The Omnibus I Negotiations in light of the ICJ Advisory Opinion on Climate Change

A legal and policy briefing for those negotiating Article 22 CS3D on climate transition plans

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Executive summary

This legal briefing is intended for policymakers within the European Commission, the Council, and the European Parliament, as well as at Member State level, involved in the trilogue negotiations on the proposed "Omnibus I" Directive,[1] particularly concerning Article 22 of the Corporate Sustainability Due Diligence Directive (**CS3D**).[2]

It examines the legal and policy implications of the Advisory Opinion delivered by the International Court of Justice (**ICJ AO**) on 23 July 2025[3] – a landmark development in the evolving international legal framework on climate change. Building on recent rulings from the European Court of Human Rights (**ECtHR**), the International Tribunal for the Law of the Sea (**ITLOS**) and the Inter-American Court of Human Rights (**IACtHR**), the ICJ AO further clarifies and strengthens the legal obligations of States – with direct implications for corporations – under international law. The ICJ AO reinforces the need for mandatory, actionable corporate climate transition plans (**CTPs**) aligned with the 1.5°C primary temperature goal of the Paris Agreement, and creates a heightened litigation risk landscape for both States and private actors.

Key take-aways for policy-makers and legislators

1. Clarification and confirmation of emerging international legal norms
Recent global judicial developments underscore a growing consensus that States and, given its international law obligations, the European Union (**EU**), have a general human rights duty to regulate companies in the context of climate change. The ICJ AO has reinforced and clarified States' legal obligations under international law in relation to climate change, including the specific duty to regulate the activities of private actors.

2. Undermining of CS3D objectives and the purpose of Article 22
Omnibus I amendments currently proposed by the European Commission, Council, and Parliament significantly weaken the existing legal requirements of Article 22. These changes risk stripping the provision of its normative force and directly undermine the CS3D's stated objectives: to support the energy transition and contribute to achieving international and European climate objectives.

3. Incompatibility with international legal obligations
When assessed against the ICJ AO, the proposed Omnibus I amendments appear irreconcilable with the Court's findings as to States' pre-existing obligations under international law. In particular, they fall short of the stringent due diligence standard required of States in regulating private actors within their jurisdiction or control in line with the 1.5°C temperature goal.

4. Legal exposure and litigation risks

[1] As proposed in the European Commission's Omnibus I package. This is the first simplification "omnibus" package of legislative proposals covering several pieces of corporate sustainability and investment legislation, including the Corporate Sustainability Due Diligence Directive (CS3D). There are currently several other "omnibus" simplification initiatives ongoing at EU level covering a number of pieces of other environmental and chemical legislation.
[2] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (CS3D).
[3] International Court of Justice, 23 July 2025, Advisory Opinion on the obligations of states in respect of climate change (ICJ Advisory Opinion).

In this context, any removal or dilution of the existing climate transition plan obligations in Article 22 of the CS3D would:

- ***Place the EU and its Member States in breach of their legal obligations and increase states liability risks:*** The ECtHR's ruling in *KlimaSeniorinnen v. Switzerland* set a legal precedent for State climate responsibility across Europe, a precedent that has been further reinforced by the ICJ AO. This confirms and expands the legal basis for holding States accountable for failing to provide the level of protection required by the European Convention on Human Rights (**ECHR**), as well as for failing to fulfil their due diligence obligations under international human rights and environmental law.
- ***Heighten legal exposure of companies*****:** The weakening or removal of obligations set out in Article 22 would not shield companies from the growing legal risks associated with the private sector's contribution to climate change. On the contrary, weaker regulation that leaves too much room for discretion in whether to have, and/or how to execute, a company's transition plan is more likely to increase their vulnerability to litigation, and to do so considerably, as judicial scrutiny of corporate climate inaction continues to advance. The Hague Court of Appeal recently confirmed that Shell has an independent duty to mitigate its emissions in line with the Paris Agreement, stemming from tort law. The Hamm Court of Appeal in Germany recently confirmed that major greenhouse gas emitters can be held liable for climate-related harms. A growing number of similar cases are pending across Europe and could lead to similar outcomes. In light of the far-reaching legal risks facing companies, a uniform legal framework across all EU Member States would not only ensure legal certainty for EU companies but enable a consistent approach to climate transition planning and delivery.
- ***Increase risks of legal challenges to the Omnibus I reforms:*** The Omnibus I reforms seek to weaken existing legal requirements aimed at reducing the environmental, human rights and climate impacts of the private sector. The proposed changes showcase the EU and Member States' failure to comply with their duty under international law to regulate the private sector effectively. There is therefore a credible risk of legal challenge to the final Omnibus I Directive on grounds that it frustrates the legislative intent of the CS3D, weakens core regulatory mechanisms without adequate justification, and are inconsistent with higher EU norms and international law.

Conclusion: Need for regulatory coherence and legal certainty

Retaining a robust and enforceable obligation for companies to adopt and implement CTPs under Article 22 is not merely a policy option – it is a legal duty. **Failure to do so would leave the EU and its Member States out of step with their obligations under international law and in a position of heightened legal vulnerability, exposed to increasing risks of climate litigation, judicial scrutiny – before national and international courts – and public accountability.**

1 Background: Recent developments in international climate jurisprudence

The past two years have seen several landmark legal rulings which provide a normative framework on the duties of States' and supranational institutions such as the EU in mitigating climate change under international law.

A number of rulings, including the European Court of Human Rights judgment in *KlimaSeniorinnen v. Switzerland*,[4] the International Tribunal for the Law of the Sea Advisory Opinion[5] and the Inter-American Court of Human Rights Advisory Opinion[6] already signaled a trend towards greater scrutiny of States' climate mitigation duty.

