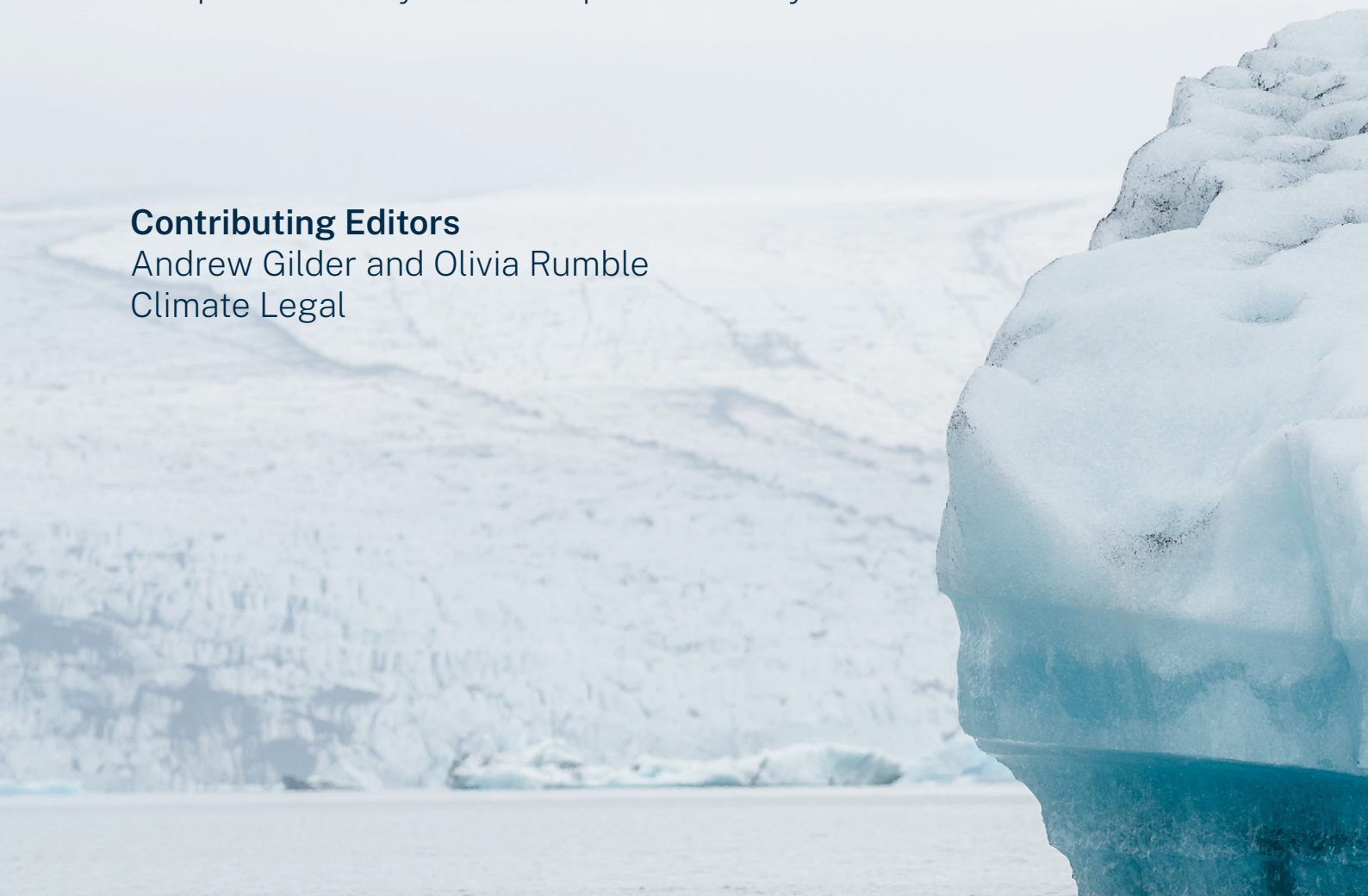

CHAMBERS GLOBAL PRACTICE GUIDES

Climate Change Regulation 2025

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Contributing Editors

Andrew Gilder and Olivia Rumble
Climate Legal



NETHERLANDS



Trends and Developments

Contributed by:

Davine Roessingh, Casper Nagtegaal, Hylke ten Bruggencate and Sebastian Hinse

De Brauw Blackstone Westbroek

De Brauw Blackstone Westbroek is an independent and international law firm deeply rooted in the Netherlands since 1871. The firm's practice covers a wide range of practice areas, comprehensively covering clients' needs with significant international operations. De Brauw acts as lead counsel in high-end transactions, disputes and regulatory enforcement

matters, co-ordinating the work from Amsterdam or its offices in Brussels, London, Shanghai and Singapore. The firm acts both independently and co-operatively with other top-tier independent firms across the globe, among whom are Best Friends – a network of top European law firms.

