Court Reg. No. 6359/2016

REPUBLIC OF ITALY
COURT OF MILAN
Criminal Section X

The Court, composed of:
Mariarosa Busacca — President
Ombretta Malatesta — Judge
Maria Antonia Versace — Judge

ORDER

On the appeals:
-of exclusion of the civil party Unicredit spa, proposed by Avelar Energy Ltd;
-of exclusion of the parties with civil responsibilities;
-of summons of additional parties with civil responsibilities;
-of dismissal of the latest petitions;

Having heard all the parties;

Having read the written notes filed by the Defense Attorneys;

Deciding on the outstanding issue for which a decision had been reserved at the hearing of 13.7.2016, the Court pronounced the following

ORDER

At the hearing of 13.7.2016 the Court, in chambers to decide on the numerous matters proposed by the Defense on the appearance of the civil parties, on the exclusion of parties with civil responsibilities and on the petitions for summons of the latter, decided only as regards the first objections, passing the order attached to the Minutes (with which the appearance of civil claimant Franceco Grieco in person was excluded and the remaining objections were dismissed, reserving the decision as regards the additional issues due to the late hour (17:55), which did not allow prolonging the assistance of the Court Registrar at the hearing.

A) The petition for exclusion of the civil party Unicredit spa, proposed by Avelar Energy Ltd;

Reading of the foregoing order shows that not expressed therein was a question raised, with reference to the civil action brought by claimant Unicredit spa, by Defense Attorney of **Avelar Energy Ltd,** who inferred that the proof of effective ownership of the powers of authority of Attorney Andrea Rossi for issue of the special representation would be lacking, as the documents proving the above are not annexed to the documents exhibited.

So, **as addition to the foregoing order**, the following must be observed:

The special power of attorney of Attorney Vincenzo Desda was granted by Unicredit spa to Attorney Andrea Rossi, in his capacity as *"Special Representative of the Bank authorized and vested with the necessary powers of representation, granted to him by virtue of special power of attorney of 26.11.2010, authenticated at the law firm of Dott. Stefano Ajello, Notary in Milan, with Index No. 11945 and Folder No. 2287, issued by the Managing Director Dott. Federico Ghizzoni"*, as legal representative of Unicredit spa.

In accordance with the specific indication of the power of attorney and its details, it is not deemed that the party would have the obligation to produce the instrument, considering the fact that as affirmed in an opinion that can be shared with the Supreme Court, *"when a legal person brings a civil action through a special representative, to whom the power of attorney [representation] was granted by a party who acted in this capacity [special representative] as institutionally body vested, by law or by a Statute, with the necessary power of representation, it is up to the person challenging*

the existence of such power to furnish proof of the matter"(Cass., Sec. I, No. 11925, 26.2.2003, Addesi).

This principle, the "*ratio*" of which is founded on the possibility of the other party to individually verify the existence and content of the instruments from which the powers of representation derive, is without a doubt, applicable in this concrete case, also with reference to the special power of attorney discussed herein, as being Unicredit a joint-stock company, the disclosure of its information is predetermined through due registration in the Register of Companies (cf. Arts. 2206 and 2209 of the Civil Code).

Avelar Energy's defense had therefore the duty of verifying the existence and content of the power of attorney, being able only after that to object lack of representation or, even, as an alternative, lack of disclosure of the instrument.

B) The petitions, lodged by civil claimants GSE and Unicredit spa, as regards the summons of the parties with civil responsibilities

At the hearing of 7.6.2016, **the Defense of civil claimant GSE** (who filed an appearance against all defendants for chapters A, B, C, D, and E) lodged a petition for summons of the following parties with civil responsibilities, as renewal and addition of the summons completed in the preliminary hearing:

1) Aveleos S.A., already lodged by GSE and admitted by the Preliminary Hearing Judge for chapter D) in relation to Giorgi and Akhmerov;

2) Aion Renewables spa, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapter D) in relation to Giorgi, for chapters B) and D) in relation to Akhmerov and for chapter D) in relation to Pilotto;

3) Avelar Management Ltd, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapters A) and D) in relation to Giorgi and Akhmerov and for chapter B) in relation to Cavacece;

4) Energetic Source spa, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapter D) in relation to Giorgi;

5) Energetic Source Solar Production srl, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapter B) in relation to Akhmerov, now extended for chapter D) in relation to Giorgi;

6) Energetic Source Green Investments srl, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapter B) in relation to Akhmerov, now extended for chapter D) in relation to Giorgi;

7) Energetic Source Green Power srl, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapter C) in relation to Akhmerov, now extended for chapter D) in relation to Giorgi;

8) Saem Energie Alternative srl, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapters B) and D) in relation to Akhmerov and for chapter D) in relation to Maggi, now extended for chapter D) in relation to Giorgi;

9) Helios Technology spa, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapters B) and D) in relation to Akhmerov, and for chapter D) in relation to Pilotto, now extended for chapter D) in relation to Giorgi;

10) Ecoware spa, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapter B) in relation to Akhmerov, now extended for chapter D) in relation to Giorgi;

11) Ens Solar Four srl in liquidation, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapters C) and D) in relation to Akhmerov, now extended for chapter D) in relation to Giorgi;

12) Ens Solar Five srl, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapter D) in relation to Akhmerov, today extended for chapter D) in relation to Giorgi;

13) Enovos Solar Investments II srl, already lodged by GSE and admitted by the Preliminary Hearing Judge for chapter B) in relation to Christnach, now extended for chapter D) in relation to Giorgi (appeal subsequently waived);

14) Energia Fotovoltaica 3 societa Agricola a r.l. in liquidation, lodged for chapter D) in relation to Giorgi;

15) Energia Fotovoltaica 14 societa Agricola a r.l. in liquidation, lodged for chapter D) in relation to Giorgi;

16) Energia Fotovoltaica 44 societa Agricola a r.l. in liquidation, requested for chapter D) in relation to Giorgi;

17) Energia Fotovoltaica 71 societa Agricola a r.l. in liquidation, requested for chapter D) in relation to Giorgi;

To the same hearing **civil claimant Unicredit spa** requested the summons of the following parties with civil responsibilities, all for chapters B) and E) in relation to defendant Akhmerov;

1) Aveleos S. A.
2) Aion Renewables spa
3) Avelar Management Ltd
4) Energetic Source Solar Production srl
5) Energetic Source Green Investments srl
6) Energetic Source Green Power srl
7) Saem Energie Alternative srl
8) Avelar Energy Ltd

These petitions are accepted, within the limits and with the exceptions indicated below.

C) The petitions for exclusion of parties with civil responsibilities already summoned during the preliminary hearing.

