

WRIT OF SUMMONS

IN FRONT OF THE JUDICIAL COURT OF PARIS

THE YEAR TWO THOUSAND AND TWENTY THREE and the

AT THE REQUEST OF :

1. **NOTRE AFFAIRE À TOUS**, an approved association for the protection of the environment governed by the law of July 1^{er} 1901, whose head office is located at 31, rue du Bichat in Paris (75010), with the SIREN number 842 790 735, represented by its President acting by virtue of article 11 of the statutes (Pièce n°45)
2. **LES AMIS DE LA TERRE FRANCE**, an approved association for the protection of the environment (currently being renewed) governed by the law of July 1^{er} 1901, whose head office is located at 47 avenue Pasteur, 93100 Montreuil, registered under the SIRET number 309 266 773 000 97 represented by its President Khaled Gajji, domiciled at the said head office in this capacity, acting by virtue of article 9 of the statutes (Pièce n°46) and authorized to act for the purposes hereof by the decision of its Bureau dated July 5, 2022 (Pièce n°49)
3. **OXFAM FRANCE**, an association governed by the law of July 1^{er} 1901, whose head office is located at 62 bis, avenue Parmentier in Paris (75011), represented by its President acting by virtue of article 9.2 of its statutes (Pièce n°47)

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Toque P 206

With whom domicile is elected, which are constituted and will occupy on the present and its consequences.

I HAVE

Bailiff of Justice

Residing at

<p>THE HONOR TO INFORM :</p>

1/ BNP PARIBAS S.A., a public limited company with a capital of 2,468,663,292 euros, whose registered office is located at 16 boulevard des Italiens, 75009 PARIS, registered in the PARIS Trade and Companies Register under the number 662 042 449, represented by its Director and Chief Executive Officer, Mr. Jean-Laurent BONNAFÉ

TO HAVE TO APPEAR ON

**TUESDAY JUNE 13, 2023 at 1:25 PM
(4th chamber - 1^{ère} section)**

Before the President and Judges of the Judicial Court of Paris, sitting in the ordinary courtroom of the Judicial Court of Paris, Parvis du Tribunal de Paris, 75017 PARIS, for the reasons of fact and law hereinafter set forth,

VERY IMPORTANT

Within fifteen days of the date indicated at the head of this document, subject to extension due to distance, in accordance with articles 643 and 644 of the Code of Civil Procedure, you are required by law to instruct a lawyer at the PARIS COURT OF APPEAL to represent you before the court.

If you fail to do so, you risk having a judgment rendered solely on the basis of the information provided by the plaintiffs.

You are reminded of the following provisions, taken from Act No. 71-1130 of December 31, 1971, as amended by Act No. 2015-990 of August 6, 2015, reforming certain judicial and legal professions, which are applicable here:

Article 5:

"Lawyers shall exercise their ministry and may plead without territorial limitation before all courts and jurisdictional or disciplinary bodies, subject to the reservations provided for in Article 4. They may apply before all the courts of the jurisdiction of the court of appeal in which they have established their professional residence and before the said court of appeal.

By way of derogation from the second paragraph, lawyers may not appear before a court other than the one in which they have their professional residence, neither in the context of seizure of property, partition and licitation proceedings, nor as part of legal aid, nor in proceedings in which they are not the masters of the case and are also responsible for pleading.

Section 5-1:

"By way of derogation from the second paragraph of article 5, lawyers registered at the bar of one of the judicial courts of Paris, Bobigny, Créteil and Nanterre may apply to each of these courts. They may apply to the Court of Appeal of Paris when they have applied to one of the judicial courts of Paris, Bobigny and Créteil, and to the Court of Appeal of Versailles when they have applied to the judicial court of Nanterre. The derogation provided for in the last paragraph of the same article 5 is applicable to them."

You are also reminded of the following articles of the Code of Civil Procedure:

Section 641:

"When a time limit is expressed in days, the day of the act, event, decision or notification that causes it to run shall not be counted.

Where a time limit is expressed in months or years, it shall expire on the day of the last month or year that bears the same date as the day of the act, event, decision or notification that causes the time limit to run. In the absence of an identical date, the period expires on the last day of the month.

When a period is expressed in months and days, the months shall be counted first and then the days."

Section 642:

"Any time limit expires on the last day at twenty-four hours.

The period that would normally expire on a Saturday, Sunday, or legal holiday is extended to the next business day."

Section 642-1:

"Provisions 640 to 642 shall also apply to the time limits within which registrations and other publicity formalities must be carried out."

Section 643:

"When the claim is brought before a court having its seat in metropolitan France, the time limits for appearance, appeal, opposition, third party opposition in the hypothesis provided for in article 586 paragraph 3, appeal for revision and appeal to the Supreme Court are increased by : 1. One month for persons living in Guadeloupe, Guyana, Martinique, Reunion, Mayotte, Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, Wallis and Futuna Islands, New Caledonia and the French Southern and Antarctic Territories; 2. Two months for those living abroad.

Section 644:

"When the request is brought before a court that has its seat in Guadeloupe, Guyana, Martinique, Reunion, Mayotte, Saint-Barthélemy, Saint-Martin, Saint-Pierre-et-Miquelon and the Wallis and Futuna Islands, the time limits for appearance, appeal of third party opposition in the hypothesis provided for in article 586 paragraph 3, and of appeal for revision are increased by one month for persons who do not reside in the territorial community in whose jurisdiction the court has its seat and by two months for persons who reside abroad. Persons whose resources are insufficient may, if they meet the conditions laid down by law n° 91-647 of July 10, 1991, benefit from legal aid. To request this assistance, they must apply to the legal aid office established at the head office of the judicial court of their residence or, (when the conditions will be set by decree in the Council of State), to a registrar of a court of the judicial order (L. n° 91-647 of 10 July 1991 art. 13, mod. by Ord. n° 2019-964 of 18 September 2019)."

Finally, it is indicated, pursuant to article 752 of the Code of Civil Procedure, that the plaintiff does not agree to the proceedings being conducted without a hearing, in accordance with article L. 212-5-1 of the Code of Judicial Organization.

The documents on which the request is based are indicated at the end of the act according to the attached schedule.

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This is an unofficial machine translation of the French original version

OBJECT OF THE REQUEST

1. Notre Affaire à Tous (NAAT), Friends of the Earth France and Oxfam France are three environmental protection associations (hereinafter referred to as the "**Plaintiffs**"), which have for several years been calling on the BNP Paribas Group, Europe's leading banking group¹, regarding its major contribution to global warming through its financing and investments.

They are bringing a claim before the Paris Court of First Instance seeking to enjoin BNP Paribas from complying with its climate change mitigation obligations under Law No. 2017-399 of March 27, 2017 relating to the duty of care of parent companies and ordering companies (hereinafter the "**Duty of Care Law**") and from preventing ecological damage resulting from its activities on the basis of Article 1252 of the Civil Code, in particular by ceasing to financially support entities developing new fossil projects. In the alternative, the Court is asked to order BNP Paribas to comply with its unilateral commitment to "*align its strategy with the Paris Agreement*" (**Pièce n°32 BNP Paribas 2021 Universal Registration Document, p. 322**) and to "*finance a carbon-neutral world by 2050, which corresponds to a temperature increase limited to 1.5°C compared to the pre-industrial era*" (**Pièce n°32, p. 646**) or, failing that, to prevent the ecological damage resulting from the violation of this commitment, which constitutes a quasi-contract.

2. Several fundamental concepts will be defined in the preamble:

- The BNP Paribas Group is making a major contribution to the worsening of global warming through its financing and investment activities in support of the development of fossil fuels, which are the primary source of greenhouse gas emissions² (hereinafter "**GHG**"):
 - o "**Financing**" refers to financial services including structured, syndicated and bilateral loans, and activities related to the issuance of shares and bonds ("underwriting"), in particular as defined in the specific guides of the OECD Guidelines.
 - o "**Investments**": this refers to activities involving the holding of securities, both proprietary and on behalf of third parties, with a distinction being made between equity and bond or structured securities, particularly as defined in the specific guide to the OECD Guidelines.
 - o "**New Fossil Projects**": as defined by the International Energy Agency (hereinafter "**IEA**"), the development of "*new oil and gas sites*" and "*new or expanded coal mines (...) beyond those projects already committed to in 2021*" (**Pièce n°10, IEA, "Net Zero by 2050, A Roadmap for the Global Energy Sector", May 2021, p. 21,³**), which includes the exploration and exploitation of new hydrocarbon reserves (coal, oil and gas).
- The "**Paris Agreement**," a treaty under international law adopted on December 12, 2015 by the 196 State Parties to the United Nations Framework Convention on Climate Change, setting a goal of limiting global temperature to 1.5°C, in any case "*well below 2°C*," while noting the reduction in climate risks if warming were limited to 1.5°C⁴.

¹ See the BNP Paribas website: "*BNP Paribas is the leading bank in the European Union*" (<https://group.bnpparibas/decouvrez-le-groupe/nous-connaitre>).

² Pièce n°17 UNEP, "Emissions Gap Report 2022," Oct. 2022, p. 5-6: Fossil fuels generate more than 70 percent of global emissions.

³ Original quote: "*Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required.*"

⁴ Article 2 (1) (a) states that "[t]his Agreement, in contributing to the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and poverty alleviation, inter alia by: (a) Containing the increase in global average temperature to well below 2°C above pre-industrial levels and continuing efforts to limit temperature increase to 1.5°C above pre-industrial levels, with the understanding that this would significantly reduce the risks and impacts of climate change." In addition, the Paris Agreement enshrined a full-fledged goal for finance to make "*financial flows consistent with a pathway to low greenhouse gas emission and climate resilient development.*" (Article 2 (1) (c)).

- **"IPCC:**

- In October 2018, the Intergovernmental Panel on Climate Change (**IPCC**), established in 1988 under the auspices of the World Meteorological Organization (**WMO**) and the United Nations Environment Programme (**UNEP**), released a special report on the consequences of 1.5°C of global warming (hereinafter "**SR1.5**"), highlighting the worsening impacts of climate change and the urgent need to contain climate warming to 1.5°C (Pièce n°13).
- Between August 2021 and April 2022, the IPCC released its 6^e assessment report on climate change in three parts:
 - the first report is on the physical science basis (**Pièce n°14**),
 - the second on impacts, adaptation and vulnerability (**Pièce n°15**), and
 - the third on climate change mitigation measures (**Pièce n°16**).

These IPCC reports demonstrate that there is a solid scientific consensus that global warming of more than 1.5°C is a threat to biodiversity and the functioning of human societies⁵. This observation is not unknown to the French courts: in the "Affaire du Siècle" case, the Paris Administrative Court itself recognized that "*greenhouse gas emissions of anthropogenic origin*" have caused an already existing ecological damage, namely "*the constant increase in the Earth's average global temperature, which has now reached 1°C compared to the pre-industrial era*" while adding that "*a warming of 2°C rather than 1.5°C would seriously increase these different phenomena and their consequences*".⁶.

A temperature increase of 1.5°C - even temporarily - implies a multitude of "*additional serious risks*" well established in the IPCC reports, among which the possible occurrence of "**climate tipping points**" which, if crossed, would lead to serious and irreversible environmental changes⁷.

The evolution of the world's climate in the coming years - and humanity's collective ability to prevent the most severe effects of global warming from occurring - depends in particular on a particularly important scientific concept, namely the "global carbon budget" remaining to limit warming to 1.5°C⁸.

This "budget" is an estimate of the maximum amount of carbon dioxide (hereafter, "**CO₂**") that can still be released into the atmosphere to maintain a 50% chance of not exceeding 1.5°C of global warming (**Pièce n°16B.7.1, p. 16**). In the third part of the 6^{ème} IPCC report, the remaining carbon budget to limit warming to 1.5°C was estimated at 510 gigatons (**Gt**) of CO₂ from 2020 (**Pièce n°16Table SPM.2, p. 18**). It was updated in November 2022 by the "Global Carbon Project" initiative, some of whose authors participate in the work of the IPCC, and evaluated at 380 Gt⁹ (hereafter the "**Global 1.5°C Carbon Budget**").

⁵ According to the IPCC, "[t]he near-term global warming of 1.5°C will lead to an unavoidable increase in multiple climate hazards and present multiple risks to ecosystems and humans (very high confidence). The level of risk will depend on short-term trends in vulnerability, exposure, level of socioeconomic development, and adaptation (high confidence). Near-term actions that limit global warming to near 1.5°C would significantly reduce projected climate change-related losses and damages in human systems and ecosystems, relative to higher levels of warming, but cannot eliminate them all (very high confidence)." (**Exhibit 15**, IPCC, AR 6, Working Group II (WG II), SPM., § B.3).

⁶ TA Paris, "Affaire du Siècle", preliminary ruling of February 3, 2021, para. 16.

⁷ According to the IPCC, "[i]f global warming transiently exceeds 1.5°C in the next few decades or later (exceedance), many human and natural systems will face additional severe risks, compared to staying below 1.5°C (high confidence). Depending on the magnitude and duration of the exceedance, some impacts will result in the release of additional greenhouse gases (medium confidence) and others will be irreversible, even if global warming is reduced (high confidence)."

⁸ According to the IPCC, the term "*Remaining Carbon Budget*" is the "[e]stimation of cumulative net anthropogenic global emissions of CO₂, from a given date until such time as these emissions become equal to zero, that would, with some probability, limit global warming to a specified level, taking into account the impacts of other anthropogenic emissions. {2.2.2}" (**Exhibit 13**, IPCC, Special Report 1.5°C, p. 26, § RID.1: Key concepts).

⁹ Friedlingstein (P.) et al. (2022), Global Carbon Budget 2022, Earth System Science Data.

However, in recent years, the annual level of CO₂ emissions associated with fossil fuels alone, at the global level, has been between 35 and 37 Gt CO₂, with an upward trend since the health crisis of 2020¹⁰. If this volume of emissions is maintained, the remaining 1.5°C Global Carbon Budget will be exhausted at the very beginning of the 2030s. In this regard, the IPCC had already determined in 2018 in its 1.5°C Special Report that "[i]t is likely that global warming will reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate (high confidence)."¹¹ In contrast, to maintain a 50% chance of limiting warming to 1.5°C, the IPCC has indicated that a 45% reduction in global CO₂ emissions is needed in 2030 compared to 2010¹².

The extremely serious risk of exceeding the Global Carbon Budget of 1.5°C and the corresponding increase in global average temperature compared to pre-industrial levels is perfectly predictable and is largely linked to a global energy system based on fossil fuels. Fossil fuels are the source of more than 70% of global GHG emissions¹³ and about 90% of CO emissions¹⁴.

In this context, it is clear that the exploitation of existing fossil fuel production capacity¹⁵ and infrastructure¹⁶ - over their lifetime - physically induces GHG emissions that exceed the Global Carbon Budget 1.5°C. A report published by the NGO Oil Change International, which analyzes the remaining carbon budget against the industry's planned fossil fuel expansion plans, points out that "every new drop of oil and gas that is allowed to be produced in 2022, if burned, will undermine the world's ability to meet the 1.5°C limit set by the Paris Agreement" (**Pièce n°6, Oil Change International, "Investing in Disaster," Nov. 2022**, p. 16, free translation).¹⁷

The implementation of new fossil infrastructures, including their financing, then effectively contributes to the **risks of exceeding the Global Carbon Budget 1.5°C as well as to the risks of "carbon lock-in", i.e. a situation in which the continued support of fossil energies maintains an inertia in the energy system that inevitably leads to seriously jeopardize the achievement of the objectives set by the Paris Agreement**, with all the environmental consequences that follow.

Similarly, the postponement of the reduction of emissions from fossil fuels into a highly uncertain future, using GHG capture techniques (*i.e.*, "abated" fossil fuels¹⁸), or even "negative emissions", which the available literature shows are neither operational nor deployable on a large scale, also contributes greatly to this "carbon lock-in" and compromises the respect of the Global Carbon Budget 1.5°C, as well as any reduction in emissions.

¹⁰ Hausfather (Z.), Friedlingstein (P.) (2022), Global CO₂ emissions from fossil fuels hit record high in 2022, Carbon Brief; Exhibit #17: UNEP, Emissions Gap Report 2022, pp. 5-6.

¹¹ Exhibit 13: IPCC, Special Report 1.5°C, § A.1.

¹² Exhibit 13: IPCC, Special Report 1.5°C, § C.1.

¹³ Exhibit 17: UNEP, Emissions Gap Report 2022, p. 5.

¹⁴ Hausfather (Z.), Friedlingstein (P.) (2022), Global CO₂ emissions from fossil fuels hit record high in 2022, Carbon Brief.

¹⁵ Exhibit 29: Trout et al., "Existing fossil fuel extraction would warm the world beyond 1.5°C," Environmental Research Letters, 2022.

¹⁶ According to the IPCC, "[t]he cumulative future CO₂ emissions projected over the lifetime of existing and currently planned fossil fuel infrastructure, without additional reductions, exceed the total cumulative net CO₂ emissions in the trajectories that limit warming to 1.5°C (>50%) with zero or limited overshoot. They are approximately equal to the total cumulative net CO₂ emissions in the trajectories that limit warming to 2°C (>67%). (high confidence)." (Exhibit 16, IPCC, AR 6, WG III, SPM., § B.7).

¹⁷ Original quote: "Every drop of new oil and gas sanctioned for production in 2022 will, if burned, jeopardize the world's ability to stay within the 1.5°C limit of the Paris Agreement. See also. K. Kühne, N. Bartsch, R. Driskell Tate, J. Higson, A. Habet, "Carbon Bombs - Mapping key fossil fuel projects," Energy Policy, vol. 166, 2022, 112950, ISSN 0301-4215, <https://doi.org/10.1016/j.enpol.2022.112950> The Guardian, "Revealed: the 'carbon bombs' set to trigger catastrophic climate breakdown", May 11, 2022: "The 12 biggest oil companies are on track to spend US\$103 million a day until the end of the decade to develop new oil and gas fields that cannot be burned if global warming is to be limited to well below 2°C." (<https://www.theguardian.com/environment/ng-interactive/2022/may/11/fossil-fuel-carbon-bombs-climate-breakdown-oil-gas>).

¹⁸ The IPCC uses the term "unabated fossil fuels" to refer to "fossil fuels produced and used without interventions that could substantially reduce the amount of GHGs emitted over the life cycle; for example, by capturing 90% or more of power plants or 50-80% of fugitive methane emissions from energy supply" (Exhibit 16, IPCC AR 6, WG III, SPM, § C.4); see also E3G (2021), Explained: what does 'unabated coal' mean? <https://www.e3g.org/news/explained-what-does-unabated-coal-mean>.

The IPCC concludes that the Global Carbon Budget of 1.5°C could be significantly exceeded if certain fossil fuel infrastructures are not "decommissioned", i.e. shut down before the end of their life cycle, given that the existing infrastructures alone (in 2018) would already contribute to a warming of 2°C¹⁹.

However, it is particularly important to recall and emphasize that a warming of 2°C is higher than the limit authorized by the Paris Agreement²⁰ and implies significant risks of serious harm to human rights and the environment²¹. This absolutely clear scientific observation has notably led Antonio Guterres, Secretary General of the United Nations, to state on January 18, 2023 that "[t]oday, fossil fuel producers and those who support them continue to fight to increase production, while knowing full well that their economic model is incompatible with the survival of humanity."²²

Based on the scientific consensus that has just been presented, according to which it is imperative to limit global warming to 1.5°C with no or minimal overshoot, thus limiting the associated physical risks and tipping points, **this assignment qualifies the respect of the "Precautionary Carbon Budget" as a cautious and vigilant behavior anchored in the absence of contribution to the extremely serious human and environmental risks caused by an overshoot of the Global Carbon Budget 1.5°C.**

In other words, and using a well-known image, science clearly tells us that, even more than twenty years ago, **"our house is burning" and that, in spite of this, the most influential economic players, including BNP Paribas, continue - in defiance of this fact - to make the situation worse.**

However, the requirements posed by the above-mentioned scientific findings have been unequivocally integrated by influential institutional actors in the business world.

Thus, in its reference energy trajectories, the IEA first asserts in May 2021 (see the "Net Zero by 2050" Report, hereinafter "**NZE**"), that, under a global trajectory consistent with the climate goal of limiting global warming to 1.5°C without overshoot, there are no New Fossil Projects²³. Again, in 2022, the IEA confirms this position by stating that, "No one should imagine that the invasion of Russia can justify a wave of new oil and gas infrastructure in a world that wants to achieve zero net emissions by 2050."²⁴.

¹⁹ According to the IPCC, "[t]he cumulative future CO₂ emissions projected over the lifetime of existing and currently planned fossil fuel infrastructure, without additional reductions, exceed the total cumulative net CO₂ emissions in the trajectories that limit warming to 1.5°C (>50%) with zero or limited overshoot. They are approximately equal to the total cumulative net CO₂ emissions in the trajectories that limit warming to 2°C (>67%). (high confidence) [...] Decommissioning and reducing the use of existing fossil fuel-based power sector infrastructure, retrofitting existing facilities with carbon capture and storage (CCS) systems, switching to low-carbon fuels, and removing new coal-fired facilities without CCS are the main options that can help bring future power sector CO₂ emissions in line with the emissions of the least-cost modelled global trajectories... (Exhibit #16, IPCC, AR 6, WG III, SPM., § B.7 and B.7.2)

²⁰ According to the head of the IEA, the commitments adopted following COP 26 in Glasgow could limit global warming to 1.8°C, which he and the international agency he represents say remains inconsistent with the Paris Agreement target: "Our updated analysis of these new targets - which are in addition to all those previously set - shows that if they are met in full and on time, they would be sufficient to limit the rise in global temperatures to 1.8°C by the end of the century. This is a historic moment: it is the first time that governments have proposed targets ambitious enough to keep global warming below 2°C. But while we welcome this progress, we must also sound a note of caution: 1.8°C is still above the Paris Agreement's goal of limiting global warming to well below 2°C and continuing efforts to limit it to 1.5°C. Scientists have clearly warned of the major climate risks of exceeding the 1.5°C limit. Our latest analysis - reflected in an updated pledge scenario to include all recent announcements - shows that even with these new commitments, we are still far from what is needed to keep the door open at 1.5°C. This would require rapid progress on emissions reductions by 2030.

²¹ In 2021, the international community reiterated the importance of limiting warming to 1.5°C in the decision adopted following the Conference of the Parties No. 26 in Glasgow (COP 26 - Glasgow Climate Pact): "the impacts of climate change will be much lower with a temperature increase of 1.5°C compared to 2°C and decides to continue efforts to limit the temperature increase to 1.5°C". (Glasgow Climate Pact of 13 November 2021, § 21). The International Energy Agency (IEA) agrees: "as the IPCC has pointed out, warming of close to 2°C would still lead to strong negative impacts for societies around the world (IPCC, 2022b)." (IEA, World Energy Outlook (WEO) 2022, p. 64).

²² Exhibit 29: A. Guterres, Speech to the World Economic Forum, January 18, 2023.

²³ According to the IEA, "There is no need for investment in new fossil fuel supply in our net zero pathway: beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in 2021, and no new or expanded coal mines are required. 21; Original quote: "there is no need for investment in new fossil fuel supply in our net zero pathway: beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required."

²⁴ Free translation. V. Exhibit 11, IEA, World Energy Outlook, 2022, p. 80 ("No one should imagine that Russia's invasion can justify a wave of new oil and gas infrastructure in a world that wants to reach net zero emissions by 2050").

On November 8, 2022, a group of 14 independent and impartial experts appointed by the UN Secretary General, including Ms. Helena Viñes Fiestas former Senior Advisor on Sustainable Finance at BNP Paribas, submitted a report formalizing the measures to be implemented by non-state actors (including businesses and financial institutions) to meet the 2050 carbon neutrality commitments consistent with a 1.5°C pathway with no or minimal overshoot. In particular, these measures include:

- the reduction of at least 50% of GHG emissions, covering all direct and indirect emissions of companies and financial institutions,²⁵, i.e. scopes 1, 2 and 3²⁶ ;
- the cessation of the expansion of fossil fuels and the corresponding financial support;
- exit from oil, gas and coal production, in addition to immediate alignment measures consistent with limiting global warming to 1.5°C.

These measures and all the changes they imply are therefore imperatives today, dictated by the need to prevent the realization of risks and environmental and human damage of a dimension never before known.

3. **In this regard, and in view of all the factual and legal arguments presented, the Plaintiffs request the Tribunal to:**

With regard to its financing and investments **in the fossil fuel sector** :

In the area of Financing :

- The **immediate termination of all new Financing** to any company developing New Fossil Projects; and

In the area of Investment :

- **The immediate cessation of any new investment** in any company developing New Fossil Projects;
- For existing investments :
 - **The adoption and effective implementation of a shareholder engagement and voting policy** to lead invested companies to renounce the development of New Fossil Projects and to adopt, detail and publicly implement measures compatible with limiting global warming to 1.5°C with no or minimal overshoot as well as the preservation of the Precautionary Carbon Budget, in line with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
 - In the absence of results in line with the above-mentioned objectives following its effective engagement actions, within a reasonable period of two years maximum from the communication of its requests, **the divestment** of the companies concerned ;

²⁵ Exhibit 12: UN HLEG, "Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions," Nov. 2022, Recommendation 1 and 2, pp. 15-18.

²⁶ Scope 1 constitutes the direct emissions related to the operated perimeter of companies, while Scope 2 concerns indirect emissions related to the energy consumption of operated sites (see GHG Protocol, Scope 1 & 2 GHG Inventory Guidance Use to prepare a GHG inventory and quantify emissions, November 2019, p.12). Scope 3 for financial institutions includes emissions associated with financing and investment activities, such as those related to the use of goods and services produced (see Scope 3 category 15, GHG Protocol, Corporate Value Chain (Scope 3) Accounting and Reporting Standard, p. 51).

And in any case,

For all of BNP Paribas' financing and investment activities in all sectors that emit GHGs:

- **The adoption, publication and effective implementation of all measures compatible with a 1.5°C trajectory with no or minimal overshoot** and with the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account, in this regard, the recommendations of the UN-HLEG 2022 report.

This includes:

- A **reduction in** GHG emissions, covering scopes 1, 2 and 3, of at least 50% by 2030;
- **Intermediate reduction targets** set on a five-year basis (2025, 2030, 2035, and every five years);
- **The adoption and effective implementation of a plan to exit** the fossil fuel sector, in line with scientific requirements to reduce fossil fuel production by 2030, with a final exit by 2050 (except for residual use in application of the precautionary principle);
- **The continuation of all financing and investment is conditional on the publication and effective implementation**, by the recipient companies, of climate strategies that are compatible with limiting global warming to 1.5°C with no or minimal overshoot, as well as the preservation of the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
- Provided that:
 - These requests are based on the state of knowledge currently available on the day of the assignment;
 - Consequently, they will have to adapt to the changing climate and scientific context, taking into account that the longer it takes to implement measures compatible with a 1.5°C trajectory with no or minimal overshoot and the Precautionary Carbon Budget, the faster GHG emissions will have to be reduced.

I. REMINDER OF THE FACTS AND THE PROCEDURE

I.1. THE ASSOCIATIONS APPLICANTS

I.1.1. NOTRE AFFAIRE A TOUS (NAAT)

4. NAAT's main objective is to strengthen the fight against climate change, particularly through the regulation of multinational companies.

Indeed, Article 2 of the NAAT Constitution provides that:

"The purpose of the association is:

- *nature protection and environmental advocacy;*
- *to organize, finance or support all actions, initiatives, in particular legal steps, ideas, speeches, pleas with the aim of protecting the living, the environment, the climate, the present and future generations and the fauna and flora; (...)*
- *to defend the collective interest as well as the particular interests of its members, in particular with regard to the right to a healthy environment and fundamental rights;*
- *ensure compliance with local, national, European or international regulations on the environment and human rights;*
- *to fight against the impunity of political, economic or physical actors when their actions cause damage to the environment and to present or future generations; (...)*

In order to achieve its purpose, "Everybody's Business" will implement all necessary actions, in particular, by : (...)

- *Using all existing legal means, in France and throughout the world, in particular by filing a civil suit, before civil, administrative or criminal courts, whether by way of action or intervention.*

Pièce n°45 Statutes Notre affaire à tous, p. 1

5. In addition, the association Notre Affaire à Tous - which on August 12, 2021 filed an application for approval under Article L. 141-1 of the Environmental Code (**Pièce n°48 Notre Affaire à Tous application for approval filed on August 12, 2021**) and has not received notification of a decision within six months of the notice of receipt of its file issued by the administration - is deemed to have received such approval since February 19, 2022, in accordance with the provisions of Decree n°2014-1272 of October 23, 2014 relating to exceptions to the application of the two-month time limit for the birth of implicit decisions of acceptance on the basis of II of Article 21 of Law n° 2000-321 of April 12, 2000 relating to the rights of citizens in their relations with administrations.

I.1.2. FRIENDS OF THE EARTH FRANCE

6. Friends of the Earth France is working for the establishment of binding legal frameworks to regulate the activities of multinational companies. In particular, they investigate the responsibility of the financial sector in climate change, environmental destruction and human rights abuses, and expose the support of French banks to the fossil fuel industry.

In accordance with Article 2 of its Statutes, *"the purpose of the Federation is to act for the protection of human beings and the environment"*.

More precisely, *"The Federation through its action intends to build a world in which: (...)*

- *The basic human needs (i.e. access, in sufficient quality and quantity, to air, water, food, energy, shelter, health, education, information and culture) of all are met, without compromising the ability of future generations to meet their own needs;*
- *Access to and sharing of natural resources are equitable; the right of everyone to live (and work) in a healthy environment and the duty to preserve it are respected; (...)*

In order to implement the values of responsibility, equity and solidarity that underlie our global approach, the Federation wants to

- *To act for the protection of human beings and the environment against the excesses of the consumer society; (...)*
- *Implementing a more balanced international architecture, which frames trade regulation (WTO), international investments as well as aid for financing so-called development projects (international financial institutions, export credit agencies, etc.) so that they do not take place at the expense of global public goods: environment, health, social, cultural, etc.*

For the preservation of the environment, the common heritage of humanity, the Federation intends in particular :

- *Protect biodiversity (fauna, flora), sites and landscapes, and preserve sensitive territories; (...)*
- *Prevent pollution, nuisances and technological risks (...).*

In defense of citizenship and the right of everyone to enjoy a healthy environment, the Federation works in particular to :

- *To work towards the implementation of a legal framework allowing to sanction those responsible for environmental degradation ("polluter pays" principle) or for the non-respect of human or social rights; (...)*
- *Promote citizens' access to information, the exercise of civic rights and the participation of everyone in decisions concerning them, particularly those relating to the environment and the living environment;*
- *To fight against abusive commercial practices and the production of goods or services that are harmful to humans and the environment".*

Pièce n°46 Statutes of Friends of the Earth France, article 2, p.2 and 3

7. The approval for environmental protection in the national framework of Friends of the Earth France was renewed for a period of 5 years from January 1, 2018 by the order of December 12, 2018 publishing a list of associations approved for environmental protection in the national framework and is currently being renewed.

I.1.3. OXFAM FRANCE

8. Oxfam France is a member of the Oxfam Confederation, an international development organization active in 67 countries, which mobilizes citizen power against poverty. Oxfam International and Oxfam France fight against poverty and its structural causes, inequalities and economic, social and environmental injustices, and defend fundamental rights.

Pièce n°47 Statutes of Oxfam France, art. 2, p. 3

Oxfam France can implement :

"It is also possible to take legal action to defend the individual and collective interests of its members and of all citizens" (Pièce n°47 art. 2, p. 3).

They have published numerous reports on the contribution of banks, and BNP Paribas in particular, to climate change.

I.2. PRESENTATION OF THE GROUP AND THE ACTIVITIES OF BNP PARIBAS

9. BNP Paribas is a public limited company with a Board of Directors, listed in France on the Euronext Paris First Market and included in the CAC 40 index. Its head office is located in France, at 16 boulevard des Italiens, in Paris.

Pièce n°30 : KBIS BNP Paribas S.A. ; Pièce n°31 Articles of Association of BNP Paribas S.A.

BNP Paribas S.A. is the parent company of the BNP Paribas Group (hereinafter, "**the Group**"), which was formed in May 2000 from the merger of Banque Nationale de Paris and Paribas.

BNP Paribas is the leading French bank, the second largest European bank and the 9th largest international banking group²⁷, with operations in 65 countries.

In 2021, the Group generated 46.2 billion euros in net banking income and 9.5 billion euros in net profit.

Pièce n°32 Universal Registration Document 2021, hereinafter "UDR", p. 5.

BNP Paribas has set a record profit for 2022 with a net profit of 10.2 billion euros. The bank expects its earnings to grow by an average of 9% per year from 2022 to 2025, up from 7% previously, which means an increase in net income of about one billion euros each year.

Pièce n°33 LeMonde.fr, "BNP Paribas posted 10.2 billion euros in net profits in 2022," Feb. 7, 2023

10. With nearly 190,000 employees at the end of 2021, the bank is organized into three main business areas (**Pièce n°32, p. 4**) :
- "Commercial, Personal Banking & Services (CPBS)", which groups together the retail banking activities of BNP Paribas.
 - "Investment & Protection Services (IPS)" which includes:
 - o Insurance with BNP Paribas Cardif,
 - o Institutional and private asset management with BNP Paribas Asset Management (hereafter "**BNP Paribas AM**"),
 - o BNP Paribas Wealth Management and BNP Paribas Real Estate.
 - "Corporate & Institutional Banking (CIB), which covers capital markets, securities services, financing, risk management, cash management and financial advisory services to companies and institutions (banks, insurance companies, asset managers, etc.).

The Group has two major subsidiaries involved in asset management and institutional investor activities **BNP Paribas Cardif and BNP Paribas AM**.

BNP Paribas Cardif is a subsidiary of the Group specializing in insurance, with EUR 282 billion in assets under management at the end of 2021 (**Pièce n°32, p.11**). Like any insurer, the subsidiary has two main activities:

- a traditional insurance business: BNP Paribas Cardif "*designs, develops and markets savings and protection products to insure individuals, their projects and their assets*" (**Pièce n°32, p.13**) ;
- an asset management activity.

BNP Paribas AM, the Group's asset management arm, had EUR 537 billion under management at the end of 2021 and was ranked 10^e asset manager in Europe (**Pièce n°32, p. 14**). The subsidiary "*offers investment solutions for*

²⁷ S&P Global Market Intelligence, The world's 100 largest banks, 2022.

individual savers (through internal distributors - BNP Paribas' private bank and commercial bank - and external distributors), companies and institutional investors (insurance companies, pension funds, official institutions, consultants)" (Pièce n°32, p. 14).

I.3. BNP PARIBAS' COMPLIANCE PLAN

11. BNP Paribas has published an integrated due diligence plan annually since 2017 within its Universal Registration Document (hereinafter "UDR") in its capacity as parent company and for all Group subsidiaries.
12. The vigilance plan for the year 2021 was published on March 22, 2022, but it is limited to 6 pages that are incomplete and insufficient with regard to the legal obligations on the duty of vigilance (Pièce n°32pp. 642 to 646).

As will be shown below, the plan does not reflect the requirements of the Due Diligence Act, merely refers to other documents relating to the non-binding commitments made by the Group, and does not include the due diligence measures required of financial institutions to prevent the serious environmental and human rights harm posed by climate change.

I.4. OTHER BNP PARIBAS ANNOUNCEMENTS ON CLIMATE CHANGE OUTSIDE THE VIGILANCE PLAN

I.4.1. THE S DOCUMENTS PUBLISHED BY BNP PARIBAS

13. The BNP Paribas Group has made a number of successive announcements relating to the climate and in particular to the fossil fuel sector, which are mainly contained in the following documents:
 - The "Climate Analysis and Alignment Report" published in April 2022 (Pièce n°65) and the "TCFD" Report issued in 2021 (Pièce n°66)
 - The new climate strategy presented in January 2023 (Pièce n°67)
 - The sectoral policies adopted by BNP Paribas relating to :
 - o To the "Coal-Fired Electricity Generation" published in 2020 (Pièce n°68) ;
 - o To the "Mining Industry" published in 2020 (Pièce n°69) ;
 - o To "Oil and Gas" published in 2022 (Pièce n°70).

BNP Paribas Cardif has updated its climate commitments for 2022.

Pièce n°72 BNP Paribas Cardif, Responsible Investment Report 2021 (art. 29 LEC), 2022, p. 34

On November 8, 2022, BNP Paribas AM presented a roadmap for achieving carbon neutrality by 2050.

Pièce n°73 BNP Paribas AM, "Committed to climate: our net zero roadmap", Nov. 2022.

BNP Paribas AM also published a due diligence policy in January 2023.

Pièce n°74 BNP Paribas AM, "Responsible Business Conduct Policy", January 2023, pp. 24-28

As will be shown below, these announcements do not constitute adequate due diligence measures to comply with its legal obligations under the Climate Change Due Diligence Act.

I.4.2. INDUSTRY INITIATIVES OF WHICH BNP PARIBAS IS A MEMBER

14. BNP Paribas joined the Net-Zero Banking Alliance in April 2021, BNP Paribas Cardif also joined the Net-Zero Asset Owner Alliance in September 2021 and BNP Paribas AM joined the Net-Zero Asset Managers Initiative in November 2021, which are sectoral alliances of the Glasgow Financial Alliance for Net Zero (hereinafter "**GFANZ**").

These alliances, covering different sectors of finance, have the stated goal of committing their members to achieving carbon neutrality by 2050.

15. It should be noted from the outset, as developed below, that the effectiveness - or even the entirety - of these initiatives are subject to substantial criticism from stakeholders of various origins²⁸.

For example, in November 2022, on the occasion of the release of new recommendations for non-state actors, aimed precisely at imposing a rigorous approach to their commitments to achieve carbon neutrality, UN Secretary General Antonio Guterres specifically targeted these alliances:

"By the first half of 2023, all existing voluntary "Net Zero" reduction initiatives will be required to explain how they will align and revise their criteria accordingly - and all new initiatives will be required to comply with these recommendations."⁽²⁹⁾

Pièce n°20A. Guterres, Speech on the occasion of the release of the report of the High Level Panel of Experts, Nov. 8, 2022

However, despite these endorsements and its own commitment to carbon neutrality by 2050, the BNP Paribas Group is not effectively implementing the measures required, according to the best available science and institutional consensus, to comply with this objective.

This is one of the main criticisms of BNP Paribas' climate policy, as will be shown below.

²⁸ See in this regard the report by Th. Philipponnat (*The problem lies in the net*, Finance Watch Report, June 2022), former member of the Autorité des Marchés Financiers in charge of the Climate and Sustainable Finance Commission (CCFD), and current member of the *European Financial Reporting Advisory Group* (EFRAG) in charge of establishing climate criteria for companies that the European Commission can transform into a delegated act in the framework of the Extra-Financial Reporting Directive. also Reclaim Finance, "GFANZ, the pluses, the minuses, the unacceptable", 2022: <https://reclaimfinance.org/site/gfanz-les-plus-les-moins-linacceptable/>

²⁹ Original quote: *"By the first half of 2023, all existing net-zero voluntary initiatives must explain how they will align and revise their standards accordingly - and all new initiatives must abide by these recommendations."*

I.5. FORMAL NOTICE SENT TO BNP PARIBAS ON OCTOBER 26, 2022

16. For many years, the plaintiff associations have been alerting the general public and government representatives to the climate risks resulting from the activities of major French banks, primarily the BNP Paribas Group. Through their numerous reports and meetings with bank officials, the plaintiffs have constantly called on the BNP Paribas Group to implement the necessary vigilance measures to limit the contribution of its activities to global warming (**Pièce n°21 List of reports published by NAAT, Friends of the Earth France and Oxfam France establishing the responsibility of banks, including BNP Paribas, over the last 5 years (2017-2023)**).

BNP Paribas has responded to several of these reports, including the letters sent in addition to the "*Multinationals' Climate Vigilance Benchmark*" reports produced by NAAT in 2020, 2021 and 2022 (**Pièce n°36 BNP Paribas' letters to NAAT dated 22 April 2020 and 8 April 2021**). However, the bank has always refused to implement the appropriate measures.

17. At the BNP Paribas General Assembly of May 18, 2021 and May 17, 2022, the associations Friends of the Earth France and Reclaim Finance asked several written questions concerning the group's support for the expansion of hydrocarbons.

In its response to the associations in 2022, the Board of Directors of BNP Paribas set out the various commitments it had already made in the area of climate change, notably in its "*Analysis and Alignment Report for the Climate*" published in April 2022.

