell has also raised all these objections in the present proceedings.

204 Furthermore, the French court ruled on the effectiveness defence put forward by TotalEnergies; according to this defence – and in line with Shell's argument – the company's emission reductions would not result in lower emissions into the atmosphere. The court rejected this argument, partly by reference to a judgment of the UK Supreme Court[365] and the Judgment challenged in these proceedings.[366] When arriving at this decision, the French court will have recognised that the Court of Appeal had established that Shell has influence over the demand side of the oil and gas market and also that the Court of Appeal had proceeded on the assumption that production restrictions are, in any event, effective. Furthermore, the French court noted that TotalEnergies had acknowledged that it had the means to influence the emissions of its end users, also via the composition of its energy mix,[367] – something which Shell, incidentally, is still denying with regard to its own influence and energy mix. This is one of the justifications for the fact that the climate obligations of TotalEnergies also cover its Scope 3 emissions. After all, its compliance with these obligations contributes to combating dangerous climate change.[368]

205 This ruling underlines that the objective points of reference discussed by Milieudefensie et al. have also led the French court to impose climate obligations on major players such as TotalEnergies by interpreting French law. The ruling also shows that Shell is not the only oil and gas company – as Shell is continuously claiming – that is being held and can be held accountable for its climate obligations. Courts in other countries are also reaching the conclusion, on the basis of a similar line of reasoning, that major oil and gas companies have climate obligations. This refutes the very foundation of Shell's argument. Other oil and gas companies also have climate obligations and courts abroad are reaching that conclusion on the basis of "their" legal systems, drawing on similar insights. Shell's reduction obligation therefore does not exist in a vacuum, but forms part of a broad fabric of state and non-state climate obligations.

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363 Tribunal Judiciaire de Paris 25 June 2026, Case No. 22/03403 (*Notre Affaire à Tous/TotalEnergies*), grounds 151 up to and including 164.
364 Tribunal Judiciaire de Paris 25 June 2026, Case No. RG 22/03403 (*Notre Affaire à Tous et al./TotalEnergies*), grounds 159 up to and including 161 and 164.
365 UK Supreme Court 20 June 2024, [2024] UKSC 20 (*Finch/Surrey*).
366 Tribunal Judiciare de Paris 25 June 2026, Case No. RG 22/03403 (*Notre Affaire à Tous et al./TotalEnergies*), grounds 173 up to and including 176.
367 Tribunal Judiciare de Paris 25 June 2026, Case No. RG 22/03403 (*Notre Affaire à Tous et al./TotalEnergies*), ground 181.
368 Tribunal Judiciare de Paris 25 June 2026, Case No. RG 22/03403 (*Notre Affaire à Tous et al./TotalEnergies*), grounds 182 and 183.

VIII CONCLUSION

206 In its Written Explanatory Submission, Shell is making a caricature of this court case. It then raises a defence against that caricature. As a result, Shell's defence is, in essence, out of step with the (legal) issues to be decided by the Supreme Court, with the judgment handed down by the Court of Appeal in this case and with the complaints raised against it by Milieudefensie et al. Ultimately, this case revolves solely around the establishment of Shell's obligation under Article 6:162 DCC to contribute to preventing or mitigating dangerous climate change. No distribution issue arises in this context, there is also no conflict with the *trias politica* concept and there are no risks to the energy security or effectiveness issues that play a part.

207 It is important to highlight this obfuscation strategy on Shell's part, as it serves to divert attention from the essence of this case. Moreover, Shell is wrongly trying to paint a positive picture of itself in this way. Whilst it does acknowledge the climate problem in this court case and confirms the need for the energy transition and CO_2 reductions, it does not see any role for itself in this context. Shell thus, on the one hand, is giving the impression that it is not standing in the way of preventing or mitigating dangerous climate change, whilst, on the other hand, it is communicating that, essentially, nothing can be expected of it. Shell presents itself as a frontrunner in the sustainable energy transition,[369] whilst less than 0.5 per cent of its energy production concerns renewable sources[370] and its investments in oil and gas even exceed those calculated by the IEA in the STEPS scenario, which leads to a disastrous 2.4°C rise in global temperatures.[371] This is quite apart from the fact that, in reality, Shell is actively opposing climate policies.[372]

208 All of this also underlines that without a duty of care and a corresponding concrete reduction obligation, Shell will not take the necessary climate action, but will continue to contribute disastrously to dangerous climate change. Conversely, a reduction order for Shell will make a significant and absolutely essential contribution to combating dangerous climate change and will thus help to protect human rights and the environment. This will also serve numerous other societal interests. However, if Shell is allowed to continue on its current course without any restrictions, the inevitable conclusion is that private-law entities have now become more destructive than states and can no longer be kept in check by anyone.[373] Fortunately, that is not the case: it is prevented by the law.

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369 Shell's written submission dated 22 May 2026, para. 78; Shell et al.'s statement of case dated 22 May 2026, para. 50; Shell's statement of defence dated 7 November 2025, para. 143.

370 Written submission by Milieudefensie et al. dated 22 May 2026, paras. 139 and 172. See also Milieudefensie et al.'s statement of case dated 22 May 2026, para. 75.

371 Written submission by Milieudefensie et al. dated 22 May 2026, para. 172. See also Appeal submission (Part 4) by Milieudefensie et al. dated 4 April 2024, para. 104; Written submission by Milieudefensie et al. dated 19 March 2024, para. 115.

372 Written Explanatory Submission by Milieudefensie et al. dated 22 May 2026, paragraphs II.3 and II.4. See also Submission by Milieudefensie et al. dated 22 May 2026, paragraphs V.1 and V.2.

373 Cf. Milieudefensie et al.'s statement of case dated 22 May 2026, para. 114.