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Inhoudsindicatie	The Hague District Court has ordered Royal Dutch Shell (RDS) to reduce the CO2 emissions of the Shell group by net 45% in 2030, compared to 2019 levels, through the Shell group's corporate policy. ECLI nummer: ECLI:NL:RBDHA:2021:5337 (Dutch version)
Vindplaatsen	Rechtspraak.nl

Uitspraak

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judgment

THE HAGUE DISTRICT COURT

Commerce Team

case number / cause list number: C/09/571932 / HA ZA 19-379 (engelse versie)

Judgment of 26 May 2021

in the case of

1. the association **VERENIGING MILIEUDEFENSIE**, in Amsterdam, and **THE OTHER PARTIES IT REPRESENTS**,
2. the foundation **STICHTING GREENPEACE NEDERLAND** in Amsterdam,
3. the foundation **STICHTING TER BEVORDERING FOSSIELVRIJ-BEWEGING** in Amsterdam,

4. the association **LANDELIJKE VERENIGING TOT BEHOUD VAN DE WADDENZEE** in Harlingen,

5. the foundation **STICHTING BOTH ENDS** in Amsterdam,

6. the youth organization **JONGEREN MILIEU ACTIEF** in Amsterdam,

7. the foundation **STICHTING ACTIONAID** in Amsterdam,

claimants,

attorney-at-law *mr.* R.H.J. Cox of Maastricht

versus

ROYAL DUTCH SHELL PLC in The Hague,

defendant,

attorney-at-law *mr.* D. Horeman of Amsterdam.

Claimants are hereinafter jointly referred to as Milieudefensie et al. The claimants in the class action are individually referred to as Milieudefensie, Greenpeace Nederland, Fossielvrij NL, Waddenvereniging, Both Ends, Jongeren Milieu Actief and ActionAid. The 17,379 individual claimants who have issued to Milieudefensie a document appointing it as their representative *ad litem* are referred to as 'the individual claimants'. The defendant is referred to as RDS.

1 The proceedings

1.1. The course of the proceedings is evidenced by the following:

- the summons of 5 April 2019, with Exhibits 1 through to 269;
- the statement of defence of 13 November 2019, with Exhibits RK-1 through to RK-30 and Exhibits RO-1 through to RO-250;
- the document containing additional exhibits of Milieudefensie et al. of 2 September 2020, with Exhibits 270 through to 331;
- the document containing exhibits of RDS of 2 September 2020, with Exhibits RK-31 through to RK-34 and Exhibits RO-251 through to RO-260;
- the document for a change of claim from Milieudefensie et al. of 21 October 2020;
- the notice of objection against the document for a change of claim of 28 October 2020 from RDS;
- the document containing additional exhibits of Milieudefensie et al. of 29 October 2020, with Exhibits 332 through to 336;
- the document containing exhibits of RDS of 30 October 2020, with Exhibits RK-35 and RK-36, and Exhibits RO-261 through to RO-280;
- the order of the cause list judge of 4 November 2020 on the objection against the change of claim, allowing the change of claim on the condition that Milieudefensie et al. provide a brief explanation on part 1(a) of the change of claim before 6 November 2020;
- the document containing an explanation of the change of the claim for relief 1A of Milieudefensie et al. of 6 November 2020;
- the reply to the explanation of the change of claim of Milieudefensie et al. from RDS, with Exhibit RO-281;
- the order of the cause list judge of 9 December 2020, declaring the objection of RDS against the alternative positions of Milieudefensie et al. unfounded;
- the document containing additional exhibits of 11 December 2020 of Milieudefensie et al., with Exhibit 337;

- the additional document containing exhibits of 15 December 2020 of RDS, with Exhibits RO-282 through to RO-284;
- the document containing additional exhibits of RDS of 16 December 2020, with Exhibit RK-37;
- the notice of objection against Exhibit RK-37 of Milieudefensie et al. of 16 December 2020;
- the reply to the notice of objection of RDS of 16 December 2020;
- the records of the oral hearings of 1, 3, 15 and 16 December 2020.
- the document of response to Exhibit RK-37 of Milieudefensie et al. of 30 December 2020, with Exhibits 338 and 339;
- the document commenting on the additional exhibits of RDS of 13 January 2021.

1.2. The records of the oral hearings were drawn up without the parties being present. The parties were given the opportunity to inform the court of factual inaccuracies. In a letter dated 19 February 2021, Milieudefensie et al. made use of this opportunity. In a letter dated 22 February 2021, RDS also made use of this opportunity. These letters form part of the case file.

1.3. Finally, the judgment date was scheduled for today.

2 The facts

In the finding of fact, the court starts from the developments up until 13 January 2021, the day on which the debate was closed . The facts are categorized as follows:

2.1 The claimants

2.2 RDS and the Shell group

2.3 Climate change and its consequences

2.4 Conventions, international agreements and policy intentions

2.5 Activities of RDS and the Shell group

2.6 Notice of liability of RDS from claimants

2.1. The claimants

2.1.1. Milieudefensie was founded on 6 January 1971 as the Raad voor Milieudefensie. Article 2 paragraph 1 and 2 of its articles of association are as follows:

"1. The object of the association is contributing to the solution and prevention of environmental problems and the conservation of cultural heritage, as well as striving for a sustainable society, at the global, national, regional and local level, in the broadest sense of the word, all of which in the interest of the association members and in the interest of the quality of the environment, nature and the landscape, in the broadest sense, for current and future generations."

2. The association endeavours to attain its objects by: critically monitoring all those developments in society which affect the environment, nature, the landscape, and sustainability, influencing decision-making through using all appropriate and legitimate means, conducting research or having research conducted, disseminating and issuing information in the broadest sense, obtaining legal decisions, and performing all acts and actions the association deems necessary for attaining its objects."

2.1.2. Greenpeace Nederland was founded in 1979. It works together with Greenpeace organizations established elsewhere. Article 4 paragraph 1 and 2 of its articles of association are as follows:

"1. The object of the foundation is promoting the conservation of nature.

2. Together with its supporters, staff and alliances the foundation endeavours to attain its objects by:

(…)

b. protecting biodiversity in all its forms;

c. combating climate change, and the pollution and abuse of the planet;

(…)

j. having and maintaining an office, and also performing all other actions connected to the foregoing in the broadest sense or which may be conducive to the foregoing."

2.1.3. Fossielvrij NL was established on 22 March 2016. Article 3 paragraph 1 and 2 of its articles of association are as follows:

"*3.1 The object of the foundation is as follows:*

Promoting, protecting, supporting and accomplishing – at the local, regional and national level – social, environmental and economic justice and health for current and future generations by removing the social legitimacy of coal, oil and gas companies (so-called "fossil companies") and effectuating the alternative use of investments and resources in order to expedite the transition to a sustainable economy which is based on renewable energy.

3.2 *The foundation endeavours to attain this object by taking on all possible tasks which could promote its object. These include:*

(…).

– Engaging in talks with staff and directors of organizations.

– Organizing, conducting and participating in creative actions and public campaigns.

– Showing what the foundation stands for and what it does by actively seeking out the public debate and approaching the media.

(…)

– Developing other types of activity."

2.1.4. The articles of association of the association Waddenvereniging, established in 1965, state the following in Article 3 paragraph 1 and 2:

"1. The association strives for the conservation, restoration and proper management of the landscape and the environment and of the ecological and natural history values of the Wadden area, including but not limited to the northern sea-clay area, the Wadden islands, the Wadden Sea and the North Sea as irreplaceable and unique nature reserves. The association also aims to promote interest in these areas. The understanding that man forms part of the ecosystem is the foundation of the association's actions.

2. The association endeavours to attain its object through all appropriate means, including:

– developing, effectuating and promoting activities for the protection of the ecological, environmental and cultural-historical value of and in the Wadden area, and standing up against activities that could harm the Wadden area;

– lobby activities and conducting legal actions;

(…)"

2.1.5. Both Ends was founded in 1986. Article 2 paragraph 1 and 2 of its articles of association are as follows:

"1. The object of the foundation is:

contributing to and promoting a responsible nature and environmental management across the globe, and also all that is connected, indirectly or directly, to this or which may be conducive to the foregoing, in the broadest sense of the word.

2. The foundation endeavours to attain its object, among other things, by:

(…)

b. actively strengthening and supporting organizations that integrate nature and environmental management aspects into activities of development cooperation and vice versa;

(…)"

2.1.6. Jongeren Milieu Actief was founded in 1990. Article 3 paragraph 1 and 2 of its articles of association are as follows:

"1. The object of the association is: striving for a better environment by:

a. *a) creating a place for young people where they can be involved in sustainability in their own way;*

b) actively working on the promotion of sustainability;

c) offering alternatives to live in a way that is more environmentally-friendly;

2. The association endeavours to attain its object by:

a. *a) conducting campaigns and organizing activities, in the broadest sense, for and by young people;*

b) using all legitimate means that are useful or necessary for its object."

2.1.7. ActionAid was founded in 1997. Article 2 paragraph 1 and 2 of its articles of association are as follows:

"1. The object of the foundation is:

Contributing to the fight against poverty and injustice all over the world. Africa is an area of special focus.

Creating awareness and increasing the understanding among the public of the causes, effects and reasons for poverty and injustice.

Inducing policymakers to effectuate change in order to guarantee the rights of vulnerable and poor people.

(…)"

2.1.8. The 17,379 individual claimants have issued to Milieudefensie a document appointing it as their representative *ad litem* to claim on behalf of each of them that RDS reduces its emissions in line with the objective of the Paris Agreement.[1]

2.2. **RDS and the Shell group**

2.2.1. RDS is a public limited company, a legal person under private law, established under the laws of England and Wales. Its head office is established in The Hague.

2.2.2. Since the 2005 restructuring of the Shell group, RDS has been the top holding company of the Shell group. The Shell group is further composed of intermediate parents, Operating Companies and Service Companies. RDS is the direct or indirect shareholder of over 1,100 separate companies established all over the world. The Shell group develops activities worldwide. The Shell group such as existed before the 2005 restructuring is hereinafter referred to as 'the then Shell group'.

2.2.3. The activities of RDS consists of holding shares in the intermediate parent companies, meeting its obligations with respect to shareholders based on its listings in New York, London and Amsterdam, and determining the group's general corporate policy. The Operating

Companies conduct operational activities and are responsible for implementing the general policy of the Shell group as determined by RDS. These Shell entities have assets and/or infrastructure with which they produce and trade in oil, gas or other energy sources. They also have permits for the exploitation, production or extraction of oil. The Service Companies provide assistance and services to the other group companies for the performance of their activities.

2.3. **Climate change and its consequences**

2.3.1. Mankind has been using energy, primarily produced by burning fossil fuels (coals, oil and gas), on a massive scale since the beginning of the Industrial Revolution. Carbon dioxide is released in this process. The chemical compound of the elements carbon and oxygen is designated with the chemical formula CO2. Some of the released CO2 is emitted into the atmosphere, where it lingers for hundreds of years, or even longer. Some of it is absorbed by the ecosystems of forests and oceans. This absorption option is steadily becoming smaller due to deforestation and the warming of sea water.

2.3.2. CO2 is the primary greenhouse gas which, together with other greenhouse gases, traps the heat emitted by the earth in the atmosphere. This is known as the greenhouse effect, which intensifies as more CO2 ends up in the atmosphere. This in turn increasingly warms the earth. The climate system has a delayed response to the greenhouse gas emissions: the warming effect of greenhouse gases which are emitted today will only become apparent in thirty to forty years' time. Other greenhouse gases are, inter alia, methane, nitrous oxide and fluorinated gases. The unit 'parts per million' (hereinafter: ppm) is used to express the concentration of greenhouse gases in the atmosphere. There is a direct, linear link between man-made greenhouse gas emissions, in part caused by the burning of fossil fuels, and global warming. The temperate of the earth has now increased

by about 1.1ºC relative to the average temperature at the beginning of the Industrial Revolution. Over the past decades, global CO2 emissions have increased by 2% per year.

2.3.3. In climate science – the area of science that studies the climate and climate change – and in the international community there has been consensus for quite some time that the average temperature on earth should not increase by more than 2ºC relative to the average temperature in the pre-industrial era. If the concentration of greenhouse gases in the atmosphere has stayed below 450 ppm by the year 2100, climate science believes there is a good chance that this target (hereinafter: the 2ºC target) will be reached. In the last couple of years, further insight has shown that a safe temperature increase should not exceed 1.5ºC with a corresponding greenhouse gas concentration level of no more than 430 ppm by the year 2100.

2.3.4. The current greenhouse gas concentration level is 401 ppm. The total global remaining capacity for further greenhouse gas emissions is also known as the carbon budget. Global CO2 emissions currently run at 40 Gt CO2 per year. Each year the global CO2 emissions stay at this level reduces the carbon budget by 40 Gt. If global CO2 emissions are higher, the carbon budget will decrease by more than 40 Gt. A carbon budget of 580 Gt CO2 was remained available from 2017 – a best estimate – for a 50% chance of a warming of 1.5ºC.[2] Now, three years later, 120 Gt CO2 of the carbon budget has been used, which means that 460 Gt CO2 remains. At unchanged emission levels, the carbon budget will have been used up within the foreseeable future.

2.3.5. The global effects of climate change are apparent from the reports of the Intergovernmental Panel on Climate Change (hereinafter: IPCC), the United Nations climate panel (see hereinafter under 2.4.4.).

In AR4 (IPCC Fourth Assessment Report, 2007), the IPCC explained that dangerous,

irreversible climate change occurs if global warming exceeds 2ºC. The report states that in order to have a more than 50% chance ('more likely than not') that the 2ºC is not exceeded, the report explains that the concentration of greenhouse gases in the atmosphere has to stabilize at a level of about 450 ppm in 2100.

AR5 (IPCC Fifth Assessment Report, 2013-2014) describes that there is 'likely' (> 66%) chance for the rise in global temperature to remain below 2°C if the concentration of greenhouse gases in the atmosphere stabilizes at about 450 ppm in 2100. Stabilization at about 500 ppm in 2100 yields a chance of more than 50% ('more likely than not') of reaching the 2ºC target. Only a limited number of studies have looked into scenarios that lead to a limitation of global warming to 1.5ºC. Such scenarios are based on concentrations of under 430 ppm in 2100. In report AR5, the IPCC has categorized the key risks associated with anthropogenic climate change into five reasons for concern (RFC):

- RFC 1: Unique and threatened systems are both ecological and cultural systems. The global temperature rise will force certain human systems to make great adaptations or will cause ecosystems as we now know them, such as ice masses and coral reefs, to disappear.
- RFC 2: Extreme weather events will increase in both frequency and intensity. Drought, extreme precipitation, heat and (tropical) storms and hurricanes are examples of extreme weather events which are expected to increase and cause more forest fires (due to drought/heat) and floods (due to extreme precipitation and storms).
- RFC 3: Distribution of impacts: the consequences of climate change will be distributed unevenly in the world. The risks are distributed unevenly and in all countries, regardless of their development status, the impact of climate change will disproportionally affect the already weaker and marginalized groups, which will be the first to feel the impact on their food and water security.
- RFC 4: Global aggregate impacts are the effects of climate change which outstrip just the direct consequences and which are an accumulation of various indirect, mutually reinforcing effects. For example, climate change causes a loss of biodiversity, which will not only impact the ecology, but also the economy because people are dependent on biodiversity (fishery and agriculture).
- RFC 5: Large-scale singular events, or tipping points, are abrupt and drastic changes in physical, ecological or social systems which in most cases are irreversible and therefore have major and permanent consequences.[3]

The following are the key risks associated with the RFCs:

"i) Risk of death, injury, ill-health, or disrupted livelihoods in low-lying coastal zones and small island developing states and other small islands, due to storm surges, coastal flooding, and sea level rise. [RFC 1-5]

ii) Risk of severe ill-health and disrupted livelihoods for large urban populations due to inland flooding in some regions. [RFC 2 and 3]

iii) Systemic risks due to extreme weather events leading to breakdown of infrastructure networks and critical services such as electricity, water supply, and health and emergency services. [RFC 2-4]

iv) Risk of mortality and morbidity during periods of extreme heat, particularly for vulnerable urban populations and those working outdoors in urban or rural areas. [RFC 2 and 3]

v) Risk of food insecurity and the breakdown of food systems linked to warming, drought, flooding, and precipitation variability and extremes, particularly for poorer populations in urban and rural settings. [RFC 2-4]

vi) Risk of loss of rural livelihoods and income due to insufficient access to drinking and irrigation water and reduced agricultural productivity, particularly for farmers and pastoralists with minimal capital in semi-arid regions. [RFC 2 and 3]

vii) Risk of loss of marine and coastal ecosystems, biodiversity, and the ecosystem goods, functions, and services they provide for coastal livelihoods, especially for fishing communities in the tropics and the Arctic. [RFC 1, 2, and 4]

viii) Risk of loss of terrestrial and inland water ecosystems, biodiversity, and the ecosystem goods, functions, and services they provide for livelihoods. [RFC 1, 3, and 4]"

2.3.5.1. The SR15 report (IPCC Special Report on the impacts of global warming of 1.5°C, 2018) describes that the risks identified by the IPCC have increased:

"There are multiple lines of evidence that since AR5 the assessed levels of risk increased for four of the five Reasons for Concern (RFCs) for global warming to 2°C (high confidence). The risk transitions by degrees of global warming are now: from high to very high risk between 1.5°C and 2°C for RFC1 (Unique and threatened systems) (high confidence); from moderate to high risk between 1°C and 1.5°C for RFC2 (Extreme weather events) (medium confidence); from moderate to high risk between 1.5°C and 2°C for RFC3 (Distribution of impacts) (high confidence); from moderate to high risk between 1.5°C and 2.5°C for RFC4 (Global aggregate impacts) (medium confidence); and from moderate to high risk between 1°C and 2.5°C for RFC5 (Large-scale singular events) (medium confidence)." [4]