A. European Court of Human Rights (ECtHR) – April 2024, KlimaSeniorinnen v. Switzerland

The ECtHR ruled in April 2024 that Switzerland must take more ambitious climate action to protect the rights of a group of senior Swiss women – a ruling that is binding on all 46 signatory parties of the Council of Europe and on the European Union[7], and sets a legal expectation worldwide.[8]

- The Court affirmed that Contracting States bear the "primary duty to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change" by limiting global temperature rise to 1.5°C.[9]
- States, as the primary guarantors of human rights, must adopt, without undue delay, a "binding regulatory framework at the national level, followed by adequate implementation", in order to meet emissions reduction targets for 2030 and beyond, based on their fair share of the 1.5°C carbon budget.[10] The ECtHR established a list of objective criteria against which a State's conduct is to be assessed, thereby limiting States' margin of appreciation in determining the pace and scope of climate action.[11]
- Given the nearing depletion of the carbon budgets of most EU Member States – and the full depletion in some – the only way States can develop and implement national plans to stay within

[4] European Court of Human Rights (ECtHR), 9 April 2024, Judgment in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (*Klimaseniorinnen*).
[5] International Tribunal for the Law of the Sea (ITLOS), 21 May 2024, Advisory Opinion on climate harm and the marine environment (ITLOS Advisory Opinion).
[6] Inter-American Court of Human Rights (IACtHR), 29 May 2025, Advisory Opinion on the impacts of climate change on human rights (IACtHR Advisory Opinion).
[7] Under Article 6(3) of the Treaty on European Union (**TEU**), "Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms… shall constitute general principles of the Union's law". Under Article 6(2) TEU, the EU must accede to the ECHR, at which point breaches by the EU of obligations such as those clarified in the *Klimaseniorinnen* judgment could, under certain circumstances, be the subject of litigation before the ECtHR.
[8] ClientEarth Media reaction: Court ruling 'a European first for climate litigation'.
[9] *KlimaSeniorinnen*, op. cit., para. 545.
[10] Ibid, para. 549.
[11] Ibid, para. 550.

the remaining budgetary constraints is by promptly and adequately regulating the private sector, which remains a primary driver of greenhouse gas emissions.[12]

- The Court recognised that States must protect the right to respect for private and family life when environmental issues are "directly caused by the State or whether State responsibility arises from the failure to regulate private industry properly".[13]

B. International Tribunal for the Law of the Sea (ITLOS) – May 2024, Advisory Opinion on climate harm and the marine environment

The International Tribunal for the Law of the Sea – the world's authority on the Law of the Sea – issued its own advisory opinion on climate change in May 2024, finding that parties to the UN Convention on the Law of the Sea (**UNCLOS**), including the EU and all its Member States, must reduce their greenhouse gas emissions to comply with the Convention and specifically with its core obligation to protect and preserve the marine environment from pollution.[14] The Tribunal:

- concluded that anthropogenic GHG emissions in the atmosphere constitute "pollution of the marine environment" as defined Article 1(1)(4) of UNCLOS[15] and that this triggers the international law obligation to take "all measures…that are necessary to prevent, reduce and control" GHG pollution "from any source" under Article 194(1) of UNCLOS;[16]
- identified that this due diligence obligation under Article 194 is stringent (and even more in a transboundary context)[17] and requires parties to UNCLOS to put in place a national system, including legislation, administrative procedures, and an enforcement mechanism, to regulate GHG-emitting activities and to "make such a system function efficiently, with a view to achieving the intended objective";[18] and
- noted the role of private actors in the pollution of the marine environment through GHG emissions.

The Tribunal's findings on the State obligation to conduct environmental impact assessments are particularly relevant to business actors. It noted that it is often the cumulative impacts of an activity that cause significant impacts to the environment. The Tribunal therefore considered that planned activities, and their cumulative impacts, must be subject to an EIA, going beyond what is currently required in many jurisdictions around the world.[19] Similarly, the UK[20] and Norwegian[21] Supreme Courts, as well as the EFTA

[12] It is relevant to note that, in assessing whether a State is complying with its positive obligations under the Convention in the context of climate mitigation, the ECtHR will examine, inter alia, whether the State's efforts - particularly the targets or pathways established by sector - are deemed "*capable*" of achieving its national climate goals (see *KlimaSeniorinnen*, para. 550).
[13] Ibid, para 435, referring to Hatton and Others v. the United Kingdom [GC], no. 36022/97, para. 98, ECHR 2003-VIII.
[14] ClientEarth Media reaction: international tribunal issues a "landmark" opinion on ocean protection and climate change.
[15] ITLOS Advisory Opinion, op.cit., paras. 161-179.
[16] Ibid, paras. 187 and. 202.
[17] Ibid, paras. 396 and 399.
[18] Ibid, paras. 233 and 235, as well as paras. 248 and 258.
[19] Ibid, paras. 365 and 367.
[20] UK Supreme Court, 20 June 2024, Judgment in R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others, UKSC/2022/0064.
[21] Supreme Court of Norway, 22 December 2020, Judgment in Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy (People v Arctic Oil); See in the same vein: Oslo District Court, 18 January 2024, Greenpeace Nordic and Nature & Youth v. Energy Ministry (The North Sea Fields Case).

Court[22] have ruled that EIAs of fossil fuel projects must include an assessment of their scope 3 emissions. This was also confirmed by the ECtHR on 28 October 2025 in *Greenpeace Nordic & Others v Norway*.[23]

C. Inter-American Court of Human Rights (IACtHR) – July 2025, Advisory Opinion on the impacts of climate change on human rights

In July 2025, the Inter-American Court of Human Rights issued its own advisory opinion on what States must do to address climate change, which was heralded as ushering in a "new era of climate justice" as the Court unequivocally stated that States must do more to address the impacts of climate change.[24]

- The IACtHR found that businesses have obligations and responsibilities with respect to climate change and their impacts on human rights.[25]
- It affirmed that States are required to regulate and monitor corporate emissions under international law, reflecting the role that businesses play in contributing to the climate crisis. In particular, the Court considered that States must require business enterprises to conduct due diligence, to take measures to reduce their emissions, and to address their contribution to the climate and to climate mitigation targets, throughout their operations.[26]
- The IACtHR also highlighted that companies, especially those with significant historical or current emissions, have a particular responsibility to avoid causing or contributing to climate-related harm.[27]

These legal developments pointed to the existence of a general human rights duty on States to regulate companies, requiring them to impose due diligence obligations, including in the context of climate change.

