



BANCA D'ITALIA  
EUROSISTEMA

## The many shades of climate change through the lenses of dispute settlement

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### 1. Introduction

The Bank of Italy has long been a careful observer of themes related to the environment, climate change and sustainability, for four main reasons. First, developments in these fields can have consequences for the economy, and need to be thoroughly understood for conducting monetary policy. Second, the Bank considers climate-related – physical and transition – risks in conducting its supervision and financial stability functions, as these risks feed the classical risk categories to which intermediaries are exposed (credit, market, operational, liquidity). Third, the Bank, while not subjected to the EU climate legislation, is committed to reducing its environmental footprint; it has been publishing an annual [Environment report](#) since 2010, and is working towards reaching net zero emissions by 2050.<sup>1</sup> Finally, the Bank owns a relatively large portfolio of assets for non-monetary policy-related purposes, and is committed to invest it according to sustainability criteria.<sup>2</sup>

This attention to environmental themes is shared internationally by over 140 central banks and supervisory authorities that have joined the Network for Greening the Financial System (NGFS). The Network, launched in 2017, has the objective to share analyses, methodologies, experiences and best practices in the environmental field, with a particular focus on climate risks.

From this brief overview, it is clear that the theme of today's conference, legal risk stemming from climate change and other environment-related disputes, is fully in scope for the Bank of Italy, and more broadly for the entire community of central banks and supervisors.

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<sup>1</sup> See the Bank of Italy [Strategic Plan for 2023-2025](#).

<sup>2</sup> The sustainable investment criteria are defined in the Bank of Italy [Responsible investment charter](#). The progress and results are described in the annual [Report on sustainable investment and climate risks](#).

## 2. Outline of the climate- and environment-related litigation

Litigation related to climate is growing worldwide. The number of cases per year increased from just a dozen in 2004 to around 250 more recently (fig. 1).<sup>3</sup> The highest number has been recorded in the US (1,745 cases in total since the mid-eighties), followed by the UK (139) and Australia (132). In low income and developing countries relatively few cases have been observed so far, but their number is also growing. Last year, the highest number of new cases, besides the US (129), were recorded in the UK, Brazil and Germany (with 24, 10 and 7 cases, in the order). These outcomes may be connected with recent legal developments.

The number of countries that have experienced cases of climate and environmental litigation reached 55 in 2023. In addition, international courts, tribunals and international institutions, including the UN and WTO, have also ruled, given advice or dealt with complaints on climate change.<sup>4</sup>

The lawsuits are typically brought against firms and, in the majority of cases, governments, with different goals and features.

Initially, corporate litigation cases were predominantly brought against firms in the fossil fuel sector, but they have gradually expanded to a diversity of industries, from fossil fuels users like airlines, to the food and beverage industry, e-commerce, and more recently firms operating in deforestation, agriculture and food supply chains (fig. 2). Interestingly, a rising number of cases targets banks and other financial institutions.<sup>5</sup> These lawsuits often argue that investments in fossil fuel industries stoke climate risks, and aim to curb finance flows to these industries.<sup>6</sup>

Most corporate cases try to push companies to be more transparent about their climate impact and to align with international emission reduction targets. A growing trend is observed for cases concerning charges of greenwashing, and for cases leveraging the evolving standards of responsible corporate conduct.<sup>7</sup>

A majority of climate and environment-related litigation is brought against governments, often for failing to fulfil international climate obligations, with a focus on emissions targets, biodiversity loss, and, more broadly, nature degradation as well as adaptation

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<sup>3</sup> J. Setzer and C. Higham, “Global trends in climate change litigation: 2024 snapshot”, June 2024.

<sup>4</sup> Overall, including countries, tribunals and international bodies, 65 jurisdictions have experienced climate change litigation (United Nations Environmental Program, [Global climate litigation report. 2023 Status review](#)). The most comprehensive source on this issue, managed by the Sabin Centre for Climate change Law of Columbia University, is the [Climate Change Litigation Databases](#).

