

CORPORATE RESPONSIBILITY AND CLIMATE CHANGE

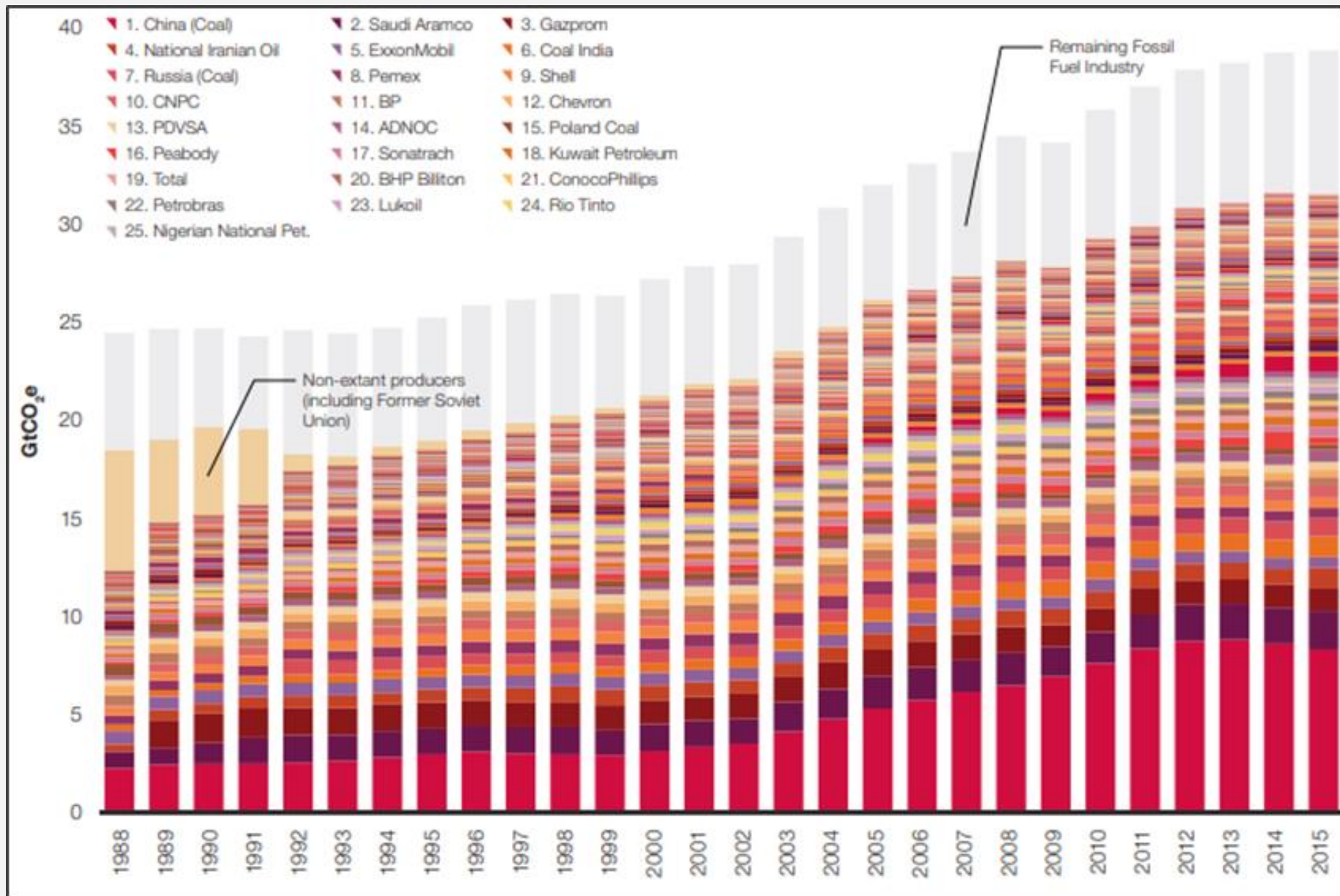
Aljoša Petek, PIC

October, 2024



THE CORPORATE EFFECT

- Huge contributions to climate change.
- State responsibility / company or corporation responsibility.
- Responsive to market signals: Climate change is the greatest and widest-ranging „market failure“ – Stern Review; the benefits of strong, early action on climate change far outweigh the costs of not acting.
- Substantial pot of money, even on a national level, for transition.