Authors



Davine Roessingh is a partner in De Brauw's litigation practice. She has extensive experience in stakeholder-driven litigation, such as the class actions against Rabobank concerning derivatives and corporate inquiry

proceedings against former SNS REAAL, and handles a wide range commercial and corporate disputes. Davine co-heads De Brauw's cross-expertise climate and sustainability group. Recent work includes advice on sustainability reporting and target setting under the CSRD/ESRS (and particularly E1), SBTi, NCI review, etc; climate scenario planning and climate risk governance, including (former) TCFD; and civil liability on GHG emission reductions and value chain responsibilities. Davine regularly speaks and publishes on these topics and amongst others sits on the Advisory Board of the Oxford University's Climate Policy Monitor.



Casper Nagtegaal represents clients in complex business transactions and advises them on general corporate and governance matters. A substantial part of his practice focuses on governance-related topics

including the role and responsibilities of the board with regard to sustainability topics, application of the Corporate Governance Code, preparing for shareholder meetings and financial and non-financial disclosures. Casper is a fellow of the Radboud Business Law Institute of the Radboud University, and lectures corporate law at that university. He co-authored the leading commentary to the Dutch Corporate Governance Code and regularly publishes in his area of expertise.



Hylke ten Bruggencate is a senior associate in De Brauw's litigation and arbitration department, advising and representing Dutch and international clients in large-scale disputes. His areas of expertise include post-M&A

and contractual disputes, corporate litigation before the Dutch Enterprise Chamber, corporate law, and sustainability. Before joining the litigation practice group, Hylke worked in De Brauw's corporate practice group, advising on national and cross-border M&A transactions.

NETHERLANDS TRENDS AND DEVELOPMENTS

Contributed by: Davine Roessingh, Casper Nagtegaal, Hylke ten Bruggencate and Sebastian Hinse,
De Brauw Blackstone Westbroek



Sebastian Hinse specialises in international commercial arbitration and cross-border litigation. He has acted as counsel for several listed companies and large multinational corporations in arbitral proceedings

under the ICC and NAI rules, as well as in proceedings before Dutch courts. Sebastian also regularly advises clients on all aspects of sustainability and climate legislation, and he regularly lectures at the Erasmus University Rotterdam on international corporate governance and the role of sustainability and climate legislation for corporate boards, including on sustainability reporting, climate scenario planning, value chain responsibilities and human rights. Sebastian also holds a UNEP FI certification in Climate Risk.

De Brauw Blackstone Westbroek

Burgerweeshuispad 201
1076 GR Amsterdam
The Netherlands

Tel: +31 20 577 1771
Fax: +31 20 577 1775
Email: Info@debrauw.com
Web: www.debrauw.com

**DE BRAUW
BLACKSTONE
WESTBROEK**

Contributed by: Davine Roessingh, Casper Nagtegaal, Hylke ten Bruggencate and Sebastian Hinse,
De Brauw Blackstone Westbroek

Momentum and Resistance: 2025 and Beyond as Pivotal Years for Climate Transition Planning

Introduction

Developments in the area of climate change in the Netherlands over the past year can be characterised by two trends – and we expect these trends to continue to unfold over the coming years.

The first trend is the policy pendulum that is, after years of tailwind, now swinging the other way: the effort of decarbonisation in the Netherlands and beyond is facing significant headwind. Policies, regulation and corporate strategies are recalibrated as part of, and as a result of, this trend.

The second trend is the continued debate on the expansion of the scope of stakeholders weighing in on the business model and strategy of the company. Increased debate is noticeable on the extent to which the climate strategy of a company should be informed and influenced by third parties.

We discuss these trends in turn, which to a large extent interlink with similar trends in the EU.

