This document is subject to regulations under the EU Regulation.
2016/679

ECLI Code ECLI:RO:CACLJ:2023:048.000312

File No 114/33/2023

R O M Â N I A COURT
OF APPEAL CLUJ
ADMINISTRATIVE AND TAX LITIGATION SECTION III

CIVIL SENTENCE No 312/2023

[redacted]

The case is pending before the Court of Justice of the European Communities for a preliminary ruling in the administrative and tax proceedings brought by the applicants DECLIC ASSOCIATION, [redacted] in contradiction with the defendants GUVERNMENT OF ROMANIA, PRIME MINISTER, MR NICOLAE CIUCĂ, MINISTER OF THE ENVIRONMENT, APPEALS AND FORESTS, MINISTER OF THE ENVIRONMENT, APPEALS AND FORESTS, MR BARNA TANCZOS, MINISTER OF ENERGY, MINISTER OF ENERGY, MR VIRGIL DANIEL POPESCU,
concerning an obligation to act.

The course of the proceedings, the parties' submissions and conclusions were recorded in the minutes of the hearing of 22 May 2023, which form an integral part of this judgment, when the court, needing time to deliberate and to give the parties the opportunity to submit written submissions, ordered that the judgment be adjourned to today, 6 June 2023.

C U R T E A :

In deciding the present civil case, the Court finds as follows:

By an administrative action registered on 31.01.2023, summarized by the document filed on 19.04.2023 (f.84,vol.V), the plaintiffs ASOCIAȚIA DECLIC, [redacted] against the defendants GUVERNMENT OF ROMANIA, PRIMUL MINISTRU, DOMNUL NICOLAE CIUCĂ, MINISTERUL MEDIULUI, APELOR ŞI PĂDURILOR, MINISTRUL MEDIULUI, APELOR ŞI PĂDURILOR, DOMNUL BARNA TANCZOS, MINISTERUL ENERGIEI, MINISTRUL
VIRGIL DANIEL POPESCU, requested the court to order the defendants to take all necessary measures to reduce greenhouse gas (GHG) emissions by 55% by 2030 and to achieve climate neutrality by 2050, to take all necessary measures to increase the share of renewables in final energy consumption to 45% and to increase energy efficiency by 13% by 2030, order the defendants to adopt, within 30 days from the date of finality of the judgment**,** concrete and coherent climate change mitigation and adaptation plans, including annual carbon budgets, with a view to achieving **the** targets under petitions 1 and 2 as well as annual reporting and monitoring mechanisms on progress towards achieving these targets and order the defendants to comply with the decision of the Court of First Instance of the European Communities of 30 April 2009 2, 4 and 6 to pay a fine of 20 % of the minimum wage per day of delay, to be paid to the State budget, from the expiry of the time-limit laid down in petition 3 until the effective adoption of the measures required to achieve the targets laid down in petitions 1 and 2.

In support of their claims, the plaintiffs submitted, in essence, that the defendants had

breached the legal obligation to reduce GHG **emissions** by at least 55% compared to 1990 levels, which is necessary to prevent dangerous climate change.

The NESCAP is the only national document that includes a commitment by the defendants to reduce GHG emissions by 44% from 2005 levels (42% from 1990 levels according to the Climate Analytics Country Sheet), exclusively through the GHG emissions trading scheme.

The defendants' undertaking is unlawful because:

■ is not linked to the climate objective under Article 2.1(a) of the Paris Agreement to limit global warming to 1.5 degrees Celsius and 2 degrees Celsius respectively; the Paris Agreement is primary legislation and the purpose of initiating any action on climate change is to prevent the critical thresholds as set and agreed in this international treaty from being reached;

■ In accordance with Article 2.1(a) of the Paris Agreement, States Parties have committed themselves to keeping global temperature increase to well below 2 degrees Celsius above pre-industrial levels and to continue efforts to limit temperature increase to 1.5 degrees Celsius.

■ limiting global warming to 1.5 degrees Celsius, even if it requires a collective effort, is also the individual responsibility of the defendants, since each signatory party must pursue this climate objective;

■ The long-term temperature objective is an important starting point for assessing the legality of the defendants' efforts under national law. Moreover, in assessing the legality of efforts to combat climate change, the court will also have to take into account the development of scientific evidence from the time of the signing of the Paris Agreement to the present day that current NDCs are insufficient.

The defendants have breached **their** constitutional obligations under Article 135(1) of the EC Treaty. (2)(d-g) of the Romanian Constitution, since the measures proposed to be adopted to combat climate change, as detailed in section 6.1.1. of the application, will not result in limiting global warming below the critical thresholds indicated above, and exceeding those thresholds creates risks for the safety of citizens, the environment and the rule of law, risks of which **the** defendants are aware, as is clear from their political statements.

In assessing the legality of the measures taken to reduce GHG **emissions** by the defendants, the plaintiffs consider that the following principles should be applied:

- Precautionary principle; The precautionary principle is enshrined in Article 191(2) TFEU, Principle 15 of the 1992 Rio Declaration on Environment and Development, Article 3 of the United Nations Framework Convention on Climate Change, as well as in various provisions of secondary legislation, such as Article 3 of GEO 195/2005. It essentially assumes that lack or insufficiency of **scientific** knowledge about the possibility of environmental degradation will not be an obstacle to the adoption of precautionary measures to eliminate or minimise the occurrence of damage.

- the principle of intergenerational equity. Part of the principle of sustainable development, enshrined in paragraphs 4, 9 and 32 of the Preamble to Regulation (EU) 2021/1119 (European Climate Act), Article 3 of GEO 195/2005, it consists in meeting the needs of the present generations without compromising the ability of future generations to meet their own needs.

In practice, the defendants were under an obligation to take 'reasonable' and 'appropriate' measures to prevent or minimise a foreseeable and serious risk of harm to human rights, in accordance with the Romanian Constitution, the ECHR and the EU Charter of Fundamental Rights. The lack of reasonableness of the measures amounts to their unlawfulness.

In its case law, the ECHR has held that this positive obligation has two aspects: (a) the obligation to provide a regulatory framework; and (b) the obligation to take preventive operational measures.

In the particular case of climate litigation, these efforts by defendants should reflect the highest ambitions to mitigate climate change and illustrate progress over time.

Defendants have not taken all necessary steps to respect human rights by introducing alternative clean energy and creating simple procedures for accessing it, through activities leading to the prevention of deforestation and ensuring afforestation;

There has been no progressive increase in ambition and regression has not been avoided. According to official data provided by the European Environment Agency (detailed in point 6.2.2. of the Action)

Romania ranks last in Europe, together with Slovenia, in terms of integrating renewable energy sources into the national electricity grid. Moreover, frequent interventions on the legislative and regulatory framework, lack of transparency and strategic vision, and the low capacity of the administrative apparatus to adapt to trends in the field have led to a loss of investment momentum and a general state of uncertainty for the renewable industry. Thus, from 2016 to 2021, no new renewable energy capacity has been installed and **the** producer has faced large capital losses.

By taking these measures, the defendants do not intend to reduce emissions to keep the global average temperature below 1.5 degrees Celsius. The burden of proof was on the defendants to show why that objective cannot be achieved, but it is clear from all the documents submitted by the defendants that there is no adequate justification for that, in accordance with the tests of necessity and proportionality, having regard also to the extent of **the** damage to human rights caused by the failure to limit global warming to 1.5 degrees Celsius.

In section 6.1.1. point 10 et seq. of the application, the plaintiffs detail that although there are technological solutions and measures which, if properly implemented, would contribute effectively to combating climate change, the defendants' measures in each segment are almost non-existent or ineffective:

=> Lack of inspection and control of deforestation.

=> Romania's renewable energy and energy efficiency backwardness

The NESCAP proposed an increase from 24.3% to 30.7% by 2030, significantly lower than the 45% set by REPowerEU and below the 40% previously proposed by the "Fitfor 55" package. However, there is no adequate justification for such low ambitions, since Romania has the capacity to invest in green energy (wind and solar).

Another pressing energy policy problem, which violates the climate goal of the Paris Agreement, is the allocation of funds for investments in fossil fuels, obsolete hydropower projects and woody biomass; this leads to a decrease in funds for wind and solar energy sources:

i) The NRPP includes references to heat pumps but does not set any targets, which shows that there is no clear policy for their promotion and widespread use;

ii) Defendants have not set themselves the objective of effectively solving the problem of energy poverty (translated by the population's income, the state of housing, etc.); heating subsidies increase the dependence of vulnerable consumers, and rehabilitation programmes are not able to solve this phenomenon which is unfavourable to the population. The lack of clear targets for increasing energy efficiency violates the fundamental rights to a decent living and a dignified future.

In conclusion, as regards the general legal obligation to combat the effects of climate change, **the** defendants' ambitions are contrary to the legal obligations assumed by the Paris Agreement, the European Climate Law and the Romanian Constitution, since:

- The modest 44% is based on a different reference date (2005) than the one assumed by the EU (1990)**, given that** in the period 1990-2000 Romania had one of the highest levels **of** greenhouse gas emissions in Europe, due to the extensive use of fossil energy and strong industry, and emissions were decreasing in 2005; thus the assumed percentage based on 1990 emissions is lower than 44;
- Romania is only assuming a percentage reduction through the Emissions Trading Scheme;
- There is no percentage assumed by Romania, calculated on all types of emissions (legal and illegal);
- There is no commitment for the period after 2030; ,
- Defendants' measures do not pass the reasonableness test (defendants did not take all possible measures to reduce **emissions**, there was no progressive increase in ambition, on the contrary a regression, measures taken do not lead to limiting global warming to 1.5 degrees Celsius).

The complainants also allege breach of specific obligations **to** combat climate change.

Thus, in terms of the share of renewables in final energy consumption, the NREEAP foresees increasing **the** share to 30.7% by 2030 (and to 29% through the NREAP), which is well below the 45% target set by the EU's REPower Package. Again, this is a failure to meet the highest possible climate ambition.

There is a tendency to report data that do not correspond to the realities on the ground to create the impression of national progress, without pursuing adaptation and scaling up climate ambitions **in** line with updated scientific data and strategies adopted notably at EU level.

Projects and investments involving the use of fossil fuels are also continuing, with the appearance of introducing green hydrogen, for which there is still no concrete data on feasibility.

Investment programmes are inefficient in the solar energy sector (of photovoltaic panel installations, thus hindering potential consumers who would contribute to the national energy system).

In conclusion, the targets set by the defendants do not meet the standard of the highest possible climate ambition, given Romania's geographic conditions favourable to offshore and onshore wind and solar energy.

The complainants also allege that the lack of strong measures, coherent plans, monitoring and reporting mechanisms creates an immediate and substantial risk to the complainants' collective and individual fundamental rights.

Thus, the applicants' fundamental rights guaranteed by the Constitution, the EU Charter of Fundamental Rights and the European Convention on Human Rights are affected.

As regards collective rights, Declic and the **individual** plaintiffs consider that all **scientific** reports show a causal link between climate change and the environment. The lack of adequate measures to prevent dangerous climate change creates an immediate and substantial risk to the plaintiffs' right to a healthy and ecologically balanced environment, a collective right enshrined in the Romanian Constitution. Moreover, the right to health and a dignified life are substantially linked to and determined by a healthy environment. These constitutionally guaranteed freedoms are matched by the defendants' constitutional obligation, laid down in Article 135(d-f), to protect the natural foundations which sustain life. The State's obligation to maintain the ecological balance and to create **the** conditions necessary to improve the quality of life relates not only to the classic environmental factors such as water, air and soil, but also to the climate.

The scope of protection to which defendants are obliged includes: prevention of damage; requirement to eliminate/compensate for damage that has already occurred; requirement to minimise risks; requirement to conserve resources in a sustainable manner; prohibition of substantial damage to the environment.

