SEATTLE
avocats

Mr. Jean-Laurent BONNAFE
Director General Manager
BNP PARIBAS
16, boulevard des Italiens
75009 PARIS

By registered mail

Paris, October 26, 2022

N/Ref: Duty of vigilance / BNP Paribas Group

Formal notice
Articles L. 225-102-4.-I and II, and following of the French Commercial Code

Mr. General Manager,

We come to you in our capacity as advisors to the associations Notre Affaire à Tous (NAAT), Oxfam France and Friends of the Earth France.

- Friends of the Earth France is a registered association for the protection of the environment. It investigates the responsibility of the financial sector in climate change and exposes the support of French banks to the fossil fuel industry.

- NAAT is a registered environmental association whose primary goal is to strengthen the fight against climate change, particularly through the regulation of multinational companies.

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

These associations have mandated us to give you formal notice to comply with the legal obligations imposed on the BNP Paribas Group (hereinafter "**BNP Paribas**"), including its subsidiaries and in particular BNP Paribas Cardif and BNP Paribas Asset Management, in terms of duty of vigilance and climate change risks.

Société d'avocats au Barreau de Paris
Selarl au capital de 5000 euros
Palais P 206
Siret 814 844 759 RCS PARIS

1, rue Ambroise Thomas
75009 Paris
T. +33 (0)1 44 29 77 77
F. +33 (0)1 45 02 85 61

I. Our constituents wish to remind you of the particularly serious and irreversible consequences that a warming of more than 1.5°C - compared to pre-industrial levels - is likely to have on the environment, human health and safety, and human rights.

Article 2 (1) of the Paris Agreement provides for :

> "*strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:*
> *(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;*
> *(...)*
> *(c) Making financial flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development* "[1] .

The Intergovernmental Panel on Climate Change's (IPCC) 1.5°C report, published in 2018 (hereafter "**SR1.5"),** scientifically established the risks to human societies and the environment of exceeding the global temperature by 1.5°C. In this sense, the Glasgow Compact established by the State Parties to the Paris Agreement "[r]*ecognizes that the impacts of climate change will be much lower at the temperature increase of 1.5°C compared to 2°C and resolves to pursue efforts to limit the temperature increase to 1.5°C*"[2] .

The 6e IPCC report, published in three parts in August 2021, February 2022 and April 2022 (hereinafter **"AR6"**) identifies, among other things, the causes and effects of global warming, both observed and projected, as well as the actions urgently required to hope to maintain this warming target at 1.5°C[3] .

The IPCC Working Group II report identifies the impacts of climate change on:

- the environment: restructuring of ecosystems, extinctions of animal and plant species, increase in areas burned by forest fires, etc.[4] ;
- security and health: "*pressure on food and forestry systems, with negative consequences for the livelihoods, food security and nutrition of hundreds of millions of people*"[5] ;
- human rights: "*approximately 3.3 to 3.6 billion people live in contexts that are highly vulnerable to climate change*"[6] , which implies the risk of involuntary migration and displacement[7] .

The IPCC Working Group III report concludes that limiting warming to 1.5°C in the long term implies reaching a peak in greenhouse gas (hereafter **"GHG"**) emissions before 2025 and requires immediate action to avoid an increase in these emissions beyond 2025 and a global warming of 3.2°C[8] .

More specifically, our constituents remind you of the need to align with a 1.5°C trajectory, as well as the imperative to renounce the development of fossil fuels and to reduce their production.
As recognized by the head of the International Energy Agency[9] as well as the Dutch judge in the *Shell* case[10] , only such a "zero or limited overshoot" trajectory aiming at carbon neutrality in 2050 and a mid-term carbon dioxide (CO2) emissions reduction in 2030 of 45% compared to 2010 (hereafter the **"1.5° trajectories"**) is truly compatible with the objectives of the Paris Agreement.

Such a trajectory - such as the International Energy Agency's, hereafter "**IEA", "**Net Zero by 2050" (hereafter "**NZE"**) - provides about a 50% chance of success in limiting warming to 1.5°C and slightly more than a 90%

---

[1] Paris Agreement, adopted on December 12, 2015 at the conclusion of COP21.
[2] Glasgow Pact of November 13, 2021, §21 (free translation).
[3] GIEC, AR6 -TS.B.1 (WGII).
[4] *Ibid.*
[5] GIEC, AR6 -TS.B.3 (WGII).
[6] GIEC, AR6 - SPM - B.2 (WGII).
[7] Annual average of 20 million people since 2008 (IPCC, AR6 -TS.B.6 (WGII)).
[8] GIEC, AR6 - SPM - C1 (WGIII).
[9] Dr. F. Birol, "C.O.P. 26 climate pledges could help limit global warming to 1.8 °C, but implementing them will be the key," Commentary, November 4, 2021.
[10] Hague Tribunal (Rechtbank den Haag), *Milieudefensie et al. v. RoyalDutch Shell*, May 26, 2021, § 4.4.29: Trajectories 1.5 "*offer the best possible chance of preventing the most serious consequences of dangerous climate change.*

chance of success in limiting warming to 2°C[11] . It is therefore necessary to comply at a minimum with the implications of a 1.5°C trajectory, including **reducing global CO2 emissions by 45% by 2030 compared to 2010**. This scientifically established necessity is the subject of an international political and diplomatic consensus, as evidenced in particular by the Glasgow Pact[12] and the UN's "*Race to Zero"* campaign to involve non-state actors in the race to carbon neutrality, of which BNP Paribas is one[13] . **Methane (CH4) emissions must also be reduced by around 45% between 2030 and 2020**, as identified by the IPCC in the Special Report 1.5°C[14] .