The swinging pendulum

Over the past year and into 2025, a shift in sentiment surrounding climate change and ESG regulations has been ushered in, amid growing concerns that the impact of these regulations is eroding the competitiveness of European businesses. Preceded by elevated energy costs and inflationary pressures, these concerns gained significant momentum following the publication of the September 2024 Report on the Future of European Competitiveness, prepared by former ECB President Mario Draghi at the request of European Commission President Ursula von der Leyen.

The Draghi Report warned that the EU must make fundamental choices about how to advance its decarbonisation agenda while preserving the competitiveness of its industry. The Report further stressed that the regulatory burden on European companies is high and continues to grow at a faster rate than in comparable economies. Notably, the Report observed that in 2023, more than half of SMEs (55%) identified regulatory obstacles and administrative burden as their

greatest challenge. The Report highlighted the EU's sustainability reporting and due diligence framework as a major source of regulatory burden, concluding in particular that these regulations insufficiently account for company size – particularly the distinction between SMEs and larger companies.

Omnibus package – Commission proposal

Against the foregoing backdrop, the European Commission published a first series of legislative proposals, widely referred to as the Omnibus Package, on 26 February 2025. The package proposes targeted amendments to several cornerstone instruments of the EU Green Deal, most notably the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CSDDD), and the Taxonomy Regulation. The European Commission, in its communication regarding the Omnibus package, emphasised its primary goal of simplifying these rules and reducing administrative burdens, particularly for SMEs, while simultaneously reaffirming the Green Deal's environmental and social objectives.

Companies reporting under the CSRD are obliged to make disclosures on their plans to ensure that their business model and strategy are compatible with the transition to a sustainable economy and with limiting global warming to 1.5 °C in line with the Paris Agreement. With respect to the CSRD, the Omnibus package proposes to significantly narrow the scope of companies subject to its mandatory reporting requirements. The reporting requirements would only apply to large undertakings or large groups with more than 1,000 employees and either a turnover above EUR50 million or a balance sheet total above EUR25 million. As a result, according to the European Commission, the number of companies subject to the CSRD would be reduced by about 80%. For companies not subject to mandatory sustainability reporting requirements, the European Commission proposes a voluntary reporting framework tailored to SMEs and smaller groups of companies. Additional changes include, for example, relaxed value chain information obligations, the scrapping of the development of sector-specific reporting standards, and provisions to ensure that companies in the value chain with no more than 1,000 employees are not asked for information beyond what is specified in the voluntary sustainability

Contributed by: Davine Roessingh, Casper Nagtegaal, Hylke ten Bruggencate and Sebastian Hinse,
De Brauw Blackstone Westbroek

reporting requirements, except for information that is commonly shared between companies.

Substantive amendments to the CSDDD are proposed by the Omnibus package as well. Notably, the Omnibus package also proposes to amend Article 22 CSDDD, which pertains to climate transition plans. While companies would still be obligated to adopt a climate transition plan to align with the Paris Agreement and EU climate objectives, the proposal removes the explicit requirement for these plans to be “put into effect” and replaces it with the requirement to include “implementing actions” in the climate transition plan. Additional changes include, for example, narrowing the scope of due diligence obligations to direct business partners, with specific provisions aiming to limit the requirement to obtain information from value chain businesses with fewer than 1,000 employees; an extension of the monitoring interval for due diligence from one to five years; and the removal of the provision for representative action under an EU-wide civil liability regime, leaving these aspects largely to the discretion of individual member states.

Stop-the-Clock

To accommodate negotiations on amendments to the CSDDD and CSRD, the European Commission tabled a “stop-the-clock” proposal aimed at postponing the implementation timeline. Despite a tense build-up, an overwhelming majority in the European Parliament ultimately voted in favour of the proposal on 3 April 2025. The Council subsequently gave its final green light on 14 April 2025 and the Directive (Directive (EU) 2025/794) was published in the Official Journal of the EU two days later.

