

Friends of the Earth v Royal Dutch Shell - what did the Dutch Court rule, and what does it mean for Shell's business?

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The Court's decision

The District Court of The Hague made a [landmark ruling](#) on 26 May in the case made collectively by the Dutch Friends of Earth (Milieudefensie) and other NGOs versus Royal Dutch Shell ("Shell" or "RDS") on the issue of whether Dutch law required Shell to limit its CO₂ emissions:

- ◆ The basis for the ruling was the court's decision that Shell was subject to Dutch law due to its HQ being in The Hague. It did not allow similar cases brought by non-Dutch organisations/citizens to proceed as there was not enough "similar interest to join a collective claim"
- ◆ On this basis the court ordered Shell to reduce (or cause to be reduced) the CO₂ emissions attributable to its business operations, **and** its sold products, by at least 45% at end 2030 - relative to the 2019 level
- ◆ The court also ruled that the decision is **provisionally enforceable**. **This means** Shell needs to start complying immediately, even if it decides to appeal this decision. This is a critical point as Shell is expected to appeal to the Court of Appeals. And it is likely the case will finally end up, after several years, in the Supreme Court
- ◆ The impact on Shell's operations is therefore immediate and very real.

What are the likely implications?

Shell has been one of the most forward-thinking oil companies on the Climate Change issue. It has not, like [ExxonMobil](#) and [Chevron](#), had to be forced by activist shareholders to recognise the potential consequences for its business. Shell also has a distinguished history of successful adaptation to changing circumstances - it began life in 1833, after all, as a [shop selling sea-shells](#), before slowly transforming into the business we know today.

The court's decision to enforce its ruling, whilst the appeal process takes place, therefore makes it unlikely that Shell will simply try to do the bare minimum in terms of compliance. This would create major reputational risk with governments, investors and the general public. And in any case, it would be fighting a losing battle. It is already clear - as we have discussed in The pH Report and in our blog - that [Oil markets and OPEC have entered the endgame for the Age of Oil](#).

We therefore expect Shell to take the decision as a signal to become far more proactive in pursuing its evolution away from fossil fuels. We believe it would make good business sense for Shell to now accelerate its transformation. And logically, as well as ethically, it would make perfect sense for Shell to use its influence to ensure that a 45% reduction in CO₂ emissions becomes the globally accepted standard.

In fact, Shell may well come to look back on the decision as a key moment in building its future competitive position. Internally, it removes the scope for debate as it is now hard to argue for a "business as usual" strategy. And externally, it creates the potential to put Shell on the front foot, in terms of building its competitive position for the future.

The legal position: applicable law

The Dutch Civil Code has an important longstanding concept called an "**unwritten standard of care**": this means that acting in conflict with what is generally accepted according to unwritten law is unlawful. There exists a "**duty of care**".

European law (Article 7, Rome II) determines which law is applicable to a non-contractual obligation arising from environmental damage, or further damage suffered by persons or property as a result of such damage. The Court agreed with the Claimants that Dutch law applies as Royal Dutch is headquartered in The Hague and is the "policy setting entity" of the Shell group, and the collective action seeks to protect the interests of Dutch residents.

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Editor:

Paul Hodges

+44 (0)7785 354809

phodges@new-normal.com

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The Court's decision is a major step on the way to 'The End of the Oil Age'

The legal position - background case law

The Supreme Court of the Netherlands previously ruled (2019: Urgenda vs Netherlands State) that the Dutch State failed to fulfil its duty of care:

"By not wanting to reduce emissions by at least 25% by end-2020 relative to 1990."

A key element in that 2019 case was that the ECHR (European Convention on Human Rights) was deemed applicable as climate change presented a real threat to human rights.

"The Court believes that it is appropriate to speak of a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with loss of life/or a disruption of family life. . . It follows from Articles 2 and 8 of the ECHR that the State has a duty to protect against this real threat."

The UN Guiding Principles on Business and Human Rights also seek to ensure businesses adhere to respecting human rights. The European Commission has stipulated that businesses in Europe need to respect the UN Guiding Principles. As the Urgenda case decision included protection against climate change as a human right, it therefore follows that in the Netherlands, impact on climate change forms part of the aforementioned duty of care of the Civil Code.

