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To the Pre-Trial Judge
of the 5ème chamber 2ème section of the
Paris Judicial Court

5ème room 2ème section
RG n° 22/03403
Plea hearing of 22 March 2023
Signed by AVR on 10 February 2023

REPLY TO THE STATEMENT OF OBJECTIONS

before the Judicial Court of Paris

FOR :

1. **The association NOTRE AFFAIRE À TOUS**, an association governed by the law of 1er July 1901, whose registered office is located at 63, rue du Chemin Vert (75011) in Paris, with the SIREN number 842 790 735, represented by its president acting by virtue of article 11 of the statutes,

2. **The SHERPA association**, an association governed by the law of 1er July 1901, whose head office is located at 80 quai de Jemmapes (75010) in Paris, with the SIREN number 443 232 897, represented by its president acting by virtue of article 12 of the statutes,

3. **The ZÉA association**, an association governed by the law of 1er July 1901, whose head office is located at 31, rue Chevalier Paul (83000) in Toulon, with the SIREN number 832 629 448, represented by one of its co-presidents, acting by virtue of a decision of the Board of Directors dated 14 September 2019,

4. **The association ECO-MAIRES "Association Nationale des Maires et des Elus Locaux pour l'Environnement et le Développement Durable" (National Association of Mayors and Local Elected Officials for the Environment and Sustainable Development), an** association governed by the law of 1 er July 1901, whose registered office is located at 215 bis boulevard Saint Germain (75007) in Paris, with the SIREN number 378 598 122, represented by its president acting by virtue of article 12 of the articles of association

5. **The association France NATURE ENVIRONNEMENT**, an approved environmental protection association governed by the law of 1 July 1901, whose registered office is located at 2, rue du Dessous des Berges (75013) in Paris, with the SIREN number 840 629 828, represented by its president, acting by virtue of a deliberation of its Bureau dated 21 January 2020,

6. **The commune of ARCUEIL**, a local authority domiciled at its Hôtel de Ville located at 10, Avenue Paul Doumer, (94110) in Arcueil, with the SIREN number 219 400 033, represented by its Mayor in office, acting by virtue of the deliberation 2019DEL106 of the Municipal Council dated 3 October 2019

7. **The municipality of BAYONNE**, a local authority domiciled at its Town Hall located at 1, avenue du Maréchal Leclerc (64100) in Bayonne, with the SIREN number 216 401 026, represented by its current Mayor, acting by virtue of the deliberation of the Municipal Council delegating authority dated 14 April 2014 and by virtue of a decision of 25 June 2019,

8. **The commune of BÈGLES**, a local authority domiciled at its Hôtel de Ville, located at 77, rue Calixte Camelle (33130) in Bègles, with the SIREN number 213 300 395, represented by its current Mayor, acting by virtue of deliberation no. 1 of the Municipal Council dated 3 October 2019,

9. **The commune of BIZE-MINERVOIS**, a local authority domiciled at its Hôtel de Ville, located at 4, avenue de l'Hôtel de Ville (11120) in Bize-Minervois, registered with the INSEE under the SIREN number 211 100 417, represented by its current Mayor, acting by virtue of deliberation no. 2019-33 of the Municipal Council dated 29 May 2019,

10. **The commune of CORRENS**, a local authority domiciled at its Town Hall, located at 5, place Général de Gaulle (83570) in Correns, with the SIREN number 218 300 457, represented by its Mayor in office, acting by virtue of deliberation n°2019/056 of the Municipal Council dated 6 August 2019,

11. **The EST ENSEMBLE establishment**, a multi-purpose public trade union establishment domiciled at 100, avenue Gaston Roussel (92232) in Romainville, with SIREN number 200 057 875, represented by its current President, acting by virtue of deliberation 2016- 01-07-05 of the Territorial Council and decision n°D2019-598 of 28 November 2019,

12. **The commune of GRENOBLE**, a local authority domiciled at its Hôtel de Ville located at 11, boulevard Jean Pain (38021) in Grenoble, with the SIREN number 213 801 855, represented by its current Mayor, acting by virtue of deliberation no. 27-E016 of the Municipal Council dated 23 May 2016 and of order ARR_2019_026 dated 9 January 2019

13. **The municipality of La Possession**, a local authority domiciled at its Town Hall located at 10, rue Waldeck Rochet (97419) La Possession in Reunion Island, with the SIREN number 219 740 081, represented by its current mayor, acting by virtue of deliberation no. 09 of the Municipal Council dated 29 March 2017 and a decision no. 10/2019-SG dated 25 July 2019,

14. **The commune of MOUANS-SARTOUX**, a local authority domiciled at its Hôtel de Ville located at Place du Général de Gaulle (06370) in Mouans-Sartoux, with the SIREN number 210 600 847, represented by its mayor in office,

15. **The commune of NANTERRE**, a local authority domiciled at its Hôtel de Ville located at 88, rue du 8 mai 1945 (92000) in Nanterre, with the SIREN number 219 200 508, represented by its Mayor in office, acting by virtue of the deliberation DEL2014-79 of the Municipal Council of 29 March 2014 and the Mayor's decision dated 4 October 2019

16. **The municipality of SEVRAN**, a local authority domiciled at its Town Hall located at 28, avenue du Général Leclerc (93270) in Sevran, with SIREN number 219 300 712, represented by its Mayor in office, acting by virtue of deliberation no. 4 of the Municipal Council dated 15 May 2018 and decision no. 2018/299 dated 19 October 2018,

17. **The commune of VITRY-LE-FRANÇOIS**, a local authority domiciled at its Hôtel de Ville located at Place de l'Hôtel de Ville (51300) in Vitry-le-François, with the SIREN number 215 106 022, represented by its current Mayor, acting by virtue of deliberation DEL 36-2014 of the Municipal Council dated 17 April 2014,

18. **The CENTRE VAL DE LOIRE region**, a regional authority domiciled at its Hôtel de Région located at 9 rue Saint-Pierre Lentin (45000) in Orléans, with SIREN number 234 500 023, represented by the President of the Regional Council acting by virtue of deliberation 22.04.14 of 18 November 2022,

19. **AMNESTY INTERNATIONAL FRANCE**, an association governed by the law of 1er July 1901, whose registered office is located at 76, boulevard de la Villette, 75019 in Paris, represented by its president acting by virtue of article 9 of the statutes and the decision of its board of directors dated 26 July 2022,

20. **The municipality of Paris**, a local authority with special status domiciled at its Hôtel de Ville located

at Place de l'Hôtel de Ville, 75196 Paris cedex 04, with the SIREN number 217 500 016, represented by its Mayor in office, acting by virtue of the deliberation of the Municipal Council delegating authority on 3 July 2020,

21. **The municipality of Poitiers**, a local authority domiciled at its Hôtel de Ville located at CS 10569, 86021 Poitiers Cedex, with the SIREN number 218 601 946, represented by its Mayor in office, acting by virtue of the deliberation of the Municipal Council delegating authority on 20 July 2020,

22. **The City of New York**, a local authority under US law (State of New York), domiciled at 100 Church Street, NY 10007-2601, New York, represented by its current General Counsel, acting by virtue of a decision dated 21 July 2022,

Having for lawyers :

Maître Sébastien MABILE
Maître François de CAMBIAIRE
Lawyers at the Paris Bar
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Toque P 206

Applicants to the proceedings
Respondents to the incident

AGAINST :

TOTALENERGIES (formerly TOTAL S.E.), a European company with a capital of 6,573,650,842.50 euros, whose registered office is located at 2 place Jean Millier, La Défense 6, 92400 Courbevoie, registered in the Nanterre Trade and Companies Register under number 542 051 180, represented by its Chairman and Chief Executive Officer, Mr Patrick Pouyanné,

Having for lawyers :

Maître Denis Chemla
Maître Romaric Lazerges
Lawyers at the Paris Bar
Allen & Overy LLP
52, avenue Hoche - 75008 Paris
Telephone: 01.40.06.54.00 - Fax: 01.40.06.54.54
Toque J22

Respondent to the proceedings
Claimant to the incident

PLEASE THE COURT

1. It will be shown in these pleadings that :

- the procedural objections raised by TOTALENERGIES are inadmissible and unfounded (**Section 2.1**) ;
- As a main point, the grounds for dismissal raised by TOTALENERGIES raise substantive issues and are to be assessed by the Tribunal together with the merits of the case (**Section 2.2**) ;
- In the alternative, these grounds of inadmissibility of the action are unfounded (**Section 2.3**).

As a counterpoint, given the urgency of combating global warming, which is the subject of an indisputable scientific and political consensus (**Sections1.1.1 and 1.1.2**) and of which TOTALENERGIES has been fully aware for many years (**Section 1.1.4**), the Plaintiffs and Voluntary Intervenors ask the Pre-Trial Judge to order TOTALENERGIES to take provisional measures to preserve a chance to limit global warming to 1.5°C (**Section 2.4**).

I. REMINDER OF THE FACTS AND THE PROCEDURE

1.1. Presentation of the facts

1.1.1. The international political and scientific consensus on tackling climate change and limiting warming to 1.5°C

2. The international consensus on the absolute necessity to fight global warming is indisputable since the Paris Agreement, a binding international treaty signed by the 196 States Parties of the United Nations Framework Convention on Climate Change on 12 December 2015.

Article 2 of the Paris Agreement states that :

> *" 1. This Agreement, in contributing to the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and poverty alleviation, including by*
>
> *(a) Containing the increase in global average temperature to well below 2°C above pre-industrial levels and continuing efforts to limit the increase in temperature to 1.5°C above pre-industrial levels, while recognizing that this would significantly reduce the risks and impacts of climate change*"[1] .

The Convention's States Parties, in their decision accompanying the Paris Agreement, also expressly invite non-Parties - including businesses - to participate in climate change mitigation:

> *"The Conference of the Parties (...) invites non-Parties (...) to scale up their efforts and support measures to reduce emissions and/or build resilience and reduce vulnerability to the adverse effects of climate change, and to report on these efforts through the Non-State Actors' Portal for Climate Action*"[2] .

[1] Paris Agreement, available at the following link:
https://www.un.org/fr/climatechange/paris-agreement
[2] Decision 1 -/CP.21, "Adoption of the Paris Agreement", FCCC/CP/2015/10/Add.1, §134, p. 21, accessible at the following link:
https://unfccc.int/resource/docs/2015/cop21/fre/10a01f.pdf

3. The Intergovernmental Panel on Climate Change (**IPCC)** was established in 1988 under the aegis of the World Meteorological Organisation (**WMO)** and the United Nations Environment Programme (**UNEP)** to assess the reality, causes and consequences of climate change. Its work thus reflects an international scientific consensus on the subject.

In October 2018, at the request of the States-Parties to the Paris Agreement, the IPCC published a special report on the consequences of 1.5°C of global warming (hereinafter "**SR1.5"**), highlighting the worsening impacts of climate change and the urgent need to contain climate warming to 1.5°C in order to avoid a range of serious risks to natural and human systems[3] .

Among other things, the report concludes that:

> The report states that "*climate-related risks to health, livelihoods, food security, water supply, human security and economic growth are expected to increase with 1.5°C of global warming, and even more with 2°C of warming*" (**Exhibit 4, B.5, p. 11**).

Based on the findings of this report, the State Parties to the Paris Agreement concluded the Glasgow Compact on 13 November 2021 which "[r]*ecognises that the impacts of climate change will be much lower with a temperature increase of 1.5°C compared to 2°C and decides to continue efforts to limit the temperature increase to 1.5°C*"[4] .

4. Between August 2021 and April 2022, the IPCC published its Assessment Report 6 on climate change, in three parts (each written by a different working group). The first report focuses on the physical science basis (**Pièce n°41**), the second on impacts, adaptation and vulnerability (**Pièce n°42**), and the third on climate change mitigation measures (**Pièce n°43**)[5] .

