Lex Mundi Climate Change Questionnaire

The Netherlands

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The past decade has seen an acute interest in global climate change policies. In wake of this environment, whether your team is undertaking an energy transition or advising management on a proposed climate change policy and its effects, it is imperative that legal functions within organizations understand how relevant climate change laws apply to and inform the way in which they conduct their business.

The Lex Mundi Global Climate Change Guide allows users to download information concerning relevant policies, measures and legislation related to climate change regimes in more than 30 jurisdictions around the world. Specific questions and topics addressed in the guide include National Policies, GHG Emission Trading Schemes, Renewable Energy Sources, Energy Efficiency Measures, Financial Institutional Measures and Prominent Litigation Cases.

In this document you will find policies, measures and legislation related to climate change in The Netherlands.

Whether you have questions about liability issues, funding, competition cases, new business models or other aspects of sustainable development, dealing with the impact of new national and international environmental laws requires extensive knowledge and expertise.
Whatever your sector, we have the specialists to interpret those laws, reduce risks and explore opportunities. Please do not hesitate to contact one of our Climate Risk & Sustainability experts.

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HOUTHOFF

Please note that the questions below have been answered on the basis of policies, plans, rules and regulations as per 4 June 2021.

GENERAL

1. Has your country signed / ratified the Paris Agreement? If so, what is its INDC / NDC?

Yes, the Netherlands signed the Paris Agreement together with all other EU Member-States on 22 April 2016. The Paris Agreement was subsequently approved by the Netherlands on 21 July 2017, and it entered into force for the Netherlands on 27 August 2017. The EU's INDC under the Paris Agreement is to reduce greenhouse gas emissions ("**GHG**") with at least 40% by 2030.

The EU, subsequently, presented the European "Green Deal" on 11 December 2019. This action plan is a significant step towards the EU's objective of achieving climate neutrality by 2050 in line with the objectives of the Paris Agreement. This EU objective is expected to be anchored in legislation by means of the European Climate Law. The European Parliament and Council reached a provisional agreement on the Climate Law Regulation in April 2021. The file is now being prepared for formal adoption.

Furthermore, as part of the European Green Deal, the European Commission will present a "Fit for 55 package" on 14 July 2021. This legislative package aims to reduce emissions by at least 55% by 2030 compared to 1990 levels (this target is more ambitious than strictly required under the Paris Agreement).[1] The package will cover wide-ranging policy areas / sectoral legislation – from renewables to energy efficiency, energy performance of buildings, as well as land use, energy taxation (e.g. introduction of a Carbon Border Adjustment Mechanism), effort sharing and revision of the emissions trading system (ETS).

1 In December 2020, the European Council already agreed that the EU's GHG emissions must be reduced by 55% in 2030 compared to 1990,

2. *What are the key national policy instruments regarding climate change and what are the national long-term greenhouse gas emissions (GHG) reduction targets?*

The key national policy instrument is the national Climate Plan (*Klimaatplan*), adopted in April 2020 ("**Climate Plan**") in accordance with the Climate Act (see: item 4, below). The Climate Plan summarizes the main aspects of national climate policy during the period 2021-2030. A new Climate Plan will be adopted at least once every five years after 2019.

The Climate Plan is largely based on the Climate Agreement (*Klimaatakkoord*) dated 28 June 2019 ("**Climate Agreement**"). The Climate Agreement is a 237-page document which contains the result of negotiations between over a hundred organizations including the central government, local and regional authorities, private companies, civil society organizations, unions and environmental organizations. During the negotiations five so-called "sector tables" were formed, representing sectors such as the built environment, industry, agriculture and land use, mobility and electricity. The instruments (e.g. legislative amendments, subsidies, levies and binding agreements) by means of which the reduction is to be achieved are set to be detailed in the short to medium term. An amendment to the Environmental Management Act (*Wet milieubeheer*) in connection with the implementation of Directive (EU) 2018/2001 (promoting the use of energy from renewable sources) and to implement the Climate Agreement is currently in progress.

PBL Netherlands Environmental Assessment Agency will present a Climate and Energy Outlook (*Klimaat- en Energieverkenning*) to the minister once a year, consisting of a scientific report on the consequences of the climate policies pursued over the previous year. The minister must send the Climate and Energy Outlook to Parliament together with the Climate Report (*Klimaatnota*), which sets out whether and, if so, when and which additional measures are necessary to achieve the aforementioned goals and which biannually contains a report on the execution of the Climate Plan. The most recent Climate Report was published on 30 October 2020.