C-1) on the petition for exclusion of Aveleos SA

This company, summoned as party with civil responsibility by request of civil claimants EAM Solar Italy Holding S.r.l. and EAM Solar Asa, was admitted by the Preliminary Hearing Judge in relation to the positions of defendants Giorgi and Akhmerov, for the crime of fraud indicated on chapter F) of the charge.

With the petition lodged, the Defense Attorney of the party with civil responsibility infers that the initiative of EAM companies was undertaken in violation of the "Standstill Agreement" (Exhibit No. 1 to brief of June 7, 2016) concerning their rights as shareholders, signed between those companies and Aveleos and governed by the laws of Luxembourg, established after the legal action filed for fraud by EAM representatives in the present criminal proceedings (for this purpose, it is noted that among the obligations undertaken by EAM, on point No. 10 is listed the commitment *"to consign to Aveleos the records and documents in relation to the criminal proceedings already brought forward or concluded against (i) Aveleos, (ii) any company of the Avelar or Enovos Group and their affiliates, and (iii) any of their respective Directors, Executives, Employees and Representatives").*

From this Agreement, which according to the arguments of Aveleos would have enduring effectiveness between the parties, deems to arise between the latter:

a) A commitment *"not to bring forward any civil and/or criminal proceeding before the Date of Expiry against (i) the Parties, (ii) any company of the Avelar Group and/or Enovos Group and their affiliates, and (iii) any of their Directors, Executives, Employees and Representatives* (cf. Art. 12 of the *Standstill Agreement*);
b) A commitment by Aveleos to pay EAM a high amount as financing (so-called "Bridge Loan"- cf. Art. 14 of the *Standstill Agreement*).

As regards this commitment, EAM received from Aveleos a loan for the significant amount of 2.5 million Euros.

The Defense Attorney refers to the order passed on 14.9.2015 by the Court of Milan, Enterprise Matters Specialized Section (Exhibit 2 of brief of June 7, 2016) and clarifies that the full effectiveness of the "Standstill Agreement" between the parties may not be deemed expired for the mere fact that the EAM companies communicated a notice of termination on July 2015, as, on the one hand, the facts set out in said instrument were all refuted by Aveleos with precision and detail, and on the other, it is impossible to see a connection between this communication (furthermore, unilateral) and any termination effect of the agreement, not provided for by Italian laws (Art. 1454 of the Civil Code) or by Luxembourg laws (Art. 1184 Luxemburg Civil Code, specifically recalled).

So much inferred, in order to ensure compliance with the agreement legally carried out between the parties and still effective among them, the Defense Attorney requests, pursuant to Articles 86 and 87 of the Code of Criminal Procedure, the exclusion of the company Aveleos summoned in its capacity of party with civil responsibility.

The same argument is proposed also by the companies Avelar Energy Ltd.

In this regard, EAM's Defense counter-argues (cf. also brief filed at the hearing of 13.7.2016) that no preclusive effects to the exercise by EAM of a civil action within the criminal process may originate from the Standstill Agreement.

To this purpose, he recalls, in the first place, the order issued on June 3, 2015 by the Preliminary Hearing Judge, according to which the Standstill Agreement constitutes a private law business that *"does not influence the civil action in the criminal process".*

In addition, the Defense Attorney of the civil claimants underlines that the reported breach of the Agreement by EAM was an effect of the principle of self-determination *"inadimplenti non est adimplendum",* since Aveleos in its turn had breached the commitment undertaken in the "Standstill Agreement" to cover for the operational costs of the special purpose entities, as deemed also by the Court of Milan - Enterprise Matters Specialized Section, resorted to on an urgent basis by Aveleos for the purpose of obtaining a disqualification of its summons as party with civil responsibility in the present criminal proceedings (cf. order issued on September 14, 2015).

Upon dismissal of the appeal, the Civil Judge had in fact, recognized that this commitment – even if constituting *"in the framework of the agreement signed, the main obligation undertaken by Aveleos"*- was plainly not fulfilled since November 2014.

In the course of the precautionary procedure EAM had, in addition, furnished an extensive confirmation of the relevance of the amounts demanded to Aveleos already since November 2014 to the credit associated with the operational costs *"according to remarks established as fact which resulted inadequately challenged by the counterparty".*

The Defendant of the civil claimants reports, in addition, that in the meantime civil proceedings were lodged before the Court in Luxembourg to ascertain the enduring effectiveness of the "Standstill Agreement" at the time when EAM obtained from the Preliminary Hearing Judge the summons of the parties with civil responsibilities for the preliminary hearing of September 15, 2015.

It requests therefore, in relation to the arguments described, the dismissal of petitions of exclusion lodged by the parties with civil responsibilities.

The Panel notes that the petition for exclusion of the parties with civil responsibilities, founded on the effectiveness of the "Standstill Agreement", cannot be accepted.

It is undisputed that on October 11, 2014, EAM established with Aveleos S.A. a settlement agreement, better known as "Standstill Agreement", with which the parties assumed reciprocal commitments.

This agreement followed the contract established on December 31, 2013, with which EAM had purchased from Aveleos SA the whole share capital of the so-called *"special purpose entities"*

owner of photovoltaic plants in Italy, that is, Energetic Source Solar Production srl, Energetic Source Green Investments srl, Energetic Source Green Power srl, Ens Solar One srl, Ens Solar Four srl, Energia Fotovoltaica 14 s.r.l. and Energia Fotovoltaica 25 s.r.l.

For this purchase the civil claimants accept to have paid huge amounts of money (30 million Euros in a first stage, further to additional 3,062,688.12 Euros in order to comply with the conditions established by the financing bodies for maintenance of the credit relationship).

On the basis of the summary of the briefs lodged and of the same count (chapter E) it arises that, following the purchase, the feed-in tariffs issued in favor of the "*special purpose entities*" were suspended by the Italian Manager and, following this, disputes arose between the parties, which culminated in EAM's decision to bring forward criminal proceedings against Avelos, involved in the present proceedings.

The "Standstill Agreement", concluded in the wake of those disputes, was – in the intentions of the contracting parties – aimed at ensuring a settlement to this complex issue, which guaranteed Aveleos (and to the companies affiliated thereof) to prevent the risk of legal actions being brought by EAM; the latter, in their turn, wanted at least to ensure themselves the financing of the "operational costs" borne by the "special purpose entities", for which the State allowance (feed-in tariffs) in the photovoltaic sector was suspended.

The agreement, structured as a bilateral contract, established reciprocal commitments to be carried out within a specified temporary framework.

