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Climate litigation in the wake of Covid-19

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The Covid-19 pandemic that has forced over half of the world's population into restrictive lockdowns of varying degrees has also triggered sudden drops in greenhouse gas emissions and a significant improvement in air quality as a result of the drastic decline in human activity. But many commentators have warned us not to mistake these signs for solutions to the serious threats associated with climate change that loom over humankind; they argue that this brief drop in emissions will provide no lasting relief for the climate[1]. In fact, the economic downturn caused by lockdowns could prove detrimental to efforts to decrease global emissions if it prompts governments to invest large sums of money to bail out fossil fuel-dependent industries in order to restart their economies.

However, a future in which carbon emissions skyrocket in a desperate attempt to save jobs and livelihoods in the short term is not fatal. Many experts and policymakers around the world have come together to seek solutions for a green recovery to the pandemic. The idea of a green recovery has also been receiving significant coverage in European media. This article seeks to explore the impact of the coronavirus pandemic from the perspective of climate regulation and litigation in Europe, and attempts to identify future trends in this area.

1. Pre-pandemic trends in climate litigation

While predominantly an American phenomenon[1], climate litigation has increasingly become a tool used by European climate activists to push for more ambitious climate policies in the face of a perceived lack of political will, and to put pressure on corporate behaviour. While all these cases offer climate-related arguments in support of their claims, they vary widely in terms of their scope and the legal grounds they invoke. These include national climate-related legislation and policy, international and national human rights law, and private law grounds such as nuisance and negligence (or their civil law equivalents). Spanning multiple national jurisdictions and legal traditions, some hybrid concepts such as the duty of care and the public trust doctrine have also emerged as sources of climate obligations for Member States[2]. In addition, company law, commercial law and financial law also increasingly contain climate-related obligations for companies, such as climate-related disclosure and consumer protection requirements.

One point often raised in and about climate cases is that the courts are not the best forum to address climate change. Achieving the objective of climate neutrality with a tight deadline requires sweeping reforms in many areas of human activity, which the legislative and executive branches are most suited to enact and implement[3]. Climate cases are not always successful, and plaintiffs face structural challenges such as establishing standing to sue or establishing causality between the activities of a specific entity and the environmental damage they face. However, the discussion below demonstrates how litigation can contribute to more rapid progress in bringing about these changes by crafting arguments for more ambitious goals on the basis of existing legal grounds and holding governments and companies accountable when they do not respect the existing framework. Litigation can also have a much broader impact than the result of the case itself, and contributes to shape standards and public perception of how governments and companies should be handling climate risks.

1.1 Litigation against governments

A majority of climate cases are filed against governments. Although claims and legal grounds vary widely, what many of these actions have in common is that they seek in some form or another to ensure that States respect their commitments made under the Paris Agreement[4].

(a) Greening of human rights

Some actions brought against governments consist of comprehensive challenges to their climate policies, claiming that they are obliged to set more ambitious policies, for instance through the adoption of higher emissions reduction targets[5]. The most famous example of challenge to a Member State's climate policies is the *Urgenda* case in the Netherlands: this is the first case in the world in which a court has ordered a State to achieve a greater reduction in greenhouse gas emissions in the absence of a statutory obligation, simply based on general legal principles and human rights provisions.

The case was filed in 2013 in the Netherlands by the Urgenda foundation, who claimed that the Dutch State was obliged to adopt an emissions reduction target of 25% to 40% compared to 1990 levels in order to achieve the goal of keeping global warming below 2°C as defined within the UNFCCC framework[6]. The bases for this claim were the Dutch State's obligation to respect its international climate obligations, including under the UNFCCC framework; the Dutch's State's obligation to protect the fundamental rights of its citizens, in particular the rights to life and private and family life enshrined in articles 2 and 8 of the European Convention on Human Rights; and an unlawful nuisance claim under national law[7]. On 24 June 2015, the District Court of The Hague held in favour of Urgenda. The Court accepted that by failing to set an adequate emissions reduction target, the Dutch State had acted negligently, and that its duty of care towards its citizens under Dutch civil law obliges it to achieve a reduction of at least 25% compared to 1990 levels by the end of 2020[8].

This decision was upheld by the Court of Appeal of The Hague on 9 October 2018. What is remarkable about the appeal decision is that it states that the Dutch State's obligation to reduce its emissions by at least 25% by the end of 2020 derives directly from articles 2 and 8 of the European Convention on Human Rights. The reasoning of the Court of Appeal is as follows: Member States have a duty under articles 2 and 8 of the European Convention on Human Rights to protect the rights to life and private and family life of their citizens from imminent threats of which they are aware[9]. Climate science has sufficiently established that climate change constitutes such an imminent, and even current, threat to the rights of Dutch citizens[10]. The reduction target of at least 25% of emissions is the minimum necessary to achieve the globally agreed goal of keeping global warming well below 2°C and preferably under 1.5°C[11]. Therefore, the Dutch State has a duty under articles 2 and 8 of the European Convention on Human Rights to achieve a reduction in emissions of at least 25% compared to 1990 levels by the end of 2020[12]. On 20 December 2019, the Supreme Court of the Netherlands upheld this decision.

This reliance on articles 2 and 8 of the European Convention on Human Rights as the basis of a Member State's obligation to take more action to fight climate change constitutes an example of the "greening of human rights": rather than seeking to assert a new substantive right to a clean environment, plaintiffs leverage well-established human rights in an environmental context. The Supreme Court's decision in Urgenda further supports this trend by engaging in a lengthy discussion of articles 2 and 8 in the environmental context, in response to the Dutch State's claim that these provisions do not entail an obligation for Member States to offer protection from climate change because of its global nature[13]. The Supreme Court noted that these provisions do not only afford protection to single individuals, as European Court of Human Rights case law, although silent on climate change specifically, requires Member States to protect entire groups of individuals or regions affected by environmental hazards[14]. This, coupled with the seriousness of the threat posed by climate change and Member States' duties under international law, led the Supreme Court to conclude that the global nature of this issue does not detract from the duty of each Member State to "do its part" to protect the rights of its citizens against climate change[15].

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However, similar challenges, in which plaintiffs have also invoked human rights as a ground for the Member State's obligation to act, have been dismissed for a variety of reasons in other European jurisdictions such as the UK *(Plan B Earth and Others v. The Secretary of State for Business, Energy, and Industrial Strategy*[16]*; Packham v. The Secretary of State for Transport)*[17]*, Germany (Family Farmers and Greenpeace Germany v. Germany)*[18]*, Ireland (Friends of the Irish Environment v. Ireland)*[19]*, Switzerland (Verein KlimaSeniorinnen Schweiz v. Bundesrat)*[20]*, and the EU (Armando Ferrão Carvalho and Others v. The European Parliament and the Council)*[21].