In addition to the Climate Plan, the Netherlands is required to send the European Commission an integrated national energy and climate plan (*Integraal Nationaal Energie- en Klimaatplan*) ("**NECP**") roughly once every 10 years. The Netherlands' NECP incorporates parts of the Climate Plan.

3. *Have national policies or legislation been adopted limiting or prohibiting the use of certain fossil fuels (e.g. coal, natural gas, nuclear)?*

In the Coalition Agreement, "*Trust in the future 2017 to 2021*" ("**Coalition Agreement**"), the (former) coalition government parties agreed that the five remaining coal-fired power plants in the Netherlands will be closed by 2030 at the latest and that subsidizing the co-firing of biomass will cease after 2024.

On 20 December 2019, the Act on the Prohibition on Coal for Electricity Production (*Wet verbod op kolen bij elektriciteitsproductie*) was adopted. The Act prohibits the use of coal in power generation from 2030 onwards. As from 1 January 2025 it will apply to production facilities with an electrical yield of less than 44%, and as from 1 January 2030 the Act will apply to all production facilities. The Act directly affects the four remaining operational coal fired power plants in the Netherlands with a total capacity of 4,000 MW.

As a result, two of the four remaining plants are required to close or switch to alternative fuels by the end of 2024, and the two remaining units are required to do the same by the end of 2029. However, to comply with court-enforced climate goals (see: item 15, below), one of the less efficient plants located on the Maasvlakte near Rotterdam will likely close early, as its owner recently accepted a compensation offer from the Dutch cabinet.

On 11 December 2020, in the context of additional measures required to comply with the judgment in the Urgenda case (see: item 15, below), the Dutch government proposed an amendment to the Act on the Prohibition on Coal for Electricity Production. The objective of the amendment is to reduce CO_2 emissions from coal-fired production installations such that the total CO_2 emissions in the four years following 2020 are at least 25% less compared to 1990. From 2021 up to and including 2024, CO_2 emissions as a result of coal-fired electricity production are set to be limited to 35% of the amount of CO_2 emissions that would be produced in case that the production installation would operate at its total permitted capacity.

On 29 March 2018, the Dutch Minister of Economic Affairs and Climate Policy took the watershed decision to cease the production of natural gas from the Groningen field, from which approximately 1,700 billion cubic meters ("**bcm**") of gas had been produced since the early 1960s and which still contains an estimated 900bcm of gas, in the shortest term possible. This decision was taken to ensure the safety in the province of Groningen, as natural gas production induced earthquakes that continue to cause significant damage to buildings.

The only operational nuclear power plant in the Netherlands is located at Borssele in the province of Zeeland. The plant is owned by N.V. Elektriciteits-Produktiemaatschappij Zuid-Nederland EPZ ("**EPZ**"). In 2006, EPZ, its shareholders and the Dutch State signed the Borssele Agreement (*Convenant Kerncentrale Borssele*), which states that EPZ must initiate the decommissioning of the plant by 31 December 2033 at the latest. Ever since the 2011 Fukushima nuclear disaster and the German government's decision, in the same year, to phase out nuclear power, there have been no plans in the Netherlands for the establishment of any new commercial nuclear power plants.

Finally, the new Environment and Planning Act (*Omgevingswet*) is set to enter into force on 1 July 2022. The Environment and Planning Act bundles most regulations on the environment. The Act introduces a long-term, integral national vision on the environment: the National Environmental Vision ("**NOVI**"). The NOVI, published in September 2020, states that, in order to reduce national GHG emissions by 95% in 2050 (compared to 1990), fossil fuels have to be replaced by renewable energy sources, such as wind and solar energy. In order to obtain these objectives, climate proof and climate neutral measures will have to be implemented at the national, provincial and municipal level.