2.3.5.2. In the SR15 report, the IPCC concludes that global warming will probably reach 1.5°C between 2030 and 2052 if the increase continues at the current level. Climate-related risks for man and nature will be higher than now with global warming at 1.5°C, but lower at 2°C. The risks hinge on the extent and rate of global warming, geographic location, development and vulnerability levels, and of choices in and implementation of adaptation and mitigation options. In order to limit global warming to 1.5°C, the report states that global emissions will have to have been reduced to far below 35 Gt Co2-eq by 2030. The IPCC also points out that half of the models used show that global emissions should be reduced to between 25 Gt and 30 Gt Co2-eq in 2030. The report states that, as a result of these findings, limiting global warming to 1.5°C requires a net reduction of 45% in global CO2 emissions in 2030 (bandwidth 40-60%) relative to 2010, and a net reduction of 100% in 2050 (bandwidth 2045-2055):

"In model pathways with no or limited overshoot of 1.5°C, global net anthropogenic CO2 emissions decline by about 45% from 2010 levels by 2030 (40–60% interquartile range), reaching net zero around 2050 (2045–2055 interquartile range). For limiting global warming to below 2°C CO2 emissions are projected to decline by about 25% by 2030 in most pathways (10–30% interquartile range) and reach net zero around 2070 (2065–2080 interquartile range). Non-CO2 emissions in pathways that limit global warming to 1.5°C show deep reductions that are similar to those in pathways limiting warming to 2°C. (high confidence)." [5]

2.3.5.3. The SR15 report also states the following:

"All pathways that limit global warming to 1.5°C with limited or no overshoot project the use of carbon dioxide removal (CDR) on the order of 100–1000 GtCO2 over the 21st century. CDR would be used to compensate for residual emissions and, in most cases, achieve net negative emissions to return global warming to 1.5°C following a peak (high confidence). CDR deployment of several hundreds of GtCO2 is subject to multiple feasibility and sustainability constraints (high confidence). Significant near-term emissions reductions and measures to lower energy and land demand can limit CDR deployment to a few hundred GtCO2 without reliance on bioenergy with carbon capture and storage (BECCS) (high confidence)." [6]

2.3.5.4. The SR15 report indicates with respect to the nationally determined contributions (NDCs) of the parties to the Paris Agreement that the NDCs are insufficient for limiting global warming to 1.5°C and that the target is only feasible if global CO2 emissions start to fall well before 2030:

"Estimates of the global emissions outcome of current nationally stated mitigation ambitions as submitted under the Paris Agreement would lead to global greenhouse gas emissions in 2030 of 52–58 GtCO2-eq yr−1 (medium confidence). Pathways reflecting these ambitions would not limit global warming to 1.5°C, even if supplemented by very challenging increases in the scale and

ambition of emissions reductions after 2030 (high confidence). Avoiding overshoot and reliance on future large-scale deployment of carbon dioxide removal (CDR) can only be achieved if global CO2 emissions start to decline well before 2030 (high confidence)." [7]

Europe

2.3.6. All parts of Europe will encounter the adverse effects of climate change. Individual citizens and companies will run a substantial financial risk as a result of these impacts.[8] As a result of climate change Europe is expected to face more frequent heat waves, which will last longer and become more intense and result in more deaths.[9] Human systems and ecosystems in Europe are vulnerable to climate change, but vulnerabilities will differ per region. The following applies to North-Western Europe:

"Coastal flooding has impacted low-lying coastal areas in north-western Europe in the past and the risks are expected to increase due to sea-level rise and an increased risk of storm surges. North Sea countries are particularly vulnerable, especially Belgium, Denmark, Germany, the Netherlands, and the United Kingdom. Higher winter precipitation is projected to increase the intensity and frequency of winter and spring river flooding, although to date no increased trends in flooding have been observed." [10]

The Netherlands

2.3.7. The Netherlands has relatively high per capita CO2 emissions compared to other industrialized countries. The impacts of global warming (globally about 0.8 degrees higher than pre-industrial temperatures and 1.7 degrees in the Netherlands) are already noticeable in the Netherlands.[11] Heat waves, drought, floods, damage to ecosystems, threat to food production and damage to health are expected to intensify in future if the global average temperature rises. According to the Royal Netherlands Meteorological Institute (KNMI)[12], in the future the Netherlands will have to take account of higher temperatures, a faster rising sea level, wetter winters, heavier precipitation and chances of drier summers. The KNMI states the following, inter alia:

"In climate science it is accepted that a large degree of global warming will increase the risk of a major abrupt transition in the climate system. However there is as of yet no firm quantitative basis for the direction and magnitude of such a transition. Therefore, developing such transitions into extreme scenarios is beyond the scope of KNMI'14. Nevertheless, some examples have been provided below. Some climate models indicate a slow but complete shut down of the warm Gulf Stream before 2100. This reduces the warming over Europe in all but one of these models, in which the Gulf Stream shuts down around 2050 and Europe even sees a temporary net cooling. A few models indicate an abrupt decline in Arctic sea-ice cover during warming scenarios, resulting in a strong temperature increase over the North Pole area. This may impact the formation of storms that affect Europe. Another effect featured in some climate models is a much stronger drying of the soil in southern Europe. This 'desertification' of the Mediterranean will favour easterly winds over the Netherlands, leading to very warm and dry summers. There are two other relevant processes that are either not included or not well represented in current climate models. The first is a collapse of the West Antarctic ice sheet. At present this ice sheet is losing mass by increased iceberg calving. Once a collapse has been initiated, for which no indications exist at present, the mass loss might be much greater than accounted for in the KNMI'14 sea-level rise scenarios. The second process is the possibility of remnants of tropical hurricanes hitting Europe. Observations show that over the last two decades Atlantic hurricanes form more often in the eastern Tropics compared to the Caribbean. A large proportion of these hurricanes move directly to the north, and travel to Western Europe. The chances of Atlantic hurricanes to form in the eastern Tropics will increase due to global warming, and therefore also the probability of remnants of hurricanes hitting Western Europe. New experiments performed by KNMI with a highly detailed climate model have confirmed this. It will result in an earlier and more severe storm season in the Netherlands." [13]

2.3.8. According to the KNMI, a sea level rise of 2.5 to 3m this century cannot be ruled out. If

global warming does not exceed 2°C this century, it is possible that the sea level rise remains limited from 0.3 to at most 2.0m. However, if the global warming is greater (4°C in 2100) the sea level rise may climb to 2.0m and 3.0m at most in 2100. After 2100, this accelerated sea level rise may increase to 5m and possibly 8m in 2200. After 2050, the sea level rise is expected to accelerate even further. To counter this, various measures have to be taken, including faster and increased sand nourishment along the coast, strengthening or replacing storm surge barriers and other flood risk management works in a shorter term than currently envisioned, and moving and enlarging fresh water inlets.[14] Up to 2030, the impact of an accelerated sea level rise will be limited and hardly noticeable in the Dutch Wadden Sea. However, in the long term, up to the year 2100, the anticipated change will depend to a great extent on the climate scenarios, varying from hardly any impact up to 2100 to a noticeable impact in 2050. In most scenarios, none of the tidal basins in the Dutch Wadden Sea will have drowned by 2100. In the more extreme scenario (DeConto & Pollard), which predicts a total sea level rise of approximately 1.7m in 2100, the Wadden Sea will drown before 2100.[15]

2.3.9. Climate change-related health problems in Dutch residents include heat stress, increasing infectious diseases, deterioration of air quality, increase of UV exposure, and an increase of water-related and foodborne diseases. In the coming decades, the Netherlands will also face many water-related climate impacts, such as flooding along the coast and rivers, excess water, water shortage, deterioration of water quality, salinization, raised water levels and drought. Periods of either drought and water shortage or problems due to excess water may occur on an annual basis. These changes and uncertainties in water availability will have an impact on agriculture and biodiversity, but also on, for example, the energy sector and the manufacturing industry, for instance in the form of cooling water problems and poor accessibility via rivers in case of drought and network problems due to drought, excess water or other weather extremes).[16]

2.4. **Conventions, international agreements and policy intentions**

2.4.1. A UN conference on 'Human environment' was held in Stockholm in 1972. The conference brought forth the Stockholm Declaration, in which the principles of international environmental policy and environmental law were laid down. The United Nations Environment Program (UNEP) was established as a result of the conference.

The UN Climate Convention

2.4.2. In 1992 the UN Climate Convention (a framework convention) was concluded. This convention has since entered into force and ratified by the majority of the global community, including the Netherlands. The convention seeks to protect the planet's ecosystems and mankind and strives for sustainable development for the protection of current and future generations. The preamble to the convention contains the following consideration, inter alia: "Determined to protect the climate system for present and future generations". Article 2 of the convention reads as follows:

"The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."

2.4.3. Article 7 has established the Conference of the Parties (hereinafter: COP), which usually convenes every year (the so-named climate change conferences). The COP is the highest decision-making entity under the convention, although COP decisions are not legally binding.

Numerous COPs (climate change conferences) have since been held, including the COP 21 in 2015 in Paris (the Paris Climate Conference), culminating in the Paris Agreement, the COP 22 in 2016 in Marrakesh, in which the parties called for more ambition and a more intensive cooperation to close the gap between the current emissions reduction targets and the targets of the Paris Agreement and for further climate actions, and the COP 25 in 2019 in Madrid (see below under 2.4.8).

The IPCC

2.4.4. In 1988, the UNEP and the World Meteorological Organization (WMO), under the auspices of the United Nations, established the Intergovernmental Panel on Climate Change (IPCC). The IPCC focuses on gaining insight into all aspects of climate change through scientific research. It does not carry out its own research, but rather studies and assesses the most recent scientific and technical information that is made available worldwide. The IPCC is not just a scientific but also an intergovernmental organization. It has 195 members, including the Netherlands. Since its establishment, the IPCC has published five reports (Assessment Reports), with associated specialist reports, on the state of affairs in climate science and on climate developments. (See under 2.3.5.1 through to 2.3.5.4).

The UNEP

2.4.5. The UNEP has issued annual reports on the so-named emissions gap since 2010. The emissions gap is the difference between the desired emissions level in a particular year and the reduction targets to which the relevant countries committed. In UNEP's annual report on the year 2013, it was found for the third time in a row that the pledges had fallen short and greenhouse gas emissions had seen a rise rather than a drop. In its 2017 report, the UNEP noted that if the emissions gap is not bridged in 2030, it is highly unlikely that the 2°C target will be reached. Even if the reduction targets underlying the Paris Agreement are implemented in fully, 80% of the carbon budget remaining in the context of the 2°C target will be used by 2030. If a 1.5°C target is taken as a basis, the associated carbon budget will have been completely used up by then.

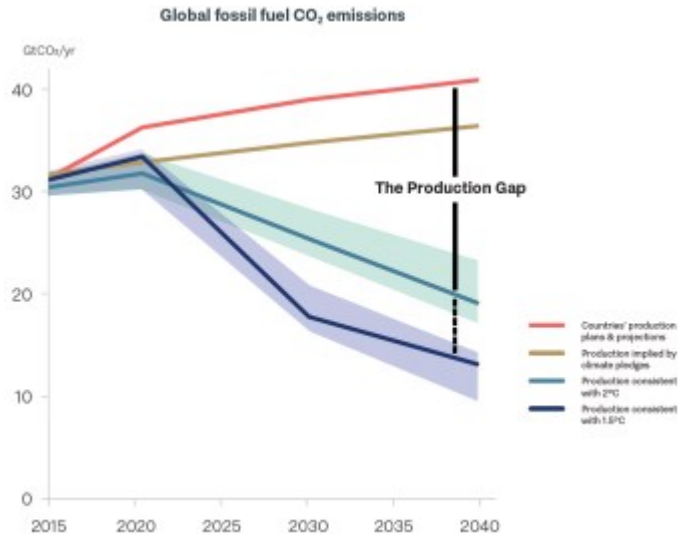
2.4.6. The 2019 UNEP Production Gap Report focuses on the so-called production gap. This gap is the difference between the planned production of fossil fuels of countries and global production levels in line with global warming limited to 1.5°C or 2°C. The following conclusion was drawn in this report, inter alia:

"In aggregate, countries' planned fossil fuel production by 2030 will lead to the emission of 39 billion tonnes (gigatonnes) of carbon dioxide (GtCO2). That is 13 GtCO2, or 53%, more than would be consistent with a 2°C pathway, and 21 GtCO2 (120%) more than would be consistent with a 1.5°C pathway. This gap widens significantly by 2040.

(…)

Oil and gas are also on track to exceed carbon budgets, as countries continue to invest in fossil fuel infrastructure that "locks in" oil and gas use. The effects of this lock-in widen the production gap over time, until countries are producing 43% (36 million barrels per day) more oil and 47% (1,800 billion cubic meters) more gas by 2040 than would be consistent with a 2°C pathway." [17]

Below is a diagram of the production gap[18]:



The Paris Agreement

2.4.7. The Paris Agreement, which was signed on 22 April 2016, entered into effect on 4 November 2016, and covering the period from 2020, has a different system than the UN Climate Convention. Each country is called to account regarding its individual responsibility (bottom-up approach). In short, the following is laid down in the agreement, inter alia:

- Global warming must be kept well below the 2ºC threshold relative to the pre-industrial age, while striving for 1.5°C.
- The parties have to draw up national climate plans, namely nationally determined contributions (NDCs), which must be ambitious and whose ambition level must increase with each new plan.
- The parties observe with great concern that the current NDCs are insufficient for an average temperature rise of no more than 2ºC relative to the pre-industrial age.
- The use of fossil fuels must be brought to an end quickly, as this is a major cause of excessive CO2 emissions.

The decision of the parties to adopt the Paris Agreement notes the following about non-state stakeholders:

"The Conference of the Parties

(…)

117. Welcomes the efforts of non-Party stakeholders to scale up their climate actions, and encourages the registration of those actions in the Non-State Actor Zone for Climate Action platform;

(…)

133. Welcomes the efforts of all non-Party stakeholders to address and respond to climate change, including those of civil society, the private sector, financial institutions, cities and other subnational authorities;

134. Invites the non-Party stakeholders referred to in paragraph 133 above to scale up their efforts and support actions to reduce emissions and/or to build resilience and decrease vulnerability to the adverse effects of climate change and demonstrate these efforts via the Non-State Actor Zone for Climate Action platform referred to in paragraph 117 above;"

2.4.8. During the 25th Conference of the Parties in Madrid in 2019 (COP 25) held under the UN Climate Convention, the so-called Climate Ambition Alliance was established. In the Climate Ambition Alliance, both state and non-state actors have signalled their intention to achieve net-zero CO2 emissions by 2050, required to meet the climate goals of the Paris Agreement. The press release on this alliance of state and non-state actors mentions, among other

things, that countries cannot take on this task on their own, that non-state action is required for meeting the goal of the Paris Agreement, and that this needs to be done with due observance of the latest scientific findings. Under the auspices of the UN, the so-called Race to Zero initiative was developed in order to achieve the necessary expansion of the group of non-state actors in the Climate Ambition Alliance in the quickest way possible. The Race to Zero initiative is an assembly of global networks that have developed emissions reduction protocols and guidelines for non-state actors. Based on scientific findings, these protocols and guidelines present, inter alia, what companies should do to reduce the greenhouse gas emissions caused by their activities and products.

The International Energy Agency (IEA)

2.4.9. The International Energy Agency (IEA) is an intergovernmental organization that was established in 1974 in order to support the coordination of a collective response to major disruptions in the oil supply. The IEA has 30 member countries, including the Netherlands. Although the oil supply forms a substantial focus area of the IEA, the agency has also focused its attention on other sources of energy. In its Beyond 2 Degree-Scenario (B2DS), the IEA assumes a reduction of 21 to 22 Gt CO2 in 2030. This represents a 35% drop relative to the starting point of 33 Gt in 2014, which the IEA uses as a base year.[19]

2.4.10. The IEA has published its annual World Energy Outlook since 1977. It offers analyses and insights into developments in the energy market and what these developments signify for energy certainty, environmental protection and economic developments.

In its World Energy Outlook 2019, the IEA foresees that the demand for oil and natural gas will rise until 2040 across all scenarios outlined in the outlook. The IEA distinguishes three scenarios, namely the Current Policies Scenario, the Stated Policies Scenario and the Sustainable Development Scenario (SDS). The IEA explains these scenarios as follows in the World Energy Outlook 2019:

" ***The Current Policies Scenario shows what happens if the world continues along its present path, without any additional changes in policy.*** *In this scenario, energy demand rises by 1.3% each year to 2040, with increasing demand for energy services unrestrained by further efforts to improve efficiency. While this is well below the remarkable 2.3% growth seen in 2018, it would result in a relentless upward march in energy-related emissions, as well as growing strains on almost all aspects of energy security.*

The Stated Policies Scenario, by contrast, incorporates today's policy intentions and targets. *Previously known as the New Policies Scenario, it has been renamed to underline that it considers only specific policy initiatives that have already been announced. The aim is to hold up a mirror to the plans of today's policy makers and illustrate their consequences, not to guess how these policy preferences may change in the future.*

In the Stated Policies Scenario, energy demand rises by 1% per year to 2040. Low-carbon sources, led by solar photovoltaics (PV), supply more than half of this growth, and natural gas, boosted by rising trade in liquefied natural gas (LNG), accounts for another third. Oil demand flattens out in the 2030s, and coal use edges lower. Some parts of the energy sector, led by electricity, undergo rapid transformations. Some countries, notably those with "net zero" aspirations, go far in reshaping all aspects of their supply and consumption. However, the momentum behind clean energy technologies is not enough to offset the effects of an expanding global economy and growing population. The rise in emissions slows but, with no peak before 2040, the world falls far short of shared sustainability goals.

