



*Fondazione Culturale*  
**RESPONSABILITÀ ETICA**

## **- ENI AGM 2010 -**

### **Intervention of the**

# **Fondazione Culturale Responsabilità Etica**

## **Onlus**

### **1. Introduction**

The Cultural Foundation of Banca Etica - Fondazione Culturale Responsabilità Etica Onlus – started in 2007 a critical shareholding initiative. The Fondazione bought some shares of major Italian corporations that are targeted by Italian and international civil society organisations and networks. These firms are criticized for their negative environmental, social and human rights behavior, regarding their questionable impact on local and national development processes, their lack of transparency, their poor democratic governance, and more broadly for their responsibility and controversial sustainability record and performance.

The critical shareholding is carried on in close contact with Italian and international civil society organisations. The Fondazione bought the shares of ENI after the proposal of the Campagna per la Riforma della Banca Mondiale – CRBM.

The goal of this initiative is at least three-fold:

–Firstly, it gives the chance to bring the voice of the Southern communities and of international civil society organisation campaigns directly to the board of the companies and to the other shareholders. Too many projects carried on by Northern transnational corporations badly impact on the life and the fundamental rights of local groups in the global South. These latter hardly can make their voice heard in the country where the mother company is based. The critical shareholding initiative may therefore be an effective tool to try and bring this voice directly to the board, the managers and the shareholders of the company. The result is an increase of the

social and environmental performance of the company in order to reduce broader negative development impacts and to foster a more active dialogue between the company and all its stakeholders;

–Secondly, the Foundation sees the critical shareholding as an instrument of “economic democracy”, thus increasing the knowledge and the participation of small shareholders and of the general public in financial matters. With this initiative, the Cultural Foundation wants to open a debate on the role of the shareholder and on its duties. The current crisis has shown the threats of a financial system based upon the short termism and the only maximization of profits. Being a shareholder means you become an owner – even if of an extremely small percentage – of the company you invest in. Thus it must imply rights as well as duties, and namely to actively participate in the life of the company; this is regarded as central in any development process both in the North and the South, given the prominent role nowadays of the private sector in most societies.

– Lastly, the critical shareholding increases the representativity of the small shareholders in the AGM and, more broadly, in the life of the company. A 2009 OECD report “The corporate governance lessons from the financial turmoil” points out that one of the main reasons for the actual crisis has been the flaws in the corporate governance schemes of many companies. The same OECD report pledges, as a major step forward, to increase the participation of the small shareholders in the life and the decisions of the companies. The critical shareholding goes precisely in this direction and will contribute to increase democratisation and accountability of private sector operations.

In several European countries, as well as in the US, active shareholders engagement has become a widespread practice. The interventions and proposals of the small active shareholders helped in many cases in increasing the company environmental and social responsibility, its governance and accountability, and its long term sustainability. This strategy has already been used in some campaigns targeting Northern corporations's responsibility in solidarity with affected communities in the global South and to promote their right to development.

This same practice has hardly been done in Italy, apart from some seldom initiatives carried on in specific cases. We therefore believe that the initiative undertaken in Italy by the Fondazione Culturale Responsabilità Etica Onlus could contribute to develop a more proactive and dynamic participation of other shareholders in the Italian firms. <sup>1</sup>

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<sup>1</sup>DI RECENTE SUL SUPPLEMENTO ORDINARIO N. 43 DELLA GAZZETTA UFFICIALE N.53 DEL 5 Marzo 2010 è stato pubblicato il Dlgs n.27.1.2010 con il quale è stata definitivamente recepita la Direttiva Comunitaria 2007/36/CE (Shareholders Rights) che amplia l'esercizio dei diritti degli azionisti di minoranza di Società quotate, che avrà integrale efficacia già a partire dal prossimo 30.10.2010. Il decreto in questione interviene sulle vari fasi del procedimento assembleare rimodellando, peraltro: il regime delle convocazioni assembleari e le informazioni pre-assembleari, il diritto dei soci ad inserire punti all'ordine del giorno e di presentare proposte di delibera, i requisiti per partecipare e per votare in assemblea, il diritto dei soci di porre domande, l'obbligo di aggiornamento dei libri soci e trasparenza dell'azionariato, la rappresentanza del diritto di voto e la possibilità di distribuire dividendi maggiorati. Particolare interesse va, altresì, accordato alla nuova modifica sostanziale in tema di sollecitazione di deleghe di voto che con l'attuale riforma risulta nettamente semplificato rispetto alla precedente procedura assolutamente complessa ed onerosa. Infatti adesso la richiesta di voto rivolta a **a più** di 200 azionisti su

To sum up, this initiative was conceived to make progresses in the medium and long term, both towards the firms responsibility and towards the shareholders participation.

In order to increase the efficiency of the initiative, the intervention in the AGM has been focused on a small number of concrete cases and investments where ENI is involved. Moreover, the projects considered are those where we believe that some concrete social, environmental or human rights improvements could take place. In the last years, the main projects the Fondazione Culturale has presented to the AGM have been:

The impacts of the activities in the Niger Delta, in Nigeria, where the gas flaring practice is still widespread, despite the Nigerian law prohibits it since 1984. The gas flaring consists in burning in the open air the gas that comes out when oil is extracted. A practice accused of having enormous impacts on the environment and on the health of the local communities.