In its most recent reports, and in particular the second part, the IPCC is particularly alarmist about the impact of global warming above 1.5°C:

- *"The magnitude and rate of climate change and its associated risks are highly dependent on short-term mitigation and adaptation measures, and the expected adverse effects and associated losses and damages increase with each additional tenth of a degree of global warming (very high confidence)*" () (**Pièce n°42B.4, p. 14**)[6] .

- "The *very high risk of extinction for endemic species in biodiversity hotspots is projected to at least double between global warming levels of 1.5°C and 2°C and at least tenfold if warming increases from 1.5°C to 3°C (medium confidence)*. (**Pièce n°42B.4.1, p. 14**)[7] .

In its press release announcing the 6ème report of Working Group II, the IPCC warns that

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[3] The concluding remarks produced the Policy Brief for Policy Makers as Exhibit 4 and do not include the full IPCC report in the discussion, due to its volume, which is available online at the following link: https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_Low_Res.pdf

[4] Glasgow Climate Pact, available at the following link https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf; Original quote: '*Recognises that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C and resolves to pursue efforts to limit the temperature increase to 1.5 °C*', §21, p. 4.

[5] Similarly, the concluding authors have produced the Policy Summaries for Policymakers of these three parts of the IPCC report and do not make the full IPCC reports available for discussion, which are available online at the following link: https://www.ipcc.ch/reports/

[6] *The magnitude and rate of climate change and associated risks depend strongly on near-term mitigation and adaptation actions, and projected adverse impacts and related losses and damages escalate with every increment of global warming (very high confidence)*.

[7] *Very high extinction risk for endemic species in biodiversity hotspots is projected to at least double from 2% between 1.5°C and 2°C global warming levels and to increase at least tenfold if warming rises from 1.5°C to 3°C (medium confidence)*.

> *"The world will face multiple unavoidable climate hazards over the next two decades with a global warming of 1.5°C (2.7°F). Exceeding even this temporary level of warming will result in additional severe consequences, some of which will be irreversible."* (**Exhibit 25**).

5. The most serious risks resulting from global warming above +1.5°C - even temporarily - are clearly summarised in the note by the climatologist Dr. Yann Robiou du Pont, consulted by the concluding parties for the purposes of the procedure (**Pièce n°40**).

In his note, Dr. Yann Robiou du Pont mentions one of the most serious and irreversible risks, namely the risk of runaway or "*tipping* points"[8] . These events would be characterised, for example, by a gradual but irreversible melting of the ice cap and permafrost of Antarctica or Greenland, resulting in a significant release of methane into the atmosphere, one of the most powerful GHGs[9] . This particularly serious risk is likely to further exacerbate climate change and must be avoided at all costs. And since "[i]*t is likely that global warming will reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate (high confidence)*"[10] immediate action is "*absolutely necessary to limit warming to 1.5°C*" (**Pièce n°40pp. 2 - 3**).

1.1.2. The scientific experts have determined the greenhouse gas reduction trajectories to be respected and the actions to be implemented to meet the objective of limiting warming to 1.5°C

6. In order to achieve the universally agreed objective of limiting global warming to 1.5°C, several climate scenarios (or "trajectories") have been developed.

[8] IPCC, SR1.5, Chapter 3, p. 283. See also the OECD report, "*Climate Tipping Points: Insights for Effective Policy Action*", published in 2022 and available at https://doi.org/10.1787/abc5a69e-en

[9] As TOTALENERGIES has acknowledged, "*Methane is a greenhouse gas with a global warming potential 25 times greater than CO2 over 100 years. In 2021, the IPCC estimated its impact on current warming to be 0.5°C relative to the pre-industrial era.*" (**Adverse Exhibit 24, p. 171**).

[10] Exhibit 4, A1, p. 4

7. **<u>First</u>, the trajectories that limit global warming to 1.5°C "with no or minimal overshoot" project a sharp and deep decline in net global anthropogenic CO2 emissions until 2030 and the achievement of carbon neutrality[11] by 2050** (**Exhibit 4, C.1, p. 14**).

In its special report SR1.5 (2018), the IPCC thus proposed three scenarios (P1, P2, P3) of greenhouse gas (hereafter "**GHG**") emissions compatible with limiting warming to 1.5°C "without exceedances" or with "limited exceedance". The common feature of these trajectories is the reduction of GHG emissions by 45% by 2030 compared to 2010:

> "*<u>Under trajectories that limit global warming to 1.5°C with no or minimal overshoot</u>, net global anthropogenic CO2 emissions decline by about 45% from 2010 levels to 2030[12] (interquartile range: 40-60%), becoming zero by 2050 (interquartile range: 2045-2055).*" (**Exhibit 4, C.1, p. 18**).

The International Energy Agency (**IEA**) has also developed a 1.5°C no-exceedance trajectory, namely - the "Net Zero by 2050" (hereafter **"NZE"**), in its report "*Net Zero by 2050, A Roadmap for the Global Energy Sector*", published in October 2021, (**Pièce n°44**).
In its World Energy Outlook 2022 report, the IEA states that :

> *<u>"The NZE scenario is one of a group of scenarios classified by the IPCC as a "no or low exceedance" scenario</u>, and aligns with the target, agreed again in Glasgow at COP26 in 2021, of "continuing efforts to limit temperature increase to 1.5°C*" (**Pièce n°45pp. 63-64**).

It should be remembered at this point that :

- these trajectories have about a 50% chance of success in limiting warming to 1.5°C (**Exhibit 4, p. 26 ; Pièce n°44(Exhibit 4, p. 26; Exhibit 44, p. 35**) and slightly more than a 90% chance of success in limiting warming to 2°C[13] ;

- are "*physically, technically, socially and economically feasible*" (**Pièce n°40, p. 4**).

8. **Second, the trajectories limiting warming to 1.5°C were calculated to avoid exceeding the "remaining carbon budget",** which is "*the amount of CO2 that could still be emitted while keeping warming below a specific temperature level*" (**Pièce n°41p. 28, footnote 43**).

The first part of the IPCC's 6e report, which will be published in the summer of 2021, also states clearly:

> *"Achieving zero net anthropogenic CO_2 emissions is a necessary condition for stabilising human-induced global temperature increase at any level, but <u>(...) limiting global temperature increase to a specific level implies limiting cumulative CO_2 emissions **within a carbon budget**</u>*" (**Pièce n°41p. 36, D.1.1**).

In the third part of the 6ème IPCC report, published in April 2022, the remaining carbon budget to limit warming to 1.5°C was estimated at 510 giga tonnes of CO2 (**Pièce n°43Table SPM.2, p. 18**). It was updated in November 2022 by the Global Carbon Project, on which the IPCC had relied, and is now estimated at 380 giga tonnes[14] .

As for the remaining carbon budget to limit warming to 2°C, the IPCC has estimated it at 890 gigatonnes of CO2 (**Pièce n°43Table SPM.2, p. 18**).

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[11] IPCC definition of "carbon neutrality": "A *situation in which human activities have no net impact on the climate system. This requires offsetting residual emissions by removing (carbon dioxide) emissions and taking into account supra-national or local biogeophysical effects of some human activities, for example those that alter surface albedo or local climate. See also Net zero CO2 emissions*. (Glossary 1.5°C Special Report, 2018, **Exhibit #4**).

[12] This was confirmed in the most recent IPCC report, which projects a 43% reduction in greenhouse gas emissions by 2030 compared to 2019 levels in its no-exceedance or limited-exceedance pathway (**Pièce n°43Table SPM.2; p. 18**).

[13] IPCC, SR1.5, Chapter 2, Supplementary Material, p. 18 (Table 2. SM.12)

[14] "Global carbon budget 2022", available at the following link: https://essd.copernicus.org/articles/14/4811/2022/

9. **The above results in several sets of concrete consequences and measures to be implemented for non-state actors, such as TOTALENERGIES.**

Specifically, in 2021, at COP 26, UN Secretary General Antonio Guterres established a High-Level Expert Group to set a framework for 2050 carbon neutrality commitments by non-state actors, particularly businesses (hereinafter "**UN-HLEG**", being the acronym of the official name of the group in question: "*United Nations High-Level Expert Group*") (**Pièce n°46**).

According to the Terms of Reference of the Expert Group (Annex I of the report), the objective is to

> *"Ensure that net zero emission commitments and their implementation are consistent with the objective of limiting global temperature increase to 1.5°C and that they make a credible contribution to the urgent need to reduce emissions within this decade to 45% below 2010 levels by 2030 (...)"* (**Pièce n°48p. 38**)[15] .

This group is composed of impartial experts, as specified in the annex defining the terms of reference of the expert group:

> *"Members must abide by a code of conduct in line with UN principles in order to ensure the impartiality and independence of the HLEG, to eliminate any possible conflict of interest and not to use their position for financial gain*" (**Pièce n°47, p. 3**).

In November 2022, on the first day of the Conference of the Parties (COP) 27 in Sharm-El-Sheikh, the panel published a report for non-state actors containing a number of recommendations for non-state actors making carbon neutrality commitments (such as the one made by TOTALENERGIES to achieve carbon neutrality by 2050, see *below*) (**Pièce n°48**).

10. First of all, in order to respect a trajectory compatible with a warming limited to 1.5°C, the most recognised experts in the field are unanimous on the need to **reduce fossil fuel production, which implies immediately stopping all new oil and gas exploitation projects**. Indeed, as the IPCC reminds us in its assessment report n°6 (working group n°3):

> *" B.7. Cumulative lifetime projected CO2 emissions from existing and currently planned fossil fuel infrastructure, without additional abatement, exceed cumulative net CO2 emissions in trajectories that limit warming to 1.5°C (>50%), with no or limited exceedance. They are roughly equal to the total cumulative net CO2 emissions in the trajectories that limit warming to 2°C (>67%). (high confidence*
>
> *B.7.1 If historical operating patterns are maintained, and with no additional abatement, the estimated cumulative future CO2 emissions from existing fossil fuel infrastructure, the majority of which is in the electricity sector, would be 660 [460-890] GtCO 2 from 2018 to the end of its lifetime. This would rise to 850 [600-1100] GtCO 2 if unabated emissions from currently planned power sector infrastructure are included. This compares with cumulative global net CO2 emissions from all sectors of 510 [330-710] GtCO2 until net CO235 emissions are zero in the scenarios that limit warming to 1.5°C (>50%) with zero or limited overshoot,*

[15] *To ensure that net zero emissions commitments and implementation are aligned with the goal of keeping global temperature rise to 1.5°C goal and credibly contribute their fair share to urgently cutting emissions in this decade to achieve a decline of 45% from 2010 levels by 2030.*

> *and 890 [640-1160] GtCO2 in the scenarios that limit warming to 2°C (>67%). (high confidence) (Table SPM.2) {2.7, Figure 2.26, Figure TS.8}* "[16] " (**Pièce n°43B.7 p. 16**)[17] .

In other words, <u>any new fossil fuel infrastructure would generate CO2 emissions in excess of the carbon budget remaining</u> to limit warming to 1.5°C, and equal to that to meet a 2°C warming trajectory. There is <u>therefore no room for new oil and gas extraction projects</u>.

The IEA, in its report published on 17 May 2021 on the "Net Zero" scenario, clearly states:

> *"Beyond the projects already committed to in 2021, there are no new oil and gas fields to be approved in our trajectory, and no new coal mines or mine expansions are required*"[18] (**Pièce n°44, p. 21**).

The IEA confirmed in its "*World Energy Outlook 2022"* report published in November 2022 that despite the geopolitical context and the current energy crisis :

> *"No one should think that invading Russia can justify building a wave of new oil and gas infrastructure in a world that seeks to achieve net zero emissions by 2050*"[19] . (**Pièce n°45, p. 80**).

Therefore, according to UN-HLEG, carbon neutrality (or "net-zero") commitments must necessarily be accompanied by a concrete and effective measure to stop exploration of new oil and gas fields.