The undertakings given by the defendants and the measures to be implemented have the effect of a light breeze on the phenomenon of climate change, the development of which **is** unrestricted, resulting in a clear breach of **the** defendants' obligations to prevent damage and minimise risks. In section 6.3.1. the plaintiffs point out that the reports of the National Meteorological Administration (from 2015 and 2022) show a causal link between climate change and the health of the Romanian population (heat waves are increasingly intense and persistent, aggravating respiratory and cardiovascular diseases, asthma, allergies, mental illness, etc.). According to an analysis of climate change in Europe carried out by the European Centre for Disease Prevention and Control, the impact of climate change on public health is also reflected in an increase in the number of hospitalisations and deaths caused by heat waves, the number of hypothermia caused by blizzards, the number of injuries and deaths **from** floods, and changes in the areas of vector-borne disease transmission. The Centre also draws attention to the fact that these negative effects of climate change on the health of the population will continue to intensify in the **future as** environmental **conditions** deteriorate. In practice, with rising temperatures and humidity levels, these vectors will spread even to areas where they did not previously have access.

In conclusion, the lack of firm, concrete and coordinated climate change policies, although the defendants are aware of the danger posed by climate change, is circumscribed by indirect intent, which is the form of culpability with which the defendants disregard **their** legal obligations and prejudice our right to health.

With regard to the right to a dignified **life**, Declic and the plaintiffs are a spokesperson for **the living** generations, generations which, in the absence of vigorous action by the defendants in the area of climate change mitigation and adaptation, will be forced to bear this responsibility unfairly, with their fundamental rights stripped away,

With regard to the individual fundamental rights of the claimants of rd. 2-6 (right to life, right to privacy, right to property) they are deeply intertwined with the right to a healthy and ecologically balanced environment and the right to health, how these rights are affected f ind detailed at length in the action. The World Bank report prepared for the Romanian Government mentions the main vulnerabilities to climate change that have been identified in our country in various spheres of activity related to water use. The essential nature of this natural element for life and health is a well-known fact that does not need to b e demonstrated. As a vital element involved in daily life, any degree of damage to it has particularly important consequences and, depending o n the severity of the damage caused, the impact may be felt more strongly by a greater number of people. Thus, the hazards identified are as follows: water supply will be affected, as warmer and shorter winters will lead to a seasonal decrease in snow volume and early and rapid snowmelt, causing shortages in the summer months; warmer and drier summers will also cause a qualitative deterioration of water resources, thus effectively reducing water supply; water supply will also be affected by lower groundwater levels in the summer months due to reductions in surface flow; higher summer temperatures will lead to more evaporation and transpiration and therefore higher water demands in agriculture at the same time as water supply will be in deficit. Domestic water demand and supply will feel the same effect (but less pronounced); flora and fauna of aquatic ecosystems
(rivers and lakes), as well as those dependent on rainfall and river flows (such as wetlands) will suffer from reduced summer water flows and increased frequency of **floods** and droughts; high summer temperatures, which lead to degradation of water quality (through reduced dissolved oxygen levels, eutrophication and excessive algal blooms), will also affect the environment.

So, just in relation to how climate change affects water use, the impact on property rights, the right to a decent living, but also on lives, the right to privacy and family life, is negatively felt in multiple forms and degrees, depending on the extent of the consequences caused.

Accordingly, in the light of the considerations set out in the application and the present summary of pleas of illegality, the applicants request that the action be allowed as formulated.

The defendant MINISTRY OF THE ENVIRONMENT, APPEALS AND FORESTS submitted a statement of defence, alleging: **the** plea of lack of **standing** and interest of the applicants, the plea of lack of passive standing **of** the natural persons sued (heads of the defendant institutions), the plea of prematurity of the imposition of fines on the heads of the defendant institutions, namely the Prime Minister of Romania, Mr Nicolae Ionel CIUCĂ, Mr Virgil POPESCUL and Mr BÂRNA TÂNCZOS, the plea of inadmissibility of the claim No. 1 of the action and the plea of lack of locus standi in respect of claim no. 2 of the application, and on the merits requested the dismissal of the action as formulated against the Ministry of the Environment, Water and Forests; (f.135, vol. III).

As regards the applicant's lack of interest in bringing the action, the defendant relies on the provisions of Article 8(8) of Regulation No 40/94. 11(11) and (11)(b) (12) of Law No 554/2004 and submits that **the** applicants have neither proved nor relied on any right or legitimate private interest adversely affected by the administrative act which they seek to suspend, within the meaning of Article 1 of Law No 554/2004.

The plaintiffs have not challenged an actual administrative act, but merely intended to bring the present action in order to invoke an alleged failure to comply with **the** environmental conditions and achieve the objectives set out in the application.

In other words, the action does not specify which administrative act is being challenged or which specific action is being challenged in order to be fully consistent with the purpose for which the Declic Association was established, which is why the defendant requests that the exception b e admitted. In support

In support of its claims, the defendant invoked Decision No 8/02.03.2020 of the High Court of Cassation and Justice and submits that the plaintiffs have failed to demonstrate any public or private interest in their **application**, which is why it requests that the plea of lack of interest be upheld.

With regard to the plea of lack of locus **standi** of the natural persons sued, the defendant submits that none of the natural persons sued has locus standi in this dispute since the attainment of those objectives cannot be imputed to them, but requires cooperation between the Romanian and European **institutions**. The fact that the defendants do not have locus standi, since the mere fact that they are heads of an authority is not per se sufficient to incur liability for any deficiency of the institution.

In other words, the plaintiffs did not prove the existence of any causal link between the allegedly harmful act and the damage caused, limiting themselves to suing the persons in charge of public institutions.

Invoking the provisions **of** Article 1 para. (5) of the Romanian Constitution in relation to the provisions of the Code of Civil Procedure, the defendant submits that natural persons, in their capacity as heads of the abovementioned public authorities, cannot have locus standi, which is why it requests that the objection be upheld and that Mr Nkolae Ionel CIUCĂ, Mr Virqil POPESCU and Mr BÂRNA TANCZOS be removed from the case.

With regard to the plea of untimeliness of the imposition of fines on the heads of the defendant public authorities, the defendant submits that such a judgment cannot be enforced by a mere natural person, whether a head of authority or not, and that the applicants are proceeding on the basis of an absolute presumption of non-enforcement of an enforceable title.

Thus, in view of the provisions of Article 24 para. (3) of the Administrative Litigation Act No 554/2004, as subsequently amended and supplemented, the defendant takes the view that the decision imposing a fine on the head of the institution can be made only after the final outcome of the present dispute, by means of a separate judgment and a separate file. Otherwise, it could be inferred that the court is accepting the applicants' submissions and could proceed on the assumption that the heads of the public authorities have culpably failed to fulfil **their** obligations under the enforcement order.

On the merits, the defendant submits that, according to the National Inventory on Emissions of Gases with

emissions (INEGES) in the year 2022, total C02 equivalent emissions in Romania, excluding the LULUCF (Land use Change and Forest) sector, were 109,934.33 kt C02 equivalent in 2020.

According to INEGES 2022 and Romania's Fifth Biennial Report, from 1989 to 2020, Romania's total GHG emissions (excluding the LULUCF sector) decreased by 64.09% and net GHG emissions (including LULUCF) decreased by 72.90%.

Romania has one of the lowest per capita emission rates in the European Union. between 1990 and 2020, Romania also reduced **its** C02 emission intensity per unit of GDP by 77%, a rate more than double the global average. in 2020, the shares of total GHG emissions (excluding LULUCF) were as follows: 67% for C02, 21% for CH4, 10% for N20 and 2% for aggregated fluorinated gases.

Next, the defendant presented the national policy and legislative framework in the field of climate change.

European Union (hereinafter referred to as 'EU') environmental policy aims at a high level of protection, including through objectives and actions to limit the impact of climate change as set out in the first sentence of paragraph 1. (2) of Art. 191 TFEU (ex Art. 174 TEC) by reference to par. (F **ind** party to the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, the following 'pillars of climate policy' legislation has been adopted at EU and Member State (MS) level:

• Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Union, as subsequently amended and supplemented (the 'EU-ETS Directive')

The EU Emissions Trading Scheme covers all major emitters of greenhouse gases in industry, energy and aviation. in total, the EU-ETS covers

Emissions from 8 757 power and thermal plants and production facilities and 371 aircraft operators flying between airports in the European Economic Area (EEA) and from the EEA to Switzerland and the UK. These account for about 36% of total EU emissions.

The EU-ETS Directive states that Member States should use at least 50% of revenues from auctioning of allowances and all aviation revenues for climate and energy purposes. Member States report annually on how they spend their auctioning revenues.

At the national level, the EU-ETS Directive was transposed by Government Decision No 780/2006 on the establishment of a scheme for greenhouse gas emission allowance trading.
greenhouse, as subsequently amended and supplemented.

In July 2021, the European Commission also presented several legislative proposals to revise the EU-ETS **in** the framework of "Fit for 55". The Commission proposed that the sectors covered by the scheme should achieve emission reductions of 61% compared to 2005. To this end, the proposal tightens the cap on emissions and its annual reduction.

• Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on energy and climate action governance (the 'EUGR'), amending Regulations (EC) No 663/2009 and (EC) No .../.../EC on energy and climate action governance (the 'EUGR'). 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council

The EU ETS sets the legislative basis for reliable, inclusive, cost-effective, transparent and predictable governance of the energy union and climate action (the governance mechanism) to ensure that the energy union's 2030 and long-term goals under the 2015 Paris Agreement are met. The governance mechanism is based on long-term strategies, integrated national energy and climate plans covering ten-year periods from 2021-2030, corresponding integrated national interim energy and climate reports submitted by Member States and integrated monitoring measures by the Commission.

• Regulation (EU) 2018/842 of the European Parliament and of the Council on the annual mandatory reduction of greenhouse gas emissions by Member States during the period
2021-2030 with a view to contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (referred to as the
"ESR Regulation")

The ESR Regulation sets out Member States' obligations regarding their minimum contributions for the period 2021-2030 towards meeting the Union's objective of reducing its greenhouse gas **emissions** by 30% below 2005 levels in the sectors covered by Article 2 of the Regulation in 2030 and contributing to the achievement of the Paris Agreement targets. Pending the adoption of legislative proposals to revise the ESR Regulation, according to Art. 4 para. (1) and Annex I of the current ESR Regulation, Romania has set an obligation to reduce its GHG emissions by 2% compared to its 2005 greenhouse gas emissions set under Art. 4 para.
(3). The Regulation also lays down rules for setting annual emission allocations and for assessing the progress of Member States towards meeting their minimum contributions.

• Regulation (EU) 2018/841 of the European Parliament and of the Council on the inclusion **of** greenhouse gas emissions and **removals** resulting from land use, land-use change and forestry activities in the 2030 climate and energy policy framework and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (the 'LULUCF Regulation')

Separate from these four pieces of legislation, sectoral legislation and mitigation measures at EU and MS level contribute to the reductions needed to achieve the mandatory targets set out in Art. 1, Art. 2(2) and Art. 3(2) of the Kyoto Protocol. (1) and Art. 4 para. (1) of Regulation (EU) 2021/1119 establishing a framework for

to achieve climate neutrality ("European Climate Law"), which in turn legally enforces the ambitions of the European Green Pact.

Thus, the European Climate Act has set a binding target of achieving climate neutrality in the Union by 2050 in order to meet the long-term temperature objective of Article 2(1)(a) of the Paris Agreement. Specifically, by 2050 at the latest, a balance shall be ensured at Union level between emissions and removals of greenhouse gases which are regulated under Union law, so as to reach net zero emissions by that date, and the Union shall aim to achieve a negative **emissions** balance thereafter. In order to meet the climate neutrality objective set out in Article 2(1), the Union's binding climate target for 2030 shall be an internal reduction of net greenhouse gas **emissions** (emitted after **removals**) by at least 55 % by 2030 compared to 1990 levels.