In addition, there is a need to establish sufficient measures to reduce fossil fuel production, which alone is responsible for approximately 70% of annual GHG emissions[15] .

As such, the first implication of a 1.5°C trajectory in the energy sector is the immediate cessation of the development of new fossil projects. In fact, the global 1.5°C carbon budget makes it impossible to extract all of the reserves already being exploited in order to maintain the 1.5°C trajectory.

The IEA, in its NZE report published on May 17, 2021, thus states:

> "*Beyond projects already committed as of 2021, there are no new oil and gas fields approved for developmentin our pathway, and no new coal mines or mine extensions are required.*"[16]

The IPCC shares, in essence, the same observation:

> " *Projected cumulative future CO2 emissions over the lifetime of existing and currently planned fossil fuel infrastructure without additional abatement exceed the total cumulative net CO2 emissions in pathways that limit warming to 1.5°C (>50%) with no or limited overshoot..*"[17]

Thus, it is clear that no more funding or investment should be given to the development of new fossil fuel projects, either directly or to the companies that carry them.

Moreover, with regard to the necessary reduction in the production and consumption of fossil fuels, the 1.5°C "zero or limited overshoot" trajectories diverge on the speed and intensity of the reduction rates, but they all show (as does the IPCC[18]) that a drastic reduction is necessary by 2050. Above all, they reveal that the production and consumption of each of the fossil fuels must be reduced by 2030, as recalled in particular in the Production Gap Report 2021 published by the United Nations Environment Programme, which indicates that :

> "annual average decline rates of around 11% for coal, 4% for oil, and 3% for gas between 2020 and 2030 would be consistent with limiting warming to 1.5°C, based on the mitigation scenarios compiled by the Intergovernmental Panel on Climate Change (IPCC). "[19]

II. Reports published by our constituents, Oxfam France and Friends of the Earth France, as well as by numerous French and international organizations including Reclaim Finance, Oil Change International and Rainforest Action Network, establish that **your company is a major contributor to the risks associated with global warming.**

---

[11] IPCC, Special Report 1.5°C, Chapter 2SM, p. 2 SM-18 (Table 2.SM.11).
[12] Glasgow Pact of November 13, 2021, §22.
[13] See the *Race to Zero* campaign criteria. Some investors, banks and insurers from the Glasgow Financial Alliance, the Net Zero Asset Managers initiative and the UN-Convened Net-Zero Asset Owner Alliance have joined the *Race to Zero* campaign, including BNP Paribas. The GFANZ is demanding that "all [its] members [...] must align themselves with the Race to Zero criteria".
[14] IPCC, SR1.5, SPM, p. 15; see also UNEP & CCAC, *Global methane assessment: Benefits and costs of mitigating methane emissions, Summary for Decision Makers*, 2021, p. 6.
[15] Direct and indirect emissions associated with fossil fuels make up more than 70% of global GHGs according to the C.D.P. and R. Heede (*Carbon Majors Report*, 2017).
[16] IEA, *Net Zero by 2050. A Roadmap for the Global Energy Sector*, 2021, p. 21.
[17] IPCC, AR6 - SPM - B.7 (WGIII).
[18] IPCC, SR1.5, SPM, p. 16
[19] SEI, IISD, ODI, E3G, and UNEP, *The Production Gap Report 2021* , 2021 p. 35.

According to Oxfam France, in 2020, BNP Paribas was the most CO2e emitting bank in France with **749 million tons of CO2e**[20] .

In <u>financing</u> activities (including structured, syndicated and bilateral loans, and equity and bond issues - hereinafter "**financing**"), **BNP Paribas is one of the main contributors to the fossil fuel sector, in particular through its predominant support for major oil and gas companies:**

- BNP Paribas is the **1st European and 5th global financer of fossil fuel <u>expansion</u>,** with $55 billion in financing provided between 2016 and 2021[21] ;
- BNP is the **world's 1st financer of the eight American and European majors in the sector** (TotalEnergies, Chevron, ExxonMobil, Shell, BP, ENI, Repsol, Equinor), with $43 billion in financing granted to their fossil fuel activities between 2016 and 2021[22] . Yet these groups are involved in the development of more than 200 new fossil energy projects expected to be approved for development by 2025[23] , which would result in the emission of an additional 8.6 gigatons of CO2, equivalent to the lifetime emissions of 77 new coal-fired power plants[24] ;
- BNP Paribas is the **2nd global financer of TotalEnergies** over the period 2016-2021 ($5.8 billion)[25] , while its fossil fuel projects, which are expected to be approved for development by 2025, would result in massive new CO2 emissions, equivalent to those of 18 coal-fired power plants over their lifetime[26] **.** The company has been singled out for its involvement in several major projects that threaten the climate, the environment and human rights, such as Mozambique LNG[27] , Tilenga and EACOP in Uganda and Tanzania[28] ;
- BNP Paribas also stands out in certain rapidly developing **non-conventional sectors**, despite the fact that they are highly risky for the environment and emit large quantities of greenhouse gases, particularly methane[29] **.** Your bank is the world's 1st financier of Arctic oil and gas development, with nearly $6 billion in financing granted to this sector between 2016 and 2021[30] .