Its recommendation 5, entitled "*Phasing out fossil fuels and developing renewable energy*"[20] , states:

> *"All net zero commitments should include specific targets to <u>end the use and/or support of fossil fuels</u>, consistent with the IPCC and IEA net zero greenhouse gas emission models that limit warming to 1.5°C with no or limited overshoot, with global emissions declining by at least 50% by 2030, to reach net zero by 2050.*" (**Pièce n°48p. 23**)[21] .

Under its detailed recommendations for companies, UN-HLEG also states:

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[16] Free translation. Original quote: "*B.7 Projected cumulative future CO2 emissions over the lifetime of existing and currently planned fossil fuel infrastructure without additional abatement exceed the total cumulative net CO 2 emissions in pathways that limit warming to 1.5°C (>50%) with no or limited overshoot. They are approximately equal to total cumulative net CO 2 emissions in pathways that limit warming to 2°C (>67%). (high confidence) {2.7, 3.3}*

B.7.1 If historical operating patterns are maintained,33 and without additional abatement,34 estimated cumulative future CO2 emissions from existing fossil fuel infrastructure, the majority of which is in the power sector, would, from 2018 until the end of its lifetime, amount to 660 [460-890] GtCO 2. They would amount to 850 [600-1100] GtCO 2 when unabated emissions from currently planned infrastructure in the power sector is included. These estimates compare with cumulative global net CO 2 emissions from all sectors of 510 [330-710] GtCO2 until the time of reaching net zero CO2 emissions35 in pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, and 890 [640-1160] GtCO2 in pathways that limit warming to 2°C (>67%). (high confidence) (Table SPM.2) {2.7, Figure 2.26, Figure TS.8} "

[17] Free translation. Original quote: "*Projected cumulative future CO2 emissions over the lifetime of existing and currently planned fossil fuel infrastructure without additional abatement exceed the total cumulative net CO2 emissions in pathways that limit warming to 1.5°C (>50%) with no or limited overshoot. They are approximately equal to total cumulative net CO2 emissions in pathways that limit warming to 2°C (>67%). (high confidence)"*.

[18] Free translation. Original quote: "*Non-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply*".

[19] Free translation. Original quote: "*No one should imagine that Russia's invasion can justify a wave of new oil and gas infrastructure in a world that wants to reach net zero emissions by 2050*.

[20] Free translation. Original quote: "*Phasing Out of Fossil Fuels and Scaling Up Renewable Energy*

[21] Free translation. Original quote: "*All net zero pledges should include specific targets aimed at ending the use of and/or support for fossil fuels in line with IPCC and IEA net zero greenhouse gas emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot, with global emissions declining by at least 50% by 2030, reaching net zero by 2050*.

> *"For oil and gas, cease (i) exploration for new oil and gas fields, (ii) expansion of oil and gas reserves, and (iii) oil and gas production*" (**Pièce n°48p. 24**)[22] .

Stopping the expansion of oil and gas reserves is therefore essential to achieving the Paris Agreement target, and UNEP has estimated the annual rate of reduction in coal and oil production needed to achieve this:

> *"To limit warming to 1.5°C, global coal, oil and gas production would have to decline by about 11%, 4% and 3%, respectively, each year between 2020 and 2030*" (**Pièce n°49p. 14-15**)[23] .

11. Second, trajectories consistent with a 1.5°C target with no or limited overshoot require **substantial and immediate reductions in GHG emissions,** as explained by the IPCC in the 6ème IPCC Assessment Report, published in August 2021:

> *"Global GHG emissions are projected to peak between 2020 and no later than 2025 in modelled global trajectories that limit warming to 1.5°C (>50%) with no or limited overshoot and in those that limit warming to 2°C (>67%) and assume immediate action. [SPM table, footnote [9], FOOTNOTE 38]. In both types of modelled trajectories, rapid and deep reductions in GHG emissions follow in 2030, 2040 and 2050 (high confidence). If policies are not strengthened beyond those implemented by the end of 2020, GHG emissions are projected to increase beyond 2025, leading to a median global warming of 3.2 [2.2 to 3.5] °C by 2100.*" (**Pièce n°43C.1., p. 17**).

The UN-HLEG states, in its first main recommendation on the formulation of the carbon neutrality objective, that Net-zero commitments should :

> *"contain interim targets (including targets for 2025, 2030 and 2035) and plans to reach net zero in line with the IPCC or IEA modelled trajectories for net greenhouse gas emissions, which limit warming to 1.5°C with no or limited overshoot, and with a 50% reduction in global emissions by 2030, to achieve net CO_2 emissions by 2050 and net greenhouse gas emissions soon thereafter.*" (**Pièce n°48p. 15**)[24] .

Its detailed recommendation states that :

[22] Free translation. Original quote: "*On oil and gas, end (i) exploration for new oil and gas fields, (ii) expansion of oil and gas reserves, and (iii) oil and gas production*".

[23] Free translation. Original quote: "*To be consistent with limiting warming to 1.5°C, global coal, oil, and gas production would have to decrease by around 11%, 4%, and 3%, respectively, each year between 2020 and 2030*".

[24] *should contain interim targets (including targets for 2025, 2030 and 2035) and plans to reach net zero in line with IPCC or IEA net zero greenhouse gas emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot, and with global emissions declining by at least 50% by 2030, reaching net zero by 2050 or sooner*.

> *"All non-state actors must reduce their emissions as quickly as possible, aligning with or exceeding national targets, roadmaps and timetables. Those with the capacity to go faster than a 50% reduction by 2030 and a net zero reduction by 2050 should do so*" (**Pièce n°48p. 16**)[25] .

The European Union has adopted a target of reducing net GHG emissions by at least 55% by 2030 compared to 1990 (**European Climate Law, Regulation (EU) 2021/1119 of 30 June 2021**).

12. It is in the light of these findings and recommendations, issued by the most recognised scientific experts, that TOTALENERGIES' contribution to global warming and the (in)effectiveness of the measures it has adopted to help combat it must be analysed.

1.1.3. TOTALENERGIES' activities contribute significantly to global warming

13. Dr. Yann Robiou du Pont, a climatologist consulted by the parties for the purposes of the proceedings, recalls that, according to the IPCC and the IEA, TOTALENERGIES' actions are decisive in achieving the Paris Agreement objective, given its contribution to global emissions:

> *"The actions of major oil and gas companies such as TotalEnergies are decisive in this respect. Fossil fuels, which are responsible for more than 70% of global emissions, must be reduced rapidly*. (**Pièce n°40**).

More specifically, TOTALENERGIES' direct and indirect emissions (scopes 1, 2 and 3) represent between 0.8% and 1% of global GHG emissions, "*i.e. the equivalent of France's annual territorial emissions*" (**Pièce n°40**).

In 2019, TOTALENERGIES already acknowledged in a letter addressed to the plaintiff communities that the emissions "*associated with the installations operated by the Total group worldwide represent 42 million tonnes of CO2, i.e. 0.1% of global emissions. The use of our products by our customers throughout the world generates emissions of around 400 million tonnes of CO2, i.e. 0.8% of global emissions*" (**Exhibit 2-4**).

14. This significant share of global greenhouse gas emissions and, consequently, TOTALENERGIES' contribution to global warming would justify the company fully assuming its share of the global effort required to meet the objective of limiting global warming to 1.5°C. This is especially true given its historical knowledge of the climate risks associated with its activities.

1.1.4. TOTALENERGIES has historically contributed to delaying the global fight against climate change despite its knowledge of the climate risks associated with its activities since 1971

15. After recalling the widely shared observation that global policies to combat climate change are insufficient, the climatologist Dr. Yann Robiou du Pont states in his note that :

[25] *All non-state actors must reduce emissions as fast as possible, aligning or exceeding national targets, roadmaps and timelines. Those that have the capacity to move faster than a 50% reduction by 2030 and net zero by 2050 should do so, while some developing country non-state actors may require more support on their path to net zero*.

> *"The IPCC and numerous studies accepted by scientific journals have shown that the fossil fuel industry, including TotalEnergies, has historically contributed to delaying the global fight against climate change by unduly raising scientific uncertainties, pressuring decision-makers and shifting the responsibility for the climate crisis onto individuals, despite its early and accurate knowledge of climate hazards*. (**Pièce n°40, p. 4**).

16. **A dozen other IPCC members, who recently published an opinion piece on TOTALENERGIES on 8 February 2023, concomitantly and completely independently of Dr. Yann Robiou du Pont's note, wrote :**

> *"The 2022 IPCC reports highlight decades of misinformation strategies by the fossil fuel industry, undermining the transmission of scientific knowledge about the consequences of greenhouse gas emissions and the risks of the warming they cause. This strategy partly explains the lack of ambition of climate policies, the slow pace of redirecting funding away from fossil fuels, and the seriousness of the situation today, with the impacts of climate change worsening in all regions of the world, more than 30 years after the publication of the first IPCC report*. (**Pièce n°54**).

17. The scientific literature now documents precisely the role of the fossil fuel industry in climate inertia.

With regard to TOTALENERGIES specifically, a study by Christophe Bonneuil (historian at the CNRS) and others, entitled "*Early Warning and Emerging Responsibility: Total's Responses to Global Warming, 1971-2021*", published in 2021 in the journal "*Global Environmental Change*", provides direct evidence of TOTALENERGIES' awareness of global warming during 1971:

> *"The company's magazine, Total Information, contained an article entitled "Air pollution and climate*" (**Pièce n°50, p. 2**).

The article in question, written by the geographer Durand-Dastès, devoted very specific developments to anthropogenic global warming and its devastating effects:

> *"Since the 19th century, humans have been burning increasing amounts of fossil fuels. This results in the release of huge amounts of carbon dioxide [...].*
>
> *"This increase in concentration is quite worrying [...] It is therefore possible that an increase in the average temperature of the atmosphere is to be feared. The orders of magnitude calculated are obviously small (1 to 1.5◦ C) but could have significant impacts. Atmospheric circulation could be altered, and it is not impossible, according to some, to predict at least partial melting of the ice caps, which would certainly lead to a significant rise in sea level. The catastrophic consequences are easy to imagine*" (**Pièce n°50p. 2**)[26] .

Historian Christophe Bonneuil's and others' study of TOTALENERGIES also points out that *the American Petrolum Institute* (API) "*received warnings about global warming as early as the 1950s and commissioned research on the subject in the late 1960s, which indicated that continued expansion of fossil fuels would cause significant global warming by the end of the century, with adverse consequences for societies around the world"* (**Pièce n°50, p. 2**).

However, TOTALENERGIES "*was a member of the API in the late 1960s through its North American subsidiary and therefore had access to this information*" (**Pièce n°50, p. 2**). This 1971 alert was therefore not isolated and was, on the contrary, part of an international scientific and political context sensitive to anthropogenic global warming:

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[26] Free translation. Original quote: "*Since the 19th century, humans have been burning increasing amounts of fossil fuels. This results in the release of enormous quantities of carbon dioxide [...] This increase in concentration is quite worrying [...] carbon dioxide plays a large role in the thermal balance of the atmosphere [...] air richer in carbon dioxide absorbs more radiation and heats up. It is possible, therefore, that an increase in the average temperature of the atmosphere is to be feared. The calculated orders of magnitude are obviously small (from 1-1.5 ◦C) but could have important impacts. Atmospheric circulation could be modified, and it is not impossible, according to some, to foresee at least a partial melting of the polar ice caps, which would certainly result in significant sea level rise. The catastrophic consequences are easy to imagine*".

> *"A meta-analysis of the scientific literature from 1965 to 1979 shows that most studies predict warming*" (**Pièce n°50, p. 3**).

18. While TOTALENERGIES initially chose to keep the issue quiet until the late 1980s, the company later adopted a lobbying strategy to counteract policies to reduce greenhouse gas emissions and actively participated in casting doubt on the reality of global warming and the impact of its activities.

This strategy is reflected in the lobbying against EU carbon taxation in the 1990s, described by The Economist as "the *fiercest lobbying ever seen in Brussels*" (**Pièce n°50, p. 6**).

