

KEY POINTS

- Climate liability is a developing and increasingly court-approved legal concept, impacting states and companies (mostly oil and gas majors) across jurisdictions.
- Banks are not immune to climate liability and must prepare to avoid it.
- Avoiding climate liability demands an ambitious transition plan, reflecting a bank's fair share in the global emission reductions necessary to limit global warming to 1.5°C. This will typically require targets for a substantial and absolute reduction of the bank's emissions, including its financed emissions, as opposed to solely managing its climate-related financial risk.
- There are reasons why arguments for a less extensive duty for banks to take climate action do not hold.

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Banks' climate liability: what to learn from states and oil majors

Banks are no real-economy actors, but they do face a very real risk of climate liability: indirectly, because of the litigation impending on clients with greenhouse gas-intensive activities and products; directly, because banks may fail their own legal duty to actively reduce their (financed) emissions. This latter risk is particularly relevant to many banks considering their mostly inadequate transition plans. Pim Heemskerck and Roger Cox analyse how the concept of climate liability may apply to banks. Their firm Paulussen Advocaten NV acts for Friends of the Earth Netherlands et al. in the landmark case against Shell plc and has acted in similar landmark climate cases against states.

HARDLY A NOVELTY: LIABILITY FOR CLIMATE-RELATED HUMAN RIGHTS VIOLATIONS

A long-lasting problem with minimal improvement

The urgency and magnitude of the climate problem are well-known and underpinned by global political consensus since the Paris Agreement's conception in 2015. In 2021, the Glasgow Climate Pact confirmed the global political consensus of the critical need for rapid, deep and sustained greenhouse gas (GHG) emission reductions, stating that global CO₂ emissions need to be reduced by 45% by 2030 and net-zero around 2050, to retain a fighting chance to achieve the 1.5°C goal of the Paris Agreement. It is the culmination of scientific and political developments that started decades earlier and took off seriously with the establishment of the Intergovernmental Panel on Climate Change (IPCC) in 1988 and the 1992 United Nations Framework Convention on Climate Change (UNFCCC). Meanwhile, annual global emissions currently peak at record levels, despite record growth of low-emission energy.

A large-scale hazard to human rights globally

The very slow and minimal real-world progress in tackling the threat of climate change stands in striking contrast with the unfathomable proportions of the potentially lethal risks that it poses to human (and all other) life on Earth, due to heat stress, floods, sea level rises, wildfires, the spread of infectious diseases, summer smog, the degradation and loss of ecosystems and flora and fauna and the risks to drinking water and food supplies. Since 2008, the United Nations Human Rights Council (UNHRC) adopted numerous resolutions on climate change and human rights, recognising that climate change poses a threat to human rights around the world, including the right to life and the right to health. Multiple courts, including supreme courts, have acknowledged climate change's threat to human rights.¹ In 2022 the Brazil Supreme Court even ruled that the Paris Agreement constitutes a human rights treaty, taking precedence over national legislation.²

The need for action from both states and companies

As protectors of human rights, states must counter the urgent risk of climate change and

rapidly implement climate policies effecting the necessary emission reductions. But more is needed. Under the UNFCCC, it has been acknowledged since 2012 that non-state actors need to become involved to close the "emissions gap".³ This is the gap between the aggregate total of states' committed emission reductions and the actual emission reductions required globally to keep global warming under the currently agreed threshold of 1.5°C. This means that urgent and proactive climate action is also needed from non-state actors such as companies, including banks and other financial institutions.⁴ Against this backdrop, the UNFCCC decision adopting the Paris Agreement explicitly welcomes climate action from non-state actors, including financial institutions.⁵ Article 2(c) of the Paris Agreement explicitly acknowledges the need to "make finance flows consistent with a pathway towards low GHG emissions and climate-resilient development". The IPCC has highlighted the "financing gaps" within the financial sector, stating that climate finance flows have to increase by a factor between three and six (across sectors and regions) whilst private fossil-fuel related financing as well as other misaligned flows continue to be of major concern.⁶

It seems unlikely that (national) states will be able to move (international) companies to fully take up the role they need to play to limit dangerous climate change, also not through (national) law-making. In 2008, the United Nations Human Rights Council (UNHRC) concluded that states and other public institutions do not have a sufficient grip on (international) companies, due to their ability to move business to other jurisdictions and to influence law-making,

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amongst other things.⁷ The UNHRC found that this phenomenon had created a “governance gap”, in which companies could operate without (enforceable) restrictions on human rights and the environment. This phenomenon gave rise to the United Nations Guiding Principles on Business and Human Rights (UNGP), the United Nations Global Compact (UN Global Compact) and the OECD Guidelines for Multinational Enterprises (OECD Guidelines). These guidelines for companies urge self-regulation to close the governance gap as much as possible. They request (international) companies to respect human rights and remedy human rights violations connected to their business operations.