However, these measures are insufficient as will be demonstrated below, since no commitment was adopted to stop supporting companies developing New Fossil Projects and to reduce GHG emissions and covering the bank's direct and indirect emissions (**Pièce n°34 Written answer to the questions asked by Friends of the Earth France, General Assembly of May 17, 2022**).

Already in 2021, in its response to the associations Reclaim Finance and Friends of the Earth France, the Board of Directors of BNP Paribas merely referred to its sectoral policies, which are also insufficient, as will be demonstrated below (**Pièce n°35 Written answer to the questions asked by Friends of the Earth France, General Assembly of 18 May 2021**).

18. **On October 26, 2022**, in accordance with the provisions of Article L.225-102-4 II of the French Commercial Code, the associations Oxfam France, Notre Affaire à Tous and Friends of the Earth France gave BNP Paribas formal notice to comply with its obligations under Article L.225-102-4 I of the French Commercial Code by publishing a new due diligence plan that complies with the legal requirements, within three months of receipt of the letter of formal notice (**Pièce n°37**), covering all its activities including those of BNP Paribas Cardif and BNP Paribas AM.

The plaintiffs requested that BNP Paribas publish a new compliance plan which, without prejudice to other measures that may be identified in light of the worsening climate emergency, scientific data and changes in its activities, should include the following measures

"1. a map presenting, analyzing and prioritizing the risks of serious harm resulting from BNP Paribas' activities in the fossil fuel sector, **regularly updated** to take into account available data on the Group's contribution to climate risks

In particular, it is requested, under the identification of risks of serious harm to the environment, health and safety and human rights in climate, generated by the increase of GHG (...) and to publish :

- *BNP Paribas' complete carbon footprint (scopes 1, 2 and 3) in intensity and absolute value resulting from its activities:*
 - *disaggregated by industry sectors (including coal, oil and gas) and subsectors (including each unconventional hydrocarbon sector) of the underlying companies supported;*

- and by type of financial services including financing (including structured, syndicated and bilateral loans, equity and bond issues) and investments (own and third-party, distinguishing between equity and bonds or structured securities).
- Flows and stocks in terms of amount and share of financing and investments across the entire fossil fuel value chain:
 - disaggregated by sector and sub-sector (see above),
 - and by type of financial services (see above).
- The list of fossil fuel companies and projects (coal, oil and gas) that benefit from financial support from BNP Paribas, in particular projects with high GHG emissions and the companies behind them.
- The exhaustive methodologies associated with all published data and measures taken within the framework of the BNP Paribas Compliance Plan (the precise calculation methodologies, reference databases, as well as the perimeters of the financial services and client activities covered)
- The climate scenarios used as a reference by BNP Paribas and their underlying assumptions, particularly with regard to the use of carbon capture and storage (CCS) technologies.
- Details of BNP Paribas' shareholder engagement policy and its voting decisions at general meetings of fossil fuel companies in which it is an investor.

2. Procedures for regular evaluation of the value chain in relation to the risk map, enabling the impact of their activities on the risks identified, analyzed and prioritized to be quantified in concrete terms.

3. Adapted actions to prevent serious damage and mitigate risks, enabling the Group to align itself with a 1.5°C trajectory (defined in I) that is compatible with the Paris Agreement's objective of limiting global warming to 1.5°C, and consistent with BNP Paribas' commitment to finance a carbon-neutral world by 2050.

A compliant plan, detailed and aligned with this objective, should therefore include at a minimum:

- the immediate cessation of all financial support (financing and investments) to companies that develop new fossil fuel projects;
- the adoption of an exit plan for the oil and gas sector, in line with scientific requirements for a reduction in fossil fuel production by 2030, with a final exit (except for residual use in application of the precautionary principle) by 2050;
- the implementation of measures to reduce the BNP Paribas Group's carbon dioxide (CO₂) and methane (CH₄) emissions (in absolute terms and covering scopes 1, 2 and 3) by at least 45% in 2030 compared to 2010 levels, equivalent to an annual reduction of approximately 7%;
- reduce other GHG emissions appropriately.

These demands are based on currently available data. They will have to adapt to the changing climate and scientific context, taking into account that the longer effective GHG emission reduction measures are not implemented, the faster they will have to be reduced.

BNP Paribas must also make the continuation of any financial support conditional on the publication and effective implementation by its clients of climate strategies aligned with a 1.5°C trajectory, including at least the requirements listed above .

In order to be consistent, BNP Paribas must demonstrate that it has implemented a concrete shareholding policy, in particular in order to :

- *Effectively exercise its power to influence companies active in the fossil fuel sector and in which it is an investor, notably by proposing climate resolutions and voting in favor of climate plans that are truly aligned with the Paris Agreement and that meet the requirements listed above;*
- *if it fails to do so within a reasonable period of time of no more than two years, implement a divestment policy.*

4. A system for periodic monitoring of the measures implemented under the plan and regular evaluation of their effectiveness, (1) based on indicators of means and results, (2) specifying the methodology and sources used, (3) publicly presenting the results and, in the event of identified risk or harm, the prevention and remediation implemented.

BNP Paribas is expressly requested to justify the effective implementation of its vigilance plan, by reporting on compliance:

- *commitments already made in the area of climate change, particularly in the context of the Net Zero alliances of which it is a member, and its sectoral policies on fossil fuels, for which there is no effective monitoring system;*
- *measures that will be taken in accordance with the requests of this notice, within a reasonable period of time appropriate to the climate emergency.*

5. The establishment of an appropriate alert and reporting mechanism.

These vigilance measures must be effectively implemented, and the report on their implementation must be made public and included in the management report.

The letter reserved the right "to request precautionary measures and full compensation for the damages suffered as a result of the serious breaches of vigilance exposed" (Pièce n°37, p. 16).

19. On January 24, 2023, BNP Paribas responded to the formal notice with a letter in which it refused to implement the requested due diligence measures (Pièce n°38).

On the same day, BNP Paribas communicated new climate commitments, which were still insufficient to meet its legal obligations under the duty of care (Pièce n°39 Friends of the Earth France, Notre Affaire à Tous, Oxfam France "L'affaire BNP : Menacée d'une action en justice, BNP Paribas communique mais ne répond pas aux demandes des ONG", 25 Jan. 2023; Pièce n°40 Exhibit 40: Reclaim Finance, "Oil and gas: BNP Paribas is using the wrong method", 25 Jan. 2023; Pièce n°41 The BNP Affair, Press Release, 25 Jan. 2023).

20. On February 15, 2023, counsel for the Plaintiffs sent an official letter to BNP Paribas to uphold the terms of the formal notice, emphasizing the inadequacy of the measures announced and of the response letter received on January 24, 2023, which do not include a commitment to effectively implement the vigilance measures requested in the formal notice, first and foremost the immediate cessation of new financial support (Financing and Investments) to any company developing New Fossil Fuel Projects (**Pièce n°43**).

Faced with BNP Paribas' refusal to adopt in its compliance plan the appropriate and effective measures to mitigate climate risks and prevent the serious harm resulting therefrom, as requested in the formal notice of October 26, 2022, and resulting from the institutional and scientific consensus on the measures required to limit warming to 1.5°C in accordance with the objective of the Paris Agreement, the Plaintiffs are compelled to bring an action before the Paris Court of First Instance for the factual and legal reasons set forth below.

II. DISCUSSION

21. As a preliminary matter, it will be briefly recalled that the Paris Court of Justice has exclusive jurisdiction to rule on the present dispute.

The legislator has given the Paris Court of Justice exclusive jurisdiction to hear disputes relating to the duty of care.

The material jurisdiction of the Court of First Instance to hear actions brought under Article L.225-102-4, I, 1°) of the French Commercial Code was confirmed by the Versailles Court of Appeal in a judgment dated November 18, 2021, No. 21/01661, upholding an order of the Pre-Trial Judge of the Nanterre Court of First Instance issued on February 11, 2021, in the action denouncing the inadequacies of TotalEnergies' climate change mitigation plan³⁰.

In a decision dated December 15, 2021, in the *TotalEnergies Uganda* case brought by the association Les Amis de la Terre France, the Court of Cassation also ruled, in accordance with Articles L. 211-3 of the French Judicial Organization Code and Articles L. 721-3 and L. 225-102-4 of the French Commercial Code, that:

"the due diligence plan, incumbent on a public limited company pursuant to the third text, does not constitute a commercial act within the meaning of the third text of the second text and that, if the establishment and implementation of such a plan present a direct link with the management of this company, justifying the jurisdiction of the consular courts by application of the second text of the second text of the second text of the third text, the plaintiff who is not a trader and who intends to act for this purpose has, however, in this case, the choice of bringing the matter before the civil court or the commercial court.

Com. Dec. 15, 2021, no. 893, appeals no. 21-11.957, 21-11.882

By article 56 of the law n°2021-1729 of December 22, 2021 for confidence in the judiciary, the legislator intervened to grant the Paris Judicial Court exclusive jurisdiction to hear actions relating to the duty of vigilance:

"The Paris judicial court hears actions relating to the duty of care based on Articles L. 225-102-4 and L. 225-102-5 of the Commercial Code. (Article L. 211-21 of the Code of Judicial Organization)

The other grounds invoked form related and indivisible claims that fall within the jurisdiction of the Paris Court of Justice, it being emphasized that the Paris Court of Justice has exclusive jurisdiction in matters of ecological damage³¹.

The Paris Court of First Instance thus has jurisdiction to hear the present case against BNP Paribas, the company liable for the duty of care, in which it is requested that its due diligence plan be brought into conformity with the legal obligations.

³⁰ Preliminary order, Tribunal judiciaire de Nanterre, February 11, 2021, RG n°20/00915; CA Versailles, 14^{ème} ch, November 18, 2021, n°21/01661.

³¹ Art. L. 211-20, 1° of the Code of Judicial Organization; Decree No. 2021-286 of March 16, 2021 designating the regional hubs specializing in environmental violations.

II.1. PRIMARILY, THE FAILURE OF BNP PARIBAS TO COMPLY WITH ITS DUTY OF CARE

22. The March 27, 2017 law on the duty of care of parent companies and ordering companies ("Duty of Care Law") is a legislative response to the April 24, 2013 tragedy of the collapse of the Rana Plaza, a building housing textile workshops, which caused the death of 1,138 Bangladeshi workers and injured 2,000 of them.

The responsibility of French distributors such as the Auchan or Camaïeu groups, who had their products manufactured at lower cost by underpaid labor, in undignified working conditions and in a building whose safety was seriously deficient, was pointed out.

This scandal left a lasting impression on international public opinion, which *"no longer accepts that international law provides immunity to multinationals that willingly dispense with respect for human rights and the basic rules of nature protection."*

Pièce n°52 Report No. 2628 of the Law Commission of the National Assembly, p. 9

With the collapse of the Rana Plaza, it became clear to all civil society and economic actors that *"certain economically powerful transnational companies can, through the fragmentation of national rights and societies, undermine, with a certain impunity, what we hold most dear, beyond our political differences, by violating human rights and ecosystems (...)"*, and that a legislative and humanist response had to be made to this state of affairs.

Exhibit 32: Report No. 2628 of the Law Commission of the National Assembly, p. 48

II.1.1. THE INTEREST AND STANDING OF THE PLAINTIFFS

23. It is settled case law that, even without legislative authorization, and in the absence of an express provision in the articles of association concerning the use of legal channels, an association may take legal action on behalf of collective interests as long as these interests fall within its corporate purpose³².
24. Article L. 225-102-4 II of the French Commercial Code provides that when a company is given formal notice to comply with its obligations under the Duty of Care Act and fails to do so within three months of the notice being given:

"the competent court may, at the request of any person having an interest in the matter, enjoin him, if necessary under penalty, to respect them."

In an order issued on February 11, 2021, the Nanterre Court of First Instance ruled that the interest to act on the basis of Article L. 225-102-4 of the French Commercial Code **must be understood broadly**:

"The letter of article L. 225-102-4 of the French Commercial Code reveals that the preservation of human rights and of nature in general cannot be satisfied with the "insurance management" [...] mentioned in the parliamentary works and with the standardization by the market induced by the presentation of the due diligence plan at the shareholders' meeting, but requires a judicial control. And this can only be done through strong social control, made possible by the publicity of the vigilance plan and by a loose definition of the interest to act, the action being very widely open ("any person justifying an interest to act")."

Pièce n°44 Order of preparation, Nanterre Judicial Court, February 11, 2021, RG n°20/00915

³² Cass, civ 1^e, 18 September 2008, n°06-22.038.

The provisions of Article L. 225-102-4 of the French Commercial Code relating to the due diligence plan and the work of the French Parliament expressly provide for the involvement of stakeholders in the development and implementation of the due diligence plan³³. This is a central provision of the law, and the associations played an important role during the legislative process.

In its letter of January 24, 2023, BNP Paribas acknowledged that it had previously met with certain Plaintiffs, thus confirming their status as stakeholders in the banking group's climate responsibility.

In this respect, reference should be made to the OECD's Guide to Responsible Business Conduct, which is a reference standard for defining the due diligence obligations of ordering companies (cited in the parliamentary proceedings as a source of inspiration and interpretation of the French law, see *below* no.43), which defines "stakeholders" as follows:

"Stakeholders are individuals or groups whose interests are or may be impacted by the activities of an enterprise. Not all individuals or groups considered to be stakeholders will have interests that are likely to be impacted by a specific activity of a company. It is therefore important for the company to identify those individuals and groups whose interests need to be taken into account in the context of a specific activity ("relevant stakeholders"). Furthermore, due diligence applies to the interests of stakeholders who have been affected by a company's activity ("impacted stakeholders") as well as to those stakeholders who have not been affected but are likely to be ("potentially impacted stakeholders").

Pièce n°57 OECD Guide to Responsible Business Conduct, 2018, Q8, p. 52

The Guide also provides examples of stakeholders, including "NGOs, local civil society organizations, NHRIs" as "relevant stakeholders" (**Pièce n°57, p. 52**).

25. In the present case, the plaintiffs have put BNP Paribas on notice to comply with its obligations under Article L. 225-102-4 I. of the French Commercial Code on October 26, 2022.

The legitimate interest of such an action against BNP Paribas is justified in order to contribute to the fight against the aggravation of climate change with the aim of mitigating the serious harm to the environment, human health and safety, and human rights that results from it (**Pièce n°37**).

The three plaintiff associations, namely Notre Affaire à Tous, Les Amis de la Terre France and Oxfam France, propose, by their respective statutes, to defend the environment as well as human rights, including by taking legal action, and in particular to fight against the worsening of climate change (**Pièce n°45, Pièce n°46, Pièce n°47**).

The Plaintiffs therefore demonstrate a clear interest and standing in light of the interests protected by their statutes:

- **Notre affaire à tous :**

Article 2 of the NAAT Bylaws provides that:

"The purpose of the association is:

- *nature protection and environmental advocacy;*
- *to organize, finance or support all actions, initiatives, in particular legal steps, ideas, speeches, pleas with the aim of protecting the living, the environment, the climate, the present and future generations and the fauna and flora; (...)*

³³ Article L. 225-102-4 of the French Commercial Code provides that "the plan is to be drawn up in association with the company's stakeholders".

- *to defend the collective interest as well as the particular interests of its members, in particular with regard to the right to a healthy environment and fundamental rights;*
- *ensure compliance with local, national, European or international regulations on the environment and human rights;*
- *to fight against the impunity of political, economic or physical actors when their actions cause damage to the environment and to present or future generations; (...)*

In order to achieve its purpose, "Everybody's Business" will implement all necessary actions, in particular, by : (...)

- *Using all existing legal means, in France and in the world, in particular by filing a civil suit, before the civil, administrative or criminal courts, whether by way of action or intervention.*

Pièce n°45 Statutes Notre Affaire à Tous, p. 1

In addition, the association Notre Affaire à Tous - which on August 12, 2021 filed an application for approval under Article L. 141-1 of the Environmental Code (**Pièce n°48**) and did not receive notification of a decision within six months of the notice of receipt of its file issued by the administration - is deemed to have received such approval since February 19, 2022, in accordance with the provisions of Decree no. 2014-1272 of October 23, 2014 relating to exceptions to the application of the two-month time limit for implicit decisions of acceptance based on II of Article 21 of Law no. 2000-321 of April 12, 2000 relating to the rights of citizens in their dealings with the administrations

- Friends of the Earth France :

According to article 2 of its statutes, "*the purpose of the Federation is to act for the protection of human beings and the environment*".

More precisely, "*The Federation through its action intends to build a world in which: (...)*

- *The basic human needs (i.e. access, in sufficient quality and quantity, to air, water, food, energy, shelter, health, education, information and culture) of all are met, without compromising the ability of future generations to meet their own needs;*
- *Access to and sharing of natural resources are equitable; the right of everyone to live (and work) in a healthy environment and the duty to preserve it are respected; (...)*

In order to implement the values of responsibility, equity and solidarity that underlie our global approach, the Federation wants to

- *To act for the protection of human beings and the environment against the excesses of the consumer society; (...)*
- *Implementing a more balanced international architecture, which frames trade regulation (WTO), international investments as well as aid for financing so-called development projects (international financial institutions, export credit agencies, etc.) so that they do not take place at the expense of global public goods: environment, health, social, cultural, etc.*

For the preservation of the environment, the common heritage of humanity, the Federation intends in particular :

- *Protect biodiversity (fauna, flora), sites and landscapes, and preserve sensitive territories; (...)*
- *To prevent pollution, nuisances and technological risks (...).*

In defense of citizenship and the right of everyone to enjoy a healthy environment, the Federation works in particular to :

- *To work towards the implementation of a legal framework allowing to sanction those responsible for environmental degradation ("polluter pays" principle) or for the non-respect of human or social rights; (...)*

- *Promote citizens' access to information, the exercise of civic rights and the participation of everyone in decisions concerning them, particularly those relating to the environment and the living environment;*
- *To fight against abusive commercial practices and the production of goods or services that are harmful to humans and the environment*

Pièce n°46 Statutes of Les Amis de la Terre France, art. 2, p. 2 and 3

The approval for environmental protection in the national framework of Friends of the Earth France was renewed for a period of 5 years from 1^{er} January 2018 by the order of December 12, 2018 publishing a list of associations approved for environmental protection in the national framework and is currently being renewed.

- **Oxfam France:**

According to its statutes :

"Oxfam France is a non-partisan and non-denominational international solidarity organization, member of the international confederation Oxfam.

Its purpose is to fight against poverty and its structural causes, inequalities and economic, social and environmental injustices, and to defend fundamental rights, in France and in the world, alone or in partnership.

It states:

"Means. - To achieve its objectives, the association carries out or supports :

actions to defend the individual and collective interests of its members as well as of all citizens".

Pièce n°47 Oxfam France Statutes, Article 2, p. 3

Finally, the Plaintiffs have duly empowered their legal representatives to bring this action (**Pièce n°45, Pièce n°46, Pièce n°47, Pièce n°49**).

The interest and standing of the Plaintiffs are therefore perfectly characterized.

II.1.2. THE APPLICABLE LEGAL FRAMEWORK

II.1.2.1. The general obligation of environmental vigilance

26. Article 1^{er} of the Charter of the Environment introduced by the constitutional law n° 2005-205 of 1^{er} March 2005 provides that:

"Everyone has the right to live in a balanced, healthy environment."

Section 2 then provides that:

"Every person has the duty to take part in the preservation and improvement of the environment."

In the light of these two articles, the Constitutional Council deduced the existence of an obligation of vigilance in environmental matters:

"that respect for the rights and duties set out in general terms by these articles is imposed not only on the public authorities and the administrative authorities in their respective fields of competence but also on all persons; that it follows from these provisions that everyone is bound by an obligation of vigilance with regard to environmental damage that may result from his activity".

Constitutional Council, Decision n° 2011-116 QPC " Michel Z. " of April 8, 2011

This solution, which applies to both public and private persons, was reaffirmed in Decision No. 2017-672 QPC of November 10, 2017 "Association Entre Seine et Brotonne et al."

Constitutional Council, Decision No. 2017-672 QPC of November 10, 2017

According to Franck Terrier, former President of the Third Civil Chamber of the Court of Cassation,

"As interpreted by the decision of the Constitutional Council of April 8, 2011, the Charter imposes not only on the public authorities and the administrative authorities but also on every person an obligation of vigilance, each being required to answer for the environmental damage that may result from his or her activity, and the right to sue for damages may not be restricted under conditions that distort its scope. Once these principles have been established, it is up to the judges to give them life."

L. Neyret and G. J. Martin (dir.), Nomenclature des préjudices environnementaux, LGDJ 2012, pref. F. Terrier, p. 2.

According to the doctrine, the implementation of the obligation of environmental vigilance as it results from the case law of the Constitutional Council "does not require the intervention of the legislator. Thus, the judge (...) could directly sanction the violation of the obligation of environmental vigilance (...) as allowing the liability of the person through whose fault damage is caused to the environment to be engaged". It should be considered that the obligation of environmental vigilance, and the sanction of its violation, are imposed "not only in the event of damage to the environment (...) but also in the event of risk of damage"³⁴.

27. The notion of vigilance implies a duty of prevention and mitigation if a risk of harm is known or reasonably foreseeable.

³⁴ K. FOUCHER, "La première application de la Charte de l'environnement par le Conseil constitutionnel dans le cadre de la QPC : de l'inédit, de l'inutile et du flou", A.J.D.A., 2011, p. 1158.

The obligation of environmental vigilance is sanctioned according to the rules of civil liability under common law, giving the right to compensation "*not only in the event of damage to the environment (...) but also in the event of risk of damage*". This perspective is perfectly consistent with article 1252 of the Civil Code, which provides that :

"Independently of the compensation for the ecological damage, the judge, seized of a request to this effect by a person mentioned in article 1248, may prescribe reasonable measures to prevent or stop the damage."

This obligation of environmental vigilance is also part of the following positive law framework of common law liability, in particular with regard to :

- the provisions of the Charter of the Environment, which has constitutional value, in particular the principles of prevention and precaution that it sets out;
- the principles of prevention and precaution enshrined in Article L.110-1 of the Environmental Code;
- the jurisprudence of the Court of Cassation in order to hold a company liable on the basis of a lack of vigilance;

28. In particular, companies' approach to their contribution to climate change must be in line with these principles of prevention and precaution:

The principle of prevention is enshrined in Article 3 of the Charter of the Environment: "*All persons must, under the conditions defined by law, prevent the damage they are likely to cause to the environment or, failing that, limit the consequences*".

The precautionary principle is enshrined in Article 5 of the Charter: "*When the occurrence of damage, although uncertain in the light of scientific knowledge, could seriously and irreversibly affect the environment, the public authorities shall ensure, by application of the precautionary principle and within their areas of competence, the implementation of risk assessment procedures and the adoption of provisional and proportionate measures in order to prevent the occurrence of damage*".

Article L. 110-1-II of the Environmental Code states:

"II. - Their knowledge, protection, enhancement, restoration, rehabilitation, management, preservation of their capacity to evolve and safeguarding of the services they provide are of general interest and contribute to the objective of sustainable development, which aims to satisfy the development needs and health of present generations without compromising the ability of future generations to meet their own needs. They are inspired, within the framework of the laws that define their scope, by the following principles:

1° The precautionary principle, according to which the absence of certainty, given the scientific and technical knowledge of the moment, must not delay the adoption of effective and proportionate measures to prevent a risk of serious and irreversible damage to the environment at an economically acceptable cost;

2° The principle of preventive action and correction, as a priority at the source, of environmental damage, using the best available techniques at an economically acceptable cost. This principle implies avoiding damage to biodiversity and the services it provides; failing that, reducing the extent of such damage; and finally, compensating for damage that could not be avoided or reduced, taking into account the species, natural habitats and ecological functions affected;
This principle must aim for no net loss of biodiversity, or even a gain in biodiversity;"

It is also recalled that the fight against climate change is among the objectives of sustainable development, as indicated in II, and that "*public and private persons must, in all their activities, comply with the same requirements*" under Article L. 110-2 of the same code.

This has two consequences:

- respect for the precautionary principle requires companies to adopt the most prudent measures **and to consider the most severe hypotheses of damage, even when they are affected by relative uncertainty, in order to prevent the occurrence of serious and irreversible risks, taking into account existing scientific and technical knowledge;**

As will be shown below, the precautionary principle in climate matters requires considering a precautionary carbon budget and taking into account the climate trajectories with the least risk, providing the greatest probability of limiting global warming within the objective of the Paris Agreement. These are the "1.5°C no-exceedance or minimal-exceedance" trajectories³⁵ such as the IEA's NZE (**Pièce n°10p. 49**).³⁶

- the principle of prevention requires a preventive approach for certain risks, itself specifically required by the duty of care law, which translates the obligation for companies to act as far upstream as possible in order to prevent damage to the environment and to people, i.e., to aim for the climate hypotheses of a 1.5°C trajectory limiting damage to ecosystems to a maximum.

29. According to the jurisprudence of the Court of Cassation³⁷, the notion of vigilance implies a duty of prevention and mitigation if a risk of damage is known or reasonably foreseeable.

The obligation of environmental vigilance therefore implies a duty to prevent known risks, but also a duty of caution against uncertain risks.

The Court of Cassation has already had occasion to interpret the translation of the precautionary principle for a private company, for example in the so-called "Distilbene" cases: *"the precautionary principle, which requires anticipating and preventing the risks of a product, presupposes a context of scientific uncertainty and sufficient scientific representation of the potential risks"*³⁸.

However, given the predictability of the worsening of global warming, the risks involved and the significant damage associated with it, everyone is fully obliged to reduce their impact on global warming in proportion to their means.

Above all, the preventive measures must be adapted to the seriousness and importance of the risk of damage incurred in the light of the scientific elements available³⁹.

In addition to this general environmental duty of care with constitutional foundations, there are special obligations of a legislative nature, including the provisions of the Commercial Code resulting from Law No. 2017-399 of March 27, 2017 on the duty of care of parent companies and ordering companies.

II.1.2.2. The duty of care provided for in Article L.225-102-4 of the French Commercial Code

³⁵ According to the IPCC 1.5°C Special Report, p. 26 (Box RID.1): "trajectories that project, based on current knowledge, at least a 50% probability of limiting global warming to no more than 1.5°C are 'no-exceedance' trajectories; those that project a limitation of warming to no more than 1.6°C, followed by a return to 1.5°C warming by 2100 at the latest are 'small overshoot' trajectories; while those that project warming above 1.6°C, but returning to 1.5°C by 2100 at the latest are 'large overshoot' trajectories."

³⁶ IEA, "Net Zero by 2050, A Roadmap for the Global Energy Sector," May 2021, p. 49: "The NZE aims to ensure that energy-related and industrial process CO₂ emissions to 2030 are in line with reductions in 1.5°C scenarios with no or low or limited temperature overshoot assessed in the IPCC's 1.5°C special report on global warming." ("The NZE aims to ensure that energy-related and industrial process CO₂ emissions to 2030 are in line with reductions in 1.5°C scenarios with no or low or limited temperature overshoot assessed in the IPCC in its Special Report on Global Warming of 1.5°C.")

³⁷ Cass. 1^{re} civ., March 7, 2006 [2 judgments], pourvoi n° 04-16.179 and n° 04-16.180, Bull. civ. I, n° 142 and n° 143; RTD civ. 2006, p. 565, obs. P. Jourdain; 1^{re} esp, D. 2006, IR p. 812, and the NDLR: "1 / that the precautionary principle, which requires anticipating and preventing the risks of a product, presupposes a context of scientific uncertainty and sufficient scientific representation of the potential risks; [...] the company UCB Pharma, which, in the face of these known and scientifically identified risks, did not take any measures, which it should have done even in the presence of discordant results as to the advantages and disadvantages of the product, failed in its duty of vigilance".

³⁸ *Ibid.*

³⁹ On the obligation of vigilance under French law, see A. Gossement, "Sur la responsabilité civile du laboratoire pharmaceutique à raison des médicaments commercialisés", D. 2004, p. 2071).

30. The purpose of the Duty of Vigilance Act is to strengthen the obligations of French companies to prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment resulting from their activities, and to avoid the occurrence of related damage.

This law introduced two new provisions which are codified in articles L. 225-102-4 and 5 of the French Commercial Code. The first of these articles provides that:

" 1. Any company that employs, at the close of two consecutive fiscal years, at least five thousand employees within its own company and in its direct or indirect subsidiaries whose registered office is located on French territory, or at least ten thousand employees within its own company and in its direct or indirect subsidiaries whose registered office is located on French territory or abroad, shall establish and effectively implement a vigilance plan. (...)

The plan includes reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment, resulting from the activities of the company and those of the companies it controls within the meaning of II of Article L. 233-16, directly or indirectly, as well as from the activities of subcontractors or suppliers with which it has an established business relationship, when these activities are related to that relationship.

The plan is intended to be drawn up in association with society's stakeholders, if necessary within the framework of multi-stakeholder initiatives within sectors or on a territorial scale. It includes the following measures:

1° A risk map to identify, analyze and prioritize risks;

2° Procedures for regular assessment of the situation of subsidiaries, subcontractors or suppliers with whom an established business relationship is maintained, with regard to risk mapping;

(3) Appropriate actions to mitigate risk or prevent serious harm;

4° A mechanism for alerting and collecting reports on the existence or occurrence of risks, established in consultation with the representative trade unions in the said company;

5° A system for monitoring the measures implemented and evaluating their effectiveness. (...)"

The vigilance plan and the report on its effective implementation are made public and included in the report mentioned in Article L. 225-102. (...)"

These provisions establish a duty of care on the part of the companies concerned, which consists of establishing, publishing and effectively implementing a due diligence plan containing measures to identify the risks and prevent serious harm resulting from their activities and value chains.

These provisions call for several observations, both in a general way on the Due Diligence Law (II.1.2.2.1), and specifically concerning reasonable due diligence measures in banking matters (II. 1.2.2.2) and in climate matters (II.1.2.2.3).

II.1.2.2.1. General considerations on Duty of Care Act

31. The Sherpa association has published a reference guide for the application of the duty of care, which takes up the spirit of the Duty of Care Act by specifying the nature of the obligations imposed on companies to effectively implement this obligation.

Pièce n°64 : Sherpa, Reference Guide for Vigilance Plans, 2018

This duty of care engages the civil liability of the company, and these provisions allow any interested person to ask the competent judge to order the company to comply with its obligations or, in the event of damage resulting therefrom, to order it to pay compensation.

32. First of all, it is clear from the provisions of the law that it is an obligation to adopt "appropriate" measures of "reasonable" vigilance and to implement them in an "effective" manner, the judicial authority being competent to assess both the quality and the effectiveness of these measures.

The Reference Guide for Compliance Plans emphasizes the importance of the completeness of risks because "*this clearly distinguishes the [Compliance] Law from mere 'reporting' or 'compliance' obligations*" (Pièce n°64, p. 42).

A. The Duty of Care Act covers the activities of the parent company and its subsidiaries

33. The particularity of this new duty of care lies in its scope, which includes not only the activities of the parent company concerned, but also the activities of its subsidiaries, suppliers and subcontractors with whom a commercial relationship is established, including abroad.

Both BNP Paribas S.A. as the parent company and its subsidiaries are covered by the duty of care.

B. The Due Diligence Act covers financial activities

34. To determine which companies are covered by the law, the law sets a single criterion: it relates to the number of employees. Article L. 225-102-4 I refers to :

"Any company that employs, at the end of two consecutive fiscal years, at least five thousand employees in its own company and in its direct or indirect subsidiaries whose registered office is located in France.

Moreover, this threshold of 5,000 employees is largely exceeded by BNP Paribas, whose head office is in Paris, and its direct and indirect subsidiaries, since the group has nearly 190,000 employees (189,765 Full Time Equivalents at the end of 2021) worldwide, including 54,659 in France (Pièce n°32p. 4 and 647).

35. **The law does not therefore distinguish between sectors of activity covered by the duty of care. All economic activities are covered, including financing and investment activities.**

In fact, BNP Paribas mentions its financing and investment activities in its compliance plan and mentions having implemented measures to exclude certain activities and companies as compliance measures (Pièce n°32p. 644), albeit in a very inadequate manner.

C. The law establishes a civil duty of conduct

36. **The legislator and the Constitutional Council have established that the duty of vigilance is a "new civil obligation".**

In its observations submitted to the Constitutional Council, which was seized *a priori* of the constitutionality of the law, the Government clearly stated that :

"The obligation placed on the companies concerned is (...) not a simple documentary obligation but an obligation of means to implement the vigilance measures provided for by the law and whose content they have defined in light of the risks that their activity may generate. The company must be able to demonstrate that the measures mentioned in the vigilance plan have been implemented.

Pièce n°50 Observations of the Government on the Law on the Duty of Vigilance of Parent Companies and Instructing Companies, JORF n°074 of 28 March 2017, text n°5

Vigilance can thus be understood as:

"the sum of the efforts that the company must make to prevent damage

S. Cossart and M. L. Guislain, Le devoir de vigilance pour les entreprises multinationales, un impératif juridique pour une économie durable, Revue Lamy de droit des affaires, n°104, 2015

37. Any breach of the duty of care - defined as a standard of prudent and diligent behavior as set forth above - gives rise to a civil fault, which may engage the liability of its author and justify a court injunction in the event of non-compliance by the company with its obligations under the duty of care.

In its decision No. 2017-750 DC of March 23, 2017, the Constitutional Council confirmed the civil nature of the duty of vigilance:

"By the contested provisions, the legislator, on the one hand, has introduced a new civil obligation and, on the other hand, has attached to it a sanction having the character of a punishment.

"The vigilance plan is a legally binding unilateral act of a civil nature, as confirmed not only by its purpose but also by the characterization used in the parliamentary work on the law" (Pièce n°44(Exhibit 44, Preliminary order, Nanterre Court, February 11, 2021, RG n°20/00915, p. 7)

The explanatory memorandum of the bill of the deputy Dominique Potier indicated on first reading that the breach of the duty of vigilance constituted a civil fault:

"Since the non-existence of a prevention plan or its insufficiency constitutes a civil fault, the company's liability may be established if it can be proven that the implementation of a prevention measure could have avoided or minimized the damage caused."

Pièce n°58 : House Bill No. 2578, Feb. 11, 2015, p. 12

As the doctrine points out:

"The duty of care, introduced by the proposed legislation, imposes a standard of conduct, the disregard of which establishes civil fault. The duty to act creates a fault of abstention. This standard of conduct will likely be defined in relation to the vigilance practices of other companies. They will have the role of a standard, in other words, an instrument for measuring behavior and situations in terms of normality, as mentioned in the literature.

N. Cuzacq, "Le devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre : Acte II, scène 1", Recueil Dalloz 2015. 1049

38. **This behavioural obligation translates into the obligation to adopt "appropriate" measures of "reasonable" vigilance and to implement them "effectively".**

The company concerned cannot simply publish measures without justifying that they are appropriate and effective in view of the seriousness of the risks and serious harm resulting from its activities and its value chain.

Secondly, because of the reference to tort law, the duty of care constitutes a general standard of conduct towards third parties and the environment, which may give rise to civil liability on the part of the company. These provisions

require the public disclosure of due diligence measures in a "due diligence plan", which constitutes the material basis for this new standard of conduct.

The purpose of the vigilance plan is to make public the mapping of risks and the mitigation and prevention measures taken by the company to enable stakeholders to exercise control and, if necessary, to bring a civil action for liability or compliance, in order to prevent, stop or repair the consequences of damage.

D. The judicial authority alone is competent to assess the reasonableness and appropriateness of due diligence measures and to monitor their effective implementation

39. The parliamentary works, the doctrine and the first judicial decisions agree on this competence which was entrusted to the judge by the legislator.

The parliamentary works note that the power conferred on judges is as much to "*verify the content and quality of the due diligence plan*" as to "*ensure its existence and the seriousness of its implementation*".

Pièce n°51 : Opinion n° 2625 of Mrs. Annick LE LOCH, made on behalf of the Committee on Economic Affairs, tabled on March 10, 2015 - Speech of Mr. Hervé Pellois, p. 23

40. The judge therefore has an important role to play in the **qualitative** evaluation of the measures implemented. The terms "*proper*", "*reasonable*" and "*appropriate*" reflect the need for a standard of behavior that cannot be validated by the company itself but must be subject to external control:

"The "reasonable" character of the due diligence plan opens the door to the judge's assessment of whether the measures put in place are "reasonable" (...). The central question concerns the assessment that the judge will have to make of the reasonableness of the companies' vigilance practices."

G. Delalieux, "Quelques considérations prospectives sur l'effectivité présumée de la loi 'Devoir de vigilance des firmes multinationales'", Le devoir de vigilance, Centre de recherche droit Dauphine et LexisNexis, 2019

41. Secondly, the judge has the same power to assess **the effectiveness of the implementation of** due diligence measures. Members of Parliament have clearly stated their position in this regard:

In civil matters, it is accepted that it is up to the judge to determine whether or not the debtor of an obligation has failed to fulfil his obligation.

According to the parliamentary work, the vigilance plan is intended to be compared "*with the reality on the ground*" in order to "*note, if necessary, the inadequacy of the precautions*" and the judge may be called upon to verify "*its adequacy to the risks identified*".

Pièce n°52 Report No. 2628 of the Law Commission of the National Assembly, p. 35

Moreover, the judge has the same power to assess the effectiveness of the implementation of due diligence measures. Parliamentarians have clearly stated their position in this regard:

"It is also essential that the judge be able to request the implementation of the due diligence plan. If the judge finds that damage is imminent, he or she must be able to ask the parent company to take all possible measures to avoid it - this is the very point of the duty of vigilance, to prevent damage from occurring."

Pièce n°52 Report No. 2628 of the Law Commission of the National Assembly, p. 46

"The vigilance plan provided for in Article 1^{er} risks being no more than a list of good resolutions, a catalog of good practices that are not followed up on; in short, a fine display and communication tool, but with very little effectiveness. This is why we believe it is important to strengthen the tools available to the judge to control the veracity of this plan, and the reality of the actions that will be outlined in it. If large French companies are as virtuous as they claim, what do they have to fear?"

Pièce n°53 : National Assembly session of March 30, 2015 - Ms. Danielle Auroi, Discussion of the articles, p. 27

It is therefore up to the judge to control the effectiveness of the vigilance plan in relation to the objective of preventing breaches:

"The measures constituting the due diligence plan must be "reasonable" but also "effective". By this precision, the legislator shows a real mistrust of an obligation that could remain formal and dead letter. (...) If the criterion of "reasonable" makes it possible to introduce a certain flexibility in the assessment of due diligence, the national judge will have to assess the "effectiveness" of the implementation of the reasonable measures envisaged by the plan. In other words, the judge will not have to limit his assessment to the compliance of the measures envisaged by the Due Diligence Plan with the law, or with the other normative references to which it refers."

L. d'Ambrosio, "Le devoir de vigilance : une innovation juridique entre continuités et ruptures", Revue Droit et Société n° 106, 2020, p. 644 and 645

The need for strict judicial control of the duty of care of ordering companies has been confirmed by an order of the pre-trial judge of the Nanterre judicial court:

"The letter of article L. 225-102-4 of the French Commercial Code reveals that the preservation of human rights and of nature in general cannot be satisfied with the "insurance management" (...) mentioned in the parliamentary works and with the standardization by the market that the presentation of the due diligence plan to the shareholders' meeting induces, but requires a judicial control. And this can only be achieved through strong social control, made possible by the publicity of the due diligence plan and by a loose definition of the interest to act, the action being very widely open."

Pièce n°44 Order for the preparation of the case, Judicial Court of Nanterre, February 11, 2021, RG n°20/00915

42. Contrary to what BNP Paribas alleges in its response of January 24, 2023, it is therefore incorrect to state that the determination of due diligence measures is left to "the discretion of the companies" (Pièce n°38, p. 6).

This response fails to emphasize that it is primarily the judge's responsibility to review the appropriateness and reasonableness of the due diligence measures contained in the plan, which is clearly inferred both from the text of the law itself and from its spirit, as revealed by parliamentary work and the decision of the Constitutional Council.

E. The general interpretative framework applicable to multinational enterprises

- i) The reference made in the preparatory work to the United Nations and OECD Principles , an interpretative framework for French law

43. In order to clarify what is expected of companies subject to the Duty of Care Act and in the absence of case law, it is appropriate to clarify the will of the legislator based in particular on the indications given by the deputies during the parliamentary proceedings.