Similarly, in the margins of the 1992 Rio conference, TOTALENERGIES distributed a brochure stating that *:*

> *"The report states that "the considerable progress in climate science since the beginning of the century has not removed the uncertainties about the greenhouse effect and insists that energy policies must "ensure the growth of [developing] countries, even if it means increasing greenhouse gas emissions first"* (**Pièce n°50p. 6**)[27] .

This "*factory of doubt*" continued after the Rio Summit (**Pièce n°51**).

From the 2000s onwards, TOTALENERGIES "*focused on equivocal descriptions of global warming and downplayed the strength and importance of the available scientific evidence*" (**Pièce n°50, p. 6**).

For example, TOTALENERGIES' 2002 sustainability report stated "*equivocally that emissions from human activities may be causing climate change*"[28] , while its 2004 report emphasizes "*the uncertainties [...] that remain about the origin and evolution of the phenomenon*" in a way that "*distracts from the company's products and ignores the causal links provided by physical science and statistical attribution research*"[29] (**Pièce n°50, p. 7**).

19. From 2006 onwards, TOTALENERGIES put on a show of adherence to the scientific consensus in order to "*unfold a new narrative, a sort of division of labour in which, on the one hand, scientists are in charge of taking stock of climate change and, on the other, companies present themselves as the most legitimate ones to implement the appropriate solutions to bring about the energy transition"* (**Pièce n°51**).

TOTALENERGIES is thus trying to "*promote itself as a climate leader*", in particular with the creation of *the Oil and Gas Initiative* or the presentation of One Total 2035, a roadmap to reduce the carbon intensity of its products (**Pièce n°50, p. 8**).

However, TOTALENERGIES' announcements are clearly not being followed up.

20. Associations involved in environmental protection and the fight against global warming (including some of the Claimants) have been denouncing TOTALENERGIES' double talk in this regard for several years:

> *"To declare that one's ambition is consistent with the +2°C scenario while admitting exclusively in the notes to the consolidated accounts that one is building a strategy based on a scenario that predicts approximately +1°C of additional warming could be at best double talk, at worst deception. This contradictory communication is likely to mislead stakeholders concerned about the fight against climate change*" (**Pièce n°52, p. 25**).

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[27] Free translation. Original quote: "*the considerable progress made in climatology since the beginning of the century has not allowed us to dispel the uncertainties regarding the greenhouse effect" and insisting that energy policies should "ensure the growth of [developing] countries, even if it means increasing green house gas emissions to start".*

[28] Free translation. Original quote: "*equivocally reported that emissions due to human activities "could be the origin of climate change".*

[29] Original quote: "*both deflecting attention away from the company's products and ignoring the causal links provided by physical science and statistical attribution research*".

Other NGOs have filed a criminal complaint against TOTALENERGIES for "*misleading commercial practices*" because of the incompatibility of TOTALENERGIES' climate communication with its massive investments in fossil fuels. A criminal investigation is currently underway against the company by the economic and financial division of the Nanterre public prosecutor's office (**Pièce n°53**).

21. In any event, the Respondents demonstrate in these pleadings that the latest measures announced by TOTALENERGIES, both in its 2021 Compliance Plan (published in the 2022 DEU, **Adverse Exhibit 23**, hereinafter the "**2021 Compliance Plan**"), and in its *Sustainability Climat 2022 Progress* Report (**Adverse Exhibit 30**), are still not in line with the objective of the Paris Agreement.

This is also the conclusion reached by :

- Dr. Yann Robiou du Pont, consulted for the purpose of the procedure:

  "Total's strategy does not demonstrate alignment with the IPCC and IEA 1.5°C trajectories. Based on the existing literature, TotalEnergies is moving us further away from achieving the goals of the Paris Agreement." (**Pièce n°40, p. 9**) ;

- **a dozen other IPCC members, who published the above-mentioned opinion piece of 8 February on the instrumentalisation of their reports by TOTALENERGIES, consider that :**

  "The total carbon footprint of TotalEnergies' activities, as described in its strategy, would imply a stagnation of greenhouse gas emissions at around 400 million tonnes of CO2-equivalent per year by 2030, whereas the trajectories assessed by the IPCC to keep global warming well below 2°C or close to 1.5°C imply a reduction in global emissions of the order of 27 and 43% respectively, compared to 2020. It is hard to imagine that a major company like TotalEnergies does not realise the mismatch between its carbon neutrality strategy and the latest scientific findings, or the recommendations of the UN High Level Panel [UN-HLEG] *on the integrity of carbon neutrality strategies, which recommends eliminating fossil fuels from the energy mix*. (**Pièce n°54**).

1.2. Reminder of the procedure

22. In a letter dated 22 October 2018, 13 local authorities and 5 associations called on TOTALENERGIES to denounce its inaction in the face of climate change (**Exhibit 2-1**).

TOTALENERGIES, through its General Counsel, responded on 14 January 2019, indicating that climate issues were recognised by the company, and that it was setting targets to reduce its greenhouse gas emissions (**Exhibit 2-2**).

The councils of the associations and the mayors replied to TOTALENERGIES on 14 February 2019 (**Exhibit 2-3**).

On 27 February 2019, Mr POUYANNÉ, Chairman and CEO of TOTALENERGIES, proposed a meeting with the mayors and associations (**Exhibit 2-4**).

On 18 June 2019 a meeting was organised at the TOTALENERGIES headquarters between Mr POUYANNÉ and the representatives of the local authorities and associations (with the exception of SHERPA) (**Exhibit 2-5**).

23. By letter dated 19 June 2019 and received by TOTALENERGIES on 20 June 2019, the associations and communities gave **TOTALENERGIES formal notice** to comply with the obligations set out in Article L.225-102-4 I of the French Commercial Code , stemming from the law of 27 March 2017 on the duty of care of parent companies and ordering companies (hereinafter the "**Duty of Care Law**"), by publishing a new due diligence plan that complies with the legal requirements, within three months of receipt of the letter of formal notice (**Exhibit 3**).

TOTALENERGIES was criticised for not complying with the above-mentioned provisions in its vigilance plan published in March 2018. Indeed, the risk map published did not mention the risks related to climate change resulting from the overall increase in GHG emissions from TOTALENERGIES' activities. Secondly, the plan did not include any appropriate action to mitigate risks and prevent serious harm resulting from climate change.

It was also pointed out to TOTALENERGIES that its plan published on 19 March 2019 still did not reflect the exercise of reasonable vigilance, commensurate with the group's share of responsibility for global warming.

In particular, the actions foreseen in the vigilance plan were not sufficient to mitigate the risks and prevent serious harm resulting from global warming beyond the 1.5°C threshold referred to in Article 2 of the Paris Agreement.

24. By bailiff's writ delivered on 28 January 2020, the plaintiff associations and communities summoned the TOTALENERGIES company before the Nanterre judicial court on the basis of Article L. 225-102-4, I, 1°) of the French Commercial Code for failure to comply with its due diligence obligations, and on the basis of Article 1252 of the French Civil Code in order to prevent environmental damage resulting from uncontrolled GHG emissions linked to the company's activities.

The National Consultative Commission on Human Rights (CNCDH) recently welcomed the launch of this action on the basis of the law on the duty of vigilance "*which allows civil society to react to these shortcomings, as shown by the summons (...) of the company Total by a group of associations and local authorities, in January 2020, with a view to enjoining it to drastically reduce its GHG emissions*".[30]

According to the summons, it is demonstrated that the measures that TOTALENERGIES claims to have taken to combat climate change are insufficient to mitigate the risks and prevent the serious violations of human rights, health and safety of people, and the environment, which are constantly worsening as a result of, among other things, TOTALENERGIES' activities.

25. On 16 October 2020, after a first referral to the Pre-Trial Hearing of 21 July 2020, TOTALENERGIES served a plea of lack of jurisdiction on the Court of First Instance in favour of the Commercial Court of Nanterre.

By Order of February 11, 2021, the Pre-Trial Judge rejected the objection of lack of jurisdiction raised by Total and confirmed the jurisdiction of the Court (**Exhibit 21**).

TOTALENERGIES appealed this judgment on 18 February 2021.

By a judgment of 18 November 2021, the Versailles Court of Appeal confirmed the Order of 11 February 2021 and consequently the jurisdiction of the Nanterre Court (**Exhibit 22**).

At the same time, Article 56 of Act No. 2021-1729 of 22 December 2021 on confidence in the judiciary created a new Article L. 211-21 of the Code of Judicial Organisation, which states

> *"The Paris judicial court hears actions relating to the duty of care based on Articles L. 225-102-4 and L. 225-102-5 of the Commercial Code*.

As this provision is a procedural law, it is immediately applicable to the present case.

By order of 10 February 2022 of the Pre-Trial Judge of the Nanterre Court, the case was transferred to the Paris Court.

[30] Opinion "*Climate emergency and human rights*" of the National Advisory Commission on Human Rights, published on 27 May 2021.

26. At the pre-trial hearing on 25 May 2022, the Pre-Trial Judge adjourned the case to 21 September 2022 for TOTALENERGIES' incidental submissions, asking the plaintiffs to proceed with the voluntary incidental interventions announced "before the end of July".

Voluntary interventions by Amnesty International France and the municipalities of Paris, Poitiers and New York were served on 29 July 2022 before the Paris Court.

It is in this context that TOTALENERGIES communicated on 20 September 2022, more than two years after the beginning of the proceedings, incidental conclusions n°1 before the Pre-Trial Judge (hereinafter the "**incidental conclusions n°1**").

II. DISCUSSION

2.1. *In limine litis*: procedural objections are inadmissible and unfounded

27. TOTALENERGIES raises the nullity of the summons issued by certain plaintiffs on the basis of article 117 of the Code of Civil Procedure.

28. It will be shown below that the ZÉA association has full capacity to sue (**2.1.1**) and that the mayors of the Applicant and Intervening communes whose power of representation is contested are indeed entitled to represent them (**2.1.2**).

2.1.1. The ZÉA association has the capacity to sue

29. TOTALENERGIES claims that the summons issued by the ZÉA association is null and void, on the basis of Article 117 of the Code of Civil Procedure, due to the association's lack of capacity to bring legal proceedings because it did not comply with the requirements of Article 5 of the Law of 1st July 1901 on the contract of association. This article requires that the association be made public, by insertion in the Journal officiel, in order to have the capacity to bring legal proceedings.

30. In support of the foregoing, the Respondent submits (**Pièce n°55**) :

- the receipt for the declaration of the creation of the association at the prefecture, at the time called "The Ocean Nation",
- its insertion in the Official Journal on 31 October 2015,
- the receipt of the declaration of modification of the name of the association, which became "ZÉA".

The ZÉA association does have the capacity to sue.

31. **The Pre-Trial Judge will dismiss the request to declare the summons issued to TOTALENERGIES by ZÉA null and void.**

2.1.2. The mayors and representatives of the Applicant and Intervening municipalities have the power to represent them in court

32. TOTALENERGIES maintains that the summons issued by some of the Claimants is null and void for substantive reasons due to the lack of power of the mayor of some of them to represent them (article 117 of the Code of Civil Procedure), namely the cities of :

- Bayonne,
- Grenoble,
- La Possession,
- Mouans-Sartoux, and
- Sevran.

TOTALENERGIES also raises the nullity of the voluntary intervention submissions of certain Voluntary Intervenors, namely the cities of Paris and New York, on the same grounds.

33. Article L. 2122-22, 16° of the General Code of Local Authorities allows the municipal council to delegate to the mayor the power to bring actions in the name of the community and to defend it, '*in cases defined by the municipal council*', or in a general manner throughout the duration of his or her term of office (**CE, 4 May 1998, n°188292, *de Verteuil***).

Although the lack of authorisation granted by the municipal council to the mayor does constitute a cause of nullity of the summons, it may be covered in accordance with Article 121 of the Code of Civil Procedure:

> *"In cases where it can be covered, nullity shall not be pronounced if the cause has disappeared by the time the judge rules*.