2 The ICJ Advisory Opinion: Core findings

On 23 July 2025, the ICJ – the principal judicial organ of the United Nations – unanimously issued its first-ever advisory opinion on climate change. The opinion was requested by Vanuatu and other States seeking guidance on how international law applies to the climate crisis. It constitutes a major development in international environmental law, confirming the jurisprudential trend outlined above by further clarifying the legal obligations of States under international law in relation to climate change. The Court made it clear that:

- A clean and healthy environment is the **foundation for human life** and human rights protected by international law.[28] This means that in order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment,

[22] EFTA Court, 21 May 2025, Judgment in Norway v. Greenpeace Nordic and Nature and Youth Norway, Case E-18/24.
[23] ECtHR, 28 October 2025, Judgment in Greenpeace Nordic and Others v. Norway, para. 319.
[24] ClientEarth Media reaction: landmark Inter-American court decision heralds a new era of climate justice, lawyers say.
[25] IACtHR Advisory Opinion, op. cit., para. 346.
[26] Ibid, paras. 346-347.
[27] Ibid, para.353.
[28] ICJ Advisory Opinion, op. cit., para. 393. See notably David R. Boyd, A Right Foundational to Humanity's Existence, Verfassungsblog, 30 July 2025.

including through mitigation and adaptation measures, the adoption of standards and legislation, and the regulation of the activities of private actors.[29]

- **Climate change prevention is a binding legal obligation**, not a discretionary matter of policy. The ICJ frames the duty to prevent climate harm as a core State obligation derived from international customary law – particularly the principle of "no-significant-harm" – and binding treaty obligations.[30] If States fail to curb the production and consumption of fossil fuels, or if they approve fossil fuel projects and spend public money for fossil fuel interests, they could be in breach of international law.[31]
- Importantly, **States have a duty to regulate private actors' GHG emissions**. This includes not just passing climate laws, but ensuring such laws are effectively implemented and enforced.[32] A State's failure to regulate the emissions of private actors within its jurisdiction or control – which include extraterritorial emissions – may amount to an internationally wrongful act, triggering consequences under the law of State responsibility.[33]
- Compliance with these obligations requires "**stringent" due diligence** from States because of the severe risks indicated by the best available science.[34] Additionally, the ICJ reaffirmed the findings of ITLOS (see above), noting that the obligation of due diligence is "particularly relevant in a situation in which the activities in question are mostly carried out by private actors or entities".[35]
- With regard to States' obligation to prepare, communicate, and maintain nationally determined contributions (**NDCs**),[36] States have **limited discretion** with regard to their content, particularly as they must reflect States' **"highest possible ambition"**[37] and be capable, when taken together, of realising the objectives of the Paris Agreement, including the goal of limiting global temperature rise to 1.5°C above pre-industrial levels.[38] While the ICJ AO's primarily addresses States' duties, it also signals the need for stronger regulation of private actors: in practice, States cannot meet their international climate mitigation targets without significant reductions from corporations, which are responsible for a substantial share of global emissions.
- The obligation to "adopt national policies and take corresponding measures on the mitigation of climate change" is not fulfilled merely by the formal adoption of such policies and measures but also requires that these are sufficiently **effective and robust** to deliver real emissions reductions.[39] This implies the need for an objective assessment of the ambition, design, and likely impact of climate legislation and regulation, including in relation to corporate actors.
- States' obligation to implement their NDCs through domestic mitigation measures requires them to use **"best efforts" in line with the "best available science"** to achieve their NDCs, and the measures proposed must be "reasonably capable of achieving" States' NDC targets.[40] These

[29] Ibid, para. 403.
[30] Ibid, aras. 272–300, 230-254 and 404.
[31] Ibid, para. 427.
[32] Ibid, para. 403.
[33] Ibid, paras. 95, 252, 282, 427 and 428.
[34] Ibid. paras. 138, 246, 268.
[35] Ibid, para. 252 and ITLOS AO, op. cit., para. 236.
[36] Ibid, paras. 235-236.
[37] Ibid, paras. 245-246.
[38] Ibid, paras. 245 and 249.
[39] Ibid. para. 208.
[40] Ibid, paras. 251-254.

obligations require more than formal adoption of climate policies; they demand tangible and genuine implementation efforts informed by sound scientific research.

- Historical emitters (i.e. countries who have burned the most fossil fuels for the longest periods of time) **bear heightened obligations**, including potential responsibility for reparations for States enduring the worst of the climate crisis.[41]
- **The 1.5°C is the primary temperature goal** for limiting the global average temperature increase.[42] The obligation to limit global temperature rise to 1.5°C under the Paris Agreement thus remains legally binding and non-negotiable, regardless of current emissions trajectories or political feasibility. Even if global emissions have not fallen at the required rate, and the 1.5°C target is on track to be exceeded, States cannot simply shift to a less ambitious target. On the contrary, they are in fact required to increase their climate mitigation efforts.[43]

The distinct mitigation duty of companies

Alongside State's duty to regulate, the private sector bears a distinct duty to mitigate. These duties are complementary and reinforce one another in addressing climate challenges. The distinct mitigation duty of companies was confirmed by the Hague Court of Appeal ruling in *Shell v. Milieudefensie.*[44]