This has not prevented other parties from bringing new claims relating to climate change.

In February 2020, a group of German youths filed a legal challenge against Germany's federal Climate Protection Act (*Bundesklimaschutzgezetz*), arguing that the Act's target of reducing greenhouse gases by 55% by 2030 from 1990 levels is insufficient[22]. The plaintiffs allege that the Climate Protection Act therefore violates their human rights (including their right to life and physical integrity and the principle of human dignity, as protected by the German Basic Law (*Grundgezetz*). They ask that the Federal Constitutional Court declare that (i) the Climate Protection Act violates the German Basic Law, (ii) the federal legislature is required to issue new quotas to ensure that Germany's emissions are kept as low as possible, and (iii) the federal legislator is obliged to create new regulations prohibiting Germany from transferring emission allocations to European neighbouring states as long as EU climate protection legislation does not provide a sufficient level of protection of their basic rights.

On 18 May 2020, three plaintiffs sought judicial review of the UK government's energy national policy statements on the grounds that these policy statements must be re-evaluated in light of new UK and global climate commitments. Alternatively, they argue that the national policy statements must be declared unlawful. Amended summons were filed on 29 June 2020 and this case is still pending[23].

On 31 July 2020, the Supreme Court of Ireland delivered a ruling reversing the High Court decision in *Friends of the Irish Environment v. Ireland*[24]. The case concerned a judicial review application by Irish NGO Friends of the Irish Environment against Ireland's National Mitigation Plan adopted under the Climate Action and Low Carbon Development Act. The plaintiffs argued that the plan was unconstitutional, breached fundamental rights guaranteed by the European Convention on Human Rights, and did not satisfy the requirements of the Act under which it was adopted[25]. The High Court had rejected the challenge, holding that the government had acted within its margin of discretion[26]. The Supreme Court reversed this decision, holding that "the Plan falls well short of the level of specificity required to provide that transparency and to comply with the provisions of the 2015 Act"[27]. However, the Supreme Court considered that the plaintiffs, as a legal entity unable to enjoy the right to life and the right to bodily integrity, did not have standing to invoke breaches of these human rights in the context of the proceedings[28].

On 2 September 2020, six Portuguese youths lodged a complaint with the European Court of Human Rights against 33 countries[29]. The plaintiffs allege that these countries have violated their human rights by failing to take sufficient action on climate change, and they are seeking an order requiring these countries to take more ambitious action. More specifically, the plaintiffs rely on articles 2, 8 and 14 of the European Convention on Human Rights, which protect the right to life, the right to respect for private and family life and the right not to experience discrimination; the plaintiffs claim that the defendant countries have fallen short of their human rights obligations, by failing to agree to emission reductions that will limit any temperature increase to 1.5 degrees Celsius, as envisaged by the Paris Agreement.

More recently, on 15 September 2020, Greenpeace Spain, Oxfam Intermon and Ecologistas en Accion filed a lawsuit against the Spanish Government, arguing that it has failed to take adequate action on climate change. More specifically, the plaintiffs claim that Spain is in breach of Regulation (EU) 2018/1999[30], and should have approved a National Energy and Climate Plan and Long Term Strategy. According to public sources, the plaintiffs seek an order compelling greater climate action.

(b) (De-)carbonization of environmental law- the example of environmental impact assessments

In another type of climate case against governments, plaintiffs challenge a more specific aspect of a Member State's policy or a specific project, for instance the decision to qualify forest biomass as renewable energy[31], the decision to grant a tax credit for air travel[32], the decision to allow an airport extension[33], or the decision to grant deep-sea extraction licenses[34].

An interesting development has arisen recently in this area. On 27 February 2020, the Court of Appeal of England and Wales held in favour of plaintiffs challenging a government policy allowing for the construction of a third runway at Heathrow airport. In first instance, the Divisional Court dismissed the plaintiffs' claims, holding that this policy was made lawfully. On appeal, the plaintiffs raised issues about the operation of the Habitats and Strategic Environmental Assessment (**SEA**) Directives, as well as a number of issues regarding the UK's commitments on climate change. The Court of Appeal held that the government acted unlawfully in failing to take into account the Paris Agreement when devising the policy because such a consideration is required under sections 5(8) and 10(3) of the UK Planning Act and Annex I to the SEA Directive. The Court also held that when the government reconsiders the policy to fix its established deficiencies, it should also take into consideration the non-CO2 climate impacts of aviation and the effect of emissions beyond 2050, which was not done in the challenged policy decision. The UK government announced that it would not appeal the decision. However, on 7 May 2020, the Supreme Court granted permission to appeal to Heathrow Airport Ltd and Arora Holdings Ltd on the issue of "whether the Government's failure to take account of the United Kingdom's climate change commitments, as represented in the Paris Agreement, when deciding whether or not to build a new runway at Heathrow Airport rendered the decision unlawful".

What is interesting, and somewhat controversial, about the Court of Appeal's decision in the Heathrow case is that neither sections 5(8) and 10(3) of the UK Planning Act, nor the SEA Directive explicitly require that the government take into account the Paris Agreement. Section 5(8) of the Planning Act requires that "government policy relating to the mitigation of, and adaptation to, climate change" is taken into account, which the Court of Appeal deemed to include the Paris Agreement. Section 10(3) requires the Secretary of State to exercise his/her functions with "regard [to] the desirability of mitigating, and adapting to, climate change", which the Court of Appeal also interpreted as requiring the Secretary of State to consider the Paris Agreement. As for the SEA Directive, its main purpose is to ensure an assessment of the environmental impacts of a plan or programme on the environment, but it does not include any requirements in relation to climate change. The Court of Appeal based its conclusion that the Paris Agreement should have been taken into account on the requirement contained in Annex I to the Directive that the government take into account "the environmental protection objectives, established at international (…) level, which are relevant to the plan".

This decision by the Court of Appeal exemplifies another trend in climate litigation: the (de-)carbonization of environmental impact assessments, i.e. the extensive interpretation of existing environmental requirements to include climate criteria which are not imposed in the text of the legal provision itself. That trend first became apparent in an Austrian case on the construction of a third runway at Vienna Airport, albeit with a different outcome. In February 2017, the Austrian Federal Administrative Court struck down the approval of the construction plan on the ground that such a construction was contrary to the public interest. The Court based its decision on the Austrian Aviation Act, which includes consideration of "other public interests" among the authorizations requirements for the plan. The Court interpreted the notion of public interests as encompassing the need to mitigate climate change, which according to the Court is a requirement that flows from Austrian law, EU law, and international commitments such as the Paris Agreement.

