CIVIL COURT OF ROME WRIT OF SUMMONS

In the interest of **GREENPEACE** Onlus, current in Rome, Via della Cordonata n. 7, C.F. 97046630584, PEC greenpeaceonlus@legalmail.it, in the person of its President and legal representative pro tempore, Mr. Ivano Novelli, [redacted] of **RECOMMON** APS, current in Rome, Via dei Sardi n. 28, C.F. 97686900586, PEC recommon@pec.recommon.org, in the [redacted] person of its President and legal representative pro tempore,

Francesca Zazzera, [redacted] Ninetto Martucci, [redacted] Caravaglios, [redacted] NoaHelffer [redacted] **Marco Lion,** [redacted] PatriziaBartelle , [redacted] **Giorgio Crepaldi,** [redacted] Lucia Pozzato, [redacted] Right, [redacted] Giovanna Deppi, [redacted] Rtiffato, [redacted] **Maria Antonietta D'Antonio,** [redacted] represented and defended, by proxies on separate sheets, by Alessandro Gariglio, of the Alessandria Bar, C.F. [redacted] with office in Alessandria, P.tta St. Lucia n. 1, Matthew Ceruti, of Foro of Rovigo, [redacted] with an office in Rovigo, Via Al1'Ara n. 8, Marco Casellato, of the Bar of Rovigo, [redacted] on studio in Rovigo, Via Mazzini n. 23, electively domiciled at the office of the former at Alessandro, P.tta S. Lucia n. 1, declaring that they wish to receive communications from the clerk's office at the following fax [redacted]

v.

ENI S.p.A., in the person of its legal representative *pro tempore*, with registered office in Rome, Piazzale Enrico Mattei no. 1 c.f./p.iva: 00484960588; PEC: eni@pec.eni.com,

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MINISTRY OF THE ECONOMY AND FINANCE (fiscal code 80415740580) in person of the Minister, legal representative *pro tempore, with registered* office in Via XX Settembre, 97 - 00187 ROMA; PEC: attigiudiziari.mef@pec.mef.gov.it, represented *ex lege* by the Avvocatura dello Stato (fiscal code 80224030587) at whose offices he is by law domiciled in Via dei Portoghesi, 12, 00186 ROMA, PEC: ags.rm@mailcert.avvocaturastato.it,

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CASSA DEPOSITI E PRESTITI SPA (tax code and registration with the Companies' Register of Rome **80199230584**) in the person of its legal representative *pro tempore* with registered office in Via Goito, 4 - 00185 Rome, PEC: cdpspa@pec.cdp.it,

- defendants -

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INTRODUCTION

This case is part of the so-called '*climate litigation*', legal actions brought with the aim of forcing governments or companies to comply with certain standards on reducing greenhouse gas emissions and limiting global warming.

The actors are environmental associations, of national and international stature, and private individuals residing in areas of the country particularly exposed to climate change, all of whom, either directly or through the frustration of their corporate purpose and their prevailing activities, on the one hand, and their property and fundamental human rights, on the other, suffer the consequences of ENI's conduct on climate change.

Anthropogenic climate change is "*the greatest human rights challenge of the 21st century*"[1] . It negatively affects a number of - if not all - human rights. The universally and scientifically recognised impacts of climate change, including environmental degradation, are resource deprivation, prevalence of life-threatening diseases, widespread hunger and malnutrition, and extreme poverty that prevents individuals from living a dignified life. Some of the individual rights negatively affected are the rights to life, food, water, sanitation and health. Collective rights are also violated, including the rights to security

[1] Statement made by the High Commissioner for Human Rights, Mary Robinson, during the meeting on human rights and climate change at the 28th session of the Human Rights Council available at https://www.fao.org/fileadmin/templates/righttofood/documents/news/150330_HRC28/HRC28_RighttoFood.pdf.

food, economic development and growth, self-determination, cultural preservation, equality and non-discrimination.

Private actors, like every living being, are already suffering, and will suffer even more in the future, the consequences of global warming that can be summarised as a worsening of the quality of life, to the point of difficulty, if not impossibility, of living in their places of residence, the proliferation of diseases, and all the further damage, both patrimonial and non-patrimonial, that the events connected with climate change and universally recognised and indicated in the IPCC will bring and that can be summarised as follows

- atmospheric warming with heat waves;
- warming of the oceans;
- ocean heatwaves, which have doubled since 1980;
- warming and rising seas resulting in coastal erosion and endangering coastal inhabitants;
- acidification of the seas resulting from the absorption of increasing levels of Co2;
- loss of the cryosphere;
- melting glaciers;
- increased frequency and intensity of extreme weather phenomena, such as storms and floods;
- loss of agricultural production;
- subsidence and salt wedge rise along rivers.

As already anticipated, to the damages and dangers for individuals are added the collective ones that must be protected also through the recognition of the right of action of the plaintiffs Greenpeace and ReCommon who, moreover, have been incurring substantial costs for several years in order to study climate change and denounce ENI's conduct which is the subject of the present suit.

ENI's responsibility for these changes clearly emerges from the results of the so-called '*attribution* science', i.e. the science that makes it possible to attribute to a specific subject a specific quantity of emissions that do not comply with the values set at international level. In particular, it is possible to ascertain, among other things, the quantity of ENI's emissions, which will be discussed below, and to ascertain that ENI is responsible at global level for a volume of greenhouse gas emissions that is greater than that of Italy as a whole, thus being one of the main contributors to the climate change underway. This is also due to the fact that the data they use was compiled by the oil companies themselves, including ENI, which therefore cannot be unaware of it. Not even the hypothetical objection that it is not ENI alone that is responsible could exonerate it from its responsibilities, for the legal reasons that will be dealt with at length in the second part of this writ.

But not only that.

Part I of this document will also illustrate and thus demonstrate in court how oil companies, and ENI in particular, have been aware for over fifty years of the impact their activities have on the climate, so much so that they have implemented lobbying and so-called '*greenwashing'* strategies to mask their responsibilities.

The interrelationship between man and the environment is the pivot around which legal reflection has developed in order to delineate its relative contours and to transpose the statements of international instruments that, starting with the 1972 Stockholm Declaration, have brought environmental protection within the framework of human rights. This is also thanks to the work done by the European Court of Human Rights, which has increasingly extended the concept of environmental protection to the point of speaking of the existence of the human right to a healthy environment.

As will be argued in Part II of this document, the conduct that causes climate change, with all that this entails in terms of environmental risks and health consequences, violates human rights that are safeguarded and protected both by the Italian Constitution and, through it, by international standards and agreements that are binding on states and companies, especially those such as ENI that expressly declare that they adhere to them and are subject to them.

The violation of these rules entails the commission of unlawful conduct that is protected by Articles 2043, 2050 and 2051 of the Civil Code, read in conjunction with Articles 2 and 8 of the ECHR, and requires both specific forms of compensation and injunctive relief, since the increase in the planet's temperature, which is already detrimental to actors and human beings in general, will be even more so if the supranational objectives set at the Paris Conference are not respected.

All this with the clarification that the action is also directed against the Ministry of Economy and Finance and Cassa Depositi e Prestiti, in view of the dominant influence they exercise over the company, from its foundation to the present day, for which they are co-responsible - for the legal reasons set out in greater detail below - for the company's choices made in terms of energy-climate strategies and the consequent emissions of CO2 and other climate-changing gases.

Due to the inevitable length and complexity of the act, this brief introduction requires an index.

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PART I: FACTUAL PREMISE

1. FOREWORD

In the Earth's long geo-history, there have been several geological periods marked by particular climatic conditions, e.g. ice ages and warm periods. The geological era that saw the birth of human civilisation, the Holocene, was marked by a stable climate that allowed humanity to develop as we know it today. Until the industrial revolution, however, these phenomena depended essentially only on natural dynamics while human impact was very limited. Since the industrial revolution in the 19th century, this picture was reversed and the indisputable role of fossil fuels used by mankind as the main cause of climate change became apparent.

Carbon dioxide (CO2) is the most 'known' and widespread greenhouse gas in the atmosphere, but methane also has a very high climate-changing potential, up to 80 times more than CO2 in the top 20

years after release[2] . For the sake of simplicity, we will use the term CO2 and the term greenhouse gas as synonyms in this paper, meaning all climate-altering gases released into the atmosphere. The current (February 2023) CO2 concentration in the atmosphere is about 420 parts per million (ppm),[3] and is more than 40 per cent higher than in the pre-industrial period, when concentrations were about 280 ppm. The result of this increase in CO2 concentrations in the atmosphere is that the Earth's average temperature has risen by at least 1.1°C since 1880[4] and the consequences of this warming are now evident all over the planet, including in Italy.

2. INTERNATIONAL REPORTS ON CLIMATE CHANGE

This section briefly presents the main conclusions of the UN climate conventions and conferences. The aim is to highlight the exponential increase in knowledge about the severity of the problem and its causes: climate-changing emissions from burning fossil fuels. It is worth noting at the outset that despite more than 30 years of international negotiations and climate policies, the use of fossil fuels - ENI, as we shall see, has maximised their production and sale - and the associated emissions of CO2 and other greenhouse gases such as methane have dramatically increased to date. The result is that annual global CO2 emissions are still rising, greenhouse gas emissions from fossil fuels have reached a record high[5] in 2022, and with current trajectories we are on track for a temperature increase of 2.9°C at the end of the century,[6] while the implementation of current 'emission reduction pledges' according to Article 4 of the Paris Agreement would only allow us to limit this increase to between 2.4°C and 2.6°C.[7]

Climate change was first on the UN agenda in 1972 during the Stockholm Conference on the Human Environment, when it was decided to establish a special UN organisation for climate and other global environmental issues: the United Nations Environment Programme, or UNEP.

The first world climate conference was held in Geneva in 1979. It was organised by UNEP and another UN organisation, the World Meteorological Organisation (WMO). This conference urged the member countries to introduce preventive measures

2 https://www.unep.org/news-and-stories/story/methane-emissions-are-driving-climate-change-heres-how-reduce-them

3 https://www.co2.earth/daily-co2

4 https://earthobservatory.nasa.gov/world-of-change/global-temperatures

5 https://www.globalcarbonproject.org/carbonbudget/index.htm

6 https://climateactiontracker.org/global/temperatures/

7 https://www.unep.org/resources/emissions-gap-report-2022

against potential anthropogenic climate change in order to contain its repercussions on the well-being of humanity[8] .

In 1985, UNEP and the WMO organised a conference in Villach, Austria, which was attended by 29 countries. According to the scientists, *"as a result of increasing concentrations of greenhouse gases, it is now believed that an increase in global average temperature that is greater than any other in human history could occur in the first half of the next century.*"[9] The rate and degree of future warming could *"be profoundly affected by government policies on energy conservation, fossil fuel use, and the emission of certain greenhouse gases.*"[10]

The Joint Final Declaration of the 1988 Toronto Conference affirmed the need for urgent action to prevent the threat of severe anthropogenic climate change: *'Humanity is conducting an unintentional, uncontrolled and pervasive global experiment whose ultimate consequences could be second only to a global nuclear war. The earth's atmosphere is being modified at an unprecedented rate by pollutants resulting from human activities [...] These changes pose a serious threat to international security and are already having damaging consequences in many parts of the globe [...] The best available predictions point to potentially severe economic and social dislocation for present and future generations [...] It is critical to act now.*"[11] The 1988 Final Declaration argues that the *"Transition to a sustainable future will require investment in energy efficiency and non-fossil energy sources*" and recommends that governments and industry proceed immediately to (i) shift investment to large-scale sustainable energy, (ii) reduce energy considerably, and (iii) use product labels to inform consumers of the CO2 pollution caused by the production and use of fossil fuels. This call of the 1988 climate conference must be recognised as a historic event as it was the first time a scientific conference urged the main climate decision-makers to take immediate action, demonstrating the concern already prevalent in the scientific community at the time. The final declaration urged the United Nations to draw up a convention to combat climate change and protect the atmosphere (which would happen in 1992) and to continue to support the work of the United Nations Intergovernmental Panel on Climate Change (IPCC).

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8 WMO 1979: Proceedings of the World climate Conference (WMO) Geneva 12-13 February 1979, p. 713.

9 UNEP/WMO/ICSU 1985 Conference Statement Villach 9-15 October 1985, p. 1.

10 UNEP/WMO/ICSU 1985 Conference Statement Villach 9-15 October 1985.

11 CIEL 1990, Conference Statement Toronto 27-30 June 1988.

Climate Change)[12] which was established that same year (1988) with the aim of evaluating climate change science.

Since 1988, scientific knowledge about the causes and consequences of climate change has been regularly organised and summarised in regular reports by the IPCC. The reports of this institution are the scientific basis for international intergovernmental cooperation against climate change.[13] In 1990, the IPCC published its first assessment report in which it concluded that emissions caused by human activity cause a substantial increase in the concentration of greenhouse gases in the atmosphere, which in turn contributes to global warming. After the first assessment report in 1990, new reports were published in 1995, 2001, 2007, 2013- 14 and 2021-22.

In 2018, the IPCC published a very important Special Report (abbreviated as SR1.5) analysing the differences between 1.5°C and 2°C global warming. More recently, two 'special reports' were published in 2019[14] while the sixth 'IPCC Assessment Report' (AR6) was published between 2021 and 2023. The IPCC is divided into three working groups that analyse the scientific situation with regard to, existing scientific knowledge (Working Group I); the consequences of climate change for the environment, economy and society (Working Group II); and potential strategies in response to these changes (Working Group III).

3. THE 1992 UNITED NATIONS CLIMATE CONVENTION AND CONFERENCE OF THE PARTIES

The United Nations Climate Convention, or United Nations Framework Convention on Climate Change (UNFCCC), dates back to 1992 and entered into force on 21 March 1994.

Its overall objective is to prevent dangerous man-made climate change. This can be achieved by stabilising greenhouse gas concentrations in the atmosphere at a level that prevents significant anthropogenic disturbance of the climate system. According to the Convention (Article 2), this level must be achieved '*within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner*'.

12 https://www.ipcc.ch/about/

13 Article 21 of the UN Climate Convention states that the IPCC shall provide scientific and technical advice to States Parties and that the Secretariat established under the Convention shall facilitate this advice. Article 21 explains that the Secretariat may also consult other qualified scientific organisations. Practice has shown that the Secretariat uses, inter alia, reports and advice from the two parties incorporating the IPCC (the WMO and UNEP) and the World Bank, for example, which is why this report will also be based on the reports of these organisations.

14 (IPCC Special Reports on Climate Change and Land, and on the Ocean and Cryosphere; and Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems)

The preamble of the UNFCCC makes it clear that *'Parties should protect the climate system for the benefit of present and future generations of* humanity'[15] . Article 3 discusses the principles that States Parties, which have benefited from the causes of anthropogenic climate change, must observe in their actions, including the principle that developed countries (the main culprits of the climate crisis) must, in the first instance, take the lead in implementing emission reductions and climate change mitigation. Another important principle enshrined in Article 3.3 is the precautionary principle, i.e. the need to take precautionary measures to reduce or prevent the causes of climate change and limit its negative impacts. The Convention makes it clear that where serious or irreversible damage is likely to occur, lack of full scientific certainty should not be a reason for postponing precautionary measures. This is known in international law as the precautionary principle.

Article 7 of the UNFCCC establishes the Conference of the Parties (COP), the supreme body of the Convention that takes the necessary decisions to promote the implementation of the Convention. The first COP was held in 1995 and is referred to as COP1. The numbering continues in this way, which means, for example, that the 2010 COP is referred to as COP16 and the 2022 COP, which concluded last November 2022 in Sharm el Sheikh, Egypt, as COP27.

3.1 EVOLUTION OF LONG-TERM TEMPERATURE TARGETS

The Copenhagen Accord, sanctioned by COP15 in 2009, based on the best scientific knowledge available at the time, reaffirms that in order to achieve the main objective of Article 2 of the UNFCCC (i.e. to prevent dangerous anthropogenic climate change) the global temperature increase will have to remain below 2°C[16] . In particular, the Copenhagen Accord refers to a specific recommendation of the 2009 Special Update Report. This report argues that observations from that time have shown that ecosystems and societies are highly vulnerable to even modest levels of climate change and that temperature increases above 2°C could cause severe social and environmental disruption in this century and beyond: *'Recent observations show that societies and ecosystems are highly vulnerable to even modest levels of climate change ... Temperature increases above 2°C will be difficult for contemporary societies to cope with and are likely to cause severe social and environmental disruptions in the remainder of this century and beyond*'.[17] The report then concludes that a 2°C scenario will pose '*significant risks of deleterious impacts on society and the environment*'. Based on this scientific evidence, the

15 UNFCC 1992 United Nations Framework Convention on Climate Change, Art. 3.1.

16 UNFCC COP 15 Copenhagen Agreement 2009, p. 5.

17 Richardson 2009 (IPCC AR4 2009), *Synthesis Report from Climate Change, Global Risks, Challenges & Decisions*.

Copenhagen calls for the '*strengthening of the long-term goal by referring to various issues presented by science, including in relation to temperature increases of 1.5°C*'.

The Cancun Agreements reached at COP16 recognise that deep cuts in global greenhouse gas emissions are needed "[*...] so as to keep the global average temperature increase below 2°C compared to pre-industrial levels and that Parties take urgent steps to achieve this long-term goal.*"[18] It also affirms the need *"to strengthen the long-term global goal on the basis of the best available scientific knowledge, including in relation to a global average temperature increase of 1.5°C.*" These agreements also refer to UN Human Rights Council Resolution 10/4 of 2009, which states that climate change is a threat to human rights worldwide, including the right to life and, in particular, to those in vulnerable positions.

At COP17 in Durban in 2011, the signatories recognised "*that climate change poses an urgent and potentially irreversible threat to human societies and the planet and therefore requires to be urgently addressed by all Parties [...],*"[19] even to have "*a likely chance of keeping the global average temperature increase below 2 °C or 1.5 °C above pre-industrial levels*". It is significant to note that UNEP, in its first *Emissions* Gap Report in 2010, concluded that *"Although the country is committed to contributing to reducing emissions below business-as-usual in 2020, these are not adequate to reduce emissions to a level consistent with the 2 °C target and thus lead to a* gap"[20] .

Building on the Conference of the Parties in Doha in 2012 (COP18), a process of expert dialogue was initiated between 2013 and 2015 under the auspices of the UNFCCC in preparation for the Paris Climate Summit.

The aim was to understand whether the target identified in Copenhagen and Cancún of reducing global warming to below 2°C was sufficient, also in view of the possible need to reduce it to 1.5°C.

The final conclusions of the expert dialogues were documented in a report that the UNFCCC published in 2015 and which states that the 2°C target can no longer be considered safe: *"Significant climate impacts are already occurring at the current level of global warming and further warming magnitudes will only increase the risk of severe, pervasive and irreversible impacts. [...] The concept of a 'watch level', where up to 2°C of*

18 UNFCCC COP 16, Cancun Agreements, 2010.

19 UNFCCC COP 17 Durban 2011 Decision 1/CP 17.

20 UNEP, The Emission Gap Report 2010 Bridging the Emission Gap, Synthesis Report.

warming is considered safe, it is inadequate and would therefore be better seen as an upper limit [...] Limiting global warming below 1.5°C would have several advantages in terms of moving closer to a safer 'watch level' [...] Parties may wish to adopt a precautionary pathway aiming to limit global warming as far below 2°C *as possible*"[21] .

The Paris Agreement, which entered into force on 5 October 2016 after the ratification processes, is a further elaboration and update of the 1992 UNFCCC.

4. THE 2015 PARIS AGREEMENT (COP21)

Its initial goal is to keep global warming 'well below 2°C' and preferably limit it to 1.5°C, recognising that this would significantly reduce the risks and impacts of climate change (Article 2). All countries affiliated to the UNFCCC must state their national emission reduction targets (set by them), which should reflect the highest possible ambition based on their common but differentiated responsibilities and respective capabilities (Article 4). These targets are also called National *Determined Contributions* (NDCs) and must be reported every five years and include a time frame up to 2030[22] .

According to Article 2, the agreement *'[...] aims to strengthen the global response to the threat of climate change [...]',* defining as a central goal to *'(a) Maintain the global average temperature increase well below 2°C above pre-industrial levels and continue efforts to limit the temperature increase to 1.5°C above pre-industrial levels [...].* To achieve the goals set to contain dangerous climate change, Article 3 states that 'As *nationally determined contributors to the global response to climate change, all Parties shall undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 in order to achieve the objective of this Agreement set out in Article 2*'.

Reaffirming their endorsement of the IPCC as the international authority on climate science and their commitment to base their climate action on the best available science, at COP21 in Paris itself, the states called on the IPCC to provide a special report by 2018 on the impacts of global warming of 1.5ºC above pre-industrial levels and related global greenhouse gas emission pathways (cited above as IPCC SR 1.5)[23] . In 2018, all 195 IPCC Member States approved by consensus the Summary for Policymakers

21 UNFCCC 2015, Report on the Structured Expert Dialogue on the 2013-2015 review.

22 FCCC/CP/2015/10/Add.1 paragraph 24

23 FCCC/CP/2015/10/Add.1 para 21

of SR 1.5, thus acknowledging that they have gained knowledge on the impacts of global warming of 1.5ºC. Among other things, the report concludes that:

i) Already at 1°C global warming compared to pre-industrial levels, the world was experiencing extreme forms of climate that threatened human rights[24] ;

ii) a global warming of 1.5°C is not safe "for most nations, communities, ecosystems and sectors and poses significant risks to natural and human systems compared to the current warming of 1°C[25] ;

iii) the difference in the consequences of climate change with a global warming of 1.5°C and 2°C, respectively, is substantial[26] ;

iv) between 1.5ºC and 2ºC could result in serious and irreversible damage to natural and human systems[27] .

The report confirmed that even if temperatures are limited to 1.5ºC in the 21st century, sea levels will continue to rise beyond 2100 and that, if 1.5ºC is exceeded, "*instability of the Antarctic sea ice sheet and/or irreversible loss of the Greenland ice sheet could cause sea levels to rise by several metres over hundreds or thousands of years"*. After the publication of this report, the need to limit global warming to a maximum of 1.5°C was recognised by the Council of Europe*: 'The IPCC report confirms that the world needs to limit climate change to 1.5°C to reduce the likelihood of extreme weather events. It also emphasises that emissions must be reduced much more urgently than previously expected. (...) This provides an opportunity for the EU to step up its action to demonstrate leadership and reap the benefits of first mover advantage.*

This report also indicates that, as a result of these findings, reducing global warming to 1.5 °C requires global CO2 emissions to be reduced by 45% by 2030 and 100% net by 2050. This means that from 2050 (bandwidth 2045-2055), there can be no more CO2 emissions into the atmosphere. If this emission reduction process is followed, the probability of staying below 1.5 °C is 50% or more and the probability of staying below 2 °C is 85%.

The subsequent COPs in Marrakech (COP 22), Bonn (COP 23) Katowice (COP 24) Madrid (COP 25) can be seen as meetings that focused on the technical aspects of the implementation of the Paris Agreement and the new climate scenarios outlined with the IPCC's 2018 work.

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24 IPCC, 1.5SR, SPM, A.1-A..3.; IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, SPM, B.1.6 (2022) [IPCC AR6 WGII]).

25 IPCC, 1.5SR, Technical Summary (TS), p. 44, Ch. 5, p. 447.

26 IPCC, 2018, SR1.5 Global Warming of 1.5˚C, SPM p.20.

27 IPCC, 2018, SR 1.5 Global Warming of 1.5ºC, SPM, A.3.2

COP 26 in Glasgow was seen as particularly important, with countries expected to bring stronger commitments to strengthen the Paris Agreement. In this context, negotiators were expected to take a number of detailed technical decisions to finalise the Paris 'rule book', including new emission reporting rules for all countries from 2024. In reality, the text 'invites' countries to 'review and strengthen' their climate commitments by the end of 2022, calls for a 'phase down' of coal, and defines processes to achieve a global adaptation target, higher levels of climate finance, and '*loss and damage*' funding.[28]

COP27 in Sharm el-Sheikh was marked by the assurance to developing countries to secure a new fund to support victims of climate disasters. It emphasised the urgent need for immediate, deep and sustained emission reductions in all applicable sectors; it recognised the unprecedented global energy crisis and the urgency to rapidly transform energy systems to make them more secure, reliable and resilient, including by accelerating clean and equitable transitions to renewable energy during this decade[29] . This COP featured a record number of 636 lobbyists representing the fossil fuel industry - an increase of more than 25 per cent compared to COP 26. This presence demonstrated the strength of the oil industry and its ability to infiltrate and block decisive action to drastically reduce the use of fossil fuels.

5. LATEST IPCC AR6 REPORT

In March 2023, the IPCC published the AR6 Synthesis Report, which summarises the best scientific knowledge currently available on climate change. This report integrates the main findings of the AR6 working group reports and the three special reports published since 2018 and affirms the imperative need to keep global warming below 1.5ºC.

In 2021, the IPCC published the Working Group I (WGI) contribution to the Sixth Assessment Report, which addresses the most up-to-date physical understanding of the climate system and climate change and brings together climate science knowledge. The contributions of Working Group II (WGII) and Working Group III (WGIII) to the Sixth Assessment Report were published in 2022. The WGII report provides an assessment of the impacts of climate change on global and regional natural and human systems and examines the vulnerabilities, capacities and limitations of nature and human societies in adapting to climate change. The WGIII report provides an updated assessment of the progress and commitments of

28 https://www.isprambiente.gov.it/it/archivio/notizie-e-novita-normative/notizie-ispra/2021/11/26a-conferenza-delle-parti-sul-cambiamento-climate

29 https://enb.iisd.org/sites/default/files/2022-12/enb12818e.pdf

global climate change mitigation and examines the sources of global greenhouse gas emissions[30] . The WGII report is quite stark in its conclusions, and IPCC Chairman Hoesung Lee's statement is explicit: '*This report is a desperate warning of the consequences of inaction*.

The AR6 confirmed that CO2 concentrations in the atmosphere in 2019 were higher than at any time in at least 2 million years, and that methane and nitrous oxide concentrations were higher than at any time in at least 800,000 years. (A.1.3 SPM). The largest share and growth in gross greenhouse gas emissions comes from CO2, fossil fuel combustion and industrial processes, followed by methane. (A.1.4).

The IPCC also reiterates that current levels of warming are undermining the effective enjoyment of human rights. The AR6 report noted that "*the evidence of observed changes in extreme events such as heat waves, heavy rainfall, droughts and tropical cyclones, and in particular their attribution to human influence, has strengthened further since AR5*"[31] . Millions of people are already suffering the impacts of the climate crisis: water and food are increasingly difficult to access, amplifying social tensions and migration phenomena, among other things.

The AR6 report also reiterates that at current levels of warming, climate change has already caused substantial damage to terrestrial, freshwater, cryospheric, coastal and open ecosystems. The Working Group II report confirms that some losses are already irreversible, such as mass die-offs of various tree and coral species, and that "other impacts are approaching irreversibility, such as the impacts of hydrological changes resulting from glacier retreat, or changes in some mountain (medium confidence) and Arctic ecosystems driven by permafrost thaw (high confidence)[32] .

Furthermore, the IPCC has been clear that '*the projected risks and negative impacts and associated losses and damages from climate change increase with each increase in global warming*' (emphasis added) and that '*climate and non-climate risks will increasingly interact, creating compound and cascading risks that are more complex and difficult to manage*'[33] . With rising global temperatures, the IPCC warns that "*compound heat waves and droughts are expected to become more frequent, including concurrent events in multiple locations (high confidence). Due to relative sea level rise, the current extreme sea level events, which occur every 100 years, are expected to occur at least once*

30 https://www.ipcc.ch/reports/

31 IPCC AR6 Synthesis Report, SPM A.2; IPCC AR6, Working Group 1, Climate Change 2021: the Physical Science Basis, sections A3 and A.3.5

32 IPCC AR6, Working Group II, Climate Change 2022: Impacts, Adaptation and Vulnerability, SPM, Section B1.2

33 IPCC AR6, SPM B.2

per year in more than half of the tide gauge locations by 2100 under all scenarios considered (high confidence). Other expected regional changes include intensification of tropical cyclones and/or extratropical storms (medium confidence) and increased aridity and wildfires (medium-high confidence)"[34] .

The IPCC estimates that current greenhouse gas emission trends could reach 1.5ºC in the short term and even 2ºC in the coming decades[35] . All global pathways that could limit warming to 1.5ºC and those that limit warming to 2ºC, "*imply rapid and deep and, in most cases, immediate reductions in greenhouse gas emissions in all sectors this decade*"[36] .

Emissions must peak by 2025 at the latest, and be reduced by at least 45% by 2030. At the same time, methane emissions must be reduced by a third by 2030. To achieve these deep and sustained emission reductions and ensure a liveable and sustainable future for all, the IPCC states that "*rapid and far-reaching transitions are needed across all sectors and systems"*[37] and that to achieve this goal "*feasible, effective and low-cost options for mitigation and adaptation are already available, with differences between systems and regions*". The report confirms that in addition to solar and wind energy technologies, we also have the financial means to address this climate emergency: even without counting the benefits of climate change mitigation, or the defence (adaptation) measures we would need to address, the impacts of these investments on GDP would be a few percentage units.
As of SR 1.5 in 2018, the international community is aware of the need to make every effort to limit the temperature increase to below 1.5ºC and the AR6 Synthesis Report reaffirms this. Therefore, all countries of the world, based on the best available knowledge, are aware that with each additional degree of warming, the negative climate risks and impacts and the associated losses and damages from climate change will increase with each increase in global temperature; and that these projected negative risks and impacts are higher for global warming of 1.5ºC and even higher for 2ºC and beyond. Therefore, the international community is aware that every effort must be made to limit the temperature increase to below 1.5ºC.
The IPCC AR6 report reiterates that achieving zero net emissions requires "*a*

34 IPCC AR6, SPM B.1.4
35 IPCC AR6, SPM B.2
36 IPCC AR6, SPM B.6
37 IPCC AR6, SPM C.3

substantial reduction in the overall use of fossil fuels'[38] .

However, the major contributors to this situation - the oil industry, above all - consciously and deliberately refuse to make an effective contribution to preventing this danger. The AR6 Report illustrates how reductions in emissions from fossil fuel combustion and industrial processes have fallen short of increases in emissions in industry, energy supply and transport[39] . These actors are thus guilty, among other things, of damage to the environment, health, the economy and private property, violating, as we shall see, supranational and national regulations.

In addition, even the influential International Energy Agency, an international organisation founded by the OECD that works closely with governments and industry, recently published a study showing that no investment should be made in new fossil fuel projects[40] . In other words, the development of new oil and gas fields should not be approved in order to limit global warming to a maximum of 1.5ºC. However, emission reductions from the combustion of fossil fuels - a prerequisite for compliance with the Paris Agreement - have been lower than emission increases due to rising global activity levels in industry, energy supply and transport[41] .

In the view of the actors, therefore, even private actors such as ENI, who are among the main perpetrators of climate change, must take action not only to compensate for the damage already caused and to remedy it, but also and above all to prevent its perpetuation over time. In particular: (1) because they have long been well aware of the dangers, risks and causes of climate change; (2) because they play a substantial role in global emissions of greenhouse gases and carbon dioxide in particular (specifically, CO2 emissions associated with ENI's business are higher than those of the entire Italian state); (3) because they have the power, means and capacity to exercise control over emissions; (4) because they are among the main actors necessary for a transition to an environmentally and socially sustainable society;

(5) because they can take effective mitigating and precautionary measures with reasonable and not impossible actions.

With these facts in mind, ENI, like any other oil company, has been aware of the problem for decades, yet continues to make a significant contribution to emissions. Having the tools and resources to control and drastically reduce these emissions and to take effective precautionary measures, it is essential that it adapts its industrial plans to enable a transition

38 AR6 SYR, SPM C.3.2

39 AR6 SYR, SPM A.1.4

40 https://www.iea.org/reports/net-zero-by-2050

41 AR6 SYR, SPM A.1.4

sustainable, emission-free energy. As a state-controlled company, it must adapt to the global climate targets officially accepted under international law by our country without further unacceptable delays.

On the basis of all that is illustrated in this summons, the plaintiffs come to the conclusion that ENI, with its current climate policy inadequate with respect to the obligations to which it should be subject, although endorsed by the Italian State for the reasons that will be better illustrated, violates the right to life and the right to an undisturbed family life as provided for in Articles 2 and 8 of the ECHR, committing unlawful conduct and causing pecuniary and non-pecuniary damage.

ENI must, therefore, be required to put an end to this *contra ius* situation by pursuing the global climate objective of the Paris Agreement, respecting, among others, the precautionary principle.

As an internationally operating company and responsible for more CO2 than the entire country emits, ENI will have to follow the emission reduction scenario necessary to limit global warming in the atmosphere with a greenhouse gas concentration in the atmosphere between 400 and 500 ppm.

This means achieving zero net CO2 emissions by 2050 with an intermediate emission reduction of at least 45% by 2030 at the latest. It is, therefore, imperative that ENI begins to reduce its emissions immediately and concretely, because if it continues to delay and/or postpone, the risk of not being able to avoid irreversible climate damage will increase, and so will the associated social and economic costs.

6. INCREASING CO2 CONCENTRATIONS IN THE ATMOSPHERE

In 2015, the annual average of global CO2 concentrations exceeded the level of 400 ppm for the first time; in May 2022, that of 421 ppm[42] . The speed with which humans have changed the chemical composition of the atmosphere since the industrial revolution is staggering.

In its fifth report in 2013/2014, the IPCC projected a baseline scenario (i.e. without explicit additional efforts to limit emissions) that exceeds 450 ppm by 2030 and reaches concentration levels between 750 and more than 1300 by 2100[43] . If greenhouse gas emissions continue to grow as they are now, climatologists predict global warming of more than 4°C above the pre-industrial level during this century. As things stand, the world is therefore heading for catastrophic climate change for humanity and other forms of life.

In the first decades of the 20th century, the relationship between fossil fuel combustion, atmospheric CO2 and global temperatures aroused little interest because it was believed with some degree of

42 https://www.noaa.gov/news-release/carbon-dioxide-now-more-than-50-higher-than-pre-industrial-levels

43 IPCC 2013, AR5, WGIII, SPM, p.8

certainty that the CO2 released in this way would be absorbed by the oceans, thus protecting the atmosphere. This axiom began to be challenged when, in 1938, researcher Guy Callendar published a study entitled '*The Artificial Production of Carbon Dioxide and its Influence on* Temperature'[44] . In his study, Callendar observed that three-fourths of the carbon dioxide released over the previous 50 years had remained in the atmosphere and therefore had not, as claimed until then, been reabsorbed by the oceans.

In 1957, Roger Revelle and Hans Suess of the Scripps Institute of Oceanography in La Jolla, California, published the first study contradicting the thesis that the oceans had absorbed the vast majority of the carbon added artificially to the atmosphere[45] . Revelle and Suess, in particular, stated that '*within a few centuries we are putting back into the atmosphere and the oceans the concentrated organic carbon stored in sedimentary rocks over hundreds of millions of years*'.

Two months after the publication of this article, scientists from Humble Oil (a subsidiary of today's ExxonMobil) published a study that acknowledged both the increase in atmospheric CO2 levels and the obvious contribution of fossil fuels to this increase, as well as the continued and predicted increase in the burning of fossil fuels[46] . The oil companies were by no means unaware of what was happening, so much so that through their trade organisation, the American Petroleum Institute (API), they continued to commission studies on the subject[47] .

For example, in 1968, a report commissioned by the API from the Stanford Institute of Research entitled '*Sources, Abundance, and Fate of Gaseous Atmospheric Pollutants*' warned that rising CO2 levels would result in rising global temperatures and lead to melting polar ice caps, rising sea levels, warming oceans, and other serious environmental damage on a global scale.

On 28 February 1978, the EPA (the US Environmental Protection Agency) published a dossier on the environmental impact of coal liquefaction, which stated for the first time that "*the continued use of fossil fuels as a primary energy source for more than 20 to 30 years could lead to an increase in atmospheric carbon dioxide levels. The greenhouse effect, the increase in*

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44 https://www.rmets.org/sites/default/files/qjcallender38.pdf

45 R.Revelle & Hans E. Suess, '*Carbon Dioxide Exchange Between Atmosphere and Ocean and the Question of an Increase of Atmospheris CO2, during the Past Decade. Su https://onlinelibrary.wiley.com/doi/10.1111/j.2153-3490.1957.tb01849.x*

46 H.R. Brannon et al., '*Radiocarbon Evidence on the Dilution of Atmosphere and Oceanic Carbon by Carbon from Fossil Fuels*', available at *http://onlinelibrary.wiley.com/doi/10.1029/TR038i005p00643/full*

47 Elmer Robinson E R.C. Robbins, '*Sources, Abundance, and Fate of Gaseouse Atmospheric Pollutants: Final Report*'. Available at *https://www.osti.gov/scitech/biblio/6852325.* Also H.H. Meredith, "*Platitudes or Performance?*". Reachable at http://www.tandfonline.com/doi/pdf/10.1080/00022470.1.

global temperature and the resulting climate change could be significant and damaging'.

During the same period, the American geophysicist Gordon MacDonald also came to similar conclusions. In 1978 he began a study for the White House Department of Energy in which he stated that '*global temperatures will rise by an average of two to three degrees Celsius, fine dust conditions will threaten vast areas of North America, Asia and Africa, access to drinking water and agricultural production will decline, triggering unprecedented mass migration*'.

Lyndon Johnson, the 36th president of the United States, claimed that his generation had altered the composition of the atmosphere on a global scale through a sudden increase in carbon dioxide derived from the use of fossil fuels and commissioned a further study on the subject.

On 23 July 1979, a group of scientists meeting in Massachusetts at the *Woods Hole Oceanographic Institution* published the Charney Report, entitled "*Carbon Dioxide and Climate: A* Scientific *Assessment*"[48] . It stated that the level of CO2 would change the Earth's temperature, predicting a disastrous future. More precisely, according to the report, at that rate of emissions, the global temperature would rise by 3°C by 2035: "*we have irrefutable evidence that the atmosphere is changing and that humans are contributing to this process. Carbon dioxide concentrations are continuously increasing. This is linked to the burning of fossil resources and the exploitation of the soil. Since carbon dioxide plays a significant role in the thermal equilibrium of the atmosphere, it is reasonable to assume that its increase will have consequences for the climate*'. One year after the publication of the Charney Report, US President Carter signed the Energy Security Act (1980) to initiate a multi-year study entitled *Changing Climate, with the* aim of analysing the social and economic effects of climate change[49] .

The Charney Report then became the target of the oil companies who, therefore, were widely aware of it and who, like Exxon, tried to refute it and deny its conclusions, while scientists continued to gather evidence and the media continued to publicise studies on climate change. The New York Times, on 22 August 1981, published the news of a study published in *Science* by James Hansen showing rising temperatures over the last century[50] .