In November 2024, the Hague Court of Appeal (**CoA**) upheld the landmark 2021 District Court decision in *Shell v. Milieudefensie*, confirming that large corporations, including fossil fuel companies, have an existing and enforceable duty of care under Dutch law to reduce their GHG emissions in line with the goals of the Paris Agreement. Unlike the District Court in 2021, the CoA ruled that it cannot determine by what percentage Shell must reduce its emissions. Nevertheless, the decision further strengthens the international trend recognising that corporate actors have direct obligations to mitigate climate change and that States, in turn, have a duty to ensure those obligations are enforced.[45]

The Court confirmed that protection from dangerous climate change is a human right, and that Shell, as a major corporate emitter, has a duty to respect those rights by reducing emissions across its value chain.[46]

Shell and other large polluting companies must make an adequate contribution to achieving the objectives of the Paris Agreement, including limiting warming to 1.5°C.[47]

The Court emphasized that large companies bear responsibilities not only for reducing their operational CO2 emissions and those of their suppliers (Scope 1 and 2), but also for reducing the CO2 emissions of their products (Scope 3) which typically constitute the majority of fossil fuel companies' climate impact.[48]

[41] Ibid, para. 292.
[42] Ibid, paras. 224-225.
[43] Ibid. paras. 244–247. See notably on this Rogelj J, Rajamani L, The pursuit of 1.5°C endures as a legal and ethical imperative in a changing world, Science, 19 June 2025.
[44] The Hague Court of Appeal (CoA), 12 November 2024, Judgment Shell Plc v. Stichting Milieudefensie and Others (*Shell v. Milieudefensie*).
[45] Milieudefensie, Milieudefensie vs. Shell - Summary of the ruling on appeal.
[46] The Hague CoA, op. cit., paras. 7.17 and 7.27.
[47] Ibid, para. 7.9.
[48] Ibid, para. 7.99.

The ruling also noted that the development of new oil and gas fields may be incompatible with the Paris Agreement's goals,[49] reinforcing the need for a rapid transition away from fossil fuel expansion.

Crucially, the Court found that large companies which have historically contributed to dangerous climate change bear a heightened responsibility to prevent further harm.[50]

Both the ICJ AO and the Shell CoA decision affirm that ambitious corporate regulation is not optional - it is essential for States to meet their international mitigation targets. The CS3D is a crucial instrument through which the EU and its Member States operationalize this dual responsibility - ensuring that corporate mitigation duties are effectively enforced as part of States' own duty to safeguard human rights affected by climate change.

3 Implications for the Omnibus I negotiations on climate transition plans

This section first unpacks Article 22 CS3D and the proposed amendments under the Omnibus I reform process. It then assesses how the recent ICJ AO increase litigation risks for EU Member States and heightens the legal exposure of companies if the existing obligation to adopt and put into effect 1.5°C-compatible CTPs is weakened or removed. Finally, it looks at the risks of legal challenges should the Omnibus I reforms weaken or remove the existing CTP obligations.

A. Article 22 CS3D and the amendments proposed under the Omnibus I reform process

The Paris Agreement is an international agreement that forms an integral part of EU law: it binds the EU and its institutions and influences legal interpretation. By adopting the European Climate Law, the EU legally committed to becoming climate-neutral by 2050 and to reducing GHG emissions by at least 55 % by 2030.[51] These commitments not only guide public policy but also shape corporate responsibilities, creating a link between States obligations under international climate law and the duties of companies operating within the EU.

The CS3D, adopted on 13 June 2024, acknowledges the central role of the private sector in achieving the objectives of the Paris Agreement, in addition to the specific actions expected from all State Parties.[52] The Directive recognises that the European Climate Law objectives necessitate changing the way in which companies produce and procure.[53] Article 22 CS3D on climate transition plans is a cornerstone provision designed to ensure the Directive contributes meaningfully to combating climate change and achieving both international and EU climate objectives.[54]

Under the existing text, Article 22 requires all in-scope companies (EU and non-EU) to adopt and *put into effect* a CTP that sets out how the company will, through *best efforts*, adapt its business model and

[49] Ibid, para. 7.61.
[50] Ibid, para. 7.26.
[51] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law).
[52] CS3D Recitals 8-10.
[53] CS3D Recital 11.
[54] Ibid, see notably Recital 73.

strategy and reduce its GHG emissions to ensure compatibility with the transition to a sustainable economy and limiting global warming to 1.5°C, as required by the Paris Agreement. The article also outlines the key elements of a credible plan – emissions reduction targets, decarbonisation levers, investments and funding, and governance structures – aligned with the Corporate Sustainability Reporting Directive (**CSRD**). In other words, Article 22 is the corporate corollary of the States' climate due diligence duties.

However, **the Commission's Omnibus proposal**, published on 26 February 2025, significantly undermines the obligations set out in Article 22 and presents a real risk of EU Member States falling foul of their international law obligations as clarified by the ICJ.[55] It proposes deleting the requirement to "put into effect" CTPs, introducing instead an obligation for companies to only include "implementing actions" in their plans.

The Council, in its 23 June 2025 negotiating mandate, proposed to dilute Article 22 further.[56] It retains the deletion of the obligation to "put into effect" the plans and further downgrades the requirement to merely "outlining" implementing actions. It also makes the adoption of transition plans entirely optional during the first two years of the Directive's application. Furthermore, it lowers the standard of conduct from "best efforts" to "reasonable efforts", and replaces the requirement to ensure "compatibility" with the Paris Agreement with a requirement to merely "contribute" to the Paris Agreement's objectives. Finally, the Council proposes to turn the previously mandatory content of CTPs into entirely voluntary requirements and significantly reduce the powers of supervisory authorities, limiting them to verifying whether a plan was adopted, without assessing the plan's design, credibility, or effectiveness.