Similarly to the Court of Appeal in *Heathrow*, the Federal Administrative Court in *Vienna Airport* thus incorporated climate considerations through an existing, non-climate-related assessment requirement. However, in June 2017, the Austrian Constitutional Court overturned this decision. The Constitutional Court held that the Federal Administrative Court had (i) considered greenhouse gas emissions too-broadly, (ii) wrongly considered that certain EU law provisions and international agreements such as the Paris Agreement resulted in any directly applicable obligations in that context; and (iii) wrongly considered "public interests" such as climate protection, which are not rooted in the Aviation Act. But the Constitutional Court made it clear that while public interests not rooted in the Aviation Act cannot be taken into account, environmental protection should, by virtue of its constitutional significance, be taken into account when interpreting public interests referred to in the Aviation Act (among other things: protection of the general public and the avoidance of the endangerment of lives, health and property). This leaves the reader to wonder whether the Constitutional Court's decision would have been different if the Federal Administrative Court, rather than relying on the public interest to mitigate climate change, had held that the plan was contrary to the public interest of protecting lives and property as interpreted in the light of the environmental context, including the detrimental effects of greenhouse gas emissions on climate change and its resulting harmful consequences.

1.2 Litigation against companies

Although governments are the most common defendants in climate cases, companies are increasingly targeted in these types of lawsuits as well. Companies are faced with a wide variety of claims and legal arguments, which are in continual expansion under the combined impulse of creative plaintiffs and evolving legal frameworks.

(a) Liability for carbon majors

Plaintiffs have brought claims against companies seeking to hold them liable for their greenhouse gas emissions' contribution to climate change. One notable example of a liability claim against a company for its contribution to climate change is *Lliuya v. RWE AG*. This case was brought by a Peruvian farmer seeking damages from RWE, a German energy producer, to cover the costs of protecting his Peruvian town against the risks of floods due to melting glaciers. The farmer alleged that by emitting substantial amounts of greenhouse gases over time, RWE was partly responsible for this phenomenon. In first instance, the

Regional Court of Essen (Germany) dismissed the farmer's claim, but the Higher Regional Court of Hamm subsequently declared the claim admissible, which was in itself seen as a huge step forward for this type of claim. The case therefore proceeded to the evidentiary stage, and is currently pending, awaiting the gathering of evidence. But this is no formality: the plaintiff faces a significant challenge in proving causality between the melting glaciers and RWE's emissions, and in determining the share of RWE's responsibility.

(b) Challenges to carbon-heavy operations

In a similar manner to governments in cases like *Urgenda*, some companies have recently been sued by activists seeking to force them to reduce their greenhouse gas emissions for the future based on general principles of law and human rights principles[35]. For instance, in *Milieudefensie et al. v. Royal Dutch Shell plc* (currently pending), a group of NGOs brought an action against Shell before the District Court of The Hague in the Netherlands, seeking to force Shell to meet certain emission reduction targets by 2030, 2040 and 2050[36]. The legal ground invoked to support this claim is the social duty of care that Shell must exercise in order to avoid being guilty of unlawful endangerment under the Dutch Civil Code, as interpreted in the light of human rights standards as set out in *Urgenda*. Similar lawsuits have been brought in Poland based on a general requirement not to cause damage through environmental harm[37].

Another strategy deployed by plaintiffs to hinder a company's carbon-heavy activities is to challenge the permits that allow the company to operate. Such cases are introduced against permitting authorities rather than the companies themselves. However, certain frameworks such as the OECD Guidelines for Multinational Enterprises or the French "plan de vigilance"[38] require companies to conduct an assessment of the environmental impacts of their own projects. Plaintiffs have sought to challenge companies' involvements in certain projects on these bases. For instance, in November 2019, a group of NGOs brought a complaint to the attention of the Slovenian and UK National Contact Points for the OECD Guidelines against a company engaging in fracking, on the ground that the company, its subsidiaries and contractors had failed to take into account and to mitigate the adverse impacts of their activities. The complaint is currently pending. In France, Friends of the Earth introduced a complaint against Total before the Nanterre District Court alleging that Total had breached its obligations under the "plan de vigilance"[39] by failing to identify and address the human rights and environmental risks associated with a specific project it conducted in Uganda[40]. The Court transferred the case to the Nanterre Commercial Court in January 2020 on grounds of competence[41].

(c) Compliance with non-financial disclosures

Another increasingly prominent type of climate litigation against companies arises from breaches of non-financial disclosures requirements. In an effort to integrate social and environmental considerations into the way large companies are run, EU and national lawmakers have imposed requirements on these companies to report on a number of non-financial elements of their performance. The EU's Non-Financial Reporting Directive requires certain large companies to report on the policies they implement in the areas of environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery, and diversity on company boards[42]. This Directive is due to be reviewed in the context of the European Green Deal in order to strengthen the foundations for sustainable investment. National legislation in various countries has imposed additional reporting requirements.

This proliferation of disclosure requirements has become a breeding ground for lawsuits against companies that fail to comply with them. For instance, in 2017, France introduced a new obligation for large companies to draw up a "*plan de vigilance*" which must identify risks posed to human rights, health and security, and the environment as a result of the company's activities; the plan must also contain prevention and mitigation measures to address these risks, and procedures to ensure their effective application[43,44].

In January 2020, a group of French NGOs and municipalities brought a case against Total before the Nanterre District Court (distinct from the case about the Uganda project), which is currently pending, alleging a breach on the part of Total of its disclosure obligations under the French "*plan de vigilance*"[45]. The plaintiffs are arguing that Total failed to identify the climate change-related risks associated with its activities properly and to devise appropriate mitigating and preventive measures as required by the "*plan de vigilance*" provisions; in terms of mitigating measures, they are requesting that the District Court order Total to adopt a series of specific targets and measures to ensure climate neutrality by 2050 and to limit global warming to 1.5°C[46].

Even non-binding standards such as the OECD Guidelines for Multinational Enterprises have been used by environmental activists to push companies towards more ambitious targets. In 2017, a group of NGOs in the Netherlands brought a complaint to the attention of the National Contact Point for the OECD Guidelines, arguing a failure on the part of Dutch bank ING to disclose the quantity of greenhouse gas emissions emitted as a result of its financing, and to adopt goals to decrease the amount of these emissions. Following a dialogue between the parties under the auspices of the National Contact Point, ING made a number of commitments with regards to measuring and reporting on its climate impact, setting intermediary targets in order to achieve the Paris Agreement objective, and steering its lending portfolio in a direction compatible with that objective[47].

However, in making these disclosures, companies must be careful about the information that they present to the public. They are indeed at risk of becoming the target of lawsuits or complaints if their statements are misleading. For instance, NGO ClientEarth brought a complaint against BP to the attention of the National Contact Point for OECD in the UK in December 2019, alleging that BP's advertisement contained a number of misleading claims and statements regarding the characterization of its activities and their environmental impact[48]. Shortly after the complaint was made, which is still pending, BP announced that it was putting an end to this advertising campaign and that it would no longer engage in that sort of "corporate reputation advertising"[49].