At the level of national strategic documents with implications for reducing GHG **emissions**, the defendant mentions:

• Government Decision No 1.076/2021 on the adoption of the National Integrated Energy and Climate Change Plan (NIIECP) 2021-2030

• Romania's National Resilience and Recovery Plan (NRRP)

Romania's Recovery and Resilience Plan sets out the investment priorities and reforms needed for recovery and sustainable growth, linked to the green and digital transition envisaged by the European Commission. PNNR comprises 15 components targeting different areas of activity with an impact including on national policies to combat climate change and environmental protection.

According to the document, in order to reach the renewable energy ambition of over 30.7% in 2030, Romania will develop additional renewable energy capacity of about 6.9 GW compared to 2015. By 31 December 2025, a cumulative installed coal and lignite power generation capacity of 3,780 MW will be taken out of operation.

• Government Decision No 877/2018 on the approval of the National Strategy for Sustainable Development of Romania 2030

• Government Decision No 1.172/2022 approving the National Strategy on Circular Economy (SNEC)

The reduction of GHG emissions, in parallel with the continued efficiency of goods production processes, is a key objective of the transition to a circular economy. At national level, elements of the transition to a circular economy in Romania are also foreseen in the NRDS and the NRDP.

• Government Decision No 1.227/2022 on the approval of the National Forest Strategy 2030 (NFS 2030)

• Decision No 10/2023 on the amendment and completion of the National Long-Term Renovation Strategy to support the renovation of the national stock of residential and non-residential buildings, both public and private, and its gradual transformation into a highly energy-efficient and decarbonised building stock by 2050, approved by Government Decision No 1.034/2020

• Decision No 59/2023 approving the National Strategy on Environmental Education and Climate Change 2023-2030

The main objective of the Strategy is to develop competences, knowledge, skills and attitudes that enable students to contribute to: 1. actions relevant to combating climate change and reducing its impacts; 2. actions to adapt to climate change and ensure climate resilience models; 3. protecting, restoring and promoting the sustainable use of terrestrial ecosystems, rivers, lakes, seas and marine resources and halting biodiversity loss; 4. ensuring sustainable consumption and production patterns.

• National Strategic Plan 2023-2027 (Ministry of Agriculture and Rural Development) which includes specific targets and measures related to contributing to climate change mitigation and adaptation and sustainable energy.

• Status of Romania's long-term strategy to reduce greenhouse gas **emissions** (LTS) (in relation to the complainants' arguments in paragraph 4 Section 5.5 - page 31)

As regards the elaboration of Romania's long-term strategy for the reduction of greenhouse gas **emissions** (LTS), we point out that the LTS is being elaborated, in accordance with the provisions of Regulation (EU) 2018/1999, **as** a complex, technical process, which requires cross-sectoral and inter-institutional involvement and collaboration to establish optimal and feasible policies in relation to climate and energy, social and cost-effective needs. The LTS will reflect the vision for a modern economy and an efficient energy system that contributes to meeting Romania's commitments under the Paris Agreement and the European Green Pact, as well as the opportunities and challenges for reducing anthropogenic greenhouse gas emissions.

As regards Case C-2022/2090, the defendant states that a letter of formal notice for failure to fulfil an obligation under Article 15(15)(b) of the Regulation was sent to the defendant. (Information was sent to the Commission on the current state of preparation of the LTS as well as the timetable of activities to complete the LTS deliverable.

With regard to the plea of lack of locus **standi** of the Ministry of the Environment, Water and Forests in respect of claim 2 ('order the defendants to take all necessary measures to increase the share of renewable energy in final energy consumption to 45% and **to** increase energy efficiency by 13% by 2030'), the defendant relies on Article 1(1)(b) of the Directive. (2) and (3) of General Decision No 43/2020 on the organisation and functioning of the Ministry of the Environment, Water and Forests (hereinafter referred to as MMAP), as subsequently amended and supplemented, which lays down **the** areas in which the MMAP operates and implements policies at national level, with reference also to Article 1(1)(a) of Regulation (EC) No 43/2020. (1) and art. 4 of Government Decision No 316/2021 on the organisation and functioning of the Ministry of Energy, as amended.

However, the second petit comprises two separate heads of claim, as follows:

• The first head of claim seeks to order the defendants to take all necessary measures to increase the share of renewables in final energy consumption to 45% by 2030; however, the common framework for the promotion of energy from renewable sources is Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (RED II Directive), transposed by Law No 220/2008 establishing the system for the promotion of energy production from renewable energy sources, as subsequently amended and supplemented;

• The second head of claim seeks to order the defendants to take all necessary measures to increase energy efficiency by 13% by 2030; the common EU framework for increasing energy efficiency is Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (the EED Directive), transposed by Law No 121/2014 on energy efficiency, as amended;

The obligation to determine the procedural framework and to justify the procedural qualities is incumbent on the plaintiffs, in accordance with the provisions of Article 36 of the Civil Procedure Code, in conjunction with Article 2 para. (1) lit.
b) of Law No 554/2004.

In view of the substantive law provisions invoked above, the content of the second pleading before the Court, and the arguments put forward in Section 5.5 "Romania's commitments. Insufficiency of our country's commitments" paragraphs (2), (5) to (15) (pages 31 to 33 of the application), Section 6.1.2.2 para. (4) pct. 1 (p. 46), it follows that passive legal standing lies only with the public authorities to which the competence, i.e. the prerogatives to establish policies in the field of the promotion of energy from renewable sources, respectively energy efficiency, belongs.

With regard to the plea of lack of interest and, respectively, of lack of **standing in** administrative proceedings of the plaintiffs Pencea-Brădătan Elena-Roxana, Brădățan Tudo-Iulian, Năstache-Hopârteanu Cătălina, Mirea Silvia, Dejeu Daniela-Luminița, the defendant claims that **the** provisions of Law no. 554/2004 regulates in its entirety **the** special conditions which must be exercised in order to trigger judicial review in respect of an unjustified refusal to deal with an application.

However, in the assessment of the interest underlying the action in concreto, it cannot be held that the applicants are natural persons who are injured by the contested administrative act, within the meaning of Article 2(2)(b) of Regulation No 40/94. 1(a) of Law No 554/2004.

The five plaintiffs make general statements such as "plaintiffs 2-6 are Romanian citizens deeply concerned about the defendants' deliberate indifference to our fundamental rights to a stable climate" (para. 2 p. 6), "the defendants' attitude infringes the individual fundamental rights of plaintiffs 2-6" (para. 13 p. 9), "we are directly affected by the defendants' deficient policy on climate change issues" (para. 1 p. 14), "our action seeks to prevent substantial impairment of our rights" (para. 5 p. 15), respectively list a set of rights potentially affected "the defendants' inactions, which amplify climate challenges, disregard not only this right of the undersigned, but also the right to a decent living, the right to property, the right to liberty and the right to life itself" (para. 3 p. "the authorities' inaction jeopardises both the legitimate interest of the Declic Association and the fundamental rights of the claimants in rd. 2-6: the right to life and privacy, the right to property, the right to a decent living, the right to a healthy and sustainable environment, the right to a dignified **life** for future generations, etc." (para. 3 p. 5) Therefore, on the basis of mere allegations, the conclusion of harm to the applicants' rights and legitimate interests cannot be sustained.

Moreover, there is no real dissociation between the Declic Association and the five natural person claimants, representing the same general, collective interests. Thus, the applicant Pencea-Brădățan Elena-Roxana and the applicant Brădățan Tudor-Iulian are listed in Annex 2 'Table of founding and non-founding members **of** the association as at 15.03.2022' to the Statutes of the Declic Association (Annex No 1 submitted by the applicants).

The plaintiff Pencea-Brădățan Elena-Roxana is the president of the Declic Association as it appears from the Association's statute, and the plaintiffs Brădățan Tudor, Mirea Silvia, Năstăsache-Hopârteanu Cătălina and Dejeu Luminița are part of the Declic team, as it appears from the Declic Association's website.

This is also apparent from the contents of the identical addresses submitted by the Declic Association on 01.09.2022 and 23.09.2022 respectively and the address submitted by
natural persons claimants at rd. 2-6. Moreover, the **individual** plaintiffs themselves acknowledge this in paras. 4 of p. 7 of the application ("**the** plaintiffs in paras. 2-6 addressed the same requests to the competent public authorities on 20.12.2022").

In the light of all these arguments, the defendant requests that the plea of lack of interest and the plea of lack of locus **standi of the** natural persons claimants be upheld and that the claimants' application **in** rows 2 to 6 be dismissed as devoid of interest and brought by persons lacking locus standi.

With regard to the plea of inadmissibility of claim No 1, the defendant submits that **the** plaintiffs have brought a claim seeking an order that the defendants take all necessary measures to reduce greenhouse gases by 55% by 2030 and to achieve climate neutrality by 2050.

The applicants have individually set the 55% GHG emission reduction target by 2030 and the 2050 climate neutrality target. The 55% GHG **emission** reduction target by 2030 and the 2050 climate neutrality target are set at EU level and are to be achieved collectively by the EU Member States, as set out in Articles 1, 2(2) and 3(2) of the Directive. (1) and 4(1). (1) of the European Climate Act.

Each Member State has the right to set its own level of GHG emission reductions by 2030 and 2050 respectively, in the light of its social, economic and environmental circumstances.

The fact that the administrative court was seised of a head of claim seeking, in reality, to impose, with the court's assistance, percentages for the reduction of GHG **emissions** by 2030 and 2050 respectively, leaving only the defendants the possibility of determining their measures, constitutes a circumvention of the principle of the separation of powers in the State enshrined in Article 1(1)(b) of the EC Treaty. (4) of the Constitution of Romania and an overstepping of the powers of the judiciary.

The Government of Romania, on the proposal and analysis of the relevant ministries, is the only one able to assess the opportunity, the necessity, the concrete possibility of achieving a percentage reduction of GHG emissions by 2030 and 2050 respectively, taking into account all

aspects

budgetary implications and the economic impact of making such a commitment and the measures to achieve it.

Moreover, the court cannot oblige the defendants to declare a climate emergency (in relation to **the** allegations in paragraph 8 p. 37) without violating the principle mentioned above. Similarly, the same reasoning must be taken into account with regard to the references to the non-existence of a national climate law (paragraph 8 p. 37; paragraph 2 p. 45).

The defendant therefore also seeks the dismissal by way of exception of claim 4 in respect of the defendant Minister for the Environment, Water and Forests, Mr Bârna Tânczos, since the subject-matter of that claim concerns the imposition of a fine from the expiry of the period laid down in claim 3 until the actual adoption of the measures required to achieve the objectives laid down in claim 1.

With regard to the objection of inadmissibility of claim 3 in respect of the applicants' request to adopt concrete and coherent plans on the climate change adaptation component in order to achieve the objectives set out in claims 1 and 2, due to the absence of a request from the applicants on this issue and, implicitly, the absence of an unjustified refusal to deal with a request, the defendant submits that an analysis of all the requests shows that **the** applicants did not address a request to the defendant MMAP to adopt, within a maximum period of
30 days after receipt of the request of concrete and coherent climate change adaptation plans. **The** plaintiffs only requested "the adoption within a maximum of 30 days of receipt of the application of concrete and coherent climate change mitigation plans".

But in the language of the trade, mitigation is different from adaptation. According to the Intergovernmental Panel on Climate Change (IPCC), the United Nations body responsible for assessing the **scientific** aspects of climate change, mitigation is defined as "an anthropogenic intervention to reduce sources of greenhouse gases or enhance sinks of greenhouse gases", while adaptation means "the adjustment of natural or human systems in response to actual or projected climate stimuli or their effects, with the aim of mitigating negative impacts or exploiting beneficial opportunities". There is no definition of mitigation or adaptation in either the UNFCCC or the Paris Agreement.