The second investment taken into account has been the exploitation of the Caspian Sea oil fields, in Kazakhstan. These oil fields, among the biggest discovered in the last decades, pose enormous technical difficulties, linked to the high presence of sulfur in the oil, to the atmospheric conditions, and others. Strong environmental and social critiques, as well as a sharp increase in the costs and several delays have so far characterized the whole project. In the context of investment in the Caspian region involving ENI, concerns about ongoing impacts and risks associated with the Baku-Ceyhan oil pipeline have also been raised, including the critiques to project sponsors and linked to unfair stabilisation clauses. This draws upon previous work carried out by CRBM and other CSOs which led to UN Special Rapporteur on business and human rights, Prof. John Ruggie, to question the use of such clauses in particular in the context of foreign investment in developing countries.

Lastly, the Cultural Foundation and CRBM decided to confront ENI on its investments in the Republic of Congo. Namely, ENI signed an agreement with the local Government to explore tar sands in a vast region of the country.

The Fondazione then raised the problem of the complex structure of the company, with the presence of dozen of subsidiaries in low-taxation countries, or even in countries considered as tax havens. Going through ENI 2008 balance sheet, there were several companies where ENI has a participation or even a complete control that are registered in countries such as the Bahamas, the Bermuda, Luxembourg, Switzerland, Monaco, the Channel Islands (Saint Helier, in Jersey), the British Virgin Islands, Cyprus and others.

During the AGMs of the last years, the Foundation stressed the fact that a poor social

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specifiche richieste di voto ovvero accompagnate da raccomandazioni, dichiarazioni o altre indicazioni volte ad influenzare il voto, dovrà essere effettuata sulla base di un prospetto, ma senza i precedenti limiti che erano costituiti dalla l'intervento necessario di un intermediario (banche, imprese di investimento sicav ect.) e, soprattutto, dai requisiti di possesso minimo azionario. . Conseguentemente più strumenti per l'esercizio dei propri diritti (da far valere nelle attività delle prossima Assemblea dei Soci) sono stati accordati ai soci di minoranza che possono condividere, dal nell'ambito di un nuovo quadro normativo di riferimento, le finalità presenti e future sin qui esplicate.

and environmental track record may also have severe impacts on the companies long term financial sustainability, affecting their ability to maintain their leadership in the market and their competitiveness, thus damaging all shareholders.

In the 2010 AGM, the Fondazione Culturale wants to further expand on these projects, and ask some specific questions regarding the impacts of ENI investments in the global South.

## 2. Investments in the Republic of Congo

During ENI 's AGM 2009, we raised concerns about environmental and social issues related to ENI investments in the Republic of Congo, on the basis of a briefing by the Campaign for the Reform of the World Bank of April 2009.

In November 2009, the Fondazione Culturale Responsabilità Etica and CRBM were among the organizations supporting an international report published by the Heinrich Boell Foundation (HBF) called "*Energy Futures? ENI investments in tar sands and palm oil in the Republic of Congo*" (see enclosed).

We were taken aback by ENI 's dismissive reaction to this report and refusal of the invitation extended by us to ENI executives to participate in the Italian launch of the report, which took place in Milan on November 10<sup>th</sup> 2009.

On December 2<sup>nd</sup> 2009, together with civil society representatives from the Republic of Congo and Italy and the Project Manager of the HBF research project we met company officials to discuss the outstanding questions and concerns documented in the *Energy Futures?* report.

On the one hand, this meeting has represented a major step forward in the dialogue with the company. Several high level managers attended on behalf of ENI, and almost a whole day was dedicated to discussing the technical issues linked to ENI investments in Congo.

On the other, unfortunately, in our view ENI was not able to respond adequately to several questions raised during the meeting about the current and potential impacts of their investments in Congo, as outlined in the *Energy Futures?* Report (see below). Eni management also made specific commitments relating to (1) release of data on gas flaring at the Mboundi field and (2) agreeing a formal framework for conducting dialogue with local civil society organizations that, to our knowledge, have not yet been fulfilled.

At the request of both the Heinrich Boell Foundation and the *Africa - Europe Faith and Justice Network* (a faith based network of organisations) we are therefore asking ENI to respond in writing to the concerns raised in the *Energy Future?* report and subsequent meeting in December. The Africa-Europe Faith and Justice Network raised similar concerns in a separate letter of March 29<sup>th</sup> 2010.

Overall, we are asking Eni to make public the available data relating to the environmental, social and financial implications of Eni's investments in tar sands and palm oil in Congo. As an investor we have an obvious interest in understanding the financial costs of the proposed investments and the assumptions these are based on, as well as its environmental and social implications. We note that transparent communication with local communities affected by Eni's investments is also a cornerstone of the company's ethical guidelines. According to Eni's *Sustainability Report*, Eni respects the right of local communities to be consulted over the design and conduct of business activities, which includes being informed about investments that directly or indirectly affect the communities and their local environment.

It is thus of particular concern that, there is very little information available to investors and other stakeholders regarding the scope and substance of both the proposed tar sands and palm oil projects and thus no independent scrutiny of their potential impacts. According to an internal evaluation by ENI in March 2009 and as reported in the Energy Futures report, around 70% of the area of the concession for tar sands exploration is covered by tropical forest. This is obviously in conflict with ENI CEO Paolo Scaroni public statement of 21 July 2009 on BBC TV programme “Hardtalk”: “Our tar sands are in an area where there is savannah, no tropical forest [...] otherwise we wouldn’t do it. We discovered tar sands in an area which is essentially savannah, in which we could remove the oil from the sands, restore the ground as it is, replant savannah and the environment will be better than before”.

