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Climate Change Regulation 2026

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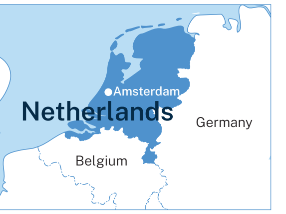

Trends and Developments

Contributed by:
Davine Roessingh, Sebastian Hinse and Tom van der Rijt
De Brauw Blackstone Westbroek

De Brauw Blackstone Westbroek is an independent and international law firm that has been deeply rooted in the Netherlands since 1871. The firm's practice covers a wide range of areas, comprehensively meeting clients' needs in 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 or Singapore. The firm acts both independently and co-operatively with other top-tier independent firms across the globe, who are connected through "Best Friends" – a network of top European law firms.

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Key Themes for 2026

In our Trends and Developments contribution in 2025, we focused on the impact that legal questions on climate change might have on Dutch corporate law. Now, in 2026, after years of considerable tailwind, climate regulation and climate mitigation policies are encountering even more headwinds than predicted, based on developments in 2025. International scientific consensus on the severe physical consequences of climate change is in most contexts not in dispute despite these headwinds. The UN Emissions Gap Report of 2025 confirms that current policies are insufficient to meet the goals of the Paris Agreement. While the long-term costs of adapting to higher temperatures are generally considered to be higher than the near-term costs of reducing emissions, near-term geopolitical pressures continue to slow action.

Legislators are in the midst of determining what an appropriate response is. They are shaping effective and economy-wide responses, while simultaneously balancing various other societal, economic and geopolitical interests. Both proponents and opponents of more stringent climate obligations seek to influence, interfere in, or circumvent the legislative process. They do so by, among other things, turning to the courts. From the many proceedings launched over the past 12 months, it is safe to conclude that the Netherlands is widely regarded by NGOs as an attractive forum in which climate policies can be put to the test.

In this contribution and against this background, we discuss three interlocking dynamics that define the Dutch climate landscape in 2026:

- government policy under pressure;
- corporate behaviour in adopting climate policies; and
- NGO-led litigation.

Government Climate Policy Under Pressure

The ambitions and associated obligations for States stemming from the Paris Agreement have been progressively sharpened by the international courts. In its *KlimaSeniorinnen* judgment of 2024, the European Court of Human Rights confirmed that States have a positive obligation to adopt climate mitigation measures. In July 2025, the International Court of Justice published an Advisory Opinion setting out that States have an obligation to protect the climate system under international law. The UN General Assembly's subsequent resolution of May 2026 urges States to implement measures to achieve the 1.5°C target, while recognising different national circumstances. In climate cases against States, however, courts at the same time continue to emphasise the wide margin of discretion for States as to which measures to adopt to reach climate targets. The aim therefore appears to be no longer in debate; but the method remains for States to determine.

Against this background, the Dutch State faces three notable challenges.

First, the Netherlands is currently not on track to achieve its 2030 emissions reduction target of 55%. Annual assessments by the Netherlands Environmental Assessment Agency and the Council of State conclude that progress is insufficient, as the current trajectory would lead to a 45–55% emission reduction in 2030 compared to 1990.

Second, the current geopolitical environment creates competing and compelling policy pressures – such as high energy costs for households and businesses – that illustrate the well-documented "time consistency problem" of climate policy: short-term pressure on governments to deviate from long-term commitments to ensure calibration with market circumstances. On top of that, a push to rapidly increase defence spending to ensure the long-term safety of the Netherlands and the European continent has put additional pressure on other long-term interests, such as climate change. An example of this is that the Dutch government is increasing domestic gas production from small Dutch gas fields in the interest of energy security and affordability. The government takes the view that this is consistent with its climate policy (and may be associated with fewer emissions than importing LNG), which focuses on reducing market-wide demand for fossil fuel, rather than on a decrease of national production as a standalone objective.

