



# ESG Litigation

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YOUR TRUSTED ESG GUIDE

# The need to address ESG issues

The rules of the game have changed

**Environmental, Social and Governance (ESG)** issues have rapidly made their way to the top of the board's agenda. The need to address ESG has been amplified by enhanced regulatory frameworks, growing media attention, consumer activism and **global environmental crises**. Increased scrutiny of ESG policies by regulators, investors and NGOs has led to heightened litigation risks. Whether it is allegations of financial greenwashing or claims of parent company liability for environmental damages, **ESG litigation is rising** exponentially around the globe, with the Netherlands emerging as a key frontrunner jurisdiction.

**ESG litigation fundamentally differs** from other high-risk litigation, as risk is not limited to financial damages alone. Consumers, NGOs and investors will want to see strategic, structural and operational changes within your organisation. Examples include **successful attempts to drastically reduce greenhouse gas emissions**, to divest from investments in oil and gas or to appoint ESG-savvy directors. Driven by an increasingly professional class action landscape, eager NGOs and courts willing to entertain novel legal arguments, **ESG litigation** in the Dutch courts is set to become a permanent risk.

# Increased ESG litigation risks

## We are here to help you manage and mitigate

We are here to **defend you in ESG litigation**. Whether claimants are petitioning the Dutch Enterprise Chamber, bringing class actions or seeking injunctions to change your policies. For all these different types of proceedings we offer **an all-round litigation team** with a breadth of experience.

Moreover, we can help you take action to **prevent and mitigate the risks** of such litigation. These risk-mitigating services include assistance in setting up a robust human rights & environmental due diligence process, advice on engagement with NGOs and support in developing a **coherent defense frame**.

### Human Rights & Environmental Due Diligence

A solid **human rights & environmental due diligence policy**, properly embedded in your organisation, is perhaps your most important risk mitigation tool.

The lack of such a policy may open you up to litigation under an **increasing number of mandatory due diligence laws**, including the EU Corporate Sustainability Due Diligence Directive (CSDD).

**We have helped organizations around the world** to mitigate litigation risks by developing a solid human rights & environmental due diligence policy.

### Stakeholder Engagement

Well-executed stakeholder engagement can serve as an **early warning signal** to litigation risks, and provides opportunities to prevent and mitigate those risks from materializing.

A properly set up grievance mechanism helps to deal with human rights and environmental concerns at an early stage. It can **prevent years of costly litigation**.

We have **extensive experience engaging with stakeholders**, including NGOs. We have developed grievance mechanisms in challenging jurisdictions and are well placed to help you.

### Coherent Defense Frame

If litigation is likely, **it is important to develop a coherent line of defense** prior to the actual proceedings.

A coherent defense frame aligns all internal stakeholders and ensures that the legal team can **focus on bringing the strongest case**, instead of discussing fundamental aspects of the strategy.

We strongly believe this 'frontloading' of **strategic issues pays off** in all ensuing stages of the litigation and may in fact help reduce litigation risk.

### Human rights litigation



Human rights litigation is at the **core of ESG litigation**.

Thanks to our strong understanding of salient human rights issues such as indigenous people rights, we were asked to assist a global private equity **fund accused of violating indigenous people's free, prior and informed consent rights** in relation to the development of a wind farm.

We have also **defended a global telecom operator** in respect of alleged fundamental labour rights violations in Bangladesh.

Human rights matters may be **litigated through alternative grievance mechanisms**, most notably the so-called National Contact Point (NCP) proceedings under the OECD Guidelines. We have helped more clients in Dutch NCP proceedings than any other law firm and regularly publish on the issue.

### Climate change litigation



Since the Paris Agreement there has been an exponential increase in climate change litigation, and there are **no signs of it slowing down**.

We act as negotiator for the republic of Georgia at climate change COPs, leading to an unrivalled understanding of the **global climate change framework**.

Also, we are assisting multiple clients in respect of Milieudefensie's **threat to commence proceedings**, including one of the largest institutional investors and a global chemicals company.

### Biodiversity litigation



Biodiversity is a novel area of ESG litigation which we expect to develop rapidly, following the agreement on a **Global Biodiversity Framework at COP15**.

We have helped identify salient biodiversity litigation risks for one of the **largest global insurance companies**, as well as for a large biotechnology company.

We are also closely monitoring international **regulatory developments** around plastics for multiple chemicals companies.

# Managing and mitigating ESG litigation risks

Do you want to know more?

Do not hesitate to **give us a call** to discuss. We are here to **help**.



## Michiel Coenraads

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Michiel Coenraads co-chairs DLA Piper's international ESG litigation practice. He is one of the very few litigation partners in the Netherlands specialising in business & human rights and widely recognised as a frontrunner in the field.

With Michiel's background in corporate governance and c-suite advisory work, he regularly advises board level executives of blue-chip clients on the larger strategic implications of business & human rights developments.

Michiel is also the go-to litigator in the Netherlands in respect of specific instance proceedings with the Dutch National Contact Point (NCP) under the OECD Guidelines on Responsible Business Conduct.

Michiel has dealt extensively with a range of stakeholders and can provide clients with invaluable insights into how that should be approached. He is regularly invited across the globe to speak about ESG litigation and stakeholder engagement.



## Jorian Hamster

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Jorian Hamster is a rising star in the Dutch business & human rights landscape and far ahead of his peers in terms of thought leadership and hands-on experience advising clients.

Through his secondment to the firm's Mexico City office, he is one of the few Dutch lawyers with hands-on experience in the mining sector and indigenous people's rights in particular.

He has been asked by an international energy major to assist them inhouse with their most complex business & human rights litigations and has gained invaluable experience working on some of the world's leading business & human rights cases.

Further examples on his experience and knowledge include a training on business & human rights at the African Business & Human Rights forum in Dakar, speaking on ESG litigation at the African Energy Forum in Cape Town, acting as climate negotiator for Georgia during COP27 in Sharm-el-Sheikh, publishing on business & human rights in leading Dutch law journals and being interviewed by Reuters, Law.com and the Dutch Financial Times about developments in this space.

# DLA Piper

## Your trusted ESG guide

**Environment, Social and Governance (ESG)** can no longer be regarded as just a corporate box ticking or report writing exercise. It is now firmly established as the umbrella under which all facets of the transition towards a more sustainable future are gathered.

In the past few years, we've seen the ESG legal framework evolve rapidly. Making the transition towards a more sustainable future an undeniable and critical necessity for every business. Your organisation's social license depends on meeting stakeholder's ESG expectations, complying with the ESG legal framework and driving performance through a well-articulated strategy.

We believe that by making businesses better, we make the world a better place. On your journey towards a more sustainable future, DLA Piper is well positioned to be your trusted ESG guide. Wherever you are in your transition, we will guide you with forward-looking and pragmatic legal advice. With our global mind-set and vast practical experience, we can help you navigate environmental, social and governance challenges and seize ESG-related opportunities.