Hansen himself is one of the leading scientists on climate change. On 23 June

48 https://geosci.uchicago.edu/~archer/warming_papers/charney.1979.report.pdf

49 https://www.govinfo.gov/app/details/COMPS-10425

50 https://www.nytimes.com/1981/08/22/us/study-finds-warming-trend-that-could-raise-sea-levels.html

1988 speaks for the first time in history in front of the US Senate about global warming, stating that the world is overheating and that the Earth recorded higher temperatures in the first five months of 1988 than in the previous 130 years, due to mankind's polluting activities.

Hansen even estimated that a temperature increase of 0.8°C would occur between 1988 and 2017. The prediction was almost perfectly centred as the data in 2017 showed an increase of 0.6°C.

We can, therefore, say that the suspicions about the climate-changing effects of the use of fossil fuels supplied by oil companies to our societies, which date back to the late 19th century, found a certain and unequivocal answer between the 1970s and the 1980s: the climate is changing and catastrophic scenarios are looming because temperatures are rising in proportion to the increase of CO2 and other greenhouse gases in the atmosphere, which is largely to blame for fossil fuels, the oil industry's core business.

7. GLOBAL WARMING

The fact that the Earth is warming due to higher CO2 concentrations in the atmosphere has, as we have seen, been known for a long time. According to the IPCC, in the decade 2011-2020, the average temperature of our planet has increased by about 1.09°C (bandwidth 0.95 to 1.20°C) compared to pre-industrial levels[51] , and global warming at the current rate will lead to an increase in average temperatures of 0.2°C every decade[52] .

The most recent studies indicate that at least one of the years between 2023 and 2026 has a 48% probability of temporarily exceeding 1.5°C of warming compared to pre-industrial levels[53] , i.e. well in advance of what was suggested in the IPCC's own recent special report on 1.5°C warming published in 2018 mentioned above.

Furthermore, it is virtually certain that, according to current emission trends, the global warming threshold of 2°C will be exceeded during the 21st century.

The current level of global warming is already having an impact on important ecosystems and human communities across the planet. Current climate extremes reveal that many human and natural systems are vulnerable to global warming and its consequences, such as disruption of food production and water supply, damage to infrastructure and settlements, and deterioration of life, health and well-being of living beings.

Air pollution and the causes of climate change are strictly

51 IPCC 2021, AR6, SPM, p. 5.

52 IPCC 2018, Global Warming of 1.5°C SPM p.6.

53 WMO, 2022, Global Annual to Decadal Climate Update, https://library.wmo.int/doc_num.php?explnum_id=11175

interdependent. This is a new element of the above-mentioned IPCC AR6 Working Group report I. In fact, Chapter 6 discusses, for the first time in an organic manner in the work of the IPCC, the so-called short-lived climate forcers in the atmosphere, many of which are the most common air pollutants that have deleterious effects on human health and the environment in general. Air pollution and climate change are defined as two sides of the same coin, leading to the conclusion that integrated policies to reduce emissions generated by human activities are the best environmental policy strategy, also in terms of social and economic costs, and produce beneficial effects both for air quality and for limiting global warming.

Many of the changes we have experienced in the recent past and are currently experiencing are signs of a now irreversible impact, or one that is about to become irreversible, of climate change, such as rising sea temperatures, melting land ice and the consequent rise in sea level, and the acidification and deoxygenation (anoxia) of the seas themselves. In more detail, the report shows that further warming will amplify the thawing of permafrost and the loss of seasonal snow cover, land ice and Arctic sea ice. The Arctic is likely to be sea-ice-free in September (month of the annual minimum) at least once before 2050, with more frequent occurrences for higher warming levels. The global mean sea level will continue to rise throughout the 21st century in all five scenarios considered by the IPCC.

Again in the same report, low probability and high impact events are analysed, i.e. potential climate change outcomes considered unlikely, yet possible, that could lead to disastrous consequences (e.g. a sudden collapse of the Antarctic ice sheet leading to a faster-than-expected rise in sea level, or the disappearance of the Amazon rainforest, or more generally concomitant extreme events).

On the other hand, this report analyses climate change with reference to five illustrative scenarios that cover a range of possible future developments of anthropogenic factors that are found in the scientific literature to influence climate change. The Shared Socio-economic Pathways (SSPs) consider a variety of different socio-economic contexts associated with the implementation of different GHG management strategies.

These paths start in 2015 and include hypotheses with:

- high greenhouse gas emissions and CO2 emissions doubling by 2100 or 2050 compared to current values;
- intermediate values of greenhouse gas emissions with CO2 emissions remaining at current levels until the middle of the century;

- Low or very low greenhouse gas emissions with CO2 emissions moving towards the goal of net zero emissions around or after 2050, with different levels of negative CO2 emissions.

In the different pathways, emissions change according to different socio-economic assumptions, levels of climate change mitigation and emission control initiatives for certain pollutants. However, the global temperature will continue to increase at least until mid-century in all the Shared Socioeconomic Pathways considered.

8. KEY RISKS AND FIVE REASONS FOR CONCERN

Since the 2001 Third Assessment Report (AR3), the IPCC has divided the most important risks associated with anthropogenic climate change ('key risks') into **'five** Reasons for Concerns**'** (RCF). They are considered key risks by the IPCC because of the great danger they pose, the high degree of vulnerability of societies and/or ecosystems to them, the large magnitude of the risk, its high probability, the irreversibility of the consequences, and the limited potential to limit the risk through adaptation and mitigation.

The five RCFs are as follows:

RFC1: "Unique and threatened systems" are both natural and cultural systems. Rising global temperatures will mean that some human systems will have to adapt massively or ecosystems as we know them will disappear. Examples of systems that already face a very high risk of extensive damage between 1.5°C and 2°C are ice masses in the Arctic Ocean and coral reefs in tropical waters.

RFC2: 'Extreme weather events' will increase in both frequency and intensity. Droughts, extreme rainfall, heat and (tropical) storms and hurricanes are examples of extreme weather conditions that will increase in frequency and/or severity and will in turn lead to more forest fires (due to drought/heat) and floods (due to extreme rainfall and storms). Most infrastructures (ports, roads, waterways, railways, energy supply, buildings, hospitals, dams, urban planning, etc.) have not been designed to withstand extreme weather conditions such as extreme heat and extreme rainfall and the damage will be significant.

But they already have been.

To cite events close to us, it will suffice at this stage to mention Hurricane VAIA, which, from 26 to 29 October 2018, raged over vast areas of France, Italy, Croatia, Austria and Switzerland, causing extremely serious damage to natural resources, property and individuals affected, with a total of 37 deaths, the felling of around 42 million trees and damage estimated at over 5 billion

euro[54] .

RFC3: 'Distribution of Impacts'; the IPCC emphasises that the risks of climate change are unevenly distributed and that in all countries (regardless of development status) groups that are already in vulnerable situations and among the most marginalised will be the most affected and most exposed to food and water security risks.

RFC4: "Global aggregate impacts" are the effects of climate change that are greater than direct effects alone and that add up to various mutually reinforcing (indirect) effects. This can be explained with an example: climate change leads to a loss of biodiversity through various complex mechanisms, in a relationship where the loss increases exponentially with the extent of global warming. This loss of biodiversity not only has important (direct) consequences for ecology, but also important (indirect) economic consequences because people depend on this biodiversity.

RFC5: "Large-scale singular events" are changes that in most cases are irreversible and therefore have very wide-ranging and lasting consequences.

Of the five reasons for concern, the fifth reason (the risks of large-scale singular events) deserves special attention because it refers to the most comprehensive, drastic and sudden dangers of climate change, the so-called 'tipping points' of the climate system. By 'point of no return', the IPCC indicates that the climate system is undergoing an abrupt and irreversible change that through feedback mechanisms can further accelerate climate change to the point where it becomes uncontrollable.

Some possible risks of the point of no return include, according to the IPCC, (i) the thawing of the permafrost layer of the tundra regions and the thawing of the permafrost layers close to the shallow seabed, causing the release of large quantities of methane gas (a considerably more potent greenhouse gas than CO2, as mentioned above) trapped in the permafrost to date; (ii) the drying up of the Amazon region, with the consequence that tropical rainforests in this area may capture much less CO2 from the atmosphere and may even become a net/active source of CO2 release, with an increasing risk of large forest fires and the conversion of the rainforest biome to a savannah state (iii) the disappearance of ice in Greenland, which could cause the sea level to rise by 7 metres as well as the West Antarctic Ice Sheet, which is also considered unstable, which may lead to a further rise in sea level of about 4 metres.

The IPCC concludes that the risk of tipping points is particularly high if there is no

54 https://www.larena.it/oltre-verona/veneto/tempesta-vaia-cause-danni-vittime-ottobre-2018-1.9702462, in celebrating the anniversary of the disaster, recalls, for example, the people who died in the Veneto region alone: 'one person died in the very first hours, a man from Padua crushed by a plane tree in Feltre, followed by a man who slipped into a stream in Falcade and an elderly woman from Selva di Cadore swept away by a tree in the woods'.

further emission reductions: *'Without further mitigation efforts beyond those in place today, and even adapting, warming by the end of the 21st century will lead to a high to very high risk of severe, widespread and irreversible* global *impacts*'[55] .

It should be noted that in 2018, an international team of climate scientists published a paper on tipping points that confirms the IPCC findings[56] . Also that study points out that the crossing of tipping points can lead to accelerated warming or other changes through various *feedbacks* on the climate system, so that other tipping points can be initiated in the climate system. The resulting domino effect is called 'Tipping Cascades' (tipping cascades/chain reactions generated by a point of no return), with the consequence that once the points of no return are reached, the Earth warms up more rapidly, leading to the impossibility of preventing further and possibly irreversible dangerous climate change.

9. RISKS TO HUMAN HEALTH

In 2014, the IPCC highlighted that the effects of climate change such as heat spells, floods and droughts affect people's health both directly and indirectly. The consequences for food supply due to crop failures, the spread of infectious diseases spread by insects and the health consequences associated with the displacement of people have to be taken into account: *'The health of human populations is sensitive to changes in weather patterns and other aspects of climate change (very high confidence). These effects occur directly, through changes in temperature, precipitation and the occurrence of heat waves, floods, droughts and fires. Indirectly, health can be damaged by ecological disruptions caused by climate change (failed crops/crops, changes in disease vector patterns) or social responses to climate change (such as displacement of populations following prolonged droughts). Temperature variability is a risk factor in its own right, beyond the influence of average temperatures on* heat-related *deaths*'[57] .

Because of the global scale of direct and indirect damage to people's lives and health, the World Health Organisation (WHO) has identified climate change as the greatest challenge to human health and a risk that seriously threatens all *aspects of society: 'Climate change is the greatest health challenge of the 21st century and threatens all aspects of the society in which we live. The severity of the health impacts of climate change*

55 IPCC 2013, AR5, SYR, p. 70-72.

56 Steffen, W., Rockström, J., Richardson, K., Lenton, T. M., Folke, C., Liverman, D., ... & Schellnhuber, H. J. (2018). Trajectories of the Earth System in the Anthropocene. Proceedings of the National Academy of Sciences, 115(33), 8252-8259.

57 IPCC 2014, AR 5, WGII, H 11, p. 713.

human is becoming increasingly clear and further delay in action will increase the risks'[58] .

Even *The Lancet*, arguably the world's leading medical-scientific journal, has come out to state that health risks are becoming unacceptably high and that the lack of emission reductions threatens human life and health: *"The changes in our days of heat waves, labour capacities, vector-borne diseases and food security provide an early warning of the combined and overwhelming public health impact as predicted - if temperatures continue to rise. Trends in climate change impacts, exposures and vulnerabilities show an unacceptably high level of risk to the current and future health of populations worldwide [...] The lack of progress in reducing emissions and building adaptive capacity threatens both lives and the viability of the national health systems on which they depend, with the potential to disrupt basic public health infrastructure and overwhelm/annihilate* health *services*."[59] .

The link between climate change and difficulties in food supply shows that humans depend on healthy ecosystems. The IPCC explicitly links the impact of climate change on ecosystems to its impact on human systems, human well-being and people's ability to sustain themselves. In addition, ecosystems also play a key role in limiting the spread of human and non-human diseases and pests, influence and stabilise weather and climate (e.g. tempering temperature extremes, rainwater circulation and CO2 uptake through forests), and thus influence agriculture, food supplies, water supply and flood hazards, and physical human infrastructure. As ecosystems change, their impact on these issues also changes, and according to the IPCC they affect human well-being and the well-being of millions of other species in many different ways. The more ecosystems are affected by climate, the harder it is for humans and other species to adapt to these changes[60] .

Some of the functions of ecosystems that are already threatened by the current warming of about 1°C are pollination, pest control, disease regulation, climate regulation services and drinking water supply. With increased stress on ecosystems, the possibilities to respond to climate change will be limited. This is important, among other things, because ecosystems that cannot adapt to climate change (because it is too fast or too drastic) also limit human adaptation: *"Successful adaptation will depend on our ability to enable and facilitate natural systems to*

58 UNFCC World Health Organisation 2018, COP 24 Special Report Health & Climate Change p. 10.

59 Watts 2018, The Lancet, The 2018 Report of the Lancet countdown on health and climate change p. 2479.

60 IPCC 2014, AR5, WGII, CH. 4, p. 319.

adapt to a changing climate, thus maintaining the ecosystem services on which all life *depends*'[61] .

The main effect that the destruction of ecosystems due to climate change will have on human life and well-being is the reason why Article 2 of the 1992 UN Climate Convention made it clear that climate change is dangerous once ecosystems are no longer able to adapt naturally to it. For the same reasons, within the definition of 'adverse effects of climate change', the treaty clarifies (Article 1) that these include significant adverse effects on the composition, resilience or reproductive capacity of natural or human-managed ecosystems.

In short, humans depend on healthy ecosystems that are sufficiently vital for their lives and well-being if they can provide the goods, functions and ecosystem services that humans need for their existence.

Climate change is a threat to ecosystems and therefore a threat to human life and well-being.

10. SOCIO-ECONOMIC IMPACTS

Evidence of one of the socio-economic impacts of climate change that most directly affects our country is provided by a study published by Italian researchers that shows how heat waves in sub-Saharan Africa, by reducing food production in the area, increase migration flows[62] . This, and many other related works, attest to another particularly cruel aspect of climate change, namely its nature as an amplifier of inequalities, a situation that can create further sources of conflict or exacerbate existing ones. The inequality inherent in climate change, on the other hand, is also well reflected in the figure on responsibility for greenhouse gas emissions. According to one study, the richest 10% of the world's population was responsible for more than half (52%) of the emissions between 1990 and 2015; also during this period, the richest 1% of the population was responsible for 15% of the emissions, more than the total emissions of the EU countries and more than double those of the poorest half of humanity (7%)[63] ; even the 1% of individuals emitting the most CO2 produced 1000 times more than the 1% of individuals emitting the least[64] .

Climate change-induced inequalities are an important issue, hence the need for strong international cooperation between countries, also emphasised by the

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61 IPCC 2014, AR5, WGII, CH. 14, p. 839.

62 migrations from the Sahel to Italy driven by weather-climate variations, Linear and non-linear influences of climatic changes on migration flows: a case study for the 'Mediterranean bridge', Environmental Research Communications 1,011005, https://iopscience.iop.org/article/10.1088/2515-7620/ab0464, A. Pasini, S. Amendola (2019).

63 Oxfam, 2020, *Confronting Carbon Inequality*, https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621052/mb-confronting- carbon-inequality-210920-en.pdf

64 https://www.iea.org/commentaries/the-world-s-top-1-of-emitters-produce-over-1000-times-more-co2-than-the-bottom-1

UNFCCC, which in its preamble recognises '*that the global nature of climate change requires the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities, and their respective economic and social capacities and conditions*'. If the impacts of climate change affect everyone, and Italy has already been repeatedly - and increasingly frequently - hit by extreme phenomena such as heat waves and droughts, the countries and communities that have a residual responsibility with respect to historical greenhouse gas emissions are those most affected and that have the fewest resources today to cope with the impacts of the climate crisis. This is also why 'climate justice' is a necessary element to ensure a future perspective for all our societies: decarbonising is both a contingent necessity and an element of justice, to which we are all bound.

11. THE IMPACTS OF CLIMATE CHANGE IN ITALY

Italy is one of the European countries most at risk from the impacts of climate change. The study 'Risk Analysis - Climate Change in Italy,'[65] carried out by the Euro-Mediterranean Centre on Climate Change (CMCC) highlights the main ones: '*reduction of water resources, soil instability, forest fires, soil consumption, desertification and loss of crop and ecosystem productivity: these are some of the multiple risk factors that characterise the entire Mediterranean basin. To these risks must be added the additional pressures caused by ongoing climate change that act as 'amplifiers' with consequences that could be extremely negative in the coming decades*'.

As explained in this study, climate change can create 'new' risks, or it can amplify existing ones. We are talking about risks related to extreme phenomena such as floods, storms, heat waves, but also risks for specific sectors of the economy, first and foremost agriculture, or related to cross-cutting issues such as health or water management.

Some particularly interesting results of the CMCC study show that:

- the probability of risk from extreme events has increased in Italy by 9% in the last 20 years;
- Urbanised areas will experience strong negative impacts from climate change, especially with regard to extreme weather phenomena (heat waves and intense precipitation events).
- It will mainly be the most vulnerable sections of the population (children, the elderly, the disabled) that will be most adversely affected;
- Intense heat is a health risk for the population. In 2019 the

65 https://www.cmcc.it/wp-content/uploads/2020/09/EXECUTIVE_SUMMARY_CMCC_RISCHIO_Clima_in_Italia-1.pdf

days of intense heat were 29 more than in the 1961-1990 period. According to climate projections, these are expected to increase especially in urban areas;

- There is a strong link between temperature increase and air pollution. The expected increase in periods of intense heat affects the increase in mortality, cardiovascular and respiratory diseases;
- There is an increasing trend in the frequency and intensity of extreme precipitation phenomena, resulting in an increased risk of reservoir flooding and urban flooding;
- Italy is an area strongly subject to geological, hydrological and hydraulic instability phenomena that pose a serious threat to the population. The rise in temperature and the increase in precipitation phenomena localised in space and time play an important role in exacerbating the risk of geo-hydrological instability throughout the territory.
- Expected climate changes (prolonged periods of drought, extreme events and changes in the rainfall regime) present risks to the quality and availability of water resources in Italy; these risks are most evident in the summer months and in semi-arid areas.
- The risk from climate change in Italy for the agricultural sector is significant for both plant and animal production. Productivity decreases are expected in the future for spring-summer cycle crops in Italy, especially if they are not irrigated. From analyses of climate change scenarios, a reduction in irrigated maize yields of up to 25-50% compared to current values in some areas is expected in the coming decades.
- Negative impacts of climate change on the health, production and reproduction of most livestock species are expected, with higher vulnerability for dairy ruminants and pigs, medium vulnerability for poultry and medium-low for meat ruminants.
- An increase in fire risk of more than 20 per cent in all climate scenarios and a lengthening of the fire season by between 20 and 40 days are expected in Italy in the coming decades.

In light of this risk picture, it is understandable how climate may become the most important variable with respect to economic and employment development in the coming years.

Isolating the risks of landslides and floods only, a study carried out in 2021 by Greenpeace Italy[66] - entitled 'How much does the climate crisis cost Italy' - highlights how *'from 2013 to 2019, the economic damage caused by landslides and floods in Italy amounted to EUR 20.3 billion, for*

66 https://www.greenpeace.org/static/planet4-italy-stateless/2021/08/ae9471fc-quanto_costa_allitalia_la_crisi_climatica.pdf

an average of almost 3 billion per year'. There are obviously regional differences, with Emilia-Romagna being the worst affected region, followed by Campania, Tuscany, Abruzzo and Liguria. But it is the whole Italian territory that is exposed, since '*more than 90% of Italian municipalities are at risk of landslides or floods: a total of 7.5 million people are exposed to these two dangers (1.3 million for the landslide risk, 6.2 million for the flood risk)*'.

In addition to the material damage this will cause, these dangers also threaten the right to life, health and undisturbed family life as set out in the European Convention on Human Rights.

12. INJUSTICE BETWEEN GENERATIONS

The impact of climate change not only differs for people from different regions and socio-economic backgrounds (intragenerational), but also leads to inequalities between generations (intergenerational).

The fact that the consequences of climate change will inevitably become greater in the future automatically means that climate change will hit young people and future generations harder.

The concept of intergenerational inequality gained its first importance after the Brundtland Commission defined sustainable development in its well-known report 'Our Common Future' as follows: *"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own* needs"[67] .

Although this report did not specifically address climate change, it nevertheless shows that the impact of anthropogenic activities has an impact on the lives of future generations and that it is important to consider the needs and opportunities of these generations as well. Lord Stern's 2006 and 2009 reports confirm this argument and also link it to climate change *'Issues of intra- and intergenerational equity are central. Climate change will have serious impacts over the lifetime of most of those living today. Future generations will be even more severely affected, but they lack representation in* today*'s decisions*'[68] .

Unless urgent and sufficient action is taken to prevent serious climate change and to stay below 1.5°C, the costs of adaptation and damage will largely be borne by younger people and future generations, who have not caused the problem. The contradiction that emerges here is that the wishes are of the older generations and the burdens of the

67 UN Documents, Our Common Future, Gathering a Body of Global Agreements, Chapter 2, Towards Sustainable Development, p. 44.

68 Stern Review 2006: The Economics of Climate Change, H. 2, Economics, ethics and climate change, this report is published on request of the British government in 2006.

young people. Which once again underlines the importance of climate action and shows that delay is not an option. In the following section on the sources of law and, in particular, on the constitutional reform of 2022, this topic will also be explored from a strictly legal point of view.

13. THE STRATEGY OF OCCULTATION E OF DISINFORMATION OF THE OIL COMPANIES AND MALFEASANCE ON CLIMATE CHANGE.

Hansen was not the only scientist who argued in the late 1980s what turned out to be true: that the rise in temperatures was to be attributed to the exponential increase in C02 emissions into the atmosphere, which began with the industrial revolution and was linked to the extraction and exploitation of fossil fuels by oil companies.

Committed to scientific research in the field, the big fossil companies hired the best scientists to figure out how to increase profits or protect themselves from possible problems related to rising temperatures from burning fossil fuels.

Several documents that have emerged in recent years have shown that as early as 1981, Royal Dutch Shell, for example, commissioned its own scientists to carry out studies on the greenhouse effect.

In 1986, this research led to the internal publication of the report of the same title, in which it was learned that Shell was well aware of the oil industry's predominant role in the increase of CO2 emissions and had even calculated the individual contribution as an estimated 4% of the total. We also learn that scientists knew that this would cause significant changes in sea level, ocean currents, precipitation patterns, regional temperatures and climate, and the consequences on the human ecosystem, living standards and food availability, as well as society, economics and politics.

A report written by scientists from Harvard, Bristol and George Mason universities and published in October 2019 draws some parallels between the disinformation campaign set up by the oil companies and that orchestrated by the tobacco industry, which for years have tried to underestimate the harm of cigarette smoking in the eyes of consumers[69] .

In this regard, in the 2010 essay 'Merchants of Doubt', Harvard University historian and geologist Naomi Oreskes and historian Eric M. Conway clearly explain how oil companies orchestrated mass disinformation campaigns to protect their own interests through the manipulation of public opinion, so as to obstruct the recognition of the emerging scientific consensus.

The technique succeeded for a long time also thanks to the immense economic power of the oil companies.

[69] https://www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf

All oil companies have adopted this tactic, but since climate change studies have been developed in the United States, it is from a US company, Exxon, that we can derive useful information.

In 2006, the trial United States v. Philip Morris ended with the conviction of several tobacco companies: the companies had lied to the public for 50 years and continued to do so: "*for decades, the defendants also engaged in an elaborate and well-funded public relations offensive, denying and attacking the consensus conclusion that they themselves had already reached internally, but that the less well-funded public health community was belatedly reaching, that smoking is addictive primarily because cigarettes effectively release* nicotine"[70] .

In the wake of this, a conference was organised in La Jolla, California, in 2012, at the initiative of Professor Naomi Oreskes, with the aim of exploring the hypothesis that specific responsibilities existed in the fossil fuel industry as well, and possibly opening the way to legal action. In fact, it was one thing to prove, as was now established, that there was a very well-funded disinformation operation attributable to known spin-doctors, and quite another to establish whether it was also criminally relevant conduct, i.e. whether one had lied with knowledge of lying.

The result was the investigative project *Inside Climate News*[71] , according to which Exxon between 1977 and 1986 not only already referred to global warming caused by fossil fuels as a problem to be dealt with, but internal company documents showed that managers were very well aware of the risk of environmental catastrophes and irreversible damage if they did not change course quickly. The same analysis shows how other oil companies, such as ENI, had similar awareness as Exxon of the causes and effects of global warming.

The disinformation operation is now established to be without merit and there are, in fact, numerous lawsuits against oil companies worldwide for being the conscious and malicious cause of the ongoing climate change and rulings by national courts and human rights institutions recognising the advance knowledge of climate change and the malicious intent of fossil fuel companies. See most recently Dutch v. Shell and the findings of the Human Rights Commission of the Philippines. In particular, the Human Rights Commission of the Philippines, in its landmark multi-year investigation into the responsibility of 47 major fossil fuel and cement companies, including ENI, towards the climate-related human rights of the Filipino people, stated that ENI and other

70 https://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-DOJ-litigation-overview-2015.pdf

71 https://insideclimatenews.org/project/exxon-the-road-not-taken/

companies had an early awareness, notification or knowledge of the negative impacts of their products on the environment and the climate system, at the latest in 1965, and engaged in the deliberate obfuscation of climate science, which undermined the public's right to make informed decisions about their products by concealing the fact that their products resulted in significant damage to the environment and the climate system[72] .

14. THE OIL INDUSTRYIN ITALY ITS KNOWLEDGE OF ONGOING CLIMATE CHANGE

The pollution caused by the oil industry is a consequence of all the activities and various stages of hydrocarbon production, from exploration to refining. The wastewater, solid waste and gases generated during drilling, production, but also transport, include more than eight hundred different toxic chemicals.

Other types of impact on the environment must also be taken into account, involving an intensification of the greenhouse effect, acid rain and groundwater pollution: all disastrous consequences.

In Italy, the oil industry got a late start as a well-defined business, as the first national oil company was only founded in the early 20th century under the name of Società Petrolifera Italiana.

This was more of a local business and its activities were somewhat reduced, until it first became Agip in the 1920s and then after the war ENI, thanks to Enrico Mattei, who promoted the spread of domestic and foreign oil exploration and expanded its activities to many parts of Africa and Eastern Europe.

Even today, ENI is still Italy's national oil company, despite the fact that a substantial shareholding is held by private individuals, and is dedicated to finding crude oil and natural gas around the world.

ENI is Italy's largest fossil fuel company, 30% owned by the Italian state. It is among the top thirty companies in the world responsible for the climate crisis[73] . It produces approximately 1.7 million barrels of oil equivalent (2022 figures) per day, and it intends to increase this figure by 3-4% per year to 1.9 million by 2026, and then maintain this peak production until 2030[74] .

In Nigeria, for example, Eni has been active since 1965 in the Niger Delta region, infamously known as one of the most polluted in the world, mainly due to continuous oil spills

72 Philippine Commission on Human Rights, National Inquiry on Climate Change Report, May 2022, available at: https://chr.gov.ph/wp-content/uploads/2022/12/CHRP_National-Inquiry-on-Climate-Change-Report.pdf pp. 101-109

73 https://cdn.cdp.net/cdp-production/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1501833772

74 https://www.eni.com/it-IT/media/comunicati-stampa/2023/02/cs-capital-markets-day-2023-ita.html

contaminating water and soil in the region[75] . To these must be added the damage caused by gas flaring, i.e. the practice of open burning of excess gas, which Eni has not yet stopped[76] .

In Mozambique, ENI has discovered an offshore gas field at a depth of about 1,600 metres. In order to export the gas that will be extracted ENI is completing a huge gas liquefaction plant off the coast of Mozambique. A study by the Global Energy Monitor[77] concluded that new liquefied gas projects could have a greater impact on climate than even coal, due to fugitive methane emissions during transport. In Val d'Agri (Basilicata), ENI has been extracting oil from Europe's largest onshore field for more than 30 years. In 2017, ENI's Centro Olio Val D'Agri (COVA) experienced a spillage of 400 tonnes of oil, which, according to the findings of the NOE carabinieri, caused the contamination of waterways in the area. Because of this, two ENI managers are on trial for unnamed disaster and one for environmental disaster in Potenza[78] .

ENI, like the US oil companies, has been well aware of the relationship between CO2 emissions and climate change for decades.

In publications signed by companies such as ISVET (for several years a research institute of the ENI group) and TECNECO (a resource engineering company belonging to the ENI group and operating in the 1970s in the field of environmental protection), as well as in several articles published in ENI's in-house magazine '*Ecos'* - published between the 1970s and the year 2000, whose name was chosen because "*it referred back to the 'E' of 'ENI' and 'energy', but also to the words 'economy' and 'ecology*'"[79] - we find numerous testimonies demonstrating ENI's absolute awareness, for decades, of the CO2/climate change issue, as has been the case for its American 'sisters' and, recently, also for the French Total. This is not surprising, given that ENI has been a member since 1974[80] -- and together with Exxon, Shell, BP, Total itself and other companies in the sector is still today a '*corporate* member'[81] -- of the International Petroleum Industry Environmental Conservation Association (IPIECA). An organisation that, according to the very recent study '*Early warnings and emerging accountability: Total's responses to*

75 https://www.amnesty.org/en/documents/afr44/7970/2018/en/

76 https://www.greenpeace.org/static/planet4-italy-stateless/2020/05/85f676a0-ex_sum_la_strategia_del_gruppo_eni_fino_al_2050.pdf p.2, https://www.eni.com/assets/documents/governance/2020/ita/Domande-e-Risposte-prima-Assemblea-13-maggio-2020.pdf p.12 regarding the situation in Libya and Nigeria

77 https://globalenergymonitor.org/wp-content/uploads/2021/01/Gas-Index-report-2020.pdf

78 https://www.rainews.it/tgr/basilicata/articoli/2022/02/bas-sversamento-petrolio-eni-cova-viggiano-rinvio-a-giudizio-andrea-palma-ruggero-gheller-d696ad29-4817-460a-bf77-eb051cf3f79b.html

79 https://archiviostorico.eni.com/aseni/it/magazines/ecos

80 https://archiviostorico.eni.com/aseni/bookreader/books/ECOS_1992_003.html?r=search#page/54/mode/2up/search/ipieca

81 https://www.ipieca.org/membership/

global warming, 1971-2021'[82] , published in October 2021 in the scientific journal *Global Environmental Change*, was allegedly used by EXXON to coordinate '*an international campaign to question climate science and undermine international climate policies, starting in the 1980s*'.

However, let us again focus strictly on ENI. In the introduction to the summary report (published in 1970) of a survey carried out by ISVET on behalf of ENI itself between 1969 and 1970 ("*Public intervention against pollution; evaluation of the costs and economic benefits of a project to eliminate the main forms of air and water pollution in Italy*"), between page 22 and page 24 - in paragraph 1.1.1. entitled "*The ongoing technical-industrial revolution and pollution*" - reads: "*Pollution is an alteration of the state of nature caused by human intervention in the natural environment, i.e. in "that infinitely complex network of living beings and resources (air, water, nutrients and materials) on which life, including human life, depends". In his efforts to transform his environment to make it more suitable for his survival and development, man has often altered its balance, to the point of destroying natural resources of incalculable value, because they are irreplaceable and non-reproducible. [...] The balance between man and the environment [...] has, however, lasted a long time. It was only with the advent of the industrial revolution that the process of systematic and increasing destruction of natural resources began in the palaeo-technical era, leading in the last twenty years to the current crisis in the relationship between man and the biosphere. In fact, this crisis, which manifests itself in the progressive compromise of the natural environment, has been given a decisive turn in the recent post-war period by the expansion of industrialisation, the uncontrolled application of modern production techniques, the growing increase in motorisation, the worsening of disordered urbanisation processes, the population explosion, and the increase in production and consumption. In short, the drive for economic development has led to an increasing aggravation of the process of social metabolism, according to which nature's resources are wrested from the environment and returned to it after the cycles of production/processing and consumption, in the form of waste products (urban solid waste, industrial effluents, combustion products, civil sewage, and so on). The damage done to the environment has been all the more serious, the more the myth of producing the maximum amount of goods and services at the minimum cost has so far prevailed over the need for harmonious development of man and the balance between man and nature. Thus pollution has increased in tandem with the expansion of production, causing increasing damage to human health and the environment on which, ultimately, human life itself depends. [...] Indeed, alterations in the natural balance are generally negative, because man has not yet learnt to regulate the system of dynamic balances.*

82 https://www.sciencedirect.com/science/article/pii/S0959378021001655

natural. When he tries to achieve the maximum economic effect, he touches almost the entire causal-consequential 'web' of nature, causing a huge amount of unpredictable and often lethal consequences. Beginning with Commoner's famous studies on strontium-90 and Lake Erie, the development of ecological studies has made it possible to denounce in an increasingly well-documented manner the execrable character of many forms of environmental impairment. For example, the carbon dioxide in the atmosphere, according to a recent report by the UN Secretary, due to the increased use of mineral fuel oils, has increased over the last century by an average of 10% worldwide; towards the year 2000, this increase could reach 25%, with consequences 'catastrophic' on climate'.

A few years later, in 1972, ENI entrusted TECNECO with the task of preparing the "*First Report on the Environmental Situation of the* Country"[83] . This was a three-volume publication - promoted by the Prime Minister's Office, in the person of the then Head of Government Giulio Andreotti - presented and printed in 1973.

Section *1 0 2* of chapter i 'Climatic and Meteorological Characters' - written, among others, in collaboration with the Air Force Meteorological Service and the CNR Institute of Atmospheric Physics - states: '*The atmosphere is one of the essential components of the environment in which human life takes place and therefore its phenomena, its perturbations, its changes in structure, which can be assessed through climatic and meteorological events, profoundly condition it. In the man-atmosphere system, contrary to what was tacitly believed until not so long ago, the relationships are not exclusively unidirectional, i.e. they are all made up of the interference of the atmosphere on the human sphere: there is now also a sum of actions in the opposite direction, whereby human activities, in turn, provoke transitory alterations or stable changes in the structure and quality of the atmosphere, as well as in the course of some of its important phenomena. Human action can have either limited or major effects, potentially ranging between the two extreme limits of pernicious changes that gradually lead to the disappearance of life on earth, or, in the opposite direction, to a complete 'weather control' capable of enabling knowledge and advance planning of all atmospheric manifestations. By analysing the intense network of interdependencies and interactions between the atmosphere and mankind, the importance of meteorological and climatological studies and the very way in which we understand and address the problems of the atmosphere have undergone a profound evolution compared to the past (practically only 10-20 years ago). Not only have the available methodologies and technologies substantially changed and progressed, but some topics have taken on a completely new and unpredictable importance, such as turbulence and the diffusion of substances in the lower layers of the atmosphere, climatic modifications, exchanges between*

83 https://archiviostorico.eni.com/aseni/bookreader/books/ECOS_1972_003.html?r=gatto_ecos#page/76/mode/2up/search/tecneco

the atmosphere and the biosphere and between the air and the sea, artificial weather modification, water and energy climate balances and atmospheric circulations at various scales of space and time'.

In section *1 2 2* 'Atmospheric emissions', contained in the chapter 'Production activities' in the same first volume of the TECNECO report - a structure part of the Eni group

- it states: '*Industrial discharges into the atmosphere are mainly related to the following activities: processing of ferrous (steel and foundry) and non-ferrous materials (production and finishing), processing of non-metallic minerals (cement, lime, bricks, etc.), chemical industry, oil industry (refining and petrochemicals), food industry, pharmaceutical industry, paper industry, electronics, etc. [...] Heat production plants are also very often present in technological cycles, which normally use fuels for the operation of thermal generators [...] These plants generate pollution from combustion reactions, with emissions of sulphur and nitrogen oxides, particulate matter and so on*'.

In a table published to accompany the paragraph to schematically summarise the list of '*main polluting compounds emitted during the different phases of industrial operations and their sources in relation [...] to gases*', CO2 is also included. The list[84] mentions CO2 from combustion processes and the fact that although not considered a pollutant "*its increase in the atmosphere is considered a potential cause of climate change*".

Five years later, in 1978, TECNECO itself published an in-depth study entitled "Environment and exhaustible or renewable energy sources". It is, according to the introduction, "*an attempt to assess in a comprehensive manner the environmental implications of massive 'concentrated' energy production and to indicate, in broad terms, those aspects of the development of energy sources that deserve special attention for their suitability to be exploited without causing further degradation to the environment. This type of work is part of a strand of studies that has already been underway for some time within Tecneco, whose tasks are mainly dedicated to the development of two areas: one concerning the protection of the environment and the other the search for environmental resources suitable for use in energy production*'. In the foreword to the first chapter of the publication, entitled "Energy sources for 'concentrated' energy production and their environmental effects", the authors ask: "*what are the limits placed by the environment on ever-increasing energy production and consumption?"* They add that *"it is desirable, technically feasible, and economically sound to reduce the rate of growth of energy consumption, without decreasing the gross national product [...] It would also be necessary to implement an intensive programme of energy development from renewable and extensive sources such as solar, geothermal, and wind power [...]".* Then the chapter continues with an excursus on the different energy sources used at the time, and continues with an in-depth look at 'Emissions

84 The source of which is: H. F. LUND, Industrial pollution control handbook, Mcgraw Hill - 1971

pollutants from fossil fuel power plants and their environmental effects'. These include, in paragraph 3.4, CO2: *"Carbon dioxide (CO2) is the ultimate oxidation product of fossil fuels [...] it exists in the air in concentrations of about 300 p.p.m. and only human activity increases this value by interfering with natural processes, so that above a certain threshold it becomes a pollutant [...] it has been found to have increased from about 295 p.p.m. to 320 p.p.m. (1970 values), i.e. by about 10%, during the last 110 years. It is assumed that with the increasing consumption of fossil fuels, which began with the industrial revolution, the CO2 concentration will reach 375-400 p.p.m. in the year 2000, assuming that 35-45% of the emitted CO2 remains in the atmosphere (the remainder being removed by the bio-geochemical cycle). This increase is regarded by some scientists as a possible long-term problem, especially since it could alter the heat balance of the atmosphere, leading to climate changes with serious consequences for the biosphere*'. Climate effects are the subject of a separate section, 3.8. *"Several hypotheses have been formulated about the effect of fossil fuel emissions on climate. On a local scale, even considerable changes in climate have been noted [...] Similar changes in climate may occur on a regional scale due to the continued, increasing consumption of fossil fuels, and this may become a major problem by the end of the century [...] As already noted, the most reliable data available indicate that the CO2 content of the atmosphere will reach 375-400 p.p.m. in the year 2000; this would increase the temperature of the atmosphere by 0.5°C [...] if, on the other hand, the effect due to the accumulation of CO2 prevails, the temperature increase could contribute to the complete melting of the Arctic and Antarctic ice*.