BNP Paribas is also a major contributor to global warming risks through its <u>investment</u> activities (holding stocks and bonds, both proprietary and for third parties, hereafter "**investments**"). You hold more than 1.2 billion investments in TotalEnergies alone[31] .

These investments justify BNP Paribas playing its full role as a shareholder in its fossil fuel clients and in particular in the developers of new projects. However, your Group has demonstrated in the past its lack of commitment in this area, particularly with regard to TotalEnergies.

In 2020, BNP Paribas AM abstained from voting in favour of the resolution proposed at the Annual General Meeting by a group of TotalEnergies shareholders, calling for the adoption of decarbonisation targets for its activities, with a detailed strategy for achieving them, in order to align with the objectives of the Paris Agreement[32] . In 2022, your group also voted for the insufficient "climate" plan presented by the French

[20] Oxfam France, "*Banque et climat, le désaccord de Paris*", October 2021, p. 10.
[21] Rainforest Action Network, BankTrack, Indigenous Environmental Network, Oil Change International, Reclaim Finance, Sierra Club, Urgewald, March 2022. *Banking on Climate Chaos - Fossil Fuel Finance Report 2022.* These financing volumes cover loan transactions and equity and bond issues (excluding bilateral transactions) in which BNP Paribas was involved between 2016 and 2021, in proportion to the share of the beneficiary companies' activities in fossil fuels or, where applicable, in the targeted sub-sector.
[22] *Ibid.* See detailed financial data.
[23] Oil Change International, *Big Oil Reality Check*, May 2022.
[24] *Ibid.*
[25] Rainforest Action Network, BankTrack, Indigenous Environmental Network, Oil Change International, Reclaim Finance, Sierra Club, Urgewald, March 2022. Based on financial data published in: *Banking on Climate Chaos - Fossil Fuel Finance Report 2022*.
[26] Oil Change International, *Big Oil Reality Check*, May 2022.
[27] Friends of the Earth Europe, Justiça Ambiental, Friends of the Earth EWNI, Les Amis de la Terre France, Friends of the Earth US, Milieudefensie, ReCommon, 2022, *Fuelling the Crisis in Mozambique*
[28] Friends of the Earth France and Survie, 2022, *EACOP, the road to disaster*.
[29] United Nations, 2021. Cut methane emissions to avert global temperature rise, UN-backed study urges.
[30] Rainforest Action Network, BankTrack, Indigenous Environmental Network, Oil Change International, Reclaim Finance, Sierra Club, Urgewald, *Banking on Climate Chaos - Fossil Fuel Finance Report 2022*, March 2022.
[31] Amounts invested by BNP Paribas in TotalEnergies. The data was extracted in mid-September from the Refinitiv and Thomson EMAXX financial databases and covers holdings in equities and bonds, excluding green bonds.
[32] Reclaim Finance, *Total AGM: BNP Paribas will abstain from voting on the climate resolution,* 2020.

major, which provides for the development of numerous new oil and gas projects that are incompatible with a 1.5°C trajectory[33] .

III. **Article L. 225-102-4.-I of the French Commercial Code** resulting from the Act of March 27, 2017 relating to the duty of vigilance (hereinafter **"Duty of Vigilance Act"**) requires you[34] to **establish, publish and effectively implement** a "vigilance plan", which:

> *"includes reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment, resulting from the activities of the company and those of the companies it controls (...) as well as from the activities of subcontractors or suppliers with whom there is an established business relationship, when these activities are related to that relationship"*.

BNP Paribas' compliance plan published in its Universal Registration Document must include the following measures:

> *"1° A risk map to identify, analyze and prioritize risks; (...)*
> *2° Procedures for regular assessment of the situation of subsidiaries, subcontractors or suppliers with whom an established business relationship is maintained, with regard to risk mapping;*
> *3° Appropriate actions to mitigate risk or prevent serious harm;*
> *4° A mechanism for alerting and collecting reports on the existence or occurrence of risks, established in consultation with the representative trade unions in the said company;*
> *5° A system for monitoring the measures implemented and evaluating their effectiveness*.

According to the law-making preparatory work, the objective of the Duty of Vigilance Act must be interpreted in light of all the international texts that define the standard of due diligence for companies. This standard, set out in particular in the *United Nations Principles on Business and Human Rights*, has been the subject of clarifications concerning banking and financial activities[35] . In addition, the *OECD Guidelines for Multinational Enterprises* have specified the due diligence standard applicable to banking and financial actors in two specific guides.