4. *What specific national climate change legislation has been adopted?*

On 28 May 2019, the Netherlands adopted the Climate Act (*Klimaatwet*). The Climate Act anchors in broad outline the coalition government's agreement on climate and energy as set out in the Coalition Agreement. The Act sets "politically enforceable" goals for climate policy and offers a framework for developing policies aimed at irreversibly and gradually reducing GHG emissions in the Netherlands to a level that is 95% lower in 2050 compared to 1990, in order to limit global warming and climate change. To achieve this target, a 49% reduction in GHG emissions by 2030 is pursued. However, following the new EU CO_2 reduction target of 55%, it is anticipated that also the Netherlands will further (have to) increase it target. The Climate Act has entered into force on 1 September 2019, and Article 7 of the Climate Act (regarding procedural regulations on the Climate and Energy Outlook and the Climate Note) entered into force on 1 January 2020.

In order to meet the GHG emissions goals set in the Climate Act (and elaborated on in the Climate Plan), a large variety of regulatory legislation has been and is expected to be enacted over the coming years, including the introduction of a national CO_2 levy (see: item 6, below) for the large GHG emitters per 1 January 2021.

GHG EMISSION TRADING SCHEMES

5. Does your country participate in an international or national GHG emissions trading scheme?

The EU Emissions Trading System ("**ETS**") Directive has been implemented in the Netherlands by means of the Environmental Management Act (*Wet Milieubeheer*), the Emissions Trading Decree (*Besluit handel in emissierechten*) and the Regulation on the monitoring of emission trading (*Regeling monitoring handel in emissierechten*).

The EU ETS functions based on the "cap and trade"' principle. A cap is set on the total amount of certain GHG that can be emitted by the installations covered by the ETS. The cap is reduced over time so that total emissions decrease. Within the cap, installations buy or receive emissions allowances, which they can trade with one another as required.

After each year, an installation must surrender enough allowances to fully cover its emissions, otherwise fines are imposed. If an installation reduces its emissions, it can keep the spare allowances to cover its future needs or else sell them to another installation that is short of allowances.

If a company qualifies as an EU ETS company, the company must apply for an emissions permit from the Dutch Emissions Authority ("**NEa**"). The NEa enforces compliance with the ETS in the Netherlands. The NEa, for example, has the authority to impose fines to cover the emissions of a company that has insufficient emissions allowances at the end of the year. A fine of EUR 100 can be imposed in relation to every tonne of CO2 emitted for which the company has not submitted allowances (this amount has been indexed since the 2013 emission year). Furthermore, a company will have to compensate for the additional emissions in the following year.

The EU has committed to reducing non-ETS emissions by 30% in 2030 compared to 2005. The EU members states' shared efforts required to achieve this non-ETS goal are elaborated in Effort Sharing Regulation (EU) 2018/842 which translates into an obligation for the Netherlands to reduce its non-ETS GHG emissions by 36% by the end of 2030.

On 21 September 2020, the European Commission approved the revised state aid guidelines under the EU ETS. These guidelines regulate, among other things, which sectors can be subsidized for indirect emission costs. The purpose of the subsidy is to prevent companies from establishing themselves outside the EU and thus bypassing the direct or indirect ETS costs, so-called carbon leakage. Compared to the current guidelines, more sectors will be eligible for compensation, but the compensation percentage will be reduced from 85% to 75%. In addition, the compensation will be made dependent on additional decarbonisation efforts by the companies involved.

6. Has a national CO_2 tax or similar instrument been adopted?

Large companies that are subject to the EU ETS as well as substantial N_2O emissions and emissions of CO_2 by waste processing companies are subject to a CO_2 levy from 2021 onwards if their CO_2 emissions are not in line with the relevant EU emissions benchmark. The Climate Plan stipulates that the national CO_2 levy will ensure emissions reductions of 14.3 megaton by 2030 (compared to the "base path" set out in the Climate and Energy Outlook 2019).[2]

The CO_2 levy is expected to increase from EUR 30 per ton of CO_2 in 2021 to EUR 125-150 in 2030 and includes the mandatory EU ETS tariff, which is currently around EUR 26. The additional charge for companies that are subject to the CO_2 levy is therefore equal to the difference between the mandatory EU ETS tariff and the CO_2 tax. The amount of the CO_2 levy will be revised when the new EU ETS Benchmark becomes available in 2025. Proceeds from the CO_2 levy will largely be used to make industrial companies more sustainable.

The CO_2 levy formally became effective as of 1 January 2021 (following amendments to the Environmental Taxes Act (*Wet belastingen op milieugrondslag*) and the Environmental Management Act). Due to the COVID crisis, the government has decided to grant industrial companies more dispensation rights than required. As a result, in the first years, the CO_2 levy does not yet significantly increase the tax burden for the companies involved.