Turning to the 1980s, and Eni's company magazine *Ecos,* in the July/September 1988 issue focusing on energy, in an article by Paolo Gardin, we read that 'there is no *energy source that does not have a significant impact on the environment, nor is there any part of the natural ecosystem that does not suffer this impact to varying degrees. However, the atmospheric environment is the one primarily involved in energy production processes, given the prevalence of fossil sources. The tremendous development of combustion processes during this century has led scientists to fear the greenhouse effect that could lead to climate change with devastating effects on the entire* earth*'s ecosystem*"[85] .

Page 23 of the October/December 1988 issue of the same *Ecos* states that '*while scientists continue their investigations to further investigate the nature of the phenomenon and quantify its possible consequences, it is incumbent on us to work as of now, as far as possible, to contain the*

85 https://archiviostorico.eni.com/aseni/bookreader/books/ECOS_1988_180-182.html?r=catto_ecos#page/100/mode/2up/search/%22effect+gerra%22

phenomenon of carbon *dioxide emission*'[86] .

Again on page 32, in an article on the greenhouse effect in which the 1988 Toronto conference is also cited, it is stated that "*Thus, carbon dioxide, water vapour, methane, are substances that are part of a natural cycle whose equilibrium concentration in the atmosphere has determined the climatic conditions of our planet in the last geological era. Scientists are concerned about the change in this equilibrium as a result of the enormous development in the demand for energy and, therefore, the consumption of fossil fuels that characterised the transition from the pre-industrial era to the* industrial *era*"[87] .

This shows ENI's awareness of CO2 emissions as a result of burning fossil fuels and the impact on the climate system.

15. THE GREENWASHING PHENOMENON.

As seen above, scientific disinformation has been one of the strategies most often adopted by oil companies. This system, however, at least since the 2000s, with the awareness of the scientific world and the population of the effects of CO2 on the atmosphere, has lost its effectiveness and oil companies have tried new ways.

One of these is '*greenwashing*'.

In the English dictionary the term '*greenwashing*' reads '*behaviour or activities that make people believe that a company is doing more to protect the environment than it actually does*'. After years of prevailing climate denialism (we knew everything over eighty years ago), the climate crisis manifests itself in all its, unfortunately expected, power. Calling increasingly frequent extreme phenomena 'bad weather' is just one of many ways of denying the evidence.

Those who have known for a long time are now engaged in a frenzied struggle to cover up their responsibilities with so-called *greenwashing* initiatives, i.e. giving themselves a greenwash to continue making money to the detriment of the community.

One way is to tell of investments in futuristic technologies, such as nuclear fusion or the absorption and storage of carbon or its removal from the atmosphere, which simulate a real commitment, disguising a concrete disinterest in a current and urgent issue: climate change.

This is not to demonise scientific research, but to criticise it if it is used for the cat-and-mouse operation of changing everything to change nothing.

It may not be possible to start experimenting with nuclear fusion until the middle of the century[88] ,

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86 https://archiviostorico.eni.com/aseni/bookreader/books/ECOS_1988_183-185.html?r=catto_ecos#page/24/mode/2up/search/%22effect+serra%22

87 https://archiviostorico.eni.com/aseni/bookreader/books/ECOS_1988_183-185.html?r=catto_ecos#page/34/mode/2up/search/%22effect+serra%22

88 https://www.greenpeace.org/italy/storia/15639/fusione-nucleare-possiamo-credere-alle-dichiarazioni-di-descalzi-al-copasir/

but by that time, if we have not already reduced greenhouse gas emissions to zero, the damage will be irreversible. Much more important, urgent and 'green' would be to spend the same amount of money on total decarbonisation programmes[89] .

Equally problematic is ENI's promotion of emission 'offsetting' projects through the implementation of forest protection measures, as the estimates presented by ENI on the emission reduction achieved by these projects are inflated. This is what emerges from a scientific analysis of the Luangwa Community Forests Project, in Zambia, the only REDD+ (*Reducing Emissions from Deforestation and forest Degradation in developing countries*) project in which ENI is involved for which it has been possible to obtain documentation. The Luangwa Community Forests Project is the largest REDD+ project by number of beneficiaries, as well as the largest in Africa by area covered. However, according to the analysis carried out, the Zambian project financed by ENI overestimates the carbon credits generated which, in reality, are likely to be about half of those projected[90] .

Even ENI's dissimulation that it has found the solution in the use of gas, fossil of course, is not a solution. On this point, Elisa Giannelli, a researcher at E3G in Brussels in 2019, described the problem in these terms: '*the European Union's long-term climate goals call for the Union to phase out natural gas almost entirely, gradually but steadily, by 2050. Analysis of the projected trajectories of the NIPECs of some major countries suggests that member states are driving the Union towards a* natural *gas glut*'[91] .

However, while the European Union has already revised its targets since 2019 with respect to cutting emissions and the share of renewables in total electricity production, in Italy the PNIEC has not yet been amended, which, at ENI's behest, has fossil gas consumption at its core, and this despite direct criticism from the European Commission[92] .

That the attempt by ENI and Italy is a blatant example of a 'mass distraction' operation can also be deduced from the decisions taken in other states.

Also in 2019, the Advertising Standard Authority (the UK equivalent of the Antitrust Authority) warned Equinor (a Norwegian state-owned company) against confusing consumers by claiming that gas is a '*low carbon energy*' source.

Similar situation in the Netherlands where the Advertising Code Foundation sanctioned Shell for the

89 https://www.greenpeace.org/italy/rapporto/13862/the-luangwa-community-forests-project-lcfp-in-zambia

90 https://www.greenpeace.org/italy/rapporto/13862/the-luangwa-community-forests-project-lcfp-in-zambia/

91 https://www.rivistaenergia.it/2019/11/lincoerenza-delle-politiche-minaccia-gli-obiettivi-climatici-europei-il-caso-del-gas-naturale/

92 https://ec.europa.eu/energy/sites/ener/files/documents/staff_working_document_assessment_necp_italy.pdf&sa=D&source=docs&ust=1650537178653080&usg=AOvVaw16rBzqR5bW9WVTc6DuJXsE

gas to liquid' message even conveyed to an audience of children (during the Generation Discover 2018 festival).

Curiously, a couple of years late and evidently without paying attention to the sanctions imposed in other European countries, Italy has decided to entrust its national oil company, ENI, with school education.

In January 2020, the ANP (National Association of Headmasters) and ENI announced the launch of a programme of meetings on environmental sustainability issues for the training of Italian school teachers. In particular, the seminars will cover the following four macro topics: climate change, energy efficiency, waste and environmental remediation[93] .

This is without hesitation the most obvious example of Italic *greenwashing.*

It is paradoxical that it is precisely ENI, which has very serious, significant and certain responsibilities on at least two of the topics that will concern the teaching activities, 'climate change' and 'territories to be reclaimed' - the company itself admits that it has more than 1,800 hectares to be reclaimed as a result of its polluting activities[94] - that is being called upon by the Principals to play a key role in this educational path. A path that, instead, should be carried out by third parties, representing collective interests and not by a private company that not only makes profits by exploiting fossil fuels - the consumption of which should be drastically reduced if we want to avoid the exponential rise in temperatures on our planet - but which, over the last fifty years, has been responsible for major environmental impacts on a global and national level.

16. THE ECONOMIC INFLUENCE OF OIL COMPANIES

Of course, the economic power of the oil companies is probably unparalleled.

In the October 2020 report 'Decarbonising *Is Easy: Beyond Market Neutrality in the ECB's Corporate* QE'[95] by Greenpeace, New Economic Foundation, Soas University of London, University of the West of England and University of Greenwich, it was shown how the rules regarding the assets that private banks can provide as collateral to the European Central Bank when borrowing money end up favouring multinational oil and gas companies. We are talking about more than EUR 300 billion, including the securities of ENI, Shell, Total, Repsol and others.

This means that when the European Central Bank lends money to private banks, money that is then largely used to finance the oil companies themselves, it asks for 'collateral' consisting of financial assets such as government bonds or *corporate bonds*,

93 https://www.eni.com/it-IT/media/news/2020/01/eni-e-lassociazione-nazionale-presidi-anp-avviano-un-programma-congiunto-di-incontri- on-environmental-sustainability-themes-for-training-teachers-in-italian-schools.html

94 https://www.eni.com/enirewind/it-IT/bonifiche.html

95 https://www.greenpeace.org/static/planet4-italy-stateless/2020/10/3f229ef4-greenpeacenefreportecb-1-1.pdf

i.e. the bonds of companies and oil companies in particular.

Over time, therefore, 59% of the corporate bonds eligible as collateral by the European Central Bank are from the fossil fuel, energy-intensive industry, carbon-intensive transport and fossil energy *utilities* sector.

It is obvious that such a situation puts the oil companies in a position of absolute economic strength.

In Italy, the development of new fields and the construction of more gas pipelines could not take place without the financial support of banks such as UniCredit and Intesa Sanpaolo.

Since the signing of the Paris Agreement, UniCredit and Intesa Sanpaolo have financed Italian fossil companies with over USD 9.2 billion. Taking all lending institutions worldwide into account, the total financing the Six-legged Dog has received over the past seven years since the Paris Agreement is $23.6 billion[96] .

This unquestionably denotes ENI's power over national and EU credit institutions.

17. ENI HE WORLD OIL INDUSTRY AND ITS CONTRIBUTION TO CLIMATE CHANGE

ENI is one of the world's leading oil companies as well as one of the world's largest emitters of greenhouse gases, as shown in the tables below, which illustrate its size in relation to the other majors in the sector: revenues, annual production, reserves and reserves/production ratio.

In more detail, thanks to 'attribution science', a new branch of climate science that the IPCC's 2021 report has embraced, it is possible to reconstruct the contribution - and thus the historical responsibility - of individual companies to climate change and its major negative impacts. "*Attribution science makes it possible to establish the causal link between what we see and who created the emissions. It is a scientific breakthrough that forces companies to take responsibility for what they do*,' summarised Rachel Licker, a climatologist at the Union of Concerned Scientists (Virgin, 2019) in November 2019.

For example, a number of important recent studies (Heede, 2013; 2014; Ekwuzel et al., 2017; Licker et al. 2019) draw attention to the direct contribution to climate change, in terms of emissions and impacts, of the oil industry and provide an excellent basis for understanding and determining their responsibilities and duties in this regard as they for the first time quantify the climate change impacts attributable to the specific oil company.

The most striking result of Heede's (2013; 2014) work - the so-called 'carbon accounting[97] ' - is that 62% of global industrial emissions of carbon dioxide and methane from 1751 to 2015 can be traced back to the activities of 100 '*carbon majors*' - basically companies

96 https://www.bankingonclimatechaos.org/#fulldata-panel

97 https://science.sciencemag.org/content/353/6302/858.summary

operating with fossil fuels (oil, gas and coal) - currently active. The *Carbon Majors* Database (CDP 2017), the most comprehensive database on the historical contribution in terms of GHG emissions by private companies[98] also indicates that emissions from these companies accounted for 91% of global industrial emissions and over 70% of all anthropogenic GHG emissions in 2015.

It should be pointed out that these figures, as will be further clarified below, include so-called *scope 3* emissions, i.e. emissions that originate from the 'downstream' combustion of oil and gas distributed by oil companies in the global economic system, those generated by the use of products and services placed on the markets. Overall, the largest share - between 85% and 90%, it is estimated - of oil industry emissions are *scope 3*.

Ekwurzel and colleagues (2017) extended Heede's original analysis by connecting the activities of carbon *majors* to greenhouse gas concentrations in the atmosphere and some associated climate impacts. This study found that emissions generated by 90 carbon *majors* over the historical period 1880-2010 contributed to about 57% of the observed increase in atmospheric CO_2 concentrations, 42-50% of the increase in global mean surface temperature, and 26- 32% of global sea-level rise. Licker and colleagues (2019) demonstrated the link between declining pH levels in ocean surface waters and CO_2 production, pointing out that 88 of the carbon majors were responsible for 55% of ocean acidification between 1880-2015, causing inestimable damage to ecosystems and marine life, not to mention the fishing industry so vital to myriad coastal communities.

To come to ENI, its cumulative CO_2 and CH_4 emissions over the period 1988-2015 amount to 0.6% of global cumulative industrial emissions (Heede, 2014). The database on which the work of Ekwurzel et al. (2017) is based makes it possible to attribute to ENI over the period 1980-2010: 1) between 0.309 and 0.395 ppm contribution to the increase in the concentration of CO_2 in the atmosphere; 2) between 0.0013 and 0.0037 °C contribution to the increase in the global mean land temperature; and 3) between 0.04 and 0.21 mm global sea level rise. The database of the study by Licker et al. (2019) shows that over the period 1980-2015, ENI contributed to ocean acidification, reducing the pH of the oceans by between 0.000365 and 0.000444.

18. ENI EMISSION DATA

According to the Annual Financial Report[99] , ENI's absolute lifecycle greenhouse gas emissions in the year 2022 (latest available data) amount to 419 million tonnes of CO2 eq., broken down as follows[100] :

98 Accessible here: https://b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcdd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf

99 https://www.eni.com/assets/documents/ita/bilanci-rapporti/2022/Relazione-finanziaria-annuale-2022.pdf

Scope 1 emissions: direct greenhouse gas emissions from sources owned or controlled by the company;

Scope 2 emissions: indirect greenhouse gas emissions associated with the production of electricity, heat, or steam purchased by the company;

Scope 3 emissions: all other indirect emissions, such as emissions associated with the extraction and production of materials, fuels and services, including transport in company-owned or company-controlled vehicles, waste management, outsourced business activities.

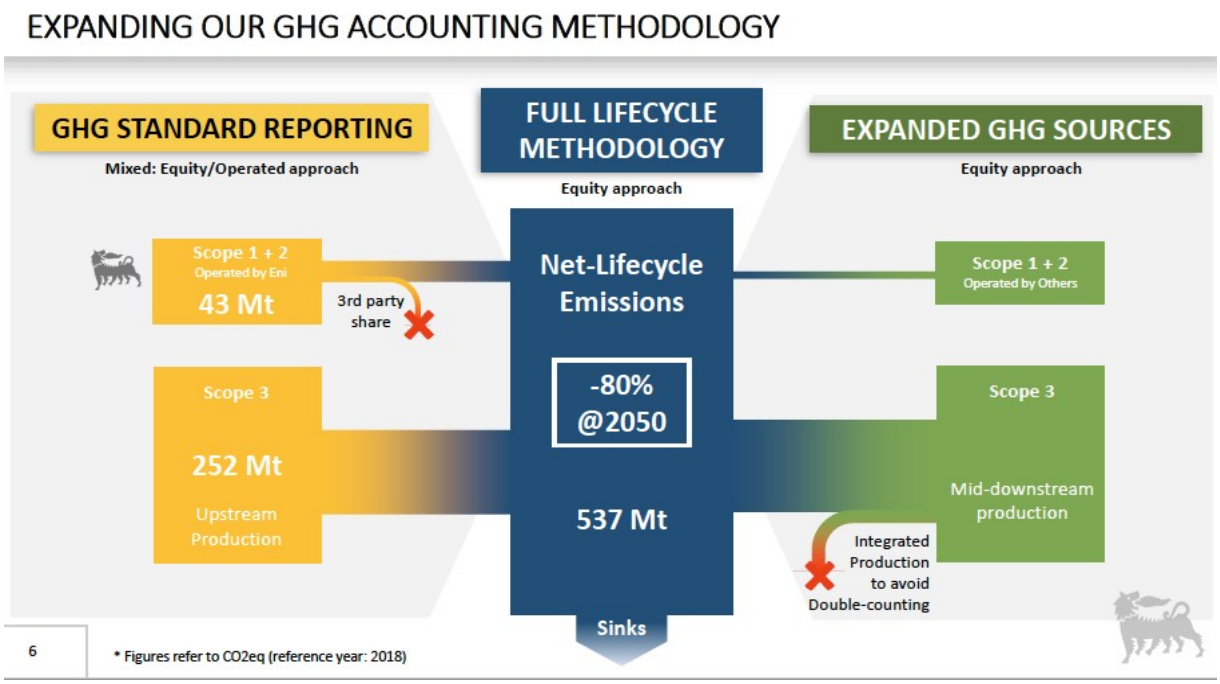
In ENI's case, *Scope 1* and *Scope 2* emissions represent 9% of total emissions. It should be specified that ENI has adopted its own methodology to measure its Scope *1*, Scope *2* and *Scope 3* emissions:

1. *"*Net Carbon Footprint*",* which represents the total *Scope 1* and *Scope 2* emissions associated with ENI's activities, net of "*carbon* sinks" (i.e. any system, natural or man-made, that absorbs more carbon than it emits);
2. "Net-Absolute GHG Lifecycle Emissions", i.e. the total *Scope 1*, *Scope 2* and *Scope 3* emissions associated with ENI's products and activities throughout the value chain, net of *carbon sinks*;
3. *"*Net Carbon Intensity", which represents the ratio between the net amount of greenhouse gases emitted in absolute terms, over the entire life cycle of products, and the energy content of the products sold.

The 'Lifecycle Greenhouse Gas Assessment', on the other hand, includes '*all energy products managed by Eni and considers all their impacts along the entire value chain (including products acquired from third parties): oil, gas, electricity as well as new bioproducts from circular economy companies*' (see figure below).

Figure 4.1 - ENI methodology for emissions reporting.

100 https://www.eni.com/assets/documents/ita/sostenibilita/2021/eni-for-2021-just-transition-ita.pdf



Source: Eni's Methodology for the assessment of GHG emissions with reference to data for the year 2018.

The new methodology significantly changes the way ENI reports its emissions:

- for *Scope 1* and *2,* there is a shift from a 100% approach based solely on fields operated by ENI (*"operated approach"*) to an asset-based reporting, i.e. also including ENI's share in activities not directly operated by the company, both in the *upstream* (exploration and production) and along the production chain;

- For *Scope 3*, the scope is extended to include all emissions associated with *mid-downstream* energy products, excluding products from ENI's (*upstream)* production 'to avoid double counting';

In practice, for the year 2021 - for which more detail is available - Scope *1* and *Scope 2* emissions related to activities directly operated by ENI amount to 41 million tonnes (Mt), to which 176 Mt of *Scope 3 emissions are* added. The sum of these two quantities gives the total emissions reported under '*standard reporting*', which is 217 Mt. To these, using the '*equity approach*' adopted by ENI, *Scope 1 + 2* emissions relating to activities not wholly operated by ENI, and *Scope 3* emissions relating to *midstream* and *downstream*, i.e. activities such as the transport and combustion of gas and oil extracted by ENI, are added, thus arriving at 456 Mt. As a comparison, in the same year, national GHG emissions were 407 Mt[101] , thus Eni's total emissions far exceeded those of Italy.

19. ENI'S CLIMATE POLICY

101 https://www.isprambiente.gov.it/files2022/area-stampa/comunicati-stampa/2022-14-aprile-comunicato-stampa-emissioni.pdf

In light of the large climate footprint, ENI has equipped itself with a decarbonisation plan to 2050 (document available on the company's website under the name 'Long-Term Strategic Plan to 2050'), which, however, does not envisage the company abandoning fossil fuels completely, and furthermore leaves the reduction of about 65% of the company's emissions to after 2030, contrary to the indications of the scientific community regarding the urgency of reducing a large part of emissions in the current decade. This point is fundamental with respect to ENI's hypothetical decarbonisation, which plans to reduce its emissions by only 35% by 2030, and postpones more important actions from the next decade.

Emission reduction, according to the plan, will be achieved by combining at least five different strategies:

1) increasing the share of gas in decreasing upstream production (after 2030) and decreasing gas flaring;
2) focus on own-produced gas, bio-methane and renewables (with an installed renewables capacity of 60 GW by 2050);
3) conversion of European refineries into bio-refineries;
4) forest conservation (REDD+ projects);
5) CCS (Carbon Capture Storage).

The plan remains quite vague in several passages, and ENI gives as justification the fact that the strategic development plan '*has great flexibility to adapt to changes in the markets*' over the next thirty years. While this may make sense in a long-term perspective, it would be appropriate for ENI to provide investors and all interested citizens with at least 3-4 different development scenarios, based on different expected market trends.

ENI also emphasises that it will reach zero net *Scope 1 and 2* (*upstream*) emissions by 2030. This goal, which is not particularly ambitious considering that, as mentioned, 90% of the company's 2021 emissions are *Scope 3*, would be achieved through a series of strategies that also include projects of dubious effectiveness such as CO2 capture and storage (CCS) and emission credits from forest preservation projects (REDD+), which have encountered several problems in the past, both in terms of counting emission credits and the impact on local communities living in the various forests.

While the plan is vague in the medium and long term, it is clear that in the short term ENI intends to increase - rather than decrease - its production of hydrocarbons (oil and gas). For the period 2023-2026, in fact, it expects an average annual growth of 3-4% per year and an overall growth of 17% until the production peak in 2026. This effectively means postponing emission cuts and not decarbonising its energy mix, relying only on offsetting instruments such as those mentioned above.

Eni's planned expansion of oil and gas production in the coming years also involves the development of new oil and gas fields that are already taking place. As the company's management told investors last March, in 2023 Eni will start up the first phases of Baleine in Côte d'Ivoire and Congo LNG, start-ups in Egypt, the United Arab Emirates and Norway, and will continue the asset development programme in Algeria, while in 2024 the company will launch start-ups in Italy, Egypt, Côte d'Ivoire Phase 2, Kazakhstan and Norway[102] .

In essence, in the face of an already serious climate emergency, ENI decides to postpone the adoption of incisive measures to reduce greenhouse gas emissions until after 2030 and to continue to increase its oil and gas production, while the scientific community agrees in identifying the 2020-2030 decade as the decisive window of opportunity for climate action: if all possible actions to reduce emissions are not put in place in the current decade, the future situation may no longer be recoverable (Grasso and Vergine, 2020).

ENI also plans to exploit 85% of the current 3P hydrocarbon reserves (proven + probable + possible)[103] by 2035. A clear and worrying sign of the direction the company intends to take.

Unfortunately, ENI has not disclosed clear emission reduction targets in the plan in the short term, and it is not possible to know whether and how emissions will increase from 2020 to 2025, especially *Scope 3* emissions. However, it is reasonable to assume that emissions will increase, given the sustained increase in hydrocarbon production and considering that offsetting strategies related to reforestation and CO2 capture and storage projects are uncertain and will not have a major effect in the short term.

Furthermore, it is unclear by how much ENI plans to decrease its hydrocarbon production after 2030. In the evolution of the *upstream* sector, much emphasis is placed on the reduction of oil in favour of gas, whose supposedly greater contribution to the reduction of *GHG Scope 1, 2 and 3* emissions than oil is something that is questioned by numerous studies. For example, the criticality of methane emissions was recently reiterated by a study published in 2019 in the prestigious journal *Science*: this work argues that methane is a significantly more potent greenhouse gas than carbon dioxide in terms of warming the atmosphere, and therefore poses a serious obstacle to achieving the goals of the Paris Agreement (Fletcher and Schaefer, 2019).

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102 https://www.eni.com/assets/documents/press-release/migrated/2023-it/02/CS-capital-markets-day-2023-ita.pdf p.5

103 Proven reserves: this is the definition for oil and gas that one is reasonably certain can be extracted, given current technology, current prices, commercial and political agreements. It is also called P90, i.e., it has a 90% chance of being produced. Probable reserves: is the definition for oil and gas that it is probable to be able to extract, given current technology, current prices, commercial and political agreements. It is also called P50, i.e., it has a 50% chance of being produced.

Possible reserves: this is the definition for oil and gas that has the possibility of being developed under favourable circumstances, not equivalent to the current ones. It is also called P10, i.e., it has a 10% chance of being produced.

In short, proper decarbonisation cannot only involve the - albeit slow - shift of production from oil to gas, but must instead plan for a gradual but steady shift away from hydrocarbons as a whole without relying on carbon capture and storage or the removal of carbon from the atmosphere[104] . This element is completely absent from the company's plans.

ENI clearly admits that it relies heavily on offsetting instruments, in particular CCS (*Carbon Capture and Storage*: a process of geological sequestration of carbon dioxide produced by large combustion plants) and REDD+ (*Reducing Emissions from Deforestation and Forest* Degradation*)*: forest conservation projects that allow CO2 absorption). On forest conservation projects ENI provides steadily increasing CO2 offset targets from 2025 to 2050. CO2 absorption is expected to increase from 0 to 10 Mt per year in this decade and by at least another 40 Mt per year in the following twenty years (2030 to 2050).

REDD+ projects lack transparency, as the company has never presented official documentation on them and only data from a project in Zambia is available. Moreover, in analysing this data, an independent study commissioned by Greenpeace Italy found inconsistencies that would lead to an overestimation of emission credits linked to the project[105] .

CO2 capture and storage (CCS) technology is also one of the pillars promoted for decarbonisation. Besides numerous uncertainties related to technology, cost, efficiency, the possibility of its production on an adequate scale and environmental impact[106] , it is clear that CCS will not contribute to decarbonisation in the short term.

The authoritative French research association on finance and decarbonisation Reclaim Finance, whose director Lucie Pinson was awarded the prestigious Goldman Environmental Prize in 2020, comparable to a Nobel prize for the environment, has recently published, in collaboration with ReCommon and Greenpeace Italia, its analysis of ENI's decarbonisation strategy to 2050, showing how it is not in line with what is required by the IPCC and International Energy Agency's *net zero* scenarios[107] . As can be seen from the following diagram based on data provided by the company itself, it is precisely the lack of a more incisive action to reduce emissions in the current decade that is to blame for ENI's non-compliance with what the international scientific community requires in order to avoid catastrophic

104 IPCC AR6, Synthesis Report, SPM, B6.4

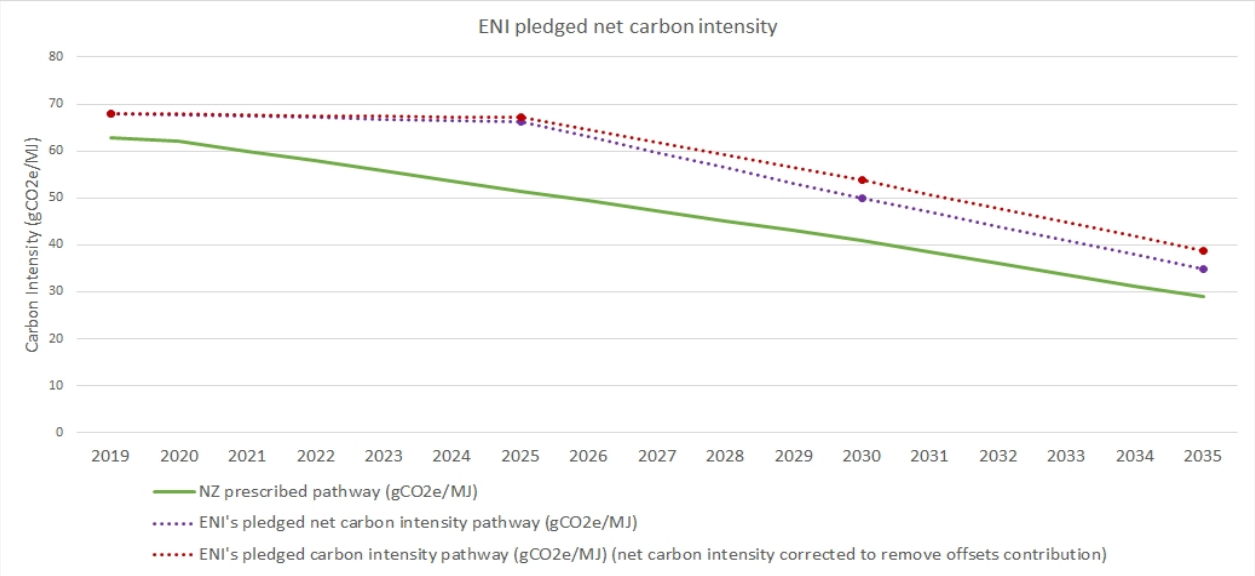
105 https://www.greenpeace.org/static/planet4-italy-stateless/2021/06/719f406b-gp-lcfp_scientific-report_english-version-1.pdf

106 IPCC AR6 WGIII, SPM, C.4.4, C.4.6

107 https://u6p9s9c8.rocketcdn.me/site/wp-content/uploads/2023/04/20230413-briefing-climate-strategy-assessment-eni.pdf

climate change by keeping the temperature increase below 1.5°C. In fact, already by 2030 ENI will 'consume' 71 per cent of the carbon budget allocated to it according to scientific models, and by 2035 the carbon intensity of ENI's activities will still be 21 per cent higher than allowed.

Figure 4.2 - ENI's carbon intensity reduction commitments to 2035

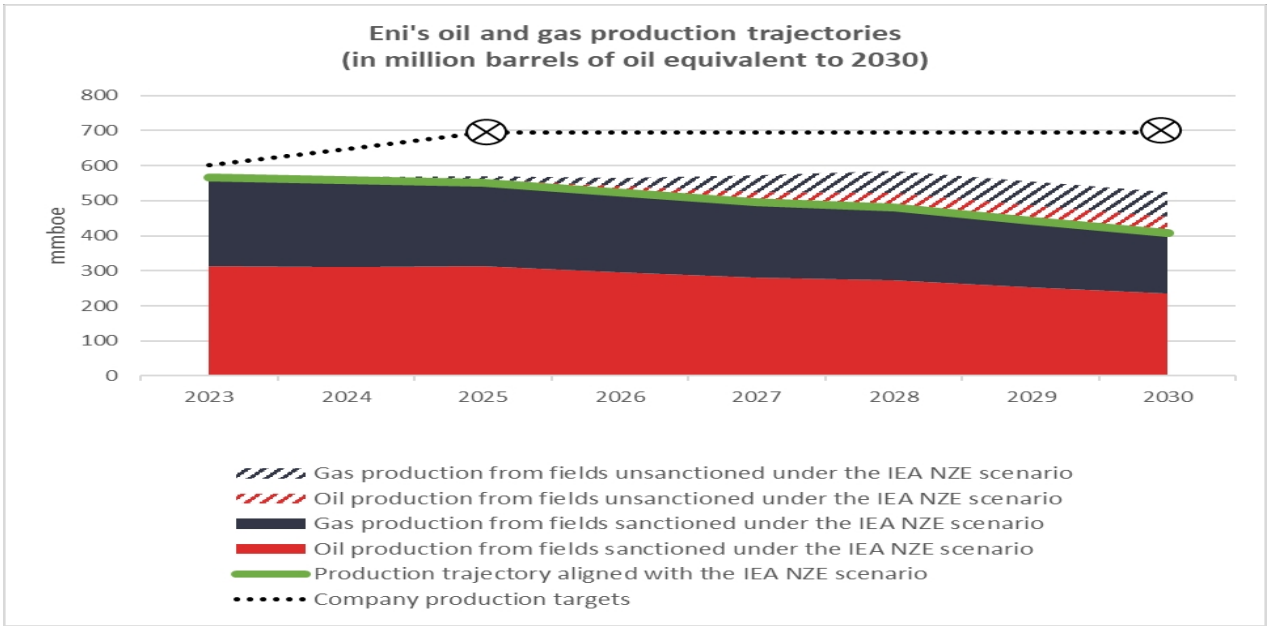


Source: Reclaim Finance, Is Eni on Track for 1.5°?, April 2022

In March 2023, ENI also presented its 'Strategy 2023-2026', which will direct the group's investments in the short term. This investment plan is very indicative of the kind of climate impact the company expects to have in the near future, and it is clear that - at least in terms of planned investments - ENI has no intention of decreasing its high-carbon activities in the coming years, especially in the oil and gas sectors.

Investments in the four-year period will, in fact, be concentrated mainly on hydrocarbons, while very little is envisaged for renewable energies, major absentees in ENI's industrial plan, which shows that it does not want to focus on these technologies for its own decarbonisation. The plan envisages an average investment capital of EUR 9 billion per year, of which about 75% - or EUR 6.5 billion per year - will be earmarked for gas and oil, and only 25% for the '*green + retail'* sector, thus presumably zero or low emissions. This is how Eni intends to finance the increase in oil and gas production in this decade, as shown in the graph below, and contrary to what the International Energy Agency recommends in its *net zero* (NZ) scenario.

Figure 4.3 - Eni's oil and gas production trajectory to 2030 compared to International Energy Agency reduction scenarios



Source: Reclaim Finance, Assessment of Eni's Climate Strategy, April 2023

Therefore, for the next four years ENI intends to focus clearly on hydrocarbon extraction, leaving only a small part of the investment capital to renewables. Note that the '*green'* sector also includes unspecified decarbonisation activities, circular economy - again, not specifying the interventions - and the *retail* sector.

The production targets for renewables are also extremely low: ENI plans to install or acquire renewable plants or existing renewable companies by 2026 just 7GW, a very small share, which does not improve much even in 2030, when the company sets a target of 15 GW of installed capacity.

In summary, as far as combating climate change is concerned, ENI therefore provides some long-term objectives but, in the short and medium term, the company's investments will remain 75% directed towards gas and oil, the hydrocarbons responsible for greenhouse gas emissions, and therefore the company's emissions are likely to increase in the coming years, which will be decisive in countering the worsening climate emergency.

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PART II: THE LAW

20. THE SUBJECTS OF THESE PROCEEDINGS

20.1. ACTIVE LEGITIMISED SUBJECTS

20.1.1. GREENPEACE ONLUS

Greenpeace is a global network of independent national and regional organisations working to change attitudes and behaviour, to protect and preserve the environment and to promote peace. It comprises 28 independent national/regional organisations in over 40 countries in Europe,

Americas, Africa, Asia and the Pacific, as well as a coordinating body that is Greenpeace International. It supports communities in their legal and campaigning efforts to address the impacts of the climate crisis and to achieve climate justice.

With this legal action against ENI, Greenpeace Italia defends the collective (legal) interests set out in its statute. The social object of Greenpeace Italia is defined in Article 3 of the statute, which reads as follows '*the association pursues exclusively civic, solidarity and socially useful aims and operates, without profit-making purposes, carrying out activities of general interest in the field of safeguarding and improving the conditions of the environment [...] the aims of the association are the following - 'to promote the protection of nature and biodiversity and the preservation of the environment in a socially just, equitable and ecologically durable manner for the benefit and advantage of present and future generations [...] In particular, the association may [...] propose and support legal actions, provided that such activities are consistent with the association's purposes and its status as a third sector entity*'.

Greenpeace was born out of the social protests of the 1960s, the battles for civil, women's, indigenous and workers' rights, pacifism and emerging ecological awareness. Greenpeace was initially founded as a response to US plans to conduct a thermonuclear test with a 5-megaton bomb on the island of Amchitka, threatening 131 species of birds and other biodiversity.

Since then, Greenpeace has been at the forefront of stopping nuclear tests and emissions of pollutants that have dangerous implications for the atmosphere and human safety, such as CFCs (chloro-fluorocarbons). Greenpeace was (also in Italy, as we shall see) one of the main protagonists of the path that led to the Montreal Protocol for the abatement of CFC emissions in 1987. Subsequently, in the 1990s, Greenpeace developed 'Greenfreeze', a CFC-free refrigeration system and, in 1997, the United Nation Environmental Plan (UNEP) awarded Greenpeace for its '*outstanding contributions to the protection of the Earth's ozone layer*'.

This experience, coupled with growing alarm in the scientific community, also led Greenpeace to start campaigning on climate change. Greenpeace International's first report on climate change, '*Global Warming - the Greenpeace report' was in* 1990, and since then Greenpeace has been one of the associations that has contributed most to raising awareness of *climate change among the* non-specialist public. For example, by also showing possible solutions. Greenpeace's first decarbonisation energy scenario, '*The fossil fuel free future*' was developed by the Stockholm Environment Institute (SEI) in 1993. Between 1994 and 2004, Greenpeace continued to develop energy scenarios

(global, regional - e.g. European - and over twenty national scenarios) on models that, although relatively simple, were among the most effective (and predictive) in the field. Since 2005, Greenpeace has been producing a new series of energy scenarios: Energy Revolution, developed with the International and the European Renewable Energy Council (EREC) and the German Space Agency's Institute for Technical Thermodynamics (DLR). These scenarios, which were often incorporated into the work of international scientific commissions such as the International Panel on Climate Change (IPCC), made it possible to formulate targets, and thus more precise demands, integrating aspects on fossil fuels as well as on the elimination of nuclear power, sustainable agriculture and the protection of oceans and forests. Between 2005 and 2009, various Greenpeace offices, with different collaborations, developed various versions of some thirty scenarios on all continents, with two 'global' editions of the scenario, translated into over fifteen languages. As we shall see, also in Italian: Greenpeace Italy has also, more recently, developed a further refined energy scenario model.

Of course, Greenpeace has not limited itself to developing models and proposing solutions. Over time, it has directly confronted numerous activities, companies, governments, responsible for dangerous greenhouse gas emissions. With direct actions, Greenpeace for example has repeatedly protested against the use of coal, with actions in various parts of the Planet: from New Zealand to Svaalbard, from Australia to the United Kingdom and many more: including, as we shall see, Italy.

Greenpeace Italy's first activities are, of course, campaigns against nuclear power: in particular on the transport by sea of nuclear waste from the Latina power plant to the Sellafield plant (UK) where plutonium is extracted from the waste to produce nuclear devices. This commitment continued both when protesting (e.g. with Gianna Nannini at the French Embassy in Rome) against the resumption of French nuclear tests in Mururoa (1995) and when attempts were made to restart nuclear power in Italy. Greenpeace Italy was in the front row for the victory of the second anti-nuclear referendum (2011).

Another issue that attracted the attention of Greenpeace Italy from the very beginning was the trafficking of toxic waste, starting with the first documented 'poison ships' (and denounced by Greenpeace) in 1988. Then, when the oil tanker Haven exploded off the coast of Genoa on 11 April 1991, Greenpeace was among the first to broadcast images of the disaster. Still in the 'maritime' sphere, after Greenpeace's global success that led to the UN ban on drift nets (the so-called 'walls of death'), Greenpeace was particularly active against an (illegal but widely tolerated) fleet operating in Italy, responsible - according to estimates released by the then Minister of Agriculture - for the killing of about 6,000 cetaceans a year. Thanks to this pressure, the European Union banned the practice altogether in 1998.

