Pouring gas on fire:
One-Dyas' fossil gas extraction project N05-A in the North Sea violates requirements of responsible business conduct under the OECD Guidelines for Multinational Enterprises

Notification of Specific Instance to the Dutch OECD National Contact Point

23 January 2024

submitted by VU Climate and Sustainability Law Clinic, North Sea Fossil Free, Scientists for Future NL, Scientist Rebellion NL and Deutsche Umwelthilfe

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0. Parties to the specific instance

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1. Summary

One-Dyas B.V. is a Dutch private limited liability company which is seeking to extract fossil gas from the N05-A gas field and surrounding fields in the North Sea (“the N05-A project”). The life-cycle GHG emissions caused by the project will significantly **harm human rights and the environment**, and **undermine the objectives of international and European climate policy**. However, One-Dyas has **failed to identify these adverse effects** in the project’s environmental impact assessment, and has, to our knowledge, not assessed its human rights impacts. Moreover, One-Dyas **continually and consistently misrepresents the climate-related impacts** of the N05-A project in its public communications. **One-Dyas thereby violates requirements of responsible business conduct** laid down in the OECD Guidelines for Multinational Enterprises relating to human rights, the environment, consumers and disclosure.

In particular, One-Dyas violates the following requirements:

- Chapters II (general policies), IV (human rights) and VI (environment) of the OECD Guidelines hold that **enterprises should identify actual and potential adverse impacts of their activities on human rights and the environment**. However, One-Dyas has not identified the harm caused by the life-cycle emissions of the N05-A project in its environmental impact assessment report, and has failed to assess the human rights impacts thereof.
- According to chapters IV (human rights) and VI (environment), **enterprises should avoid causing or contributing to adverse human rights and environmental impacts**. However, new fossil gas extraction by the N05-A project will cause such harm.
- Chapters III (disclosure), VI (environment) and VIII (consumer interests) require **enterprises to adequately inform stakeholders and the public about the climate impacts of their activities**. However, One-Dyas has continuously misrepresented the GHG emissions caused by the N05-A project, thereby failing to inform stakeholders and the public adequately.

Therefore, we ask One-Dyas to take the following steps:

- **conduct a comprehensive assessment** of the adverse impact of the N05-A project on human rights and the environment;
- based on this assessment, to **terminate the N05-A project**;
- and to **correctly inform stakeholders and the public about the adverse impacts of fossil gas extraction from the North Sea** on human rights and the environment.

2. Initial assessment criteria

According to the OECD Guidelines, the Dutch National Contact Point (NCP) will make an initial assessment as to whether the issues raised warrant further examination.[1] The initial assessment criteria are specified in the Commentary as well as in Dutch NCP's handling procedures for specific instances. This section addresses their application in this specific instance.

2.1. Identity of the parties concerned and their interest in the matter

The specific instance is submitted by the VU Climate Change & Sustainability Law Clinic, North Sea Fossil Free, Scientists for Future NL, Scientist Rebellion NL and Deutsche Umwelthilfe.

The **VU Climate Change and Sustainability Law Clinic** is an academic association of law students, lecturers and researchers at the Vrije Universiteit (VU) Amsterdam who are concerned about climate justice for young people. Since 2020, its members address and challenge instances of corporate climate disinformation and obstruction. The Climate Law Clinic has repeatedly raised concerns about the climate impact of the N05-A project on young people, including in the public participation procedure.

North Sea Fossil Free is an association of individuals and community groups from Groningen, Friesland and the Wadden islands. For years, Its members have expressed concerns about the adverse impacts of new fossil fuel extraction in the North Sea for humans and the environment, including in the public participation procedures. North Sea Fossil Free has repeatedly organized public protests against the N05-A project.

Scientists for Future NL (S4F) is an association of scientists from all academic disciplines concerned about the unfolding climate crisis. S4F seeks to communicate science-based findings about the climate crisis and its consequences for humans and the environment to the public, and to demand climate action from public and private decision makers. S4F has long voiced concerns about the climate impacts of gas drilling in the North Sea, including through an open letter supported by over 400 scientists.

[1] OECD Guidelines, Procedures, I.C.

Scientist Rebellion NL is an association of scientists engaging in direct action to prevent climate breakdown. Through protests and blockades, Scientist Rebellion draws attention to climate science and challenges public and private institutions engaged in climate-harming activities. Scientist Rebellion has repeatedly engaged in direct actions in regard to the N05-A project.

Deutsche Umwelthilfe (DUH) is a German environmental NGO. DUH has long been active in challenging climate-harming practices, including corporate climate disinformation and obstruction. DUH has raised concerns about the adverse environmental impacts of gas drilling in the North Sea for years, and has also opposed the extraction permit for the N05-A project by the Dutch government.

2.2. Whether the issues are material and substantiated

The specific instance addresses three main issues:

1. One-Dyas fails to correctly identify and assess the life-cycle GHG emissions caused by the N05-A project in its environmental impact assessment report and has, to our knowledge, not assessed their human rights impacts.
2. Through its life-cycle GHG emissions, the N05-A project will cause adverse impacts on human rights and the environment.
3. One-Dyas persistently misrepresents the adverse human rights and environmental impacts arising from the N05-A project's life-cycle GHG emissions, thus inadequately informing stakeholders and the public.

These issues are material, as they concern non-compliance with provisions of Chapter II (general policies), III (disclosure), IV (human rights), VI (environment) and VIII (consumer interests) of the OECD Guidelines. They are substantiated by extensive information, largely drawing from legal sources and peer-reviewed research.

2.3. Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance

One-Dyas plans to construct and operate the N05-A project. It will therefore be causally responsible for the project's life cycle GHG emissions, which contribute to climate change. The specific instance provides a clear explanation of the nexus between the enterprise's actions and the adverse impacts of the resulting GHG emissions on human rights and the environment. Moreover, by having failed to assess the adverse impacts on human rights and

the environment adequately and communicating publicly in a misleading manner about these impacts, One-Dyas also bears the sole responsibility for these issues.

2.4. The relevance of applicable law and procedures, including court rulings

The specific instance addresses the relevant international, EU, soft and case law in sections 5, 6, 7 and 8. The applicable law does not limit the NCP's ability to contribute to the resolution of the issues or the implementation of the Guidelines.

2.5. How similar issues have been, or are being, treated in other domestic or international proceedings

There are no ongoing parallel proceedings against One-Dyas. While the extraction permit for the N05-A project is currently appealed in a Dutch court, this challenge is directed against the government, not One-Dyas. The issues raised in this specific instance are substantively different from the pending court procedure, as they concern the responsibilities of a multinational enterprise.

2.6. Whether the examination of the issue would contribute to the purposes and effectiveness of the Guidelines.

Examining the issue would contribute to the purposes and effectiveness of the Guidelines in at least three ways.

First, it is essential for the NCP to **clarify the responsibilities of oil and gas extraction companies in the climate crisis within the framework of the OECD guidelines**. The NCP can play a crucial role in providing clear guidance on the obligations of these companies and outlining best practices for conducting business in ways that align with climate objectives. This proactive approach by the NCP can significantly enhance the effectiveness of the OECD guidelines and contribute to the advancement of responsible corporate conduct in the context of the climate crisis.

Second, the **2023 update of the OECD guidelines presents a significant opportunity for the NCP to provide specific and timely guidance on business responsibilities in the context of the climate crisis**. By leveraging the updated guidelines, the NCP can articulate clear expectations for companies operating in sectors with substantial climate impacts. This presents an opportune moment for the NCP to advocate for enhanced corporate

accountability and responsible conduct, aligning with the evolving challenges posed by the climate crisis and reinforcing the relevance and effectiveness of the OECD guidelines.

Third, the issues raised in this specific instance **reflect concerns about the N05-A project that have been voiced by affected communities for years**. They have sought to engage the involved companies, for example via the public participation processes. However, there has been a **complete lack of meaningful responses and proactive changes by One-Dyas**. This indicates a pressing need for the NCP to get involved. The NCP could serve as a catalyst for fostering genuine dialogue and corporate accountability, ultimately contributing to improved corporate responsibility and positive outcomes for affected communities.

2.7. Whether the Dutch NCP is the right entity to handle the notification

The Dutch NCP is the appropriate authority to address this specific instance. One-Dyas has its headquarters in the Netherlands, and the complainants are mostly based in the Netherlands as well. Furthermore, the N05-A project is located within Dutch territory.

2.8. Whether the enterprise is covered by the Guidelines

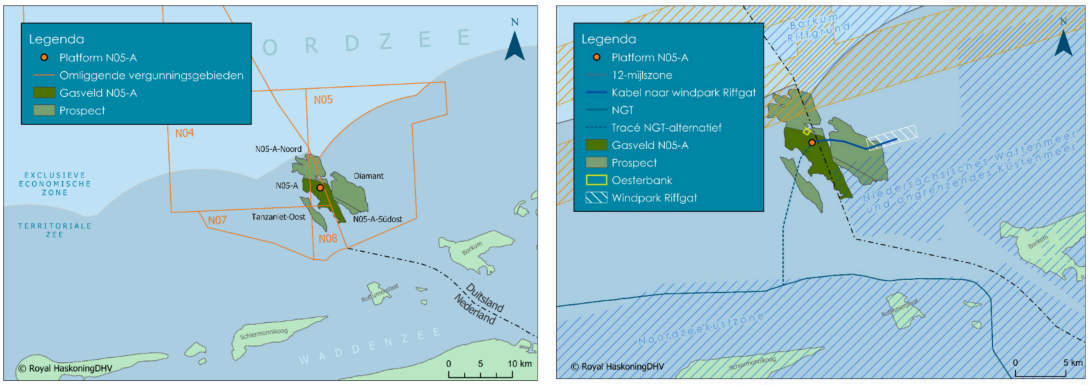
One-Dyas is a large extractive enterprise located in the Netherlands and operating in multiple countries.[2] It is consequently covered by the OECD Guidelines.

[2] https://onedyas.com/overview/

3. Overview over the N05-A project

The N05-A gas field was discovered in 2017.[3] One-Dyas seeks to construct a gas extraction platform in the North Sea at the Dutch/German border, from which wells will be drilled.[4] From the platform it seeks to exploit the N05-A gas field. Moreover, it aims to establish whether a number of surrounding prospects hold significant amounts of gas, which then would also be extracted. These prospective gas fields are N05-A-Noord and Tanzaniet-Oost located in Dutch territory and N05A-Südost and Diamant located in German territory (see map below). The Platform will lie outside, but close to three Natura2000 areas (Noordzeekustzone, Borkum Riffgrund and Niedersächsiches Wattenmeer; see map below). The Platform shall be connected through an electric cable with the German offshore wind park Riffgat. A pipeline will deliver the extracted fossil gas to the existing NGT pipeline, which is connected to the mainland. The expected duration of extraction is ten to thirty-five years, i.e., **it could extend beyond 2050**. The amount of gas that is expected to be extracted is more than 13 billion m^3.[5]

The gas extraction project is a joint venture between three companies: ONE-Dyas B.V., Discover Exploration Ltd (a UK private limited liability company), and Energie Beheer Nederland B.V. (EBN, a government owned Dutch private limited liability company). One-Dyas conducts the actual operations and holds the licenses.[6]



The location of the N05-A project and of the Natura2000 areas.[7]

[3] One-Dyas, 'Winningsplan N05-A' 12 <https://www.rvo.nl/sites/default/files/2021/04/Winningsplan-Gaswinning-N05-A.pdf> accessed 8 October 2023.
[4] ibid 16.
[5] 'Hoofdrapport Milieueffectrapport - Gaswinning N05-A' 12 <https://commissiemer.nl/projectdocumenten/00008635.pdf> accessed 8 October 2023.
[6] One-Dyas, 'Winningsplan N05-A' (n 3) 2–3.
[7] ibid 12 and 14.

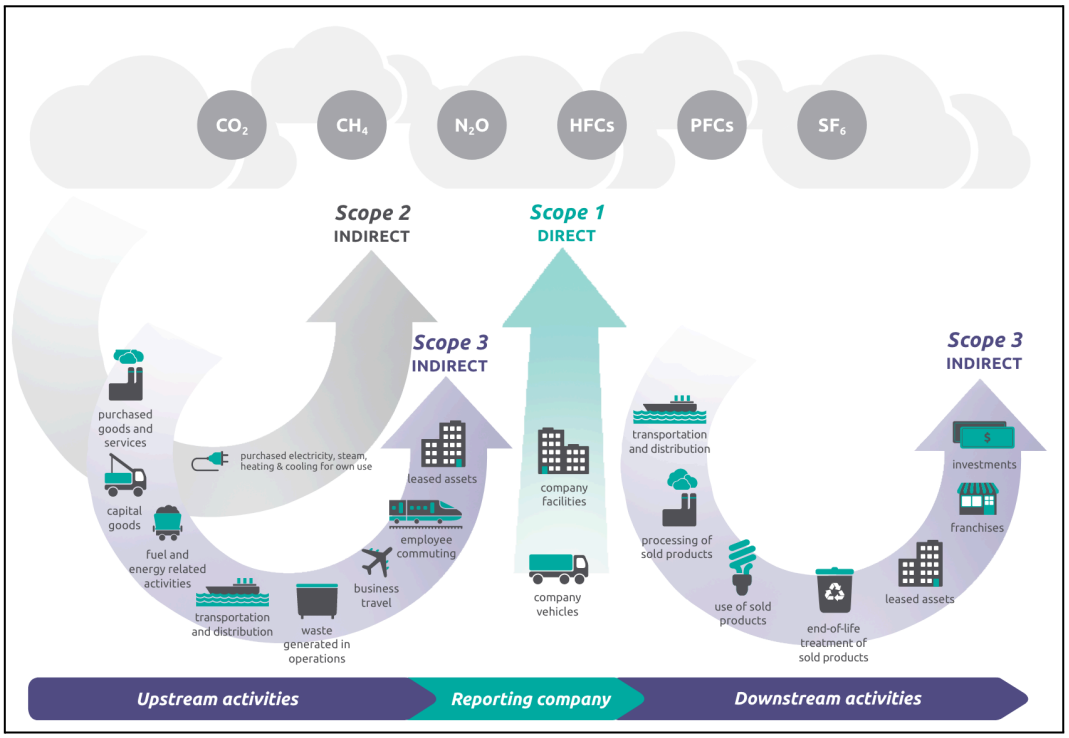
The project requires permits from the Dutch and German authorities. On 1 June 2022, the Dutch Ministerie van Economische Zaken en Klimaat issued permits for the drilling and operation of the wells, for the construction and operation of the gas pipeline and the electric cable, and for the gas extraction.[8] The Dutch permits were appealed, which are currently pending before a Dutch court.[9] The German procedure is not yet concluded.

[8] Ministerie van Economische Zaken en Klimaat, 'Omgevingsvergunning Voor Platform N05-A'; 'Vergunning Pijpleiding En Elektriciteitskabel N05-A'; 'Instemmingsbesluit winningsplan N05-A'.