Indeed, the explanatory memorandum of the February 11, 2015 bill expressly relies on the United Nations Guiding Principles on Business and Human Rights adopted by the United Nations Human Rights Council in June 2011, known as the "Ruggie Principles" (**Pièce n°54**) and the OECD Guidelines for Multinational Enterprises adopted by OECD member countries updated in 2011 (**Pièce n°56**) :

"In accordance with the UN Guiding Principles on Business and Human Rights adopted unanimously by the UN Human Rights Council in June 2011, and in accordance with the OECD Guidelines, the objective of this proposed law is to establish a duty of care for parent companies and ordering companies with respect to their subsidiaries, subcontractors and suppliers."

Pièce n°58 : House Bill No. 2578, Feb. 11, 2015, p. 4

In Report No. 2628 of the Law Commission of the National Assembly, the concept of reasonable measure included in the proposed law is defined by reference to the United Nations Guidelines and the concept of "*due diligence*", which consists of :

"A set of appropriate measures to achieve an objective defined in a national or international standard, to respect a minimum level of prudence in the consideration of an external standard.

Pièce n°52 Report n° 2628 of the Law Commission of the National Assembly, p. 31

According to the rapporteur of the law in the National Assembly, Deputy Dominique Potier:

"International law, i.e., the principles defined by the Organization for Economic Cooperation and Development (OECD) and by the United Nations (UN) in 2011, serves as the basis for what could be called a "code of labor and environmental good conduct" on an international scale."

Pièce n°52 Report No. 2628 of the Law Commission of the National Assembly, p. 49

44. The normative "base" against which a company's reasonable vigilance must be assessed is therefore *at least* constituted by :
- The United Nations Guiding Principles on Business and Human Rights (**Pièce n°54**)not. Principle 13) and its 2012 Interpretative Guide (**Pièce n°55**) ;
 - The OECD Guidelines (2011) (**Pièce n°56**) and the OECD Interpretative Guidance on Due Diligence for Responsible Business Conduct (2018) (**Pièce n°57**).

This normative reference framework - which is universally relevant - makes it possible to specify the scope of the vigilance required of companies and to determine the appropriate actions to prevent risks, both in terms of environmental and human rights violations.

45. **BNP Paribas explicitly refers to these principles and guidelines in several documents.**

In its human rights statement published in 2012, BNP Paribas stated:

"The Global Compact principles, as well as the OECD Guidelines for Multinational Enterprises, serve as a global framework for BNP Paribas to effectively guide its corporate responsibility approach, particularly in terms of protecting fundamental human rights.

"BNP is committed to protecting human rights and respecting internationally recognized standards in this area. The bank will ensure that these rights are respected in all its activities, in all the countries in which it operates, and in all the relationships it has with its employees, its supply chain, its clients and the populations of the countries in which it operates. BNP Paribas supports the guiding principles "Protect; Respect; Remedy" defined by John Ruggie, Special Representative of the UN Secretary General on the issue of human rights and transnational corporations and other business enterprises."

Pièce n°75 BNP Paribas, Human Rights Declaration, 2012, p. 2

In its Charter for Responsible Business Relationships published in 2018, it was noted that:

"BNP Paribas is committed to a number of principles and standards that underpin the way in which the Group conducts its business: (...) the OECD guidelines for multinational enterprises, which are recognized worldwide

Pièce n°76 BNP Paribas, Charter for Responsible Business Relations, 2018

BNP Paribas is thus committed to implementing its duty of care in accordance with the recommendations of the United Nations and the OECD.

ii) The identified impacts or negative effects can be prioritized according to their severity

46. As the commentary on UN Principle 17 makes clear, companies should "assess *actual and potential human rights impacts*" (Pièce n°54, p. 20).

The commentary on Principle 17 allows for some prioritization where value chains are complex (Pièce n°54, p. 21).

As for the OECD's Due Diligence Guide for Responsible Business Conduct, it states that:

"When it is not possible to address all identified negative impacts at the same time, it is recommended that the company prioritize the actions it must take, based on the severity and likelihood of said impacts."

Pièce n°57 OECD Guide to Responsible Business Conduct, 2018, p. 20

He adds:

"The significance of an adverse impact is measured by its probability and severity. The severity of an adverse impact is measured by its magnitude, scale and irreparability.

The concept of magnitude refers to the severity of the negative impact.

Scale refers to the extent of the adverse impact, such as the number of individuals affected or likely to be affected or the extent of environmental damage.

Irreparable character refers to any limitation on the possibility of returning the persons or environment affected by the adverse impact to a situation equivalent to that in which they were before the damage." (Pièce n°57, p. 46)

Thus, the negative impacts as defined by the UN Principles or the negative impacts as defined by the OECD Guidelines can be prioritized according to their likelihood and severity.

iii) The due diligence measures required of the company depend on its involvement in the identified negative impact

➤ **The United Nations principles (the so-called "Ruggie Principles")**

47. Principle 13 of the UN Principles states:

"The responsibility to respect human rights requires companies :

(a) That they avoid or contribute to negative human rights impacts through their own activities, and that they remedy such impacts when they occur;

(b) That they strive to prevent or mitigate adverse human rights impacts that are directly related to their activities, products or services through their business relationships, even if they have not contributed to those impacts" (Pièce n°54, p. 16-17).

As stated in the Interpretative Guide to this Principle 13,

"There are three basic ways in which a company can be involved in a negative human rights impact:

a) It can cause the impact through its own activities;

(b) It can contribute to the impact through its own activities - either directly or through an external entity (government, business, or other);

(c) It may not cause or contribute to the impact, but may be involved because the impact is caused by an entity with which it has a commercial relationship and which is related to its own activities, products or services" (Pièce n°55, p. 17)

The expected actions of the company under each of these assumptions are summarized as follows:

"(a) If a company is likely to cause or contribute to an adverse human rights impact through its activities, it should cease or change the activity that is causing the impact, in order to prevent or mitigate the possibility of the impact occurring or recurring. If an impact does occur, however, the company should actively engage in its remediation, either directly or in collaboration with others (whether courts, government, other involved companies, or other third parties);

(b) If an enterprise is at risk of being involved in an adverse impact solely because the impact is related to its activities, products, or services by virtue of its business relationships, it is not responsible for the impact itself: that responsibility lies with the entity that caused or contributed to it. Therefore, the company does not have to provide redress (although it may decide to do so to protect its reputation or for any other reason). However, it does have a responsibility to use its influence to encourage the entity that caused the impact, or contributed to it, to prevent or mitigate its recurrence. This may amount to working with the entity and/or those in a position to assist." (Pièce n°55, p. 20)

➤ **The OECD Guidelines for Multinational Enterprises**

48. Similarly, the degree of involvement of the company in a negative impact matters in determining how the company should respond to said negative impact.

As the OECD guide states,

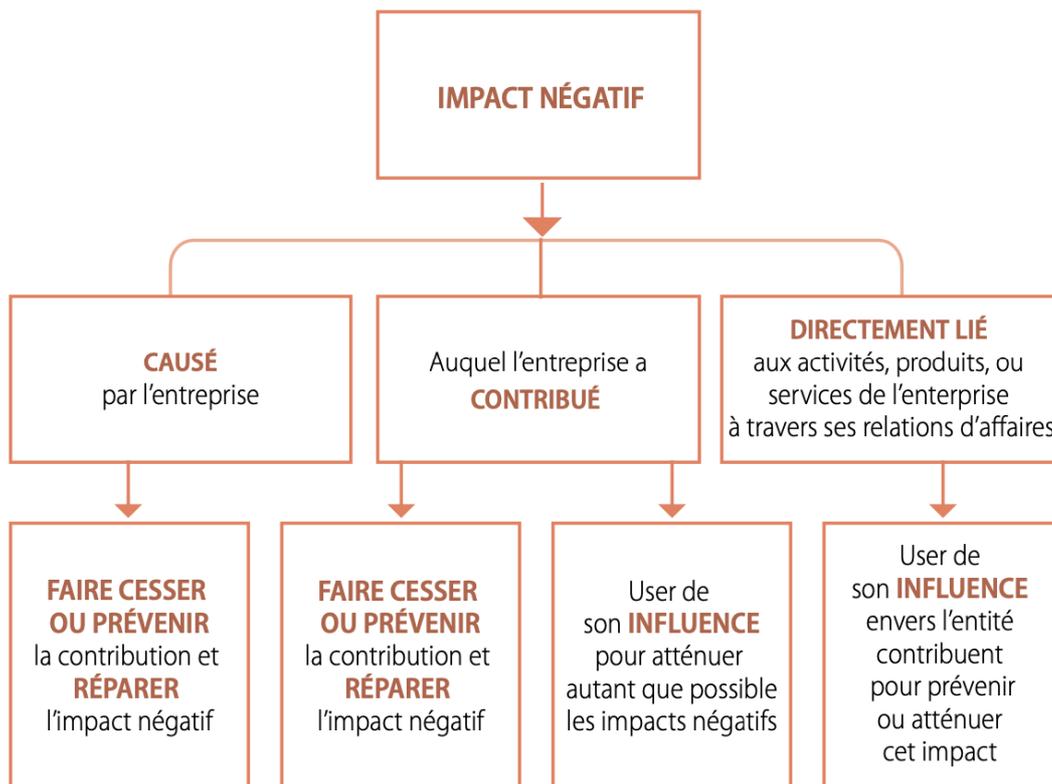
"A company "causes" a negative impact when its activities alone are sufficient to cause the negative impact. (...)

A company "contributes to" an adverse impact if its activities in combination with those of other entities cause the impact, or if its activities have caused, facilitated, or induced another entity to cause the impact. This contribution must be substantial, i.e., it must not be minor or negligible. (...)

Be directly related: the concept of "relatedness" refers to the relationship that can be established between an adverse impact and a company's products, services or activities, through a third party entity (i.e., a business relationship)" (**Pièce n°57**, p. 76-79).

Depending on the degree of involvement of the company in a negative impact, the responses that the company must make are summarized in the diagram below.

SCHÉMA 2. Traiter un impact négatif



Note : Voir OCDE (2011), chapitre IV, pour avoir plus d'explications.

(**Pièce n°57**, p. 80)

- iv) The extent of the measures to be adopted by companies depends on the seriousness of the risks and the size of the company

➤ The severity of the risks

49. UN Principle 14 states that:

*"The corporate responsibility to respect human rights applies to all companies regardless of their size, sector, operating environment, ownership and structure. Nevertheless, the scope and complexity of the ways in which companies fulfill this responsibility may vary depending on these factors and the severity of the adverse human rights impacts" (**Pièce n°54**, p. 21).*

As the interpretative guide to the UN Principles indicates,

"The severity of a potential adverse impact on human rights is the primary factor in determining the scope and complexity of the procedures that a company must put in place to know and demonstrate its respect for human rights. Therefore, the procedures must first and foremost be proportionate to the risks to human rights posed by its activities. (Pièce n°55, p. 21).

The commentary to Principle 14 states that:

"The severity of the impacts will be determined by their magnitude, extent and whether or not they are irreversible" (Pièce n°54, p. 17).

As for the OECD guide, it states that:

"the measures that a company takes to implement its duty of care must be proportionate to the seriousness and likelihood of the risks involved. When the severity and likelihood of a negative impact are high, the scope of the duty of care must be extended" (Pièce n°57, p. 19).

In this respect, it will be stressed that the climate risks and the aggravation of global warming resulting from the continuation of GHG emissions represent a particularly serious and catastrophic danger for humanity, according to the scientific works of the IPCC, in particular those published from 2018 within the special report 1.5°C. Moreover, the risks linked to a global warming higher than 1.5°C impact the whole world, leading to increased risks for the whole of humanity, the consequences of which are considered irremediable by scientists (see below n°70 s.).

In the words of Antonio Guterres, during his speech at the World Economic Forum on January 18, 2023:

"Today, fossil fuel producers and those who support them continue their race to expand production, knowing full well that this economic model is incompatible with human survival" (40).

Pièce n°26 A. Guterres, Speech to the World Economic Forum, January 18, 2023

➤ **The size of the company**

50. The greater the economic capacity of the company, the more intense the duty of care.

As the above-mentioned UN Principle 14 indicates,

"The corporate responsibility to respect human rights applies to all companies regardless of their size, sector, operating environment, ownership and structure. Nevertheless, the scope and complexity of the ways in which companies fulfill this responsibility may vary depending on these factors (...)" (Pièce n°54, p. 17).

Principle 17 also states that:

"Human rights due diligence...will be more or less complex depending on the size of the business enterprise, the risk of serious human rights impacts, and the nature and scope of its activities" (Pièce n°54, p. 20).

The OECD Due Diligence Guide also states that:

⁴⁰ Original quote: "Today, fossil fuel producers and their enablers are still racing to expand production, knowing full well that this business model is inconsistent with human survival."

"the nature and scope of the duty of care may vary depending on factors such as the size of the company (...)" (Pièce n°57, p. 21).

In conclusion, BNP Paribas S.A., which is headquartered in Paris and employs nearly 190,000 employees worldwide and nearly 55,000 employees in France, i.e., far more than the legal threshold of 5,000 employees in France, falls within the scope of the Due Diligence Act codified in Articles L. 225-102-4 and L. 225-102-5 of the French Commercial Code with respect to its financing and investment activities.

Also covered by the Duty of Care Act are all of its controlled group companies, within the meaning of the Act, including its main subsidiaries involved in financing, investing or managing assets related to fossil fuels, such as :

- the insurer BNP Paribas Cardif;
- the asset manager and institutional investor BNP Paribas AM;
- BNP Paribas Corporate & Institutional Banking (CIB), a division of BNP Paribas S.A. providing financing and strategic advisory services to corporate and institutional investors, capital markets investment and financing, and securities custody.

As a result, BNP Paribas must establish, effectively implement and publish a compliance plan in accordance with the requirements of article L.225-102-4 of the French Commercial Code.

Under this duty of care, BNP Paribas is required to adopt "*appropriate*" and "*reasonable*" due diligence measures, to implement them "*effectively*", and to report on the effectiveness of these measures in preventing and limiting the risks of serious harm resulting from its activities.

It is the responsibility of the judicial authority to monitor the reasonableness and appropriateness of due diligence measures and to control their effective implementation.

In order to ensure this control, reference should be made to the general interpretative framework to which the legislator referred during the preparatory work, namely the United Nations and OECD Principles on Due Diligence. These principles state that:

- If the identified impacts or negative effects can be prioritized, they must be prioritized according to their severity;
- The due diligence measures required of the company depend on its involvement in the identified negative impact or incidence;
- The extent of the measures to be adopted by companies depends on the seriousness of the risks and the size of the company.

In light of the parliamentary work on the Duty of Vigilance Act and the recommendations contained in the United Nations and OECD Principles, the assessment of the "reasonable" nature of the vigilance expected of BNP Paribas under the French Duty of Vigilance Act must therefore be based on the following criteria

- BNP Paribas' contribution through its direct and indirect financial support (financing and investment) for activities that emit GHGs;
- of the seriousness of climate risks and the knowledge of the high probability of the occurrence of dangerous global warming for humanity;
- the systemic size of 1^{ère} European bank⁴¹, the market power and the colossal financial capacity of such a banking group to take measures to prevent and remediate climate risks;
- the irreversible nature of certain risks linked to a 1.5°C climate warming.

⁴¹ See the BNP Paribas website: "BNP Paribas is the leading bank in the European Union" (<https://group.bnpparibas/decouvrez-le-groupe/nous-connaitre>).

II.1.2.2.2. Specific considerations for the exercise of due diligence by banking and financial institutions

51. To clarify what is expected of banking and financial institutions under their duty of care, reference should be made to the clarifications and specific guides on the duty of care of banking and financial institutions for their financing and investment activities.

These activities have been the subject of particularly precise and specific recommendations by both the UN and the OECD, notably because of the very risky nature of these activities - which are, moreover, at the origin of the creation of the notion of "diligence", even historically in the sense of French jurisprudence⁴².

The essential and decisive role that can be played by banking and financial institutions in the exercise of their vigilance to prevent, remedy and repair damage and at least influence their clients to limit the impact of the activities they support has been very clearly underlined by the OECD:

"Financial institutions play a key role in contributing to societal and development goals, including the Sustainable Development Goals (SDGs) and the Paris Agreement goals, by enabling the provision of finance towards key services, infrastructure, technology and quality jobs the provision of finance towards key services, infrastructure, technology and quality jobs.

By promoting responsible business conduct between themselves and their clients and implementing due diligence processes, financial institutions can also avoid financing projects or assets that may be associated with harm to workers, communities or the environment. In this regard, one of the most powerful contributions companies can make to sustainable development is to integrate CBR into their operations and value chains through robust due diligence processes.

*By conducting CBR due diligence, financial institutions can ensure that funding goes to projects and companies that behave responsibly and ultimately benefit people and the planet."*⁴³

Pièce n°62OECD, "Responsible business conduct due diligence for Project and Asset Finance transactions", Oct. 2022, p. 6

First, the standard of care set forth in Principle 13 of the UN *Principles on Business and Human Rights*, was clarified for "corporate and investment banks" in an opinion by the Office of the UN High Commissioner for Human Rights published on June 12, 2017.

Pièce n°59 : OHCHR, "OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on

⁴² V. L. Smit et al, EU supply chain study, Study on due diligence requirements through the supply chain. Final report, British Institute of International and Comparative Law, Civic Consulting, Directorate-General for Justice and Consumers (European Commission), LSE, 2020, p. 158: the concept of "due diligence" comes from Roman law and the standard of "bon père de famille". The duty of due diligence on the part of banks has already been widely enshrined in French law, in particular in the Monetary and Financial Code, which imposes a duty of vigilance on banks with regard to their customers in the fight against money laundering and terrorist financing (Articles L. 561-1 to L. 561-50 of the Monetary and Financial Code).

⁴³ Original and complete quote: *"Financial institutions play a key role in contributing to societal and development objectives, including the Sustainable Development Goals (SDGs) and the objectives of the Paris Agreement, through enabling provision of financing towards key services, infrastructure, technology and enabling quality jobs. Through promoting responsible business conduct (RBC) amongst themselves, their clients and undertaking due diligence processes, financial institutions can also avoid financing projects or assets that may be associated with harm to workers, communities or the environment. In this respect, one of the most powerful contributions business can make towards sustainable development is to embed RBC in their activities and across their value chains through strong due diligence processes. By carrying out RBC due diligence, financial institutions can ensure that financing flows to projects and companies that behave responsibly and ultimately benefit people and the planet.*

Business and Human Rights in the context of the banking sector," June 12, 2017, p. 2, note 3

Second, the OECD has adopted three specific guides for banking and financial actors:

➤ Regarding financing activities :

- The 2019 OECD Guide to Banking Sector Due Diligence on Financing Activities (General Lending and Securities Issuance) (hereinafter, "**OECD General Finance Guide**").

Pièce n°60 : OECD, "Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises," October 29, 2019

- The October 2022 OECD Guide to Due Diligence in Project and Asset Finance (the "**OECD Project Finance Guide**").

Pièce n°62 OECD, "Responsible business conduct due diligence for Project and Asset Finance transactions", Oct. 2022

The financing activities covered are defined in the Annexes to the OECD Guides. They include loans "*for general corporate purposes, such as day-to-day business expenditures and investments,*" possibly through "*syndicated loans issued by a group of lenders,*" bond and equity issues orchestrated by investment banks (**Pièce n°60**Appendix B, pp. 69-72⁴⁴) and project and asset financing (**Pièce n°62**Appendix B, p. 69) (see *above* definition of the term "**Financing**").

➤ Concerning investment activities :

- The 2017 OECD guide on due diligence for institutional investors (hereinafter, the "**OECD Investment Guide**").

Pièce n°61 : OECD, "Responsible business conduct for institutional investors Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises," 2017

The investment activities covered are defined in the Annex to the OECD Guide, which distinguishes the different asset classes covered by the Guide: these include listed equities, corporate bonds (debt or loans), private equity (shares in unlisted companies), infrastructure investment (unlisted funds investing in assets such as airports, roads or renewable energy facilities, or direct investments in such assets), real estate (unlisted real estate investment trusts, or direct investments in real estate) (see *supra* no.2definition of "**Investment**") (**Pièce n°61**p. 8 and Appendix 3, pp. 57-61).

Together, these texts make it possible to determine the due diligence measures that can be expected of a bank in its financing of activities or clients with high climate risks and in its investment activities.

A. Elements common to all financial activities

⁴⁴ Original and complete quote: "*The type of transactions covered by this paper are: General purpose loans, and underwriting securities. Companies often raise money for general purposes, such as day-to-day corporate expenditure and investments. (...) A common mode of providing general-purpose loans is through syndicated loans. (...) Securities underwriting is the process by which investment banks typically raise capital from investors on behalf of corporations or other organizations, such as governmental entities. The investment bank acts as matchmaker. Investment banks will often compete to be awarded underwriting deals. The client selects a lead manager and co-managers. The banks will then work closely with the client towards the successful issuance of the security (debt or equity).*"

- i) A bank must include in the scope of its due diligence the negative impacts caused by the companies it finances or invests in

52. The Office of the United Nations High Commissioner for Human Rights has clarified that, in applying Principle 13 of the UN Principles to the banking sector, banks' own activities should be interpreted to include:

"Actions and decisions (including omissions) involving third parties, such as providing financial products and services to customers" (Pièce n°59p. 4,).⁴⁵

The 2019 OECD General Corporate Finance Guide addresses *"performing due diligence with respect to adverse impacts associated with a bank's customer's activities"* (Pièce n°60p. 8,).⁴⁶

The 2017 OECD Investment Guidance addresses *"performing due diligence on negative impacts associated with investee companies"* (Pièce n°61p. 8,).⁴⁷

Thus, the activities of the companies that a bank finances or in which it invests are included in the scope of its due diligence.

53. **Incidentally, BNP Paribas itself admitted as much in 2016:**

"We must prevent the risks of human rights violations in the clients we finance".

Pièce n°77 : Dec. 13, 2016 statement, "BNP Paribas reaffirms its commitment to human rights," from BNP Paribas website.⁴⁸

- ii) The analysis of risks and the measures expected of the bank depend on the severity of the risks and its size

54. For the Office of the United Nations High Commissioner for Human Rights :

"The complexity of a bank's human rights due diligence processes depends on the size of the bank, the nature and context of its operations, and the severity of the bank's potential adverse human rights impacts. The severity of the potential impacts is the most important factor in determining the scope and complexity of the due diligence process. The number and type of a bank's clients (existing and potential), its financial products and services, and the countries in which its clients are located and operate all influence the complexity of a bank's risk profile and the severity of potential human rights risks associated with its operations and client relationships. The more complex a bank's portfolio, the more sophisticated its systems will need to be to ensure that it identifies and addresses relevant risks, and the more detailed its human rights due diligence processes will need to be with respect to specific clients or transactions."⁴⁹

Pièce n°59, p. 4

⁴⁵ Original quote: "A bank's 'own activities' in this context includes actions and decisions (including omissions) involving third parties, such as providing financial products and services to clients.

⁴⁶ Original quote: "this paper focuses on carrying out due diligence with respect to adverse impacts associated with a bank's client's activities".

⁴⁷ Original quote: "this paper focuses on carrying out due diligence with respect to adverse impacts associated with investee companies.

⁴⁸ <https://group.bnpparibas/actualite/bnp-paribas-reaffirme-engagement-faveur-droits-homme>.

⁴⁹ Original quote: "The complexity of a bank's human rights due diligence processes depend on the size of the bank, the nature and context of its operations and the severity of the bank's potential adverse human rights impacts. Severity of potential impacts is the most important factor in determining the scale and complexity of the due diligence process. The number and types of a bank's clients (existing and prospective), its financial products and services, and the countries in which its clients are located and operate in, will all influence the complexity of a bank's risk picture and the severity of the potential human rights risks associated with its activities and client relationships. The more complex a bank's portfolio, the more sophisticated its systems would need to be to make sure that it identifies and addresses relevant risks, and the more detailed its human rights due diligence processes would need to be with respect to particular clients or transactions.

Thus, a bank's efforts must be increased in the presence of such serious risks to the environment and human rights as those caused by global warming in excess of 1.5°C.

Moreover, the more clients and activities a bank has, as is the case with BNP Paribas, the more sophisticated and detailed its due diligence processes are expected to be.

While it is possible for banks to prioritize their due diligence efforts, in accordance with the UN Guidelines (see above, no. 46), it is not possible to prioritize the due diligence efforts of banks.46), a **detailed analysis** should be conducted **for high-risk clients or transactions**:

"A bank's human rights policies and systems should be developed to provide a minimum level of control for all types of activities, with more detailed analysis preferred for high-risk clients or transactions. To the extent possible, a bank should first develop a picture of its overall risks, including areas (e.g., business/sector, relationship/client, country) that may present the most serious risks, and then prioritize those areas for further analysis." (free translation)⁵⁰

Pièce n°59, p. 4

55. In the OECD General Finance Guide, while the exercise of due diligence must focus on the company in general, the bank is expected to take into account the impact of projects developed when they are sources of negative impacts on the environment and/or human rights, particularly when these projects present serious risks:

"when a bank identifies potentially severe adverse impacts related to a specific asset, subsidiaries or projects, based on the geographic, sector or corporate risk profile, a more detailed project-level assessment for that specific asset or project may be triggered" (⁵¹)

Even when providing general financing, the bank must therefore take into account the negative impacts of projects specific to the sector of activity of the financed company.

It is therefore all banking and financial activities that fall within the scope of activities covered by due diligence measures and which are the subject of precise instructions adopted by the UN and the OECD concerning the nature of due diligence, the adapted and reasonable character of the measures to be implemented by multinationals in consideration of the activity in question and the resulting negative impact.

B. Specificity of the duty of care for financing activities

- i) All financing activities (general and project financing) are covered

56. Released in 2019, **the OECD General Finance Guide is intended for banks and other financial institutions in implementing the recommendations of the OECD Guidelines in their general corporate lending and securities underwriting activities (Pièce n°60, p. 7, 69-71).**

As the Guide explains:

"general purpose lending and securities underwriting transactions generally occur at the corporate level, i.e., the bank provides financing or underwriting services that support the general

⁵⁰ Original quote: "A bank's human rights policies and systems should be developed with an aim to provide a minimum level of screening for all types of activities, with the more detailed analysis prioritized for high-risk clients or transactions. Where possible, a bank would be expected to first develop an understanding of its overall risk picture, including which areas (e.g. activities/sectors, relationships/clients, countries) are likely to pose the most severe risks, and then to prioritize those areas for more detailed analysis.

⁵¹ Original quote: "where a bank identifies potentially severe adverse RBC impacts related to a specific asset, subsidiaries, or projects, based on geographic, sectoral, or company risk profile, a more detailed project level assessment for that specific asset or project may be triggered.

operations or expansion of a company, not a specific project or asset (such as a power plant or infrastructure project)" (Pièce n°60p. 38,)⁵²

The OECD Project Finance Guide specifically addresses due diligence in project and asset finance (Pièce n°62) with specific provisions for the following activities:

"- project financing (including project-related loans and bridge loans related to a specific project) and - asset financing, including: o machinery and equipment financing; o transportation financing" (Pièce n°62Exhibit 62, Appendix B, p. 69,).⁵³

All financing activities are therefore covered by the duty of care.

ii) Measures expected of banks in the context of their financing activities

57. The OECD General Finance Guide reminds us that, like any company, a bank can be involved in negative impacts in three different ways that call for special vigilance measures (Pièce n°60, p. 42) :

- If the bank **caused** the negative impact (assumption a), it must stop and repair it.
- If the bank has **contributed** or could contribute to the negative impact through its activities or those of its clients (assumption b), **it must contribute to the repair of the damage if it is proven, cease and prevent its contribution** in addition to using its power of influence over its client to prevent and mitigate the negative impact caused by the client.
- If the bank **is directly involved** in a negative impact caused by the activity of one of its clients (assumption c), **it must use its power of influence with its client to prevent and mitigate the impact.**

While in many cases the impacts caused by a client will be, in the first instance, "directly related" to the bank's financing (assumption c), the bank may also, depending on the circumstances, be considered to have contributed in its own right (assumption b) to the negative impact. The Guide specifies the conditions under which this is the case:

"When an impact occurs, the determination of a bank's substantial (not minor or insignificant) contribution to that impact can be based on an analysis of the following highly interconnected factors:

- *The extent to which the bank's activities increased the risk of the impact occurring by facilitating or inducing a customer to cause an adverse impact;*
- *The degree of predictability of impact;*
- *The extent to which the measures adopted by the bank have effectively mitigated or reduced the risk of this impact occurring."* (free translation)⁵⁴

Pièce n°60pp. 44-45

In this case, according to the OECD Principles, the bank must stop and prevent its contribution in addition to using its power of influence over its client to prevent and mitigate the negative impact it causes.

To this end, the OECD General Finance Guide contains a long list of practical actions for banks to implement in order to stop, prevent and mitigate the negative impacts observed:

⁵² Original quote: "General purpose loans and securities underwriting transactions usually take place at the corporate level, i.e. the bank provides finance or underwriting services which support the general operations or the expansion of a company, not to a specific project or asset (such as a power plant or an infrastructure project).

⁵³ Quote: "Project finance (including project related loans and bridge loans related to a specific project) and // Asset finance, including: o Machinery and equipment finance o Transport finance".

⁵⁴ Original quote: "Where an impact has occurred, a determination of whether a bank substantially contributed to that impact (i.e. not a minor or trivial contribution) can be based on an analysis of the below highly interrelated factors:

- *The degree to which the bank's activities increased the risk of the impact occurring by facilitating or incentivizing a client to cause an adverse impact;*
- *The degree of foreseeability of the impact;*

The degree to which actions taken by the bank actually mitigated or decreased the risk of that impact.

"General approaches to prevention may include:

- The definition of exclusionary criteria that prohibit the provision of a financial service to businesses in specific circumstances or for specific clients. (...)

Appropriate responses once actual or potential negative impacts have been identified may include: (...)

- To terminate or suspend the provision of financial services, in accordance with the contractual terms, or to raise the credible prospect of doing so. (...)
- Consider not engaging in future business opportunities with the customer (as an additional measure or as an alternative to terminating the customer relationship when immediate termination is not possible or would result in severe negative impacts to impacted stakeholders)." (free translation)⁵⁵

Pièce n°60, p. 47

In practice, BNP Paribas recognizes the relevance of this due diligence principle. It has adopted various sectoral exclusion policies, based on its assessment of certain negative impacts (**Pièce n°68, Pièce n°69, Pièce n°70, Pièce n°71**). However, these measures are still far from meeting the requirements of the UN and OECD Guidelines on Climate Change, as will be demonstrated (see *below*, n° 85).85 s.).

Thus, in the sense of the OECD Principles, the exercise of due diligence by a banking actor providing loans and financial services can be summarized as follows:

- When a bank **contributes to** the negative impact, **it must contribute to the repair of the damage if it is proven, cease and prevent its contribution** in addition to using its power of influence over its client to prevent and mitigate the negative impact caused by the client. Several types of measures are expected from them, which can go as far as the exclusion of certain activities or the cessation of the provision of financial services.

- If the bank **is directly involved** in the negative impact caused by the activity of one of its clients, **it must use its power of influence with its client to prevent and mitigate said impact**, and disengage if it fails, after a reasonable period of time.

In the context of the application of the law on due diligence, such measures may constitute reasonable vigilance measures expected of a bank in the context of its financing activities.

C. Specificity of the duty of care for investment activities

i) The investment activities of asset managers and asset holders are covered

58. Released in 2017, the OECD Investment Guide targets *institutional investment managers and asset owners* (**Pièce n°61**pp. 3, 8 and 53-56).

The OECD Investment Guidance "*identifies key actions for asset managers and asset holders to implement at each stage of the due diligence process*" (**Pièce n°61**p. 3,).⁵⁶

The BNP Paribas Group, for its asset management activities of the CIB division of BNP Paribas S.A., and for the activities of its subsidiaries BNP Paribas AM and Cardif, are included in the scope of this specific OECD

⁵⁵ Original Citation: "General approaches to prevention may include:

- *Defining exclusionary criteria that prohibit the provision of a financial service to companies under specific circumstances or for specific clients. (...)*

Appropriate responses once actual or potential adverse impacts have been identified may include: (...)

- *Terminating or suspending the provision of financial services, in accordance with contract clauses, or raising the credible prospect of doing so.*
- *Considering not engaging in future business opportunities with the client (as an additional measure or as an alternative to terminating the client relationship when an immediate termination is not possible or would cause severe adverse impacts to impacted stakeholders)."*

⁵⁶ Original quote: "*The paper identifies key actions for asset managers and asset owners under each step of the due diligence process (...)*".

"Institutional Investor" guide. It should also be noted that BNP Paribas AM is a member of the Institutional Investors Group on Climate Change (IIGCC).

The Group should therefore apply it as an external standard for its own and third-party asset management activities.

ii) Measures expected of banks in the context of their investment activities

59. In accordance with the OECD Guidelines (see *supra*, no. 48), investors can "contribute to" - or be "directly linked to" - the negative impacts caused by the activity of the companies in which they invest.

The contribution assumptions are limited to cases where investors have significant managerial control over a company:

"When companies cause or contribute to negative impacts, they are expected to remediate them. [... Remediation is an expectation in situations where a company causes or contributes to negative impacts. In some cases, investors may contribute to the impacts caused by the companies in which they invest and may be required to remediate. These situations may arise when investors have significant managerial control over a company, for example, in some partnerships." (Pièce n°61p. 20,)⁵⁷

In most cases, however, investors are minorities in terms of shareholding and/or company ownership and do not "contribute" to the negative impacts caused by the companies in which they invest within the meaning of the OECD Guidelines. Investors are, however, "directly linked" to these impacts. They are then expected to ask the investee companies to prevent and mitigate these negative impacts by exercising their influence:

"in the context of negative impacts arising from investment recipient companies, investors in most cases will not cause or contribute to the negative impact, but will only be directly linked to it. Therefore, investors are not expected to provide a remedy, but should seek to encourage the investee company to do so as part of their prevention and mitigation responsibility, based on prioritization" (Pièce n°61p. 20,⁵⁸).

Assuming that investors are only "directly linked" to the identified negative impacts, "they are expected to strengthen and exert their influence to the extent possible in order to induce the underlying companies to take action to prevent and mitigate the negative impacts" (pp. 35-36).⁵⁹

In some cases, divestment may be appropriate:

"According to the OECD Guidelines, divestment may be an appropriate response once adverse impacts have been identified where mitigation attempts have failed, where the investor considers mitigation unfeasible, where the investor's policy requires exclusion, or simply because of the severity of the adverse impact. This may be the case if the investor has limited influence or has failed to prevent or mitigate adverse impacts after an extended period of increasing engagement.

Factors to consider in deciding whether divestment is an appropriate response include: the investor's influence over the company; the criticality of the relationship to the investor; the severity of the impact; and whether terminating the relationship with the company would result in adverse impacts. This decision

⁵⁷ Original quote: "Under the OECD Guidelines where enterprises are causing or contributing to adverse impacts they are expected to address those impacts. (...) Remediation is an expectation in situations where an enterprise causes or contributes to adverse impacts. In some instances investors may be contributing to impacts caused by their investee companies and may be responsible for remediation. These situations could arise where investors wield significant managerial control over a company, for example, in certain General Partnerships.

⁵⁸ Original quote: "(...) in the context of adverse impacts arising from investee companies, investors will in most instances not cause or contribute to, but only be directly linked to the adverse impact. As a result investors would not be expected to provide remedy, but they should seek to encourage the investee company to do so as a component of their responsibility to seek to prevent and mitigate, based on prioritisation (see also Sections 1.3 and 2.5).

⁵⁹ Original quote: "Investors are expected to build and exert their leverage to the extent possible to influence their underlying companies to take action to prevent and mitigate adverse impacts where risks arise.

will also depend on the nature of the asset class and strategy and whether divestment is a reasonable decision under the applicable fiduciary duty or prudent investment rules.

(...)

According to the OECD Guidelines, divestment should, in most cases, be a last resort or reserved for the most severe negative impacts. However, in some cases, debarment may be a first response to negative impacts. For example, some investment institutions have debarment policies for highly harmful industries or products or those with potential systemic negative impacts." (free translation)⁶⁰

Pièce n°61, p. 39-40,

The United Nations Principles for Responsible Investment (hereinafter "UN-PRI") also contemplates divestment as the appropriate action when other measures to engage the company in decarbonization have been exercised without success (Pièce n°63 UN PRI, "Discussing divestment, Developing an approach when pursuing sustainability outcomes in listed equity," 2021). The report states that certain assumptions favor divestment, such as when the company does not have "opportunities to transition to a sustainable business model" (⁶¹) or "investors have little influence, such as a controlled company or lack of legal recourse" (⁶²) (Pièce n°63 Table 1, p. 11).

In fact, BNP Paribas recognizes the relevance of this principle of diligence in practice. It implements this type of measure itself, **even though it is very inadequate, as will be shown**, in its sectoral policies for activities that the bank considers to be at risk, namely, in the area of climate change, coal-fired electricity generation (Pièce n°68), the mining industry (Pièce n°69) and non-conventional oil and gas (Pièce n°70).

In any event, "if the investor chooses to continue the relationship, the investor must continue to account for its ongoing risk mitigation efforts and be aware of the reputational, financial, or legal risks associated with continuing the relationship" (Pièce n°61 Exhibit #61, p. 36,⁶³; see also p. 39).

Thus, under the OECD Guidelines, an investor's due diligence consists of:

- where the investor contributes to negative impacts through its investment activities, i.e. in the case of controlled investments, prevent and remedy such impacts;
- where the investor is only "directly connected" to the negative impacts caused by the companies in which it invests, **exerting influence** on the investee companies to prevent and remedy those impacts.
- In the event of inability to influence, failure to mitigate, and/or **for the most severe impacts, exclude and divest from investee companies.**

In the context of the application of the duty of care law, such exclusion and divestment measures may constitute reasonable due diligence measures expected of an investor.

⁶⁰ Original quote: "Under the OECD Guidelines, an appropriate response once adverse impacts have been identified may include divestment after failed attempts at mitigation, where the investor deems mitigation unfeasible, where the investor policy dictates exclusion, or simply because of the severity of the adverse impact. This may be the case if an investor has limited leverage or has been otherwise unsuccessful in preventing or mitigating adverse impacts after an extended period of escalating engagement.

Some factors to consider when deciding if divestment is an appropriate response are: the investor's leverage over the company; how crucial the relationship is to the investor; the severity of the impact; and whether terminating the relationship with the company would result in adverse impacts. This decision will also depend on the nature of the asset class and strategy and whether divestment is prudent as understood in the context of a relevant jurisdiction's laws on fiduciary duty or prudent investment.

(...)

Under the OECD Guidelines, divestment should in most cases be a last resort or reserved only for the most severe adverse impacts. However, in some cases, exclusion may be a first response to adverse impacts. For example, some investment institutions have exclusion policies for highly damaging industries or products or those with potential systemic negative impacts.

⁶¹ Original quote: "Poor opportunities to transition to a more sustainable business model".

⁶² Original quote: "Investors have low leverage, e.g. a controlled company, lack of legal recourse".

⁶³ Original quote: "Investors who lack (or have exhausted) leverage over an investee that is causing impacts may choose to maintain the relationship or divest. Both divestment from, and continued investment in, an investee company may be appropriate outcomes following risk-based prioritizations as laid out in this document. If the investor chooses to remain in the relationship, it should continue to account for its ongoing risk mitigation efforts and be aware of the reputational, financial or legal risks of the continuing connection.