Climate liability as an increasingly court-approved concept

Considering the facts above, it should not come as a surprise that courts across jurisdictions increasingly accept the concept of civil liability for climate-related human rights violations (briefly: climate liability). This form of liability has evolved initially in respect of states, building on court decisions dating back as far as the mid-2000s. This includes the 2007 US Supreme Court ruling in *Massachusetts v EPA*, which affirmed that a single state’s relatively small share in global emissions does not diminish its individual responsibility to reduce emissions.⁸ The development of climate liability has taken off particularly since 2015, when the District Court of The Hague ruled in the *Urgenda* case that the Dutch State committed an unlawful act by pursuing an insufficiently ambitious emission reduction target for 2020.⁹ This ruling was confirmed by the Court of Appeal of The Hague in 2018 and by the Dutch Supreme Court in 2019, equating the inadequate reduction target with an (imminent) violation of the right to life and the right to respect for private and family life.¹⁰ Courts in other jurisdictions followed suit, including in Belgium, France and Germany.¹¹ Climate cases have been (and continue to be) initiated in other jurisdictions, seeking to hold governments accountable for inadequate climate policies.¹²

Based on the general notions of the climate liability of states, large CO₂-intensive companies are also increasingly the subject of climate liability cases aiming for corporate emission reductions. This seems an obvious development, considering such companies’ control of enormous emission volumes related to their activities and sold products, which often exceed those of industrialised states. This can create comparable state-like climate responsibilities for large companies, especially considering the emissions gap and governance gap as mentioned above. The potential for climate liability of companies is demonstrated by the 2021 ruling of the District Court of The Hague in respect of Shell. In *Milieudefensie et al. v Royal Dutch Shell*, Shell was ordered by the court to achieve an absolute reduction of its worldwide CO₂ emissions of 45% by 2030 (as detailed further below).¹³ Similar cases seeking adequate climate policies of oil and gas majors, and of other companies that are strongly linked to fossil fuels (such as car manufacturers), have been initiated in various other jurisdictions (including France, Germany and Italy).¹⁴

Why banks should care

Banks are not immune to climate liability. It impacts banks in at least two ways. The first source of impact (and probably the best known) lies within the potential climate liability of their *clients*. A second source of impact (which is the main focus of this article) is the climate liability faced by *banks themselves* if they fail to meet their *own* legal duty to limit climate change, considering their large volumes of financed emissions (which often also exceed states’ national emissions) and the corresponding role that they ought to take in closing the emissions gap. We believe both sources of impact to be very real for banks and we see developments pointing in that direction. For instance, the two sources of impact also carry financial risks, increasingly urging regulators to intensify the prudential supervision governing these financial risks, announcing enforcement action in some cases.¹⁵ Furthermore, the first bank, BNP Paribas, has been taken to court for its alleged inadequate climate action.¹⁶

THE LEGAL OUTLINES: A GENERAL DUTY TO TAKE CLIMATE ACTION

What it is: a general duty based on open norms

To better understand climate liability (and how it may apply to banks), it is essential to understand some of its basic features. The most essential is that climate liability typically ensues from legal doctrines providing for a general obligation to abstain from conduct causing – and to take reasonable precautions preventing – potential harm to others (sometimes named “endangerment”). Such doctrines can be enshrined in open norms existing under virtually any jurisdiction (be it under public nuisance law, negligence or general tort law). A common characteristic of such open norms is their ability to (allow courts to) account for all facts and circumstances relevant to a case. In the case of companies, this allows human rights obligations as well as instruments such as the UNGP and OECD Guidelines to be reflected in their legal duties towards individuals, and account for the emissions and governance gaps. As a result, these doctrines can express that companies with a certain level of contribution to (or other influence on) climate change have a legal duty to help prevent climate-related human rights violations and thus a duty to take climate action.

The generality of the obligations outlined above implies that the concept of climate liability is not a priori restricted to specific actors or sectors only. This aligns with the UNGP and OECD Guidelines, which are explicitly agnostic to a company’s size, sector, operational context, ownership and structure.