[9] https://www.duh.de/presse/pressemitteilungen/pressemitteilung/paukenschlag-fuer-den-schutz-der-nordsee-deutsche-umwelthilfe-stoppt-per-gericht-neue-gasbohrungen-v/

4. Overview: GHG emissions from fossil gas extraction

GHG accounting commonly distinguishes GHG emissions of a project based on the emission source (see graphic below). Direct emissions, also termed scope 1 emissions, describe emissions from sources that are owned or controlled by the project developer.[10] **Indirect emissions** are emissions that are a **consequence of the project activity, but occur at sources not owned or controlled by the project developer**.[11] Indirect emissions include those related to the production of energy purchased for the project, which are termed scope 2 emissions.[12] **Other indirect emissions can arise either up- or downstream from the project, and are termed scope 3 emissions**.[13] Upstream emissions are related to inputs to the project other than energy, such as raw or building materials. Downstream emissions result from the transport, use and disposal of the project's output. Scope 1, 2 and 3 emissions are distinguished for analytical purposes, but they are **all attributable to the project**.



GHG accounting commonly distinguishes between scope 1, 2 and 3 emissions, all of which are attributable to a company or project (GHG Protocol).[14]

[10] World Resources Institute, 'GHG Protocol for Project Accounting' (2005) 130.
[11] ibid 131.
[12] World Resources Institute, 'Greenhouse Gas Protocol. Corporate Accounting and Reporting Standard' (2004) 25.
[13] ibid.
[14] World Resources Institute, 'Greenhouse Gas Protocol - Corporate Value Chain (Scope 3) Accounting and Reporting Standard' (2011) 5.

Gas extraction projects cause both direct and indirect GHG emissions.[15] Direct emissions are emissions from the installation itself, for example from gas venting or flaring (scope 1). Indirect emissions include emissions related to the energy consumed by the operation (scope 2), emissions from the transportation of the extracted gas **and from the combustion of the extracted gas by end users (scope 3).** The extraction of gas is a necessary precondition for the emission of GHG from burning these fuels by end users, so that there is a direct causal link between the two.[16] According to the International Energy Agency (IEA), **scope 3 emissions constitute by far the largest share of GHG emissions of fossil gas** (85%).[17] In turn, end use emissions make up most of these scope 3 emissions.[18]

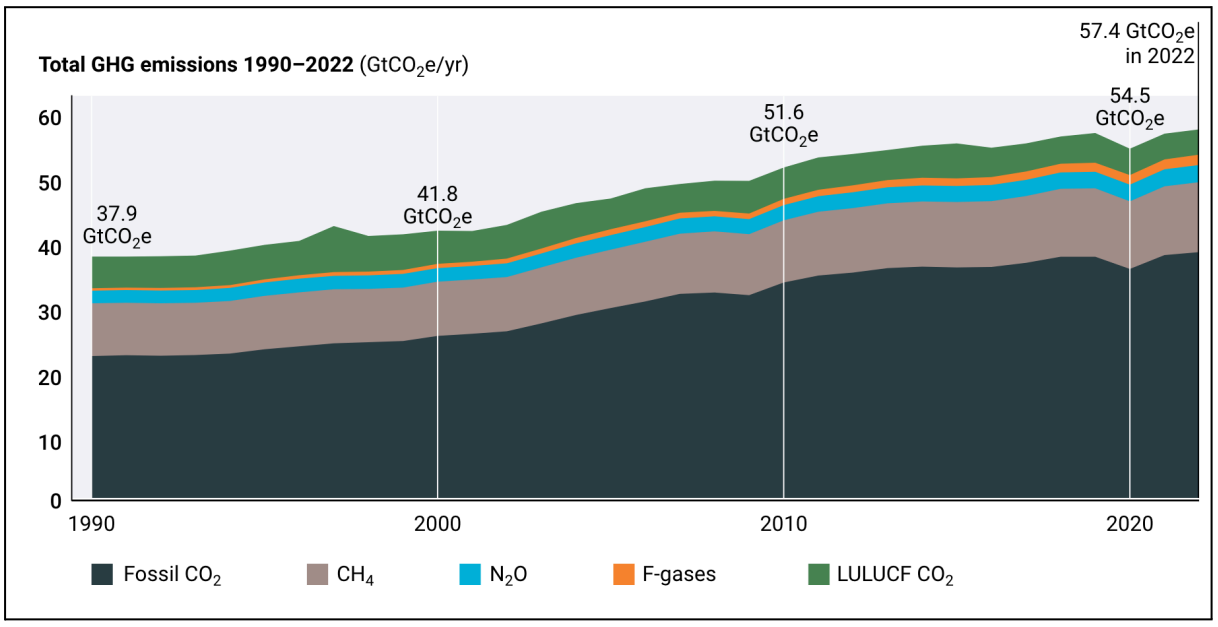
[15] International Energy Agency, 'Emissions from Oil and Gas Operations in Net Zero Transitions: A World Energy Outlook Special Report on the Oil and Gas Industry and COP28' (2023) 7–9.
[16] On the attributability of GHG emissions of projects to the governmental decision that authorized it see Council on Environmental Quality, 'National Environmental Policy Act (NEPA) Guidance on Consideration of Greenhouse Gas Emissions and Climate Change (Interim) [2023] 88 FR 1196' 1201; see also Michael Burger and Jessica Wentz, 'Evaluating the Effects of Fossil Fuel Supply Projects on Greenhouse Gas Emissions and Climate Change Under NEPA' (2020) 44 William & Mary Environmental Law and Policy Review William & Mary Environmental Law and Policy Review 423, 455 and 457.
[17] International Energy Agency (n 15) 9.
[18] Andrew Burnham and others, 'Life-Cycle Greenhouse Gas Emissions of Shale Gas, Natural Gas, Coal, and Petroleum' (2012) 46 Environmental Science & Technology 619, 623–624.

5. Climate change and fossil fuel extraction

5.1. Climate crisis, greenhouse gas emissions and fossil fuels

The climate crisis *"is a threat to human well-being and planetary health"*, as the most recent report of the Intergovernmental Panel on Climate Change (IPCC, 2023) holds.[19] The threat is acute: according to the IPCC, *"[t]here is a rapidly closing window of opportunity to secure a liveable and sustainable future for all."*[20]

Climate change is caused by GHG emissions from human activities, most notably CO_2 from fossil sources (see graphic below).[21] CO_2 traps heat in the atmosphere, creating the greenhouse effect.[22] As more CO_2 accumulates in the atmosphere, this effect strengthens, leading to an accelerated warming of the Earth. Other significant GHGs include methane (CH_4), nitrous oxide (N_2O), and fluorinated gasses.[23] The climate system responds to GHG emissions with a delay, meaning the full impact of GHG emitted today will only become evident several decades into the future.



CO_2 from fossil sources and methane (CH_4) emissions are the dominant greenhouse gases (UNEP Emissions Gap Report 2023).[24]

[19] IPCC, 'Summary for Policymakers' in Hoesung Lee and others, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)* (IPCC 2023) 24.
[20] ibid.
[21] ibid 4.
[22] Minal Pathak and others, *Climate Change 2022: Mitigation of Climate Change. Working Group III Contribution to the IPCC Sixth Assessment Report (AR6)* (IPCC 2022) 233.
[23] ibid 207.
[24] United Nations Environment Programme, 'Emissions Gap Report 2023: Broken Record – Temperatures Hit New Highs, yet World Fails to Cut Emissions (Again)' (2023) XVII.

The **production and combustion of fossil fuels** (coal, oil and gas) causes CO_2 and methane emissions. It is **responsible for around 90% of CO_2 emissions**[25] and 40% of methane emissions.[26] Fossil fuels are consequently the dominant cause of climate change: there is a **clear and direct relationship between fossil fuel combustion and climate change**.

5.2. The impacts of GHG emissions on humans and environment today

The impact of climate change, caused by GHG emissions, is observable today. The Earth's average temperature has risen by around 1.1ºC compared to the start of the Industrial Revolution.[27] Sea level rise has steadily increased, with a current average rise of 3.7 mm per year.[28] **Climate change is already causing a wide range of extreme weather and climate events worldwide**, including heatwaves, heavy rainfall, droughts, and tropical cyclones.[29]

Climate change **adversely affects life, health, well-being, community, environment and property of humans**.[30] More than 3 billion people live in contexts that are highly vulnerable to climate change.[31] Climate change has reduced food and water security, and hinders efforts to meet the Sustainable Development Goals (SDG).[32] Climate change increases the risk of infectious diseases, harm caused by heat, adverse mental health effects, displacement, as well as damages associated with floods and storms, damages to infrastructures and to key economic sectors.[33] The **impact of climate change is highly unequal**, particularly affecting indigenous peoples, small-scale food producers and low-income households.[34]

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[25] Pierre Friedlingstein and others, 'Global Carbon Budget 2023' (2023) 15 Earth System Science Data 5301, 5341. The number includes cement production, see 5308.
[26] 'Global Methane Tracker 2023 – Analysis' (*IEA*) <https://www.iea.org/reports/global-methane-tracker-2023> accessed 11 December 2023, section 2.0; the figure also includes bioenergy.
[27] IPCC, 'Summary for Policymakers' (n 19) 4.
[28] ibid.
[29] ibid 5.
[30] ibid 5–6.
[31] ibid 5.
[32] ibid 6.
[33] IPCC, 'Summary for Policymakers' in Hans-O Pörtner and Debra Roberts, *Climate Change 2022 – Impacts, Adaptation and Vulnerability: Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022) 10.
[34] IPCC, 'Summary for Policymakers' (n 19) 5.

Climate change is triggering a monumental shift in global ecosystems.[35] The rise in global temperatures, a direct consequence of increased GHG emissions, has forced a significant number of species to migrate towards the poles or seek refuge at higher elevations.[36] **Climate change has already caused localized extinctions of hundreds of species**, highlighting the immediate and severe impact of climate change on biodiversity. The situation is particularly dire in specialized ecosystems, such as those in mountainous regions and the Arctic. These areas are experiencing some of the most profound changes due to climate change. The retreat of glaciers and the thawing of permafrost, both direct results of rising temperatures, are pushing these ecosystems towards a point of no return.

5.3. Future impacts of GHG emissions on humans and the environment

The quantity of GHG emissions directly impacts the magnitude of future risks associated with climate change. The more GHGs are emitted into the atmosphere, the greater the risks of severe climate-related impacts. **Reducing GHG emissions is a critical step in minimizing the future risks associated with climate change**.[37]

The **escalation of climate change will severely affect humans on a global scale**. Rising sea levels, a direct result of melting polar ice caps and glaciers, will disproportionately affect densely populated coastal regions, leading to widespread displacement.[38] Displacement also implies the loss of cultural heritage, livelihoods and community structures. Furthermore, the rise in temperature will make large parts of the world inhospitable.[39] Such extreme conditions, characterized by deadly heat and humidity, will undermine the ability to live and work in these regions. In addition, the increasing frequency of extreme weather events such as hurricanes, floods and droughts poses a direct threat to people's health, safety and well-being. These natural disasters will have a profound social and economic impact, disproportionately affecting the most vulnerable, including the poor, elderly and children. The **younger generation and future generations will inherit a drastically changed world**, a world that is much hotter and fundamentally different from what previous generations have known (see graphic below).[40] The rights of future generations to a sustainable and liveable planet are therefore at risk.

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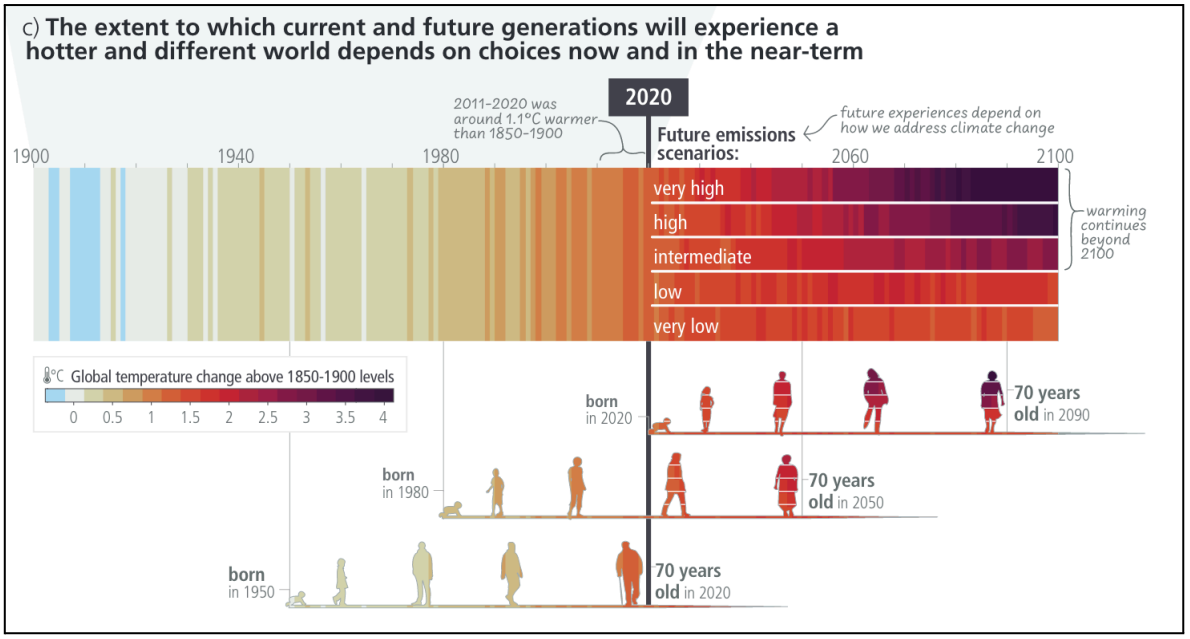
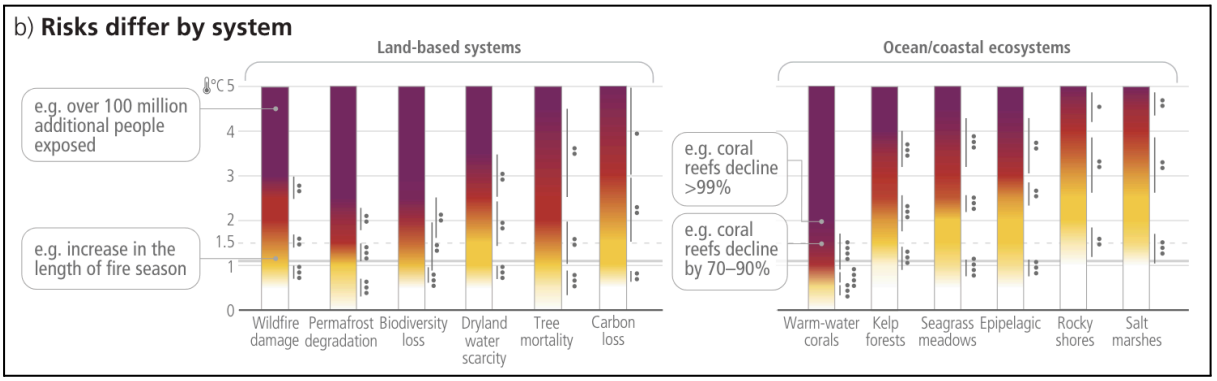
[35] IPCC, ‘Summary for Policymakers’ (n 33) 12–15.
[36] ibid 9.
[37] IPCC, ‘Summary for Policymakers’ (n 19) 12.
[38] IPCC, ‘Summary for Policymakers’ (n 33) 15.
[39] IPCC, ‘Summary for Policymakers’ (n 19) 16.
[40] ibid 7.



