

Maastricht, 25 April 2022

**PAULUSSEN  
ADVOCATEN**

Shell plc  
To the CEO, Mr B.C.A.M van Beurden  
To the Executive Committee (Mr B.C.A.M van Beurden, CEO)  
To the Board of Directors (Sir A. Mackenzie, Chairman)  
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Prof. mr. R.F.H. Mertens  
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Mr. B.L.J. Lenferink  
Mr. M.J. Reij  
Mr. A.J.M. van Diem  
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Mr. P. Courtens  
Mr. J.M.B. Gorissen  
Mr. M. Schütz  
Mr. L.H.J. Somers  
Mr. S.J. Keuls  
Mr. V.C. Rozek  
Mr. M.L. Ramakers  
Mr. G. Sarandib

**Subject: Shell's actions and communications in response to the judgment of the District Court of The Hague and the potential exposure of directors to personal liability towards third parties (RC.26.358/16)**

Dear Mr Van Beurden, dear Sir Mackenzie,

On behalf of Friends of the Earth Netherlands ("**Milieudefensie**"), we are addressing the CEO, the Executive Committee and the Board of Directors of Shell plc about Shell's actions and communications in response to the judgment of the District Court of The Hague (the "**Court**") dated 26 May 2021.

## 1. Introduction

In this judgment, the Court ordered Shell plc ("**Shell**") to reduce the worldwide absolute emissions of the entire Shell-group with at least net 45% by 2030. In short, the Court found that Shell is responsible for significant CO<sub>2</sub>-emissions which contribute to global warming and the urgent threat of dangerous climate change. The Court recognized that this will have serious and irreversible consequences and puts the human rights of Dutch citizens at risk. In light of this, Shell has an individual legal responsibility to take drastic measures to limit its own contribution to this global catastrophe, which cannot be conditional on society's progress.<sup>1</sup> This means Shell must change its policy and use its power, control and influence to reduce CO<sub>2</sub>-emissions in Scope 1, 2 and 3, including emissions from the products sold by the Shell-group.<sup>2</sup>

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<sup>1</sup> District Court The Hague 26 May 2021, [ECLI:NL:RBDHA:2021:5339](https://www.ecli.nl/ECLI:NL:RBDHA:2021:5339), par. 4.5.2.

<sup>2</sup> The Court made clear that Shell's policy must be focused on achieving net 45% emission reductions by 2030 (par. 4.4.39). Shell is free to decide how it achieves these reductions (par. 4.4.54). The Court has made it explicit that financial sacrifice, foregoing new investments in extraction of fossil fuels and/or limiting production of fossil fuels may be required from Shell, in light of the serious threats and risks to human rights.

Note: in 2021, Shell was responsible for 1,367 Megaton of greenhouse gas emissions.<sup>3</sup> This accounts for about 2.3% of total global emissions and this is more than the total emissions of the Netherlands (168 Megaton), the United Kingdom (424 Megaton) and Germany (762 Megaton) combined.<sup>4</sup>

Shell has appealed, but the Court declared the judgment provisionally enforceable, which means the necessary climate action cannot be suspended pending the appeal. The Court admitted that this may have far-reaching consequences for Shell. Nevertheless, it found that immediate compliance with the imposed emission reduction order outweighs the interests of Shell in maintaining the status quo during appeal proceedings.<sup>5</sup> According to the Court, the compelling public interest that is served by compliance with the reduction obligation of 45% by 2030 outweighs any negative consequences Shell might face as a result, including impact on Shell's commercial interests.<sup>6</sup>

In doing so, the Court recognized – based on hundreds of pages of procedural documents, thousands of pages of corroborating evidence and a four day court-hearing – the extreme urgency of immediate emission reductions because this decade is critical for the world's ability to prevent dangerous global warming.