The third challenge is that the Dutch electorate continues to vote for parties that do not have climate change sufficiently high on their agenda. While polling generally shows that the majority of voters care about climate change and prefer mitigation actions, the outcomes of recent elections do not reflect this. When court decisions order the Dutch State to take more stringent climate action, tension arises, as the electorate then tends to perceive this as courts taking a legislative role on the initiative of NGOs. This discussion is ongoing.

These challenges add to the increasing recourse to judicial scrutiny. In January 2026, the District Court of The Hague issued its judgment in the *Bonaire* case. Inhabitants of Bonaire – a Caribbean island that forms part of the Kingdom of the Netherlands and which is particularly vulnerable to rising sea levels – brought proceedings against the Dutch State. The court concluded that Dutch climate policies are insufficient and that the State is in violation of Article 8 ECHR in respect of the inhabitants of Bonaire: the mitigation and adaptation measures taken by the State, viewed as a whole, were found not to meet the State's obligations in a UN context. The Dutch State announced it will appeal the decision.

The Bonaire judgment

For the purposes of this contribution, the *Bonaire* judgment merits discussion on two fundamental points.

The first point concerns the court's decision on the baseline year applied for the reductions envisaged. The court's assessment is that the Dutch State, in formulating its climate policies, operates against a baseline that is not consistent with the applicable legal framework. The Netherlands' 2030 target of a 55% net reduction in greenhouse gas emissions is explicitly defined in the European Climate Law by reference to 1990 emission levels — as is the Paris Agreement's accounting framework. The court finds that progress should be measured against a different, more recent baseline year (being 2019). This decision, however, ignores decades of reductions already achieved before 2019. This is not a technicality. It would move the goal posts post hoc and create divergence between national obligations across the EU. The court substantiates its baseline year choice by relying on an interpretation of two COP decisions (specifically the Glasgow Climate Pact and the Sharm el-Sheikh Implementation Plan). It is questionable whether these decisions provide sufficient legal basis for the court's finding that the Dutch State must reduce its emissions by 43% in 2030 relative to the baseline year 2019. After all, COP decisions have a distinctly different purpose and legal status and are in many respects not intended to change, and are not capable of changing, the contents of the Paris Agreement nor the material agreement laid down therein.

A second point of note is the fact that in its decision, the court includes considerations on the aviation and shipping sectors. Following the Paris Agreement, emissions from international aviation and shipping are addressed through dedicated multilateral frameworks: the International Civil Aviation Organization's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), and the International Maritime Organization (IMO) strategy. These sectors are deliberately excluded from the domestic nationally determined contribution accounting of individual States precisely because they are trans-boundary by nature and require co-ordinated international governance. At EU level, the same logic applies: while the EU has extended the scope of the EU Emissions Trading System (ETS) to cover aviation and, more recently, maritime transport, this has been done through specific legislative instruments – not by folding these sectors into EU member states' national reduction targets under the Effort Sharing framework.

The court's *Bonaire* decision is hence also difficult to reconcile on this point with the structure of both EU law and international climate law and their underlying considerations. This too may have a distorting impact on the functioning of climate policies within the EU, and the level playing field in, and functioning of, the internal market.

Taken together, these two points show the risk of fundamental misconceptions of the design of climate policies. They add to legal uncertainty and undermine legislative effectiveness. This, in turn, risks market responses from corporates, which will now be discussed.

Corporate Responses to Climate Policies

In the search for effective climate policies, due regard should be given to corporate market behaviour. Without embarking on an exposé of, among other things, the fiduciary duties of companies and their boards, the widely accepted notion is that private undertakings are, at a minimum, obliged to promote the success and viability of a company and should not embark on deliberate value destruction and financial distress. Climate policies widely take this into account and seek to calibrate climate change (mitigation and adaptation) obligations within the already existing legal framework to avoid directly conflicting obligations.

These dynamics and interests do not benefit from fragmentation across regulatory frameworks. This increases compliance costs and creates incentives for companies to transfer activities towards jurisdictions with lighter climate regulation (regulatory arbitrage). Four dynamics merit particular attention, as follows.