CDP, Carbon Majors Report 2017 on the basis of Richard Heede's Carbon Majors Database

Entity		Partial Damage	Financial gain
		USD trillion	
1	Saudi Arabia: Aramco	2.8	5.4
2	Russia: Gazprom	2.2	2.9
3	Iran: National Iranian Oil Co.	1.4	2.4
4	ExxonMobil	1.2	1.2
5	Mexico: Pemex	1.1	1.2
6	Shell	1.1	0.9
7	BP	1.0	0.7
8	Chevron	0.9	0.6
9	China: PetroChina	0.9	1.3
10	United Arab Emirates: Abu Dhabi NOC	0.7	1.7
11	Venezuela: Petroleos de Venezuela	0.7	1.1
12	Kuwait: Kuwait Petroleum Corp.	0.6	1.4

Schleussner et al, Carbon majors' trillion dollar damages: The case for contributions from fossil wealth to loss and damage finance

PUBLIC OPINION IN SLOVENIA

- 83 % of Slovenian residents support legal responsibility of private and public companies to reduce emissions in line with the Paris Agreement (YouGov, 2023 – Austria, Belgium, Finland, France, Germany, Ireland, Netherlands, Poland, Spain and Slovenia).
- 82 % believe, that the banks are responsible for the actions of companies, in which they invest.
- 73 % believe, that people should have the right to directly sue large emitters of GHG for compensation for damages done to them through climate change consequences (floods, draughts, heat waves etc.).
- 68 % of Slovenian people believe, that it is the state's responsibility, to protect citizens from negative consequences of climate change (DACE, 2023).

AUGUST 2023 FLOODS

Civil court cases vs. state institutions and municipalities, not against GHG emitting companies or engineers or subcontractors of antiflood measures.



Anže Malovrh/STA



Yerpo

HUMAN RIGHTS IN ECONOMY

- National Action Plan (2018) for enforcing human rights in the Slovenian economic system and businesses, based on the UN Guiding Principles:
 1. The State is responsible for adopting a legal framework.
 2. The registered companies are responsible for upholding human rights in their business practices.
 3. The State is responsible for control and sanctioning.

Areas: equal opportunities, basic workers' rights, environment protection and sustainable development, prevention of human trafficking etc.

Signed by 30 slovenian companies, many of them publicly owned, legislation not yet adopted.

GENERAL CIVIL LIABILITY

- Arises from negligence, nuisance, infringement of personal rights.
- Costs -> Environmental Protection Act – prevention of majority of cases until 2022.
- The question of jurisdiction.

MILIEUDEFENSIE AND OTHERS V ROYAL DUTCH SHELL PLC

- The first successful climate case against a corporation
- Based on negligence (duty of care)
- Unwritten rules of law (UN Guiding Principles and the Paris Agreement goals)
- Injunction to decrease GHG emissions by 45% across all scopes (1-3) from 2019 levels
- Obligation of result (direct emissions) v obligation of endeavour (indirect emissions)
- Under appeal
- Greenpeace Italy and others v ENI S.p.A. and others



Royal Dutch Shell (RDS)

LUCIANO LLIUYA V RWE AG

- In front of the German court in 2015
- Request for a contribution to adaptation measures for climate damage in Peru
- The requested damages correspond to the evaluated amount of historical emissions from RWE (0.47%)
- Evidencing (1) the risk to plaintiff's property (2) the contribution of the defendant
- Asmania and others v Holcim



Alexander Luna/Germanwatch

DEVELOPMENTS OVERSEAS

- Lawsuits of public authorities (counties and states) against fossil fuel producers for their financial contribution to required adaptation measures
- Smith v Fonterra and others



Tim Chong/Reuters

DUE DILIGENCE

- Across the whole value chain
- Arises from soft law (OECD Guidelines, UN Guiding Principles)
- Can be a civil law obligation or a statutory obligation (EU).
- Enforcement can be problematic.



European Parliament

DUE DILLIGENCE DIRECTIVE

- Adopted this year, 13.6.2024.
- Due diligence provisions + companies adopt and put into effect a **transition plan for climate mitigation**, which is compatible with the transition to a sustainable economy, in line with **Paris Agreement goals** and the **2050 climate neutrality target** (Art. 22/1) + minimum requirements /checklist.
- Emphasis on monitoring: “Member States shall ensure that the supervisory authorities have adequate powers and resources to carry out the tasks assigned to them under this Directive, including the power to require companies to provide information and carry out investigations related to compliance with the obligations...” (25/1).

DUE DILLIGENCE DIRECTIVE

- Pecuniary penalties based on the company's worldwide turnover – can be above 5 % of the net worldwide turnover of the company in the financial year preceding that of the decision to impose the fine.
- Scope: companies (and partnerships) with 1000+ employees and a net worldwide turnover of 450 million EUR.
- 4 Slovenian based companies (2018), approx. 17,000 companies across EU and outside (turnover in EU).