With progressing climate change, young people and future generations will experience a hotter and different world (IPCC).[41]

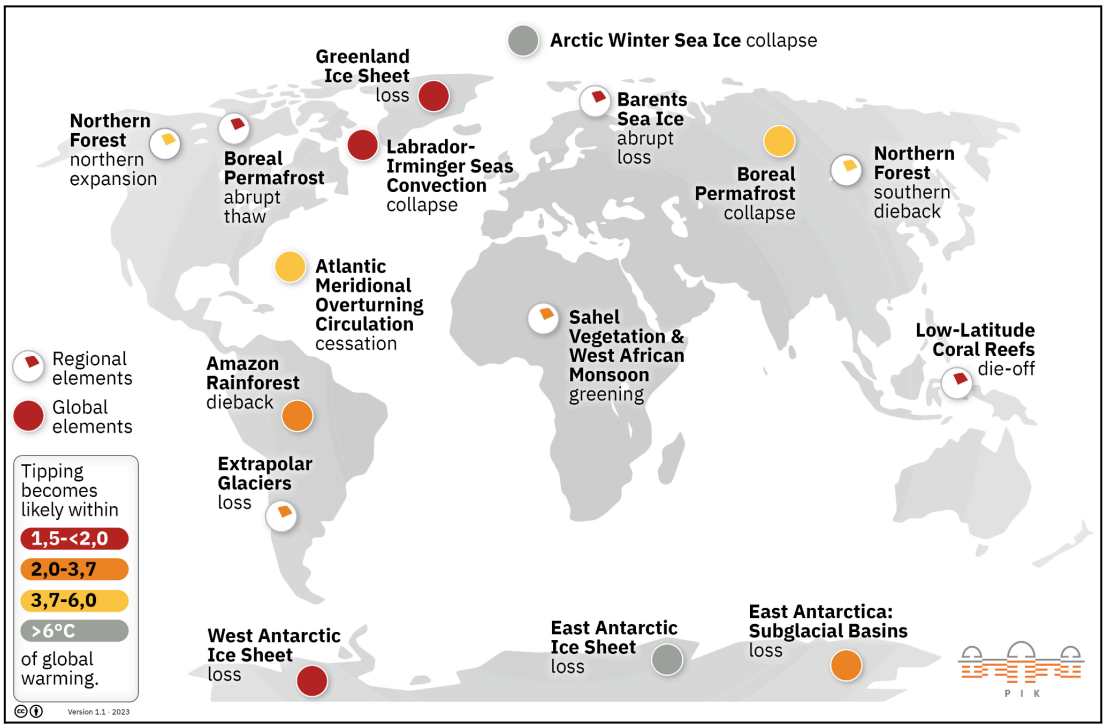
A **further increase of GHG emissions will have major impacts on the environment** (see graphic below).[42] Already at global warming of 1.5°C, biodiversity will be significantly impacted, with up to 15% of species worldwide at a very high risk of extinction.[43] Polar and mountain ecosystems will further shrink due to warming, melting ice and permafrost, and altered water cycles. Dryland regions will be affected by increased water scarcity. Coral reefs are estimated to decline by a further 70-90%, and most small or low-elevation glaciers worldwide will disappear within decades. Global warming of 1.5°C will also lead to increased wildfire damage, permafrost degradation and tree mortality. A temperature increase beyond 1.5°C will further exacerbate these adverse impacts.



Continued GHG emissions will cause far-reaching harm to the environment, including the massive extinction of species (IPCC).[44]

[41] ibid.
[42] ibid 17.
[43] IPCC, 'Summary for Policymakers' (n 33) 14.
[44] IPCC, 'Summary for Policymakers' (n 19) 17.

Continued GHG emissions also **increase the risk of reaching climate tipping points**. A tipping point is a critical threshold value beyond which the climate system undergoes dramatic and irreversible changes. It marks the end of the predictable and stable state, and the beginning of a new, often less life-friendly equilibrium.[45] Examples of tipping points are the melting of Arctic and Antarctic sea ice, the dieback of tropical rain forests and the death of coral reefs.[46] Recent research indicates that the Atlantic gulf stream as a crucial tipping point may collapse as early as mid-century under current emission projections.[47] This could cause the loss of half of the global area for growing wheat and maize.[48] Certain tipping points are likely reached already at global warming below 2°C (see graphic below). These findings underscore the **urgent need for concerted global efforts to mitigate warming and prevent these catastrophic thresholds from being crossed**.[49]



An overview of climate tipping points, many of which already become likely at global warming below 2°C (Potsdam Institute for Climate Impact Research).[50]

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[45] IPCC, *The Ocean and Cryosphere in a Changing Climate: Special Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2019) 594.
[46] David I Armstrong McKay and others, 'Exceeding 1.5°C Global Warming Could Trigger Multiple Climate Tipping Points' (2022) 377 Science eabn7950.
[47] ibid.
[48] 'Global Tipping Points' (University of Exeter 2023) 3.
[49] Katherine Calvin and others, 'IPCC, 2023: 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 and J. Romero (Eds.)]. IPCC, Geneva, Switzerland.' (First, Intergovernmental Panel on Climate Change (IPCC) 2023) 77 <https://www.ipcc.ch/report/ar6/syr/> accessed 16 October 2023.
[50] https://www.pik-potsdam.de/en/output/infodesk/tipping-elements

5.4. The Paris objectives, fossil fuel extraction and the production gap

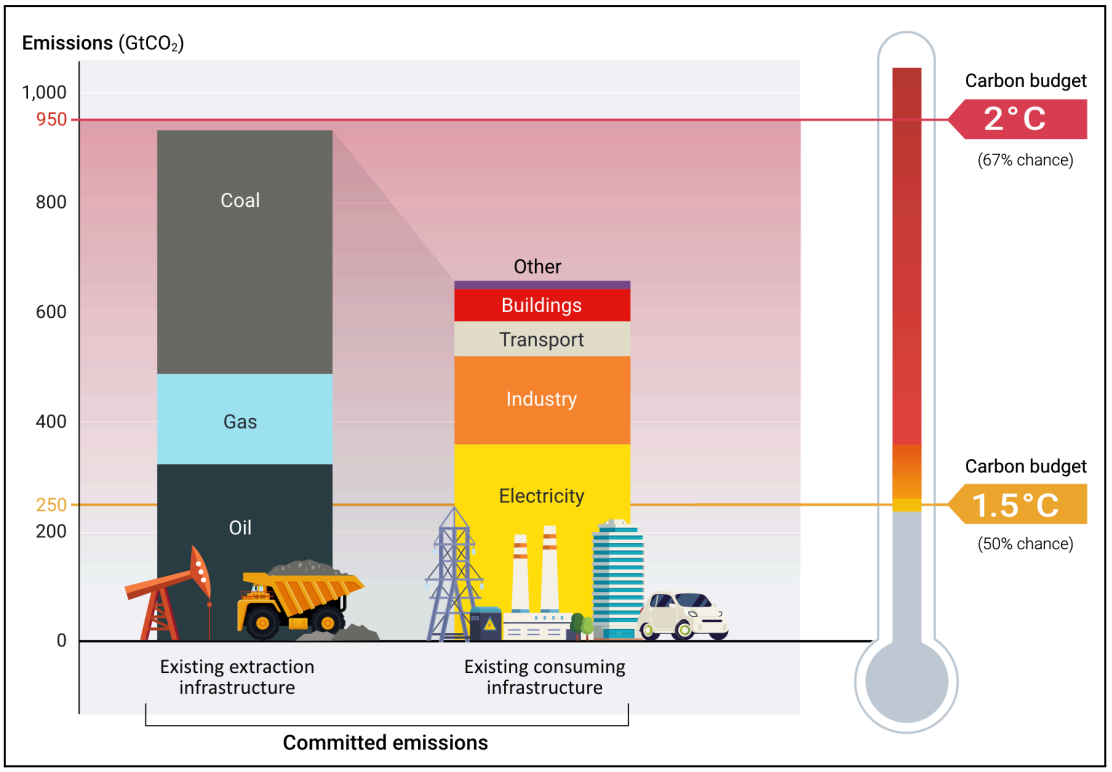
The international community has agreed in the **United Nations Framework Convention on Climate Change** (UNFCCC) that GHG concentrations in the atmosphere must be stabilized to prevent dangerous anthropogenic interference with the climate system.[51] It further agreed in the **Paris Agreement** that this requires global warming to be limited to well below 2°C above pre-industrial levels, and **efforts to be made to limit the temperature increase to 1.5°C**.[52] The IPCC special report "Global Warming of 1.5°C" (2018) showed that the adverse effects of a temperature increase of 2°C will be significantly more severe than those of a 1.5°C increase.[53] On that basis the international community resolved in the Glasgow Climate Pact to limit global warming to 1.5°C.[54] The **EU explicitly endorses the 1.5°C target**.[55] To achieve this objective the European Climate Law prescribes an emission reduction in the EU of at least -55% by 2030, and climate neutrality by 2050 at the latest.[56]

Based on the objective of limiting global warming to 1.5 or 2°C, carbon budgets can be calculated. A carbon budget represents the total amount of GHGs that can be emitted into the atmosphere while still staying within these temperature limits. The **carbon budgets are shrinking rapidly**. According to the most recent research, the **remaining carbon budget for a 50% likelihood to limit global warming to 1.5°C** (2°C) has fallen to 275 $GtCO_2$ (1150 $GtCO_2$). It will be **exhausted in 7 years** (28 years) at current emission levels.[57]

Existing fossil fuel infrastructure will cause cumulative future CO_2 emissions of 460-910 $GtCO_2$.[58] Emissions from currently planned fossil fuel infrastructure will further add 190-270 $GtCO_2$.[59] This **significantly exceeds the carbon budget to remain within the**

[51] Art 2 United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).
[52] Art 2(1)(a) Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 55 ILM 740.
[53] IPCC, *Global Warming of 1.5°C. An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* (Cambridge University Press 2018).
[54] Decision -/CP.26, Glasgow Climate Pact (2021), para 21.
[55] Council of the European Union, 'Council Conclusions on Climate and Energy Diplomacy, 9 March 2023, 7248/23', para 1.
[56] Arts 2 and 4 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 [2021] OJ L 243/1 (European Climate Law).
[57] Global Carbon Budget 2023, 5304; see alsoRobin D Lamboll and others, 'Assessing the Size and Uncertainty of Remaining Carbon Budgets' [2023] Nature Climate Change 1.
[58] Pathak and others (n 22) 265.
[59] ibid 266.

1.5°C threshold. It also exhausts the carbon budget to remain below 2°C (see graphic below), before emissions from other sectors are taken into account.[60]



CO_2 emissions from existing fossil fuel infrastructure will exceed the 1.5°C and exhaust the 2°C threshold (UNEP Emissions Gap Report 2023).[61]

Fossil fuels are almost exclusively burned for energy, with only 6% used for other purposes.[62] Moreover, there are only very limited storage capacities. This means that almost all **fossil fuels, once extracted, will be burned within a short time frame**.[63]

Continued investments in unabated high-emitting infrastructure act as barriers to mitigation efforts, and will lock in GHG emissions for decades to come, thereby undermining the Paris Agreement's objectives.[64] According to the IPCC report, *"**the Paris climate goals could move out of reach** unless there are dedicated efforts for early decommissioning, and reduced utilisation of existing fossil fuel infrastructures [and] **cancellation of plans for new fossil fuel infrastructures**."*[65]

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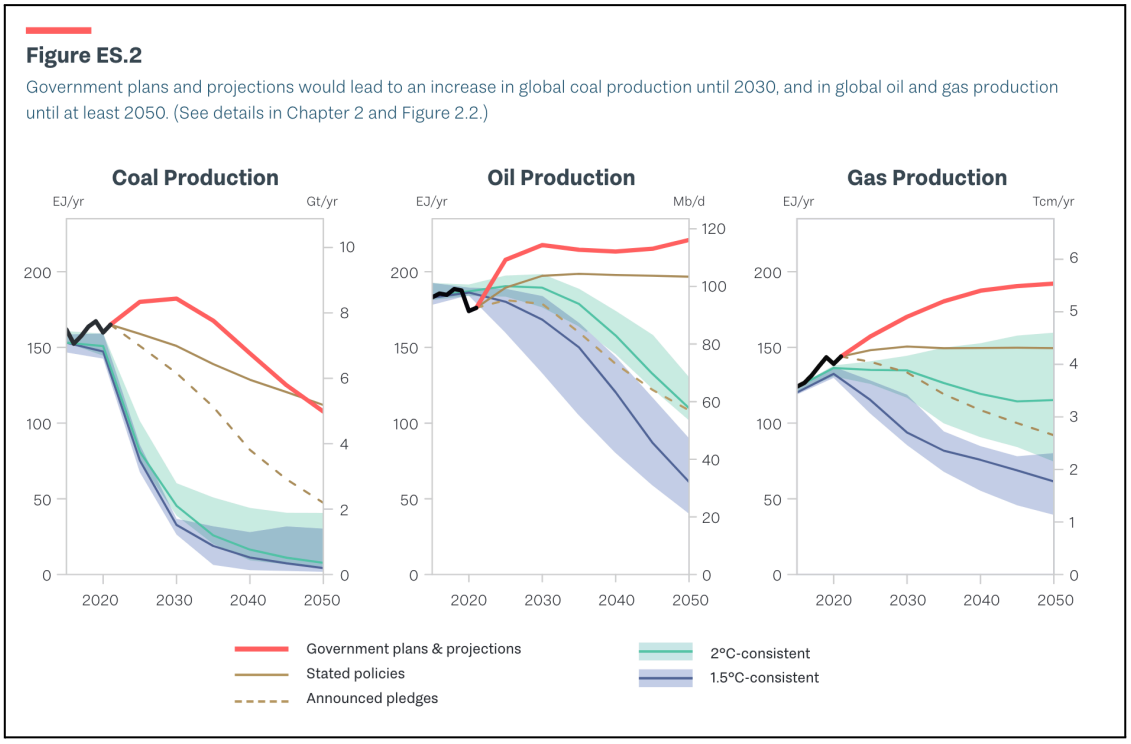
[60] ibid.
[61] United Nations Environment Programme (n 24) XXIII.
[62] Science Based Targets Initiative (SBTi), 'Non-Energy Uses of Petroleum and Gas Products' <https://sciencebasedtargets.org/resources/legacy/2020/08/OG-Annex-A-Non-energy-uses-of-petroleum-and-gas-products-2.pdf> accessed 6 October 2023.
[63] Dan Calverley and Kevin Anderson, 'Phaseout Pathways for Fossil Fuel Production Within Paris-Compliant Carbon Budgets' (Tyndall Centre for Climate Change Research 2022) 27.
[64] IPCC, *Climate Change 2022: Mitigation of Climate Change, Summary for Policymakers* (2022) 15 and 28.
[65] Pathak and others (n 22) 266.