At the meeting on 2 December, Eni stated that the internal study was an early report that did not reflect Eni’s current exploration intentions. Furthermore, this study involved only low-resolution satellite imaging outlining general areas of higher and lower environmental sensitivity. Eni was at the stage of processing new data from radar and aerial imagery that would allow a more complete picture of rainforest coverage and the environmental sensitivity of the permit zone. However, as far as we know, none of this data is available to allow independent evaluation of whether exploration can take place in accordance with Eni’s environmental and social guidelines.

At the same meeting, it was stated that the tar sands project was at a pilot phase and no decision had yet been taken on a particular extraction technology for any exploration project, although the intention was to use *in situ* technology given the depth of the resource. It was further claimed that *in situ* techniques would minimize the project’s environmental impacts and that the extraction and upgrading techniques being envisaged were experimental techniques not currently being used in Canadian tar sands projects. Again, to our knowledge, there is no published data that would allow independent evaluation of the land, water and emissions impacts of Eni’s investment. However, we note with reference to the use of as yet-untested techniques in order to minimize environmental impacts, that *in situ* extraction as currently deployed in Canada, when assessed on a life-cycle basis considering the land use impacts of upstream processes, may in fact have a larger impact than mining projects (see note 202, p. 17 of Energy Futures report)

During the same meeting we asked for clarification of figures in the public domain for the estimated tar sands resource and for the costs of exploitation. Eni’s response was to state that any published figures were preliminary and that the company could not take responsibility for how the media had interpreted their preliminary estimations. Given the well-publicised current discussion over the costs of Canadian tar sands projects and their longer-term financial viability, we urge the company to publish the most precise figures available.

Therefore in the interests of transparency and the provision of accurate information to shareholders and other stakeholders, we ask ENI’s Board and CEO to:

1. Provide an update to us and local civil society organisations Rencontre pour la paix

et les droits de l'homme (RPDH) and Justice and Peace Commission-Pointe Noire (JPC) that Eni will inform the Congolese authorities that it is in favour of releasing all data relating to gas flaring at the M'Boundi field.

2. In accordance with (1), disclose publicly all data on air emissions from the Mboundi field, with details of levels of flaring and atmospheric concentrations of VOCs (BTEX and others), fine particulates, PAHs and acid gases generated by downwind flaring, and the impacts of flares on the chemical quality of rainwater, surface water and soil quality limits. This should include Eni's Health Impact Assessment for the M'Boundi area and the underlying epidemiological data. Such data should be made available in a form accessible to local communities.

3. Disclose an action plan and concrete timetable for the reduction of gas flaring from Eni's M'Boundi field and other operations in the Republic of Congo. More generally, gas flaring represents a huge social and environmental cost of Eni operations and a waste of resources that may become an economic cost for the company in the near future and Eni should therefore detail how it will eliminate flaring worldwide.

4. Update shareholders and local stakeholders on the current status of the tar sands and palm oil projects, including the timetable for implementation and the exact location of the 2 pilot palm oil projects.

5. Disclose all environmental and social impact assessments (ESIAs) for these projects and associated infrastructure and, in particular, all new data relating to the environmental sensitivity of the tar sands permit area including estimates of rainforest coverage.

6. Disclose to shareholders the company's evaluation of the financial costs of the tar sands project including the underlying assumptions about capital and expenditure costs, oil price etc. on which these are based and an updated estimate of recoverable reserves.

7. Disclose what specific *in situ* and upgrading technologies Eni is considering for its Congo project, along with the company's evaluation of the social, environmental and financial implications for each of these technologies, and answering the questions outlined on p. 23 of the *Energy Futures?* report in relation to energy and water use.

8. Provide an update on any consultation carried out with local communities relating to the tar sands and palm oil projects since September 2009, in accordance with Eni's ethical guidelines and as discussed in the December 2<sup>nd</sup> 2009 meeting with Eni.

9. In accordance with (5), provide an update on the status of the framework MOU between Eni and civil society organisations representing affected communities (RPDH and JPC-PN) and disclose a clear plan and timetable for future engagement with local communities.

### **3. ENI in Nigeria**

#### **3.1. Nigeria: petroleum, pollution and poverty in the Niger Delta<sup>2</sup>**

Oil has been extracted commercially in the Niger Delta, Nigeria, for half a century. The massive oil deposits have generated billions of dollars in revenues for the country, yet the vast majority of people living in the oil producing areas live in poverty. Oil may have brought wealth to the few, but it has brought impoverishment, conflict, human rights abuses and despair to many.

The growing multi-dimensional crisis in the Niger Delta is being driven by extensive pollution and damage to the environment, corporate failure and bad practice, serious government neglect and the actions of security forces and armed groups.

The oil industry in the Niger Delta comprises both the government of Nigeria and subsidiaries of multinational companies such as Shell, Eni and Total, as well as some Nigerian companies.

The link between human rights and environmental pollution has long been recognized.

For the people of the Niger Delta, environmental quality and sustainability are fundamental to their overall well-being and development.

Oil spills, waste dumping and gas flaring are endemic in the Niger Delta. Hundreds of oil spills occur every year, and some 2,000 sites have been registered as contaminated by the National Oil Spill Detection and Response Agency. The true figure may be far higher.