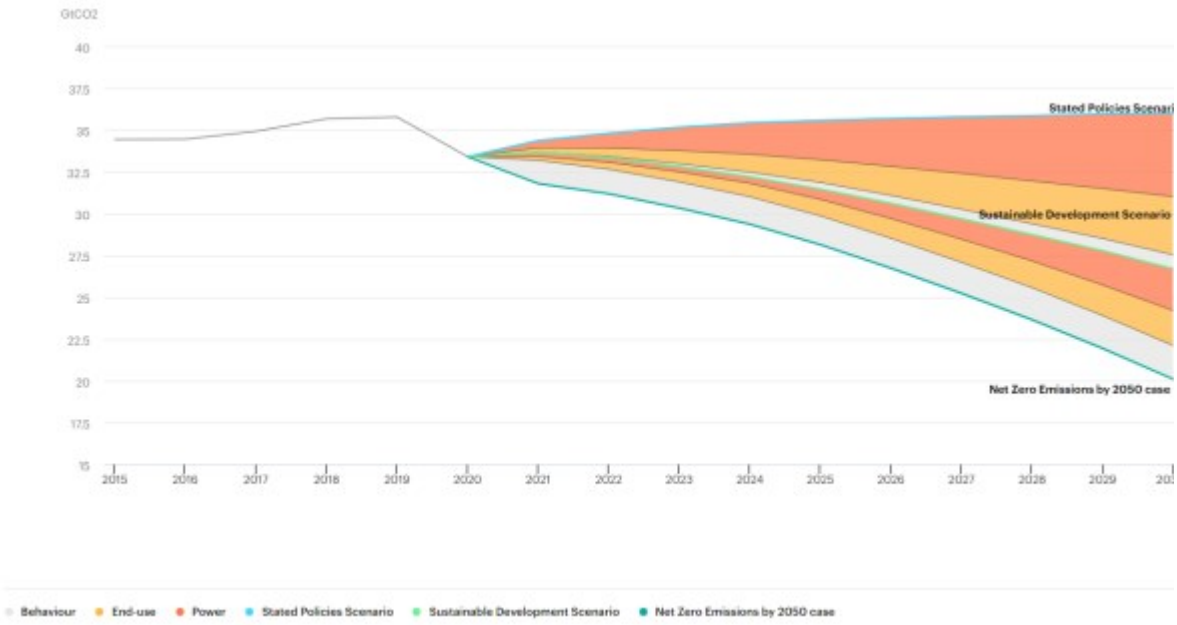
The Sustainable Development Scenario maps out a way to meet sustainable energy goals in full, requiring rapid and widespread changes across all parts of the energy system. *This scenario charts a path fully aligned with the Paris Agreement by holding the rise in global temperatures to "well below 2°C … and pursuing efforts to limit [it] to 1.5°C", and meets objectives related to universal energy access and cleaner air. The breadth of the world's energy needs means that there are no simple or single solutions. Sharp emission cuts are achieved*

across the board thanks to multiple fuels and technologies providing efficient and cost-effective energy services for all."

2.4.11. In the World Energy Outlook 2020, published in October 2020, the IEA introduces the 'Net Zero Emissions by 2050 (NZE2050) case', which is a translation of a net zero scenario in 2050 for the energy sector. The IEA notes the following, inter alia:

"Decisions over the next decade will play a critical role in determining the pathway to 2050. For this reason, we examine what the NZE2050 would mean for the years through to 2030. Total CO2 emissions would need to fall by around 45% from 2010 levels by 2030, meaning that energy sector and industrial process CO2 emissions would need to be around 20.1 Gt, or 6.6 Gt lower than in the SDS in 2030." [20]

The outlook contains the below graph, entitled 'Energy and industrial process CO2 emissions and reduction levers in WEO 2020 scenarios, 2015-2030'[21]:



The European Union (EU)

2.4.12. Article 191 of the Treaty on the Functioning of the European Union (TFEU) contains the EU's environmental goals. For the implementation of its environmental policy, the EU has worked out a large number of directives, including the so-named 2013 ETS directive (Directive 2003/87/EC), which was subsequently amended. The Directive has established a scheme for greenhouse gas emission allowance trading in the EU. Overall, the ETS system works as follows. Companies in the EU that fall under the ETS system, which are energy-intensive companies such as those in the energy sector, may only emit greenhouse gases in exchange for surrendering emission allowances. The allowances can be purchased, sold or kept. The system currently provides for an emissions reduction of 43% by 2030 relative to 2005.[22] On 17 September 2020, the European Commission proposed a new EU reduction target of at least 55% in all sectors by 2030 relative to 1990.[23] The European Council discussed this enhancement on 15 October 2020.

The Netherlands

2.4.13. In proceedings instituted by Urgenda, a foundation and citizens' group that focuses on developing plans and measures for the prevention of climate change, the Dutch State was ordered to reduce greenhouse gas emissions by at least 25% as of late 2020 relative to 1990.[24]

2.4.14. On 28 June 2019, the Dutch cabinet presented its Climate Agreement. The Climate

Agreement encompasses a package of measures and agreement between companies, social organizations and government bodies for the joint reduction of greenhouse gas emissions in the Netherlands by 49% in 2030 relative to 1990. The Climate Agreement is the result of consultations among some 150 parties, which gathered at five environment-themed round table meetings, namely Electricity, Industry, Built Environment, Agriculture and Mobility. The implementation of the agreements will be run wherever possible by the participating parties, including the central government.

2.4.15. On 1 September 2019, the Climate Act[25] entered into force. This act provides a framework for the development of policy geared towards a permanent and gradual reduction of greenhouse gas emissions in the Netherlands to a level that will be 95% lower in 2050 than in 1990, with the purpose of curbing global warming and climate change. The aim is to achieve a 49% reduction in greenhouse gas emissions by 2030 and a full Co2-neutral electricity production by 2050 in order to meet the target for 2050. According to the Climate Act, the cabinet must draw up a Climate Plan. The first Climate Plan is based on the Climate Agreement and covers the period between 2021 and 2030. The plan contains the broad outlines with which the cabinet seeks to achieve the targets in the Climate Act as well as a number of considerations, including on the latest scientific insights in the area of climate change and on the economic impact of the policy.

2.5. **Activities of RDS and the Shell group**

2.5.1. As the top holding company, RDS establishes the general policy of the Shell group. For instance, RDS draws up the investment guidelines in support of the energy transition as well as the business principles for the Shell companies. RDS reports on the consolidated performance of the Shell companies and maintains relationships with investors. In RDS' Sustainability Report 2019, the RDS Board is designated in a 'Climate Change Management Organogram' as having 'oversight of climate change risk management'. The companies of the Shell group are responsible for the implementation and execution of the general policy. They must adhere to the applicable legislation and their contractual obligations. Each Shell company bears operational responsibility for the implementation of 'climate change policies and strategies'.

2.5.2. RDS has made executive remuneration dependent on reaching short-term targets. In the 2019 Annual Report it was reported that the performance indicator 'energy transition' counts towards 10% in the weighting. The other 90% is linked to other, mostly financial performance indicators.

2.5.3. As the top holding company, RDS reports on the greenhouse gas emissions of the various Shell companies, both on the basis of the relevant company's operational control (100% of the emissions of companies and joint ventures operated by one of the Shell companies) as well as on the basis of the relevant company's share capital (equity share of the emissions of companies and joint ventures in which Shell participates).

2.5.4. RDS reports on greenhouse gas emissions on the basis of the World Resources Institute Greenhouse Gas Protocol (GHG Protocol). The GHG Protocol categorizes greenhouse gas emissions in Scope 1, 2 and 3:

- Scope 1: direct emissions from sources that are owned or controlled in full or in part by the organization;
- Scope 2: indirect emissions from third-party sources from which the organization has purchased or acquired electricity, steam, or heating for its operations;
- Scope 3: all other indirect emissions resulting from activities of the organization, but

occurring from greenhouse gas sources owned or controlled by third parties, such as other organizations or consumers, including emissions from the use of third-party purchased crude oil and gas.

2.5.5. RDS' reporting method and Shell's information on greenhouse gas emissions are available, inter alia, in their annual reports, Sustainability Reports, the Carbon Disclosure Project (CDP) – an international not-for-profit charity that runs the global disclosure system for investors, companies, cities, states and regions – and on the website of the Shell group. In 2018, RDS reported that 85% of the Shell group emissions were Scope 3 emissions.

2.5.6. In its 2019 submission to the CDP, RDS writes that its CEO has ultimate responsibility for the general management of the Shell group. The CEO is the most senior individual who is ultimately accountable for all management, except with respect to matters falling under the ultimate responsibility of the RDS Board or which belong to the domain of the RDS shareholders' meeting. With respect to climate change, the following is stated in the submission to the CDP:

"The CEO is the most senior individual with accountability for climate change. This includes the delivery of Shell´s strategy, e.g. through Shell´s plans (…) to set short-term targets for reducing the Net Carbon Footprint of the energy products it sells (…)."

2.5.7. The 2019 CDP submission explains that the climate policy, for which the RDS CEO bears ultimate accountability, is adopted by the RDS Board, which has 'oversight of climate-related issues'. *Among its 'governance mechanisms into which climate-related issues are integrated' are 'Setting performance objectives; Monitoring; implementation and performance of objectives; Overseeing major capital expenditures, acquisitions and divestitures; Monitoring and overseeing progress against goals and targets for addressing climate-related issues'.* The RDS Board seeks the advice of a so-called Board-level committee, namely the Corporate and Social Responsibility Committee (CSRC). The role of the CSRC is as follows:

"(…) to review and advise the Board on Shell's strategy, policies and performance in the areas of safety, environment, ethics and reputation against the Shell General Business Principles, the Shell Code of Conduct, and the HSSE & SP Control Framework. Conclusions/recommendations made by the CSRC are reported directly to the Executive Committee and Board. The topics discussed in depth included personal and process safety, road safety, the energy transition and climate change, Shell's Net Carbon Footprint ambition, the Company's environmental and societal licence to operate, and its ethics programme."

2.5.8. The 2019 submission to the CDP also states the following:

"Climate change and risks resulting from GHG emissions have been identified as a significant risk factor for Shell and are managed in accordance with other significant risks through the Board and Executive Committee. Shell's processes for identifying, assessing, and managing climate-related issues are integrated into our overall multi-disciplinary company-wide risk identification, assessment and management process. Shell frequently monitors and assesses climate-related risks looking at different time horizons; short (up to 3 years), medium (three years up to around 10 years) and long term (beyond around 10 years). Shell has a climate change risk management structure in place which is supported by standards, policies and controls.

(...)

Finally, we assess our portfolio decisions, including divestments and investments, against potential impacts from the transition to lower-carbon energy. These include higher regulatory costs linked to carbon emissions and lower demand for oil and gas. The portfolio changes we are making reduce the risk of having assets that are uneconomic to operate, or oil and gas reserves that are uneconomic to produce because of changes in demand or CO2 regulations."

2.5.9. In 1988, the then Shell group published an internal report on climate change, which had been drawn up in 1986, entitled 'The Greenhouse Effect'. In it, and in the information film,

'Climate of concern', the then Shell group warned about the dangers of climate change. In a brochure with the title 'Climate Change, what does Shell think and do about it' from March 1998, the following is stated about the role of the then Shell group in changing energy markets:

"They must play their part in the necessary precautionary measures to limit greenhouse gas emissions.

Shell companies expect to do the following:

(…)

Reduce emissions of greenhouse gases in their own operations as well as helping their customers to do the same."

In 1998, a new branch, known as the Shell International Renewables, was created in the then Shell group, whose focus was on new forms of energy, including solar energy, the planting of forests, and energy from biomass.

2.5.10. From 2006/2007 onward, the Shell group invested in tar sand in Canada in order to extract tar sand oil. The Shell company in question, Shell Canada, sold some parts of this investment in 2017. From late 2017/January 2018, the Shell group started to focus on the extraction of oil and gas from shale, which requires a drilling technique known as fracking. It is an intensive process that costs extra energy and consequently may culminate in a higher CO2 emission per unit of energy generated as compared to the conventional extraction of petroleum and natural gas. Moreover, the extraction of shale gas and shale oil, it turns out, releases the highly potent greenhouse gas methane into the atmosphere.

2.5.11. In December 2017, RDS presented its 'Net Carbon Footprint Ambition' (NCF ambition) for the Shell group. The NCF ambition is a long-term ambition with which the Shell group seeks to reduce the CO2 intensity of the energy products sold by the group by 2050. It is an intensity-based standard which focuses on the Shell group's relative contribution to the emissions reduction in the total energy system. The NCF ambition pertains to a reduction of the CO2 intensity of Scope 1, 2 and 3 emissions. The NCF ambition is generally adjusted very five years. In 2019, RDS also started to use targets, in addition to ambitions, for the short term for the Shell group, such as a specific NCF target. The short-term targets will be established every year for a period of three to five years. RDS annually reports on the NCF ambition in its Sustainability Report. The website of the Shell group also states the following about the NCF ambition:

"Our ambition depends on society making progress to meet the Paris Agreement. If society changes its energy demands more quickly, we intend to aid that acceleration. If it changes more slowly, we will not be able to move as quickly as we would like. Both energy demand and energy supply must evolve together. This is because no business can survive unless it sells things that people need and buy." [26]

2.5.12. In 2018, RDS published the Sky Report containing the 'Sky' scenario (hereinafter: Sky) for the development of future energy systems. RDS uses this scenario, inter alia, to support and test its business decisions. Sky assumes that society will reach net zero emissions by 2070, which means that the target of the Paris Agreement of keeping the global average temperature rise well below 2°C will have been met. Sky assumes a swift growth of renewable energy sources, such as wind and solar, and of low-emission fuels, such as biofuels, in addition to a persisting demand for oil and gas in the long term. Sky also foresees a substantial increase of a method for capturing and re-using CO2, known as Carbon Capture Utilization and Storage (CCUS), to further limit CO2 emissions in the atmosphere. Sky assumes that even in a climate-neutral energy system, with net zero CO2 emissions in 2070, fossil fuels – if combined with CCUS – still constitute 22% of the total energy supply, of which oil and gas form 16%. In 2050, this could be 45%, of which oil and gas form 33%. The report also states the following:

"From 2018 to around 2030, there is clear recognition that the potential for dramatic short-term change in the energy system is limited, given the installed base of capital across the economy and available technologies, even as aggressive new policies are introduced."

2.5.13. In 2018, RDS published the Energy Transformation Report 2018, which was intended to answer questions of shareholders, governments and not-for-profit organizations about the significance of the energy transition for the Shell group. The report states, among other things, that in all scenarios used by RDS, including the Sky scenario, the demand for oil and natural gas will be higher in 2030 than in 2018 and:

"To meet that demand, we expect to make continued investments in finding and producing oil and gas."

The report also states that the Shell group also invests in other energy sources, such as hydrogen, biofuels and wind, and that the Shell group wants to lower the CO2 intensity of its products.

The report states the following regarding the risk of so-called 'stranded assets':

"LOW RISK OF STRANDED ASSETS

Every year, we test our portfolio under different scenarios, including prolonged low oil prices. In addition, we rank the break-even prices of our assets in the Upstream [27] and Integrated Gas businesses to assess their resilience against low oil and gas prices. These assessments indicate that the risk of stranded assets in the current portfolio is low.

At December 31, 2017, we estimate that around 80% of our current proved oil and gas reserves, will be produced by 2030 and only around 20% after that time. Production that is already on stream will continue as long as we cover our marginal costs.

We also estimate that around 76% of our proved plus probable oil and gas reserves, known as 2P, will be produced by 2030, and only 24% after that time."

2.5.14. The disclaimer at the end of the Energy Transformation Report 2018 states the following:

"Additionally, it is important to note that Shell's existing portfolio has been decades in development. While we believe our portfolio is resilient under a wide range of outlooks, including the IEA's 450 scenario (World Energy Outlook 2016), it includes assets across a spectrum of energy intensities including some with above-average intensity. While we seek to enhance our operations' average energy intensity through both the development of new projects and divestments, we have no immediate plans to move to a net-zero emissions portfolio over our investment horizon of 10-20 years. Although, we have no immediate plans to move to a net-zero emissions portfolio, in November of 2017, we announced our ambition to reduce the Net Carbon Footprint of the energy products we sell in accordance with society's implementation of the Paris Agreement's goal of holding global average temperature to well below 2°C above pre industrial levels. Accordingly, assuming society aligns itself with the Paris Agreement's goals, we aim to reduce our Net Carbon Footprint, which includes not only our direct and indirect carbon emissions, associated with producing the energy products which we sell, but also our customers' emissions from their use of the energy products that we sell, by 20% in 2035 and by 50% in 2050."

2.5.15. In October 2018, the CEO of RDS said the following in a speech:

"*Shell's core business is, and will be for the foreseeable future, very much in oil and gas, and particularly in natural gas […] people think we have gone soft on the future of oil and gas. If they did think that, they would be wrong*."

