CORPORATE CLIMATE LITIGATION IN EUROPE: SCAFFOLDING FROM STATE OBLIGATIONS AND THE RISE OF POLLUTER-PAYS†

by

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Over the last decade, Europe has been the crucible of path-defining climate cases. Across the region, courts have been asked to define the limits of public and private responsibility. This Essay argues that corporate climate litigation in Europe has developed along two intersecting trajectories that together define an emerging framework of climate accountability. The first extends public-law standards to corporations, translating human rights and carbon-budget principles into private-law duties of care, due diligence, and disclosure that reach across entire value chains. The second trajectory sees the emergence of polluter-pays litigation, which seeks to proportionate damages and adaptation costs from major emitters, testing how attribution science and emissions accounting can ground financial responsibility for climate harm.

This Essay situates corporate climate litigation in Europe within a broader trend toward the financialization of climate accountability. Drawing on leading and pending cases across Europe, it identifies emerging principles alongside persistent enforcement challenges linked to insolvency, insurance,

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and cross-border jurisdiction. This Essay concludes that Europe is building a provisional but concrete framework for corporate climate responsibility and financial redress. Understanding the feedback loops between public-law scaffolds, private-law duties, and polluter-pays mechanisms helps clarify both the promise and the limits of Europe's multi-scalar model of climate accountability.

INTRODUCTION[1]

Climate change poses an unprecedented challenge of civilizational proportions. The Intergovernmental Panel on Climate Change (IPCC) has established that anthropogenic greenhouse gas emissions (GHG) have been the dominant driver of global warming since the mid-20th century.[2] Human-induced climate change—manifested through increasingly frequent and intense extreme weather events—has already caused widespread adverse impacts, resulting in losses and damages to both nature and people.[3] Across all regions, the most vulnerable communities and

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[1] This Essay draws from a report submitted to the Council of Europe in August 2025, co-authored by Joana Setzer and Catherine Higham, with research assistance from Nina Koistinen. Joana Setzer & Catherine Higham, Study on National Climate Litigation, Council of Europe/Grantham Research Institute on Climate Change and the Environment, London School of Economics (Mar. 6, 2026), https://www.lse.ac.uk/granthaminstitute/publication/study-on-national-climate-litigation/.

[2] Intergovernmental Panel on Climate Change, Climate Change 2021: The Physical Science Basis, The Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2021), https://www.ipcc.ch/report/ar6/wg1/ (last visited Nov. 3, 2025).

[3] IPCC, Summary for Policymakers, in Climate Change 2022: Impacts, Adaptation, and

ecosystems are disproportionately affected.[4] The scientific consensus is equally clear that the well-being of present and future generations depends on urgent and immediate action.[5]

Within this context, climate litigation has emerged as a mechanism for advancing accountability in domestic and international legal systems, shaping the governance of mitigation, adaptation, and loss and damage.[6] The first wave of climate cases appeared in the mid-2000s, with early lawsuits taking place in the United States and Australia.[7] Since then, the field has expanded rapidly, not only in the number and diversity of cases, but also in the depth of academic analysis and the attention it receives from policymakers, corporations, the financial sector, and the media.[8] The adoption of the Paris Agreement in 2015, along with several landmark judicial decisions in the same year, catalyzed a surge of interest in litigation as a means of enforcing climate commitments and shaping policy outcomes.[9]

Over the last decade, Europe has been the crucible of path-defining climate cases. It has produced both influential state-centered cases, such as *Urgenda v.*

Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner et al. (eds.)] 3-33 (Cambridge Univ. Press 2022), https://www.ipcc.ch/report/ar6/wg2/chapter/summary-for-policymakers/.

[4] *Id.*

[5] 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 [Core Writing Team, H. Lee & J. Romero (eds.)] 1-34 (IPCC, Geneva 2023), https://www.ipcc.ch/report/ar6/syr/.

[6] N.K. Dubash et al., *National and Sub-National Policies and Institutions*, *in* IPCC, Climate Change 2022: Mitigation of Climate Change, Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (P.R. Shukla et al. eds., 2022).

[7] JACQUELINE PEEL & HARI M. OSOFSKY, CLIMATE CHANGE LITIGATION: REGULATORY PATHWAYS TO CLEANER ENERGY (2015).

[8] Joana Setzer & Catherine Higham, Global Trends in Climate Change Litigation: 2025 Snapshot, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT (June 25, 2025), https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2025-snapshot/.

[9] Jacqueline Peel & Hari M. Osofsky, *Climate Change Litigation*, 16 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 21 (2020); Jacqueline Peel, Alice Palmer & Rebekkah Markey-Towler, Review of Literature on Impacts of Climate Litigation, CHILDREN'S INVESTMENT FUND FOUNDATION (2022), https://www.unimelb.edu.au/__data/assets/pdf_file/0008/4238450/Impact-lit-review-report_CIFF_Final_27052022.pdf; Don C. Smith, *Landmark Climate Change-Related Judicial Decisions Handed Down in the Netherlands and Australia: A Preview of What's to Come?*, 37:2 JOURNAL OF ENERGY & NATURAL RESOURCES LAW 145 (2019); Joana Setzer J & Lisa C. Vanhala, *Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance*, 10 WIRES CLIMATE CHANGE e580 (2019).

Netherlands[10] and *KlimaSeniorinnen v. Switzerland*,[11] and ambitious efforts to hold corporate actors liable for their contributions to the climate crisis.[12] Across the region, courts have been asked to define the limits of public and private responsibility: how far must governments act to safeguard fundamental rights against climate risks, and to what extent must corporations mitigate or pay for the harms linked to their emissions?[13]

This Essay argues that European corporate climate litigation has evolved through two intersecting trajectories. The first is the extension of the principles of human rights reasoning and compliance with climate framework laws from governments to corporations, where courts interpret private-law doctrines, such as duty of care and due diligence, in a manner informed by public-law standards. The second strand is the rise of polluter-pays litigation, in which claimants seek proportionate damages or adaptation costs from major emitters, invoking scientific evidence of contribution and causation. Together, these strands may define the region's legal approach to corporate accountability for climate change, in which responsibility is shared, multi-scalar, and increasingly financialized (i.e., translated into quantifiable and compensable financial liabilities). This Essay proceeds in three parts. Part I provides an overview of the European climate litigation landscape, situating corporate cases within the broader evolution of litigation against states. It introduces public-law precedents that have generated the normative scaffolding upon which private-law claims now build. Part II examines the emerging body of corporate-climate litigation, focusing on three complementary trajectories. The first, due diligence litigation, advances *forward-looking preventive obligations* by seeking to compel companies to adopt or implement emissions-reduction strategies, align governance structures with climate goals, and manage transition and physical risks across their value chains. The second, polluter-pays litigation, invokes *backward or contemporaneous compensatory obligations*, seeking to hold corporations financially responsible for past or ongoing contributions to climate harm through damages or adaptation-cost recovery. The third and related strand, climate-washing litigation, illustrates how courts are policing the credibility of corporate climate claims within this evolving regulatory environment. Part III turns to the enforcement of damages and remedies, analyzing how state-based mechanisms such as environmental liability regimes, insolvency frameworks, and insurance markets mediate the effectiveness of

[10] *Urgenda Foundation v. State of the Netherlands (Ministry of Infrastructure and the Environment)*, C/09/456689/ha Za 13-1396 (Hague Dist. Ct. June 24, 2015); *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Urgenda Foundation*, 200.178.245/01 (Hague Ct. App. Oct. 9, 2018); *State of the Netherlands v. Urgenda Foundation*, No. 19/00135 (Sup. Ct. Neth. Dec. 20, 2019).

[11] *Verein KlimaSeniorinnen Schweiz & Others v. Switzerland*, No. 53600/20 (Eur. Ct. H.R. Apr. 9, 2024).

[12] Setzer & Higham, CoE Study, *supra* note 1.

[13] *See infra* Part I.

corporate climate accountability. The conclusion reflects on how these intersecting trajectories together delineate a provisional but increasingly concrete European framework for translating climate responsibility into enforceable legal duties and financial obligations.

I. OVERVIEW OF CLIMATE LITIGATION IN EUROPE

Climate litigation in Europe has intensified over the past decade, reflecting the broader global trend of increasing reliance on courts to drive or challenge climate policy.[14] While the total number of new cases identified for each year has gradually declined since 2022, a trend mirrored globally, this does not necessarily indicate a waning of climate litigation. Rather, it may signal the diversification of legal strategies, some of which are not yet captured in current climate litigation databases.[15]

In this connection, it should be noted that climate litigation is defined, for the purposes of this Essay, as cases brought before judicial and quasi-judicial bodies that involve material issues of climate change science, policy, or law. This definition corresponds to that applied by the Sabin Center Climate Litigation Database[16] and, in turn, in the Grantham Research Institute's *Global Trends in Climate Litigation* reports,[17] upon which this Essay builds. While neither comprehensive nor exhaustive, the climate litigation data housed on the Sabin Center Database provides a rich cross-cutting sample of litigatory activity by a range of actors and on various legal bases, across jurisdictions.[18] This Essay further draws upon a report on domestic climate litigation in Europe submitted to the Council of Europe in August 2025.[19] This Part of the Essay provides an overview of climate litigation in Europe, situating it within the global landscape where relevant. Section I.A outlines where the majority of climate cases have been filed across European states and regional courts, and where cases remain largely absent. Section I.B provides an overview of the plaintiffs and defendants in these cases, while Section I.C examines the most common litigation approaches in Europe.

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[14] Joana Setzer, Harj Narulla, Catherina Higham & Emily Bradeen, Climate Litigation in Europe: A Summary Report for the European Union Forum of Judges for the Environment, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT (Dec. 6, 2022), https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/12/Climate-litigation-in-Europe_A-summary-report-for-the-EU-Forum-of-Judges-for-the-Environment.pdf.

[15] Setzer & Higham, 2025 Snapshot, *supra* note 8.

[16] Sabin Center for Climate Change Law, Climate Litigation Database, https://www.climatecasechart.com/ (last visited Nov. 3, 2025).

[17] Grantham Research Institute on Climate Change and the Environment, Global Trends in Climate Change Litigation, https://www.lse.ac.uk/granthaminstitute/litigation/ (last visited Nov. 3, 2025).

[18] Sabin Center, *supra* note 16.

[19] Setzer & Higham, CoE Study, *supra* note 1.

A. *Geographical Distribution of Cases*

Although climate litigation in Europe has historically been concentrated in a few countries, it is now increasingly widespread, reflecting both the maturity of climate arguments in certain legal systems and the growing regional diffusion of climate-related legal arguments, particularly against corporations.[20]

For the purposes of this Essay, we consider climate litigation across Europe as a region. This jurisdictional scope is primarily delimited in line with the membership of the Council of Europe. In other words, the term "European" in this Essay refers to the member states of the Council of Europe (CoE), spanning 46 Western and Eastern European nations, including the United Kingdom. All 46 CoE member states are signatories to the European Convention of Human Rights (ECHR), which—along with the rulings of its court, the European Court of Human Rights (ECtHR)—plays an influential role in climate litigation in the region.[21] In this connection, it bears stating that references to European Union (EU) litigation and legislation are also made throughout this Essay. Although the EU is a wholly separate organization, the EU's 27 member states are also parties to the Council of Europe, thus forming a subset—and, notably, a majority—of the CoE's membership.[22] Moreover, the EU holds an influential role in regional and indeed global climate governance, making its legislative and judicial activity highly relevant to developments in the region.[23]

Domestic climate lawsuits have been recorded in 25 countries in Europe since 2002,[24] with a further 12 cases filed before the ECtHR and 70 before the Court of

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[20] EKATERINA ARISTOVA & JUSTIN LIM (EDS.), CLIMATE LITIGATION IN EUROPE UNLEASHED: CATALYSING ACTION AGAINST STATES AND CORPORATIONS, BONAVERO INSTITUTE FOR HUMAN RIGHTS (Mar. 5, 2024); CÉSAR RODRÍGUEZ-GARAVITO (ED.), LITIGATING THE CLIMATE EMERGENCY: HOW HUMAN RIGHTS, COURTS, AND LEGAL MOBILIZATION CAN BOLSTER CLIMATE ACTION (2022); IVANO ALOGNA, CAROLE BILLET, MATTEO FERMEGLIA & ALINA HOLZHAUSEN, CLIMATE CHANGE LITIGATION IN EUROPE: REGIONAL, COMPARATIVE AND SECTORAL PERSPECTIVES (Intersentia 2024).