II.1.2.2.3. The exercise of due diligence in climate matters

A. Climate risks constitute serious risks and harm within the meaning of the Duty of Care Act

60. As mentioned above, article L. 225-102-4 of the French Commercial Code provides that *"the plan shall include reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment"*.
61. **Global warming is now the most serious risk that humanity is facing in the XXI^e century.** At the COP 27 held in November 2022, the Secretary General of the United Nations Antonio Guterres clearly stated that :

"This is the defining issue of our time. It is the central challenge of our century (...) the deadly impacts of climate change are here and now" ⁽⁶⁴⁾

Pièce n°23 A. Guterres, "Opening speech of the COP 27", Nov. 7, 2022

There is no doubt that GHG emissions are sources of serious harm to the environment, human rights and human health and safety within the meaning of the March 27, 2017 law on duty of care. This is, moreover, what the Paris Administrative Court recognized, qualifying the existing global warming as an ecological harm to which the State is illegally contributing due to the non-achievement of its own objectives⁶⁵ (see *below*, no.121). Everyone must therefore do their part by reducing their own emissions in order to limit global warming; this is a principle widely recognized in comparative law (see the decision of the Supreme Court of the United States of America, *Massachusetts v. EPA* of April 2, 2007⁶⁶ ; the decision of the Supreme Court of the Netherlands, *Urgenda* of December 20, 2019,⁶⁷ ; the decision of the German Constitutional

⁶⁴ Original quote: *"It is the defining issue of our age. It is the central challenge of our century (...) The deadly impacts of climate change are here and now.*

⁶⁵ TA Paris, 4^e section, 1^{re} chamber, N°1904967, 1904968, 1904972, 1904976/4-1, February 3, 2021, p. 28: *"21. It follows from these stipulations and provisions that the French State, which has recognized the existence of an "emergency" to fight against the climate change in progress, has also recognized its capacity to act effectively on this phenomenon to limit its causes and mitigate its harmful consequences. To this end, it has chosen to subscribe to international commitments and, at the national level, to exercise its regulatory power, in particular by conducting a public policy to reduce greenhouse gas emissions emitted from the national territory, through which it has undertaken to achieve, within specific and successive deadlines, a certain number of objectives in this area. (...) 31. In addition, the fact that the State could achieve the objectives of reducing greenhouse gas emissions by 40% in 2030 compared to their 1990 level and of becoming carbon neutral by 2050 is not such as to exonerate it from its responsibility since failure to respect the trajectory it has set for itself in order to achieve these objectives would result in additional greenhouse gas emissions, which will accumulate with the previous ones and will produce effects during the entire life of these gases in the atmosphere, i.e. approximately 100 years, thus aggravating the ecological damage claimed. "*

⁶⁶ U.S. Supreme Court, *Massachusetts v. EPA*, 549 U.S. 497, April 2, 2007, at 23: *"A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.*

⁶⁷ Supreme Court of the Netherlands, *State of the Netherlands v. Urgenda Foundation*, 20 December 2019, No. 19/00135, §5.7.7: *"Partly because of the serious consequences of dangerous climate change, as noted in 4.2 above, the defense that a state does not have to meet its responsibility because other countries do not meet their partial responsibility cannot be accepted. Nor can the defense that a country's share of global greenhouse gas emissions is very small and that reducing emissions in its own territory makes little difference on a global scale be accepted. Indeed, accepting these defenses would mean that a country could easily escape its partial responsibility by pointing the finger at other countries or its own small share. If, on the other hand, this defense is excluded, each country can be effectively called to account for its share of emissions and the likelihood that all countries will actually contribute will be greater, in accordance with the principles set out in the preamble to the UNFCCC cited above in 5.7.2."* (free translation - original quote: *"Partly in view of the serious consequences of dangerous climate change as referred to in 4.2 above, the defense that a state does not have to take responsibility because other countries do not comply with their partial responsibility, cannot be accepted. Nor can the assertion that a country's own share in global greenhouse gas emissions is very small and that reducing emissions from one's own territory makes little difference on a global scale, be accepted as a defense. Indeed, acceptance of these defences would mean that a country could easily evade its partial responsibility by pointing out other countries or its own small share. If, on the other hand, this defence is ruled out, each country can be effectively called to account for its share of emissions and the chance of all countries actually making their contribution will be greatest, in accordance with the principles laid down in the preamble to the UNFCCC cited above in 5.7.2"*).

Court of March 24, 2021⁶⁸ ; the decision of the Court of the Hague, *Milieudéfense v. Shell* of 26 May 2021⁶⁹).

In its opinion "Climate emergency and human rights" published on May 27, 2021, the National Consultative Commission on Human Rights recommends that the public authorities strengthen the control of the application of the law on the duty of vigilance in climate matters⁷⁰.

i) The IPCC's identification of numerous serious violations of the environment, human rights and human health and safety

62. GHG emissions constitute serious harm to the atmosphere because of the resulting alteration of its ecological functions of climate regulation (see the preliminary decision rendered in the "case of the century" reproduced *below*, no. 121).121). They also generate innumerable infringements of human rights and fundamental freedoms, human health and safety and the environment as identified by the successive reports of the Intergovernmental Panel on Climate Change (hereinafter, "IPCC") "SR1.5" published in 2018 (Pièce n°13) and "AR6" (Pièce n°14, Pièce n°15, Pièce n°16).

Following the October 2018 IPCC Special Report on the Consequences of 1.5°C Global Warming, which was intended to compare the consequences of 1.5°C and 2°C warming (Pièce n°13), the second part of the 6^e IPCC report published in February 2022 ("AR6 WGII") identifies the impacts of climate change on the environment, security and health as well as human rights and establishes a worsening of these impacts since the previous report published prior to COP 21 (Pièce n°15 IPCC, AR6 - Summary for Policy Makers (WGII), "Impacts, Adaptation and Vulnerability", Feb. 2022; see also. Appendix 2).

- **Risks of serious environmental damage**

63. According to the IPCC, in addition to the impact of GHG emissions on the atmosphere, climate change is causing a restructuring of ecosystems, an extinction of animal and plant species, an increase in areas burned by forest fires, etc.

The IPCC observes that climate warming is generating risks of serious damage to **terrestrial** and **marine ecosystems**:

"Climate change has caused substantial damage, and increasingly irreversible losses, in terrestrial, freshwater, coastal and open ocean ecosystems (high confidence).

(Pièce n°15, B.1.2)

⁶⁸ Constitutional Court of Karlsruhe, 24 March 2021, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, §99: "It is true that climate change is a global phenomenon that the German state will clearly not be able to stop on its own. However, this fact does not make it impossible or superfluous for Germany to make a contribution to combating climate change (for more details, see No. 199 ff. below)" and §119: "Anthropogenic climate change is directly linked to the concentration of anthropogenic greenhouse gases in the atmosphere (for the current state of knowledge, see No. 18 ff. and No. 32 ff. above). In this context, CO₂ emissions are of particular importance. Once they have entered the atmosphere, they can hardly be removed. As a result, the anthropogenic global warming and climate change of the past years cannot be reversed. At the same time, every ton of CO₂ emitted above a small climate-neutral volume leads to further global warming beyond the irreversible level already reached, and to equally irreversible climate change. If global warming is to be contained below a certain temperature threshold, only the volume of CO₂ reduced according to this threshold can be emitted; on a global scale, there is still a "residual CO budget₂". If emissions exceed this residual budget, the target temperature threshold will be exceeded.

⁶⁹ Hague Tribunal, *Milieudéfense v. Shell* of May 26, 2021, No. C/09/571932 / HA ZA 19-379, §4.4.37: "It is also important that every reduction in greenhouse gas emissions has a positive effect on combating dangerous climate change. After all, each reduction means there is more room in the carbon budget. The court recognizes that RDS cannot solve this global problem on its own. However, this does not absolve RDS of its partial individual responsibility to do its part with respect to Shell's group emissions, which it can control and influence." "It is also important here that each reduction of greenhouse gas emissions has a positive effect on countering dangerous climate change. After all, each reduction means that there is more room in the carbon budget. The court acknowledges that RDS cannot solve this global problem on its own. However, this does not absolve RDS of its individual partial responsibility to do its part regarding the emissions of the Shell group, which it can control and influence.)

⁷⁰ CNCDH "Urgence climatique et droits de l'Homme" 27 May 2021, Recommendation 30, <https://www.cncdh.fr/sites/default/files/2021-06/A%20-%202021%20-%206%20-%20Urgence%20climatique%20et%20droits%20de%20l%27Homme%2C%20mai%202021.pdf>. f

As a result:

"Short-term warming and increases in the frequency, severity, and duration of extreme events will place many terrestrial, freshwater, coastal, and marine ecosystems at high or very high risk of biodiversity loss (medium to very high confidence, depending on the ecosystem).

(Pièce n°15, B.4.3)

- **Risks of serious harm to the health and safety of people**

64. The impacts of global warming on human health and safety are already visible. The IPCC already observes that :

"This will put pressure on food and forestry systems, with negative consequences for the livelihoods, food security and nutrition of hundreds of millions of people.

(Pièce n°15, B.4.3)

"Currently, about half of the world's population is experiencing severe water scarcity for part of the year due to climatic and other factors.

(Pièce n°15, B.1.3)

"climate change has had negative effects on the physical health of people around the world (very high confidence) and on the mental health of people in the regions assessed (very high confidence)."

(Pièce n°15, B.1.4)

The IPCC also announces that:

"Climate change and related extreme events will significantly increase health problems and premature deaths in the short and long term (high confidence)."

(Pièce n°15, B.4.4)

- **The risk of serious violations of human rights and fundamental freedoms**

65. On March 25, 2009, the United Nations Human Rights Council warned that :

"climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights, including the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination, and human rights obligations relating to access to safe drinking water and sanitation, and recalling that in no case may a people be deprived of their own means of subsistence."

Human Rights Council, tenth session, Resolution 10/4. Human rights and climate change, 25 March 2009

The same observation is made in its resolution 50/9 of July 14, 2022.

Human Rights Council, fiftieth session, Resolution 44/7. Human rights and climate change, 14 July 2022, A/HRC/RES/44/7, p. 2

Several foreign decisions by the highest courts have found that climate change significantly affects human rights and fundamental freedoms.

In the *Urgenda* case in the Netherlands, the Supreme Court (*Hoge Raad*) confirmed the threat posed by climate change to the right to life under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and to the right to private and family life under Article 8 of the Convention.

Hoge Raad, December 20, 2019, *Urgenda v. The Netherlands*, 19/00135⁷¹

In its decision of March 24, 2021⁷², the Constitutional Court of Karlsruhe considered, on the basis of the German Basic Law, that all the fundamental rights and freedoms of future generations are threatened by global warming. The Court ruled that by not providing for measures to reduce GHG emissions beyond 2030, the German climate law infringes on all of their fundamental rights and freedoms of future generations.

C. const. Karlsruhe, 24 March 2021, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, press release no. 31/2021 of 29 April 2021

ii) Climate risks fall under the exercise of due diligence according to the OECD

66. The OECD includes climate change impacts among the negative impacts covered by due diligence. Indeed, the recent industry guidance on project and asset finance released in October 2022 provides examples of adverse impacts within the meaning of the 2018 OECD guidance that may be caused by or contributed to by companies or to which they may be directly linked through a business relationship. Under environmental harm, the example is given of "air pollution and climate change impacts."

Pièce n°62OECD, "Responsible business conduct due diligence for Project and Asset Finance transactions", Oct. 2022, p. 13).

Indeed, within the OECD's 2017 industry guide for institutional investors, it is expressly stated that climate change may be flagged by investors to their clients as a "priority risk in light of the magnitude, scope, and irremediability of climate change impacts." (Pièce n°61p. 25.)⁷³

iii) The doctrine is in favor of including climate risks in the scope of the Duty of Care Act

67. The most authoritative doctrine states that the damage resulting from global warming falls within the scope of the Duty of Care Act:

"All environmental damage, whatever it may be, including that resulting from global warming, should be subject to risk identification and damage prevention measures".

N. Rias, " Quel rôle pour le devoir de vigilance dans la responsabilité climatique ? ", in *Le changement climatique, quel rôle pour le droit privé*, Dalloz, coll. Thème et commentaires, 2019, p. 169

"It would be surprising, to say the least, to leave out of the vigilance this part of the infringements, while the concern of protection of the climate system composes the major form of the global movement of fundamental reinterpretation of the distribution of risks and negative externalities"

J. Rochfeld, "Interview on the contribution of the law of vigilance in environmental and climate matters", in *Les entreprises et les communs, Entretiens approfondies menées sur le devoir de vigilance des multinationales*, Rev. dr. homme n° 19/2021, p. 28

⁷¹ Official English translation : <https://uitspraken.rechtspraak.nl/#/details?id=ECLI:NL:HR:2019:2007>.

⁷² Official French translation:

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/FR/2021/03/rs20210324_1bvr265618fr.html;jsessionid=08E7400D1814B51384356468E604F791.2_cid507.

⁷³ Original quote: "investors may flag in their policies that climate change risk is a priority for them, given the significant scale, scope and irreversible character of climate change impacts, as well as signals from regulators and their clients that this should be a priority issue."

"It seems difficult to contest now that the climate relates to human rights and the environment, but the law provides that the plan must provide for "appropriate actions to mitigate risks or prevent serious harm", which implies positive actions [...] and the absence of positive action seems to be analysed as faulty".

F.-G. Trébulle, "Responsibility and climate change: what responsibility for the private sector?", Energy Environment Infrastructures, 2018, n° 8-9, p. 26

As proof of the recognition of the link between climate change and the risk of human rights and environmental abuses, **most companies now include climate risks in their compliance plans**. The study carried out by the association Notre Affaire à Tous notes that only "three companies out of 27 still do not include climate in their vigilance plan", but concludes that "more than half (14) of them do so only very partially" (**Pièce n°28 Notre Affaire A Tous, Multinationals' Climate Vigilance Benchmark, 2022 Report, p. 13**).

In fact, BNP Paribas refers to the climate risks resulting from its activities in its compliance plan. Among the "risks taken into account in drawing up the various maps", BNP Paribas states that it takes into account "climate risks" and "greenhouse gas emissions" (**Pièce n°32pp. 642 and 643**). This statement is reiterated in BNP Paribas' response letter of January 24, 2023 (**Pièce n°38, p. 7**).

Although the identification of these risks and the measures proposed by BNP Paribas are largely insufficient, as will be demonstrated, **the inclusion of these risks within the duty of care is therefore accepted**.

B. The exercise of vigilance in the light of the reference standards in climate matters

68. As noted above, the exercise of due diligence within the meaning of the law involves the adoption of "a series of appropriate measures in order to achieve an objective defined in a national or international standard, to respect a minimum level of prudence in taking into account an external standard" (**Pièce n°52Report No. 2628 of the Law Commission of the National Assembly, p. 31**).
69. It is therefore necessary to identify international benchmarks for climate change mitigation against which to assess the measures implemented by a bank in its financing and investment activities.

The scope of this duty of vigilance in climate matters must be constructed according to the following criteria

- of the United Nations Framework Convention on Climate Change of May 9, 1992 (hereinafter "**UNFCCC**");
- of the international agreement of reference ratified by a large majority of States, which is **the Paris Agreement** of December 12, 2015 (defined above);
- the "**European Climate Act**" of **30 June 2021**, which sets out the objectives of the European Union (Regulation (EU) No. 2021/1119 of 30/06/21 establishing the framework required to achieve climate neutrality and amending Regulations (EC) No. 401/2009 and (EU) 2018/1999, known as the "European Climate Act");
- reports of the **IPCC**, the United Nations Environment Programme (hereinafter "**UNEP**") and the **UN-HLEG**;
- international organizations and institutions highlighting the need to stop the expansion of fossil fuels in order to comply with the objectives of the Paris Agreement and achieve carbon neutrality by 2050, such as the IEA.

Article 2 of the 1992 UNFCCC aims to prevent "dangerous anthropogenic interference with climate change".

Article 2 (1) of the 2015 Paris Agreement aims to limit global temperature to 1.5°C, in any case "well below 2°C", while noting the reduced risks if warming were limited to 1.5°C :

" 1. This Agreement, in contributing to the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and poverty alleviation, including by:

(a) Containing the increase in global average temperature to well below 2°C above pre-industrial levels and continuing efforts to limit the increase in temperature to 1.5°C above pre-industrial levels, with the understanding that this would significantly reduce the risks and impacts of climate change; (...)

(c) Making financial flows consistent with a low greenhouse gas emission and climate change resilient development pathway (...)".

Paris Agreement of December 12, 2015, article 2

In 2021, the international community reiterated the importance of limiting warming to 1.5°C. The decision adopted following the Conference of the Parties No. 26 in Glasgow (COP 26 - Glasgow Pact) "[r]ecognizes that the impacts of climate change will be much lower with a temperature increase of 1.5°C compared to 2°C and decides to continue efforts to limit the temperature increase to 1.5°C" (74).

Glasgow Pact, of November 13, 2021, §21

This declaration confirms that the objective of limiting global warming to 1.5°C must be pursued.

Following its December 11, 2019 communication "The Green Deal for Europe," the European Union adopted a binding regulation to achieve the Paris Agreement's long-term goal of limiting global warming to 1.5°C. The European Climate Act thus imposes two binding targets:

- a goal of climate neutrality in 2050;
- a target of reducing net GHG emissions (CO₂ and methane) by "*at least 55% by 2030 compared to 1990 levels*" (Art. 4) and "*in all sectors of the economy and throughout the Union*" (Recital 26).

Regulation no. 2021/1119 of June 30, 2021, "European Climate Law", recital 1 and article 2

The European Climate Law underlines "*the existential threat posed by climate change*" as well as the urgency to act to limit warming to 1.5°C as characterized by the solid basis of the IPCC work:

"(3) The 2018 Intergovernmental Panel on Climate Change (IPCC) Special Report on the consequences of global warming of 1.5°C above pre-industrial levels and associated global greenhouse gas emission trajectories, in the context of strengthening the global response to climate change, sustainable development and poverty alleviation, provides a strong scientific basis for addressing climate change and highlights the need to rapidly scale up climate action and continue the transition to a climate neutral economy. The report confirms that greenhouse gas emissions must be urgently reduced and warming limited to 1.5°C, particularly to reduce the likelihood of extreme weather events and tipping points being reached. The 2019 Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) highlighted global biodiversity loss, with climate change as the third most important driver of biodiversity loss."

Moreover, companies were expressly invited to participate in the achievement of this objective at COP 21. The decision accompanying the Paris Agreement thus states that:

"The Conference of the Parties (...) Invites non-Parties (...) to increase their efforts and support measures to reduce emissions and/or build resilience and reduce vulnerability to the adverse effects of climate change (...)"

⁷⁴ Original quote: "Recognizes that limiting global warming to 1.5°C requires 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 midcentury as well as deep reductions in other greenhouse gases."

Decision 1 -/CP.21, "Adoption of the Paris Agreement",
FCCC/CP/2015/10/Add.1, §134

Climate duty measures must be measured against the universally recognized goal of preventing dangerous anthropogenic climate change and limiting warming to 1.5°C.

- i) The scientific basis : the imperative need to limit global warming to 1.5°C by preserving the Global Carbon Budget 1.5°C

➤ **The need to limit global warming to 1.5°C**

70. In October 2018, at the request of State Parties, the IPCC released a special report on the consequences of 1.5°C of global warming (hereinafter "**SR1.5**"), highlighting the worsening impacts of climate change and **the urgent need to contain climate warming to 1.5°C** in order to avoid the occurrence of a range of serious risks to the environment and human health and safety.

Pièce n°13 : IPCC, 1.5°C Special Report, Summary for Policymakers, 2018, pp. 9-12

Among other things, the report concludes that:

"climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth are projected to increase under 1.5°C global warming, and even more under 2°C" (Pièce n°13B.5, p. 11).

71. Between August 2021 and April 2022, the IPCC released its 6^e assessment report on climate change, in three parts, each written by a different working group. The first report focuses on the physical science basis (**Pièce n°14**), the second on impacts, adaptation and vulnerability (**Pièce n°15**), and the third on climate change mitigation measures (**Pièce n°16**).

In the 6^{ème} report of Working Group II, the IPCC warns that:

"Global warming to 1.5°C in the near term will lead to an inevitable increase in multiple climate hazards and present multiple risks to ecosystems and humans (very high confidence). The level of risk will depend on short-term trends in vulnerability, exposure, level of socioeconomic development, and adaptation (high confidence). Near-term actions that limit global warming to near 1.5°C would significantly reduce projected climate change-related losses and damages in human systems and ecosystems, relative to higher levels of warming, but cannot eliminate them all (very high confidence)" (Pièce n°15)

72. This aggravation of the climatic risk is not unknown to the French courts since, in recognizing the existence of an ecological prejudice in the "Affaire du Siècle" case, **the Administrative Court of Paris itself recognized that "greenhouse gas emissions of anthropic origin" have caused an already existing ecological prejudice, namely "the constant increase in the Earth's average global temperature, which has now reached 1°C compared to the pre-industrial era" while adding that "a warming of 2°C rather than 1.5°C would seriously increase these different phenomena and their consequences."⁷⁵.**

73. In this respect, one of the most serious and irreversible risks lies in the risk of runaway with the reaching of "tipping points"⁷⁶.

As Johan Rockström, director of the Potsdam Institute for Climate Impact Research, an expert on the subject and one of the main researchers behind the concept of planetary limits, explains:

⁷⁵ TA Paris, 4^e section, 1^{re} chambre, N°1904967, 1904968, 1904972, 1904976/4-1, February 3, 2021, "L'Affaire du siècle", p. 28, para. 16,

⁷⁶ IPCC, SR1.5, Chapter 3, p. 283. See also OECD Exhibit 19, "Climate Tipping Points: Insights for Effective Policy Action," published in 2022 and available at <https://doi.org/10.1787/abc5a69e-en>.

"(...) Tipping points are crossed when a small change (e.g., a small increase in global temperatures due to fossil fuel combustion) triggers a large, irreversible change (a tropical forest becoming an arid savanna). This transformation is due to "feedback loops" that are self-perpetuating, so that the change continues even if the pressure (global warming) subsides. Therefore, there is no turning back if the background climate falls below the threshold again."⁷⁷ .

According to the IPCC, this situation could materialize by exceeding the threshold of 1.5°C of warming:

"Trajectories that exceed 1.5°C are at greater risk of passing through "tipping points," that is, thresholds beyond which some impacts can no longer be avoided, even if temperatures are subsequently returned to normal. The collapse of the Greenland and Antarctic ice sheets over a time scale of centuries and millennia is an example of a tipping point."⁷⁸ .

This analysis has recently been confirmed by various scientific and institutional publications. For example, a group of leading authors on the subject noted in a 2022 article that:

"Even the Paris Agreement's goal of limiting warming to well below 2°C and preferably 1.5°C is not without danger because crossing the 1.5°C threshold risks multiple tipping points." (free translation) .⁷⁹

McKay, A. et al. (2022), "Exceeding 1.5°C global warming could trigger multiple climate tipping points", *Science*, Vol. 377/6611

The OECD, in a recent report specifically devoted to this issue, itself notes that:

"Recent research shows that significant tipping points are already "possible" at current levels of warming and could become "likely" in the 1.5-2°C range of warming projected by the Paris Agreement (...)

*This report concludes that the current state of scientific understanding of tipping points in the climate system challenges the commonly held view that feedback loops have a low probability at moderate levels of warming, adding urgency to the climate challenge."*⁸⁰

Pièce n°18 OECD, "Climate Tipping Points: Insights for Effective Policy Action", 2022, p. 8

Therefore, from the perspective of preventing damage to the environment and to people, **limiting global warming to 1.5°C is an imperative, as the risks posed by exceeding it, even temporarily, are significant.** To achieve this objective, the scientific consensus in the field of climate physics has highlighted the need for CO₂ emissions to be contained within the limits of a specific carbon budget.

➤ **The Global 1.5°C Carbon Budget**

74. Preserving the carbon budget at a certain level to achieve a given temperature target is an imperative highlighted as early as the 2018 IPCC 1.5°C Special Report:

⁷⁷ J. Rockström, "Tipping points and feedback loops," in Greta Thunberg, *The Big Book of Climate*, Kero, 2022, pp. 33-36; Armstrong McKay et al, Exceeding 1.5°C global warming could trigger multiple climate tipping points, *Science*, Vol 377, Issue 6611, 9 Sep. 2022 (<https://www.science.org/doi/10.1126/science.abn7950>).

⁷⁸ IPCC, SR1.5, Chapter 3, p. 283.

⁷⁹ Original and complete quote: "Even the Paris Agreement goal of limiting warming to well below 2°C and preferably 1.5°C is not safe as 1.5°C and above risks crossing multiple tipping points. Crossing these CTDs can generate positive feedbacks that increase the likelihood of crossing other CTDs. Currently the world is heading to- ward ~2 to 3°C of global warming; at best, if all net-zero pledges and nationally determined contributions are implemented it could reach just below 2°C. This would lower tipping point risks somewhat but would still be dangerous as it could trigger multiple climate tipping points" (<https://doi.org/10.1126/science.abn7950>).

⁸⁰ <https://www.oecd.org/environment/climate-tipping-points-abc5a69e-en.htm>.

"Limiting global warming requires limiting total cumulative global anthropogenic CO₂ emissions since pre-industrial times, i.e. staying within a total carbon budget (high confidence)" (Pièce n°13, C.1.3).

This imperative is reiterated by the first part of the 6^e IPCC report which notes that :

"Achieving zero net anthropogenic CO₂ emissions is a necessary condition for stabilizing human-induced global temperature increase at any level, but (...) limiting global temperature increase to a specific level implies limiting cumulative CO₂ emissions within a carbon budget"⁽⁸¹⁾

Pièce n°14 IPCC, AR6 - Summary for Policy Makers (WGI): "The Physical Science Basis", August 2021, p. 36, D.1.1

This same report highlighted that the carbon budget allowing to limit global warming to 1.5°C (the "Global Carbon Budget 1.5°C" as defined above) could be exhausted by 2030, depending on the different scenarios developed by the IPCC (Pièce n°14p. 37, Annex 3).

In the third part of the 6^{ème} IPCC report published in April 2022, the Global Carbon Budget 1.5°C was evaluated at 510 Gt CO₂ (Pièce n°16Table SPM.2, p. 18). It was updated in November 2022 by the Global Carbon Project, a scientific initiative whose authors contribute to the IPCC reports, and is now estimated at 380 Gt CO₂⁸².

This 1.5°C Global Carbon Budget is the net amount of CO₂ released into the atmosphere that must not be exceeded to maintain a 50% chance of not exceeding 1.5°C global warming (Pièce n°16B.7.1, p. 16).

In other words, by respecting these limits, the estimated probabilities of preserving the desired temperature target and of exceeding it are identical. Any more favorable probability estimate thus leads to a reduction of the Global Carbon Budget of 1.5°C considered as available.

In addition to this, the assessment of the Global Carbon Budget 1.5°C is itself subject to a certain form of uncertainty since, as the IPCC points out, "[t]he *uncertainties regarding the estimates of these remaining carbon budgets are large and depend on several factors*" (Pièce n°13 IPCC, 1.5°C Special Report, Summary for Policymakers, 2018, C.1.3, p. 14), such as, for example, the impact of GHGs other than CO₂, the possible release of additional carbon or methane as a result of different phenomena (e.g., thawing permafrost), the climate response to GHGs, or the assessment of historical warming (Pièce n°13 IPCC, 1.5°C Special Report, Summary for Policymakers, 2018, B.5.4, p. 11 and AR6, WG1 Technical summary TS3.3, p. 97).

It is therefore quite possible that the carbon budget actually available to limit global warming to 1.5°C at some level of probability is actually even more constrained than the best estimates provided to date by the IPCC and the Global Carbon Project.

Taking into account the above as well as the potentially existential and irreversible consequences of exceeding the 1.5°C temperature objective, the limit of the carbon budget to be considered under a precautionary approach should therefore be, at a minimum, the one retained by the IPCC for a 50% probability of reaching this objective - that is, to date, 380 Gt CO₂, according to the latest state of knowledge available (the "Precautionary Carbon Budget", as defined above).

For the same reasons, a similar precautionary approach must be applied to the reduction trajectory that global emissions must follow until they reach a state of carbon neutrality, in the coming decades, in particular until 2030

⁸¹ Original quote: "(...) *reaching net zero anthropogenic CO₂ emissions is a requirement to stabilize human-induced global temperature increase at any level, but (...) limiting global temperature increase to a specific level would imply limiting cumulative CO₂ emissions to within a carbon budget.*

⁸² Friedlingstein (P.) et al. (2022), Global Carbon Budget 2022, Earth System Science Data

when emissions will have to be reduced by almost half compared to current levels, which is an indispensable condition for stabilizing global warming at 1.5°C, as the section below demonstrates.

➤ **Compliance with the Paris Agreement, with a reasonable chance of limiting climate damage, requires urgent action and a 1.5°C trajectory with no or minimal overshoot**

75. To reach the universally accepted objective of limiting global warming to 1.5°C, several climate scenarios (or "trajectories"⁸³) have been developed.

The trajectories that make it possible to limit global warming to 1.5°C are based on a drastic and rapid decrease in net global anthropogenic GHG emissions by 2030, in order to achieve carbon neutrality by 2050 (Pièce n°13, C.1).

Indeed, the IPCC had already determined in 2018 that "[i]t is likely that global warming will reach 1.5°C between 2030 and 2052 if it continues to increase at current rates (high confidence)" (Pièce n°13A.1), which instead estimates that a 45% reduction in CO₂ emissions in 2030 compared to 2010 is necessary to maintain a 50% chance of limiting warming to 1.5°C (Pièce n°13, C.1).

In fact, in recent years, the annual rate of CO₂ emissions associated with fossil fuels alone, at the global level, has been between 35 and 37 Gt CO₂, with an upward trend since the health crisis of 2020 (Pièce n°17p. 5-6)⁸⁴. If this volume of emissions is maintained, the remaining 1.5°C Global Carbon Budget will be exhausted at the very beginning of the 2030s.

Of course, in view of the previous observations on the major risks posed by any exceedance, even temporary, of the 1.5°C limit (see above, no.70 s.), trajectories that assume or imply such an overshoot cannot meet the obligation and the need to mitigate the risks or prevent climate damage.

So that, in principle, only trajectories that allow limiting global warming to 1.5°C with zero or minimal overshoot are relevant, in that they offer the best available chances for preserving the objective of the Paris Agreement and the Precautionary Carbon Budget as well as mitigating the risks related to global warming. In particular, these trajectories require a drastic and immediate reduction in GHG emissions, especially related to fossil fuels, as highlighted in 2018 by the IPCC in its special report 1.5°C :

"Trajectories that limit global warming to 1.5°C with no or minimal overshoot would require rapid and radical energy transitions."

Pièce n°13IPCC, SR1.5 - Summary for Policymakers: "1.5°C Special Report", 2018, C2, p. 17

Similarly, the 6^{ème} IPCC assessment report explains that:

"Global GHG emissions are expected to peak between 2020 and no later than before 2025 in global modeled trajectories that limit warming to 1.5°C (>50%) with zero or limited overshoot and in those that limit warming to 2°C (>67%) and assume immediate action. [...] In both types of modeled trajectories, rapid and deep GHG emission reductions follow in 2030, 2040 and 2050 (high confidence). If policies are

⁸³ According to the IPCC, the term "trajectories" means: "Future temporal evolution of natural or human systems. Trajectories may consist of a set of quantitative and qualitative scenarios or descriptions of possible future developments, or of solution-oriented decision-making processes aimed at achieving desirable societal goals. They usually focus on biophysical, techno-economic, or socio-behavioral evolution, involve diverse dynamics, objectives, and actors, and are established at different scales." In addition, the term "1.5°C target pathway" means "A pathway of greenhouse gas emissions and other climate forcing factors that, based on the current state of knowledge of climate response, has an approximate 50% to 66% probability of either keeping temperature rise below 1.5°C or returning to 1.5°C by around 2100 after a temporary overshoot." (IPCC, 1.5°C Special Report, Glossary).

⁸⁴ See also Hausfather (Z.), Friedlingstein (P.) (2022), "Global CO₂ emissions from fossil fuels hit record high in 2022", Carbon Brief; <https://www.carbonbrief.org/analysis-global-co2-emissions-from-fossil-fuels-hit-record-high-in-2022/>

not strengthened beyond those implemented by the end of 2020, GHG emissions are projected to increase beyond 2025, resulting in a median global warming of 3.2 [2.2 to 3.5]°C by 2100."⁽⁸⁵⁾.

**Pièce n°16IPCC, AR6 - Summary for Policy Makers (WGIII):
"Mitigation of Climate Change", Apr. 2022, C.1, p. 17**

Moreover, in this set of trajectories as well, a precautionary approach is necessary and requires to retain only those whose underlying assumptions are not based on uncertain and speculative measures related to the deployment, on the required scale and in an undetermined future, of technological or natural devices.

In particular, the trajectories considered cannot justify the continued installation of new fossil fuel infrastructures or production capacities or the postponement of the reduction of GHG emissions linked to fossil fuels into the distant future by arguing for GHG capture techniques (*i.e.*, so-called "abated" fossil fuels⁸⁶), or even "negative emissions" which the available literature shows are neither operational nor deployable at scale. **Such practices contribute to "carbon lock-in" and compromise the respect of the Global 1.5°C Carbon Budget as well as any emission reduction.**⁸⁷

In its above-mentioned report, the OECD states unambiguously that:

*"It is important to note that, given that an overshoot of the temperature target could lead to tipping points, the well-known argument that the deferral of emission reductions could be offset by negative emissions in the second half of the century is no longer valid."*⁸⁸

Pièce n°18 OECD, "Climate Tipping Points: Insights for Effective Policy Action", 2022, p. 77

Among the different trajectories proposed, the IEA has developed a 1.5°C trajectory with no or minimal overshoot, namely - the "Net Zero by 2050" (hereafter "**NZE**") in its report "Net Zero by 2050, A Roadmap for the Global Energy Sector", published in October 2021 (**Pièce n°10**).

In its "World Energy Outlook 2022" report, the IEA states that:

"the NZE scenario is part of the group of scenarios classified by the IPCC as a "no or minimal exceedance" scenario, and aligns with the goal, agreed again in Glasgow at COP26 in 2021, of "continued efforts to limit temperature increase to 1.5°C" (Pièce n°11p. 63-64,⁸⁹))."

⁸⁵ Original quote: "Global GHG emissions are projected to peak between 2020 and at the latest before 2025 in global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot and in those that limit warming to 2°C (>67%) and assume immediate action (see Table SPM.2 footnote i). 37 In both types of modelled pathways, rapid and deep GHG emissions reductions follow throughout 2030, 2040 and 2050 (high confidence). Without a strengthening of policies beyond those that are implemented by the end of 2020, GHG emissions are projected to rise beyond 2025, leading to a median global warming of 3.2 [2.2 to 3.5]°C by 2100".

⁸⁶ The IPCC uses the term "unabated fossil fuels" to refer to "fossil fuels produced and used without interventions that could substantially reduce the amount of GHGs emitted over the life cycle; for example, by capturing 90% or more of the emissions from power plants or 50-80% of fugitive methane emissions from energy supply". (Exhibit #16, IPCC, AR 6, WG III, SPM., § C.4); see also E3G (2021), Explained: what does 'unabated coal' mean? (<https://www.e3g.org/news/explained-what-does-unabated-coal-mean>).

Conversely, the deployment of "abated fossil fuels," including through carbon capture and sequestration (CCS) technologies, is fraught with uncertainty, due in part to the lack of maturity of these technologies to capture GHG emissions: "Currently, global CCS deployment rates are far below those predicted by models for limiting global warming to 1.5°C or 2°C." In 2018, the IPCC explained that "Carbon dioxide removal [of which CCS is an absolutely essential component] on a large scale is not a proven technology and reliance on this option poses a serious threat to the ability to contain warming to 1.5°C." (IPCC, SR1.5, French Technical Summary, p. 34).

⁸⁷ According to the IPCC, "the continued installation of so-called unabated fossil fuel infrastructure will have the effect of 'locking in' GHG emissions. (high confidence)."

⁸⁸ OECD (2022), [Climate Tipping Points: insights for effective policy action](#). Original quote: "It is important to note however that, since an overshoot could lead to the crossing of tipping points, the well-known argument that delayed emissions reductions can potentially be compensated by negative emissions during the latter part of the century is no longer valid.

⁸⁹ Original quote: "the NZE Scenario falls within the group of scenarios categorized by the IPCC as a "no or low overshoot" scenario, and aligns with the goal, agreed again in Glasgow at COP26 in 2021, to "pursue efforts to limit the temperature increase to 1.5°C".

It is important here to recall that the IEA characterizes its NZE scenario as a "narrow but still achievable" pathway to its goal (Pièce n°11p. 121,).⁹⁰

Moreover, this scenario is itself based on very uncertain assumptions that are not compatible with a rigorously conservative approach, such as the future deployment of - as yet unavailable - CO capture technologies₂ :

"the period to 2050 sees an increase in electrification, hydrogen use, and CCUS deployment, for which not all technologies are commercially available today, and which enable more than half of the emissions reductions between 2030 and 2050" (91)

Pièce n°10IEA, "Net Zero by 2050, A Roadmap for the Global Energy Sector", Oct. 2021, p. 47

However, according to the IEA analysis, the NZE pathway remains "the most technically feasible, cost-effective, and socially acceptable" (Pièce n°10, p. 3).

The assumptions made by the IEA can therefore not be considered as anything other than the bare minimum that must be done to preserve the chances of achieving the 1.5°C global warming target with no or minimal overshoot.

In any case, the IEA emphasizes that "all stakeholders - governments, businesses, investors and citizens - must act this year and every year thereafter to ensure that the target is not out of reach" (Pièce n°10, p. 3).

➤ **The development of New Fossil Projects is in direct contradiction with this set of imperatives**

76. It follows from the above developments that, in a world truly moving towards carbon neutrality - and, more generally, towards preventing the most severe consequences of climate change - emissions from fossil fuels must be *drastically* reduced as soon as possible.

This idea is powerfully conveyed by a simple comparison of the current level of these emissions - whose annual rate of increase is expected in 2022 - i.e. about 37 Gt CO₂ , and the Precautionary Carbon Budget of 380 Gt CO₂ .

As the lead author of the Global Carbon Project explicitly notes, by 2022 "the remaining carbon budget to keep warming below 1.5°C will be gone in nine years, if emissions remain at current levels"⁹² .

The urgency to act towards the fossil fuel sector is all the more obvious given that, beyond the above-mentioned figures, the fossil fuel infrastructures and production capacities currently being exploited contain in themselves a volume of emissions exceeding the Precautionary Carbon Budget.

This is unambiguously noted by :

- The IPCC, which states that:

"[t]he cumulative future CO₂ emissions projected over the life of existing and currently planned fossil fuel infrastructure, without additional reductions, exceed the total cumulative net CO₂ emissions in the trajectories that limit warming to 1.5°C (>50%) with zero or limited exceedance. They are approximately equal to the total cumulative net CO₂ emissions in the trajectories that limit warming to 2°C (>67%). (high confidence)."

Exhibit 16, IPCC, AR 6, WG III, SPM, § B.7

⁹⁰ Original quote: "the pathway detailed in the Net Zero Emissions by 2050 (NZE) Scenario remains narrow but still achievable".

⁹¹ Original quote: "the period to 2050 sees increasing electrification, hydrogen use and CCUS deployment, for which not all technologies are available on the market today, and these provide more than half of emissions savings between 2030 and 2050".

⁹² Hausfather (Z.), Friedlingstein (P.) (2022), Global CO₂ emissions from fossil fuels hit record high in 2022, Carbon Brief.

- The most recent scientific literature on this issue states:

"We find that meeting a 1.5°C carbon budget (50% probability) implies leaving nearly 40% of the "developed reserves" of fossil fuels unextracted. The conclusion that developed reserves greatly exceed the 1.5°C carbon budget is robust to a Monte Carlo analysis of the limitations of the reserves data, carbon budget uncertainties, and oil prices. This study contributes to the growing body of research on the relevance of fossil fuel supply to climate mitigation. Going beyond recent warnings from the International Energy Agency, our results suggest that to stay below 1.5°C, governments and companies will not only have to stop licensing and developing new fields and mines, but also prematurely decommission a significant portion of those already developed."⁹³

Pièce n°29 Trout et al, "Existing fossil fuel extraction would warm the world beyond 1.5°C", 2022, abstract

However, as explained above, the scientific consensus is established on the fact that, due to the "lock-in" effect, these GHG emissions induced by the life cycle of the infrastructures and production capacities studied are bound to end up in the atmosphere.

The conclusion of these purely objective observations is self-evident: the development of new fossil fuel infrastructures and production capacities, beyond those that exist today, and therefore, *a fortiori*, the continuation of exploration, are in physical contradiction with the preservation of the feasibility of an emissions trajectory limiting global warming to 1.5°C with no or minimal overshoot and the corresponding Precautionary Carbon Budget.

This simple truth is consubstantial with the positions expressed by the IEA on the subject in its 2021 NZE scenario.

In this 1.5°C scenario with no or minimal overshoot, which the IEA itself considers to be a necessarily "narrow" path, the IEA has mainly highlighted that in pursuing this objective, the share of fossil fuels in the energy mix will decrease drastically and very rapidly in the coming decades.