Greenpeace in Italy has also been active against the production of hazardous substances: a case

Exemplary was the global campaign against PVC production, which in our country condensed into the protests against the (former ENI) petrochemical pole in Porto Marghera (with numerous actions, particularly in 1990 and 1999). Again, as already mentioned, Greenpeace was decisive for the approval in Italy, in 1993, of one of the most advanced 'ozone-saving' laws. More recently, Greenpeace has denounced the extremely serious condition of hundreds of thousands of citizens in the Veneto region who have been exposed to contamination by perfluoroalkyl substances (PFAs) for decades. Thanks to numerous actions, investigations and demonstrations organised together with local committees, in 2020 the first part of a trial was finally begun involving the top management of the company considered most responsible for the pollution (Miteni in Trissino), but not yet the politicians and administrators who should have prevented this disaster.

Following the launch of Greenpeace International's climate campaign (in 1990), Greenpeace Italy also started its activities on the subject with public initiatives, scientific reports and campaigns and actions also against the most responsible actors, politicians and companies. In 1992, Greenpeace Italy published the Italian translation of the "*Global Warming"* report with the title "*Clima. The Greenpeace report on global warming*'. Various other activities were followed by a first action (in 1995) with the unveiling of a large banner on the ENI headquarters in EUR. Activities against ENI's projects in the Barents Sea (2004 and 2005), among others, are worth mentioning. After the efforts (mentioned above) to stop the 'nuclear renaissance' in Italy, Greenpeace campaigned against coal-fired power generation development projects, in particular by ENEL. The campaign started in 2006 with dozens of non-violent direct actions against plants (of ENEL and other groups) and other sites (including ENEL's headquarters in Viale Regina Margherita, Rome), culminating in a simultaneous occupation of five power plants (and protests at various coal ships) during the G8 summit in L'Aquila in 2009.

More recently, in 2020, Greenpeace Italy published an even more refined energy scenario, 'Italy 1.5', commissioned from the Institute for Sustainable Future in Sydney (ISF). The scenario used a methodology already applied on a global scale for the decarbonisation of the planet scenario promoted by the Leonardo DiCaprio Foundation and carried out by ISF itself, the German Aerospace Agency (DLR) and the University of Melbourne.

As early as 1993, Greenpeace International published a scenario for sustainable development. Internationally, Greenpeace organisations have conducted many campaigns to combat climate change, some of which are mentioned below.

One of Greenpeace's first campaigns on climate change took place in Austria in 1990, where Greenpeace urged members of the government to commit to a 30% reduction before the

Two thousand[108] .

In 1992, Greenpeace acted on the last day of the Rio Conference by painting the word ACT on chimneys around the world to remind government leaders that they had to actually implement the goals.

In 1995, sociologists wrote that Greenpeace played an important role in formulating the problem and distributing information on climate change among the general public[109] .

Since 1997, various Greenpeace offices have organised expeditions to the North Pole, Antarctica, the Alps and the Himalayas to document the effects of climate change.

Greenpeace has developed various energy evolution scenarios that are often used in the world of science and energy[110] .

In these scenarios, Greenpeace and the German Institute for Space and Space Travel have shown that a completely CO2-free energy supply by 2050 is technically and economically feasible.

Greenpeace in Italy now employs around 60 people and has over 1,000 volunteers and 93,000 supporters, has legal personality in Italy and is an association recognised by the Ministry of the Environment[111] which has invested for the 'climate campaign', from 2016 to 2021, data available today, the total amount of euro 735,706.00[112] .

20.1.2. RECOMMON APS

ReCommon APS is a social promotion association founded in Rome in January 2012. ReCommon fights against the abuse of power and the plundering of territories to create spaces of transformation in society, in Italy, Europe and the world.

As stated in the Articles of Association, *ReCommon APS 'proposes to carry out exclusively or principally activities of general interest aimed* at *stimulating the autonomous and sustainable development of local communities [...] to act for the protection of the environment and the climate, to promote social equity in the ecological transition'* (Art. 2.1.).

For the pursuit of the aforementioned purposes, the Association operates in the following areas of general interest referred to in Art. 5 para. 1 of Legislative Decree 117/2017 (Art. 2.3 of the Articles of Association): *'lett. e) interventions and services aimed at safeguarding and improving the conditions of the environment and the prudent and rational use of natural resources'.*

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108 B. Knappe 1994: *Het geheim van Greenpeace*. Uitgeverij Mingus, 1994.

109 M. Mormont & C. Dasnoy, 1995: *Source strategies and mediatisation of climate change*. Environmental Sociology Unit, Fondation Universitaire Luxembourgeoise, Arlon, Belgium, Media, Culture & Society, Sage, vol. 17, p.49-64

110 Greenpeace 2015: Energy Revolution.

111 Decree of Recognition Ministry of the Environment.

112 Certification by the Financial Director of Greenpeace Onlus, dated 28 October 2021.

ReCommon APS therefore aims to pursue the following purposes (Art. 2.4):

"(a) The achievement of a society based on equity and economic, social, environmental and climate justice, (b) the promotion and protection of the commons, (c) the protection of the environment and climate, including the promotion of moving away from the fossil fuel economy; (d) the restoration of sovereignty over the management of natural resources to local communities, ... (j) the promotion of new environmentally and socially sustainable lifestyles."

As of 30 April 2023, ReCommon has a *staff* of 11 people and 55 volunteers.

Denunciation and pressure campaigns on companies, institutions and the world of finance are ReCommon's main means of action. These campaigns use the tools of research, investigative work, *advocacy*, legal activism and support for local communities impacted by environmentally harmful projects and operations.

One of the seven thematic axes around which ReCommon's campaigns are developed is climate justice.

For ReCommon, '*climate change is now a reality that brings with it environmental, social and economic devastation, especially for the most marginalised communities. The commitments of governments and multinationals have so far failed to contain global warming below a safe threshold long established by the scientific community. On the other hand, they promote false technological solutions that postpone the problem or even circumvent it, such as emission compensation mechanisms, which condemn those who suffer most from the climate crisis to sacrifice their territories to allow polluters to continue their activities undisturbed. It is profoundly unfair that once again those who generated the crisis come out stronger without changing their model of development, which is so harmful and without paying the bill for the wounds inflicted on the planet*' (www.recommon.org).

In order to see its statutory objectives realised, *ReCommon APS* has always cultivated investigations and information campaigns against the fossil industry, in the conviction that environmental disasters, human rights violations and social devastation often occur in societies founded on a model of energy exploitation anchored on fossil fuels such as coal, gas and oil.

ReCommon APS also works to counter the consolidation of an 'extractivist' model of society, based on the systematic removal of wealth from territories, the dispossession of the communities that live in them, and the consequent impoverishment of billions of people worldwide.

His investigations, *advocacy* and public campaigns challenge governments, *corporations* and financial institutions, which are responsible for violations and abuses, with actions conducted jointly with local communities.

By way of example, the following publications are mentioned:

- "*The Poison Delta - The Impacts of the Activities of ENI and Other Multinational Oil Companies in Nigeria*", published on 5 June 2012;
- '*Energy and Alternatives - Let's start again from the territories to transform societies*', published on 11/12/2013;
- *"Energy and Finance*', published on 18/03/2014.

Since its foundation, ReCommon has been active in raising public awareness on energy issues and the energy transition away from fossil fuels. In particular within the framework of the European project no. DCI-NSAED/2012/281-964 of the EuropAid agency, entitled "*Democratising energy for development: mobilising public support for fair energy relations and democratising the process regarding the EU Common External Energy Policy to develop a coherent, just and sustainable European policy*".

ReCommon has produced two short handbooks on the subject - https://www.recommon.org/energia-e- alternatives/, https://www.recommon.org/energia-in-che-senso/ - and conducted a series of training meetings aimed at Italian and European citizens.

In campaigning to stop climate change, ReCommon has focused on discouraging the production and use of fossil fuels, which are mainly responsible for global warming and subsequent climate change.

In particular, ReCommon was the initiator of public campaigns that helped move the Enel group, Europe's second largest electricity utility, to adopt a commitment to decommission all its coal-fired plants worldwide by 2027.

At the same time, ReCommon's campaigning led the UniCredit banking group to adopt a very progressive policy to exit coal financing by 2028.

Similarly, Generali Insurance has adopted a policy to exit coal financing and insurance by 2030. These commitments and policies are in line with what the United Nations has called for to meet the climate change challenge.

In addition, thanks to ReCommon's action, Generali assicurazioni and UniCredit adopted a policy of partial exclusion of financing for oil and gas operations in the non-conventional sector. Finally, ReCommon was among the most active organisations in the campaign that led the European Investment Bank, the EU's public bank, to commit to cease all financing for fossil fuels, including fossil gas, by the end of 2021. At COP26 in Glasgow in November 2021, the Italian government pledged to stop direct international public funding for the fossil energy sector, a source of CO2 emissions into the atmosphere, by the end of 2022.

Recently, ReCommon's role and actions have gained important recognition from

administrative judges who have repeatedly affirmed the association's right to have access to environmental and climate documentation on financial transactions related to gas extraction and liquefaction projects.

Reference is made to the decisions of the Regional Administrative Court of Lazio-Rome, section II, no. 6272 of 17 May 2022 and of the Council of State, section IV, no. 2635 published on 14 March 2023, referring to the internal *due diligence* carried out by the public insurer SACE SpA, controlled by the Ministry of Economy and Finance, with respect to two gas extraction and liquefaction projects in northern Mozambique.

Again with regard to these projects, it is worth mentioning a similar important precedent of the Regional Administrative Court of Lazio - Rome, section II, with ruling No. 2642 published on 14 February 2023, which recognised the association's right to have access to the environmental and climate documentation of the *due diligence* carried out by Cassa Depositi e Prestiti SpA, a subsidiary of the Ministry of Economy and Finance.

For its activities on Climate and ENI, ReCommon invested from 2016 to 2022 the sum of EUR 289,400.00.

20.1.3. PRIVATE

The private actors are all Italian citizens residing in Italy.

We do not wish to anticipate here what will be discussed in more detail in the following section on climate change in Italy, however, two aspects cannot be left out: the first is that climate change will be, but already is, impacting every part of the world and, therefore, every inhabitant; the second is that some areas of Italy will have more easily perceptible impacts than others and, therefore, their inhabitants will suffer more appreciable consequences.

In particular, as pointed out by the Euro-Mediterranean Centre on Climate Change at a conference in April 2022, the outlook for Italy is not very encouraging[113] .

Temperatures are expected to rise, with variations being felt more in Alpine areas and during the summer seasons when, according to the CEMC climate models, the rise in average temperatures, without the corrections that the actors are demanding, could reach up to 5°C.

Hydrogeological instability will worsen significantly as a consequence of melting glaciers and permafrost, indicators that the Alpine and Apennine areas will always be hardest hit. The intense rainfall that will follow periods of prolonged drought, as is already occurring in Piedmont at the turn of 2021 and 2022, will contribute to a further increase in hydraulic risk for small basins and to the risk associated with surface landslide phenomena for areas with higher permeability soils.

Both the coastal and offshore marine environment will see an increase in surface temperatures and

113 https://www.focus.it/ambiente/natura/italia-le-conseguenze-del-clima.

sea level rise, with increased water acidification and coastal erosion. There will be an increase in mortality from ischaemic heart disease, s t r o k e s , nephropathies and metabolic disorders due to heat stress, and an increase in respiratory diseases due to the close relationship between rising urban temperatures and concentrations of ozone and particulate matter.

Impacts will also affect agriculture because there will be a trend towards reduced yields for many crop species, accompanied by a decrease in the quality characteristics of products. Similarly, there will also be impacts on livestock farming, with both direct and indirect impacts on animals and consequent repercussions on the quality and quantity of production.

Having said that, we can divide the private plaintiffs in the present case into four categories.

Those residing in the Po delta and Venice lagoon area, those residing in other coastal areas of Italy, those residing in the Po Valley and finally those residing in mountainous areas, particularly the Dolomites.

The former - Martucci, Bartelle, Crepaldi, Pozzato and Destro - are already suffering and will suffer directly from the effects of warming and rising seas with the consequent erosion of the coastline, including the phenomena of subsidence, the rising of the saline wedge in the Po river, droughts, heat waves, water shortages, hence the inevitable change in the economy, especially agriculture, and the market values of land and property, and the dangers to their safety. As well as, but this applies to all categories, the danger of serious health repercussions.

The latter - Zazzera, Lion and Hellfer - are already witnessing and will also see coastal erosion, less evident than those in the first category due to the different orography of the territories, but which will nonetheless heavily affect the environment and safety, also as a result of the intensification of extreme climatic phenomena (just think of the state of already serious hydrogeological instability in Liguria and Campania, where rivers and streams will see their watercourses shorten even further, with a consequent greater risk of flooding and, consequently, of damage to property and persons, up to and including endangering people's lives as a result of disaster events).

The third group, Caravaglios and D'Antonio, while not suffering direct consequences from rising seas, will suffer, and in part is already suffering, all the other consequences from which the lowland areas and the Po Valley in particular are afflicted: heat waves, prolonged drought periods, water shortages, drinking water supply problems, reduced cultivation, impoverished soils and worsening air quality. All of which have an impact on the environment, climate and health.

All the problems highlighted for the first three groups also apply to the fourth, that of the

residents in the mountain areas, Ruffato and Deppi, who are already suffering and will also suffer the direct consequences of glacier erosion, increased landslides, destruction of forests, rising temperatures, storms, hurricanes and other extreme climatic phenomena, and dangers to water basins. The Dolomite area is particularly unstable, there have been debris discharges in the Sorapiss area, landslides at the base of the Civetta in the province of Belluno, from Sass Maor in the province of Trento a piece of wall has come off, generating an imposing accumulation, the same fate has befallen the west face of Cima Canali and the Torri del Cimerlo. Not to add the impacts of the devastating hurricane VAIA that, from 26 to 29 October 2018 raged over the Dolomites (as well as over vast mountainous areas in France, Croatia, Austria and Switzerland) causing extremely serious damage to natural resources, property and individuals affected, with a total of 37 deaths, the felling of around 42 million trees and estimated damage of over 5 billion euros.

Therefore, ENI's conduct for which it must be held liable pursuant to Articles 2043, 2050 and 2051 of the Civil Code, and more generally for the violation of human rights, gives rise to the right for private plaintiffs and associations to bring an action for compensation for material, economic and moral damage as well as damage to health and life, and to obtain an injunction imposing compliance with precise objectives in the defendant's strategic and industrial choices.

20.2. THE LEGITIMISED PASSIVE SUBJECTS

20.2.1. ENI

This legal action is brought first against Eni SpA, which is an energy company present in 62 countries with approximately 32,000 employees.

The ENI group is active in the exploration, development and extraction of oil and natural gas in 37 countries, including Italy[114] .

ENI markets gas, electricity and oil products in Europe and non-European markets also through trading activities.

Until a few years ago, ENI was the leading Italian company by capitalisation.

In 2021, Eni was ranked 461st in the Forbes Global 2000 ranking of widely held companies in terms of revenue, profit, assets and market capitalisation, while the Fortune 500 listed Eni at position 216 for revenue. In the same year, Eni was listed in the Thomson Reuters Top 100 Global Energy Leaders[7] and in the Thomson Reuters Top 25 for the Oil & Gas sector.

With the crisis in the oil sector exacerbated by the Covid-19 pandemic in recent years, ENI today ranks second in terms of market capitalisation after Enel, with a capital of EUR 44,917 million

[114] https://www.eni.com/assets/documents/ita/bilanci-rapporti/2022/Relazione-finanziaria-annuale-2022.pdf

(value as of end of March 2023)[115] . ENI is a company listed on both the Milan Stock Exchange and the Dow Jones in New York.

If we compare ENI with the other largest multinational oil companies internationally, in terms of annual oil equivalent production at the end of 2021, ENI ranks 19th with more than 600 million barrels of oil equivalent (BOE: barrel of oil equivalent). To give meaning to a scale of comparison, the first in the ranking is Saudi Aramco with a production of 4,346 million BOE). If, however, one excludes from the ranking the national oil companies (i.e. almost completely state-controlled) ENI is the sixth largest international oil company worldwide (again as a term of comparison the first is Exxon with a production of 1,581 million BOE)[116] . This means that ENI is among the most important players in the global oil market. In 2022, ENI extracted an average of 1.61 million barrels equivalent per day[117] and its business plans inform us that it intends to increase its production to 1.9 million by 2026. In addition, ENI made 750 million barrels of oil equivalent of new discoveries in 2022 alone[118] .

In particular, ENI is the leading oil producer in Africa from where it derives about half of its total oil and gas production.

In this regard, ENI has historically played a central role in some African countries in initiating and enhancing oil and gas extraction since the 1960s. It should be emphasised that in the last decade, ENI has played a central role internationally in the discovery of new mega fields, whose shares it then sold in a new business model, realising significant capital gains. In particular, compared to its *competitors,* in recent years ENI has had one of the highest success rates in oil exploration, even of the largest majors.

As at 31 December 2022, Eni SpA had equity investments in 401 subsidiaries, of which 275 abroad, in 134 jointly controlled and associated companies, of which 98 abroad, and another 24 significant equity investments, of which 21 abroad[119] .

With reference to the year 2020, in the sectors of *exploration & production*, *global gas & LNG portfolio*, *refining & marketing* and chemicals, *renewables*, *corporate* and financial companies, the company ENI International BV under Dutch law, a wholly owned subsidiary of ENI SpA, is

115 https://mercati.ilsole24ore.com/azioni/classifiche/capitalizzazione-piazza-affari

116 Urgewald elaboration, Global Oil and Gas Exit List - https://gogel.org/

117 https://www.eni.com/assets/documents/press-release/migrated/2023-en/02/eni-fourth-quarter-2022-ceo-claudio-descalzi-comments-results.pdf

118 https://www.eni.com/assets/documents/ita/bilanci-rapporti/2022/Relazione-finanziaria-annuale-2022.pdf

119 https://www.eni.com/assets/documents/ita/bilanci-rapporti/2022/Relazione-finanziaria-annuale-2022.pdf
Annexes to the Notes to the Consolidated Financial Statements of Eni SpA as at December 31, 2022, pp. 472 et seq.

itself being the parent company of as many as 81 companies abroad on behalf of ENI SpA[120] . It should be noted that the financial statements of ENI International BV are consolidated in the same way as those of 43 other subsidiaries and 99 jointly controlled and associated companies in the financial statements of the parent company ENI SpA in accordance with current Italian tax law[121] .

The financial statements of ENI International BV for the fiscal year 2019 - thus outside the economic impact of the Covid-19 pandemic that started in February 2020 with heavy repercussions on the oil sector - show that the company had dividends of USD 4,793,177,000 from its subsidiaries, and paid out a dividend of USD 6,780,552,000 against a capital injection of USD 1,750,000,000 from the parent company ENI SpA[122] . This generated an anti-tax profit of EUR 5,746,000,000, and thus it can be said that as net transfers Eni International BV contributed more than 75% of ENI SpA's anti-tax profit, and thus played a decisive role in the generation of the latter's profit.

20.2.2. ENI AND THE ITALIAN STATE

The action is brought not only against ENI SpA, but also against the Ministry of Economy and Finance and Cassa Depositi e Prestiti spa.

The 'Ente Nazionale Idrocarburi' was created by the Italian state as a public body in 1953 under the leadership of Enrico Mattei, a partisan and Christian Democrat MP, who was its chairman until his death in 1962.

ENI, as mentioned, was from its inception until 1992 a public economic entity, financed by the state through an 'endowment fund' whose disbursement and increase was determined by parliament.

As a public economic entity, ENI was subject to the supervision of the Ministry of State Holdings. and was governed by a board of directors within which was an 'Executive Council' of three members plus the president and vice-president; the Executive Council was the body with the greatest decision-making powers, and its members were chosen on the recommendation of the parties of the governing majority.

ENI was then converted into a public limited company in 1992.

After privatisation, from 1995 to 2001, the Italian State sold a substantial part of the share capital in five stages, while retaining a share of over 30% (adding the shares held by the then Ministry of the Treasury and the Cassa Depositi e Prestiti), thus maintaining effective control of the company. According to Law No. 474 of 30 July 1994, the

120 https://www.eni.com/assets/documents/ita/bilanci-rapporti/2020/Relazione-finanziaria-annuale-2020.pdf

121 https://www.eni.com/assets/documents/ita/bilanci-rapporti/2020/Area-di-Consolidamento-Eni-2020.pdf

122 Eni International BV balance sheet, available at the Dutch commercial register: https://www.kvk.nl/orderstraat/product-kiezen/?kvknummer=332649340000

The State, through the Ministry of Economy and Finance (MEF), in agreement with the Ministry of Economic Development, is the holder of a number of special powers to be exercised in accordance with pre-established criteria.

As of 19 September 2022, the controlling shareholders Ministry of Finance and Cassa Depositi e Prestiti hold 4.411% and 26.213% of the shares, respectively. The control of the Italian State is thus guaranteed. In fact, the State's participation is such that it influences choices in a sector that, as mentioned, is strategic both in the short and long term.

As a strategic *asset of* the state, ENI has always represented its best and worst aspects. As emerges in many official documents and in records of judicial enquiries that obviously cannot be retraced here, ENI has served, among other things, as a 'cash box' for financing parties and managing foreign funds, as well as an 'employment office' for politics[123] .

Eni feeds the Treasury's coffers with rich dividends (more than EUR 5.7 billion received in the period 2016-2022 alone), and is Italy's largest multinational.

On the other hand, its CEO is worth as much or more than a minister because of the power he derives from managing investments, cash flows, purchases and dividends worth several tens of billions of euros. The important influence of the company and its CEO on the country's international strategies, particularly in the oil and gas sector, is also well known.

20.2.3. CASSA DEPOSITI E PRESTITI

It is worth making a few remarks on the Cassa Depositi e Prestiti (CDP), since its legal system, despite having undergone many changes, has not distorted its original nature as a public administration, which it still retains and which is recognised by both administrative jurisprudence[124] and the Supreme Court[125] , as well as by the same provisions of the Prime Minister's Office.

Founded in pre-unification Italy, having been established in 1850 with its headquarters in Turin, CDP is historically linked to the need to use the substantial financial resources from the collection of postal savings to finance public investments.

That is why, for about a century, it was a Directorate General of the Ministry of the Treasury, although it had separate accounts and budget from those of the State.

By Law No. 197 of 13 May 1983, it acquired full autonomy and in 1993 was recognised

123 Andrea Greco, Giuseppe Oddo, 'Lo Stato Parallelo', ed. Chiarelettere.

124 See, e.g., TAR Lazio-Roma, Section II Sentence dated 8 February 2023 published on 14.2.23 Associazione Recommon v. Cassa depositi e prestiti spa and others in which Cassa depositi e prestiti (defended on this occasion by the Avvocatura generale dello Stato) was ordered to produce documents requested by the applicant as addressee, as a "public authority", of the obligations regarding access to environmental information pursuant to Legislative Decree no. 195/2005.

125 Cf. Civil cassation, Sec. 1, Sentence no. 7401 of 13/07/1999, which states that it belongs to the State Administration, which has not ceased to exist as a result of the subsequent attribution of legal personality.

the Institute the legal personality[126] .

Subsequently, with Legislative Decree No 284 of 30 July 1999 (implementing Article 11 of Law No 59 of 15 March 1997), its organisational and functional structure was reorganised, reaffirming, in any event, its legal nature as a State administration, endowed with its own legal personality and with organisational, patrimonial and budgetary autonomy, which carries out activities of general economic interest: for this reason, the rules contained in the Consolidated Law on Banking and Credit were not applied to it.

The 2002 Finance Act[127] provided that the Cassa Depositi e Prestiti could intervene in the financing of the extraordinary plan for infrastructure and large-scale regional and local works identified by the CIPE.

Subsequently, with Decree-Law No. 63 of 15 April 2002, converted, with amendments, into Law No. 112 of 15 June 2002, the CDP was authorised to set up a joint-stock financial company, 'Infrastrutture S.p.A.', with the task of financing, as a subsidiary to banks and other intermediaries, infrastructure and large public works, provided that they are susceptible of economic use, and development investments. The Finance Law for 2006[128] then provided for the merger by incorporation, effective as of 1 January 2006, of Società Infrastrutture S.p.A. into Cassa Depositi e Prestiti (in the meantime transformed into a joint-stock company), which consequently assumed all the assets, rights and legal relations of Infrastrutture S.p.A., including the separate assets.

Subsequently, Article 5 of Decree-Law No. 269/2003, converted, with amendments, into Law No. 326/2003, provided for the transformation of the Cassa Depositi e Prestiti into a joint-stock company, named 'Cassa Depositi e Prestiti Società per Azioni' (CDP S.p.A.).

In implementation of this legislation, the Decree of the Minister of Economy and Finance of 5 December 2003 was issued, which, inter alia, set the share capital of CDP S.p.A. at EUR 3.5 billion. The share capital was fully paid into a current account with the Central State Treasury of which CDP S.p.A. is the holder (current account called 'CDP S.p.A. - separate management').

In addition, on 27 April 2005, the Articles of Association of CDP S.p.A. were adopted by a Prime Ministerial Decree not published in the Official Journal, and the members of the corporate bodies were appointed.

The joint-stock company takes the form of a non-banking financial intermediary and is subject to supervision by the Bank of Italy in the forms provided for registered financial intermediaries

126 See Article 22 of Decree-Law No. 8 of 18 January 1993, converted by Law No. 68 of 19 March 1993.

127 Law No. 448/2001, Art. 47, paragraphs 1-5.

128 Law No 266/2005, Art. 1, paras 79-83

in the special list referred to in Article 107 of the Consolidated Banking Act.

It is also provided that other public or private entities, among which banking foundations are expressly mentioned, may hold capital shares, provided that overall these shares remain minority (Decree-Law No. 269/2003: Art. 5(2)).

Currently, 70 per cent of the company's share capital is owned by the Ministry of Economy and Finance and 30 per cent, corresponding to a value of EUR 1.50 billion, by a group of 65 banking foundations.

The Minister for Economic Affairs and Finance continues to exert a decisive influence on the Cassa's activities, as a result both of the large majority he holds in the institution's capital and of the specific powers conferred on him with regard to the separate management, to which the holdings transferred by the State are entrusted.

Indeed, from a purely civil law perspective, the fact that it is a new public limited company is irrelevant.

Beyond the formal aspect, in fact, cases are all too well known in which the individual joint-stock company with a predominantly (or exclusively) public shareholding has been considered, by case law, as an indirect organ of a public administration to which it was instrumentally linked.

Starting with the judgment of the United Cassation Court of Cassation dated 29/12/1990, no. 12221 (Meddedil case) with which it was formally ruled that the joint-stock company, concessionaire of the P.A. for the construction of works, as holder of public functions, transferred by the same PA with the concession provision, not only performs substantially and objectively administrative acts, but operates precisely as an indirect organ of the same Public Administration.

The Supreme Court itself, moreover, has still had occasion to distinguish, more recently and also under a different profile from that affirmed by the United Sections, when considering the phenomenon of the privatisation of public entities, between a 'substantial privatisation' and a privatisation, instead, that is merely 'formal'.

The latter would be the case where the new entity operates, albeit in the form of a public limited company, under a 'special right' resulting, on the one hand, from the fact that the State participates in the share capital and, on the other, that the company is called upon to pursue public interest objectives. In such cases, and on the basis of such legal considerations, the Supreme Court has equated, even in the presence of a new corporate form, the legal regime relating to the defence in the trial of the joint-stock company with that previously granted to the same entity when it played the role of an economic public body.[129]

129 In this sense, see Sec. 3, Judgment No. 5441 of 14/03/2006 De Bernardo v Ente Poste Italiane Spa.

However, the reference to the indirect organ thesis[130] seems the most appropriate to frame the present case, given similar specific precedents.[131]

Particularly in the light of the even more explicit statements made by the Council of State which, in its judgement no. 498 of 20/5/1995, sez. VI decision, regarding the SpA Ferrovie dello Stato, a company holding the concession ex lege of the tasks envisaged by law no. 210 of 17/5/1985, establishing the Ente Ferrovie dello Stato, and whose shares are wholly owned by the State, affirmed the principle according to which the SpA Ferrovie dello Stato is to be qualified as an indirect body of the Public Administration, a body that is a public body and is not a public body. 210 of 17/5/1985, which set up the Ente Ferrovie dello Stato, and whose shares are wholly owned by the State, affirmed the principle according to which Spa Ferrovie dello Stato is to be qualified as an indirect organ of the Public Administration (then the Ministry of Transport), as it is in the same position as the Public Administration and issues subjectively and objectively administrative acts.

The Constitutional Court has played a significant role in the reconstruction of this special category of administrative bodies. 259 with respect to joint-stock companies established following the transformation of IRI, ENI, INA and ENEL provided for by Article 15 of Law Decree No. 333 of 11/7/1992. converted by Law No. 359 of 8/8/1992, a control that should have continued to be exercised, in the forms and within the limits previously applied, as long as the State continues to hold an exclusive or majority interest in the share capital of said companies.

The same Court has clarified that ".in the presence of a public service organised and managed in the form of an undertaking and based on economic criteria, the relationship with users assumes a contractual nature and loses its authoritative connotations, with the consequent disappearance, in the regulation of liability for damage caused to users, of the importance once attributed to the subjective aspects of the body - administration, Entity or company - that takes care of them, while the objective profiles of each service become decisive, capable of justifying a special discipline limiting that liability, without, however, ever being able to exclude it entirely"[132] .

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130 The body-organ thesis was, for example, supported by the Avvocatura Generale dello Stato with regard to the legal nature of the Port Authorities after the reform carried out by law 84/94: cf. 26750 of 4 March 1995, according to which "...the functions attributed by law to the authority, all of which are of an exquisitely public nature, belong to the Ministry of Transport and Merchant Marine, to which, o n the other hand, they remain attributed in ports where such authorities are not established; the regulation of the management of assets and the control over the same, reserved to the adm.Transport and Shipping and the Treasury; the control of the legitimacy of the management of the port authority, reserved for the Court of Auditors, are all elements of assessment that reasonably lead to the conclusion that port authorities are "bodies" of the State, assimilable to State administrations and therefore can avail themselves of the advocacy of the Bar according to the general rules of the Consolidated Law on Lawyers.
n. 1611/1933." The text of the note can be read on the official website of the State Attorney's Office http://www.avvocaturastato.it/node/188.

131 The cases of ANAS, transformed into a joint-stock company with public shareholding by article 7, paragraph 11 of Law 8-8-2002, no. 178 (converting into law, with amendments, Law Decree 8-7-2002, no. 138) and CONI CONI, also transformed into a joint-stock company with public shareholding by article 8 of Law 8-8-2002, no. 178, seem emblematic. Both of the above companies were granted the patronage of the Avvocatura dello Stato.

132 Constitutional Court. 21 January 1999, no. 4. Again in the sense of excluding a favourable regime for the civil liability of companies exercising public functions, see Corte cost. 20 June 2002, no. 254 by which the constitutional illegitimacy of Article 6 of Presidential Decree of 29 March 1973 was declared,
No 156, on postal and telecommunications matters, in so far as it provided that the postal administration and the concessionaires of the service telegraphic service do not incur any liability for the non-delivery of telegrams.

A further refinement of the theory is represented by that jurisprudential direction of the Council of State that has been able to enhance the attribution to the public joint-stock company of the status of 'public body of community importance'[133] .

Finally, the reference to Community legislation also allows one to take into account the relevant guidelines expressed by the Court of Justice, a further important interpretative input that can be used for the correct legal classification of a joint-stock company as a Cassa Depositi e Prestiti[134] .

Finally, it should be borne in mind that all of Cassa Depositi e Prestiti's activities are characterised by a close relationship of instrumentality with the activities of the State and are also carried out using, inter alia, the staff of the Ministry of the Economy and Finance itself (which has absorbed the powers of the Ministry of the Treasury).

In the light of these general principles, therefore, it must be affirmed that the various reform laws have always confirmed that the Cassa Depositi e Prestiti belongs to the public administration, most recently through the organic inclusion of the joint-stock company within the State Finance Administration, as an instrumental body (or, more appropriately, as an indirect body in the terms described above) of the State Administration itself, chaired by the Minister and subject to the supervision of the Ministry of the Economy and Finance.

It also follows that it has full passive legitimacy with respect to the action for damages caused by the emissions of ENI (of which the Cassa Depositi e Prestiti owns 25.96 % of the share capital) in terms of climate change, in light of the same principles of law that will be recalled *below with respect to* the position of the Ministry of the Economy and Finance.

21. THE LEGAL STANDING OF THE PLAINTIFFS

21.1. LEGAL STANDING OF THE ASSOCIATIONS GREENPEACE ONLUS AND RECOMMON APS.

Without needing to go into excessive detail on this point (and referring to what has been deduced in Part I of this deed), it is clearly evident that the climatic alterations of which ENI is one of the main perpetrators, and undoubtedly the main Italian culprit, are the cause of extremely serious environmental/climatic damage, as such legally relevant, also in terms of unnamed "disaster" (pursuant to Article 434 of the Criminal Code) and of environmental disaster (Article 452-quater of the Criminal Code) presenting all the characteristics both in terms of size and of the relative offensive projection: see the disaster events mentioned in § 20.1.3.

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133 In this sense, see the arguments developed by Council of State, Sec. 06 SENT. no. 01267 of 16/09/1998.

134 See, for example, the Teckal judgment of 18 November 1999 in Case C-107/98 in which the Court was able to affirm the inapplicability of the public procurement rules when there is no real contractual relationship between the contracting authority and the company entrusted with the service, as is the case with interorganic delegation or a service entrusted exceptionally in-house.

The plaintiffs in the present action are, as mentioned above, the associations Greenpeace and ReCommon, and, in addition, a number of private persons, i.e. natural persons, all of whom are in any event affected, the former in their statutory purposes, the latter in their property and rights, by the activity carried out by the defendants.

In fact, the plaintiffs are legitimated to act for breach of Articles 2043, 2050 and 2051 of the Civil Code due to the unlawful conduct, because it violates human rights, committed by the defendants ENI, CDP and MEF. On the other hand, both private individuals and associations are also entitled to act for the damages suffered by them due to the environmental/climatic damage caused by ENI's conduct, in the forms and measures that will be specified.

It is, in fact, entirely common ground that the violation of human rights and, therefore, protection under Articles 2043, 2050 and 2051 of the Civil Code, arises from the significant environmental damage caused by ENI under Article 300 of Legislative Decree No 152/2006.

Moreover, as is well known, pursuant to Article 311 of Legislative Decree no. 152/2006, the only person with the legal standing to act for the purposes of compensation for environmental damage is the Minister for the Environment and Protection of the Territory (now the Minister for the Environment and Energy Safety-MASE), who '*acts, also by bringing civil action in criminal proceedings, for compensation for environmental damage in a specific form and, if necessary, for equivalent assets, or proceeds pursuant to the provisions of Part Six of this decree*'.

In the case in point, therefore, there has been an evident and macroscopic environmental damage, i.e. a significant and measurable deterioration of natural resources, and it is only the Minister for the Environment who has the right to act for the purpose of obtaining compensation for such specific damage, either in a specific form or by means of the administrative procedures pursuant to Part Six of Legislative Decree No. 152/2006.

However, in our case, the plaintiffs are clearly not claiming compensation for environmental damage in the proper sense of the term (not within their jurisdiction), but rather the plaintiffs are subjects damaged by the fact producing the environmental damage - i.e. by the harmful conduct of the defendants. Therefore, as such, associations and private individuals have a direct right of action against the persons responsible for the fact (also causing environmental damage), in order to obtain compensation for the damage, different and distinct from the environmental damage, caused to the same plaintiffs by the same facts of the defendants, which are also productive precisely of the environmental damage proper.

Indeed, pursuant to Article 313, paragraph 7 of Legislative Decree no. 152/2006, it remains in any case without prejudice to "*the right of the persons harmed by the event producing environmental damage, in their health or in their property, to take legal action against the responsible party to protect the rights and interests harmed*".

In this regard, the Constitutional Court in its judgment 01/06/2016, no. 126 recognised the constitutional legitimacy of the legislator's choice to reserve to the State, and in particular to the

Minister of the Environment (now MASE), the power to act for compensation for environmental damage,

pointing out, however, that there is always the power of action of other subjects (public and private) for the specific damage suffered by them as a consequence of the environmental damage (in the strict sense).

Accordingly, there is full entitlement to bring proceedings against the applicants for compensation for the damage suffered by them as a result of ENI's activities. Those activities are manifestly multi-offensive or multi-injurious, in that, on the one hand, they have caused and continue to cause very significant environmental damage, within the meaning of Article 300 of the abovementioned directive, but at the same time they have caused and continue to cause further and separate damage to the property and rights owned by the applicants in the present proceedings.

The plaintiffs Greenpeace and ReCommon therefore have full right and legitimacy, under the statutes of their respective associations, to bring an action to counteract the harm and damage to the environment and climate caused by the defendants, as well as to obtain compensation for the expenses incurred over the years in investigating, denouncing and counteracting ENI's unlawful conduct.

On the other hand, there would be no doubt if the associations were exercising their civil action in criminal proceedings, therefore, neither can there be any doubt as to their full right to exercise that action in civil proceedings. Even more so now that the criminal preliminary ruling has disappeared.

In support of the foregoing, reference is made to consolidated and authoritative jurisprudence of legitimacy. According to the Criminal Court of Cassation, section III, 23/05/2012, no. 19437, "the damage that can be *compensated under civil law may also be in the form of the prejudice caused to the activity concretely carried out by the environmental association for the valorisation and protection of the territory, which is affected by the goods subject of the damaging event. In such hypotheses, there could be harm that is also susceptible of economic assessment, in consideration of any financial outlays incurred by the body for the performance of the protection activity*". In identical terms, Criminal Cassation section III 26/09/2011 no. 34761. Such damage would exist, again according to the Supreme Court, and in the present case it undoubtedly does exist, if the environmental association, rooted - as here - in a very specific historical and territorial context, i.e. the Italy of the last decades, has sustained expenses - as in the present case - for the activity of environmental protection, which became necessary in reaction to and in connection with the occurrence of facts causing environmental damage *ex adverso.*

Again, according to the Criminal Court of Cassation, section III, 21/10/2010 no. 41015, only the State, and on its behalf the Minister of the Environment, pursuant to article 311 of the Environment Code, as mentioned above, has the right to form a civil action in proceedings for environmental offences, in order to obtain compensation for environmental damage of a public nature, pursuant to article 300 of the Environment Code, considered in itself as a lesion of the public and general interest in the environment. However, all other subjects, whether individual or associated, according to this pronouncement of the Supreme Court, may act - as precisely through this act - "*pursuant to*

Article 2043 of the Civil C o d e to obtain compensation for

any pecuniary damage, further and concrete, suffered by them, distinct from environmental damage", and yet caused by the same facts producing environmental damage in the proper sense. In similar terms, according to the Criminal Court of Cassation section III, 9 July 2014 no. 24677, the legitimacy of bringing a civil action in trials for environmental offences belongs exclusively to the State for the compensation of environmental damage of a public nature, understood as a lesion of the public interest in the integrity and healthiness of the environment, while all other subjects, individuals or associations, may bring civil action in criminal proceedings pursuant to art. 2043 Civil Code. - or, as here, civil action in the autonomous and designated civil forum - in order to obtain compensation for pecuniary and non-pecuniary damage, further and concrete, consequent - as in the present case - to the lesion of their other particular rights, different from the public interest in the protection of the environment, even if deriving from the same damaging conduct and producing the environmental damage.