[21] *See* Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) art. 1, Nov. 4, 1950, Eur. T.S. No. 5. Ratification of the ECHR is a prerequisite for membership in the Council of Europe. *See* Statute of the Council of Europe art. 3, May 5, 1949, Eur. T.S. No. 1 (requiring member states to accept the principles of the rule of law and enjoyment of human rights); Council of Europe, The European Convention on Human Rights, https://www.coe.int/en/web/human-rights-convention (last visited Mar. 26, 2026) ("Its ratification is a prerequisite for joining the Organisation. The European Court of Human Rights oversees the implementation of the Convention in the 46 Council of Europe member states."). All 46 CoE member states are accordingly parties to the Convention.

[22] Council of Eur., Member States, https://www.coe.int/en/web/portal/home (last visited Mar. 20, 2026). All 27 EU member states are also parties to the Council of Europe.

[23] Sebastian Oberthür & Claire Dupont, *The European Union's International Climate Leadership: Towards a Grand Climate Strategy?*, 28 J. EUR. PUB. POL'Y 1095 (2021).

[24] Namely, Austria, Belgium, Bulgaria, Czechia, Denmark, Estonia, Finland, France,

Justice of the European Union (CJEU).[25] These cases are, however, unevenly distributed across CoE member states. Historically, most European climate cases have been filed in Western and Northern Europe, with countries such as the United Kingdom, Germany, France, Switzerland, and the Netherlands consistently acting as hubs of such litigation. These jurisdictions often combine robust administrative and constitutional frameworks, active civil society engagement, and strong traditions of judicial review, creating favorable conditions for climate-related claims.[26] By contrast, no known climate cases have been documented in 21 CoE member states,[27] many of which are Eastern and Southern European states. Nonetheless, in recent years, these subregions have also begun to see a rise in climate cases, though activity remains comparatively lower.[28] Early cases in countries such as Poland and Greece have typically involved project-specific challenges and were often related to renewable energy expansion or fossil fuel infrastructure.[29]

Notably, the potential over- and underrepresentation of certain jurisdictions in climate litigation data has been attributed to definitional questions, with certain regions and jurisdictions featuring more subtle—or simply different—forms of climate-related litigation that are not captured by the definitions applied in leading databases and scholarship.[30] Although this argument has been notably made in relation to Global South climate litigation,[31] it appears to hold true for litigation in some European jurisdictions also. For example, at a regional level, the CJEU has delivered numerous judgments that test the boundaries of EU climate and energy law applicable in its 27 member states, including disputes over emissions trading, renewable energy targets, and environmental impact assessments.[32] These cases are

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Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine, and the United Kingdom.

[25] Sabin Center, *supra* note 16. Note: data collection for the purposes of this Essay was carried out prior to the consolidation of the Sabin Center's "US" and "global" climate litigation databases. All figures cited herein therefore refer to data housed on the "global" database pre-dating this consolidation.

[26] Margaretha Wewerinke-Singh & Sarah Mead, eds., "Merits," in The Cambridge Handbook on Climate Litigation 169–98 (Cambridge Univ. Press 2025).

[27] Namely, Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, Georgia, Greece, Iceland, Latvia, Lichtenstein, Lithuania, Malta, Moldova, Monaco, Montenegro, North Macedonia, San Marino, Serbia, and Slovakia.

[28] Setzer & Higham, CoE Study, *supra* note 1.

[29] *Id.*

[30] Setzer & Higham, 2025 Snapshot, *supra* note 8.

[31] *See, e.g.*, Jacqueline Peel & Jolene Lin, Transnational Climate Litigation: The Contribution of the Global South, 113:4 AMERICAN JOURNAL OF INTERNATIONAL LAW 679 (2019); Tracy-Lynn Field, Towards a Risk-Thematic Approach for African Climate Litigation, *in* CLIMATE LITIGATION AND JUSTICE IN AFRICA (Kim Bouwer, Uzuazo Etemire, Tracy-Lynn Field & Ademola Oluborode Jegede eds., 2024).

[32] Heloísa Oliveira, Ana Ruiz & Pedro Sampaio Minassa, Climate Litigation Before the

not, however, consistently and comprehensively documented in generalist climate litigation databases as they often fall outside the definitional scope applied.

At the same time, there are signs that systemic cases (i.e., those targeting whole-of-government climate policy responses) and rights-based cases may continue to proliferate across Europe, particularly as EU law and the ECHR continue to shape national responses in their respective member states and further afield.[33] As Eckes argues, "most strategic climate litigation is brought to national courts," as "the EU has very restrictive standing requirements for direct actions against general acts."[34]

Europe is among the global regions with the highest number of climate lawsuits reaching apex courts, such as constitutional and supreme courts.[35] Despite this, the success rates of climate cases before apex courts in Europe are low by comparison with other regions.[36] Many of these unsuccessful cases are rejected prior to a consideration on their merits, meaning they are dismissed on grounds relating to admissibility, justiciability, or other preliminary requirements.[37] Nonetheless, where cases before apex courts have been successful, they have been influential, both in terms of shaping domestic policy debates and in inspiring further cases.[38]

At the same time, the relevance of the ECHR to climate law has been confirmed following the recent landmark ruling of the ECtHR in *KlimaSeniorinnen v. Switzerland*,[39] which held that European human rights protections impose obligations on CoE member states to take regulatory action to address the need for both climate change mitigation and adaptation.[40]

Court of Justice of the European Union, *in* CLIMATE CHANGE BEFORE INTERNATIONAL COURTS (Carla Amado Gomes, Heloísa Oliveira, Armando Rocha & Matteo Fermeglia eds., 2025).

[33] Jacqueline Peel & Hari M. Osofsky, *A Rights Turn in Climate Change Litigation?*, 7:1 TRANSNATIONAL ENVIRONMENTAL LAW 37 (2018); IVANO ALOGNA, CAROLE BILLET, MATTEO FERMEGLIA & ALINA HOLZHAUSEN, CLIMATE CHANGE LITIGATION IN EUROPE: REGIONAL, COMPARATIVE AND SECTORAL PERSPECTIVES (Intersentia 2024).

[34] Christina Eckes, *Strategic Climate Litigation Before National Courts: Can European Union Law Be Used as a Shield?*, 25 GER. L.J. 1022 (2024).

[35] Setzer & Higham, CoE Study, *supra* note 1.

[36] *Id.*

[37] Setzer & Higham, 2025 Snapshot, *supra* note 8.

[38] *See, e.g.*, Alina Averchenkova, Catherine Higham, Tiffanie Chan & Isabela Keuschnigg, Impacts of Climate Framework Laws: Lessons from Germany, Ireland and New Zealand, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT AND CENTRE FOR CLIMATE CHANGE (Mar. 14, 2024), https://www.lse.ac.uk/granthaminstitute/publication/impacts-of-climate-framework-laws/; Wonneberger, A. and Vliegenthart, R., *Agenda-Setting Effects of Climate Change Litigation: Interrelations Across Issue Levels, Media, and Politics in the Case of Urgenda Against the Dutch Government*, 15 ENVIRONMENTAL COMMUNICATION 699 (2021).

[39] *KlimaSeniorinnen*, *supra* note 11.

[40] Annalisa Savaresi, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland: Making Climate Change Litigation History*, 34:1 REV. EUR. COMP. & INT'L ENV'T L. 279 (2025). *See also* Chris Hilson & Oliver Geden, *Climate or Carbon Neutrality? Which One Must States Aim for*

This evolving geographical landscape illustrates a dual dynamic: climate litigation continues to proliferate at a significant pace in a few jurisdictions with established legal and activist communities, while simultaneously expanding into other national and regional forums, thereby reinforcing the role of courts as central actors in Europe's climate governance architecture.

B. Plaintiffs and Defendants

Most climate cases globally are filed against state actors. In 2024, 80% of cases filed targeted national and sub-national governments and public authorities.[41] This trend is reflected in Europe though to a somewhat lesser degree, with almost 58% of cases featuring state actors as respondents.[42] Although generally taken against planning or other public authorities, these cases can have both direct and indirect implications for corporate entities. This is most clearly the case for lawsuits taken against public authorities to challenge permits granted to corporations, on climate-related grounds.

Meanwhile, corporate climate litigation is clearly on the rise. As of 2024, 123 cases against corporate entities had been filed before courts in Europe, with more than three-quarters of these cases filed since 2020. A broad range of sectors are implicated in these cases, with a growing number of lawsuits targeting corporate entities active in the retail, transport, mining, and agriculture and food sectors, as well as financial and business services.

Climate change lawsuits are most commonly filed by individuals and NGOs, often acting together: globally, 60% of cases in 2024 were filed by such actors. Cases filed before European domestic and regional courts display a similar trend: approximately 64% of cases in the region include NGO or individual claimants. Although global trends show a growth in government- and prosecutor-led litigation particularly in the Global South (for instance, in Brazil and China), European climate litigation remains very much civil society-initiated.

Nonetheless, corporate entities and trade associations also feature as claimants in climate cases. Although such lawsuits tend to contest climate policy measures (whether broadly or in their application to a specific company), corporate actors have also been behind the filing of climate-aligned cases. For instance, in *Coolglass Windfarm Ltd. v. An Bord Pleanála*,[43] the applicants were developers of a wind farm who sought judicial review of a planning authority decision that had rejected planning permission based on the project's visual impacts.

Under Article 8 Echr?, EJIL: TALK! (Apr. 29, 2024); Jeremy Letwin, *Klimaseniorinnen: the Innovative and the Orthodox*, EJIL: TALK! (Apr. 17, 2024).

[41] Setzer & Higham, 2025 Snapshot, *supra* note 8.

[42] Unless otherwise indicated, the data discussed in this Section draws from Setzer & Higham, CoE Study, *supra* note 1; Setzer & Higham, 2025 Snapshot, *supra* note 8.

[43] *Coolglass Windfarm Ltd. v. An Bord Pleanála*, [2024] IEHC 570 (High Ct.) (Ir.).

C. Most Common Types of Case Strategies Before Courts in Europe

European climate litigation encompasses a diverse array of legal strategies, reflecting the region's evolving regulatory and judicial landscape.[44] While early cases often focused on challenging individual projects—such as coal plants, pipelines, or infrastructure approvals—recent years have seen a rise in systemic and accountability-driven litigation.[45] In many of these more recent cases, different strategies overlap and evolve, with litigants increasingly experimenting with hybrid approaches, for instance, combining project-level challenges with human rights arguments.[46]

Applying the categorization of climate case strategies developed by Setzer and Higham[47] to the subset of cases filed before European domestic courts, the most prevalent primary strategy is that of cases seeking to integrate climate considerations, standards, or principles into a given decision or sectoral policy, with the dual goal of stopping specific harmful policies and projects, and mainstreaming climate concerns in policymaking.[48] These so-called *integrating climate considerations* cases are also the most common globally.[49]

These cases are increasingly being utilized by claimants in Europe to contest the expansion of fossil fuels.[50] Many of these cases are grounded in environmental law, especially environmental impact assessment (EIA) regimes derived from the European Union Environmental Impact Assessment Directive,[51] and target individual projects anticipated to produce significant GHG emissions, challenging approvals granted to such projects.[52] The question of whether Scope 3—i.e., downstream—emissions must be considered in issuing project approvals has also been increasingly brought into focus in these lawsuits.[53]

This issue has been particularly prevalent before the courts of the UK and Norway, the largest oil and gas producing states in Europe. In *Greenpeace Nordic*

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[44] Joana Setzer & Catherine Higham, Global Trends in Climate Change Litigation: 2024 Snapshot, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT 30 (June 27, 2024), https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2024-snapshot/.

[45] Setzer et al., EUFJE Report, *supra* note 14.

[46] Setzer & Higham, 2025 Snapshot, *supra* note 8, at 31.

[47] *Id.*

[48] *Id.* at 31, 33.

[49] *Id.* at 33.

[50] Setzer & Higham, CoE Study, *supra* note 1.

[51] Directive 2011/92/EU of the European Parliament and of the Council on the Assessment of the Effects of Certain Public and Private Projects on the Environment, 2012 O.J. (L 26) 1, as amended by Directive 2014/52/EU, 2014 O.J. (L 124) 1.