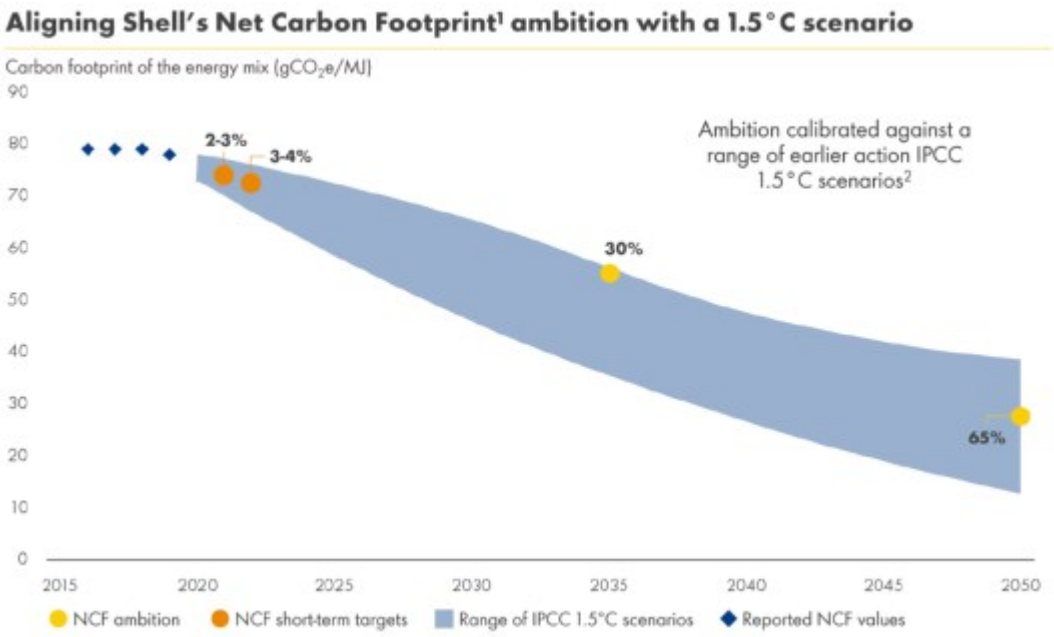
2.5.16. On 12 September 2019, Shell Nederland, part of the Shell group, and several other organizations, signed the Climate Agreement.

2.5.17. In response to the more far-reaching ambition of the European Commission to become climate neutral by 2050 ('the Green Deal'), RDS issued a sketch in 2020 entitled 'A climate-

Neutral EU by 2050', in which it notes that the EU ambitions require an acceleration of the energy transition that goes beyond the Sky scenario. RDS emphasizes that in order to facilitate the energy transition, the EU must create a policy framework with clear and binding legislative targets. RDS also explains in the sketch that carbon pricing must be expanded across the economy.

2.5.18. RDS included the adjusted ambitions for the Shell group in its 'Responsible Investment Annual Briefing' of April 2020 (hereinafter: 'RI Annual Briefing van 2020'), aimed at its investors. In the briefing, RDS states that the Shell group strives for a reduction of CO2 emissions to net zero in 2050, or sooner from the manufacture of all its products, or all of Scope 1 and 2 emissions. With regard to Scope 3 emissions, RDS wants to reduce the CO2 intensity of the Shell group's energy products per sold unit of energy (the NCF) by 30% in 2035 (was: 20%) and by 65% in 2050 (was: 50%). RDS also wants to help customers of the Shell group reduce their use of Shell energy products, the Scope 3 emissions, to net zero in 2050 or sooner. Finally, RDS has formulated short-term targets for the next two to three years.

2.5.19. In its RI Annual Briefing of 2020 (hereinafter: 'the RI Annual Briefing 2020'), RDS shows in a diagram how it believes its ambitions for the Shell group, both in the short and long term, relate to the so-called 'earlier action' IPCC 1.5℃ scenarios:



2.5.20. The RI Annual Briefing 2020 contains the following warning ('Definitions and cautionary note'), inter alia:

"Additionally, it is important to note that as of April 16, 2020, Shell's operating plans and budgets do not reflect Shell's net-zero emissions ambition. Shell's aim is that, in the future, its operating plans and budgets will change to reflect this movement towards its new net-zero emissions ambition. However, these plans and budgets need to be in step with the movement towards a net-zero emissions economy within society and among Shell's customers. Also, in this presentation we may refer to "Shell's Net Carbon Footprint", which includes Shell's carbon emissions from the production of our energy products, our suppliers' carbon emissions in supplying energy for that production and our customers' carbon emissions associated with their use of the energy products we sell. Shell only controls its own emissions but, to support society in achieving the Paris Agreement goals, we aim to help and influence such suppliers and consumers to likewise lower their emissions."

2.5.21. At the presentation of the third-quarter figures, on 29 October 2020, RDS gave a brief

explanation of the Shell group's strategic direction during the presentation of the third quarter figures. Its strategic direction is as follows:

"Shell will reshape its portfolio of assets and products to meet the cleaner energy needs of its customers in the coming decades. The key elements of Shell's strategic direction include:

▪ Ambition to be a net-zero emissions energy business by 2050 or sooner, in step with society and its customers.

▪ Grow its leading marketing business, further develop the integrated power business and commercialise hydrogen and biofuels to support customers' efforts to achieve net-zero emissions.

▪ Transform the Refining portfolio from the current fourteen sites into six high-value energy and chemicals parks, integrated with Chemicals. Growth in Chemicals will pivot to more performance chemicals and recycled feedstocks.

▪ Extend leadership in liquefied natural gas (LNG) to enable decarbonisation of key markets and sectors.

▪ Focus on value over volume by simplifying Upstream to nine significant core positions, generating more than 80% of Upstream cash flow from operations.

▪ Enhanced value delivery through Trading and Optimisation."

2.5.22. The website of the Shell group also states the following:

"We have the responsibility and commitment to respect human rights with a strong focus on how we interact with communities, security, labour rights and supply chain conditions."

(…)

We are committed to respecting human rights. Our human rights policy is informed by the UN Guiding Principles on Business and Human Rights and applies to all our employees and contractors."

2.5.23. In an open letter to the shareholders dated 16 May 2014, RDS wrote the following:

"We are writing this letter in response to enquiries from shareholders regarding the "carbon bubble" or "stranded assets" issue […] there is a high degree of confidence that global warming will exceed 2°C by the end of the 21st century […] because of the long-lived nature of the infrastructure and many assets in the energy system, any transformation will inevitably take decades […] Shell does not believe that any of its proven reserves will become "stranded" as a result of current or reasonably foreseeable future legislation concerning carbon."

2.5.24. Since 2016, the Dutch NGO Follow This, shareholder in RDS, has submitted various resolutions with the request to exchange the investments of the Shell group in oil and gas for sustainable energy. The RDS Board has consistently recommended its shareholders to vote against these resolutions for being contrary to the company's interests. The RDS Board stated the following, among other things:

"*tying the Company's hands to a renewables only mandate would be strategically and commercially unwise*."

The majority of shareholders has voted against these resolutions.

2.6. **Notice of liability of RDS from claimants**

2.6.1. In a letter dated 4 April 2018, Milieudefensie held RDS liable for its current policy as well as claimed conformity with the climate targets under the Paris Agreement. RDS responded in a letter dated 28 May 2018 stating that the claims of Milieudefensie were unfounded, that the courts were not the appropriate forum for questions about the energy transition, and that the approach of Milieudefensie was not constructive.

2.6.2. In a letter dated 12 February 2019, Milieudefensie et al. gave RDS another opportunity to

comply with what had been claimed earlier, which RDS rejected in a letter dated 26 March 2019.

3 The dispute

3.1. Milieudefensie et al. claim, following a change of claim, (in essence) for the court:

1. to rule:

- a) that the aggregate annual volume of CO2 emissions into the atmosphere (Scope 1, 2 and 3) due to the business operations and sold energy products of RDS and the companies and legal entities it commonly includes in its consolidated annual accounts and with which it jointly forms the Shell group constitutes an unlawful act towards Milieudefensie et al. and (i) that RDS must reduce this emissions volume, both directly and via the companies and legal entities it commonly includes in its consolidated annual accounts and with which it jointly forms the Shell group, and (ii) that this reduction obligation must be achieved relative to the emissions level of the Shell group in the year 2019 and in accordance with the global temperature target of Article 2 paragraph 1 under a of the Paris Agreement and in accordance with the related best available (UN) climate science.
- b) that RDS acts unlawfully towards Milieudefensie et al. if RDS, both directly and via the companies and legal entities it commonly includes in its consolidated annual accounts and with which it jointly forms the Shell group:

- *principally:* fails to reduce or cause to be reduced by at least 45% or net 45% relative to 2019 levels, no later than at year-end 2030, the aggregate annual volume of all CO2 emissions into the atmosphere (Scope 1, 2 and 3) due to the business operations and sold energy products of the Shell group;

- *in the alternative:* fails to reduce or cause to be reduced by at least 35% or net 35% relative to 2019 levels, no later than at year-end 2030, the aggregate annual volume of all CO2 emissions into the atmosphere (Scope 1, 2 and 3) due to the business operations and sold energy products of the Shell group;

- *further in the alternative:* fails to reduce or cause to be reduced by at least 25% or net 25% relative to 2019 levels, no later than at year-end 2030, the aggregate annual volume of all CO2 emissions into the atmosphere (Scope 1, 2 and 3) due to the business operations and sold energy products of the Shell group;

2. to order RDS, both directly and via the companies and legal entities it commonly includes in its consolidated annual accounts and with which it jointly forms the Shell group, to limit or cause to be limited the aggregate annual volume of all CO2 emissions into the atmosphere (Scope 1, 2 and 3) due to the business operations and sold energy products of the Shell group to such an extent that this volume at year-end 2030:

- *principally:* will have reduced by at least 45% or net 45% relative to 2019 levels;
- *in the alternative:* will have reduced by at least 35% or net 35% relative to 2019 levels;
- *further in the alternative:* will have reduced by at least 25% or net 25% relative to 2019 levels;

all of this while ordering RDS to pay the costs of the proceedings.

3.2. Milieudefensie et al. have based their claims on the following:

RDS has an obligation, ensuing from the unwritten standard of care pursuant to Book 6 Section 162 Dutch Civil Code[28] to contribute to the prevention of dangerous climate change through the corporate policy it determines for the Shell group. For the interpretation of the unwritten standard of care, use can be made of the so-called *Kelderluik* criteria[29], human rights, specifically the right to life and the right to respect for private and family life, as well as soft law endorsed by RDS, such as the UN Guiding Principles on Business and Human Rights, the UN Global Compact and the OECD Guidelines for Multinational Enterprises. RDS has the obligation to ensure that the CO2 emissions

attributable to the Shell group (Scope 1 through to 3) will have been reduced at end 2030, relative to 2019 levels, principally by 45% in absolute terms, or net 45% (using the IPCC SR15 report and the IEA's Net Zero emissions by 2050 scenario as a basis), in the alternative by 35% (using the IEA's Below 2 Degree Scenario as a basis), and further in the alternative by 25% (using the IEA's Sustainable Development Scenario as a basis), through the corporate policy of the Shell group. RDS violates this obligation or is at risk of violating this obligation with a hazardous and disastrous corporate policy for the Shell group, which in no way is consistent with the global climate target to prevent a dangerous climate change for the protection of mankind, the human environment and nature.

3.3. RDS has put forward a reasoned defence and files a motion for inadmissibility, or to dismiss the claims.

3.4. The parties' assertions are discussed in more detail below, where relevant.

4 The assessment

4.1. Introduction

4.1.1. The claims of Milieudefensie et al. are directed against RDS, established in the Netherlands, as the parent company of the Shell group. This case revolves around the question whether or not RDS has the obligation to reduce at end 2030 and relative to 2019 levels across all emission Scopes (1 through to 3) the CO2 emissions of the Shell group's entire energy portfolio through the corporate policy of the Shell group.

4.1.2. RDS endorses the need to tackle climate change by achieving the goals of the Paris Agreement and reducing global CO2 emissions. According to RDS, the energy transition required for achieving these goals demands a concerted effort of society as whole. RDS opposes the allowance of the claims: RDS asserts that there is no legal basis for doing so. RDS also argues that the solution should not be provided by a court, but by the legislator and politics.

4.1.3. The court does not follow RDS' argument that the claims of Milieudefensie et al. require decisions which go beyond the lawmaking function of the court. The court must decide on the claims of Milieudefensie et al.[30] Assessing whether or not RDS has the alleged legal obligation and deciding on the claims based thereon is pre-eminently a task of the court. In the following assessment, the court interprets the unwritten standard of care from the applicable Book 6 Section 162 Dutch Civil Code on the basis of the relevant facts and circumstances, the best available science on dangerous climate change and how to manage it, and the widespread international consensus that human rights offer protection against the impacts of dangerous climate change and that companies must respect human rights.

4.1.4. The assessment culminates in the conclusion that RDS is obliged to reduce the CO2 emissions of the Shell group's activities by net 45% at end 2030 relative to 2019 through the Shell group's corporate policy. This reduction obligation relates to the Shell group's entire energy portfolio and to the aggregate volume of all emissions (Scope 1 through to 3). It is up to RDS to design the reduction obligation, taking account of its current obligations and other relevant circumstances. The reduction obligation is an obligation of result for the activities of the Shell group, with respect to which RDS may be expected to ensure that the CO2 emissions of the Shell group are reduced to this level. This is a significant best-efforts obligation with respect to the business relations of the Shell group, including the end-users, in which context RDS may be expected to take the necessary steps to remove or prevent the serious risks ensuing from the CO2 emissions generated by the business relations, and to

use its influence to limit any lasting consequences as much as possible. This obligations is also designated hereinafter as 'RDS' reduction obligation'.

4.1.5. The court explains below how it has arrived at this opinion. The following themes are dealt with in the following order: under 4.2 the admissibility, under 4.3 the applicable law, under 4.4 RDS' reduction obligation, under 4.5 the policy, the policy intentions and the ambitions of RDS and the allowability of the claims, and under 4.6, the conclusion and costs of the proceedings.

4.2. **Admissibility**

1. Admissibility of class actions

4.2.1. Access to the Dutch courts is governed by Dutch law. The class actions of Milieudefensie et al. are governed by Book 3 Section 305a Dutch Civil Code, pursuant to which a foundation or association with full legal capacity may institute legal proceedings for the protection of similar interests of other persons. From the applicable transitional law[31] it follows that the admissibility of the class actions of Milieudefensie et al. must be tested on the basis of Book 3 Section 305a Dutch Civil Code (former), which applied up until 1 January 2020.

4.2.2. The class actions of Milieudefensie et al. are public interest actions. Such actions seek to protect public interests, which cannot be individualized because they accrue to a much larger group of persons, which is undefined and unspecified.[32] The common interest of preventing dangerous climate change by reducing CO2 emissions can be protected in a class action. The dispute on the admissibility of class actions revolves around the question whether or not they comply with the requirement 'similar interest' in the sense of Book 3 Section 305a Dutch Civil Code. This requirement entails that the interests in question must be suitable for bundling so as to safeguard an efficient and effective legal protection of the stakeholders.

4.2.3. The court is of the opinion that the interests of current and future generations of the world's population, as served principally with the class actions, is not suitable for bundling. Although the entire world population is served by curbing dangerous climate change, there are huge differences in the time and manner in which the global population at various locations will be affected by global warming caused by CO2 emissions. Therefore, this principal interest does not meet the requirement of 'similar interest' under Book 3 Section 305a Dutch Civil Code.

4.2.4. However, the interests of current and future generations of Dutch residents and (with respect to the Waddenvereniging) of the inhabitants of the Wadden Sea area, a part of which is located in the Netherlands, as served in the alternative with the class actions, are suitable for bundling, even though in the Netherlands and in the Wadden region there are differences in time, extent and intensity to which the inhabitants will be affected by climate change caused by CO2 emissions. However, these differences are much smaller and of a different nature than the mutual differences when it concerns the entire global population and do not stand in the way of bundling in a class action. The collective claims are therefore declared not allowable insofar as they serve the interest of the world's population, except for the interest of Dutch residents and the inhabitants of the Wadden region.

4.2.5. The interest served with the class action must align with the objects stated in the articles of association and must also actually be promoted. Milieudefensie, Greenpeace Nederland, Fossielvrij NL, Waddenvereniging, Both Ends and Jongeren Milieu Actief meet this requirement. ActionAid does not meet this requirement, as it does not promote the interests of Dutch residents sufficiently for its collective claim to be allowable. ActionAid's object is broadly formulated in its articles of association, which pertains to the world with a special focus on Africa. ActionAid mainly operates in developing countries. Its operations in the Netherlands are geared towards developing countries, not Dutch residents. Its collective

claim must therefore be declared not allowable.

4.2.6. The other admissibility requirements under Book 3 Section 305a Dutch Civil Code are rightfully not in dispute. Therefore, the collective claims of Milieudefensie, Greenpeace Nederland, Fossielvrij NL, Waddenvereniging, Both Ends and Jongeren Milieu Actief are allowable.

2. Locus standi of individual claimants

4.2.7. A claimant must have an independent, direct interest in the instituted legal proceedings.[33] This is complemented with the option from the above-discussed Book 3 Section 305a Dutch Civil Code to institute proceedings for the protection of similar interests of others. The legislative history of Book 3 Section 305a Dutch Civil Code states that if a public interest action is instituted, *"citizens, individually, are generally not entitled to institute proceedings due to a lack of interest".*[34]In other words, besides a class action there is only room for the claims of individual claimants if they have a sufficiently concrete individual interest. That is not the case here: the interest of the claims of individual claimants is the same as the common interest which the class actions seek to protect. Their interests are already served by the class actions and they do not have an interest in a separate claim in addition to the class actions. The claims of the individual claimants must therefore be declared not allowable.

All further uses of Milieudefensie et al. refer to Milieudefensie, Greenpeace Nederland, Fossielvrij NL, Waddenvereniging, Both Ends and Jongeren Milieu Actief jointly.

4.3. **Applicable law**

4.3.1. Milieudefensie et al. principally make a choice of law within the meaning of Article 7 Rome II[35], which according to Milieudefensie et al. leads to the applicability of Dutch law. Insofar as the choice of law of Article 7 Rome II does not lead to the applicability of Dutch law, Milieudefensie et al. claim in the alternative that the applicable law must be determined based on the general rule of Article 4 paragraph 1 Rome II. According to Milieudefensie et al., this general rule also leads to the applicability of Dutch law.