It is settled case law that :

> *"If the exception based on the fact that a municipality has not been authorised to plead by a deliberation of the municipal council is of public order, it is only in the interest of the municipality, which is free to cover up the defect in the summons by a subsequent deliberation, under the conditions provided for by articles 117 and 121 of the Code of Civil Procedure*" (**Cass. Civ. 3ème, 11 January 1984, n°82-15.909**)[31] .

The fact that this objection is made in the sole interest of the municipality means that the latter's opponent cannot rely on it (**Cass. Civ. 1ère, 17 February 1993, n°88-10.763**).

34. As a result, **in the present case,** the cause of nullity of the summons and the incidental conclusions put forward by TOTALENERGIES (i) cannot be invoked by TOTALENERGIES and, in any case, (ii) can be regularised until the day the judge rules.

The Pre-Trial Judge will consequently declare TOTALENERGIES inadmissible to invoke the nullity of the summons based on an alleged lack of power of the Mayor to represent the community.

35. **In any case** and for all useful purposes, the applicants produce in support of the present applications the resolutions adopted by the municipal councils and conferring on their respective mayors the power to represent them in court:

- The decision of the **Bayonne** City Council dated 14 April 2014 (regularly published and available on the city's website[32]), referred to in the decision of the Mayor of Bayonne dated 25 June 2019 (**Exhibit n°1-7**) and giving general delegation to the Mayor to represent the municipality, in the following terms: "*referral to and representation, both in summary proceedings and in first instance, appeal and cassation, before the civil and criminal courts, including the lodging of complaints and the constitution of civil parties*" (**Pièce n°56**).

- The deliberation of the **Grenoble** city council dated 23 May 2016 (regularly published and available on the city's website[33]) and the sub-delegation order dated 21 November 2018 (**Pièce n°57**), referred to in the

[31] See also: Cass. Soc. 5 June 1991, n°87-41.552; Cass. Civ 2nd, 20 October 2011.
[32] Available at the following link, accessible on 10 February 2023: https://www.bayonne.fr/fileadmin/medias/Publications/Deliberations/Conseil_municipal_du_14_avril_2014/CM_14-04-2014_integral_toutes-les-deliberations_28pages.pdf
[33] Available at the following link, accessible on 10 February 2023: https://www.grenoble.fr/416-les-comptes-rendus-des-conseils-municipaux.htm

decision of the Mayor of Grenoble dated 26 July 2019 (**Exhibit n°1-13**) and giving general delegation to the Mayor to represent the municipality, in the following terms: *"to bring legal actions in the name of the municipality or to defend the municipality in actions brought against it, before any court of first instance, on appeal or in cassation, in summary proceedings or on the merits*" (**Pièce n°58**);

- The deliberation of the municipal council of the town of **La Possession** dated 29 March 2017 (regularly published and available on the town's website[34]), referred to in the decision of the Mayor of La Possession dated 25 July 2019 (**Exhibit n°1-14**) and giving a general delegation to the Mayor to represent the commune, in the following terms: "*to go to court, with all powers, in the name of the commune of La Possession, to bring all legal actions and to defend the interests of the commune in all cases likely to arise, both in first instance and in appeal and cassation, before the courts of all kinds, including administrative and judicial courts, for any action of whatever nature, whether it be a summons, a voluntary intervention, an appeal in guarantee, the filing of a complaint with the filing of a civil party, a direct summons, a summary procedure, a protective action or the decision to withdraw an action. He may be assisted by the lawyer of his choice*. (**Pièce n°59**).

- The deliberation of the Mouans-Sartoux town council dated 26 May 2020 giving general delegation to the Mayor to represent the municipality, in the following terms: "*to bring legal actions in the name of the municipality or to defend the municipality in actions brought against it, in all cases*" (**Pièce n°60**) ;

Furthermore, the town of Sevran plans to adopt a resolution at the next town council meeting to authorise the Mayor to "*defend the interests of the town by taking legal action against the TOTALENERGIES company before the Paris Court of Justice*" (**Pièce n°61to come**).

36. The same is true of the Voluntary Intervenors, who have, for the same reasons, the capacity to bring legal proceedings despite TOTALENERGIES' attempts to artificially raise a ground for nullity on this point.

37. With regard to the City of **Paris**, the plaintiffs submitted in support of the conclusions in voluntary intervention a sufficiently general deliberation allowing the Mayor "*to bring in the name of the City of Paris all legal actions or defend the City of Paris in actions brought against it, due to all of its activities before all courts without exception*" (**Exhibit 33**). TOTALENERGIES claims that the object of the action does not concern the activities of the City of Paris but consists in "*interfering in the activities of a third company, TOTALENERGIES*" (**Incidental conclusions n°1, p. 6**).

Apart from the fact that TOTALENERGIES is not entitled to rely on an alleged lack of power to represent the municipality, this argument is based on a strictly literal interpretation of the delegation granted to the Mayor by the City Council of the City of Paris, which attempts to circumscribe the "activities" of the City of Paris to very limited hypotheses such as that of "*action against a concessionaire who does not respect its contractual obligations*".

The wording and the generality of the terms used ("all of her activities") in the delegation granted to the Mayor indicate, however, that the City Council's intention was to delegate to the Mayor particularly broad competences in judicial matters, i.e. all actions that can be brought before all courts, without exception.

In any event, it is clear that the present dispute concerns "the activities of the City of Paris" which, as was amply demonstrated in its submissions in voluntary intervention, is particularly exposed to climate risks, committed and active in the fight against global warming and the reduction of greenhouse gas emissions.

It is referred to the Conclusions in Voluntary Interventions of 29 July 2022 for more details and will simply be recalled that the City of Paris :

[34] Available at the following link, accessible on 10 February 2023: https://www.lapossession.re/fileadmin/user_upload/La_Mairie/Comptes-rendus_Conseil_Municipal/CM_du_20170329_Proces_verbal.pdf

- launched its first Climate Plan in 2007 and the latest Climate Plan of 2018 aims to achieve carbon neutrality for the territory by 2050 (**Exhibit 31)**;

- has carried out a study of the vulnerability and robustness of its territory to climate change in 2021 (**Exhibit 32**);

- has been selected by the European Commission to be part of the European Union's "100 Climate Neutral Cities" programme and to implement the necessary actions to reduce emissions;

- is particularly exposed to climate change as the capital has already warmed up by +2°C since the pre-industrial era, with heatwaves likely to have critical consequences for its inhabitants, vital infrastructure, and energy and transport networks;

- 10 billion between 2014 and 2020 to make Paris a sustainable, inclusive, responsible and innovative city (**Exhibit 31**).

In other words, the fight against global warming, which is clearly the object of the present action aimed at enjoining TOTALENERGIES to take appropriate vigilance measures, is one of the priority activities of the City of Paris.

The delegation of power granted on 3 July 2020 to the Mayor of Paris clearly covers such action.

38. In the case of the City of **New York,** its representative, the current *Corporation Counsel*, does have the power to intervene incidentally in this action under New York State law.

As a preliminary point, it is not disputed that the law governing a foreign legal person or grouping is applicable to determine whether its representative is indeed entitled to represent it in court (**A. Huet, "Fasc. 582-20: Procédure civile et commerciale dans les rapports internationaux (DIP). - Domaine de la "lex fori": instance", JCL Droit international, 27 October 2018, n°25**). This rule obviously applies to legal persons governed by public law, such as States, whose power of representation must be assessed in the light of the law of that State (**Cass. 1re civ., 20 Nov. 2001, n° 99-18.920**).

The Respondents submit a certification from Ms. Alice Baker, a New York State barrister and counsel in the New York City Law Department, confirming that the New York City *Corporation Counsel* has the authority to represent the City's interests in this matter (**Pièce n**°62).

This power is derived from Section 394 of the Charter of the City of New York (hereinafter the "**Charter"**), which states

- describes the role of *Corporation Counsel* as representing the City of New York in "***all*** *legal matters of the City and its agencies in which the City is interested*"[35] (Section 394(a));

- expressly gives the *Corporation Counsel* of the City of New York general authority "*to bring actions at law or in equity and* ***any proceedings*** *provided by law in* ***any court****, local, state or national, to maintain, defend and establish the rights, interests, revenues, property, privileges, franchises or claims of the City*" (emphasis added) (Section 394(c))[36] .

The Defendant and Mr. Kritzer, an attorney at the New York bar consulted by TOTALENERGIES on this issue (**Opposing Exhibit 41**)[37] , argue that this provision would limit *Corporation Counsel*'s authority to represent only the

[35] Free translation. Original quote: "*all the law business of the city and its agencies and in which the city is interested*".

[36] Free translation. Original quote: "*to institute actions in law or equity and any proceedings provided by law in any court, local, state or national, to maintain, defend and establish the rights, interests, revenues, property, privileges, franchises or demands of the city*".

[37] It is noted that Mr. Kritzer is a commercial litigator who is not a specialist in New York procedural law. He himself states that he has a "*practical background in commercial litigation* (...) *involving New York and US law*" (**Opposing Exhibit 41**). He therefore does not claim to have any particular expertise in the interpretation of the provisions of the New York Charter.

United States courts, even though this does not follow from the above provisions or from other provisions of the Charter. In fact, there is no reference to the United States in Chapter 17 of the Charter, which describes the authority and power of the entire New York City Law Department.

The Paris Judicial Court meets the definition of a state or national court under the New York City Charter. Nothing in the provisions of the Charter, nor any ordinary meaning of the term 'state' or 'national', suggests that the *Corporation Counsel*'s power of representation is limited to a specific territory.

This assertion by the Defendant and Mr. Kritzer is based exclusively on a bad faith misinterpretation of the aforementioned provisions, using reasoning that ignores not only the plain language of the Charter but also the legislative intent behind it.

New York law and relevant case law provide that the primary purpose of statutory interpretation must be to ascertain legislative intent (***People v. Ryan*, 1937 - 274 N.Y. 149, 152; *People v. Silburn*, 2018 - 31 N.Y.3d 144, 155; N.Y. General Construction Law §110**), in order to achieve the purpose of the law (***New York State Bankers Ass'n v. Albright*, 1975 - 38 N.Y.2d 430, 437**). Thus, the maxim of statutory interpretation relied upon by Mr Kritzer, *expression unius est exclusion alterius*, cannot be used to override the intention of the legislature (***John P. v. Whalen*, 1981 - 54 N.Y.2d 89, 96**).

The above quotation, to which bolding has been added to emphasize the repeated use of general words such as "all" and "every", clearly indicates the legislature's intent to provide the *Corporation Counsel* of the City of New York with broad legal authority to carry the voice of the City of New York in all its interests. Under New York State case law, the use of the word "all" means "every" or "every", and "implies no limitation" (***Kimmel v State of New York,* 2017 - 29 N.Y. 3d 386, 393**).

To infer from the lack of a complete enumeration of all potential forums in Section 394(c) of the Charter a restriction on the ability of the *Corporation Counsel* to represent the City of New York in all forums where the interests of the City would be raised would clearly defeat the intent of the legislature and prevent the City from exercising its rights under the New York Constitution, which must be liberally construed.

39. Finally, New York City's *Corporation Counsel* already regularly represents the City in international and foreign **proceedings** outside the U.S. courts, such as before the Swiss and Jordanian courts (see Appendices A and B to the Pièce n°62 *City of New York v. Morrison*; *City of New York v. Khashma*).

40. **The Pre-Trial Judge will set aside the procedural objections raised by TOTALENERGIES and will rule that the mayors and representatives of the Claimants and Intervenors have the power to represent them in court.**

2.2. Mainly: the grounds for dismissal put forward by TOTALENERGIES raise questions of substance and are to be assessed by the Court of First Instance together with the merits of the case

41. Article 789 paragraph 6 of the Code of Civil Procedure states that :

> *"Where the objection requires a decision on the merits of the case, the pre-trial judge shall decide on the merits of the case and on the objection. However, in cases which do not fall within the competence of the single judge or which are not assigned to him, a party may object. In this case, and as an exception to the provisions of the first paragraph, the Pre-Trial Judge shall refer the case back to the bench of judges, if necessary without closing the investigation, so that it may rule on this substantive issue and on this objection.*

*The court may also order such a referral if it considers it necessary**.** The referral decision is a measure of judicial administration*.

