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Legal Scholars Concerned about the Weakening of Article 22 CSDDD on Climate Transition Plans

We are a group of legal scholars writing to express our concern regarding an amendment in the 'Omnibus Simplification Package' (**Omnibus**) proposed by the European Commission, which would significantly weaken Article 22 of the Corporate Sustainability Due Diligence Directive (**CSDDD**). The proposed amendment would weaken Article 22 by removing the obligation for Climate Transition Plans to be 'put into effect'.[1]

We strongly advise against this proposed weakening of Article 22. Our concerns, which we explain in more detail below, are fourfold: **(1)** states' legal obligation to regulate corporate greenhouse gas (**GHG**) emissions would not be met; **(2)** the internal market would fragment and litigation risk would increase; **(3)** disclosure without follow-through may increase companies' liability exposure ; and **(4)** without guiding regulations, corporate climate transitions will be more disorderly and costly.

Before explaining these concerns, we briefly set out the background to the provision and the current Omnibus proposal.

Background to Article 22 of the CSDDD

By adopting the European Climate law, the Union legally committed to becoming climate-neutral by 2050 and to reducing GHG emissions by at least 55 % by 2030. Both commitments will require companies operating in Europe to reduce their emissions over time. Article 22 of the CSDDD supports companies to undertake that transition (see notably Recitals 11 and 73). Without a clear obligation for large companies to adopt and put into effect a Climate Transition Plan in line with the Paris Agreement's goal of limiting global temperature rise to 1.5^{C}, the EU and its Member States will likely be unable to reach their GHG emission reduction targets.

Article 22 of the CSDDD contains an obligation for companies to adopt and implement Climate Transition Plans, in which companies must explain how they will reduce their GHG emissions in line with limiting global temperature rise to 1.5^{C}. Article 22 was designed to create a level playing field, where all companies follow the same rules when setting these plans. This obligation to implement a Climate Transition Plan is best understood as an obligation of means (a 'best efforts obligation') rather than an obligation of result. This distinction is key because it acknowledges that companies must take responsible steps towards achieving climate goals, but they are not held to an exact outcome or result.

As per Recital 73, this distinction is embedded in the CSDDD:

> 'Such requirements should be understood as an obligation of means and not of results. Being an obligation of means, due account should be given to the progress companies make, and the complexity and evolving nature of climate transitioning. While companies should strive to achieve the greenhouse gas emission reduction targets contained in their plans, specific circumstances may lead to companies not being able to reach these targets, where this is no longer reasonable.'

This means that companies are required to act in good faith and to the best of their abilities, but they are not expected to guarantee the achievement of specific targets. Therefore, Article 22 emphasises the process and intent of the company, rather than strict, unyielding outcomes. Put differently, Article 22 encourages incremental gains, continuous improvement and progress over perfection.

The Omnibus proposal

The Omnibus proposal, published on 26 February 2025, seeks to undermine the Climate Transition Plan obligation in Article 22 of the CSDDD. More specifically, it proposes to amend the obligation of

[1] European Commission Omnibus proposal COM(2025)81.

Member States to ensure that certain companies 'adopt and put into effect a transition plan'.[2] Instead, the Omnibus proposal would require Member States to ensure companies 'adopt a transition plan... including implementing actions'. As such, the amendment in the Omnibus proposal would have the consequence that companies would not be legally required to put their transition plan 'into effect' under Article 22. Mere paperwork, instead of good faith action, would suffice in meeting the obligation.

Why the Commission's Art 22 Omnibus proposal on Climate Transition Plans heightens legal risk

1. States' legal obligation to regulate corporate GHG emissions would not be met

There is a general human rights duty to regulate transnational companies, requiring states to impose due diligence obligations, including in the context of climate change.[3] The *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* judgment of 9 April 2024 by the European Court of Human Rights (**ECtHR**) affirmed that under Article 8 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*'.[4] As primary actors in charge of ensuring the effective enjoyment of human rights, states must adopt, without undue delay, a *'binding regulatory framework at the national level, followed by adequate implementation'* with a rigorous, science-based carbon budget, emissions reduction targets and actionable plans for 2030 and beyond on that basis. The Convention, and the Court's interpretation of it, are binding on all 27 Member States of the European Union.

For most EU Member States, the GHG emissions from the largest businesses regulated in their jurisdiction are so significant that they are bound to exceed their territorial emissions budgets. While choice of means to pursue climate mitigation objectives is subject to a wide margin of appreciation, achieving the Paris Agreement's long-term temperature goal – and remaining within a fair share of the carbon budget – is factually impossible without reducing corporate emissions. Removing, weakening, or delaying keystone legislation mandating corporate transition plans in line with international commitments runs counter to state obligations, exposing Member States to further litigation and undermining legal certainty for companies.