4.3.2. Article 7 Rome II determines that the law applicable to a non-contractual obligation arising out of environmental damage or damage sustained by persons or property as a result of such damage shall be the law determined pursuant to the general rule of Article 4 paragraph 1 Rome II, unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred. The parties were right to take as a starting point that climate change, whether dangerous or otherwise, due to CO2 emissions constitutes environmental damage in the sense of Article 7 Rome II. They are divided on the question what should be seen as an 'event giving rise to the damage' in the sense of this provision. Milieudefensie et al. allege that this is the corporate policy as determined for the Shell group by RDS in the Netherlands, whereby her choice of law leads to the applicability of Dutch law. RDS asserts that the event giving rise to the damage are the actual CO2 emissions, whereby the choice of law of Milieudefensie et al. leads to the applicability of a myriad of legal systems.

4.3.3. The choice as laid down in Article 7 Rome II is justified with a reference to Article 1919 TFEU (Article 174 TEC), which prescribes a high level of protection.[36] Both Milieudefensie et al. and RDS refer to the handbook by Von Hein. The complete entry for event giving rise to the damage in the sense of Article 7 Rome II reads as follows:

"Where events giving rise to environmental damage occur in several states, it is not possible to invoke the escape clause (Article 4(3)) in order to concentrate the applicable law with regard to a single act. Thus, the plaintiff may opt for different laws as far as acts by multiple tortfeasors acting in various states are concerned. If, however, an act in country A causes an incident in

country B which then leads to an environmental damage in country C, it may be submitted that only the final incident should be characterized as the decisive 'event' within the meaning of Article 7. One has to concede that extending the victim's right to choose the law, of each place of act would considerably undermine legal predictability. On the other hand, such generous approach would fit the favor naturae underlying Article 7. Since the tortfeasor may be sued in country A under Article 7 no. 2 Brussels Ibis, extending the victim's option will also facilitate proceedings." [37]

4.3.4. The Court of Justice of the European Union (CJEU) has made no declaration on the 'event giving rise to the damage' in the sense of Article 7 Rome II. The court sees insufficient basis in the interpretation of this provision to seek a link with the CJEU rulings as cited by the parties on other principles of liability, some of which are subject in Rome II to specific choice-of-law rules (intellectual property rights, unlawful competition, and product liability and prospectus liability).[38] Nor does the court see a basis to seek a link with the case law cited by RDS, in which it was determined that a purely internal decision cannot be designated as an injurious event.[39]

The published corporate policy that RDS draws up for the Shell group, which was also discussed with the shareholders, and to which the claims of Milieudefensie et al. pertain, cannot be equated with this. The court also sees insufficient grounds to seek a link with the cases cited by RDS, in which parent companies were called to account for non-intervention in subsidiaries.[40] A parallel with the law applicable to a participant in an unlawfully committed act perpetrated in concert (product liability) does not hold water due to the below-mentioned characteristics of the responsibility as regards environmental damage and imminent environmental damage, as raised in this case.

4.3.5. An important characteristic of the environmental damage and imminent environmental damage in the Netherlands and the Wadden region, as raised in this case, is that every emission of CO2 and other greenhouse gases, anywhere in the world and caused in whatever manner, contributes to this damage and its increase. It is not in dispute that the CO2 emissions for which Milieudefensie et al. hold RDS liable occur all over the world and contribute to climate change in the Netherlands and the Wadden region (see also below under 4.4 (2)). These CO2 emissions only cause environmental damage and imminent environmental damage in conjunction with other emissions of CO2 and other greenhouse gases for Dutch residents and the inhabitants of the Wadden region. Not only are CO2 emitters held personally responsible for environmental damage in legal proceedings conducted all over the world, but also other parties that could influence CO2 emissions. The underlying thought is that every contribution towards a reduction of CO2 emissions may be of importance. The court is of the opinion that these distinctive aspects of responsibility for environmental damage and imminent environmental damage must be included in the answer to the question what in this case should be understood as 'event giving rise to the damage' in the sense of Article 7 Rome II.

4.3.6. Milieudefensie et al. hold RDS liable in its capacity as policy-setting entity of the Shell group (see below under 4.4. (1.)). RDS does contest that its corporate policy for the Shell group is of may be of influence on the Shell group's CO2 emissions. However, RDS pleads for a restricted interpretation of the concept 'event giving rise to the damage' in the application of Article 7 Rome II. In its view, its corporate policy is a preparatory act that falls outside the scope of this article because in the opinion of RDS, the mere adoption of a policy does not cause damage.

The court holds that this approach is too narrow, not in line with the characteristics of responsibility for environmental damage and imminent environmental damage nor with the concept of protection underlying the choice of law in Article 7 Rome II. Although Article 7 Rome II refers to an 'event giving rise to the damage', i.e. singular, it leaves room for situations in which multiple events giving rise to the damage in multiple countries can be

identified, as is characteristic of environmental damage and imminent environmental damage. When applying Article 7 Rome II, RDS' adoption of the corporate policy of the Shell group therefore constitutes an independent cause of the damage, which may contribute to environmental damage and imminent environmental damage with respect to Dutch residents and the inhabitants of the Wadden region.

4.3.7. Superfluously, the court considers that the conditional choice of law of Milieudefensie et al. is in line with the concept of protection underlying Article 7 Rome II, and that the general rule of Article 4 paragraph 1 Rome II, upheld in Article 7 Rome II, insofar as the class actions seek to protect the interests of the Dutch residents, also leads to the applicability of Dutch law.

4.4. **RDS' reduction obligation**

4.4.1. RDS' reduction obligation ensues from the unwritten standard of care laid down in Book 6 Section 162 Dutch Civil Code, which means that acting in conflict with what is generally accepted according to unwritten law is unlawful. From this standard of care ensues that when determining the Shell group's corporate policy, RDS must observe the due care exercised in society. The interpretation of the unwritten standard of care calls for an assessment of all circumstances of the case in question.

4.4.2. In its interpretation of the unwritten standard of care, the court has included: (1.) the policy-setting position of RDS in the Shell group, (2.) the Shell group's CO2 emissions, (3.) the consequences of the CO2 emissions for the Netherlands and the Wadden region, (4.) the right to life and the right to respect for private and family life of Dutch residents and the inhabitants of the Wadden region, (5.) the UN Guiding Principles, (6.) RDS' check and influence of the CO2 emissions of the Shell group and its business relations, (7.) what is needed to prevent dangerous climate change, (8.) possible reduction pathways, (9.) the twin challenge of curbing dangerous climate change and meeting the growing global population energy demand, (10.) the ETS system and other 'cap and trade' emission systems that apply elsewhere in the world, permits and current obligations of the Shell group, (11.) the effectiveness of the reduction obligation, (12.) the responsibility of states and society, (13.) the onerousness for RDS and the Shell group to meet the reduction obligation, and (14.) the proportionality of RDS' reduction obligation. In 4.5, the court weighs the policy, policy intentions and ambitions of RDS for the Shell group against RDS' reduction obligation. Finally, 4.6 contains the conclusion on RDS' reduction obligation and the court's assessment of which claims of Milieudefensie et al. can be allowed.

4.4.3. All further uses by the court of 'the unwritten standard of care' refer to – for the sake of brevity – what may be expected of RDS under this standard with respect to Dutch residents and the inhabitants of the Wadden region, whose interests Milieudefensie et al. seeks to protect in the class actions.

(1.) the policy-setting position of RDS in the Shell group

4.4.4. From the facts as presented under 2.5.1 through to 2.5.7 it follows that RDS determines the general policy of the Shell group. The companies in the Shell group are responsible for the implementation and execution of the policy, and must comply with applicable legislation and their contractual obligations. The implementation responsibility of the Shell companies does not alter the fact that RDS determines the general policy of the Shell group.

(2.) the Shell group's CO2 emissions

4.4.5. The parties debate about the Shell group's position in the hierarchy and about the percentage of the global CO2 emission that can be ascribed to the Shell group. In both approaches, the Shell group is a major player on the worldwide market of fossil fuels. If all Scopes (1 through to 3) are included, the Shell group is responsible for significant CO2 emissions all over the world. The total CO2 emissions of the Shell group (Scope 1 through to

3) exceeds the CO2 emissions of many states, including the Netherlands. It is not in dispute that these global CO2 emissions of the Shell group (Scope 1 through to 3) contribute to global warming and climate change in the Netherlands and the Wadden region.

(3.) the consequences of CO2 emissions for the Netherlands and the Wadden region

4.4.6. The temperature rise in the Netherlands (approximately 1.7 degrees above the pre-industrial temperature) has so far developed about twice as fast as the global average (approximately 0.8 degrees above the pre-industrial temperature) (see under 2.3.7.). The climate change caused by CO2 emissions will have serious and irreversible consequences for the Netherlands and the Wadden region (see 2.3.7 through to 2.3.9). The risks for Dutch residents and the inhabitants of the Wadden region are apparent from various sources. The IPCC reports are not specifically focused on the Netherlands. The fact that these reports do not mention certain risks for Dutch residents and the inhabitants of the Wadden region, as put forward by RDS, does not mean that these risks do not exist. The risks associated with climate change for Dutch residents and the inhabitants of the Wadden region concern health risks and deaths due to climate change-induced hot spells as well as health problems and an increased mortality risk due to increasing infectious diseases, deterioration of air quality, increase of UV exposure, and an increase of water-related and foodborne diseases. They also concern water-related health risks, which the Netherlands and the Wadden region will face, including flooding along the coast and rivers, excess water, water shortage, deterioration of water quality, salinization, raised water levels and drought. Although the consequences of climate change and the associated risks for the inhabitants of the Wadden region may turn out differently from the risks for Dutch and other residents because the effect of accelerated sea level rise will be limited and hardly noticeable in the Wadden region up to 2030 (see 2.3.8), climate change will equally have serious and irreversible consequences for the inhabitants of the Wadden region; in the more extreme scenarios this area will drown completely in the long term.

4.4.7. RDS points out that the nature and severity of the dangers of climate change are not static but dynamic and that they will be influenced by the measures against dangerous climate change. These observations by RDS, which in themselves are accurate, do not refute the aforementioned serious and irreversible consequences of climate change in the Netherlands and the Wadden region. These observations of RDS show that there is some uncertainty about the precise manner in which dangerous climate change will manifest in the Netherlands and Wadden region. This uncertainty is inherent in prognoses and future scenarios but has no bearing on the prediction that climate change due to CO2 emissions will lead to serious and irreversible consequences for Dutch residents and the inhabitants of the Wadden region.

4.4.8. RDS believes that in the outline of the consequences of climate change made by Milieudefensie et al. pay too little attention is paid to adaptation strategies, such as air conditioning, which may contribute to reducing risks associated with hot spells, and to water and coastal management to counter the sea level rise caused by global warming. These adaptation strategies reveal that measures can be taken to combat the consequences of climate change, which may in result reduce the risks. However, these strategies do not alter the fact that climate change due to CO2 emissions has serious and irreversible consequences, with potentially very serious and irreversible risks for Dutch residents and the inhabitants of the Wadden region.

(4.) the right to life and the right to respect for private and family life of Dutch residents and the inhabitants of the Wadden region

4.4.9. Milieudefensie et al invoke the right to life and the right to respect for private and family life of Dutch residents and the inhabitants of the Wadden region. These rights enshrined in Articles 2 and 8 of the European Convention for the Protection of Human Rights and

Fundamental Freedoms (ECHR) and Articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR) (hereinafter jointly also referred to as: 'the human rights') apply in relationships between states and citizens. Milieudefensie et al. cannot directly invoke these human rights with respect to RDS. Due to the fundamental interest of human rights and the value for society as a whole they embody, the human rights may play a role in the relationship between Milieudefensie et al. and RDS. Therefore, the court will factor in the human rights and the values they embody in its interpretation of the unwritten standard of care.

4.4.10. From the Urgenda ruling it can be deduced that Articles 2 and 8 ECHR offer protection against the consequences of dangerous climate change due to Co2 emissions induced global warming.[41] The UN Human Rights Committee, which decides on violations of the ICCPR, determined the same as regards Articles 6 and 17 ICCPR.[42] In a case on the right to life as enshrined in Article 6 ICCPR, the UN Human Rights Committee considered as follows:

"Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life." [43]

In 2019, the UN Special Rapporteur on Human Rights concluded the following:

"There is now global agreement that human rights norms apply to the full spectrum of environmental issues, including climate change." [44]

RDS' argument that the human rights invoked by Milieudefensie et al. offer no protection against dangerous climate change therefore does not hold.

The serious and irreversible consequences of dangerous climate change in the Netherlands and the Wadden region, as discussed under (4.4. (3)), pose a threat to the human rights of Dutch residents and the inhabitants of the Wadden region.

(5.) the UN Guiding Principles (UNGP)

4.4.11. In its interpretation of the unwritten standard of care, the court follows the UN Guiding Principles (UNGP)[45]. The UNGP constitute an authoritative and internationally endorsed 'soft law' instrument, which set out the responsibilities of states and businesses in relation to human rights. The UNGP reflect current insights. They do not create any new right nor establish legally binding obligations.[46] The UNGP are in line with the content of other, widely accepted soft law instruments, such as the UN Global Compact (UNGC) 'principles' and the OECD Guidelines for Multinational Enterprises (the OECD guidelines). Since 201, the European Commission has expected European businesses to meet their responsibilities to respect human rights, as formulated in the UNGP.[47] For this reason, the UNGP are suitable as a guideline in the interpretation of the unwritten standard of care. Due to the universally endorsed content of the UNGP, it is irrelevant whether or not RDS has committed itself to the UNGP, although RDS states on its website to support the UNGP (see 2.5.22)

4.4.12. The UNGP distinguishes between the responsibility of states and that of businesses. The responsibility of states, as formulated in the UNGP, is more far-reaching than that of businesses: states must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.[48] RDS points out the following passage from the commentary to Principle 8:

There is no inevitable tension between States' human rights obligations and the laws and policies they put in place that shape business practices. However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence."

RDS argues that states therefore have to, and are able to, balance different societal

interests, which it argues is not true for businesses. RDS also points out other differences between states and businesses.

4.4.13. The differences between states and businesses RDS emphasizes are expressed in the UNGP in the different responsibilities for states and businesses, between which no inevitable tension needs to exist – as follows from the quotation given by RDS. The responsibility of business enterprises to respect human rights, as formulated in the UNGP, is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.[49] Therefore, it is not enough for companies to monitor developments and follow the measures states take; they have an individual responsibility.

4.4.14. It can be deduced from the UNGP and other soft law instruments that it is universally endorsed that companies must respect human rights. This includes the human rights enshrined in the ICCPR as well as other 'internationally recognized human rights'[50], including the ECHR. For example, the OECD Guidelines for Multinational Enterprises (the OECD guidelines) state the following[51]:

"Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

(…)

Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage;"

4.4.15. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.[52] Tackling the adverse human rights impacts means that measures must be taken to prevent, limit and, where necessary, address these impacts. It is a global standard of expected conduct for all businesses wherever they operate. As has been stated above, this responsibility of businesses exists independently of states' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations.[53] It is not an optional responsibility for companies.[54] It applies everywhere, regardless of the local legal context, [55] and is not passive:

"Respecting human rights is not a passive responsibility: it requires action on the part of businesses." [56]

4.4.16. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.[57] The means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size. Severity of impacts will be judged by their scale, scope and irremediable character. The means through which a business enterprise meets its responsibility to respect human rights may also vary depending on whether, and the extent to which, it conducts business through a corporate group or individually.[58] The court is of the opinion that much may be expected of RDS. RDS heads the Shell group, which consists of about 1,100 companies, and operates in 160

countries all over the world. It has a policy-setting position in the Shell group (see 4.4 (1.)), which is a major player on the worldwide market of fossil fuels and is responsible for significant CO2 emissions, which exceed the emissions of many states and which contributes towards global warming and a dangerous climate change in the Netherlands and in the Wadden region (see 4.4 (2.)) with serious and irreversible consequences and risks for the human rights of Dutch residents and the inhabitants of the Wadden region (see 4.4 (3.) and (4.)).

4.4.17. The UNGP are based on the rationale that companies may contribute to the adverse human rights impacts through their activities as well as through their business relationships with other parties. The duty to respect human rights requires that companies:

a. avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
b. seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.[59]

"Activities" are understood to include both actions and omissions. "Business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-state or state entity directly linked to its business operations, products or services.[60] The responsibility to respect human rights encompasses the company's entire value chain. Value chain is understood to mean:

"*the activities that convert input into output by adding value. It includes entities with which it has a direct or indirect business relationship and which either (a) supply products or services that contribute to the enterprise's own products or services, or (b) receive products and services from the enterprise.*"[61]

4.4.18. RDS' value chain includes the closely affiliated companies of the Shell group, on which it has a policy-setting influence (see below under 1). These also include the business relations from which the Shell group purchases raw materials, electricity and heat. Finally, the end-users of the products produced and traded by the Shell group are at the end of RDS' value chain. RDS' responsibility therefore also extends to the CO2 emissions of these end-users (Scope 3). This is in line with the analysis of the various protocols and guidelines for climate change for non-state actors, drawn up by the University of Oxford in 2020 (hereinafter: the Oxford report).[62] This analysis shows the points on which there is broad consensus and regarding which there are differences of opinion. Under 'Scope', which pertains to both '*which greenhouse gasses are included'* and '*what activities are covered*'[63] the list of '*points of greater consensus or certainty'* states the following: *"in general, targets should aim to cover all gasses and all activities and scopes, as data allows"* and under "*points of less consensus or open questions*": *"How to prioritize different activities across scopes (e.g. focus on total emissions, areas of direct control, etc.)"*[64]

The Oxford report also states the following about the activities for which companies are responsible:

"For companies, a few targets do not include scope 3 emissions, though the majority do. However, within this relative consensus that all activities should be considered, there are different areas of emphasis. Some recommend focusing on those activities across all scopes that are most material to total emissions (SBTI, ACT). Others prioritize those emissions which are most directly controllable by the entity (RAMCC) or follow guidance which only partly includes some scopes (Natural Capital Partners). Data limitations around, especially, scope 3 emissions, creates further uncertainties about coverage."[65]

RDS correctly notes that the Oxford report does not mention a legal obligation for energy companies to reduce Scope 3 emissions in absolute and uniform steps. More generally, the Oxford report also states:

"Given the heterogeneity of actors setting net zero targets, no single approach or standard for net

zero targets would be appropriate or effective. However, the large amount of active work on this subject creates a significant opportunity for greater alignment around common principles to underlay the diversity of approaches we see." [66]

However, it does follow from the Oxford report that, although there are nuances, it is internationally endorsed that companies bear responsibilities for Scope 3 emissions. The court has included this widely endorsed starting point in its interpretation of the unwritten standard of care. The court notes that the level of responsibility is related to the extent to which companies have control and influence over the emissions. RDS' control and influence over the Scope 3 emissions of the Shell group is discussed in more detail in 4.4 (6.).