Communities in the Niger Delta frequently do not have access to even basic information about the impact the oil industry has on their lives. The government of Nigeria has never undertaken effective monitoring of, or studies on, the impact of the oil industry on health, fisheries or agriculture, despite concerns having been raised for years by the communities, civil society groups, the African Commission on Human and Peoples' Rights and many others. Companies claim to have carried out some studies – but few of these are ever published.

Systemic and serious government failures have left the people of the Niger Delta without adequate protection of their environment or their human rights but a company is not free to ignore the consequences of its actions because a government has failed to hold it to account.

There are international standards that relate to oil industry operations, and accepted standards on social and environmental impacts, which oil companies in the Niger Delta should be well aware of. In addition, companies have in place policies which commit them to good practice in terms of environment and social impacts.

The vast majority of cases reported to, and investigated by, Amnesty International relate to the Shell Petroleum Development Company (SPDC). However, other

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<sup>2</sup> Amnesty International, 2009 Nigeria: Petroleum, pollution and poverty in the Niger Delta, AI Index AFR 44/021/2009

companies are not blameless – there is evidence of poor practice in other areas and by other companies, including Eni.<sup>3</sup>

The Fondazione Culturale insists on the requests included in the report by Amnesty International, calling on companies to:

Make their public commitments to the environment and human rights a reality. Monitor their social and human rights impact, disclose information and undertake meaningful and respectful consultation with affected communities.

Clean up the pollution they have caused and put in place effective preventive measures.<sup>4</sup>

### 3.2. Bonny Island project and the international corruption case

Mr. Ugo Biggeri, president of the Fondazione Culturale Responsabilità Etica, a shareholder of ENI, have asked the following question to ENI CEO Paolo Scaroni during ENI AGM 2009.

The question was asked to get clarity on ENI prevision in the balance to allocate funds from the annual profit for paying eventual fines connected to the corruption scandal of Bonny Island.

Mr. Biggeri “(...) Halliburton have plea bargain with the US government a fine of almost 600 million USD. I would like to get clarity on some points: **are you allocating a share of the profit and for which amount in order to pay eventual similar fines that could be charged to ENI.** Halliburton has plea bargain but from the international investigation it seems that ENI was informed of facts and taking part in them. This is showed by the acts, it will be duty of the authorities to verify it. The question then is related to the balance of this year”.

ENI CEO Paolo Scaroni has replied to the question without explanations on the share of profit eventually sided for the purpose of paying fines.

Paolo Scaroni: “Halliburton have plea bargain, the penal terms and the fine. There are contacts with the Department of Justice and with the attorney's office in Milan that from the early days have engaged on the case to verify the compliance with Law 231 or eventual illicit acts. What have we done in the face of this? The Board have been informed already in June 2004, it has periodically monitored the investigation, the steps undertaken. We have collaborated with the authorities, both the Department of Justice and the Attorney's office in Milan. We have started – more recently- a review of company's procedures, to be implemented on anti-corruption cases, to be sure that

<sup>3</sup>Amnesty International Italy, 2009 “Inquinamento da petrolio nel Delta del Niger: Amnesty International apprezza le dichiarazioni di Eni Spa ma sottolinea che c'è molto altro da fare” (“Oil pollution in the Niger Delta: Amnesty International welcome statements by Eni, but highlights much more needs to be done”), Press release, n.090, 2 July 2009. See: <http://www.amnesty.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/2370>

<sup>4</sup> Amnesty International Italy, 2009 “Nigeria, chiarezza sull'impatto del petrolio nel Delta del Niger”, Public Appeal, 30 June 2009 See: <http://www.amnesty.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/2357>

such happenings like that which might have happen will not take place in the future (...).”

On August 7<sup>th</sup> 2009 (3 months after the AGM), in the semestral report referring to June 30<sup>th</sup> 2009, ENI declared that “a negative outcome of the proceedings, which might have a significant economic impact on the company, cannot be excluded”. “However, given the complexity of the analysis in facts and in law (also on prejudicial issues related with jurisdiction and prescription) and taken account of the limited information available to the company and of the secrecy around the investigations, as of today it is not possible to determine objectively the eventual cost in case of a negative outcome”.<sup>5</sup>

ENI Annual Financial Report of 2009, published on March 11<sup>th</sup> 2010 (about a year after the AGM 2009), declares to have assumed “a compromised conclusion with US authorities, in line with what have been announced by Technip (one of the four members of the consortium), (...) foreseeing “an allocation of funds of 250 million euro”<sup>6</sup>.

In a press release dated February 12<sup>th</sup> 2010, Technip declared the company decision over an allocation of funds of 245 million Euro in relation to a possible transaction with US authorities”<sup>7</sup>.

ENI Annual Financial Report acknowledges also the Italian investigation. We read in the report that “The case of TSKJ have determined investigations versus unknown by the Attorney's office of Milan since 2004”. “Starting from March 10<sup>th</sup> 2009, the company have received requests to present documentation by the Attorney's office in Milan. On July 17<sup>th</sup> 2009, date in which a search warrant and attachment has been notified to Saipem/SnamProgetti, the company has been informed that the Attorney's Office of Milan have started to investigate several people, among them at least one former executive of SnamProgetti. The facts under investigation are related to a time-frame back to 1994 and are related also to the period after the introduction of the Decree n. 231 dated June 8<sup>th</sup> 2001, on the administrative responsibility of companies”.