Since the judgment of May 2021, both the global political and the global scientific community have reaffirmed the necessity of “*rapid, deep and sustained reductions in global greenhouse gas emissions*” including the need to reduce global CO<sub>2</sub>-emissions by 45% in 2030<sup>7</sup> and reemphasized that this decade is critical.<sup>8</sup>

In the words of UN Secretary-General Guterres, we are facing “*a code red for humanity.*”<sup>9</sup>

Despite all this, Shell has not taken the necessary action. Based on Shell's public actions and communications, we conclude that Shell does not intend to comply with the Court's emission reduction order. The Board's advice to reject the resolution submitted by Follow This at Shell's AGM on 24 May 2022 further confirms this.<sup>10</sup>

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<sup>3</sup> Annual Report 2021, p. 91.

<sup>4</sup> See Netherlands, Germany and the United Kingdom

<sup>5</sup> District Court The Hague 26 May 2021, ECLI:NL:RBDHA:2021:5339, par. 4.5.7.

<sup>6</sup> District Court The Hague 26 May 2021, ECLI:NL:RBDHA:2021:5339, par. 4.4.53-54.

<sup>7</sup> See Glasgow Climate Pact, par. 22 and IPCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (“**AR6 WGI**”).

<sup>8</sup> See Glasgow Climate Pact, par. 5 and IPCC.

<sup>9</sup> Statement of 9 August 2021 of the UN Secretary-General on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment.

<sup>10</sup> Shell Notice of Annual General Meeting 2022 dated 20 April 2022.

However, Shell's sophisticated media strategy could lead the public and other stakeholders to believe that Shell has taken adequate action.<sup>11</sup> It has not.

In this letter, Milieudéfense will share its findings and substantiate why Shell's current strategy will lead Shell to violate its legal obligation to reduce emissions and protect human rights. This would create significant exposure for the company and harm the interests of Shell's shareholders, employees and other stakeholders. More importantly, it causes disastrous losses and damages and puts global society at risk. In light of this, Milieudéfense believes that Shell's directors risk future personal liability by failing to take action in line with the global universal goal of almost halving worldwide CO<sub>2</sub>-emissions by 2030, which is the only way to prevent dangerous climate change.

We note that this letter should not be construed as expressing an intention to formally enforce the judgment. However, that does not mean Shell can refrain from further action.<sup>12</sup>

With this letter, Milieudéfense makes an urgent call on Shell's CEO, Executive Committee and Board of Directors to reconsider its position and to stop informing stakeholders incompletely and inaccurately about the implications of Shell's current energy strategy, which is not in line with the judgment from the Court and consequently not Paris-aligned.

Note: Of course, the contents of this letter are also relevant to Shell's shareholders. In addition to the material risks following from Shell's lack of Paris-aligned action, at least the larger institutional investors also bear their own legal responsibility to align investments with the goals of the Paris Agreement.

## 2. This decade is critical to prevent dangerous climate change: net-zero in 2050 is not Paris-aligned

As Shell is well aware, the world is running out of time to prevent dangerous climate change. Global greenhouse gas emissions have increased year after year and after a temporary drop in 2020, they have surged again to pre-pandemic levels.<sup>13</sup>

Climate change is caused by the accumulation of greenhouse gas emissions into the Earth's atmosphere. Every tonne of CO<sub>2</sub> emissions adds to global warming and Shell is responsible for about 1.4 billion tonnes of CO<sub>2</sub> emissions annually, which is approximately 2.3% of global CO<sub>2</sub> emissions. To limit global warming to 1.5 °C, the total amount of cumulative emissions must be kept within a finite carbon budget. At the current rate of CO<sub>2</sub>-emissions, the carbon budget to limit global warming to 1.5 °C could be depleted by 2030.<sup>14</sup>

<sup>11</sup> This will be substantiated below and in Annex 1 to this letter.

<sup>12</sup> It is a basic principle of Dutch civil procedural law that a judgment is valid by operation of law.

<sup>13</sup> IEA press release of 8 March 2022, Global CO<sub>2</sub> emissions rebounded to their highest level in history in 2021.

<sup>14</sup> See IPCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change ("AR6 WGI"), p. 29.

This means that the path to net-zero is crucial and makes it clear that plans to reach net-zero in 2050 are wholly insufficient if those plans do not result in deep, immediate and sustained absolute emission reductions towards 2030.