- **In the area of financing,** the OECD's "*Due Diligence for Responsible Corporate Lending and Securities Underwriting*"[36] recommends, among other things, that banking institutions put in place appropriate plans to prevent or mitigate negative impacts resulting from their activities[37] .

  The guide further contains a long list of practical and concrete actions for banks, which includes " *Considering not engaging in future business opportunities with the client (as an additional measure or as an alternative to terminating the client relationship when an immediate termination is not possible or would cause severe adverse impacts to impacted stakeholders).*"[38] .

- **In the area of investment,** the OECD's "*Responsible business conduct for institutional investors*" guide provides for due diligence measures because of the direct link between investment activities and the negative impacts of fossil assets, justifying that the bank should *at least* exercise its power of influence to mitigate and prevent the expansion of fossil assets[39] .

  Failing that, due diligence consists in divesting: the OECD guide thus envisages the exclusion of an activity from an investment portfolio[40] .

---

[33] Reclaim Finance, *Revelation: Which shareholders support TotalEnergies' climate change strategy?* , 2022.
[34] BNP Paribas has met the employee thresholds set out in article L. 225-102-4.I of the French Commercial Code.
[35] OHCHR, *OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector*, 12 June 2017.
[36] OECD, *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, October 29, 2019.
[37] *Ibid.* Ch. 2. Measure 3, p. 47, 3.1 and 3.2.
[38] *Ibid*, p. 48.
[39] OECD, *Responsible business conduct for institutional investors - Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises*, 2017.
[40] *Ibid*, p. 39.

As a result, exercising reasonable vigilance must involve identifying the climate risks induced by your activities, and effectively implementing related vigilance measures, including the definition and implementation of a decarbonization trajectory for all of your financing and investment activities[41] .

IV. In this context, your vigilance plan (published as a parent company and for all Group subsidiaries)[42] does not appear to comply with the legal requirements of the Duty of Vigilance Act, nor with your obligations to limit the climate risks resulting from your activities.

Firstly, a formal breach of the Duty of **Vigilance** Act should be noted: most of BNP Paribas' climate change commitments are included in documents outside the vigilance plan itself, whereas the Duty of Vigilance Act provides that they should be published in the plan as part of the management report[43] . For example, the vigilance plan published in 2022 states that BNP Paribas plans to set new "*greenhouse gas emission reduction targets across the oil and gas value chain in early 2022*"[44] . These measures were announced by BNP Paribas in May 2022 in its "*Climate Analysis and Alignment Report*" and its TCFD Report, i.e., after and outside the vigilance plan.

1. **The "mapping" of risks** is very incomplete, vague and imprecise, in that it does not identify, analyze and prioritize climate risks, which are only mentioned as "*environmental issues*"[45] .

Acknowledging that "*the activities of BNP Paribas' clients are likely to entail risks in the areas of human rights and fundamental freedoms, health and safety of individuals and the environment*"[46] , BNP Paribas states that it has "*maps of the risks carried by its clients*":

> *"For each sector of activity, <u>the salient risks related to</u> human rights and fundamental freedoms, health and safety of individuals and the <u>environment</u> have been defined according to a <u>methodology for rating</u> the level of seriousness and occurrence of each risk, which is based on the reference framework for reporting on the United Nations Guiding Principles*"[47] .

These maps and the scoring methods on which they are based are not included in the vigilance plan - which is required by law - so it is impossible to assess their quality and relevance.

BNP Paribas also states that it has set up a new ESG assessment of its clients in order to manage these risks, "*in line with its duty of vigilance*"[48] . The purpose of this assessment is to "***identify companies whose weak performance or management of ESG-related risks** could result in credit, investment or reputational risks, as well as **negative environmental and social impacts***"[49] . However, no details are given about these companies, the nature of their activities and the risks they pose, either in the vigilance plan or in any of the documents related to the Group's climate strategy.

BNP Paribas **is thus seriously deficient in its climate risk mapping, which does <u>not identify</u>:**

- the climate and environmental risks associated with its fossil fuel activities, both for projects in which it is directly involved and for the companies in the sector that it supports through its financing and investments;
- the risks associated with its clients' new projects and expansion plans.

However, these risks should be <u>identified, analyzed and prioritized</u> in accordance with the scientific data available and the seriousness of this major challenge for humanity in the years to come. Banks must approach their activities by anticipating and determining the risks to which they could contribute by financing

---

41 "*Financing the reduction of net greenhouse gas emissions and the enhancement of resilience to climate impacts is a **critical factor in** the transition to a low-carbon economy.*" (IPCC, AR6 - T.S.6.41 (WGIII)).
42 Universal Registration Document (URD) [in French it is called “Document d'enregistrement universel (DEU)"] and Annual Financial Report 2021, BNP Paribas, Compliance Plan, Chapter 7.7, pp. 642-645.
43 Article L225-102-4, I, paragraph 5 of the French Commercial Code.
44 URD 2021, p. 644.
45 URD 2021, p. 642.
46 URD 2021, p. 644.
47 URD 2021, p. 645.
48 TCFD (*Taskforce on Climate-related Financial Disclosures*) Report 2021, p. 43. See also DEU 2021, p. 596.
49 *Ibid.*

activities or clients with high climate risks, in order to prevent them.