4.4.19. In its interpretation of the unwritten standard of care, the court has also included the internationally propagated and endorsed need for companies to genuinely take responsibility for Scope 3 emissions. This need is more keenly felt where these emissions form the majority of a company's CO2 emissions, as is the case for companies that produce and sell fossil fuels. In case of the Shell group, approximately 85% of its emissions are Scope 3 emissions (see 2.5.5.).

4.4.20. Companies may be expected to identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.[67] Regardless of the extent of its control and influence on these emissions, RDS may be expected to identify and assess the adverse effects of its Scope 1 through to 3 emissions. RDS has done so (see 2.5.4). It knows that the exploration, production, refinery, marketing, and the purchase and sale of oil and gas by the Shell group as well as the use of products of the Shell group generates significant CO2 emissions worldwide, which undoubtedly contributes to climate change in the Netherlands and the Wadden region (see 4.4 (2.)). RDS has for a long time known of the dangerous consequences of CO2 emissions and the risks of climate change to Dutch residents and the inhabitants of the Wadden region. RDS also knows the amount of CO2 emissions of the Shell group; it has reported on the volume of CO2 emissions (see 2.5.3). Finally, from the quotation from the CDP 2019, given in 2.5.8, follows that RDS regularly monitors and assesses the climate-related risks of its business activities and those of its business relations, namely for the short term (a period of up to three years), the mid-term (a period of between three to ten years) and the long term (a period of more than ten years ahead).

4.4.21. Companies subsequently should take 'appropriate action' on the basis of their findings and assessments. Appropriate action will vary according to:

i. whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
ii. the extent of its leverage in addressing the adverse impact.[68]

The commentary to this principle states the following:

"Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the

abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences.

(…)

If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors." [69]

RDS' responsibility is defined by the influence and control it can exercise over the Scope 1 through to 3 emissions of the Shell group (4.4 (6.)), and what is needed to prevent dangerous climate change (4.4 (7.)). – for which Milieudefensie et al. follow the goal of the Paris Agreement – and the possible reduction pathways (4.4 (8.)).

(6.) the control and influence of RDS on the CO2 emissions of the Shell group and its business relations

4.4.22. The court distinguishes between the CO2 emissions of (1) the Shell group (RDS and the other Shell companies) and (2) the business relations of the Shell group, including the end-users.

4.4.23. Due to the policy-setting influence RDS has over the companies in the Shell group, it bears the same responsibility for these business relations as for its own activities. The far-reaching control and influence of RDS over the Shell group means that RDS' RDS' reduction obligation must be an obligation of result for emissions connected to own activities of the Shell group. This concerns RDS' Scope 1 emissions and the part of RDS' Scope 2 emissions which can be ascribed to the Shell companies. From the perspective of the Shell group as a whole, this constitutes the Scope 1 emissions of the Shell group.

4.4.24. As regards the business relations of the Shell group, including the end-users, RDS may be expected to take the necessary steps to remove or prevent the serious risks ensuing from the CO2 emissions generated by them, and to use its influence to limit any lasting consequences as much as possible (see under 4.4.20). This is a significant best-efforts obligation, which is not removed or reduced by the individual responsibility of the business relations, including the end-users, for their own CO2 emissions.

4.4.25. It is not in dispute that through its purchase policy the Shell group exercises control and influence over its suppliers' emissions. These are the Scope 2 emissions of the Shell group as a whole. This means that through the corporate policy of the Shell group RDS is able to exercise control and influence over these emissions. The subject that is most disputed between the parties is the control and influence RDS exerts over the Scope 3 emissions of the Shell group, which are released by the end-users. RDS does not contest that it can exert that control and influence through its energy package, and the composition thereof, produced and sold by the Shell group. This is not altered by the circumstance, emphasized by RDS, that the Shell group has contractual obligations as well as obligations ensuing from long-term concessions, which may limit its freedom of choice as regards the Shell group's energy package. This limitation means that RDS is not fully free to determine the Shell group's energy package; in determining the energy package of the Shell group, RDS will have to take the current obligations into account. This limitation does not alter the fact that ultimately RDS determines the energy package of the Shell group – and consequently, the range of energy products. With due observance of its current obligations, RDS is free to decide not to make new investments in explorations and fossil fuels, and to change the energy package offered by the Shell group, such as the reduction pathways require, which are discussed below (in 4.4 (8.)). Through the energy package offered by the Shell group, RDS controls and influences the Scope 3 emissions of the end-users of the products produced and sold by the Shell group. What RDS also puts forward regarding its control and influence on the Scope 3 emissions concerns the effectiveness of its reduction obligation,

which is discussed below (in 4.4 (11.)).

(7.) what is needed to prevent dangerous climate change

4.4.26. In formulating RDS' alleged reduction obligation Milieudefensie et al. link up with the goals of the Paris Agreement. The agreement is non-binding on the signatories and is non-binding for RDS. However, the signatories have sought out the help of non-state stakeholders (see 2.4.7). Whether or not RDS or the Shell group can be designated as the 'non-Party stakeholders' referred to in COP 25 can remain undiscussed. The signatories have emphasized that the reduction of CO2 emissions and global warming cannot be achieved by states alone. Other parties must also contribute. Since 2012 there has been broad international consensus about the need for non-state action, because states cannot tackle the climate issue on their own. The current situation requires others to contribute to reducing CO2 emissions: the IPCC has found that the member states' national reduction pledges for 2030 added together are far from sufficient for reaching the goals of the Paris Agreement (see 2.3.5.4).

4.4.27. The goals of the Paris Agreement are derived from the IPCC reports. The IPCC reports on the relevant scientific insights about the consequences of a temperature increase, the concentrations of greenhouse gases that give rise to that increase, and the reduction pathways that lead to a limitation of global warming to a particular temperature. Therefore, the goals of the Paris Agreement represent the best available scientific findings in climate science, which is supported by widespread international consensus. The non-binding goals of the Paris Agreement represent a universally endorsed and accepted standard that protects the common interest of preventing dangerous climate change. The court follows this reasoning in its interpretation of the unwritten standard of care. The court assumes that it is generally accepted that global warming must be kept well below 2ºC in 2100, and that a temperature rise of under 1.5ºC should be strived for. The court also assumes that this requires a limitation of the global concentration of greenhouse gases of up to 450 ppm in 2100 and that a maximum greenhouse gas concentration of 430 ppm must be pursued. The court notes that in doing so it does not formulate a legally binding standard for the prevention of dangerous climate change in the Netherlands and the Wadden region. The court includes this broad consensus about what is needed to prevent dangerous climate change – viz. achieving the goals of the Paris Agreement – in its answer to the question whether or not RDS is obliged to reduce the Shell group's CO2 emissions via its corporate policy.

4.4.28. The court establishes that tackling dangerous climate change needs immediate attention. Given the current concentration of greenhouse gases in the atmosphere (401 ppm in 2018), the remaining carbon budget is limited. This applies to both 430 ppm as a limit for a global warming of up to 1.5ºC and 450 ppm for a global warming of up to 2ºC. The longer it takes to achieve the required emissions reductions, the higher the level of emitted greenhouse gases, and consequently, the sooner the remaining carbon budget runs out. At unchanged emission levels, the carbon budget will have been used up within twelve years. As has been described by the IEA in its World Energy Outlook 2020 (see 2.4.11), the next ten years will be crucially important for preventing dangerous climate change. This also follows from the conclusion of the UNEP (of 2019) (see 2.4.6). The sooner reductions are started, the more time is available before the remaining carbon budget runs out. The imperativeness for the Netherlands to reduce CO2 emissions is even greater, because so far the temperature rise in the Netherlands has developed about twice as fast as the global average, with serious and irreversible consequences and risks for the human rights of Dutch residents and the inhabitants of the Wadden region (see 4.4 (3.) and (4.)).

(8.) possible reduction pathways

4.4.29. The IPCC also identifies scientific insights into possible strategies to address dangerous

climate change and its consequences. The SR15 report shows that only reduction pathways aiming for a net 45% reduction of CO2 emissions in 2030, relative to 2010 levels, yield a 50% chance of limiting global warming to 1.5°C and an 85% chance of limiting global warming to 2°C. Since there still is a 15% chance that the earth will rise by over 2°C, these reduction pathways offer the best possible chance to prevent the most serious consequences of dangerous climate change. From this the court deduces that reduction pathways aiming for a net 45% reduction of CO2 emissions in 2030, relative to 2010 levels, offer the best possible chance worldwide to prevent the most serious consequences of dangerous climate change. The EU and the Dutch State are taking similar reduction pathways in their more stringent climate goals for the next ten years. RDS rightfully points out that the IPCC does not prescribes a particular reduction pathway and that the scenarios reported by the IPCC are potential pathways, which have many variables and alternatives. RDS is also right in its view that not one single pathway is the measure of all things on a global scale, and it is right when pointing out that the IPCC does not comment on the question whether and how its scenarios can be translated into contributions of various actors and sectors, let alone contributions of individual parties. That being said, there is a widely endorsed consensus that in order to limit global warming to 1.5°C, reduction pathways that reduce CO2 emissions by net 45% in 2030, relative to 2010 levels, and by net 100% in 2050, should be chosen. The court includes this broad consensus in its interpretation of the unwritten standard of care. Again, the court does not formulate a legally binding standard for – in this case – a reduction pathway to be chosen.

4.4.30. It is generally accepted that the reduction pathways discussed above contain net goals, which leave room for the compensation of CO2 emissions. This follows from the SR15 report (see 2.3.5.2 and 2.3.5.3) and the circumstance that the EU[70] and the Dutch State leave room for the compensation of CO2 emissions in their most recent plans. For instance, the explanatory memorandum to the Dutch Climate Act states the following:

"The definition used for the emission of greenhouse gases also implies the involvement of negative emissions. This concerns processes that extract greenhouse gases from the atmosphere, such as a combination of capturing biomass and storing CO2 (Carbon Capture and Storage – CCS). The monitoring mechanism ordinance contains the method with which these negative emissions may be subtracted from the greenhouse gas emissions." [71]

The IPCC warns against the risks that may be associated with reduction pathways that are based on large-scale negative emissions (see 2.3.5.3, last sentence). However, the IPCC does not mention the feasibility of such reduction pathways. It must therefore be assumed that – although scenarios that assume large-scale negative emissions could perhaps be questioned – it is generally accepted that there must be room for scenarios with negative emissions. This means that the reduction pathway as argued for by Milieudefensie et al. – as derived from the SBTi report – in which the net zero reduction by 2050 is reached through an absolute reduction of 45% in 2030, without the option of compensation of CO2 emissions, goes beyond the above-described broad consensus. Therefore, this reduction pathway as argued for by Milieudefensie et al. is not taken into consideration.

4.4.31. The following, not-disputed circumstances to which RDS refers are incorporated in the consensus about possible reduction pathways which the court has included in its opinion:

- the permanent role of fossil fuels, also acknowledged by the IPCC and IEA, in order to meet worldwide demand for energy during and after the energy transition and beyond;
- fossil fuels cannot be dispensed with, at least at the present state of technological progress;
- CO2 emissions come from a wide variety of sources;
- the worldwide reduction of CO2 emissions requires complex, global changes in society and the economy;
- there is no worldwide uniform approach, with a standard goal and uniform time path for reducing CO2 emissions;

- the worldwide reduction of CO2 emissions requires activities across various jurisdictions, which are subject to different legislative and regulatory frameworks and long-term strategies;
- various fossil fuels, such as coal, oil and gas, have different effects on CO2 emissions and thereby on the climate;
- the energy transition is beset by uncertainties;
- the precise course of the energy transition that is required to reduce CO2 emissions cannot be predicted in detail and also depends on partly unknown factors;
- the course of the energy transition will be influenced by future technological developments in various areas and sectors, whose physical and economic feasibility is not always clear beforehand;
- it is not clear beforehand how demand and supply on the energy market will develop;
- the circumstance that the energy market is not a static system;
- the key role for states in achieving the goals of the Paris Agreement through government policy;
- states will have to make difficult choices to achieve the climate goals;
- the goals of the Paris Agreement require a worldwide change in consumption patterns.

These circumstances reveal that the energy transition is a complex, multi-faceted and inherently uncertain issue, for which other parties – states and consumers – also bear responsibility.

4.4.32. The aforementioned reduction pathways are global and do not proclaim anything about what can be expected from RDS. The claims of Milieudefensie et al. assume that what applies to RDS also applies to the entire world. The court has assessed this aspect and has concluded that in its formulation of the Shell group's corporate policy, RDS should take as a guideline that the Shell group's CO2 emissions (Scope 1, 2 and 3) in 2030 must be net 45% lower relative to 2019 levels. In legal ground 4.4.33 through to 4.4.38, the court has explained how it arrived at this opinion.

4.4.33. The court notes that Milieudefensie et al. do not argue for leaving the energy transition to the market or for holding RDS alone responsible for achieving the CO2 reduction of Dutch society. The parties agree that dangerous climate change is a worldwide problem, which RDS cannot solve on its own. There is broad consensus on this too, which is formulated as follows in the passage from Oxford report, as cited by RDS:

"There is broad consensus that achieving net zero for any actor will almost always depend to varying degrees on the actions of other actors. These interlinkages are operationalized in different ways. Net zero is a collective goal, and so cooperation between different actors is essential." [72]

The court includes this broad consensus in its interpretation of the unwritten standard of care. The mutual dependencies and the need for cooperation are expressed in the obligation with respect to the business relations of the Shell group: that is a significant individual best-efforts obligation, which requires cooperation with other parties.

4.4.34. Milieudefensie et al. would like RDS to do its part and ensure that the CO2 emissions attributable to the Shell group are reduced. This is in line with the broad international consensus that each company must independently work towards the goal of net zero emissions by 2050. This follows from the Oxford report, which states the following on this matter:

"*There is general consensus on the need for global net zero CO2 by 2050, with many targets explicitly referring to the objectives of the Paris Agreement and the IPCC's Special Report on 1.5 SC to set their timelines."* [73]

There is also broad consensus that the scope and timing per company may vary according to their capacity and responsibility. The Oxford report describes this as follows:

"There is broad agreement that all actors should pursue net zero, but also that various factors

may lead various actors to adopt targets differentiated by timing and scope. One, there is wide consensus that capacity should be a key factor in determining the scope and timing of commitments, with those with higher capacity (e.g. developed jurisdictions, larger companies) taking more aggressive and expansive targets. Two, several respondents submitted that historical responsibility and past behavior should also be a relevant consideration (Carbone 4, UCS, RAMCC, UNSW, RMI, UCS). Such divisions, however, are not always clear cut. For example, many global companies have worldwide operations and supply chains (ACT). Three, respondents also noted that larger emitters should be required to meet more stringent standards than smaller entities (ICC). Four respondents noted that not all actors have the same control over their emissions (Fashion Charter)." [74]

4.4.35. The concrete implementation of this responsibility for companies is still unclear:

"Despite this broad consensus, few targets explicitly operationalize equity by providing differentiated guidance on net zero targets to different actors. In one case, a global network of actors calculated their aggregate carbon budget and then allocated individual targets according to level of development and expected future growth in population (C40). In another case, the global carbon budget is divided into sectoral allocation which are then apportioned to individual companies based on their emissions footprint (SBTi). Others have suggested that cumulative emissions form the basis of equity considerations (Vale). How to effectively operationalize equity considerations remains an open question for the climate action community." [75]

4.4.36. So there is no well-defined and concrete specification for the method according to which the timing of the various companies must be applied in working towards the goal of net zero emissions in 2050. The consensus referred to in legal ground 4.4.33 and 4.4.34, however, provides sufficient starting points for the specification of the unwritten standard of care on this issue. In light of the broad international consensus that each company must independently work towards achieving net zero emissions by 2050, RDS may be expected to do its part.

4.4.37. In answering the question what can be expected of RDS, the court considers that an important characteristic of the imminent environmental damage in the Netherlands and the Wadden region at issue here is that every emission of CO2 and other greenhouse gases, anywhere in the world and caused in whatever manner, contributes to this damage and its increase. It is an established fact that – apart from its own limited CO2 emissions – RDS does not actually causes the Scope 1 through to 3 emissions of the Shell group by itself. However, this circumstance and the not-disputed circumstance that RDS is not the only party responsible for tackling dangerous climate change in the Netherlands and the Wadden region does not absolve RDS of its individual partial responsibility to contribute to the fight against dangerous climate change according to its ability.[76] As has been considered above (in legal ground 4.4.16), much may be expected of RDS in this regard, considering it is the policy-setting head of the Shell group, a major player on the fossil fuel market and responsible for significant CO2 emissions, which incidentally exceed the emissions of many states and which contributes to global warming and climate change in the Netherlands and the Wadden region, with serious and irreversible consequences and risks for the human rights of Dutch residents and the inhabitants of the Wadden region. On RDS rests an obligation of results as regards the Scope 1 emissions of the Shell group as well as a significant best-efforts obligation as regards the business relations of the Shell group, including the end-users, whereby RDS may be expected to take the necessary steps to remove or prevent the serious risks ensuing from the CO2 emissions generated by them, and to use its influence to limit any lasting consequences as much as possible (see under 4.4.24).