In case of conviction according to the decree n.231 dated June 8<sup>th</sup> 2001, above the administrative sanctions, it is applicable the confiscation of the profit of the crime. In the phase of preliminary investigations, preventive confiscation of the profit and other preventive measures are applicable. The Attorney's Office on Milan has asked to the Judge for preliminary investigation (GIP) the interdiction to ENI SpA and Saipem SpA from undertaking activities which require a direct or indirect interaction with Nigerian National Petroleum Corporation or other controlled companies.

In relation to the facts being examined, the Attorney has highlighted the inefficacy and the non-implementation of the model of organization, management and control put in place to prevent the overstated crimes by subjects under surveillance.”

<sup>5</sup> Eni, 2009, Relazione Finanziaria Semestrale Consolidata, pag. 112, August 7<sup>th</sup>

<sup>6</sup> Eni, 2010, Relazione Finanziaria Annuale 2009, pag. 278, March 11<sup>th</sup>

<sup>7</sup> Technip, 2010, Press Release, Charge for potential resolution of the TSKJ Nigeria Matter in the US, February 12<sup>th</sup>

The request of interdiction has been refused by the Court of re-examination on January 19<sup>th</sup> 2010. On February 19<sup>th</sup> 2010 the Attorney's office in Milan has appealed to the Court of Cassation, asking for the cancellation of the ruling of the Court of re-examination.

On parallel, on February 11<sup>th</sup> 2010 the Attorney's office in Milan has notified to ENI the request to present documentation and information related to the companies participated by ENI SpA and Saipem SpA (former SnamProgetti SpA) involved in the Bonny Island Project.

There may then be a risk that ENI may be convicted to more sanctions on the basis of the decree n.231/2001, which will sum up to the sanction owed to the US authorities, which will fell on the 2010 balance of ENI group.

We ask to ENI board and CEO Paolo Scaroni:

why ENI has not informed promptly its shareholders, during 2009 AGM, that “a negative outcome of the proceedings, which might have a significant economic impact on the company, cannot be excluded”?

ENI has allocated 250 million Euro in preparation of a “a compromised conclusion” with US authorities. This equals to about 5% of 2009 ENI net profit. This amounts to which percentage of ENI net profits inside the TSKJ consortium?

What is the amount of the “profit of the crime” that might get confiscated in case of conviction ruled on the basis of decree n.231/2001?

What economic consequences might derive from the eventual decision of the High Court (Corte di Cassazione) to interdict ENI SpA and Saipem SpA from undertaking activities which require a direct or indirect interaction with Nigerian National Petroleum Corporation or other controlled companies?

## 4. ENI in Kazakhstan

### 4.1 International corruption in Kazakhstan

In its Annual Report 2009, published in March 2010, Eni reports that on 1 October 2009 the Public Prosecutor of Milan “requested a number of documents pursuant to Article 248 of the Penal code”. Through this decision, “part of a criminal proceeding against unknown”, Eni SpA was requested to transmit - in relation to the “alleged international corruption, embezzling pillage, an other crimes – audit reports and other documentation related to anomalies and critical issues on the management of

1. the Karachaganak plant and
2. the Kashagan project“.

The crime of international corruption (mentioned in the request of transmission of documents) is sanctioned, in addition to the Italian criminal code, by legislative decree June 8, 2001 n.231 which establishes the administrative responsibility of companies for crimes committed by their employees on their behalf. Eni commenced the collection of the documentation in order to rapidly fulfil the requests of the Public Prosecutor. The company has deposited in different phases the documents collected. The Company continues to fully collaborate with the Public Prosecutor providing also further documentation when available.<sup>8</sup>

To our knowledge, Eni has not published any further information on the Italian investigation yet.

### 4.2 Fines and irregularities in Karachaganak: investigation by the Kazakh police

On 26 March 2010, the news agency Reuters reported that the Kazakh financial police had accused “a consortium led by British Gas and Eni of illegally earning 708 million USD in 2008 by producing more oil and gas than originally agreed with the state”. The consortium operates the Karachaganak oil and gas field in western Kazakhstan under a Production Sharing Agreement (PSA) with the state that sets out production levels and the profit split. “A criminal case has been launched”, Rustam Ibraimov, deputy head of the Kazakh financial police, said in a written response to Reuters questions. Ibraimov said Karachaganak, Kazakhstan's top gas producer, “had produced 1.1 million tonnes of oil and 94,000 tonnes of gas condensate in excess of the agreed amount in 2008”.

The Kpo Consortium answered in an information note to the press that it has always acted in the “full respect of the Kazakh law” and of the PSA for the Karachaganak field, while assuring a full co-operation with Kazakh authorities.<sup>9</sup>

<sup>8</sup> Eni, 2010, Annual Report 2009, pag. 280, 11 March

<sup>9</sup> Dow Jones Newswires, 2010, Eni: nuove accuse Kazakhstan contro consorzio Karachaganak, 26 March

The criminal case is just the latest stage in an acrimonious relationship between the consortium and the government, which has long sought a stake in the field. Earlier in March, the state accused the consortium, which also includes U.S. firm Chevron and Russia's LUKOIL, of tax evasion dating back to 2004 and launched a full audit of its operations. The Karachaganak group has denied any wrongdoing, however, saying its operations complied with Kazakh law, and in 2008 it launched a legal case to recover over 1 billion USD in what it sees as "illegally levied customs duties" and other payments.<sup>10</sup>

On 26 February 2010, as reported by Reuters, a Kazakh court slapped a 210 million USD environmental fine on the Kpo Consortium. The prosecutor general's office said that the venture had been fined for "environmental violations such as excessive waste dumping dating back to 2008". "The total damage was of 3.09 billion tenge (210 million USD)", it said in a statement.<sup>11</sup>

As reported by the Wall Street Journal<sup>12</sup>, the Kazakh government's pressure on Karachaganak Petroleum Operating (KPO), would be only part of a strategy to "force the way of Kazakhstan's state-owned oil company KazMunaiGaz (KMG) into the consortium". KPO would be vulnerable because "it is the only big oil-and-gas project in Kazakhstan in which KMG doesn't have an interest".