Although some information is published, it is not sufficiently precise and exhaustive given the seriousness of these risks. No data is provided for BNP Paribas' investment portfolio, which publishes for its credit portfolio only: its electricity mix[50] ; its primary energy mix[51] ; carbon intensity in the oil and gas sector[52] ; gross exposure to the oil and gas sector[53] .

The vigilance plan does not contain **any precise and exhaustive information on the stocks and flows (amounts and shares) of financing and investments** towards companies active in the fossil fuel sector, and in particular those developing new projects.

In addition, **the GHG emissions (scope 1, 2 and 3)** that BNP Paribas contributes to generating through all of its financial services are not published.

At a time when climate change has worsened considerably in recent years, these shortcomings are a failure of vigilance.

2. **The procedures for regular evaluation of the value chain (subsidiaries, subcontractors, suppliers and business relationships) in relation to risk mapping** are very inadequate.

   There is no procedure for assessing the real climate impact of your financed activities and investments on the entire value chain (subsidiaries, subcontractors, suppliers, business relationships).

3. **Actions to mitigate risks or prevent serious damage** do not seem reasonable and even less adapted to the urgency, the magnitude of your contribution and the importance of the stakes in global warming.

   However, by joining the Net Zero Banking Alliance, BNP Paribas has committed to "*financing a carbon-neutral world by 2050, which corresponds to a temperature increase limited to 1.5°C compared to the pre-industrial era*"[54] .

   BNP Paribas has made sectoral commitments[55] and in particular has announced **measures to reduce its credit exposure or carbon intensity** for the energy sector in 2022 as follows:

   - the reduction between 2020 and 2025 of the carbon emissions intensity financed: by 30% in electricity production, and by 10% for hydrocarbon extraction and refining[56] ;
   - reducing its credit exposure to oil and gas production by 12% between 2020 and 2025[57] ;
   - reducing its credit exposure to oil production by 25% between 2020 and 2025[58] .

   BNP Paribas also claims to have strengthened its **exclusion policies**.

   Regarding the coal sector[59] :

   - the exclusion of financial support for companies developing new coal mines, power plants and infrastructure[60] ;
   - phasing out coal production and coal-fired power generation by 2030 in the European Union and OECD countries, and by 2040 in the world[61] ;

---

[50] URD 2021, p. 600.
[51] URD 2021, p. 601.
[52] *Climate analytics and alignment report 2022*, p. 27.
[53] URD 2021, p. 425.
[54] URD 2021, p. 645.
[55] URD 2021, p. 646.
[56] *Climate analytics and alignment report,* 2022, p. 9.
[57] URD 2021, p. 644.
[58] *Climate analytics and alignment report,* 2022, p. 27.
[59] BNP Paribas, 2020. Coal-fired power generation sector policy. Mining sector policy. Coal exclusion policy analysis by Reclaim Finance, available at the following link Coal Policy Tool.
[60] *Ibid.*
[61] *Ibid.*

- the obligation for companies operating in the sector to have an exit plan aligned with this timetable by the end of 2021[62] .

Regarding the oil and gas sector:

- since 2017, the exclusion of dedicated support for production and transportation projects in three unconventional sectors (Arctic oil and gas, shale oil and gas, oil sands)[63] , as well as in the Amazon[64] ;
- since 2022, the exclusion of financial support to companies with more than 10% of their business related to oil sands and shale oil and gas, or with more than 10% of their business derived from Arctic activities[65] ;
- the exclusion of financial support to companies that produce from oil and gas reserves in the Amazon and to those that develop related infrastructure[66] .

These measures are actually insufficient and inadequate to prevent serious harm and mitigate climate risks from oil and gas industry financing[67] **.**

First, your Group refuses to exclude from its activities new oil and gas projects, as well as companies planning to develop such projects (while it has committed to do so for new mining, power plant and coal-related infrastructure projects) :

> "*We have chosen not to systematically ban companies developing new exploration on the condition that their practices are more environmentally friendly than those of decommissioned facilities. All of the scenarios developed by the Intergovernmental Panel on Climate Change are not based on a halt to new oil and gas projects and, contrary to the assumptions used in the IEA's NZE 2050 scenario, global oil demand continues to grow.*"[68] .

First of all, the requirement to use "*practices that are more environmentally friendly than those of the decommissioned facilities*" is extremely vague and not very restrictive. Moreover, there is no guarantee that these new operations will replace existing facilities of equivalent capacity.

Secondly, **BNP Paribas rejects the conclusions of the IEA's NZE on the expansion of fossil fuels**[69] , after recognizing it as a "reference scenario" in its latest vigilance plan (see *above*). In addition, similar recommendations are made in the work and criteria of the Net Zero coalitions with which BNP Paribas is associated or a member:

- The *One Earth Climate Model* (OECM) commissioned by the Net Zero Asset Owner Alliance (NZAOA) recommends that financial institutions "*immediate cessation investments in new oil, coal and gas projects*"[70] ;
- The Glasgow Financial Alliance on Net Zero (GFANZ), whose members must align with the *Race To Zero* criteria[71] , which also calls for an end to funding fossil fuel expansion[72] .