<sup>5</sup> NGFS, “Climate-related litigation: recent trends and developments”, 2023.

<sup>6</sup> NGFS, “Micro-prudential supervision of climate-related litigation risks”, 2023.

<sup>7</sup> See e.g. the OECD [Guidelines for Multinational Enterprises on Responsible Business Conduct](#), 2023; Rajavuori, M., Savaresi, A. and van Asselt, H. (2023), [Mandatory due diligence laws and climate change litigation: Bridging the corporate climate accountability gap?](#). *Regulation & Governance*, 17: 944-953.

for vulnerable communities.<sup>8</sup> Central banks and supervisory authorities themselves have been taken to court for climate-related matters.<sup>9</sup>

While most cases originate from plaintiffs' attempts to fight climate change and nature degradation, backlash against ESG policies is also fueling litigation. In some cases investors sue governments or corporates for damage stemming from climate policies adopted to comply with the 2015 Paris agreement. This type of litigation, often addressed via arbitration under terms of confidentiality, relies on specific contractual clauses or treaties provisions which envision invariance of the legal framework for certain investments. Another variant of these corporate "anti-ESG" lawsuits targets NGOs and activist shareholders that try to pursue ambitious climate agendas at general shareholders meetings.<sup>10</sup> In other cases, these lawsuits stem from a "just transition" argument, aiming to address socioeconomic problems spurred by action against climate change, including inequality and distributional effects.<sup>11</sup> Yet other cases concern potential trade-offs between climate and biodiversity or other environmental aims (so-called "green vs green" cases). Altogether, in 2023 litigation not aligned with climate goals accounted for nearly 50 cases out of a total 230 cases.<sup>12</sup>

Little if any public information is available on the value of climate-related claims, or the damages decided by courts. This is partly due to the relative novelty of the phenomenon, and to the fact that, so far, lawsuits have often asked for corrective action rather than damages.

### 3. Climate and environmental risk litigation: the EU perspective

This bird's eye view of the environmental litigation phenomenon suggests a few observations from the perspective of central banks and supervisors. A first one is that litigation risk can have a negative impact on financial intermediaries, through various channels. A direct channel concerns greenwashing. Recently, disputes of this type against intermediaries have been promoted in France, the United States, Canada.<sup>13</sup> As mentioned before, intermediaries can also be brought to court because they finance corporates that contribute to climate change or harm nature.<sup>14</sup> Of course, intermediaries can also

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<sup>8</sup> Two landmark cases are [Urgenda Foundation v. State of Netherlands](#) in 2015 and [Neubauer et al v. Germany](#) in 2020.

<sup>9</sup> See the actions taken by Client Earth against the [National Bank of Belgium](#) in 2021 and against the [UK Financial Conduct Authority](#) in 2023.

<sup>10</sup> United Nations Environmental Program, cit.; J. Peel and H. Osofsky, 2020, [Climate Change Litigation](#). Annual Review of Law and Social Science.

<sup>11</sup> See [Government Atacama vs Chile Ministry of Mining](#) in 2022, a case of lithium exploitation without public participation and environmental assessment.

<sup>12</sup> J. Setzer and C. Higham, 2024, cit.

<sup>13</sup> See the [regulatory complaint](#) to the Autorité des marchés financiers by Client earth against Blackrock, the SEC [sanction](#) to DWS Investment Management Americas Inc., the [inquiry](#) commenced by the Competition bureau into Royal Bank of Canada.

<sup>14</sup> See the two cases of [Amis de la terre](#) and [Commissao Pastoral](#) against BNP Paribas in 2023: NGFS, "Nature-related litigation: emerging trends and lessons from climate-related litigation", 2024.

be indirectly affected by litigations brought against their corporate clients, to the extent that these actions jeopardise the latter's viability, or create reputational damage to the intermediary.