In light of this, Shell's ambition to become a net-zero emissions business does not justify the claim that its strategy would be Paris-aligned. The actions between now and 2030 will decide if dangerous climate change can still be prevented. That is what the court case against Shell is about and that is why the Court ordered Shell to reduce its total emissions by at least 45% in 2030, in line with the global average emission reductions required to preserve a chance of limiting global warming to 1.5 °C. The Court confirmed that meeting the imposed reduction order requires immediate change. This means that Shell cannot hold off on reducing its emissions until later this decade.

It is clear that dangerous climate change can only be prevented by limiting cumulative emissions. This means that any policy must strive to limit cumulative emissions through rapid and deep emission reductions. Climate science and political consensus are unequivocal in this respect. The bare minimum for any policy must be achieving the necessary 45% emission reductions towards 2030 in a linear pathway, which equally distributes the effort that must be delivered. Everything short of that is a delay of what must evidently be done to prevent dangerous global warming and causes excess cumulative emissions.<sup>15</sup> The world cannot afford such delay in this critical decade, because the damage will have been done and will at least in part be irreversible, as the recent IPCC Working Group II Contribution once again made abundantly clear.<sup>16</sup> In light of this, an accelerated reduction path should be pursued in order to limit cumulative emissions as much as possible, with a linear reduction path being the bare minimum.

However, Shell currently has no policy focused on achieving absolute reductions for the totality of its Scope 1, 2 and 3 emissions with at least 45% by 2030, as is required by the judgment.<sup>17</sup> For 2030, Shell does not have a target to reduce absolute emissions in Scope 3, which in 2021 made up 95% of Shell's total global emissions:<sup>18</sup>

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<sup>15</sup> UNEP's Emission Gap Report shows the excess cumulative emissions caused by different pathways and refers to paths that reduce emissions slower than in a linear pathway as a delayed path. See United Nations Environment Programme (2021). Emissions Gap Report 2021: The Heat Is On – A World of Climate Promises Not Yet Delivered. Nairobi, Executive Summary, p. XXI. Note that the figure shown in this report relates to a reduction path for CO<sub>2</sub> equivalents.

<sup>16</sup> IPCC, 2022: Summary for Policymakers In: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change ("AR6 WGII"), SPM-20. AR6 WGII also warns that every additional increment of global warming will escalate the projected adverse impacts and related losses and damages, see SPM-14.

<sup>17</sup> See par. 4.4.39: "in formulating the corporate policy of the Shell group, RDS should take as a guideline that the Shell group's CO<sub>2</sub> emissions (Scope 1, 2 and 3) in 2030 must be net 45% lower relative to 2019 levels."

<sup>18</sup> Annual Report 2021, p. 91.

Performance – absolute emissions						
Scope	Absolute emissions [D], [F] million tonnes of CO <sub>2</sub> e				Targets [E]	
	2016	2019	2020	2021	Target 2030	Target 2050
Scope 1 [A]	72	70	63	60	50% reduction compared with 2016 levels on a net basis	0
Scope 2 [B]	11	10	8	8		0
Scope 3 [C]	1,545	1,551	1,305	1,299	No target	0

For Scope 3 emissions, Shell only has an intention to reduce the carbon intensity of its products by 20% in 2030. However, reducing carbon intensity has no connection to the reduction of absolute emissions. If carbon intensity declines, Shell’s total emissions can still increase. In fact, there is ample reason to conclude that Shell’s total emissions may actually increase until 2030. This is the exact opposite of Paris-alignment.

Note: investor collective Climate Action 100+ - representing 700 investors with USD 68 trillion in assets under management - also found that Shell’s short-, medium- and long-term targets are not aligned with the goal of limiting global warming to 1.5°C.<sup>19</sup>

Annex 1 will substantiate this in further detail and explain why Shell’s public communications, including its widely reported message that it would “*rise to the challenge*” in response to the judgment, incorrectly suggest that Shell will actually reduce its emissions in a meaningful way.

By not taking the necessary action now, Shell and in fact the people that decide on Shell’s strategic direction, willingly accept that the universal goal of limiting global warming to 1.5 °C may not be met and willfully ignore an enforceable court order in the process, gambling on a different outcome on appeal.