42. This new wording of Article 789 of the Code of Civil Procedure, resulting from the reform of civil procedure, has broadened the powers of the Pre-Trial Judge, who is now the only one competent to rule on the grounds of non-receipt.

According to the doctrine, as some authors have pointed out, this new prerogative is not without its difficulties, given the very nature of the grounds for dismissal:

"The competence of the pre-trial judge, in the strict legal sense of the term, is in fact based on the idea that the case should be purged of lateral challenges so that the court only has to rule on the heart of the dispute. The question is therefore whether the objections fall within the scope of these "lateral challenges" or not. The only problem is that answering such a question is difficult because in reality admissibility litigation is a hybrid dispute, involving both procedure and substance" (N. CAYROL, ". (**N. CAYROL, "Tribunal judiciaire : procédure écrite ordinaire", Répertoire de procédure civile Dalloz, November 2020 (updated October 2022), n°201**).

The legislator has not laid down any specific criteria for determining which of the grounds for dismissal raise preliminary questions of substance, which does not make it possible to resolve the confusion caused by the very definition of the grounds for dismissal in Article 122 of the Code of Civil Procedure and thus to delimit their scope of
application:

*"Any plea which tends to declare the opponent's claim inadmissible, **without examination of the merits**, for lack of right to act, constitutes a plea of non-receipt*.

Another author has asked:

"In which cases does the assessment of a plea of inadmissibility raise a question of substance? Ms Amrani-Mekki gives the convincing example of 'a statute of limitations whose duration depends on the nature of the action and the status of the parties', but one is embarrassed, for example, in the case of lack of interest or lack of status, concepts which seem purely procedural but which may also raise a substantive issue. (**H. Croze, "*Procédure écrite ordinaire devant le tribunal judicaire - Essai d'archéologie juridique contemporaine*", Procédures n°3, March 2020, study 6, n°18**)

In case law, in similar circumstances, trial judges have held that standing or interest in the case, as well as the statute of limitations, depended on substantive issues contested by the respondent and which should be referred to the panel together with the merits of the case:

"In the present case, it is certain that the grounds of non-retention based on the lack of interest and standing to act as well as the statute of limitations of the action fall in principle within the competence of the pre-trial judge by application of the aforementioned provisions.

*However, the same provisions provide for an exception where, in proceedings that do not fall within the jurisdiction of a single judge, the pleas in law raised require that substantive issues be decided before or at the same time and a party has objected to the examination of the pleas in law by the pre-trial judge and has expressly requested that they be examined by the formation of the judgment**.***

However, it appears that Allianz IARD's standing or interest in acting depends on its subrogation in the rights of its insured, which presupposes, in particular, that the insurer has paid the condominium corporation sums under the building insurance contract between them.

However, this point is formally contested by the respondents, even though Allianz IARD has submitted payment certificates (exhibit 14) supported by summary tables (exhibits 6 and 7) that tend to show the payment of various sums to Nexity, in its capacity as managing agent, of the co-ownership in question.

> *Moreover, they also require the resolution of substantive issues relating to subrogation in futurum, the merits of anticipated warranty calls and the assessment of substantive conditions for admitting or not admitting the prescription of the claim.*
>
> *Consequently, Allianz could avail itself of the legal exception to the jurisdiction of the pre-trial judge in favour of the jurisdiction of the court of first instance and this devolution is imposed on the pre-trial judge when the conditions of the exception are met, as in this case*. (**Bourges Court of Appeal, 16 December 2021, n°21/00610**).

In this case, complex issues were clearly at stake, which may also be a reason for the judge to consider such a referral necessary and to order it ex officio[38] . This is good administration of justice.

Finally, it should be remembered that according to the case law[39] and the doctrine[40] , if one of the parties objects to the Pre-Trial Judge's ruling on a plea of inadmissibility requiring a prior decision on a substantive issue, referral to the panel is automatic.

43. **In the present case,** the grounds of non-admissibility raised by TOTALENERGIES require a certain number of questions of substance to be decided before and at the same time as these grounds of non-admissibility are examined. It therefore appears to be in the interests of the proper administration of justice to refer them to the panel for consideration of the merits by the Court.

Firstly, with regard to the objection based on an alleged extinction of the object of the action, it is particularly clear that it raises questions that are exclusively relevant to an assessment of the merits of the case, since it involves ruling on the nature of TOTALENERGIES' obligations under its duty of care, in accordance with Article L. 225-102-4 of the Commercial Code.

Although TOTALENERGIES wrongly relies on a purely formal criterion, arguing that the summons was limited to the 2018 Compliance Plan and that it had not been served with a notice of default for its latest 2021 Compliance Plan, the respondents show that :

- the demands made in the summons are not limited to the mere publication of a plan;
- the actions and measures requested at the summons stage have still not been adopted or effectively implemented under the terms of TOTALENERGIES' latest Compliance Plan, for which the Claimants therefore did not need to put the company on notice again.

The examination of these pleas is clearly a matter of substance. How can these questions be decided without deciding on the nature of the obligations incumbent on TOTALENERGIES under its duty of vigilance: simple publication of a plan or adoption of a standard of prudent and diligent behaviour? And this, even though no decision on the merits has yet been rendered on the basis of the Duty of Vigilance Act.

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Secondly, the plea of inadmissibility based on an alleged lack of formal notice also raises preliminary questions of substance:

- On the one hand, TOTALENERGIES claims that it was not put on notice by certain Claimants and Intervenors, which implies interpreting the legislator's intention concerning the obligation of prior notice provided for by the Duty of Care Act;

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[38] R. Laffly, "Fins de non-recevoir : un juge de la mise en état dont de 'super-pouvoirs'", Dalloz avocats - Exercer et entreprendre, 2020, p. 36.

[39] CA Bourges, 16 December 2021, cited above; CA Douai, 24 November 2022, No. 2022, No. 022/00835

[40] Répertoire de procédure civile Dalloz, n°197. See also: R. Laffly, "Fins de non-recevoir : un juge de la mise en état dont de 'super-pouvoirs'", Dalloz avocats - Exercer et entreprendre, 2020, p. 36.

- on the other hand, the plea based on the lack of precision of the requests formulated in the formal notice compared to those in the summons requires a detailed examination of these requests in order to determine whether TOTALENERGIES was addressed with sufficient precision.

The examination of these pleas is also a matter of substance because they require the interpretation of one of the legal bases of the action and a precise assessment, both in fact and in law, of the claims made on the merits.

Thirdly, the argument that the claims based on Article 1252 of the Civil Code are inadmissible on the grounds that they are identical to those based on Article L. 225-102-4 of the Commercial Code naturally raises a number of preliminary questions of substance:

- First, the Pre-Trial Judge will have to analyse the injunctive relief sought by the Claimants and Intervenors on each of the legal grounds to determine how they are different;

- then, the Pre-Trial Judge will have to examine the factual grounds justifying the two types of claims, i.e. breaches of the duty of care in climate matters on the one hand, and the prevention of ecological damage on the other;

- Finally, the Pre-Trial Judge will have to interpret the two legal grounds put forward by the Claimants and Voluntary Intervenors.

Fourthly, the interest and standing of the Applicants and Voluntary Intervenors, contested by TOTALENERGIES, can only be assessed in relation to the claims made on the merits.

In general, interest and standing are legal issues of both form and substance, as emphasised by the doctrine and case law referred to above.

But this confusion is even more intricate in the present proceedings, since the claims seek to judicially enjoin TOTALENERGIES to, on the one hand, adopt vigilance measures to mitigate the risks and prevent the serious harm resulting from global warming to which the Claimant communities are exposed, and on the other hand, to prevent the worsening of the related ecological damage - which, according to the Claimants, justifies their interest in and standing to act.

These claims are not only complex and numerous, but above all they are based - primarily - on the Duty of Care Act, of which this is one of the first applications of case law. The only decisions handed down so far concern the jurisdiction of the judicial court and have simply admitted that the interest to act must be understood in a broad manner (cf. *infra*, §83).

The same conclusion can be drawn from claims based on Article 1252 of the Civil Code for the prevention and cessation of ecological damage, which again has not been applied by the case law.

It is obvious that all these issues are relevant to the merits of the case and will be much better assessed by the Court with the merits of the case.

In addition, the procedural delays that have elapsed since the introduction of the proceedings in January 2020 also contribute to the same interest of a proper administration of justice and a reasonable time for judgment. There is further justification for examining all these issues together with the merits of the case.

44. **Consequently, the Applicants and Voluntary Intervenors oppose the decision of the Preliminary State Examining Judge on these preliminary issues and expressly request that the examination of these grounds for dismissal be referred to the Court together with the merits of the case, in accordance with the provisions of Article 789 of the Code of Civil Procedure.**

2.3. In the alternative: the grounds of inadmissibility of the action are unfounded

45. If by any chance the Pre-Trial Judge were to consider himself competent to rule on the grounds of non-admissibility, without considering it necessary to decide a substantive issue beforehand, then he would be asked to reject all the grounds of non-admissibility raised by TOTALENERGIES, which are unfounded for the reasons set out below.

2.3.1. The general inadmissibility affecting all the Applicants and Voluntary Intervenors is unfounded

2.3.1.1. The subject matter of the proceedings has not disappeared since TOTALENERGIES' due diligence plan still does not comply with the claims of the Claimants

46. TOTALENERGIES maintains that the object of the Claimants' action has disappeared and that the consequences should be drawn from this, namely that the disappearance of the object of the claim at the origin of the proceedings would entail the extinction of the proceedings.

According to the Defendant, the subject matter of the action is "*limited to TOTALENERGIES' 2018 Compliance Plan*", which is no longer in force and has been replaced by several plans published since then, which have not been "*challenged by the Plaintiffs*" or "*formally served with a formal notice that would only pave the way for its legal challenge*"[41] .

This argument appears to be unfounded in law and in fact for the reasons set out below.

47. As a preliminary point, it should be noted that if the summons formally refers to the compliance plan published in 2019 and relating to the 2018 financial year (the "**2018 Compliance Plan**"), it is because the summons was issued on 28 January 2020. However, for three years now, TOTALENERGIES has been raising multiple procedural issues, first with regard to the determination of the competent court, and now with regard to manifestly unfounded grounds for dismissal, with the obvious aim of delaying the start of the proceedings on the merits. The Applicants and Voluntary Intervenors have therefore not had the opportunity to update their claims on the merits, which they will be able to do once the present incidents have been resolved.

A. In law: the duty of vigilance is a standard of prudent and diligent behaviour, the breach of which gives rise to a civil fault that does not require repeated formal notice

48. **Firstly,** it should be noted that the decisions cited by the Defendant in support of its claim are irrelevant.

TOTALENERGIES first cites three appellate decisions that find the proceedings terminated in cases that are radically different from the present proceedings:

- In the judgment cited by the Montpellier Court of Appeal of 16 November 2021[42] , a municipality had summoned the occupant of a premises in order to obtain his eviction. The Court found, at the request of the municipality, that the proceedings were terminated on the grounds that the occupant had already vacated the premises.

- In the cited judgment of the Paris Court of Appeal of 19 January 2017[43] , the respondent in a social security dispute had not appeared in person and had not been duly represented to support her appeal. The Court

[41] Incidental findings no. 1, p. 29, no. 104.
[42] CA Montpellier, 16 November 2021, RG n° 21/01482.
[43] CA Paris, 19 January 2017, RG n° 14/00022.

then ruled that it was appropriate to "*establish the extinction of the proceedings*", the appeal having become "without object".

- In the judgment cited by the Versailles Court of Appeal of 30 March 2011[44] , the appellant had made a request to replace an expert; but the expert having completed his mission by submitting his report, his appeal had become moot. The Court then decided that "*the disappearance of the object of the claim at the origin of the proceedings*" entails the extinction of the proceedings.

