

**Businesses make a vital contribution to making our economy more sustainable and to achieving Europe's climate goals. Their contribution is, to some extent, enforced by law. During this conference, which opened with an interview with lawyer Roger Cox (known for Milieu-defensie's climate lawsuit against Shell), we discussed the legal disputes that can arise from the responsibilities, duties and liabilities that companies and directors have concerning sustainability and climate from different areas of law.**

## Greenwashing vs. Greenbleaching

> The scrutiny of sustainability-related expressions is becoming increasingly common.

- If a sustainability claim is not presented in a clear, specific, correct and unambiguous way, low-threshold litigation can be brought before the RCC, which occurs frequently. The RCC takes a fairly strict stance on this matter: companies must demonstrate a high level of proof.
- Standards will become more concrete from 2026 with the [Empowering Directive](#).
- Various bodies (including the ACM and civil courts) can review expressions about sustainability. This reduces the room for manoeuvre for companies.
- The financial sector is already largely familiar with this, as many regulations regarding financial products with an ESG or sustainable character (e.g. investment products, *EU Green Bonds*) are already in force, with more to come.
- Financial sector regulators AFM, DNB and their EU counterparts are monitoring financial institutions' communications closely to identify instances of *greenwashing* and *greenbleaching* (a failure to report on a company's or product's sustainability efforts). This applies to prospectuses, product information, and marketing material. They proactively investigate and accept complaints in a low-threshold manner.

> For NGOs, complaints about greenwashing are usually a means, not an objective. Parties raising greenwashing issues often seek media attention for their ultimate climate or environmental goal. This makes it more complicated to resolve these cases out of court.

## Climate Litigation

> The outcome of the climate lawsuits against Shell and ING Bank will serve as test cases for collective actions against companies over their climate policies. The potential for such actions to increase will depend on the outcome of these cases.

- The Dutch courts have granted NGOs wide latitude to conduct such proceedings for the time being. The CSDDD provides NGOs with further encouragement.
- From 2025 onwards, we anticipate an increase in proceedings on annual accounts before the Ondernemingskamer (Art. 2:448 et seq. Civil Code). Any interested party can request an adjustment of the annual accounts, the management report and other information, without having to meet strict admissibility criteria. NGOs can leverage this opportunity to demand greater transparency on the sustainability policies of companies covered by the CSRD, thereby drawing media attention to these companies.
- The forthcoming ESG regulations for financial markets and products, along with the increased focus by regulators on greenwashing, may also be relevant for civil proceedings against financial institutions.

> The ECHR, in its recent ruling *KlimaSeniorinnen Schweiz v. Switzerland*, has determined that climate change is a human rights issue and has also provided NGOs with the opportunity to challenge government policies in court.

- However, the extent of the duty of governments to combat climate change has not yet been clearly defined. The ECHR judgment is clear about the goal – climate neutrality by 2050 – but the means of achieving it and intermediate targets have not yet been defined.
- Furthermore, there are parties, including NGOs, who believe that wealthier countries should achieve climate neutrality before 2050, given their historical emissions. In this context, Greenpeace's legal proceedings against the Dutch state, among others, are ongoing. The stakes are high, with the Netherlands facing the challenge of becoming climate neutral by 2030.
- It is likely that companies will face stricter regulation if judges rule that wealthy countries should be climate neutral by 2030.
- The CSDDD ultimately gave climate policy a secondary role, but it is possible that climate will still play a larger role in the application of the CSDDD, in the guise of a human rights issue.

> From a criminal law perspective, there is an increasing focus on directors, especially concerning ESG and climate regulations.

- ESG-related obligations are only marginally criminally enforceable, yet risks are increasingly visible for "de facto executives".
- It is becoming more important to choose words with great care in reports and to ensure sufficient substantiation.
- For directors themselves, it is becoming increasingly important to take demonstrable action where necessary.

## Our experts

**Stibbe Amsterdam employs over 200 legal experts in over ten different areas of law. They are available to assist you in navigating the challenges facing your organisation. Should you have any questions, please contact Valérie van 't Lam or one of our other ESG & Sustainability experts who were present during the conference.**



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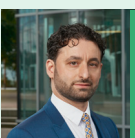
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## Want to know more?

**Stibbe regularly organises events on climate, sustainability and ESG. Our experts also publish and speak on the latest relevant developments. To stay informed, please contact us via one of the following channels:**