What it demands: an ambitious transition plan for emission reductions

If climate liability can follow from a general duty to protect, respect and remedy human rights, the question is what specific climate action is needed to avoid such liability. Cases seeking climate liability as discussed in this article typically demand states and companies to commit to targets representing their fair share in effecting the absolute emission reductions necessary to achieve the global

temperature goal of the Paris Agreement (in contrast to cases seeking financial compensation for climate-related damages already suffered). For companies, the most appropriate instrument for this is a “transition plan.”¹⁷ In general, such a transition plan must include appropriate absolute emission reduction targets for a company’s activities and sold products, the so-called scope 1, 2 and 3 emissions,¹⁸ in line with a 1.5 °C scenario (time-bound from 2030 or earlier). A transition plan also needs to indicate how the company will implement the climate targets in its business models, strategy and governance. Clearly, only adopting a transition plan does not suffice; the company will have to actually and effectively implement it.

This is, however, still a rather broad approach that requires further translation for an individual company. In making such a translation, circumstances specific to the individual company’s context must, to some extent, be considered. A lot can be expected from large companies responsible for a large volume of emissions. In the case against Shell, the court ordered a 45% reduction of absolute emissions in 2030 (relative to 2019 levels), for both its own operations and its sold fossil fuels products. The 45% target equates the reduction percentage that under the Glasgow Climate Pact needs to be achieved globally by 2030 for a fighting chance of keeping global warming at 1.5°C, which could also be seen as a reflection of what on average should be done by globally operating companies.¹⁹ In ordering the 45% reduction in respect of Shell, the court explicitly considered that the interest of preventing the threat of dangerous climate change outweighs Shell’s commercial interests, recognising that this order will require drastic measures and financial sacrifices, which could curb potential growth.

THE BANKING CONTEXT: RESPONSIBILITY FOR FINANCED EMISSIONS

The starting point: banks are not fundamentally different

Considering the generality of climate liability, which does not a priori exclude any type of actor, one could certainly argue that

banks also have a legal duty to contribute their fair share in effecting the necessary emission reductions. This in itself does not seem controversial. Most banks adhere to instruments such as the UNGP and the OECD Guidelines and acknowledge themselves to have a responsibility in respect of climate change. This is demonstrated by individual commitments to the Paris Agreement and by adherence to sectoral commitments such as the UN Net-Zero Banking Alliance (or NZBA, which is part of the UNFCCC’s Race to Zero campaign).

The subsequent question is how, for a bank, this translates into concrete emission reduction obligations. Looking at their context, the simple reality is that banks finance and thus enable substantial volumes of client emissions causing climate change; the client activities accounting for such financed emissions generally cannot exist without funding. To us, it seems that this basic feature of a bank’s contribution to climate change is not so different from that of an oil and gas major, or of other large companies whose products enable client emissions. And there are other commonalities too, which imply that certain arguments *against* climate liability which cannot exculpate oil and gas majors, can neither exculpate banks (such as the point that emission reduction obligations should be applied through government policies only to ensure a level playing field, which in the case of Shell did not withhold the court from ordering emission reductions). Therefore, it does not seem illogical to argue that a bank’s transition plan, just like that of an oil and gas major, must include targets for the reduction of the absolute volume of its emissions (including scope 3 financed emissions; scope 1 and 2 emissions are generally not material for banks), with a percentage similar to the reduction percentages that need to be achieved globally (which, as explained above, in the case of Shell informed an absolute reduction of 45% by 2030; current scientific findings dictate a global average reduction of 48%).²⁰

The central question: can banks be less ambitious?

Still, most banks choose to only pursue targets aimed at the reduction of the

emission *intensity* of the activities they finance, instead of a reduction of their *absolute* volume of financed emissions.²¹ And, in doing so, most banks seem to set these targets with the sole purpose of managing the climate-related *financial risk* to which they *themselves* are exposed (mainly, risks to banks induced from a customer’s climate related physical and transition risk, such as the loss of assets due to extreme weather events or the unviability of fossil business models in a net-zero economy), not with the purpose of defining their share in the reduction percentages that need to be achieved globally to limit the *human rights risks to others*. This deviates from the starting point as we have formulated above; also various institutions have suggested that banks should include absolute reduction targets in their transition plans (including the UNFCCC, the United Nations High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities and the Network for Greening the Financial System).²²

So, the question is: are there reasons nevertheless that could permit banks to live with these not-so-ambitious transition plans? An easy answer may be that more ambitious plans are not required by sustainability legislation applicable to banks or by the industry commitments that most banks have adhered to (such as the NZBA). But this answer does not hold.²³ Current sustainability legislation is not designed for (nor necessarily aligned with) the requirements of climate liability. And neither can compliance with industry commitments as such indemnify banks from climate liability. Rather, an explanation might be that legally relevant differences *do* exist between banks and other actors (their more fundamental commonalities notwithstanding), which could justify banks being less ambitious.