In this regard, **the** provisions of Article 4 par. 1 lit. b) of the UNFCCC, ratified by Romania through Law no. 24/1994, the Paris Agreement, ratified by Romania through Law no. 57/2017, includes a section dedicated to adaptation and the global goal of adaptation. MMAP is currently reviewing adaptation policies and measures in **the** "National Strategy on Adaptation to Climate Change for the period 2022-2030 with a view to 2050" (SNASC) and the "National Action Plan for the implementation of SNASC" (PNASC) in the framework of the RO-ADAPT project. SNASC and PNASC are strategic public policy documents covering the following domains: (1) Water resources, (2) Forests, (3) Biodiversity and ecosystem services, (4) Population, public health and air quality, (5) Education and awareness, (6) Cultural heritage, (7) Urban systems, (8) Agriculture and rural development, (9) Energy, (10) Transport, (11) Tourism and recreation, (12) Industry and (13) Insurance.

The documents have undergone the strategic environmental assessment according to Government Decision no. 1076/2004 on the establishment of procedures for carrying out environmental assessments for plans and programmes. on the basis of the Decision of the framing stage no. 6 of 15.09.2022 for the SNASC and PNASC it was decided that the Strategy and its related Plan do not require an environmental assessment and will be subject to **the** adoption procedure without an environmental opinion. Please note that all information on the strategic environmental assessment procedure is available on the MMAP website.

SNASC and PNASC will go through the decision-making transparency procedure later this year, which is an integral part of the procedure for adopting the regulatory act of approval.

Given that there is no identity between the notion of adaptation and mitigation, please note that the defendants have not requested us to adopt concrete and coherent climate change adaptation plans within a maximum of 30 days of receipt of the application. For there to be an unjustified refusal, there must be an express request to the public authorities, i.e. a written and legally reasoned notification.

However, in the absence of a request, there is no unjustified refusal on the part of the MMAP to deal with a request. Accordingly, the defendant requests that the third plea be dismissed as inadmissible in that regard.

Next, the defendant submitted considerations concerning the dismissal of the action as unfounded. In accordance with the decisions taken at the 20th session of the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC), the Union and its Member States submitted their nationally determined expected contribution, together with an annex containing quantifiable and qualitative information on the achievement of the INDCs. Even before the signature and ratification of the Paris Agreement, the EU and its Member States committed themselves to jointly reach a binding domestic reduction target of at least 40% of economy-wide greenhouse gas **emissions by** 2030 compared to 1990 levels, as set out in the European Council Conclusions of October 2014.

Nationally Determined Contributions (NDCs) serve as a commitment tool under the Paris Agreement and are a key component of its ambition cycle and accountability framework. Under Article 4 of the Paris Agreement, each country sets its own NDC targets (hence they are called nationally determined), must then track progress towards implementation and achievement, but has no legal obligation to reach them.

At the same time, not all provisions of the Paris Agreement set legally binding rules for States Parties. For example, a number of the provisions relating to mitigation of **emissions** are formulated as recommendations and not as mandatory rules. By way of example, the central obligation of the Paris Agreement in Article 4.2, first sentence, states that "Each Party shall prepare, communicate and maintain the successive nationally determined contributions (NDCs) that it intends to make." This is the only legally effective obligation relating to mitigation and is strictly procedural in nature. In other words, the provision does not require States Parties to implement their NDC, but only to prepare it, to communicate it.

Each successive NDC must embody the highest level of ambition of one of the Parties - it must do its utmost to achieve progressively the Paris Agreement temperature target (Art. 2.1(c)). It is important to stress that the above-mentioned target is a general one that does not impose quantitative restrictions on greenhouse gas emissions or a global or national carbon budget. During the negotiations on the adoption of the Paris Agreement, Parties considered the possibility of "endowing" the Agreement with a binding mechanism for individual monitoring of States' commitments, but in the end Parties decided not to create such a mechanism but opted for the establishment of a facilitative mechanism for monitoring the implementation of the Paris Agreement, which operates in a transparent, non-confrontational and non-punitive manner.

Full implementation of the Fit for 55 proposals and the REPowerEU plan would put the EU and its Member States on track to meet the current NDC target.

The performance of States Parties in achieving the NDCs under the Paris Agreement is measured on the basis of IPCC reports and **Decisions** taken by the Conferences of the Parties to these two agreements, and not on the basis of Litmus or other tests referred to by the plaintiffs in the action.

The choice of means (policies and measures) to combat climate change is within the margin of appreciation of the state. Given the complexity of the task, this choice is difficult and takes into account different interests that need to be balanced. Moreover, in environmental matters, the European Court of Human Rights has often stressed that it cannot substitute for the view of local authorities on the best policy adopted, so it has always recognised a "wide" margin of appreciation for states, especially in difficult social and technical areas (Hatton et al., supra, paras. 100-101; Tatar, supra, para. 108).

Consequently, the defendant requests that the defendants' arguments relating to infringement of Article 4 of the Paris Agreement and the non-existence of national carbon budgets be rejected as unfounded.

As regards Romania's country-level membership of the Global Methane Commitment, updated data from Romania's Fifth Biennial Report, published at the end of 2022, will allow for an analysis to be developed to guide Romania's decision to join the initiative on the basis of current evidence.

Second, on 15 December 2021, the Commission presented the proposal for a Regulation on the reduction of methane **emissions** in the energy sector as a second part of the "Fit for 55" package of legislative proposals. After numerous negotiations at Member State level, in December 2022, the Council reached an agreement (general approach) on the proposal. The Council has now started negotiations with the Parliament to reach agreement on a final text.

With regard to the allegations concerning GHG emission certificates and green certificates, the defendant mentions that the complainants confuse the green certificate and the GHG emission certificate.

The green certificate is the title that certifies the production of a quantity of electricity from renewable energy sources and is regulated by Article 2(h) of Law 2020/2008.

The greenhouse gas emission certificate is the title that confers the right to emit one tonne of carbon dioxide equivalent in a defined period, valid only for the purpose of the H.G. No 780/2006, as subsequently amended and supplemented, and is transferable under the conditions laid down in the same decision. Greenhouse gas **emission** allowances are allocated free of charge to operators who manage an installation where one or more of the activities listed in Annex No 1 to Government Decision No 780/2006, as subsequently amended and supplemented, are carried out.

The plaintiffs also confuse the green certificate and the greenhouse gas emission reduction unit ('CER').

Accordingly, the defendant seeks the dismissal as unfounded of all arguments relating to the green certificate and the greenhouse gas emissions certificate.

Finally, the defendant argues that concerted action by all States Parties to the UNFCCC and the Paris Agreement (in its threefold dimension - (i) mitigation **of** emissions and low greenhouse gas emissions (GHG emissions) economic development; (**ii**) enhancing capacities to adapt to and build resilience to the adverse effects of climate change; (i) aligning financial flows in a way that is consistent with a shift towards low GHG emitting and climate resilient development), private actors (e.g. multilateral development banks, companies, especially those in energy intensive or fossil fuel intensive industries) and citizens in taking effective measures and actions to combat climate change.

As regards all requests for evidence on page 77, these cannot be submitted by the MMAP, as they do not fall within the competence of the MMAP, as it follows from Art. 1 of GD no. 43/2020 on the organisation and functioning of the Ministry of Environment, Water and Forests and Art. 1 para.
(1) of Government Decision No 316/2021 on the organisation and functioning of the Ministry of Energy. As regards the requests for evidence on page 78, these were addressed to the defendant Government of Romania, the Romanian Court **of** Accounts (not a party to the case) and the Ministry of Investment and European Projects (not a party to the case).

In conclusion, having regard to the facts and points of law, the defendant seeks the dismissal of the application as made.

Defendant THE MINISTRY OF THE ENVIRONMENT, APELOR AND FORESTS, LORD BARNA TANCZOS filed a statement of defence in which it requested that the plea of prematurity of the action brought against it be admitted and, consequently, that it be dismissed as premature; that the plea of lack of **locus** standi be admitted and, on the merits, that the applicants' action be dismissed as unfounded (f.159, vol.III).

As a preliminary point, the defendant stated that it supports and relies on all the defences and exceptions put forward by the Ministry of the Environment, Water and Forests in its statement of defence.

With regard to the plea of prematurity of the application for **a declaration of** amendment, the defendant submits that the bringing of the action against him is of a formal nature only by virtue of the fact that he is the head of the central public authority - the Ministry of the Environment, Water and Forests.

With a view to enforcing any favourable judgment, the applicants request the court to impose a fine of 20% of the gross minimum wage per day of delay.

The defendant considers that the time-limit for the imposition of penalties runs from the date on which the decision imposing the penalty becomes final (which, according to Article 24 of Law No 554/2004, must be a separate dispute) until the date of actual enforcement.

A court judgment establishing a '55 % reduction in greenhouse gases' cannot be enforced by a mere natural person, whether a head of the Ministry of the Environment, Water and Forests or a head of the Ministry of the Environment, Water and Forests, and the plaintiffs are relying on an absolute presumption of non-enforcement of an enforceable title, in the sense that there is a high degree of non-enforcement of the judgment and fines are also sought. In that context, the defendant relies on the provisions of Article 24(1)(b) of Regulation (EC) No 659/1999. (3) of the Administrative Litigation Act No 554/2004, as subsequently amended and supplemented, and submits that the decision ordering the imposition of a fine on the head of the institution may be made only after the present dispute has become final, by means of a separate judgment and a separate file.

Otherwise, it could be inferred that the court is accepting the claimants' contentions and could assume that the public authorities have culpably failed to fulfil **their** obligations under the enforcement order.

With regard to the plea of lack of legal standing, the defendant submitted that, as head of the Ministry of the Environment, Water and Forests, it does not have legal standing in this dispute, since the achievement of the objectives sought by the action cannot be my responsibility alone, but requires cooperation between Romanian and European **institutions**. It considers that the substantive issues arising from its lack of locus standi can be clearly seen in the statement of defence of the Ministry of the Environment, Water and Forests. Moreover, European policy in this regard may be subject to change/adaptation, and its obligation to adopt a certain attitude may be contrary to the changes laid down at European level. As the Ministry detailed in its reply, these are only certain targets at European level, not an absolute obligation and from which no exception can be made (e.g. 54% reduction of GHG).

Last but not least, it is not individuals who adopt measures/plans/budgets, but public institutions following a strong inter-institutional cooperation, both at national and European level, who are responsible for achieving the objectives. At the same time, the defendant considers that it does not have locus standi, since the mere fact that it is the head of an authority is not per se sufficient to incur liability for any shortcomings of the institution.

In other words, the plaintiffs did not prove the existence of any causal link between the allegedly harmful act and the damage caused, but merely brought proceedings against the persons in charge of public institutions.

On the merits, the defendant seeks the dismissal of the applicants' action, putting forward essentially the same arguments as those put forward by the defendant Ministry of the Environment, Water and Forests in its own statement of defence. The European Climate Law has established a binding objective of achieving climate neutrality in the Union by 2050, with a view to meeting the long-term temperature objective laid down in Article 2(1)(a) of the Paris Agreement.

Specifically, by 2050 at the latest, a balance shall be ensured at Union level between emissions and removals of greenhouse g a s e s that are regulated in Union law, so as to reach net zero emissions by that date, and the Union shall subsequently aim to achieve a negative emissions balance.

In order to meet the climate neutrality objective set out in Article 2(i), the Union's binding climate target for 2030 shall be a domestic reduction of net emissions of
greenhouse gases (emitted after deducting **removals**) by at least 55 % by 2030 compared to the levels in the EU ETS.

As regards the binding Union climate target for 2040, according to recital 30 and Article 4 of the European Climate Act, the Commission should propose an interim Union climate target for 2040, if appropriate, no later than six months after the first global assessment under the Paris Agreement.