4.4.38. In the foregoing, the court has considered that in its interpretation of the unwritten standard of care (see legal ground 4.4.29) it has included the consensus that in order to limit global warming to 1.5°C, reduction pathways that reduce CO2 emissions by net 45% in

2030, relative to 2010 levels, and by net 100% in 2050, should be chosen. With its claims, Milieudefensie et al. does not follow the 2010 levels, but rather take 2019 as the base year, when the summons in these proceedings was issued. RDS' argument that 2019 or another base year is not appropriate and wrongfully suggests a static situation ignores that a base year is required in order to set a reduction target. Milieudefensie et al. are right to state that the base year 2019 benefits RDS, because the CO2 emissions of the Shell group – which are not disputed – were higher in 2019 than in 2010. RDS shows in a sample calculation that a 45% reduction obligation based on the higher CO2 emissions in 2019 in absolute terms (i.e., the number of Gt to be reduced) leads to a greater reduction obligation and also to higher permitted emissions. However, in order to arrive at 45% of the 2010 CO2 emissions in the current situation, in which the CO2 emissions of the Shell group have increased since 2010, a much greater reduction of CO2 emissions must be achieved than calculated by RDS. A reduction target with 2019 as the base year, although less far-reaching, sufficiently corresponds with the widely endorsed consensus that limiting global warming to 1.5°C requires a net reduction of 45% in global CO2 emissions in 2030 relative to 2010, and a net reduction of 100% in 2050.

4.4.39. Therefore, in formulating the corporate policy of the Shell group, RDS should take as a guideline that the Shell group's CO2 emissions (Scope 1, 2 and 3) in 2030 must be net 45% lower relative to 2019 levels. Net refers to the sum of the reduction of CO2 emissions of the Shell group's entire energy portfolio (Scope 1, 2 and 3). As has been considered above, RDS rightfully takes the standpoint that 'the right reduction pathway' cannot be determined for everyone – all states and companies – all over the world. The guideline referred to above gives RDS leeway to develop its particular reduction pathway and to differentiate as it sees fit, as long as it achieves a net 45% reduction in CO2 emissions of the Shell group (Scope 1 through to 3) relative to 2019. This is an obligation of results as regards the Shell group's activities. With respect to the business relations of the Shell group, including the end-users, this constitutes a significant best-efforts obligation, in which context RDS may be expected to take the necessary steps to remove or prevent the serious risks ensuing from the CO2 emissions generated by them, and to use its influence to limit any lasting consequences as much as possible. A consequence of this significant obligation may be that RDS will forgo new investments in the extraction of fossil fuels and/or will limit its production of fossil resources.

(9.) the twin challenge

4.4.40. The parties agree that the world faces a twin challenge: dangerous climate change must be curbed by reducing CO2 emissions while meeting the global energy demand of the rapidly growing world population. However, the importance of access to reliable and affordable energy, as pointed out by RDS, and the Shell group's role in it, have no bearing on RDS' reduction obligation. That interest must always be served within the context of climate targets. The court explains this as follows.

4.4.41. The UN Sustainable Development Goals (UNSDG)[77] have the object, inter alia, to ensure access to affordable, reliable, sustainable and modern energy for all. The court includes the UNSDG in its interpretation of the unwritten standard of care, as this UN Resolution represents a widely endorsed international consensus. The COP in which the UNSDG were adopted states under 31 and 32:

"31. We acknowledge that the United Nations Framework Convention on Climate Change is the primary international, intergovernmental forum for negotiating the global response to climate change. We are determined to address decisively the threat posed by climate change and environmental degradation. The global nature of climate change calls for the widest possible international cooperation aimed at accelerating the reduction of global greenhouse gas emissions and addressing adaptation to the adverse impacts of climate change. We note with grave concern the significant gap between the aggregate effect of parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent

with having a likely chance of holding the increase in global average temperature below 2 degrees Celsius, or 1.5 degrees Celsius above pre-industrial levels.

32. Looking ahead to the twenty-first session of the Conference of the Parties in Paris, we underscore the commitment of all States to work for an ambitious and universal climate agreement. We reaffirm that the protocol, another legal instrument or agreed outcome with legal force under the Convention applicable to all parties shall address in a balanced manner, inter alia, mitigation, adaptation, finance, technology development and transfer and capacity-building; and transparency of action and support."

4.4.42. From this it follows that there is a connection between the UNSDG and the climate goals of the Paris Agreement and other agreements made for the implementation of the UN Climate Convention. It is not the intention for SDG 7 (*"Ensure access to affordable, reliable, sustainable and modern energy for all"*), as cited by RDS, to detract from the Paris Agreement or to interfere with these goals. This also follows from SDG 13 (*"Take urgent action to combat climate change and its impacts"*) and the preamble under 8 of the Paris Agreement, which emphasizes the intrinsic connection between the tackling of dangerous climate and fair access to sustainable development and the eradication of poverty. The UNSDG sustainability goals can therefore not be a reason for RDS to not meet its reduction obligation.

4.4.43. Finally, the obligations of states to provide energy supply, as laid down in the Agreement on an International Energy Program and the European Energy Charter Treaty and the associated protocol, are separate from the obligation of states and companies, such as the Shell group, to align the composition of their energy supply with the CO2 reduction required for countering global warming.

(10.) the ETS system and other 'cap and trade' emission systems that apply elsewhere in the world, permits and current obligations of the Shell group

4.4.44. RDS invokes the indemnifying effect of the European Emissions Trading Scheme (ETS) and other, similar 'cap and trade' emission trading systems that apply elsewhere in the world. Article 17 Rome II stipulates that in assessing the conduct of the person claimed to be liable, account shall be taken, as a matter of fact and in so far as is appropriate, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the liability. The court applies this rule, which also extends to permits, in assessing RDS' legal obligation ensuing from the unwritten standard of care in Book 6 Section 162 Dutch Civil Code. This means that the court considers the rights of the Shell group under the ETS system and other 'cap and trade' emission systems that apply elsewhere in the world.

4.4.45. Activities of the Shell group in the EU are covered by the ETS system (see 2.4.12.). It is a system which, inter alia, regulates the CO2 emissions of a wide variety of industries based on the "cap and trade" principle.[78] The objective of the ETS system is to reduce the member states' anthropogenic emissions of greenhouse gases, fulfilling the commitments ensuing from the Kyoto Protocol.[79] Companies in the EU that fall under the ETS system may only emit greenhouse gases in exchange for surrendering emission allowances. These emission allowances regard Scope 1 emissions and may be purchased, sold or kept. The emission allowances are divided over the companies in the member states. If a company emits less CO2 than allocated, it may sell the corresponding emission allowances. Companies that are about to exceed their CO2 quota may purchase additional emission allowances. By creating CO2 scarcity through the ETS system, the EU aims to reduce in absolute terms the total emissions in its member states. The EU views the ETS system as the cornerstone of its climate policy and as an important tool to cost-effectively limit CO2 emissions. The most recent emissions reduction targets in the ETS system are still not sufficient to achieve the goals agreed under the Paris Agreement. The system currently provides for an emissions reduction of 43% by 2030 relative to 2005.[80] There is discussion about a new EU reduction

target of at least 55% by 2030 relative to 1990 (see 2.4.12).

4.4.46. Given the emissions reduction targets of the ETS system, RDS can rest assured that the interests to be taken into account, which are also at issue in these proceedings, were fully and correctly weighed by the issuing body/bodies when the emission allowances were issued. It concerns the reduction target strived for with the ETS system. To that extent, the ETS system has an indemnifying effect.[81] The indemnifying effect of the ETS system means that – insofar as it concerns the reduction target of the ETS system – RDS does not have an additional obligation with respect to Scope 1 and 2 emissions in the EU that fall under the system. Those are Scope 1 emissions of the Shell group in the EU and the Scope 3 emissions in the EU of the end-users of the products produced and sold by the Shell group, which are covered by the ETS system – as Scope 1 emissions of the consumers. However, the ETS system only affects a part of the CO2 emissions for which RDS is responsible. Furthermore, the ETS system only applies in the EU, while global Scope 3 emissions influence the dangerous climate change in the Netherlands and the Wadden region (see 4.4 (2.)). Finally, the reduction target of the ETS system is not identical to RDS' reduction obligation. Insofar as RDS' reduction obligation extends beyond the reduction target of the ETS system, RDS will have to fulfil its individual obligation. RDS cannot rely on the indemnifying effect of the ETS system insofar as this system entails a less far-reaching reduction target than a net reduction of the CO2 emissions (Scope 1 through to 3), relative to 2019, for the Shell group.

4.4.47. So the ETS systems only covers a small part of the Shell group's emissions. Only for these emissions, RDS does not have to adjust its policy due to the indemnifying effect of the ETS system. The ETS system therefore does not stand in the way of allowing the claims. RDS' argument that the ETS system will be interfered with if the claims are allowed also does not hold. What applies to the ETS system also applies to other existing and planned 'cap and trade' emission schemes elsewhere in the world. Up to the level of the reduction target these schemes aim to achieve, they have an indemnifying effect insofar as the interests to be taken into account, which are also at issue in these proceedings, were fully and correctly weighed by the issuing body/bodies when the emission allowances were issued. Just like for the ETS system, RDS has no additional obligations for emissions already regulated under these systems. The indemnifying effect of these systems applies up to the reduction percentage they aim to achieve. If it is lower than the obligation of RDS, RDS has to do more. If states set stricter reduction obligations – by any means – RDS naturally also has to comply with these obligations.

4.4.48. RDS also identifies other permits and the current obligations of the Shell group, such as the obligations ensuing from long-term concessions for oil and gas extraction. It is not apparent that CO2 emissions have played any role whatsoever in these permits and concessions. These permits and the current obligations – which do not have an indemnifying effect and therefore do not subtract from RDS' reduction obligation – are therefore a given which RDS has to take into account in meeting its reduction obligation.

(11.) the effectiveness of the reduction obligation

4.4.49. RDS argues that the reduction obligation will have no effect, or even be counterproductive, because the place of the Shell group will be taken by competitors. Even if this were true, it will not benefit RDS. Due to the compelling interests which are served with the reduction obligation, this argument cannot justify assuming beforehand there is no need for RDS to not meet this obligation. It is also important here that each reduction of greenhouse gas emissions has a positive effect on countering dangerous climate change. After all, each reduction means that there is more room in the carbon budget. The court acknowledges that RDS cannot solve this global problem on its own. However, this does not absolve RDS of its individual partial responsibility to do its part regarding the emissions of the Shell group, which it can control and influence.[82]

4.4.50. The question also is whether this argument of RDS is actually valid. What this argument assumes is perfect substitution, whereby the place of the Shell group will be taken over one-on-one by other parties. However, it remains to be seen whether this circumstance will transpire. This cannot necessarily be deduced from the examples given by RDS or from the Mulder report submitted by RDS (as Exhibit RK-35). The examples date from before the Paris Agreement. Therefore, it cannot automatically be assumes that it will be the same, now or in the future. The Mulder report also seems to be a snapshot. The Mulder report also only seems to start from a 'business as usual' scenario and not from other scenarios, in which other oil and gas companies also limit their investments in oil and gas, voluntarily, under pressure, or due to retreating investors, or as sustainable methods of energy generation become available worldwide, in the aim to meet the targets of the Paris Agreement. Other companies also have to respect human rights. Finally, the Mulder report does not take account of the causal relationship between production limitation and emission reduction. The Production Gap Report (see 2.4.6.) states that research shows that there is a causal relationship between production limitation and emission reduction:

"..studies using elasticities from the economics literature have shown that for oil, each barrel left undeveloped in one region will lead to 0.2 to 0.6 barrels not consumed globally over the longer term." [83]

(12.) the responsibility of states and society

4.4.51. The responsibility of states and society for the energy transition has been discussed above. It is an important point of discussion for RDS. It emphasizes that states determine the playing field and the rules for private parties. According to RDS, private parties cannot take any steps until states determine the frameworks. RDS also argues that government policy is needed to bring about the required change of the energy market. RDS also claims that the energy transition must be achieved by society as a whole, not by just one private party. RDS asserts that including the Scope 3 emissions has the effect that the problem for society as a whole is passed on to energy companies, and that Milieudefensie et al. do not sufficient account of the inevitable sectoral differentiation, due to, among other things, by the availability of technological solutions. RDS points out the following passage in the Oxford report:

"Another key question is how sub- and non-state actors' net zero targets relate to national policy frameworks (Alliances for Climate Action). For many cities, states, and regions, achievement of net zero may be highly contingent on national policies (RAM CC). The private sector is also often dependent on national frameworks (CDP, Fashion Charter). For this reason, some actors emphasize that actors setting net zero targets should also align or advocate for national policy frameworks that will allow them to successfully meet their targets. (RMI, UCS, Fashion Charter, SEI)." [84]

4.4.52. From the passage in the Oxford report, cited by RDS, it follows that public-private partnership and the division of responsibility among the various actors are points of attention. There is general consensus on this. This issue, the not-disputed responsibility of other parties and the uncertainty whether states and society as a whole will manage to achieve the goals of the Paris Agreement, do not absolve RDS of its individual responsibility regarding the significant emissions over which it has control and influence. There is also broad international consensus that each company must independently work towards the goal of net zero emissions by 2050 (see legal ground 4.4.34). Due to the compelling interests which are served with the reduction obligation, RDS must do its part with respect to the emissions over it has control and influence. It is an individual responsibility that falls on RDS, of which much may be expected (see legal ground 4.4.16). Therefore, RDS must do more than monitoring developments in society and complying with the regulations in the countries where the Shell group operates. There is broad international consensus that it is imperative for non-state actors to contribute to emissions reduction (see legal ground 4.4.26) and for companies to have an individual responsibility to achieve the reduction targets (see legal

ground 4.4.13). RDS' responsibility differs as regards (a) the Shell group (obligation of results) and (b) the business relations of the Shell group (significant best-efforts obligation) (see 4.4. (5.) and (6.)). This subdivision shows that RDS is not the only party that is held responsible for curbing dangerous climate change in the Netherlands and the Wadden region; the solution to this problem is not passed on to RDS alone. However, RDS does bear an individual responsibility, which it can and must effectuate through its corporate policy for the Shell group.

(13.) the onerousness of the reduction obligation on RDS

4.4.53. RDS argues that imposing a reduction obligation on it will lead to unfair competition and a disruption of the 'level playing field' on the oil and gas market. RDS has failed to specify this argument. It also seems to ignore that it is necessary to reduce the worldwide oil and gas extraction and to facilitate the curtailment of CO2 emissions that cause dangerous climate change; other companies will also have to make a contribution. This defence therefore does not hold. Although the court made enquiries about it, RDS has failed to further specify the onerousness of the reduction obligation; it only argues that far-reaching consequences for RDS and the Shell group, which by the way are not under debate, alone argue against accepting the reduction obligation for RDS, as advocated by Milieudefensie et al. The court assumes that the reduction obligation will have far-reaching consequences for RDS and the Shell group. The reduction obligation requires a change of policy, which will require an adjustment of the Shell group's energy package (see legal ground 4.4.25). This could curb the potential growth of the Shell group. However, the interest served with the reduction obligation outweighs the Shell group's commercial interests, which for their part are served with an uncurtailed preservation or even growth of these activities. Due to the serious threats and risks to the human rights of Dutch residents and the inhabitants of the Wadden region, private companies such as RDS may also be required to take drastic measures and make financial sacrifices to limit CO2 emissions to prevent dangerous climate change. For these reasons, RDS' argument, namely that accepting the reduction obligation, as advocated by Milieudefensie et al., is highly unusual and has no precedent, does not benefit RDS.

(14.) the proportionality of RDS' reduction obligation

4.4.54. The court has included the proportionality of the reduction obligation in its interpretation of the unwritten standard of care. Proportionality has been discussed before, in the context of various sub-topics. The court considers that the CO2 emissions for which RDS can be held responsible by their nature pose a very serious threat, with a high risk of damage to Dutch residents and the inhabitants of the Wadden region and with serious human rights impacts. This applies to both current and future generations. A characteristic feature of dangerous climate change is that every emission of CO2 and other greenhouse gases, anywhere in the world and caused in whatever manner, contributes to this development. In turn, each reduction of greenhouse gas emissions positively contributes to countering dangerous climate. After all, each reduction means that there is more room in the carbon budget. RDS is able to effectuate a reduction by changing its energy package. This all justifies a reduction obligation concerning the policy formation by RDS for the entire, globally operating Shell group. The compelling common interest that is served by complying with the reduction obligation outweighs the negative consequences RDS might face due to the reduction obligation and also the commercial interests of the Shell group, which are served by an uncurtailed preservation or even increase of CO2-generating activities. Due to the serious threats and risks to the human rights of Dutch residents and the inhabitants of the Wadden region, private companies such as RDS may also be required to take drastic measures and make financial sacrifices to limit CO2 emissions to prevent dangerous climate change. RDS has total freedom to comply with its reduction obligation as it sees fit, and to shape the corporate policy of the Shell group at its own discretion. The court notes here that a 'global' reduction obligation, which affects the policy of the entire Shell group, gives RDS much more freedom of action than a reduction obligation limited to a particular territory or a business

unit or units.

Conclusion on RDS' reduction obligation

4.4.55. The court concludes that RDS is obliged to reduce the CO2 emissions of the Shell group's activities by net 45% at end 2030, relative to 2019, through the Shell group's corporate policy. This reduction obligation relates to the Shell group's entire energy portfolio and to the aggregate volume of all emissions (Scope 1 through to 3). It is up to RDS to design the reduction obligation, taking account of its current obligations. The reduction obligation is an obligation of result for the activities of the Shell group. This is a significant best-efforts obligation with respect to the business relations of the Shell group, including the end-users, in which context RDS may be expected to take the necessary steps to remove or prevent the serious risks ensuing from the CO2 emissions generated by them, and to use its influence to limit any lasting consequences as much as possible.