By virtue of this demanding but physically necessary trajectory, the IEA states bluntly:

"no investment is needed in new fossil fuel supplies: beyond the projects already committed to in 2021, our trajectory does not include approval of any new oil or gas site development, and no new or expanded coal mines are needed."⁽⁹⁴⁾

Pièce n°10, p. 21

She also adds about the development of gas:

*"No new natural gas fields are needed in the NZE beyond those already in operation. Many of the liquefied natural gas (LNG) facilities currently under construction or in the planning stages are also not needed."*⁹⁵

Pièce n°10, p. 102

⁹³ Original quote: "We find that staying within a 1.5°C carbon budget (50% probability) implies leaving almost 40% of 'developed reserves' of fossil fuels unextracted. The finding that developed reserves substantially exceed the 1.5°C carbon budget is robust to a Monte Carlo analysis of reserves data limitations, carbon budget uncertainties and oil prices. This study contributes to growing scholarship on the relevance of fossil fuel supply to climate mitigation. Going beyond recent warnings by the International Energy Agency, our results suggest that staying below 1.5°C may require governments and companies not only to cease licensing and development of new fields and mines, but also to prematurely decommission a significant portion of those already developed."

⁹⁴ Original quote: "There is no need for investment in new fossil fuel supply in our net zero pathway: beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required."

⁹⁵ Original quote: "No new natural gas fields are needed in the NZE beyond those already under development. Also not needed are many of the liquefied natural gas (LNG) liquefaction facilities currently under construction or at the planning stage."

It confirms in its report "World Energy Outlook 2022" published in November 2022 that despite the geopolitical context and the current energy crisis :

"No one should think that invading Russia can justify building a wave of new oil and gas infrastructure in a world that seeks to achieve net zero emissions by 2050."⁽⁹⁶⁾

Pièce n°11 IEA, "World Energy Outlook 2022", Nov. 2022, p. 80

In summary, the result of all these elements is an unambiguous scientific consensus on the fact that **the continuation of emissions linked to fossil fuels - a large part of which is already induced by the production of existing deposits - leads inexorably in the short term to the exhaustion of the Precautionary Carbon Budget, with the very likely consequence of crossing the 1.5°C warming limit that it is so imperative not to exceed, as demonstrated above.**

In light of this, the IEA's transition assumptions - in particular its conclusion that a net-zero trajectory with no or minimal overshoot does not involve the development of New Fossil Projects - are therefore much more than an assertion of a desirable pathway to carbon neutrality. They actually reflect **a physical imperative: the need to immediately halt the expansion of fossil fuels in order to preserve any real chance of keeping global warming within limits that mitigate the risks of its most catastrophic environmental and civilizational consequences.**

This measure cannot therefore be seen otherwise, in the state of available knowledge, than as the *sine qua non* of any genuine good faith approach to mitigating risks or preventing climate damage, which is confirmed by the understanding of this conclusion by an institutional consensus that is now well established and shared by the UN-HLEG (cf. *infra*, n°78 s.), but also UNEP, which in its annual scientific report calls on "*Investors, private and development banks*" to "*not invest in new fossil fuel infrastructures*" and not to insure them (**Pièce n°17 UNEP, "Emissions Gap Report 2022", Oct. 2022 p. XXIV**).

The global scientific consensus outlined above, as it emerges mainly from the work of the IPCC and the most recent scientific publications, unambiguously concludes that both the trajectories preserving the feasibility of limiting global warming to 1.5°C with no or minimal overshoot and the corresponding Precautionary Carbon Budget are directly endangered by the expansion of fossil fuels.

The emissions induced along the value chain and the life cycle of existing fossil infrastructures and hydrocarbon production capacities and the maintenance in the coming years of a level of emissions linked to fossil energies that does not meet the recognized requirement of a drastic and immediate reduction could indeed, on their own, lead to the realization of environmental and human risks of unprecedented severity.

***A fortiori*, any exploration, new fossil infrastructure or additional fossil fuel production capacity reinforces a widely recognized situation of systemic inertia, thus adding to the identified dangers.**

It is clear that the development of New Fossil Projects is in direct contradiction with the climate objectives set by the Paris Agreement and, more generally, the preservation of the stability of the climate and human societies.

⁹⁶ Original quote: "No one should imagine that Russia's invasion can justify a wave of new oil and gas infrastructure in a world that wants to reach net zero emissions by 2050."

ii) The institutional consensus on stopping financial support to actors developing New Fossil Projects and measures to immediately reduce net emissions

77. Based on the scientific consensus that has just been presented, according to which it is imperative to respect GHG emission reduction trajectories and a corresponding Precautionary Carbon Budget in order to preserve the chances of reaching the objective of limiting global warming to 1.5°C with no or minimal overshoot, a certain number of institutional actors have translated the concrete measures to be taken to this end by private actors and banking and financial institutions.

➤ The Race to Zero initiative

The *Race To Zero* initiative of the United Nations Framework Convention on Climate Change calls for :

"phase out the development, financing and facilitation of new untapped fossil fuel assets, including coal, consistent with appropriate science-based global scenarios" (97).

Pièce n°22 Race to Zero clarifications, 2022

➤ The recommendations of the High Level Panel of Experts mandated by the UN Secretary General, a universal reference standard for limiting global warming to 1.5°C

78. In 2021, UN Secretary General Antonio Guterres appointed at COP 26 a group of 14 High-Level Experts to set a framework for the 2050 carbon neutrality (or "net-zero") commitments of non-state actors, especially businesses and financial institutions (*United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities*, hereafter "UN-HLEG")⁹⁸.

Pièce n°19 Annex defining the terms of reference of the High Level Panel of Experts; Pièce n°20 Exhibit 20: A. Guterres, Speech on the occasion of the release of the report of the high-level panel of experts, Nov. 8, 2022

According to the document defining the terms of reference of the expert group, *the objective is to "ensure that net zero emission commitments and their implementation are consistent with the objective of limiting global temperature increase to 1.5°C (...)"*. (Pièce n°19⁹⁹)

This group is composed of independent and impartial experts, as specified in the Annex defining the terms of reference of the expert group:

"Members must abide by a code of conduct consistent with UN principles to ensure the impartiality and independence of the HLEG, to eliminate any potential conflict of interest, and not to use their position for financial gain" (Pièce n°19¹⁰⁰)

⁹⁷ Original quote: "Each Race to Zero member shall independently undertake an approach based in the best available to implementing the "unabated fossil fuel phase down and out criteria, in compliance with all legal and professional obligations. Each Race to Zero member shall phase out its development, financing and facilitation of new unabated fossil fuel assets, including coal, in line with appropriate global, science-based scenarios.

⁹⁸ The report refers to "net zero pledges and commitments from non-State actors: private sector (businesses), including that of financial institutions, as well as those by sub-national entities (local and regional governments).

⁹⁹ Original and complete quote: "To ensure that net zero emissions commitments and implementation are aligned with the goal of keeping global temperature rise to 1,5°C goal and credibly contribute their fair share to urgently cutting emissions in this decade to achieve a decline of 45 % from 2010 levels by 2030, the UN Secretary-General is proposing to convene a High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities (HLEG) to help ensure credibility and accountability of net-zero pledges.

¹⁰⁰ Original quote: "Members must abide by a code of conduct in line with United Nations principles to ensure the impartiality and independence of the HLEG, eliminate any possible conflicts of interest and not use their position for the purpose of financial gain.

In this regard, it is notable that Ms. Helena Viñes Fiestas, former Senior Advisor on Sustainable Finance at BNP Paribas, is a member of this group.

Released in November 2022, this report therefore sets forth "a universal definition of net zero" (Pièce n°12p. 5) for private actors, including financial institutions such as BNP Paribas. More specifically, this report includes 10 recommendations to be implemented in order to meet the commitment to carbon neutrality and limit warming to 1.5°C with no or minimal overshoot.

Before mentioning the relevant recommendations, it is important to note that UN-HLEG shares the analysis presented (see above, no. 74).74) on the risks of exceeding the carbon budget:

*"As the IPCC has pointed out, existing planned and approved fossil fuel infrastructure will exhaust the remaining carbon budget. **Therefore, there is no room for new investments in fossil fuel supply and existing assets need to be decommissioned.** In addition, the IEA states that new fossil fuel supply sources are incompatible with the emissions trajectory required to reach net zero, and this includes new natural gas supply sources and LNG exports, which are scheduled to peak and decline by the end of the decade." (Pièce n°12Recommendation 5, p. 23)¹⁰¹*

Recommendation #5, "Phasing out fossil fuels and developing renewable energy," clearly states that:

*"All net zero commitments should include specific targets to **end the use and/or support of fossil fuels**, consistent with the IPCC and IEA net zero greenhouse gas emission models that limit warming to 1.5°C with no or limited overshoot, with global emissions declining by at least 50% by 2030, to reach net zero by 2050 (...)" (Pièce n°12Recommendation 5, p. 23).¹⁰²*

This recommendation is recalled by UN-HLEG among the main points of the proposed recommendations:

- "Non-state actors cannot claim to be "net zero" while continuing to build or invest in new fossil fuel sources" (Pièce n°12Recommendation 5, p. 12¹⁰³).
- "The net zero plans of cities, regions, financial institutions, and businesses should not support new fossil fuel supplies: there is no room for new investments in fossil fuel supply and there is a need to decommission and retire existing assets" (Pièce n°12Recommendation 5, p. 12¹⁰⁴).

Under its detailed recommendations for financial institutions, UN-HLEG states:

"With respect to oil and gas, financial institution oil and gas phase-out policies should include a commitment to cease financing and investing in support of: (i) the exploration of new oil and gas deposits, (ii) the expansion of oil and gas reserves, and (iii) oil and gas production." (Pièce n°12Recommendation 5, p. 24)¹⁰⁵

Consequently, according to the UN-HLEG's recommendations, the carbon neutrality commitments made by financial institutions to meet the objective of limiting global warming to 1.5°C must necessarily be

¹⁰¹ Original quote: "As the IPCC has highlighted, existing planned and approved fossil fuel infrastructure will exhaust the remaining carbon budget. Therefore, there is no room for new investment in fossil fuel supply and a need to decommission existing assets. Additionally, the IEA states that new fossil fuel supply is incompatible with the required emissions trajectory to achieve net zero, and that includes new supplies of natural gas and LNG exports, which must peak and decline by the end of this decade."

¹⁰² Original quote: "All net zero pledges should include specific targets aimed at ending the use of and/or support for fossil fuels in line with IPCC and IEA net zero greenhouse gas emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot, with global emissions declining by at least 50% by 2030, reaching net zero CO₂ emissions by 2050, followed by net zero greenhouse gas emissions soon after (...)"

¹⁰³ Original quote: "Non-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply."

¹⁰⁴ Original quote: "City, region, finance and business net zero plans must not support new supply of fossil fuel: there is no room for new investment in fossil fuel supply and there is a need to decommission and cancel existing assets."

¹⁰⁵ Original quote: "On oil and gas, oil and gas phase-out policies from financial institutions must include a commitment to end financing and investing in support of: (i) exploration for new oil and gas fields, (ii) expansion of oil and gas reserves, and (iii) oil and gas production."

accompanied by an end to their support for the development of hydrocarbons. This is one of the main measures expected of a banking and financial player such as BNP Paribas. The UN-HLEG also prescribes the withdrawal from oil and gas production.

79. UN-HLEG also recommends implementing other actions.

In its recommendation #1, entitled "Announcing the Carbon Neutrality Goal," UN-HLEG considers that private actors committed to carbon neutrality should commit to adopting plans with **short- and medium-term targets consistent with GHG emission reduction trajectories that limit warming to 1.5°C with no or limited overshoot**, similar to the IEA's Net Zero trajectory discussed above :

"The commitment to achieve carbon neutrality must be made publicly by the non-state actor's leadership and represent a fair share of the global climate change mitigation effort. The commitment must contain interim targets (including targets for 2025, 2030, and 2035) and plans to achieve net zero consistent with IPCC or IEA modeled trajectories for net greenhouse gas emissions that limit warming to 1.5°C with no or limited overshoot, and with a 50% reduction in global emissions by 2030, to achieve net CO₂ emissions by 2050 and net greenhouse gas emissions soon thereafter. Net zero must be maintained thereafter" (Pièce n°12Recommendation 1, p. 15).¹⁰⁶

Non-state actors should also increase their efforts if they can - especially if they are from developed countries:

"All non-state actors should reduce their emissions as quickly as possible, aligning with or exceeding national targets, roadmaps, and timetables. Those with the capacity to achieve a 50% emissions reduction by 2030 and net zero CO₂ emissions by 2050 more quickly should do so, while some non-state actors in developing countries may need more support on the path to carbon neutrality" (Pièce n°12Recommendation 1, p. 16).¹⁰⁷

A greater effort can therefore be expected from a player such as BNP Paribas, given that it is the leading bank in the European Union¹⁰⁸ and the 9^e international banking group¹⁰⁹, originally and mainly established in developed countries, whose climate impact is major as demonstrated above.

In Recommendation #2, "Adopt Net Zero Goals," UN-HLEG considers that:

¹⁰⁶ Original quote: "A net zero pledge should be made publicly by the leadership of the non-state actor and represent a fair share of the needed global climate mitigation effort. The pledge should contain interim targets (including targets for 2025, 2030 and 2035) and plans to reach net zero in line with IPCC or IEA net zero greenhouse gas emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot, and with global emissions declining by 50% by 2030, reaching net zero CO₂ emissions by 2050 and net zero greenhouse gas emissions soon after. Net zero must be sustained thereafter.

¹⁰⁷ Original quote: "All non-state actors must reduce emissions as fast as possible, aligning or exceeding national targets, roadmaps and timelines. Those that have the capacity to move faster than a 50% reduction by 2030 and net zero CO₂ emissions by 2050 should do so, while some developing country non-state actors may require more support on their path to net zero.

- Multinationals should set global targets that account for variability across jurisdictions and include all operations along their value chain in all jurisdictions.

- Non-state actors must publicly disclose and report on progress against those targets and plans, ensuring that any claims of being net zero or net zero aligned are based on actions, not just announcements.

- A non-state actor should be considered and recognized as net zero aligned (or have independent validators following and adhering to a set of commonly accepted assurance standards confirm that its "net zero pledge is on/off track") when

- its pledge, targets and pathway to net zero are generated using a robust methodology consistent with limiting warming to 1.5°C with no or limited overshoot verified by a third party (for example by the Science Based Targets Initiative (SBTi), the Partnership for Carbon Accounting Financials (PCAF), The Paris Agreement Capital Transition Assessment (PACTA), The Transition Pathway Initiative (TPI), the International Organization for Standardization (ISO), among others);

- its pledge and progress reporting should cover all scope emissions and all operations along its value chain in all jurisdictions (any omission needs to be properly reported);

- it is demonstrating progress by achieving or exceeding its interim targets with reports that are verified by a credible, independent third party based on publicly available data.

¹⁰⁸ <https://group.bnpparibas/decouvrez-le-groupe/nous-connaître>.

¹⁰⁹ S&P Global Market Intelligence, The world's 100 largest banks, 2022.

"Targets should account for all greenhouse gas emissions (based on internationally agreed upon measurements of warming effects) and include separate targets for significant non-CO₂ greenhouse gas emissions (e.g., fossil methane and biogenic methane).

Targets must include emissions reductions from the entire value chain and activities of a non-state actor, including: (...) all emissions facilitated by financial entities" (Pièce n°12 Recommendation 2, p. 17)¹¹⁰

Financial actors must therefore adopt GHG emission reduction targets other than CO₂ and include their direct and indirect emissions related to their activity.

Therefore, in order to contain global warming to 1.5°C within the limit of a scientifically established Precautionary Carbon Budget, an institutional consensus is emerging around the measure that is now expected from a banking institution, namely :

First, the immediate cessation of all new Financing and Investment to any company developing New Fossil Projects.

On February 6, 2023, UN Secretary General Antonio Guterres called on all fossil fuel industry players and their financial backers to immediately implement the measures recommended by the UN-HLEG:

"And that means more ambitious 2030 emissions targets from companies, investors and cities, backed by credible and immediate action - which means real emissions, not fake carbon credits. By September, all companies, cities, regions, and financial institutions that have committed to zero by 2050 will be required to submit their transition plans with credible and ambitious targets for 2025 and 2030, according to the standards set by my high-level panel.

I have a particular message for fossil fuel producers and their accomplices who are rushing to expand production and reap huge profits: if you cannot credibly commit to a "net zero" pathway, with targets for 2025 and 2030 covering all your operations, you should not be in business. Your core product is our core problem. We need a renewable energy revolution, not a self-destructive fossil fuel resurgence." (free translation)¹¹¹

Pièce n°25 A. Guterres, Address to the General Assembly on the UN Priorities for 2023, 6 February 2023

If they fail to implement this measure to stop the expansion of fossil fuels immediately, the industrial players in fossil fuels and their financial backers such as **BNP Paribas would be acting as if they had failed to meet their obligations to be vigilant with regard to climate change**, by assuming to continue to contribute to significantly exceeding the Global Carbon Budget of 1.5°C, which is compatible with the objective of the Paris Agreement.

¹¹⁰ Original quote: "Non-state actors "Targets must have short-, medium- and long-term absolute emissions reduction targets and, where appropriate, relative emissions reduction targets across their value chain that are at least consistent with the latest IPCC net zeroaccount for all greenhouse gas emissions modelled pathways that limit(based on internationally approved measures of warming to 1.5°C with no or limited overshoot, and where global emissions decline at least 50% below 2020 levels by 2030, reaching net zero effects) and include separate targets for material non-CO₂ emissions by 2050, followed by net zero greenhouse gas emissions soon after". (e.g. fossil methane and biogenic methane)

Targets must include emissions reductions from a non-state actor's full value chain and activities, including: (...) all emissions facilitated by financial entities"

¹¹¹ Original quote: "And it means more ambitious 2030 emissions targets from businesses, investors and cities, backed by credible and immediate action - meaning actual emissions and not fake carbon credits. By September, all businesses, cities, regions and financial institutions that took a 2050 net-zero pledge should present their transition plans with credible and ambitious targets for 2025 and 2030 - aligned with the standards set by my High-Level Expert Group.

I have a special message for fossil-fuel producers and their enablers scrambling to expand production and raking in monster profits: If you cannot set a credible course for net-zero, with 2025 and 2030 targets covering all your operations, you should not be in business. Your core product is our core problem. We need a renewables revolution, not a self-destructive fossil-fuel resurgence. (<https://press.un.org/en/2023/sqsm21680.doc.htm>).

Second, adopt reduction targets that include the emissions facilitated by its financing and investments, consistent with trajectories that limit warming to 1.5°C with no or minimal overshoot.

This includes:

- **A reduction in GHG emissions, covering scopes 1, 2 and 3, of at least 50% by 2030;**
- **Intermediate reduction targets set on a five-year basis** (2025, 2030, 2035, and every five years);
- **The adoption and effective implementation of a plan to exit the fossil fuel sector**, in line with scientific requirements to reduce fossil fuel production by 2030, with a final exit by 2050 (except for residual use in application of the precautionary principle);
- **The continuation of all financing and investment should be conditional on the publication and effective implementation, by the recipient companies, of climate strategies that are** compatible with limiting global warming to 1.5°C with no or minimal overshoot, as well as the preservation of the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG report.

II.1.2.2.4. Conclusion: the measures expected from banking and financial institutions for their financing and investment activities in terms of climate change

80. Under the Due Diligence Act, reasonable vigilance on the part of a bank such as BNP Paribas consists primarily in not compromising the objective of the Paris Agreement within the limits of a Precautionary Carbon Budget in the face of risks to human rights and the environment resulting from climate change. The external standards to be taken into account have been analysed above, allowing the following appropriate measures to be adopted.

A bank must therefore take into account the activities developed by the companies financed under its obligations to prevent and remedy serious risks and damage, such as the New Fossil Projects carried out by companies supported by the activities of the BNP Paribas Group, which are clearly incompatible with the objective of not exceeding the Precautionary Carbon Budget to limit global warming to 1.5°C, as already demonstrated (**Pièce n°60**, p. 38).

In the fossil fuel sector, when a bank like BNP Paribas continues to finance New Fossil Fuel Projects while this expansion leads to contribute to exceeding the remaining Precautionary Carbon Budget to limit global warming to 1.5°C as demonstrated above (see above, n° 74), it is not surprising that it has been able to do so.74), which is a contribution to many of the perfectly predictable damages associated with global warming.

➤ **In terms of financing**

81. It follows from the United Nations Principles as interpreted in banking matters and from the general and specific OECD guidelines set out above that if a bank decides to finance a client whose activities consist of developing New Fossil Energy Projects, it is putting itself in a position to contribute to a negative impact, namely the aggravation of climate change, "incompatible with the survival of humanity" in the words of UN Secretary General Antonio Guterres:

- Firstly, the negative impact of the client's activity on the climate is foreseeable by clearly going against the scientific recommendations to stop the development of New Fossil Projects in order to preserve the feasibility of a 1.5°C trajectory with no or minimal overshoot and the corresponding Precautionary Carbon Budget;
- Second, if the bank provides its financing-either to a high-risk activity or to a customer whose activities are high-risk-its decision to provide the financial support places it in a contributory position.

➤ **In terms of investment**

82. Thus, within the meaning of the OECD Guidelines set out above, an investor's due diligence consists of :
- When the investor contributes to negative impacts through its investment activities, i.e. in the case of a controlling investment, prevent and remedy these impacts by exercising its influence through shareholder engagement;
 - Where the investor is only "directly connected" to the negative impacts caused by the companies in which it invests, exerting influence on the investee companies to prevent and remedy those impacts;
 - In the event of inability to influence, failure to mitigate, and/or for the most severe impacts such as those caused by fossil fuel expansion, exclude and divest from investee companies.

Like a bank, an investor must take into account the activities developed by investee companies such as New Fossil Projects that are clearly incompatible with the 1.5°C objective as already demonstrated.

Investors should therefore adopt and implement consistent investment policies designed to ensure that the activities of investee companies are consistent with the objective of limiting global warming to 1.5°C and the corresponding Precautionary Carbon Budget.

The behavior expected of a banking institution under the Due Diligence Law, in light of the interpretative framework of the UN and OECD Banking and Financial Services Guidelines, requires the implementation of **measures consistent with the scientific and institutional consensus outlined above, which defines the standard of due diligence behavior for non-state actors, including financial institutions.**

It therefore seems reasonable, within the meaning of the Duty of Care Act, to expect a financial player such as BNP Paribas to adopt all measures compatible with a 1.5°C trajectory with no or minimal overshoot and with the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account, in this respect, the recommendations of the UN-HLEG 2022 report.

In the context of the Duty of Care Act, the following adapted measures must be implemented:

With regard to its financing and investments in the fossil fuel sector :

In the area of Financing :

- The **immediate termination of all new Financing** to any company developing New Fossil Projects; and

In the area of Investment :

- **The immediate cessation of any new investment** in any company developing New Fossil Projects;
- For existing investments :
 - **The adoption and effective implementation of a shareholder engagement and voting policy** to lead invested companies to renounce the development of New Fossil Projects and to adopt, detail and publicly implement measures compatible with limiting global warming to 1.5°C with no or minimal overshoot as well as the preservation of the corresponding Precautionary Carbon Budget, in line with the

latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;

- In the absence of results in line with the above-mentioned objectives following its effective engagement actions, within a reasonable period of time of no more than two years from the communication of its requests, **the divestment of the companies concerned** ;

➤ **In any event, for all BNP Paribas financing and investment activities in all sectors that emit GHGs, the following criteria must be met**

- **The adoption, publication and effective implementation of all measures compatible with a 1.5°C trajectory with no or minimal overshoot and with the corresponding Precautionary Carbon Budget**, in accordance with the latest state of knowledge and taking into account, in this regard, the recommendations of the UN-HLEG 2022 report. This implies in particular:
 - A **reduction in GHG emissions**, covering scopes 1, 2 and 3, of at least 50% by 2030;
 - **Intermediate reduction targets** set on a five-year basis (2025, 2030, 2035, and every five years);
 - **The adoption and effective implementation of a plan to exit** the fossil fuel sector, in line with scientific requirements to reduce fossil fuel production by 2030, with a final exit by 2050 (except for residual use in application of the precautionary principle);
 - **The continuation of all financing and investment is conditional on the publication and effective implementation**, by the recipient companies, of climate strategies that are compatible with limiting global warming to 1.5°C with no or minimal overshoot, as well as the preservation of the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
- Provided that:
 - These demands are based on the state of knowledge currently available; consequently, they will have to adapt to the evolution of the climate and scientific context, taking into account that the longer it takes to implement measures compatible with a 1.5°C trajectory with no or minimal overshoot and the Precautionary Carbon Budget, the faster GHG emissions will have to be reduced.

II.1.3. CHARACTERIZATION OF THE INADEQUACY OF THE BNP PARIBAS CLIMATE VIGILANCE PLAN

83. As a preliminary point, it should be noted that BNP Paribas is the leading bank in the European Union¹¹² with 46.2 billion euros in net banking income in 2021, 2,634 billion euros in assets, and 9.5 billion euros in net profit (Pièce n°32, p. 4).

On February 7, 2022, BNP Paribas announced that it had achieved a **net profit of 10.2 billion euros in fiscal 2022**.

The bank expects its earnings to grow by an average of 9% per year from 2022 to 2025, compared with 7% previously, which means an increase in net income of around one billion euros each year.

BNP Paribas S.A. states the following purpose: "*BNP Paribas' mission is to contribute to a responsible and sustainable economy, by financing and advising its clients in an ethical manner*" (Pièce n°32, p. 580).

However, it will be demonstrated here that the due diligence plan published in the Universal Registration Document 2021 does not comply with legal requirements and is seriously inadequate with regard to the above-mentioned reasonable due diligence measures that must be implemented by banking and financial actors in order to prevent and limit serious climate-related damage (Pièce n°32p.642 to 646).

II.1.3.1. A first formal failure: a flawed vigilance plan and disparate

84. The first formal failure to comply with the Due Diligence Act should be noted: no commitment by BNP Paribas on climate change is included in the due diligence plan.

BNP Paribas refers to documents that are not part of the compliance plan itself, whereas article L. 225-102-4, I, paragraph 5 of the French Commercial Code states that they should be published in the plan as part of the management report.

BNP Paribas justifies these referrals as follows:

*"the references made in the plan to other sections of the DEU are intended to avoid redundancy in a document that is several hundred pages long. This makes sense insofar as the law provides for the inclusion of the Compliance Plan in the Management Report: the Plan is therefore an integral part of the DEU and should be read in the context of Chapter 7 of the DEU, which brings together information relating to our economic, social, civic and environmental responsibilities. (...)
The extra-financial commitments made are one of the levers for preventing the salient risks identified and therefore complement the vigilance plan. (...)" (Pièce n°38, p. 6).*

First, the non-financial performance statement may refer to the due diligence plan, but there is no provision authorizing the reverse (Article L. 225-102-1 III of the French Commercial Code: "*The statement may refer, where appropriate, to the information mentioned in the due diligence plan provided for in I of Article L. 225-102-4*"). The due diligence measures should be included in the due diligence plan published in the management report.

Disparate - and insufficient - announcements are found in various documents:

- The "*Climate Analysis and Alignment Report*" published in 2022 (Pièce n°65) and the "TCFD" Report (Pièce n°66)
- The new climate strategy presented in January 2023 (Pièce n°67)
- The sectoral policies adopted by BNP Paribas relating to :
 - o The "*Coal-Fired Electricity Generation*" published in 2020 (Pièce n°68) ;

¹¹² <https://group.bnpparibas/decouvrez-le-groupe/nous-connaître>

- The "Mining Industry" published in 2020 (**Pièce n°69**) ;
- The "Oil and Gas" published in 2022 (**Pièce n°70**).
- BNP Paribas Cardif's commitments included in its Responsible Investment Report 2021 (**Pièce n°72, p. 34**) ;
- The BNP Paribas AM commitments presented on November 8, 2022 (**Pièce n°73**).

However, all the commitments adopted must be expressly included in the due diligence plan, which is a binding document that may engage the civil liability of the company in the event of default.

Secondly, the due diligence plan does not include the five types of due diligence measures set out in the law, contrary to what BNP Paribas indicates in its letter of January 24, 2023 in response to the formal notice.

The plan does not contain any sections that explicitly identify appropriate measures to remediate serious damage resulting from BNP Paribas' activities; a fortiori, appropriate climate-related actions to limit the very significant contribution to financed emissions are not included in the plan.

Finally, no report on the actual implementation of the vigilance plan is published, although companies subject to the Duty of Vigilance Act are required to do so.

II.1.3.2. Substantive failures: insufficient climate vigilance measures and seriously incompatible with the objective of the Paris Agreement

In addition, the BNP Paribas due diligence plan does not meet the requirements of Article L225-102-4, I of the French Commercial Code and is seriously deficient.

II.1.3.2.1. Risk mapping is incomplete and inaccurate

85. Article L. 225-102-4 of the French Commercial Code provides that the due diligence plan shall include:

" 1° A risk map to identify, analyze and prioritize risks; "

The obligation to identify risks is a prerequisite for the preventive and precautionary approach enshrined in the OECD Guidelines or the United Nations Guiding Principles on Business and Human Rights (see *above*, no. 46).46 s.).

According to the Guide de Référence pour les Plans de Vigilance published by the Sherpa association:

"In order to fully comply with the publication obligation, which, as explained above, is intended to provide information, the published risk map must be sufficiently detailed to enable any person to identify precisely the risks within the group's substantial and organizational scope. Any publication that lacks sincerity in the way it presents the risks would not comply with the duty of vigilance publication requirement, which must allow for the identification of risks and violations of human rights and environmental standards, which are necessarily specific.

Pièce n°64 Sherpa, Guide de Référence pour les Plans de Vigilance, p. 51

Within this mapping, the risks must be prioritized according to their probability and severity, following the example of the OECD recommendations in this area (see *above*, no. 46).46).

The OECD Due Diligence Guidance for Responsible Business Conduct provides a due diligence process that includes a step entitled: *"Identify and assess actual and potential adverse impacts associated with the company's activities, products and services"* (**Pièce n°57, p. 6**).

The Guide recommends "conducting extensive research to identify which aspects of the company's activities, business relationships and supply chain present particularly significant risks of serious adverse impacts on CRE issues¹¹³", so as to "develop an initial and comprehensive overview of the company's fields of activity and types of business relationships" by "consulting relevant stakeholders and experts" (§2.1, p. 29).

From this initial finding, the company must "conduct iterative, increasingly precise evaluation studies" (§2.2.c, p. 30).

The guide recommends "prioritizing, if necessary, the risks of adverse impacts on CRE issues, and defining the measures to be taken according to their severity and likelihood", in particular to "identify actual or potential adverse impacts to be addressed immediately, at least in part" (§2.4, p.32).

Specifically, with respect to banks, the OECD specifies the type of information that may be relevant in the context of risk assessment:

"The client's corporate structure (e.g., subsidiaries, joint ventures) and strategy (e.g., expansion plans) and how they may impact CRE issues;

- *Geographic areas in which the client is active and, if possible, those in which it will be active (e.g., the sensitivity of the surrounding area and/or the likelihood that regulation of CBR issues will be reliably enforced by government authorities) ;*
- *The industry sector in which the customer is active (e.g., the likelihood that a specific industry sector will cause, contribute to, or be linked to negative impacts on the CRE) ;*
- *The client's CRE policy and governance structure, including its CRE policy(s) and management systems;*
- *The client's CRE track record and its ability and willingness to address CRE issues appropriately, including with respect to the client's due diligence on its own suppliers (e.g., company-related controversies discussed in the media or raised by civil society) ;*
- *If applicable, the customer's high-risk joint venture partners in its subsidiaries" (¹¹⁴) (Pièce n°60, p. 38).*

When a bank identifies a serious risk, "*a more detailed project-level assessment for that specific asset or project may be triggered. These may include, for example, identified risks of adverse impacts on indigenous peoples, critical habitats, significant cultural heritage, or large-scale relocation to a significant asset of a client under development or proposed*" (Pièce n°60p. 38¹¹⁵).

It will be shown that, as far as the identification of climate risks is concerned, the mapping of BNP Paribas' vigilance plan is highly inadequate insofar as these risks are of unprecedented, global scope and scale, and are irreversible in nature.

A. Climate risks resulting from the activities of the BNP Paribas Group

86. **First**, it is not disputed that GHG emissions are a source of serious harm to the environment, human health and safety, human rights and fundamental freedoms (see above, no. 62).62).

¹¹³ CRE is an acronym for Responsible Business Conduct.

¹¹⁴ Original quote:

¹¹⁵ Original quote:

Secondly, BNP Paribas' activities contribute to the increase in climate risks.

87. Regarding the financing:

Financing mainly covers lending (all types of loans, including syndicated loans), underwriting, guaranteeing and activities related to the issuance of shares and bonds (also called *underwriting*).

A loan may be syndicated (i.e., involving several banks that share the risk) or bilateral. Since bilateral loans are not published, they are not included in the financial data mentioned below, which means that BNP's financing of the fossil fuel industry is underestimated.

The BNP Paribas Group's financing activities include both *project finance and corporate finance*, including in the oil and gas sector.

BNP Paribas' activities in the fossil fuel sector have been investigated and exposed for years by French and international civil society organizations (**Pièce n°21**) and in particular in the following recent reports.

- **BNP Paribas played a leading role globally in financing the fossil fuel industry between 2016 and 2021.**

Pièce n°2 Banking on Climate Chaos, 2022, p. 13

BNP Paribas is the **1^{er} European and 5^{ème} global financier of fossil fuel expansion** between 2016 and 2021, with \$55 billion in financing provided¹¹⁶ (**Pièce n°2**).

The bank is the **1^{er} global financier of the eight American and European majors in the sector** (TotalEnergies, Chevron, ExxonMobil, Shell, BP, ENI, Repsol, Equinor) between 2016 and 2021, with \$43 billion in financing provided to their fossil fuel activities over this period (**Pièce n°2**, p. 13). These groups are involved in more than 200 New Fossil Projects that are expected to be approved for development by 2025 (**Pièce n°5** ; **Pièce n°6**p. 10), which would result in the emission of an additional 8.6 gigatons of CO₂, equivalent to the lifetime emissions of 77 new coal-fired power plants (**Pièce n°5**).

BNP Paribas is the **2^{ème} global financier of TotalEnergies** between 2016 and 2021 (\$5.8 billion) (**Pièce n°2**). However, the fossil fuel projects that are expected to be approved for development by 2025 by this company alone would result in the emission of an additional 2 gigatons of CO₂, the equivalent of the lifetime emissions of 18 new coal-fired power plants (**Pièce n°5**). The company has been singled out for its involvement in several major projects that threaten the climate, the environment and human rights, such as Mozambique LNG¹¹⁷, Tilenga and EACOP in Uganda and Tanzania¹¹⁸ ;

- **BNP Paribas maintains its support for the expansion of fossil fuels, in contradiction with its net zero commitment and after joining the Net Zero Banking Alliance in April 2021.**

Pièce n°3 Reclaim Finance, Friends of the Earth France et al, "Throwing fuel on fire: GFANZ financing of fossil fuel expansion", Jan. 2023

From April 2021 to August 2022, BNP Paribas was involved in 30 transactions, providing nearly \$7.1 billion to a dozen companies developing (or "developers") New Fossil Projects (**Pièce n°3**, p. 48-49).

¹¹⁶ These financing volumes cover loan transactions and equity and bond issues (excluding bilateral transactions) in which BNP Paribas was involved between 2016 and 2021, in proportion to the share of the beneficiary companies' activities in fossil fuels or, where applicable, in the targeted sub-sector.

¹¹⁷ Friends of the Earth Europe, Justiça Ambiental, Friends of the Earth EWNI, Les Amis de la Terre France, Friends of the Earth US, Milieudéfense, ReCommon, [Fuelling the Crisis in Mozambique](#), 2022.

¹¹⁸ Friends of the Earth France and Survie, [EACOP, the road to disaster](#), 2022.

Nearly \$6.2 billion has been awarded to oil and gas developers including, for example:

- During this period, BNP Paribas financed Saudi Aramco, the company developing the world's largest oil and gas expansion projects, by participating in two loans totaling \$24 billion (**Pièce n°3**, p. 8).
- It has also been a major supporter of the oil and gas majors, participating in financings of \$10 billion to ExxonMobil in August 2021 (loan); \$1.5 billion to Shell in November 2021 (bond issue); \$8 billion to TotalEnergies in April 2022 (loan) (**Pièce n°3**, p. 19).

It has granted another 905 million to coal developers, including, for example:

- US\$37 million in a US\$555 million revolving loan to Marubeni, which is planning new coal-fired power plants in Indonesia (Cirebon 2) and Japan (Tokuyama East (TKE3)), in February 2022; and to POSCO, which is planning new coal-fired power plants in South Korea, in August 2022
- **BNP Paribas is even a leader in sectors that are particularly harmful to the environment and are expanding rapidly.**

BNP Paribas is the **world's 1^{er} financier of Arctic oil and gas development between 2016 and 2021**, with nearly \$6 billion in financing provided to the sector over that period (**Pièce n°2**). However, this type of exploitation contributes to the acceleration of the melting of the permafrost, which contains large quantities of methane and has irreparable consequences on the most fragile ecosystems. It generates GHG emissions that contribute to global warming, which in turn contributes to the melting of the permafrost. Furthermore, the increase in maritime traffic generated by the multiplication of oil and gas projects in the Arctic region leads to an increase in the release of black carbon through the combustion of heavy fuel oil to propel ships. This black carbon, by being deposited on the Arctic ice, has the effect of accelerating the melting of the ice even more (**Pièce n°82**).

- **BNP is known for its support of oil and gas development in certain regions.**

Indeed, the bank is the **3^e financier of oil and gas expansion in Africa** between 2019 and July 2022, with nearly \$4.6 billion in financing provided over that period.

Pièce n°7 Reclaim Finance, Friends of the Earth France et al, "Who is Financing Fossil Fuel Expansion in Africa?", Nov. 2022, p 42-43

BNP Paribas is also the **8^{ème} largest financier of the gas industry in Southeast Asia** between 2016 and March 2022, with \$6.5 billion. It is the only Western bank among the top 10 banks that finance the gas industry in Southeast Asia the most.

Pièce n°8 CEED, "Financing A Fossil Fuel Future, Tracing The Money Pipeline Of Fossil Gas In Southeast Asia," June 2022, p. 32

It should be noted that this financing does not include bilateral loans, for which the data are not public.

- **BNP Paribas still massively shifts its financing towards fossil fuels**

Between 2016 and July 31, 2022, 93% of BNP Paribas' energy financing was directed to fossil fuels, compared to just 7% to renewables. The compiled data examines financing flows (syndicated loans and bond issues) to 377 companies active in the global energy sector, which collectively account for about 75% of global production volumes over the past three years.

Pièce n°8 Reclaim Finance, "Just 7% of global banks' energy financing goes to renewables," Jan. 2023

88. Regarding Investments :

BNP Paribas is a major contributor to global warming risks through its investments.

As a reminder, Investments are defined as the holding of shares and bonds, both for their own account and for third parties.

This includes the activities of BNP Paribas AM, a subsidiary that has also publicly committed to achieving carbon neutrality by 2050, has been a member of the Net Zero Asset Managers (NZAM) initiative since November 2021, and nevertheless continues to invest in companies developing New Fossil Projects.

In fact, as of September 2022, BNP Paribas AM held at least \$2.7 billion worth of assets (stocks and bonds) in 70 companies developing New Fossil Projects (**Pièce n°3**).

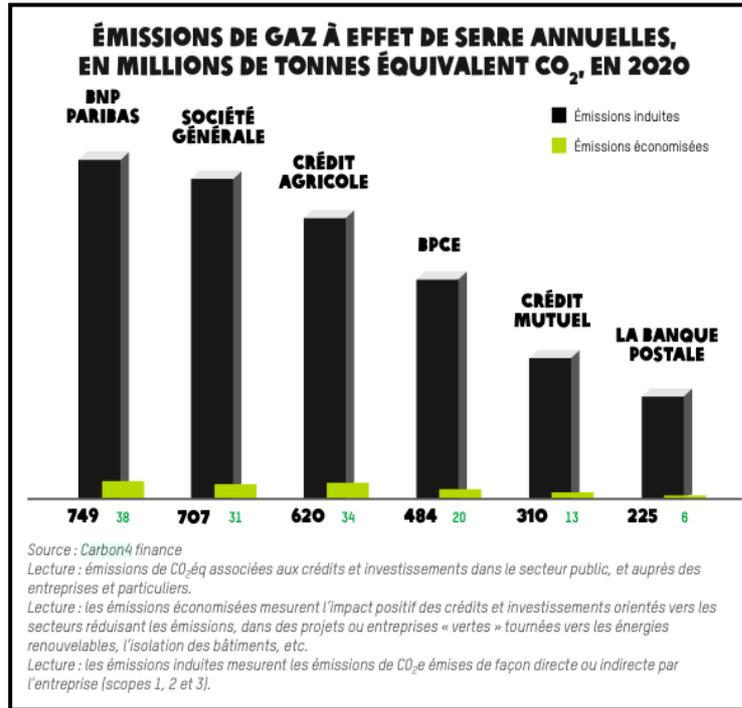
Among the companies developing New Fossil Projects in which BNP Paribas AM holds the most shares and bonds are still the American and European majors in the sector (TotalEnergies, Chevron, ExxonMobil, Shell, BP, ENI, Repsol and Equinor). At the same time, BNP Paribas AM held \$1.9 billion in assets (stocks and bonds) in these eight companies alone, including \$1.1 billion in TotalEnergies (**Pièce n°3**).