On 05.04.2023, the intervener ASOCIAȚIA BANKWATCH ROMÂNIA filed an application for ancillary intervention in favour of the plaintiffs by which it requested the admission of their actions (f.106, vol.IV).

In support of this application, the intervener submits that the condition of interest laid down in Article 61(1)(b) of Regulation No 40/94 is satisfied. 1 of the Civil Code, given that (i) the Bankwatch Association

Romania has as its statutory aim and objective the protection of the environment, that (**i)** the matters sought by the applicants in **the** present case against the defendants fall within the mechanisms by which the objective of environmental protection is achieved and that (**i**) by supporting the applicants' defences in the present case and by potentially upholding their claims, the intervener is making a concrete contribution to the achievement of its own statutory aim and objectives. Accordingly, please find that Bankwatch's interest is legitimate and that **the** conditions laid down by law for the admissibility in principle of the present application are met.

The intervener invokes Article 8 of the European Convention on Human Rights, which reaffirms the fundamental human right to a healthy environment, and argues that there is no coherent support system in Romania to support the achievement of **the** 45% renewable energy target. The installation of new capacity has stagnated since 2016 when Romania reached its 2020 target and deemed it unnecessary to maintain the support scheme.

Compliance with environmental protection legislation is an ongoing challenge at national level, with frequent violations and exemptions being made even with the authorities' blessing. There have been flagrant violations of the legislation on the environmental impact assessment of energy projects, in particular in cases of the expansion of lignite quarries in Gorj county, where the courts have on various occasions annulled or suspended the environmental agreements issued for such works, or in notorious cases such as that of the hydroelectric power station project in Defileul Jiului implemented by the state company Hidroelectrica, which was stopped by a final decision of the Bucharest Court **of** Appeal, because the construction permits issued for this project were issued without environmental assessments having been carried out. The national authorities' interest in ensuring environmental health and protection is also 'telling' in view of the repeated attempts by Parliament over the last year to change the boundaries of protected areas in Romania in order to facilitate the construction of problematic energy projects of national interest, some of which have been declared illegal by final decisions of the national courts, others of which are the subject of ongoing lawsuits.

The factual situation therefore fully justifies the present legal action and, in that context, it is not only necessary, but also fully justified, to uphold the applicants' **application.**

According to the legal provisions, the defendants are responsible for taking measures in the field of climate change, including the reduction of GHGs (greenhouse gases), and bear the legal responsibility and obligation to take the measures which are the subject of the first head of claim.

The measures which the defendants are obliged to adopt must have the effect of reducing GHG emissions by at least 55% by 2030. This follows directly and unequivocally from the provisions **of** Article 4(4) of Directive 2003/87/EC. 1 of Regulation (EU) 2021/1119, which sets as a binding climate target 'an internal reduction of net greenhouse gas emissions (emitted after deduction of **removals**) by at least 55% by 2030 compared to 1990 levels'. However, the measures taken by the defendants in the exercise of their obligations under the law cannot have the effect of reducing GHGs in the manner required by Article 4(4) of the Directive. 1 of Regulation (EU) 2021/1119, since in point 1.1 of that regulation the Commission is not required to take the necessary measures to reduce greenhouse gas emissions. A, l.l.i, par. 2 of the National Integrated Energy and Climate Change Plan (NIIECP) 2021-2030, the "target to reduce domestic GHG emissions by at least 40% by 2030 compared to 1990" is retained. Therefore, by simply comparing the two legal acts, it can be concluded that **the** provisions of Article 4(4) of the Kyoto Protocol are not in line with the objective of the EU's Kyoto Protocol. 1 of Regulation (EU) 2021/1119 are infringed by the defendants in the present case.

The measures which the defendants are obliged to adopt must have the effect of achieving climate neutrality by 2050. That obligation follows directly and unequivocally from the provisions of Article 2 of Regulation (EU) 2021/1119.

The defendants in the present case have failed to develop a long-term strategy containing the measures necessary to achieve the binding climate target set out in the previous paragraph, despite the fact that the development of such a strategy is mandatory and had to be completed by 1 January 2020, pursuant to Article 15(1) of the Directive. 1 of Regulation (EU) 2018/1999, which stipulates that 'by 1 January 2020 and thereafter by 1 January 2029 and every ten years thereafter, each Member State shall draw up and submit to the Commission its long-term strategy with a time

horizon of at least 30 years'.

Breach of the obligation under Article 15 para. 1 of Regulation (EU) 2018/1999 was the subject of a letter of formal notice from the European Commission, 1NFR(2022)2090, notified to the defendant Government of Romania on 29.09.2022, but the defendants have not yet complied.

Romania is a signatory to the Paris Agreement, concluded in Paris on 12 December 2015 and signed by Romania in New York on 22 April 2016, ratified by Law no. 57/2017. Thus, given **the** provisions of Article 31 of Law No 590/2003 on Treaties, which states that "the application and observance of the provisions of the treaties in force is an obligation for all Romanian state authorities, including the judicial authority (...)", including the courts are responsible for ensuring the application and observance of the provisions contained in the Paris Agreement.

For the purposes of the above, the intervener invokes **the** provisions of Article 2 of the Agreement, which define the objectives undertaken by the signatories as 'maintaining global average temperature increase well below 2°C above pre-industrial levels and continuing efforts to limit temperature increase to 1.5°C above pre-industrial levels'. That objective is therefore an obligation incumbent on the Romanian authorities, and not a formal declaration lacking legal force, which is why the applicants request a declaration that the adoption of measures designed to achieve a minimum 55% reduction in greenhouse gases by 2030 and climate neutrality by 2050 is also an obligation arising from the Paris Climate Agreement.

Directive (EU) 2018/2001 requires Member States to ensure a share of energy consumption from renewable sources of at least 32% of gross final consumption of energy by 2030. Article 3(3) of Directive 2018/2001 also requires Member States to ensure a share of energy consumption from renewable sources of at least 32% of gross final consumption of energy by 2030. 1 of the Directive states that an increase in this level is likely and could be achieved by 2023. We point out to the court that the 'RepowerEU' legislative package has increased the share from 'at least 32%' to 'at least 45%', thus adjusting in concrete terms the minimum level of ambition that Romania must assume.

The defendants are only declaring their intention to increase the target, which is apparent from the fact that the legislative act transposing Directive (EU) 2018/2001, namely GEO no. 163/2022, in the XlXth paragraph of the explanatory memorandum, **the** defendants, who are also signatories to the aforementioned legislative act, acknowledge the late transposition of the Directive and justify the urgency of legislating by means of the emergency ordinance "taking into account the context of the current discussions at the level of the European Commission on the revision of Directive (EU) 2018/2001 and the ambitious increase of the target for energy from renewable sources to 45%". We note that at the time of **the** adoption of GEO No 163/2022, i.e. on 29 November 2022, the European Parliament had already adopted (on 16.09.2022) the Commission's proposal to increase the target to 45%.

The measures taken by the defendants in the exercise of **their** obligations under the law cannot have the effect of increasing the share of renewables in final energy consumption by 45% as long as in point. A,
1.1.i, para. 2 of the National Integrated Energy and Climate Change Plan 2021-2030 (NIIECP), it is noted that "as regards the share of renewable energy, the European Commission has recommended Romania to increase the ambition level for 2030 to a share of renewable energy of at least 34%. Consequently, the level of ambition for the share of renewable energy has been revised compared to the updated version of the NESCAP, from an initially proposed share of 27.9% to a share of 30.7%". Please therefore find that the defendants should be ordered to take all necessary measures to increase the share of renewables in final energy consumption to 45% in 2030.

Defendants recognise and accept that urgent action is needed to ensure that the objectives agreed in the Paris Agreement are met. By way of example, in the explanatory memorandum to GEO No 163/2022, the signatory defendants state that 'Directive (EU) 2018/2001 imposed obligations on Member States to take into account the level of ambition set out in the Paris Agreement and technological progress, including the reduction of the costs of investment in renewable energy' and that 'the approval of the completion of the legal framework necessary to promote the use of renewable energy for the period 2021-2030 is of exceptional urgency'. **Thus**, the time-limit requested by the applicants in the application for interim measures, of a maximum of 30 days from the final judgment, is a time-limit which corresponds to the urgency required by the need to take measures capable of achieving the objectives set out in heads 1 and 2 of the

application.

On 06.04.2023, the applicants DECLIC ASSOCIATION, [redacted] *iled notes for the hearing* in which they contested the defences and objections raised by the defendants and supported the merits of their claim (f.115, vol.IV).

The objections raised by the Ministry of the Environment, Water and Forests are unfounded in the light of the following arguments, evidence and legal considerations:

The plea of lack of interest of the Declic Association has no legal support, by reference to the subject matter of the action, the objectives of the Declic Association and the ICCJ decision No 8/2020.

The defendant Ministry of the Environment, Water and Forests submits that the undersigned has not challenged an actual administrative act. However, that is a limited view of the subject-matter of the administrative dispute, given that Article 8(8)(a) of Regulation No 40/94 is not applicable. (1) of Law No 554/2004 refers both to the situation of an appeal against **a n** administrative act, sentence I, a n d to the hypothesis of failure to resolve an application within the time limit or unjustified refusal to resolve an application, sentence a**)**.

The applicants submit that they have proved why the refusal to adopt the requested measures constitutes an unjustified refusal. They have addressed requests to the defendants in respect of the petitions, but in their replies the defendants have merely reviewed the plans already in place, insisting that each country determines its own Nationally Determined Contributions ('NDCs') autonomously, but ignoring the standards by which NDCs are determined: the highest possible level of ambition and transparency.

In support of their claims, the applicants invoke the case law of the ECHR and European case law in which the interest of non-governmental organisations in promoting action on climate change has been upheld.

With regard to the applicants' plea of lack of locus **standi** in paras. 2-6, the applicants submit that it is unfounded by reference to the provisions **of** Article 9 Aarhus Convention, Article 35 para. (1) of the Romanian Constitution and Article 3(h)(a) of GEO No 195/2005.

The defendant's argument that the plaintiffs are not representative is contradicted by the graph in the latest IPCC synthesis report which suggestively illustrates how present and future **generations** will experience a different world and rising temperatures.

The plaintiffs **claim** that they have the necessary standing to bring an action with this specificity, this right being conferred on them both by constitutional norms, secondary legislation and international treaties that Romania has ratified, integrating them into domestic law, with reference also to Article 35 para. (1) of the Romanian Constitution.

Also, the Romanian State, in its role as guarantor of the right to a healthy and ecologically balanced environment, has regulated, at the level of principle, the right of access to justice in environmental matters (art. 3 lit. h) second sentence of GEO no. 195/2005), and at the level of direct application, the right of any person to "apply directly to the judicial authorities in environmental matters, regardless of whether or not damage has been caused" in art. It is important to note that following the amendment of this act by Law No 265/2006, individuals have the right to apply to the courts, regardless of whether or not environmental damage has occurred.

Consequently, given the existence of these international, constitutional and legislative rules, in the context of the existence of an identity between the person of the undersigned in paragraphs 2 to 6 and the holder of the right claimed, the plea of locus **standi** raised by the Ministry of the Environment, Water and Forests must be rejected as unfounded.

The plea of lack of interest of the plaintiffs in paragraphs 2 to 6 must also be rejected, in view of both the violation of individual fundamental rights and the immediate risk of substantial harm to the rights **and** freedoms in question as a consequence of the defendant**s** breach of positive **obligations** and the violation of collective rights, the legitimate private interest being doubled by the public interest.

The plaintiffs of rd. 2-6 argue that they have justified in section 4.2. of the application **the** private legitimate interest by reference to the violation of the subjective rights and freedoms guaranteed by the Romanian Constitution, the EU Charter of Fundamental Rights, these two acts of

primary legislation enshrining including the fundamental right to a healthy environment, a right which is not found in the ECHR.