The disparity between current and projected fossil fuel production levels and the limits necessary to meet the Paris climate goals is termed the "**production gap**." According to the UNEP's Production Gap Report (2023), aggregate **fossil fuel extraction plans for 2030 are more than double the amount of what would be consistent with 1.5°C** and 69% more than the amount consistent with 2°C.[66] By 2050, planned production will be 350% and 150% above what is consistent with 1.5°C and 2°C, respectively (see graphic below).



Planned fossil fuel production greatly exceeds the extraction quantities that would be compatible with global warming of 1.5°C or 2°C (UNEP Production Gap Report).[67]

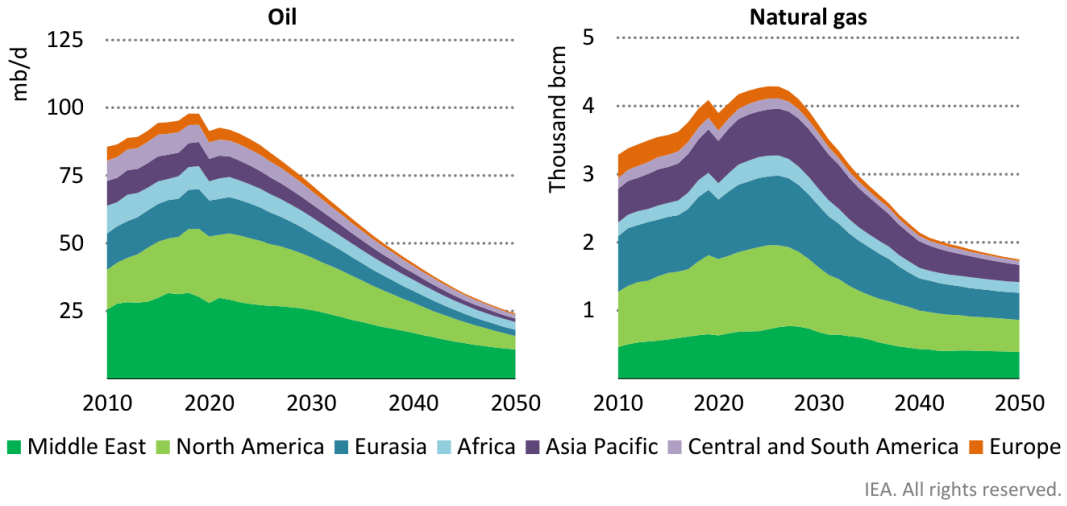
To meet the Paris objectives, the production gap must be closed. Existing fossil fuel infrastructure must be decommissioned early, and plans for expanding fossil fuel extraction must be abandoned. According to the Production Gap Report, *"countries should aim for a near total phase-out of coal production and use by 2040 and a combined reduction in oil and gas production and use by three-quarters by 2050 from 2020 levels, at a minimum."*[68]

In 2021, the **International Energy Agency published the "Net Zero by 2050" scenario** (NZE Scenario). It provides the most comprehensive understanding of how the energy sector must develop to limit the global temperature increase to 1.5°C, while ensuring

[66] Stockholm Environment Institute, 'The Production Gap: Phasing down or Phasing up? Top Fossil Fuel Producers Plan Even More Extraction despite Climate Promises' (2023) 4.
[67] ibid.
[68] ibid 8.

universal access to modern energy by 2030.[69] According to the NZE Scenario, achieving the objective requires total energy supply to be reduced by 7% between 2020 and 2050.[70] The share of fossil fuels in total energy supply must fall from 80% to 20% (see graphic below).[71] By 2050, natural gas use must be 55% lower than in 2020. Most importantly, no new oil and gas fields are needed beyond those already under development.[72] **Preventing the approval of new oil and gas fields for development is a key milestone in meeting the Paris objective** (see graphic below).[73]

Figure 3.3 ▷ **Oil and natural gas production in the NZE**

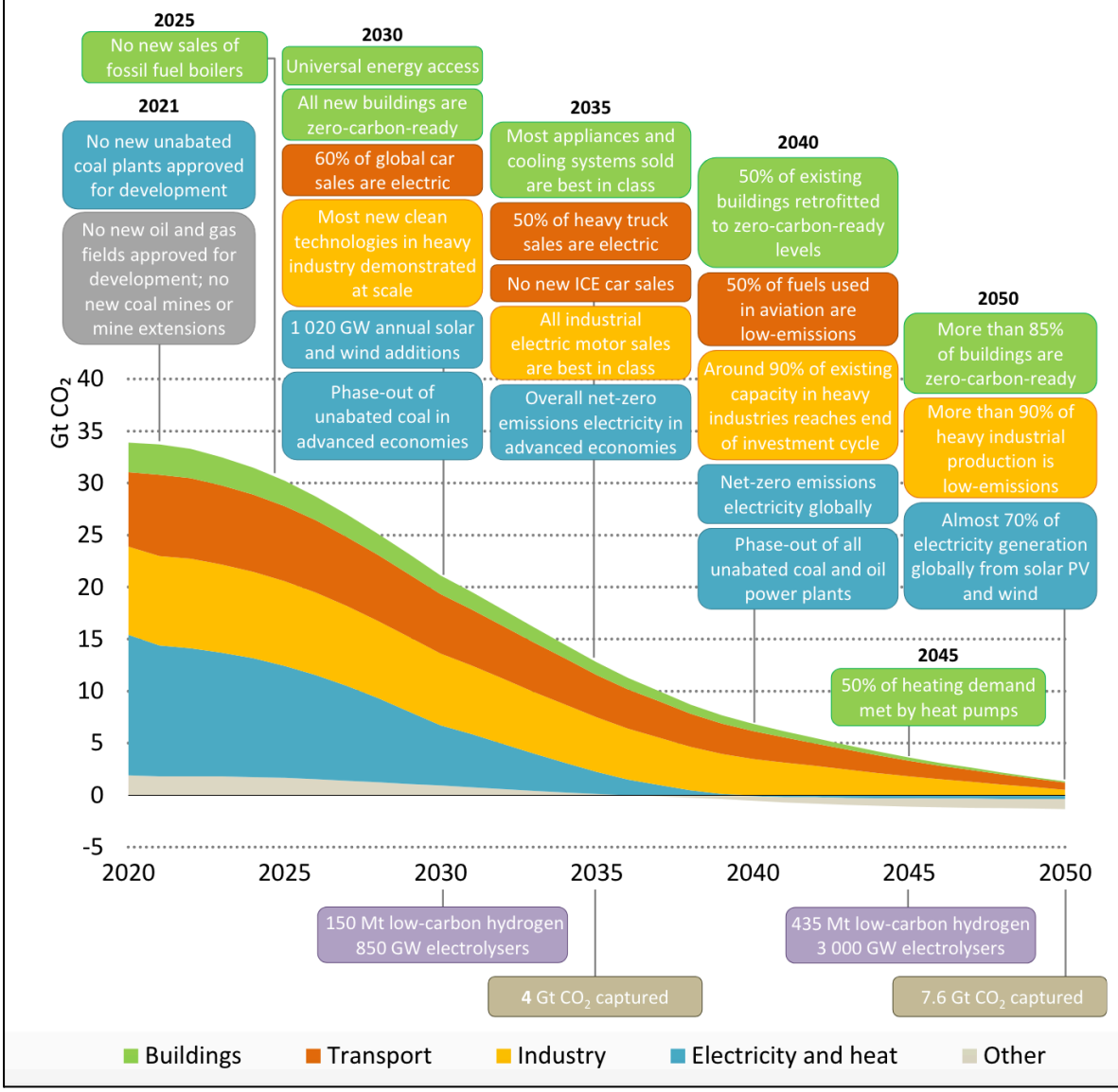


No new oil and natural gas fields are required beyond those already approved for development. Supply is increasingly concentrated in a few major producing countries

The NZE Scenario by the IEA shows that the production of fossil gas must be reduced significantly over the next decades (IEA Net Zero by 2050).[74]

[69] International Energy Agency, 'Net Zero by 2050 - A Roadmap for the Global Energy Sector' (2021).
[70] ibid 56.
[71] ibid 57.
[72] ibid 102.
[73] ibid 152.
[74] ibid 102.

Figure 4.1 ▷ Selected global milestones for policies, infrastructure and technology deployment in the NZE



Preventing the approval of new oil and gas fields for development is a key milestone for achieving the Paris objective (IEA Net Zero by 2050).[75]

The **need to phase-out fossil fuel extraction is particularly urgent for undertakings from developed countries such as the Netherlands**. Given their higher historical contributions to GHG emissions and their advanced economic and technological capacities, these **countries bear a particular responsibility under international law in leading the transition towards sustainable practices**.[76] Research shows that the Netherlands, as one of the wealthiest countries, already exceeded its fair-share-budget for 1.5°C by factor 2.[77] To

[75] ibid 152.
[76] Art 2(2) Paris Agreement; Art 3(1) UNFCCC.
[77] Andrew L Fanning and Jason Hickel, 'Compensation for Atmospheric Appropriation' (2023) 6 Nature Sustainability 1077.

ensure a just transition the wealthiest oil and gas producer nations must cut production by as much as 74% by 2030 and phase out production completely as early as 2034, as Calverley and Anderson show.[78] By taking a proactive stance, undertakings in developed nations can serve as examples of catalyzing a global paradigm shift towards cleaner and more sustainable energy practices, thereby aligning with the collective effort to address the climate crisis.

The concept of Carbon Dioxide Removal (CDR) describes attempts to remove CO_2 from the atmosphere. **CDR practices are not a viable alternative to closing the production gap**. Most CDR practices are hypothetical at scale, and their future mitigation performance is consequently unknown. The IPCC 1.5°C Report states in this regard: *"CDR deployed at scale is unproven, and reliance on such technology is a major risk in the ability to limit warming to 1.5°C."*[79] Similarly, the European Academies Science Advisory Council (EASAC) finds that *"these technologies offer only limited realistic potential to remove carbon from the atmosphere."*[80] The IEA has held that carbon capture and storage (CCS) cannot be assumed to even remotely offset continued emissions from oil and gas.[81] The immediate and drastic reduction of fossil fuel production is the only credible way of achieving the objectives of the Paris Agreement and to prevent irreversible damage to the planet.

Summing up, the climate crisis is mainly caused by GHG emissions from the extraction and combustion of fossil fuels. **Existing and currently planned fossil fuel infrastructure will cause GHG emissions in excess of what is allowable** to stay within the thresholds set by the Paris Agreement. To prevent further GHG emissions that would cause global warming beyond the danger line, it is **necessary to refrain from developing new fossil fuel extraction projects**, including, and particularly, new fossil gas extraction in industrialized countries like the Netherlands.

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[78] Calverley and Anderson (n 63) 6.
[79] Myles Allen and others, 'Technical Summary' in Valérie Masson-Delmotte and others, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (IPCC 2018) 34.
[80] European Academies Science Advisory Council (EASAC), 'Negative Emission Technologies: What Role in Meeting Paris Agreement Targets?' (2018) EASAC policy report 34 1.; the German Constitutional Court proved to be very skeptical about the role of CDR measures in its 2021 Neubauer decision; see Bundesverfassungsgericht, ECLI:DE:BVerfG:2021:rs20210324.1bvr265618, paras 227, 33.
[81] IEA, 'The Oil and Gas Industry in Net Zero Transitions' (2023) 16.

6. One-Dyas has failed to identify environmental and human rights risks of its N05-A project

6.1. Rules

Chapters II (general policies), IV (human rights) and VI (environment) of the OECD Guidelines require enterprises to identify actual and potential adverse impacts of their activities on human rights and the environment.

Chapter II (general policies) holds that enterprises should *"**[c]arry out risk-based due diligence**, for example by incorporating it into their enterprise risk management systems, to **identify, prevent and mitigate actual and potential adverse impacts** [...] and account for how these impacts are addressed."*[82]

Chapter IV (human rights) holds that enterprises should *"**[c]arry out human rights due diligence** as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts."*[83] According to the Commentary, *"[t]he process entails **assessing actual and potential human rights impacts**, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed."*[84]

According to chapter VI (environment), enterprises should *"[e]stablish and maintain a system of environmental management appropriate to the enterprise **associated with the operations, products and services of the enterprise over their full life cycle**, including by carrying out **risk-based due diligence**, as described in Chapter II, **for adverse environmental impacts**, including through identifying and assessing adverse environmental impacts associated with an enterprise's operations, products or services, including through collection and evaluation of adequate and timely information regarding the adverse impacts associated with their operations, products and services and where activities may have significant adverse environmental impacts, **preparing an appropriate environmental impact assessment**."*[85]

According to the Due Diligence Guidance, due diligence must be commensurate with risk: *"The measures that an enterprise takes to conduct due diligence should be **commensurate***

[82] OECD Guidelines, chapter II, para 11.
[83] OECD Guidelines, chapter, IV, para 5.
[84] OECD Guidelines, commentary, para 50.
[85] OECD Guidelines, chapter VI, para 1(a).

***to the severity and likelihood of the adverse impact**. When the **likelihood and severity of an adverse impact is high, then due diligence should be more extensive**."*[86] The severity of an adverse impact is to be evaluated by its scale, scope and irremediable character: *"Scale refers to the gravity of the adverse impact. Scope concerns the reach of the impact, for example the number of individuals that are or will be affected or the extent of environmental damage. Irremediable character means any limits on the ability to restore the individuals or environment affected to a situation equivalent to their situation before the adverse impact."*[87]

6.2. Facts

One-Dyas submitted environmental impact assessment (EIA) reports to the Dutch and German authorities in the context of the permitting process. The submission of an EIA report is a legal requirement under both Dutch and German law, which are based on the EU EIA Directive.[88]

One-Dyas' Dutch EIA report identifies GHG emissions as an impact of the project.[89] Regarding specific emission sources, it only identifies emissions relating to the construction and operation of the project, as well as the enterprise's own transportation activities between the platform and the Dutch harbor (see table below), all of which are scope 1 emissions. In contrast, **the report does not address scope 3 emissions, which include emissions from transporting the gas and from its end use**.