After several twists and turns,[57] the final position adopted by **the European Parliament** on 13 October is to simply delete Article 22.[58]

By seeking to completely eliminate Article 22 or strip the provision of its normative force, the proposed changes directly undermine the CS3D's objective to support the energy transition and contribute to achieving international and European climate objectives.

Moreover, when assessed against the ICJ AO as well as the other recent legal developments mentioned above (see section 1 and 2), these proposed changes appear irreconcilable with the evolving obligations of States – and, by extension, of companies subject to State regulation – under international law. If adopted, the weakening of the existing CTP requirements under Article 22 would likely be inconsistent with international law for the following reasons:

(i) Removal of the duty to implement

Article 22 was originally worded in such a way as to impose both an obligation of result (to adopt a CTP) and an obligation of conduct (to "put it into effect"). By replacing the explicit legal obligation to "put [CTPs] into effect" with vague alternatives – "including" (Commission) or "outlining" (Council) implementing actions, the proposed changes give rise to ambiguity at best and procedural box-ticking at worst. The proposals raise questions as to whether companies would still be required to implement their plans at all and, if so, whether they must implement them in their entirety or whether a few actions would be sufficient.

[55] European Commission Proposal for a directive of the European Parliament and the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, COM(2025) 81 final.
[56] Council of the European Union Negotiating Mandate on the Proposal for a directive of the European Parliament and the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements.
[57] EU lawmakers reject deal to simplify sustainability rules in major upset | Euractiv.
[58] Report | Texts tabled | Plenary | European Parliament.

It also raises questions as to when a sufficient level of "implementing actions" have been taken to comply with Article 22.

This risks reducing Article 22 to a mere planning or disclosure exercise rather than a substantive requirement to take positive climate action, thereby encouraging greenwashing.[59] Transparency alone does not guarantee action: an express legal obligation on companies to take actions consistent with their transition plan disclosure is necessary to address the implementation gap. Indeed, many companies set climate targets without monitoring progress or implementing the actions they propose. This disconnect creates reputational and legal risks for both companies and governments.

Consequently, these proposed changes stand in direct contradiction to the ICJ AO, which emphasises that national policies must not only be adopted but also effectively implemented. Merely symbolic transition plans may evidence a failure by States to demonstrate the execution of "best efforts" in "taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction."[60] Indeed, weakening the existing CTP requirements Article 22 seems rather more inconsistent with best efforts to regulate private sector in line with achieving the Paris climate target. In short, merely requiring the adoption of a plan is not enough, and may be unlawful. Without demanding concrete implementing actions, such a provision would not fulfil States' obligations.

(ii) Lowering of the standard of efforts required

The shift from "best efforts" to "reasonable efforts" introduces a substantially lower standard. "Best efforts", as currently elaborated in CS3D Recital 73, obliges companies to explore and deploy all reasonable and available means, without demanding unrealistic sacrifices. "Reasonable efforts", by contrast, is defined by the Council's mandate as reasonable and proportionate steps or actions that do not require companies to exhaust all possible means at their disposal. The Council's reference to "best industry practices" is particularly problematic given that current industry practices fall short of aligning their business models with the speed and scale required to prevent dangerous global warming.[61] This wording thus risks further lowering the standard of effort required, arguably making the 1.5°C target more challenging to achieve.

This change would give companies greater leeway to determine the intensity and timing of their mitigation measures, potentially justifying reduced ambition by invoking proportionality or questioning the reasonableness of certain actions in the context of their operations or business model. This could open the door, for example, to companies ultimately abandoning any target for reducing their indirect Scope 3 which typically represent the largest portion of corporate carbon footprints.

These proposals to reduce the standard of effort required to implement CTPs – thereby reducing the effort required from private actors to mitigate their climate impacts – stand in sharp contrast to the conclusions of the ICJ, ITLOS and IACtHR AOs. The ICJ AO notably affirms that, for obligations of conduct, States must use "all means at their disposal" to meet the required objective.[62] Adopting a lower standard for private actors creates a double standard between public and private actors in addressing climate change.

[59] See notably the ECB on this, Opinion on proposals for amendments to corporate sustainability reporting and due diligence requirements (CON/2025/10), 8 May 2025, para. 4.1.2.
[60] ICJ AO, op. cit., para. 428, *see also id.*, para .236, 253.
[61] Corporate Climate Responsibility Monitor 2025 | NewClimate Institute.
[62] ICJ AO, op. cit., para. 229. *See also* IACtHR AO, op. cit., para. 232; ITLOS AO, op. cit., para 233.

(iii) From "compatibility" to "contribution"

The Council's proposed change from ensuring "compatibility" with the Paris Agreement to merely "contributing" to it introduces legal uncertainty. Compatibility can be objectively assessed against established 1.5°C pathways (e.g., the International Energy Agency's Net Zero Emissions scenario); contribution, by contrast, is inherently vague.

This ambiguity risks allowing major European oil and gas companies as well as energy producers to argue that mere compliance with the EU Emissions Trading System (**ETS**),[63] constitutes sufficient "contribution" to the reduction of GHG emissions – regardless of whether their business model and strategies are aligned with the 1.5°C goal.[64] This also means that a company could argue that the development of new gas infrastructure to replace coal-fired power plants could "contribute" to emissions reduction. However, the best available science unequivocally indicates that new fossil fuel projects are "incompatible" with the 1.5°C temperature target,[65] and the Hague CoA noted that these projects may be incompatible with Shell's duty to mitigate its climate impacts.[66] These examples demonstrate the fundamental difference between obligations of compatibility and contribution.

This Council's proposed change also departs from the standard articulated in the ICJ AO. In combination with the shift from "best efforts" to "reasonable efforts", it would further lower the standard of corporate accountability and fall short of the due diligence standard required for States to regulate private sector GHG emissions. The ICJ makes clear that this standard is stringent, requiring "best efforts", the "highest possible ambition", and alignment with the "best available science".