In addition, on 3 June 2019, the government submitted a proposal to parliament regarding a minimum carbon price in electricity production, also to be implemented in the Environmental Management Act and the Environmental Taxes Act.[3] It remains unclear if and when this proposal will be adopted (the proposal is still under consideration). The intended measure is linked to the EU ETS. Whereas the price of emission allowances under EU ETS fluctuates, the Dutch government decided to introduce a minimum carbon price of EUR 12.30 in 2020, which will gradually be increased to EUR 31.90 in 2030. Should the EU ETS price fall below this minimum price (which – at present – it is not expected to do) the difference between the minimum price and the lower EU ETS price will be levied in the form of a national CO_2 tax.

2 Climate Plan, p. 31.

3 Draft Act on Minimum Carbon Price in Electricity Production, Lower House, session year 2018-2019, 35 216, no. 2.

7. *Does national legislation regulate and/or subsidize carbon capture and storage (CCS)?*

As of 1 January 2020 the Climate Agreement provided for extending the scope of the main subsidy scheme for renewable energy in the Netherlands (see: item 8, below).[4] The new, extended scheme (SDE++) not only stimulates sustainable energy production but also CO_2-reduction techniques, like CCS.[5] To prevent the deployment of CCS from being at the expense of techniques that are necessary for the transition in the long term, the subsidization of CCS is limited in three ways.[6] Firstly, CCS will only be subsidized if there are no cost-effective alternatives. Secondly, a maximum of 7.2 megaton of GHG emissions reductions through CCS will be subsidized. Thirdly, after 2035 no subsidy will be available for CCS. In addition, techniques that can be operated profitably without a subsidy do not qualify.

A permit with strict safety requirements is required for CCS. These requirements are set out in the Mining Act. The State Supervision of Mines supervises compliance with the Mining Act.

4 Climate Agreement, p. 232-235; Climate Plan, p. 31.
5 Letter to the House of Representatives on 26 April 2019, Lower House, session year 2018–2019, 31 239, no. 300.
6 Climate Agreement, p. 107.

RENEWABLES

8. Are the production and/or use of renewable energy sources subject to a national subsidy or similar support scheme?

The main subsidy scheme for renewable energy in the Netherlands, the Renewable Energy Production Incentive Scheme (SDE++) broadens the scope of the former subsidy scheme (SDE+). SDE++ not only stimulates the production of renewable electricity, gas and heat (including combined heat and power), but also provides a subsidy for CO_2-reduction techniques, like CCS (see: item 7, above). The subsidy scheme is, in principle, open to the operators of installations that use renewable energy sources, which are wind, solar energy, terrestrial heat, ambient heat, osmosis, wave energy, tidal energy, hydro power, biomass, landfill gas, sewage treatment plant gas and biogas. The 2021 SDE++ tender round is scheduled for 5 October until 11 November 2021.

On 12 February 2021 the EU adopted a regulation establishing the Recovery and Resilience Facility. It became the central pilar of NextGenerationEU, a recovery plan of the European Commission, aiming at repairing the economic and social damages caused by the COVID-19 pandemic. The financial support from the Facility is offered exclusively to Member States and provided in the form of both a loan and a non-repayable grant. The funds will be used until 2026 to support various reforms and investment projects of Member States that will contribute to the restoration of their economies. To receive the funding Member States will have to explain to what extent and how their proposed measures contribute to the green transition or to addressing the challenges resulting from it. Once the funds are distributed among Member States they will proceed to their internal allocation.

ENERGY EFFICIENCY

9. What are the main national measures being taken to reduce GHG emissions / improve energy efficiency in the built environment?

Pursuant to the Climate Plan, natural gas will become significantly more expensive in the coming years. The energy tax (*energiebelasting*) on gas will increase by 10 cents per cubic meter, which will be compensated through lower electricity prices and a larger exemption for energy tax.[7] Also, around 1.5 million houses and non-residential buildings should be natural gas-free by 2030, which requires a significant increase in the supply of sustainable heat.[8] In addition, to increase the number of sustainable buildings, the government has set up a heat fund (*warmtefonds*) for private house owners and house owner associations.[9] The government will annually provide EUR 50 to 80 million in (non-revolving) resources. The heat fund currently has a budget of EUR 1.1 billion.