According to the Criminal Court of Cassation section III, 25 May 2011 no. 25039, environmental associations are legitimately entitled to become civil parties in criminal proceedings - or rather, as in the present case, to act directly in civil proceedings for the purpose of compensation for the relevant damages suffered - for environmental offences *iure proprio*, since the provision that reserves to the State - pursuant to article 311 of the Environmental Code - the possibility of becoming a civil party in matters of environmental damage is not an obstacle. "*This rule in fact does not prevent the applicability of the general rules on compensation for damage*".

Finally, as already agreed and unequivocally stated by the authoritative jurisprudence of the Supreme Court of Cassation, in the opinion of the Criminal Cassation section III, 17 January 2012 no. 19439, "*the damage, necessarily different from the damage to the environment as a public good, which can be compensated in favour of environmental associations that are civil parties in proceedings for environmental offences, can be of a financial nature as well as moral, deriving from the prejudice caused to the activity concretely carried out by such associations for the valorisation and protection of the territory on which the goods subject to the damaging event affect*".

Therefore, the environmental associations which are the plaintiffs today have full and indisputable standing to bring civil proceedings under Article 2043 et seq. of the Civil Code, in order to obtain compensation for the pecuniary and non-pecuniary damage suffered by those associations as a result of the many years of activities carried out by ENI, which also primarily caused environmental damage under Article 300 of the Environmental Code.

With regard to the legitimacy to act of non-recognised environmental associations, before the Ordinary Civil Judge the issue has already been positively resolved by the Supreme Court. Indeed, the jurisprudence of legitimacy has progressively opened up towards extensive solutions, until reaching the definitive clarification by the United Criminal Sections of the Court of Cassation with the well-known judgment of 24.04.2014, no. 38343 (in Rv 261110, *ThyssenKrupp*) where it was

specified (see the

§ 56) that '*corporations and associations are entitled to bring actions for damages, even in criminal proceedings*

by means of the constitution of a civil plaintiff, where the offence has damaged an interest of their own, provided that this interest coincides with a real right or, in any case, with a subjective right of the organisation, and therefore even if the offended interest is the interest pursued with reference to a historically circumstantiated situation, taken to heart by the organisation and assumed in the articles of association as the very reason for its existence and action, as such the subject of an absolute and essential right of the organisation. This is due both to the immedesimation between the entity itself and the interest pursued, and to the incorporation between the members and the association itself, so that the latter, due to the affectio societatis towards the chosen interest and the prejudice caused to it, suffers an offence and therefore also non-pecuniary damage from the offence". *(Sec. 6, no. 59 of 01/06/1989, Monticelli, Rv. 182947). The principle has been repeatedly reiterated (e.g. Cass. pen., sect. I, no. 44528 of 25/09/2018, dep. 31/10/2019; Cass. pen., sect. 4, no. 38991 of 10/06/2010, Quaglierini, Rv. 248848; Sect. 3, no. 38290 of 03/10/2007, Abdoulaye, Rv. 238103). It was briefly stated that there are organisations that have made a certain interest the main object of their existence, so that it has become an internal and constitutive element of the association and as such has taken on the consistency of a subjective right. The development of jurisprudence has held the protectability of collective interests without the existence of a protective norm being necessary, the direct assumption by the entity of the interest in question being sufficient, which has made it the object of its own activity, becoming the specific purpose of the association.* All of this with the following functional clarification to "*identify a regulating principle that, without prejudice to the basic lines of the development of jurisprudence, avoids inappropriate outcomes, such as the indiscriminate extension of legitimacy every time any body claims to be the guardian of the interest harmed by the crime. In this regard, the evocation and valorisation, recurrent in case law, of the need to refer to a specific historical situation is useful; and the role concretely played by the body that takes part in the proceedings is also relevant"* (Cass. Sez. Un. 24.04.2014 cit.).

On the level of active and passive legitimacy in environmental actions, it is then necessary to recall the provisions of the "Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters", signed in Aarhus in 1998 and ratified in Italy by law no. 108 of 16 March 2001, which provides, inter alia:

- in Article 2(*5)* that 'the public concerned' (with access to justice in environmental matters) is to be understood as *'the public affected or likely to be affected by, or having an interest to assert in, environmental decision-making processes; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have such an interest*;
- in Article 9(3) that *"... each Party shall ensure that members of the public who*

meet the criteria, if any, laid down in national law, may initiate administrative or judicial proceedings to challenge the acts or omissions of private persons or public authorities performed in breach of national environmental law'.

- and in paragraph 4 of Article 9*:* "*4. Without prejudice to paragraph 1, the procedures referred to in paragraphs 1, 2 and 3 shall provide adequate and effective remedies, including injunctive relief where appropriate, and shall be objective, fair, expeditious and not prohibitively expensive. Decisions under this Article shall be given or recorded in writing. Decisions of courts and, where possible, of other bodies shall be accessible to the public.".*

The Aarhus Convention Compliance Committee has clarified that while national governments enjoy broad discretion in defining such criteria for standing, the criteria cannot be so stringent as to deny environmental associations access to the courts in practice (Communication ACCC/C/2005/11 (Belgium) para. 35-36). In the same decision, the ACCC clarified that standing must be the rule and limitations are the exception.

21.2. THE LEGAL STANDING OF NATURAL PERSONS

Similarly, the natural persons, who are also the plaintiffs today, all residents and owners of property in areas of the country particularly exposed to the effects of climate change, have full legitimacy to act, as pacifically established by the aforementioned jurisprudence of legitimacy, for the purposes of compensation, pursuant to Articles 2043, 2050 and 2051 of the Civil Code, of the pecuniary and non-pecuniary damages etiologically traceable, without interruption, to the facts, also productive of environmental/climatic damage, unlawfully put in place by the defendants.

If in fact, again in terms of a counterfactual judgment, ENI had not carried out the acts and conduct detrimental to the environment complained of herein, the private plaintiffs would certainly not have suffered the patrimonial damage manifested by them in this action and alleged both in the past and in the future.

In fact, if ENI had not committed the acts alleged in the summons, the plaintiffs would not have seen the patrimonial and market value of the relevant real estate assets concretely diminished to a considerable extent, as has unfortunately occurred, by virtue of the conduct of the present defendants.

It should be added that the private plaintiffs have suffered and are suffering damage from '*metus*', attributable to the psychological suffering resulting from the fear of exposing their material possessions, as well as their safety, life and health, and that of their loved ones (in particular, spouses and children) to the extreme and disastrous phenomena induced by climate change, and they are also entitled to obtain compensation for the damage resulting from the alteration of their daily life habits due to the

same climate changes (on the legitimacy to act of private parties in order to obtain the recognition of damages from *metus* in cases of disaster events pursuant to art. 434 of the Italian Criminal Code, see Civil Cass., SS.UU., sentence 21/02/2002 no. 2515 on the Seveso disaster; Civil Cass, sect. III, no. 11059 of 13/05/2009 always referring to the well-known Icmesa affair; Court of Assizes of Alessandria 06/06/2016 no. 1 on the Spinetta Marengo case; Cass. pen., sect. IV, of 10/05/2018, no. 25547; Ord. Court of Savona, sect. pen. of 19/03/2019 concerning the environmental and health disaster of the thermoelectric power plant Tirreno Power).

Hence, in conclusion, the manifest legitimacy to bring proceedings, as well as the evident interest in bringing proceedings - direct, concrete and current - pursuant to Article 100 of the Code of Civil Procedure. All the plaintiffs, environmental associations and private parties, have a direct, concrete and present interest in bringing proceedings, pursuant to Article 100 of the Code of Civil Procedure, in order to obtain compensation for the pecuniary and non-pecuniary damage suffered by them as a result of the wilful and negligent conduct described in the lawsuit, which would also merit direct action by the Minister of the Environment pursuant to Article 311 of the Environmental Code, for the purpose of obtaining compensation for the separate environmental damage pursuant to Article 300 of the Environmental Code. As already mentioned, pursuant to Article 313, paragraph 7, of the same Legislative Decree. As already mentioned, pursuant to article 313, paragraph 7 of the same legislative decree 152/2006, in any case, the right of parties damaged by the event producing environmental damage, in their health or property, to take legal action against the responsible party to protect the rights and interests harmed remains intact, with the clarification that the above-mentioned "special" regulations on environmental damage are, however, in addition to the general regulations on damage provided for by the civil code (Criminal Court of Cassation, section III, 17/01/2012, no. 19439).

Hence the plaintiffs' interest and right to sue for the violation of human rights, as amply demonstrated and argued above. According to the well-known and fundamental judgment of the Court of Cassation, United Sections, 6 October 1979 no. 5172**,** the right to a healthy environment constitutes a fundamental right of the individual that cannot be degraded and as such can also be protected against the Public Administration**.** This judgment represented the first recognition of the right to the environment as a subjective right, irrespective of whether the plaintiff holds a right to property or another right in rem, a principle later followed by copious case law (see**,** e.g., Court of Cassation, section II, 9.1.2013, no. 309).

It remains only to add, in terms of jurisdiction, that the United Civil Sections of the Supreme Court of Cassation have had occasion to specify that the jurisdiction of the ordinary judge remains unchanged with regard to actions for damages or injunctions brought by persons to whom the event producing environmental damage has caused damage to health or property, pursuant to the provisions of Article 313, paragraph 7, of Legislative Decree 152/2006. All of which is to add that the fact that the harmful activity is carried out in accordance with authorisations issued by the

public authorities does not affect the division of jurisdiction (given that such authorisations cannot be recognised as having the effect of weakening rights).

fundamental rights of third parties) but exclusively on the powers of the ordinary judge, who, in the hypothesis that the damaging activity derives from material conduct that does not comply with the administrative measures that make its exercise possible, shall sanction, by prohibiting it or bringing it into conformity, the activity that has proved harmful because it does not comply with the administrative regulation, while, in the hypothesis that such conformity is revealed, he shall disapply the aforesaid regulation and impose the cessation or adjustment of the activity so as to eliminate the damaging consequences (thus Civil cassation, sec. un, 23/04/2020, n.8092).

22. INTER-GENERATIONAL INJUSTICE AND CLIMATE DISPUTE

The impact of climate change not only differs for people from different regions and socio-economic backgrounds, but also leads to inequalities between generations.

The fact that the consequences of climate change will inevitably become greater in the future automatically means that climate change will hit young people and future generations harder.

The concept of intergenerational inequality gained its first recognition after the so-called 'Brundtland Commission' defined sustainable development in its well-known report 'Our Common Future', published in 1987 by the World Commission on Environment and Development (WCED), as follows: *"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own* needs"[135] .

Although this report did not specifically address climate change, it nevertheless highlighted the centrality of the issue of the impact of anthropogenic activities on the lives of future generations whose needs and opportunities must be considered. The 2006 and 2009 climate change reports by Lord Nicholas Stern confirm this argument and also link it to climate change*: 'Issues of intra- and intergenerational equity are central. Climate change will have serious impacts over the lifetime of most people living today. Future generations will be even more severely affected, but they lack representation in* today*'s decisions*'[136] .

Unless sufficient action is taken to prevent severe climate change and to stay below 1.5°C, the costs of adaptation and damage will largely be borne by these people and future generations, who have not caused the problem. The contradiction that emerges here is that the desires are of the older generations and the burdens of the young. Which again underlines the importance of climate action and shows that delay is not a legally acceptable option.

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135 UN Documents, Our Common Future, Gathering a Body of Global Agreements, Chapter 2, Towards Sustainable Development, p. 44.

136 Stern Review 2006: The Economics of Climate Change, H. 2, Economics, ethics and climate change, this report is published on request of the British government in 2006.

The action proposed by this act is part of the list of climate litigation actions, which as of April 2023, according to the Sabin Centre for Climate Change Law database[137] , reached 2,276 worldwide.

In short, it must be remembered that there has so far been climate litigation between states and climate litigation in which the plaintiffs are private individuals and non-governmental organisations, including Greenpeace. In relation to the defendants, a distinction is made between actions brought against states, on the one hand, and actions brought against companies (the so-called 'big carbons'), on the other.

Climate litigation by private individuals against states includes, *inter alia*:

- the Dutch experience of the now well-known 'Urgenda case' (also discussed *below*), i.e. the civil case brought by the 'Dutch Urgenda Foundation' (and several Dutch citizens) against the Dutch State to demand that it be ordered to reduce CO2 emissions in accordance with its international commitments, which ended with the Supreme Court's 2020 ruling upholding the State's sentence, issued at the previous instances, to reduce greenhouse gas emissions by 25% compared to 1990 levels[138] ;
- the German case "Neubauer, et al. v. Germany' of the appeal brought by natural persons and supported by Greenpeace Germany that ended with the 2021 ruling of the German Federal Constitutional Court (on which see *below*), which declared that the provisions of the Federal Climate Protection Act governing national climate targets were incompatible with fundamental rights enshrined in the Constitution because they did not provide for a clear emission reduction pathway from 2030 to achieve carbon neutrality and thus placed an unfair burden of emission reductions on future generations that would seriously undermine their fundamental freedoms[139] ;
- the French affair known as the 'Affaire du Siècle' defined in first instance with the 2021 rulings of the Paris Administrative Court, which upheld the appeal brought by a number of non-governmental organisations (including Greenpeace France), declaring the French State liable for failing to adopt adequate and sufficient instruments to combat the phenomenon of climate change and ordered it to take all necessary measures to repair the ecological damage caused by the exceeding of carbon budgets between 2015 and 2018[140] .

Climate litigation against large emitters of greenhouse gases includes

137 In https://climate.law.columbia.edu

138 These were the rulings in the 'Urgenda case': District Court of The Hague, Urgenda v The State of the Netherlands, ECLI:NL:RBDHA:2015:7145, 24 June 2015; Court of Appeal of The Hague, Urgenda v The State of the Netherlands, ECLI:NL:GHDHA:2018:2591, 8 October 2018; Court of Cassation, ECLI:NL:HR:2019:2007, 13 January 2020.

139 The 24 March 2021 ruling of the Bundesverfassungsgericht, published at https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html

140 These are the rulings issued by the Paris Administrative Court on 3 February and 14 October 2021.

remember, among others:

- the Dutch case of 'Milieudefensie et al. v. Royal Dutch Shell plc.' decided with the 2021 judgment in which the Hague District Court ordered the company to reduce climate-changing emissions in the light of scientific evidence and international standards[141] ;

- the German case 'Llyula v. RWE AG' concerning the lawsuit brought by a Peruvian citizen against an energy major to have it declared liable for global warming and consequently endangering his property[142] ;

- the New Zealand case 'Smith v. Fonterra Co-Operative Group Limited' brought by a New Zealand citizen against several companies held responsible for greenhouse gases (including a dairy, a power plant and an oil refinery)[143] .

On the other hand, as the United Nations Environment Programme points out, '*more than ever, litigation is now an important tool to encourage policy makers and market actors to develop and implement effective means to mitigate climate change and adapt to its effects. Indeed, it would be wrong to rely on technological developments and non-climate policy initiatives to fend off climate destabilisation. Therefore, climate law and policy is a key element of any* rational *action plan*'[144] .

Now, the recalled climate change litigation pronouncements start from a twofold common premise:

- Scientifically, there is now irrefutable evidence (see §§ 17, 18 *above*) that human activities have unequivocally caused global warming, mainly through the emission of greenhouse gases to which ENI, as a 'Carbon Major', has contributed significantly through the release of CO2 and other greenhouse gases, causing a dangerous alteration of the Earth's climate system;

- This scientific premise is accompanied by the legal acquisition, now common to the various state and supra-state legal systems, that the stability of the climate system - and, conversely, the fight against climate change - is an essential dimension of the right to a clean, healthy and sustainable environment, which all individuals are entitled to and the protection of which calls for the application of an intergenerational responsibility of states and companies.

The protection of the right to a clean, healthy and sustainable environment, and therefore to a stable climate, is

141 The Hague District Court, 26 May 2021, available at https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339).

142 The court of first instance rejected the claim, pointing out, in addition to its vagueness, the lack of a causal link between the event and the damage; otherwise, the court of second instance found the claim admissible. For a reconstruction of the entire case, see https://climate-laws.org/geographies/germany/litigation_cases/luciano-lliuya-v-rwe. On the case, see D'Alessandro, Climate change litigation, or the new frontier of judicial protection: the trial as a tool to combat climate change, in Le pag. de l'aula civ., 2020, p. 51 ff.

143 For the reconstruction of the story, https://climate-laws.org/geographies/new-zealand/litigation_cases/smith-v-fonterra-co-operative-group- limited.

144 ONU Environnement en partenariat avec Columbia Law School, l'état du contentieux climatique, revue mondiale, mai 2017.

necessary for the effective enjoyment of all human rights, including the rights to life, health, private and family life, and private property, as well as the economic, social and cultural rights recognised by the various constitutional charters, including the Italian Constitution, the ECHR - European Charter of Human Rights and international agreements (*first and foremost*, the UNFCCC and the Paris Agreement).

To date, there are no Italian court rulings on climate change and human rights[145] . However, awareness of the problems associated with climate change has been known to Italian judges for some time now. In particular, constitutional, administrative and civil jurisprudence has already expressed itself on the subject on several occasions.

Thus, for example, the Plenary Assembly of the Council of State No. 9 of 2019 affirmed the '*overriding interest of the community in the gradual reduction of the carbon dioxide component in the atmosphere*'.

The Constitutional Court has added that there is a public interest in "*eliminating dependence on fossil fuels*", thus giving a significant impetus and spur towards alternative energy sources (Judgments No 124 of 2010, 286 of 2019, 237 of 2020 and 46 of 2021).

The Court of Cassation, Civil Section VI, in its judgment no. 7343 of 2021 affirmed the "*favour of the national legislator and the European Union for the principle of the maximum diffusion of renewable energy sources. In this sense it is first of all the Treaty on the Functioning of the European Union of 25 March 1957, art. 194, letter c, - cd. Treaty of Rome, according to which "in the context of the establishment or functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to [...] promote energy saving, energy efficiency and the development of new and renewable forms of energy". We must also mention the United Nations Framework Convention on Climate Change, ratified by Law no. 120 of 1 June 2002, on the "Ratification and Execution of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, done at Kyoto on 11 December 1997"), the European directives on the subject (Dir. of the European Parliament and of the Council, 27 September 2001, no. 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market; Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directive 2001/77/EC and Directive 2003/30/EC). Finally, also in the same*

145 It should be noted, however, that before the civil section of the Court of Rome the action brought by environmental protection associations and individuals in June 2021, which sued the Italian State held responsible for climate non-compliance, is currently pending, in order to order it to adopt the necessary measures to reduce greenhouse gas emissions by 92% by 2030, compared to pre-industrial levels (an initiative called 'Giudizio Universale'). See www.giudiziouniversale.eu, as well as L. BUTTI, Il contenzioso sul cambiamento climatico in Italia, in RGA Online, 22, 2021, p. 1 ff.; P. PUSTORINO, Cambiamento climatico e diritti umani: sviluppi nella giurisprudenza nazionale, in Rivista OIDU, 2021, p. 596 ff.; G. PULEIO, Rimedi civilistici e cambiamento climatico antropogenico, in Persona e Mercato, 3, 2021,
p. 469 ff.

direction is the Paris Agreement signed on 22 April 2016, the first universal and legally binding agreement on climate change, adopted at the Paris Climate Conference held from 30 November to 11 December 2015, ratified by the European Union and all its countries and entered into force on 4 November 2016, which, as part of the objective to curb global warming, strongly incentivises the use of renewable energies.

The Supreme Court has, therefore, embraced two fundamental principles: that of assimilating international sources on climate change to EU law, thus becoming immediately effective in themselves, and that of recognising the 'Paris Agreement' as 'the first universal and legally binding agreement on climate change'.

The reference legislation for the action in question must, therefore, be found in both national and European Union and international law. And the relevant precedents can and must also be sought beyond national borders, as we have already seen above and will elaborate on in the following paragraphs.

23. INTERNATIONAL SOURCES

23.1. CLIMATE CHANGE AND HUMAN RIGHTS

The repercussions of climate change on human rights, *primarily* the right to life and health, are now well known and evident: the figures for illnesses and premature deaths due to environmental pollution are already three times higher than those for AIDS, tuberculosis and malaria taken together, and this constitutes a threat to the right to life, a healthy environment and clean air; natural disasters such as floods, tropical storms and long periods of drought are occurring with increasing frequency and have adverse consequences for food security in the countries of the global South and North and the enjoyment of numerous human rights[146] .

The Paris Agreement was the first international treaty to explicitly recognise the link between climate action and human rights, thus laying the groundwork for the application of existing human rights legal instruments to the reduction of emissions by states and private companies[147] .

But for some time now, the risks of serious damage that climate change causes to human rights have been recognised, as partly anticipated in Part I of this act, by several bodies at international and EU level.

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146 See, *inter alia,* the 'European Parliament resolution of 19 May 2021 on the effects of climate change on human rights and the role of environmental defenders in this context', in https://www.europarl.europa.eu/doceo/document/TA-9-2021-0245_IT.html

147 The Preamble of the Paris Agreement refers to the need for an effective response to the threat of climate change in the context of the protection and promotion of human rights, "[...] recognising that climate change is a common human concern, countries should, when acting to address it, respect, promote and consider their human rights obligations, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities, those in vulnerable situations, and the right to development, as well as gender equality, the empowerment of women and intergenerational equity.

Thus, for example, the UN report '*Climate Change - The Anatomy of a Silent Crisis*' states that '*every year climate change leaves more than 300,000 people dead, 325 million severely affected [...] Four billion people are vulnerable and 500 million people are at* extreme *risk*'[148] . Also according to the UN, '*in the coming decades climate change will displace millions of people. Current estimates put the number of 'climate refugees' and 'environmental migrants' in the range of 25 million to one billion by 2050*'[149] .

On 25 March 2009, the UN Human Rights Council adopted Resolution 10/4[150] in which it stated that: "The effects of *climate change have a number of impacts, both direct and indirect, on the effective exercise of human rights, including the right to life, the right to adequate food, the right to enjoy the best possible state of health, the right to adequate housing, the right to self-determination and human rights obligations relating to access to safe drinking water and sanitation, and recalling that under no circumstances should a people be deprived of their livelihoods.*"

In particular, the UN (see previous link) has stated that the right to life, self-determination, health and basic needs such as food, clean water and shelter will be compromised due to the consequences of climate change "*noting that climate change impacts have a number of implications both direct and indirect, for the effective enjoyment of human rights, including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations relating to access to safe drinking water*'.

At the opening of the forty-second session of the Human Rights Council, held in Geneva on 9 September 2019[151] , the UN High Commissioner for Human Rights called on states to act on the threat that climate change poses, stressing that "*the world has never seen a human rights threat of this magnitude*".

The 'United Nations Committees for the Protection of Human Rights' also jointly issued a statement recalling the impact of climate change on human rights, highlighting that the IPCC report released on 8 October 2018 on global warming of 1.5°C "*confirms that climate change poses significant risks to the enjoyment of human rights protected by the International Convention on the Elimination of All Forms of*

148 Global Humanitarian Forum, *Human Impact Report Climate Change, The Anatomy of A Silent Crisis*, 2009 executive summary.
149 https://gsdrc.org/document-library/human-impact-report-climate-change-the-anatomy-of-a-silent-crisis/
150 https://www.ohchr.org/en/climate-change/human-rights-council-resolutions-human-rights-and-climate-change
151 https://www.partitoradicale.it/2019/09/09/michelle-bachelet-alto-commissario-delle-nazioni-unite-per-i-diritti-umani-mai-vista-una-threat-to-human-rights/

discrimination against women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child and the International Convention on the Rights of Persons with Disabilities. The negative impacts identified in the report threaten, among others, the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water, and cultural rights [...] These negative impacts on human rights are already occurring at 1°C warming and any further rise in temperatures will further undermine the realisation of rights. The IPCC report makes it clear that to avoid the risk of large-scale and irreversible systemic impacts, urgent and decisive climate action is needed [...] Climate-related risks to health, livelihoods, food security, water supply, human security and economic growth will increase if global warming of 1.5°C occurs, and even more if it warms by 2°C"[152] .

It is then recalled the case addressed by the UN Human Rights Committee in its decision of 14 October 2019 (in the case of Teitiota v. New Zealand, UN Doc. CCPR/C/127/D/2728/2016)[153] that recognised the relevance of the effects of climate change on migration policies, in the sense that environmental degradation that prevents a person from living in a certain area of the planet can be a prerequisite for the recognition of refugee status. In fact, the decision affirms the principle that States have an obligation to ensure and guarantee the right to life of persons, extending this right *to* "*reasonably foreseeable* threats *and potentially life-threatening situations that may result in the loss of life or otherwise a substantial deterioration in the conditions of existence, including environmental degradation, climate change and unsustainable development, which constitute some of the most serious and urgent threats to the life of present and future generations and which may adversely affect an individual's well-being and thus cause a violation of his or her right to life*".

In 2019, the Human Rights Committee recognised that climate change is one *of 'the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The obligations of States Parties under international environmental law should therefore inform the context of Article 6 of the Covenant [right to life], and the obligation of States Parties to respect and guarantee the right to life should also inform their obligations relevant to the*

152 https://www.unhcr.org/it/notizie-storie/notizie/unhcr-il-comitato-delle-nazioni-unite-per-i-diritti-umani-con-la-sua-decisione-in-materia- of-climate-changes-launches-an-alarm-bell/

153 It is the story of Mr Teitiota, a citizen of a small state in Oceania who, due to the rising of the oceans had transferred to New Zealand where he applied for refugee status, which was denied by the New Zealand authorities. Having exhausted all domestic remedies, Mr. Teitiota appealed to the UN Human Rights Committee, on the basis of Article 5 and Article 6 of the Optional Protocol to the International Covenant on Civil and Political Rights, claiming New Zealand's violation of his right to life. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F127%2FD%2F2728%2F2016&Lang=en

under international environmental law' 154.

In 2021, the United Nations Council recognised "*the right to a clean, healthy and sustainable environment as an important human right to the enjoyment of human rights* "155 and acknowledged that the impacts of climate change and the consequent loss of biodiversity and its services "*interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights.*" Furthermore, it recognised that climate change constitutes one *of the* '*most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life*'.156

The UN Council's recognition of the right to a healthy environment was followed by the UN General Assembly's (UNGA) recognition that a clean, healthy and sustainable environment is a universal human right. This resolution, adopted in July 2022, was unprecedented (with 161 votes in favour, no votes against and eight abstentions). In the resolution, the UNGA recognised that the impacts of climate change '*interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights'*157 and that climate change is one *of* '*the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights'*158.

23.2. ARTICLES. 2 AND 8 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE CEDU JURISPRUDENCE

At the level of European law, it should be recalled that the European Court of Human Rights has clearly established on several occasions that various types of environmental degradation may lead to violations of substantive human rights protected by Articles 2 and 8 of the European Convention on Human Rights, which guarantee respectively the right to life and the right to respect for private and family life: such an interpretation offered by the European Court of Human Rights is now constant and consolidated (see *López Ostra v. Spain,* 9 December 1994; *Guerra and Others v. Italy,* 19 February 1998; *Di Sarno and Others v. Italy*, 10 January 2012, no. 30765/2008).

Thus, for example, in 1998, with the ruling Guerra v. Italy, 19.2.1998 ref. 14967/89[159] the

154 N. Human Rights Comm., General Comment No. 36, U.N. Doc. CCPR/C/GC/36, para. 62 (2019) [HRC, General Comment No. 36].
155 Human Rights Council, HRC, A/HRC/RES/48/13 (18 October 2021), page 3
156 Ibid, p.2
157 United Nations General Assembly (UNGA), The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022), p. 2
158 Ibid, p.3
159 http://www.dirittiuomo.it/sentenza-19-febbraio-1998

The ECHR broadened the area of protection under Article 8 of the Convention by stating that '*des atteintes graves à l'environnement peuvent toucher le bien-être des personnes et les priver de la jouissance de leur domicilie de manière à nuire à leur vie privée et familiale*'. [160]without even the potential for damage to health.

Furthermore, in the 1994 Lopez-Ostra v. Spain judgment, it established the principle that "*il va pourtant de soi que des atteintes graves à l'environnement peuvent affecter le bien-être d'une personne et la priver de la jouissance de son domicile de manière à nuire à sa vie privée et familiale, sans pour autant mettre en grave danger la santé de l'*intéressé"[161] . In essence, the ECHR stated that even if there was no danger to health, as is the case here, there would still be a violation of human rights and in particular of Article 8 of the Convention.

Even more recently, in the *Cordella and Others v. Italy* decision of 24/01/2019, it was ruled that there is an infringement of the right to respect for private and family life, under Article 8 ECHR, when the persistence of a situation of environmental pollution endangers the health of the applicants and, more generally, that of the entire population living in the areas at risk, compromising the right to the full enjoyment of their private and domestic dimension. In the same judgment, the Court specified that the breach of the commitment undertaken by the Contracting States to protect the rights deriving from the ECHR is also to be found in the omissions and negligence attributable to the State for not having prevented or stopped the conduct, attributable to private individuals, which infringes the ECHR.

With the 2009 Tatar v. Romania judgment[162] the ECHR expressly recognised, among the subjective positions protected by Article 8 of the Convention, not only the rights to respect for one's home and private life, but more generally the right to enjoy a healthy and protected environment, derived from a coordinated reading of international instruments and European and international case law.

It was, therefore, the ECHR, through an evolutionary reading of the Convention, that delineated the environment as an autonomous protected legal asset, understood as a synthesis of the factors that allow and favour the life and development of living beings.

It should be added that Articles 2 and 8 of the ECHR, as interpreted above, must be analysed in parallel with Articles 2 and 7 of the Charter of Fundamental Rights of the European Union (CFREU) - also known as the 'Nice Charter' - which also protect the right to life and the right to respect for one's home and one's privacy.

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160 "*serious damage to the environment may impair the well-being of persons and deprive them of the enjoyment of their home in such a way as to impair their private and family life*".

161 "it goes *without saying, however, that serious damage to the environment may affect a person's well-being and deprive him of the enjoyment of his home in such a way as to impair his private and family life, without, however, seriously endangering his health*".

162 https://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=001-106021&filename=CASE%20OF%20T%C4%82TAR%20v.%20ROMANIA%20-%20[Italian%20Translation]%20by%20UFTDU%20(Unione%20forense%20per%20la%20tutela%20dei%20diritti%20umani).pdf

family life. It must be pointed out that the Nice Charter is directly applicable in our legal system, since, pursuant to art. 6 TEU (Treaty on European Union), it has the same legal value as treaties, the scope of which is far greater than that of an ordinary international treaty, since they come from a supranational system integrated with that of the Italian Member State and constitutionally recognised pursuant to art. 11 of the Constitution. The Nice Charter thus becomes EU law and carries with it all the consequences deriving from the principle of the primacy of EU law in terms of direct effectiveness and precedence over national legal systems.

Not only that: the scope of the provisions of the Nice Charter must be coordinated with the interpretation offered by the European Court of Human Rights with reference to those rights that find correspondence in both supranational charters by virtue of the principle of equivalence set out in Article 52 of the same CFREU (Nice Charter) which states that "*Where this Charter contains rights corresponding to those guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those conferred by the said Convention. This provision shall not preclude more extensive protection under Union law*'.

Therefore, the protection of private and family life granted by the Charter of Nice, which finds direct application in the Member States' legal systems for matters falling within the competence of the EU, must be interpreted in accordance with the jurisprudential orientation of the European Court of Human Rights, understanding it as a fundamental right of the individual to live in a healthy environment without suffering adverse consequences on his or her daily activities due to pollution.

It is worth adding, however, that the protection of fundamental rights and the Paris Agreement are also at the heart of the aforementioned judgment of the Court of Appeal of The Hague, upheld by the Supreme Court of the Netherlands, in Urgenda Foundation v. State of the Netherlands in which the Dutch judges held that the aforementioned Articles 2 and 8 of the European Convention on Human Rights (ECHR) were applicable to the case.

The Court of Justice of the European Union (CJEU) also endorsed the principle of the relationship between climate policy, sustainable energy and the right to life as early as 2001: "*the use of renewable energy sources [...] contributes to the reduction of greenhouse gas emissions, which are among the main causes of climate change that the European Community and its member states are committed to combating [...] It should be noted that this policy is also designed to protect* people*'s health and lives*"[163] . The CJEU, therefore, ruled that climate policy can be opposed to the principle of the free market because climate policy (which aims to protect life and health) has a higher purpose than the objective of the free market itself.

163 PreussenElektra/Schhleswag AG, C-379/98 of 13 March 2001, ECLIL:EU:C:2001:160

23.3. ENVIRONMENTAL/CLIMATIC DISASTER AND HUMANITARIAN PROTECTION IN THE JURISPRUDENCE OF THE ITALIAN COURT OF CASSATION

Finally, it is recalled that also the Italian Supreme Court of Cassation (recalling the cited international precedent of the United Nations Human Rights Committee in its decision of 14 October 2019 on the case Teitiota v. New Zealand) recognised the inseparable link between climate change, environmental disasters and human rights violations. This occurred with the order of **Cass. civ., sect. II, 24 February 2021, no. 5022** where it was stated that *"for the purposes of the recognition, or denial, of humanitarian protection provided for by Article 19, paragraphs 1 and 1.1, of Legislative Decree no. 286 of 1998, the concept of "ineliminable core constitutive of the status of personal dignity", constitutes the minimum essential limit below which the individual right to life and dignified existence is not respected. This limit is to be assessed by the court of merit not only with specific reference to the existence of a situation of armed conflict, but also with regard to any context that is, in concrete terms, capable of exposing the fundamental rights to life, liberty and self-determination of the individual to the risk of being reduced to zero or reduced below the aforementioned minimum threshold, expressly including - if its existence is concretely recognised in a given geographical area - the cases of environmental disaster, as defined by Article 452-quater of the Criminal Code climate change and the unsustainable exploitation of natural resources'.* The Court of Cassation, therefore, attributing the situation in the Niger delta (from where the person applying for humanitarian protection came from) to the case of environmental disaster under Article 452-quater of the Criminal Code. because of the "*serious situation of environmental disruption, due to the indiscriminate exploitation by oil companies",* clarified that among the conditions of unsustainable impairment of fundamental human rights (which allow the recognition of humanitarian protection), there is not only armed conflict, but also those situations due to environmental degradation, exploitation of natural resources determined by man and climate change that endanger the right to life, understood as the minimum complex of rights to health, social existence, family, security and dignity.

The jurisprudence of the Supreme Court is now consolidated in this sense: see, most recently, **Civil cassation, sez. lav., 22/06/2022, no. 20121** where it reaffirmed the principle whereby, for the purposes of recognising the humanitarian protection of a foreign citizen, the concept of "ineliminable core constituent of the statute of personal dignity constitutes the minimum essential limit below which the individual right to life and dignified existence is not respected, which "*must be assessed by the judge of merit not only with specific reference to the existence of a situation of armed conflict, but also with regard to any context that is, in concrete terms, capable of exposing the fundamental rights to life, liberty and self-determination of the individual to the risk of annihilation*

or reduction below the aforesaid minimum threshold, expressly including - if their existence in a given geographical area is concretely recognised - the cases of environmental disaster, as defined by Article 452-quater of the Criminal Code*, climate change and the unsustainable exploitation of natural resources) or even of extreme poverty* (Court of Cassation no. 15961/2021, Court of Cassation no. 20218/2021, Court of Cassation no. 5022/2021)".

23.4. CLIMATE CHANGE AND NON-STATE ACTORS

It is now widely recognised that human rights obligations and responsibilities have specific implications in relation to climate change and are incumbent not only on states but also on the private sector.

During the 25th Conference of the Parties in Madrid in 2019 (COP 25) under the UN Climate Convention, the so-called 'Climate Ambition Alliance' was established[164] . In the 'Climate Ambition Alliance' state and non-state actors have committed themselves to achieving net zero CO2 emissions by 2050, which are necessary to meet the climate goals of the Paris Agreement. The official documents on this alliance of state and non-state actors mention, among other things, that countries cannot take on this task alone, that non-state action is necessary to achieve the goal of the Paris Agreement, and that this requires the latest scientific findings.

Under the auspices of the United Nations, the *Race to Zero* initiative was developed to achieve the necessary expansion of the group of 'non-state actors' in the Alliance for Climate Ambition as quickly as possible. The *Race to Zero* initiative comprises a set of global networks that have developed protocols and emission reduction guidelines for non-state actors. Based on scientific findings, these protocols and guidelines present, among other things, what companies should do to reduce greenhouse gas emissions caused by their activities and products.

As clarified by Eni in the answers published on the company's website to the pre-assembly questions in preparation for the 2023 Shareholders' Meeting, "*At the moment, Eni is not a member of the UN 'Climate Ambition Alliance: Race to Zero', because although it has implemented a decarbonisation strategy that is challenging in terms of targets and includes all supply chain emissions related to products sold (Scope 1, 2 and 3), it has decided not to meet all the requirements of the initiative. In particular, it is currently not possible to certify Eni's targets as 'science based', as there is no approved and shared target setting methodology for the O&G sector*'. (p.126).

164 https://climateinitiativesplatform.org/index.php/Climate_Ambition_Alliance:_Race_to_Zero#:~:text=It%20is%20the%20UN%2Dbacked,thrive%20in%20spite%20of%20them

Nonetheless, "*Eni recognises and supports the role of the Intergovernmental Panel on Climate Change (IPCC), as the main international body for the study and investigation of climate change, and considers its Assessment Reports to be among the most relevant scientific sources on the functioning of the climate system and the anthropogenic impact on the mechanisms that regulate it".* (p.116), and in particular, "*Eni supports the Paris Agreement goal of limiting the global average temperature increase to well below 2°C compared to pre-industrial times, pursuing all efforts to limit the temperature increase to 1.5°C."* (p.126) ENI is, therefore, universally committed to the goals of the COP and the Paris Agreement.[165]

The violation of human rights is protected in domestic law, on the one hand under the constitutional profile deriving from Articles 10 and 11 of the Constitution, and on the other hand, by the provision of Article 2043 of the Civil Code, as will be discussed in more detail below in § 26.