[52] *Id.*

[53] *R (on the application of Finch on behalf of the Weald Action Group) v. Surrey County Council* [2024] UKSC 20 (U.K.) (holding that Scope 3 downstream emissions must be assessed in EIA).

and Others v. Ministry of Petroleum and Energy (Norway),[54] NGOs and individuals challenged permits for three North Sea oil and gas fields, citing the absence of Scope 3 emission assessments in the EIAs. The case has led to a European Free Trade Association (EFTA) Court advisory opinion confirming that Scope 3 emissions constitute project "effects" that must be considered under EIA law.[55] It builds on an earlier domestic case, which also led to two applications before the ECtHR.[56]

While the second of these applications remains pending, the first—*Greenpeace Nordic and Others v. Norway*—has been dismissed by the ECtHR on its merits.[57] Although the case was therefore unsuccessful in striking down the exploration permits in question, the judgment confirms the court's recent climate jurisprudence in *KlimaSeniorinnen* and notes that the conduct of an "adequate, timely and comprehensive [EIA] in good faith and based on the best available science" prior to the authorization of an activity that is potentially harmful to individual rights is a material issue in determining whether a state has acted within the margin of appreciation accorded to it in relation to climate-related decision-making and the protection of human rights under the ECHR from the "serious adverse effects of climate change."[58] In so ruling, the ECtHR referred to the advisory opinions of the International Tribunal for the Law of the Sea (ITLOS),[59] the Inter-American Court of Human Rights (IACtHR),[60] the International Court of Justice (ICJ),[61] and the EFTA Court[62] as regards the need to conduct an appropriate EIA, and further highlighted the importance of quantifying GHG emissions, including both downstream (Scope 3) and exported emissions.[63]

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54 *Greenpeace Nordic & Nature & Youth v. Energy Ministry (The N. Sea Fields Case)* (Borgarting Ct. App. Nov. 14, 2025).

55 *The Norwegian State v. Greenpeace Nordic Ass'n & Nature and Youth Norway*, E-18/24 (EFTA Ct. May 21, 2025) (Advisory Op.).

56 *Greenpeace Nordic Ass'n & Nature and Youth v. Norway*, Apps. Nos. 34068/21 (Eur. Ct. H.R. Oct. 28, 2025); *The Norwegian Grandparents' Climate Campaign and others v. Norway*, Apps. Nos. 19026/21 (Eur. Ct. H.R, pending).

57 *Greenpeace Nordic & Others v. Norway*, App. Nos. 34068/21 & 19026/21 (Eur. Ct. H.R. Oct. 28, 2025) (finding no violation of Art. 8 ECHR on the merits).

58 *Id.* paras. 318–24.

59 International Tribunal for the Law of the Sea, Advisory Opinion, No. 31 (May 21, 2024), Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (Advice) (International Tribunal for the Law of the Sea May 21, 2024).

60 Inter-American Court of Human Rights, Advisory Opinion OC-32/25 (Climate Emergency and Human Rights) (May 29, 2025).

61 Obligations of States in respect of Climate Change (Request for Advisory Opinion), General List No. 187, para. 298 (Int'l Ct. Just. July 23, 2025) (advisory opinion).

62 *The Norwegian State v. Greenpeace Nordic Ass'n & Nature and Youth Norway*, *supra* note 55.

63 *Id.*

Although these lawsuits are filed against public authorities, they carry direct consequences for corporate developers holding the challenged permits.[64] This is illustrated by the ruling of the Scottish Court of Sessions on the Jackdaw and Rosebank projects, with the court emphasizing that investors' interest in legal certainty must be balanced against the rule of law and the public interest in climate mitigation.[65] Developers that proceed with projects while legal challenges remain unresolved assume a calculated litigation risk, and the court affirmed that this risk does not outweigh the public's interest in preventing climate harm.[66]

The second most prevalent strategy in climate cases before European domestic courts is found in the *climate-washing* cases (discussed further in Section II.C). These cases challenge inaccurate government or corporate narratives regarding contributions to the transition to a low-carbon future.[67] Recent years have seen a sharp rise in the filing of climate-washing cases, with this being the most prevalent strategy in corporate cases globally.[68] Such cases have also featured prominently before the courts of various CoE member states. Climate-washing litigation has had a high success rate before European domestic courts, with over 80% of such cases resulting in an outcome deemed to enhance climate action—higher even than the already relatively high global success rate of 60% in climate-washing cases.[69]

The third most prevalent category of climate cases before European domestic courts is the so-called *government-framework* cases.[70] These cases challenge the ambition or implementation of climate targets and policies affecting the whole of a country's (national or subnational) economy and society, such as the landmark *Urgenda v. Netherlands*[71] case, *Notre Affaire à Tous and Others v. France*,[72] *VZW Klimaatzaak v. Belgium and Others*,[73] and *Neubauer v. Germany*[74] litigation. Europe

[64] Setzer & Higham, CoE Study, *supra* note 1.

[65] *Greenpeace UK and Uplift v. Secretary of State for Energy Security and Net Zero and the North Sea Transition Authority*.

[66] *Greenpeace/Uplift v. Scotland* [2025] CSOH 10.

[67] Setzer & Higham, 2025 Snapshot, *supra* note 8.

[68] *Id.*; Tiffanie Chan, Juliana Vélez-Echeverri, Joana Setzer & Catherine Higham, *Consumer Protection and Climate Change*, *in* THE OXFORD HANDBOOK OF CLIMATE CHANGE AND PRIVATE LAW (Douglas Kysar & Ernest Lim eds., forthcoming 2026).

[69] Setzer & Higham, 2025 Snapshot, *supra* note 8.

[70] *Id.*

[71] *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Urgenda Foundation*, 200.178.245/01 (Hague Ct. App. Oct. 9, 2018); *State of the Netherlands v. Urgenda Foundation*, No. 19/00135 (Sup. Ct. Neth. Dec. 20, 2019).

[72] *Notre Affaire à Tous & Others v. France*, No. 1904967, Administrative Court of Paris (France), Feb. 3, 2021.

[73] *VZW Klimaatzaak v. Belgium & Others, No. 2021/AR/559* (Ct. App. Brussels Nov. 30, 2023).

[74] *Neubauer et al. v. Germany*, 1 BvR 2656/18 et al. (Fed. Const. Ct.) (Ger.) (Mar. 24, 2021).

accounts for a significant proportion of all such cases filed globally.[75] In 2024, the highest human rights court in Europe issued its ruling in *KlimaSeniorinnen v. Switzerland*, holding Switzerland accountable for failing to adopt adequate climate measures, recognizing that such inaction violated human rights.[76] The implementation of such rulings by governments not only results in laws and policies that directly affect corporations, but, as we argue in the next Part, have also become the scaffolding for corporate climate litigation in Europe.

II. CLIMATE LITIGATION AGAINST CORPORATIONS IN EUROPE

Corporations have become increasingly prominent targets in European climate litigation, reflecting heightened societal and legal scrutiny of their role in driving the climate crisis. High-emitting sectors—such as fossil fuels, cement, and automotive—are now frequently pursued in court for their substantial contributions to GHG emissions, their influence on climate policy, and their responsibilities to investors, consumers, and society at large.[77] Claimants aim to hold companies accountable for climate-related harms, challenge misleading or "greenwashed" claims, enforce directors' fiduciary and human rights obligations, and, in some cases, block or delay carbon-intensive projects.[78] Strategic litigation against corporations also seeks to catalyze systemic change, pressuring high-emitting industries to align their operations and investments with domestic and international climate goals, including those set by the Paris Agreement.[79]

This focus on corporate climate accountability has been shaped by several key developments. One of the initial drivers of such litigation was the Richard Heede research attributing over 60% of global emissions to just 90 "Carbon Majors,"[80] providing a first scientific basis for assigning responsibility to major emitters. This was followed by the Philippines Human Rights Commission's inquiry on climate change,[81] which explicitly linked corporate emissions to human rights impacts, citing several climate cases against governments in so doing.[82]

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[75] Setzer & Higham, CoE Study, *supra* note 1.

[76] *Id.*

[77] Setzer & Higham, 2025 Snapshot, *supra* note 8.

[78] *Id.*

[79] Mikko Rajavuori, Annalisa Savaresi & Harro van Asselt, *Mandatory Due Diligence Laws and Climate Change Litigation: Bridging the Corporate Climate Accountability Gap?*, 17:4 REGULATION & GOVERNANCE 944, 945, 947 (2023).

[80] Richard Heede, Carbon Majors: Accounting for Carbon and Methane Emissions 1854–2010, CLIMATE MITIGATION SERVICES (Apr. 7, 2014), https://climateaccountability.org/pdf/MRR%209.1%20Apr14R.pdf.

[81] Comm'n on Hum. Rts. of the Phil., Nat'l Inquiry on Climate Change Rep., Case No. CHR-NI-2016-0001, para. 60 (May 6, 2022).

[82] *Id. See also* Annalisa Savaresi & Margherita Wewerinke-Singh, *Historic Inquiry Holds the*

Building on these foundations, civil-society organizations and individual claimants now use litigation—often grounded in human rights, consumer-protection, corporate governance, and tort doctrines—not only to hold corporations directly accountable but also to drive stronger regulatory oversight.[83]

Scholarly work has further developed the conception of such corporate responsibility. Rajavuori, Savaresi and van Asselt, for example, identify three categories of climate lawsuits which involve corporate emission reduction.[84] The first category relies exclusively on corporate human rights obligations and responsibilities filed before non-judicial bodies.[85] The second category, to which the *Milieudefensie v. Royal Dutch Shell*[86] case belongs, relies on a combination of human rights and tort law brought before judicial bodies.[87] The third category is based on due diligence legislation.[88]

Practitioner-oriented publications have also analyzed corporate climate litigation across jurisdictions. In particular, the *Global Toolbox on Corporate Climate Litigation* developed by the British Institute of International and Comparative Law (BIICL) synthesizes comparative jurisprudence and practical strategies for the effective implementation of corporate climate obligations, identifying patterns in how courts operationalize duties of care, due diligence, and disclosure in 17 countries around the world.[89]

This Part examines three types of litigation against corporations in Europe. In Section II.A we examine climate-related human rights due diligence litigation, in which we observe an important doctrinal migration from public to private law, influencing the grounds on which these cases are brought and, in some cases, on which rulings are issued. In Section II.B we examine polluter-pays litigation, which involves requests for monetary damages, but that can be combined with requests for injunctive relief, often based on the human rights due diligence arguments discussed in the preceding Section. Section II.C examines climate-washing litigation, where courts are being asked to police the boundaries between legitimate sustainability communication and deceptive advertising.

Carbon Majors Accountable for the Impacts of Climate Change in the Philippines, GNHRE BLOG (2022), https://gnhre.org/?p=15176; Setzer & Higham, 2024 Snapshot, *supra* note 44.

[83] Rajavuori et al., *supra* note 79, at 946.

[84] *Id.*

[85] *Id.*

[86] *Milieudefensie et al. v. Shell*, Hague Court of Appeal, Case No. 200.302.332/01, Judgment of Nov. 12, 2024.

[87] *Id.*

[88] *Id.*

[89] British Institute of International and Comparative Law, Corporate Climate Litigation Toolbox, https://www.biicl.org/ccl-toolbox (last visited Nov. 3, 2025).

A. *Due Diligence Litigation*

Litigation grounded in human rights due diligence obligations seeks to compel companies to adopt and implement adequate climate strategies through injunctive relief.[90] In these cases, corporate climate litigation advances the developments of the past decade or so, in which the public–private dichotomy has been increasingly transcended through shifting societal expectations and the imposition of legal requirements, notably human rights due diligence standards, on corporations.[91]

Early landmark judgments against governments forged the conceptual tools that now underpin climate cases against corporations. In *Urgenda v. Netherlands*, the Dutch Court of Appeals and Supreme Court redefined mitigation as a rights-based obligation by linking the state's climate inaction to breaches of Articles 2 and 8 of the ECHR—the rights to life and to respect for private and family life.[92] The decision's influence stemmed less from its specific reduction target (a 25% cut by 2020) than from its broader interpretive shift: climate mitigation became a *legal duty*, not a policy preference.[93]

Subsequent judgments in other jurisdictions applied and deepened this framework. *Neubauer v. Germany* constitutionalized the concept of carbon budgets and intergenerational equity, holding that inadequate near-term targets could disproportionately burden future generations' rights.[94] The *KlimaSeniorinnen v. Switzerland* judgment of the ECtHR then confirmed that the ECHR requires member states to set and implement Paris Agreement-consistent pathways, grounded in best-available science and credible interim milestones.[95] Together, these cases established a triad of judicial principles: (i) climate change poses foreseeable and serious risks to human rights; (ii) states have positive obligations to prevent those risks through effective mitigation; and (iii) courts can assess compliance against objective scientific metrics such as carbon budgets.