The applicants' individual and collective fundamental rights are endangered because of the link **between** a healthy environment and supra-legal prerogatives such as life, health or human dignity, having at the same time both the status of victim and potential victim, in the sense of the ECHR case law.

Accordingly, the legitimate public interest which duplicates the legitimate private interest is also proven and sufficiently substantiated in the present case.

The plea of inadmissibility in respect of the first head of claim must be rejected because the request made to the court does not infringe the principle of the separation of powers in the State.

By their application, **the** applicants allege both a breach of positive obligations and a breach of human rights by the defendants. Nor does the defendant's theory of infringement of the separation of powers in the State have any legal basis from a human rights perspective.

The request that the defendants be obliged to enter into legal limits, that is to say, to adopt measures (the margin of discretion as to the types of measures lies with them) compatible with the climate objectives set out in Article 2(1)(a) of the Paris Agreement: limiting global warming to 1.5 degrees Celsius and 2 degrees Celsius respectively.

The plea of partial inadmissibility of claim 3, in so far as it requires the defendant to adopt plans for adaptation to climate change, is manifestly unfounded, since it is clear from the entire reasoning of the claims in the leniency proceedings that **the** applicants refer to both the lack of mitigation measures and the lack of adaptation to climate change.

Adaptation strategies include the promotion of renewable energy production and the development of energy efficiency strategies.

The only usefulness of this argument put forward in defence by the defendant is that it can be equated with an admission of wrongful refusal.

The plea of lack of locus **standi** of the natural persons sued has no legal basis, which is why it must be rejected.

The defendant Ministry of the Environment, Water and Forests relies on that plea, arguing that the natural persons sued, at the moment the Ministers of the Ministries sued, namely Ministers Tanczos Bârna, Nicoale-lonel Ciucă and Virgil Popescu, are not directly responsible for the 'deficiency of the institution' specialising in the environment. However, the plaintiffs claim that this 'liability' exists and is applicable in **practice**:

The defendant Minister for the Environment, Water and Forests, pursuant to Article 56(1)(b) of Regulation (EEC) No 4064/89 1 lit. c) of the Administrative Code, 'develops and implements the Ministry's own strategy, integrated into the Government's economic and social development strategy, as well as policies and strategies in the Ministry's areas **of** activity', and according to Article 13 para. 1 of H.G. no. 43/2020, it ensures the management of the Ministry of Environment, Water and Forests;

The defendant Minister for Energy, pursuant to Article 56(1)(b) of the EC Treaty 1 lit. c) of the Administrative Code, 'develops and implements the Ministry's own strategy, integrated with the Government's economic and social development strategy, as well as policies and strategies in the Ministry's areas of activity', and according to Article 10 para. 1 of H.G. no. 316/2021, it ensures the management of the Ministry of Energy;

The defendant Prime Minister of Romania, in accordance with **the** provisions of Article 107(1)(b) of the EC Treaty, is (1) of the Constitution of Romania, "heads the Government and coordinates the work of its members"; furthermore, according to Art. 1 para. 2 of H.G. No 563/2022 on the establishment, organisation and functioning of the Interministerial Committee on Climate Change, the defendant heads the Committee which, according to Article 3(a)
"analyses and proposes solutions in order to ensure the consistency of the policies in the sectors that have an impact on climate change, proposed by the relevant ministries, with the commitments made at national level to the European Union, the United Nations and other international organisations to which Romania is a party, and monitors the progress made by Romanian **institutions** in their implementation".

The defendant MINISTRY OF ENERGY submitted a statement of defence in which it requested that the plea of lack of **standing** and interest of the plaintiffs, the plea of lack of passive standing of the natural persons sued (managers of the defendant institutions), the plea of prematurity

of the imposition of fines on the managers of the defendant institutions and, on the merits, the dismissal of the plaintiffs' action against the Ministry of Energy as unfounded (f.49, vol.V).

With regard to the plea of lack of interest of the applicants, the defendant states that the applicants have understood to bring the present action alleging an alleged failure to comply with **the** environmental conditions and to achieve the objectives set out in the **application**, without attacking an actual administrative act, without specifying which administrative act is being attacked or which concrete inaction is being challenged, and invokes **the** provisions of Article 8(8) of Regulation No 40/94. ([11]) and para. ([12] of Law No 554/2004, Decision of the Constitutional Court of Romania No 66 of 15 January 2009, concerning the exception of unconstitutionality of the provisions of Article 8 para. ([11]) of Law no. 554/2004, Decision no. 8/02.03.2020 of the High Court of Cassation and Justice.

With regard to the objection of lack of interest and lack of **standing of** the natural person applicants: Pencea Brădățan Elena Roxana, Bradățan Tudor Iulian, Năstache- Hopârteanu Cătălina, Mirea Silvia, Dejeu Daniela Luminița, the defendant relies on the provisions **of** Article 2(a), Article 2(2)(b) and Article 2(2)(c) of the Rules of Procedure. (1) lit. p) din Legea nr. 554/2004 art. 2 alin. (1)(p) of Law No 554/2004, according to which, as natural persons or groups of natural persons, without legal personality, the applicants may not bring proceedings as such in the subjective administrative proceedings, unless they prove that they are the holders of subjective rights or legitimate private interests (Article 2(1)(a) of Law No 554/2004). 554/2004] and, as a consequence, they may not bring an action in objective dispute, i.e. to request the annulment of an administrative act, based on the premise of the infringement of a legitimate public interest, unless and under the condition that they prove that the alleged infringement of the legitimate public interest logically results (as a consequence, there must therefore be a causal relationship) from the infringement of the subjective right or legitimate private interest [art. 8 para. ([11]) of Law 554/2004.

In the light of the foregoing, the defendant considers that the mere general allegations of the applicants cannot support the conclusion that their rights and legitimate interests are prejudiced. To that end, the applicants had to prove the concrete practical benefit materialised by reference to their own person, in accordance with the purpose and objectives of the association set out in its articles of association. The consequences of the absence of interest, of personal harm to the applicant, also extend to another condition for bringing a civil action, that of s t a n d i n g .

With regard to the plea of lack of locus **standi** of the natural persons sued (the heads of the defendant institutions), the defendant submits that, by accepting the method of establishing the procedural framework chosen by the applicant, it would be accepting that the Minister for Energy has dual capacity as defendant in the same dispute, which is procedurally inadmissible.

Having regard to **the** provisions of Article 5(k), Article 2(2) and Article 3(2) of the Treaty establishing the European Community 1, art. 54, in conjunction with art. 55 of the Administrative Code, the defendant states that the Minister is not a central public authority, but a dignitary (a person exercising functions of public dignity by virtue of a mandate, according to the Constitution, the Administrative Code and other normative acts) and ensures the management and representation of the central public administration authority (Ministry).

Pursuant to Article 117 of the Constitution, Government Decision No 316/2021 approved the organisation and functioning of the Ministry of Energy. According to Art. 10, the Ministry is headed by the Minister of Energy who represents and commits the institution unjustly. According to para. (5), before the jurisdictional authorities the Ministry of Energy is represented by the specialized staff, based on the powers granted for each case, according to the competence established by order of the Minister of Energy.

Therefore, the party who considers himself injured by an act issued by a public authority has the possibility to call upon the body issuing the administrative act as a defendant, and the public legal person which issued the administrative act has passive procedural quality, i.e. it has the competence to settle the claimant's request in the preliminary administrative procedure.

This solution is also in line with respect for the principle of the certainty of legal acts (clarity and predictability of the law), especially as the public legal person itself is recognised as the issuing authority. It is also based on the provisions of the Civil Code, which, by virtue of Article 28 of Law No 554/2004, are applicable to administrative disputes and subject relations between the legal person and its bodies to the rules of the mandate. The concept of administrative capacity has acquired applicability through Article 5(o) of GEO No 57/2019 on the Administrative Code.

Consequently, there is consistency in the general regulation, in the sense that acts are issued by public authorities and not by dignitaries, the heads of those authorities. Thus, the exception

the lack of locus **standi** of the Minister for Energy is well founded, given that the defendant is not the public authority which issued the contested acts within the meaning of Article 2(2)(b) of Regulation (EC) No 1049/2001. 1(b) of Law No 554/2004.

According to legal doctrine, passive procedural quality presupposes identity between the person and the defendant.

the purpose of injuring or harming another or in an excessive and unreasonable manner contrary to good faith, since the triggering factor for such an action, which could constitute the interest in justifying the bringing of the action, is the so-called 'popular actions' brought by various persons under private law who are not in a position to justify, by reference to their own person, an injury to a legitimate private right or interest and, as such, base their action solely on the generic theory of injury to the public interest,

With regard to the objection of prematurity of the imposition of fines on the heads of the defendant institutions, the defendant submits that the imposition of fines on the head of the institution can only be made after the judgment to be ordered in the present dispute has become final, as a measure to compel the head of the authority to proceed with the execution of the obligation, in accordance also with the provisions **of** Article 24(1)(b) and (c) of Regulation (EEC) No 40/94. 3 of Law no. 554/2004 as amended. subsequent.

On the merits of the case, it is submitted that, as far as renewable energy is concerned, for the period 2021-2030, the target for renewable energy consumption of 32% in 2030 is the EU's Renewable Energy Sources (RES) target. Member States range between 30.4% and 31.9%, and in the case of Romania, according to the National Integrated Energy and Climate Change Plan (PNIESC), the overall share of renewable energy in gross final energy consumption in 2030 is 30.7%. It should be noted that the targets proposed by Romania in the PNIESC resulted from modeling processes based on macroeconomic data, strategies and public policy documents in force at the time, taking into account the characteristics of the national economy and the impact and costs of these measures on the final consumer.

Currently, the Ministry of Energy is analysing several scenarios for the revision of the NESCAP, which will be carried out in accordance with EU Regulation 2018/1999, **including** the scenario of achieving climate neutrality in 2050, which will be consulted and updated by the responsible authorities.

Thus, taking into account the above, in terms of renewable energy sources, the new targets and objectives of the NREESCP and the funds available in the National Recovery and Resilience Plan (NRRP) Modernisation Fund (FM), at this point in time the MoE intends to finance the development of new renewable generation capacities until 2030.

In addition, the increase in the share of energy from renewable sources and the reduction of greenhouse gases will also be contributed by prosumers (13,109 individual prosumers and 492 legal entity prosumers) with a total installed capacity of 15,811 kW according to the latest data in the ANRE's "Report on Monitoring the Activity of Prosumers for 2021".

In national legislation, according to GEO No 163/20225, electricity from renewable sources self-produced by prosumers, which remains on their premises, will not be subject to discriminatory or disproportionate procedures and any tax or tariff, thus supporting their development.

The EU-wide target on energy efficiency is currently set by Directive (EU) 2018/2002 of 11 December 2018 amending Directive 2012/27/EU on the
energy efficiency and is at least 32.5% by 2030 compared to 2007 modelling projections for 2030.

Through the REPoyverEU plan, the European Commission has proposed to increase the **EU**'s energy efficiency target from 9% to 13% compared to the 2020 Reference Scenario as negotiations are currently ongoing at Council and European Parliament level on the proposed revision of the Energy Efficiency Directive. The target of increasing energy efficiency to 13% compared to the 2020 Reference Scenario is only at the proposal stage and does not create obligations for Member States.

Given that the Energy Efficiency Directive is currently under review, pending its publication in the Official Journal of the European Union, and that its transposition must be completed within the deadline set at the time of its adoption.

On 10.04.2023, the intervener ASOCIAȚIA 2CELSIUS filed an application for ancillary intervention in favour of the plaintiffs, requesting that the application **be** admitted (f.64, vol.V).