Based on the information and press reports mentioned above, we ask ENI :

- to estimate the amount of alleged "criminal profits" for Kashagan and Karachaganak, since a violation of legislative decree June 8, 2001 n. 231, quoted above (3.) can result in the "confiscation of criminal profits in addition to administrative penalties"<sup>13</sup>

- answer to the allegations of "environmental violation" and "over-production of illegal oil" in the Karachaganak field, formulated by the Kazakh authorities (see footnotes for references).

Given the complexity and variety of allegations made by the Kazakh authorities and the existence of a criminal proceeding in Milan, we ask ENI to publish a report assessing potential impacts of sanctions that might result from any Kazakh investigation or violation of the law decree 231.

### 4.3 Karachaganak

Two years ago, in occasion of 2008 ENI shareholders meeting, we have highlighted outstanding issues around the Karachaganak oil field operated by ENI through the consortium KPO (Karachaganak Petroleum Operating B.V.). ENI controls 32.5% of

<sup>10</sup> Reuters, 2010, Kazakhs open probe against BG, Eni venture, 26 March

<sup>11</sup> Reuters, 2010, Kazakhstan court fines BG, Eni-led group \$210 million, 26 February

<sup>12</sup> Wall Street Journal 2010, Western Oil Companies Feel the Heat in Kazakhstan, 27 February

<sup>13</sup> Eni, 2010, Annual Report 2009, pag. 280, 11 March

the field together with British Gas (32.5%), Chevron (20%) and LUKoil (15%). The KPO consortium is registered in The Netherlands.

In particular we have called the attention of ENI management and shareholders on the violations of IFC internal procedures which have been reported at that time by the first report of the Compliance Advisor Ombudsman, an independent mechanism to which local communities affected by IFC financed projects can call upon<sup>14</sup>. The case referred to the Karachaganak oil field. Since then, the CAO has been called to act by the local communities affected by ENI operated Karachaganak oil field two more times<sup>15</sup>. In particular the CAO has been called to look at the legality of the decision by the Kazakh government to reduce the Sanitary Protection Zone (SPZ) from 5 km to 3 km only, excluding the community of Berezovka from the right to relocation to a safer area in the case of communities that live inside the limit of the SPZ.

Such a decision, taken after the signature of the Production Sharing Agreement with KPO consortium led by ENI in 1997, has forced 1500 people of the Berezovka village, located at 3km only from the Karachaganak field, to live in a supposedly toxic area. As a matter of fact, KPO consortium has been fined already twice by the Kazakh authorities for violations of the environmental law: KPO had to pay 15 million USD in 2008<sup>16</sup> for violation of environmental standards and safety rules and 56.4 million USD in 2009 for emissions in the atmosphere above the allowed limit and violation of the law on the use of land<sup>17</sup>. In early 2009 the public association "Zhasil Dala" of the Berezovka village and the Ecological Society "Green Salvation" has filed a lawsuit against the Kazakh government for "failing to undertake measures to protect and defend the rights and freedoms of citizens and to ensure the safety of the residents of the village of Berezovka who have been forced to live in a zone that is dangerous to their health, and in violation of their rights to a healthy environment"<sup>18</sup>. According to the same source, the case is now under review by the Supreme Court of Kazakhstan.

As shareholders of ENI, we ask our company to explain:

- Whether and how the company has been involved in the decision to limit the sanitary protection zone, moving from 5 to 3 Km at the Karachaganak field;
- Why KPO has never made public the limit of the Karachaganak operating facilities, in order to allow the measurement of the exact limit of the SPZ;
- What has been the action plan of ENI to ensure the right to a safe environment of the communities living in the vicinity of the Karachaganak field, in respect of the International Covenant on Economic and Social Rights and of the Ethical code of

<sup>14</sup> In 2002, LUKoil, have obtained a 150 million loan from the IFC to support LUKoil's share of the operating costs at Karachaganak. See: <http://www.ifc.org/ifcext/eca.nsf/Content/SelectedPRKkazakhstan?OpenDocument&UNID=ED899AFF2F2D1A4485256C63005C57B5>

<sup>15</sup> See: <http://www.cao-ombudsman.org/>

<sup>16</sup> See ENI, Assemblea degli Azionisti 2008, Intervento della Fondazione Culturale Responsabilità Etica

<sup>17</sup> "The Company KPO Continues to Violate Environmental Norms of Western Kazakhstan Oblast", *Kazinform*, April 17<sup>th</sup> 2009, <http://www.inform.kz/showarticle3.php?lang=rus&id=234213>

<sup>18</sup> "The People have Taken a Partial Step towards Victory", February 2<sup>nd</sup> 2010, <http://www.respublika-kz.info/news/society/7403/>

ENI;

We furthermore ask the company to release to the shareholders and the general public a detailed report on the emissions measured by KPO at Karachagak field since 1997, as well as the complete documentation on the permits to emit that KPO has requested to the Kazakh authorities.