Similar reasoning was recently conducted by the Dutch Court of The Hague in the climate litigation brought by some associations and individuals against Shell[166] . In its judgment of 26 May 2021, the District Court of The Hague, upholding the action brought by Milieudefensie et alii, ordered Shell to reduce CO2 emissions by 45% by 2030 compared to 2019 levels through a significant change in corporate policy.

Based on the assumption that protection against the effects of climate change constitutes a 'human right' (as, moreover, reiterated by the UN *Special Rapporteur* on Human Rights in 2019, according to whom 'it is now commonly recognised that human rights norms apply to the entire spectrum of environmental issues , including climate change'), the Dutch court ruled on the inadequacy of the strategies adopted by Dutch society on CO2 emissions to prevent an imminent possible violation of the right to life and private and family life of Dutch residents and inhabitants of the Wadden region, based on scientific evidence and international standards, and supplemented the state regulation on civil liability with the 'standard of care' dictated by the Paris Agreement.

The rule that was held to have been violated by the Dutch court is Article 6:162 of the Dutch Civil Code, which provides that '*a person who commits a wrongful act attributable to him or her against another person shall make reparation for the damage that that other person has suffered as a result thereof*', applied in conjunction with (and thus supplemented by) the United Nations Guiding Principles (UNGP) on Business and Human Rights and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (on which *infra*), as well as Arts. 2 and 8 of the European Convention on Human Rights

165 https://www.eni.com/en-IT/low-carbon/inevitable-energy-transition.htm

166 Milieudefensie et al. v. Royal Dutch Shell, ECLI:NL:RBDHA:2021:5337

with reference to the right to life and respect for private and family life.

24. THE NEW ART. 9 AND 41 OF THE ITALIAN CONSTITUTION

24.1. CONSTITUTIONAL REFORM AND THE DUTY TO PROTECT THE ENVIRONMENT/CLIMATE 'ALSO IN THE INTEREST OF FUTURE GENERATIONS'

The first source of law underpinning this action are Articles 9 and 41 of the Italian Constitution, as recently amended by Constitutional Law No. 1 of 8 February 2022.

As is well known, the new Article 9 of the Constitution provides that[167] :

"*The Republic promotes the development of culture and scientific and technical research. It protects the landscape and the historical and artistic heritage of the Nation. It protects the environment, biodiversity and ecosystems, also in the interest of future generations. State law regulates the ways and forms of animal protection*'.

Instead, the reformed Article 41 of the Constitution provides that:

'*Private economic initiative is free.*

It may not be carried out in conflict with social utility or in such a way as to harm security, freedom, human dignity, health or the environment.

The law determines the appropriate programmes and controls so that public and private economic activity can be directed and coordinated for social and environmental purposes'.

Articles 9 and 41 of the Constitution thus reformed now serve as a fundamental exegetical parameter for ordinary laws that, if they cannot be interpreted in a constitutionally oriented sense with respect to the primary obligation to protect the environment 'also in the interest of future generations', must be referred to the Constitutional Court to have them declared unconstitutional.

In this sense, the aforementioned 'injustice between the generations' can and must find in the constitutional dictate its point of reference and element of protection both from a passive point of view and from an active point of view, and the Court cannot but orient its decision in this sense.

In Italy too, therefore, 'future generations' become central in constitutional law. As has been said, "*We are moving more and more towards a protection of those who 'have no voice', and this marks a fundamental shift in constitutionalism, a change in the perspective of the Constitutions and [...] a change in the assessment of the relationship between the Constitution and the future: from the focus on the future of the Constitutions […] we are progressively moving to the future as a dimension to be*

167 The underlined parts are those that were introduced with the constitutional amendment in question.

preserve'[168] .

On the other hand, the concepts of sustainability and future generations are becoming increasingly central to European constitutionalism also "*taking advantage of the permeability of contemporary constitutions to* external *influences*"[169] .

The environment and future generations have thus become so important and central in politics and constitutional law that for the first time since 1948, one of the first 12 articles of the Italian Constitution, the 'fundamental principles' of the Republic, has been amended[170] .

The amendment of Article 9 of the Constitution has, therefore, made explicit both an intragenerational and intergenerational responsibility. This latter responsibility was already apparent in other articles of the Constitution. In fact, where Article 1 speaks of 'the people', the concept of future generations must also be traced back to it[171] , and even the principles of a balanced budget (Article 81) and sustainability of the public debt (Article 97) - introduced by the 2012 constitutional amendment - find their explanation in an implicit reference to responsibility towards future generations (and in fact the Constitutional Court had already mentioned future generations in its rulings, not only on the environment, but also on the budget and public spending: judgment of the Court of Appeal of 19 December 2011, p. 6).

No. 18 of 2019 and Judgment No. 115 of 2020).

Of course, Article 9 of the Constitution now makes the intergenerational responsibility clause explicit in unequivocal terms, expressly linking it to the protection of the environment, ecosystems and biodiversity. All this with the further clarification that the nexus 'protection of the environment-future generations' finds its main and natural terrain in the management of the problem of the climate emergency because of its ontological intergenerational temporal projection.

This choice was, moreover, long overdue to bring our country into line with European constitutionalism, and was now almost inevitable in light of international norms, which, especially in the environmental and climate fields, have attained the *status* of customary norms of international law[172] .

With the constitutional reform, therefore, it is quite clear that the way is now open for Italy, too, to reach a ruling similar to that of the German Federal Constitutional Court in 2021 (Ordinance of 24 March 2021 on the

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168 L. Bartolucci, '*The latest path of future generations in constitutional law*', AIC, Constitutional Observatory, 4/2021, ISSN:2283-7515.

169 T. Groppi, '*Sustainability and constitutions: the constitutional state at the test of the future*', in Comparative and European Public Law No. 1, 2016.

170 I.A. Nicotra, '*The entry of the environment into the Constitution, an important signal after Covid*', in Federalismi.it, 30 June 2021, p. 2.

171 D. Porena, '*The principle of sustainability. Contributo allo studio di un programma costituzionale di solidarietà intergenerazionale*', Turin, 2017, pp. 155 ff. according to which '*the exercise of sovereign prerogatives could not take on only concerns linked to the present and to the contingent needs of the citizen-voters alone because the compromise of the needs of the future generations would end up contradicting that very notion of the people [...] which, only in its fullness and complexity, would make it the legitimate holder of sovereignty*'.

172 R. Falk, '*Human Rights Horizons. The Pursuit of Justice in a Globalized World*', New York-London, 2000, p. 193.

Bundesverfassungsgericht)[173] , based on a similar constitutional provision of intergenerational responsibility. In that case, following an appeal brought by individuals, including children, environmental associations and the *Fridays for Future* movement, in the aforementioned decision the German judges declared the incompatibility with fundamental rights of the provisions of the Federal Climate Change Act of 12 December 2019, which regulate national climate targets and permitted annual emission quantities until 2030. In particular, Article 20 of the Grundgesetz (GG) was taken as the reference standard, according to which '*The state shall protect, thereby assuming its responsibility towards future generations, the natural foundations of life and animals through the exercise of legislative power, within the framework of the constitutional order, and of executive and judicial powers, in accordance with law and the law*'. On the basis of this, the Federal Court ruled that the plaintiffs' fundamental rights had been violated because the government had not established a clear emission reduction pathway after 2030 and had allowed too many emissions compared to the permitted amounts until 2030, thus leaving a disproportionate burden of emission reductions on future generations. In the words of the Court, '*one generation should not be allowed to consume large portions of the carbon budget by bearing a relatively smaller share of the reduction effort, if this means leaving subsequent generations with a drastic reduction burden and exposing their lives to severe loss of liberty*'.174 As intertemporal guarantees of liberty, fundamental rights offer plaintiffs protection against global threats, in this case the unfair greenhouse gas reduction burdens, which cannot be unilaterally dumped into the future. If, in fact, a large part of the CO2 budget was already exhausted by 2030 to allow current generations a lifestyle based on high greenhouse gas emissions, there would be a greater risk of serious loss of freedom because there would be a shorter timeframe for the technological and social developments necessary to keep global warming within 1.5°C. In essence, the German judge read Article 20 GG '*as a rule of time-keeping of the German climate system and a duty to protect it in time for the benefits of future generations: benefits of maintaining, not increasing their* rights'[175] . Climate protection, in this way, becomes a question of the permanence in time of freedoms, which must be safeguarded for the benefit of future generations.

There is no doubt that the similar intergenerational responsibility clause for environmental protection contained in the new Article 9 of the Italian Constitution requires all powers of the

173 https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html

174 https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324_1bvr265618en.html;jsessionid=813E8B97D5C3436EF0D2CF80B94AA188.internet991

175 M. Carducci, *'Climate-conditional freedom and the government of time in the BVerfG ruling of 24 March 2021*', in LaCostituzione.info, 3 May 2021.

Republic, including the jurisdictional one, to preclude one generation from being allowed to "consume a large part of the carbon dioxide budget by bearing a relatively light burden, where this would result in subsequent generations having to bear a more radical burden and expose their lives to a greater loss of freedom" (so the aforementioned Bundesverfassungsgericht's Climate Change Order of 24 March 2021)[176] .

As the doctrine has pointed out, in short, it is *'undeniable ... that an explicit reference in the Constitution to the 'interest of future generations' - as significantly demonstrated by the recent judgment of 24 March 2021 of the German Bundesverfassungsgericht, which ruled on the provisions of the Federal Climate Change Act of 12 December 2019 (Bundes- Klimaschutzgesetz - KSG), applying precisely the clause of 'responsibility towards future generations' contained in Art. 20a of the Basic Law - is certainly capable of constituting an extremely important constraint for the legislature and, therefore, a parameter of validity rich in potential for the decision-making processes of environmental policy-making and for judicial review of them*"[177] .

24.2. CONSTITUTIONAL REFORM AND THE EXTENSION OF JUDICIAL REVIEW OF ENVIRONMENTAL/CLIMATE INTERESTS

The new constitutional norms of the reformed Articles 9 and 41 of the Constitution therefore open the way to a broader judicial review of environmental/climate interests also in the interest of future generations. *First and foremost* in terms of active legitimacy, i.e. the inevitable broad interpretation of the conditions for access to justice for individuals and associations and NGOs with express statutory purposes of environmental and climate protection declined in terms of intergenerational equity, such as Greenpeace (whose statutory purpose is to *'promote the protection of nature and biodiversity and the conservation of the environment in a socially just, equitable and ecologically sustainable manner for the benefit of present and future generations'*: art. 3 of the articles of association) and ReCommon ("The *association aims to pursue the following purposes: a) the achievement of a society based on equity and economic, social, environmental and climate justice; b) the promotion and protection of the commons; c) the protection of the environment and climate, including the promotion of overcoming the fossil fuel economy; d) the restitution to local communities of sovereignty over the management of natural resources*": Art. 2 of the articles of association).

Secondly, in terms of passive legitimacy, in the sense that 'broad access' to justice

176 I.A. Nicotra, "The *Entry of the Environment into the Constitution*", cit., p. 4 "*Social justice between generations requires, in fact, that one generation should organise its affairs in such a way as to refrain from placing the behaviour of the offspring to come in conditions worse than those present. Ultimately, the new constitutional statement recognises the importance of the non-transferable character of the environmental heritage in order to guarantee the perpetuation of the social group against the serious danger of humanity's self-destruction. So that each generation ensures access to the environmental heritage, preserving it intact for future generations*'.

177 M. Cecchetti, *La revisione degli articoli 9 e 41 della Costituzione e il valore costituzionale dell'ambiente,* in *Forum di Quaderni costituzionali,* no. 3/2021, 311.

environmental - climate of individuals and associations, which is also prescribed by international conventions (first and foremost by the 'Aarhus Convention' on access to information, public participation in decision-making processes and access to justice in environmental matters, to which we will return *below*), must be guaranteed both with regard to states and to public and private enterprises. In fact, it is to the latter that the constitutional legislator addresses when the new art. 41 prescribes that private economic initiative cannot be carried out in conflict with social utility or in such a way as to damage (in addition to security, freedom and human dignity, also) 'health' and 'the environment', identifying in the latter public interests two precise limits, prevalent and conforming, of private economic activity, which is therefore obliged to prevent environmental/health damage, starting with the most exasperating damage constituted by climatic prejudice.

Again in terms of passive legitimacy, it should be added that, as has been pointed out, the new paragraph 3 of Article 41 of the Constitution ('*The law determines the programmes and appropriate controls so that public and private economic activity can be directed and coordinated for social and environmental purposes*') paves the way for a profound change in the relationship between law and economy in our country, foreseeing the intervention of the State aimed at orienting economic initiative towards a new model of development (from the *Welfare State* to the '*Environmental State'*) with actions of direction and coordination of the public and private economy aimed at environmental protection[178] .

Since state action in the field of economic production has mainly been implemented in our country through public participation in the share capital of enterprises, in particular by the Ministry of the Economy and Finance through the intervention of its subsidiary Cassa Depositi e Prestiti s.p.a., there is no doubt that the action of environmental functionalisation of economic activity, now provided for by the constitutional text, sees in this area the priority sector of intervention, with an inevitable new role for the MEF and CDP itself, in terms of selecting and managing investments in shareholdings through *'mission-oriented policies*'[179] .

This must necessarily be the case, in particular, in the presence of companies in which the Ministry of the Economy, by virtue of shareholdings held either directly or indirectly (precisely, through the Cassa Depositi e Prestiti), has control over the company, exercising a dominant influence over it, as is the case with the share capital of ENI s.p.a.

25. ARTICLES. 3-TER AND 3-QUATER OF THE ENVIRONMENT CODE, ARTICLE 9 OF THE AARHUS CONVENTION

The reform of Articles 9 and 41 of the Charter has in essence constitutionalised two principles already enunciated in the Italian legal system, contained in Legislative Decree 152/2006 and subsequent amendments and additions, bearing, as is well known, the so-called "Italian Constitution".

178 F. De Leonardis, *The ecological transition as a system development model: insights into the role of administrations*, in *Diritto*

amministrativo, 2021, 779.

179 F. De Leonardis, *ult. op. cit.*

"Environmental Code'.

On the one hand, the 'Principle of Sustainable Development' of Art. 3-quater of Legislative Decree 152/2006, as amended and supplemented, containing, as is well known, the so-called 'Environment Code', according to which '*1. Every human activity that is legally relevant under this code must comply with the principle of sustainable development, in order to ensure that the satisfaction of the needs of present generations cannot compromise the quality of life and the possibilities of future generations*'.

On the other hand, the 'Principle of Environmental Action' in Art. 3-ter of the same 'Environment Code', which provides that "*the protection of the environment and natural ecosystems and cultural heritage must be guaranteed by all public and private entities and natural and legal public or private persons, through appropriate action that is informed by the principles of precaution, preventive action, correction, as a priority at source, of damage caused to the environment, as well as the 'polluter pays' principle, which, pursuant to Article 174(2) of the Treaty of the European Unions, govern the Community's policy on the environment*".

We are therefore in the presence of the constitutionalisation of the general principles of the Environmental Code that assign an express duty of environmental protection not only to public entities, but also to private legal entities: a legal duty that imposes on individual entrepreneurs and private companies an 'appropriate action' in environmental matters, necessarily conformed to the principle of sustainable development and necessarily informed by the general principles of Art. 191 of the Treaty on the Functioning of the European Union (TFEU), of precaution, of preventive action, of the correction, as a priority at source, of damage caused to the environment, as well as the 'polluter pays' principle.

Hence the full justiciability of the rights of individuals and associations against business actions conducted in a manner contrary to these principles and likely to cause environmental/climate damage, in order to obtain the imposition of business strategies aimed at ensuring sustainable development that will preserve people's health and the environment (including ecosystems and biodiversity) from the detrimental consequences of climate change induced emissions.

All this, moreover, is in line with international treaties, ratified by our country, including the aforementioned 'Aarhus Convention' (to which we will return *below*) which, in Articles 2 and 9, prescribes that 'members of the public concerned' (including NGOs) must be guaranteed 'broad access' to environmental justice, in order to initiate legal proceedings to challenge also 'actions and omissions by private individuals' made in violation of environmental law.

This opens the door, therefore, to ENI's liability and the claimants' right to bring an environmental/climate liability action against the same company.

26. ARTICLE 2043 OF THE ITALIAN CIVIL CODE (AND ARTICLES 2 AND 8 OF THE ECHR)

Going back to what has been deduced above (at § 23.4) regarding the reasoning underlying Shell's conviction in the climatic litigation concluded with the judgment of the District Court of The Hague of 26 May 2021 where the violation of human rights found protection in Art. 6:162 of the Dutch Civil Code, the analogy between the aforementioned Dutch rule on civil liability and Article 2043 of the Italian Civil Code, according to which '*any intentional or negligent act which causes unjust damage to others shall oblige the person who has committed the act to compensate for the damage*', is quite evident.

That Article 2043 of the Civil Code is the reference standard used to protect human rights is clear from the jurisprudence of legitimacy and merit on this point.

In Judgment No. 21649 of 28 July 2021, the Sixth Civil Section of the Court of Cassation points out that "*it has been affirmed by this Court that the right to respect for one's private and family life is one of the rights protected by the European Convention on Human Rights (Article 8). The Strasbourg Court has repeatedly applied this principle also as a basis for the protection of the liveability of the home and the quality of life within it, awarding the parties subjected to intolerable immissions substantial compensation for non-material damage, and all this even though there was no state of illness (Court of Cassation, Sec. 3, no. 20927, 16/10/2015, Rv. 637537). It has similarly been affirmed that even when there is no biological damage, the impairment of the right to normal family life in the home and the right to the free and full exercise of daily living habits are appreciable damages in terms of non-asset damage (Court of Cassation, no. 7875, 2009). The court of merit conformed to these principles and ascertained the existence of indemnifiable damage related to the impairment of the right to rest, which affects the quality of life of an individual and consequently the constitutionally guaranteed right to health. It is not a question of damage in re ipsa, but of damage-consequence, which, according to the court of merit's ascertainment, has been proven in terms of inconveniences suffered as a result of the difficulty of living in the home*".

Even more explicit is Sentence no. 4030 of 19 February 2013, Third Civil Section, "*the criminal exoneration does not elide the civil tort and that the obligation under Article 2043 of the Italian Civil Code, which is a general clause of neminem laedere, both in positive law and with regard to inviolable human rights such as health, remains firm*".

ENI's unlawful act is therefore manifest in all its evidence, the company's conduct having violated at the very least Articles 2 and 8 of the European Convention on Human Rights**,** in addition to the other sources of law, including constitutional and community law, referred to above, so that the defendant's conduct appears definitively '*contra ius*'.

In this last regard, it is worth recalling the progressive expansion that the jurisprudence of

legitimacy has gradually recognised the concept of the "injustice" of the damage, arriving at affirming the compensability also of the injury of factual situations which - although not protected through the recognition of a subjective right - are however protected by the legal system (see for the affirmation of the principle, although relating to a different case, Civil cassation no. 9547/2020).

Just as, to all intents and purposes, the subjective legal situations of the present plaintiffs are protected by the legal system, in the terms that have already been explained in the preceding paragraphs and, in particular, in terms of the impact of climate change on future generations.

At the same time, it must be pointed out that the defendant's conduct is certainly to be counted among those so-called "*non iure"* conducts, since the exercise of the business activity cannot be considered as justified if it results in a de facto abuse of law - in the terms illustrated in paragraphs 17 et seq. and therefore - in total disregard of the composition of the interests at stake already affirmed upstream by the legislature according to the national and supranational regulatory sources, recalled several times.

As to the existence of the causal link between the defendant's wrongful act and the so-called event-damage, i.e. the impairment of the interests protected by the legal system of which the present petitioners are undoubtedly bearers, we shall discuss this at greater length *below*.

Suffice it for now to mention that the previous paragraphs documented how ENI is one of the world's largest oil companies and emitters of greenhouse gases.

In particular, thanks to "*attribution science*" (cf. § 17 and §§ ff.), the contribution - and thus the historical responsibility - of the defendant on the cumulative emissions of CO_2 and CH_4 in the period 1988-2015 was reconstructed, amounting to 0.6% of global industrial cumulative emissions (Heede, 2014). The database on which the work of Ekwurzel et al. (2017) is based makes it possible to attribute to ENI over the period 1980-2010: 1) between 0.309 and 0.395 ppm contribution to the increase in the concentration of CO_2 in the atmosphere; 2) between 0.0013 and 0.0037 °C contribution to the increase in the global mean land temperature; and 3) between 0.04 and 0.21 mm global sea level rise. The database of the study by Licker et al. (2019) shows that over the period 1980-2015, ENI contributed to ocean acidification, reducing the pH of the oceans by between 0.000365 and 0.000444.

Furthermore, according to ENI's own report '*Eni for 2019 - carbon neutrality in the long term*', ENI's absolute lifecycle greenhouse gas emissions in the year 2022 (latest useful data), amount to 419 million tonnes of CO2 eq:

Scope 1 emissions: direct greenhouse gas emissions from sources owned or controlled by the company;

Scope 2 emissions: indirect greenhouse gas emissions associated with the production of electricity, heat, or

steam purchased by the company;

Scope 3 emissions: all other indirect emissions, such as emissions associated with the extraction and production of materials, fuels and services, including transport in company-owned or company-controlled vehicles, waste management, outsourced business activities.

In the light of the above, therefore, Eni's decisive contribution to the occurrence of the damage-event does not appear to be in doubt, in accordance with the so-called prevailing probability or "more probable than not" criterion, which is valid in ascertaining the causal link in civil liability (see, on this point, most recently, Civil cassation, section II, no. 1, Civil cassation, section III, no. 1, no. 2, no. 2, no. 3, no. 3, no. 4), sec. II, no. 25884/2022, according to which "*on the subject of ascertaining the causal link, if the harmful event is hypothetically ascribable to a plurality of causes, the judge of merit is required, first of all, to eliminate, from the list of possible assessable hypotheses, those less probable (without the number of possible alternative hypotheses concretely identifiable being relevant, given the impredictability of an arithmetic of the probative values), then to analyse the remaining hypotheses considered most probable and, finally, to choose from them the one that has received, according to inferential reasoning, the highest degree of confirmation from the factual elements having the consistency of clues, thus assuming the guise of prevailing probability*").

27. SUBJECTIVE IMPUTABILITY OF THE UNLAWFUL ACT TO ENI SPA AND THE 'SOFT LAW' AS THE NORMATIVE PARAMETER OF FAULT

27.1. MALICIOUS IMPUTATION (AND STRATEGIES OF DISINFORMATION AND GREENWASHING)

As is well known, in order for the wrongful act to be attributed to the defendant, it is necessary to prove that it also belongs to the defendant from a psychological point of view, in terms of 'intent' or, at least, 'fault'.

Beginning with the first subjective imputation, it does not seem unnecessary to recall that, according to almost constant case law, for the purposes of the integration of the tort of tort, it is not necessary that the conduct be supported by a so-called direct intent, it being sufficient even the mere so-called eventual intent.

In essence, the fact will be maliciously attributable to the agent even when the latter, although not acting with the specific aim of realising the harmful event, has nevertheless represented its occurrence as a possible consequence of the conduct and has accepted the risk. Alternatively, wishing to borrow Frank's well-known formula from criminal doctrine, the offender may be said to have acted with malice aforethought when he, having been certain that the event would occur as a consequence of his conduct, acted in any case.

In this respect, it is worth recalling once again the considerations made in the preceding paragraphs and, in particular, in §§ 13 and 14.

In fact, it will be recalled that scientific publications by research institutes traceable to ENI (such as ISVET and TECNECO), as well as various articles published by ENI itself ('*Ecos'* - published between the 1970s and the year 2000), already contain numerous testimonies demonstrating

the absolute awareness of the CO2/climate change issue by ENI for decades, as seen by American and European oil companies.

It will also be recalled how ENI is associated with the International Petroleum Industry Environmental Conservation Association (IPIECA). An organisation that, according to the very recent study '*Early warnings and emerging accountability: Total's responses to global warming, 1971-2021*', published in October 2021 in the scientific journal *Global Environmental Change*, was allegedly used by EXXON to coordinate '*an international campaign to question climate science and undermine international climate policies, starting in the 1980s*'.

From the above derives at the very least ENI's absolute awareness of the relationship between CO2 emissions - and, more generally, between the environmental impacts of its activity - and climate change, which in turn are the harbingers of the consequences better described in the introduction and on which this action is based.

It should also be recalled that the defendant company, along with all the other oil companies, tried in every way to conceal the scientific evidence of this aetiological relationship through disinformation campaigns carried out over the years.

It is indeed a well-known fact that since the 1970s/80s, all oil companies, including ENI, using the enormous economic power generated by the profits of their activities, have deployed a veritable strategy of concealment on the causes and consequences of climate change (on this point, please refer to § 13 where the subject is exhaustively dealt with).

Similarly, when at the beginning of the 2000s the correlation between CO2 emissions and climate change could no longer be doubted, the same oil companies, again including the defendant, began to 'practice' so-called '*greenwashing'*, i.e. to implement communication campaigns aimed at making them appear in the eyes of the public as 'sensitive' and 'active' companies in the fight against climate change (again, please refer to § 15 for a detailed discussion of the so-called '*greenwashing'* phenomenon).

Therefore, the defendant's having first attempted to conceal the catastrophic results for the ecosystem resulting from its business activity and, later - when those nefarious results could no longer be denied - having tried to appear as a company devoted to environmental protection and sustainability, constitutes proven proof that the defendant's actions belong to it maliciously.

In other words, the aquillian tort contested against ENI is nothing but the result of a precise entrepreneurial choice on its part, carried out knowingly despite being aware of the consequences that its activity had - and has - for the ecosystem. All this, with the sole objective of

maximising profits from the use of fossil fuels for as long as possible.

In light of all the foregoing considerations, therefore, the subjective element of fraudulent intent on the part of the defendant ENI is deemed amply demonstrated.

27.2. CULPABLE IMPUTATION (AND SOFT LAW)

Without prejudice to the above-mentioned malicious intent of the wrongdoing, the case also shows clear culpable profiles against the defendants.

Fault takes the form of a lack of the required diligence, prudence and expertise (so-called general fault), or for failure to comply with laws, regulations, orders or disciplines (so-called specific fault, again borrowing the dogmatic classification of criminal science).

In general, culpability consists in the failure of the agent's conduct to meet the standard of appropriateness imposed by the legal system, whereas the failure to comply with laws, regulations, orders and disciplines represents the 'in itself' of culpability.

Therefore, all those precautionary rules, inspired by the criteria of foreseeability and preventability of the harmful event, which describe in modal terms the conduct necessary to avoid the occurrence of a given event, are of decisive importance in the present case.

This category includes the set of provisions or recommendations, even if not strictly legal in origin, better known as '*soft law*'.

Orbene, che la “soft law” possa esprimere un parametro oggettivo per l’accertamento della colpa non pare revocabile in dubbio, giacché il nostro ordinamento conosce già una forma di responsabilità colposa che parte proprio dal mancato rispetto delle c.d. linee guida, che ne rappresentano l’autentica espressione (cfr. in merito, Cass. civ., sec. II, no. 13510/2022, according to which "*on the subject of healthcare liability for medical-surgical activities, the so-called soft law of the guidelines - although not having the value of a rule of the system - constitutes an expression of parameters for ascertaining medical negligence, which contribute to the correct subsumption of the concrete case in the legal case, governed by general clauses, such as those contained in articles 1218 and 2043 of the Italian Civil Code*").

Now, ENI's conduct not only violates the cited articles of the Civil Code, the ECHR and the Constitution of the Italian Republic, but also other internationally recognised standards, such as the UN Guiding Principles on Business and Human Rights, the UN Global Compact and the OECD Guidelines for Multinational Enterprises.

On this point, already in a 2014 article published by the Turin Academy of Sciences, Professor Sabino Cassese, former President of the Constitutional Court, highlighted how '*national law retracts, supranational law asserts itself. International agreements multiply: European Convention on Human Rights [...] these and other international agreements contain*

guarantee norms for the protection of citizens' rights [...] From national constitutional openings and the development into global norms comes a third phenomenon that has been called 'demystification', i.e. the process by which international human rights become effective within national legal orders [...] In different ways, depending on the parts of the world and the countries involved, the decisions of supranational courts regarding subjective legal situations of national citizens are binding within the national legal order, as, for example, reflected in the SERAP v. Republic of Nigeria decision of the African Court on Human and Peoples' Rights (ECW/CCJ/JUD 18/12, 2012), regarding the right to health, the right to an adequate standard of living and the right to environmental protection in the Niger Delta, and has been recognised by the Mexican Supreme Court of Justice, with reference to a decision of the Inter-American Court of Human Rights, in the Padilla Pacheco case (912/2010) regarding the right to life, the right to personal integrity, the right to liberty and the right to judicial protection."

As far as this litigation is concerned, the sources to which reference must be made, in order to fulfil "*the court's task of advancing the protection of rights [...] as that affirmed by the Italian Constitutional Court of the "maximum expansion of guarantees", Constitutional Court, Sentence 317/2009*". [180]in addition to those already mentioned, are the United Nations Guiding Principles (UNGP), which constitute an authoritative and internationally approved normative instrument that establishes and distinguishes between the responsibilities of States and those of corporations ("*corporate accountability*") in relation to human rights.

The responsibility of states, as formulated in the UNGP, is broader than that of corporations: states must protect themselves against human rights abuses within their territory and/or jurisdiction by third parties, including corporations. This requires the adoption of appropriate measures to prevent, investigate, punish and redress such abuse through effective policies, laws, regulations and decisions. The responsibility of corporations to respect human rights, as formulated in the UNGP, is a global standard of conduct expected of all corporations wherever they operate. It exists independently of the ability and/or willingness of states to fulfil their human rights obligations and does not reduce those obligations.181 And it exists beyond compliance with national laws and regulations that protect human rights.182 Therefore, it is not sufficient for companies to monitor developments and follow measures taken by states: they have an individual responsibility.

It can, therefore, be inferred from the UNGP and other *soft law* instruments that it is universally

180 S. Cassese, Accademia delle Scienze, Turin, 2014, '*End of the solitude of constitutional courts, or the porcupine's dilemma*'.

181 UNGPS, Principle 11, page 13. Available here: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

182 Ibid

recognised that companies must respect human rights. This includes the human rights enshrined in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights and other '*internationally recognised human rights*', including the ECHR. For example, the OECD Guidelines for Multinational Enterprises (the OECD Guidelines) state the following: "*Enterprises should, within the framework of the laws, regulations and administrative practices of the countries in which they operate, and in consideration of relevant international agreements, principles, objectives and standards, give due regard to the need to protect the environment, public health and safety, and generally to conduct their activities in a manner that contributes to the broader objective of sustainable development. In particular, companies should [...] Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, also taking into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.*"

Companies, including ENI, must therefore respect human rights. This means that they should not only avoid violating human rights, but also address negative human rights impacts in which they are involved. Addressing negative human rights impacts means that measures must be taken to prevent, limit and, if necessary, address their impacts. It is a global standard of conduct expected of all companies wherever they operate. This is not an optional responsibility for companies, but applies everywhere, regardless of the local legal context and is *not passive: 'Respect for human rights is not a passive responsibility: it requires action on the part of companies.*

It applies to all companies regardless of their size, sector, operating environment, ownership and structure. However, the extent and complexity of the means by which companies assume this responsibility may vary depending on these factors and on the severity of the negative impacts on the company's human rights. The means by which an enterprise assumes its responsibility to respect human rights will be proportionate to, among other factors, its size. The severity of impacts will be judged by their scale. The means by which an enterprise assumes its responsibility to respect human rights may also vary depending on whether, and to what extent, it conducts business through a corporate group or individually.

The UN Human Rights Council also states that *'markets function optimally only if they are embedded in rules, customs and institutions [...] Indeed, history teaches us that markets pose the greatest risks - to society and business itself - when their reach and power far exceed the reach of the institutional foundations that enable*

them to function smoothly and ensure their political viability. This is such a moment and the growing allegations of corporate-related human rights violations are the canary in the coal mine, signalling that all is not well. The root cause of the corporate and human rights situation today lies in the governance gaps created by globalisation - between the scale and impact of economic forces and actors and the ability of corporations to manage their negative consequences. These governance gaps provide the permissive environment for wrongful acts by corporations of all kinds without adequate sanction or redress. How to reduce and ultimately close human rights gaps is our key challenge .[183]

From this it follows that, in addition to States, corporations also have a responsibility to prevent human rights violations in the course of their activities: *'The framework is based on differentiated but complementary responsibilities [...]: the State's duty to protect against human rights violations by third parties, including corporations; the corporate responsibility to respect human rights [....] Each principle is an essential component of the framework: the State's duty to protect because it is at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business*'.

A form of self-regulation is, therefore, necessary because in a globalised world, nation states are not able to combat this excess of increasing human rights violations by multinational companies: *'There is no single solution for institutional misalignments in business and human rights. Instead, all social actors - states, companies and civil society - must learn to do many things differently*'.

For this reason ENI is legally bound by its code of ethics, which forms the basis of the company's Organisation, Management and Control Model in accordance with Legislative Decree 231 of 2001, stating that: "*ENI is committed to ensuring respect for internationally recognised Human Rights in its own activities and those of its business partners, in line with the United Nations Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises. Eni's commitment to comply with international human rights treaties and standards is expressed in the Eni Declaration on Respect for Human Rights and is also embedded in other key documents of the company's internal regulatory system. Eni's approach to Human Rights is also confirmed in the Global Framework Agreement on International Industrial Relations and Corporate Social Responsibility renewed in 2019 and in compliance with the Voluntary Principles on Security & Human Rights. Eni is determined to contribute positively to the achievement of the Sustainable Development Goals,*

183 Ruggie 2008: Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the right to development.

supports a low-carbon and socially just energy transition and is among the signatories of the Paris Pledge supporting the goals contained in the Paris Agreement', must be held legally bound to the prohibition of human rights violations, even if a certain conduct is not sufficiently regulated at the national and international level due to the lack of national and international agreements, instruments and resources: a company, in particular of the defendant's significance, always has an obligation to prevent its activities from leading to wrongdoing and in particular human rights violations.

Environmentally, ENI has also committed to act on the targets set by the Paris Accords, which urged the private sector to do more to reduce emissions: '*13. Welcomes the efforts of all non-stakeholder stakeholders to address and respond to climate change, including those of civil society, the private sector, financial institutions, cities and other sub-national authorities; 135. Calls on the non-stakeholder stakeholders referred to in paragraph 134 to intensify their efforts and support actions to reduce emissions [...]*"[184] .

The UN Guiding Principles were adopted with the support of the UN Human Rights Council in 2011. They serve to incorporate and elaborate the basic principle that, in addition to states, companies also have independent obligations to prevent human rights violations.

In particular, they state that:

- The responsibility to respect human rights is a global standard of conduct that all companies are obliged to respect;
- Addressing negative consequences in the area of human rights means that measures must be taken to prevent, minimise and, if necessary, remedy these consequences;
- companies are not allowed to undermine the ability of states to fulfil their human rights obligations;
- Therefore, companies must prevent their activities, products and services from causing negative consequences for human rights;
- the larger the company and the severity of the impact (scale, scope and degree of irreversibility), the greater the responsibility to prevent these negative consequences;
- preventive or mitigating measures must be taken even in the event of potentially serious consequences.

Now, there is no doubt that the defendant company - i.e. the leading Italian company by capitalisation (at least until a few years ago), one of the most important oil producers

184 UNFCCC 2015 COP21 *Adoption of the Paris Agreement*, p.19

in the world and among the largest companies in which the Italian State has a shareholding - embodies to perfection that 'model agent' from whom compliance with the aforementioned precautionary rules could certainly be expected. So much so that, the failure to comply with them, also integrates the subjective parameter of guilt, thus allowing the unlawful act to be ascribed culpably to its author.

All the more so since his position, in legal terms, qualifies as a 'position of guarantee' under both criminal and civil law according to the criteria laid down for this purpose by the Supreme Court.

Consider, to this end, the principles affirmed by the Criminal Court of Cassation, Sec. II, sentence no. 4633 of 1 October 2020 concerning the position of guarantee borne by natural persons and the Criminal Court of Cassation, Sec. 3, sentence no. 32941 of 28/04/2010 Ud. dep. 08/09/2010 concerning the position of guarantee of the Municipality (owner of the road property) as civil responsible party in the criminal proceedings; similarly cf. Civil cassation Sect. 3, Order no. 20312 of 26/07/2019 concerning the position of guarantee both pursuant to art. 2051 of the Civil Code and with reference to the principles of "neminem laedere" on the basis of precedents already affirmed by Sect. 3, Sentence no. 3631 of 28/04/1997 and by U. S., Ruling no. 2693 of 13/07/1976.

On the other hand, specific negligence, pursuant to Article 43 of the criminal code, also consists in failure to comply with 'disciplines', meaning the set of rules (including those of good technique) that govern a certain activity.

The best criminal doctrine is very clear, on this point, when it affirms, with regard to *rules of conduct*: "...Not a few times the State or other authority, public or private [the bold is ours], intervenes to fix these rules, regulating certain activities, more or less dangerous, so as to prevent, as far as possible, harmful consequences for third parties".[185]

The most recurring example of this is the UNI standards, which, although they are "...a set of provisions without general binding force", nevertheless dictate the rules of art to which human activity must conform in the matters they regulate[186] .

With these premises, therefore, it must be concluded by acknowledging that even the so-called 'soft law rules' as described above can contribute to qualifying the (specific) fault of the industrial operator in relation to the damage caused by climate change attributable to it.

28. ARTICLES. 2050 AND 2051 OF THE CIVIL CODE

If, therefore, as anticipated, the violation of human rights finds internal protection in Article 2043 c.c., which is the general rule for civil law sanctioning liability for torts

185 Thus Antolisei, Manual of Criminal Law, General Part 7 edition, Giuffrè, p. 294

186 Cass. penale Sez. 3, Sentenza n. 1987 del 08/10/2014 Ud. dep. 16/01/2015 which, in motivation, opportunely specified: "This is, therefore, a set of provisions without general scope, because they are directed to the specific purpose of regulating the analyses carried out by the owner of the waste production plant, for the purposes of their chemical-physical characterisation, for the sole types of waste identified by the same ministerial decree".

environmental liability committed by ENI from a subjective point of view, there are nonetheless two other provisions of the Civil Code which must also be taken into consideration in the event that, however improbable, one wishes to object to the absence of the subjective element of non-contractual liability on ENI's part in causing the damage in question, namely Articles 2050 and 2051 of the Civil Code.

28.1. LIABILITY OF THE OPERATOR OF A DANGEROUS ACTIVITY UNDER ART. 2050 C.C.

Article 2050 of the Civil Code regulates, as is well known, liability for the performance of 'dangerous activities', providing that '*anyone who causes damage to others in the performance of a dangerous activity, by its nature or by the nature of the means used, shall be liable to pay compensation, unless he proves that he has taken all appropriate measures to avoid the damage*'.