Furthermore, as of 1 January 2021, all new residential and utility buildings (such as offices) in the Netherlands have to meet the requirements for "nearly zero energy buildings" ("**NZEB**"). The NZEB requirements are implemented in the Building Decree 2012 (*Bouwbesluit 2012*). The requirements, contained in a Decree amending the Building Decree 2012 dated 13 December 2019, concern three aspects: (i) the energy requirements of the building; (ii) primary usage of fossil energy; and (iii) the share of renewable energy. Dutch legislation for the energy performance of buildings is based on the Energy Performance of Buildings Directive ("**EPBD**").

In addition, the environmental performance requirements for buildings will become stricter as of 1 July 2021. The Environmental Performance Buildings ("**MilieuPrestatie Gebouwen**"), which is required to be appended to every application for an environmental permit, indicates the environmental impact of the materials used in buildings. The current norm of 1 will be lowered to 0,8 and will be continuously lowered thereafter. The MPG will be halved by 2030 at the latest. Through the MPG, the Dutch government wants to achieve a more sustainable use of materials. The stricter requirements should encourage suppliers to develop more environmentally friendly construction products.

Finally, as of 1 January 2023, offices larger than 100 square meters must have at least an energy label C, representing an energy savings level on a scale from A to G. This obligation is also implemented in the Building Decree 2012.

7 Climate Agreement, p. 24-31; Climate Plan, p. 33.
8 Climate Agreement, p. 37-40; Climate Plan, p. 34.
9 Climate Agreement, p. 22; Climate Plan, p. 33.

10. What are the main national measures being taken to reduce GHG emissions / improve energy efficiency in the transport sector?

Pursuant to the Climate Agreement, an investigation will be launched into road pricing.[10] In addition, newly produced vehicles should be fully electric from 2030, with corresponding incentives through taxation measures.[11] In 2025, zero-emission logistics zones will be established in 30-40 larger municipalities.[12] Moreover, a "National Agenda Charging Infrastructure" has been adopted, as part of the Climate Plan.[13] The purpose of the National Agenda is to ensure that the charging infrastructure is prepared for the large-scale rollout of electric transport.

11. What are the main national measures being taken to reduce GHG emissions / improve energy efficiency in industry?

Pursuant to the Climate Plan, a CO_2 levy for large companies has been introduced (see: item 6, above) and CCS has been subsidized (see: item 7, above). In addition, the energy tax for natural gas has increased by per 1 January 2021 and the share that companies contribute to the sustainable energy surcharge (*Opslag Duurzame Energie*) vis-à-vis households has increased from 50% to 66%.[14]

Energy saving measures for all companies

The Activities Decree (*Activiteitenbesluit*) contains environmental regulations and applies to most companies in the Netherlands which may impact the environment. If the annual energy consumption of a company under the Activities Decree exceeds 50,000 kWh (electricity) or 25,000 m^3 (gas), the company must take energy saving measures if it can retrieve the costs thereof in under 5 years. Companies had to provide information on energy saving measures by 1 July 2019 at the latest. Furthermore, large enterprises (as opposed to small and medium enterprises) are obliged, according to the Temporary Regulation implementation Articles 8 and 14 Energy Efficiency Directive, to carry out an energy-audit. This audit has to be repeated once every four years and is used to gather information on energy use and on possibilities to take energy saving measures. The energy audit report had to be submitted to the competent authorities no later than 31 December 2020.

Sustainable energy surcharge (Opslag Duurzame Energie)

Companies will have to pay a higher sustainable energy surcharge rate to their energy supplier in 2021 and 2022. In the Climate Agreement, it has been agreed that the industrial sector should make a larger contribution than households. The applicable tariffs depend on the amount of gas and electricity consumed.

10 Climate Agreement, p. 46-47; Climate Plan, p. 29.
11 Climate Agreement, p. 53-65; Climate Plan, p. 29-30.
12 Climate Agreement, p. 65.
13 Climate Plan, p. 30.
14 Climate Agreement, p. 104.

