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Global Bank Sued in France Over Fossil Fuel Financing

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On February 23, three climate advocacy groups—Friends of the Earth France, Notre Affaire à Tous and Oxfam France—filed a [lawsuit](#) alleging that a global financial institution violated Article L. 225-102-4.-I of the French Commercial Code (“Duty of Vigilance Act”), which [requires](#) companies to establish a “Vigilance Plan” to “identify and prevent risks of severe violations of human rights and fundamental freedoms, health and safety of people and to the environment in their entire sphere of influence.” The lawsuit criticizes BNP Paribas (BNP) for, among other things, failing to “require” its clients in the fossil fuel industry “to immediately stop developing new fossil fuel projects and engage in a progressive exit from the sector,” despite allegedly committing to “take these kinds of measures” with respect to the coal industry in 2020. The lawsuit seeks to compel BNP to comply with the Duty of Vigilance Act by inquiring into the activities it finances in compliance with UN and OECD guidelines and, potentially, divest activities causing damage.

In October 2022, the organizations [served BNP](#) with notice of their alleged violations and asked it to address the issues being raised within three months, as provided for in the Duty of Vigilance Act. Despite engagement, claimants contend that BNP did not meet their demands, and this litigation ensued.

In [response](#) to the lawsuit, BNP stated that it was disappointed that plaintiffs opted to litigate instead of engaging in continued dialogue, but stated that BNP is “convinced that the ecological transition is the only viable path for the future of our economies” and that it is “focused on [its] fossil-fuel exit path, accelerating financing for renewable energies and supporting our customers, without whom the transition cannot be made.”

Taking the Temperature: This lawsuit marks the second time within a few months that NGOs have asserted sustainability-related claims under the Duty of Vigilance Act, which was passed in 2017. Earlier this year, the NGO ClientEarth and other claimants **commenced litigation** in a Paris court against Danone, the global food products company. The claimants contend that Danone breached the Duty of Vigilance Act because it does not have an adequate plan to reduce its plastic footprint. Here, the BNP claimants' press release observes that the action "is part of a global litigation movement" targeting emissions financing. We have **commented on this trend**, whether via shareholder proposals, regulatory enforcement or civil suits. That trend is being driven by the **challenges** companies, including banks, confront in establishing that their current sustainability efforts are sufficient to meet their articulated net-zero or other climate goals. For example, according to the BNP **claimants**, "BNP states that, by joining the Net Zero Banking Alliance, it has committed itself to 'funding a carbon-neutral world by 2050, which means that the temperature increase should not exceed 1.5°C compared to the pre-industrial era.'" Claimants argue that "in reality, its current policies cannot guarantee successful results," and that the bank's statements about its emissions financing and other sustainability efforts are not accurate. For issuers like BNP, the focus on a supposed divergence between publicly articulated climate goals and the implementation of transition plans sufficient to meet those goals will remain an area of concern from both a regulatory and litigation perspective. To mitigate those risks, companies should focus on climate-related governance (monitoring and assessing material risks and opportunities), data collection/assessment (including alignment with SBTi or other data standard setters) and disclosure (including necessary caveats or qualifications on articulated climate goals).