Provided that:

- These investments relate only to BNP Paribas AM and do not include significant operations of Cardif and BNP Paribas CIB, for which investment data are not publicly available;
- These are the publicly available data and do not include confidential over-the-counter transactions (*i.e.*, investments without intermediaries or syndication). These figures therefore significantly underestimate the BNP Paribas Group's investments in companies developing New Fossil Projects.

89. BNP Paribas' carbon footprint is colossal:

According to figures compiled by Carbon4 Finance for the Oxfam France report, in 2020 BNP Paribas was the bank with the highest GHG emissions in France due to its loans and investments, with **749 million tons of CO₂ equivalent** emitted directly or indirectly (**Pièce n°1**, p. 10).



Source: OFXAM France, "Banque et climat, le désaccord de Paris", October 2021, p.10

In 2020, according to Oxfam France, loans to companies active in the oil and gas sector accounted for **39% of the GHG emissions of the bank's corporate credit portfolio**. As the carbon footprint is a snapshot at a given time, it is assessed on the basis of the stock of corporate loans. Financial tools to help issue new shares and bonds and BNP Paribas' direct investments in companies active in the fossil fuel sector are therefore not included in this calculation, which is therefore particularly conservative (**Pièce n°1**, p. 14).

As a result, BNP Paribas' financing and investment activities entail numerous risks of serious harm to the environment, human rights, health and safety, and fundamental freedoms.

In view of the scope, scale and irreparable nature of the damage caused by BNP Paribas' activities in the fossil fuel sector, climate risks must be identified with particular precision in the Group's risk management plan.

B. The insufficient identification of climate risks in BNP Paribas' vigilance plan

90. The vigilance plan makes fleeting reference to climate risks. In its response of January 24, BNP Paribas seems to consider that this mention would be sufficient (**Pièce n°38**, p. 7).
91. However, such an anecdotal reference does not satisfy the obligation to draw up a precise map of the climate risks to which the Group's Financing and Investment activities in companies in the fossil fuel industry directly contribute.

Indeed, the risk "mapping" of the BNP Paribas vigilance plan is very incomplete, vague and imprecise, since it :

- does not identify, analyze and prioritize climate risks, which are only mentioned under "environmental issues" (**Pièce n°32**, p. 642) ;

- does not disclose any specific information on the risks resulting from BNP Paribas' activities through its support for the expansion of fossil fuels and its direct and indirect GHG emissions contributing to exceeding the Global Carbon Budget 1.5°C.

Recognizing that "*the activities of BNP Paribas' clients are likely to carry risks in the areas of human rights and fundamental freedoms, health and safety of individuals and the environment*" (Pièce n°32(Exhibit 32, p. 644), BNP Paribas states that it has "*maps of the risks faced by its clients*":

"For each sector of activity, the salient risks related to human rights and fundamental freedoms, health and safety of individuals and the environment have been defined according to a methodology for rating the level of seriousness and occurrence of each risk, which is based on the reference framework for reporting on the United Nations Guiding Principles. (Pièce n°32, p. 645)

These maps and the scoring methods on which they are based are not included in the plan - which is required by law - so it is impossible to judge their quality and relevance.

BNP Paribas also states that it has set up a new "ESG" (environmental, social and governance) assessment of its clients in order to manage these risks, "*in line with its duty of care*".

Pièce n°66 TCFD 2021 Report, p. 43 ; Pièce n°32, p. 596)

The objective of this assessment would **be** "to identify companies whose weak performance or risk management of ESG factors could translate into credit, investment, reputational risks, and adverse environmental and social impacts."

Pièce n°66 TCFD 2021 Report, p. 43

BNP Paribas also states in the letter of January 24, 2023 that it conducts a preliminary assessment of its clients as part of a "KYC" process and ESG Assessment.

However, no details are given about these companies, the nature of their activities and the risks they pose, and even less about the results of the "KYC" assessments conducted by BNP Paris, either in the Compliance Plan or in any of the documents relating to the Group's climate strategy.

BNP Paribas is thus seriously deficient in its climate risk mapping, which does not identify :

- the climate and environmental risks resulting from its activities, both for fossil fuel projects in which it is directly involved and for the companies in the sector that it supports through its financing and investments;
 - the risks associated with the New Fossil Projects and expansion plans of its client companies.
92. **However, these risks should be identified, analyzed and prioritized** , as required by law, in accordance with the scientific data available and the seriousness of this major challenge for humanity in the years to come. Banks must approach their activities by anticipating and determining the risks to which they could contribute by supporting activities or clients with high climate risks, in order to prevent them.
93. **First, as a prerequisite** for analyzing the climate risks resulting from BNP Paribas' activities, the Group must accurately assess its carbon footprint, i.e. its direct and indirect GHG emissions.

However, the absolute value of the GHG emissions generated by BNP Paribas through all of its financial services is not currently published. The Group assesses its direct GHG emissions from fossil fuels and its indirect emissions, mainly from electricity consumption and heating/cooling networks ("scopes 1 and 2"), in absolute terms, but for all other indirect emissions ("scope 3"), it only assesses those "related to the mobility" of its employees (Pièce n°32, p. 636).

However, this assessment of direct and indirect GHG emissions is an essential prerequisite - and strongly recommended - for the analysis of the resulting climate risks.

UN-HLEG thus stated in its report published in November 2022 that:

"Targets must include emissions reductions from the entire value chain and activities of a non-state actor, including (...) all emissions facilitated by financial entities." (free translation)¹¹⁹

Pièce n°12 (UN HLEG, "Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions", Nov. 2022, Recommendation 2, p. 17)

Compliance with such a requirement implies a prior and precise assessment of the direct and indirect emissions of the bank's financing and investment activities.

Moreover, contrary to what BNP Paribas claims, its non-financial *reporting* obligations or its prudential obligations to the Autorité de contrôle prudentiel et de résolution (ACPR) in no way exempt it from having to implement a risk map that complies with legal requirements.

Moreover, the European regulations currently being drafted or due to come into force (Directive (EU) 2022/2464 of the European Parliament and of the Council of December 14, 2022, known as the "CSRD" or "Corporate Social Responsibility Directive", which reforms the NFRD ("Non-Financial Reporting Directive") on non-financial reporting) are in no way a substitute for the French obligations stemming from the Duty of Vigilance Act adopted in 2017, but rather a complement to them. In any case, they do not have the same purpose, nor the same object, nor the same scope, since they apply to a larger number of companies, including VSEs.

It should be noted that the CSRD now requires companies to communicate on their transition plan and concrete measures to ensure that their business model and strategy are compatible with the objective of limiting global warming to 1.5°C in line with the Paris Agreement and the objectives of the European Climate Law, in particular the binding objectives of carbon neutrality in 2050 and a reduction in emissions of 55% in 2030 compared to 1990 levels¹²⁰ for all emission scopes¹²¹.

BNP Paribas is perfectly capable of publishing the information requested in a transparent and exhaustive manner.

If it does not do so, it is by design to conceal the extent of the climate risks resulting from its activities.

94. **Secondly**, although some information is published, it is not sufficiently precise and exhaustive given the seriousness of these risks. Above all, the information is incomplete because it only covers one particular sector (e.g., the electricity mix) where BNP Paribas claims to have a smaller climate footprint.

But it hides the real level of its climate impact through its massive support for fossil fuels.

¹¹⁹ Original quote: "Targets must include emissions reductions from a non-state actor's full value chain and activities, including (...) all emissions facilitated by financial entities."

¹²⁰ Article 1^{er}, 4) of the CSRD: "2. The information referred to in paragraph 1 shall include:

a) a brief description of the company's business model and strategy, including: (...)

(iii) the plans defined by the company, including implementation actions and related financial and investment plans, to ensure the compatibility of its business model and strategy with the transition to a sustainable economy, the limitation of global warming to 1.5°C in accordance with the Paris Agreement under the United Nations Framework Convention on Climate Change, adopted on December 12, 2015 (hereinafter referred to as the "Paris Agreement"), the goal of climate neutrality by 2050 as set out in Regulation (EU) 2021/1119 of the European Parliament and of the Council (*8), and, where applicable, the company's exposure to coal, oil and gas activities."

¹²¹ Section 1^{er}, 8) of the CSRD: "2. (...) Sustainability reporting standards, taking into account the purpose of a sustainability reporting standard in particular:

(a) specify the information that companies must disclose about the following environmental factors:

(i) climate change mitigation, including Tier 1, Tier 2 and, where appropriate, Tier 3 greenhouse gas emissions (...)"

The data provided for BNP Paribas' investment portfolio, including through BNP Paribas AM's Net Zero Roadmap, is largely insufficient:

- For its credit portfolio only, the published data only covers: its electricity mix (**Pièce n°32**p. 600); its primary energy mix (**Pièce n°32**p. 601); carbon intensity in the oil and gas sector (**Pièce n°65**p. 27); gross exposure to the oil and gas sector (**Pièce n°32**, p. 425).
- The investment policy does not include Scope 3 emissions, which account for the majority of its emissions.
- However, the report of the High Level Panel of Experts clearly states that emission reduction targets must cover all operations and all value chains, including financial institutions (**Pièce n°12**p. 17), and on all scopes (1, 2 and 3).

In any event, the Compliance Plan does not contain **any precise and exhaustive information on the stocks and flows (amounts and shares) of financing and investments** to companies active in the fossil fuel sector, particularly those developing new projects.

95. BNP Paribas claims that the letter of formal notice sent to it exceeds the provisions of the law on duty of care:

*"We would like to remind you that the publication of non-financial data is not provided for by the law on due diligence but is subject to specific regulations, some of which are currently being revised or implemented. We remind you that the publication of non-financial data is not provided for by the law on the duty of vigilance but is subject to specific regulations, some of which are currently being revised or implemented. (**Pièce n°38**, p. 7).*

This is proof of a complete lack of understanding of the purpose of the Duty of Vigilance Act and of its obligation to map risks, which is interpreted in light of both the parliamentary work and the recommendations of the UN and OECD reference guides.

Paradoxically, BNP Paribas itself refers to the recommendations of the United Nations Guiding Principles, without complying with their precise requirements for risk mapping.

It is undeniable that information can be included in both the vigilance plan and the non-financial performance declaration required under Article L. 225-102-1 of the French Commercial Code.

Nevertheless, the non-financial performance statement must contain, in particular, depending on the company's situation and the impact of its activity, information on the way the company takes into account the social and environmental consequences of its activity. The first stakeholders concerned by this statement are the shareholders.

The vigilance plan must identify the risks that the company's activity poses to human rights and the environment throughout its value chain. This plan is of interest to all stakeholders, including those outside the company. The mapping that must be included in the plan must therefore precisely identify the risks that the company's activities and those of its subsidiaries pose.

As summarized by one author:

"In their extra-financial performance statement, companies may, if they consider it relevant, i.e. in a materiality approach, provide information on greenhouse gas emission reduction targets: Article R. 225-105 is an incentive guide. (...) There is no doubt that any information concerning mitigation and even more so adaptation to climate change is very important for all stakeholders, and first and foremost for shareholders (at least some of them) and employees, insofar as the company's survival in the medium to long term is at stake. But if this information must be included in the declaration, for these reasons, this does not mean that it should not be included in the due diligence plan. More specifically, since the plan should only present the risks that the company's activity poses to human rights and the environment

throughout its value chain (and not the risks that the environment represents for the company), measures to adapt to climate change do not belong in the plan, but measures to mitigate this phenomenon are required. The natural receptacle for commitments to reduce greenhouse gas emissions is therefore also, and above all, the Compliance Plan.

A. Stevignon, " Le devoir de vigilance climatique, un nouveau champ de responsabilité pour les entreprises ", REDC, 2021, n° 3, p. 339

As part of its due diligence, BNP Paribas must therefore include in its due diligence plan a **map presenting, analyzing and prioritizing the risks of serious** environmental, health and safety, and human rights **violations in the area of climate change** resulting from BNP Paribas' activities, as described above (see *above*), including

A regularly updated map presenting, analyzing, and ranking the risks of serious environmental, health and safety, and human rights violations related to climate change resulting from BNP Paribas' activities, **as** described above (see *above*), including

- BNP Paribas' exhaustive carbon footprint in CO2 equivalent (*scopes* 1, 2 and 3), in intensity and absolute value, resulting from its activities, with a disaggregation for the fossil fuel sector:
 - By sectors (coal, oil and gas), subsectors (including each unconventional hydrocarbon sector), and types of activity along the value chain (exploration, production, transportation, processing, storage, power generation) of the underlying companies supported; and
 - By type of financial services including Financing (including structured, syndicated and bilateral loans, equity and bond issues) and Investments (own and third party, distinguishing between equity and bonds or structured securities);
- Flows and stocks, in amount and share of Financing and Investments :
 - Disaggregated by sectors, subsectors and types of activities (see *above*); and
 - By type of financial services (see *above*) ;
- The list of fossil fuel companies and projects (coal, oil and gas) that benefit from financial support from BNP Paribas, in particular projects with high GHG emissions and the companies that support them;
- The exhaustive methodologies associated with all the data published and the measures taken within the framework of the BNP Paribas Compliance Plan (in particular, the precise calculation methodologies, reference databases, as well as the perimeters of the financial services and client activities covered);
- The climate scenarios used as a reference by BNP Paribas and their underlying assumptions, particularly with regard to negative emissions (natural and technological carbon sinks) and carbon capture and storage (CCS) techniques;
- Details of BNP Paribas' shareholder engagement policy (in particular, an inventory of the actions taken, the timetable followed, communications with the company on this subject and the escalation strategy (in particular: actions and deadlines) in the event of unsuccessful engagement), and its voting decisions at the general meeting of fossil fuel companies in which it is an investor;

Lastly, this map must be regularly updated to take into account the latest available data on the Group's contribution to climate risks.

The lack of a proper mapping and analysis of climate risks and the failure to prioritize these risks within environmental risks, at a time when climate change has become considerably more severe in recent years and in view of its irremediable nature, constitutes a failure of vigilance on the part of BNP Paribas.

II.1.3.2.2. Procedures for regular assessment of the situation of subsidiaries, subcontractors or suppliers

96. Article L. 225-102-4 of the French Commercial Code provides that the due diligence plan shall include:

"2° Procedures for regularly assessing the situation of subsidiaries, subcontractors or suppliers with whom an established business relationship is maintained, with regard to risk mapping;"

Again, the UN-HLEG report requires that emissions from the entire value chain be assessed:

"Targets must include emissions reductions from the entire value chain and activities of a non-state actor, including (...) all emissions facilitated by financial entities." (free translation)¹²²

Pièce n°12 UN HLEG, "Integrity matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions", Nov. 2022, Recommendation 2, p. 17

The UN and OECD Guidelines emphasize coverage of the entire value chain of banking and financial companies.

In this case, despite the "tools" mentioned by BNP Paris in its letter of January 24, 2023 (**Pièce n°38** No qualitative or quantitative data, no performance indicators or procedures for assessing the real climate impact of the activities financed and the investments on the entire value chain (subsidiaries, subcontractors, suppliers, business relations) are included in the plan.

The sole indication of the "Know your client" method, which is not described and does not check the compatibility of climate commitments with the 1.5°C trajectory and the objective of the Paris Agreement, is highly insufficient to comply with its duty of climate vigilance under the value chain assessment.

The lack of regular assessment of the situation of subsidiaries, subcontractors and suppliers with regard to risks related to climate change constitutes a lack of vigilance on the part of BNP Paribas.

II.1.3.2.3. Actions to prevent and mitigate risks and serious harm

97. Article L. 225-102-4 of the French Commercial Code provides that the plan must include "reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment".

As such, any company subject to the Duty of Vigilance Act must include in its vigilance plan :

"(3) Appropriate risk mitigation or serious harm prevention actions."

¹²² Original quote: "*Targets must include emissions reductions from a non-state actor's full value chain and activities, including (...) all emissions facilitated by financial entities.*"

This is the core of the duty of care, with the commitment to implement them effectively and to monitor their effectiveness under the fifth paragraph of the law.

The aim is to determine "*reasonable vigilance measures to prevent serious violations of human rights (...), the health and safety of individuals and the environment*" as a result of the GHG emissions generated by the activities of BNP Paribas and its subsidiaries.

As mentioned above, the legislator has given the judge the power to assess the "*reasonableness*" of the vigilance that must be exercised and the "*appropriateness*" of the actions that must be included in the plan by the company.

The terms "*reasonable*" and "*appropriate*" are standards with evolving content that must be appreciated in the current context.

A. Assessing the "reasonableness" of the vigilance

98. The assessment of the "reasonable" nature of the vigilance expected of BNP Paribas under the Due Diligence Act must be based on the seriousness of the risks, its size and its knowledge of the risks.

i) The seriousness of the risks

In view of the recommendations of the United Nations and OECD guidelines (see *above*, no.49), the assessment of the "reasonable" nature of the vigilance expected of BNP Paribas must be based primarily on the seriousness of the climate risks.

The risks and serious harm to the environment, human health and human rights caused by climate change, which have been established by numerous scientific studies and international organizations, therefore require a response from the United States that must be proportionate to their seriousness and likelihood. In this respect, it will be recalled that there is no issue more serious than that of climate change, given both the established difficulty of maintaining global warming at 1.5°C and the need to achieve this objective in order to avoid any climate runaway (see *above*, no.70 s.).

ii) The size of the BNP Paribas Group worldwide and systemically

99. In view of the recommendations of the United Nations and OECD guidelines (see *above*, no.50), the size of BNP Paribas also influences the assessment of the "reasonableness" of the due diligence required, which must be all the more important because of its market power and the level and probability of the risks to which it contributes.

In the *Shell* case, which had international repercussions although an appeal is pending, the Dutch judge ruled on the scope of the general duty of care of the parent company (*Royal Dutch Shell*, "RDS").

The Dutch judge justified his decision by stating that the power of action of the Shell multinational justifies an obligation proportional to its size and market power:

"The Court is of the view that much can be expected of RDS. RDS is the head of the Shell Group, which consists of approximately 1,100 companies and operates in 160 countries around the world. It holds a senior position in the Shell Group (...), which is a major player in the global fossil fuel market and is responsible for significant CO₂ emissions, which exceed the emissions of many states and contribute to global warming and dangerous climate change in the Netherlands and the Wadden region.

Pièce n°79, p. 30

In this respect, it will be useful to recall that BNP Paribas is one of the world's leading financial players that finances the entire economy. As BNP Paribas itself reminds us in its reply letter, it will be the 7^{ème} largest bank in the world in 2021 and the leading European bank (**Pièce n°38, p. 4**).

As a systemic bank and leader in its sector, BNP Paribas has a particular obligation to implement stringent due diligence measures regarding climate change mitigation.

The November 2022 UN-HLEG report confirms that:

"All non-state actors must reduce their emissions as quickly as possible, aligning with or exceeding national targets, roadmaps and timetables. Those that have the capacity to move faster than a 50% reduction by 2030 and net zero CO₂ emissions by 2050 should do so (...)"⁽¹²³⁾

Pièce n°12, p. 16,

iii) Risk awareness by BNP Paribas

100. In view of the assessment by civil case law of vigilance in general law (see above, no.29), the "reasonable" nature of the vigilance expected of BNP Paribas must finally be assessed in light of its knowledge of the risks.
101. The intensity of the duty of care is all the greater when the risk is known, i.e. when BNP Paribas would have been able not only to foresee the risk but also to act upstream to limit its contribution to the damage.

The risk created by GHG emissions on the climate has been known for decades:

- Recent research has established the oil majors' knowledge of their significant effect on anthropogenic climate change as early as 1965-1970¹²⁴.
- At the international level, the creation of the IPCC dates back to 1988; the causality between anthropogenic GHG emissions and global warming was established by the IPCC in 1992: *"Emissions resulting from human activities are significantly increasing atmospheric concentrations of ... greenhouse gases [which] will enhance the greenhouse effect, resulting in additional warming of the Earth's surface on average."*¹²⁵.
- The fifth report released in 2014 ahead of COP 21 clearly stated that *"it is now 95% certain that humans are the primary cause of current global warming"*¹²⁶.
- The SR1.5 report states, *"Human activities are estimated to have caused global warming of about 1.0°C above pre-industrial levels, with a likely range of 0.8°C to 1.2°C. Global warming is projected to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate. (high confidence)."* (**Pièce n°13**, A1).

The sixth report confirms that *"there is no doubt that human influence has warmed the atmosphere, oceans and land. Rapid and widespread changes have occurred in the atmosphere, oceans, cryosphere and biosphere"* (**Pièce n°14A1**,).¹²⁷

¹²³ Original quote: "All non-state actors must reduce emissions as fast as possible, aligning or exceeding national targets, roadmaps and timelines. Those that have the capacity to move faster than a 50% reduction by 2030 and net zero CO₂ emissions by 2050 should do so (...)"

¹²⁴ IPCC, AR 6, WG III, Chapter 5, p. 84 (Exhibit 16): *"Among the causes of this lack of action by the international community, the IPCC and numerous studies accepted by scientific journals, have shown that the fossil fuel industry has historically contributed to delaying the global fight against climate change by unduly raising scientific uncertainties, pressuring decision-makers, and deflecting responsibility for the climate crisis onto individuals, despite its early and accurate knowledge of climate hazards.* See also. Ch. Bonneuil et al, "Early warnings and emerging accountability: Total's responses to global warming," 1971-2021, Global Environmental Change Volume 71, November 2021. 16.

¹²⁵ IPCC, "Climate Change: The IPCC Scientific Assessment", 1991, p. xi (J. Houghton, G. Jenkins, & J. Ephraums).

¹²⁶ IPCC, AR5, Synthesis Report, 2014, p. V.

¹²⁷ Original quote: *"It is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.*

- Most importantly, the Paris Agreement adopted in 2015 set notorious targets, including on financial flows, for reducing GHG emissions in order to limit global warming to 1.5°C.

As for the risks of damage to the environment, human rights and the safety and health of people, these have been particularly well documented since the publication of the fifth report of the IPCC, the special report on the consequences of a 1.5°C global warming in 2018 (**Pièce n°13**) and the first two parts of the IPCC's sixth report, published in 2021 and 2022 (**Pièce n°14, Pièce n°15**).

Yet, while BNP Paribas is certainly aware of these risks, the Group has maintained its financing and investments in the fossil fuel industry, including companies developing new projects in this sector, in the years following the adoption of the Paris Agreement and up to the present day (see *above*, no.87 s.).

Today, it seems contrary to the exercise of reasonable vigilance to provide new financial support (through financing or investment) to a company developing new fossil fuel expansion projects with full knowledge of the facts.

UN Secretary General Antonio Guterres stated bluntly at the Davos Summit on January 18, 2023 that:

"The science has been clear for decades. I'm not just talking about the UN scientists. I'm talking about fossil fuel scientists. We learned last week that some fossil fuel producers were well aware in the 1970s that their flagship product was burning up our planet.

*Like the tobacco companies, they have ignored their own science. The oil giants have spread lies. And like the tobacco industry, those responsible must be held accountable. Today, **fossil fuel producers and those who support them** continue to expand production, **knowing full well that their business model is incompatible with human survival.**" (free translation)¹²⁸*

Furthermore, on February 6, 2023, UN Secretary General Antonio Guterres called on all fossil fuel industry players and their financial backers to immediately implement the measures recommended by the UN-HLEG:

"And that means more ambitious 2030 emissions targets from companies, investors and cities, backed by credible and immediate action - which means real emissions, not fake carbon credits. By September, all companies, cities, regions, and financial institutions that have committed to zero by 2050 will be required to submit their transition plans with credible and ambitious targets for 2025 and 2030, according to the standards set by my high-level panel.

*I have a particular message for fossil fuel producers and their accomplices who are rushing to expand production and reap monstrous profits: If you cannot credibly commit to net zero, with targets for 2025 and 2030 covering all your operations, you should not be in business. Your core product is our core problem. We need a renewable energy revolution, not a self-destructive fossil fuel resurgence."¹²⁹ (**Pièce n°25**)*

In the same vein, five Goldman Environmental Prize laureates called on financial institutions, in an article published in "Le Monde", to stop supporting TotalEnergies' oil and gas expansion strategy, which is responsible for accelerating global warming and social injustices (**Pièce n°27**).

¹²⁸ <https://www.weforum.org/agenda/2023/01/davos-2023-special-address-by-antonio-guterres-secretary-general-of-the-united-nations/>.

¹²⁹ *"And it means more ambitious 2030 emissions targets from businesses, investors and cities, backed by credible and immediate action - meaning actual emissions and not fake carbon credits. By September, all businesses, cities, regions and financial institutions that took a 2050 net-zero pledge should present their transition plans with credible and ambitious targets for 2025 and 2030 - aligned with the standards set by my High-Level Expert Group.*

I have a special message for fossil-fuel producers and their enablers scrambling to expand production and raking in monster profits: If you cannot set a credible course for net-zero, with 2025 and 2030 targets covering all your operations, you should not be in business. Your core product is our core problem. We need a renewables revolution, not a self-destructive fossil-fuel resurgence." (<https://press.un.org/en/2023/sgsm21680.doc.htm>).

B. Assessment of the "appropriate" nature of the actions to be included in the vigilance plan

102. The "appropriate" nature of the actions to be included in the vigilance plan must be assessed in particular with regard to:
- The international due diligence standards drawn up by the United Nations and the OECD as specified for banking and financial institutions in the context of their financing and investment activities.
 - The standard of behavior expected of private actors in climate change mitigation based on the latest scientific knowledge and institutional consensus reflected in the UN-HLEG report (**Pièce n°12**).

It has been demonstrated above that, based on a cross-reading of all these texts, against which the vigilant behavior of a bank in climate matters should be assessed, it can reasonably be expected that it will implement appropriate actions to prevent serious damage and mitigate risks, making it possible to preserve the objective of limiting global warming to 1.5°C, following a trajectory with no or minimal overshoot, as well as the corresponding Precautionary Carbon Budget.

It will now be shown that the risk prevention and mitigation measures contained in both the vigilance plan and in the documents and policies to which it refers from time to time are highly inadequate.

These measures are inadequate in view of the scale of the risks and damage caused by global warming and are even less reasonable in view of the capacity for action of one of the world's largest banking groups.

C. The measures of the plan are not reasonable and adapted to the prevention of climate risks

103. As a preliminary point, it should be noted that not all of the commitments mentioned below are included in BNP's Compliance Plan, as some of them were adopted after the date of publication of the plan (see *above*, no. 13).13).
104. BNP Paribas has adopted several exclusionary policies contained in its various sectoral policies to which the Compliance Plan refers (**Pièce n°32**, p. 644).

With regard to the **coal sector**, BNP Paribas is committed to :

- Stop providing financial support to companies that develop new coal mines, power plants and infrastructure;
- Phase out coal and coal-fired power generation by 2030 in the European Union and OECD countries, and by 2040 globally;
- Require companies operating in the sector to have an exit plan aligned with this timeline by the end of 2021.

(Pièce n°68 ; Pièce n°69)

In the **oil and gas sector**, BNP Paribas is committed to:

- since 2017, to cease all dedicated support for production and transportation projects in three unconventional sectors (Arctic oil and gas, shale oil and gas, oil sands) (**Pièce n°71**), as well as in the Amazon (**Pièce n°65**, p. 34) ;
- since 2022, to cease providing financial support to companies with more than 10% of their business related to oil sands and shale oil and gas, or with more than 10% of their business derived from Arctic activities (**Pièce n°65**, p. 34) ;
- since 2022, to cease all financial support to companies that produce from oil and gas reserves in the Amazon and to those that develop related infrastructures (**Pièce n°65**, p. 34) ;
- since 2022, to reduce between 2020 and 2025 the carbon emissions intensity financed: by 30% in electricity production, and by 10% for hydrocarbon extraction and refining (**Pièce n°65**, p. 34) ;
- since 2022, to reduce its credit exposure to oil and gas production by 12% between 2020 and 2025, and by 25% for oil production alone (**Pièce n°65**, p. 34) ;

- since January 2023, to reduce by 2030 80% of outstanding financing for oil extraction and production, and 30% for gas (**Pièce n°67**).

It will be shown that the measures adopted by BNP are inadequate because :

- They do not guarantee that the expansion of fossil fuels will stop;
- They do not guarantee the exit from fossil fuels.

i) Measures adopted by BNP do not guarantee a halt to the expansion of fossil fuels

105. BNP has no policy of discontinuing its support for hydrocarbon expansion, New Fossil Projects, or companies planning to develop such projects:

"We have chosen not to systematically ban companies developing new exploration on the condition that their practices are more environmentally friendly than those of decommissioned facilities. All scenarios developed by the Intergovernmental Panel on Climate Change are not based on a halt to new oil and gas projects and, contrary to the assumptions used in the IEA's NZE 2050 scenario, global oil demand continues to grow" (Pièce n°65, p. 6).

First of all, the requirement to use "*practices that are more environmentally friendly than those of the decommissioned facilities*" is extremely vague and not very restrictive. Moreover, there is no guarantee that these new operations will replace existing facilities of equivalent capacity.

Secondly, BNP Paribas goes beyond the scientific and institutional consensus supporting the urgent need to stop supporting the expansion of fossil fuels (see above, no.80 s.). In particular, it dismisses the conclusion of the IEA's Net Zero roadmap, after having recognized it in its latest vigilance plan as a "*reference scenario*" (**Pièce n°32** BNP Paribas also mentioned one of the main results of this scenario concerning the expansion of fossil fuels in a response to a written question from Friends of the Earth France at its 2022 General Assembly, acknowledging that:

"Apart from the existing oil and gas fields, which should continue to be financed (without such financing, the decline in supply would be too rapid), the development of new fields is no longer necessary" (Exhibit 23, p. 1).

Thus, by not including a commitment to cease all financing and investments that support the expansion of fossil fuels, BNP Paribas' compliance plan appears inadequate, even though such a general exclusion measure is the first reasonable compliance measure that should be included to prevent the worsening of climate change.

106. The only commitments made cover all "conventional" and "non-conventional" hydrocarbons and do not address the urgent issue of ending support for New Fossil Projects:

- The targets for reducing the carbon intensity of the credit portfolio, credit exposure and outstanding loans in the oil and gas sector by 2025 or 2030 do not require any immediate action to be taken with regard to expansionist companies. BNP Paribas can continue to support directly and indirectly, via new financial flows, New Fossil Projects that will pollute well beyond these dates, emitting quantities of GHGs into the atmosphere that are incompatible with the Global 1.5°C Carbon Budget.
- The Group may also prefer to keep some of these clients in its portfolio rather than others, particularly the oil and gas majors, which are among the most active in the expansion of fossil fuels.
- These targets are also limited to credit activities, when the issuance of shares and bonds on behalf of companies is an important lever for financing the fossil fuel industry and its expansion.
- Even for financing dedicated to new oil and gas projects, there is no firm exclusion to date. BNP Paribas states that it intends to "*reserve its financing in the gas sector primarily for new generation low-emission thermal power plants as well as for security of supply, gas terminals and the gas transport fleet*" (**Pièce**

n°67): not only does BNP place no explicit limits on expansion in gas exploration and production, but it also shows a willingness to support companies in their investments in fossil fuels.

107. The announcements made by BNP Paribas in January 2023 (**Pièce n°67**) are therefore still insufficient, since they do not include any of the climate vigilance measures set out above to preserve the objective of limiting global warming to 1.5°, following a trajectory with no or minimal overshoot, as well as the corresponding Precautionary Carbon Budget.

The inadequacies of these announcements have been discussed in detail by the Claimants and the NGO Reclaim Finance (**Pièce n°39, Pièce n°40, Pièce n°41**).

As a result, BNP Paribas will continue to finance or invest heavily in New Fossil Projects. This was confirmed on February 9, 2023, when BNP Paribas, along with two US banks, helped oil and gas giant British Petroleum (BP) issue a \$2.5 billion bond. BP continues to develop New Fossil Projects, with the major's expansion plans amounting to 3 billion barrels of oil equivalent¹³⁰.

The objective of immediate cessation of Financing and Investment in New Fossil Projects is not respected, nor is the absence of an exit plan from the oil and gas sector, which does not allow for the remediation of the serious risks and damages resulting from the overshooting of the precautionary Carbon Budget.

This is a serious failure of vigilance that invalidates all of BNP Paribas' measures and vigilance plan.

108. Finally, exclusion measures, when they exist, are clearly insufficient.

First, BNP Paribas has not adopted an exclusionary measure covering conventional hydrocarbons. BNP Paribas also limits its definition of "unconventional" sectors. BNP Paribas has thus excluded from its definition of non-conventional oil and gas the highly sensitive sector of ultra-deepwater offshore oil and gas ecosystems, going against the recommendations of the Scientific Committee of the Observatoire de la finance durable.

Secondly, BNP Paribas has chosen exclusion thresholds with limited impacts, committing to stop supporting clients whose activities are more than 10% related to oil sands and shale oil and gas, and more than 10% to Arctic oil and gas. This threshold approach exempts large "diversified" groups, including the main oil and gas majors. BNP Paribas can thus renew its financial support for TotalEnergies, which is nevertheless the leading European developer in the Arctic. As the Reclaim Finance association clearly explains:

"In total, shale oil and gas, oil sands and Arctic (excluding Norway) represent 12% of TotalEnergies' production. However, by instituting an exclusion threshold on revenue and separating shale and oil sands on one side and Arctic oil and gas on the other, the 10% threshold does not imply the exclusion of TotalEnergies."

Pièce n°78 Reclaim Finance, "BNP Paribas: Too little progress on climate change," May 3, 2022

Even more, the exclusionary measures in BNP Paribas' non-conventional oil and gas policy are rendered meaningless by a very general exception:

"The above criteria [related to unconventional oil and gas and the Arctic and Amazon] will not apply to companies with the most credible plans to transition to a net-zero economy by 2050, based on clear transition criteria such as: a public commitment to align with a 1.5°C strategy; interim targets; a coherent investment program to support its diversification strategy away from fossil fuel production; a measured

¹³⁰ Financial research conducted by the NGO Reclaim Finance, and made public on February 17, 2023: <https://twitter.com/ReclaimFinance/status/1626513906427473921>.

and annually reported level of greenhouse gas emissions; and strong board leadership" (**Pièce n°71**, p. 34).

BNP Paribas does not sufficiently specify the vague criteria that would allow it to benefit from this exemption, in particular alignment with a 1.5°C trajectory, even though numerous analyses have shown that the transition plans currently adopted by the major oil and gas companies are not compatible with such a trajectory. This is demonstrated by the "net-zero company benchmark" of the Climate Action 100+ (which includes BNP Paribas AM and BNP Paribas Cardif). It is also what the reports by the Oil Change International association, which analysed the strategies of BNP Paribas' major oil and gas clients in the light of the Global 1.5°C Carbon Budget, remind us of (**Pièce n°5**) or the conclusion of the World Benchmarking Alliance on the major oil and gas companies¹³¹.

This ill-defined exemption, the application of which is left entirely to the discretion of BNP Paribas, does not even draw a red line on the end of oil and gas development, including in these very risky sectors. These exclusionary measures are both ineffective and inappropriate.

The measures to end new financial support to companies developing New Fossil Projects, recognized in the coal sector, should be adopted and implemented in the oil and gas sector, in order to preserve the objective of limiting global warming to 1.5°, following a trajectory of no or minimal overshoot, and the corresponding Precautionary Carbon Budget.

ii) The measures adopted do not provide an exit plan for financing and investment in the oil and gas sector

109. As demonstrated above, it is reasonable to expect a banking and financial institution to adopt, as part of its duty of care, a fossil fuel exit strategy, which is necessary to respect the Precautionary Carbon Budget corresponding to a 1.5°C trajectory with no or minimal overshoot.

This is the second adapted action to prevent the risk of worsening climate change recognized in the UN-HLEG report.

BNP Paribas has not set a firm timetable for exiting the oil and gas sector, even though it has admitted *that "there is less and less need for oil exploration and production, and to a lesser extent for gas"*.

Pièce n°42 Novethic.fr, "Devoir de vigilance: la pression monte sur BNP Paribas après sa mise en demeure", 26 Jan. 2023

It has also done so for the coal sector. BNP Paribas has been asking all its clients to adopt a "physical" coal exit plan in line with this timetable since 2021: to phase out coal production and coal-fired power generation by 2030 in the European Union and OECD countries, and by 2040 worldwide.

BNP Paribas should therefore be able to ask all of its clients for a gradual plan for the withdrawal from oil and gas, with precise deadlines for the gradual closure of physical hydrocarbon infrastructures, in line with scientific scenarios.

The 2025 or 2030 reduction targets for the carbon intensity of the credit portfolio, credit exposure, and outstanding credit in the hydrocarbon sector do not guarantee this exit, in that they :

- These commitments, including the most recent announcements, do not include BNP Paribas' support through its equity and bond issuance activities, which are key levers for financing companies in the sector;
- **only concern part of the projects and the hydrocarbon supply chain** - for example, oil and gas pipelines or thermal power plants (except for the reduction of the financed carbon intensity) are not concerned;
- **contain a weaker commitment to gas than to oil, anticipating less effort in this sector;**

¹³¹ <https://www.worldbenchmarkingalliance.org/publication/oil-and-gas/rankings/>.

- **Reducing exposure to fossil fuels does not preclude the financing of long-term projects:** existing policies deal with "financed emissions", i.e. emissions attributed to BNP from its financing, or "reduction of outstanding loans by 2030". However, BNP may make short-term loans for new infrastructure that is expected to operate over the long term (beyond 2030), which will only appear as financed emissions for the few years it takes for the loans to be repaid, whereas project emissions may continue for decades.

BNP Paribas' due diligence plan is therefore deficient in that it does not include an exit plan for financing and investment in the oil and gas sector.

iii) Shareholder engagement measures are insufficient

110. For the record, both BNP Paribas AM and BNP Paribas Cardif align their oil and gas exclusion policies with that of BNP Paribas, which updated its policy in May 2022 (**Pièce n°65**). This policy is primarily aimed at limiting investments in three non-conventional sectors. As demonstrated in (i) and (ii) above, this policy is insufficient.

In its latest shareholder engagement policy of November 2022, BNP Paribas AM commits to (**Pièce n°73p. 19**):

- "Voting for Climate Action"
- "Engage with businesses on carbon neutrality by 2050 or sooner"
- "Advocating for a climate policy aligned with carbon neutrality"

BNP Paribas AM is committed to :

"sanction companies that fail to meet our climate expectations by opposing the following categories of management resolutions (...). In determining whether to apply these sanctions, we consider whether companies :

- *correctly report all greenhouse gas emissions related to their activities (Scopes 1 and 2 for all companies, scope 3 if applicable)*
- *communicate or engage constructively with their climate adaptation business strategy or climate lobbying strategy.*
- *Have the ambition to achieve net zero GHG emissions by 2050 or earlier, based on credible decarbonization strategies and interim targets, consistent with global efforts to limit warming to 1.5°C.*

Pièce n°73, p. 19

111. To guarantee a shareholder sanction policy aligned with a 1.5°C scenario, BNP Paribas should urgently adopt a shareholder engagement strategy including precise and dated measures, accompanied by a sanction, via divestment, if the company does not respond within a reasonable timeframe given the climate emergency. These measures required of companies in which it is an investor must at least include :

- stop the expansion of fossil fuels (as defined in i) ;
- implement an oil and gas exit plan with specific timelines based on scientific scenarios, and no later than 2050 (as defined in ii).

This strategy should include a shareholder voting strategy, including in its "Say on Climate" votes, providing for the ability to vote that a fossil fuel company is aligned with "carbon neutrality by 2050" if and only if the company has committed to meeting the above demands.

It is considered that a 2-year period to exert this influence is both compatible with and cannot be exceeded given the climate emergency, as well as the need for immediate and urgent actions in line with the scientific and institutional objectives mentioned above.