The evolution of climate litigation has demonstrated the cross-jurisdictional influence of such judgments—or the "transnational character of climate change

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[90] Setzer & Higham, CoE Study, *supra* note 1.

[91] Janne Mende, *Corporate Human Rights Responsibilities: Rethinking the Public-Private Divide*, 41:3 NORDIC JOURNAL OF HUMAN RIGHTS 255 (2023).

[92] *Urgenda*, *supra* note 10.

[93] Annalisa Savaresi & Joana Setzer, *Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers*, 13:1 JOURNAL OF HUMAN RIGHTS AND THE ENVIRONMENT 7 (2022); Lucy Maxwell, Sarah Mead & Dennis van Berkel, *Standards for Adjudicating the Next Generation of Urgenda-style Climate Cases*, 13:1 JOURNAL OF HUMAN RIGHTS AND THE ENVIRONMENT 35 (2022); Zuzanna Buszman, Beyond the Courtroom: *The Evolution of Rights-Based Climate Litigation from Urgenda to Held and its Policy Impact*, 102 STUDIA IURIDICA 56 (2024).

[94] *Neubauer*, *supra* note 74.

[95] *KlimaSeniorinnen*, *supra* note 11.

litigation."[96] Litigants and courts alike frequently reference judgments from other jurisdictions, applying and confirming legal interpretations developed therein.

Litigants have since applied these same principles in cases brought against corporations, albeit reframed through private-law doctrines. International soft-law instruments such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the Organization for Economic Co-operation and Development Guidelines for Multinational Enterprises (OECD MNE Guidelines) frame human rights due diligence as a distinct set of corporate responsibilities, shifting understandings of the public and private spheres and the respective responsibilities associated with each.[97] These instruments have been relied on—often in combination with national tort law or human rights provisions—by claimants in litigation seeking the recognition of specific emissions-reductions obligations in respect of corporate actors.[98] Some of these cases have advanced the development of corporate due diligence legislation, potentially strengthening corporate climate accountability.[99]

To broaden our understanding of this phenomenon, we developed an automated full-text analysis pipeline designed to systematically detect and catalogue every reference to framework or systemic cases within the corpus of corporate filings and judgments using a Large Language Model.[100] This allowed us to analyze a large number of documents and identify when and how reasoning from government cases was being invoked.

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[96] Phillip Paiement, *Urgent Agenda: How Climate Litigation Builds Transnational Narratives*, 11:1-2 TRANSNATIONAL LEGAL THEORY 121 (2020); *see also* Natasha Affolder & Godwin E.K. Dzah, The Transnational Exchange of Law Through Climate Change Litigation, *in* RESEARCH HANDBOOK ON CLIMATE CHANGE LITIGATION 207 (Francesco Sindico, Kate McKenzie, Gastón Medici-Colombo & Lennart Wegener eds., 2024).

[97] *See* UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS 'PROTECT, RESPECT AND REMEDY' FRAMEWORK, UN Doc. A/hrc/17/31 (June 16, 2011); OECD, OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES ON RESPONSIBLE BUSINESS CONDUCT (OECD PUBLISHING 2023). *See also* Antoine Duval, *Ruggie's Double Movement: Assembling the Private and the Public Through Human Rights Due Diligence*, 41(3) NORDIC J. HUM. RTS. 279 (2023).

[98] Rajavuori et al., *supra* note 79.

[99] *Id.*

[100] We constructed a local database integrating metadata from the Sabin Center Climate Change Litigation Database with the full text of 121 corporate climate case documents (including complaints, defenses, and judgments). A Large Language Model (Google Gemini 3.0 Pro) was employed to semantically analyze the full text of each document against a reference list of 127 government framework cases. The LLM-based pipeline is capable of identifying references regardless of naming variation, linguistic convention, or language, including oblique or paraphrased citations that would evade rule-based detection, while simultaneously classifying the document producer and the context in which each citation occurs. The results partially informed the analysis made in the article by mapping which reasoning from government framework cases has migrated into corporate climate litigation. Expert analysis of the results was used to iterate and validate results.

Milieudefensie et al. v. Royal Dutch Shell[101] exemplifies the migration of principles developed in climate litigation against states to cases against corporations.[102] In the proceedings, claimants explicitly leveraged *Urgenda v. Netherlands*[103] and *Neubauer*[104] to argue that public-law standards regarding unlawful endangerment and intergenerational equity define the scope of corporate liability, despite Shell's objections that state obligations cannot be transposed to private actors.[105] The duty of care invoked in that case echoes the *Urgenda* court's finding that a "real and immediate risk" of climate harm triggers legal obligations of prevention.[106] Indeed, both the Hague District Court, and subsequently the Hague Court of Appeal, explicitly cited *Urgenda*, holding that a corporation's social standard of care must be interpreted in harmony with human rights principles and the Paris Agreement temperature goal.[107] By treating Articles 2 and 8 of the ECHR as interpretive aids to domestic tort law, the courts blurred the line between public and private responsibility.[108] The Court of Appeal additionally referred to the judgment of the ECtHR in *KlimaSeniorinnen* and litigation against governments from various non-European jurisdictions,[109] demonstrating the multilevel legal origins of climate-related obligations and the cross-pollination that occurs in domestic climate jurisprudence across jurisdictions and between public- and private-law litigation.[110]

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[101] *Milieudefensie et al. v. Shell*, Hague Court of Appeal, Case No. 200.302.332/01, Judgment of Nov. 12, 2024.

[102] Chiara Macchi & Josephine van Zeben, *Business and Human Rights Implications of Climate Change Litigation:* Milieudefensie et al. v Royal Dutch Shell, 30 REV. EUR. COMP. & INT'L ENV'T. L. 409 (2021); Philippe Paiement, Reimagining the Energy Corporation: Milieudefensie and Others v. Royal Dutch Shell Plc, *in* NETHERLANDS YEARBOOK OF INTERNATIONAL LAW 2021, vol. 52, at 247 (T.M.C. Asser Press 2023) (Daniëlla Dam-de Jong & Fabian Amtenbrink eds.).

[103] *Milieudefensie et al. v. Royal Dutch Shell plc.*, Summons, Hague District Court (Neth.), paras. 40, 41, 52, 53, 55 (Apr. 5, 2019).

[104] *Milieudefensie et al. v. Royal Dutch Shell plc.*, Defence on Appeal, Hague Court of Appeal (Neth.), para. 376 (Oct. 18, 2022).

[105] *Milieudefensie et al. v. Royal Dutch Shell plc.*, Statement of Defense, Hague District Court (Neth.), paras. 417–20 (Nov. 13, 2019).

[106] *Urgenda*, *supra* note 10, paras. 4.3, 5.7.1 (Hague District Court judgment). The "real and immediate risk" language appears at paragraph 4.3.

[107] *Milieudefensie et al. v. Royal Dutch Shell plc.*, C/09/571932 / HA ZA 19-379, ECLI:NL:RBDHA:2021:5339 (Rechtbank Den Haag [Hague District Court] May 26, 2021).

[108] *Id.* paras. 4.4.9–4.4.10; *Milieudefensie v. Shell*, Hague Court of Appeal, *supra* note 101, paras. 7.7–7.8, 7.18.

[109] The Court of Appeal cited *Leghari v. Fed'n of Pak.*, (2015) W.P. No. 25501 (HC Lahore) (Pak.); *Corte Suprema de* Justicia [C.S.J.] [Supreme Court], Abril 5, 2018, Sentencia STC4360-2018 (Colom.) ("Future Generations"); *Stf, Adpf 708, Relator: Min. Luís Roberto Barroso*, 01.07.2022 (Braz.) ("Climate Fund"); Held v. State, No. Cdv-2020-307, 2023 WL 5202888 (Mont. Dist. Ct. Aug. 14, 2023).

[110] *Milieudefensie v. Shell*, Hague Court of Appeal, *supra* note 101, para. 7.27.

Although the appellate court ultimately overturned the District Court's judgment, crucially, it reaffirmed the finding that corporations do indeed bear a legal responsibility to combat climate change and achieving the Paris Agreement targets.[111] According to the Court of Appeal, existing climate measures under EU and domestic law are not exhaustive, meaning that compliance with such measures does not free corporations from further emissions-reduction obligations derived from a social standard of care.[112] Additionally, the court explicitly indicated that expansion of fossil fuels through investments in new oil and gas fields may run counter to Shell's obligations, violating the social standard of care.[113] In interpreting this social standard of care, the appellate court relied on the UNGPs and the OECD MNE Guidelines—in addition to a range of other non-binding regulations and guidelines applicable to private actors—to conclude that although human rights treaty provisions are primarily directed at states, they may have an "indirect horizontal effect" on relationships between private actors by clarifying the content of such broad standards.[114] This doctrinal migration—from state duties to corporate duties—has become a defining feature of Europe's second generation of climate litigation.

More broadly, so-called *corporate-framework* cases like the *Milieudefensie* case seek to hold companies accountable for their contributions to climate change by challenging group-wide policies, governance structures, and decision-making frameworks.[115] These cases are concerned with the climate impacts of corporate practices on society and vulnerable groups or individuals, thus focusing on the external, society-facing impacts of corporate practices rather than on internal impacts such as shareholder value.[116] They often argue that corporations should be required to assess and mitigate climate-related risks and impacts across corporations' full value chains.[117] Such arguments are increasingly combined with the "polluter-pays" arguments discussed in the next Section. One such case is that of *Asmania v. Holcim*, which was recently declared admissible by the Cantonal Court of Zug in Switzerland. In its admissibility decision, the court relied on the *KlimaSeniorinnen* decision as authority for the proposition that Articles 2 and 8 of the ECHR apply in the context of climate change. The court noted that under Swiss law, the "indirect third party effect" of other Convention rights has been recognized in other contexts, and thus it is feasible that Articles 2 and 8 may

[111] *Id.* para. 7.53.

[112] *Id.* para. 7.62.

[113] *Id.* paras. 7.25, 7.55.

[114] *Id.* paras. 7.25, 7.55. *See* UNGPs, *supra* note 97; OECD MNE GUIDELINES, *supra* note 97.

[115] Setzer & Higham, 2025 Snapshot, *supra* note 8.

[116] *Id.*

[117] Setzer & Higham, 2024 Snapshot, *supra* note 44.

inform the interpretation of Swiss civil law in the context of a climate law dispute.[118]

The European corporate climate litigation landscape is being further shaped by the incorporation of climate and human rights-related corporate obligations into domestic and regional legislation, notably through the adoption of environmental and/or human rights due diligence provisions.[119] At the national level, France's duty of vigilance law underpins litigation such as *Notre Affaire à Tous v. Total*,[120] where claimants argue that the respondent must adopt Paris Agreement-aligned emissions-reduction targets as part of its vigilance plan. The claimants invoke *Urgenda v. Netherlands* to draw a parallel between the Dutch duty of care and the French duty of vigilance.[121] On admissibility, the claimants also rely on two further government-framework cases: *Commune de Grande-Synthe v. France* to establish the conditions under which local authorities may claim an interest in acting on climate matters[122] and *Notre Affaire à Tous & Others v. France* in which the state was condemned for the inadequacy of its climate action.[123] The case has been declared admissible and is due to be heard on the merits.

At the EU level, the Corporate Sustainability Reporting Directive (CSRD)[124] and the Corporate Sustainability Due Diligence Directive (CSDDD)[125] advance disclosure and due diligence obligations relevant to the climate.[126] Although transposition timelines have shifted and amendments aimed at "reducing administrative burden" have been proposed, momentum behind human rights due diligence and its climate application suggests continued use of these concepts in litigation against major emitters.[127]

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[118] *Asmania et al. v. Holcim Ltd.*, Kantonsgericht [Cantonal Court] [KG] Zug, Dec. 17, 2025, No. A3 2023 6, para. 3.7.2 (Switz.).