Asset divestiture

If a company retires emission-intensive assets early (certainly if it does so as a result of climate policies), it may divest those assets to buyers in less regulated jurisdictions who will continue exploiting them, resulting in no reduction – and potentially an increase – in overall real-world emissions. This concept of asset partitioning should be anticipated in climate policies to ensure that these policies do not have such a detrimental impact on the competitiveness of companies falling within their ambit that the companies are forced to work around them.

Carbon leakage

A second factor to take into account is carbon leakage. Companies exposed to the EU ETS may seek to relocate to third jurisdictions with less stringent climate policies. The EU has sought to address this risk through free allocation of emission allowances to highly exposed sectors and through the Carbon Border Adjustment Mechanism (CBAM). In addition to this, and as a matter of principle of course, the EU cannot ignore market dynamics outside the EU. Following the Draghi report, focus on the EU's competitiveness has increased.

Disclosure

Disclosure asymmetry adds a third dynamic. Companies subject to lighter disclosure obligations may gain a competitive advantage over those subject to stricter requirements, creating information asymmetries and diminishing first-mover incentives. This is certainly so where the disclosures cover topics that are not, or not directly or easily, translated into quantification of financial risk. Markets and investors will not act on such information in the same manner in which they act on information that represents (quantifiable) risk.

Conflicting obligations

A fourth – and increasingly problematic – issue is that of conflicting obligations. Regulatory fragmentation, in part as a result of decisions of national courts, can give rise to conflicting legal obligations for multinationals, heightening legal uncertainty. This can make it increasingly difficult and, at times, impossible for large globally operating companies to reconcile their obligations in, for example, the EU, with their obligations elsewhere, such as the US.

Against this backdrop, companies seek to manage their climate risk exposure, although this is structurally difficult. Climate risk unfolds over a long-term horizon, the speed of the transition is uncertain, and historical data is not representative of future conditions. These factors make well-informed, forward-looking climate risk decisions inherently challenging.

These dynamics, in combination with diverging and evolving climate change regulation, have forced companies in the Netherlands, like elsewhere in Europe and globally, to reassess their voluntarily adopted and communicated climate ambitions. The feasibility of these ambitions and the extent to which companies are able to deliver on, among others, emission reduction targets, depend to a great extent on the pace at which the various transitions – in climate, energy and food – progress. This is in addition to the fact that these companies have, for years, formulated climate-transition planning strategies that naturally seek to maintain competitive advantage and financial growth.

The reality described leads NGOs, in turn, not only to challenge national policies in court, but also to subject corporate climate obligations to the assessment of national courts.

Ever-Increasing NGO Activism in the Netherlands

The number of climate cases launched in the Dutch courts has not decreased over the past year. Several high-stakes proceedings that may affect the core business of major companies are currently ongoing or have been announced in the Netherlands against companies in the oil and gas, financial, food, and infrastructure sectors.

Milieudefensie v Shell

The first case launched by Milieudefensie against Shell is nearing its climax, as it is being heard by the Dutch Supreme Court. In the first *Shell* case, Dutch NGO Milieudefensie appealed to the Dutch Supreme Court after all its claims were rejected by the Court of Appeal. Milieudefensie claims that Shell has an obligation to reduce its scope 1, 2, and 3 emissions by 45% by 2030 relative to 2019. The Advocate General is expected to publish his opinion in Q4 2026 or Q1 2027, with the Supreme Court's judgment expected in Q2 or Q3 2027.