As an illustration of this insufficient shareholder commitment, we would point out that :

- BNP Paribas AM, as a shareholder of TotalEnergies, did not oppose its climate plan at the May 2022 Annual General Meeting, even though its inadequacy has been widely documented by both NGOs and investors;

- Especially since the Chairman of the Board of Directors of BNP Paribas, Mr. Jean Lemierre, is a director of TotalEnergies, a company with a major impact on the climate when it comes to the development of New Fossil Projects (**Pièce n°6** Oil Change International, "Investing in Disaster", Nov. 2022).

BNP Paribas' shareholder commitment to this company could therefore have a significant and determining influence in aligning its strategy with the objective of the Paris Agreement. Failing that, a resignation measure should be imposed as well as divestment, as recommended by the Guiding Principles.

It is therefore clear that the vigilance plan and the set of climate commitments adopted outside the vigilance plan are insufficient to prevent climate risks and mitigate serious climate impacts arising from its financing and investment activities.

BNP Paribas' failure to take appropriate action to prevent risks and mitigate serious harm arising from its financing and investment activities constitutes a lack of vigilance .

II.1.3.2.4. The alert mechanism

112. BNP Paribas is required to include in its compliance plan:

"4° A mechanism for alerting and collecting reports on the existence or occurrence of risks, established in consultation with the representative trade unions in the said company."

In this case, the due diligence plan does not include any details of the alert mechanism put in place by BNP Paribas, which also constitutes a lack of due diligence.

II.1.3.2.5. The monitoring system and the lack of reporting on the actual implementation of the plan

113. The system for monitoring the measures implemented and evaluating their effectiveness is not included in the BNP Paribas Compliance Plan.

Under the terms of Article L. 225-102-4 of the French Commercial Code, BNP Paribas is required to include the following in its compliance plan

"5° A mechanism for monitoring the measures implemented and evaluating their effectiveness."

It is also required to publish a *"report on the effective implementation"* of the plan.

The company is therefore bound by two distinct obligations.

114. First, the plan must include *"a mechanism for monitoring the measures implemented and evaluating their effectiveness."*

The monitoring of measures and their effectiveness is in line with the logic of continuous improvement desired by international standards for the vigilance approach (**Pièce n°54** Principle 20, p. 26 and 27; **Pièce n°57**, p. 36).

Indeed, this legal obligation echoes the 20^e UN Guiding Principle on Business and Human Rights:

"Companies should monitor the effectiveness of the measures they have taken. This monitoring should be based on appropriate qualitative and quantitative indicators and should draw on assessments from both internal and external sources, including stakeholders." (Pièce n°54 Principle 20, pp. 26-27)

This requirement is necessary to allow both:

- the company to demonstrate the **effective implementation** of its duty of care, which is an obligation set forth in the Duty of Care Act, as described above;
- To allow the stakeholders and *ultimately* the judge to evaluate the effectiveness of this implementation.

As the parliamentary evaluation report of the law published on February 24, 2022, pointed out:

"The company must (...) be able to demonstrate that the measures provided for in the vigilance plan have been effectively implemented: this is where the legal upheaval introduced by the law lies, which thus lifts the hypocritical veil cast over the reality of the economic flows separating the principals - essentially, the shareholders of the large transnational corporations - from the subcontractors and the subsidiaries.

C. Dubost and D. Potier, "Parliamentary Evaluation Report," Feb. 24, 2022, p. 33

115. Secondly, the company is required to publish a "report on the effective implementation", which is not included in the vigilance plan (see above, no. 84).84).

It was pointed out that:

"The system for monitoring the implementation and evaluating the effectiveness of measures may involve the establishment of process or resource indicators and result indicators. The former will meet the objective of monitoring the effective implementation of the vigilance plan. The latter will make it possible to measure the effectiveness of actions implemented to mitigate risks and prevent breaches. These systems go beyond simple reporting.

Fasc. 2450, "Devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre", J.-Cl. Sociétés Traité, Jan. 27, 2022, n° 47

116. In this case, no monitoring mechanism appears in the BNP Paribas vigilance plan, nor does it publish a report on its actual implementation.

There are no precise and factual measures based on indicators and or concrete results to determine whether the measures published in the vigilance plan in 2018, 2019, 2020 and 2021 have been respected. This failure constitutes a non-negligible fault, since the effectiveness of the implementation of the vigilance plan constitutes the core of the legislative mechanism. Consequently, the judge is not in a position to assess the effectiveness of the implementation of the vigilance plan, which falls within his competence, as mentioned above.

The "results" mentioned by BNP Paribas in its plan are once again very vague and do not meet the legal requirements mentioned above. In terms of climate change, it is only stated that:

"In order to align its portfolio with its climate objectives, BNP Paribas has chosen to use a sectoral analysis based on indicators and scenarios specific to each sector" (Pièce n°32, p. 646).

However, these indicators and the specific scenarios for each sector are not spelled out in the vigilance plan, making it impossible to ensure that these sectoral measures are appropriate.

Above all, the main fossil fuel sector is the subject of very inadequate commitments, since they are insufficient to meet the main objective that must be pursued, namely the immediate cessation of financial support for the development of New Fossil Projects.

These shortcomings in the vigilance plan with regard to periodic monitoring and verification of objectives are a further breach of vigilance by BNP Paribas.

II.1.4. AN INJUNCTION TO COMPLY WITH THE OBLIGATIONS SET OUT IN THE ACT OF 27 MARCH 2017

II.1.4.1. On the request for an injunction to publish and implement a new due diligence plan

117. Article L. 225-102-4.-II of the French Commercial Code provides that :

"II - When a company that has been given formal notice to comply with the obligations set out in I does not do so within three months of the notice being given, the competent court may, at the request of any person with an interest in the matter, order it to comply with these obligations, subject to a fine if necessary.

It has now been demonstrated that BNP Paribas' compliance plan did not comply with legal requirements, particularly in terms of identifying the climate risks resulting from its business activities and taking appropriate action to mitigate these risks or prevent the serious harm they cause.

BNP Paribas was duly put on notice by the plaintiffs by registered mail dated October 26, 2022 (**Pièce n°37**) and has failed to comply with this notice by refusing to publish a compliant due diligence plan within the three-month period.

The reply of January 24, 2023 does not contain any of the measures requested, and does not eliminate the breaches of obligations set out in Article L. 225-102-4 of the French Commercial Code.

The Court will therefore order BNP Paribas, on the basis of Article L. 225-102-4 II of the French Commercial Code, to comply with its obligations under Article L. 225-102-4 I of the French Commercial Code and to bring its due diligence plan into conformity.

To this end, BNP Paribas will be required to remedy the shortcomings identified in its due diligence plan.

BNP Paribas will thus be required to publish and implement a new vigilance plan, containing at least the following measures, without prejudice to other measures that may be identified in light of the urgency of the climate change situation, scientific data and changes in its activities:

1. A regularly updated map presenting, analyzing and prioritizing the risks of serious harm to the environment, health and safety, and human rights in terms of climate change resulting from BNP Paribas' activities, as described above (see above, no.86 s.), including in particular:

- The exhaustive carbon footprint in CO₂ equivalent (scopes 1, 2 and 3), in intensity and absolute value, of BNP Paribas resulting from its activities, with a disaggregation for the fossil fuel sector:
 - By sectors (coal, oil and gas), subsectors (including each unconventional hydrocarbon sector), and types of activity along the value chain (exploration, production, transportation, processing, storage, power generation) of the underlying companies supported; and
 - By type of financial services including Financing (including structured, syndicated and bilateral loans, equity and bond issues) and Investments (own and third party, distinguishing between equity and bonds or structured securities);
- Flows and stocks, in amount and share of Financing and Investments :
 - Disaggregated by sectors, subsectors and types of activities (see above); and
 - By type of financial services (see above) ;

- The list of fossil fuel companies and projects (coal, oil and gas) that benefit from financial support from BNP Paribas, in particular projects that emit large amounts of greenhouse gases and the companies behind them;
- The exhaustive methodologies associated with all the data published and the measures taken within the framework of the BNP Paribas Compliance Plan (in particular, the precise calculation methodologies, reference databases, as well as the perimeters of the financial services and client activities covered);
- The climate scenarios used as a reference by BNP Paribas and their underlying assumptions, particularly with regard to negative emissions (natural and technological carbon sinks) and carbon capture and storage (CCS) techniques;
- Details of BNP Paribas' shareholder engagement policy (in particular, an inventory of actions taken, the timetable followed, communications with the company on this subject and the escalation strategy (in particular: actions and deadlines) in the event of unsuccessful engagement), and its voting decisions at the general meeting of companies in the fossil fuel sector in which it is an investor

2. Procedures for regular evaluation of the value chain in relation to the risk map, enabling the impact of their activities on the risks identified, analyzed and prioritized to be quantified in concrete terms.

3. Adapted actions for the prevention of serious damage and mitigation of risks, aimed at preserving the objective, provided for in the Paris Agreement, of limiting global warming to 1.5°C with no or minimal overshoot, as well as the corresponding Precautionary Carbon Budget, which require in the state of scientific knowledge on the day of the assignment:

With regard to its financing and investments in the fossil fuel sector :

In the area of Financing :

- **The immediate termination of all new Financing** to any company developing New Fossil Projects; and

In the area of Investment :

- **The immediate cessation of all new investments** in any company developing New Fossil Projects;
- For existing investments :
 - **The adoption and effective implementation of a shareholder engagement and voting policy** to lead invested companies to renounce the development of New Fossil Projects and to adopt, detail and publicly implement measures compatible with limiting global warming to 1.5°C with no or minimal overshoot as well as the preservation of the corresponding Precautionary Carbon Budget, **in** line with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
 - In the absence of results in line with the above-mentioned objectives following its effective engagement actions, within a reasonable period of time of no more than two years from the communication of its requests, the **divestment of** the companies concerned ;

And in any case,

For all of BNP Paribas' financing and investment activities in all sectors that emit GHGs:

- **The adoption, publication and effective implementation of all measures compatible with a 1.5°C trajectory with** no or minimal overshoot and with the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account, in this regard, the recommendations of the UN-HLEG 2022 report. This implies in particular:
 - A **reduction in GHG emissions**, covering scopes 1, 2 and 3, of at least 50% by 2030;
 - **Intermediate reduction targets** established on a five-year basis (2025, 2030, 2035, and every five years)
 - **The adoption and effective implementation of a plan to exit** the fossil fuel sector, in line with scientific requirements to reduce fossil fuel production by 2030, with a final exit by 2050 (except for residual use in application of the precautionary principle);
 - **The continuation of all financing and investment is conditional on the publication and effective implementation**, by the recipient companies, of climate strategies that are compatible with limiting global warming to 1.5°C with no or minimal overshoot, as well as the preservation of the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
- Provided that:
 - These requests are based on the state of knowledge currently available;
 - Consequently, they will have to adapt to the changing climate and scientific context, taking into account that the longer it takes to implement measures compatible with a 1.5°C trajectory with no or minimal overshoot and the corresponding Precautionary Carbon Budget, the faster GHG emissions will have to be reduced.

The implementation of an alert and reporting mechanism adapted to the prevention of climate risks resulting from the activity of BNP Paribas.

The publication of a periodic monitoring system for the objectives and measures of the plan implemented:

- a. Based on means and result indicators,
- b. Specifying the methodology and sources used,
- c. Publicly reporting the results, including, where a breach has been identified, the products and facilities involved and the remediation implemented, and
- d. Involving external stakeholders, in order to (i) ensure that vigilance measures are appropriate, (ii) regularly evaluate their effectiveness and (iii) their efficiency, and (iv) modify them accordingly.

BNP Paribas will also be required to publish a report on its effective implementation, as required by Article L. 225-102-4-I of the French Commercial Code, justifying the effective implementation of its compliance plan by reporting on compliance:

- commitments already made in the area of climate change, particularly in the context of the Net Zero alliances of which it is a member, and its sectoral policies on fossil fuels, for which there is no effective monitoring system;
- actions that will be taken in accordance with the requests of this subpoena, within a reasonable timeframe appropriate to the climate emergency.

Pursuant to Article L. 225-102-4-II of the French Commercial Code, the injunction to publish a new due diligence plan should be issued under a penalty of **100,000 euros** per day of delay within one month from the date of service of the decision, with provisional enforcement.

This measure, the amount of which is sufficiently dissuasive for BNP Paribas not to obstruct its execution, is justified by the urgency of the matter, in view of the seriousness of the consequences of the worsening of climate change in terms of damage to the environment, to human health and safety, and to human rights. It is also proportionate to the revenues/financial flows generated by BNP Paribas.

II.1.4.2. On advertising measures

118. Given the extent of the damage to the climate and the reputation of BNP Paribas, the Plaintiffs request that the decision be published, broadcast or posted, in accordance with the provisions of Article L.225-102-5 of the French Commercial Code, in a manner to be determined by the Court.

II.2. AS A COMPLEMENTARY MEASURE, AN INJUNCTION TO STOP THE ECOLOGICAL DAMAGE

II.2.1. ACTION TO PREVENT ENVIRONMENTAL DAMAGE

119. According to article 1247 of the Civil Code:

"Ecological damage consisting of non-negligible damage to the elements or functions of ecosystems or to the collective benefits derived by man from the environment shall be compensable under the conditions laid down in this title."

Article 1252 of the Civil Code provides that:

"Independently of the compensation for the ecological damage, the judge, seized of a request to this effect by a person mentioned in article 1248, may prescribe reasonable measures to prevent or stop the damage."

This provision may constitute the legal basis for a purely preventive action. As François-Guy Trébulle points out, in reading article 1252 :

"It is clear that the action may be solely preventive or intended to put an end to the damage and (...) this is easily understood in view of the specific characteristics of the situation concerned".

F.-G. Trébulle, "La consécration de l'accueil du préjudice écologique dans le Code civil", *Énergie - Env. - Infrastr.*, 2016, n° 11, p. 4, n° 17.

Thus, the action provided for in Article 1252 of the Civil Code is envisaged as being autonomous from any action for compensation for ecological damage.

II.2.2. THE INTEREST AND STANDING OF THE PLAINTIFFS

120. The action may be brought by any person referred to in Article 1248 of the Civil Code which provides that:

"The action for compensation for ecological damage is open to any person with standing and an interest in acting, such as the State, the French Biodiversity Office, local authorities and their groupings whose territory is concerned, as well as public establishments and associations approved or created for at least five years on the date the proceedings are instituted, whose purpose is the protection of nature and the defense of the environment."

As already mentioned (see above, no.4 s.), one of the purposes of the plaintiff associations is to defend the environment. In addition, the associations NAAT and Friends of the Earth France are approved for the protection of the environment.

They are therefore entitled to act on the basis of article 1252 of the Civil Code in order to obtain "*reasonable measures to prevent*" the aggravation of this ecological damage and the derived ecological damage.

II.2.3. PREVENTING THE WORSENING OF CLIMATE CHANGE CAUSED BY THE ACTIVITIES OF BNP PARIBAS

II.2.3.1. GHG emissions cause ecological damage to the atmosphere and innumerable derived harms to climate regulation and ecosystems

121. It is now indisputable that greenhouse gas emissions are the source of ecological damage to the atmosphere and of innumerable derived damages.

The nomenclature of environmental damages established by Professors L. Neyret and Gilles J. Martin, which today constitutes a reference in the field and which inspired the legislator when the "Biodiversity" law of August 8, 2016 was adopted, had identified, among the damages caused to the environment, "Damage to the air or atmosphere and to their functions" by specifying that:

"Damage to the air or atmosphere and its functions means damage to the quality of the air or atmosphere that affects its ecological functions.

This damage can take the form of a change in the composition of the air or the atmosphere.

The ecological functions of the air or atmosphere are the roles it plays in ecosystems, such as supporting biodiversity, absorbing ultraviolet solar radiation, and regulating the climate.

L. Neyret and G. J. Martin (dir.), Nomenclature des préjudices environnementaux, LGDJ, coll. Droit des affaires, 2012, p. 16-18

In the "Case of the Century", the Paris Administrative Court has very precisely characterized the ecological damage caused to the atmosphere by the increase in man-made GHG emissions. It also noted numerous derived damages, particularly environmental damages, and observed that these damages will worsen:

"With regard to the existence of ecological damage

It follows from the investigation, and in particular from the latest special reports published by the Intergovernmental Panel on Climate Change (IPCC), in which France participates actively and contributes 15% of the funding, and to whose conclusions it adheres, that the constant increase in the Earth's average global temperature, which has now reached 1°C compared to the pre-industrial era, is mainly due to greenhouse gas emissions of anthropogenic origin. This increase, responsible for a modification of the atmosphere and its ecological functions, has already caused the acceleration of the melting of continental ice and permafrost and the warming of the oceans, which result in the rise of sea level, which is accelerating. The latter phenomenon is combined with the increase in frequency and severity of extreme weather events, ocean acidification, and ecosystem damage, which have serious and irreversible consequences for human activities such as fishing and farming, as well as for water resources, and lead to increasing risks of food insecurity and degradation of water resources, human health, and economic growth. It also results from these reports that this global warming will reach 1.5°C between 2030 and 2052 if anthropogenic greenhouse gas emissions continue to increase at the current rate and will persist for several centuries, even if these emissions decrease, because of the persistence of greenhouse gases in the atmosphere, and that a warming of 2°C rather than 1.5°C would severely increase these various phenomena and their consequences. It also results from this work that each additional half-degree of global warming very significantly increases the associated risks, in particular for the most vulnerable ecosystems and populations, and that limiting this warming to 1.5°C requires reducing greenhouse gas emissions by 45% by 2030 compared to 2010 and achieving carbon neutrality by 2050 at the latest. Finally, it results from the work of the National Observatory on the effects of global warming, an organization attached to the Ministry of Ecological Transition and responsible in particular for describing, through a number of indicators, the state of the climate and its impacts on the entire national territory, that in France, the increase in average temperature, which for the decade 2000-2009, amounts to 1.14°C compared to the period 1960-1990, causes in particular the acceleration of the loss of mass of glaciers, especially since 2003, the worsening of coastal erosion, which affects a quarter of the French coastline, and the risk of flooding, poses a serious threat to the biodiversity of glaciers and coastlines, leads to an increase in

extreme climatic phenomena, such as heat waves, droughts, forest fires, extreme precipitation, floods and hurricanes, risks to which 62% of the French population is strongly exposed, and contributes to an increase in ozone pollution and the expansion of insect vectors of infectious agents such as dengue fever or chikungunya. In view of all these elements, the ecological damage claimed by the applicant associations must be considered as established.

TA Paris, 4^e section, 1^{re} chamber, N°1904967, 1904968, 1904972, 1904976/4-1, 3 February 2021, para. 16, p. 28

The French administrative judge has therefore already ruled that GHG emissions cause ecological damage to the atmosphere and countless derived damages.

Furthermore, in a resolution adopted on July 28, 2022, the United Nations General Assembly recognized that :

"the impacts of climate change, unsustainable management and use of natural resources, air, land and water pollution, mismanagement of chemicals and wastes, the resulting loss of biodiversity and the decline of ecosystem services undermine the enjoyment of a clean, healthy and sustainable environment and that environmental degradation has direct and indirect negative effects on the effective enjoyment of all human rights" (United Nations General Assembly, Resolution of 28 July 2022, 76/300. Right to a clean, healthy and sustainable environment).

This decision is part of a global line of jurisprudence that recognizes that global warming affects human rights:

- In its decision of March 24, 2021, the German Constitutional Court recognizes that global warming affects the rights and freedoms of future generations (**C. const. Karlsruhe, March 24, 2021, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, press release no. 31/2021 of April 29, 2021, French version**) ;
- In its decision of December 20, 2019, the Supreme Court of the Netherlands confirmed the threat posed by climate change to the right to life within the meaning of Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and to the right to private and family life within the meaning of Article 8 (**Hoge Raad, December 20, 2019, Urgenda v. The Netherlands, 19/00135, English version**) ;
- In its decision of June 17, 2021, the Brussels Court of First Instance recognized that global warming violates fundamental human rights (**Tribunal de première instance francophone de Bruxelles, Klimaatzaak v. Belgium, June 17, 2021**).

It is thus established that GHG emissions cause ecological damage to the atmosphere and violate human rights.

II.2.3.2. An action under Article 1252 can usefully prevent the aggravation of identified environmental harms

122. The prevention of damage is of particular importance in environmental matters, as environmental damage can have irreversible consequences.

This is particularly true of climate change, which is an irreversible phenomenon, and the resulting damage, which is just as irreversible. It will be recalled that the latest IPCC report warns of the catastrophic consequences of climate change for the environment, whatever the scenario envisaged (see above, no. 62). 62) ; **Pièce n°13, Pièce n°14, Pièce n°15, Pièce n°16**).

In the "Century case" mentioned above, the administrative court decided to enjoin the Prime Minister and the competent ministers to prevent the aggravation of damages resulting from climate change due to insufficient action by the State on the basis of Article 1252 :

"Under the terms of article 1246 of the Civil Code: "Any person responsible for ecological damage is obliged to repair it". Under the terms of article 1249 of the Civil Code: "Compensation for ecological damage is made in kind as a matter of priority... / In the event of legal or factual impossibility or inadequacy of the measures of reparation, the judge shall order the person responsible to pay damages, allocated to the reparation of the environment, to the claimant or, if the latter is unable to take the appropriate measures to this end, to the State. (...)". And under the terms of article 1252 of the Civil Code: "Independently of the reparation of the ecological damage, the judge, seized of a request in this sense by a person mentioned in article 1248, can prescribe the reasonable measures suitable to prevent or stop the damage".

*On the need for an injunction:
(...)*

the applicant associations are entitled to request the issuance of an injunction to remedy the harm caused by the excess greenhouse gas emissions and to prevent the aggravation of the damage that may result from them.

DECIDES: (...)

Article 2: The Prime Minister and the competent ministers are enjoined to take all necessary measures to repair the ecological damage and prevent further damage to the extent of the uncompensated share of greenhouse gas emissions under the first carbon budget (...)"

TA Paris, 4^e section, 1^{re} chamber, N°1904967, 1904968, 1904972, 1904976/4-1 14 October 2021, p. 31

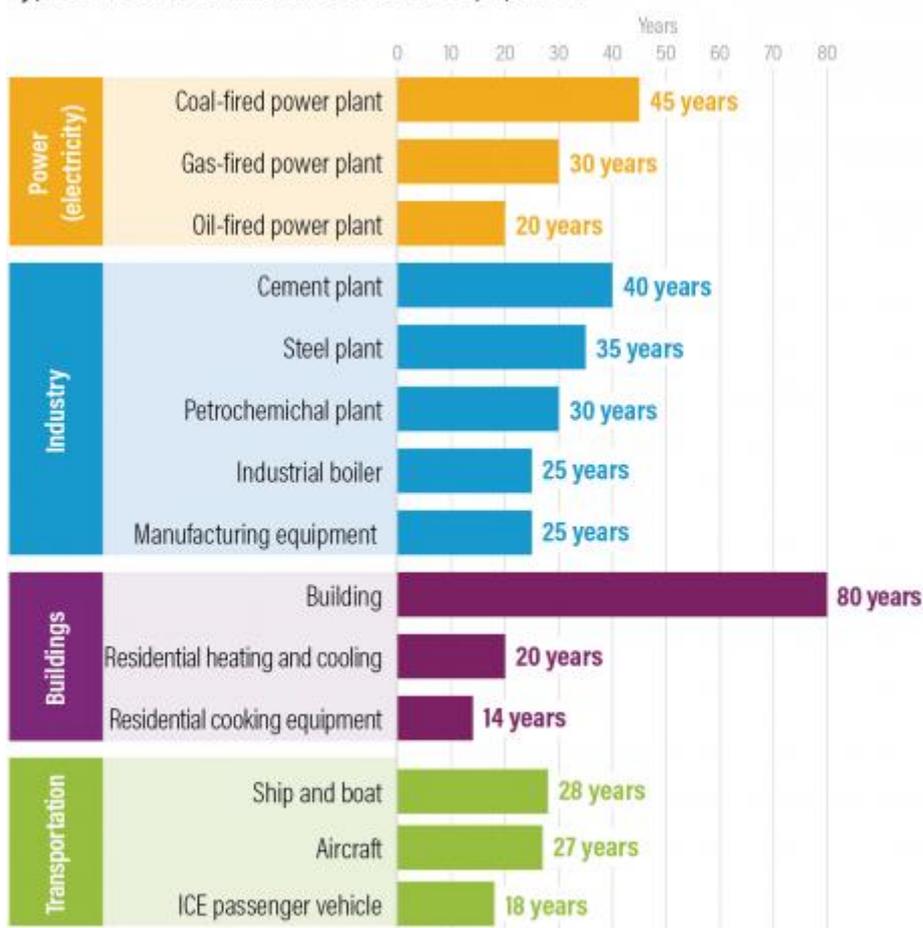
The administrative judge has therefore already issued an injunction on the basis of Article 1252 of the Civil Code to prevent the worsening of climate change.

II.2.3.3. BNP Paribas' activities significantly aggravate the ecological damage identified

123. It should be noted that **BNP Paribas' activities contribute to particularly significant direct and indirect GHG emissions** (see *above*, no. 87).^{87 s.)} and, on the other hand, that **banking and financial activities allow the development of New Fossil Projects whose induced emissions will exceed the Global Carbon Budget allowing to limit global warming to 1.5°C**, (see *above*, n°74)

The development of New Fossil Projects perpetuates the "carbon lock-in" principle that delays, or even prevents, the transition to a low-carbon energy system. Fossil fuel projects will release GHGs into the atmosphere for the entire life of their facilities or until they are exhausted.

Typical lifetime of infrastructure and equipment



Source: Data are based on World Energy Outlook 2011, and Assessing Carbon Lock-in (Erickson et al. 2015). WORLD RESOURCES INSTITUTE

(Source: World Resources Institute, "What is carbon lock-in and how can we avoid it?", 25 March 2021¹³²)

124. Consequently, through its financing and investment activities in new fossil **fuel** projects, BNP Paribas is contributing, through a direct and certain causal link, to the occurrence of **ecological damage to the atmosphere** and to the regulation of the climate and ecosystems.

However, the actions presented in BNP Paribas' compliance plan and the preventive measures announced but not included in its compliance plan are insufficient and do not make it possible to prevent the ecological damage resulting from the GHG emissions to which its activities contribute.

Under article 1252 of the Civil Code, it is therefore possible to ask the judge to prescribe "*reasonable measures to prevent*" the aggravation of considerable environmental damage caused by his activity.

The term "*reasonable*" being a standard with an evolving content, it must be assessed on the day of the judgment according to what is commonly accepted, notably by the community of experts and scientists.

To date, the IPCC "SR1.5" reports (**Pièce n°13**) and "AR6" (**Pièce n°14, Pièce n°15, Pièce n°16**) that it is necessary to prevent the worsening of climate change within the limits of the Precautionary Carbon Budget allowing to reach the objective of 1.5°C warming with no or minimal overshoot, which implies to stop the expansion of fossil

¹³² Available at the following link: <https://www.wri.org/insights/carbon-lock-in-definition>

exploitation, to reduce fossil production, to reduce GHG emissions by 50% by 2030 compared to 2010 and to reach carbon neutrality by 2050, as recalled by the UN-HLEG in particular

The "reasonable measures to prevent" the worsening of climate change within the limits mentioned that financial institutions must implement were presented above (see *supra*, no.80 s.).

BNP Paribas should be ordered to implement all of these measures to prevent ecological damage.

II.2.4. THE INJUNCTION UNDER THE PROVISIONS OF ARTICLE 1252 OF THE CIVIL CODE

125. In order to prevent the occurrence of serious environmental damage resulting from GHG emissions, the Court will order BNP Paribas to implement, within **six (6) months** of the decision to be rendered, appropriate measures to prevent serious harm and mitigate risks in order to preserve the objective, set out in the Paris Agreement, of limiting global warming to 1.5°C with no or minimal overshoot, as well as the corresponding Precautionary Carbon Budget, which require, in the light of the state of scientific knowledge on the date of the writ:

With regard to its financing and investments **in the fossil fuel sector** :

In the area of Financing :

- **The immediate cessation of all new financing** to any company developing New Fossil Projects;

In the area of Investment :

- **The immediate cessation of any new investment** in any company developing New Fossil Projects;
- For existing investments :
 - **The adoption and effective implementation of a shareholder engagement and voting policy** to lead invested companies to renounce the development of New Fossil Projects and to adopt, detail and publicly implement measures compatible with limiting global warming to 1.5°C with no or minimal overshoot as well as the preservation of the corresponding Precautionary Carbon Budget, **in line with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report**;
 - In the absence of results in line with the above-mentioned objectives following its effective engagement actions, within a reasonable period of two years maximum from the communication of its requests, the **divestment of the companies concerned** ;

And in any case,

For all of BNP Paribas' financing and investment activities **in all sectors that emit GHGs**:

- **The adoption, publication and effective implementation of all measures compatible with a 1.5°C trajectory with no or minimal overshoot** and with the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account, in this regard, the recommendations of the UN-HLEG 2022 report. This implies in particular:
 - **A reduction in GHG emissions**, covering scopes 1, 2 and 3, of at least 50% by 2030;
 - **Intermediate reduction targets** established on a five-year basis (2025, 2030, 2035, and every five years)

- **The adoption and effective implementation of a plan to exit the fossil fuel sector**, in line with scientific requirements to reduce fossil fuel production by 2030, with a final exit by 2050 (except for residual use in application of the precautionary principle);
- **The continuation of all financing and investment is conditional on the publication and effective implementation, by the recipient companies, of climate strategies that are compatible with limiting global warming to 1.5°C** with no or minimal overshoot, as well as the preservation of the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
- Provided that:
 - These requests are based on the state of knowledge currently available;
 - Consequently, they will have to adapt to the evolution of the climate and scientific context, taking into account that the longer it takes to implement measures compatible with a 1.5°C trajectory with no or minimal overshoot and the corresponding Precautionary Carbon Budget, the faster GHG emissions will have to be reduced;

II.3. IN THE ALTERNATIVE, BNP PARIBAS' FAILURE TO MEET ITS COMMITMENT TO BECOME CARBON NEUTRAL BY 2050

126. It will be demonstrated below that BNP Paribas is committed to achieving carbon neutrality by 2050.

However, the concrete translation of this commitment implies respecting a Global Carbon Budget of 1.5°C in order to limit warming to a trajectory of 1.5°C with no or limited overshoot.

This is what emerges from the latest work of the IPCC on the Precautionary Carbon Budget (recalled above, see *supra*, no.74) as well as the trajectories compatible with a 1.5°C limit and the immediate actions to be implemented to limit warming to 1.5°C with a 50% reasonable chance, as recommended in the UN-HLEG report.

The UN Secretary General has indicated that actors who have announced a Net Zero 2050 commitment must immediately implement the measures recommended by the UN-HLEG report. Otherwise, their commitment to achieve carbon neutrality in 2050 would not be met and would be misleading, and therefore wrong.

127. Consequently, the Court is asked to consider that the announcements made by BNP Paribas, which aim at "alignment" or a commitment to achieve carbon neutrality by 2050, obliges it to implement the measures recommended by the UN-HLEG report.

This voluntary commitment, which is binding on BNP Paribas, involves, in particular, ceasing (i) new financing to, and (ii) investments in companies developing New Fossil Projects.

An analysis of its Financing and Investment activities shows that BNP Paribas is in breach of this commitment, which may give rise to civil liability.

II.3.1. CHARACTERIZATION OF BNP PARIBAS' FAILURE TO MEET ITS COMMITMENT TO BECOME CARBON NEUTRAL BY 2050

128. The consequences of the announcements made by the BNP Paribas Group to achieve carbon neutrality by 2050 should be drawn.

For the record:

- BNP Paribas joined the Net-Zero Banking Alliance in April 2021,
- BNP Paribas Cardif also joined the Net-Zero Asset Owner Alliance in September 2021, and
- BNP Paribas Asset Management joined the Net-Zero Asset Managers Initiative in November 2021.

These sectoral alliances are grouped under the umbrella of the *Glasgow Financial Alliance for Net Zero* (GFANZ), created in April 2021 following COP26 in Glasgow, in partnership with the UN *Race to Zero*, with the goal of "*coordinating efforts across all sectors of the financial system to accelerate the transition to a global net zero economy*" (**Pièce n°83 From the website: <https://www.gfanzero.com/about/>**)

The consequences of the announcements made by the BNP Paribas Group to achieve carbon neutrality by 2050 should be drawn.

129. These alliances are nowadays highly criticized for the "*greenwashing*" of their commitments, which are "Net Zero" in name only (**Pièce n°3, Pièce n°4**).

In particular, it is surprising, to say the least, that the GFANZ has left the United Nations Race to Zero initiative.

GFANZ, in its second annual activity report for 2022, makes no mention of any obligation for its members to join the Race to Zero initiative and issued a statement that "*members are encouraged, but not required, to join the Race to Zero initiative*" (free translation) (¹³³Pièce n°3 Reclaim Finance, Friends of the Earth France et al, "Throwing fuel on fire: GFANZ financing of fossil fuel expansion," Jan. 2023, p. 25).

However, on its website¹³⁴, the GFANZ continues to acknowledge that:

"Each sector alliance is anchored by the Race to Zero campaign, which mobilizes actors outside of governments to take rigorous and immediate action to set interim targets and credibly achieve net zero carbon emissions by 2050 at the latest. Companies agree to meet both the Race to Zero criteria and other net zero commitment criteria decided by their industry alliance and aligned with the industry's business model and leverage." ¹³⁵

Pièce n°3 (See Reclaim Finance, Friends of the Earth France et al, "Throwing fuel on fire: GFANZ financing of fossil fuel expansion," Jan. 2023, p. 26).

The fact remains that these alliances have the stated objective - including in their name "NET ZERO Alliance" - of achieving carbon neutrality by 2050 and aligning themselves with a 1.5°C trajectory. Consequently, by joining them, **the BNP Paribas Group has committed itself to achieving carbon neutrality by 2050 for all of its financing and investment activities by respecting a trajectory limiting global warming to 1.5°C.**

130. In addition to its adherence to sectoral alliances, the Group-wide objective of achieving carbon neutrality is repeated several times in the DEU 2021 (**Pièce n°32**pp. 579, 583, 588, 589, 599, 646) and it is clearly stated that :

"BNP Paribas is committed to (...) financing a carbon-neutral world by 2050, which corresponds to a temperature increase limited to 1.5°C compared to the pre-industrial era.

Pièce n°32p. 599 and p. 646

But these announcements, both sectoral and individual, are only announcements that are not followed by effects, in other words "*greenwashing*", if they do not imply the implementation of measures compatible with respect for the Precautionary Carbon Budget and a 1.5°C trajectory.

131. It will be recalled that the UN-HLEG report established that the achievement of this objective requires the cessation of financial support to the development of New Fossil Projects and to the companies that develop them:

"All net zero commitments should include specific targets to end the use and/or support of fossil fuels, consistent with the IPCC and IEA "net zero" greenhouse gas emission models that limit warming to 1.5°C with no or limited exceedance, with global emissions declining by at least 50% by 2030, to reach net zero by 2050.

For financial institutions:

¹³³ Original quote: "*members are encouraged, but not required, to partner with the Race to Zero*".

¹³⁴ <https://www.gfanzero.com/membership/>.

¹³⁵ Original quote: "*Each sector-specific alliance is anchored in the Race to Zero campaign, which mobilizes actors outside governments to take rigorous and immediate action to set interim targets and credibly reach net-zero carbon emissions by 2050 at the latest. Firms agree to meet both Race to Zero and other net-zero commitment criteria decided by their sector-specific alliance and aligned with the sector's business model and levers of influence.*"

With respect to oil and gas, financial institutions' oil and gas phase-out policies must include a *commitment to cease financing and investing in support of: (i) exploration of new oil and gas fields, (ii) expansion of oil and gas reserves, and (iii) oil and gas production.*" (free translation)¹³⁶

Pièce n°12 UN HLEG, "Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions", Nov. 2022, Recommendation 5, pp. 23-24

In order to achieve its objective, BNP Paribas has stated that it is basing itself on the IEA's Net Zero scenario (**Pièce n°32**, p. 600).

However, the IEA has also indicated that, in its scenario, **no investment in new oil and gas facilities is expected to be made beyond the projects already committed in 2021:**

"no investment is needed in new fossil fuel supplies: beyond the projects already committed to in 2021, our trajectory does not call for approval of any new oil or gas site developments, and no new or expanded coal mines are needed."⁽¹³⁷⁾

Pièce n°10 IEA, "Net Zero by 2050, A Roadmap for the Global Energy Sector", Oct. 2021, p. 21

The IEA confirmed in its "World Energy Outlook 2022" report published in November 2022 that despite the geopolitical context and the current energy crisis :

"No one should think that invading Russia can justify building a wave of new oil and gas infrastructure in a world that seeks to achieve net-zero emissions by 2050" ⁽¹³⁸⁾ .

Pièce n°11 IEA, "World Energy Outlook 2022", Nov. 2022, p. 80

By continuing to financially support the expansion of fossil fuels, while failing to implement the measures required to achieve the carbon neutrality goal it has set for itself, BNP Paribas is failing to meet its voluntary commitment to become carbon neutral by 2050.

II.3.2. THE FORCED EXECUTION OF ITS UNILATERAL COMMITMENT OF WILL

II.3.2.1. The commitment to achieve carbon neutrality by 2050 is a unilateral commitment of will

- 132. Since the reform of contract law effected by Ordinance No. 2016-131 of February 10, 2016, the unilateral commitment of will as a source of obligations has been enshrined in French law.**

Under Article 1100-1 of the Civil Code as amended by Order No. 2016-131 of February 10, 2016:

"Legal acts are expressions of will intended to produce legal effects. They may be conventional or unilateral.

¹³⁶ Original quote: "All net zero pledges should include specific targets aimed at ending the use of and/or support for fossil fuels in line with IPCC and IEA net zero greenhouse gas emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot, with global emissions declining by at least 50% by 2030, reaching net zero by 2050" "For financial institutions: On oil and gas, oil and gas phase-out policies from financial institutions must include a commitment to end financing and investing in support of: (i) exploration for new oil and gas fields, (ii) expansion of oil and gas reserves, and (iii) oil and gas production.

¹³⁷ Original quote: "There is no need for investment in new fossil fuel supply in our net zero pathway: beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required.

¹³⁸ Original quote: "No one should imagine that Russia's invasion can justify a wave of new oil and gas infrastructure in a world that wants to reach net zero emissions by 2050."

They obey, as a matter of course, for their validity and effects, the rules governing contracts.

133. First, the Report to the President of the Republic clearly stated that :

"Article 1100-1,] in specifying that a juridical act may be conventional or unilateral, includes a unilateral commitment of will, a category of unilateral act which creates, by the sole will of its author, an obligation on the part of the latter.

Report to the President of the Republic on Order No. 2016-131 of Feb. 10, 2016

134. Second, the most authoritative commentators on contract law reform have emphasized this consecration.

As O. Deshayes, Th. Genicon and Y.-M. Laithier have stated:

The presence of this text "at the head of a title devoted to the 'sources of obligation' leads one to believe that unilateral commitments of will are now recognised by the Civil Code".

O. Deshayes, Th. Genicon and Y.-M. Laithier, Réforme du droit des contrats, du régime général et de la preuve des obligations, LexisNexis, 2^e éd., 2018, p. 44

As for F. Chénéde, he admits, on reading article 1100-1 al. 1^{er} of the Civil Code, that :

"It is the official recognition, alongside the contract, of the unilateral juridical act (e.g.: will, acknowledgement of debt), and therefore, for lack of having condemned it, of its most controversial species: the unilateral commitment of will, by which a person obliges himself to perform a service for the benefit of another (of which the promise to perform a natural obligation is an illustration among others)".

F. Chénéde, Le nouveau droit des obligations et des contrats 2019/2020, Dalloz, coll. Dalloz référence, 2^e ed., 2018, p. 19, n° 111.14

135. Thirdly, the recent case law of the Cour de cassation no longer allows for any doubt as to the admission of unilateral commitments of will as a source of obligation.

Already, certain decisions rendered by the Cour de cassation shortly before the reform had admitted the existence of unilateral commitments of will outside of any natural obligation.

In a decision of January 23, 2007, the Commercial Chamber of the Court of Cassation decided:

"by undertaking, albeit morally, "not to copy" the products marketed by the company Créations Nelson, the company Camaieu International had expressed the unequivocal and deliberate will to bind itself to the competing company; (...) the Court of Appeal (...) therefore deduced exactly that this clause had a binding value for the interested party and that it could be legally enforced against it.

Cass. com. Jan. 23, 2007, Bull. civ. IV, n° 12, n° 05-13.189

In another decision of February 12, 2013, the First Civil Chamber had referred to a "*unilateral commitment*" whereas the qualification retained by the Court of Appeal was that of a "*unilateral contract*".