Tabel 34: Verbruik van fossiele energie en BKG-emissies voor het voorkeursalternatief. Door elektrificatie van het platform wordt in de boorfase 65 procent en in de productiefase 85 procent emissiereductie bereikt ten opzichte van een standaardsituatie.

Projectfase en varianten	Fossiel energieverbruik	BKG-emissie
Aanlegfase	24 TJ/jr	1.800 CO_2 eq/jr
Boorfase	33 TJ/jr	5.300 CO_2 eq/jr
Productiefase	180 TJ/jr	8.600 CO_2 eq/jr
Transporten tijdens concurrent operations		
Variant Den Helder	85 TJ/jr	6.300 CO_2 eq/jr
Variant Eemshaven	23 TJ/jr	1.700 CO_2 eq/jr

Overview of emission sources of the N05-A project, as identified by One-Dyas in the EIA Report. Scope 3 emissions are not identified as emissions of the project.[90]

[86] OECD, 'OECD Due Diligence Guidance for Responsible Business Conduct' (2018) 17.
[87] ibid 42.
[88] "Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) Text with EEA relevance" (EIA-directive).
[89] 'Hoofdrapport Milieueffectrapport - Gaswinning N05-A' (n 5) 59; 'Milieueffectrapport Gaswinning N05-A - Deel 2: Milieueffecten' 85–99 <https://www.rvo.nl/sites/default/files/2021/04/4-MER-Deel-2-Milieueffecten-Gaswinning-N05-A.pdf> accessed 6 December 2023.
[90] 'Hoofdrapport Milieueffectrapport - Gaswinning N05-A' (n 5) 61–62.

In its **German EIA report One-Dyas acknowledges that the project causes scope 3 emissions**, but does not quantify them. Instead, it **claims that end use emissions from burning the extracted gas cannot be attributed to the project**.[91]

To our knowledge, **One-Dyas has not conducted an assessment of the human rights impacts of the N05-A project's full GHG emissions**, including scope 3 emissions.

6.3. Analysis

This analysis will show that One-Dyas has violated the requirements of the OECD Guidelines relating to the identification of environmental and human rights risks of its operations by omitting scope 3 emissions of the N05-A project, including end use emissions, from the environmental impact assessment, and by failing to conduct a human rights assessment.

Failure to identify and assess end use emissions of extracted gas conflicts with the OECD Guidelines

The **environmental impact assessment of a gas extraction project should include the emissions caused by the combustion of the extracted gas by end users, which are scope 3 emissions.** This follows from the EU EIA Directive, which governs the EIA report conducted by One-Dyas, various hard- and soft law requirements regulating sustainability disclosure, as well as the OECD Guidelines.

To determine the specific expectations placed on the enterprise, reference should be made to the "*framework of laws, regulations and administrative practices in the countries in which they operate"* and "*relevant international agreements, principles, objectives, and standards."*[92] Therefore, relevant EU and national legislation as well as other international standards need to be considered when interpreting the OECD Guidelines and their scope.

[91] Arbeitsgruppe fuer regionale Struktur- und Umweltforschung GmbH, 'Richtbohrungen von Der Plattform N05-A in Den Deutschen Sektor Der Nordsee Einschließlich Der Erdgasförderung Im Deutschen Hoheitsgebiet. UVP-Bericht Mit Allgemein Verständlicher Nichttechnischer Zusammenfassung, FFHVerträglichkeitsuntersuchung Und Artenschutzrechtlichem Fachbeitrag (UVP Bericht)' 527 <https://uvp.niedersachsen.de/documents-ige-ng/igc_ni/A7A09BE1-18FB-4194-A2E8-7E3712E71508/N05-A_UVP-B_FFH-VP-AFB_2022-08-25.pdf> accessed 6 December 2023.

[92] OECD Guidelines, chapter VI, chapeau.

The **EIA Directive requires an EIA to be conducted for large-scale gas extraction projects**, such as the N05-A project.[93] It prescribes the comprehensive evaluation of a project's environmental effects, including its impacts on the climate.[94] The EIA report **must address all environmental effects** of a project that are likely to be significant. The concept of significant effects must be understood broadly. According to the EIA Directive, projects can have significant effects "by virtue, inter alia, of their nature, size or location."[95] The EIA Directive covers direct effects **as well as "any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects** of the project."[96] This comprehensive scope of the EIA Directive has repeatedly been confirmed by the Court of Justice of the European Union (CJEU). Significantly, **relevant environmental effects are not limited to the construction and operation of the project**: according to the CJEU they also include, for example, noise and other effects caused by the foreseeable increase in rail traffic following the doubling of a railway track[97] and from increased activity caused by an airport expansion.[98] In this context it held in *Abraham v Région wallonne* (2008) that *"[i]t would be simplistic and contrary to that approach [of the EIA Directive] to take account, when assessing the environmental impact of a project or of its modification, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable to result from the use and exploitation of the end product of those works."*[99]

The EIA Directive requires the EIA report to assess climate-related impacts of projects, and most notably their GHG emissions.[100] This obligation is further specified in the "Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment", which the European Commission issued in 2013. The Guidance describes the EIA as "an opportunity to systematically integrate climate change [...] into a wide range of public and private projects."[101] Given the broad scope of the EIA Directive, project-related GHG

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[93] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment [2011] OJ L 26/1 (EIA Directive), Annex I, para 14.
[94] Art 3(1) EIA Directive.
[95] Art 2(1) EIA Directive.
[96] EIA Directive, Annex IV, para 5.
[97] Case C-227/01, *Commission of the European Communities v Kingdom of Spain* [2004] ECLI:EU:C:2004:528, para 49.
[98] Case C-2/07, *Paul Abraham and Others v Région wallonne and Others* [2008] ECLI:EU:C:2008:133, para 46.
[99] ibid, para 36.
[100] Art 3(1)(c) EIA Directive; Annex IV, paras 4 and 5(f); on integrating consideration of climate change in EIAs see Jacqueline Peel, 'Environmental Impact Assessments and Climate Change' in Michael Faure (ed), *Elgar Encyclopedia of Environmental Law* (Edward Elgar 2023).
[101] European Commission, 'Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment' (2013) 11.

emissions must consequently be assessed in a comprehensive manner, taking into account emission scopes 1, 2 and 3. Excluding certain indirect emissions from the assessment, such as end use emissions, would conflict with the broad definition of environmental effects in the EIA Directive. While the Commission Guidance does not provide an exhaustive definition of the GHG emissions that must be addressed, it highlights the relevance of indirect GHG emissions in establishing the climate impact of a project.[102] It can thus be assumed that EIAs must consider all of a project's or plan's direct and indirect GHG emissions if they are significant, including end use emissions. **End use emissions from burning the extracted gas consequently constitute environmental effects of gas extraction projects, and must be included and assessed in an EIA report under the EIA Directive**.

Various courts around the world have held that emissions from the combustion of fossil fuels by end users constitute environmental effects of fossil fuel extraction projects.[103] Recent examples include judgments by the Oslo District Court (2024)[104] and the Land and Environment Court New South Wales in *Gloucester Resources Ltd v Minister for Planning* (2019).[105] This view also finds expression in the 2023 National Environmental Policy Act (NEPA) Guidance on Consideration of Greenhouse Gas Emissions and Climate Change issued by the US federal Council on Environmental Quality (CEQ).[106] The NEPA Guidance holds: *"Indirect effects generally include reasonably foreseeable emissions related to a proposed action that are upstream or downstream of the activity resulting from the proposed action. For example,* ***where the proposed action involves fossil fuel extraction****, direct emissions typically include GHGs emitted during the process of exploring for and extracting the fossil fuel. The reasonably foreseeable indirect effects of such an action likely would include effects associated with the processing, refining, transporting,* ***and end-use of the fossil fuel being extracted, including combustion of the resource to produce energy****."*[107]

Other EU instruments relevant for climate-related reporting confirm that scope 3 emissions, including end use emissions, form part of an enterprise's or project's GHG

[102] Examples for indirect emissions addressed by the Guidance are emissions related to energy consumption (scope 2) as well as to input resources and transportation (scope 3); See ibid 29 and 36.
[103] For an overview of Australian cases see Brian Preston, 'Contemporary Issues in Environmental Impact Assessment' (2020) 37 Environmental and Planning Law Journal 423; for US cases see Jessica A Wentz and Benjamin Franta, 'Liability for Public Deception: Linking Fossil Fuel Disinformation to Climate Damages' (2022) 52 Climate Law Reporter 10995.
[104] Oslo District Court [2024] 23-099330TVI-TOSL/05, with reference to Supreme Court of Norway, *Nature and Youth Norway et al v Norway [2020]* HR-2020-2472-P, paras 186, 225, 263 and 267.
[105] Land and Environment Court New South Wales, *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7, paras 486-513.
[106] Council on Environmental Quality (n 16).
[107] ibid 1204.

emissions and must be disclosed. Under the corporate sustainability reporting requirement created by the Corporate Sustainability Reporting Directive (**CSRD**), enterprises must **fully disclose their scope 1, 2 and 3 emissions**.[108] The **EU Environmental Footprint Methods** for organizations and for products similarly require all direct and indirect environmental impacts to be included in the calculation of the environmental footprint. This **includes impacts in the distribution, use and end of life stages**.[109] The EU Commission Guidance on the Unfair Commercial Practices Directive holds that *"the **product's main environmental impacts over its lifecycle**, including its supply chain, are relevant"* in the assessment of environmental marketing claims.[110]

Climate disclosure is also regulated by various **international standards**, such as the IFRS and GRI standards on financial and impact sustainability reporting, the GHG Protocol, the various GHG-related ISO standards and the SBTi Corporate Net-Zero Standard. **All of them consider scope 3 emissions to be relevant in evaluating the climate impact of corporations, projects and products**. The IFRS S2 standard requires the disclosure of scope 3 emissions[111], which includes the use of sold products.[112] GRI 305, which regulates emissions reporting within the GRI reporting framework, requires the disclosure of scope 3 emissions, including the use of sold products.[113] According to GRI 11, the sectoral standard for the oil and gas sector, scope 3 emissions must be included in GHG reporting.[114] It holds: *"GHG emissions resulting from the **end use of products are classified as other indirect (Scope 3) GHG emissions**. For the **oil and gas sector, these constitute the most significant GHG emissions** and over half of global CO emissions."*[115] While the GHG Protocol Corporate Accounting and Reporting Standard from 2004 still kept scope 3 reporting optional[116], the 2011 supplement made it obligatory.[117] Similarly, the GHG Protocol Product Life Cycle Accounting and Reporting Standard (2011) requires all lifecycle

[108] ESRS1 E1, E1-6, Commission Delegated Regulation (EU) .../... of 31.7.2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards, Annex.
[109] Commission Recommendation on the use of the Environmental Footprint methods C(2021) 9332 final, Annex I (Product Environmental Footprint Method), 29-31; Annex 3 (Organisation Environmental Footprint Method), 29-33.
[110] European Commission, 'Guidance on the Interpretation and Application of Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market' (2021) 96.
[111] Art 29(a)(i) 'IFRS (International Sustainability Standards Board) Sustainability Disclosure Standard S2: Climate-Related Disclosures'.
[112] ibid, Appendix A.
[113] 'Global Sustainability Standards Board (GSSB) GRI 305: Emissions (2016)', para 305-3.
[114] 'Global Sustainability Standards Board (GSSB) GRI 11: Oil and Gas Sector (2021)' 13–14.
[115] ibid 14.
[116] World Resources Institute, 'Greenhouse Gas Protocol. Corporate Accounting and Reporting Standard' (n 12) 41.
[117] World Resources Institute, 'Greenhouse Gas Protocol - Corporate Value Chain (Scope 3) Accounting and Reporting Standard' (n 14) 6.

emissions to be addressed, including transport and product use.[118] The various GHG-related ISO standards follow the same approach. ISO standard 14067 on the carbon footprint of products requires the consideration of the entire life cycle of the product, which includes emissions related to the product's use.[119] ISO standard 14064-1 on GHG quantification and reporting at the organization level requires all relevant GHG emissions to be included.[120] It prohibits the exclusion of substantive quantities of indirect emissions, such as emissions associated with the use of products from the organization.[121] The 2022 ISO Net Zero Guidelines require undertakings to include scope 1, 2 and 3 emissions in their net zero targets.[122] Finally, the **SBTi** Corporate Net-Zero Standard **holds explicitly that companies selling or distributing fossil fuels are required to report the use-phase emissions**.[123]

A broad understanding of environmental impacts that includes end use GHG emissions in the assessment of gas extraction projects also corresponds to the approach of the OECD Guidelines. According to the OECD Guidelines, enterprises are responsible not only for adverse impacts they themselves caused, but also impacts that they contributed to that are directly linked to their operations, products or services by a business relationship.[124] According to the Commentary, *"'contributing to' an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact and does not include minor or trivial contributions."*[125] The extraction of gas constitutes a "substantial contribution" to the emission of GHG from burning the extracted gas by end users. The **OECD Guidelines explicitly hold that the enterprise's system of environmental management should address all impacts *"associated with the operations, products and services of the enterprise over their full life cycle."***[126]

Moreover, the OECD Guidelines require enterprises to **conduct extensive due diligence when the likelihood and severity of adverse impacts are high**. The latter is to be determined based on scale, scope and irreversibility of the impact. As shown above, climate

[118] World Resources Institute, 'Greenhouse Gas Protocol - Product Life Cycle Accounting and Reporting Standard' (2011) 37–40.
[119] ISO 14067:2018, Greenhouse gases — Carbon footprint of products — Requirements and guidelines for quantification 14067, para 5.2.
[120] International Organization for Standardization, 'ISO 14064-1:2018, Greenhouse Gases — Part 1: Specification with Guidance at the Organization Level for Quantification and Reporting of Greenhouse Gas Emissions and Removals' (2018), para 4.3.
[121] ibid, paras 5.2.3 and 5.2.4.
[122] ISO, 'IWA 42:2022 Net Zero Guidelines', para 11.
[123] SBTi, 'Corporate Net-Zero Standard (Version 1.1)' 33.
[124] OECD Guidelines, chapter II, para 13.
[125] OECD Guidelines, commentary, para 16.
[126] OECD Guidelines, chapter VI, para 1.

science is unequivocal about the fact fossil fuels are the main cause of GHG emissions, and that more fossil fuel extraction will inevitably lead to an increase in GHG emissions. Further it is unequivocal that an increase in GHG emissions will further exacerbate climate change, which increases the likelihood of adverse effects on humans, their human rights and the environment. Finally, it is unequivocal about the fact that the scale and scope of these effects are significant, and that many of them will be irreversible. Consequently, **One-Dyas is required to conduct extensive due diligence regarding the climate impact of the N05-A project**.