Having regard to **the** provisions of Article 61(2) of the Treaty establishing the European Community 1 and 2 of the Civil Procedure Code, the intervener claims that it justifies a legitimate, established and actual private interest in formulating an application for ancillary intervention in relation to the review of the legality of an administrative act having an impact on the environment.

In that context, the intervener also relies on the provisions of Article 20(2)(b) of **the EC Treaty.** (6) of O.U.G. No 195/2005, the provisions of Article 9(2), Article 2(2), Article 2(3) and Article 2(4) of O.U.G. No 195/2005. 5 of the Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) and claims that it has proved, through the statutes of the association, that it is an organisation registered in accordance with the legal provisions, which aims to promote, initiate, consult, advise, charity and train in the field of ecology or environmental protection and climate change, and that this dispute is directly related to climate change - legislation and public policies, so that in the light of all these considerations, we consider that the application for accessory intervention should be admitted.

The 2Celsius Association is intervening in this case by bringing arguments from the area **of** greenhouse gas (GHG) emissions from transport, a sector whose emissions are exceptional, urgent and massive - with serious and immediate implications for public health.

GHG emissions generated by Romania (more than 14% of EU emissions) come from the transport sector (more than 20% of national C02 emissions). Transport is the only sector in Romania whose emissions are increasing.

The promotion of electromobility in road transport (light vehicles and urban public transport), as well as the promotion of electric rail transport are essential measures to which the Romanian state has committed itself through the National Integrated Energy and Climate Change Plan (NICEP).

Defendants acknowledge and accept that urgent action is needed to ensure that the objectives agreed in the Paris Agreement are met.

By the beginning of 2023, only 23,000 electric cars have been registered. However, the import of used cars has remained at a high level since 2017, when the registration tax was abolished. Annually, the number of imported second-hand cars registered in Romania averaged more than 400,000 per year.Under these conditions, in 2022, Romania's car fleet is the second oldest in Europe with an average of 16.9 years. Therefore, purchase subsidies cannot be the only fiscal instrument to deliver a zero-emission car fleet and Romania has underused other forms of vehicle taxation.

According to 2Celsius research studies, government programmes such as the Rabla Programme are not achieving their environmental and greenhouse gas emission reduction targets'3'. The stated aim of the programme is 'to improve environmental quality', and the targets cover air pollution from exhaust emissions from old cars, soil and water pollution from toxic spills, and meeting targets for recycling and reuse of waste from end-of-life vehicles. However, with the exception of additional environmental premiums for the purchase of cars emitting less than 96 g C02/km, there are no clear indicators set or available to monitor and evaluate the achievement of these environmental targets.

On 09.05.2023, the plaintiffs filed a reply to the defendants' statement of defence, in which they requested the rejection of the arguments put forward by the defendants, with the consequence of admitting their claims (f.139, vol.V).

The defendant MINISTRY OF THE ENVIRONMENT, APPEALS AND FORESTS submitted a statement of defence in which they requested that the applications for leave to intervene be dismissed as the interveners had not provided evidence nor invoked any right or legitimate private interest harmed by the contested administrative act, within the meaning of Article 1 of Law No 554/2004 (f.14, vol.V).

On 22.05.2023, the applicants submitted notes for the hearing in which they contested the arguments put forward by the Ministry of the Environment, Water and Forests in their response to the applications to intervene (f.73, vol.V).

Having analysed the documents and the file, the Court notes the following:

In relation to the handling of the objection of lack of **legal standing of** the Prime Minister, the Minister for the Environment, Water and Forests and the Minister for Energy, the conclusion of the session of 10.04.2023 (f.77 Since, therefore, the Court, by its judgment of 10 April 2023, upheld this objection, the application for a writ of summons against the defendants, the Prime Minister, the Minister for the Environment, Water and Forests and the Minister for Energy, must be dismissed as **having** been brought against persons without locus s t a n d i .

According to Article 248 para. (1) N.C.P.C. *The court shall first rule on procedural objections and on substantive objections which render the taking of evidence or, where appropriate, the investigation of the merits of the case wholly or partly unnecessary*.

Standing presupposes the existence of an identity between the person sued (the defendant) and the person who is the passive subject of the legal relationship (passive standing). The plaintiff, i.e. the person bringing the action, must prove both active and passive standing of the person he has sued. This obligation is based on the provisions **of** Articles 32 and 36 C.C.P. By indicating his claim and the factual and legal circumstances on which that claim is based, the plaintiff justifies his right to bring an action against a particular defendant.

The Court finds that the *plea of lack of locus standi in relation to the second head of claim, raised by the Ministry of the Environment, Water and Forests in its statement of defence*, *is unfounded*, having regard to the provisions of Article 1(1)(b) of the Rules of Procedure of the Court of First Instance. 2 to 4, paras. 7, art. 5 şi art. 6 din HG 43/2020, art. 1 alin. 1, art. 4 of GD 316/2021, in the light of which the Court considers that a shared/interdependent competence is established between the Ministry of the Environment, Water and Forests and the Ministry of Energy with a view to ensuring: an increase in the share of energy consumption from renewable sources in the value of final energy consumption, and an increase in energy efficiency, and the question of the existence or non-existence of the rights and obligations asserted in relation to certain specific measures necessary to achieve the quotas set out in the application for a preliminary ruling is a matter of substance.

At the same time, the Court considers that, in the case of a complex action for instituting proceedings, which comprises small claims which interfere with each other, the existence of the defendants' passive procedural capacity must be analysed in relation to the whole of the procedural means exercised, and not in relation to each claim, in a piecemeal manner, since such an analysis would be formal and devoid of legal finality; even if the Court had upheld the plea of lack of locus **standi** of the Ministry of the Environment, Water and Forests in respect of a particular part of the application, that Ministry would still have remained in the proceedings in relation to the other small claims, in respect of which it did not raise the plea of lack of locus standi. As a result, the purpose of the admissibility of the objection, that of being removed from the proceedings, would not be achieved, and it **would** even be in the defendant's interest to remain in the proceedings in respect of all the petitions **in** relation to the arguments put forward by the plaintiffs which require verification in the light of the powers of the Ministry of the Environment, Water and Forests, and the point raised in address No DGEICPSC/107169/10.01.2023 (f.134) cannot be omitted. vol. I) by the Ministry of the Environment, Water and Forests, according to which the Ministry constantly undertakes measures aimed at increasing the share of renewables in final energy consumption and increasing energy efficiency by means of development **strategies** at Ministry level and through the various programmes financed by the AFM.

In fact, the Court notes from the preamble to EU Regulations No 2018/841, No 2018/842, No 2018/1999 and No 2021/1119 (issued to **implement** the EU's commitments under the Paris Agreement) that the threats posed by climate change and the impact of pollution on the right to a healthy living environment are undisputed.

However, the Court, *without minimising the importance of respecting and guaranteeing the right to a healthy living environment*, considers that in the light of Article 9 para. 2, Art. 22 para. 6 C.C.P., having regard to the manner in which the petitions are formulated (order the defendants *to*

take all necessary measures, i.e. *to adopt concrete and coherent plans*), having regard also to the arguments set out in

The Court of Justice considers that the admissibility of the action (section 3.3, page 9, paragraphs 4 and 5, and section 4, page 12, paragraph 2), **if the *operative part of the judgment does not identify*, because it cannot, what measures are necessary and what are the concrete and coherent plans to achieve the climate objectives, *would entail the delivery of a judgment which is unenforceable*** and which would constitute an infringement of Article 7 of the EC Treaty. 6 of the European Convention on Human Rights, with reference to the case law of the European Court of Human Rights, which has held that the right to apply to a court would be illusory if the domestic legal order of a Contracting State allowed a final and binding judgment to be ineffective to the detriment of a party (Imobiliara Saffi v. Italy - 1999, paragraph 63; Dorneanu v. Romania - 2007, paragraph 32).

By granting a judgment allowing the claimants' actions, without indicating any criteria on the basis of which the claim contained in the enforceable title becomes certain (the claimants leaving the defendants free to decide on the measures to be taken, even though the premise of the present dispute is, from their point of view, precisely the inadequacy of the measures taken), the debtors are left free to refuse or to determine the scope and application of the enforceable title themselves.

In this context, based on the principle of availability which governs the civil process, there is no need to carry out any verification in relation to the standard of ECHR case-law relating to Article 8. Even if the defendants were to be found to have infringed the protection of public health and the environment, the manner in which the actions were brought is not such as to lead to the removal of the infringements, and the result is precisely the point which was the premise for the commencement of the proceedings, the defendants **are** entitled, this time and with the court's assistance, to take unidentified/quantifiable steps to achieve the parameters sought by the plaintiffs, and any steps taken by the defendants if not considered satisfactory by the plaintiffs (see the issues in section 5.5 pg. 31, section 6.2.2 pt. 5 pg. 51) generates the possibility of initiating enforcement proceedings in accordance with art. 24 et seq. of Law 554/2004, ultimately leading to the plaintiffs and the courts at the enforcement stage substituting legislative powers by regulating the necessary measures to achieve the parameters sought by the plaintiffs in the present dispute.

In analysing Article 2(11) of **Regulation 2018/1999**, the Court finds that the concept of The "*Union's 2030 energy and climate targets*" operate on four concrete levels with the possibility of further expansion:

a) a binding Union-wide **target of at** *least 40 %* **domestic reduction of** *greenhouse gas emissions* across the economy by 2030 *compared to 1990***,**

b) the binding Union-wide **target** of **at** *least 32% of energy consumed* in the Union *from renewable sources* by 2030,

c) the Union-wide headline **target** of **improving energy efficiency** *by at least 32.5%* in 2030 and

d) *the 15%* **target** for **electricity grid interconnection** for 2030, or

e) ***any subsequent targets*** agreed by the European Council or the European Parliament and the Council for 2030.

According to point 69 of the preamble, the Commission should *review the* implementation of this Regulation *in 2024 and every five years* thereafter and, if appropriate, present proposals for amendments to ensure proper implementation and achievement of its objectives. Those reviews should take account of developments *and be based on the results of the global stocktaking under the Paris Agreement*.

The review procedure is laid down in Article 38 of the Regulation. Similarly, a review procedure is also provided for in Article 17 of Regulation 2018/841 and Article 15 of Regulation 2018/842.

This has been done with a view to a constant review taking into account, inter alia, changing national circumstances, how all sectors of the economy contribute to reducing greenhouse gas emissions, international developments and efforts to achieve

the long-term objectives of the Paris Agreement to ensure that the environmental targets are met as objectively and rapidly as possible.

In this regard, the Court notes, with the adoption of **Regulation 2021/1119, the** existence of ***a new*** **Union** ***climate target*** **for 2030** which *replaces the target in Article 2(11) of Regulation 2018/1999 on greenhouse gas emissions* (the tier highlighted in point a above), *while the targets set out in tiers b and c remain unchanged*.

Thus, according to Article 4 para. 1 of Regulation 2021/1119, in order to meet the climate neutrality objective laid down in Article 2(1) - a t the latest by 2050, a balance shall be ensured at Union level between emissions and removals of greenhouse gases which are regulated under Union law, *so as to achieve zero net emissions* by that date, and the Union aims to achieve a negative **emissions** balance thereafter, the ***Union's binding climate target for 2030*** *is an* ***internal reduction of net greenhouse gas emissions*** *(emissions after removals) by at least 55 % by 2030 compared to 1990 levels.*

According to Article 2 para. 2 pgf. 1 and 3 of Regulation 2021/1119, the Commission shall*, by 30 June 2021, review the* relevant Union legislation to enable the objective set out in paragraph 1 of this Article and the climate neutrality objective set out in Article 2(1) to be met and shall consider adopting the necessary measures, including the adoption of legislative proposals, in accordance with the Treaties; and after the adoption of the legislative proposals by the Commission, the Commission shall monitor the legislative procedures for the different proposals and may report to the European Parliament and the Council whether the expected outcome of those legislative procedures, *taken together,* would lead to the achievement of the objective set out in paragraph 1; if the expected outcome is not in line with the objective set out in paragraph 1, the Commission may take the necessary measures, including the adoption of legislative proposals, in accordance with the Treaties.