A second observation is that litigation risk is growing in parallel with the development of legal frameworks that try to address climate change and nature degradation. This correlation (to be expected: there can be no legal case in the absence of a legal basis) suggests that the number of cases is likely to grow further as legislation becomes more pervasive. Think about the legislation on transparency passed by the main jurisdictions: the Corporate Sustainability Reporting Directive (CSRD) in the EU, the new rules adopted by the US Securities and Exchange Commission in 2024. Clearly, a firm will be held liable for the accuracy of its own data. Furthermore, greater transparency can be exploited by those who intend to initiate a litigation.

In this context, the new EU Corporate Sustainability Due Diligence Directive (CSDDD)<sup>15</sup> is worth a special mention. The aim of this Directive is to foster sustainable and responsible behaviour in corporate operations and through their entire value chains. The new rules will try to ensure that companies in scope refrain from action with adverse effects on human rights or the environment, inside and outside Europe. The Directive applies to companies, including regulated financial undertakings. Large companies will be required to respect due diligence obligations for their own activities and for those of their entire value chain, that is, for suppliers as well as customer firms. The CSDDD also requires all firms in scope to adopt transition plans compatible with the the Paris Agreement.

Financial firms subjected to the CSDDD have an important waiver, which excludes customer firms downstream in their value chain (in essence, borrowers) from the scope of the regulation. In my view such waiver is appropriate at this stage. The CSRD will improve reporting for large firms and listed SMEs, but will leave out the vast majority of SMEs; this would make it virtually impossible for intermediaries to implement due diligence obligations downstream. However, a review clause in the directive leaves the door open for extending the due diligence obligations downstream for financial intermediaries as well.

The CSDDD introduces a harmonized civil liability regime for damage caused by failure to respect due diligence obligations, that will need to be implemented at national level. The objective is to achieve a level playing field in the EU, and to avoid "forum shopping" (selection of the most favourable jurisdiction by plaintiffs).

The above considerations suggest that the enforcement of the CSDDD by EU member states – due by July 2026 – could stoke environment-related litigation, mainly for corporates but also for intermediaries, especially if, in the future, the review clause makes them accountable for the corporates they finance. This hypothesis is consistent with

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<sup>15</sup> [Directive \(EU\) 2024/1760](#) of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

recent litigation cases observed in countries where the national legislation similar to the CSDDD is already enforced (e.g. France and the Netherlands<sup>16</sup>).

#### 4. Conclusions

The legislation aiming at protecting the planet and future generations from climate change and nature degradation has been making important progress worldwide. This legislation creates powerful incentives for corporates to change their behaviour; next to carbon taxes and incentive schemes, it is an indispensable tool in the hands of governments, if our economies are to be steered towards a sustainable path. The obligations and penalties introduced by the legislation are necessary to give bite to the legislation itself.

At the same time, legislation aiming to effectively drive the fight against climate change must carefully balance ambition and feasibility. Requests that are too ambitious may risk foundering against backlash, coming not only from powerful oil majors and other big polluters, but also from citizen who fear for their jobs and livelihood, as well as from investors. Europe, that arguably has had a leading role in developing ambitious climate legislation, has provided various examples of the latter type recently. Beyond the judicial system, backlash can also come from voters. Elected governments and legislative bodies are in the driver seat in the fight against climate change; they need to be mindful of the possible unintended effects of their policies and regulations. Excessive litigation can be one of them. An excessive increase in the burden for the court system would not go to the advantage of the climate cause.