[119] Rajavuori et al., *supra* note 79; Setzer & Higham, CoE Report, *supra* note 1.

[120] *Notre Affaire à Tous & Others v. Total S.A.*, Nanterre Judicial Court (Fr.) (Feb. 28, 2023).

[121] *Notre Affaire à Tous et al. v. Total*, Complaint, Nanterre Judicial Court (Fr.) (Jan. 28, 2020).

[122] *Notre Affaire à Tous et al. v. Total*, Reply, Nanterre Judicial Court (Fr.) (Feb. 10, 2023).

[123] *Id.*

[124] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, 2022 O.J. (L 322), at 15.

[125] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, 2024 O.J. (L 253) 1.

[126] Sabrina Bruno & Mario Manna, *More on the Omnibus Package and the Future of European Global Leadership on Sustainability*, BIICL INSIGHTS (May 22, 2025), https://www.biicl.org/blog/107/more-on-the-omnibus-package-and-the-future-of-european-global-leadership-on-sustainability.

[127] *Id.*

Where statutory regimes are nascent or contested, civil society is likely to argue that existing domestic duties—such as duties of care, nuisance, and consumer protections—already require emissions mitigation, as seen in *Milieudefensie*. Such claims are advanced, for example, in *Greenpeace Italy et al. v. ENI*,[128] in which the claimants seek declaratory and injunctive relief, on the basis of international human rights law and national constitutional provisions, in relation to past and threatened future violations of fundamental rights as a result of GHG emissions. The claimants also draw on government-framework cases,[129] including *Urgenda v. Netherlands* in support of the argument that the existence of other contributors to GHG emissions does not preclude the respondent's liability.[130]

Although the case is pending, the Italian Court of Cassation issued a landmark ruling in July 2025 confirming its admissibility—and that of climate change cases generally—before civil courts.[131] This judgment provides important clarification on jurisdictional questions in relation to climate litigation in Italy, given the dismissal of previous cases, as well as demonstrating the importance of maintaining the distinction between public- and private-law principles despite the process of interpretative harmonization outlined above. The Court of Cassation affirmed—in line with climate jurisprudence in many other CoE member states and elsewhere—that adjudication of climate lawsuits does not constitute an illegitimate incursion into the political sphere or corporate liberties. Rather, determining whether an entity's conduct complies with fundamental rights guarantees in the context of climate change falls squarely within the judicial role. In so doing, the court distinguished the present case from the government-framework cases cited by the claimants, clarifying that whereas the Italian case known as *A Sud v. Italy*—or the *Giudizio Universale*—challenged the state in its capacity as legislator over sovereign policy choices, the action against ENI is a civil liability claim directed at a corporate actor for its failure to adopt adequate emissions-reduction measures.[132]

The limits of reliance on public-law principles in private-law cases may also be seen in a series of cases brought against corporations in Germany based on similar argumentation derived from the *Neubauer* judgment. By way of example, in *Barbara*

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[128] *Greenpeace Italy, ReCommon & 12 Individuals v. ENI S.p.A. et al.*, Civil Court of Rome (It.) (July 21, 2025).

[129] The Claimants also cited the *Neubauer et al. v. Germany* and *Notre Affaire à Tous & Others v. France*. *Greenpeace Italy et al. v. ENI S.p.A. et al.*, No. 19287, Summons (Civil Court of Rome, filed May 9, 2023).

[130] *Id.*

[131] *Greenpeace Italy et al. v. ENI S.p.A.*, the Italian Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A., Order No 20381/2025, Corte di Cassazione Sezioni Unite (Italian Supreme Court of Cassation, Joint Civil Chambers, July 21, 2025).

[132] *Id.*; *see also* Giorgia Valentini & Chiara Gentile, *A Step Forward in Italian Climate Litigation: Preliminary Remarks on Greenpeace and Others v. ENI and Others*, VERFASSUNGSBLOG (Sep. 9, 2025), https://verfassungsblog.de/climate-litgation-italy/.

Metz et al. v. Wintershall Dea AG,[133] the claimants sought injunctions requiring the respondent oil and gas company to adopt more stringent emissions-reductions targets and to cease extractive activities within and outside Germany, including indirect involvement through shareholding. The case was grounded in the argument—upheld against the state in the *Neubauer* judgment—that the respondent corporation's acts and omissions exceed a fair share of the carbon budget and thus compromise the claimants' fundamental rights.[134] According to a press release from the defendants, the case settled after the company's oil and gas exploration and production assets were sold.[135] However, similar grounds alleging fundamental rights violations resulting from excessive GHG emissions are also advanced in *Deutsche Umwelthilfe v. BMW*,[136] *Kaiser et al. v. Volkswagen*,[137] and *Allhoff-Cramer v. Volkswagen AG*,[138] all of which are based in German tort law. To date, these arguments have not met with success before the German courts, with the courts accepting the argument that the *Neubauer* judgment left the mode of climate protection to be adopted as a matter for the legislature,[139] but the cases remain pending in the appeals process.

Despite mixed success to date, ongoing efforts by civil-society groups to apply the concept of human rights due diligence to climate change extend beyond major polluting industries. The financial services industry has been increasingly targeted for its indirect contributions to emissions through its investment practices.[140] These cases target the flow of finances to high-emitting activities incompatible with climate objectives by seeking to internalize climate risk into capital allocation and impact the economic tenability of carbon-intensive investments.[141] This strategy type is exemplified by *Milieudefensie v. ING Bank*,[142] in which the claimants argue that the respondent—one of the largest banks in the Netherlands—is in breach of its duty of care under Dutch tort law and international soft law by failing to reduce its financed emissions in line with the

[133] *Metz et al. v. Wintershall Dea AG*, Regional Court of Kassel (Ger.) (Oct 4, 2021).

[134] *Id.*

[135] Press Release, Wintershall Dea, Climate Lawsuit Against Wintershall Dea Withdrawn (Feb. 23, 2023), https://wintershalldea.de/en/newsroom/climate-lawsuit-against-wintershall-dea-withdrawn.

[136] *Deutsche Umwelthilfe v. BMW AG*, Regional Court of Munich I (Ger.) (Sep. 20, 2021).

[137] *Kaiser et al. v. Volkswagen AG*, Regional Court of Braunschweig (Ger.) (Nov. 8, 2021).

[138] *Allhof-Cramer v. Volkswagen AG*, Regional Court of Braunschweig (Ger.), at 7 (Nov. 8, 2021).

[139] *Kaiser et al. v. Volkswagen AG*, *supra* note 137.

[140] Setzer & Higham, 2025 Snapshot, *supra* note 8.

[141] *Id.*

[142] *Milieudefensie v. ING Group and ING Bank*, Amsterdam District Court (Neth.) (Mar. 28, 2025).

Paris Agreement.[143] To build their claim, claimants relied on several government-framework cases. Based on *Urgenda v. Netherlands* they argued that inadequate climate policy could be a breach of the respondent's duty of care.[144] The claimants also relied on human rights grounds, affirming that courts in other jurisdiction have confirmed, in government-framework cases, that dangerous climate change is a threat to human rights,[145] and citing the *KlimaSeniorinnen* judgment in support of the claim that ING has a legal obligation to protect fundamental rights under the ECHR.[146] Finally, in their summons, claimants referred to other government-framework cases, including *Held v. Montana*, to refute the effectiveness defense[147] (the argument that emissions reductions by a single company would be ineffective, as competitors would simply take over its market share) and *M.K. Ranjitsinh & Others v. Union of India & Others* and *PSB et al. v. Brazil* to assert that human rights provide protection against dangerous climate change.[148]

Ultimately, the cases discussed above represent an active frontier where the transposition of state obligations to the private sector is being rigorously examined. As courts across Europe navigate these novel arguments, from fossil fuel extraction to financed emissions, they are progressively determining the limits within which state obligations and human rights principles can be translated into enforceable corporate obligations.

B. *Polluter-Pays Litigation*[149]

Polluter-pays litigation involves attempts to hold major corporate emitters financially liable for the harms caused or threatened by their contributions to climate change.[150] While the polluter-pays principle has long underpinned environmental-liability regimes, its application in civil climate litigation in Europe is comparatively new and marks a shift from preventive or compliance-oriented measures toward the allocation of financial responsibility for both historic and future climate harm.[151]

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[143] *Milieudefensie v. ING Group and ING Bank*, No. 67808, Summons (Amsterdam District Court, filed Mar. 28, 2025).

[144] *Id.* paras. 656–57.

[145] *Id.* paras. 859–61.

[146] *Id.* para. 862. *See also KlimaSeniorinnen*, *supra* note 11.

[147] *Milieudefensie v. ING Summons*, *supra* note 143, para. 1171.

[148] *Id.* para. 866.

[149] In this Section, the authors draw on our previous work in Nina Koistinen, Catherine Higham & Joana Setzer, *Will Polluters Pay? Evidentiary Hearings in the Case of Lliuya v. RWE in the Wider European Context*, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT (Mar. 17, 2025), https://www.lse.ac.uk/granthaminstitute/news/will-polluters-pay-evidentiary-hearings-in-the-case-of-lliuya-v-rwe-in-the-wider-european-context/.

[150] *Id.*

[151] *Id. See also* Priscilla Schwartz, The Polluter-Pays Principle, *in* RESEARCH HANDBOOK ON INTERNATIONAL ENVIRONMENTAL LAW 243 (Malgosia Fitzmaurice et al. eds., Edward

This category of litigation diverges from due diligence-based claims in that it seeks monetary damages for past and anticipated climate-related harm.[152] Polluter-pays climate litigation therefore features a unique element of financial accountability not seen in other corporate climate litigation.[153] The two categories are not, however, mutually exclusive. Rather, such requests for monetary damages are frequently combined with requests for injunctive relief.[154] Although relatively few in number, polluter-pays cases are legally significant and have begun to shape jurisprudence on corporate liability for GHG emissions.

Out of 85 polluter-pays climate lawsuits filed globally, three have been filed against corporate entities in Europe—namely, *Lliuya v. RWE* (Germany),[155] *Asmania v. Holcim* (Switzerland),[156] and *Falys v. Total* (Belgium).[157] All three cases target carbon majors and seek to engage corporate responsibility for climate-related harm based on the respondents' contributions to global emissions.

While both *Asmania* and *Falys* remain pending at the time of writing, a judgment was issued in *Lliuya* in May 2025, bringing the decade-long proceeding to an end.[158] The question before the court in that case was whether the increased risk of a future flooding event due to climate change was sufficiently significant such that the respondent, RWE, should be required to intervene to mitigate that risk by contributing to flood protection measures. Ultimately, the court found this to be insufficiently substantiated by the evidence before it.[159] Notwithstanding the dismissal of the case on the facts, the court made numerous legal pronouncements that are likely to prove constructive for subsequent polluter-pays cases in Europe and further afield, including the presently pending cases of *Asmania* and *Falys.*[160] The trajectory of the *Lliuya* case thus further exemplifies the iterative nature of climate litigation and the—sometimes gradual, sometimes accelerated—migration of legal approaches, both from public to private law and across jurisdictions, that is characteristic of such litigation.

Elgar Publ'g 2010).

152 Koistinen et al., *supra* note 149.

153 *Id.*

154 *Id.*

155 *Lliuya v. RWE AG*, Essen District Court (Ger.) (Nov. 23, 2015).

156 *Asmania et al. v. Holcim Ltd.*, Cantonal Court of Zug (Switz.) (July 12, 2022).

157 *Falys et al. v. TotalEnergies SE*, Commercial Court of Tournai (Belg.) (Mar. 1, 2024).

158 *Lliuya v. RWE AG*, Higher Regional Court (Oberlandesgericht, OLG) of Hamm, Case No. 5 U 15/17 (Ger.) (May 28, 2025).

159 *Id.*

160 *Lliuya v. RWE AG*, OLG Hamm, *supra* note 158, at 22, 92–97. *See also* Noah Walker-Crawford, Joy Reyes & Nicholas Petkov, Luciano Lliuya v. RWE*: A Major Step Forward for Climate Justice*, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT (July 9, 2025). https://www.lse.ac.uk/granthaminstitute/news/luciano-lliuya-v-rwe-a-major-step-forward-for-climate-justice/.