In particular, EAM committed itself to:

- Not present directly or indirectly bankruptcy proceedings against Aveleos;
- Deliver to Aveleos the records and documents lodged in relation to criminal proceedings already brought forward or concluded against (i) Aveleos (ii) any company of the Avelar Group and its affiliates and (iii) any of their respective Directors, Executives, Employees and Representatives (clause 9 and 10 of the Agreement on the records);

AVELEOS, in its turn, committed itself to:

- Finance the operational costs of the so-called "special purpose entities" sold by Aveleos: to this purpose, an initial payment of 2.5 million Euros was envisaged, to be followed by an additional amount agreed upon in the course of monthly reunions aimed at establishing the cash flow of the contracting parties (clause 15 of the Agreement on the records);

Both parties, in addition, committed themselves:

- Not to bring forward any civil and/or criminal proceeding before the date of contract expiry – due on March 11, 2015 – toward themselves, their affiliates, their respective Directors, Executives and Representatives (clause 12 of the Agreement on the records).

The Panel deems that such contractual agreements must not present original errors which annul their formal validity: this Agreement, in fact, does not appear, not even according to the argumentation of the party, affected by malice, misstatements or coercion, but constitutes the synthesis of an agreement-based arrangement freely agreed upon by the parties and aimed, according to a certain equilibrium in the services, at ensuring to the parties the attainment of the objectives that each of them had fixed.

The agreement in its whole and in its individual clauses does not even present any characteristics contravening binding regulations, public order and good use. On the contrary, the impediments contractually established for the exercise of civil actions in the criminal proceeding pertain to the rights as shareholders of the contracting parties.

The same civil claimants do not challenge the validity of the agreement freely entered into nor do they deny the violation of the clause that hindered them from exercising the civil action within the scope of these proceedings; instead, they figure having legitimately decided to no longer comply with the agreement by virtue of the previous and serious breaches by Aveleos SA.

Acknowledging the absence of original errors of the "Standstill Agreement", the Panel must consider – within the limits included in this procedural phase and on the basis of elements advanced by the parties and placed on record – the plausibility of the objection raised regarding non-performance presented by the Defense of the civil parties, being able to infer from it the legality of the summons of the parties with civil responsibilities by EAM within the scope of these proceedings.

In relation to the elements up until this time acquired and based, in particular, also on the order issued on September 14, 2015 by the Court of Milan - Enterprise Matters Specialized Section

(disposition invoked by all parties and produced by Aveleos S.A. Defense) the Panel deems that there is a "presumption" of legitimacy in the objection raised.

In this perspective, if it is unquestionable that the main obligation assumed by Aveleos SA, on the basis of the interest implied by the contractual regulations, was represented by the financing of *"operational costs"* borne by the "special purpose entities", it arises that such costs were only partially covered by the initial payment of the amount of 2,500.000 Euros since, on the basis of the foregoing clause 15 of the aforementioned Agreement, additional amounts were to be budgeted on the basis of recurring meetings.

So, in the scope of the foregoing precautionary procedure, it is evident that, since the days prior to the establishment of the compromise settlement, EAM already faced costs for the higher amount of 5 million Euros and that since November 2014 readily claimed to the counterparty serious non-compliance with the commitments of covering for costs assumed.

As far as the effective relevance of the amounts demanded since 2014 to costs incident to the operational needs of the "special purpose entities", the Civil Court remarks that the EAM Group had, in brief filed for the hearing of September 14, 2015, *"furnished broad explanations of the reasons claimed as well as significant supporting documents which, according to the facts of the case, in the opinion of this Judge, were not adequately challenged by the counterparty"*.

To this purpose, the Court trying the case considered rightly *"conclusive"* that, with the letter of response to the contractual termination declaration by EAM, Aveleos *"by no means subjects to discussion the effective conformity of the request of costs estimated in point 15 of the Agreement but rather justifies the refusal to comply by virtue of non-compliances of the counterparty, timely challenged (by EAM)"* and – as such –left "only uncontestable".

In relation to the previous consideration, there are still well-founded elements to support the objections regarding non-compliance raised by EAM, considering the fact that for these purposes and on the basis of elements placed on record, it is demonstrated that even before November 2014, Aveleos SA had missed payment of the amounts necessary to cover for operational costs related to the management of the "special purpose entities". This breach, pertaining to the most important of obligations undertaken by Aveleos toward EAM - as confirmed now by the measure of the Civil Judge – and enduring until the exercise of the civil action in the criminal proceeding, may very well, in view of the actual circumstances, attribute a "presumption" of validity to the raised objection of non-compliance.

So much that AVELEOS has not furnished elements to challenge the existence of non-compliance, as specifically remarked by the Civil Judge, who has noted that, in consideration of the contractual termination declaration by EAM founded on the failure to pay the operational costs, AVELEOS *"by no means subjects to discussion the effective conformity of the request of the costs estimated in point 15 of the Agreement but rather justifies the refusal to comply by virtue of previous non-compliances of the counterparty – according to arguments timely challenged by the counterparty and until this time remained completely uncontestable"*.

From the positive assessment – carried out in view of actual circumstances – in relation to the existence of conditions validating the non-compliance objection raised, can only ensue the current admissibility (from the perspective under consideration) of the summons of Aveleos SA and of Avelar Energy Ltd., as well as Enovos Luxemburg SA, as parties with civil responsibilities.

C-2) <u>on the petition for exclusion of Enovos Solar Investment II srl</u>

This petition is founded on the acquittal during the preliminary hearing, of defendant Daniel Christnach, while the same GSE, with instrument filed on 29.6.2016, waived the motion proposed with reference to the position of Marco Giorgio for chapter D): the petition for exclusion must therefore be accepted.

C-3) <u>on the petition for exclusion of the bankruptcy of Helios Technology spa</u>

The Preliminary Hearing Judge admitted the petition for summons of this company – presented by civil claimant GSE spa - in relation to the conducts challenged to Akhmerov, as legal representative of the company (chapters B and D), to Coppola, as member of the Board of Directors and Managing Director (chapter D), to Bertoldo, as responsible for quality control in the first place and of the technical office afterward (chapter D) and to Pilotto, as responsible for logistics and inventory management (chapter D).

The party with civil responsibility argues in particular that the request for compensation filed against itself after the declaration of bankruptcy is inadmissible ex Art. 52 Bankruptcy Law since, concerning investigations essential to the verdict of bankruptcy, the related debts must be enforced against the bankrupt's estate through a petition to be admitted as a creditor of the insolvent company in receivership ex Arts. 93 et seq. of the Bankruptcy Law.

The Panel remarks that in effect, the party declared bankrupt loses the procedural capacity in favor of the liquidator, while the aggrieved party may not exercise any action during criminal proceedings against the liquidator as legal representative of the bankrupt party, being all debts able to be enforced through petition for proof of claim in bankruptcy: in the system specified in Arts. 52 and 95 of the Bankruptcy Law, every claim of pecuniary content filed against a bankrupt party must be in fact started through the special procedure within bankruptcy proceedings of assessment of debts to be lodged before a bankruptcy court, deeming any other action inadmissible (cf. Cass. Civ., Section I, 5.8.2011, No. 17035).