In the meantime, in May 2026, Milieudefensie launched a second case against Shell (by then domiciled in the United Kingdom), again in the Netherlands. While Milieudefensie brought the first case before the Hague District Court, the second claim was brought before the Amsterdam District Court, as at the time, Shell's headquarters were in Amsterdam. Milieudefensie argues it can choose where in the Netherlands it wishes to sue Shell since the damages caused by the purportedly unlawful actions of Shell occur across the entire country. In its argued position, Milieudefensie and any other NGO for that matter, would therefore be at liberty to sue any company around the globe for that company's contributions to climate change. Should the court accept jurisdiction in this case, on the basis of Milieudefensie's arguments, this would essentially make the Netherlands the hub for private enforcement of climate obligations globally. Milieudefensie's new strategy in this second case stems from the decision of the Hague Court of Appeal in the first *Shell* case. The Court of Appeal considered, as an obiter dictum, that investments in new oil and gas fields may conflict with obligations under Dutch law based on unwritten norms. That consideration prompted Milieudefensie to initiate new proceedings against Shell, including a claim that Shell be prohibited from continuing to produce oil and gas from fields where the final investment decision was taken after 1 January 2022, and from divesting those fields to third parties.

Milieudefensie v ING

In March 2025, Milieudefensie initiated proceedings against ING, one of the Netherlands' leading banks. Milieudefensie claims that ING is obliged to reduce its scope 1, 2, and 3 emissions, both at the overall portfolio level and for all sectors individually. The claims also include a prohibition on the bank providing new and existing financing to all clients that is in some shape or form related to new fossil fuel projects. This latter claim is similar to the relief sought by Milieudefensie in its second case brought against Shell. ING submitted its Statement of Defence in February 2026.

Greenpeace v JBS

In April 2026, Greenpeace sent globally operating food processor JBS a notice essentially arguing that JBS's (meat-based) business model is inherently unlawful. Greenpeace has requested significant amounts of data from JBS and has already announced its intention to launch litigation should JBS refuse to provide this data. JBS responded in May 2026 by drawing attention to, among other things, the fact that it was unclear from Greenpeace's letter what the organisation's exact position was. Greenpeace announced litigation on 22 July 2026.

Advocates for the Future v the Port of Rotterdam

In May 2026, another Dutch NGO, Advocates for the Future, delivered a notice before action to the Port of Rotterdam. This NGO also announced claims for reductions of, among other things, scope 1, 2 and 3 emissions. The Port of Rotterdam appears to be targeted because it is held by the Dutch State and the municipality of Rotterdam (ie, public entities). While cases against private companies have difficulty arguing the logic of transposing state obligations and national reduction percentages to obligations of a single, private entity, the NGO in this case likely wishes to use to its advantage the fact that the Port of Rotterdam is owned by public bodies, and the fact that it serves a public function. This, however, ignores the fact that the claims, as described, essentially relate to the activities of, and would directly impact, the lessees in Rotterdam harbour, which are private companies and their individual assets. The claims hence argue not an emission reduction at group or entity level, but at asset level. The assets in question, in turn, may be held by entities and groups domiciled in many different jurisdictions in which diverging climate policies and obligations apply.

Separation of power between the courts and the legislature

The proceedings described raise fundamental questions on the separation of powers between the courts and the legislature, and thus, whether courts can interfere in climate policies. Can they do so regardless of an extensive body of EU and Dutch climate regulations that explicitly state alignment with the Paris Agreement, and does this role change if, arguably, existing policies are considered inadequate?

Although not a Dutch development, it is relevant in the Dutch context that in May 2026, the German Federal Court of Justice issued its judgments in climate cases against BMW and Mercedes-Benz – the first final judgment at the highest level of a European civil court on the civil law mitigation obligations of companies. The court did not accept that it has a role to play in this respect. The decision of the Dutch Supreme Court in the *Milieudefensie/Shell* case will therefore be an important one, not merely for its contents as such, but also for the level of alignment or fragmentation that it can cause across countries and markets.