Like corporate-framework cases, polluter-pays cases rely on human rights and due diligence standards in seeking the reparation of harm.[161] In doing so, evidence of corporations' deliberate denial of climate science and dissemination of climate misinformation is increasingly introduced by litigants to support their arguments.[162] According to litigants, evidence of the fossil fuel industry's knowledge of the causes and impacts of climate change and not only their failure to act upon this knowledge, but their deliberate concealment of this information, amounts to a breach of the legal standards of conduct.[163] In this regard, the argumentation in corporate climate cases reflects that of tobacco litigation.[164] This argumentation is illustrated in *Falys*, with the claimant arguing that the respondent fossil fuel company's concealment of the impacts of GHG emissions and its funding of related disinformation campaigns with the aim of stalling the energy transition and maximizing its profits does not reflect the actions of a prudent and diligent corporation, thereby falling short of the general standard of care. In *Falys*, consistent with the pattern of doctrinal migration observed in due diligence litigation, the claimant drew on the government-framework case precedents of *VZW Klimaatzaak v. Kingdom of Belgium & Others* and *Urgenda v. Netherlands* to support both procedural and substantive dimensions of the claim.[165] *Falys* is a more orthodox iteration of polluter-pays litigation, in that the claimant primarily seeks damages for past harms caused by climate-induced extreme weather events.[166] The challenge of demonstrating the imminence of harm and the severity of risk is less onerous for such backward-looking claims. This may in turn assist claimants in clearing the initial hurdle of establishing a legitimate interest in proceedings.[167] By contrast, where polluter-pays cases pre-emptively seek damages for the mitigation of anticipated harm, as in *Lliuya*, questions around temporality become pertinent.[168] The existence of legislation codifying corporate reporting obligations may act to assist litigants in such cases. This is illustrated in *Asmania*, which—like *Lliuya*—concerns threatened future injuries as well as existing harms (and incidentally, also concerns flood risk).[169] In both of these cases, although the conduct creating the alleged risk has already occurred, much of the material injury itself is yet to materialize.[170]

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[161] Koistinen et al., *supra* note 149.

[162] Jessica Wentz & Benjamin Franta, *Linking Fossil Fuel Disinformation to Climate Damages*, 52 ENV'T L. REP. (ELR) 10995 (2022).

[163] *Id.*

[164] *Id.*

[165] *Falys et al. v. TotalEnergies SE*, Petition, Commercial Court of Tournai (Belg.) (Mar. 1, 2024).

[166] Koistinen et al., *supra* note 149.

[167] *Id.*

[168] *Id.*

[169] *Asmania et al. v. Holcim Ltd.*, Kantonsgericht [Cantonal Court] [KG] Zug, *supra* note 118.

[170] *Falys et al. v. TotalEnergies SE*, Petition, *supra* note 165.

In an attempt to overcome the more onerous procedural challenges associated with their claims for anticipated harms, the claimants in *Asmania* draw upon the respondent's corporate strategy documents to establish the imminence of the threatened harm.[171] According to the claimants, Holcim's group-wide climate strategy evidences the respondent's intention to continue pursuing the same line of action into the future—that is, producing excessive GHG emissions in violation of individual rights.[172] This case thus underscores how enhanced corporate climate planning and reporting obligations may support the bringing of claims by present and potential future victims of climate harm. As noted above, the case has now been declared admissible by the Cantonal Court of Zug.

Besides posing questions about the existence of corporate liability, polluter-pays climate litigation in Europe raises complex considerations as to the extent of such liability. In this regard, discussions around Scope 3 emissions are of particular relevance. Scope 3 emissions refer to GHGs emitted downstream in the value chain, notably from the use of a corporation's goods and services by consumers and corporate clients.[173] These are distinguished from Scope 1 emissions (direct emissions produced by the corporation's operations) and Scope 2 emissions (emissions from third-party services used by the corporation, such as electricity and transport).[174] Corporations are generally expected to understand and to take some responsibility for Scope 1 and 2 emissions under soft law reporting standards, and increasingly under mandatory climate-disclosure regimes.[175] The extent to which actors can be held liable for Scope 3 emissions is a key determinant in quantifying defendants' responsibility in polluter-pays cases, in particular where the respondent is engaged in fossil fuel production or other activities with a high volume of downstream emissions. This explains why responsibility for Scope 3 emissions is an eminent consideration in *Falys*—in which the respondent, TotalEnergies, is a fossil fuel producer—while it is of lesser prominence in *Lliuya* and *Asmania*, both of which target industries—electricity production and cement manufacturing, respectively—the emissions of which predominantly fall within Scope 1.[176]

The question of determining the extent of corporate liability is further explored through the quantum of damages sought by claimants. The claimants in both *Lliuya* and *Asmania* adopt a more conservative approach in this regard by seeking damages commensurate with the respondents' contributions to global GHG emissions.[177] In

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[171] Koistinen et al., *supra* note 149.

[172] *Id.*

[173] *Id.*

[174] Daniel C. Esty & Nathan de Arriba-Sellier, *Zeroing in on Net-Zero: From Soft Law to Hard Law in Corporate Climate Change Pledges*, 94 U. COLO. L. REV. 635 (2023).

[175] *Id.*

[176] Koistinen et al., *supra* note 149.

[177] *Id.*

Lliuya, damages amounting to 0.38% of the costs associated with the adoption of flood protection measures were sought—a percentage calculated based on RWE's share of global emissions.[178] A similar strategy has been adopted by the claimants in *Asmania* in requesting damages for (past and future) emotional harm and damage to property, in addition to the financing of adaptation measures in their locality.[179] As in *Lliuya*, the compensation is sought on a *pro rata* basis (plus interest), based on the respondent's alleged contribution to 0.42% of global GHG emissions.[180] This legal strategy creatively circumvents drop-in-the-ocean arguments (frequently seen in both public and corporate climate litigation) according to which the respondent cannot be held responsible given the supposedly trivial magnitude of their emissions relative to global GHG emissions.[181] The court firmly rejected this argument in its decision on admissibility, arguing, "[e]very single contribution is essential to tackling climate change."[182]

By contrast, the damages provisionally sought in *Falys* are a symbolic one euro per extreme weather event complained of, in addition to one euro for non-pecuniary damage.[183] It remains to be seen whether the extent of damages sought will be varied by the claimant over the course of later submissions and, if so, whether a similar proportional approach to calculating the damages attributable to the respondent will be proposed. In this connection, the inclusion and extent of Scope 3 emissions are particularly significant in cases following the model of *Asmania* and *Lliuya*, in which damages are sought on a *pro rata* basis corresponding to the respondents' contributions to global GHG emissions. Whether or not Scope 3 emissions are considered to fall within the scope of the respondents' legal responsibilities will inevitably alter the percentage contribution applicable.

Although no case has yet granted a request for damages against a corporation for its global contribution to GHG emissions,[184] polluter-pays litigation demonstrates the increasing legal and evidentiary sophistication of corporate climate claims. While this type of climate litigation remains relatively nascent in Europe, the cases brought reflect a broader trend towards the recognition of corporate

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[178] *Lliuya v. RWE AG*, OLG Hamm, *supra* note 158, at 22.

[179] Koistinen et al., *supra* note 149.

[180] *Id.*

[181] *Asmania et al. v. Holcim Ltd.*, Kantonsgericht [Cantonal Court] [KG] Zug, *supra* note 118.

[182] *Id.*

[183] Koistinen et al., *supra* note 149.

[184] Setzer & Higham, 2025 Snapshot, *supra* note 8; Noah Walker-Crawford, Jameela Joy Reyes, Nicholas Petkov & Sofia Palazzo Corner, *Science in the Courtroom: Evidentiary Needs in Climate Litigation*, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT (Mar. 10, 2026), https://www.lse.ac.uk/granthaminstitute/publication/science-in-the-courtroom-evidentiary-needs-in-climate-litigation/.

financial liability for climate harm.[185] Polluter-pays litigation is likely to continue accelerating in light of progressive legal and scientific developments. Legal understandings of corporate responsibility for Scope 3 emissions and attribution science—which measures the impact of climate change on the increased intensity and likelihood of extreme weather events—are both in a state of rapid and continuous evolution, lending ever greater credibility and substance to such claims.[186] These ongoing developments are likely to further clarify the contours of corporate responsibility for climate change. In this regard, it is worth noting that the question of corporate financial accountability for climate damage may also be dealt with through legislation. This alternative (complementary) route for implementing a polluter-pays approach to climate harm is further discussed in Part III.

C. Climate-Washing Litigation

As noted in Part I, climate-washing cases are the second most prevalent strategy in climate cases before European domestic courts.[187] These cases challenge inaccurate or misleading representations by governments or corporations regarding their contributions to the transition to a low-carbon future.[188] In the corporate context, they expose the growing tension between public-facing climate claims and the actual business models, investment portfolios, and production practices of major emitters.[189]

Unlike rights-based due diligence cases, climate-washing litigation does not tend to directly draw on precedents developed in state-centered litigation. Rather, it represents a reactive strand of climate accountability that has emerged in parallel with—and in response to—the rapid tightening of consumer-protection and green-marketing laws, particularly in the EU.[190] In this sense, while cases such as *Urgenda* and *Neubauer* constitutionalized state duties to act on climate change, climate-washing cases draw from various EU legal instruments.[191] Courts are now being asked to police the boundaries between legitimate sustainability communication and

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185 Setzer & Higham, 2025 Snapshot, *supra* note 8.

186 *Id.*

187 Setzer and Higham, CoE Report, *supra* note 1.

188 Lisa Benjamin et al., *Climate-Washing Litigation: Legal Liability for Misleading Climate Communications*, CLIMATE SOC. SCI. NETWORK (Jan. 2022), https://cssn.org/wp-content/uploads/2022/01/CSSN-Research-Report-2022-1-Climate-Washing-Litigation-Legal-Liability-for-Misleading-Climate-Communications.pdf; Setzer & Higham, 2025 Snapshot, *supra* note 8.

189 Tiffanie Chan, Juliana Vélez-Echeverri, Joana Setzer & Catherine Higham, Consumer Protection and Climate Change, *in* THE OXFORD HANDBOOK OF CLIMATE CHANGE AND PRIVATE LAW (Douglas Kysar & Ernest Lim eds., forthcoming 2026).

190 *Id.*

191 *Id.*

deceptive advertising, transforming consumer-protection law into a new frontier of climate accountability.

The most emblematic illustration of this is the ruling of the Paris Judicial Court in *Greenpeace France et al. v. TotalEnergies*,[192] the first global ruling to find a major oil company liable for misleading environmental claims.[193] There, the court concluded that the company had engaged in "misleading commercial practices" by overstating its commitment to carbon neutrality while continuing to expand oil and gas production.[194] Crucially, the verdict made repeated reference to recent EU legislative reforms, including the 2024 Directive on Empowering Consumers for the Green Transition,[195] which prohibits green claims that are not supported by "clear, objective, publicly available and verifiable commitments and targets."[196] The judgment explicitly situated itself within this new European regulatory environment, underscoring that corporate climate communication must now be substantiated by verifiable plans rather than aspirational branding.[197]

The case also unfolded against the backdrop of the European Commission's proposed Green Claims Directive,[198] which would have required companies to submit sustainability-related statements for pre-approval before dissemination.[199] While that proposal was withdrawn in June 2025 amid concerns of bureaucratic overreach, the court ruling appears to fill that gap, signaling that courts will enforce the substance of current EU regulatory standards even in the absence of further legislation.[200]

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[192] *Greenpeace France, Les Amis de la Terre France & Notre Affaire à Tous v. TotalEnergies SE*, No. RG 22/02955, Judicial Court of Paris (Fr.) (Oct. 23, 2025).

[193] *Id.*

[194] *Id.*

[195] Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information, 2024 O.J. (L) (Mar. 6, 2024).

[196] *Greenpeace France v. TotalEnergies, supra* note 192.

[197] Simon Mundi, *Europe Has Become a Risky Place for Corporate Green Claims: Court Ruling Against Totalenergies Reflects Wider EU Crackdown on Greenwashing*, FT (Oct. 24, 2025), https://www.ft.com/content/4f3e072e-d136-4174-ad74-d5bbc14e8a99.