From the point of view of the scope of application of the provision, as clarified by case law, dangerous activities are to be considered not only those activities qualified as such by a regulation, but also those which, by their very nature or the characteristics of the means used, entail a significant possibility of the occurrence of damage, having a marked offensive potential (Civil cassation, 5 June 2002, no. 8148; Civil cassation, 30 October 2002, no. 15288). It follows that "a large number of activities, even those not expressly regulated, but from which aggression may arise to individual components of the environment or neighbouring assets (such as health or public safety), may well, by reason of a recognised dangerousness, entail the application of the strict regime of imputation of liability pursuant to Article 2050 of the Civil Code"[187] . And so the applicability of Article 2050 of the Civil Code to the exercise of activities that cause environmental pollution has been repeatedly recognised by ordinary and administrative judges: see e.g. Cass. civ, sect. III, 29 July 2015, no. 16052 (which affirmed the operation of Article 2050 of the Civil Code in a case in which it was alleged that the spillage of fuel from an underground tank of a service station had polluted the nearby aquifer, contaminating the crops on a piece of land); as well as Cass. civ. sez. I, 07/03/2013, no. 5705; T.A.R. Lombardy-Brescia sez. I, 09/08/2018, no.802 (regarding historical contamination of polluted sites).

See also the judgement of the Regional Administrative Court of Sicily, Catania, Sec. I, 11 September 2012, no. 2117, in which the administrative judge affirmed that the liability of the operator of *ex se* polluting activities is to be determined precisely pursuant to Article 2050 of the Italian Civil Code, which, as is well known, establishes a presumptive type of liability "*the economic operators who produce and derive profits through the exercise of dangerous activities, insofar as they are ex se polluting, or insofar as they are users of contaminated production facilities and a source of enduring contamination, are for this very reason obliged to fully bear the charges necessary to guarantee the protection of the environment and the health of the*

187 L. PRATI, *Civil Law and the Environment*, in NESPOR-DE CESARIS (ed.), *Environmental Code*, Giuffrè, Milan, 2009, 281.

population, in causal correlation with all the phenomena of impairment connected indiscriminately with the industrial use of the site, burdened as such with a real burden of public relevance, inasmuch as it is aimed at the protection of prevailing and indecisive interests of the entire community', and which, as such, may well also be activated by individuals belonging to the community.

According to the constant orientation of the jurisprudence of legitimacy, liability for the exercise of dangerous activity pursuant to Article 2050 of the Civil Code establishes a presumption of fault on the part of the injured party, the recognition of which only requires prior ascertainment of the existence of the etiological link between the activity and the harmful event; however, the burden of proving that all suitable measures were adopted to avoid the damage remains with the injured party (Civil cassation 15 July 2008, no. 19449; Civil cassation 4 December 1998, no. 12307).

28.2. LIABILITY FOR DAMAGE CAUSED BY THINGS IN CUSTODY

For the same reasons, the civil liability of the 'custodian' under **Article 2051 of the Civil Code,** which states that '*everyone is liable for the damage caused by the things he has in custody, unless he proves unforeseeable circumstances,* also applies in the case under consideration.

It is a rule of Romanesque derivation, being modelled on the *actio de effusis et deiectis of the* praetorian matrix in Roman law of the 2nd century B.C. Already at that time, the praetor was more interested in the harmful consequences (to be prevented or sanctioned) than in the conduct that caused them.

Consider, to remain within our positive legal system, that based on the rule in question, the injured party can therefore limit themselves to proving the causal link between the thing in custody and the damage, while the custodian is required to provide the so-called "liberating" proof by positively demonstrating the fortuitous event, i.e. the fact outside the sphere of custody having an autonomous causal impulse and being absolutely unpredictable and exceptional (see, for example, Civil cassation, section VI, 02/05/2022, no. 13729). All this with the clarification that "On *the subject of civil liability pursuant to Article 2051 of the Civil Code, custody takes concrete form not only in the performance on the thing of the subsequent restorative interventions, aimed at neutralising, within a reasonable time, the unforeseeable dangerous elements, which have in any case occurred, but also in a preventive activity, which, on the basis of a judgement of foreseeability "ex ante", arranges what is necessary to prevent damage etiologically pertaining to the thing in custody*" (Civil cassation, sec. VI, 23 January 2019, no. 1725). With regard to the scope of application, case law specifies that the liability under Article 2051 of the Italian Civil Code applies to the custodian of the thing, i.e. to the person who has actual material power over it, de facto or de jure (Cass. civ. 1859/2020; Cass. S.U. 91/12019; Cass. civ. 88/5377).

The rule was used by the State to obtain compensation for environmental damage caused on polluted sites whose remediation was deemed to be of national interest.

Thus, for example, in Programme Agreements concerning some of these Sites[188] rules were introduced that recognised the State's right to have environmental damage repaired also pursuant to Article 2051 of the Civil Code[189] .

Regardless of the above-mentioned administrative practice, there is case law on Article 2051 of the Civil Code concerning precisely damage caused through natural resources.

In tal senso si consideri il caso trattato dalla Suprema Corte quando, ancora nel 2004, ha affermato la seguente massima: "*Poiché per configurare la responsabilità prevista dall'art.* ***2051 cod. civ****. it is sufficient the etiological link between the harmful event and the anomaly of the thing, whether original and natural or supervening and man-made, if the owner of a fund upstream, while not altering an existing road, increases the debris - in this case earth, stones, leaves, following the planting of an orchard - without also carrying out the* ***necessary works to prevent the natural atmospheric agents****, even if of considerable, but not exceptional, entity, from* ***conveying and dragging them forcefully into the underlying property****, flooding it,* ***he is obliged to compensate the foreseeable damage deriving therefrom****. (In the case in point, the Court of Cassation held that the trial judge had correctly applied this principle, having ascertained that, although the ground was unstable and landslide-prone,* ***this did not justify omissive conduct on the part of the custodian of the area****, and that the protective works required of the owner of the land upstream did not consist in the complete reclamation of the cliff on which the land was situated, but were limited to the construction of a retaining wall capable of providing a natural defence for the property below)*".[190]

In that case, the damage was the result of the omission of a precautionary measure that, if taken, would have prevented the damage from occurring due to the work of natural agents that were not interdicted as would have been necessary.

In any event, it is necessary to take into account the fact that, under Article 2051 of the Civil Code, the injured party only has the burden of proving the causal link between the thing in custody (in this case the industrial plant producing the atmospheric emissions) and the damage (understood as injury to the legal asset owned by the plaintiffs).

Given this proof, the burden of proof will be on the injured party to prove that the damage is attributable to a "fortuitous event" where by such is meant ".... a natural fact either of the injured party or of a third party, characterised by unforeseeability and inevitability, from the objective point of view and of causal regularity or adequacy,

188 We refer, in particular, to the Programme Agreement for the Mantua Site (31/5/2007), for the 'Napoli Orientale' Site (15/11/2007) for the Brindisi Site (18/12/2007), for the Piombino Site (21/12/2007) for the Priolo Site (7/11/2008).

189 See, for example, Art. 5 of the Programme Agreement for the East Naples Site of 15.11.2007 established that " ...in private areas the safety and remediation works of the soil and groundwater are carried out by the persons obliged to do so because they are responsible for the contamination thereof or to whom the environmental damage is, in any event, attributable also pursuant to Article 2051 of the Civil Code with reference to the environmental damage caused by the areas for which they have custody".

190 Civil cassation Sec. 3, Judgment No. 10649 of 04/06/2004

without any relevance to the diligence or lack of diligence of the caretaker'[191] .

On the fact that industrial emissions into the atmosphere produce climate change with the consequent damage to individuals, their property and their rights, we will argue, with ample scientific references, below: it will therefore be up to the defendants to attempt to prove the 'fortuitous event' with the characteristics required by the aforementioned ruling of the United Sections.

29. CAUSALITY

29.1. IN GENERAL

We have left the subject of causality for last, certainly not because of its residual importance (on the contrary), but rather so that it can be better appreciated in the light of all the considerations made so far.

In fact, it remains to be clarified what are the legal reasons why ENI itself, on the one hand, and the Administrations and/or State Bodies that, for various reasons, control its activity, on the other, can be called to answer, before an Italian Judge, for a planetary phenomenon as complex as climate change.

One might, in fact, be tempted to consider on the one hand unconnectable to ENI's (or ENI's alone) conduct the above-mentioned phenomenon, which is articulated in a myriad of aspects, each endowed with its own autonomy, hardly attributable to the conduct of a single subject; on the other hand, it is not possible to censure (for lack of jurisdiction or for lack of a civil obligation on the part of the State towards individuals to adopt measures to prevent climate change) the activities of the Government or of the public administration carried out *jure imperi*, since it is unanimously recognised that the phenomenon of global warming is transnational and requires collective measures in order to be prevented or contained.

In order to provide adequate answers to these albeit legitimate questions, it is necessary to reckon with the notion of causality (including omissive causality) and with the positive discipline of concurrence of causes in relation to liability for damages referable thereto, as well as with the jurisprudential arrears that have so far developed in other Community legal orders, where similar questions of law have already been addressed and decided.

The principle of causality is inherent in the paradigm of civil liability, especially non-contractual liability under Article 2043 of the Civil Code.

Indeed, this rule is built upon it when it states that the obligation to compensate arises from 'any wilful or negligent act that causes unjust damage to another'.

To cause means to cause: hence one is liable for damage when and to the extent that it has been caused by wilful or negligent conduct.

191 Thus most recently Civil Cass S. Unite Order No. 20943 of 30/06/2022

Indeed, in this regard, the Supreme Court has affirmed the following principle: "On *the subject of civil liability, in order for an obligation of indemnity to arise, it is necessary to have not only a damaging event, governed by material causality, but also a consequential damage, governed by legal causality, the attribution of which presupposes the finding of any of the normative cases* pursuant to *articles 2043 et seq. of the Civil Code, all consisting in the description of a connection, which historically links an event to conduct, things or events of another nature, connected with a particular relationship to the subject called upon to answer, all of which consist in the description of a nexus, historically linking an event to conduct, things or events of another nature, connected with a particular relationship to the subject called upon to answer*".[192]

Causality, therefore, is the same as that which applies in criminal law, as the Court has had occasion to state repeatedly, emphasising basic norms of the criminal system: "On *the subject of non-contractual civil liability, the causal link between unlawful conduct and damage is governed by the principle set out in Articles 40 and 41 of the Italian Criminal Code, according to which one event is to be considered caused by another if the former would not have occurred in the absence of the latter, as well as by the so-called adequate causality criterion, on the basis of which, within the causal series, the first would not have occurred in the absence of the latter, on the basis of which one event is to be considered caused by another if the former would not have occurred in the absence of the latter, as well as by the criterion of the so-called adequate causality, on the basis of which, within the causal series, only those events must be given prominence that do not appear - to an "ex ante" assessment - wholly implausible; It follows that, for the purposes of attributing the harmful event to a certain conduct, it is not sufficient that a sequence relationship exists between the antecedent and the consequential datum, but rather that this relationship must integrate the extremes of a possible sequence, in the same way as a calculation of statistical regularity, whereby the event appears as a consequence that cannot be unforeseen from the* antecedent"[193] .

It should also be specified that damage caused by mediated causality is also indemnifiable, according to the rule whereby "*causae est causa causati*": "On the subject of the indemnifiability of damage resulting from an unlawful act (or from breach of contract, in the case of contractual liability) the causal link must be understood in such a way as to include in the indemnity also indirect and mediated damage that appears as a normal effect according to the principle of so-called causal regularity"[194] .

In our case, it is ENI itself that declares the tortious act of emitting into the environment annually, through its plants and the marketing of petroleum products, huge quantities of climate-change-producing gases.

In this qualitative-quantitative perspective, therefore, ENI is among the first industrial players, internationally, to emit the largest quantities of gases responsible for global climate change if it is true that, for example, in 2021 it alone emitted more tonnes of CO2 than the rest of Italy[195] .

192 Thus Civil Cass. Sec. 3, Judgment no. 4043 of 19/02/2013.

193 Thus, for example, Civil Cassation, Sec. L, Judgment No. 8885 of 14/04/2010 and the same judgment Sec. U, Judgment No. 24408 of 21/11/2011, which will be discussed shortly.

194 Thus Civil Cass. Sec. 3, Judgment No. 15274 of 04/07/2006

195 See § 18

In this regard, wishing to pursue the discussion of the causal link according to the discipline borrowed from criminal law, it does not seem pointless to recall how Eni's aetiological contribution to climate change also benefits from the so-called 'law of hedging', according to the well-known model of subsumption under scientific laws, cleared by the well-known 'Franzese' sentence and consolidated with the equally well-known 'ThyssenKrupp' sentence[196] .

In fact, the causal relationship between the use of fossil fuels and climate change does not appear to be in doubt, since it is based on so-called 'universal' scientific laws, which make it possible to affirm with certainty or at least with a high degree of rational credibility or logical probability that the occurrence of climate change is causally linked to the emission of greenhouse gases, such as those constantly emitted into the environment by Eni, as the company itself has declared[197] .

In the present case, therefore, it appears possible to consider that the causal link between ENI's conduct in emitting altering gases and the 'climate change' event has already been demonstrated on the basis of the consolidated scientific knowledge and the absence of alternative causal paths capable of explaining the phenomenon.

All this without prejudice to the fact that in the matter of ascertaining the causal link in the context of civil liability, the standard of proof remains that of the so-called 'prevailing probability', even in the hypothesis of several concurrent causal factors in the occurrence of the event.

In particular, as recently reiterated by the Supreme Court, '*where the harmful event is hypothetically attributable to a plurality of causes*, *the criteria of "prevailing probability" or "more probable than not" must be applied; therefore, the court of merit is required, first of all, to eliminate the least probable hypotheses from the list of assessable hypotheses (without the number of possible hypotheses that can be concretely identified being relevant, given the unpredictability of an arithmetic of probative values), then to analyse the remaining hypotheses considered more probable and, finally, to choose from them the one that has received, according to inferential reasoning, the highest degree of confirmation from the factual elements having the consistency of evidence, thus assuming the role of prevailing probability"* (cf. Cass. civ, sec. III, no. 25884/2022, cited above).

In the light of all the above, therefore, even if we do not wish to adhere to the strictest evidentiary standard of criminal law, which is in any case deemed to exist, the causal link between ENI's active conduct and the climate change event can be deemed to be demonstrated in the present

196 As is well known, these are, respectively, the judgments: Cass. pen., Sez. Un. of 10 July 2002, No. 30328 and Cass. pen. Sec. Un. of 04/04/2014, no. 38343 of 04/04/2014 that affirmed the following principle of law, albeit referring to omissive causality "*in the improper omissive culpable offence, the causal relationship between the omission and the event cannot be deemed to exist on the basis of the statistical probability coefficient alone, but must be verified on the basis of a judgement of high logical probability, which in turn must be founded not only on a logical deduction reasoning based on scientific generalisations, but also on an inductive judgement based on the analysis of the characterisation of the historical fact and the particularities of the concrete case*".

197 On the so-called scientific laws of coverage, please refer to the first part of the act, where all international scientific studies demonstrating the aforementioned causal link are reported and discussed.

judgement at least by virtue of the aforementioned criterion of prevailing probability, sufficient in itself to configure the tort of tort in tort.

29.2. CONCAUSAL PROFILES

A final clarification is necessary with regard to the regulation of concauses.

Of course, ENI's emissions are not alone in causing climate change, as it is a phenomenon that, by definition, has a multiplicity of causal factors, partly human and partly natural.

However, it is precisely for this reason that ENI, since its conduct was concausal with respect to the climate change, can be held civilly liable under Article 41 of the Italian Criminal Code.

The Supreme Court's most recent jurisprudence has, in fact, tempered the rigour of previous pronouncements (such as, for example, the aforementioned Sez. U, Sentence no. 24408 of 21/11/2011)[198] reaffirming the equivalence between causes and concauses: "On the *subject of the relationship of causality in civil liability, on the basis of the principles set out in Articles 40 and 41 of the Criminal Code if the environmental conditions or natural factors characterising the physical reality affected by the conduct attributable to man are sufficient to determine the event of damage independently of the conduct itself, the author of the action or omission remains relieved, in full, of all responsibility for the event, not having put in place any antecedent with concrete causal efficiency where, on the other hand, those conditions cannot give rise, without the human contribution, to the damaging event, the author of the attributable conduct is liable in full for all the consequences arising therefrom according to normality, since in such a case a proportional reduction cannot be made by reason of the lesser seriousness of his fault, since a comparison of the degree of aetiological incidence of several competing causes can be established only between a plurality of culpable human conducts, but not between an attributable human cause and a natural contributory cause that cannot be attributed. It follows that, in the face of even the slightest uncertainty as to the relevance of a possible "con-causal" contribution of a natural factor (whatever that may be), it is not legally permissible to rely on a "simplified" probative reasoning, such as to lead "ipso facto" to a division of liability on an equitable basis, with the relative resizing of the compensatory "quantum"*"[199] .

The same principle of law was also recently affirmed by Civil cassation, section III, no. 5632 of 23/02/2023, albeit with reference to liability for medical malpractice, where the Court established that, "*in the event of competition in the production of the harmful event between the conduct of the medical practitioner and an autonomous natural fact, such as a previous pathological situation of the injured party, it is up to the*

198 That judgment, in fact, had sought to circumscribe the principle of causal equivalence dictated by Article 41 of the Criminal Code, allowing the Judge to "...proceed to the percentage attribution of the respective responsibilities".

199 Thus, for example, Civil cassation, sect. 3, no. 30521 of 22/11/2019. The same principle, moreover, was recently reaffirmed by Civil cassation, sec. II, no. 5737 of 24/02/2023.

the creditor of the professional service the burden of proving the causal link between the intervention of the doctor and the damage event in terms of aggravation of the pathological situation and, once the concausal scope of the medical error has been ascertained, it is up to the doctor to prove the absorbing and not merely concurrent nature of the external cause; if the extent of the natural concausal contribution remains uncertain, liability for all the consequences identified on the basis of legal causality must be attributed entirely to the author of the human conduct'.

In the same terms, moreover, the Supreme Court had previously expressed itself when it stated, on a general level: "In the presence of facts attributable to several persons, coeval or succeeding one another in time, all must be recognised as having a causative efficacy of the damage, if they have determined a situation such that, without one or other of them, the event would not have occurred, while the rank of exclusive efficient cause must be attributed to only one of the attributable facts when the same, by inserting itself as a supervening cause in the causal series, interrupts the etiological connection between the harmful event and the other facts, or when the same, exhausting the causal series from the outset and by its own force, reveals the non-existence, in the other facts, of the value of contributory cause and relegates them to the level of extraneous occasions"[200] ; just as when he had also affirmed a similar principle with reference to medical negligence[201] .

Finally, as mentioned above, similar questions of law have also arisen in the jurisdictional systems of other states, similarly affected by legal actions framed within the framework of so-called climatic litigation, where the same legal problem of identifying the causal link between conduct and event arose.

Emblematic in this respect is the so-called 'Urgenda' case, which was recently definitively decided by the Dutch Court of Cassation in the landmark ruling of 13 January 2020[202] .

The *Dutch Urgenda Foundation*, also representing a large group of Dutch citizens, had brought a class action against the State, demanding that it be ordered to reduce CO2 emissions in accordance with its international commitments. Similar to the present case, the *cause of action* in that action was based, among other arguments, on the high level of Dutch emissions and the fact that this would lead to serious human rights violations for future generations due to the resulting increase in temperatures.

In its judgment at first instance, The Hague Tribunal upheld the claim of the plaintiffs and, accordingly, ordered the Dutch State to reduce total greenhouse gas emissions by 25%.

200 Thus Civil Cass. Sec. 1, Judgment No. 92 of 04/01/2017.

201 See e.g. Civil Cassation, Sec. 3, Judgment No. 2335 of 16/02/2001.

202 Below are the case law references of the judgments on the merits and legitimacy of the case, using the identification criteria used by Dutch doctrine: District Court of The Hague, *Urgenda v The State of the Netherlands*, ECLI:NL:RBDHA:2015:7145, 24 June 2015; Court of Appeal of The Hague, *Urgenda v The State of the Netherlands*, ECLI:NL:GHDHA:2018:2591, 8 October 2018; Court of Cassation, ECLI:NL:HR:2019:2007, 13 January 2020.

compared to 1990 emission levels. The decision was then upheld on the merits also on appeal, while in cassation all procedural issues concerning the Urgenda foundation's legal standing and jurisdiction were definitively rejected.

Of interest for our purposes are the arguments with which first the Court of First Instance, and then the Court of Appeal, rejected the defendant state's plea that no causal conduct could be attributed to it in relation to a global phenomenon to which it contributed at least 0.5% of global emissions[203] .

However, according to the Hague Tribunal, the fact that the Netherlands emitted fewer greenhouse gases than other states could not, in any case, avoid the Dutch State's obligation to reduce them and take the necessary precautions to protect the rights of its citizens. Moreover, the court of first instance continued, any release of greenhouse gases into the environment, no matter how small, contributes to an increase in the level of CO2 in the atmosphere and, consequently, the risk of climate change[204] .

In the light of all these considerations, therefore, the Dutch court of first instance considered that the causal link (defined as '*sufficient causal* link'[205]) between the State's greenhouse gas emissions and global climate change, with its present and future deleterious effects on the quality of life of Dutch citizens, was present and proven in this case.

The arguments spent by the Court of Appeal on the subject were of a similar tenor.

According to the judge of appeal, in fact, the awareness that the phenomenon of change

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203 Here is the passage from the judgment in which this argument is stated (§ 4.78): "*After all whether or not the 2°C target is achieved will mainly depend on the reduction targets of other countries with high emissions. More specifically, the States relies on the fact that the Dutch contribution to worldwide emissions is currently only 0.5%. If the reduction target of 25-40% from Urgenda's claim were met the State argues that this would result in an additional reduction of 23.7549.32 Mt CO2-eq (up to 2020), representing only 0.04 0.09% of global emissions. Starting from the idea that this additional reduction would hardly affect global emissions, the State argues that Urgenda has no interest in an allowance of its claim for additional reduction*".

204 *This is* § 4.79 of the judgment, which states*: 'This argument does not succeed. It is an established fact that climate change is a global problem and therefore requires global accountability. It follows from the UNEP report that based on the 47 van 55 27-6-2015 19:30 Rechtspraak.nl - Print uitspraak http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDH... reduction commitments made in Cancun, a gap between the desired CO2 emissions (in order to reach the climate objective) and the actual emissions (14-17 Gt CO2) will have arisen by 2030. This means that more reduction measures have to be taken on an international level. It compels all countries, including the Netherlands, to implement the reduction measures to the fullest extent as possible. The fact that the amount of the Dutch emissions is small compared to other countries does not affect the obligation to take precautionary measures in view of the State's obligation to exercise care. After all, it has been established that any anthropogenic greenhouse gas emission, no matter how minor, contributes to an increase of CO2 levels in the atmosphere and therefore to hazardous climate change. Emission reduction therefore concerns both a joint and individual responsibility of the signatories to the UN Climate Change Convention. In view of the fact that the Dutch emission reduction is determined by the State, it may not reject possible liability by stating that its contribution is minor, as also adjudicated mutatis mutandis in the Potash mines ruling of the Dutch Supreme Court (HR 23 September 1988, NJ 1989, 743). The rules given in that ruling also apply, by analogy, to the obligation to take precautionary measures in order to avert a danger which is also the subject of this case. Therefore, the court arrives at the opinion that the single circumstance that the Dutch emissions only constitute a minor contribution to global emissions does not alter the State's obligation to exercise care towards third parties. Here too, the court takes into account that in view of a fair distribution the Netherlands, like the other Annex I countries, has taken the lead in taking mitigation measures and has therefore committed to a more than proportionate contribution to reduction. Moreover, it is beyond dispute that the Dutch per capita emissions are one of the highest in the world'.*

205 The theme is taken up in § 4.90 of the judgment, according to which '*From the above considerations, particularly in 4.79, it follows that a sufficient causal link can be assumed to exist between the Dutch greenhouse gas emissions, global climate change and the effects (now and in the future) on the Dutch living climate. The fact that the current Dutch greenhouse gas emissions are limited on a global scale does not alter the fact that these emissions contribute to climate change. The court has taken into consideration in this respect as well that the Dutch greenhouse emissions have contributed to climate change and by their nature will also continue to contribute to climate change*'.

climate is global in nature does not negate the defendant state's obligation to nonetheless take all appropriate measures within its territory, also in accordance with the general precautionary principle established in international law[206] .

Also according to the appellate court in the 'Urgenda' case, therefore, all of the Dutch State's objections regarding the lack of a causal link in the present case had to be rejected, since such an argument - namely that the defendant cannot be held responsible for climate change since it is not the sole (or only a minor) material cause of it and in any event shares responsibility with other States, which perhaps do not take any precautions to mitigate the same phenomenon - would lead to the absurdity of denying any effective legal remedy to the plaintiffs who, among other things, certainly cannot choose which state to sue[207] .

Precisely on the basis of these grounds, the Dutch Court of Cassation - which, as recalled, set the final seal on the dispute in January 2020 - rejected all procedural questions raised by the defendant state regarding the Urgenda foundation's interest in bringing proceedings, on the assumption that a reduction of emissions by the Netherlands alone would not have prevented the occurrence of the danger of climate change for the present and future generations.

Thus, even according to the Dutch Supreme Court, even the minimal contribution of only one of the actors responsible for climate change can justify the individual's interest in bringing suit. A *fortiori*, it is held that the same legal arguments can be transposed to the present case where the defendant ENI, unlike the Dutch State, contributes to climate change with a far greater emission figure, since in 2021 it alone emitted more tonnes of CO2 than the rest of Italy.

The fact that climate change is also caused by other contributory factors, which in the present case may well be the climate-changing emissions of other parties, public or private, including ENI's *competitors*, certainly does not exclude liability

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206 The reference is to §§ 61, 62 and 63 of the judgment: '*61. The State has also put forward that the Dutch greenhouse gas emissions, in absolute terms and compared with global emissions, are minimal, that the State cannot solve the problem on its own, that the worldwide community has to cooperate, that the State cannot be deemed the party liable/causer ('primary offender') but as secondary injuring party ('secondary offender'), and this concerns complex decisions for which much depends on negotiations. 62. These arguments are not such that they warrant the absence of more ambitious, real actions. The Court, too, acknowledges that this is a global problem and that the State cannot solve this problem on its own. However, this does not release the State from its obligation to take measures in its territory, within its capabilities, which in concert with the efforts of other states provide protection from the hazards of dangerous climate change. 63. The precautionary principle, a generally accepted principle in international law included in the United Nations Framework Convention on Climate Change and confirmed in the case-law of the European Court of Human Rights (Tătar/Romania, ECtHR 27 January 2009, no. 67021/01 section 120), precludes the State from pleading that it has to take account of the uncertainties of climate change and other uncertainties (for instance in ground of appeal 8). Those uncertainties could after all imply that, due to the occurrence of a 'tipping point' for instance, the situation could become much worse than currently envisioned. The circumstance that full scientific certainty regarding the efficacy of the ordered reduction scenario is lacking therefore does not mean that the State is entitled to refrain from taking further measures. High plausibility, as described above, suffices*'.

207 The passage is contained in § 64, which states that "*Moreover, if the opinion of the State were to be followed, an effective legal remedy for a global problem as complex as this one would be lacking. After all, each state held accountable would then be able to argue that it does not have to take measures if other states do not so either. That is a consequence that cannot be accepted, also because Urgenda does not have the option to summon all eligible states to appear in a Dutch court.*

of the defendant and its aetiological contribution to the aforesaid phenomenon, if it is true as stated in Article 41(3) of the Criminal Code, i.e. that the wrongful act of another person in which the pre-existing or simultaneous or supervening cause may arise does not, however, exclude the causal relationship between the action or omission and the event.

All this, without forgetting the provisions of Article 2055 of the Civil Code, according to which where the harmful event is attributable to more than one person, all are jointly and severally obliged to pay compensation for the damage.

Thus, to conclude on this point, ENI is civilly liable for the damage caused by climate change that it has caused or otherwise contributed to.

Under this last profile, the most recent theories of so-called proportional causality, based on the criterion of the increase in risk to be attributed to the subject who has been identified (or who is in any case identifiable) in the hypothesis of plural causal contributions by several subjects to the occurrence of the harmful event, also assume relevance.

In such a case, the identified or identifiable wrongdoer shall be liable to an extent proportionate to the increased risk related to his conduct, determined according to available scientific knowledge.

Therefore, and to all intents and purposes, ENI cannot in any event be exempt from liability even if it accepts this theory, since the increased risk of climate change linked to its conduct is extremely significant from a proportional point of view in light of all the considerations set out above.

Therefore, and to all intents and purposes, ENI cannot be exempt from liability even if it accepts this theory, since the increase in the risk of climate change attributable to its conduct is extremely significant from a proportional point of view; and this in light of all the considerations set out above.

30. THE RESPONSIBILITY OF THE STATE AS SHAREHOLDER OF ENI

30.1. THE INFLUENCE DOMINANT OF THE STATE ON ENI SPA E ROLE OF THE ASSEMBLY ON THE COMPANY'S CLIMATE STRATEGY

Eni, as seen *above* in § 20.2, is not a 'normal' joint-stock company. Eni is the State and the State is Eni.

This is not only because the controlling shareholders of the company are the Ministry of Finance and Cassa Depositi e Prestiti, which hold 4.411% and 26.213% of the shares respectively.

On the other hand, one cannot forget, in fact, that Eni's budget is audited by the Court of Auditors, which reports to the Presidents of the House and Senate.

We read in the annual *incipit of* the Court's report that 'having regard to the *Presidential Decree of 11 March 1961 by which ENI, Ente Nazionale Idrocarburi, was subjected to the control of the Court of Auditors; having regard to Law No 359 of 8 August 1992 converting,*

having regard to Decree-Law No. 333 of 11 July 1992, as amended, by which Ente Nazionale Idrocarburi was transformed from a public entity, established by Law No. 136 of 10 February 1953, into a joint-stock company, taking the name of Eni S.p.A.; having regard to the financial statements of the above company for the financial year 2019, as well as the attached reports of the Board of Directors and the Board of Statutory Auditors, transmitted to the Court of Auditors in accordance with Article 4 of the abovementioned Law No. 259 of 1958; having examined the acts; having heard the reports of the President of the Chamber ... 259 of 1958; having examined the acts; having heard the Rapporteur, President of the Chamber ... and, on his proposal, discussed and deliberated on the report in which the Court, on the basis of the acts and information acquired, reports to the Presidencies of the two Chambers of Parliament the result of the audit carried out on the financial management of the Company for the financial year ...; considering that, having thus fulfilled the legal requirements, the said Presidencies may be informed, pursuant to Art. 7 of the aforesaid Law No. 259 of 1958, the financial statements - accompanied by the reports of the administrative and auditing bodies - and the report as resolved above, which is attached hereto as an integral part;
P. Q. M.
communicates, pursuant to Article 7 of Law No 259 of 21 March 1958, to the Presidencies of the two Chambers of Parliament, together with the financial statements for the financial year ... of Eni S.p.A. - accompanied by the reports of the administrative and auditing bodies - the joint report in which the Court reports the results of its audit of the financial management of Eni S.p.A. for the financial year in question'.

In Cassa Depositi e Prestiti's 2019 report, as in its predecessors, it still states that '*The shareholding, whether direct or indirect, is subject to the statutory limit of three per cent of the share capital (Article 6.1 of the articles of association), in implementation of Article 3 of the Decree-Law of 31 May 1994,*
No. 332, converted, with amendments, by Law No. 474 of 30 July 1994, then amended by Article 3, paragraph 5, letters a) and b) of Decree-Law No. 21 of 15 March 2012, converted, with amendments, by Law No. 56 of 11 May 2012, which provides that companies operating, inter alia, in the energy sector may introduce into their bylaws a maximum limit of share ownership not exceeding five per cent with respect to individual shareholders. Shareholdings in excess of three per cent do not affect the exercise of property rights, but do not permit, with respect to the shares exceeding the limit itself, the exercise of voting rights and any other rights other than property rights. Excluded from this limit, pursuant to Article 32 of the articles of association, in accordance with the provisions of the abovementioned Article 3 of Decree-Law No 332 of 1994, are the holdings in Eni's capital held by the Ministry of Economy and Finance, by public entities, or by entities controlled by them (such as Cassa Depositi e Prestiti SpA). The aforementioned Ministry, by virtue of the shareholding it holds both directly (with 4,34 per cent) and indirectly (with 25,76 per cent) through Cassa Depositi e Prestiti SpA (CDP SpA), a company controlled by the same

Ministry, therefore has

sufficient votes to exercise a dominant influence in the Company's ordinary shareholders' meeting'. Furthermore, consider that pursuant to Article 2359 of the Italian Civil Code, *'The following are considered subsidiary companies: ... 2) companies in which another company has sufficient votes to exercise a dominant influence in the ordinary shareholders' meeting'.* All this with the clarification that the latter provision is expressly referred to by Legislative Decree No. 175 of 19 August 2016 (approving the "Consolidated Law on Public Participation Companies") according to which *"control"* is *"the situation described in Article 2359 of the Civil Code".*

Therefore, thanks to the company shareholdings held directly and indirectly, the MEF has sufficient votes to exercise a dominant influence in the ordinary shareholders' meeting of Eni, which is equivalent to a situation of 'control' by the State over the same investee company.

Eni's ordinary shareholders' meeting also plays a primary role in the company's climate strategy. Indeed, the latter approves Eni's Annual Financial Report, which includes many elements of the strategy to achieve carbon neutrality by 2050 and in particular the verification of the progress achieved each year to meet these and related specific targets: see Annual Financial Report 2022[208] .

At the same time, the same document approved by the Shareholders' Meeting includes the 'Consolidated Non-Financial Statement' (pursuant to Legislative Decree 254/2016), which extensively elaborates on the aforementioned strategy with reference to specific carbon and climate performance indicators. This implies that the public shareholder with dominant influence approves the annual financial report and all its related documents.

The 'Notes to the Consolidated Financial Statements' submitted for approval by the Shareholders' Meeting also elaborates on the company's climate strategy: *'ACCOUNTING STATEMENTS AND SIGNIFICANT ASSESSMENTS MADE TO TAKE ACCOUNT OF THE IMPACTS OF CLIMATE RISKS*

The effects of initiatives to limit climate change and the potential impact of the energy transition influence the accounting estimates and significant judgments made by management for the preparation of the consolidated financial statements as of 31 December 2021. In particular, the global push towards an economy with reduced emissions intensity, increasingly restrictive regulatory measures towards oil & gas activity and hydrocarbon consumption, carbon pricing schemes, the technological evolution of alternative energy vectors, as well as changes in consumer preferences may lead, in the medium-long term, to a structural decline in demand for hydrocarbons, an increase in operating costs, as well as a greater risk of non-producible reserves (so-called stranded assets) for Eni. The strategy defined by Eni envisages achieving carbon neutrality of its operations in 2050, in line with the

208 https://www.eni.com/assets/documents/ita/bilanci-rapporti/2022/Relazione-finanziaria-annuale-2022.pdf

scenarios compatible with keeping global warming within the 1.5°C threshold; it also sets intermediate targets for 2030 and 2040, both in terms of absolute emission reductions and carbon intensity. The scenarios adopted by company management are constructed taking into account existing or foreseeable policies, regulations and technological developments, and outline an evolutionary path for the future energy system, based on an economic and demographic framework, an analysis of current and announced policies and the state of technologies, identifying, among these, those that can reasonably be expected to reach technological maturity in the horizon considered. The price variables therefore reflect management's best estimate of the fundamentals of the various energy markets, incorporating current and foreseeable decarbonisation trends, and are constantly benchmarked against the views of market analysts and energy industry peers. These scenarios underpin significant estimates and judgments regarding: (i) the assessment of the intention to continue exploration projects; (ii) the verification of the recoverability of non-current assets and credit exposures to National Oil Companies; (iii) the definition of the useful lives and residual values of fixed assets; (iv) the impacts on provisions for risks and charges. Please refer to the Report on Operations - Non-Financial Statement regarding the sensitivity analyses performed on the value of reference assets considering the low-carbon scenarios indicated by international bodies."

The approval of these documents (and others) by the Shareholders' Meeting confirms that the state shareholder has approved Eni's climate strategy and approach to climate risk.

30.2. THE INFLUENCE OF THE STATE (MEF E CDP) ABOUT MANAGEMENT AND ADMINISTRATION OF ENI IN RELATION TO CLIMATE STRATEGY

ENI's Bylaws[209] establishes limits to the Company's shareholding by providing in Article 6.1, paragraph 1: "Pursuant to *Article 3 of Decree-Law No. 332 of 31 May 1994, converted with amendments by Law No. 474 of 30 July 1994, no one may own, for any reason whatsoever, shares of the Company that entail a shareholding of more than 3% of the share capital*".

Paragraph 6, which follows, explicitly removes voting rights for the portion exceeding 3 per cent: "*Voting rights and other rights other than equity rights pertaining to shares held in excess of the maximum limit indicated above may not be exercised and the voting rights that would have accrued to each of the persons to whom the shareholding limit applies are reduced proportionally, unless the shareholders concerned have jointly indicated in advance. In the event of non-compliance, the resolution may be challenged pursuant to Article 2377 of the Civil Code if the required majority would not have been achieved without the votes in excess of the limit*

209 https://www.eni.com/it-IT/chi-siamo/governance/lo-statuto.html

maximum indicated above'.

And yet Article 32.2 of the General Provisions provides for an exemption from the aforesaid provisions for the Ministry of Economy and Finance and entities controlled by them (Cassa Depositi e Prestiti SpA): 'Pursuant to *Article 3(2) of Decree-Law No. 332 of 31 May 1994, converted with amendments by Law No. 474 of 30 July 1994, the shareholdings in the capital of the Company held by the Ministry of Economy and Finance, by public entities or entities controlled by them are not subject to the* provisions of the aforesaid General Provisions. *332 of 31 May 1994, converted with amendments by Law No 474 of 30 July 1994, the provisions of Article 6.1.6 of these Articles of Association do not apply to the shareholding in the Company's capital held by the Ministry of Economy and Finance, public entities or entities controlled by them*'.

From this exemption (dating back to the 1994 regulations on the privatisation of Eni and other state-owned shareholdings)**,** descends the so-called *golden share* attributed to the Italian government to maintain strategic control over the companies being privatised. While it is true that (as a result of developments in European law and an infringement procedure imposed by the European Commission) in 2012 the legislative framework was replaced by the so-called *golden power* mechanism and related rules introducing limitations on purchases by certain foreign entities of shares in Italian companies, the latter leaves unchanged the corporate structure concerning the MEF's shares, which continues to control, either directly or through mediation, 31 per cent of Eni SpA.

The dominant influence of the MEF and CdP over ENI is not, however, limited to the share package and the shareholders' meeting, but goes to the 'heart' of the company's management and administration.