While the estimation of end use emissions involves a degree of uncertainty, this does not allow their exclusion from the EIA. Instead, a range of potential emissions must be provided that represents this uncertainty. The upper bound can be determined through the "full burn" assumption employed by US federal agencies, which the CEQ describes as the (realistic) assumption *"that all of the available resources will be produced and combusted to create energy."*[127] It is significant to note that the US Bureau of Land Management reports on GHG emissions from both actual and potential fossil fuel extraction on federal land, including end use emissions.[128] This shows that **identifying and assessing end use emissions of planned gas extraction projects is both feasible and common practice**.

It is interesting to highlight that **One-Dyas itself considers the N05-A project's scope 3 emissions, but only when it describes its alleged positive climate impacts**. Under the headline *"The advantages of Dutch gas"* the Dutch EIA report states: *"Producing natural gas in the Netherlands has a number of important advantages in light of the energy transition. For example, the Dutch natural gas chain has a relatively small carbon footprint compared to other gas-producing countries. The larger footprint of the chain in other countries has two main causes. First, the transport of gas over longer distances, both within the country and transport to the Netherlands."*[129] Emissions from transport of the produced gas are scope 3 emissions, just like end use emissions are. This indicates that One-Dyas itself considers scope 3 emissions to constitute environmental impacts of the N05-A project, at least when their inclusion appears to be beneficial for the enterprise.[130]

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[127] Council on Environmental Quality (n 16) 1205.
[128] Bureau of Land Management, '2020 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends from Coal, Oil, and Gas Exploration and Development on the Federal Mineral Estate'
<https://www.blm.gov/sites/default/files/docs/2021-11/2020%20BLM%20Specialist%20Report%20-%20GHG%20Emissions%20and%20Climate%20Trends%20%2811-3-21%29.pdf> accessed 28 November 2023.
[129] 'Hoofdrapport Milieueffectrapport - Gaswinning N05-A' (n 5) 11 (translated from Dutch).
[130] See also Arbeitsgruppe fuer regionale Struktur- und Umweltforschung GmbH (n 91) 527.

SHV, the corporate group to which One-Dyas belongs, is collecting emission data from within the whole group, including from One-Dyas.[131] In its annual report, which also covers One-Dyas, SHV identifies GHG emissions as a key impact of the group's activities: *"[O]ur own impact materiality assessments clearly show that GHG represents one of the most material environmental issues across SHV."*[132] The report **explicitly recognizes that scope 3 emissions make up the bulk of the company's total GHG emissions**, stating that *"[c]onsolidated Scope 3 GHG emissions are estimated to comprise more than 90 percent of total emissions."*[133] This further confirms that One-Dyas and its owner SHV are aware of the fact that end use emissions constitute a significant impact of gas extraction operations, despite the fact that they were omitted from the EIA report.

It can thus be concluded that emissions from burning the extracted gas should be considered in the environmental impact assessment of a gas extraction project. The **failure of One-Dyas to consider the full climate impact of its N05-A project, including end use emissions, conflicts with the requirements of both the EIA Directive, various other hard- and soft law requirements, as well as the OECD Guidelines**.

Failure to conduct human rights assessment of N05-A project's full impact

Enterprises should assess the human rights impacts of their actions in the context of climate change. This assessment should include impacts that the enterprise contributes to over its entire value chain, including the harm caused by scope 3 emissions. This follows from the OECD Guidelines, the relevant EU legislation and international human rights instruments.

The **OECD Guidelines require enterprises to carry out human rights due diligence** that is appropriate to the size, nature and context of the operations, and the severity of the risks of human rights impacts.[134] This obligation to carry out due diligence also extends to the enterprise's value chain.[135] This consequently **also covers the harm caused by the enterprise's scope 3 emissions**.

The climate-related impacts of new fossil fuel extraction projects is significant, as they make it more difficult to close the production gap, and therefore to meet the objectives of the Paris

[131] SHV, 'Annual Report 2022' 28–29 <https://www.shv.nl/wp-content/uploads/2023/04/SHV-Annual-Report-2022-online.pdf> accessed 8 November 2023.
[132] ibid 28.
[133] ibid.
[134] OECD Guidelines, chapter IV, para 5.
[135] OECD Guidelines, commentary, para 50.

Agreement. This, in turn, is likely to have major human rights implications. **Given the severity of this risk, it is necessary to comprehensively assess the human rights impact of the N05-A project**.

That human rights due diligence also includes the harm caused by scope 3 emissions also follows from the relevant EU law. The Corporate Sustainability Due Diligence Directive (CSDDD), agreed by the European legislators in December 2023[136], will require enterprises to carry out due diligence to identify, prevent, mitigate and account for actual or potential human rights and environmental impacts in its own operations or value chain.[137]

International instruments confirm that **human rights due diligence should address risks of adverse human rights impacts arising in the enterprise's value chain**, including in the climate context. According to the UN Guiding Principles on Business and Human Rights (UNGP), human rights due diligence *"[s]hould cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships."*[138] According to the "Safe Climate" report by the UN Special Rapporteur on Human Rights and the Environment, such assessment should *"includ[e]* ***both upstream and downstream effects (i.e. both production- and consumption-related emissions)****."*[139]

Summing up, the human rights impact assessment of a gas extraction project should include the emissions caused by the combustion of the extracted gas by end users, which are scope 3 emissions. One-Dyas has failed to assess the human rights impacts of the full life cycle emissions that will be caused by the N05-A project. It thereby violates the requirements of the OECD Guidelines.

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[136] 'Corporate due diligence rules agreed to safeguard human rights and environment | Aktuelles | Europäisches Parlament' (14 December 2023) <https://www.europarl.europa.eu/news/de/press-room/20231205IPR15689/corporate-due-diligence-rules-agreed-to-safeguard-human-rights-and-environment> accessed 10 January 2024.

[137] European Parliamentary Research Service, 'Towards a Mandatory EU System of Due Diligence for Supply Chains' (2020) 8 <https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI(2020)659299_EN.pdf> accessed 2 November 2023.

[138] Principle 17, UN Guiding Principles on Business and Human Rights (2011).

[139] Safe Climate. A Report of the Special Rapporteur on Human Rights and the Environment (2019) A/74/161, 29 and 32.

7. By extracting fossil gas, One-Dyas will contribute to adverse impacts on human rights and environment

7.1. Rules

Chapters IV (human rights) and VI (environment) of the OECD Guidelines require enterprises to avoid human rights infringements and adverse environmental impacts of their activities.

Chapter IV (human rights) holds: *"Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations: [...] Within the context of their own activities,* ***avoid causing or contributing to adverse human rights impacts*** *and address such impacts when they occur."*[140] The Commentary explains: *"Where an enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Where an enterprise contributes or may contribute to such an impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible."*[141]

Corporate human rights obligations are determined within the framework of *"internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations."*[142] Chapter IV of the Guidelines is in line with the UN Guiding Principles on Business and Human Rights.[143] These also require that corporations' activities should not undermine the efforts made by states to safeguard human rights.

Chapter VI (environment) holds that *"enterprises should conduct their activities in a manner that takes due account of the need to protect the environment, and in turn workers, communities and society more broadly,* ***avoids and addresses adverse environmental impacts*** *and contributes to the wider goal of sustainable development. Enterprises can be*

[140] OECD Guidelines, chapter IV, para 2.
[141] OECD Guidelines, commentary, para 47.
[142] OECD Guidelines, chapter IV, chapeau.
[143] OECD Guidelines, commentary, para 41.

involved in a range of adverse environmental impacts. These include, among others: a) climate change [...].”[144]

To determine the specific expectations placed on the company, reference should be made to the “*framework of laws, regulations and administrative practices in the countries in which they operate”* and “*relevant international agreements, principles, objectives, and standards.”*[145] According to the Commentary, they *“represent an important benchmark for understanding environmental issues and expectations.”*[146] The OECD Guidelines specifically refer to the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. According to the Commentary, *“[a]dverse environmental impacts should be assessed in light of best available science.”*[147]

According to the OECD Guidelines, enterprises should reduce emissions in line with the Paris objective. The Commentary states: *“Enterprises have an important role in contributing towards net- zero greenhouse gas emissions and a climate-resilient economy, necessary for achieving internationally agreed goals on climate change mitigation and adaptation. [...]* ***Enterprises should ensure that their greenhouse gas emissions*** *[...]* ***are consistent with internationally agreed global temperature goals based on best available science****, including as assessed by the Intergovernmental Panel on Climate Change (IPCC).”*[148]

7.2. Facts

According to its EIA report, One-Dyas plans to extract over 13 billion m^3 fossil gas over a period of 35 years.[149] These will cause significant GHG emissions.

7.3. Analysis

The analysis will show that the GHG emissions caused by the N05-A project conflict with the requirement on One-Dyas under the OECD Guidelines to avoid adverse impacts on the environment and human rights.

GHG emissions caused by the N05-A project harm environment

International and EU law constitute the framework within which One-Dyas acts, and determines the expectations placed on the enterprise in the context of climate change. The

[144] OECD Guidelines, chapter IV,, chapeau.
[145] OECD Guidelines, chapter IV,, chapeau.
[146] OECD Guidelines, commentary, para 66.
[147] OECD Guidelines, commentary, para 68.
[148] OECD Guidelines, commentary, para 76.
[149] ‘Hoofdrapport Milieueffectrapport - Gaswinning N05-A’ (n 5) 12.

Paris Agreement provides that the increase of global average temperature should be held to well below 2°C above pre-industrial levels and efforts should be pursued to limit the temperature increase to 1.5°C.[150] Furthermore, global peaking of greenhouse gas emissions should be reached as soon as possible.[151] The Glasgow Climate Pact further emphasizes the importance of the 1.5°C threshold.[152] It highlights the policies required to achieve this goal, namely *"rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century, as well as deep reductions in other greenhouse gases."*[153]

The EU explicitly endorses the 1.5°C target.[154] To achieve this objective, the **European Climate Law prescribes an emission reduction in the EU of *at least* -55% by 2030, and climate neutrality by 2050 at *the latest***.[155] Beyond this the EU has also set far-reaching targets concerning the reduction of energy demand and of fossil fuel use in the energy and the transportation sectors. The Energy Efficiency Directive (2023 recast) prescribes an energy consumption reduction target of at least 11,7% by 2030.[156] The **Renewable Energy Directive** seeks to increase the share of "**energy from renewable non-fossil sources" in the EU's energy mix, laying down a renewable energy target of at least 42.5% by 2030**.[157] However, the EU is currently not on track to meet its climate objectives, as a recent report by the EU Court of Auditors shows.[158]

Currently implemented policies will fail to limit global warming to 1.5°C and 2°C. The United Nations Environmental Programme (UNEP)'s Emission Gap Report 2023 estimates that, **under current policies, global mean temperature will increase by 3°C** by the end of the

[150] Art 2(1)(a) Paris Agreement.
[151] Art 4(1) Paris Agreement.
[152] Glasgow Climate Pact, para 21.
[153] ibid, para 17.
[154] Council of the European Union (n 55), para 1.
[155] Arts 2(1) and 4(1) European Climate Law.
[156] Art 4(1) Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast) 2023.
[157] Art 3(1) Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources [2018] OJ L 328/82 (Renewable Energy Directive recast, RED II) 2018 (328); as amended by Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 [2023] OJ L.
[158] European Court of Auditors, 'EU Climate and Energy Targets – 2020 Targets Achieved, but Little Indication That Actions to Reach the 2030 Targets Will Be Sufficient, Special Report 18/2023' (2023).

century.[159] Even if states would implement all of their current, conditional emission reduction pledges under the Paris Agreement, global warming would still reach 2.5°C.[160]

New fossil fuel extraction, including new fossil gas extraction, stands in conflict with the international and European climate objectives. According to the IPCC report and the Production Gap Report 2023, already discussed earlier, GHG emissions caused by existing and planned fossil fuel extraction will significantly exceed the remaining carbon budgets. The **Council of the EU has recently emphasized that energy systems must be largely free of fossil fuels as early as the 2030s**.[161]

The **N05-A project would add additional fossil gas extraction capacities at a point when existing capacities are already in excess of the Paris threshold, and the EU is failing to meet its emission reduction, energy consumption reduction and renewable energy targets**. It therefore **undermines international and European climate objectives, making it even more difficult to prevent dangerous climate change**, with major adverse consequences for the climate and the environment. As shown earlier, at a global warming of more than 1.5°C, many ecosystems face a significantly higher risk of suffering irreversible damages than at current temperature levels, and many species face a significantly higher risk of extinction. The danger of triggering tipping points is disproportionately more likely, with grave implications for ecosystems and species.

In its EIA reports, One-Dyas seeks to play down the adverse climate impact of the N05-A project by arguing that the extracted gas would not actually lead to an increase in gas consumption or in GHG emissions. Moreover, One-Dyas seeks to justify the project's adverse climate impact by arguing that the project is necessary to meet future Dutch gas demand, and that it finds support in Dutch energy policy.[162] **All three claims are factually incorrect**.

In its EIA report, One-Dyas argues that the gas extracted by the N05-A project would merely replace existing gas supply, and not lead to an increase of gas consumption and a corresponding increase in GHG emissions.[163] However, **this claim conflicts with standard**

[159] United Nations Environment Programme (n 24) XXII.
[160] ibid XXII.
[161] Council of the European Union, 'Preparations for the 28th Conference of the Parties (COP28) of the United Nations Framework Convention on Climate Change (UNFCCC) (Dubai, 30 November – 12 December 2023), 14285/23, 17 October 2023', para 14.
[162] 'Hoofdrapport Milieueffectrapport - Gaswinning N05-A' (n 5) 10–12; 'Milieueffectrapport Gaswinning N05-A - Deel 2: Milieueffecten' (n 89) 86.
[163] 'Milieueffectrapport Gaswinning N05-A - Deel 2: Milieueffecten' (n 89) 86.

economic theory, research and recent experiences on the gas market. Standard economic theory holds that an increase in supply leads to a reduction of the price, which in turn causes an increase in consumption.[164] The gas market must be assumed to operate on the basis of this mechanism: if an additional quantity of fossil gas is extracted and placed on the market, the price will fall. This will lead to an increase in consumption and GHG emissions. This assumption would not hold true only if fossil gas demand were perfectly inelastic, meaning that a change in price would have no effect whatsoever on the quantity of gas consumed. In reality, however, gas demand is not perfectly inelastic. This is confirmed by research[165] as well as by recent developments in the EU, which saw a significant drop in gas demand in reaction to the price shock caused by the Ukraine war.[166] The Rechtbank Den Haag also pointed out in *Milieudefensie v. Shell* that each emission reduction has a positive climate impact and dismissed Shell's argument of alleged perfect substitution.[167] In any case, One-Dyas would have to provide evidence for its unrealistic assumption of perfect price inelasticity in the demand for fossil gas, which it failed to do. Consequently it must be assumed that the additional extraction of fossil gas by the N05-A project will lead to an increase in fossil gas consumption, and a corresponding increase in GHG emissions.