The differences between banks and other actors: do they impact climate liability?

Obviously, there are many differences between banks and other actors such as states and oil and gas majors. But, to us,

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these seem of only little relevance from a climate liability perspective. Unfortunately, it is beyond the scope of this article to look at each in detail. We will, however, share some observations in respect of the central difference between banks and oil and gas majors. This central difference is that a bank's main product (funding) is intrinsically dissimilar to that of an oil and gas major (fossil fuels).

This difference has two consequences. First, a bank's end-user (eg a borrower) may apply funding to high or low emission-intensive activities (especially outside of the context of project finance), whilst an oil and gas major's end-user can basically be presumed to burn every drop of oil sold producing a reasonably predictable volume of end-user emissions. This means that a bank's main product, unlike that of an oil and gas major, is not inherently emission intensive. A second consequence is that banks will have a different role in the energy transition than oil and gas majors. For oil and gas majors, the task ahead follows a rather commonly agreed reduction path to a system with only very little place for fossil fuels post-2050, requiring a wind-down of activities. A bank, in contrast, is invested in a multitude of sectors that will remain necessary after 2050 and will have to provide the funding that these sectors need to transition to Paris-aligned net-zero business models.

We believe that these two consequences underline a bank's responsibility to take proactive climate action. In some way, the two consequences make it easier for a bank to decarbonise its main product than it is for an oil and gas major, as a bank may channel its funding from high-emission-intensive to low-emission-intensive activities and clients. In fact, banks have a very particular responsibility to do so, considering the financing gaps as mentioned above. Without the decarbonisation of banks' portfolios, the transition necessary to avert dangerous climate change simply cannot happen. This puts banks in a (pseudo) public utility function, comparable to their function in the economic system. This might create duties *beyond* those of oil and gas majors, including in terms of climate liability.

Banks, on the contrary, might take the two consequences above as arguments for a *less* extensive duty to take climate action. They could argue that they cannot pursue emission reductions as effectively as an oil and gas major, having not as much control over client emissions. Banks might also argue that absolute reduction targets would require (or at least incentivise) banks to divest from emission-intensive clients, which may have a less positive impact than leveraging their engagement with clients and financing their transition process. Finally, banks might take the position that, because of the diversity across their client sectors, the average emission reductions required globally cannot be applied simply to the reductions necessary within their individual sector portfolios. All in all, banks could argue, they cannot be required to pursue ambitious absolute emission reduction targets. For various reasons, we doubt if this line of argument would be very effective to prevent a bank's climate liability. Again, it is beyond the scope of this article to go into every detail. But we will mention a couple of things.

First, banks do have a level of control over their clients' emissions. Banks traditionally have close relationships with their corporate clients, allowing them to engage with clients and for instance discuss how the client's business model fits within the bank's commercial and risk parameters (as reflected also in the pricing and conditions of the bank's products, for instance when arranging new funding or refinancing existing debt). Also, banks hold the key to the funding that clients need to transition to less emission-intensive business models. When employing this leverage truthfully and in a meaningful way (for instance by requiring and helping clients to implement robust, science-based transition plans), we believe banks to be at least equally well-placed as oil and gas majors to influence clients' emissions.

Second, absolute reduction targets may *incentivise* banks to divest, but they are not synonymous with divestment; absolute reductions can also be achieved through the leverage mentioned above. Nevertheless, divestment may be necessary as an escalation

strategy if, despite the bank's leverage, client progress keeps lagging. But in such case, the bank's leverage has already proven *not* to be effective in achieving real-world emission reductions, and divestment may be inevitable and preferable.

One might also argue that, in case the bank must ultimately divest, this will still not achieve real-world emission reductions. The argument is that the client may be able to refinance with a competitor bank, which could result in the divesting bank's financed emissions dropping whilst real-world emissions continue. But this argument is of little relevance from a climate liability point of view because it comes down to the so-called "drug dealers' defence" (that if we don't supply someone else will). This defence is generally rebutted on the basis that one's illegal behaviour does not legitimise another's. With climate change, the defence would imply that no actor globally has *any* duty to reduce emissions until a point where all actors worldwide will take sufficient climate action simultaneously, which point, of course, will never be reached. Hence, since the 2007 US Supreme Court ruling in *Massachusetts v EPA* as mentioned above, this defence has been rejected in all court rulings referenced above.