### 3. Potential liability of Shell

The Court ruled that Shell has a legal obligation to reduce emissions in line with the Paris Agreement. The Court also found that as of December 2020, Shell was not yet in violation of this obligation, but violation was imminent because “*the policy, policy intentions and ambitions of RDS for the Shell group are incompatible with RDS’ reduction obligation.*”<sup>20</sup> In this letter, Milieudedefensie substantiated that Shell’s policy, policy intentions and ambitions for Scope 3 emissions are still incompatible with Shell’s reduction obligation.

<sup>19</sup> <https://www.climateaction100.org/company/royal-dutch-shell/>, based on disclosures until 31 December 2021.

<sup>20</sup> District Court The Hague 26 May 2021, ECLI:NL:RBDHA:2021:5339, par. 4.5.3.

In addition, Shell's – inadequate – carbon intensity targets for 2030 and beyond still seem to be conditional, which is also inconsistent with Court's ruling.<sup>21</sup>

Note: The Court qualified Shell's legal obligation to reduce Scope 2 and 3 emissions as a significant best-efforts obligation. The Court considered that the absolute reduction obligation will have far-reaching consequences for Shell and the Shell group and requires a change of policy as well as an adjustment of the Shell group's energy package. In addition, the Court found that drastic measures and financial sacrifice may be required from Shell, in light of the urgency of preventing dangerous climate change. The Court considered Shell may have to forgo new investments in the extraction of fossil fuels and/or will have to limit its production of fossil resources. In other words: Shell must do everything reasonably possible to achieve the ordered 45% in absolute emission reductions, even if that would be detrimental to its own financial results. The Court has placed an onerous obligation on Shell, consistent with the nature of its responsibility. Milieudefensie submits that Shell will have to document the efforts undertaken as evidence of what it has or has not done to reduce its absolute emissions and why.

Based on the current situation, Shell's efforts are clearly lacking, because Shell's policy is not even focused at achieving the result ordered by the court. Shell rejects shareholder resolutions requesting absolute emission reduction targets for Scope 3 and incorrectly frames climate change as a customer demand issue over which it has no control. This is an inaccurate statement because Shell has total control over what it produces and sells to customers (and thus total control over its Scope 3 emissions) and it has also been proven in court that a reduction in Shell's production will affect customer demand and the market in general. To the extent that meeting the reduction obligation would require cooperation with other parties, this still does not justify the lack of a policy in line with the judgment and does not alleviate the onerous nature of Shell's obligation.

If we look at Scope 3 emissions, Shell reported 1,551 Mt in 2019. Based on this, an absolute reduction of 45% means Shell must focus on reducing its emissions with 698 Mt by the end of 2030. Taking into account at least a linear path as the bare minimum of what should be done to curb Shell's cumulative emissions over time (as said: anything less is a delay), this would result in the following minimum reductions (numbers are the maximum Scope 3 emissions allowed in Mt):

2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
1,551	1,488	1,424	1,361	1,297	1,234	1,170	1,107	1,043	980	917	853

<sup>21</sup> Annual Report 2021, p. 15: "Our medium- and longer-term targets are to reduce by 20% by 2030, by 45% by 2035 and 100% by 2050, in step with society." Although Shell's CEO claims in his introduction of the Energy Transition Progress Report 2021 that the target for 2050 is no longer conditional, the report also states on page 36 "In the future, as society moves towards net-zero emissions, we expect Shell's operating plans to reflect this movement", suggesting it is still a conditional target. In addition, the statement only mentions 2050, so it remains unclear what the status is of the interim targets.

In 2020, Shell reported a drop in Scope 3 emissions from 1,551 Mt to 1,305 Mt compared to 2019 as a result of the global pandemic and an apparent exclusion for volumes held for trading purposes.<sup>22</sup> The total volume of Scope 3 emissions remained largely unchanged in 2021 (1,299 Mt). Because of this, Shell's emissions have declined quicker than in a linear path. However, the reductions that have occurred so far are not a result of Paris-aligned climate policy.

In view of the urgent need to reduce cumulative emissions, Shell should actually ensure that its current total emissions will not surge back over current levels, but decrease in a linear pathway from now on. Such a pathway would result in additional savings of about 500 Mt in cumulative emissions, which is about three times the total annual emissions of all citizens and companies in the Netherlands.