One-Dyas also claims that the N05-A project is necessary to meet future fossil gas demand in the Netherlands. However, this **claim conflicts with projections of fossil fuel demand that are in line with legal requirements under international and EU law**. According to the OECD Guidelines, enterprises should not undermine the efforts of states to comply with their international obligations. As already discussed, EU law prescribes a significant reduction of energy demand of at least 11,7% by 2030 in order to achieve the necessary emission reductions to remain below the 1.5°C threshold. **Within a Paris-compliant demand pathway the development of new oil and gas extraction projects is unnecessary, as the IEA's NZE Scenario shows**.[168] It is therefore incorrect to claim that new extraction projects are necessary to meet future fossil gas demand. In any case, One-Dyas would have to provide evidence that new fossil gas extraction is necessary even if demand develops in conformity with legal requirements. However, it has failed to do so.

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[164] Council on Environmental Quality (n 16) 1205; see also Brian Prest and others, 'Estimating the Emissions Reductions from Supply-Side Fossil Fuel Interventions' (Resources for the Future, Working Paper 23-12, April 2023) 1–3.
[165] Antonio F Erias and Emma M Iglesias, 'Price and Income Elasticity of Natural Gas Demand in Europe and the Effects of Lockdowns Due to Covid-19' (2022) 44 Energy Strategy Reviews 100945.
[166] Ben McWilliams and Georg Zachmann, 'European Natural Gas Demand Tracker' (*Bruegel*, 7 December 2023) <https://www.bruegel.org/dataset/european-natural-gas-demand-tracker> accessed 13 December 2023.
[167] Rechtbank Den Haag, *Milieudefensie v. Shell* [2021] ECLI:NL:RBDHA:2021:5339, para. 4.4.49.
[168] International Energy Agency (n 69).

Finally, One-Dyas claims that the N05-A project finds support in Dutch energy policy. However, this is factually incorrect. **EU law requires that national energy policy must be executed in a way that does not jeopardize the attainment of the EU's climate-related objectives**.[169] The EU's **REPowerEU plan**, enacted in May 2022, provides a blueprint to integrate the objective of ensuring secure energy supply on the one side, and achieving the Union's climate objective on the other. The plan builds on three tenets: expanding renewable energy production to *"**quickly substitute fossil fuels**"*, reducing energy consumption and diversifying energy sources.[170] The **plan does not seek the expansion of domestic fossil fuel production**, though it states that *"continuing domestic natural gas production for Member States where this is possible can contribute to strengthen security of supply."*[171] Importantly, the REPowerEU Plan reconfirms the EU's climate targets, emphasizing that its ambitions are not modified.[172] Along these lines, the Council of the European Union emphasized that *"EU fossil fuel diversification efforts should not undermine longterm climate neutrality goals globally and **should avoid creating fossil fuel lock-ins and stranded assets**."*[173] This shows that Dutch energy policy, which must comply with European policy, cannot be invoked to justify new gas extraction.

It can be concluded that new fossil gas extraction by the N05-A project will make it more difficult to achieve the international and EU climate objectives. Exceeding the temperate threshold of the Paris Agreement significantly increases the risk of adverse effects on the environment. Consequently, One-Dyas is violating the requirement of the OECD Guidelines to prevent adverse environmental impacts.

GHG emissions caused by the N05-A project harm human rights

Climate change impacts human rights. This has clearly been established by the UN Human Rights Council, which has adopted 13 resolutions on the effect of climate change on human rights.[174] In 2022, the UN General Assembly recognized the right to a clean, healthy and sustainable environment as a human right.[175] According to the IPCC report, this right *"arguably extends to a right to a 'safe climate' shaped in part by the Paris Agreement."*[176] Ian

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[169] Case C-411/17, *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres* [2019] ECLI:EU:C:2019:622, para 179; Case C-24/19, *A and Others v Gewestelijke stedenbouwkundige ambtenaar van het departement Ruimte Vlaanderen, afdeling Oost-Vlaanderen (Wind turbines at Aalter and Nevele)* [2020] ECLI:EU:C:2020:503, para 92.
[170] Communication: REPowerEU Plan, COM(2022) 230 final 1.
[171] ibid 5.
[172] ibid 2.
[173] Council of the European Union (n 55), para 34.
[174] https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Resolutions.aspx
[175] https://news.un.org/en/story/2022/07/1123482
[176] Pathak and others (n 22) 1499.

Fry, UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, stated in his report to the UN General Assembly on 21 October 2022: *"Throughout the world, human rights are being negatively impacted and violated as a consequence of climate change. This includes the right to life, health, food, development, self-determination, water and sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery. [...] The* ***overall effect of inadequate actions to reduce greenhouse gas emissions is creating a human rights catastrophe****, and the costs of these climate change related disasters are enormous. [...] Those most affected and suffering the greatest losses are the least able to participate in current decision-making and more must be done to ensure they have a say in their future, including children and youth, women, persons with disabilities, indigenous peoples and minorities."*[177] The IPCC report describes the relationship between climate change and human rights as follows: *"Climate change effects and related disasters have the potential to affect human rights broadly, for instance, by giving rise to deaths, disease or malnutrition (right to life, right to health), threatening food security or livelihoods (right to food), impacting upon water supplies and compromising access to safe drinking water (right to water), destroying coastal settlements through storm surge (right to adequate housing), and in some cases forcing relocation as traditional territories become uninhabitable."*[178]

The **climate crisis already affects human rights today**.[179] According to the IPCC report, climate change has increased heat-related human mortality and morbidity and the occurrence of food-, water-, and vector-borne diseases.[180] It has adversely affected physical and mental health, thereby affecting the rights to life and to health. Moreover, climate change has exposed millions of people to acute food insecurity.[181] Roughly half of the global population experience severe water scarcity for at least some part of the year due to climatic and non-climatic drivers. Climate change thus affects the rights to food and to water. Climate

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[177] 'Climate Change the Greatest Threat the World Has Ever Faced, UN Expert Warns' (*OHCHR*, 21 October 2022) <https://www.ohchr.org/en/press-releases/2022/10/climate-change-greatest-threat-world-has-ever-faced-un-expert-warns> accessed 1 November 2022.

[178] Pathak and others (n 22) 1499.

[179] The rights identified in this report are based on the core international human rights treaties. For the full text of these treaties and protocols, see UN Office of the High Commissioner for Human Rights (OHCHR), The Core International Human Rights Treaties (2014), available at http://www.ohchr.org/Documents/ Publications/CoreInternationalHumanRightsTreaties_en.pdf. For an explanation of treaty implementation, see OHCHR, The United Nations Human Rights Treaty System, Fact Sheet No. 30, Rev. 1 (2012), available at http://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf. For a more detailed overview of specific rights, such as the rights to water, food, health, and housing, see OHCHR, Publications and Resources: Fact Sheets, http://www.ohchr. org/EN/PublicationsResources/Pages/FactSheets.aspx (last visited Nov. 12, 2015)

[180] IPCC, 'Summary for Policymakers' (n 33) 11.

[181] ibid 9.

and weather extremes are also increasingly driving displacement, thereby affecting the rights to housing and to private and family life.[182] Other affected rights include the right to self-determination, the right to preservation of culture, equality and non-discrimination, of indigenous peoples.

As the **climate crisis continues to escalate, the negative impact on human rights will also increase**. According to the IPCC report, each additional increment of global warming is associated with an increased risk of extreme droughts, floods, food scarcities and diseases.[183] According to the WHO, climate change is expected to cause approximately 250.000 additional deaths per year between 2030 and 2050, from undernutrition, malaria, diarrhoea and heat stress alone.[184] The impacts on global food security will also be significant.

The 1.5°C target constitutes a critical threshold beyond which risks to human rights will intensify dramatically.[185] **Limiting the temperature increase to 1.5°C instead of 2°C is essential to limit severe human rights impacts**. The human rights threats associated with 1.5°C or more of global warming will occur in the near future, as the 1.5°C threshold could be crossed already by the early 2030s at current emission projections.[186]

To **prevent further adverse human rights impacts, further GHG emissions must be prevented as much as possible**. According to the IPCC report, *"[t]he extent to which current and future generations will experience a hotter and different world* ***depends on choices now and in the near term****."*[187] And: *"Limiting warming to 1.5°C involves rapid, deep and in most cases immediate greenhouse gas emission reductions."*[188]

As shown above, fossil fuel extraction and combustion is the main cause of GHG emissions. Fossil fuels are almost exclusively burned for energy, with only 6% used for other purposes.[189] It can therefore be assumed that fossil fuels, once extracted, will invariably be

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[182] ibid 11.
[183] IPCC, 'Summary for Policymakers' (n 19) 15.
[184] WHO, 'Climate Change' (*who.int*) <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> accessed 10 January 2024.
[185] IPCC, *Global Warming of 1.5°C* (n 53) 178–181.
[186] Nicola Jones, 'When Will Global Warming Actually Hit the Landmark 1.5 ºC Limit?' (2023) 618 Nature 20.
[187] IPCC, 'Summary for Policymakers' (n 19) 7.
[188] ibid 22.
[189] Science Based Targets Initiative (SBTi) (n 62) 5.

burned, and thereby invariably cause GHG emissions.[190] The **extraction of fossil fuels therefore contributes to the adverse human rights impacts of GHG emissions caused by the combustion of the extracted fossil fuels**. Conversely, avoiding fossil fuel extraction will prevent adverse human rights impacts caused by the combustion of the extracted fossil fuels.

Enterprises are required to avoid causing or contributing to adverse human rights impacts, including climate-related impacts. This has been confirmed, inter alia, by the Commission on Human Rights of the Philippines. The Commission found in relation to the so-called Carbon Majors that these companies have a corporate responsibility to refrain from contributing to climate change impacts that impair the full enjoyment of human rights."[191] Similarly, the Rechtbank Den Haag held in *Milieudefensie v Shell* (2021) that the general duty of care laid down in Dutch civil law, informed by human rights, requires Shell to reduce its emissions by -45% by 2030, in line with the Paris Agreement and the best available science.[192] Similarly, the UN Special Rapporteur on Human Rights and the Environment held that enterprises are responsible for *"reduc[ing] greenhouse gas emissions from their own activities and their subsidiaries [and] from their products and services."*[193]

By avoiding the extraction of fossil fuels, enterprises can effectively prevent adverse human rights impacts caused by the combustion of the extracted fossil fuels. According to the **Commission on Human Rights of the Philippines**, to avoid further human rights violations, the Carbon Majors should **cease further exploration of new fossil fuel sources, and keep fossil fuel reserves in the ground**.[194] According to the court in *Milieudefensie v Shell*, the company *"is free to decide not to make new investments in explorations and fossil fuels"* and thereby reduce its scope 3 emissions.[195]

To conclude, One-Dyas will contribute to adverse human rights impacts by developing the N05-A project, which will increase GHG emissions. One-Dyas can effectively avoid contributing to adverse human rights impacts by ceasing the development of the N05-A project.

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[190] To the same effect see *Supreme Court of Norway, Nature and Youth Norway et al v Norway [2020] HR-2020-2472-P* (n 104), para 228.
[191] Commission on Human Rights of the Philippines, 'National Inquiry on Climate Change' (2022) 112.
[192] Rechtbank Den Haag, *Milieudefensie v Royal Dutch Shell* [2021] ECLI:NL:RBDHA:2021:5339.
[193] Safe Climate Report, para 72 (p 32)
[194] Commission on Human Rights of the Philippines (n 191) 131.
[195] *Rechtbank Den Haag, Milieudefensie v Royal Dutch Shell* [2021] ECLI:NL:RBDHA:2021:5339, para 4.4.25.

8. One-Dyas misinforms stakeholders and the public about the climate harms caused by the N05-A project

8.1. Rules

Chapters III (disclosure), VI (environment) and VIII (consumer interests) of the OECD Guidelines require enterprises to correctly inform stakeholders and the public about the climate impacts of their activities.

Chapter III (disclosure) holds that *"[e]nterprises should disclose regular, timely, reliable, clear, complete, accurate and comparable information in sufficient detail on all material matters."*[196] Material matters concern information that may influence the enterprise's value.[197] It covers *"sustainability-related information"* and *"foreseeable risk factors."*[198] The latter includes *"sustainability risks, notably climate-related risks."*[199] Enterprises should also *"**communicate responsible business conduct information**."*[200] This includes ***"the enterprise's actual or potential adverse impacts on people, the environment and society"***, and is considered to be of relevance to a broad set of stakeholders, including investors, workers and civil society.[201]

Enterprises should disclose according to internationally recognized standards: *"Enterprises should prepare and disclose information in accordance with internationally recognised accounting and disclosure standards, and refrain from publication of insufficient or unclear information."*[202] They *"should seek to adopt and **align with emerging global best practice and evolving disclosure standards, for example on climate and emissions**."*[203]

Chapter VI (environment) prescribes the disclosure of correct and relevant information about the environmental impacts of their actions to stakeholders and the public. It holds that enterprises should *"[e]stablish and maintain a system of environmental management **appropriate to the enterprise associated with the operations, products and services of the enterprise over their full life cycle,** [...] including through [...] providing the public,*

[196] OECD Guidelines, Chapter III, para 1.
[197] OECD Guidelines, commentary, para 31.
[198] OECD Guidelines, Chapter III, para 2.
[199] OECD Guidelines, commentary, para 31.
[200] OECD Guidelines, Chapter III, para 3.
[201] OECD Guidelines, commentary, para 3.
[202] OECD Guidelines, Chapter III, para, 4.
[203] OECD Guidelines, commentary, para 38.

workers, and other relevant stakeholders with adequate, measurable, verifiable (where applicable) and timely information on environmental impacts associated with their operations, products and services based on best available information."[204] Enterprises should *"[c]ontinually seek to improve environmental performance [...] including by [...] promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including by* ***providing relevant and accurate information on their environmental impacts (for example, on greenhouse gas emissions*** *[....])."*[205]

Chapter VIII (consumer interests) holds that enterprises should communicate in an accurate and non-deceptive manner with consumers. They should *"[p]rovide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on [...] environmental attributes."*[206] They should *"[n]ot make representations or omissions, nor engage in any other practices that are deceptive, misleading, fraudulent unfair or that otherwise subvert consumer choice in ways that harm consumers or competition."*[207] In particular, *"information should be presented in a comprehensible and easily accessible manner using plain language"* and *"in a manner that facilitates consumers' ability to compare products."*[208] The **obligation to communicate in an accurate and non-deceptive manner extends to communications about the environmental impacts of the actions of the enterprise**. According to the Commentary, *"many consumers are increasingly interested in knowing the position and activities of enterprises on a broad range of economic, social and environmental issues."*[209] Consequently, **enterprises should *"ensure the accuracy of any claim regarding environmental or social performance."***[210] Moreover, they should *"[s]upport efforts to promote consumer education in areas that relate to their business activities, with the aim of, inter alia, improving the ability of consumers to: [...] ii) better understand the economic, environmental and social impact of their decisions and iii) support sustainable consumption."*[211]

[204] OECD Guidelines, Chapter VI, para 1.
[205] OECD Guidelines, Chapter VI,, para 5.
[206] OECD Guidelines, Chapter VIII, para 2.
[207] OECD Guidelines, Chapter VIII, para 4.
[208] OECD Guidelines, Chapter VIII, para 2.
[209] OECD Guidelines, commentary, para 94.
[210] OECD Guidelines, Chapter VIII, para 98.
[211] OECD Guidelines, Chapter VIII, para 5.