(d) Shareholder activism and fiduciary duties

It is worth noting that the litigation risk may come from within companies themselves. In the same way that States are sued by their own citizens demanding better climate governance, shareholders have sued companies in which they own shares, for instance demanding compliance with disclosure requirements[50] or arguing that a company's decision to construct a new coal-fired power plant was against its best interests[51]. One emerging question in relation to companies' governance is whether, in the context of their duty to exercise due care and diligence and to act in the best interests of the company, directors have a duty to factor in climate risks. In Australia, a young man sued his pension fund, alleging that the fund's trustee has breached its duty to act as a prudent and diligent trustee by failing to provide adequate information about the climate risks associated with their investments and its failure to put into place processes that comply with the recommendations of the Task Force on Climate-related Financial Disclosures[52]. This case, which is currently pending, could prove significant for the future of corporate governance.

In a similar vein, on 22 July 2020, Australian Kathleen O'Donnell filed an Originating Application and Concise Statement in the Federal Court of Australia, naming as respondents the Commonwealth of Australia, the Secretary to the Department of Treasury and the CEO of the Australian Office of Financial Management[53]. Ms O'Donnell is claiming that as long-term investments, exchange-traded Australian Government Bonds (**eAGBs**) face material risks caused by climate change, and that the Commonwealth and its officers are required to disclose these risks to investors.

If successful, Ms O'Donnell seeks declarations that the Commonwealth and its agents have breached their duties of disclosure, and injunctions preventing the Commonwealth from promoting eAGBs until it adequately discloses the climate risks associated with them.

Unlike *McVeigh v Retail Employees Superannuation Trust*, or the *Urgenda* litigation in the Netherlands, Ms O'Donnell does not claim that the Commonwealth must implement better climate change policies: rather, her claim is confined to the obligation to disclose climate change risks.

2. Ebbs and flows of climate-related regulatory initiatives after Covid-19

2.1 Regulatory efforts and economic disruption

Recent years have brought about a growing understanding among policymakers and the public of the urgency to address climate change. In 2015, the international community agreed to a goal of keeping global warming well below 2°C, and to strive to keep it below 1.5°C, which experts agree would substantially reduce the risks and impacts of climate change. However, experts agree that mitigation measures currently in place around the world are insufficient to meet the temperature goal in the Paris Agreement[54]. The new European Commission set out to tackle this overwhelming challenge by issuing a Communication setting out a European Green Deal on 11 December 2019. This document sets out a comprehensive plan to "transform the EU's economy for a sustainable future", with a view to achieving climate neutrality by 2050. The shifts announced in this plan include decarbonizing the energy system, decarbonizing industry and promoting a circular economy, building more efficiently, revising mobility, designing a more sustainable food system, preserving and restoring ecosystems, and achieving a toxic-free environment. In order to achieve this, sustainability must become a key consideration in all EU and national policies and investments. Along with this comprehensive vision for the future of the EU, the European Commission issued a roadmap for the next steps to implement this vision over the next two years. These include devising strategies to set detailed sector-specific goals, some of which have already been released, and drafting or revising regulatory instruments to implement them. One of the key legal initiatives included in the European Green Deal is the European Climate Law, for which a proposal was adopted by the European Commission on 4 March 2020. This proposal sets a binding climate-neutrality target for 2050 and mandates EU institutions and Member States to adopt the necessary measures to reach that target[55]. The proposal also empowers the European Commission to set out a trajectory for emissions between 2030 and 2050, and announces a revision of the 2030 emissions reduction target[56].

However, the breakout of the coronavirus pandemic has disrupted economies on a global scale and at least temporarily shifted all other concerns aside. Governments are pouring massive resources into containing the virus and supporting individuals and businesses affected by restrictive lockdowns. In addition to shifting public attention away from climate change, this has diverted away and reduced resources available to public and private stakeholders to make investments for a sustainable transition. The crisis has also forced the European Commission to revise its immediate working priorities. On 27 May 2020, the European Commission released a revised version of its 2020 work programme in which it announces delays in the adoption of some initiatives under the European Green Deal, such as the Renewed Sustainable Finance Strategy and the review of the Non-financial Reporting Directive, which have both been pushed back by a few months. But the European Commission has stated that initiatives deemed central to the recovery such as the Strategy for sustainable and smart mobility, the legislative proposal on sustainable aviation fuels and the Strategy for smart sector integration are still on schedule[57].

2.2 The promise of a green recovery

In spite of the major change in circumstances brought about by the pandemic, climate change has remained a top priority on the public agenda. This global disruption actually constitutes an opportunity for Member States to accelerate the progress made in addressing climate change: their prominent interventionist role in keeping their economies afloat provides opportunities for them to integrate environmental policy objectives into recovery packages. And European leaders seem to have embraced this idea. At the end of April, Germany and the UK co-hosted the 11th edition of the Petersberg Climate Dialogue, during which 30 ministers and high-level representatives discussed climate-friendly strategies to help their economies emerge from the crisis. On 27 May 2020, the European Commission released its proposal for a recovery plan with an associated 750 billion euro budget, which puts the green and digital transitions at the centre of the recovery and reconstruction efforts. Investments will be guided by the EU sustainable taxonomy to ensure that they align with the EU's climate neutrality objective. In equipping itself with the means to reach its goals, the European Commission is sending a strong signal that addressing climate change remains one of its key priorities for the years to come.

The European Commission has also stated, in its Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak, that although it is primarily up to Member States to design national support measures, they are encouraged to adopt a green approach in accordance with the EU's climate neutrality objective[58]. The document also states that for State aid received under the framework, "large undertakings shall report on how the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation"[59]. However, this Framework does not contain any concrete sustainability criteria, nor impose any obligations on reporting undertakings to demonstrate the achievement of such criteria; the references it contains to sustainability therefore seem to have little force beyond their rhetorical impact.

The economic turmoil caused by the pandemic also reinforces the imperative for companies to boost their transition to climate neutrality. The increasing prevalence of climate considerations in investment decisions, the evolution of legal frameworks towards increased sustainability requirements and the European objective of climate neutrality, which will eventually filter into national legislation, mean that companies' liability, and eventually their growth, will be on the line if they do not take the same direction. In addition, more immediately, companies improving on sustainability may also be in a better position to benefit from recovery aid. The pandemic therefore presents a good opportunity for companies to re-evaluate activities in order to get rid of certain carbon-intensive assets and to build more resilience at every step of their operations[60]. The OECD's guidelines on Covid-19 and Responsible Business Conduct recommend that companies apply risk-based due diligence throughout their supply chains in order to be able to identify and address adverse social and environmental impacts in their crisis response[61]. According to the guidelines, this includes "better reporting on measures taken [to] address the financial, environmental, social and governance risks companies face as a result of the Covid-19 crisis[62]."