The same principle was applied also in the event of a company under administrative compulsory liquidation, establishing that all debts must be enforced during bankruptcy proceedings, *"within the scope of the procedure of investigation entrusted to the liquidator, while the judge may acknowledge in ordinary session only at a later time the objections or impugnments of the debts presented in aforesaid session, determining as such a situation of inadmissibility or, if proposed, of an inability to prosecute the motion which concerns both the motions of conviction and those of mere assessment of debts; it follows that the request made during ordinary proceedings becomes dismissed by virtue of regulations expressly established to safeguard the principle of the "par condicio creditorum"* (thus Cass. Civ., Sec. III, No. 27679, 21.11.2008; also Preliminary Hearing Judge Milan, July 10, 2009, at Foro Ambrosiano 2009, 293, who ordered the exclusion from criminal proceedings of *"the legal person undergoing administrative compulsory liquidation, summoned as party with civil responsibility by request of the civil claimants, as, pursuant to Art. 52 of the Bankruptcy Lay, also in the event of administrative compulsory liquidation the debts must be assessed in compliance with the "par condicio creditorum", which could otherwise be altered by the judgment of the party with civil responsibility, who filed an appearance in the criminal proceedings, to compensate for damages, pecuniary and not, deriving from the crime, pursuant to Arts. 2043, 2049 of the Civil Code and 185 of the Penal Code in favor of some creditors").*

For reasons of consistency the Court decides to exclude and not admit, even in the absence of specific objections of the party, the summons as parties with civil responsibilities of the companies Aion Renewables spa and Ecoware spa, as in their turn have been declared bankrupt.

In fact, one can read in the petition for summons made by GSE that Aion Renewables was declared bankrupt by the Court of Reggio Emilia with verdict No. 42, lodged on 14.3.2013, while Ecoware was declared bankrupt by the Court of Padova with verdict No. 73, lodged on 28.2.2013.

C-4) on the petition for exclusion of Energia Fotovoltaica 73 società Agricola a responsabilità limitata (hereinafter En.Fo 73 s.r.l.s.u.), limited to the position of Gianpiero Coppola

The request for action in warranty of the company EnFo 73 s.r.l. s.u. in these criminal proceedings was decided by the Preliminary Trial Judge on 23.7.2015, by request of GSE spa, with reference to the conducts challenged on chapter D) of charge to defendant Coppola Gianpiero: even though the latter was not committed for trial, the order includes the summons, among the parties with civil responsibilities, of the aforementioned company.

With the motion lodged, the Defense Attorney of En Fo 73 infers that Coppola not only was not vested as legal representative of the company at the time of the facts, but also, with an overriding argument, that in the course of the preliminary hearing the defendant defined his own position pursuant to Art. 444 of Code of Criminal Procedure, requesting that the Panel, within the exercise of the powers granted pursuant to Art. 87 of the Code of Criminal Procedure, orders the exclusion of En Fo 73 S.p.A., as party with civil responsibilities in these proceedings.

The petition is accepted.

The definition of the position of defendant Coppola Gianpiero through the special procedure ex Art. 444 of the Code of Criminal Procedure entails *ipso iure*, as logic consequence, the exclusion of the company summoned only as party with civil responsibility for the conduct challenged to him.

C-5) on the petition for exclusion of Ens Solar Four srl

Summons of Ens solar Four S.r.l. was decided by the Preliminary Hearing Judge upon request of GSE S.p.A. in relation to the position of defendant Akhmerov for the crime of chapter D) of the charge.

With the lodged petition for exclusion, the Defense Attorney infers that the request for summons of the party with civil responsibility was founded on the uncontested matter that the accused held at the time of the facts, the position of *"legal representative of the company"*, as indicated in the same chapters C) and D) of the charge made by the Public Prosecutor, highlighting, in point of law, that the indirect responsibility of the legal person – based on the principal parts of Art. 2049 of the Civil Code – may not be extended to the illegal act of its director, who is not bound to the company by a subordinate relationship or subject to powers of control, management and supervision.

It excludes, in addition, that the petitioner Ens Solar may be summoned to answer for civil charges *"a titolo aquiliano"* [concerning injurious damages] for actual offenses committed by the legal representative by virtue of a total guilt by association.

Lastly, it infers, with an overriding argument, that the summons of Ens Solar Four as party with civil responsibility would be logically inadmissible, being the latter involved within the scope of the same proceedings as party charged pursuant to Leg. Decree No. 231/2001.

The Panel deems that the request for exclusion is not accepted.

Certainly the legal relationship that binds Akhmerov to Ens Solar Four srl is able to be qualified as guilt by association, as the defendant occupied, at the time of the facts, the position of legal representative of the company.

Beyond the definition of the title at the bottom of which must framed the joint responsibility of the company – matter over which the drafting of case law has been subject to changes in orientation – it remains unquestioned that, precisely by virtue of guilt by association, the company is liable outwards from the illegal act committed by its legal representative.

This conclusion has always been reached by the Supreme Court, even recently.

In particular, according to latest results in case law, *"within the scope of liability for illegal act committed by the director of a company, according to the prevailing doctrine and case law, a distinction must be made between the fait accompli beyond managerial activities and incident in the scope of his/her individual activity (for which the director is liable pursuant to Art. 2043, without binding the liability of the company directed) and wrongful act committed within the scope of the managerial activity (in the case in point, within the scope of the production and release of a film, which is the corporate objective of the Racing Pictures), governed by Art. 2395 of the Civil Code. The company managed is liable for this wrongful act; the reason for this liability, which is added to that of the director himself/herself, may ensue either from the corporate relationship of the director with the company, which is liable for the illegal act committed by corporate members or from the principle of Art. 2049 of the Civil Code, extensively understood"* (cf. Cass. Civ. No. 12951, 5.12.1992 and, in compliance with, Cass. No. 2074, 12.6.1969 and Cass. 6469, 3.11.1983 No., in the above grounds).

More recently the civil liability of the company was founded on the pattern referred to in Art. 2043 of the Civil Code. In particular, it is noted that the *"liability for injurious damages vests all members of the body and is founded on the corporate relationship, and in addition on the general principle that renders liable individuals and legal persons for the damaging actions of anyone who is part of the bureaucratic or company organization"*. (Cass. Civ., Sec. 6-2, Order No. 29260 of 28.12.2011).

Even the order of the Supreme Court, Sec. VI, No. 24548, 22.5.2013, Gilardoni, confirms this matter, as it excludes the civil liability of the company for damages of a crime committed by shareholders or directors provided that it was carried out in his/her own interest, not been founded either in Art. 2049 of the Civil Code, as there is no subordinate relationship between the company and shareholders or directors, or in the principle of guilt by association, which entails, instead, that the wrongful acts are, or manifest themselves, as execution of the corporation's activity.

