

# Reducing greenhouse gases to stay on a pathway to 1.5 degrees as a corporate duty

## The need for a standardised European framework



Climate change and its impacts are both real and present. Be it extreme drought, water scarcity, wildfires, or extreme weather events: scientific evidence shows that a global temperature increase of more than 1.5 degrees will have serious environmental, social, and human rights consequences virtually everywhere in the world. Preventing such an increase is therefore of the utmost importance. The Paris Agreement has established an international legal framework to achieve this goal.

With the German Federal Constitutional Court ruling on climate change in 2021, the link between greenhouse gas emissions and global warming has become a constitutional reality in Germany. In view of the limited remaining CO<sub>2</sub> budget, this will affect existing and planned legislation, in particular for large emitters. After all, the Court has recognised climate-friendly economic activity as a matter of constitutional law. What are the consequences that companies will face in their activities? And what does this mean in terms of the need for a standardised European framework? The authors of the legal report *Corporate (Climate) Due Diligence as Part of European and National Reporting Obligations and Company Law* focus on and discuss these questions.

### Current developments

What impact do existing or planned legal acts already have on business activities? More specifically: **To what extent do companies have an individual and legally binding obligation to bring their direct and indirect greenhouse gas emissions in line with the 1.5 degree pathway - and thus progressively to zero?** And to what extent does the new Corporate Sustainability Due Diligence Directive (CSDDD), currently negotiated at EU level, play a complementary as well as integrative role in this context?

Addressing these questions is essential given that issues of compliance with mandatory reporting and implementation

obligations are already increasingly being challenged in the courts. In 2021, the responsibility of major emitters to comply with the 1.5 degree pathway was recognised by a court in The Hague in a case involving Shell. Since then, companies have had to consider a different risk exposure if they do not submit and implement climate transition plans based on evidence-based benchmarks. The rulings of several German civil courts on similar lawsuits are still pending. However, it seems legally feasible to impose a general civil law obligation to reduce greenhouse gas emissions to a level compatible with 1.5 degrees in Germany as well, at least on particularly emission-intensive companies.

### Aim of the report

Most companies are unaware of the fact that **comparable obligations already exist under currently applicable legislation in various legal areas**. Yet, a better knowledge of these obligations can encourage and support companies in their efforts to maintain and expand measures on their way to greenhouse gas neutrality. This applies, for example, to existing reporting obligations and requirements under company law. There is currently a dynamic trend towards higher sustainability requirements for companies, partly as a result of incentives provided by European legislation. This is where the report comes into play.

It is useful for civil society to be aware of the gaps and uncertainties in the interpretation of existing rules. As for journalists, the report provides an overview of the intertwined regulations at European and national level that are key to corporate implementation of the transformation

The overarching aim of the report is to provide stakeholders with an overview of the current legal landscape for

climate-related corporate duties. Because of the particular relevance of the European CSDDD currently under negotiation, which could standardise and consolidate many processes and contribute to overcoming uncertainties of interpretation, the report also focuses on the current legislative process at European level.

## Results of the report

The report concludes that the increasing density of mandatory corporate reporting rules on so-called ESG risks (**e**nvironmental, **s**ocial, **g**overnance) already implies obligations of conduct for companies to take climate-related action. These obligations require preventive and evidence-based decision-making, including at management level. This means that companies must disclose the extent **to which their decisions are compatible with the 1.5 degree path of the Paris Agreement** in a transparent and verifiable manner. In addition to the legally binding mandatory reporting and the general principles of civil law mentioned above, the provisions of the German Supply Chain Act (LkSG, by its initials in German), which came into force this year, also point in this direction.

## What does this mean for business?

Some companies are already working towards net-zero greenhouse gas emissions and setting criteria for climate transition plans linked to specific milestones. However, many companies may not be aware that there already is a **legal requirement** to develop and implement climate transition plans that are compatible with the 1.5 degree

pathway. Failure to do so carries significant legal risks. Any forward-looking company would be well advised to consider in detail the criteria that its climate transition plans must meet in order to comply with the legally binding requirement of “1.5 degree compatibility”.

## Implications for the legislative process

Ongoing legislative processes should aim to create even greater legal clarity on the issues mentioned above, thus making it easier for companies to plan ahead. A standardised consolidation of corporate duties in a single legal framework, as planned for the CSDDD, could also significantly minimise the risk of greenwashing and litigation. Furthermore, it would prevent business and economic losses.

Based on these considerations, the authors of the report strongly support the inclusion of a detailed **legal provision in the currently negotiated CSDDD**.

According to the authors, both the Commission’s and the Council’s proposed versions of Article 15 of the Directive are important steps in this direction. However, they currently lack the necessary guidance on “Paris compliance” to ensure that companies have legal certainty and can effectively develop and implement their transition plans. By contrast, the EU Parliament has proposed to specify this further by introducing an explicit obligation to implement such plans in Article 15 of the CSDDD. This proposal would undoubtedly provide the greatest certainty for companies in their planning.

