

Application to the OECD NCP against ENI

Summary sheet

The OECD Guidelines for Multinational Enterprises are "*recommendations by governments to multinational enterprises*" which set out a number of principles, in line with internationally recognised norms, for responsible business conduct. These principles include respect for the environment, protection of human rights, the duty of transparency of information and the need to adapt their activities to the latest scientific knowledge.

In order to comply with the Guidelines, companies must first carry out a proper risk assessment of their activities.

In particular, they must ensure

- 1) *the precise identification of the actual or only potential negative impacts of its activity;*
- 2) *the identification and concrete implementation of measures to prevent and mitigate the negative impacts identified in the risk assessment;*
- 3) *informing the public about the results of the assessment of the risk of adverse impacts, the strategies adopted to prevent or mitigate them, and the effects achieved.*

Considering that the planet is in a state of climate emergency (resulting in a massive violation of fundamental human rights) and that the scientific community has identified the amount of climate-altering emissions still permitted and the relative timeframe before the rise in temperatures leads to catastrophic alterations in the climate system, on 26/7/21, the Legality for the Climate Network sent a warning to ENI inviting it to reconsider its industrial plan.

The latter, in fact, provides:

- an increase in emissions over the next three years,
- a cut in emissions that is not in line with the scenarios identified by the scientific community to meet the long-term targets of the Paris Agreement (which ENI has declared it will meet),

- a number of highly controversial solutions aimed only at (supposedly) neutralising emissions and not at stabilising the climate system, such as the use of CO2 capture and storage, the use of compensation mechanisms based on CO2 absorption, and the production of blue hydrogen.

Against this background, the company's business plan does not provide for any adequate assessment of the impacts of its activities on the current climate emergency.

ENI responded to this warning by claiming to be at the forefront of the fight against climate change, but did not provide any detailed information, simply referring to its own website.

ENI operates in a sector (the fossil sector) that structurally produces climatic impacts, which means that its activity is in itself dangerous for the climate system, and even more so in a climate emergency situation, which ENI itself acknowledges. In such a case, we speak of intrinsic and systemic risk, connected to the activity carried out.

Moreover, in a situation of climate emergency and the obvious harmfulness of activities producing climate-changing gases, the mere fact that such activities are duly authorised does not imply, per se, that they are 'legitimate', since they may constitute an extreme tort under the principle of *neminem laedere*, which is a principle of customary international law, also present in the European Union legal system, as well as in our national legal system.

ENI's refusal to produce a serious analysis of the climate risks connected with its own activity, linked to its evident desire to plan for the coming years as if there were no climate emergency (resorting to *business as usual*), and therefore as if the planet still had plenty of time to cope with the climate emergency, constitutes the extremes of irresponsible conduct, in addition to violating the principles of transparency and correct information and then also various substantive principles (such as respect for human rights and the environment) enshrined in the OECD Guidelines.

These provide that, in the event that an MNE engages in conduct contrary to the above principles, it is possible to apply to a National Contact Point (NCP), based in each OECD member state, which can initiate a "mediation" procedure and offer its "good offices" with the aim of bringing the parties together and promoting an agreed solution to the problem that has arisen.

This is not, therefore, an appeal to a judicial authority, but a voluntary mechanism, culminating in a public pronouncement by the NCP.

In Italy, the NCP has been hinged at the MISE, a circumstance that raises some perplexities, with reference to the specific case: the body that should impartially assess violations of the Guidelines by companies, in fact, is managed by the Ministry that is in charge of protecting its

development.

Not only that. Given that ENI is a public company (controlled by the State), MISE is undoubtedly in a situation of potential conflict of interest. Although this does not imply an automatic 'partiality' of the same, it is evident on this point that we are faced with a typically Italian anomaly.

Nonetheless, we believe that the procedure outlined in the OECD Guidelines, if pursued correctly and transparently, can offer a truly effective tool to address an issue as undoubtedly complex as this one.

For this reason, we decided to proceed in that direction. We now hope that the NCP will be willing to offer its '*good offices*' and that ENI will agree to sit at the table.

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Promoters:

A Sud, Diritto Diretto, Emergenzaclimatica.it, Europa Verde, Extinction Rebellion Milano, Forum Ambientalista, Fridays for Future, Generazioni Future - Cooperativa di mutuo soccorso, Greens/Efa at the European Parliament, For the climate out of fossil fuels, Rete Legalità per il clima.