This is not a new request, and civil society has repeatedly called on BNP Paribas to stop financing the

[62] *Ibid.*
[63] BNP Paribas, *Unconventional oil and gas sector policy*, 2017.
[64] *Climate analytics and alignment report,* 2022, p. 34.
[65] *Ibid.*
[66] *Ibid.*
[67] Reclaim Finance, *It's not what you say, it's what you do: Making the finance sector's net-zero alliances work for the climate*, November 2021.
[68] *Climate analytics and alignment report 2022*, p. 6.
[69] IEA, *Net Zero by 2050. A Roadmap for the Global Energy Sector*, *op.cit*, pp. 20, 101-103.
[70] University of Technology Sydney for the Net Zero Asset Owners Alliance, 2022, *Limit global warming to 1.5°C*, p. 7.
[71] The "Race to Zero" campaign is an initiative of the United Nations Framework Convention on Climate Change, of which all investors, banks and insurers in the Glasgow Financial Alliance on Net Zero (GFANZ), including BNP Paribas, are members. The GFANZ requires that "all [its] members [...] must align with the Race to Zero criteria" (BankTrack, 2022. Strengthened Race to Zero criteria require GFANZ to support fossil fuels phase-out).
[72] *Race to Zero clarifications*, 2022, calls for "*phasing out the development, financing, and facilitation of new untapped fossil fuel assets, including coal, consistent with appropriate science-based global scenarios.*"

expansion of fossil fuels[73] . When asked about this issue in a written question by Friends of the Earth France at its 2022 General Assembly, BNP Paribas replied that "*apart from the existing oil and gas fields that should continue to be financed (without this financing, supply would decline too quickly),* ***the exploitation of new fields is no longer necessary***"[74] .

Second, **exclusionary measures**, where they exist, are clearly insufficient.

On the one hand, the restriction of these exclusions to only certain sectors of the non-conventional fossil fuel industry is not justified. For example, BNP Paribas has excluded from its definition of non-conventional oil and gas the highly sensitive sector of ultra-deepwater offshore oil and gas ecosystems, going against the recommendations of the Scientific Committee of the French Sustainable Finance Observatory (*Observatoire de la Finance Durable*)[75] .

On the other hand, BNP Paribas has opted for exclusion thresholds with limited impacts, committing to stop supporting its clients whose activities are more than 10% related to oil sands and shale oil and gas, and more than 10% to Arctic oil and gas. This threshold approach exempts large "diversified" groups, including the main oil and gas *majors*. BNP Paribas is thus able to renew its financial support for TotalEnergies[76] , despite the fact that it is Europe's leading developer in the Arctic[77] .

Finally, the commitments made by BNP Paribas are emptied of their substance by a **very general exception**:

> "*The above criteria will not apply to companies with the most credible transition plans towards a net-zero economy by 2050 based on clear transition criteria such as: a public commitment to align with a 1.5°C strategy; intermediary targets; a consistent capex program to back its diversification strategy away from fossil fuel production; a level of GHG emissions being measured and reported annually and strong leadership of the Board.*"[78] .

However, BNP Paribas does not sufficiently specify the vague criteria that would allow it to benefit from this exemption, in particular alignment with a 1.5°C trajectory, even though numerous analyses have shown that the transition plans currently adopted by the major oil and gas companies are not compatible with such a trajectory[79] , such as the "net-zero company benchmark" of the Climate Action 100+ (of which BNP Paribas AM and BNP Paribas Cardif are members)

This ill-defined exemption, the application of which is left entirely to the discretion of BNP Paribas, does not even draw a red line on the end of oil and gas development, including in these very risky sectors, and presents the risk of ineffective and inappropriate exclusionary measures.

Thirdly, the **measures** taken by BNP Paribas **to reduce the exposure of its portfolios** to fossil fuels are incomplete in that they:

- only cover loans, even though many companies in the sector are financed through bond issues

[73] Many French and international organizations have multiplied actions (advocacy and expertise sharing with banks, development of databases, publication of reports, citizen mobilization) in favor of this demand. See in particular several reports published by Friends of the Earth France, Oxfam France and Notre Affaire à Tous published over the last 5 years (2017-2022).
[74] Answers of the Board of Directors to the written questions asked by Friends of the Earth France during the General Assembly of May 17, 2022, p. 1.
[75] Scientific Committee of the Sustainable Finance Observatory (*Observatoire de la Finance Durable*), *recommendations on the alignment strategies of financial actors and on unconventional hydrocarbons*, September 2021.
[76] Reclaim Finance, *BNP Paribas: too little progress on climate change*, May 3, 2022: "*In aggregate, shale oil and gas, oil sands and the Arctic (excluding Norway) account for 12% of TotalEnergies' production. However, by introducing a revenue exclusion threshold and separating shale and oil sands on the one hand and Arctic oil and gas on the other, the 10% threshold does not mean that TotalEnergies is excluded.*
[77] Reclaim Finance, *Drill Baby Drill*, 2021.
[78] *Climate analytics and alignment report 2022*, p. 34.
[79] CAC, Oil and Gas 2022; OCI, Big Oil Reality Check; Reclaim Finance, *Major Failure*. This is particularly the case for the Carbon Tracker think tank, which contributes to the Climate Action 100+, which establishes that the production and investment plans of these companies exceeded the production allowed in the IEA scenario. Carbon Tracker, 2021. Adapt to Survive: Why oil companies must plan for net zero and avoid stranded assets.

