CADWALADER

Investors Pressure European Banks to End Financing for New Oil and Gas Fields

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On February 7, a group of 30 investors, representing over $1.5 trillion of assets under management, wrote to the CEOs and board chairs of five major European banks "urging them to stop directly financing new oil and gas fields by the end of this year." The banks are: **Barclays**, **BNP Paribas**, **Crédit Agricole**, **Deutsche Bank** and **Société Générale**. According to the NGO ShareAction, which is coordinating the campaign, the banks are the largest European financiers of "top oil and gas expanders after HSBC over the period 2016 – 2021." Last December, HSBC announced an **updated** energy policy that included a commitment, among other things, not to "provide new finance, or new advisory services, to any client" for projects relating to (1) "new [oil and gas] fields where the final investment decision was made after December 31, 2021" or (2) "infrastructure whose primary use is in conjunction with new [oil and gas] fields." The letters, which are substantially identical, contend that "eleven out of twenty-five of the biggest European banks," including HSBC given its updated policy, "now have some form of asset financing restriction for new oil and gas, regardless of supply segment. This sets a new minimum level of ambition for all banks committed to net-zero by 2050." In its **press release**, ShareAction expressed the concern "that new oil & gas fields may jeopardize the global path to net-zero" and that "these activities were holding back the renewable energy revolution in Europe." The letters also urge the five banks to change their dealings with the energy companies in question: asset financing for new oil and gas has been found to represent only eight per cent of total financing to top oil and gas expanders. We therefore encourage banks to swiftly turn their attention to the companies behind these new oil and gas fields."

ShareAction has been active lately, **recently co-filing** a shareholder resolution seeking details of the "specific plan" for Glencore PLC, a multinational commodity trading and mining company, "to align thermal coal production with emissions reductions commitments." Last year, the NGO **published** a report concerning the biodiversity and climate strategies of the 25 largest European banks.

Taking the Temperature: This announcement is further evidence of a continuing trend of investors seeking to influence climate-related company policy. This is not just a European development, with similar announcements in the U.S. targeting financial institutions' climate transition plans, including finance emissions reductions targets. As we have reported, increasing numbers of companies are publishing climate transition plans and should expect that these will be subject to shareholder or regulatory scrutiny.

Other recent climate-focused shareholder activity includes the recent announcement by environmental nonprofit ClientEarth that it has asserted what it claims is the first derivative action in the High Court of England and Wales against Shell plc's board of directors, accusing the directors of violating Sections 172 and 174 of the Companies Act. ClientEarth claims that Shell is not "properly managing climate risk" and therefore its board is in breach of its legal duty to act with reasonable care, skill and diligence. Court filings are not currently publicly available. The action against Shell follows another case brought by ClientEarth in Paris against Danone for allegedly violating France's Corporate Duty of Vigilance Law in that the company supposedly does not have an adequate plan to reduce its plastic footprint. Just yesterday, on February 23, three other NGOs – Oxfam France, Friends of the Earth France and Notre Affaire à Tous – sued BNP Paribas in the Paris Judicial Court for violating the Duty of Vigilance Law (the same law at issue in the suit against Danone) relating to the bank's fossil fuel financing activities. And, yet another NGO, Global Witness, recently filed a complaint with the Securities and Exchange Commission (SEC)'s Climate and ESG Task Force asking that it investigate Shell for possible violations of the federal securities laws relating to disclosure concerning its financial investments in renewable energy sources.