#### **4.4 Kashagan**

Two years ago, in occasion of 2008 ENI shareholders meeting, we have highlighted outstanding issues around the Kashagan oil field operated by ENI through the consortium Agip KCO. As shareholders we expressed concerns about the environmental impacts of the project, which, according to independent sources, was producing an excessive level of pollutant emissions and of sulphur, as a by-product of oil extraction. Further concerns had been expressed on the potential impacts of extensive drilling operations in the North Caspian region, populated by Caspian seals and wide variety of fishes, birds and mammals. In 2008 we expressed our concerns also on the rising costs of the project, which is hurting ENI's competitiveness. A series of articles recently published by the Kazakh press, as well as interviews which we conducted last month with Kazakh journalists and geologists as well as with international financial analysts, led us to consider that ENI's environmental and financial performance in Kashagan has not improved significantly in the last two years (we can make available the mentioned documents at anytime upon request). In the following points we will underline the reasons why, as shareholders, we continue to think that the Kashagan project was, is and will be a source of risk for ENI's environmental and social performance as well as for ENI's competitiveness.

#### **4.5 Environmental risks in Kashagan. An update**

According to an article published by the newspaper "Kazakhstan Today" on January 14, 2010, the Caspian Sea would be experiencing a mass mortality of animals, especially seals, sturgeon and birds. The cause of death is said to be "chronic toxicosis": the carcasses of animals would have been contaminated by crude oil sub-products as well as pesticides, which led to a sharp drop in the immunity of seals and to an increased susceptibility to infectious diseases. animal carcasses were found breakdown products of crude oil, gasoline and fuel oil, "led to a sharp decline of the immune system of the Caspian seal and increased their vulnerability to infectious diseases".<sup>19</sup> "Kazakhstan Today" reports the results of a research carried out by a Committee appointed by the Kazakh Ministry of Agriculture and headed by Yuri Romashov, Chairman of the Committee for Fishing.

In the same article, "Kazakhstan Today" explains that the Kashagan development project, operated by Agip KCO, "will have a strong technogenic impact on the

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<sup>19</sup> Kazakhstan Today, 2010, Комиссия МСХ проводит исследование с целью предупредить гибель тюленей в казахстанском секторе Каспия, 14 January

environment" due to the construction of 37 artificial islands and 240 oil wells". Nikolai Popov, chairman of Казахского общества охраны природы (Kazakh Society for Conservation of Nature) says that "technological facilities installed by Agip KCO will be equipped with torches that will flare gas during the testing for new wells". Popov estimated that the torches will flare approximately "60,000 tons of gas a year".

According to a statement by Gazeta.kz's journalist Arthur Shahnazarian at the moment only 30 wells (of 240) have been drilled and equipped by Agip KCO. Since most part of the wells has yet to be built, the problem of gas flaring will seriously affect the Kashagan field only in the coming months.

An article published by Kazakh newspaper "Karavan" on January 15, 2010<sup>20</sup>, reported that only last year international oil companies operating in the Kashagan field (including the Consortium Agip KCO) would cause "environmental damage in the hundreds of millions of Tenge" (several million Euros). Prosecutors in the Atyrau region, after tests carried out on oil companies in the area, found that "the environment in the Caspian region is under shock, since the limitations in the emissions of pollutants are being systematically violated". For this reason Agip KCO and other companies have already been fined for a total amount of 650 million Tenge (3.3 million EUR) only in the region of Atyrau. The article also explains that "the mountains of sulphur derived from the extraction of oil in the Kashagan region, are becoming higher and higher". Agip KCO alone is going to accumulate more than 4-tonnes of sulphur".

Based on the latest figures reported by the Kazakh press, we ask the company to publish:

- an updated report on the environmental impacts of mining activities in Kashagan, with particular reference to effects on biodiversity and animal populations;
- an updated report on the quantities of gas that the Consortium Agip KCO plans to flare in the coming months;
- a full report on the total amount of fines that Agip KCO had to pay over the last two years due to alleged violations of environmental regulations.

#### **4.6 Why Kashagan is risky from a financial point of view**

There is no doubt that the costs of the project has significantly increased in the last years. In its latest estimate (2008) Agip announced an increase in the expenditures from an initial \$57 billion to \$136 billion.

According to the Kazakh energy journalist Arthur Shahnazarian, whom we interviewed, the possibility to inject gas into the reservoir which, according to the Consortium's figures would increase the recoverable reserves from 7-9 to 12-13 billion barrels, would be "crucial for the *feasibility* of the whole project", though recent attempts to inject gas in the Tengiz and Karachaganak fields would not have been "entirely successful". According to Shahnazarian, "at the Karachaganak field the

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<sup>20</sup> Karavan, 2010, Уничтожаемый регион, 15 January

injection failed completely, while in Tengiz the injection works with difficulties without bringing the expected results”.

- How does Eni intend to perform a successful gas injection in Kashagan?
- Isn't the gas injection technology too expensive or too risky in Kashagan?

According to Aymeric de Villaret, Financial Analyst and Head of Equity Oil & Gas Research at Société Générale, “ENI put much more into the Kashagan reserves than its partners (notably compared with RD Shell and Total)”. He said also that “today, ENI is very dependant on Kazakhstan as nearly 20% of its reserves are based in the country, and despite ENI's intensive investments, its potential appears lower than for its main partners”.<sup>21</sup> According to Mr de Villaret, ENI's reserves - as reported in the table below - are overvalued (as far as the Kashagan field is concerned) compared with peers.