8.2. Facts

The EIA reports that One-Dyas submitted to the Dutch and German authorities and made available for public consultation constitutes the company's main disclosure of the N05-A project's climate effects to stakeholders and the public. As already discussed, the EIA reports fail to address end use emissions.

Beyond this, One-Dyas communicates about the climate impacts of the N05-A project to stakeholders and the public through the media. In a press release from 23 April 2021, One-Dyas states:

> *"Chris de Ruyter van Steveninck, CEO ONE-Dyas: 'The electrification of platform N05-A using wind energy means a substantial reduction in emissions.* ***Emissions from the production platform will be zero and for the entire project we are talking about an 85 percent reduction****. With this innovation, we are making a* ***serious contribution to the energy transition*** *and are committed to cooperation with sustainable forms of energy. The Netherlands will still need natural gas in the coming decades. Domestic natural gas is more favorable than imported natural gas in several respects. In addition to security of supply and economic benefits for the Netherlands, homegrown natural gas also has a much lower carbon footprint.* ***With this future-proof platform N05-A, we are helping to further reduce the CO_2 footprint****.'"*[212]

In a press release from 2 June 2022, One-Dyas states:

> *"The N05-A platform will run entirely on wind energy from the nearby Riffgat wind farm, which* ***reduces the carbon footprint*** *even further. It* ***makes an active contribution to the energy transition and to achieving the goals of the Climate Agreement, in a safe and responsible manner****. Chris de Ruyter van Steveninck, CEO ONE-Dyas: 'Project N05-A and the energy transition go hand in hand. The transition to 100% renewable energy takes time. Natural gas will still be part of the energy mix in the coming decades. As long as natural gas is still needed to heat our homes, it is our job to make sure it is as clean, affordable and reliable as possible.' For the development of N05-A, there has been frequent consultation with*

[212] One-Dyas, 'Persbericht ONE-Dyas: Ontwerpbesluiten Voor Gaswinning Uit Veld N05-A Ter Inzage Gelegd' <https://onedyas.com/wp-content/uploads/2021/04/Persbericht-N05-A-ONE-Dyas-23-april-2021.pdf> accessed 11 July 2023. (translation from Dutch).

*stakeholders since 2018. These consultations provided input for an **extensive environmental impact report, in which the effects on the environment, nature and the surroundings, the implementation variants and choices made are examined** and described."*[213]

In a press release from 27 September 2022, One-Dyas states:

*"Chris de Ruyter van Steveninck, CEO of ONE-Dyas: 'This is an important step for the energy supply of the Netherlands and Germany, **providing safe and responsible domestic natural gas**. With this investment decision, we have **demonstrated that we are serious about the energy transition**. As an operator, and together with our partners, we want to actively contribute to the security of supply of natural gas to North-West Europe and **we are taking a major step in reducing CO_2 emissions**. **We are bringing emissions close to zero as the nearby offshore Riffgat wind park will supply the N05-A platform with wind energy**. We have agreed to produce natural gas from the GEMS area only as long as there is domestic demand for natural gas in the Netherlands and Germany."*[214]

The claims of One-Dyas have been widely reported in the media, both in the Netherlands and in Germany.[215] For example, RTV Noord reported on 3 June 2021:

*"The **company says it wants to operate in a sustainable manner**. For example, the rig is powered by wind turbines from the nearby German Riffgat wind farm."*[216]

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[213] One-Dyas, 'Press Release ONE-Dyas: Final Permit for Gas Production from Field N05-A' <https://onedyas.com/wp-content/uploads/2022/06/220602-Press-release-N05-A-ONE-Dyas.pdf> accessed 3 July 2023.

[214] One-Dyas, 'Final Investment Decision for North Sea Gas Field Development N05-A' <https://onedyas.com/wp-content/uploads/2022/09/20220927-Press-release-Investment-Decision-gas-field-N05-A.pdf> accessed 11 July 2023.

[215] See e.g. 'ONE-Dyas steekt definitief 500 miljoen in gasveld ten noorden van Schiermonnikoog' (*Omrop Fryslan*, 27 September 2022) <https://www.omropfryslan.nl/nl/nieuws/1169277/one-dyas-steekt-definitief-500-miljoen-in-gasveld-ten-noorden-van-schiermonnikoog> accessed 14 December 2023; Peter Mlodoch, 'Gastprojekt vor Borkum: Vom Tabu zum Teil der Lösung' *Weser Kurier* (5 April 2022) <https://www.weser-kurier.de/niedersachsen/politik/gastprojekt-vor-borkum-vom-tabu-zum-teil-der-loesung-doc7kfomg3cggnvl1zdbhz> accessed 14 December 2023; 'One-Dyas gunt contracten voor groot gasveld aan Heerema, Allseas en HSM' *FD.nl* <https://fd.nl/bedrijfsleven/1465133/one-dyas-gunt-contracten-voor-groot-gasveld-aan-heerema-allseas-en-hsm> accessed 14 December 2023; Steven Hanke, 'Nordsee-Windpark soll Gasförderung ankurbeln' *Tagesspiegel* (15 March 2022) <https://background.tagesspiegel.de/energie-klima/nordsee-windpark-soll-gasfoerderung-ankurbeln> accessed 14 December 2023.

[216] Jeroen Berkenbosch, 'Iedereen kent de NAM, maar wat is ONE-Dyas?' (*RTV Noord*, 3 June 2021) <https://www.rtvnoord.nl/nieuws/823394/iedereen-kent-de-nam-maar-wat-is-one-dyas> accessed 14 December 2023 (translated from Dutch).

RTL news reported on 20 April 2022:

> *"The North Sea drilling rig is powered by electricity from a nearby wind farm,* ***making the extraction of the gas practically CO_2 neutral****."*[217]

The Hamburger Abendblatt reported on 26 April 2022:

> *"One-Dyas [...] even* ***considers the project to be environmentally friendly****: 'Domestic natural gas has a 30 percent lower CO_2 footprint than imported natural gas,' says spokeswoman Corine Toussaint. 'By connecting the 'N05-A' platform to the German 'Riffgat' wind farm,* ***we expect production to be almost CO_2-neutral****.' This will make Lower Saxony's economy less dependent on gas imports and also give it a* ***locational advantage in terms of climate protection****, the spokeswoman said."*[218]

8.3. Analysis

By omitting end use emissions from its EIA report and public communications, One-Dyas's disclosure of the N05-A project's climate impact is incomplete. This violates recognized disclosure standards as well as the requirement to communicate in an accurate and non-deceptive manner with consumers and the public.

Failure to disclose end use emissions violates recognized disclosure standards

All relevant instruments regulating the disclosure of climate-related information by corporations agree that end use emissions form part of the disclosure obligation. This has already been shown in detail in a previous section, and will only be summarized here. First, it has been shown that all EU instruments regulating the disclosure of climate-related information require the disclosure of scope 3 emissions, including end use emissions. This includes the corporate sustainability disclosure requirements under the CSRD and the EU

[217] 'Duitsland voelt toch voor gaswinning bij Waddeneilanden' (*RTL Nieuws*, 20 April 2022) <https://www.rtlnieuws.nl/economie/artikel/5303183/duitsland-gasboringen-waddeneilanden-toch-akkoord> accessed 14 December 2023 (translated from Dutch).
[218] Maike Huckschlag, 'Krieg gegen die Ukraine_ Wie die Gaskrise das Wattenmeer erreichte' *Abendblatt* (26 April 2022) <https://www.abendblatt.de/region/niedersachsen/article235170969/borkum-erdgas-foerderung-krieg-ukraine-energie-krise.html> accessed 14 December 2023 (translated from German).

Environmental Footprint Methods for Organizations and for Products.[219] Second, all relevant soft law standards require the disclosure of scope 3 emissions. This includes the various standards of the GHG Protocol, the various relevant ISO standards, as well as the IFRS, the GRI and the SBTi standards. To provide an illustrative example, the SBTi Corporate Net-Zero Standard states that *"**[c]ompanies that sell or distribute fossil fuels are required to report the use-phase emissions associated with those fossil fuels** in scope 3 category 11 (use of sold products) and cover these emissions with a target."*[220]

It can be concluded that all relevant hard- and soft law instruments regulating climate disclosure require the disclosure of scope 3 emissions, including end use emissions. The **failure of One-Dyas to disclose end use emissions of its N05-A project violates these requirements, and therefore conflicts with the OECD Guidelines**.

Public claims of One-Dyas about N05-A project in One-Dyas violate requirement to communicate accurately and non-deceptively with stakeholders and the public

In its public communications, **One-Dyas consistently suggests that the N05-A project reduces emissions, and that the production will be free of GHG emissions. Both claims are factually incorrect**, and in any case misleading for the average consumer and the public.

According to the relevant regulatory instruments, the **validity of environmental claims should be evaluated on the basis of the life-cycle impact of the promoted product, project or corporation**. Most notably, the EU Commission's Guidance on applying the Unfair Commercial Practices Directive (UCPD) holds in this regard: *"When assessing an environmental claim, **the product's main environmental impacts over its lifecycle**, including its supply chain, are relevant."*[221] If an environmental claim refers only to one element of the life cycle, this must be made clear: *"[C]laims should be clear and unambiguous regarding which aspect of the product or its life cycle they refer to. **If a trader makes an environmental claim by highlighting just one of several impacts the product has on the environment, the claim could be misleading** within the meaning of Article 6 or 7 of the UCPD."*[222] There is a high risk that environmental claims that refer to individual

[219] Commission Recommendation on the use of the Environmental Footprint methods C(2021) 9332 final, Annex I (Product Environmental Footprint Method), 29-31; Annex 3 (Organisation Environmental Footprint Method), 29-33. .
[220] SBTi (n 123) 33.
[221] European Commission (n 110) 78.
[222] ibid.

aspects of the life cycle only are deceptive for consumers, as the UCPD Guidance holds: *"(T)raders should not distort claims about the composition of the product (including raw materials), or its use, manufacturing process, transport or end-of-life impacts,* ***for example by unduly emphasising the importance of positive aspects, which are in reality only marginal or whereas the overall environmental impact resulting from the product's life cycle is negative****."*[223]

Environmental claims by highly polluting industries are particularly liable to be misleading, as the UCDP Guidance holds: *"****Highly polluting industries should ensure that their environmental claims are accurate in a sense of being relative, e.g. 'less harmful for the environment' instead of 'environmentally friendly.****' This enables the average consumer to better understand the relative impact of the product. An environmental claim should in any case relate to aspects that are significant in terms of the* ***product's total environmental impacts over its life cycle****."*[224] The fossil fuel industry is responsible for a large part of global GHG emissions, and must therefore be considered to be a highly polluting industry.

Environmental claims must be evaluated from the perspective of the average consumer. The average consumer must be understood to be *"reasonably well-informed and reasonably observant and circumspect."*[225] However, the **average consumer cannot be expected to have the necessary scientific and technical knowledge to evaluate the veracity of complex environmental performance information, such as information on GHG emissions**.[226]

One-Dyas' claim that the N05-A project will reduce GHG emissions will be understood by the average consumer in absolute terms, i.e., that the project will reduce emissions in absolute numbers. **However, this is not the case**. Over its lifetime, the N05-A project is expected to produce over 13 billion m^3 of gas, the combustion of which will cause considerable additional GHG emissions.[227] Thus, **instead of reducing emissions in**

[223] ibid.
[224] ibid.
[225] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council [2005] OJ L 149/22 (Unfair Commercial Practices Directive, UCPD), preamble, recital 18.
[226] Clemens Kaupa, 'Smoke Gets in Your Eyes: Misleading Fossil Fuel Advertisement in the Climate Crisis' [2021] Journal of European Consumer and Market Law 21, 28.
[227] 'Hoofdrapport Milieueffectrapport - Gaswinning N05-A' (n 5) 12; for emission factor see 'Lijst emissiefactoren' (*CO2 emissiefactoren*) <https://www.co2emissiefactoren.nl/lijst-emissiefactoren/> accessed 26 November 2023.

absolute terms, the One-Dyas project will increase them. Consequently, the claim is factually incorrect, and therefore misleading.

The claims that *"we are bringing emissions close to zero"* and that *"emissions from the production platform will be zero and for the entire project we are talking about an 85 percent reduction"* is **factually incorrect when life-cycle emissions if the extracted gas are considered**. The claim only refers to one aspect of the project, namely the plan to electrify the platform. It thereby concerns scope 1 and 2 emissions but not scope 3 emissions, which remain unaffected by electrification. As discussed earlier, scope 3 emissions constitute 85% of the life-cycle GHG emissions of fossil gas. One-Dyas' claims consequently refers to a relatively marginal aspect of the overall GHG emissions caused by the N05-A project over its lifetime. However, **the average consumer cannot be expected to know that One-Dyas' claims of zero emissions refer only to a small aspect of the N05-A project**. The claim is consequently factually incorrect, and therefore misleading.

To conclude, One-Dyas has consistently claimed publicly that the N05-A project would reduce GHG emissions, and that the production would be free of GHG emissions. However, these claims are factually incorrect, and therefore misleading for consumers and the public.

9. Conclusion

The preceding analysis has shown that One-Dyas violates a number of requirements of responsible business conduct under the OECD Guidelines for Multinational Enterprises. In particular, this includes the following violations:

- Chapters II (general policies), IV (human rights) and VI (environment) of the OECD Guidelines hold that **enterprises should identify actual and potential adverse impacts of their activities on human rights and the environment**. However, One-Dyas has not identified the harm caused by the life-cycle emissions of the N05-A project in its environmental impact assessment report, and has failed to assess the human rights impacts thereof.
- According to chapters IV (human rights) and VI (environment), **enterprises should avoid causing or contributing to adverse human rights and environmental impacts**. However, new fossil gas extraction by the N05-A project will cause such harm.
- Chapters III (disclosure), VI (environment) and VIII (consumer interests) require **enterprises to adequately inform stakeholders and the public about the climate impacts of their activities**. However, One-Dyas has continuously misrepresented the GHG emissions caused by the N05-A project, thereby failing to inform stakeholders and the public adequately.

To correct these violations, we ask One-Dyas to take the following steps:

- **Conduct a comprehensive assessment** of the adverse impact of the N05-A project on human rights and the environment;
- Based on this assessment, to **terminate the N05-A project**;
- And to **correctly inform stakeholders and the public about the adverse impacts of fossil gas extraction from the North Sea** on human rights and the environment.