In any event, it is clear that Shell's current policy is incompatible with Shell's reduction obligation, especially due to the lack of any absolute emission reduction target for its Scope 3 emissions, that make up 95% of the emissions related to the Shell group.<sup>23</sup> Absent a change of course, Shell will violate its obligation to help prevent dangerous climate change and protect the human rights of citizens. This exposes Shell to unprecedented liability risks, in addition to the legal risks it already faces for its contribution to global warming to date.<sup>24</sup> This also creates risks for Shell's directors.

#### 4. The risk of future liability of directors

Milieudefensie believes there is a real risk that Shell's directors could face personal liability in the future. This requires serious reconsideration instead of turning a blind eye to what must evidently be done to prevent dangerous climate change and continuing on a path that is not far removed from business as usual and which will contribute to damages and human rights violations on a global scale.

This letter is addressed to the CEO, the entire Executive Committee as well as the Board of Directors. First and foremost, Shell's CEO is the most senior individual with accountability for climate change. Consequently, he is the key individual in relation to this topic. The CEO is supported by the Executive

<sup>22</sup> Annual Report 2021, p. 93: "*The decrease in 2020 from 2019 mainly relates to a decrease in demand for oil products given market conditions in 2020, and a decrease related to volumes associated with additional contracts being classified as held for trading purposes with effect from January 2020.*"

<sup>23</sup> On p. 7 of its 2022 notice of annual general meeting, Shell refers to IEA modelling data that shows, under the hypothesis that the global coal sector would be reducing its emissions by at least 60% in 2030, that the oil sector would need to reduce its absolute emissions by 35% in 2030 whilst the gas sector would have to reduce its absolute emissions by 18% in 2030. Apparently, Shell finds this oil and gas friendlier modelling more favorable for defining what should be done within the energy sector, but Shell even fails to align its scope 3 policy with these (or any) absolute emission reduction targets. Also, since there is no global coordination, outlook or guarantee that the coal sector will indeed do the heavy lifting until 2030, it is still necessary for Shell to align with what is on average necessary in the energy sector, namely a 45% emissions reduction by 2030. This 45% target is not only the global average but also the average that should be achieved by 2030 in the energy sector according to the IEA already in its WEO 2020. This is of course logical since fossil fuels provided by the energy sector produce about 75% of all global emissions. So without at least an average contribution by energy sector companies, the Paris goal is unachievable.

<sup>24</sup> Reference is made to several cases pending in the United States that seek redress for climate harms, including adaptation costs. See Annex 2 for more detail.

Committee, which is responsible for Shell's overall business and affairs.<sup>25</sup> Almost all members of the Executive Committee have a specific role to fulfill in climate change management.<sup>26</sup> The Board of Directors is responsible for oversight of climate change risk management.<sup>27</sup> The Board also approves Shell's energy transition strategy and has oversight of its implementation and delivery.<sup>28</sup> In general, the Board is responsible for among other things establishing the purpose, values and strategy and the overall direction of the Shell-group as well as approving of the group's long-term objectives and strategy.<sup>29</sup>

In light of this, the contents of this letter are relevant to the CEO, the other members of the Executive Committee and the full Board of Directors.

Milieudefensie recognizes that special circumstances are required before a company director can be held personally liable for damages caused to external stakeholders. This is true in the United Kingdom, in the Netherlands and essentially in all jurisdictions worldwide. Obviously, the legal standards for personal liability differ. However, there is ample reason to believe that such special circumstances could be present if directors fail to set their companies on a path to reduce emissions in line with the universal goal of preventing dangerous climate change, despite the clear consensus on what must be done and knowing full well that the next few years are critical to prevent global catastrophe.

In Annex 2 to this letter, Milieudefensie has included its views in relation to this topic. Annex 2 is not tailored to a specific jurisdiction, but describes the rapidly changing landscape of corporate accountability in relation to climate change.

It shows that the Court's judgment against Shell should not be viewed as one isolated judgment, but as part of a broader legal development that recognizes the responsibility of systemic players in the face of extraordinary facts and circumstances.