Article 17.3 of ENI's bylaws regulates the appointment of the company's Board of Directors, which '*is the central body of the corporate governance system', by* the Shareholders' Meeting: '*Only shareholders who alone or together with other shareholders represent at least 1% of the share capital or the different measure established by Consob with its own regulation...*'.

Eni's board of directors consists of 9 members. Thus the MEF presents a list of 6 candidates (1 the future chairman and 2 the future managing director) and the private shareholders usually only a list with 3 candidates[210] . The same applies to the appointment of the company's auditors.

Thus, even if the appointment of two-thirds of the Board of Directors and among them those whom the Board then appoints as Chairman and Chief Executive Officer is not directly by the MEF - as prohibited by Article 2449, fourth paragraph of the Civil Code -, it is clear that they are in fact appointed by the Ministry and are an expression of the Ministry's vision due to the election procedure, regulated by the Articles of Association.

As can be seen from the current composition of the Board of Directors, of the nine members, two are executive (i.e. with management functions) and seven are non-executive (i.e. without management functions).

The **President** is appointed by the Shareholders' Meeting pursuant to Art. 18 of the Articles of Association. If the Shareholders' Meeting has not done so, the Board of Directors does so. Due to the dominant influence on the Shareholders' Meeting by the State, the Chairman is always chosen from among the 6

210 https://www.eni.com/assets/documents/governance/2020/ita/Liste-MEF-candidati-alla-carica-di-Amministratore-e-Sindaco.pdf

advisors appointed by the MEF.

In Eni there is no executive committee and therefore, pursuant to Article 24 of the articles of association, the Board of Directors delegates its powers to one of its members, namely the **CEO.** Since there is a two-thirds majority on the Board of Directors, it is clear that those nominated by the MEF choose one of them to be the CEO, who has in fact already been nominated - prior to the shareholders' meeting - by the MEF (currently Claudio Descalzi).

Of the 7 non-executive directors, 6 are considered **independent,** and only the MEF official who sits on Eni's Board of Directors (and is currently also the Chairman of SACE) is not considered independent.

There are 4 committees within the Board of Directors in which only non-executive members participate[211] : Audit and Risk Committee (4 members: 2 MEF appointment and 2 private, private chairman), Remuneration Committee (3 members: 1 MEF appointment and 2 private, MEF chairman), Nomination Committee (3 members: 2 MEF appointment and 1 private, MEF chairman), Sustainability and Scenarios Committee (5 members: 3 MEF appointment, 2 private, private chairman).

It should be noted, therefore, that in the Sustainability Committee the majority is MEF-appointed, as is half in the Risk and Control Committee. Both committees deal with the climate strategy.

The **Control and Risk Committee** (which '*supports the Board in evaluations and decisions relating to the System of Internal Control and Risk Management (SCIGR), as well as in those relating to the approval of periodic financial and non-financial reports, with appropriate preliminary activity, as a result of which it formulates evaluations and/or opinions to the Board*') deals with climate change, as reported on ENI's website[212] :

"*The Committee ... has also concluded the specific in-depth sessions on Eni's main business risks, started in 2020, with reference to climate change, scenario risk, Environmental, Social, Governance (ESG) and reputational risks ... has deepened, meeting for this purpose with the various competent corporate functions in a dedicated session, the top risk climate change in the perspective of its impacts : i) of a financial nature, with particular reference to scenarios (Eni and IEA), to the company's strategy within the framework of the decarbonisation process and to the repercussions on financial disclosure and financial statement valuations; ii) physical, in relation to the impacts on O&G connected to the intensification of chronic and extreme climatic events, taking particular account of the peculiarities of the territories in which Eni operates and in relation to the methods of assessing physical risk, in terms of the safety of people, the integrity and availability of assets and the protection of the environment; and iii) with reference to legal issues, also in light of the evolution of case law in this area...*"

211 https://www.eni.com/it-IT/chi-siamo/governance/comitati-cda.html#:~:text=The%20Committee%20Control%20and%20Risk%20C3%A8%20composed%20of%20four%20directors,Nathalie%20Tocci

212 https://www.eni.com/assets/documents/governance/2020/ita/comitati/Le-riunioni-e-le-attivita-del-Comitato-Controllo-e-Rischi-nel-

2021.pdf

The Sustainability and Scen**arios Committee is** then mainly focused on scenarios and sustainability, with particular attention on processes, initiatives and activities aimed at overseeing the Company's commitment to sustainable development along the value chain. Particular attention is paid to the respect and protection of rights, in particular human rights, which are the foundation for an inclusive development of societies, territories and consequently of the companies operating therein. Other topics covered by the Committee with respect to sustainability include: health, well-being and safety of people and communities; local development; access to energy, energy sustainability and climate change; environment and resource efficiency; integrity and transparency; and innovation. In particular, the Committee examines scenarios for the preparation of the strategic plan, the sustainability policy and its implementation in business initiatives; it monitors the Company's positioning with respect to financial markets on sustainability issues and international sustainability initiatives; it examines and evaluates sustainability initiatives, also in relation to individual projects, as well as the Company's non-profit strategy and its implementation, also in relation to individual projects. It expresses an opinion on other sustainability issues at the request of the Board. Article 3 of the committee regulation with regard to climate transition states that *'... or decarbonisation at both operational and product portfolio levels, and technological innovation, green chemistry and circular economy, aimed at ensuring the creation of value over time for shareholders and all other stakeholders...*'[213] .

30.3. THE RESPONSIBILITY OF THE STATE (MEF AND CDP) ALSO IN THE LIGHT OF THE 'SUBSTANTIALIST CONCEPTION' OF ENTERPRISE

The aforementioned dominant influence of the State, the Ministry of Economy and Finance and Cassa Depositi e Prestiti, the only controlling shareholders of Eni S.p.A., on the shareholders' meeting and on the management and administration of the company in relation to its climate strategy (and the consequent emissions of climate-changing gases), must however be framed within the context of the substantiveist conception of the company and the consequent allocation of responsibility in environmental matters.

Consider in this regard that, in the name of the *'polluter pays'* principle with the correlated need for the allocation of the negative externalities of the business activity to the subject that has benefited from them to be effectively pursued, has led case law to accept the 'substantiveist conception' of an undertaking, elaborated in the field of competition law by the European Union case law. According to this concept, it is in fact necessary to have regard to the 'economic substance' of the undertaking, going beyond the formal phenomenal fragmentation of the undertaking into a plurality of distinct subjects and attributing, therefore, to all the subjects to whom the consequences of the conduct carried out and from which they have benefited are actually attributable, the consequences of the conduct carried out and from which they have benefited, to all the subjects to whom they are actually attributable.

213 https://www.eni.com/assets/documents/regolamento-comitato-sostenibilita-e-scenari.pdf

benefit. Thus, it has been held that *"the concept of an undertaking, in the context of competition law, must be understood as referring to an economic unit from the point of view of the object of the agreement, even if, from a legal point of view, this economic unit consists of several natural or legal persons and if that economic entity consists of a unitary organisation of personal, tangible and intangible elements which pursues a specific economic purpose on a stable basis"* (thus ECJ, 1 July 2010, Case C.407/08P, Knauf Gips KG). Thus, according to the case law that has applied the aforementioned principles in environmental matters (Council of State, sect. IV, 6 April 2020, no. 2301; TAR Veneto, sect. II, 13 March 2023, no. 340) - for the purposes of identifying the parties responsible (and as such required, inter alia, to clean up a polluted site) in accordance with a substantiveist conception of an undertaking, it is necessary not to limit the ascertainment of responsibility for the conduct that gave rise to the pollution to the material author of the economic activity that constituted the source of the contamination, but to extend it to the search for those parties who have actual control of the source by virtue of decision-making powers or who have *'in any event* made *possible'* the activity that gave rise to the pollution '*by virtue of the legal position they hold within the relations with the direct polluter'* and *'in the context of such situations, the hypothesis of the parent company that makes use of operating companies to carry out the business activity is certainly the most emblematic'.* In short, *"The substantive notion of an undertaking determines that environmental responsibilities must be allocated to those entities that, over the years, have made a profit from polluting activities, either through the distribution of dividends, or, as is more often the case, thanks to cost savings obtained through the failure to adopt adequate environmental safeguards"* (Cons. Stato, no. 2301/2020 cit.).

Therefore, applying to the case at hand the aforementioned principles on the substantiveist conception of enterprise in environmental matters, in light of the recalled situation of dominant influence/control by the State over the Company's Ordinary Shareholders' Meeting, of the appointment of two-thirds of the members of the Board of Directors of the Chairman and the CEO, of the enormous profits made by the State through the distribution of dividends (as recalled, more than EUR 5.7 billion received in the 2016-2022 period alone, following the Paris Agreement), the responsibility for ENI's climate-changing emissions must be allocated (also) to the MEF and CDP.

In conclusion, therefore, the Ministry of Economy and Finance and Cassa Depositi e Prestiti, in view of their powers and the dominant influence they have exercised over the company since its foundation to date, cannot but be held jointly responsible for the corporate choices made in terms of energy-climate strategies and the resulting emissions of CO2 and other climate-changing gases.

It is worth remembering that the choices made by Eni in past decades, even before its privatisation, have their effects on the climate to this day and will continue to

produce them in the future: therefore, the responsibility of the state, of the Ministry of Economy and Finance and of CdP, must be, as such, directed towards the past as well as the present and the future.

On the other hand, it is within the full powers and duties of the State to verify the subsidiary's respect for the environment and the climate system through the pursuit of liability actions in the event of Eni's failure to comply with international agreements that directly bind the Italian State in this matter, *first and foremost* the 2015 Paris Agreement, including Eni's failure to take the required precautions.

In this sense, therefore, the Italian state cannot but be co-responsible for the environmental-climatic disaster caused in past decades, in the present time and in the future by Eni S.p.A.

31. THE PETITUM

31.1. THE DAMAGE SUFFERED BY THE PRESENT PLAINTIFFS AS A RESULT OF THE WRONGFUL ACT OF THE DEFENDANTS AND THEIR RESPECTIVE CLAIMS FOR DAMAGES

In the light of what has been set out and will be documented in court, the climate alterations of which ENI appears to be one of the architects, and undoubtedly the main Italian culprit, have produced and are producing very serious damage to the plaintiffs, the associations Greenpeace and ReCommon, as well as to the private individuals acting in this case.

Hereinafter, therefore, we will briefly illustrate the prejudice for which compensation is sought with reference, respectively, to each of the two groups of plaintiffs in the present case, individual citizens on the one hand and environmental associations on the other.

31.1.1. THE INJURIES SUFFERED BY THE PLAINTIFFS NATURAL PERSONS WHOSE COMPENSATION IS SOUGHT

It is entirely undisputed that the violation of the human rights to life and to an undisturbed family life as provided for by Articles 2 and 8 of the ECHR and, therefore, the protection under Article 2043 et seq. of the Italian Civil Code invoked by the individuals in the present case, arises first of all from the significant environmental/climatic damage caused by ENI pursuant to Article 300 of Legislative Decree No 152/2006, as better illustrated in the preceding paragraphs on this matter.

However, as stated above, the present plaintiffs do not claim compensation for environmental damage in its proper meaning, i.e. as a significant and measurable deterioration of natural resources, but seek compensation for quite different items of damage.

More specifically, with regard to the plaintiffs-physical persons, there appears to be no doubt that they are damaged by the defendant ENI's wrongful act in that it has unequivocally caused damage to their health and safety, as well as to their property and their functional sphere.

Therefore, their legal action is aimed at obtaining compensation for items of damage, different and distinct from environmental damage in the strict sense of the term, as they are entitled to do so pursuant to Article 313, paragraph 7 of Legislative Decree no. 152/2006, for which, in any case, "*the right of persons harmed by the fact producing environmental damage, in their health or property, to take legal action against the person responsible for protecting the rights and interests harmed*" (see Constitutional Court 01/06/2016, no. 126) remains intact.

In fact, environmental damage is a multi-offensive or multi-injury event in itself, in that it causes further and distinct harm, relating to the assets and rights of the plaintiffs in the present case.

Moreover, in the present case, as has already been extensively examined, there is a classic case of tort in tort in civil law, in that the defendants carried out - in a repeated and persistent manner - intentional and negligent acts, which caused unjust damage to the plaintiffs, pursuant to Article 2043 of the Civil Code.

Moreover, the aforementioned paragraph 7 of Article 313 constitutes an express reference and mere reconfirmation of the very general hypothesis of non-contractual civil liability under Article 2043 et seq. of the Civil Code.

In this regard, as, moreover, has already been documented and as will be demonstrated in any event in the course of the proceedings, it is worth recalling that the plaintiffs-individuals are all residents and owners of real estate in areas of the country particularly exposed to the effects of climate change, so that the unjust damage to their property and to their health and safety are etiologically attributable, without interruption, to the facts, also productive of environmental/climatic damage, unlawfully implemented by the defendants.

If, in fact, in terms of counterfactual judgement, the defendants had not engaged in the environmentally damaging conduct complained of herein, the private plaintiffs would certainly not have seen the patrimonial and market value of the relevant real estate substantially diminished, as unfortunately occurred.

Similarly, individuals, all of whom reside in areas particularly affected by climate change, would not be exposed to extreme weather events that produce disasters and therefore endanger their health and personal safety.

Hence the further prejudice caused by *metus* due to the psychological suffering deriving from the fear of exposing one's material goods, as well as safety, life and personal health and that of loved ones to extreme and disastrous phenomena induced by climate change, also having the right to obtain compensation for the damage consequent to the alteration of daily life habits due to climate change, also in the absence of proof of biological damage (on the damage caused by *metus* in disaster events, see Civil cassation, section III, sentence no. 2515 of 21 February 2002 on the Seveso disaster; Civil cassation, section III, no. 11059 of 13 May 2009, again referring to the well-known case of the Seveso disaster), SS.UU., sentence 21/02/2002 no. 2515 on the Seveso disaster; Civil cassation, section III, no. 11059 of 13/05/2009 always referring to the note

Icmesa affair; Cass. pen. sez. IV, no. 13843/2020 on the Spinetta Marengo case; Cass. pen. sez. IV, 10/05/2018, no. 25547).

Hence the right of the plaintiffs to obtain compensation for the aforementioned items of damage resulting from the violation of human rights by the defendants through the conduct complained of herein.

In particular, Marco Lion, a resident of Senigallia, has already suffered climate change damage, having been one of the victims of the flood of 15 September 2022 when his home was flooded with the consequent loss of documents and other property. Lion fears, in particular, that the situation of hydrogeological instability and the occurrence of further extreme events that will increasingly put his property and the safety of him and his loved ones at risk.

These well-founded concerns are common to all actors, even those who have not yet experienced extreme events, but who already feel some of the effects of ongoing climate change.

Giovanna Deppi and Lucia Ruffato, mindful of the extreme event that happened in the Dolomites (Hurricane Vaia in 2018), fear that similar situations could happen again, with risk not only for the environment, but also for their own safety. They are also concerned about the melting of the glaciers and the severe drought situation in the mountains, and therefore increasingly fear a lack of water supply, as well as the occurrence of forest fires.

Vanni Destro, Giorgio Crepaldi, Lucia Pozzato and Patrizia Bartelle, all residents of Polesine, express their concerns and are already suffering similar damage, including heat waves, the effects of the rising salt wedge, subsidence and drought, with the consequent loss of crops and, therefore, the value of property, up to the risk of having to abandon their places of residence because they are no longer habitable in the near future, with the consequent loss of affection and the economic value of property.

The situation of Ninetto Martucci, a resident of Venice, who directly experiences the effects of rising seas, is particular. In particular, Martucci, like all Venetians, is aware that without the use of the so-called. Mose during the increasingly frequent 'high water' events, the ground floors of homes would be almost unusable, if not unusable at all; on the other hand, however, the use of the Mose has two profoundly negative effects firstly of an economic nature, because each use costs several hundred thousand euro that could be used for another purpose; secondly, because blocking the circulation of water poses a risk to its salubriousness, as well as to the lagoon's marine ecosystem, which is already severely compromised, not least by extreme weather events such as tornadoes that have caused damage to property and people, with the consequent fear for the safety of their loved ones and their own.

Also overlapping are the concerns of actresses Rachele Caravaglios and Maria Antonietta D'Antonio. They are residents of Piedmont, in the area of the Po Valley, where there is constant alarm over the state of the air and heat waves, added to which there is a drought and a shortage of water resources, with the result that even water tankers have recently been resorted to in order to supply some towns. Added to this, the constant drought and rising temperatures in a situation of very serious atmospheric particulate matter creates inevitable concern for the future and for the health of themselves and their loved ones, as it is scientifically proven to cause respiratory, allergic, skin, etc. problems.

To some extent, these concerns are the same as those of Francesca Zazzera, who, as a resident of Naples, has recently experienced at first hand the worries of extreme rainfall disasters (starting with those in nearby Ischia in November 2022), as well as major droughts, with the inevitable onset of worries about her future starting with the fear of having to leave her home and, therefore, having to start her life over in another place. In the case of Noa Helffer, who resides in Acireale, Sicily, extreme weather events, such as floods and tornadoes, have already caused damage to her home, as well as recurring limitations to school attendance, hence the inevitable onset of concern about possible future impacts related to such extreme phenomena, including drought and the increasing spread of fires.

31.1.2. DAMAGES SUFFERED BY THE ASSOCIATIONS GREENPEACE ONLUS AND RECOMMON APS FOR WHICH COMPENSATION IS SOUGHT

As regards the damages claimed by the other two plaintiffs, the associations Greenpeace ONLUS and ReCommon APS, it is first of all worth recalling that each of them pursues a main statutory purpose, namely the defence of the environment, the climate, as well as natural resources and local communities (recognised as human rights under Articles 2 and 8 ECHR), in the terms set out in §§ 20 et seq.

Accordingly, the pecuniary and non-pecuniary damage for which specific compensation is sought by the above-mentioned plaintiffs are nothing other than the damage caused by the infringement of the aforesaid statutory purposes and the damage to the financial resources and assets deployed and consumed by the same associations in order to counteract the productive activities - *ex multis* - of environmental/climatic damage carried out by ENI over the years.

In other words, the wilful and negligent activities of the defendants, which also produced environmental damage, caused separate financial and non-financial damage to the aforementioned 'collective claimants'; damage etiologically correlated to the aforementioned adverse activities and to the need, therefore, for the same claimants, as associations statutorily entrusted with the protection of the environment and the climate, ecosystems, natural resources and local communities, to implement activities, initiatives and

campaigns, clearly costly, aimed at combating and containing, as far as possible, the environmental damage caused by the defendants' activities.

Ultimately, in terms of a counterfactual judgment, if ENI had not carried out the environmentally damaging activities at issue in the present action, the above-mentioned plaintiffs would certainly not have suffered the non-pecuniary damage to their statutory purposes and the pecuniary damage to their financial and economic resources, or the disbursements which, on the contrary, they have faced in recent years, since they are engaged in onerous activities - both humanly and financially - aimed at counteracting the acts of the defendants that cause environmental damage.

In support of the foregoing, reference is made to the authoritative and consolidated jurisprudence of legitimacy according to which "*the damage that can be compensated under civil law may also be in the form of the prejudice caused to the activity concretely performed by the environmental association for the valorisation and protection of the territory, which is affected by the goods subject of the damaging event. In such hypotheses, there could be a harm that is also susceptible of economic assessment, in consideration of any financial outlays incurred by the body for the performance of the protection activity*" (Criminal Court of Cassation section III 23/05/2012 no. 19437. In identical terms Criminal Cassation section III 26/09/2011 no. 34761).

31.2. THE REQUEST TO ESTABLISH THE LIABILITY OF THE DEFENDANTS AND THE CONSEQUENT REQUESTS FOR AN ORDER TO PAY COMPENSATION IN SPECIFIC FORM

On the basis of all that is set forth in the writ of summons, the plaintiffs conclude that the aforesaid pecuniary and non-pecuniary damages result from the inadequate climate policy that ENI has pursued and continues to pursue.

In fact, as illustrated and documented *above* in § 19, ENI's decarbonisation strategy to 2050 is not at all in line with what is required by the IPCC and International Energy Agency's *net zero* scenarios, and that the lack of incisive action to reduce emissions in the current decade is due to ENI's *non-compliance* with what the international scientific community requires to avoid catastrophic climate change by keeping the temperature increase within 1,5 degrees (in fact, already by 2030 ENI will 'consume' 71 per cent of the carbon budget allocated to it according to scientific models, and by 2035 the carbon intensity of ENI's activities will still be 21 per cent higher than allowed).

ENI must, therefore, be required to put an end to this *contra ius* situation by pursuing the global climate objective of the Paris Agreement, respecting, among others, the precautionary principle.

As a company responsible for more CO2 than the country as a whole, ENI will have to follow the emission reduction scenario necessary to stabilise the

concentrations of greenhouse gases in the atmosphere between 400 and 500 ppm.

It is, therefore, imperative that ENI begins to immediately and concretely reduce its emissions because, if it continues to delay and/or postpone, the risk of not being able to avoid irreversible climate damage will increase, and so will the associated social and economic costs.

It should be recalled, that as mentioned in § 4, the 2018 IPCC SR Report 1.5 indicates that reducing global warming to 1.5 °C requires global CO2 emissions to be reduced by 45% by 2030 and 100% net by 2050. This science-based recommendation was recently reiterated and reinforced in the AR6 Working Group III Report of 2023.[214]

Hence the need to limit the aggregate annual volume of all ENI's (Scope 1, 2 and 3) atmospheric CO2 emissions due to the industrial, commercial and energy transport products sold by it to such an extent that the volume of emissions is reduced by at least 45% at t h e end of 2030 compared to 2020 levels.

It should also be considered that, as already deduced above, the Ministry of Economy and Finance and Cassa Depositi e Prestiti are also responsible for Eni's choices and the relative effects on the climate, taking into account the shareholdings held both directly and indirectly, their powers of control and the dominant influence they have exercised over the company from the foundation to the present. All this considering that the new paragraph 3 of Article 41 of the Constitution (as amended by Constitutional Law 1/2022) has imposed a profound change in the relationship between law and economics in our country, providing for public intervention to protect the environment, with actions to guide and coordinate the public and private economy aimed at environmental protection, and a consequent inevitable new role for the MEF and CDP itself, in terms of selecting and managing investments in shareholdings.

Hence, a request to ascertain responsibility and the consequent request for the Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A. to adopt an operating *policy* that defines and monitors the climate objectives that Eni S.p.A. should adopt as soon as possible in line with the Paris Agreement, and the scenarios developed by the international scientific community to keep the temperature increase within 1.5 degrees.

31.3. IN PARTICULAR: PRINCIPLES TO WHICH ENI SHOULD ADAPT ITS BUSINESS PLAN

As demonstrated, therefore, global CO2 emissions will have to be reduced to zero by 2050 in order to meet the Paris climate target to prevent dangerous climate change, and a 45% reduction in global CO2 emissions is required by 2030.

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214 "*In pathways limiting warming to 1.5°C (>50%) with no overshoot or limited overshoot global net CO2 emissions are reduced relative to modelled emissions in 2019 by 48% [36-69%] in 2030 and 80% [61-109%] in 2040.*" IPCC, AR6, SPM, C.1.2 - https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf

Any lesser scenario reduces the chances of reaching the Paris target and increases the dependence on the large-scale application of unproven CDR (*carbon dioxide removal*) technologies to create so-called negative emissions to offset excess emissions if the necessary 45% reduction in CO2 emissions by 2030 and 100% reduction by 2050 is not achieved.

That these emission reduction scenarios can and should be demanded and imposed on ENI has been made abundantly clear and demonstrated, explaining that these are feasible paths, both globally and for ENI.

Oxford University's Sustainable Finance Programme and the British think tank E3G studied which scenarios are most attractive to oil and gas companies using models simulating the international low-carbon transition.

According to their survey report '*Crude Awakening: making oil major business models climate compatible*' it is in the interest of oil and gas companies to take an active position in the energy transition[215] .

Of the five selected and researched ways in which oil and gas companies can respond to the energy transition, two were found to be economically viable and profitable for oil and gas companies and their shareholders, namely (i) actively exiting the fossil sector ('early exit') and (ii) switching to a renewable energy company ('planned transformation')[216] .

'*First one* out', or early exit, is a scenario in which an oil and gas company reduces investments in *upstream* oil and gas, and at the same time distributes profits to shareholders through dividends and share buybacks. In this way, the company remains profitable while phasing out its fossil fuel activities. If projects are likely to miss profit targets, they will be divested, transferring the obligation to decommission the existing oil and gas infrastructure to another party[217] .

"Planned transformation" is, on the other hand, a scenario in which a company not only moves away from oil and gas, but also grows in renewable energy.

With reactive strategies, on the other hand, oil companies will encounter large losses[218] . This concerns the following strategies:

- drift scenario: a strategy whereby a company adjusts its portfolio on an ad hoc basis to shrinking markets. The company is reactive and not anticipatory. Many

215 Caldecott 2018, e3g, Crude awakening: Making Oil Major Business Models Climate Compatible.
216 Caldecott 2018, e3g, Crude awakening: Making Oil Major Business Models Climate Compatible p.4.
217 Caldecott 2018, e3g, Crude awakening: Making Oil Major Business Models Climate Compatible p.16-18
218 Caldecott 2018, e3g, *Crude Awakening: Making oil major business models climate-compatible* p.16-26.

oil and gas companies see opportunities for gas, while it is not obvious that gas will or should be able to compete with alternatives. This is a risky strategy where sudden and ad hoc responses to market changes can lead to '*stranded* assets' (assets that have lost their value).

- ostrich scenario: a scenario in which an oil and gas company assumes that demand for oil and gas will continue to increase, oil prices will remain high and climate targets will not be met. The company pays little attention to the energy transition.
- Last *one standing*' scenario: a scenario in which an oil company guesses that it will be the last company to produce oil and gas. This requires all other oil and gas companies to leave the market first ('first out'). State-owned companies hold 80-90% of global oil and gas reserves and can produce oil and gas at the lowest cost. According to Oxford University and E3G, it is therefore unlikely that a private oil and gas company could successfully implement this strategy.

In short, according to this study by the University of Oxford and E3G, it is in the interest of oil and gas companies to actively take drastic measures to ensure that these companies do not risk large losses. It is in the interest of both private oil and gas companies and their shareholders that these companies either gradually but profitably wind down (early exit), or make an early and complete transition to a renewable energy company (planned transformation).

Should the defendant find a different industrial policy economically unsustainable, the case of the Danish company Ørsted (formerly Danish Oil and Natural Gas Energy) is recalled. This company demonstrated that it is also possible for oil and gas companies to engage in the energy transition, divest from polluting activities, and focus on renewable energy (the aforementioned 'planned transformation' strategy). In October 2017, this company, which is the largest energy company in Denmark, announced a name change after a ten-year process in which the company completely divested its investments in oil and gas and started investing in renewable energy. The company plans to reduce its greenhouse gas emissions by 96 per cent by 2035 compared to 2006 emissions and completely cease its coal operations in the same year. The company's CEO indicated that the company will focus entirely on renewable energy: *'Our focus for the future will be on green growth based on our existing business platforms in offshore wind, biomass, solutions*

green for customers'[219] .

In this way, the company wants to take the necessary steps to create a world that runs entirely on green energy:

"*our vision is a world that runs entirely on green energy. We want to be a company that provides real, tangible solutions to one of the* world*'s most difficult and urgent problems*'[220] .

For the time being, Ørsted's strategy has proven successful. In an interview in July 2018, Matthew Wright, managing director of Ørsteds, explains that the company is the fastest growing and most profitable energy supplier:[221]

"The leadership strategy is to run a profitable and socially responsible business. They had to convince people that the future business could be as successful as the old one. Ørsted is now the fastest growing and most profitable utility company, proving that it is possible to make decent returns from renewable energy [...] People were sceptical about offshore wind power [...] New technology is expensive to develop and we found that we were competing (competing) with established ways (methods) of generating and delivering energy. To force change, you have to implement new technology and keep developing new iterations so that it improves. Wind farms are now as cheap as using fossil fuels to generate energy and much more efficient.

This example suggests that oil companies can actually turn a profit, not a loss.

31.4. ON THE CLAIM FOR INDEMNIFICATION IN A SPECIFIC FORM UNDER ART. 2058 of the Civil Code.

Article 2058 of the Civil Code provides that "*the injured party may request reinstatement in a specific form if it is wholly or partially possible*". In the present case the plaintiffs are, in a different manner natural persons from associations, all damaged, pursuant to Article 2043 of the Civil Code by ENI's unlawful conduct. In this regard, therefore, the plaintiffs can make two types of claims: compensation in equivalent and compensation in specific form.

Well, in the present case, in the main, it is considered that the most correct request and which can guarantee more a relief for the past, but above all a guarantee for the future, is the reinstatement in specific form of Article 2058 of the Italian Civil Code. What is sought, in fact, is for the Court to order ENI to cease the unlawful conduct by means of a modification of the business plan that takes into account the aspects of law, including supranational law, devoted to the achievement of the Paris objectives and the cessation of environmental offences.

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219 Murray 2017 *Oil and gas is 'no longer who we are': DONG Energy seeks to rebrand as Orsted following fossil fuel.*

220 Murray 2017 *Oil and gas is 'no longer who we are': DONG Energy seeks to rebrand as Orsted following fossil fuel*

221 Morris 2018, *From Fossil Fuels to Green Energy: The Orsted Story*

From what has been amply illustrated above, it is clear, without any qualms of denial, that ENI's current industrial plan will cause an overshoot in the future of both the global climate objective of a 1.5°C and 2°C temperature increase, due to the latency period between the moment of greenhouse gas emissions into the atmosphere, including CO2, and the macroscopic manifestation of the effects. This is why today we can say that the objective cannot be to maintain the status quo of greenhouse gas emissions, because this status would lead to a negative result, but it is necessary to reduce emissions to zero today in order to see the effects tomorrow. And this cannot but pass through the requested modification of ENI's industrial plan. Therefore, the request for compensation in a specific form must be understood, in this case, as a request to cease the unlawful conduct by restoring the status quo ante that will occur in the future by virtue of what is done hic et nunc.

"An *order to pay damages by means of reinstatement in a specific form may be pronounced with the order to eliminate what has been unlawfully done, which is identified as the exclusive source of a current damage destined to be prolonged in time*". Cass. Civ., 27 September 1993,

n. 9728.

Obviously, the request for compensation for damages in equivalent form is, as jurisprudence teaches, a minus with respect to 2058 Civil Code that must, and will, be requested only in a subordinate or, in any case, complementary manner according to the teaching of the Supreme Court of Cassation, sentence no. 4958 of 20 August 1981 "the sentence *sentencing to compensation for damages in specific form does not exclude the right to compensation for damages in pecuniary equivalent inherent to the period in which the damaged asset was prejudiced in its efficiency and enjoyment*".

On the practicability of injunctive and specific actions to grant judicial protection to primary goods of constitutional importance, *first and foremost* the protection of health and the environment, even against the public administration, the jurisprudence of the Supreme Court is constant. See, e.g., Civil cassation, section III, 27/07/2000, no. 9893, according to which judicial protection of the right to health with respect to the public administration may be preventive and give rise to injunctions if, even before the public work is put into operation in the prescribed manner, it is possible to ascertain, considering the situation that will arise once the operation commences, that the same situation entails a risk of jeopardising the health of the plaintiff. But also Civil cassation sez. un., 23/04/2020, no. 8092 according to which the criterion of the injunction protection and that of compensation for damage in a specific form takes priority over the general action for compensation pursuant to art. 2043 civil code and this with reference both to the right to health of constitutional rank and the right to property. Therefore, the claim of a private individual who complains about the concrete manner in which the production cycle is carried out, assuming that it is dangerous to health or other fundamental rights of the person and requesting the adoption of the necessary measures to

eliminate actual and potential damage and intolerable immissions (Cass. civ. S.U. no. 11142 of 8.5.2017), with the further clarification that this jurisprudential framework is also valid and operative in the field of environmental damage and is in accordance with the relevant legislation.

31.5. THE INIBITORY REQUEST UNDER ART. 614 bis c.p.c.

Article 614 bis of the Code of Civil Procedure states that "*in the order for the performance of obligations other than the payment of sums of money, the judge, unless this is manifestly inequitable, shall fix, at the request of a party, the sum of money owed by the obligor for each subsequent breach or non-compliance, or for each delay in performing the order. The order shall constitute an enforceable title for the payment of the sums due for each breach or non-compliance.*"

The object of injunctive protection is a subjective right whose injury has been caused by the conduct of others, which, moreover, has also led to the violation of a rule of positive law that already protected the right in question, whereas the hypotheses of expectation of preventive protection of these types of rights are broad and varied, some directly referable to the category of so-called self-determined rights[222] .

Injunctive protection, which is a preventive type of protection because it tends to prevent the repetition or continuation of unlawful conduct, is of primary and not secondary importance, also in view of the fact that there are many areas - such as the rights to liberty, or to health and a healthy environment - of constitutional matrix in which the person and not material goods are placed at the centre of the protection system[223] .

In essence, such an action is directed to the protection of a right, and above all to the protection in the future of the same, on the assumption that a current injury has already occurred as well as the further and not secondary assumption of the serious danger of repetition and continuation of the injury of the same. In the present case, it is quite clear that there is no exemption from also seeking injunctive protection, given that ENI's unlawful conduct is likely, if not inevitable, to be prolonged.

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On account of all the foregoing in fact and in law, the Claimants, as set forth above, represented and defended,

citing

ENI S.p.A., in the person of its legal representative pro tempore, with offices in Rome, Piazzale Enrico Mattei no. 1, the Ministry of Economy and Finance, in the person of its Minister pro tempore, with offices in Rome, Via XX Settembre no. 97, Cassa Depositi e Prestiti S.p.A., in the person of its legal representative

222 G. Basilico, *La tutela preventiva*, Milan, 2013.

223 G.N. Nardo, *Systematic Profiles of Civil Injunctive Action*, ESI, 2017.

pro tempore representative, current in Rome, Via Goito no. 4, to appear before the Court of Rome, in its known premises, section and examining magistrate designated pursuant to Article 168 bis c.p.c, at the hearing of **30 November 2023**, at the usual time, with an invitation to enter an appearance within the term of seventy days prior to the indicated hearing, pursuant to and in the forms established by Article 166 of the c.p.c., with a warning that failure to enter an appearance or entering an appearance beyond the terms shall entail the forfeitures pursuant to Articles 38 and 167 of the c.p.c, and that technical defence through a lawyer is compulsory in all proceedings before the court, with the exception of the cases provided for in Article 86 of the Code of Civil Procedure or by special laws, and that the defendants, if the legal requirements exist, may present a petition for admission to legal aid, and that in the event of failure to appear in court they will be legitimately and declarably absent, in order to hear the following

CONCLUSIONS

May it please the Honourable Court:

As a preliminary inquiry, to admit evidence by way of interpellation and witnesses on the chapters to be formulated in the subsequent pleadings, with a request for a CTU as specified *below* under 1;

On the merits:

1) ascertain, if appropriate by means of a court-appointed expert's report, and declare that ENI S.p.A., the Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A., as a result of emissions into the atmosphere of greenhouse gases, in particular CO2, from the industrial, commercial and energy transport products sold by ENI, have not complied and are not complying with the internationally recognised climate objectives which ENI S.p.A.p.A. should have adopted in line with the Paris Agreement and the scenarios developed by the international scientific community to keep the temperature increase within 1.5 degrees, in breach of Articles 2 and 8 of the ECHR;

2) accordingly, find and declare that ENI SPA, the Ministry of the Economy and Finance and Cassa Depositi e Prestiti SPA are jointly and severally liable, in breach of the combined provisions of Articles 2 and 8 of the ECHR and Articles 2043, 2050 and 2051 of the Civil Code, for all the pecuniary and non-pecuniary damage suffered and *to be suffered* by the applicants as a result of the consequences of climate change which they have contributed to causing, including

a) against the plaintiffs-individuals, damage to their property and non-property damage to the property of their health, safety and *metus*, as well as for having endangered, and having continued to endanger, the same property and interests;

b) against the plaintiffs Greenpeace and ReCommon, the pecuniary damage consisting of the economic and financial resources deployed to combat the effects of climate change and the non-pecuniary damage resulting from the frustration of their respective statutory purposes, as well as for having jeopardised, and having continued to jeopardise, the same assets and interests;

3) consequently, order ENI SPA, pursuant to Article 2058 of the Italian Civil Code and Article 614 bis of the Code of Civil Procedure to limit the aggregate annual volume of all CO2 emissions into the atmosphere (Scope 1, 2 and 3) due to the industrial, commercial and energy transport products sold by it to such an extent that such volume of emissions is reduced by at least 45% at the end of 2030 compared to 2020 levels, or to another extent ascertained in the course of the proceedings, that guarantees compliance with the scenarios developed by the international scientific community to keep the temperature increase within 1.5 degrees, establishing as of now, in the event of non-compliance, an order to pay the sum that the Judge will deem equitable for breach or non-compliance or delay in the execution of the measure;

4) also order the Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A., pursuant to Article 2058 of the Civil Code and Article 614 bis of the Code of Civil Procedure to adopt an operational *policy* which defines and monitors the climate objectives which ENI S.p.A. should adopt in line with the Paris Agreement and the scenarios drawn up by the international scientific community to keep the increase in temperature within 1.5 degrees, within the terms indicated in point 3) above, establishing as of now, in the event of non-compliance, the condemnation of the defendants to pay the sum which the Judge will deem equitable for breach or non-compliance or delay in the execution of the measure;

5) in the alternative, order the defendants to take all necessary steps to ensure compliance with the scenarios developed by the international scientific community to keep the temperature increase within 1.5 degrees.

In any event, order the defendant to pay the costs, fees and expenses of the proceedings.

Documentary productions:

On the premise that, for reasons of procedural economy, all documents for which the reference web page has been indicated in the course of the deed or in the notes will be produced directly in court at the explicit request of the Ill. giudice adito (to simplify their availability, a document containing the indication of all the web pages with the relative hyperlink is attached, sub doc. 1), the following deeds and documents are filed in court:

1) document containing web pages and hyperlinks;
2) identity documents, certificates of residence and real estate ownership of private actors;
3) Articles of Association of Greenpeace Onlus and minutes of the election of the President and legal representative pro tempore;
4) Ministry of the Environment decree recognising Greenpeace Onlus as an environmental protection association of 20 February 1987;
5) ReCommon's articles of association and minutes of the election of the President and legal representative pro tempore;
6) technical-scientific report.

Subject to further deduction and production within the time allowed.

For the purposes of the payment of the unified contribution under Presidential Decree No 115/02, it is hereby declared that the value of the dispute is undetermined.

9 May 2023, Rome

Avv. Alessandro Gariglio Avv. Marco Casellato Avv. Matteo Ceruti