Airline bailouts provide a good illustration of the challenges and opportunities presented by the pandemic. Many Member States have already stepped in to provide substantial loans and grants to their national airlines in the face of this unprecedented crisis for the industry. This support has attracted criticism as the air travel sector's greenhouse gas emissions have soared over the past decades; providing them with massive support therefore means supporting a carbon-heavy activity at the expense of greater investments in de-carbonization. But many have also pointed out that these bailouts could be an opportunity to force airlines to become greener, by tying the support they receive to green conditions. Such conditions could include fuel efficiency standards, retiring old airplanes, new taxes on airlines' revenues, investments into low-carbon technologies development programs, frequent flyer levies, better emissions reporting requirements, and targets to limit emissions growth in the future[63]. France has embraced this approach, with enhanced sustainability policies attached to its EUR7 billion support package to the Air France KLM group. Germany, on the other hand, announced a rescue package for Lufthansa that does not contain environmental conditions; the German environmental minister stated that climate action would happen in a second phase of the recovery[64].

The tension between sustainability and the need to support airlines is also exemplified by the Council of the International Civil Aviation Organization (**ICAO**)'s revision the calculation basis for the baseline for the Carbon Offsetting and Reduction Scheme. This voluntary emissions mitigation scheme was designed to address increases in CO2 emissions from the aviation industry above 2020 levels, with a pilot phase due to start in 2021. On 30 June 2020, the ICAO decided not to take into account the real value of 2020 emissions in its calculation, and to use the value of 2019 emissions instead, in order not to impose an inappropriate economic burden on the industry by adopting a very low baseline[65]. This means that the lower activity levels in aviation brought about by the pandemic will not translate into stricter emission reduction targets for the industry in coming years. But aviation companies nonetheless remain subject to the EU ETS system, which is not impacted by the ICAO decision.

3. Thoughts on the future of climate litigation

The pre-pandemic prominence of climate change in the public eye and on policymakers' agenda has clearly survived the crisis. This crisis has even sparked the promise of accelerated change as Member States take advantage of their stimulus packages to push forward green policy objectives. As a result of changes in the regulatory landscape and increasing pressure on private and public stakeholders to achieve climate neutrality in time to achieve the 1.5°C temperature objective, the budding litigation trends identified in the first part of this article are likely to gain further traction in the future.

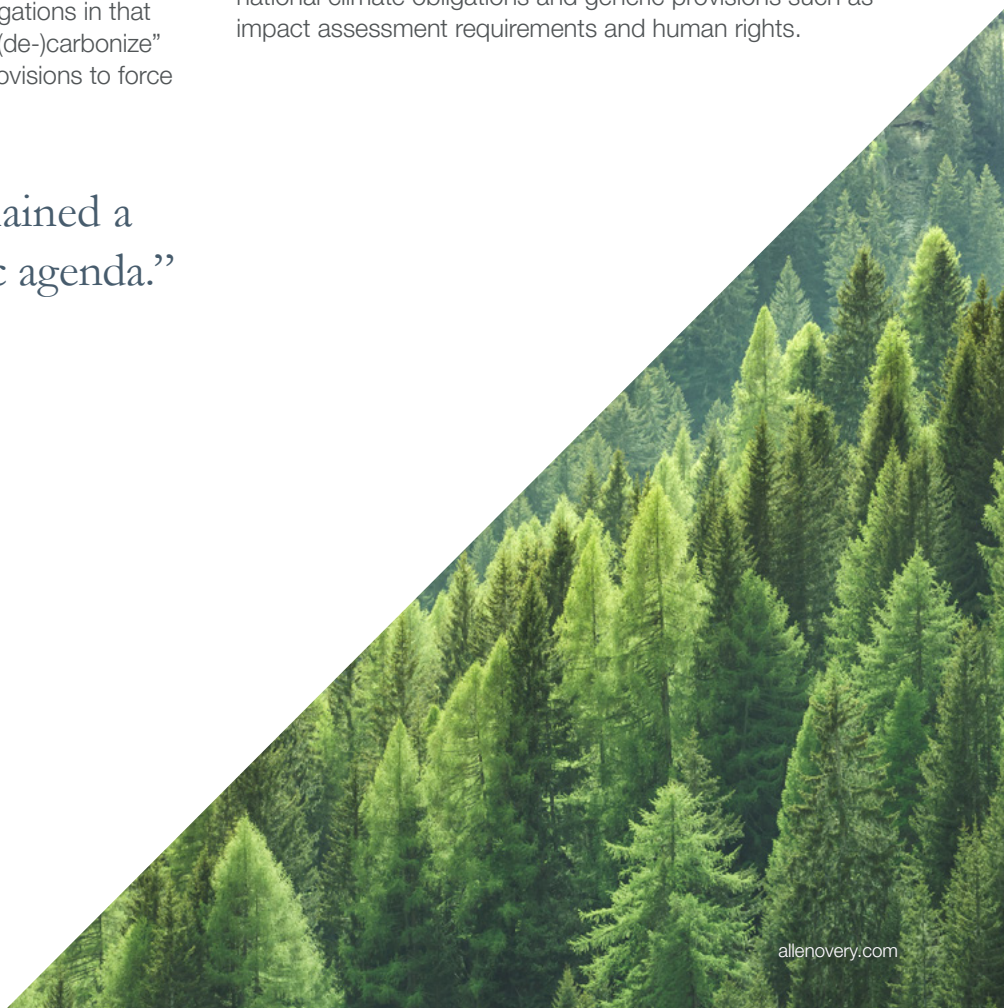
3.1 Demanding climate policies fit to achieve the 1.5°C temperature objective

Regarding the context described above, the current trend of forcing Member States to devise and implement appropriate climate targets and policies and to achieve the objectives of the Paris Agreement should persist in the years to come. The string of victories in the *Urgenda* saga has already encouraged plaintiffs to bring lawsuits in other countries: similar cases are currently pending before the Belgian and French courts[66]. In terms of the trends identified earlier regarding the arguments invoked in such cases, it is likely that plaintiffs will continue to invoke human rights, thereby further developing a body of case law "greening" well-established rights such as the right to life or to private and family life in the context of protection against climate change. In the absence of a sufficient national framework to address climate change, human rights provide a vehicle through which policymakers may be reminded of the stakes of fighting climate change, and of their obligations in that regard. Similarly, plaintiffs will continue to "(de-)carbonize" non-climate-related impact assessment provisions to force policymakers to reckon with the climate consequences of projects as long as Member States do not provide sufficient climate requirements in their environment impact assessment frameworks.