(iv) Optional adoption and voluntary content

Rendering the adoption of CTPs optional during the first two years of implementation, as proposed by the Council, means that companies would not be required to publish their first plans until around 2030 under the currently proposed transposition schedule. For those subject to the requirements in later implementation waves (for example the so-called 2029 wave), the obligation could be delayed until as late as 2032.

This shift is likely to have a significant impact on the ambition of the first transition plans, which will no longer have to set out their contribution to the European Climate Law short-term target (2030) and will focus solely on the interim (2040) and long-term (2050) targets. This is inconsistent with IPCC findings, which stress the necessity of immediate actions and emissions reductions before 2030 to avoid dangerous warming, tipping points and overshoot.[67]

Moreover, making the content of CTPs entirely voluntary, as proposed by the Council, risks hampering the consistency, comparability, and credibility of transition planning across the EU. It would remove any

[63] Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Union and amending Directive 96/61/EC (consolidated version), as amended in 2018 by Directive (EU) 2018/410.
[64] However, the Hague CoA in *Shell v. Milieudefensie* explicitly rejected the argument that compliance with the ETS necessarily fulfills a company's duty to mitigate its emissions, see paras. 7.50-7.54 of the judgment.
[65] Green et al., No new fossil fuel projects: the norm we need (2025) 384 Science, pp. 954-957; IPCC, Summary for Policymakers, in Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2023), p. 19.
[66] The Hague CoA, op. cit., paras. 7.61.
[67] See IPCC, Special Report, 'Global Warming of 1.5 °C', Summary for Policymakers, D.1, p. 18 ; IPCC, AR6, WGIII, "Mitigation of Climate Change", Summary for Policymakers, Apr. 2022, p. 17, §C.1.

common baseline for assessing whether a plan is effective, undermining both legal certainty and regulatory coherence.

Crucially, this also means removing mandatory requirements for sufficient action on Scope 3 emissions. This structurally favours perverse outcomes where companies can comply whilst expanding Scope 3 emissions, usually the biggest source of emissions, and whilst failing to align their business models with a decarbonising future.

The Council's proposed changes would reduce the overall effectiveness of Article 22 in delivering emissions reductions and are inconsistent with States' due diligence obligations articulated in the ICJ AO. By delaying the existing CTP obligation, States arguably fall short of providing a timely, science-aligned regulatory tool essential for achieving the deep, rapid, and sustained emissions reductions required under international law. By removing the mandatory content of the plan, the proposed changes also erode consistency, comparability, and enforcement of CTPs across the private sector. This, in turn, removes a critical source of information for designing and reviewing ambitious NDCs, as well as a key instrument for supporting their implementation. This delay ultimately displaces responsibility onto future generations, failing to show "[d]ue regard for the interests of future generations … [which] need to be taken into account where States contemplate, decide on and implement policies and measures in fulfilment of their obligations under the relevant treaties and customary international law."[68]

(v) Weakened supervisory powers

According to the Council's proposal, supervisory authorities' powers would be restricted to verifying whether a company has adopted a plan (a "tick box" approach), without assessing its design, credibility, or alignment with climate targets.

This change seriously compromises accountability and enforcement, in direct contradiction to the ICJ AO, which affirms that State measures to regulate corporate emissions must be "accompanied by effective enforcement and monitoring mechanisms."[69] A system where supervisory bodies lack the power to assess the credibility and ambition of corporate CTPs is plainly insufficient to satisfy States' due diligence obligations as articulated by the ICJ.

(vi) Complete deletion of climate transition plan requirements

The European Parliament's proposal to delete Article 22 in its entirety represents the most far-reaching dilution of the CS3D's climate provisions. It would remove the CS3D's only mechanism that directly operationalises the private sector's role in achieving EU and international climate objectives. This would create a regulatory gap that is difficult to reconcile with the obligations of Member States under international law, as clarified by the ICJ Advisory Opinion. The ICJ affirmed that States must adopt and implement regulatory measures, supported by effective monitoring, to limit emissions from private actors and to act with "stringent" due diligence in light of the severity of climate risks.

Eliminating Article 22 would therefore amount to a clear failure to exercise the "stringent due diligence" required under international law. It would be inconsistent with States' international law obligation to use

[68] ICJ AO, para. 157.
[69] Ibid, para. 282.

all means at their disposal to regulate private entities in a manner practically capable of reducing emissions, as required by the best available science.

B. Increased State liability risks

As outlined above, if the Omnibus I final text includes the amendments proposed by the Commission, Council or Parliament, it would likely fall short of the stringent due diligence standard required of States in regulating private actors within their jurisdiction or control in line with the 1.5°C temperature goal. **This regulatory gap risks placing the EU and its Member States in breach of binding international obligations, including duties to:**

- Protect human rights from foreseeable climate-related harm (as per the ECtHR in *KlimaSeniorinnen v. Switzerland,* the IACtHR and ICJ opinions);
- Prevent transboundary environmental damage (as per the ITLOS and ICJ opinions);
- Prevent harm to the climate system (as per the ITLOS, IACtHR and ICJ opinions);
- Submit NDCs that are "capable of making an adequate contribution to the achievement" of 1.5°C (as per the ICJ AO).

The ECtHR's April 2024 ruling in *KlimaSeniorinnen v. Switzerland* serves as a legal precedent for such liability. In that case, the Court held that the Swiss government violated Articles 2 and 8 of the ECHR by failing to adopt and implement adequate climate measures – despite having procedural frameworks in place. The Court was unequivocal: binding targets, based on a fair-share 1.5°C carbon budget, are required. Mere intentions or procedural gestures are not sufficient to discharge a State's obligations.