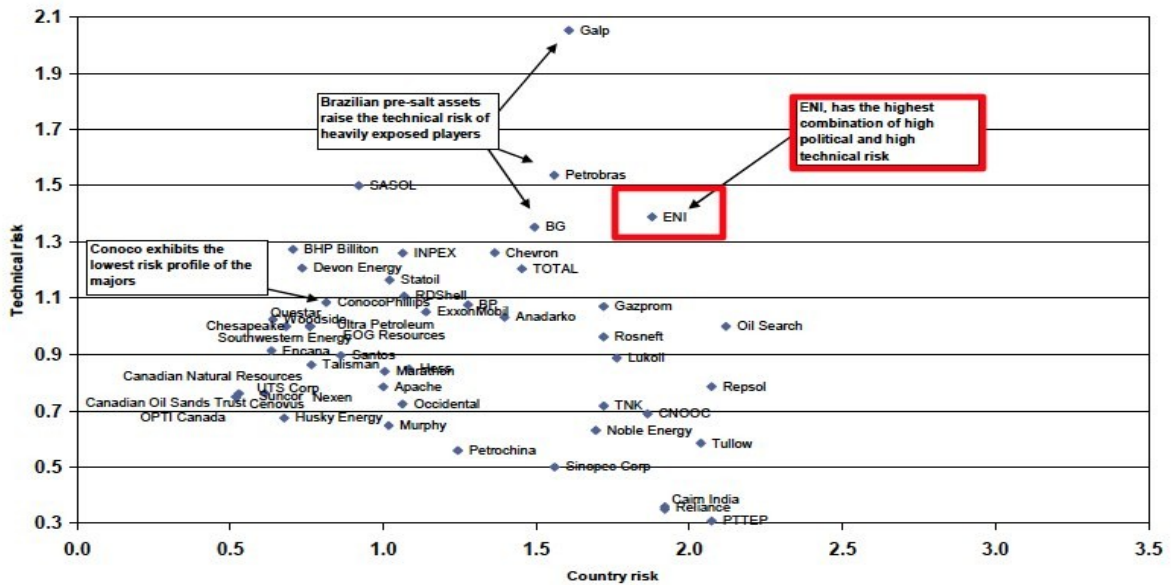
**Trend in reserves booked by members of the Kashagan field consortium**

	% interest end-07	% interest end-08	Sale in % terms	Sale in millions of barrels terms	Reserves end-07 (m b)	Reserves end-07 at 100% (m b)
ENI	18.52%	16.81%	-10.17%	56	551	2,974
ExxonMobil	18.52%	16.81%	-10.17%	52	511	2,760
Total	15.82%	16.81%	-10.17%	43	423	2,282
Royal Dutch Shell	18.52%	16.81%	-10.17%	36	354	1,911
ConocoPhillips	9.26%	8.40%	-10.24%	11	107	1,160
Inpex	8.33%	7.55%				
KazMunaiGAs	8.33%	16.81%				

Source: SG Equity Research

<sup>21</sup> Société Générale, 2009, ENI Equity Research, 26 March

Exhibit 184: Technical versus political risk by company (excluding fields at plateau)



future, since a high level of capital and resources have been immobilized in a project in which the date for “first oil” is being constantly delayed.

Therefore we ask Eni to report:

- how, according to the company’s own evaluation, the Kashagan project will further negatively impact shareholder value;
- how the financial, political and technological risks have been incorporated in the company’s earning previsions and have been taken into account in the company’s industrial development plan that has been recently published by ENI.

*“Tutte le doglianze sono sin qui elaborate con riserva di meglio illustrare e aggiungere (specie ove vi sia un riscontro auspicato da parte degli organi amministrativi) nonché al fine di vedere tutelati le facoltà ed i diritti dell'azionista istante”*

## **Fondazione Culturale Responsabilità Etica Onlus**

The Cultural Foundation For Ethical Responsibility was founded in the year 2003 by Banca Popolare Etica [[www.bancaetica.com](http://www.bancaetica.com)], the first Italian ethical bank, owned by over 30,000 members.

The Foundation aims at spreading awareness at the national and international levels about the consequences that economic action and the market dynamics have on society and the environment as well as on the production system. Convinced of the need for a strong revision of the economic model for an economy that can positively manage environmental and social limits, the Foundation promotes the principles of ethical finance, the criteria of social utility in the credit system and good manufacturing practice for a more conscious and responsible use of money. The Foundation is very committed on global justice and development issues too, and supports several Italian development NGOs as well as public campaigns on development issues, such as the Social Watch.

Furthermore, the Foundation is taking a leadership role within European and global alternative finance networks in order to promote a more political approach to ethical finance in solidarity with consumers in the North and affected communities both in the North and the South.

In line with its mission, the Foundation initiated innovative activities such as the eco-fair Terra Futura [[www.terrafutura.it](http://www.terrafutura.it)], the Social Value certification [[www.valoresociale.it](http://www.valoresociale.it)], the Observatory on Finance [[www.osservatoriofinanza.it](http://www.osservatoriofinanza.it)], the on-line platform Zoes (Zona equo sostenibile – Fair and Sustainable Zone) [[www.zoes.it](http://www.zoes.it)]. Valori [[www.valori.it](http://www.valori.it)] is the monthly magazine specializing in issues of social, ethical and financial sustainability, promoted by the Foundation.

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