The key legal considerations

The Court took the view that Royal Dutch determines the general policy of the Shell group, which includes all matters related to climate change:

- ◆ In 1986, Royal Dutch Shell (RDS) had drafted an internal report on climate change entitled "The Greenhouse Effect", in which Shell companies were urged to: *"Play their part in the necessary precautionary measures to limit greenhouse gas emissions"*. Since then, study after study has been published or commissioned by RDS.
- ◆ In 2018 Shell Nederland signed the Climate Agreement, a Government initiated agreement between companies, social organisations and government bodies for a 49% reduction of CO₂ emissions in The Netherlands in 2030 relative to 1990.
- ◆ The court did not accept the RDS argument that only states and society as a whole had responsibility for achieving the goals of the Paris Agreement: *"The undisputed responsibility of other parties [...] do not absolve RDS of its individual responsibility regarding the significant emissions over which it has control and influence"*.
- ◆ The court accepted that RDS has taken a number of steps with respect to energy transition and set more stringent climate ambitions in 2019 and 2020. However *"RDS must do more than monitoring developments in society and complying with the regulations in the countries where the Shell group operates" ... "The court is of the opinion that much may be expected of RDS"*.
- ◆ The court states that there is broad international consensus that non-state actors have a responsibility to contribute to emissions reduction. *"This is not a passive responsibility; it requires action on the part of businesses"*.
- ◆ As to the RDS argument on its competitive position, the Court was clear: *"The interest served with the reduction obligation outweighs the Shell group's commercial interests"*.

Conclusion

The Court's decision is a major step towards 'The End of the Oil Age'. The Court heard that the Shell Group's total CO₂ emissions amount to around 3% of total global emissions - more than those of many countries, including The Netherlands.

It therefore extended the basis of its ruling to include the emissions caused by worldwide sales of its products, given that these emissions contribute to global warming and climate change in The Netherlands. This will make it harder for other oil companies to avoid taking similar responsibility for the damage caused by their CO₂ emissions, particularly if Shell now takes a pro-active role in arguing for an industry target.

Editor:

Paul Hodges

+44 (0)7785 354809

phodges@new-normal.com

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About The pH Report

The pH Report is published by New Normal GmbH, a Swiss-based strategy consultancy advising Fortune 500 and FTSE 100 companies, investment banks and fund managers.



Paul Hodges phodges@new-normal.com

Is a trusted adviser to major companies and the investment community, and has a proven track record of accurately identifying key trends in global marketplaces. He is chairman of New Normal Consulting and a Global Expert with the World Economic Forum. His analysis of the key role of demographics in driving the global economy has attracted increasing interest from senior policymakers and executives.

Paul also serves as Advisory Board chairman for Infinity Recycling and non-executive Chairman of NiTech Solutions, and is a senior adviser to I.C.I.S Pricing and Recycling Technologies. Prior to moving into consulting in 1995, Paul spent 17 years with Imperial Chemical Industries (ICI) in the UK and USA. He held senior executive positions in petrochemicals and chloralkali, and was Executive Director of a \$1 billion ICI business.



Daniël de Blocq van Scheltinga daniel.dbvs@new-normal.com

Was the first foreigner to be granted permission to run the finance company of a top-tier Chinese State Owned Enterprise, when establishing and managing ChemChina Finance Company. Previously, Daniël held a variety of senior positions in corporate and investment banking, including as Asia Pacific Head of Chemicals and Asia Head Asset Based Finance for ABN AMRO.

He moved to Hong Kong in 2001, and continues to spend much of his time in China, advising international and Chinese firms, as well as leaders in the public and private sectors. Daniël is a graduate of Leiden University, the Netherlands, with a Master of Law degree with a specialty of International law.



David Hughes dhughes@new-normal.com

Is an expert on the Middle East, having lived and worked in Riyadh, Saudi Arabia for 5 years after leading SABIC's global business redesign programme in 2009. He has held a range of senior executive positions with SABIC, Huntsman and ICI, where he led a range of global \$1bn+ businesses based in the Middle East, Europe and the USA. He also served on a number of industry bodies, including as Vice-Chairman of the Board of Petrochemicals Europe, the Asian Clean Fuels Association and the Methanol Institute.

Paul Satchell psatchell@new-normal.com

Has worked in the chemical industry as an equity analyst with some of the world's leading investment banks, and directly with chemical companies. For 21 years to 2017, he covered the global chemical industry for banks including ING, Merrill Lynch and Investec, making market recommendations and undertaking advisory work in M&A and lending. He was particularly well known for his development of the Chemicals Volume Proxy, a unique real-time monitor of chemicals demand. Before this, he spent 16 years in the industry itself, mainly with BP/BP Chemicals. He is Honorary Treasurer of the Royal Society of Chemistry and previously chaired its Investment Committee.

Editor:

Paul Hodges

+44 (0)7785 354809

phodges@new-normal.com

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