And third, the diversity of reductions necessary across a bank's client sectors is also no obstacle to applying absolute reduction targets. It is difficult to see why a bank cannot reduce its financed emissions with a percentage at least similar to the absolute average reductions necessary globally across all sectors and regions (both industrialised and other), particularly if these emissions mostly stem from large corporate clients within very emission-intensive sectors with the financial means and the capacity to transition to Paris-aligned business models.²⁴ As explained above, this globally needed average reduction percentage is (at least) 45% by 2030. When a bank's overall reduction target is informed by this global percentage too, as a minimum baseline for global banks, it is no longer necessary to focus on sectoral reduction paths to define an overall reduction target. An upside of this for banks would be that they retain

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a level of flexibility to define more granular targets (at sector and/or client level) in the way that they deem most appropriate.

Finally, we want to note that the data and methodologies needed for monitoring and implementing absolute reduction targets may not be fully complete at present. However, we do not believe this to be an obstruction to the pursuit of absolute reduction targets: in the first place because targets could be adjusted to reflect new insights as data and methodologies improve, provided that transparency ensures the verifiability of the integrity of the adjustments made. Furthermore, where data and methodologies are sufficient for the pursuit of intensity targets, we find it difficult to comprehend any issues making absolute targets inherently impossible.

CONCLUSION: BANKS MUST REVISIT THEIR TRANSITION PLANS

The risk of climate liability is very real to banks and could resemble that of real-economy actors more closely than might be expected initially given the obvious differences between the two. This should urge banks to reconsider their transition plans against the concept of climate liability as applied to states and real-economy actors, including by courts in respect of oil and gas majors. When doing so, many banks will find that their transition plans fall short because they do not contain absolute reduction targets which assure a fair share in the real-world emission reductions necessary to limit dangerous climate change.

In the process of redefining transition plans, it seems wise for banks not to fixate on complexities (regulatory, commercial, operational, contractual, methodological, data or otherwise) as reasons for not implementing ambitious absolute reduction targets. Rather, these complexities should be approached with the will to overcome on the highly necessary road to a 1.5°C aligned world. This is not an easy task, as it may require painful decisions implying limits to growth, drastic measures and financial sacrifices. But it is what both climate liability and a genuine commitment to human rights demand. ■