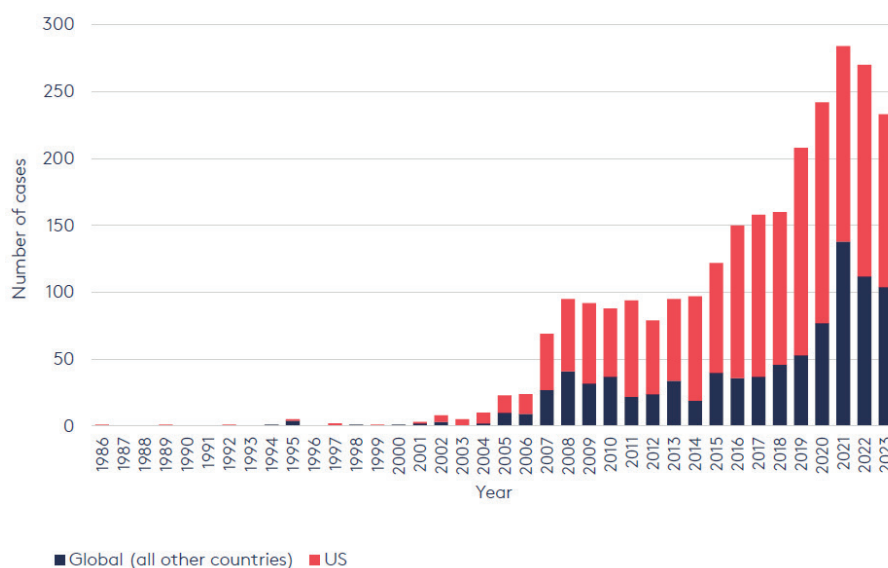
Litigation risk on environment-related issues is an emerging, important phenomenon. I am sure that today's workshop will contribute to its knowledge and understanding. Let me thank Unidroit for organizing the event, and the speakers and the participants for being here today.

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<sup>16</sup> In France, litigation was recently initiated based on a large bank's role in financing fossil fuel companies and deforestation in the Amazon basin (see footnote 15). In the Netherlands, in 2019 the case [Milieudefensie against Royal Dutch Shell](#) mandated the oil company to reduce overall emissions by 45 percent by 2030 (the ruling has been appealed).

Figure 1

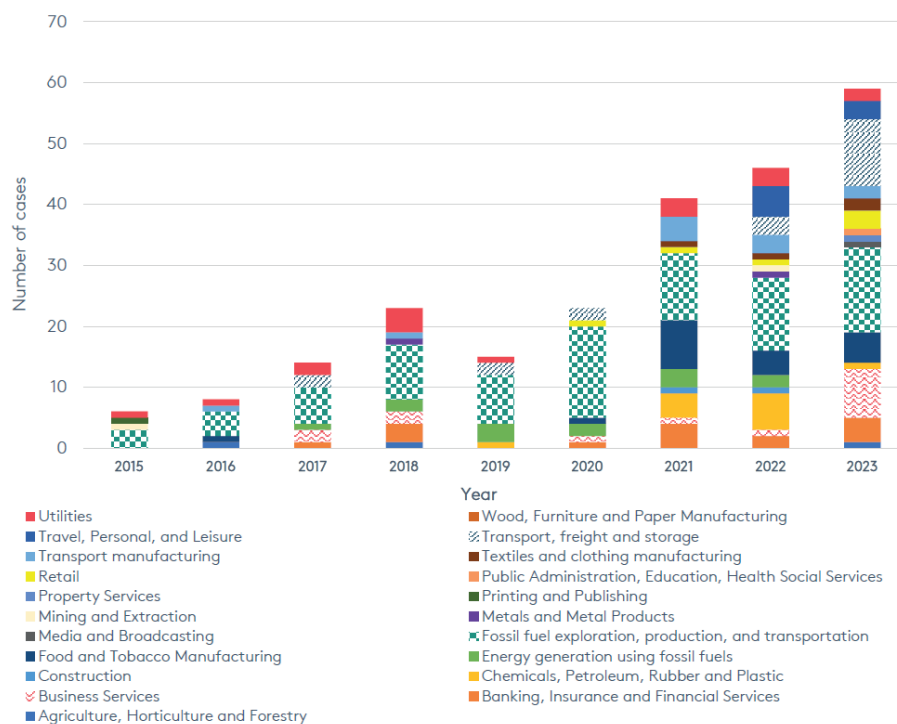
### Number of climate litigation cases within and outside the US (1986-2023)



Source: J. Setzer and C. Higham, "Global trends in climate change litigation: 2024 snapshot", June 2024.

Figure 2

### Number of companies targeted in strategic climate-aligned cases by sector (2015-2023)



Source: J. Setzer and C. Higham, "Global trends in climate change litigation: 2024 snapshot", June 2024.