THE COMPANIES ACT AND SUSTAINABLE REPORTING

Zakon o gospodarskih družbah (ZGD-I):

- A person, who was convicted of a criminal act against human health or the environment cannot become a founder, partner or an entrepreneur of a company.
- Refers to the CSRD, but does not include its implementation (companies begin reporting in 2025 – first report will be for 2024). Due diligence is to be implemented.

DISCLOSURE OF CLIMATE-RELATED RISKS

- Pacific Gas and Electric (PG&E) bankruptcy
- Task Force on Climate-related Financial Disclosures – investor led
- Corporate Sustainability Reporting Directive 2022/2464 (amending Annual Financial statements Directive (2013/34/EU))
- Also EU Taxonomy Regulation 2020/852



DUTIES TOWARDS THE SHAREHOLDERS AND THE COMPANY

- Based on corporate law
- Stranded asset debate

- ClientEarth v Enea
- ClientEarth v Shell's Board of Directors



https://www.duh-casa.si/w/wp-content/uploads/2012/07/TES_6.jpg

CONSUMER PROTECTION

- „Greenwashing“
- Prohibition of unfair commercial practices - obligation of enterprises to communicate in a non-deceptive way



Client Earth



**FIFA WORLD CUP
Qatar2022**

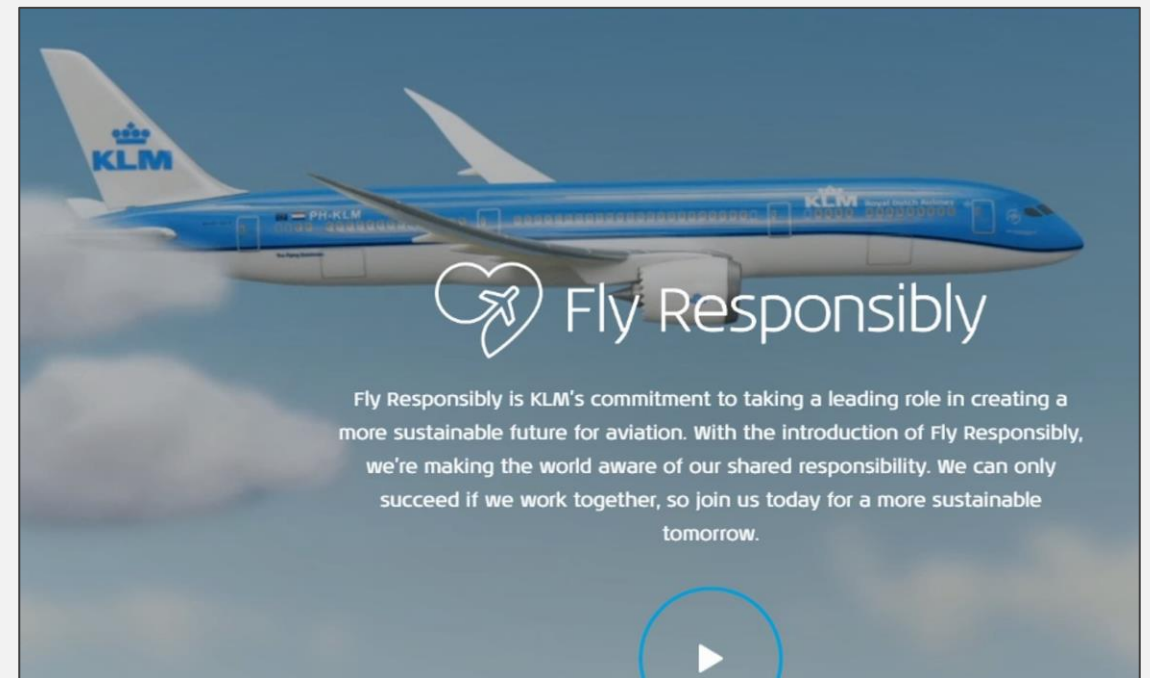
FIFA

CONSUMER PROTECTION – LEGAL BASIS

- Art 36, 49, 50, and 51 ZVPot-I (marketing, deceptive or unfair business practices/false information or omittance of information)
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices
- Directive (EU) 2024/825 regarding empowering consumers for the green transition (protection against unfair practices and providing better information)
- Reinforced by the proposal for the Green Claims Directive

CONSUMER PROTECTION – CASE LAW

- Plethora of cases
- National bodies for enforcement (in the case of FIFA: Swiss Fairness Commission, in Slovenia Consumer Association of Slovenia)
- OECD National Contact Points
- Most recent: FossielVrij NL v KLM



MAIN TAKEAWAYS

- Corporate liability regarding climate change is growing
- Important statutory developments
- Climate litigation risk
- Correlation between litigation and stock value
- Increasingly important compliance considerations regarding climate rights
- Much to implement – and no less to monitor!



THANK YOU FOR YOUR
ATTENTION!

Aljoša Petek, PIC