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**Legal Scholars: Abandoning Article 22 CSDDD Risks Policy Incoherence and Litigation Risk**

We are a group of legal scholars writing to urge the European Commission, Council, and Parliament to reject any mandate for the renegotiated 'Omnibus Simplification Package' that would weaken or remove existing requirements for Climate Transition Plans (*CTP*s) under Article 22 of the Corporate Sustainability Due Diligence Directive (*CSDDD*). To dilute these requirements would create legal and policy incoherence and expose the EU, its Member States, and its companies to increased litigation risk. We therefore recommend that Article 22 is maintained in full.

In its current form, Article 22 requires in-scope companies, in short, to adopt and put into effect a Paris-aligned CTP. However the Council mandate seeks to significantly weaken this requirement, and the European Parliament's position adopted on 13 November 2025 proposes to remove this requirement entirely. We consider weakening or removing this requirement a mistake on both legal and pragmatic grounds.

In two prior letters on this topic, dated 17 February 2025 and 8 May 2025, many legal scholars argued that diluting the CTP requirements would violate the legal obligations of Member States and the EU, contribute to policy incoherence, and actually increase litigation risk for affected corporations – thereby also harming the competitiveness of the EU. In this letter, we argue that these conclusions have only gained weight due to the recent landmark Advisory Opinions of the International Court of Justice (*ICJ*), the International Tribunal for the Law of the Sea (*ITLOS*), and the Inter-American Court of Human Rights (*IACtHR*).

## 1. Article 22 reduces legal risk for the EU and Member States by contributing to the fulfilment of the duty to regulate corporate emissions

The ICJ Advisory Opinion confirmed that States have legal obligations to prevent significant harm to the climate system, and to protect, fulfil, and respect human rights in the context of climate change, by limiting global temperature rise to 1.5°C.[1] To comply with these substantive obligations, States must regulate the private sector in line with the standard of due diligence.[2] As the ICJ explains, failure to do so is unlawful:

> '*[A] State may be responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.*'[3]

The Advisory Opinions note that, in the context of climate change, States must exercise stringent due diligence because of the severity of the circumstances.[4] Whether States have acted with the required diligence can be 'determined objectively' by assessing if they have, among other factors, taken 'all

[1] ICJ AO, paras. 224-225, 272–300, 230-254, 403-404. *See also* ITLOS AO, paras. 241-243; IACtHR AO, paras. 198, 326; *KlimaSeniorinnen*, paras. 550, 436.

[2] ICJ AO, paras. 281-282. *See also* ITLOS AO, paras. 235, 243; IACtHR AO, para. 347.

[3] ICJ AO, para. 428. *See also* ICJ AO, para. 282.

[4] *Ibid.*, para. 137-138. *See also ibid.,* paras. 456, 229; ITLOS AO, para. 243; IACtHR AO, para. 229.

appropriate measures', exercised best efforts, and acted in conformity with the severity and urgency of the risks posed, the best available science, and the precautionary principle.[5]

States' duty to regulate is also reflected in the *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* judgment of the European Court of Human Rights. There, the Court held that States must set a regulatory framework capable of limiting global temperatures to 1.5°C, in order to ensure effective protection from climate-related harm to the right to life and private and family life.[6]

Retaining a strong and enforceable Article 22 is therefore an important contribution to fulfilling a legal duty owed by Member States and the EU. Consequently, removal of Article 22 would invariably expose the EU and its Member States to heightened litigation risk at the international level. On the other hand, a weakened version of Article 22, if adopted, would be legally vulnerable and open to challenges. This is because it could readily be inconsistent with States' international law obligation to use all means at their disposal to regulate private entities in a manner practically capable of reducing emissions, as required by the best available science. This would further destabilise the EU's legal environment, creating costs to businesses rather than mitigating them.

## 2. Article 22 creates a stable operating environment for companies and reduces their litigation risk

The IACtHR Advisory Opinion confirmed that corporations have obligations to prevent, mitigate, and remedy human rights harm from climate change, independent of how governments choose to regulate them.[7] This corporate duty to mitigate emissions was previously also confirmed by the Hague Court of Appeal in *Milieudefensie v Shell*, which found that '[c]ompanies like Shell ... have their own responsibility in achieving the targets of the Paris Agreement.'[8] At least seven other cases similar to *Shell* are now pending across the EU.[9] As such, national courts across Europe will likely soon clarify the content of corporations' duty to mitigate their emissions and provide legal bases for further litigation against high-emitting corporations.

However, maintaining Article 22 would in fact *reduce* this kind of litigation risk for companies because it would create a more transparent, coherent, and predictable operating environment. Companies that develop and implement robust, 1.5°C-aligned transition plans under Article 22 would improve their prospects of complying with their duty to mitigate. Meanwhile, weakening or removing Article 22 obligations would increase litigation risk for corporations, as the nature and content of corporations' duty to mitigate would remain legally contestable. Instead of a clear pathway towards the implementation of a CTP, contestation around the very existence of a CTP obligation would heighten legal uncertainty and render other elements of the EU Green Deal, which rely on or are amplified by real economy CTPs, less effective. Without clear EU-level transition plan requirements, the result will thus be fragmented national or even individual

[5] ICJ AO, paras. 229, 287, 294, 300, 456; IACtHR AO, paras. 229, 232; ITLOS AO, paras. 233, 243.

[6] *KlimaSeniorinnen*, para. 550. *See also ibid.*, paras. 436, 546.

[7] IACtHR AO, paras. 345-346.

[8] *Milieudefensie v Shell*, para. 7.27.

[9] *See,* *Notre Affaire à Tous et al v Total*; *Notre Affaire à Tous Les Amis de la Terre and Oxfam France v BNP Paribas*; *Falys et al v TotalEnergies*; *Allhoff-Cramer v Volkswagen AG*; *Greenpeace Italy et al v ENI S.p.A., et al*; *Milieudefensie v ING Bank*; *Asmania et al v Holcim.*

approaches and heightened legal uncertainty. If that occurs, the costs of the transition to climate neutrality will increase and European corporations will be only further exposed to litigation and reputational risks.

## 3. Recommendations

Given the above, we strongly advise that the European Commission, Council, and Parliament maintain Article 22 CSDDD in its current form and, in particular, preserve:

- The obligation to adopt *and put into effect* transition plans;
- The 'best efforts' standard for companies' GHG emissions reductions;
- The requirement to ensure full compatibility with, not mere contribution to, the Paris Agreement and the European Climate Law, including reference to the 1.5°C limit and the 2030 and 2040 intermediary targets for emissions reductions;
- Mandatory content elements for transition plans, such as 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 scope 1, scope 2, and scope 3 greenhouse gas emissions; and
- A mandate for supervisory authorities to monitor not only the adoption, but also the design, implementation, and progress of CTPs.

Weakening or removing Article 22 would risk being inconsistent with international law and increase litigation risk for both the EU and Member States, as well as businesses. Further, it would undermine the cohesiveness, credibility, and enforceability of the EU climate framework and the European Green Deal agenda. A strong and enforceable Article 22 is therefore essential to achieve greater regulatory coherence, legal certainty, and risk mitigation for both public and private actors across the EU.

Thank you for your consideration,

Respectfully,

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