The trend of suing Member States to pursue better policies and decisions is likely to grow even further as the EU continues to devise strategies and to revise instruments in the context of the European Green Deal. These regulatory changes at the European level will put additional pressure on Member States to design and implement national policies that are appropriate to reach the 2050 climate neutrality objective and the intermediary emissions reduction goals, and will provide additional legal grounds for plaintiffs to invoke in court. For instance, once the European Climate Law is adopted, it is likely that plaintiffs will try to rely on the Member States' duty to "take the necessary measures […] to enable the collective achievement of the climate-neutrality objective"[67] in order to challenge policies and projects that do not fall in line with these objectives before national courts.

In the meantime, as discussed above, there is a sense that Member States must take advantage of the opportunity to use the economic instruments at their disposal in the wake of the pandemic to adopt policies that go in that direction, and plaintiffs may attempt to oblige Member States to do so through the courts. Plaintiffs may for instance try to question governments' decisions to grant State aid without environmental considerations. As stated above, the EU Temporary Framework on State Aid does not provide a firm legal ground in that regard, but plaintiffs may resort to national climate obligations and generic provisions such as impact assessment requirements and human rights.

"Climate change has remained a top priority on the public agenda."



3.2 Holding companies accountable for past, present and future emissions

The green shift in individual consciences and in regulatory frameworks described above, which was already at play before the pandemic, and has at some level been exacerbated by it, will undoubtedly continue to shape expectations of the role that companies must play in that context. Climate neutrality cannot be attained without the cooperation of private economic actors; therefore, the trend of companies coming under scrutiny for the way in which they address climate concerns will be more present than ever as efforts to reach this goal intensify. In our assessment, future climate-related claims and liabilities for companies will build on a number of the emerging trends identified above, especially focusing on (i) adequate disclosures of climate risks (ii) the scope of directors' fiduciary duties, and (iii) misselling claims (e.g. on green labeling/taxonomy).

Companies must be ready to reckon with a future in which they face claims aiming to hold them liable for their greenhouse gas emissions and their contribution to climate change, be it past, present or future. In terms of the past, the trend for companies such as carbon majors to be sued for damages suffered as a result of their contribution to global climate change is not likely to die down. On the contrary, the breakthroughs made in cases such as *Lliyua* and the evolution of attribution science will make these cases increasingly likely to succeed and all the more appealing as a result. In terms of their present and future emissions, companies will be required to comply with increasingly stringent climate-related requirements. For instance, on 29 April 2020, the European Commissioner for Justice announced that the European Commission will adopt new legislation on mandatory environmental and human rights due diligence in 2021. This legislation should require companies to identify, prevent, mitigate, and account for human rights and environmental issues linked to their operations and that of their supply chain, and to publicly report on these elements[68]. This could open the door to a flood of cases against companies that do not respect their obligations. In addition to this, companies may be targeted by "better policies"-type lawsuits of a similar nature to *Milieudefensie et al. v. Royal Dutch Shell plc*, seeking to force them to adopt more stringent emission reduction targets. Shareholders themselves may be suing the company in which they own shares to demand sustainable corporate governance - as touched on above, there is vivid discussion over the question of whether directors' duties to act prudently and in the best interests of the company entail the obligation to take decisions in accordance with the long-term objective of climate neutrality.

Another trend that is likely to flourish in the years to come is companies being sued for failure to comply with non-financial disclosure requirements. The frameworks that are already in place, such as the Non-Financial Reporting Directive, are becoming more robust as climate awareness increases[69]. International reporting frameworks such as the Task Force on Climate-related Financial Disclosures' recommendations[70] are gaining traction globally as the world reckons with the need to adopt a coherent approach to climate risk. Such standards are likely to form the basis for litigation, as they achieve best practices status, which puts pressure on companies to comply with their requirements. Central banks are also becoming increasingly concerned with the risks that climate change poses to the stability of financial systems, and are therefore working to embed climate risk assessments into financial decisions and enforcing these concerns through their prudential oversight[71].

On 30 July 2020, the European Commission opened feedback on an initiative to embed sustainability further into the EU regulatory framework on company law and corporate governance[72]. This initiative, which should lead to a directive proposal in the first quarter of 2021[73], seeks to incentivise corporate boards to integrate stakeholder interests, sustainability risks, dependencies, opportunities and adverse impacts into strategies, decisions and oversight. With this, the European Commission aims to complement the revision of the Non-Financial Reporting Directive, which is expected to clarify the requirement to report on due diligence processes, i.e. a corporate obligation to carry out due diligence, including the mitigation of adverse impacts.

In addition, State aid granted to help companies recover from the pandemic might also come with additional reporting requirements. For instance, the European Commission's Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak specifies that large companies that benefit from such aid must publish information annually on how their use of the aid supports their activities in line with the objective of green transition and climate neutrality[74]. Plaintiffs could thus envisage suing aid recipients who fail to comply with this disclosure requirement before national courts, depending on national rules on standing to sue.

The information that companies do disclose under their reporting obligations also entails litigation risks. This information could indeed enable plaintiffs to sue companies that are not performing well enough on the environmental front for breaches of regulatory requirements or based on general legal principles such as nuisance and human rights to force them to reduce their climate impact. The current appetite of companies to commit to climate pledges could also backfire: it is likely that plaintiffs will come up with plausible arguments to sue them if their actions do not match their words. Consumers could for instance argue that the company engaged in misleading advertising; shareholders could try to invoke directors' duties to act in the best interests of the company; plaintiffs could also try to argue that the pledge constitutes a binding unilateral engagement on the part of the company, which is a valid source of obligation under Belgian or French law for instance. That is not to say that judges would easily see merit in such claims, especially in the face of evidentiary hurdles and the innovative use of otherwise established legal norms and principles. But the creativity of plaintiffs, combined to evolving social sentiment and changes in the regulatory landscapes, could enable such actions to succeed in the future. In any case, litigation risks are not the only risks looming over companies displaying poor performances on the climate front. Such poor performances could entail severe reputational damage and drive away climate-conscious consumers and investors increasingly concerned with responsible governance.

> "Climate neutrality cannot be attained without the cooperation of private economic actors."