TOTALENERGIES then relies on another series of decisions relating to the unfounded nature of certain requests for disclosure of documents, since these documents were submitted *after the fact*. None of these decisions therefore concern the disappearance of the object of the applicant's action:

- In the decision of the Commercial Court of Douai of 27 November 2009[45] , a partner in a limited liability company had filed an application for interim measures to obtain the company's accounting documents. The judge did not dismiss the claimant, contrary to what was stated in the opposing pleadings, but simply noted that some documents had been handed over, and ordered the defendant to hand over copies of other documents.

- In the decision of the Commercial Court of Versailles of 8 February 2017[46] , which is very similar, a partner also requested the communication under penalty of various documents relating to his company; as several of these documents had been transmitted to him, the court ruled that "*a penalty can only be imposed for the transmission of precisely designated documents, and not those already transmitted*".

- Finally, in a decision of the Paris Commercial Court of 11 July 2013[47] , the claimant who had been given "*most of the requested documents*" at the bar was dismissed from his request for an injunction to communicate them.

The latter three decisions were therefore purely formal requests for the simple disclosure of documents.

These decisions have nothing to do with the requests made under the provisions of the Duty of Care Act in the context of the present litigation. It is not only the publication of a plan that is required of TOTALENERGIES, but also (i) the determination and (ii) the effective implementation of due diligence measures to identify risks and prevent serious harm, of which the plan is merely *the instrument*.

49. **Secondly**, the purely formalistic view of the due diligence obligations laid down by the Law of 27 March 2017 adopted by the Defendant, when it states that "*only the 2021 Due Diligence Plan is currently in force*"[48] , is in flagrant contradiction with the provisions of Article L. 225-102-4 of the French Commercial Code, as clarified by parliamentary works and doctrine.

In Report No. 2628 of the Law Commission of the National Assembly, the notion of reasonable measure included in the proposed law is defined by reference to the UN Guidelines and the notion of "*due diligence*", which consists of

> In this context, it is important to note that the term "external standard" refers to "*a set of appropriate measures to achieve an objective defined in a national or international standard, to respect a minimum level of prudence in taking into account an external standard*" (**Report No. 2628 of the Law Commission of the National Assembly, p. 31).** [49]

According to the rapporteur of the law in the National Assembly, MP Dominique Potier:

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[44] CA Versailles, 30 March 2011, RG n° 10/01971.
[45] T. com. Douai, 27 Nov. 2009, RG No. 2009000955, cited p. 29, §pt 100 of the incidental conclusions No. 1.
[46] T. com. Versailles, 8 Feb. 2017, RG n° 2016R00367, cited p. 29, §pt 100 of the incidental conclusions n°1adverses.
[47] T. com. Paris, 11 July 2013, RG n° 2013037720.
[48] Incidental findings no. 1, p. 29, no. 104.
[49] Available at the following link: https://www.assemblee-nationale.fr/14/pdf/rapports/r2628.pdf

> "*International law, i.e. the principles defined by the Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN) in 2011, serves as the basis for what could be described as a 'code of labour and environmental good conduct' at the international level*" (**Report No. 2628 of the National Assembly's Law Commission, p. 49**).

Thus, the due diligence plan - which must be included in the management report - is only the material support of this standard of behaviour. Its purpose is to make public the mapping of risks as well as the mitigation and prevention measures taken by the company to enable third parties to exercise control and, if necessary, to bring a civil liability action based on Article L. 225-102-5 of the Commercial Code, or an injunction action based on Article L. 225-102-4 of the same code.

This conception of the duty of care was expressly retained by the legislator. In fact, during the preparatory work, although the Senate had initially wanted to include the duty of care mechanism in the limited framework of "*reporting*", an amendment (No. CL10) presented by MP Dominique Potier and adopted on 21 November 2016 nevertheless went back on this formalist vision "*to restore the philosophy of the National Assembly's initial proposal*". As the government had stressed when the law was adopted:

> "*The obligation placed on the companies concerned is therefore not a simple documentary obligation*" (**Observations of the Government on the law on the duty of care of parent companies and ordering companies, *JORF* n°0074 of 28 March 2017**)[50] .

A textual analysis of Article L. 225-102-4 of the French Commercial Code, which specifies twice that the vigilance plan must be implemented in an "*effective*" manner, makes this clear:

- The use of this term appears first of all to qualify the reality of the deployment of the vigilance plan : "*Any company* (concerned) *establishes and implements effectively a vigilance* plan";

- But also, to qualify the implementation report imposed by the law: "*The vigilance plan and the report on its effective implementation are made public (...)*".

This means that the parent company or principal subject to the duty of care is therefore obliged, on the one hand, to adopt and make public a due diligence plan and, on the other hand, to ensure that it is effectively implemented and that the due diligence measures described therein are complied with, so that the risks of harm are effectively prevented**.**

50. **Thirdly**, any breach of the duty of care - defined as a standard of prudent and diligent behaviour as set out above - gives rise to a civil fault, likely to engage the liability of its author and justify an injunction by the judge in the event of non-compliance by the company with its obligations under its duty of care.

In its decision No. 2017-750 DC of 23 March 2017, the Constitutional Council confirmed the civil nature of the duty of care:

> *"By the contested provisions, the legislator, on the one hand, has introduced a **new civil obligation** and, on the other hand, has attached to it a sanction having the character of a punishment*.

The explanatory memorandum of the bill by Dominique Potier, MP, stated at first reading that failure to comply with the duty of care constituted a civil fault:

> *"Since the duty of vigilance has the precise objective of avoiding the occurrence of damage, the judge will have to consider the causal link between the quality and effectiveness of the vigilance plan and the legal liability of the company in the event of damage or infringement of fundamental rights. Since the non-existence of the prevention plan or its inadequacy constitutes a **civil fault**, the company's liability may be*

[50] Available at the following link: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290672

> *established if it can be proved that the implementation of a preventive measure could have avoided or minimised the damage caused*.

The report of the mission to evaluate the relationship between justice and the environment, drawn up jointly by the General Inspectorate of Justice (IGJ) and the General Council for the Environment and Sustainable Development (CGEDD)[51] , expressly states the civil nature of the obligations arising from the duty of vigilance in a section entitled "*Vigilance pacts, a new civil obligation for companies*".

As the doctrine points out:

> *"The duty of care, introduced by the proposed law, imposes a standard of behaviour, the disregard of which establishes a civil fault**.** The duty to act creates a fault of abstention. This standard of behaviour will probably be defined in relation to the vigilance practices of other companies. They will have the role of a standard, in other words an instrument for measuring behaviour and situations in terms of normality, as mentioned in the doctrine*" (**N. Cuzacq, "Le devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre : Acte II, scène 1", Recueil Dalloz 2015. 1049**)

This has two sets of consequences in the event of the republication of a due diligence plan after the filing of an action on the basis of Article L. 225-102-4 of the Commercial Code.

On the one hand, such a publication is not, on its own, likely to remove the civil fault resulting from a failure by a company to comply with its duty of care, unless the latter maintains and demonstrates that the appropriate vigilance measures have been taken and effectively implemented.

In any event, the publication of a new plan does not remove the subject matter of the action if there is still a dispute between the parties about the content and quality of the due diligence plan that was the subject of the formal notice, which is the case here (see *below,* B).

On the other hand, the simple publication of a new plan does not make it necessary to reiterate the formal notice, contrary to what TOTALENERGIES maintains.

In this respect, a parallel can be drawn with non-performance in contractual matters, since some authors consider it unnecessary to put a debtor on notice several times in the event of a breach of a successive or continuous obligation, such as the obligation to maintain the rented premises which is incumbent on the lessor or the obligation to provide services:

> *"It does not seem possible to require, for practical reasons, a continuous renewal of the summons in case of interruption of the execution"* (**B. Grimonprez, "Mise en demeure", Rép. civil, Dalloz, n° 33**)

> In the presence of a continuing obligation, *'case law consistently considers the formality unnecessary, since it would be unreasonable to require the creditor to proceed to a continual renewal of his summons*' (**M. Poumarède, Ph. Le Tourneau, 'Exécution par équivalent', Droit de la responsabilité et des contrats, Dalloz, 2021, No 3213.84**)

In the context of the implementation of the injunction to publish a compliance plan in accordance with legal obligations, provided for in Article L. 225-102-4 of the Commercial Code, a new formal notice cannot be required from the company after each new publication of the plan. Indeed, since these are successive obligations (publication of the due diligence plan and annual report on its implementation) and ongoing obligations (effective implementation of the due diligence plan), there is no justification for repeating the initial formal notice noting the breaches and ordering the company to comply with its due diligence obligations.

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[51] *"Une justice pour l'environnement. Mission d'évaluation des relations entre justice et environnement*" CINOTTI, Bruno; LANDEL, Jean-François; DELBOS, Vincent; ATZENHOFFER, Daniel; SIMONNOT, Carol; IGJ and CGEDD, October 2019.

The solution would obviously be different if the defendant company complied in all respects with the initial demands of the formal notice, in which case the litigation would lose its purpose.

In this respect, it was specifically ruled, in another dispute involving the interpretation of Article L.225-102-4 of the Commercial Code, that the publication of a new due diligence plan following the summons did not have the effect of rendering null and void the formal notice issued on the basis of a previous plan.

Indeed, in this case involving the company EDF, the pre-trial judge specified that :

> *"The solution adopted concerns the admissibility of the initial summons and does not prevent the claims from evolving during the course of the proceedings so that, contrary to what the plaintiffs maintain, it does not have the consequence of rendering null and void, as soon as a new due diligence plan is published, the legal action initiated on the basis of a previous plan*" (**Exhibit n°23**)

It is therefore clear that **the publication of a new due diligence plan does not require new formal notices to be sent to the defendant company, which updates its due diligence plan every year**. Such a requirement would have no basis, since it would add to the legal provisions of the Code of Civil Procedure and the Commercial Code, which make no provision for such an obligation.

In practice, such reasoning would mean considering as inadmissible any action that had not been judged before the publication of a new plan, making it totally impossible to bring a case before the judge, particularly on the merits, especially in view of the time taken by the courts, which generally exceeds one year and can be much longer in the case of procedural incidents (as in this case).

51. **Consequently, the Defendant is manifestly ill-founded in arguing that the subject matter of the proceedings has disappeared, since (i) a breach by a company of its duty of care, given the nature of the obligations laid down by the Law of 27 March 2017, cannot be considered to have disappeared by the mere publication of a subsequent plan, and (ii) consequently, there is no need to reiterate the formal notice, all the more so in the absence of any legal obligation to that effect.**

B. In this case, TOTALENERGIES' Compliance Plan still does not provide for appropriate climate vigilance measures and its breaches of duty of care remain

52. **Firstly,** it should be recalled that the Plaintiffs have initiated the present legal action in order to ensure that the Defendant complies with the obligations set out, in particular, in Article L. 225-102-4 of the French Commercial Code.

The demands made in the summons are not limited to the mere publication of a plan and are also aimed at compelling TOTALENERGIES to implement it effectively, as demonstrated by the operative part:

> ***"ORDER** TOTAL S.A. to publish, within six months of the service of the decision, a new compliance plan containing the following measures under the heading of "appropriate actions to mitigate risks or prevent serious harm", **which it will undertake to publish and implement (...)**"* (**Summons**, p. 49).

53. **Secondly**, neither the published 2018 Vigilance Plan, nor those that followed, meet the demands made in the summons.