- 1 See the court rulings mentioned in notes 9, 10 and 11 as well as note 12. Helpful outlines (in English) of these and other climate cases mentioned in this article can be found on www.climatecasechart.com
- 2 Supremo Tribunal Federal, 1 July 2022 (ADPF 708).
- 3 D Klein et al, *The Paris Agreement on Climate Change: Analysis and Commentary*, Oxford University Press (2017), Chapter 2.B.
- 4 *Emissions Gap Report 2022: The Closing Window – Climate crisis calls for rapid transformation of societies*, United Nations Environment Programme (October 2022).
- 5 UNFCCC Decision 1/CP.21 under V (“non-party stakeholders”), para 133 and 134.
- 6 S Kreibiehl et al, *Investment and Finance*, in: P R Shukla et al, *Climate Change 2022: Mitigation of Climate Change*. Contribution of Working Group III to the *Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press (April 2022), para 15.5.2.
- 7 J G Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, UNHRC (April 2008).
- 8 Supreme Court of the United States, 2 April 2007 (No. 05-1120).
- 9 Rechtbank Den Haag, 24 June 2015 (ECLI:NL:RBDHA:2015:7145).
- 10 Gerechtshof Den Haag, 9 October 2018 (ECLI:NL:GHDHA:2018:2591) and Hoge Raad, 20 December 2019, (ECLI:NL:HR:2019:2006).
- 11 Tribunal de première instance francophone de Bruxelles, 17 June 2021 (2015/4585/A), Tribunal administratif de Paris, 3 February 2021 (1904967, 1904968, 1904972, 1904976/4-1), Bundesverfassungsgericht, 24 March 2021 (1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20).
- 12 A helpful overview of climate cases is provided at www.urgenda.nl/en/themas/climate-case/global-climate-litigation
- 13 Rechtbank Den Haag, 26 May 2021 (ECLI:NL:RBDHA:2021:5337). The procedural documents are available at <https://en.milieudefensie.nl/news/overview-of-legal-documents-climatecase-against-shell>
- 14 J Setzer et al, *Global Trends in Climate Change Litigation: 2023 Snapshot*, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science (June 2023), p 35 et seq. J Setzer et al, *Global Trends in Climate Change Litigation: 2022 Snapshot*, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science (June 2022), p 33 et seq.
- 15 *Climate-Related Litigation: Raising Awareness about a Growing Source of Risk*, Network for Greening the Financial System (November 2021); www.bankingsupervision.europa.eu/press/pr/date/2022/html/ssm.pr221102~2f7070c567.en.html
- 16 See www.climatecasechart.com/non-us-case/notre-affaire-a-tous-les-amis-de-la-terre-and-oxfam-france-v-bnp-paribas
- 17 A helpful analysis of the current manifestations of financial institutions’ transition plans (as well as their purposes, which do not necessarily include climate change mitigation and for instance may serve financial risk management only) is provided in: *Stocktake on Financial Institutions’ Transition Plans and their Relevance to Micro-prudential Authorities*, Network for Greening the Financial System (May 2023).
- 18 Under reporting standards of the Greenhouse Gas Protocol (see www.ghgprotocol.org), a company has several types of emissions, classified as scope 1, 2 or 3 (with subcategories within them). Scope 1 and 2 emissions are associated with a company’s own assets and the energy purchased for them (think real estate and its heating and lighting). Scope 3 emissions arise in a company’s value chain, for instance through the use of sold products. Financed emissions are scope 3 category 15 emissions.
- 19 When aligning with the global average reduction percentage, it is important to acknowledge the principle of Common But Differentiated Responsibilities (CBDR principle), as embedded in the global climate regime. This principle entails in essence that parties with a historic responsibility for the climate problem and the most capacity to

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Paulussen Advocaten acts for Friends of the Earth Netherlands et al. in the landmark case against Shell plc and has previously acted for plaintiffs in similar landmark climate cases against states, including Stichting Urgenda.

address it must take the lead in combatting climate change. Accordingly, companies whose contribution to climate change historically is above-average (for instance because of an above-average share in fossil fuel financing) can be expected to deliver an above-average share in effecting the necessary emission reductions.

- 20** Under the most recent findings of the IPCC, in pathways that limit warming to 1.5°C (>50%) with no or limited overshoot global net CO₂ emissions are reduced by 48% (36-69%) compared to 2019 levels. See P R Shukla et al, 'Summary for Policymakers', in: P R Shukla et al. (2022), p 17.
- 21** A reduction of emission intensity is not the same as an absolute emission reduction, as was ordered in the case of Shell. Emission intensity represents the amount of emissions relative to an economic or physical unit, such as EUR or MWh. This can drop whilst absolute emissions rise, for instance, if the relative share of renewable energy in the total energy use increases, but the absolute volume of fossil energy use increases too. Emission intensity metrics can be helpful, however, as an additional measure. For instance, to compare performance across banks (with portfolios of different sizes) or individual clients.
- 22** *Interpretation Guide: Race to Zero Expert Peer Review Group*, United Nations Framework Convention on Climate Change (June 2022), p 8; *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions*, High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities (November 2022), p 17; *Stocktake on Financial Institutions' Transition Plans and their Relevance to Micro-prudential Authorities*, Network for Greening the Financial System (May 2023), p 15, which does not refer to absolute reduction targets directly, but does state that the main features of a credible net zero transition plan include "a scientifically aligned, long-term goal to significantly mitigate the worst impacts of climate change, supported by a credible trajectory (such as a Paris-aligned goal of net zero by no later than 2050)" and "the application of an 'emissions budget' which

sets an absolute cap on total emissions over the life of the transition plan". See also L Sachs et al, *Finance for Zero: Redefining Financial-Sector Action to Achieve Global Climate Goals*, Columbia Center on Sustainable Investment (June 2023), p 16.

- 23** P Heemskerk and R H J Cox, 'Bancaire klimaataansprakelijkheid onder invloed van duurzaamheidswetgeving', *Maandblad voor Vermogensrecht*, 2023, p 93-106 (in Dutch). An unofficial machine translation of this article on the influence of sustainability legislation on climate liability is available on www.paulussen.nl.
- 24** The CBDR principle mentioned in note 19 should also be considered here.