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Appendix

1. See for instance Fiona Harvey, "Steep fall in emissions during coronavirus is no cause for celebration", The Guardian, 19 May 2020.
2. According to the Grantham Research Institute on Climate Change and the Environment, up to May 2019, 1328 climate cases had been filed across the world, 1023 of which were filed in the United States (Joana Setzer and Rebecca Byrnes, "Global trends in climate change litigation: 2019 snapshot", Grantham Research Institute on Climate Change and the Environment, p. 3). The Climate Case Chart reported 1660 climate cases in September 2020, of which 1270 cases related to the United States.
3. See for instance L. Bergkamp and J.C. Hanekamp, "Climate change litigation against States: the perils of court-made climate policies?", European Energy and Environmental Law Review 2015, p. 102-114 ; L. Bergkamp, "Het Haagse klimaatvonnis. Rechterlijke onbevoegdheid en de negatie van het causaliteitsvereiste", NJB 2015, p. 2278-2288 ; see a contrario H Schoukens and A. Soete, "Klimaatverandering in de rechtbank. Een blijver na de Urgenda-rechtspraak", NJW 2020, p. 142-159.
4. The Paris Agreement aims at "holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial level" (Paris Agreement, Art. 2).
5. Urgenda v. Netherlands, Plan B Earth and Others v. The Secretary of State for Business, Energy, and Industrial Strategy, Family Farmers and Greenpeace Germany v. Germany, Friends of the Irish Environment v. Ireland, Verein KlimaSeniorinnen Schweiz v. Bundesrat, Armando Ferrão Carvalho and Others v. The European Parliament and the Council.
6. Urgenda was not able to rely on the Paris Agreement at the time, as Urgenda filed the summons in 2013 while the Paris Agreement was signed in 2015.
7. Chapter 4 of Urgenda's summons, available at https://www.urgenda.nl/wp-content/uploads/Translation-Summons-in-case-Urgenda-v-Dutch-State-v.25.06.10.pdf.
8. Rechtbank Den Haag, 24 June 2015, C/09/456689 / HA ZA 13-1396, at 5.1.
9. Gerechtshof Den Haag, 9 October 2018, 200.178.245/01, at 43.
10. Id. at 45.
11. Id. at 46 to 53.
12. Id. at 76.
13. Hoge Raad, 20 December 2019, 19/00135, at 5.1 to 5.10.
14. Id. at 5.3.1, citing ECtHR 12 January 2012, no. 36146/05 (Gorovenky and Bugara/Ukraine), para. 32 ; ECtHR 13 April 2017, no. 26562/07 (Tagayeva et al./Russia), para. 482 ; ECtHR 26 July 2011, no. 9718/03 (Stoicescu/Romania), para. 59 ; ECtHR 10 January 2012, no. 30765/08 (Di Sarno et al./Italy), para. 110 ; ECtHR 24 January 2019, no. 54414/13 (Cordella et al./Italy), para. 172.
15. Id. at 5.8.
16. The application was denied permission to proceed on two occasions, for lack of chances of success. The appeal of this denial was equally unsuccessful. High Court of Justice, Queen's Bench Division, Administrative Court, Plan B. Earth and others v. Secretary of State for Business, Energy and Industrial Strategy, 14 February 2018, CO/16/18 ; High Court of Justice, Queen's Bench Division, Administrative Court, Plan B. Earth and others v. Secretary of State for Business, Energy and Industrial Strategy, 20 July 2018, CO/16/18 ; Court of Appeal, Civil Division, Plan B. Earth and others v. Secretary of State for Business, Energy and Industrial Strategy, 25 January 2019, C1/2018/1750.
17. On 6 April 2020, a British court rejected an attempt to halt a railway project on the grounds that the project assessment had not adequately considered greenhouse gas emissions. This decision was affirmed on 31 July 2020 by the Court of Appeal, refusing permission to appeal.
18. The Court dismissed the application for lack of merit. Verwaltungsgericht Berlin, x and Greenpeace v. Germany, VG 10 K 412.18, 31 October 2019.
19. The High Court dismissed the application for lack of merit. High Court, Friends of the Irish Environment v. Ireland, 19 September 2019, [2019] IEHC 747, available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190919_2017-No.-793-JR_judgment-1.pdf ; Supreme Court, Friends of the Environment v. Ireland, 13 February 2020, [2020] IESCDET 13.
20. The case was dismissed for lack of standing, and appeal was later denied. Bundesverwaltungsgericht, Verein KlimaSeniorinnen Schweiz v. Eidgenössisches Departement für Umwelt, Verkehr, Energie und Kommunikation, 27 November 2018, A-2992/2017 ; Bundesgericht, Verein KlimaSeniorinnen Schweiz v. Eidgenössisches Departement für Umwelt, Verkehr, Energie und Kommunikation, 5 May 2020, 1C_37/2019.
21. The case was dismissed for lack of standing; an appeal is currently pending. General Court, Carvalho and others v. European Parliament and Council of the European Union, 8 May 2019, Case T-330/18.
22. Neubauer, et al. v. Germany.
23. Vince et al. v. Secretary for Business, Energy and Industrial Strategy et al.
24. Supreme Court, Friends of the Irish Environment v. Government of Ireland, 31 July 2020, 205/19, available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200731_2017-No.-793-JR_opinion.pdf.
25. High Court, Friends of the Irish Environment v. Ireland, 19 September 2019, [2019] IEHC 747 at §12, available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190919_2017-No.-793-JR_judgment-1.pdf
26. Id. at §76 and following.
27. Supreme Court, Friends of the Irish Environment v. Government of Ireland, 31 July 2020, 205/19 at §9.3, available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200731_2017-No.-793-JR_opinion.pdf.
28. Id. at §9.4 and 9.5.
29. This case (Youth for Climate Justice v. Austria, et al.) is brought against the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain and Sweden, Switzerland, Turkey, Ukraine and the United Kingdom.
30. Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council.
31. The case was dismissed for lack of standing. General Court, Sabo and others v. European Parliament and Council of the European Union, 6 May 2020, Case T 141/19.
32. The case is currently pending. Zoubek v. Austria, filed before the Austrian Constitutional court on 20 February 2020.
33. The administrative court held in favor of the plaintiffs, but the decision was overturned by the Constitutional Court. Bundesverwaltkungsgericht, 2 February 2017, W109 2000179-1/291E ; Verfassungsgerichtshof, 29 June 2017, E 875/2017 and E 886/2017.