[198] Carbon Trust, *What's Next for Green Claims in Europe and Beyond? A Q&A* (July 29, 2025), https://www.carbontrust.com/news-and-insights/insights/whats-next-for-green-claims-in-europe-and-beyond-a-qa.

[199] Proposal for a Directive of the European Parliament and of the Council on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive), COM(2023) 166 final (Mar. 22, 2023), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A166%3AFIN.

[200] *EU Halts Talks on Law Tackling Companies' Fake 'Green' Claims*, REUTERS (June 23, 2025), https://www.reuters.com/sustainability/climate-energy/eu-halts-talks-law-tackling-companies-fake-green-claims-2025-06-23/.

It is early to assess whether this legal landscape will prompt companies to improve the accuracy of their disclosures, or retreat from communicating environmental information. Nevertheless, from a governance perspective, the trajectory of European climate-washing litigation supports this Essay's broader argument about the judicialization and financialization of climate accountability. Where state-based litigation established normative baselines for mitigation and adaptation and corporate-framework cases translated those into due diligence duties, climate-washing cases indicate how market regulation and judicial enforcement jointly constrain the discursive economy of corporate climate responsibility.

Comparable rulings elsewhere in Europe confirm this trend. In 2024, the Amsterdam District Court held that Dutch airline KLM's "Fly Responsibly" campaign misled consumers about the climate impacts of aviation.[201] In March 2025, Germany's Federal Court of Justice found that the use of a "climate-neutral" label by confectionery brand Katjes violated the Unfair Competition Act, as it implied absolute offsetting or emission-free production without adequate disclosure.[202] Similarly, Danish courts ruled in *Vegetarian Society of Denmark v. Danish Crown* that the slogan "climate-controlled pork" was misleading, though the relative claim that "Danish pork is more climate-friendly than you think" was upheld as sufficiently substantiated.[203]

While the direct environmental outcomes of these cases may appear limited compared to systemic or polluter-pays litigation, their regulatory reverberations can be substantial. Climate-washing cases reinforce a European shift toward verifiability, transparency, and accountability in corporate climate communication, aligning judicial practice with consumer-protection frameworks. Moreover, they demonstrate that even in the absence of explicit climate-related corporate duties, courts are willing to sanction companies for misrepresenting their alignment with the Paris Agreement—thereby integrating climate governance principles into the fabric of commercial and consumer law.

In sum, climate-washing litigation illustrates a distinct but complementary path in Europe's tripartite evolution of climate accountability. While not derived from state obligations, these cases operate in the same normative ecosystem: translating the scientific and policy expectations of the Paris Agreement regime into enforceable communication standards. They close the loop between regulation, corporate disclosure, and judicial oversight, underscoring how Europe's legal

[201] *FossielVrij NL v. KLM Royal Dutch Airlines N.V.*, Amsterdam District Court (Neth.) (Mar. 20, 2024).

[202] *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V. v. Katjes Fassin GmbH & Co. KG*, the German Federal Court of Justice (BGH) (Ger.) (July 5, 2024).

[203] *Vegetarian Society of Denmark v. Danish Crown A/S*, Western High Court (Den.) (May 29, 2021).

order—through both public-law and market-law channels—is increasingly converging toward a shared expectation of climate truthfulness.

III. ENFORCEMENT OF DAMAGES

The enforceability of climate-related damages is where the boundaries between public and private responsibility most visibly blur. The effectiveness of polluter-pays litigation against corporations ultimately depends on state-based legal and financial infrastructure.[204] Among examples of such infrastructure for the enforcement of the polluter-pays principle are insolvency regimes, insurance markets, and administrative-enforcement capacities.[205] Conversely, landmark rulings against corporate defendants can expose states to derivative risks: fiscal, when the liable company is partly state-owned or supported by public guarantees; normative, when judgments crystallize standards that regulators must then enforce; and political, when unmet claims for compensation translate into demands for public intervention.[206] Enforcement is therefore not merely a technical afterthought. It is the interface through which Europe's different trajectories of climate litigation intersect and condition one another.[207]

When courts articulate duties of care or allocate financial responsibility, those holdings are only as effective as the mechanisms available to secure payment or ensure compliance. In practice, enforcement turns on whether states are willing and able to convert judicial principles into collectable obligations. A state that fails to do so risks a feedback effect: the erosion of confidence in judicial climate accountability and the potential re-emergence of litigation against public authorities for failing to regulate or to provide effective remedies. Enforcement thus mediates the success of both public and private climate accountability further revealing the close interrelationship of both spheres.

This Part examines the mechanisms and barriers to enforcing compensation in corporate climate litigation. Section III.A considers the environmental-liability regimes that form the baseline for corporate responsibility, including the EU's Environmental Liability Directive (ELD).[208] Section III.B explores the intersection of corporate liability, insolvency, and insurance, focusing on the practical challenges of enforcing climate-related judgments when defendants are financially distressed or strategically shield their assets.

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[204] Patrick Toussaint, *Loss and Damage and Climate Litigation: The Case for Greater Interlinkage*, 30 REV. EUR. COMP. & INT'L ENV'T L. 16 (2021).

[205] Schwartz, *supra* note 151.

[206] Javier Solana, *Climate Change Litigation as Financial Risk*, 2 GREEN FIN. 344 (2020).

[207] Setzer & Higham, CoE Study, *supra* note 1.

[208] Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, 2004 O.J. (L 143) 56 [hereinafter ELD].

A. Environmental-Liability Regime

In traditional environmental-liability regimes, companies are generally required to fund remediation or compensation.[209] However, where companies are insolvent or otherwise unable to pay, various legal and policy mechanisms may be triggered, including public remediation or partial recovery through insolvency proceedings, although these are not yet fully adapted to address the problem.[210]

In the EU, a comprehensive liability regime for environmental damage based on the "polluter-pays" principle has been set by the ELD.[211] By making those that have caused environmental damage liable for remediation, the ELD provides a strong incentive to avoid damage occurring in the first place.[212] It also makes those whose activities threaten the environment liable for taking preventive action.[213]

In cases of urgent or serious environmental liability, such as those involving threats to public health or protected biodiversity, national or local authorities may intervene to carry out necessary remediation using public funds.[214] Articles 6 and 8 of the ELD empower competent authorities to act in cases of operator failure, and to subsequently seek cost recovery from the liable operator or its legal successors.[215]

In a situation of bankruptcy, environmental liabilities are typically treated as unsecured debts under national insolvency laws, meaning they rank equally with other unsecured claims and may not be fully recovered.[216] This is particularly relevant in cross-border contexts, which are governed by the EU Insolvency Regulation.[217] The ELD does not alter this framework or provide environmental claims with priority status in insolvency. In this connection, Article 14 of the ELD encourages member states to promote the availability of financial security instruments, such as environmental-liability insurance, bank guarantees, or

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[209] Michael G. Faure, Environmental liability, *in* TORT LAW AND ECONOMICS (Michael G. Faure ed., 2009); Michael G. Faure, *Environmental Liability of Companies in Europe*, 39:1 ARIZ. J. INT'L & COMP. L. 1 (2022) [hereinafter Faure, *Companies in Europe*]; MARIE-LOUISE LARSSON, THE LAW OF ENVIRONMENTAL DAMAGE: LIABILITY AND REPARATION (2023).

[210] European Commission: Directorate-General for Environment & Valeria Fogleman, *Study in Support of the Evaluation of the Environmental Liability Directive and its Implementation: Final Report*, PUBLICATIONS OFFICE OF THE EUROPEAN UNION, at 79–84 (2024).

[211] ELD, *supra* note 208, art. 1.

[212] Fogleman, *supra* note 210, at 15–18.

[213] *Id.*

[214] ELD, *supra* note 208, arts. 5–6.

[215] *Id.* arts. 6, 8.

[216] Fogleman, *supra* note 210, at 95–98. *See also* Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), 2015 O.J. (L 141) 19.

[217] Regulation (EU) 2015/848 of the European Parliament and of the Council, *supra* note 216.

compensation funds.[218] Although the ELD does not mandate compulsory insurance at the EU level, some member states—such as Spain[219] and Portugal[220]—have introduced national requirements for certain high-risk activities.[221]

While EU legislation sets a comprehensive framework applicable within its 27 member states, civil claims for personal injury, property damage, or economic loss are generally governed by national tort law, which varies by country.[222] In many jurisdictions, victims can sue for damages caused by pollution or environmental degradation, rely on strict liability regimes, and claim under nuisance, negligence, or breach of statutory duty.[223] Such arguments were advanced in *Lliuya*,[224] discussed above, for instance.

Where the operation of public services results in environmental or climate damages, the relevant undertaking may be held liable even if the service has since been privatized. At a broader regional level, Recommendation No. R (93) 7 of the Committee of Ministers of the Council of Europe on the privatization of public undertakings and activities[225] stipulates that the privatization of a company should not jeopardize the possibility of obtaining compensation for damage caused to the environment by the undertaking or activity in question by reason of its operations prior to the privatization.[226]

Nevertheless, these processes, while legally available, often result in partial or no compensation for affected parties, especially when the polluting company has limited assets or is dissolved.[227] The asymmetry between the scale of harm and the

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[218] ELD, *supra* note 208, art. 14(1). *See also* European Commission, Report Under Article 14(2) of Directive 2004/35/CE on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage, COM(2010) 581 (Oct. 12, 2010).

[219] Environmental Liability Act, Law 26/2007 of 23 October, B.O.E. No. 255 (Oct. 24, 2007).

[220] Decree-Law No. 147/2008 of July 29, 2008, Diário da República 1st series No. 145 (July 29, 2008).

[221] *See* European Commission, *How EU Member States Implement the Environmental Liability Directive*, https://environment.ec.europa.eu/law-and-governance/environmental-compliance-assurance/environmental-liability/implementation-member-states_en.

[222] Francisco Marcos & Albert Sanchez-Graells, *Damages for Breach of the EC Antitrust Rules: Harmonising Tort Law Through the Back Door?*, 1 INDRET 1, 1 (2008). *See also* Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the Law Applicable to Non-Contractual Obligations (Rome II), 2007 O.J. (L 199) 40, recital 11.

[223] *See* Faure, *Companies in Europe*, *supra* note 209.

[224] *Lliuya v. RWE AG*, Higher Regional Court (Oberlandesgericht, OLG) of Hamm (Ger.) (May 28, 2025).

[225] Council of Europe Committee of Ministers, Recommendation No. R (93) 7 of the Committee of Ministers to Member States on Privatisation of Public Undertakings and Activities (Oct. 18, 1993).

[226] *Id.*

[227] Pat Akey & Ian Appel, *The Limits of Limited Liability: Evidence from Industrial Pollution*, 76:1 THE JOURNAL OF FINANCE 5 (2021).

financial capacity of corporate actors has been a longstanding challenge in environmental law.[228]

B. Corporate Liability, Insolvency, and the Role of Insurance in Climate Litigation

As discussed in Part II, compensation claims in corporate climate litigation increasingly reflect the cumulative and transboundary nature of climate harm, ranging from property damage caused by sea-level rise and flooding to economic losses from declining agricultural yields, and escalating adaptation costs for vulnerable communities. Yet translating such diffuse and systemic harms into enforceable financial liabilities raises profound challenges. The interplay between international climate politics, domestic enforcement constraints, and corporate financial structures makes this picture ever more complex.

At the international level, efforts to establish mechanisms for loss and damage have long been impeded by the resistance of developed states and corporate interests.[229] In 2015, developing countries successfully secured the inclusion of Article 8 on loss and damage in the Paris Agreement, yet financial commitments were explicitly excluded.[230] Moreover, the accompanying COP21 decision text contained language ruling out any basis for "liability or compensation" claims related to loss and damage.[231] Subsequent negotiations have repeatedly reflected this impasse.[232] A partial breakthrough came in 2022, when states agreed to establish a new loss-and-damage fund, subsequently operationalized in 2023 as the Fund for Responding to Loss and Damage (FRLD) with initial pledges of nearly $700 million, rising to $788.8 million by June 2025.[233] Nonetheless, this sum remains negligible compared to the estimated $340 billion that climate-vulnerable countries may require annually for climate-related damages by 2030.[234]

In this context, as Toussaint observes, climate litigation holds significant

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[228] *See* Faure, *Companies in Europe*, *supra* note 209, at 4–5; Akey & Appel, *supra* note 227, at 6, 11.