orchestrated by BNP Paribas[80] - which is why BNP Paribas has indicated that it will extend these objectives to capital market activities in its next reports[81] ;

- only concern part of the hydrocarbon projects - for example, oil and gas pipelines or thermal power plants are not concerned;
- contain a weaker commitment to oil and gas than to oil alone, leading to fears of a lesser or no effort in the gas sector;
- This could be misleading - the bank could show a (relative) reduction in its exposure to fossil fuels even if it maintains or even increases its support for oil and gas, provided that it increases its overall volume of lending at the same time. This does not guarantee that the absolute volumes of financial services provided to the oil and gas industry each year will decline, nor that support for oil and gas expansion will cease.

Finally, these measures are no substitute for a fossil fuel exit strategy, which is necessary to maintain a 1.5°C trajectory. BNP Paribas has not established a firm timetable for exiting the oil and gas sectors (here again, although it has done so for the coal sector).

Fourth, a reduction in the **carbon intensity** of the emissions from the bank's portfolio does not guarantee a reduction in **absolute value**, which should be the priority in order to guarantee a real positive impact on global warming. BNP Paribas has not set an absolute reduction target for its entire carbon footprint (scopes 1, 2 and 3).

Yet such a step is expected of your group, as a member of GFANZ, associated with the Race to Zero initiative, which states:

- the requirement to have an intermediate target that reflects an effort to achieve a 50% reduction in CO2 emissions by 2030 with average annual reductions of about 7%[82] ;
- that "*in most cases, absolute emissions targets are necessary for ensuring real-world reductions*" [83]

Moreover, as mentioned above (see *above*, I), methane (CH4) emissions must be reduced by at least 45% between 2030 and 2020 according to the IPCC[84] .

In light of the above, your intensity reduction commitments are clearly insufficient.

Moreover, the choice of this metric is not sufficient. BNP Paribas states that if its carbon intensity in 2020 is lower than the world average calculated by the IEA (68 gCO2e/MJ versus 72 gCO2e/MJ), it is because " *BNP Paribas portfolio being weighted towards oil and gas companies with emission intensities that are below industry averages.* "[85] .

This demonstrates the weakness of this indicator taken in isolation, allowing BNP Paribas to lower its carbon intensity by: adding renewable energy projects to its portfolio while granting loans to gas or oil-fired power plants; or cutting ties with certain companies specializing in shale hydrocarbons, while continuing to support oil and gas majors that are heavily involved in the development of non-conventional hydrocarbons. In other words, BNP Paribas could at the same time finance and even favour the majors in the sector, which nevertheless have the largest carbon footprints.

4. **The mechanism for monitoring the measures implemented and evaluating their effectiveness** is missing from your vigilance plan.

An essential aspect of the Duty of Vigilance Act is to ensure the effective and efficient implementation of

[80] Yet, according to the GFANZ, *"financial institutions must include in their targets all emissions caused by their investments, loans, underwriting and insurance, including the scope 3 emissions of the companies to which they provide these financial services"* (Pledge. 2.b.).
[81] *Climate analytics and alignment report 2022*, p. 11.
[82] Pledge number 3.
[83] Pledge. 7.a.
[84] IPCC, SR1.5, SPM, p. 15; see also UNEP & CCAC, *Global methane assessment: Benefits and costs of mitigating methane emissions, Summary for Decision Makers*, 2021, p. 6.
[85] *Climate analytics and alignment report 2022*, p. 32.

vigilance measures, by setting up a monitoring system including objective indicators, making it possible to verify that each risk or serious harm is covered by an appropriate mitigation or prevention measure and to regularly evaluate their effectiveness. The methodology for selecting indicators, statistical tools and data sources used should also be explained[86] .

A report on the effective implementation of the vigilance plan must be published and must set out the indicators that demonstrate the effectiveness and efficiency of the plan's measures. In this case, the BNP Paribas Compliance Plan does not contain any monitoring mechanism, nor does it publish a report on its effective implementation.

The "*results*" mentioned by BNP Paribas in its plan are very vague and do not meet the legal requirements mentioned above. In terms of climate change, it is only stated that:

> *"In order to align its portfolio with its climate objectives, BNP Paribas has chosen to use a sectoral analysis based on indicators and scenarios specific to each sector*"[87] .

However, these indicators and the specific scenarios for each sector are not spelled out in the vigilance plan, making it impossible to ensure that these sectoral measures are appropriate.

*

In view of the shortcomings and deficiencies described above, your vigilance plan and its implementation do not therefore reflect the exercise of reasonable vigilance with regard to the Duty of Vigilance Act.