34. The case was initially dismissed, but leave for appeal was granted by the High Court. Borgarting Court of Appeal, Natur og Ungdom and Föreningen Greenpeace Norden v. Ministry of Petroleum and Energy, 23 January 2020; Norges Hoyesterett, 20 April 2020, HR-2020-846-J.
35. Regional Court of Lodz, Greenpeace Poland v. PGE GiEK, pending (filed on 11 March 2020) ; Regional Court in Lodz, ClientEarth v. Polska Grupa Energetyczna, pending (filed in 2019) ; Districht Court of The Hague, Milieudefensie et al. v. Royal Dutch Shell plc, pending (filed on 5 April 2019).
36. Milieudefensie et al. v. Royal Dutch Shell plc, pending (filed on 5 April 2019).
37. Regional Court of Lodz, Greenpeace Poland v. PGE GiEK, pending (filed on 11 March 2020) ; Regional Court in Lodz, ClientEarth v. Polska Grupa Energetyczna, pending (filed in 2019).
38. See below in this article for an explanation of the French plan de vigilance.
39. Id.
40. This case is not to be confused with another French case, Notre Affaire à Tous and others v. Total, see below.
41. Tribunal Judiciaire de Nanterre, Les Amis de la Terre France et autres v. Total, 30 January 2020, 19/02833.
42. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, art. 1.
43. Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, Art. 1.
44. A number of Member States have specific due diligence and disclosure requirements. Importantly, on 20 April 2020, the European Commissioner for Justice, Didier Reynders, announced that the European Union plans to develop a legislative proposal by 2021 requiring businesses to carry out due diligence in relation to the potential human rights and environmental impacts of their operations and supply chains. He further indicated that the draft law, once developed, is likely to be cross-sectoral and provide for sanctions in the event of non-compliance. This announcement follows the publication of a wide-reaching study commissioned by the EC examining due diligence requirements through the supply chain (https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en/format-PDF/source-search). Obviously, sector and product group specific substantive due diligence requirements will continue to apply (e.g. Timber Regulation (Regulation (EU) No 995/2010) and Conflict Minerals Regulation (Regulation (EU) 2017/821).
45. Tribunal judiciaire de Nanterre, Notre Affaire à Tous and Others v. Total, pending (filed on 28 January 2020).
46. Summons, available in French at https://notreaffaireatous.org/wp-content/uploads/2020/01/Assignation-NAAT-et-autres-vs-TOTAL-VDEF.pdf.
47. National Contact Point for the OECD Guidelines for Multinational Enterprises, Final Statement, Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) v. ING, 19 April 2019.
48. ClientEarth, Complaint against BP in respect of violations of the OECD Guidelines, available at https://www.documents.clientearth.org/wp-content/uploads/library/2019-12-03-ncp-complaint-clientearth-v-bp-complaint-submission-and-annex-a-ce-en.pdf.
49. ClientEarth, "BP pulls advertising campaign just months after our legal complaint", 14 February 2020, https://www.clientearth.org/bp-pulls-advertising-campaign-just-months-after-our-legal-complaint/.
50. For instance, in Abrahams v. Commonwealth Bank of Australia (Federal Cout of Australia, VID879/2017; withdrawn), shareholders in Australia sued the bank for failure to comply with its legal obligation to disclose business risks related to climate change. This prompted the bank to make such a disclosure in its next annual report, in addition to which it adopted a climate policy statement and decided not to invest in a controversial coalmine project. As a result, the shareholders withdrew their claims.
51. Regional Court in Poznan, ClientEarth v Enea.1 August 2019, IX GC 1118/18.
52. Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017), available at https://www.fsb-tcfd.org/publications/final-recommendations-report/.
53. The Concise Statement can be accessed at https://www.equitygenerationlawyers.com/wp-content/uploads/2020/07/200722-Concise-Statement-stamped.pdf.
54. IPCC, Special Report: Global Warming of 1.5°C (2018), https://www.ipcc.ch/sr15/; UNEP, Emissions Gap Report 2018 (2018), https://wedocs.unep.org/bitstream/handle/20.500.11822/26879/EGR2018_ESEN.pdf?sequence=10 at 4.
55. European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), art. 2.
56. Id., art. 2 and 3.
57. See the European Commission's adjusted work programme at https://eur-lex.europa.eu/resource.html?uri=cellar%3Af1ebd6bf-a0d3-11ea-9d2d-01aa75ed71a1.0006.02/DOC_1&format=PDF and its annexes at https://eur-lex.europa.eu/resource.html?uri=cellar%3Af1ebd6bf-a0d3-11ea-9d2d-01aa75ed71a1.0006.02/DOC_2&format=PDF.
58. Communication from the European Commission, "Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak", C(2020) 3156, 8 May 2020.
59. Id.
60. D. Pinner, M. Rogers and H. Samandari, "Addressing climate change in a post-pandemic world", McKinsey Quarterly, April 2020.
61. OECD, "COVID-19 and Responsible Business Conduct", Tackling coronavirus (COVID-19). Contributing to a global effort, 2020.
62. Id.
63. See J. Watts, "Is the Covid-19 crisis the catalyst for greening the world's airlines?", The Guardian, 17 May 2020; D. Rutherford, "Five ways for governments to green airline bailouts", Climate Home News, 5 May 2020.
64. C. Farand, "German environment minister defends airline bailout, promises green recovery", Climate Home News, 27 April 2020.
65. ICAO, ICAO Council agrees to the safeguard adjustment for CORSIA in light of COVID-19 pandemic, 30 June 2020, https://www.icao.int/Newsroom/Pages/ICAO-Council-agrees-to-the-safeguard-adjustment-for-CORSIA-in-light-of-COVID19-pandemic.aspx.
66. Tribunal de Première Instance de Bruxelles, Klimaatzaak v. Belgique, pending (filed on 27 April 2015) ; Tribunal administratif de Paris, Notre Affaire à Tous c. France, pending (filed on 14 March 2019) ; Conseil d'Etat, Commune de Grande-Synthe c. France, pending (filed on 23 January 2019).
67. Art. 2 European Climate Law.
68. B. Fox, "New human rights laws in 2021, promises EU justice chief", Euractiv, 30 April 2020, https://www.euractiv.com/section/global-europe/news/new-human-rights-laws-in-2021-promises-eu-justice-chief/.
69. As mentioned above, the Non-Financial Reporting Directive is due to be revised in the context of the European Green Deal.
70. Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017), available at https://www.fsb-tcfd.org/publications/final-recommendations-report/.
71. See BIS, "The green swan. Central banking and financial stability in the age of climate change", January 2020, available at https://www.bis.org/publ/othp31.pdf ; Network for Greening the Financial System, "NGFS publishes a first set of climate scenarios for forward looking climate risks assessment alongside a user guide, and an inquiry into the potential impact of climate change on monetary policy", 24 June 2020, available at https://www.ngfs.net/en/communique-de-presse/ngfs-publishes-first-set-climate-scenarios-forward-looking-climate-risks-assessment-alongside-user; European Central Bank - Banking Supervision, Draft Guide on climate-related and environmental risks, 20 May 2020, available at https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/climate-related_risks/ssm.202005_draft_guide_on_climate-related_and_environmental_risks.en.pdf.
72. European Commission, Inception Impact Assessment, Ref. Ares(2020)4034032 - 30/07/2020, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance.
73. Id.
74. Communication from the European Commission, "Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak", C(2020) 3156, 8 May 2020, point 83.

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