[229] Toussaint, *supra* note 204.

[230] United Nations Framework Convention on Climate Change, Paris Agreement, art. 8, Dec. 12, 2015, T.I.A.S. No. 16-1104.

[231] Report of the Conference of the Parties on Its Twenty-First Session, held in Paris from 30 November to 11 December 2015: Addendum—Part Two: Action Taken by the Conference of the Parties at Its Twenty-First Session, Decision 1/Cp.21, Paragraph 51, Fccc/cp/2015/10/add.1 (Jan. 29, 2016).

[232] *See* Danielle Falzon, Fred Shaia, J. Timmons Roberts, Md. Fahad Hossain, Stacy-ann Robinson, Mizan R. Khan & David Ciplet, *Tactical Opposition: Obstructing Loss and Damage Finance in the United Nations Climate Negotiations*, 23 GLOB. ENV'T POL. 95, 97–99 (2023).

[233] FUND FOR RESPONDING TO LOSS AND DAMAGE, https://www.frld.org/ (last visited Nov. 4, 2025).

[234] Shuo Liu et al., *Challenges and Countermeasures for Developing Countries in Addressing Loss and Damage Caused by Climate Change*, 15 ADV. CLIM. CHANGE RES. 353 (2024).

potential to advance the international discourse on loss and damage, suggesting that domestic and transnational court cases may exert a complementary influence on the United Nations Framework Convention on Climate Change (UNFCCC) process.[235] The growing divergence between the slow pace of multilateral negotiations and the increasing frequency and severity of climate impacts risks exposing the UNFCCC regime to a crisis of legitimacy.[236]

However, even if domestic litigation is able to articulate the claims of climate victims, translating judicial recognition of climate harms into tangible financial remedies may still face obstacles when corporate defendants are insolvent, asset-poor, or shielded by intricate corporate structures.

A central challenge for polluter-pays litigation is ensuring that liability leads to effective recovery rather than symbolic declarations of responsibility. After all, although such declarations may offer intangible value to those affected by climate harm, what sets polluter-pays litigation apart is precisely its aim to financialize responsibility for such harm. One avenue for effective recovery is asset recovery and enforcement, whereby courts may authorize the seizure of corporate assets, including international holdings, to satisfy judgments.[237] However, enforcement through these means is often protracted and politically sensitive, especially in cross-border contexts requiring recognition of foreign judgments or coordination with insolvency proceedings.[238]

The second legal strategy is to seek parent company and shareholder liability. When the liable entity is a subsidiary or special-purpose vehicle, claimants increasingly seek to pierce the corporate veil or invoke group liability, pursuing the parent company or controlling shareholders. In *Asmania v. Holcim*, for instance, the claimants seek the imposition of an order against the respondent parent company in respect of the corporation's group-wide emissions, including those attributable to its subsidiaries located across 70 states.[239] Furthermore, the landmark *Vedanta v. Lungowe*[240] decision in the UK confirmed that parent companies can owe a duty of

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235 Toussaint, *supra* note 204.

236 *Id.*

237 *See* Samvel Varvastian & Felicity Kalunga, *Transnational Corporate Liability for Environmental Damage and Climate Change: Reassessing Access to Justice after* Vedanta v. Lungowe, 9:2 TRANSNATIONAL ENVIRONMENTAL LAW 323 (discussing transnational enforcement and cross-border access to justice in environmental liability litigation); Tomasz Tomczak, *The Enforcement of Environmental Damages Judgement as a Basis for Piercing the Corporate Veil within a Corporate Group*, 28 PROBLEMY PRAWA PRYWATNEGO MIĘDZYNARODOWEGO 197 (2021) (advocating expanded doctrines for enforcement of environmental damages judgments within corporate groups).

238 *Id.*; *see also* Regulation (EU) 2015/848 of the European Parliament and of the Council (Insolvency Regulation), *supra* note 216 (governing cross-border insolvency coordination).

239 *Asmania v. Holcim*, *supra* note 118.

240 *Vedanta Resources PLC & Another v. Lungowe & Others*, [2019] Uksc 20, Uksc

care for environmental harms caused by foreign subsidiaries, opening critical avenues for cross-border enforcement.[241] Tomczak further advocates for expanding these doctrines to environmental liabilities, reflecting the principle that complex corporate structures should not shield polluters from accountability.[242]

Alternatively, it might be possible to seek successor liability. Where companies transfer assets to avoid enforcement—for example, via mergers, acquisitions, or restructuring—courts may examine whether the new entity should inherit the liability.[243] This doctrine is particularly relevant to climate litigation, given the risk of strategic restructurings designed to isolate or "orphan" environmental liabilities.[244]

Finally, another option to seek recovery from climate liability is to rely on insurance and industry compensation funds. Liability insurance or specialized compensation funds can provide partial recovery.[245] However, traditional insurance markets are ill-suited to address climate-related damages, as many policies exclude gradual pollution or climate-related losses, and payouts are often capped.[246] Existing coverage may therefore fall far short of the massive compensation sought in climate-harm cases.

Insolvency adds a further layer of complexity. Under most insolvency regimes—including under the EU Insolvency Regulation and Environmental Liability Directive, discussed above—environmental and climate claims are treated as unsecured debts, competing alongside commercial creditors and often receiving only a fraction of their value.[247] This dynamic has prompted growing scrutiny of directors' duties in the context of climate risk: where insolvency coincides with continued high-risk operations or breaches of ESG obligations, directors may face personal exposure.[248]

These realities highlight a structural tension in polluter-pays climate litigation: legal recognition of harm does not guarantee financial redress. As the attention of

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2017/0185 (United Kingdom).

[241] Varvastian & Kalunga, *supra* note 237.

[242] Tomczak, *supra* note 237.

[243] Tracy D. Hester, *Spinning Off Carbon: Corporate Restructuring in a Climate Bankrupt World*, 32 N.Y.U. ENV'T L.J. 339 (2024).

[244] *Id*.

[245] *See* Faure, *Companies in Europe*, *supra* note 209, at 4; *see also* Neil Craik, Tara Davenport & Ruth Mackenzie, Insurance and Compensation Funds, *in* LIABILITY FOR ENVIRONMENTAL HARM TO THE GLOBAL COMMONS ch. 8 (Cambridge Univ. Press 2023).

[246] *See* Faure, *Companies in Europe*, *supra* note 209, at 4; *see, e.g.*, *Aloha Petroleum Ltd. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, No. SCCQ-23-0000515 (Haw. Oct. 7, 2024).

[247] Faure, *Companies in Europe*, *supra* note 209. *See also* Fogleman, *supra* note 210.

[248] *See* Faure, *Companies in Europe*, *supra* note 209, at 46–47; *ClientEarth v. Shell plc*, [2023] EWHC 1137 (Ch); Alexia Staker & Alice Garton, Commonwealth Climate & Law Initiative, Directors' Liability and Climate Risk: United Kingdom—Country Paper (2018), https://www.smithschool.ox.ac.uk/sites/default/files/2022-04/CCLI-UK-Paper-Final.pdf.

climate litigants has increasingly turned from states towards corporate actors, states remain strongly implicated given their role in regulating corporate activity contributing to global GHG emissions. Furthermore—and although litigants in European polluter-pays litigation have not yet seen their requested orders materialize—as corporate climate litigation continues to proliferate and evolve, polluter-pays climate litigation is eventually likely to enter an enforcement phase. At that stage, the regulatory power of states in supporting financial redress is likely to come under scrutiny. Responding to the trajectory of corporate climate litigation—notably polluter-pays litigation—requires foresight in terms of these practical issues associated with effectively financializing climate responsibility. Effective compensation may require a combination of legal innovation, enhanced insurance mechanisms, and the strategic targeting of corporate groups and decision-makers to prevent liabilities from evaporating through insolvency or asset shielding.

CONCLUSION

Climate litigation in Europe has matured into a distinctive, interlocking architecture of accountability. Cases against corporations have translated public-law standards into private-law obligations grounded in duties of care, nuisance, consumer protection, directors' duties, and human rights-aligned due diligence. A second and increasingly salient strand pursues proportionate financial responsibility from major emitters under a polluter-pays logic, testing how attribution science, scope-of-emissions accounting, and value-chain "influence" can be operationalized in damages and cost-recovery claims. The third and related strand, climate-washing litigation, illustrates how courts are policing the credibility of corporate climate claims within an evolving regulatory environment. Together, these tracks do more than accumulate individual holdings: they are generating a provisional but concrete framework for corporate climate responsibility and financial accountability.

This framework, however, remains uneven. European courts have been willing to recognize foreseeable climate risk as legally cognizable, to accept objective metrics such as carbon budgets as justiciable benchmarks, and to treat international human rights principles as interpretive lodestars for domestic private law. Corporate cases have begun to embed these concepts into governance standards that reach beyond a firm's fence line and into financed and facilitated emissions. Polluter-pays cases, meanwhile, are clarifying that proportional contribution to global emissions can ground claims for adaptation costs and loss.

The European legal ecosystem has been conducive to these developments. Rights-based climate jurisprudence from the ECtHR has affirmed state obligations to adopt credible pathways consistent with best-available science; national framework-law litigation has refined standards of administrative rationality and transparency; and corporate governance reforms (notably due diligence and reporting regimes) are codifying expectations about the identification, prevention, and mitigation of climate-related risks and impacts, including across Scope 3 emissions. The 2025 ICJ Advisory Opinion further situates these developments within general international law by articulating stringent due diligence duties, confirming the persistence of state responsibility and reparations principles, and highlighting regulatory obligations over private actors.[249] Although directed at states, the Opinion can offer the next pillar of normative scaffolding for domestic courts and legislatures in Europe to align corporate obligations with global mitigation imperatives.

Yet, the transboundary, cumulative, and intertemporal nature of climate harm sits uneasily with case-by-case adjudication, and the outcomes so far are mixed. The enforcement gap is a challenge for the next phase. Insolvency risk, complex corporate groups, and limited or exclusions-laden insurance cover threaten to render even successful judgments only partially compensatory. Environmental-liability legislation and traditional tort pathways rarely deliver full redress where harms are diffuse, and responsibility is distributed along global value chains. Without complementary legislative and financial mechanisms, polluter-pays may remain more rhetorical than real.

Three mutually reinforcing fronts are important as these cases progress. First, doctrinal consolidation: courts can continue to refine standards for corporate duty of care that are sensitive to sector, scale, and value-chain leverage; normalize the evidentiary role of attribution science; and develop principled approaches to proportional liability that integrate Scope 1 to 3 emissions. Second, remedial design: beyond declarations and injunctions, remedies should incorporate performance-linked orders with measurable interim milestones; calibrated penalties for non-compliance; and, where appropriate, mechanisms that anticipate insolvency risk. Third, institutional complements: legislatures can operationalize polluter-pays principles through targeted funding instruments (e.g., dedicated adaptation and loss-and-damage funds capitalized by major emitters), mandatory financial assurance for high-risk activities, and clear rules on parent company and successor liability to prevent the externalization of climate harm through corporate restructuring.

For scholars and policymakers, three research and policy agendas follow. First, developing metrics for translating scientific contribution into proportionate legal responsibility that are administrable across jurisdictions and sectors, including finance. Second, studying enforcement pathways, to understand how insolvency, insurance, and corporate-group law shape the real-world value of remedies, and which combinations of private and public finance best convert liability into recovery. Third, interrogating distributional effects to ensure that remedies do not exacerbate energy poverty or hinder a just transition, and that financial

[249] Harro van Asselt, The Private Life of the ICJ Advisory Opinion on Climate Change, Völkerrechtsblog (Aug. 15, 2025).

responsibility is allocated in ways that reflect historical and current emissions, capacity to pay, and the need to protect vulnerable communities.

Europe's trajectory thus offers both proof of concept and caution. It signals that courts might be capable of transforming scientific consensus into legal standards that bind states and corporations, and how civil society can leverage those standards to reshape governance and markets. But it also shows that the translation of science to law is challenging, and it exposes structural limits that only coordinated legislative design, international legal alignment, and innovative finance can overcome. The measure of success will not be the volume of litigation alone, but whether judgments and statutes together deliver timely emissions reductions, resilient adaptation, and tangible redress to those who suffer the consequences of a warming world.