These failures are also likely to constitute a breach of your voluntary commitments on the basis of articles 1100 and 1300 of the Civil Code, as well as a breach of the environmental duty of care resulting from the Charter of the Environment.

V. Consequently, we hereby give you formal notice to comply with the obligations set forth in Article L.225-102-4 I of the French Commercial Code by adopting reasonable and appropriate due diligence measures, which must be incorporated into a new vigilance plan and effectively implemented <u>within three months of receipt of this letter</u>, which constitutes <u>formal notice</u> within the meaning of Article L.225-102-4 II of the French Commercial Code.

The vigilance plan should include, without prejudice to other measures that may be identified in light of the worsening of the climate emergency, the evolution of scientific data and the evolution of your activities, in particular the following measures:

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

   In particular, it is requested, in the context of the identification of the risks of serious harm to the environment, health and safety and human rights in the area of climate change, generated by the increase in GHGs and referred to above (see *above*, I.), to publish:

   - BNP Paribas' complete carbon footprint (scopes 1, 2 and 3) in intensity and absolute value resulting from its activities:
     - disaggregated by industry sectors (including coal, oil and gas) and subsectors (including each unconventional hydrocarbon sector) of the underlying companies supported;
     - and by type of financial services including financing (including structured, syndicated and bilateral loans, equity and bond issues) and investments (own and third-party, distinguishing between equity and bonds or structured securities).

[86] Sherpa, *Reference Guide for Vigilance Plans*, 1ère Ed., p. 72.
[87] URD, p. 646.

- Flows and stocks in amount and share:
    - of financing and investment across the entire fossil fuel value chain:
        - disaggregated by sector and sub-sector (see *above*),
        - and by type of financial services (see *above*).

- The list of fossil fuel companies and projects (coal, oil and gas) that benefit from financial support from BNP Paribas, in particular projects that emit large amounts of GHGs and the companies that support them[88] .

- The exhaustive methodologies associated with all published data and measures taken within the framework of the BNP Paribas vigilance plan (the precise calculation methodologies, reference databases, as well as the perimeters of the financial services and client activities covered)

- The climate scenarios used as a reference by BNP Paribas and their underlying assumptions, particularly with regard to the use of carbon capture and storage (CCS) technologies.

- Details of BNP Paribas' shareholder engagement policy and its voting decisions at general meetings of fossil fuel companies in which it is an investor.

2. **Procedures for regular evaluation of the value chain with regard to risk mapping,** enabling the concrete quantification of the impact of their activities on the risks identified, analyzed and prioritized.

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

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

    - the immediate cessation of all financial support (financing and investments) to companies developing new fossil fuel projects [89] ;

    - the adoption of an exit plan for the oil and gas sector, in line with scientific requirements for a reduction in fossil fuel production by 2030, with a final exit (except for residual use in application of the precautionary principle) by 2050;

    - the implementation of measures to reduce the BNP Paribas Group's carbon dioxide (CO_2) and methane (CH_4) emissions (in absolute terms and covering scopes 1, 2 and 3) by at least 45% in 2030 compared to 2010 levels, equivalent to an annual reduction of approximately 7%;

    - reduce other GHG emissions appropriately.

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

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

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

---

[88] 425 climate bombs around the world - fossil fuel extraction projects that could individually emit more than 1 gigatonne of CO_2 - are identified in the report "*Carbon Bombs - Mapping key fossil fuel projects*". Kjell Kühne, Nils Bartsch, Ryan Driskell Tate, Julia Higson, André Habet, 2022.
[89] IEA, *Net zero by 2050: a roadmap for the global energy sector*, *op.cit*, pp. 20, 101-103.

policy, in particular to

- Effectively exercise its power to influence companies active in the fossil fuel sector and in which it is an investor, notably by proposing climate resolutions and voting in favor of climate plans that are truly aligned with the Paris Agreement and that meet the requirements listed above;

- if it fails to do so within a reasonable period of time of no more than two years, implement a divestment policy.

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

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

   - commitments already made in the area of climate change, particularly in the context of the Net Zero alliances of which it is a member, and of its sectoral policies on fossil fuels, for which there is no effective monitoring system;

   - measures that will be taken in accordance with the requests of this notice, within a reasonable period of time appropriate to the climate emergency.

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

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

*

If you fail to bring your plan into compliance and effectively implement the measures thus requested, we will be obliged to refer the matter to the competent court to ask it to enjoin you to do so, if necessary under penalty, at the end of the legal period of three months.

Finally, our clients reserve the right to seek compensation for all damages suffered as a result of the serious breaches of vigilance described above.

In accordance with our deontological rules, we would like to inform you that we are at the disposal of any of our colleagues whom you may wish to designate in this file and to whom you may communicate this letter.

Please accept, Mr. General Manager, the assurance of our highest consideration.

Sébastien MABILE
smabile@seattle-avocats.fr

François de CAMBIAIRE
fdecambiaire@seattle-avocats.fr

Louise DECARSIN
ldecarsin@seattle-avocats.fr