Two elements to consider in this context are the tools courts have at their disposal to assess these claims, and the role of science in these cases. As to the first element, court cases are typically conducted between parties and relate to specific events and conduct. In that process, the courts will not automatically be familiar with all the interests at play when assessing claims. While policy makers take years to formulate legislation that balances various, often competing, interests, and do so with the support of various bodies and tools, a court's assessment is not necessarily as broad and versatile, and is based on what parties argue in the specific case and how well they do so. Secondly, the court's assessment will require an assessment of science that science itself may not have foreshadowed. This is, for example, true for climate scenarios and pathways. These are not predictions, but instead, conditional narratives: structured explorations of what the future might look like if certain policy, technology, and economic assumptions hold. The Intergovernmental Panel on Climate Change (IPCC)'s Sixth Assessment Report alone draws on hundreds of such pathways. Within those classified as limiting warming to 1.5°C, there is substantial internal variation. Some, such as the International Energy Agency (IEA)'s Net Zero Emissions by 2050 scenario, proceed from the assumption that no new oil and gas field development is required. Others – including a number of IPCC-assessed pathways that accept limited or no overshoot – incorporate continued exploration and phased reduction, relying on different assumptions about carbon dioxide removal (CDR) and bioenergy with carbon capture and storage (BECCS), and demand destruction, fuel switching, the pace of renewable deployment and variation in the extent of overshoot projected and/or accepted. None of these scenarios is uniquely "correct". Selecting one as the legal standard is therefore not a scientific act – it is a policy choice, and one that carries consequences for capital allocation, industrial planning, and energy security over the next several decades. The selection of transition pathways and determination of reduction percentages therefore also does not entail a similar exercise for the courts as, for example, the estimation of damages or assessing causality. Instead, courts would be asked to select the norm itself.

When a court or regulator selects a single scenario as the benchmark against which a company's obligations are assessed, it imposes on that company a particular vision of the future energy market – a vision that may or may not correspond to how the actual transition unfolds. A company ordered to cease exploration of new fields on the basis of one scenario – while operating in a global market shaped by competitors and consumers whose jurisdictions have adopted different pathways and/or policies allowing for exploration of new fields – is not simply being made to internalise an externality, it is being compelled to act as though a specific macro-economic reality already exists, although it does not yet, and may never, exist in the form assumed by the model. The practical result can be the opposite of the intended regulatory effect. If the ordered company divests or exits and a less-regulated competitor fills the supply gap, global emissions do not fall. The reduction is displaced, not achieved. Moreover, if different companies operating in the same market are subject to different judicial orders based on different models – whether across jurisdictions or even within the same jurisdiction in sequenced proceedings – the resulting patchwork of obligations has no coherent relationship to any plausible market reality and may generate competitive distortions that risk undermining, rather than supporting, an orderly transition.

While parliaments and regulators can weigh the full range of competing scenarios, conduct economy-wide impact assessments, consult affected parties, and revise their approach as science, technology and geopolitics evolve, a court is unlikely to perform the same assessment and cannot revisit its decisions should reality require this after the fact.

With the wave of Dutch climate cases under way, it is worth considering whether NGOs, through these strategic lawsuits, are supporting the shaping of effective and enduring climate policies, or whether they are only targeting individual companies with purported obligations that, even if awarded, would be too rigid to survive real-world market dynamics.

Conclusion and Outlook

The Dutch climate landscape in 2026 confirms the central proposition of this contribution: government policy under pressure, corporate calibration including regulatory arbitrage, and NGO-led litigation are not three parallel trends, but interlocking dynamics.

Looking ahead, we expect these climate cases to be approached by NGOs in such a way that they will attempt piece by piece to shape the boundaries of what corporates can and cannot do from a climate change mitigation perspective. We expect that at the same time, the companies they target will increasingly focus on adaptation and climate risk management. Adaptation – adjusting business activities to minimise the costs associated with the expected level of global warming – requires reliable information on a company's climate risk exposure. This information is currently lacking at scale, leading to a risk of mispricing of climate risk and under-investment in adaptation strategies. As physical climate risks materialise with greater frequency and severity, demand for this information will grow.

We moreover expect that companies in, for example, the insurance sector, will explore the ways in which the financial impacts of extreme weather events caused by climate change can be recovered from those contributing to climate change. This will likely cause a wave of areas of science, such as attribution science, to support such cases. In turn, such after-the-fact cases reallocating the costs of climate change and even the mere prospect thereof, may go hand in hand with mitigation measures which will, in anticipation of such lawsuit, seek to decrease liability risk.