In addition, there is no doubt that Akhmerov committed the acts being challenged precisely during the exercise of the company's activities, as Ens Solar Four srl is contractor/owner of the photovoltaic plants, so that the fraudulent acts that the defendant would hypothetically have committed (having signed the declarations in lieu of affidavit for the purpose to be admitted in the feed-in tariffs with reference to nine plants at Puglia for photovoltaic conversion from solar

fountains, falsely attesting to GSE completion of works within the date due) pertain to the activity within the corporate objective of the company.

It stems that in this concrete case the company is jointly and severally liable for the statutory consequences of the illegal act committed by its legal representative.

Nor can it be deemed applicable the inferred logical and legal incompatibility between the denomination of party with civil responsibilities and that of corporation held liable pursuant to Law 231/2001.

This matter is indeed, based on an erroneous interpretation of Ruling No. 218/2014 of the Constitutional Court, which has – on the contrary – excluded every viewpoint of incompatibility between the two institutions, highlighting in particular that *"the illegal act for which the corporation is held liable pursuant to Leg. Decree 231 of 2001 does not coincide with the offense committed by the individual, so the latter and the corporation cannot be qualified as coaccuseds of the same crime; on the basis of the provision indicated, in addition, deemed in its appropriate meaning, the summons of the defendant as party with civil responsibility for the act of the coaccuseds is not excluded before its acquittal but is accepted conditionally, in the sense that it produces an effect only in the event when the defendant is acquitted or obtains a pronouncement of acquittal. Under both viewpoints indicated, therefore, Art. 38, paragraph 1 of the Code of Criminal Procedure does not constitute impediment for the summons of the corporation as party with civil responsibility"*.

The request under examination may therefore not be accepted.

C-6) <u>on the petition for exclusion of Energetic Source spa</u>

The Defense Attorney of this company, held jointly and severally liable by GSE for the offense referred to in chapter D) attributed to Giorgi, notes that in the summons of parties with civil responsibilities it is highlighted that the request for compensation is based on the capacity as contractors undertaken by the legal persons who must therefore be held accountable pursuant to Arts. 185 of Penal Code and 2049 of the Civil Code.

Having said this, the petitioner objects the conceptual absence of legal powers, noting that in chapter D) the defendant Giorgi, Vice-Chairman and Managing Director of Energetic Source spa, must be held accountable for the crime referred to in Art. 640 of the Penal Code in relation to the fees paid out with the "IV Conto Energia" in view that he was signatory of the contracts for supply of panels: these hypothezised feed-in tariffs would not coincide with the contrived and fraudulent acts described in chapter D), consisting in the use of false technical documents and/or alteration of real documents represented by the technical specifications, flash list, labels and certificates, as well as in the issue of false requests for licenses and declarations in lieu of affidavits (listed also in chapter E).

The supply contracts signed by Giorgi are therefore not taken into consideration in the count nor have they been deemed faked by the Public Prosecutor, while as regards the second fraudulent method described in chapter D), the sham transaction is readily referred to companies different than the petitioner.

The Defense Attorney argues in particular that the conduct attributed to Giorgi may be set as atypical facilitating tariffs of the illegal act, considering the fact that the signature of panel supply contracts by the Chinese company may not be considered univocal act in the abstract to ease misleading GSE, being a fact so previous in the causal sequence as regards the occurrence in Art. 640 bis of the Penal Code referred to in chapter D) that it would be even ventured to talk about an attempt liable to sanction in a single-person perspective.

These considerations reflect themselves in the act of holding liable the petitioner ex Art. 2049 of the Civil Code, in the sense that the invoked joint and several liability ignores the exact terms of the illegal act described in chapter D), which is different than that on which the request ex Art. 2049 of the Civil Code lies, as the purchase of panels is not an illegal act.

The Panel highlights that these considerations are not divisible, as the offense challenged is attributed to the defendants as accomplices, being evident that Giorgi's conduct, in the aforementioned capacity, constitutes a piece of the fraudulent acts challenged, to which he has contributed in the terms described, without opposing to this the fact that it was prior to the other conducts, whereby their association under the objective standpoint clearly arises from the

prosecution line of reasoning, while potential matters incident on the subjective element will only be confronted with in the proceedings.

The signature of the supply contracts for panels from a Chinese company destined, hypothetically, to be presented as being supplied by a different Polish company to mislead the injured party and obtain an unfair profit constitutes, without a doubt, on the abstract level that can only be taken into consideration herein, a conduct to facilitate the implementation of the criminal plan.

C-7) on the petitions for exclusion of Avelar Energy Ltd and Enovos Luxemburg SA

The Defense Attorneys of the petitioners [companies] declare that the latter were summoned by civil claimants EAM Solar Italy Holding srl and EAM Solar ASA with reference to the crime of fraud referred to in chapter F), for which Giorgi and Akhmerov are held liable (the former as *"Managing Director and in representation of"*, the latter as *"Managing Director"* of Aveleos SA), who have not yet had any type of relationship with Avelar Energy Ltd and with Enovos Luxemburg: the latter are only shareholders of Aveleos and would therefore lack the capacity to be sued as parties with civil responsibility.

The Court deems that the petitions for exclusion are not founded.

As it arises from EAM Defense Attorney's remarks and from documents annexed to the brief produced by the former, Aveleos was a "special purpose entity", established in May 2010 to expire on December 31, 2013 (Art. 3 of the Statute), controlled by two shareholders, that is, Enovos Luxemburg with 59% and Avelar Energy Ltd with 31%, which had the following characteristics:

- Its corporate objective was limited to holding equity interests (Art. 4 of the Statute);
- Its Board of Directors, due to explicit statutory provisions, was to consist of three Directors (including the Chairman) representing shareholder Enovos and two Directors representing shareholder Avelar;
- Was bound by the joint signature of a member of the Board representing Avelar and of a member of the Board representing Enovos (Art. 7.3 of the Statute);
- Was a structure with no employees and its operational office corresponded with that of Enovos (as indicated by the defendant Giorgi in the attached interview, the interviews and meetings were held at the offices of Enovos);
- During the negotiations that lead to the sale to the EAM Group, the persons that formally negotiated on behalf of Aveleos always used email accounts from "enovos" or "avelarenergy".

From the overall assessment of aforesaid elements arises the legitimacy of the thesis by EAM's Defense Attorney for which Aveleos was not a "third" subject as regards the companies owner of its share capital, as the latter had always taken part in the decision making process of Aveleos, even with reference to the sale to EAM of the photovoltaic plants object of challenge, making Aveleos receive the considerable profits object of the accusation, deriving from the offenses challenged.

In other words, it must be deemed with the obvious limits of this preliminary enforcement, that there is no different subjectivity of Aveleos in relation to the companies owning the whole of its share capital and actual its administrators (toward the members of the Board of Directors of Aveleos all appointed by both shareholders): this circumstance imposes deeming Enovos Luxembourg and Avelar Energy responsible for the obligations undertaken by Aveleos through their own managers (appointed by them and related to them), precisely because Aveleos does not seem to be an autonomous legal entity but a mere expression of the foregoing companies.