Cass. 1^{re} civ., Feb. 12, 2013, No. 11-21.314

In a third decision, the same chamber had qualified an undertaking to divide up company shares as a "*unilateral undertaking of indefinite duration*".

Cass. 1^{re} civ., Sept. 10, 2015, No. 14-20.498)

Since the reform, the Court of Cassation has clearly endorsed its position in a case where recourse to the concept of unilateral commitment was not, however, essential to achieve the desired result. In a decision of December 12, 2018, the Court of Cassation indeed explicitly referred to "*the existence of a unilateral commitment*".

Cass. com. Dec. 12, 2018, no. 17-22.268

In light of this case law, unilateral commitments of will are now a source of obligation in French law.

Unilateral declarations made by companies that publicly express the will to achieve a result must be considered as unilateral commitments of will.

136. **Indeed, it can no longer be seriously maintained that all the precise voluntary "commitments" with a specified time horizon, expressly published so as to be known by as many people as possible, are not legally binding on those who make them.**

Already, before the reform, judges had considered that voluntary "commitments" could be sanctioned in case of breach.

In 2004, the Second Civil Chamber of the Court of Cassation held, in a noteworthy decision, that failure to comply with a commitment contained in an ethics charter could result in the civil liability of a company having published it.

Cass. 2^e civ., June 10, 2004, Bull. civ. II, n° 294

In a judgment of February 13, 2015, the Lyon District Court had also given legal effect to a voluntary undertaking. In this case, in order to promote itself, an outdoor advertising company had installed permanent ground-mounted advertising supports; it stated on its website that it guaranteed its clients a service "*in accordance with the regulations in force*" and referred in particular to the "*legality of the selected location*". An approved environmental protection association brought a civil liability action on the basis of Article 1382 of the Civil Code for having installed illegal advertising devices and on the basis of Article 1371 of the Civil Code for having itself disregarded the legality of the location of its own advertising devices. The Lyon District Court granted these claims and ordered the outdoor advertising company to pay 4,000 euros in compensation for the damage to its collective interests "*aggravated by the failure to comply with the voluntary, unilateral and public commitment to respect the regulations on advertising and signs*".

Pièce n°80 : TI Lyon, Feb. 13, 2015, RG No. 11-13-002572

Although rendered on the basis of the former article 1371 of the Civil Code relating to quasi-contracts, this decision anticipated the consecration of the theory of unilateral commitment of will.

As one commentator on this decision has pointed out, the commitment that gave rise to liability here resulted from an unequivocal and deliberate will of its author, whatever the medium or form of this commitment, to oblige himself to a third party.

R. Leost, " Le mépris de l'engagement volontaire en faveur de l'environnement sanctionné par le quasi-contrat ", Dr. envir., 1^{er} déc. 2015, note sous TI Lyon 13 févr. 2015 FNE c/ S.A.RL A n° 340

The new article 1100-1 of the Civil Code now gives legal scope to these CSR commitments.

137. **The current context is particularly favorable to such a development.**

In the first place, administrative case law has already evolved to give effect to acts of flexible law by deciding that : *"documents of general scope emanating from public authorities, whether materialized or not, such as circulars, instructions, recommendations, notes, presentations or interpretations of positive law may be referred to the judge of excess of power when they are likely to have significant effects on the rights or situation of persons other than the agents responsible, where applicable, for implementing them"* (CE, June 12, 2020, no. 418142, GISTI). The Conseil d'Etat thus shows the way to judicial jurisprudence.

Second, including within the judiciary, several decisions demonstrate the evolution of case law on this issue.

On the one hand, as regards criminal liability, Total S.A. was penalized in the famous *Erika* case for not having respected its own "vetting" procedure - i.e., the control of vessels it may charter - which was put in place on a voluntary basis. In this case, an internal commitment was considered as a source of obligation, the breach of which led to the criminal liability of the company that took it¹³⁹.

Crim. Sept. 25, 2012, no. 10-82.938

On the other hand, in the Netherlands, the above-mentioned decision has for the first time drawn the consequences for Shell of its announcement of an "ambition to be net zero" under its CSR policy, in order to make this objective enforceable against the company and to order it to implement the necessary measures to reduce its GHG emissions (-45% in 2030 compared to 2019) (**Pièce n°79**). The Hague Tribunal examined the voluntary commitments made by the parent company RDS, which had claimed to be carbon neutral by 2050, and concluded that the company was in breach of its duty of care and its obligation of environmental diligence in the conduct of its business. It thus ordered RDS to reduce its GHG emissions in order to comply with the objectives set by the Paris Agreement (**Pièce n°79**).

As François-Guy Trébulle states in his commentary on the decision:

"Very clearly the court sees a form of hiatus, even inconsistency, between the ambitions, declarations or intentions expressed and the actual deployment of the group's policy."

He also points out that:

"One of the interests of the decision is clearly that it does not impose a new burden on RDS but rather receives the commitments made by RDS by explicitly giving them a mandatory character but without going beyond what had been assumed as a permissible objective."

F.-G. Trébulle, "La responsabilité des entreprises de diminuer leurs émissions de gaz à effet de serre : réflexions à propos d'une décision du tribunal de district de la Haye", EEI n°11, comm. 86

A French court of law can now, on the basis of article 1100-1 of the Civil Code, which enshrines the unilateral commitment of will, give binding force to similar commitments.

For example, the Créteil Court held that an internal communiqué issued by Total S.A. for information purposes constituted a unilateral commitment of intent, in accordance with Article 1100-1 of the French Civil Code, and consequently ordered it to perform its unilateral commitment, namely the payment of an exceptional bonus in full (**Pièce n°80TJ Créteil, November 6, 2020, n°19/06492**).

Thus, unilateral declarations specifically formulated by companies that express the will to achieve a result must be considered as unilateral commitments of will. They are therefore creators of civil obligations, so that any breach found could give rise to a civil liability action.

138. In this case, the commitment to achieve carbon neutrality by 2050, unilaterally adopted by BNP Paribas, is a specific commitment to be achieved within a certain timeframe. It is widely communicated by BNP Paribas.

¹³⁹ On this point, see F. Terré, N. Molfessis, Introduction générale au droit, Dalloz, 2022, coll. Précis, n° 437.

These commitments are aimed at all their stakeholders, including not only the company's employees and shareholders, but also all individuals and legal entities directly affected by climate change.

Any stakeholder may consider itself an addressee of these statements by BNP Paribas. As such, the plaintiff associations whose purpose is the protection of the environment (see above, no.4 s.) are entitled to consider themselves as recipients of these statements.

BNP Paribas has therefore issued a unilateral commitment to achieve carbon neutrality, to which the group is bound and which is addressed to the Plaintiffs.

Since BNP Paribas is in breach of this unilateral undertaking, BNP Paribas should be ordered to perform it judicially.

II.3.2.2. The injunction to execute the voluntary commitment to achieve carbon neutrality by 2050

139. **In law**, in the event of non-compliance with a unilateral commitment of will, contractual sanctions can be applied.

Indeed, article 1100-1, paragraph 2 provides that:

"Legal acts] obey, as a matter of course, for their validity and effects, the rules governing contracts.

The effects of contracts are set out in Chapter IV of the subtitle of the Civil Code devoted to contracts (subtitle 1^{er} of Title III). This chapter includes provisions relating to the effects between the parties, with respect to third parties, to the duration and assignment of the contract, and finally to the non-performance of the contract.

As has been pointed out:

"All these rules can therefore in principle be extended to legal acts in general (and in particular to unilateral acts), as long as their purpose is found.

**Fasc. 10: Sources of Obligations - Legal Acts and Facts,
JurisClasseur Civil Code, Art. 1100 to 1100-2, 2018, n° 27**

It is therefore appropriate to consider that the author's failure to comply with a unilateral act is an "effect" of that act and therefore to apply to it the rules relating to contractual sanctions.

In this regard, Article 1217 of the Civil Code provides that:

"The party to whom the undertaking has not been performed, or has been performed imperfectly, may :

- *refuse to perform or suspend the performance of its own obligation;*
- *pursue the forced execution of the obligation in kind ;*
- *get a price reduction;*
- *cause the contract to be rescinded;*
- *seek redress for the consequences of non-performance.*

Sanctions that are not inconsistent may be combined; damages may always be added."

Thus, any creditor of a unilateral commitment of will can pursue its forced execution on the basis of articles 1221 of the Civil Code which provides that :

"The creditor of an obligation may, after formal notice, pursue performance in kind unless such performance is impossible or there is a manifest disproportion between its cost to the debtor in good faith and its benefit to the creditor."

140. **The Court will therefore order BNP Paribas, on the basis of Articles 1100-1 and 1221 of the Civil Code, to comply with its unilateral commitment to achieve carbon neutrality by 2050, subject to a fine of 100,000 euros per day of delay, which implies in particular:**

With regard to its financing and investments **in the fossil fuel sector** :

In the area of Financing :

- **The immediate termination of all new Financing** to any company developing New Fossil Projects; and

In the area of Investment :

- **The immediate cessation of any new investment** in any company developing New Fossil Projects;
- For existing investments :
 - **The adoption and effective implementation of a shareholder engagement and voting policy** to lead invested companies to renounce the development of New Fossil Projects and to adopt, detail and publicly implement measures compatible with limiting global warming to 1.5°C with no or minimal overshoot as well as the preservation of the corresponding Precautionary Carbon Budget, in line with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
 - In the absence of results in line with the above-mentioned objectives following its effective engagement actions, within a reasonable period of two years maximum from the communication of its requests, **the divestment** of the companies concerned ;

And in any case,

For all of BNP Paribas' financing and investment activities **in all sectors that emit GHGs**:

- **The adoption, publication and effective implementation of all measures compatible with a 1.5°C trajectory with** no or minimal overshoot and with the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account, in this regard, the recommendations of the UN-HLEG 2022 report. This implies in particular:
 - A **reduction in** GHG emissions, covering scopes 1, 2 and 3, of at least 50% by 2030;
 - **Intermediate reduction targets** established on a five-year basis (2025, 2030, 2035, and every five years)
 - **The adoption and effective implementation of a plan to exit** the fossil fuel sector, in line with scientific requirements to reduce fossil fuel production by 2030, with a final exit by 2050 (except for residual use in application of the precautionary principle);
 - **The continuation of all financing and investment is conditional on the publication and effective implementation**, by the recipient companies, of climate strategies that are compatible with limiting global warming to 1.5°C with no or minimal overshoot, as well as the preservation of the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
- Provided that:
 - These requests are based on the state of knowledge currently available;

- Consequently, they will have to adapt to the evolution of the climate and scientific context, taking into account that the longer it takes to implement measures compatible with a 1.5°C trajectory with no or minimal overshoot and the corresponding Precautionary Carbon Budget, the faster GHG emissions will have to be reduced

II.3.3. FAILING THAT, THE OBLIGATION TO PREVENT ECOLOGICAL DAMAGE RESULTING FROM THE BREACH OF A QUASI-CONTRACT

141. If we do not consider that the voluntary "commitment" to achieve carbon neutrality adopted by BNP Paribas is a unilateral commitment of will, we should consider that the company is bound by a quasi-contract. Consequently, the breach of this quasi-contract may give rise to an action for extra-contractual liability.

II.3.3.1. The commitment to achieve carbon neutrality by 2050 is a quasi-contract

142. In law, the new article 1300 of the Civil Code provides in its paragraph 1^{er} that:

"Quasi-contracts are purely voluntary acts which result in an obligation on the part of the person who benefits from them without being entitled to do so, and sometimes an obligation on the part of the author to others.

The quasi-contracts governed by this subtitle are business management, undue payment and unjust enrichment."

For several years now, many authoritative opinions have considered that commitments made by companies as part of their CSR policy can be qualified as quasi-contracts, in the light of the case law of the Court of Cassation¹⁴⁰.

Indeed, in the context of the famous litigation on advertising lotteries, the Court of Cassation decided in 2002 that :

"the organizer of a lottery who announces a win to a named person without highlighting the existence of a hazard is obliged, by this purely voluntary fact, to deliver it".

Cass. ch. mixte, 6 Sept. 2002, Bull. mixte n° 4, GAJC, t. II, n° 244

In other words, it was held that the announcement of a prize, without highlighting its random nature, obliged the advertiser to deliver the promised prize on the basis of a quasi-contract.

As Professor François-Guy Trébulle pointed out then:

"This innovative and literal reading of article 1371 of the Civil Code makes it possible to maintain that the "Corporate Social Responsibility" approach is likely to be assimilated to the concept of quasi-contracts.

F.-G. Trébulle, "Corporate social responsibility: business and environmental ethics", Rép. soc., March 2003, updated Sept. 2021

The aforementioned February 13, 2015 judgment of the Lyon District Court relied precisely on the former Article 1371 on quasi-contracts to give legal effect to a voluntary undertaking.

Pièce n°80TI Lyon, Feb. 13, 2015, RG n° 11-13-002572

143. The 2016 Contract Law Reform Order does not challenge these jurisprudences.

¹⁴⁰ Ph. Le Tourneau, "Responsabilité sociale des entreprises et droit des affaires", in F.-G. Trébulle and O. Uzan (eds.), Responsabilité sociale des entreprises, regards croisés droit et gestion, Economica, 2011, p. 243 s.

Indeed, the wording of paragraph 2 of article 1300 of the Civil Code is not limitative. The legislator has therefore implicitly confirmed the existence of quasi-contracts other than those named. The Report to the President of the Republic, an essential source of interpretation of the reform, clearly states that the list of quasi-contracts is open:

"Article 1300 gives a definition of quasi-contract in its first paragraph^{er} and announces in its second paragraph the subdivision of the subtitle into three chapters. This definition is sufficiently flexible to allow the court, if necessary, to apprehend conduct which should entail obligations of indemnification on the part of their authors, despite the silence of the law. Indeed, the non-exhaustive enumeration of quasi-contracts in the second paragraph implies that there may be innominate quasi-contracts, the legal regime of which is not provided for by the Civil Code."

Report to the President of the Republic on Ordinance No. 2016-131 of February 10, 2016 reforming the law of contracts, the general regime and proof of obligations, JORF No. 0035 of February 11, 2016.

For a particularly authoritative doctrine, the case law therefore retains full latitude in this matter. Professor Jean-Sébastien Borghetti has thus written that the definition of quasi-contracts could be interpreted :

"This is a new general clause, allowing jurisprudence to see a new source of obligation behind any voluntary act of man.

J.-S. Borghetti, "Projet d'ordonnance portant réforme du droit des contrats : articles choisis - article 1300", RDC 2015, n° 3, p. 792 s.

In this context, a voluntary and unilateral declaration made by a company that is sufficiently precise, that aims to obtain a result within a certain period of time and that creates an expectation among all of its stakeholders must be qualified as a quasi-contract.

144. In this case, it will be recalled that BNP Paribas' declaration to achieve carbon neutrality by 2050 is a specific commitment, which aims to achieve a result within a certain timeframe and which has been widely communicated by BNP Paribas to all of the above-mentioned stakeholders, of which the Plaintiffs may legitimately consider themselves to be the addressees (see *above*, no. 138).138).

It should therefore be considered that BNP Paribas is bound by a quasi-contract with respect to its stakeholders, including the Plaintiffs, requiring it to achieve carbon neutrality by 2050.

145. Since it has been shown that BNP Paribas is failing to meet its obligation to achieve carbon neutrality by 2050 (see *above*, no. 128), the Group is not in a position to meet its obligations.128 s.), an action for extra-contractual civil liability may be brought on the basis of articles 1240 et seq. of the French Civil Code.

In particular, as soon as this breach results in a significant worsening of climate change, BNP Paribas may be enjoined to prevent this ecological damage on the basis of Article 1252 of the Civil Code.

II.3.3.2. The injunction to prevent ecological damage under Article 1252 of the Civil Code

146. BNP Paribas' failure to meet its own commitment to achieve carbon neutrality is a significant contributor to the occurrence and worsening of environmental damage.

These damages can be prevented in the context of such a civil liability action on the basis of Article 1252 of the Civil Code (see *supra*, no.119 s. and in particular n°122).

Reasonable measures may therefore be prescribed to avoid the harmful or even irreversible consequences of environmental damage.

In this regard, BNP Paribas will be ordered to implement, within six (6) months of the decision, appropriate measures to limit the serious damage to the environment, including

With regard to its financing and investments **in the fossil fuel sector** :

In the area of Financing :

- **The immediate termination of all new Financing** to any company developing New Fossil Projects; and

In the area of Investment :

- **The immediate cessation of any new investment** in any company developing New Fossil Projects;
- For existing investments :
 - **The adoption and effective implementation of a shareholder engagement and voting policy** to lead invested companies to renounce the development of New Fossil Projects and to adopt, detail and publicly implement measures compatible with limiting global warming to 1.5°C with no or minimal overshoot as well as the preservation of the corresponding Precautionary Carbon Budget, in line with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
 - In the absence of results in line with the above-mentioned objectives following its effective engagement actions, within a reasonable period of two years maximum from the communication of its requests, the **divestment of** the companies concerned ;

And in any case,

For all of BNP Paribas' financing and investment activities **in all sectors that emit GHGs**:

- **The adoption, publication and effective implementation of all measures compatible with a 1.5°C trajectory with** no or minimal overshoot and with the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account, in this regard, the recommendations of the UN-HLEG 2022 report. This implies in particular:
 - A **reduction in** GHG emissions, covering scopes 1, 2 and 3, of at least 50% by 2030;
 - Intermediate reduction **targets** established on a five-year basis (2025, 2030, 2035, and every five years)
 - **The adoption and effective implementation of a plan to exit the fossil fuel sector**, in line with scientific requirements to reduce fossil fuel production by 2030, with a final exit by 2050 (except for residual use in application of the precautionary principle);
 - **The continuation of all financing and investment is conditional on the publication and effective implementation**, by the recipient companies, of climate strategies that are compatible with limiting global warming to 1.5°C with no or minimal overshoot, as well as the preservation of the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
- Provided that:

- These requests are based on the state of knowledge currently available;
- Consequently, they will have to adapt to the changing climate and scientific context, taking into account that the longer it takes to implement measures compatible with a 1.5°C trajectory with no or minimal overshoot and the corresponding Precautionary Carbon Budget, the faster GHG emissions will have to be reduced.

II.4. THE IRREDUCIBLE COSTS, THE DEPENS AND THE PROVISIONAL EXECUTION OF LAW

Under the circumstances, it would be grossly unfair for the Plaintiffs to retain the costs they incurred in bringing the action and compelling BNP Paribas to comply with its legal obligations.

Consequently, the Plaintiffs request that the Court order BNP Paribas to pay them the sum of **30,000 (thirty thousand) euros each** under Article 700 of the French Code of Civil Procedure and to pay all costs and expenses.

Finally, in view of the climate emergency described by both scientific research and institutional reports, and the serious breach by BNP Paribas of its obligations requiring immediate preventive and remedial measures, the judgment to be handed down will be provisionally enforced and the Court will find that there are no grounds to set it aside.

NOW THEREFORE

*Having regard to the Constitutional Charter of the Environment, and in particular articles 1^{er}, 2, 3 and 5 thereof
Having regard to Articles L. 225-102-4 and L. 225-102-5 of the French Commercial Code,
Having regard to the Civil Code, and in particular articles 1100, 1100-1, 1217, 1221, 1252, and 1300,
Considering the article L.110-1 of the Environment Code,
In view of the foregoing means,
Having regard to the documents submitted to the debates,*

It is requested that the Judicial Court of Paris :

- **DECLARE** the associations **NOTRE AFFAIRE A TOUS, LES AMIS DE LA TERRE FRANCE** and **OXFAM FRANCE** admissible and well-founded in their claims;

Granting it,

IN THE FIRST PLACE, on the Duty of Care Act

- **REQUEST BNP PARIBAS** to publish and implement a new due diligence plan containing at least the following measures, without prejudice to any other measures that may be identified within one month of the date of notification of the decision
 1. A regularly updated map presenting, analyzing, and ranking the risks of serious environmental, health and safety, and human rights violations related to climate change resulting from BNP Paribas' activities, as described above (see above), including
 - The exhaustive carbon footprint in CO₂ equivalent (scopes 1, 2 and 3), in intensity and absolute value, of BNP Paribas resulting from its activities, with a disaggregation for the fossil fuel sector:
 - By sectors (coal, oil and gas), subsectors (including each unconventional hydrocarbon sector), and types of activity along the value chain (exploration, production, transportation, processing, storage, power generation) of the underlying companies supported; and
 - By type of financial services including Financing (including structured, syndicated and bilateral loans, equity and bond issues) and Investments (own and third party, distinguishing between equity and bonds or structured securities);
 - Flows and stocks, in amount and share of Financing and Investments :
 - Disaggregated by sectors, subsectors and types of activities (see above); and
 - By type of financial services (see above) ;
 - The list of fossil fuel companies and projects (coal, oil and gas) that benefit from financial support from BNP Paribas, in particular projects with high GHG emissions and the companies that support them;
 - The exhaustive methodologies associated with all the data published and the measures taken within the framework of the BNP Paribas Compliance Plan (in particular, the precise calculation methodologies, reference databases, as well as the perimeters of the financial services and client activities covered);

- The climate scenarios used as a reference by BNP Paribas and their underlying assumptions, particularly with regard to negative emissions (natural and technological carbon sinks) and carbon capture and storage (CCS) techniques;
 - Details of BNP Paribas' shareholder engagement policy (in particular, an inventory of the actions taken, the timetable followed, communications with the company on this subject and the escalation strategy (in particular: actions and deadlines) in the event of unsuccessful engagement), and its voting decisions at the general meeting of fossil fuel companies in which it is an investor;
2. Regular evaluation procedures of the value chain with regard to risk mapping, allowing the concrete quantification of the impact of their activities on the identified, analyzed and prioritized risks;
 3. Adapted actions for the prevention of serious damage and mitigation of risks, aimed at preserving the objective, provided for in the Paris Agreement, of limiting global warming to 1.5°C with no or minimal overshoot, as well as the corresponding Precautionary Carbon Budget, which require, given the state of scientific knowledge on the day of the assignment :

With regard to its financing and investments in the fossil fuel sector :

In the area of Financing :

- The immediate termination of all new Financing to any company developing New Fossil Projects; and

In the area of Investment :

- The immediate cessation of any new investment in any company developing New Fossil Projects;
- For existing investments :
 - The adoption and effective implementation of a shareholder engagement and voting policy to lead invested companies to renounce the development of New Fossil Projects and to adopt, detail and publicly implement measures compatible with limiting global warming to 1.5°C with no or minimal overshoot as well as the preservation of the corresponding Precautionary Carbon Budget, in line with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
 - In the absence of results in line with the above-mentioned objectives following its effective engagement actions, within a reasonable period of time of no more than two years from the communication of its requests, the divestment of the companies concerned ;

And in any case,

For all of BNP Paribas' financing and investment activities in all sectors that emit GHGs:

- The adoption, publication and effective implementation of all measures compatible with a 1.5°C trajectory with no or minimal overshoot and with the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account, in this regard, the recommendations of the UN-HLEG 2022 report. This implies in particular:
 - A reduction in GHG emissions, covering scopes 1, 2 and 3, of at least 50% by 2030;
 - Intermediate reduction targets established on a five-year basis (2025, 2030, 2035, and every five years)

- The adoption and effective implementation of a plan to exit the fossil fuel sector, in line with scientific requirements to reduce fossil fuel production by 2030, with a final exit by 2050 (except for residual use in application of the precautionary principle);
- The continuation of all financing and investment is conditional on the publication and effective implementation, by the recipient companies, of climate strategies that are compatible with limiting global warming to 1.5°C with no or minimal overshoot, as well as the preservation of the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
- Provided that:
 - These requests are based on the state of knowledge currently available;
 - Consequently, they will have to adapt to the evolution of the climate and scientific context, taking into account that the longer it takes to implement measures compatible with a 1.5°C trajectory with no or minimal overshoot and the corresponding Precautionary Carbon Budget, the faster GHG emissions will have to be reduced;
- 4. The implementation of an alert and reporting mechanism adapted to the prevention of climate risks resulting from the activity of BNP Paribas;
- 5. The publication of a periodic monitoring system for the objectives and measures of the plan implemented:
 - a. Based on means and result indicators,
 - b. Specifying the methodology and sources used,
 - c. Publicly reporting the results, including, where a breach has been identified, the products and facilities involved and the remediation implemented, and
 - d. Involving external stakeholders, in order to (i) ensure that vigilance measures are appropriate, (ii) regularly evaluate their effectiveness and (iii) their efficiency, and (iv) modify them accordingly;
- **INSTRUCT** BNP Paribas to publish a report on its effective implementation, as required by Article L. 225-102-4-I of the French Commercial Code, and in particular to report on compliance :
 - Commitments already made in the area of climate change, in particular in the framework of the Net Zero alliances of which it is a member, and its sectoral policies on fossil fuels, for which there is no effective monitoring system;
 - Actions that will be taken in accordance with the requests of this subpoena, within a reasonable timeframe appropriate to the climate emergency;
- **ORDER**, in view of the urgency and seriousness of the consequences of the worsening of climate change in terms of damage to the environment, human health and safety, and human rights, that the injunction to publish a new vigilance plan be pronounced under a penalty of 100,000 (one hundred thousand) euros per day of delay, within one month from the date of service of the decision to be taken, with provisional enforcement, pursuant to Article L. 225-102-4-II of the French Commercial Code;
- **ORDER**, in view of the extent of the harm done to the climate and the reputation of BNP Paribas, the publication, posting or communication of the decision to be made, in accordance with the terms and conditions to be defined by the Court as provided for in Article L.225-102-5 of the French Commercial Code;

IN ADDITION, on the prevention of ecological damage,

- **ORDER** BNP Paribas to implement, within six (6) months of the decision, all reasonable measures to prevent the worsening of global warming resulting from its financing and investment activities, namely

With regard to its financing and investments in the fossil fuel sector :

In the area of Financing :

- The immediate termination of all new Financing to any company developing New Fossil Projects; and

In the area of Investment :

- The immediate cessation of any new investment in any company developing New Fossil Projects;
- For existing investments :
 - The adoption and effective implementation of a shareholder engagement and voting policy to lead invested companies to renounce the development of New Fossil Projects and to adopt, detail and publicly implement measures compatible with limiting global warming to 1.5°C with no or minimal overshoot as well as the preservation of the corresponding Precautionary Carbon Budget, in line with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
 - In the absence of results in line with the above-mentioned objectives following its effective engagement actions, within a reasonable period of time of no more than two years from the communication of its requests, the divestment of the companies concerned ;

And in any case,

For all of BNP Paribas' financing and investment activities in all sectors that emit GHGs:

- The adoption, publication and effective implementation of all measures compatible with a 1.5°C trajectory with no or minimal overshoot and with the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account, in this regard, the recommendations of the UN-HLEG 2022 report. This implies in particular:
 - A reduction in GHG emissions, covering scopes 1, 2 and 3, of at least 50% by 2030;
 - Intermediate reduction targets established on a five-year basis (2025, 2030, 2035, and every five years)
 - The adoption and effective implementation of a plan to exit the fossil fuel sector, in line with scientific requirements to reduce fossil fuel production by 2030, with a final exit by 2050 (except for residual use in application of the precautionary principle);
 - The continuation of all financing and investment is conditional on the publication and effective implementation, by the recipient companies, of climate strategies that are compatible with limiting global warming to 1.5°C with no or minimal overshoot, as well as the preservation of the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;

- Provided that:
 - These requests are based on the state of knowledge currently available;
 - Consequently, they will have to adapt to the evolution of the climate and scientific context, taking into account that the longer it takes to implement measures compatible with a 1.5°C trajectory with no or minimal overshoot and the corresponding Precautionary Carbon Budget, the faster GHG emissions will have to be reduced;

In the alternative, on the failure of BNP Paribas to comply with its voluntary commitments

- **CONDEMN** BNP Paribas to carry out its voluntary commitment to "finance a carbon-neutral world by 2050, which corresponds to a temperature increase limited to 1.5°C above pre-industrial levels" (Universal Registration Document 2021, page 646), as well as to "align its strategy with the Paris Agreement and the Sustainable Development Goals" (Universal Registration Document 2021, page 322) as a breach of its unilateral commitment of will, on the basis of Articles 1100-1 and 1221 of the Civil Code ; and
- **ORDER**, in view of the urgency and seriousness of the consequences of worsening climate change, that BNP Paribas' performance of its voluntary commitment to "finance a carbon-neutral world by 2050, which corresponds to a temperature increase limited to 1.5°C compared to the pre-industrial era", as well as to "align its strategy with the Paris Agreement and the Sustainable Development Goals" (ibid) be ordered under a fine of 100,000 (one hundred thousand) euros per day of delay ;

Failing that:

- **FIND** BNP Paribas in breach of its voluntary commitment to be carbon neutral by 2050 as a breach of a quasi-contract;

Therefore:

- **ORDER** BNP Paribas to implement the following measures as part of the enforcement of its voluntary commitment to be carbon neutral by 2050

With regard to its financing and investments in the fossil fuel sector :

In the area of Financing :

- The immediate termination of all new Financing to any company developing New Fossil Projects; and

In the area of Investment :

- The immediate cessation of all new investments in any company developing New Fossil Projects;
- For existing investments :
 - The adoption and effective implementation of a shareholder engagement and voting policy to lead invested companies to renounce the development of New Fossil Projects and to adopt, detail and publicly implement measures compatible with limiting global warming to 1.5°C with no or minimal overshoot as well as the preservation of the corresponding Precautionary Carbon Budget, in line with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
 - In the absence of results in line with the above-mentioned objectives following its effective engagement actions, within a reasonable period of time of no more than

two years from the communication of its requests, the divestment of the companies concerned ;

And in any case,

For all of BNP Paribas' financing and investment activities in all sectors that emit GHGs:

- The adoption, publication and effective implementation of all measures compatible with a 1.5°C trajectory with no or minimal overshoot and with the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account, in this regard, the recommendations of the UN-HLEG 2022 report. This implies in particular:
 - A reduction in GHG emissions, covering scopes 1, 2 and 3, of at least 50% by 2030;
 - Intermediate reduction targets established on a five-year basis (2025, 2030, 2035, and every five years)
 - The adoption and effective implementation of a plan to exit the fossil fuel sector, in line with scientific requirements to reduce fossil fuel production by 2030, with a final exit by 2050 (except for residual use in application of the precautionary principle);
 - The continuation of all financing and investment is conditional on the publication and effective implementation, by the recipient companies, of climate strategies that are compatible with limiting global warming to 1.5°C with no or minimal overshoot, as well as the preservation of the corresponding Precautionary Carbon Budget, in accordance with the latest state of knowledge and taking into account in this respect the recommendations of the UN-HLEG 2022 report;
- Provided that:
 - These requests are based on the state of knowledge currently available;
 - Consequently, they will have to adapt to the evolution of the climate and scientific context, taking into account that the longer it takes to implement measures compatible with a 1.5°C trajectory with no or minimal overshoot and the corresponding Precautionary Carbon Budget, the faster GHG emissions will have to be reduced;

IN ANY CASE,

- **ORDER** BNP Paribas to pay to the associations **NOTRE AFFAIRE A TOUS, LES AMIS DE LA TERRE FRANCE** and **OXFAM FRANCE** the sum of **30,000 (twenty thousand) euros each** under Article 700 of the Code of Civil Procedure;
- **ORDER** BNP Paribas to pay all the costs of the proceedings;
- **To rule that there is** no reason to set aside the provisional execution of the decision to be made.

LIST OF DOCUMENTS PROVIDED

- Pièce n°1.** Oxfam France, "Banque et climat, le désaccord de Paris", October 2021 (extracts)
- Pièce n°2.** Rainforest Action Network, BankTrack, Indigenous Environmental Network, Oil Change International, Reclaim Finance, Sierra Club, Urgewald, "Banking on Climate Chaos - Fossil Fuel Finance Report 2022", March 2022
- Pièce n°3.** Reclaim Finance, Friends of the Earth France et al, "Throwing fuel on fire: GFANZ financing of fossil fuel expansion", Jan. 2023
- Pièce n°4.** Reclaim Finance and Friends of the Earth France, "Climate Hypocrisy: Financial actors committed to carbon neutrality throw oil on the fire", 17 Jan. 2023
- Pièce n°5.** Oil Change International, "Big Oil Reality Check", May 2022
- Pièce n°6.** Oil Change International, "Investing in Disaster", Nov. 2022
- Pièce n°7.** Reclaim Finance, Friends of the Earth France et al, "Who is Financing Fossil Fuel Expansion in Africa?" Nov. 2022 (excerpts and free translation)
- Pièce n°8.** CEED, "Financing A Fossil Fuel Future, Tracing The Money Pipeline Of Fossil Gas In Southeast Asia", June 2022
- Pièce n°9.** Reclaim Finance, "Just 7% of global banks' energy financing goes to renewables," Jan. 2023
- Pièce n°10.** IEA, "Net Zero by 2050, A Roadmap for the Global Energy Sector", May 2021
- Pièce n°11.** IEA, "World energy outlook 2022", Nov. 2022
- Pièce n°12.** UN HLEG, "Integrity matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions", Nov. 2022
- Pièce n°13.** IPCC, SR1.5 - Summary for Policymakers: "1.5°C Special Report", 2018
- Pièce n°14.** IPCC, AR6 - Summary for Policy Makers (WGI): "The Physical Science Basis", August 2021
- Pièce n°15.** IPCC, AR6 - Summary for Policy Makers (WGII): "Impacts, Adaptation and Vulnerability", Feb. 2022
- Pièce n°16.** IPCC, AR6 - Summary for Policy Makers (WGIII): "Mitigation of Climate Change", Apr. 2022
- Pièce n°17.** UNEP, "Emissions Gap Report 2022", Oct. 2022 (excerpts)
- Pièce n°18.** OECD, "Climate Tipping Points: Insights for Effective Policy Action", 2022
- Pièce n°19.** Annex defining the terms of reference of the High Level Expert Group
- Pièce n°20.** A. Guterres, Speech delivered at the release of the report of the High Level Panel of Experts, Nov. 8, 2022
- Pièce n°21.** List of reports published by NAAT, Friends of the Earth and Oxfam France establishing the responsibility of banks, including BNP Paribas, over the past 5 years (2017-2023)
- Pièce n°22.** Race to Zero clarifications, 2022
- Pièce n°23.** A. Guterres, Opening speech of the COP 27, Nov. 7, 2022
- Pièce n°24.** A. Guterres, Speech at the Major Economies Forum on Energy and Climate, June 17, 2022
- Pièce n°25.** A. Guterres, Address to the General Assembly on the United Nations priorities for 2023, February 6, 2023
- Pièce n°26.** A. Guterres, Speech to the World Economic Forum, January 18, 2023
- Pièce n°27.** Tribune, "Energies : Les acteurs financiers finiront être rattrapés par les impacts du dérèglement climatique", LeMonde.fr, Feb 6, 2023
- Pièce n°28.** Notre Affaire à Tous, Benchmark of climate vigilance of multinationals, 2022 report
- Pièce n°29.** Trout et al, "Existing fossil fuel extraction would warm the world beyond 1.5°C", 2022
- Pièce n°30.** KBIS BNP Paribas S.A .
- Pièce n°31.** Articles of Association BNP Paribas S.A.
- Pièce n°32.** BNP Paribas 2021 Universal Registration Document (excerpts)
- Pièce n°33.** LeMonde.fr, "BNP Paribas has reaped 10.2 billion euros in net profits in 2022", Feb 7, 2023
- Pièce n°34.** Written answer to questions asked by Friends of the Earth France, General Assembly of May 17, 2022
- Pièce n°35.** Written answer to the questions asked by Reclaim Finance and Les Amis de la Terres France, General Assembly of May 18, 2021

- Pièce n°36.** Letters from BNP Paribas to NAAT dated April 22, 2020 and April 8, 2021
- Pièce n°37.** Letter of formal notice dated October 26, 2022
- Pièce n°38.** Response letter from BNP Paribas dated January 24, 2023
- Pièce n°39.** Friends of the Earth France, "The BNP Affair: Threatened with legal action, BNP Paribas communicates but does not respond to NGO requests", 25 Jan. 2023.
- Pièce n°40.** Reclaim Finance, "Oil and gas: BNP Paribas is using the wrong method", 25 Jan. 2023
- Pièce n°41.** The BNP Affair, Press Release, Jan. 25, 2023
- Pièce n°42.** Novethic.fr, "Devoir de vigilance : la pression monte sur BNP Paribas après sa mise en demeure", 26 Jan. 2023
- Pièce n°43.** Reply letter to BNP Paribas dated February 15, 2023
- Pièce n°44.** Preliminary order, Nanterre Judicial Court, February 11, 2021, RG n°20/00915
- Pièce n°45.** Statutes Notre Affaire à Tous
- Pièce n°46.** Statutes Friends of the Earth France
- Pièce n°47.** Statutes Oxfam France
- Pièce n°48.** Application for accreditation of Notre Affaire A Tous filed August 12, 2021
- Pièce n°49.** Minutes of the Board of Friends of the Earth France of July 5, 2022
- Pièce n°50.** Observations of the Government on the law relating to the duty of care of parent companies and contractors, JORF n°074 of 28 March 2017, text n°5
- Pièce n°51.** Opinion No. 2625 by Ms. Annick LE LOCH, done on behalf of the Committee on Economic Affairs, submitted on March 10, 2015 - Speech by Mr. Hervé Pellois (excerpts)
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- Pièce n°53.** National Assembly session of March 30, 2015 - Ms. Danielle Auroi, Discussion of the articles (excerpts)
- Pièce n°54.** United Nations Guiding Principles on Business and Human Rights, 2011
- Pièce n°55.** OHCHR, The Corporate Responsibility to Respect Human Rights - Interpretative Guide, 2012 (excerpts)
- Pièce n°56.** OECD Guidelines for Multinational Enterprises adopted by the United Nations Human Rights Council, 2011
- Pièce n°57.** OECD guide to due diligence for responsible business conduct, 2018
- Pièce n°58.** House Bill No. 2578, Feb. 11, 2015
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- Pièce n°60.** OECD, "Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises," October 29, 2019
- Pièce n°61.** OECD, "Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises," 2017
- Pièce n°62.** OECD, "Responsible business conduct due diligence for Project and Asset Finance transactions", Oct. 2022
- Pièce n°63.** UN PRI, "Discussing divestment, Developing an approach when pursuing sustainability outcomes in listed equity", 2021
- Pièce n°64.** Sherpa, Reference Guide for Vigilance Plans , 2018 (excerpts)
- Pièce n°65.** BNP Paribas, "Climate analytics and alignment report", 2022
- Pièce n°66.** BNP Paribas, "TCFD (Taskforce on Climate-related Financial Disclosures) 2021 Report", 2022
- Pièce n°67.** BNP Paribas, Strategy presented on January 24, 2023
- Pièce n°68.** BNP Paribas, "Sector Policy - Coal-fired Power Generation", 2020
- Pièce n°69.** BNP Paribas, "Sector Policy - Mining Industry", 2020
- Pièce n°70.** BNP Paribas, "Sector Policy - Oil & Gas", 2022
- Pièce n°71.** BNP Paribas, "Non-conventional oil and gas sector policy," 2017.
- Pièce n°72.** BNP Paribas Cardif, Responsible Investment Report 2021 (art. 29 LEC), 2022

- Pièce n°73.** BNP Paribas AM, "Committed to climate: our net zero roadmap", Nov. 2022
- Pièce n°74.** BNP Paribas AM, "Responsible Business Conduct Policy", January 2023
- Pièce n°75.** BNP Paribas, Human Rights Declaration, 2012
- Pièce n°76.** BNP Paribas, Charter for Responsible Business Relations, 2018
- Pièce n°77.** Dec. 13, 2016 statement, "BNP Paribas reaffirms its commitment to human rights," excerpted from the BNP Paribas website
- Pièce n°78.** Reclaim Finance, "BNP Paribas: too little progress on climate change", May 3, 2022
- Pièce n°79.** District Court of The Hague, May 26, 2021, C/09/571932 / HA ZA 19-379, Associations Vereniging Milieudefensie, Greenpeace Netherlands, Actionaid v/Royal Dutch Shell
- Pièce n°80.** TI Lyon, Feb. 13, 2015, RG n° 11-13-002572
- Pièce n°81.** TJ Créteil, November 6, 2020, n°19/06492
- Pièce n°82.** From the Clean Arctic Alliance website: <https://www.hfofreearctic.org/en/front-page/>.
- Pièce n°83.** From the Glasgow Financial Alliance for Net Zero website: <https://www.gfanzero.com/about/>