The Stop-the-Clock Directive entails:

- with respect to the CSRD, a two-year postponement of the CSRD reporting requirements for large companies that have not yet begun reporting, as well as for listed SMEs. Accordingly, the reporting requirements for the “second wave” and “third wave” of companies are postponed from financial year 2025 to financial year 2027, and financial year 2026 to financial year 2028, respectively. In the lead-up to the Stop-the-Clock Directive, the Dutch government, having failed to timely implement the

CSRD into national law, unsuccessfully pushed to postpone the CSRD for “first wave” companies as well; and

- with respect to the CSDDD, a one-year extension of both the transposition deadline and the “first wave” of application of the CSDDD. Accordingly, the deadline for member states to implement the CSDDD has been pushed back to 26 July 2027 and the application of the CSDDD requirements for the largest companies to 26 July 2028.

Next steps

The European Commission has repeatedly stressed the importance of working towards a final Omnibus package “as soon as possible”. The European Parliament and Council are currently working on their positions on the Omnibus Proposal. The Council is expected to finalise its general approach in the coming months, while the European Parliament aims to adopt its position in the second half of the year. This timeline would allow trilogue negotiations to begin by late 2025, with the European Commission and Council publicly expressing support for a swift conclusion.

What the Omnibus directives will ultimately entail remains uncertain at this stage. There is significant debate among political parties, member states and stakeholders about core elements of the proposal. Legal scholars have also raised concerns about the transparency of the legislative process and the potential weakening of reporting and due diligence obligations. On the other hand, the French president and the German Chancellor appeared to call to scrap the CSDDD altogether, only for a spokesperson for the German Chancellor to backtrack a few days later. Similar sentiments can be seen in the Netherlands. This dynamic environment means that the final form and scope of the Omnibus directives will still be shaped in the coming months.

Meanwhile, in the Netherlands, the implementation of the CSRD had not occurred yet when the Stop-the-Clock Directive was adopted. Nonetheless, in December 2024, the Dutch regulator (the *Autoriteit Financiële Markten* (AFM)) strongly encouraged the “first wave” of companies in scope to continue pursuing publication of a CSRD-compliant sustainability report over FY2024. Many did. Earlier, in its Focus Let-

Contributed by: Davine Roessingh, Casper Nagtegaal, Hylke ten Bruggencate and Sebastian Hinse,
De Brauw Blackstone Westbroek

ter for 2025 of October 2024, Dutch investor association Eumedion already called for these companies to submit their CSRD report to an advisory shareholder vote. Eumedion argued that sustainability information had now reached a status comparable to that of financial information. Eumedion therefore believed that it would be appropriate to bring the board's accountability with respect to sustainability information and performance on an equal footing with that of financial information and performance. Eumedion thereby ignored the continuing low levels of data quality and integrity of sustainability information, and the fact that CSRD reports to a great extent report non-binary and forward-looking information. An advisory vote will therefore likely not carry much meaning, regardless of its outcome. This may have contributed to the fact that no company adhered to the request.

While the implementation of the CSRD in the Netherlands lagged behind significantly, the draft implementing law on the CSDDD was quickly available for consultation. Many responses were submitted and the Ministry at the time voiced the ambition to progress the legislative process for the CSDDD more expediently than the CSRD process. That process, however, is not halted due to the Stop-the-Clock Directive. In the draft implementation and accompanying draft Explanatory Memorandum, the Dutch legislature made explicit that no national top-ups would be implemented.

Seeing that in early June 2025, the Dutch government collapsed due to far-right politician Wilders exiting the coalition, the fate of climate change policies has yet again become uncertain. Within the EU's nationally determined contribution (NDC), the Netherlands is designated to reduce its emissions by 48% from 2005 levels by 2030. Nationally, the Dutch Climate Act (*Klimaatwet*) enshrines a net-zero target by 2050 and an interim goal of a 55% GHG emission reduction by 2030 compared to 1990 levels. The Act also mandates the government to adopt a national climate plan every five years, publish a progress report biennially, and report annually on climate policies and their effects.

The initial Dutch Climate Plan for 2021–2030 was published in 2019. In June 2024, an updated version, the Climate Plan 2025–2035 (*Integrale Nationale Energie- en Klimaatplan*), was submitted, incorporating the

principles outlined in the coalition agreement (*Hoofddlijnenakkoord*) presented by the newly elected centre-right/right-wing government in May 2024. In March 2025, the Dutch government presented the finalised Climate Plan 2025–2035 to parliament. The Council of State issued its advice on this plan and signalled various points for improvement, amongst which the necessity of the inclusion of an interim target for the year 2040.