Thus, there is a continuing shift in environmental policy at EU level and the Commission is required to assess at different intervals how EU legislation implementing the 2030 climate target should be amended to achieve such a net emissions reduction.

To this end, the Commission has announced a review of the relevant climate and energy legislation, which will *be adopted in a package covering,* among others, *renewable energy, energy efficiency*, land use, energy taxation, CO2 performance standards for light-duty vehicles, *effort sharing* and the EU ETS.

Therefore, at the present time, tackling climate change threats and
The measures adopted by Romania must be assessed in relation to the EU legislation under which these measures were designed and not by cutting out provisions favourable to the complainants**'** claims resulting from Commission positions adopted as a result of subsequent assessments undertaken under the provisions of the environmental regulations, which are then taken as a starting point in the revision of the relevant climate and energy legislation.

The Court finds that the defendant Ministry of the Environment, Water and Forests is wrong to consider that the third head of claim, relating to concrete and coherent plans for adaptation, is inadmissible in the light of the absence of any initial requests, that is to say, the absence of any prior steps taken **by** the applicant **to bring an action which could** lead to an unjustified refusal. Reading the applicants' preliminary submissions (f.94, 111, 121 Vol. I), the Court finds that by reference to the arguments set out the applicants have implicitly requested the defendants in advance, together with the adoption of mitigation plans and climate change adaptation plans.

The references to the Paris Agreement f ind sufficient to note this aspect, in the context that this agreement (ratified by Law 57/2017, art. 11 Constitution) sets a long-term temperature objective in Article 2(1)(a) and aims to strengthen the global response to the threat posed by climate change ***by increasing the capacity to adapt*** to the adverse effects of climate change, as set out in Article 2(1)(b) of that agreement, and by ensuring that financial flows are consistent with a shift towards low greenhouse gas-emitting ***and climate-resilient*** development.

climate change, as provided for in Article 2(1)(c) of that Agreement.

On the domestic front, the National Integrated Energy and Climate Change Plan 2021-2030 (NIIECP) was approved by GD 1076/2021. In addition to the measures set out in the PNIESC, strategies have been adopted to achieve environmental objectives by: PNRR, HG 877/2018 - National Strategy for Sustainable Development of Romania 2030, HG 1172/2022 -National Strategy for Circular Economy (SNEC), HG 1227/2022 -National Strategy for Forests 2030 (SNP 2030), GD 10/2023 on the amendment and completion of the National Strategy for Long-Term Renovation to support the renovation of the national stock of residential and non-residential buildings, both public and private, and its gradual transformation into a highly energy-efficient and decarbonised building stock by 2050, approved by GD 1034/2020; HG 59/2023 -National Strategy on Environmental Education and Climate Change 2023-2030; National Strategic Plan 2023-2027 (NSP). Romania's Long-Term Strategy for the Reduction of Greenhouse Gas Emissions is currently being developed (http://www.mmediu.ro/articol/strategia-pe-termen-lung-a-romaniei-pentru- reduction-of-greenhouse-gas-emissions/6135).

There can therefore be no question of manifest disinterest on the part of the defendants in achieving the environmental objectives.

According to point 40 of the preamble of Regulation 2021/1119 climate change is by definition a transboundary challenge; therefore, *coordinated action at Union level is needed to complement and effectively strengthen national policies*. Since the objective of this Regulation, namely to achieve climate neutrality in the Union by 2050, cannot be sufficiently achieved by the Member States and can therefore, by reason of its effects, be better achieved at Union level, the Union may adopt measures, in accordance with the *principle of subsidiarity as* set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

It is therefore noted that the Union *and the Member States are making* a joint effort to achieve the environmental targets, while Member States remain empowered to adopt the necessary measures at national level to enable the collective achievement of the targets, taking into account the importance of cost-effectiveness in achieving this objective.

Analysing the NESCAP, the Court observes in section A.1. Overview, section i. Political, economic, social and environmental context of the plan, that references are made to Regulation 2018/1999, therefore wrongly referring the applicants to the provisions of Article 4 para. 1 of Regulation 2021/1119 concerning the target for greenhouse gas emissions (as stated above), the latter regulation was not taken into account when drafting the national action plan, and the target of 32% renewable energy consumption in 2030 is in line with Article 2(11) of Regulation 2018/1999. The criticisms concerning an allegedly incorrect reference date for setting the ceiling on greenhouse gas emissions in relation to Article 4(4) are also unfounded. 1 of Regulation 2018/842 (each Member State shall limit its greenhouse gas emissions in 2030 at least by the percentage set for that Member State in Annex I to this Regulation in relation to its greenhouse gas emissions in 2005 as determined in accordance with paragraph 3 of this Article) with reference to Section **2.**GHG emissions and removals in the NRECP, in the context that for Romania, the European Commission has set a reduction target of 2% in 2030 compared to the 2005 level, well below the EU average (the highest GHG emission reduction rates are 40% and are set for Luxembourg and Sweden).

Although the climate action of the Union and the Member States aims to protect people and the planet, welfare, prosperity, the economy, health, food systems, ecosystem integrity and biodiversity from the threat of climate change, it should not be forgotten that the transition to climate neutrality requires changes in all policies and a collective effort by all sectors of the economy (massive public and private investments) and societies, and that it is necessary to act with caution and balance, without irreversibly endangering certain areas of the national economy.

The Court observes that the applicants, in the context of their criticisms of the commitments entered into by Romania, in an attempt to suggest that the measures taken are insufficient, by reference to the technological solutions proposed by them (pp. 31-41), are in fact seeking to replace *the* public authorities' *reasons of expediency* in achieving the environmental objectives with their own reasons of expediency, and then, on the basis of those reasons, are asking the Court to carry out an analysis of the legality of compliance with the environmental objectives, which the Court considers to be inadmissible. Thus, by way of example, the Court observes that the applicants disapprove of the defendants' measures relating to the trading of greenhouse gas **emission** allowances (EU ETS), whereas it follows from paragraph 13 of the preamble to Regulation 2021/1119 that the EU ETS is a fundamental element of the Union's climate policy and its ***essential*** instrument for reducing greenhouse gas emissions in a cost-effective manner.

The way forward to achieve the necessary transition to a climate-neutral society by 2050 at the latest, the way to achieve energy efficiency, are left to the judgement of the EU Member States, and the fact that Romania believes it can achieve the targets through hydropower or other projects that do not fully converge with those promoted by the complainants (see section 6.1.1 point 10 pg. 38 action) cannot be given **the** connotations desired by them, in the context in which, if there were any problem in this respect the Council would have made use of the provisions of Article 192 para. 2 lit. c TFEU.

In relation to pgf. 36 of Regulation 2021/1119, the Court notes that in order to ensure that the Union *and the Member States* continue to make sufficient progress towards meeting the *climate neutrality and adaptation* objective, the Commission should periodically assess progress on the basis of the information set out in this Regulation, including information submitted and reported under Regulation (EU) 2018/1999, and that to the extent that possible breaches by Romania of its **obligations** are identified, the procedure under Art. 258 TFEU, as has already happened in relation to the failure to fulfil the obligation laid down in Article 15(2) of the Treaty. 1 of Regulation No 2018/1999 (which the applicants point out in section
5.5 point 4 p. 31 application for a writ of summons, the notes for the hearing at 125 vol. V and by the Ministry of the Environment, Water and Forests f.142 pg. 14 of the statement of defence vol. III).

With regard to the elimination of energy subsidies that are incompatible with the environmental objective, in particular those for fossil fuels, this *should be done gradually,* without undermining efforts to reduce energy poverty and without plunging the country's population into financial collapse, given the notoriously high price of energy.

The references made by the complainants to the Commission's "Fit for 55" and REPowerEU" plan of measures (the aspects relating to the share of renewables in final energy consumption) are irrelevant at this stage as long as these measures have not been adopted in EU legislation (a point acknowledged by the complainants in section 5.4, points 5.6 f.30 action), this in the context that in order to fulfil the Union's contribution to the Paris Agreement, Regulation 2021/1119 should ensure that both the Union and the ***Member States*** contribute to the global response to climate change as set out in that Agreement, knowing f **ind** that the Union has established a regulatory framework to meet the 2030 greenhouse gas emission reduction target agreed in 2014, before the entry into force of the Paris Agreement. Legislation implementing that target includes *Directive 2003/87/EC establishing the EU ETS*, *Regulation (EU) 2018/842 which introduced national greenhouse gas emission reduction targets by 2030*, and Regulation (EU) 2018/841 *which requires Member States to balance greenhouse gas emissions and removals from land use, land-use change and forestry*. At the same time, the defendants' commitment to update the NRECP in line with the concrete targets that will result from the outcome of the negotiations of the "Fit for 55" package and the "RepowerEU" plan cannot be omitted (see reply address no. 10200/22.09.2022 of the Ministry of the Environment, Water and Forests f.109 Vol. I).

In the light of the above, the Court, on the basis of Articles 8 and 18 of Law 554/2004, **will *reject the*** application for a writ of summons filed by *the plaintiffs Declic Association,* [redacted] against the **defendants Prime Minister, Minister of the Environment,**

Water and Forests and the Minister for Energy, *as being brought against persons without locus standi.*

Dismiss the plea of lack of locus **standi in** respect of claim No 2 of the application **for interim measures**, raised by the Ministry of the Environment, Water and Forests in its defence, *as unfounded.*

Dismisses the action brought by the **plaintiffs Declic Association,** [redacted] against the defendants **Government of Romania, Ministry of Environment, Water and Forests and Ministry of Energy**, *as unfounded*.

Dismisses the applications for ancillary relief made on behalf of the applicants by the interveners **Bankwatch Romania Association** and **2Celsius Association**.

FOR THESE REASONS IN THE NAME OF THE LAW DECIDES:

Dismisses the action brought by the *applicants Declic Association,* [redacted] against the **defendants The Prime Minister,** established in Palatul Victoriei, Piața Victoriei nr. 1, Sector 1, Bucharest, the **Minister for the Environment, Water and Forests,** residing at 12 Libertà **i** Boulevard, Sector 5, Bucharest, **and the Minister for Energy**, residing at 39-41 Academiei Street, Sector 1, Bucharest, *as being brought against persons without locus standi.*

Dismisses as unfounded the plea of lack of locus **standi in** respect of claim No 2 of the application **for a declaration of invalidity,** raised by the Ministry of the Environment, Water and Forests in its defence.

Dismisses the action brought by the **plaintiffs Declic Association,** [redacted], *e-mail address* roxana.mandrutiu@revnic.ro,lucia.turcu@revnic.ro, isabela.porcius@revnic.ro, in contradiction with the defendants **Government of Romania,** established in Bucharest, Piața Victoriei nr. l, sector 1, **Ministry of Environment, Water and Forests,** established in Bucharest, b-dul Libertăț **i** nr. 12, sector 5, **and Ministry of Energy**, established in Bucharest, str. Academiei nr. 39-41, sector 1, *as unfounded*.

Dismisses the applications for ancillary relief made on behalf of the applicants by the interveners **Asociația Bankwatch România,** established in Bucharest, Splaiul Independenței nr. 1, bl. 16, sc. 1, ap. 6, sector 1, and **Asociația 2Celsius**, established in Cugir, str. Al. Sahia nr. 18, sc. C, ap. 5, jud. Alba.

With right of appeal within 15 days of notification.

The appeal is submitted to the Cluj Court of Appeal, Administrative and Fiscal Litigation Section III. [redacted]

[redacted]

[redacted]

[redacted]