12. *What are the main national measures being taken to reduce GHG emissions / improve energy efficiency in agriculture and land use?*

The cabinet has ordered the agricultural and land use sectors to reduce GHG emissions by 3.5 mega tonnes by 2030 (on top of existing policies).[15]

The Climate Agreement and the Climate Plan stipulate that an expected amount of nearly EUR 1 billion will be reserved to make the agricultural sector "greener" by investing in, among other things, sustainable heating in greenhouse horticulture and improved processing of manure to reduce methane emissions from livestock. In addition, the Dutch government will provide incentives for climate-friendly food consumption and reducing food waste.[16]

13. *What are the main national measures being taken to reduce GHG emissions / improve energy efficiency in the electricity production sector?*

Coal-fired power plants will be shut down in due course (see: item 3, above). In addition, the generation of offshore and onshore wind and solar energy will be further accelerated.[17] Also, a hydrogen development programme will be implemented to accommodate large-scale production and storage of renewable electricity with hydrogen technology.[18] Furthermore, as mentioned in item 6, the Dutch government has submitted a proposal to parliament regarding a minimum carbon price in electricity production.

15 Climate Agreement, p. 118.
16 Climate Agreement, p. 151-153; Climate Plan, p. 35.
17 Climate Agreement, p. 159-167; Climate Plan, p. 27-28.
18 Climate Agreement, p. 91-93.

FINANCE

14. *What measures are national financial institutions (incl. banks, pension funds, asset management companies and insurance companies) aimed at reducing the GHG emissions of their customers?*

On 10 March 2021, the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088) came into effect. The Regulation aims to provide more transparency on sustainability within the financial markets in a standardized manner. Financial market participants, financial advisers and undertakings for collective investment are required, among other obligations, to disclose information on sustainability. Financial market participants should provide information about policies on the integration of sustainability risks into the investment decision-making process or advice. Participants are likewise required to disclose the adverse impacts of investment decisions on sustainability factors.

The Taxonomy Regulation (Regulation (EU) 2020/852) was published on June 22, 2020 and supports sustainable investments by clarifying which economic activities contribute the most to EU's environmental objectives.. In order to qualify as "environmentally sustainable", an investment must contribute to at least one of the environmental objectives set out in the Regulation and must not have an adverse effect on one or more of the other environmental objectives. Article 9 of the Regulation identifies (i) the mitigation of climate change; (ii) adaptation to climate change; (iii) sustainable use and protection of water and marine resources; (iv) the transition to a circular economy; (v) pollution prevention and control; and (vi) the protection and restoration of biodiversity and ecosystems as environmental objectives. The Regulation will enter into force in phases. Rules relating to the first two objectives will take effect on 1 January 2022. Rules relating to the other environmental objectives will enter into force on 1 January 2023.

On national level fifty banks, insurers, pension funds, asset managers and their respective umbrella organizations voluntarily signed the Climate Agreement in the presence of the Minister of Finance on 10 July 2019, thus committing themselves to the goals of the Climate Agreement. The financial institutions will measure the CO_2 content of their portfolios and publicly report on these CO_2 emissions from 2020. By 2022, at the latest, these parties must announce action plans to comply with the Paris Climate Agreement.

LITIGATION

15. Are there prominent national climate change litigation cases in your country? If so please provide a short description (e.g. plaintiffs / defendants, public or civil law based, etc.).

International attention has gone out to the landmark civil law based climate law case between the Dutch Urgenda Foundation and the Dutch State in which the Court of The Hague, in its controversial judgment of 24 June 2015 (ECLI:NL:RBDHA:2015:7196), ruled that the Dutch State must ensure that by 2020, GHG emissions are reduced by 25% in comparison with 1990. The Court of Appeal of The Hague endorsed the earlier Urgenda-judgment in its judgment of 9 October 2018 (ECLI:NL:GHGHA:2018:2610). The Dutch State filed an appeal in cassation against the judgment. On 20 December 2019 the Supreme Court of the Netherlands upheld the judgment and stated that the Dutch government must reduce emissions considering its EU human rights obligations, more specifically the right to life and right to family life (ECLI:NL:HR:2019:2007).

In addition, environmentalists and human rights groups, including Greenpeace and Friends of the Earth Netherlands, started a lawsuit against Royal Dutch Shell ("**RDS**") to force it to cut its reliance on fossil fuels. In again a landmark judgement of 25 May 2021 (ECLI:NL:RBDHA:2021:5339), the Hague District Court ruled that RDS has an obligation to reduce the Shell group's (RDS and other Shell companies) "Scope 1 through 3" CO_2 emissions with 45% by 2030 compared to its emissions in 2019. This is the first time that a court has ordered a private company to reduce its overall CO_2 emissions by a fixed percentage within a fixed timeframe. The Hague District Court concluded that based on Dutch tort law – the unwritten standard of due care (an open norm) stipulated in Book 6 Section 162 Dutch Civil Code – every company has an individual obligation to reduce CO_2, regardless of existing obligations of states. RDS is likely to appeal the judgement.