2. The internal market would fragment and litigation risk would increase

The *Milieudefensie et al v Shell* ruling of 12 November 2024 (The Hague Court of Appeal) reiterated 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'.[5] The Court confirmed that this best effort obligation requires absolute emission reduction targets covering Scopes 1, 2, and 3.[6] The explanatory memorandum to the proposed Dutch law transposing the CSDDD has explicitly affirmed the link between the *Shell* ruling and Article 22 of the CSDDD.[7]

As evidenced by the impact assessment supporting the Commission proposal of the CSDDD, '*a growing number of companies are being sued in court for causing harm, which may be the consequence of the lack of clear regulatory requirements'*.[8] Notably, the document explicitly refers to the *Shell* case to highlight the legal risks that businesses run when they fail to adequately incorporate climate change considerations into their policy and governance frameworks. The absence of a binding regulatory framework will correspond directly with increased liability risks for private actors.

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[2] European Commission Omnibus proposal COM(2025)81.

[3] Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State obligations in the context of business activities, § 16 and 33; Human Rights Committee, General Comment No. 36 on Article 6, the right to life, CCPR/C/GC/36, 3 September 2019, § 22 and 62; Five UN human rights treaty bodies, Joint statement on human rights and climate change, 16 September 2019

[4] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (Grand Chamber, European Court of Human Rights, Application No 53600/20, 9 April 2024), [545] (emphasis added).

[5] *Shell Plc v Stichting Milieudefensie and Others* (Gerechtshof Den Haag, 12 November 2024) ECLI:NL:GHDHA:2024:2099, [7.27] (emphasis added).

[6] Ibid [7.96], [7.99], [7.111].

[7] Memorie van toelichting wetsvoorstel verantwoord en duurzaam internationaal ondernemen, [4.3].

[8] European Commission, SWD(2022) 42 final, Impact Assessment Report accompanying the proposal for a Directive on Corporate Sustainability Due Diligence, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022SC0042 (emphasis added).

At present, several other cases against large companies (e.g. TotalEnergies, ENI, VW, BNP Paribas, ING) are pending before courts across the EU in which plaintiffs seek alignment of corporate policies with the objective to keep below 1.5^{C} global warming. Due to the escalating onset of climate disasters and the developing jurisprudence, it is therefore likely that any further watering down of Article 22 of the CSDDD will only lead to *more* litigation.

Absent a common and clear legal framework at the EU level, the regulatory gap will be filled by courts in each EU Member State, creating uncertainty, inefficiency, and a fragmented legal framework for companies operating within the internal market.

3. Disclosure without follow-through may increase companies' liability exposure

Without an obligation to 'put into effect' Climate Transition Plans, the CSDDD may promote greenwashing and consequently increase companies' legal risk. The CSDDD does not duplicate Corporate Sustainability Reporting Directive (**CSRD**) disclosure requirements, rather the two complement each other. While CSRD mandates transparency by requiring companies to report transition plans where available, Article 22 of the CSDDD goes further by requiring large companies to adopt and implement them, specifying their behavioral duty. Without this obligation, there is a risk of encouraging empty promises and greenwashing. Outcomes which would increase the liability exposure of companies and undermine the transformative action needed to meet the EU's climate goals.

Suggestions that the obligation to implement a Climate Transition Plan is a rigid obligation of results are unfounded. Article 22 is an obligation of means, requiring companies to demonstrate responsible, good faith steps to implement their plan. Companies are not expected to guarantee the achievement of specific targets come what may. As such, to meet the standard it is enough for companies to implement their plans to the best of their ability. This achieves legal certainty and practical flexibility while helping to close the gap between climate pledges and real progress.

4. Without guiding regulations, corporate climate transitions will be more disorderly and costly

The longer firms delay their climate transition, the more disruptive and costly that transition is likely to be.[9] As such, the priority at this time should be the provision of clear, comprehensive, and practical guidance for companies regarding their Climate Transition Plans, as foreseen in Article 19 CSDDD. As the European Financial Reporting Advisory Group (**EFRAG**) is also preparing guidance in the context of the CSRD and the ESRS, these processes should be coordinated so that they ideally lead to coherent implementation.

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In conclusion, cogent and strong transition plan requirements as outlined in Article 22, combined with clear implementation guidance, are essential to set a harmonised, level playing field which provides clarity and certainty for large European businesses, avert the anticipated exposure to enhanced litigation risk and legal uncertainty, and reduce the scope and need for judicial intervention across different Member States.

Thank you for your consideration,

Respectfully,

[9] For example, see Frank Elderson, '"Failing to plan is planning to fail" – why transition planning is essential for banks' (2024), https://www.bankingsupervision.europa.eu/press/blog/2024/html/ssm.blog240123~5471c5f63e.en.html.

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