This position is reinforced by the ICJ AO, which confirms and expands the legal basis for holding States accountable for failing to meet the standard of protection required under human rights law and for failing to meet their due diligence obligations under international human rights and environmental law. It also signals that courts across the world will continue to play a key role, even an enhanced role, in holding States accountable.

In sum, retaining a strong and enforceable obligation to adopt and implement robust CTPs is not only a policy imperative but a legal duty. Failure to do so will place the EU and its Member States in a position of legal vulnerability – legally exposed in the face of increasing public scrutiny and judicial oversight.

C. Heightened legal exposure of companies

Courts across the EU are already playing a decisive role in enforcing not only state but also corporate climate obligations – and this role is only set to intensify.

As noted above, the Hague CoA held in *Shell v. Milieudefensie* that "companies like Shell … have an obligation to limit CO2 emissions … even if this obligation is not explicitly laid down in (public law) regulations" and "have their own responsibility in achieving the targets of the Paris Agreement".[70] The Court confirmed that this best effort obligation requires absolute emission reduction targets covering Scopes 1, 2, and 3.[71]

[70] The Hague CoA, op. cit.,, para. 7.27.
[71] Ibid, paras. 7.96, 7.99, 7.111.

Since then, several other similar cases against large companies – e.g. TotalEnergies,[72] EN,I[73] VW,[74] BNP Paribas,[75] ING,[76] and Holcim[77] – have been brought to courts across the EU, in which plaintiffs seek alignment of corporate policies with the 1.5°C temperature target. Companies contributing to climate change are also facing growing claims for damages – e.g. RWE[78], Shell[79] – and greenwashing claims are on the rise, with a particular focus on corporate transition misstatements.[80]

The weakening or removal of Article 22 obligations would not shield companies from the growing legal risks associated with the private sector's contribution to climate change. On the contrary, regulatory gaps at the EU level will allow divergent national approaches to corporate transition planning, increasing the likelihood that courts will delineate the obligations of private actors. A driver of this dynamic is the increasing occurrence, visibility and costs of climate impacts in Europe, which are forecast to escalate significantly in coming years.[81]

The ICJ AO not only paves the way for State disputes over transboundary climate harms, but also provides support for litigants, including civil society, shareholders, and affected communities, who bring claims against companies whose corporate transition strategies are misaligned with international obligations – especially Paris Agreement obligations. Specifically, the ICJ confirms that the best available science – as represented in the IPCC's reports – indicates that global average temperature increase beyond 1.5°C constitutes a significant risk to the climate system and human rights and that this is the scientifically-based consensus target.[82] This will serve as persuasive authority in domestic courts seeking to assess corporate responsibility for climate harm. As such, companies which develop and implement robust, 1.5°C-aligned transition plans under Article 22 will heighten their prospects of complying with their duty to mitigate emissions.

At a minimum, businesses should anticipate:

- Greater scrutiny of the content, credibility, and implementation of their transition plans;
- Legal liability, including in national Courts, for failure to align with applicable international climate obligations, including the Paris Agreement temperature target, and international human rights law;[83]
- Increased exposure to claims for failing to implement science-based, time-bound emissions reduction measures;
- Claims to remedy climate-induced loss and damage and related human rights infringements, particularly where companies are identified as significant contributors to one or more States' emissions and/or other climate impacts.

Clear and binding requirements on CTPs can thus help companies by creating a transparent and predictable operating environment, reducing litigation risks and the costs and consequences of drawn-out

[72] Notre Affaire à Tous et al. v. Total; Falys et al. v. TotalEnergies.
[73] Greenpeace Italy et. al. v. ENI S.p.A., et. al.
[74] Allhoff-Cramer v. Volkswagen AG.
[75] Notre Affaire à Tous Les Amis de la Terre, and Oxfam France v. BNP Paribas.
[76] Milieudefensie v. ING Bank - Climate Change Litigation.
[77] Asmania et al. v. Holcim.
[78] German Regional Court of Hamm, 28 May 2025, Judgment in Luciano Lliuya v. RWE AG.
[79] Shell hit with legal action over climate damages by Typhoon Odette survivors, 23 October 2025.
[80] ClientEarth Media reaction: TotalEnergies' greenwashing advertising has been ruled illegal.
[81] European Climate Risk Assessment | Publications | European Environment Agency (EEA).
[82] ICJ AO, op. cit., paras. 224, 437.
[83] This is consistent with the ICJ's conclusion that the adverse effects of climate change may impair the effective enjoyment of human rights. *See* ICJ AO, op. cit., para. 386.

legal challenges, and lifting barriers to sustainable finance. Delayed action will only make the eventual transition more disruptive, costly, and legally fraught.

D. Increased risks of legal challenges to the final Omnibus I Directive

If the changes proposed by the Commission, Council or Parliament are ultimately adopted during the trilogue negotiations, there is also a credible risk of legal challenges against the Omnibus I Directive on the grounds that it undermines the objective the CS3D to contribute meaningfully to combating climate change and to achieving both international and EU climate goals. Such changes could be viewed as weakening core regulatory mechanisms without adequate justification, thereby conflicting with higher-ranking EU norms and international law.

There are indeed serious concerns that the removal or weakening of Article 22 would undermine the EU's objective to uphold a high level of environmental protection, as well as the EU's commitments to reach climate neutrality by 2050 and to reduce net greenhouse gas emissions by at least 55% by 2030 compared to 1990, as enshrined in the European Climate Law. Both substantive and procedural grounds may be invoked. For example:[84]

- Weakening Article 22 may breach the obligations to protect the rights found in the EU Charter of Fundamental Rights (**CFR**) and the principle of proportionality (Article 5(4) TEU);
- It may violate the principle of coherence (Article 7 TFEU) and the EU's duty to ensure a high level of environmental protection (Article 11 TFEU, Article 37 CFR); or
- The change could amount to a limitation on fundamental rights under Article 52(1) CFR when viewed through the lens of the non-regression principle.