MISCELLANEOUS

16. *Climate change policies, measures or legislation (other than covered by the questions above).*

EU Action Plan Circular Economy

The European Commission adopted an action plan in 2015 to accelerate the transition to a circular economy in Europe. As part of the 2015 action plan, the Commission established an EU strategy for plastics in 2018. The 2015 action plan also focuses on improving product design. Finally, a revised EU waste legislation framework entered into force in July 2018 which includes new recycling percentages, a clearer legal status of recycled materials and by-products, and stricter rules on waste prevention and waste management. The European Commission published a new Circular Economy Action Plan on 11 March 2020. On 10 November 2020, the Commission – as part of the action plan – adopted a proposal for a Regulation to modernize EU legislation on batteries. The aim is that batteries placed on the EU market are sustainable, circular, high-performing and safe all along their entire life cycle and that they are collected, repurposed and recycled.

Circular economy and waste in the Netherlands

The Dutch government has adopted a national Circular Economy Program on 14 September 2016 in which it expresses the ambition to realize a fully circular economy by 2050. In a circular economy, residual streams which were previously considered as waste will increasingly be used as raw materials. The third National Waste Management Plan (LAP3) therefore includes a general policy on the interpretation of the term "waste" and the terms "discard", "by-product" and "end-of-waste", based on the EU Waste Framework Directive[19], the Dutch Environmental Management Act and case law.

Prohibition on plastic bags and single-use plastics

The Packaging Directive[20] was revised in 2015 in order to decrease the use of lightweight plastic bags. The Dutch 2015 Packaging Management Regulation (*Regeling beheer verpakkingen*) then prohibited the provision of free plastic bags. Since the introduction of the ban, the number of plastic bags distributed and sold has decreased by 70%. Consumers still receive free plastic bags for the packaging of perishable food and to prevent food waste.

19 Directive 2008/98/EC on waste.
20 Directive 94/62/EC on packaging and packaging waste.

The Single-Use Plastics Directive[21] entered into force on 2 July 2019. The Directive applies to certain single-use plastic products, which together account for 70% of all marine litter. The Single-Use Plastics Directive has not yet been implemented in the Netherlands. The implementation deadline has been set at 3 July 2021. Certain single-use plastic products (such as cutlery, plates, straws, cotton swabs) will as of then be prohibited.

Export of easily recyclable plastics

As of 1 January 2021, only easily recyclable plastics can be exported from the EU to non-OECD countries. This obligation was adopted during the fourteenth Meeting of the Conference of the Parties to the Basel Convention.

Tax non-recycled plastic waste

Asof 1 January 2021 a tax on non-recycled plastic packaging waste has been implemented. The rate of the tax has been determined on EUR 0,80 per kilo of plastic waste.

Climate change adaptation

In the Paris Climate Agreement, in addition to reducing emissions, countries have committed themselves to further action to adapt the physical environment to climate change (climate adaptation). In the Netherlands, climate adaptation is increasingly regulated, in particular at the local level in zoning plans. The Crisis and Recovery Act 2010 enables municipalities to experiment with legal provisions on climate adaptation in "zoning plans with a broader scope". It is conceivable, also under the Environment and Planning Act (expected to enter into force on 1 July2022), that zoning plans establish a rule that certain buildings may only be built climate-adaptively and that the related assessment framework is detailed in policy rules. Finally, it is worth mentioning that the international knowledge centre for climate adaptation, set up by the UN and Japan, is located in the Netherlands. On 17 October 2018, the Groningen office of the Global Centre on Adaptation ("**GCA**") was opened by former UN Secretary-General Ban Ki-Moon. The GCA is a global knowledge centre that supports countries, organizations and companies with knowledge and advice in the field of climate adaptation.

21 Directive 2019/904 on the reduction of the effects of certain plastic products on the environment.

CLIMATE RISK & SUSTAINABILITY EXPERTS

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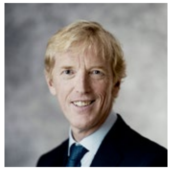
CLIMATE & COMPETITION LAW



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