This conclusion is supported in the case law of the Supreme Court according to which, if the control bond of a company as regards another does not determine in itself the liability of the company that holds the shares for the obligations assumed by the company partially owned by the former, a different conclusion must however be added the moment when, as in this concrete case, to the control is added *"a 'quid pluris', as when the mere appearance or the obsolescence of the different subjectivities of two entities appears, with the substantial uniqueness of the implementation of entrepreneurial activities in its whole, or of the specific productive relationship of those obligations"* (Cf. for example, Cass. civ., Section I, No. 24834, 24.11.2005,).

Such is the entitlement of liability of the two petitioners [companies] that overlooks the title of Managing Director of Akhmerov at Avelar Energy (of which the Defense Attorney has noted not to be included in the rebuttal sub F).

Therefore, the petition for exclusion of the parties with civil responsibilities under consideration cannot be accepted.

Further arguments with which the Defense of Avelar Energy Ltd rebuts the summons of parties with civil responsibilities consist of the Agreement referred to as "Standstill Agreement", established by Aveleos and EAM, with which the latter was committed not to bring forward any civil or criminal action against – among the other companies – Avelar Energy Ltd: on this point reference is made to the remarks in point C-1).

C-8) on the petition for exclusion of Saem Energie Alternative S.r.l.

The Preliminary Hearing Judge granted the petition of summons of this company, presented by the civil claimant GSE spa, as party with civil responsibilities in relation to the conducts challenged to Akhmerov as legal representative of the company (chapters B and D of the charge) and to Maggi, as technical manager of the same (chapter D).

The party with civil responsibilities rebuts, with the deposition lodged, that the fraudulent acts attributed to Akhmerov, *hardly* that *"of signing declarations in lieu of affidavits and requests for licenses in order to be admitted into the feed-in tariffs"*, were carried out by him not in his capacity as legal representative of Saem, but as representative of the special purpose entities referable to the Avelar Energy Group, owner of some plants object of challenge or contractors of Aion Renewables spa for implementation of the same plants. This activity, in its turn subcontracted to the subsidiaries, among which Saem S.r.l.

This petition appears to have no grounds.

For this purpose it is highlighted that, as it emerges from the counts in chapters B) and D), the Public Prosecutor has not intended to associate Akhmerov's responsibility only to the signature of declarations in lieu of affidavits or of requests for licenses in order to be admitted in the feed-in tariffs but, more in the aggregate, to the capacity as senior management assumed within companies overall involved in transactions presented as fraudulent. Even in the literal point of view, the Public Prosecutor uses the conjunction "as well as" to highlight the numerous significant characteristics of the conduct assumed by the defendant, in his capacity as legal representative, among others, of Saem srl.

In particular the prosecution's line of reasoning, emerging from the count, hypothesizes the complicity of several companies, all having Akhmerov as senior management, who – in the fulfilment and implementation of photovoltaic plants – through false certifications of completion of works and the production of panels related to products only in appearance made intra-Community (but in reality Chinese) (chapter B) or other false documents - among which false conclusive technical specifications of plants, particularly fulfilled by Maggi, Engineer in Charge at Saem (chapter D) – obtained undue payments of the feed-in tariffs for the conversion to photovoltaic.

In this perspective of Akhmerov, in the indicated capacity, is thus attributed, a conduct of material complicity in the overall fraudulent operation, having Saem carried out the works of implementation of the photovoltaic plants: in particular, a relevant role in the operations challenged he is charged in chapter B) as regards the false affirmation of works completion and in chapter D) as regards drawing up of false conclusive technical specifications of plants.

Not being able to agree with the arguments presented by the Defense Attorney of the party with civil responsibility Saem, the latter is legitimately summoned, in an abstract way, by virtue of the principle of guilt by association (reason for which reference is made to the aforementioned matters in sub C-5), to answer for the illegal act attributed to its legal representative at the time of the facts.

D) The petitions for dismissal of the motions expressed by the claimants of authorization for summons of the parties with civil responsibilities

D-1) on the petition for dismissal of the motion (presented by civil claimant Unicredit spa) of summons of Avelar Energy Ltd.

The summons of this company as party with civil responsibilities is requested by Unicredit spa with reference to chapters B) and E) of the charge, in relation to defendant Akhmerov.

The Defense Attorney of Avelar Energy Ltd bases the petition for dismissal of summons on the same arguments indicated in the petition for exclusion of parties with civil responsibilities, that is, pointing out that this company is mentioned in the charges only as owner of a minority share of

Aveleos and therefore lacks the capacity to be sued as party with civil responsibilities as regards the actions of the Director of the partially owned company: on this point, the considerations included in sub C-7) are recalled, in light of which the petition is not accepted.

D-2) on the petition for dismissal of the motion (presented by civil claimant GSE) of summons of Aveleos SA.

The summons of this company as party with civil responsibilities is requested by GSE with reference to chapter D) of the charge, in relation to defendant Giorgi.

The Defense Attorney of Aveleos points out that during the preliminary hearing GSE spa, civil claimant in said proceeding, had already requested and obtained the authorization to summon Aveleos as party with civil responsibilities but the writ of summons issued by the Preliminary Hearing Judge was not followed by a notification to Aveleos within the legal term (ex Art. 419, paragraph 4, Code of Criminal Procedure).

From this circumstance it obtains, according to the petitioner, that GSE's request resubmitted in proceedings be declared inadmissible or however invalidated, as:

- The party has manifested to waive the summons of Aveleos as party with civil responsibility, with final effect which excludes the possibility of a new petition;
- In any case, compliance with the term envisaged in Art. 419 paragraph 4, Code of Criminal Procedure is provided for by law, although implicitly, and failing which, entitlement lapses;
- However, the new petition for summons of Aveleos, having the same object and identical cause (with objective and subjective identicality of the request) as that ordered by the Preliminary Hearing Judge for the hearing of 15.9.2015 and omitted by the civil claimant, is invalid for breach of the provisions concerning the participation, presence and representation of Aveleos, pursuant to Arts. 178 letter c) and 180 of the Code of Criminal Procedure.

The Panel deems not to share such assertions.

First of all, to the failed notification of Aveleos after the order of the Preliminary Hearing Judge may not be attributed the value of implicit waiver of summons of the former as party with civil responsibilities.