Such challenges may arise before the Court of Justice of the EU (CJEU), which could be asked to assess the validity of the final Omnibus I Directive under:

- Article 263(2) of the Treaty on the Functioning of the European Union (**TFEU**) (action for annulment, e.g., for infringement of EU Treaties or essential procedural requirements); or
- Article 267 TFEU (preliminary reference on validity from national courts).

Importantly, the Commission did not assess the potential impact of the Omnibus proposal on climate change. Despite deleting the obligation to implement transition plans, the Commission's Explanatory Memorandum, Staff Working Document and Q&A accompanying the Omnibus proposal do not provide any explanation on how the amended CS3D would still allow the EU and Member States to meet their climate goals. This constitutes a failure to assess whether the proposed amendments are consistent with the EU's legally binding climate targets, as required by Article 6(4) of the European Climate Law. This is a significant omission, given the crucial role of the CS3D, particularly Article 22, in advancing the EU's energy transition and supporting climate objectives under the European Green Deal. It also means the co-legislators lack sufficient information to assess the proportionality of the Omnibus I proposal and its consistency with EU climate objectives – which could be considered as a breach of essential procedural requirements.

In the post-*KlimaSeniorinnen* and post-ICJ AO era, the EU's legislative discretion is even more constrained by the expanding fundamental international and constitutional obligations which arise from the increasing

[84] See notably on this analysis by law firms CIRIO, May 2025, The Legal Validity of the Omnibus Package: A Charter Rights Analysis, and Baldon Avocats, June 2025, Potential legal challenges under EU law to the proposed Omnibus directive.

body of evidence on climate change, its impacts, and its solutions. A weakened version of Article 22, if adopted, would be legally vulnerable and open to be challenged before EU courts. Such litigation could result in years of legal uncertainty for EU citizens, businesses, and policymakers, undermining regulatory stability.

4 Policy recommendations

Given the ICJ AO and broader jurisprudential trend, we recommend maintaining a firm position on the following elements in the final Omnibus Directive:

1. **Preserve the Article 22 obligation to adopt and put into effect transition plans (the behavioural duty)** to ensure companies adhere to their mitigation duty - and not merely disclose. Transparency alone does not guarantee action: an express legal obligation on companies to take implementing actions consistent with their transition plan is necessary to address the implementation gap (many companies set climate targets without monitoring progress and implementing the actions they disclose).
2. **Maintain the "best efforts" standard** and ensure any definition reflects the scale and urgency of the climate crisis. Companies must take effective and appropriate actions, based on best available science, to implement their transition plans and strive to achieve the greenhouse gas emission reduction targets included in their plans. The CS3D already strikes a balance and offers flexibility to companies by characterising the duty to implement as an obligation of means, not of results, and by recognising that there are factors beyond companies' control that may affect the deliverability of a plan.[85] Therefore, there is no need to lower the standard of efforts further by replacing "best efforts" with "reasonable efforts". Instead, the CS3D could provide further guidance, for example by referring to science-based and Paris-aligned transition pathways including short, medium, and long term targets. Where available, these pathways provide benchmarks and timelines that are aligned with the Union's climate targets and the global temperature goal of limiting warming to 1.5°C above pre-industrial levels.
3. **Maintain the requirement to ensure compatibility with, not mere contribution to, the Paris Agreement and the European Climate Law**. This is essential to avoid lowering the standard of corporate accountability and to ensure legal certainty and alignment with CSRD and other international transition plan requirements.
4. **Retain mandatory content elements for transition plans** (including "time-bound targets related to climate change for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence, and, where appropriate, absolute emission reduction targets for greenhouse gas for scope 1, scope 2 and scope 3 greenhouse gas emissions"). This ensures coherence with CSRD reporting requirements and provides a baseline for comparability and regulatory certainty across the single market.
5. **Strengthen and retain the mandate for supervisory authorities to monitor not only the adoption, but also the design, implementation and progress of CTPs.** Supervisory oversight is crucial to ensure the behavioural duty translates into measurable and verifiable corporate action.

[85] CS3D Recital 73.

6. **Maintain alignment with the European Climate Law and the Paris Agreement, including reference to the 1.5°C limit and the 2030 and 2040 intermediary targets.** The ICJ has made it clear that 1.5°C is the primary legally binding target for limiting global average temperature increase under the Paris Agreement. Removing the 1.5°C reference in the CS3D will not remove nor reduce legal risks for companies. This is because every tonne of CO_2 emitted today causes more harm than one emitted in the past. As climate damage worsens, legal obligations to prevent harm and human rights violations tighten. The 1.5°C reference helps define what a reasonable and proportionate corporate climate transition looks like. It is a tool that protects companies from litigation and ensures alignment with emerging case law and international expectations.
7. Include clear language in the recitals highlighting that the mandatory adoption and putting into effect of 1.5°C aligned transition plans is necessary to prevent greenwashing, align corporate conduct with international and EU legal obligations, and protect both States and companies from litigation and regulatory scrutiny.

5 Conclusion

The ICJ AO confirms that States have a binding legal duty to regulate private sector contributions to climate change, and that the 1.5°C goal remains central under international law. In this context, any removal or dilution of the existing CTP requirements in Article 22 of the CS3D would:

- Breach EU and Member State obligations under international law;
- Increase litigation risks for the EU, its Member States, and heighten legal exposure of its businesses, as well as potential legal challenges against the Omnibus Directive;
- Undermine the credibility and enforceability of the EU climate framework.

A strong, enforceable Article 22 – with clear obligations on climate transition planning and implementation – is essential to achieve regulatory coherence, legal certainty, and risk mitigation for both public and private actors across the EU.

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