Annex 2 goes on to describe many significant legal, corporate, political and scientific developments that took place since the hearing in the case against Shell. This has an impact on how corporate behavior will be assessed, including in litigation, and indicates that liability risks are increasing. Corporations and their directors must realize that it is not just unlikely, but unthinkable that there will be less scrutiny towards their conduct and obligations in the years to come, while the window of action to still limit global warming to 1.5 °C and secure a livable planet is quickly closing.

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<sup>25</sup> <https://www.shell.com/about-us/leadership/executive-committee.html>

<sup>26</sup> Annual Report 2021, p. 76.

<sup>27</sup> Annual Report 2021, p. 76.

<sup>28</sup> Annual Report 2021, p. 76.

<sup>29</sup> <https://www.shell.com/investors/environmental-social-and-governance/board-of-directors.html>. See also Powering Progress, p. 27: "Climate change and risks resulting from greenhouse gas (GHG) emissions are a significant risk factor for Shell. They are managed in accordance with other significant risks through the Board and the Executive Committee."



The grave consequences of dangerous climate change for human life and all other life on earth are undeniable. The impacts of climate change are already felt across the globe and have affected all forms of life in every part of the world. These impacts will increase with time. However, if the critical threshold of 1.5°C is crossed, science tells us the global risks and damages will increase exponentially including systemic risks and damages across all industries and sectors. There is universal global consensus that rapid, deep and sustained cuts in greenhouse gas emissions are necessary to prevent this.

Under these extraordinary circumstances Milieudefensie believes that directors of fossil fuel majors and other systemic players could be personally liable next to the corporations they manage if they fail to do what is evidently necessary to help achieve the universal goal of the Paris Agreement and deliberately choose to pursue a path that is foreseeably unlawful, being well aware of the risks and consequences to global society.

If boards continue their denial of legal responsibility and fail to take Paris-aligned action, they also expose their companies to unprecedented liability risks for breach of their legal obligation to reduce emissions and the resulting perpetual damages on a global scale. This adds to the legal risks of incurring liability for cumulative contributions to global warming to date. The accumulation of these damages will exceed the financial capacity of even the wealthiest companies in the world, which is not just a threat to business continuity, but this would leave victims empty-handed. This too is or should be foreseeable for directors today and could lead to personal liability of directors next to the corporation.

## 5. Concluding remarks

Milieudefensie is convinced that the Court of Appeal will confirm Shell's individual legal responsibility in relation to climate change. This was true based on facts and circumstances in 2020 and the rapidly changing landscape of corporate accountability for climate change further supports that conviction (see Annex 2).

The world is looking at Shell and other major polluters to do what is necessary, not to wait until it is too late to limit global warming to 1.5 °C, for which the window of action is rapidly closing, as Shell readily admits.<sup>30</sup>

Once that window closes, the future will not look favorably upon those who had the power, position and resources to help prevent this but failed to do so for the sake of maintaining short-term profitability and chose to hide behind governments, capital markets and society as a whole to justify their lack of action.

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<sup>30</sup> Annual Report 2021, p. 3, although Shell refers to this as a "*window of success*".

Milieudefensie urgently calls on the CEO, the Executive Committee and the Board of Directors of Shell to voluntarily and immediately change its course in line with the judgment of the Court and in a way that does justice to the significant responsibility that weighs on those in positions of power to help prevent the worst crisis humanity has ever faced.

Milieudefensie will send a copy of this letter and the accompanying Annexes to large investors, who have to be aware of the material and increasing risks associated with a lack of Paris-aligned action. In addition, large investors have their own legal responsibility to align investments with the goals of the Paris Agreement. This proxy season, shareholders of fossil fuel majors around the world, including Shell, will be requested to vote on resolutions that call for absolute emission reduction targets in line with the Paris Agreement across all scopes of emissions. Investors that vote against these resolutions convey the message that they don't believe these companies have to be Paris-aligned. They will have to consider the risks of such a decision.

Milieudefensie reserves its rights towards both Shell and its directors.

Sincerely,

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R.H.J. Cox  
attorney

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M.J. Reij  
attorney

Annex 1 – Detailed substantiation on the misalignment between Shell's Powering Progress strategy and the judgment

Annex 2 – The risks of director liability in relation to climate change