To give this value to an action of the party, the action must be unequivocal and conclusive in such a manner as not to give way to different interpretations: as the Supreme Court has highlighted in several occasions, for example, as regards the tacit dismissal of the lawsuit, the latter must derive *"from actions incompatible with the will to persist in the lawsuit, that is, from unequivocal behaviors, substantially incompatible with the petition for punishment.* ***This will is not inferable from mere omissions,*** *as the failed notional appearance or failure to physically appear in court of the civil party, which may derive from causes independent from the will of the injured party, from contingent circumstances and from nonabdicative and remissive considerations"*(cf., among the most recent, Cass. Sect. II, No. 41749, 8.10.2015, Tarricone, as well as, among others, United Section No. 46088, 30.10.2008, Viele).

It follows therefore that the omission of the summons under examination may not be considered as an unequivocal manifestation of the purpose to waive the summons of the party with civil responsibility, not determining a certain and substantial incompatibility between the will manifested and actions revealing an opposite will, this conduct being able to be attributed to different causes, as for example, problems incurred within the term for summons, or need of a more profound deliberation on the position of the party with civil responsibility or even an assessment of the possibility to act against the latter during civil proceedings.

Nor can it be deemed that the civil claimant has been debarred from the petition of summons under examination.

In accordance with the clear provision of Art. 183, paragraph 1, Code of Criminal Procedure, that establishes the mandatory nature of the lapse, the Defense Attorney recalls the case law of the Court of Cassation according to which the lapse must be declared not only when it is explicitly imposed by the law but also when *"the legislator envisages clear and unequivocal enunciations for the purpose to avoid procedural sequences from being in any way altered by inertia or by the parties' free will",* as in the hypothesis of terms established by the trial court for the summons of

witnesses, as inserted within a procedural sequence that does not admit delays or adjournments due to the mere negligence of the parties.

In the case under examination, if a lapse may be acknowledged within the same preliminary hearing (to which the civil claimant would be unable to summon the party with civil responsibilities beyond the term indicated), the total sequence is nevertheless in the opposite sense, as that the procedural system leaves the civil claimant with the choice to appear in the preliminary hearing or during trial, as well as the choice to propose a petition for summons of the parties with civil responsibilities to the preliminary hearing or during trial, thus pointing out the last term within which the petition must be submitted (*the petition must be submitted at the latest for the trial"* ex Art. 83, paragraph 2, Code of Criminal Procedure), in harmony with the requirements, as indicated by the case law of the supreme courts, to *'ensure that the persons with civil responsibilities may participate in all stages of the trial, which constitutes the central nucleus of the judgment, with equality as regards the other parties"* (cf. for example, Sect. IV, No. 35612, 30.4.2009, Palumbo).

It seems incorrect the assertion of the Defense Attorney for whom the failed execution of the summons would place the party for whom the summons was ordered as party with civil responsibilities in a *"procedural limbo"* or in a *"region of procedural uncertainty"*, being clear that until its summons, it is not a party of the proceedings.

Not even under this parameter may be shared the defense line of reasoning for whom the inertia of the civil party would have made the petitioner [company] lose the possibility to exercise its rights since the preliminary hearing stage, having been precluded to exercise a right that can only be exercised therein, which the Defense Attorney pinpoints, upon setting out the violation of Arts. 178 and 180 of the Code of Criminal Procedure, in the following:

- Proposing already in the preliminary hearing, the petition for exclusion from the criminal proceedings due to lack of capacity to be sued;
- Raising questions on the territorial jurisdiction which would have excluded Aveleos, ex Art. 21, par.2 of the Code of Criminal Procedure;
- Hearing defendant Giorgi, who in the course of the preliminary hearing was subject to interrogation;
- In the final debate of the preliminary hearing, inferring elements supporting the request for pronouncement of acquittal for the action challenged to Giorgi in chapter D) of the count, from where the civil liability of Aveleos arises.

The Panel points out that Aveleos finds itself, in fact and in law, in the same situation in which it would have been found if SGE would have proposed its petition for summons only for the trial: being this a specific right of the civil claimant envisaged in the procedural system, it is evident that asserted violations of equality of rights as regards the parties whom by law must be present since the preliminary hearing cannot be associated to its exercise, as the Defense Attorney of Aveleos pretends.

In any case the party with civil responsibilities not summoned for the preliminary hearing is guaranteed the possibility of requesting in trial the exclusion from the proceeding as well as to raise the questions which evidently was unable to raise therein, as that of lack of territorial jurisdiction, considering the fact that the party with civil responsibilities summoned for the trial is a party who lacked the preliminary hearing, ex Art. 21, paragraph 2 of the Code of Criminal Procedure.

D-3) on the petition for dismissal of the motion (presented by civil claimant GSE spa) of summons of Energia Fotovoltaica 14 a r.l. (requested for chapter D in relation to defendant Giorgi), of Energetic Source Solar Production srl and of Energetic Source Green Investments srl (requested for chapter B in relation to Akhmerov and for chapter D in relation to Giorgi), and of Energetic Source Green Power srl (requested for chapter C in relation to Akhmerov and for chapter D) in relation to Giorgi.

The Defense Attorney objects above all the nullity ex Art. 83, paragraph 5 of the Code of Criminal Procedure, as the petition does not indicate the *causa petendi,* or the reasons to support the claim initiated.

Even not considering that the cited Art. 83, where it orders that the instrument contains indications of the questions raised against the parties with civil responsibilities, refers to the order of summons and not to the petition for authorization to summon, the fact is that GSE has specified that engagement in the conducts attributed to each of the defendants was carried out upon exercising the

powers or capacities respectively attributed to them within the company, recalling thus the relationship of guilt by association.

In this regard, the Defense Attorney argues that the companies under examination could not act in their capacity as parties with civil responsibilities for third-party actions, as they are direct beneficiaries by virtue of Art. 11 of Min. Decree 31.1.2014 (including provisions for implementation of Art. 42 of Leg. Decree 28/2011 on control measures and sanctions in the matter of incentives in the electrical sector pertaining to GSE spa), which provides for a direct responsibility of the companies beneficiary of the State incentives.

If it is true that, as has been highlighted by the case-law of the supreme courts in many occasions, may not be considered as party with civil responsibilities ex Art. 185 of the Penal Code the party who, blamed of negligence, has a direct liability entitlement for the damages complained by the civil claimant, it may still be noted that in the case under examination no direct liability entitlement of the companies in question for unlawful acts of their directors is perceivable.

The regulations cited by the Defense Attorney are limited to provide for – in the event of non-compliance with some obligations by the companies benefitting from State incentives – the forfeiture of said benefits, the complete recovery of amounts potentially disbursed and the application of the administrative sanctions envisaged in Art. 2, paragraph 20, letter c), Law 481/1995, applicable merely *"unless the act constitutes a crime"*: consequently, the regulations cited do not present any complicity responsibility of the companies for the criminal actions of their directors, governing only the consequences connected to the breach of contractual obligations.