4.5. Policy, policy intentions and ambitions of RDS for the Shell group and allowability of the claims

4.5.1. RDS argues that the Shell group has already taken concrete steps with respect to its role in the energy transition. RDS points out, inter alia, the policy referred to in 2.5.18 through to 2.5.20, and its policy intentions and ambitions. It is an established fact that the Shell group cooperates with national governments and international and national organizations in the area of dangerous climate change, that it subscribes to the climate goals of the Paris Agreement, and that it has expressed support for the Green Deal (see under 2.5.17), the Dutch Climate Agreement (see under 2.5.16) and the goals of the Dutch Climate Act. Milieudefensie et al. argue that in spite of that the Shell group is headed towards higher rather than lower CO2 emissions by 2030 in part due to its growth strategy for oil and gas activities up to at least 2030, with a 30% increase in production and substantial investments in new oil and gas fields.

4.5.2. It is also an established fact that RDS has set more stringent climate ambitions for the Shell group in 2019 and 2020 (see under 2.5.18). However, business plans in the Shell group still have to be updated in accordance with these climate ambitions, and a further explanation of its future portfolio and plans is forthcoming. In the court's view, RDS' policy, policy intentions and ambitions for the Shell group largely amount to rather intangible, undefined and non-binding plans for the long-term (2050). These plans ('ambitions' and 'intentions') are furthermore not unconditional but – as can be read in the disclaimer and cautionary notes to the Shell documents – dependent on the pace at which global society moves towards the climate goals of the Paris Agreement ('*in step with society and its customers*'). Emissions reduction targets for 2030 are lacking completely; the NCF identifies the year 2035 as an intermediate step (see under 2.5.19). From this the court deduces that RDS retains the right to let the Shell group undergo a less rapid energy transition if society were to move slower. Moreover, RDS has insufficiently contested the standpoint of Milieudefensie et al. that RDS' planned investments in new explorations are not compatible with the reduction target to be met. The Shell group's policy, as determined by RDS, mainly shows that the Shell group monitors developments in society and lets states and other parties play a pioneering role. In doing so, RDS disregards its individual responsibility, which requires RDS to actively effectuate its reduction obligation through the Shell group's corporate policy.

4.5.3. From legal ground 4.5.2 follows that the policy, policy intentions and ambitions of RDS for the Shell group are incompatible with RDS' reduction obligation. This implies an imminent violation of RDS' reduction obligation. It means that the court must allow the claimed order for compliance with this legal obligation. There is no room for weighing interests. Therefore, the court disregards RDS' argument about the desirability/undesirability of claims such as this one, and whether or not this invites everyone in global society to lodge claims against each

other. RDS' argument that it is not appropriate to impose a court order on one private party fails on the basis of the considerations on RDS' legal obligation, as discussed above.

4.5.4. RDS' invocation of the lack of the required relativity of Book 6 Section 163 Dutch Civil Code is not relevant to the order to be imposed. Incidentally, the standard RDS would violate if it breaches its reduction obligation is for the protection of the interests of Dutch residents and the inhabitants of the Wadden region, whose interests the class actions seek to protect. It follows from the unwritten standard of care that RDS is obliged to respect these persons' human rights. This has been detailed in RDS' reduction obligation. The standards to which RDS refers have no direct effect with respect to RDS but may be included – as the court has done – in an assessment of the content and scope of RDS' reduction obligation ensuing from the unwritten standard of care.

4.5.5. Now that the court has established that RDS may violate its reduction obligation, the claimed order to comply with that obligation must be allowed. The claimed order may only be rejected if Milieudefensie et al. had no interest, to be respected at law, in it. This could occur when the order cannot contribute to preventing the alleged imminent infringement of interests. RDS' argument that the order will not be effective and possibly be counter-productive fails on the basis of the considerations under (11). regarding the effectiveness of the reduction obligation. Since it has been established that in every scenario climate change as a result of CO2 emissions-induced global warming has negative consequences for the Netherlands and the Wadden region, with serious human rights risks for Dutch residents and the inhabitants of the Wadden region, Milieudefensie has an interest in allowing its claimed order.

4.5.6. RDS' argument that the order, following a change of claim, claimed by Milieudefensie et al. – pertaining to CO2 emissions 'associated' with 'energy-carrying products' instead of 'fossil fuels' – cannot be allowed because it is unclear what this refers to, while the order sought by Milieudefensie et al. is far-reaching, fails on the basis of the assessment mentioned above of the content and scope of RDS' reduction obligation. The court also included the onerousness of the reduction obligation on RDS and the proportionality in the assessment (see 4.4 (13.) and (14.)). The order is for RDS to meet its reduction obligation and is sufficiently in line with the obligation.

4.5.7. The order will be declared provisionally enforceable. The required weighing of the parties' interests in light of the circumstances of the case works out to the advantage of Milieudefensie et al. The interest of Milieudefensie et al. for the immediate compliance with the order by RDS outweighs RDS' possible interest in maintaining the status quo until a final and conclusive decision has been made on the claims of Milieudefensie et al. This court order takes into account that the provisional enforceability of the order may have far-reaching consequences for RDS, which may be difficult to undo at a later stage. These consequences for RDS do not stand in the way of declaring the court order provisionally enforceable and therefore do not constitute grounds for deciding against it.

4.5.8. The above-established imminent violation of the reduction obligation – pertaining to the policy for end 2030, which RDS is yet to specify – does not imply that the Shell group's CO2 emissions are currently unlawful. There is also no ground for that opinion. This is all the more applicable because Milieudefensie et al. take 2019 as the base year while its arguments relates to the policy for 2030. Therefore, the first part of claim 1(a) must be rejected.

4.5.9. The second part of claim 1(a), namely for a declaratory decision about RDS' reduction obligation, is also dismissed. Since the court deems the claimed reduction order allowable, it is of the opinion that Milieudefensie et al. have insufficient interest in allowing this declaratory decision. Since claim 1(a) is dismissed, there is no need for the court to discuss RDS' other objections against this claim.

4.5.10. Claim 1(b), pertaining to the future actions of RDS, must also be rejected. It is not an established fact the RDS will act unlawfully in the future, as the claim describes. There are no indications that RDS will not comply with the order and not meet its obligations. This is all the more applicable now that RDS is in the process of adapting its policy.

4.6. **Conclusion and costs of the proceedings**

4.6.1. The conclusion is that the claims of ActionAid and the individual claimants are denied for procedural reasons and that the other collective claims are not allowable insofar as they serve the interest of the entire world population in curbing dangerous climate change caused by CO2 emissions. The order claimed under 2. is allowed in the cases of Milieudefensie et al. The other claims are rejected.

4.6.2. In the cases of Milieudefensie et al. RDS is the more unsuccessful party. It will be ordered to pay the costs of these proceedings in these cases. The court awards 5.5 points to the procedural acts. In this exceptional case – exceptional due to the complexity and the major social and financial interests – the court deems the maximum fixed amount of € 3,999 per point fitting. The lawyers' fees to be reimbursed amount to € 21,994.50. The cost order also consists of the costs of the summons (€ 99.01) and the court fee (€ 639).

4.6.3. ActionAid and the individual claimant are the unsuccessful parties in their cases and will be ordered to pay the costs of the proceedings. The court awards 2 points to the procedural acts in these cases, regarding which it deems the regular court-approved scale of costs (II, € 563 per point) fitting due to the nature and complexity of the dispute about the *locus standi* of these parties. Milieudefensie, with a document from the individual claimants appointing it as their representative *ad litem*, will be ordered to pay the costs of the proceedings of the individual claimants. Since RDS has paid court fee in one instalment, the court fee will be set at nil. ActionAid and Milieudefensie are each ordered to pay € 1,126 in costs of the proceedings.

4.6.4. The statutory interest on these cost orders, which is undisputed, is awarded. The cost orders also cover the subsequent costs. Therefore, there is no need for a separate order for the subsequent costs, which will be estimated according to the court-approved scale of costs.

5 The decision

The court:

5.1. denies the claims of ActionAid and the individual claimants for procedural reasons;

5.2. declares the other collective claims not-allowable insofar as they serve the interest of the entire world population in curbing dangerous climate change caused by CO2 emissions;

5.3. orders RDS, both directly and via the companies and legal entities it commonly includes in its consolidated annual accounts and with which it jointly forms the Shell group, to limit or cause to be limited the aggregate annual volume of all CO2 emissions into the atmosphere (Scope 1, 2 and 3) due to the business operations and sold energy-carrying products of the Shell group to such an extent that this volume will have reduced by at least net 45% at end 2030, relative to 2019 levels;

5.4. orders RDS to pay the costs of the proceedings on the part of Milieudefensie et al., estimated up to this judgment at € 22,732.51, plus statutory interest as of two weeks from the date of this

judgment;

5.5. orders ActionAid to pay the costs of the proceedings on the part of RDS, estimated up to this judgment at € 1,126, plus statutory interest as of two weeks from the date of this judgment;

5.6. orders Milieudefensie et al. to pay the costs of the proceedings on the part of RDS, estimated up to this judgment at € 1,126, plus statutory interest as of two weeks from the date of this judgment;

5.7. estimates the subsequent costs of Milieudefensie et al. and RDS at € 163 without service and increased by € 85 in case of service.

5.8. declares the orders referred to in 5.3 through to 5.6 provisionally enforceable;

5.9. dismisses all other applications.

This judgment was delivered by *mr.* L. Alwin, *mr.* I.A.M. Kroft and *mr.* M.L. Harmsen and pronounced in open court on 26 May 2021.

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[1] The Paris Agreement, UNFCCC 2015 COP 21 Paris Agreement, EP145, which entered into force on 4 November 2016.

[2] IPCC SR 15 (2018), C.1.3, p. 14.

[3] AR5 WGII H 19, p. 1079.

[4] IPCC SR 15 (2018), B.5.7, p. 12. For the meaning of the level of confidence, see footnote 3 IPCC SR 15 (2018): "*Each finding is grounded in an evaluation of underlying evidence and agreement. A level of confidence is expressed using five qualifiers: very low, low, medium, high and very high, and typeset in italics, for example, medium confidence. The following terms have been used to indicate the assessed likelihood of an outcome or a result: virtually certain 99–100% probability, very likely 90–100%, likely 66–100%, about as likely as not 33–66%, unlikely 0–33%, very unlikely 0–10%, exceptionally unlikely 0–1%. Additional terms (extremely likely 95–100%, more likely than not >50–100%, more unlikely than likely 0–<50%, extremely unlikely 0–5%) may also be used when appropriate. Assessed likelihood is typeset in italics, for example, very likely. This is consistent with AR5*."

[5] IPCC SR 15 (2018), C.1, p. 14.

[6] IPCC SR 15 (2018), C.3, p. 19.

[7] IPCC SR 15 (2018), D.1, p. 20.

[8] See the EU Green Paper 'Adapting to climate change in Europe - options for EU action' (2007), p.24.

[9] See the 2012 report of European Environment Agency 'Climate change, impacts and vulnerability in Europe 2012'.

[10] p. 24-25 of the document referred to the in the previous footnote.

[11] See the 2013 memorandum of the PBL Netherlands Environmental Assessment Agency and the KNMI memorandum '*De achtergrond van het klimaatprobleem*' ('The background of the climate problem').

[12] See 'KNMI'14, *Klimaatscenario's voor Nederland*' ('Climate scenarios for the Netherlands') (May 2014).

[13] KNMI'14, p. 28.

[14] See the report published in 2018 by Deltares, an independent institute, established in the Netherlands, for applied research in the field of water and subsurface, '*Mogelijke gevolgen van versnelde zeespiegelstijging voor het Deltaprogramma. Een verkenning*' ('Possible consequences of an accelerated sea level rise for the Delta programme. An exploration').

[15] See the 2018 Deltares report '*Ontwikkelingen van de Nederlandse Waddenzee bekkens tot 2100: Nederlandse Waddenzee bekkens tot 2100: De invloed van versnelde zeespiegelstijging en van bodemdaling*

op de sedimentbalans – een synthese' ('The development of the tidal basins in the Dutch Wadden Sea until 2100: the impact of accelerated sea-level rise and subsidence on their sediment budget – a synthesis').

[16] See the 2012 report of the Netherlands Court of Audit '*Aanpassing aan klimaatverandering: strategie en beleid*' ('Adjusting to climate change: strategy and policy').

[17] UNEP Production Gap Report 2019, p. 4.

[18] UNEP Production Gap Report 2019, p. 3.

[19] See the IEA's report Energy Technology Perspectives 2017.

[20] World Energy Outlook 2020, p. 54.

[21] World Energy Outlook 2020, figure 1.3., p 34.

[22] Directive (EU) 2018/410.

[23] https://ec.europa.eu/transparency/regdoc/rep/1/2020/EN/COM-2020-564-F1-EN-MAIN-PART-1-PDF.

[24] Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006.

[25] Bulletin of Acts and Decrees 2019, 253.

[26] https://www.shell.com/energy-and-innovation/the-energy-future/what-is-shells-net-carbon-footprint-ambition/faq.html.

[27] 'Upstream': an oil company's activities in connection with the exploration for oil and gas. These activities are different from downstream activities, which pertain to transport, refinement and sale.

[28] Civil Code.

[29] Supreme Court 5 November 1965, ECLI:NL:HR:1965:AB7079 (Kelderluik).

[30] See Section 23 Code of Civil Procedure.

[31] Section 119a subsection 1 New Civil Code Transition Act.

[32] Cf. HR 27 June 1986, NJ 1987, 743 (De Nieuwe Meer).

[33] Cf. Book 3 Section 296, 302 and 303 Dutch Civil Code.

[34] See Parliamentary Papers II 1991/92, 22 486, no. 3, p. 21.

[35] Regulation (EC) No 864/2007 of the European Parliament and the Council of 11 July 2007 on the law applicable to non-contractual obligations.

[36] Preamble Rome II, no. 25.

[37] J. von Hein, 'Article 7 Environmental Damage', in: G-P. Calliess (eds.), Rome Regulations Commentary, Alphen aan den Rijn: Kluwer Law International 2020, p. 662.

[38] CJEU 22 January 2015, ECLI:EU:C:2015:28 (*Pez Hejduk*); CJEU 27 September 2017, ECLI:EU:C:2017:724 (*Nintendo*); CJEU 19 April 2012, ECLI:EU:C:2012:220 (*Wintersteiger*); CJEU 16 July 2009, ECLI:EU:C:2009:475 (*Zuid-Chemie*); CJEU 28 January 2015: ECLI:EU:C:2015:37 (*Kolassa/Barclays Bank*).

[39] Supreme Court 21 September 2001, ECLI:NL:HR:2001:ZC3483 (*BUS/Chemconserve)*.

[40] CJEU 18 July 2013, ECLI:EU:C:2013:490 (*ÖFAB/Koot*).

[41] Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006, legal ground 5.6.2.

[42] As regards Article 6 ICCPR: see the case referred to in note 43. See also: HRC, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life,* 30 October 2018, CCPR/C/GC/36, p. 14-15. As regards Article 17 ICCPR: see HRC 20 September 2019, CCPR/C/126/D/2751/2016 (Norma Potillo Cáceres – Paraguay), section 7.7.

[43] HRC 23 September 2020, CCPR/C/127/D/2728/2016 (Ioane Teitiota - New Zealand), section 9.4.

[44] Safe Climate: A Report of the Special Rapporteur on Human Rights and the Environment, 1 October 2019, A/74/161, Acknowledgements.

[45] "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework".

[46] General principles UNGP.

[47] European Commission 2011, A renewed EU strategy 2011-14 for Corporate Social Responsibility, (op.cit. footnote 5).

[48] Principle 1 UNGP, detailed further in the subsequent principles for states.

[49] Commentary to Principle 11 UNGP.

[50] Principle 12 UNGP.

[51] Dutch translation, 2011.

[52] Principle 11 UNGP.

[53] Commentary to Principle 11 UNGP.

[54] Cf. question 7 in the Interpretive Guide ("Is the responsibility to respect human rights optional for business enterprises?" "No").

[55] Principle 23 UNGP.

[56] Interpretive Guide question 18, p. 23.

[57] Principle 14 UNGP.

[58] Commentary to Principle 14 UNGP.

[59] Principle 13 UNGP.

[60] Commentary to Principle 13 UNGP.

[61] Interpretive Guide UNGP, p. 8.

[62] Mapping of current practices around net zero targets.

[63] Oxford report, p. 2.

[64] Oxford report, table 1 (p. 1).

[65] Oxford report, p. 2.

[66] Oxford report, p. 1.

[67] Principle 17 and 18 UNGP.

[68] Principle 19 UNGP.

[69] Commentary to Principle 19 UNGP.

[70] See, for instance: https://ec.europa.eu/clima/sites/clima/files/eu-climate-action/docs/impact_en.pdf.

[71] Parliamentary Papers II 2015-2016, 34 534, no. 3 (Explanatory Memorandum), p. 21.

[72] Oxford report, p. 5.

[73] Oxford report, p. 3.

[74] Oxford report, p. 4.

[75] Oxford report, p. 4.

[76] Cf. Supreme Court 23 September 1988, ECLI:NL:HR:1988:AD5713 (Kalimijnen), legal ground 3.5.1.

[77] Laid down in Resolution 70/1 adopted by the UN General Assembly on 25 September 2015.

[78] See GP220, European Commission, EU ETS, 23 November 2016.

[79] See the preamble to Directive 2003/87/EC under 4.

[80] Directive (EU) 2018/410.

[81] Cf. Supreme Court 21 October 2005, ECLI:NL:HR:2005:AT8823 (Building permit Heemstede, Ludlage/Van Paradijs), legal ground 3.5.1 and the jurisprudence referred to there.

[82] Cf. Supreme Court 23 September 1988, ECLI:NL:HR:1988:AD5713 (Kalimijnen), legal ground 3.5.1, third paragraph.

[83] Production Gap report, p. 50.

[84] Oxford report, p. 5.