Overall, while in previous years the climate agenda enjoyed significant tailwind and Dutch corporates on that basis established ambitious targets and strategies towards decarbonisation, the recent swinging of the pendulum has to an extent reversed these ambitions often already before the due date for the first interim targets. It is to be seen whether this trend will persist in 2025 and beyond.

Tensions in corporate law and liability

While direct climate change regulation typically originates from Brussels, Strasbourg, or *Het Binnenhof* (the traditional seat of the Dutch Parliament in The Hague), in the Netherlands, a source of indirect climate rules has been the judiciary.

After the Dutch State was ordered to take measures to combat climate change in three instances, resulting in the well-known *Urgenda* decision of 20 December 2019, in the 2021 first instance decision in *Milieudefensie et al. v Shell*, Shell was ordered by the Hague District Court to limit or cause to be limited the aggregate annual volume of all CO₂ emissions into the atmosphere (Scope 1, 2 and 3) due to business operations, and to sell energy-carrying products of the Shell group to such an extent that this volume will have reduced by at least net 45% at the end of 2030, relative to 2019 levels.

Shell appealed the decision and on 12 November 2024, the Hague Court of Appeal handed down its long-awaited judgment in appeal. The Court of Appeal overturned the District Court judgment. Despite dismissing Milieudefensie's claims, the Court of Appeal did affirm that protection against dangerous climate change is a human right under Articles 2 and 8 of the ECHR, and that such rights can influence private legal relationships. It also held that companies which

Contributed by: Davine Roessingh, Casper Nagtegaal, Hylke ten Bruggencate and Sebastian Hinse,
De Brauw Blackstone Westbroek

significantly contribute to climate change and have the capacity to mitigate it, bear a responsibility to contribute to the mitigation of dangerous climate change, even in the absence of explicit statutory obligations.

Milieudefensie appealed the Court of Appeal's judgment with the Dutch Supreme Court in February 2025. The cassation is expected to run well into 2026. In the meantime, on the basis of the decision of the Court of Appeal, Milieudefensie announced a second set of proceedings against Shell. By letter of 13 May 2025, it demanded that Shell immediately cease to invest in new oil and gas fields and set emission reduction targets in line with the 1.5°C goal as laid down in the Paris Agreement for the years 2035 until 2050. Shell responded on 13 June 2025, rejecting Milieudefensie's demands, after which Milieudefensie announced to it would initiate litigation soon.

Meanwhile, on 28 March 2025, Milieudefensie initiated litigation against Dutch bank ING. Milieudefensie seeks that ING is ordered to reduce its emissions, including all "financed" and "facilitated" GHG emissions, relative to the year 2019, by 48%, 65%, 80% and 99% for the years 2030, 2035, 2040 and 2050 respectively. Milieudefensie moreover demands that ING is ordered to reduce "financed" and "facilitated" emissions of clients in its portfolio per sector relative to the year 2022, by various percentages derived from the Net Zero Emissions scenario of the International Energy Agency for the years 2030, 2035, 2040 and 2050.

Moreover, on 22 January 2025, the District Court of The Hague delivered a ruling in the case of *Greenpeace Nederland v the Dutch State*, mandating the government to significantly reduce nitrogen emissions by 2030 or face penalty payments. The court found that the government had failed to take adequate measures to prevent the deterioration of nitrogen-sensitive Natura 2000 areas and was not on track to meet its statutory nitrogen targets for 2025 and 2030. It noted that the government's budget for nitrogen reduction had been significantly reduced, from EUR25 billion to EUR5 billion, undermining its ability to meet these targets. The court ordered the Dutch government to ensure that by 31 December 2030, at least 50% of nitrogen-sensitive nature areas are brought below the critical deposition value, prioritising the most vulnerable areas. The government has announced that it will appeal the judgment.

It is clear that the Netherlands continues to be the forum for several high-stakes climate cases. Courts thereby may shape the contours of corporate responsibility for combating climate change and limiting environmental impact.

In the coming years, through the expansion of various types of stakeholder consultation, the potential continuing introduction of the CSRD, CSDDD and other EU sustainability regulation, together with the pending climate litigation described, boards and courts will likely have to put active thinking into how climate change policies interact with corporate law and board responsibility.