The petitioner notes still that the foregoing companies are already part of the proceedings in their capacity as responsible bodies called forth pursuant to Leg. Decree 231/2001, so that they cannot also be held liable in their capacity as parties with civil responsibilities, in view that the liability of the person and of the company are part of the complicity scheme, so that the prohibition referred to in Art. 83 of the Code of Criminal Procedure is applicable: to this purpose, the considerations in aforementioned in sub C-5) which exclude being able to share the defense's line of reasoning, are recalled.

Lastly, it is objected that Art. 2049 of the Civil Code, cited by the civil claimant as source of the responsibility of the companies referring to owners and contractors in relation to the illegal act of their domestic workers and clerks, is applicable only in the event of relationships of subordination, while Giorgi and Akhmerov are directors of the companies: this deals with arguments already examined in point C-5), to which it is expressly referred.

The petition under examination is thus, not admitted.

THEREFORE

In view of Art. 74 et seq. of the Code of Criminal Procedure,

Dismisses

The petition for exclusion of the civil party Unicredit spa presented by the Defense Attorney of Avelar Energy Ltd;

In view of Art. 83 et seq. of the Code of Criminal Procedure.

Excludes

The following parties with civil responsibilities:
-Enovos Solar Investments II srl;
-Helios Technology spa in bankruptcy;
-Aion Renewables spa in bankruptcy;
-Ecoware spa in bankruptcy;
-Energia Fotovoltaica 73 societa Agricola a.r.l.;

Dismisses

The remaining petitions for exclusion or of dismissal of the requests for summons of the other parties with civil responsibilities;

Authorizes

The summons of the following parties with civil responsibilities:

1. **Aveleos S. A.**, in relation to the charges against Giorgi and Akhmerov in their capacity as members of the Board of Directors (chapter D of charge), and, by virtue of the individual appeal presented by Unicredit s.p.a. to Akhmerov, for chapters B) and E), in his capacity as member of the Board of Directors;
2. **Avelar Management Ltd.**, in relation to the charges against Giorgi, as representative of the office in Milan (chapters A and D of charge), and against Akhmerov, as representative of the office in Milan (chapters A and D of charge), and against Cavacece, as employee (chapter B of charge), and, by virtue of the individual appeal presented by Unicredit s.p.a., against Akhmerov, in his capacity as member of the Board of Directors (chapters B and E);
3. **Energetic Source S.p.A.,** in relation to the charges against Giorgi, as signatory, Vice-Chairman of the Board of Directors and Managing Director (Chapter D of charge), and, by virtue of the individual appeal presented by Unicredit s.p.a. against Akhmerov, in his capacity as representative of the Company (chapters B and E);
4. **Energetic Source Solar Production s.r.l.,** in relation to the charges against Mr. Akhmerov, as legal representative (chapter B of the charge) and, in addition, against Giorgi as signatory of the panels' supply contracts (chapter D of charge), and, by virtue of the appeal presented by Unicredit s.p.a. limited to Akhmerov, in his capacity as legal representative of the Company (chapters B and E);
5. **Energetic Source Green Investments s.r.l.,** in relation to the charges against Akhmerov, as legal representative (chapter B of charge) and, in addition, against Giorgi in his capacity as member of the Board of Directors (chapter D of charge), and, by virtue of the appeal presented by Unicredit s.p.a., against Akhmerov, in his capacity as legal representative of the Company (chapters B and E);
6. **Energetic Source Green Power s.r.l.,** in relation to the charges against Akhmerov, as legal representative (chapter C of charge), against Giorgi in his capacity as member of the Board of Directors (chapter D charge), and, by virtue of the appeal presented by Unicredit s.p.a., against Akhmerov, in his capacity as representative of the Company (chapters B and E);
7. **Saem Energie Alternative s.r.l.,** in relation to the charges against Akhmerov, as legal representative (chapters B and D of charge) and against Maggi, as technical manager (chapter D of the charge) as well as against Giorgi in his capacity as member of the Board of Directors of Saem (chapter D charge) and, by virtue of the appeal presented by Unicredit s.p.a., against Akhmerov, in his capacity as legal representative of the Company (chapters B and E);
8. **Ens Solar Four s.r.l. in liquidation,** in relation to the charges against Akhmerov, as legal representative of the Company (chapters C and D of charge) and against Giorgi in his capacity as member of the Board of Directors (chapter D charge);
9. **Ens Solar Five s.r.l.,** in relation to the charges against Akhmerov, as legal representative of the Company (chapter D of charge) and against Giorgi in his capacity as member of the Board of Directors (chapter D of charge);
10. **Energia Fotovoltaica 3, societa Agricola a r.l.** in relation to accusations against Giorgi in his capacity as member of the Board of Directors (chapter D of charge);
11. **Energia Fotovoltaica 14, societa Agricola a r.l.** in relation to accusations against Giorgi in his capacity as member of the Board of Directors (chapter D of charge);
12. **Energia Fotovoltaica 44, societa Agricola a r.l.** in relation to accusations against Giorgi in his capacity as member of the Board of Directors (chapter D of charge);
13. **Energia Fotovoltaica 71, societa Agricola a r.l.** in relation to accusations against Giorgi in his capacity as member of the Board of Directors (chapter D of charge);

14. Avelar Energy Ltd., in relation to the appeal presented by Unicredit s.p.a., as regards to Akhmerov, for chapters B) and E), as Director of Aveleos SA, subject in formal terms but not in essence different from Avelar Energy Ltd.

Milan, September 13, 2016

Pudges
[*illegible signature*]
[*illegible signature*]

President
[*illegible signature*]

[*Date illisible*]
Court Registrar
Daniela DELLO MONACO
[*illegible signature*]

TRIBUNALE ORDINARIO DI ROMA
Ufficio Asseveramento Perizie e Traduzioni
VERBALE DI GIURAMENTO

CRONOLOGICO

N. 11541-2

Addi, **03 ottobre 2016**, avanti al sottoscritto Cancelliere è presente il Sig. Claudio Pancotto, (iscritto all'Albo dei Consulenti Tecnici del Tribunale di Roma dal 2004), identificato con Patente Auto n° U1J268679P, rilasciata il 01/04/2015 dalla MIT-UCO, il quale chiede di asseverare con giuramento la traduzione dalla lingua **italiana** alla lingua **inglese** del documento: **ordinanza** unito in copia.
Il Cancelliere, previa ammonizione sulla responsabilità penale (art. 483 c.p.) derivante da dichiarazioni mendaci, invita il comparente al giuramento che egli presta ripetendo: "**Giuro di avere bene e fedelmente adempiuto alle funzioni affidatemi al solo scopo di far conoscere la verità**"
Letto, confermato e sottoscritto.

TRIBUNALE DI ROMA

IL FUNZIONARIO GIUDIZIARIO
Rosalma ROBERTO

N.B. L'Ufficio non si assume alcuna responsabilità per quanto riguarda il contenuto e la regolarità formale del documento tradotto.