It is recalled that TOTALENERGIES' due diligence claims, as formulated in the summons, are as follows:

- ***"ORDER** TOTALENERGIES to publish, within six months of the date of service of the decision, a new due diligence plan including in the "risk identification" chapter of its due diligence plan :*
    - *The risks of global warming beyond 1.5°C with reference to the most recent relevant IPCC work and the objectives of the Paris Agreement, and specifying the risks of serious harm to*

human rights and fundamental freedoms, human health and safety, and the environment, in particular :

- *Risk of serious damage to terrestrial ecosystems,*
- *Risk of serious damage to marine ecosystems,*
- *Increased heat spikes,*
- *Increased risk of drought,*
- *Increased risk of heavy rainfall and flooding,*
- *Risk of flooding due to sea level rise,*
- *Risks of serious violations of human rights and fundamental freedoms ;*

- *Its contribution, through its activities, to global greenhouse gas emissions and climate change risks, amounting to approximately 1% of global emissions;*

- *The incompatibility with the respect of a GHG emission reduction trajectory limiting global warming to 1.5°C of the continuation of exploration projects for new hydrocarbon deposits intended for exploitation;*

- *Its contribution to the depletion of the global carbon budget available to limit global warming to 1.5°C and to the aggravation of the risks induced by the continuation of hydrocarbon exploitation projects (oil and gas);*

- *The risks associated with the use of CO2 capture and storage technologies, known as CCUS, within TOTAL's GHG emission reduction trajectories;*

- *The risks associated with exceeding the global carbon budget consistent with limiting global warming to 1.5°C above pre-industrial levels, and to analyse the risks resulting from its own activities according to the TOTAL Group's growth and production assumptions for 2050.*

- *A complete and exhaustive mapping of the risks resulting from its activities and in particular of the GHG emissions emitted by each sector of activity and each project, including their primary energy mix;*

- *An analysis and prioritisation of each of these risks according to their severity to highlight the importance of climate-related risks.*

- ***ORDER** TOTALENERGIES to publish, within <u>six months of the date of service of the decision</u>, a new vigilance plan including the following measures under the heading of " adapted actions to mitigate risks or prevent serious harm ", which it will undertake to publish and implement:*

<u>As a principal,</u>

- *Align with a direct and indirect GHG emissions reduction trajectory (scope 1, 2 and 3) compatible with limiting global warming to 1.5°C without overshoot to achieve carbon neutrality by 2050, which implies :*

  - *Align its activities with the "P1" GHG emission reduction pathway as defined in 2018 by the IPCC, in that this is the only pathway that, given current scientific and technological knowledge, makes it possible with an acceptable degree of probability to limit global warming to 1.5°C without overshoot;*

  - *Set interim targets for reducing the carbon intensity of its products in line with this trajectory.*

- *Reduce its gas production by -25% in 2030 and -74% in 2050 (compared to 2010);*
- *Reduce its oil production by -37% in 2030 and -87% in 2050 (compared to 2010);*
- *Implement an immediate halt to the exploration and exploitation of new hydrocarbon deposits;*

In the alternative :

- *To set targets aimed at containing the rise in the average temperature of the planet to 1.5°C in order to achieve carbon neutrality by 2050;*
- *To cover all greenhouse gas (GHG) emissions, both from its operations and from its products (Scopes 1, 2 and 3) over the medium and long term;*
- *Rely on quantitative indicators such as GHG intensity indicators (GHG emissions per unit of energy) or other appropriate quantitative indicators, to align its targets with a trajectory compatible with a global warming of 1.5°C;*

In any case :

- *Align with a direct and indirect emissions reduction pathway consistent with the Paris Agreement target;*
- *Reduce its net emissions by at least 40% in 2040 (compared to 2019) with an annual reduction of 1.8%;*
- *Reduce its hydrocarbon production by 35% in 2040 (compared to 2019) with an annual reduction of 1.7%.*
- *Reduce its net emissions by at least 40% in 2040 (compared to 2019) with an annual reduction of 1.8%;*
- *Halt exploration and application for new hydrocarbon exploration permits;*
- *Implement a gradual cessation, by 2040, of the search for and exploitation of hydrocarbon deposits by committing to leave 80% of known reserves in the subsoil in accordance with the objective defined by Law No. 2017-1839 of 30 December 2017, known as the "Hulot" law;*

- ***50,000** per day of delay from the expiry of the six-month period for compliance with the vigilance plan;"*

However, TOTALENERGIES (i) does not claim to have carried out such risk mapping, (ii) nor does it demonstrate that it has taken appropriate measures to mitigate risks or prevent serious climate-related harm in accordance with the demands of the formal notice to limit global warming to 1.5°C in accordance with the objective of the Paris Agreement.

The Voluntary Interveners emphasised this in their conclusions in voluntary intervention of 29 July 2022 :

> "*Indeed, despite the formal notice sent to it on 19 June 2019, the vigilance plan published by TOTALENERGIES in its 2021 universal registration document (**Exhibit No. 24**) is still not aligned with the objectives of the Paris Agreement, compliance with which would mitigate the risks and prevent serious harm resulting from a warming beyond the 1.5°C threshold.*"[52] .

[52] Conclusions in voluntary intervention of 29 July 2022, p. 12

i. **Firstly, with regard to risk mapping**, the risk map published by TOTALENERGIES in its 2021 Compliance Plan clearly does not meet the above-mentioned requirements, since it only states

> *"Climate change is a global risk to the planet that is the result of various human actions including energy consumption. As an energy producer, TotalEnergies is working to reduce its direct greenhouse gas emissions from its operated activities. Globally, greenhouse gas (GHG) emissions associated with TotalEnergies' operated facilities amounted to 37 Mt CO2e in 2021, excluding the COVID-19 effect, i.e. less than 0.1% of global emissions, which amounted to more than 59 billion tonnes per year in 2019(3). In addition, TotalEnergies is implementing a strategy to address the issues raised by climate change and is reporting on them in detail, in particular in its non-financial performance statement (see point 5.4 of Chapter 5), in accordance with Articles L. 22-10-36 and L. 225-102-1 of the French Commercial Code.*" (**Adverse Exhibit 23, p. 145**)

In other words, TOTALENERGIES begins by minimising its responsibility by referring to the global nature of climate change (as it does repeatedly in the context of this incident), before arguing:

- that it is reducing its direct GHG emissions[53] , without setting an absolute reduction target for its indirect emissions (scope 3) at the global level, which correspond to 437 Mt CO2e in 2021, according to TOTALENERGIES' Universal Registration Document 2021 (scope 1 + 2 + 3) (**Adverse Exhibit 24, pp. 302-303**). Together, these direct and indirect emissions constitute between 0.8% and 1% of global GHG emissions, levels equivalent to French territorial emissions (**Pièce n°40**).

  Paradoxically, TOTALENERGIES announces in other places in its 2021 Universal Registration Document targets for reducing its indirect GHG emissions (scope 3), but these are inadequate because they are neither sufficient, effective nor formulated in absolute terms at the global level (**Pièce n°40p. 8**), as demonstrated below.

  The inclusion of indirect emissions (scope 3), which make up the majority of TOTALENERGIES' emissions, is however essential to assess its contribution to climate risks, as stated by UN-HLEG:

  > *"Targets should include emission reductions from the entire value chain and activities of a non-state actor, including scope 1, 2 and 3 emissions for companies*" (**Pièce n°48, p. 17**).

- that it is implementing a climate strategy, called *"A vision of TotalEnergies Net Zero in 2050, together with society"*[54] , which it reports on more fully (i) in other documents that are not part of the Compliance Plan, which does not include all of these commitments - and which in any case remain **totally contradictory to the objectives of the Paris Agreement, as demonstrated below -** and in particular (ii) in its extra-financial performance statement, which only aims to identify the impact of climate risks on the company's financial health (and not the climate risks that TOTALENERGIES' activities pose to the environment and human rights through its contribution to global warming)[55] (**Adverse Exhibit n°23, p. 308**).

It is thus clear that this risk mapping does not meet the legal requirements, both from a formal point of view (because of this reference to documents outside the vigilance plan), and in terms of substance, since it does not identify the risks associated with global warming on natural and human systems, nor does it analyse or prioritise them, as required by Article L. 225-102-4 of the French Commercial Code, and even less so with a "*sufficient level of detail*"[56] .

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[53] **Adverse Exhibit 23**, pp. 170 - 173.

[54] **Adverse Exhibit 23**, pp. 166 - 169.

[55] *"The identification and impact of climate change risks are an integral part of TotalEnergies' overall risk management processes. They include transition risks, including those related to regulatory changes such as the introduction of carbon taxes, as well as physical risks related to the effects of climate change. The impact of these risks is analysed for the Company's assets and for investment projects (see point 3.1.1 of chapter 3)*. (Adverse Exhibit 24, p. 287).

[56] Sherpa, Reference Guide for Vigilance Plans, p. 51

The IPCC's scientific experts recently pointed this out, noting that TOTALENERGIES' climate strategy did not :

> *"There is no mention of the dominant role of cumulative CO2 emissions on warming to date and in the future, which is the key element of the IPCC's conclusions, as each additional tonne of CO2 in the atmosphere contributes to further warming.* ***There is also nothing on the impacts of climate change****, nor on the financial risks of devaluation of fossil fuel assets*. (**Pièce n°54**).

ii. **With regard to appropriate risk mitigation or serious harm prevention actions**, the actions requested in the subpoena are essentially aimed at ensuring that TOTALENERGIES is on a GHG emissions reduction trajectory that is consistent with the Paris Agreement's objective of limiting global warming to 1.5°C[57] .

TOTALENERGIES also acknowledges in its Universal Registration Document (but not in the section on the Compliance Plan):

> "*The global energy mix must evolve if the goals of the Paris Agreement are to be met.*" (**Adverse Exhibit 23, p. 18**).

Still outside the vigilance plan, but in the first pages of the Universal Registration Document 2021, TOTALENERGIES states in this respect its **"***net zero ambition 2050, together with society, in line with the objectives of the Paris Agreement***"** which consists of the following "objectives":

> *" 1. Achieve carbon neutrality (zero net emissions) by 2050 or earlier for TotalEnergies' operated activities (Scope 1+2); [...] 2. Achieve carbon neutrality (zero net emissions) by 2050 or earlier for indirect GHG emissions related to its customers' use of energy products (Scope 3), together with society*" (**Adverse Exhibit 23, p. 18**).

TOTALENERGIES states that it is based "in *particular on the Net Zero vision of the IEA*" (**Adverse Exhibit 23, p. 12**).

The UN-HLEG, which makes specific recommendations to private actors to define and implement carbon neutrality commitments (see *above*, § 9), is a good example of how to do this.9), considers that they should "*ensure that any claim to be net zero or net zero aligned is based on actions, not just announcements*" (**Pièce n°48p. 16**)[58] .

Specifically, while this long-term objective seems adequate, TOTALENERGIES is not taking any of the necessary short- and medium-term measures identified by the experts to achieve it, namely, on the one hand, **stopping the exploration and exploitation of new oil and gas fields** and, on the other hand, **reducing its GHG emissions to align with a 1.5°C trajectory compatible with the remaining carbon budget**.

- **On the one hand,** in order to achieve the goal of carbon neutrality by 2050, the most recognised experts in the field are unanimous on the need to **reduce fossil fuel production, which implies immediately stopping all new oil and gas exploitation projects**.

As recalled above (cf. *supra*, §10), any new oil or gas infrastructure contributes to the risk of exceeding the remaining carbon budget, according to the IPCC and the IEA.

For this reason, UN-HLEG considers that :

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[57] Mainly: "*To align with a direct and indirect GHG emissions reduction pathway (scope 1, 2 and 3) compatible with limiting warming to 1.5°C without overshoot to achieve carbon neutrality in 2050,".* In the alternative: "*To set targets aimed at containing the rise in the average temperature of the planet to 1.5°C in order to achieve carbon neutrality in 2050"*. In any case: "*To align with a direct and indirect emissions reduction pathway consistent with the objective of the Paris Agreement"* [which is to do everything possible to limit global warming to 1.5°C].

[58] Free translation. Original quote: "*ensuring that any claims of being net zero or net zero aligned are based on actions, not just announcements".*

> *"Non-state actors cannot claim to have a "net zero" trajectory while continuing to build or invest in new fossil fuel production facilities*"[59] (**Pièce n°48, p. 7**).

TOTALENERGIES' Vigilance Plan obviously does not include any measures in this sense, on the contrary, as it is stated in its Vigilance Plan 2021:

> *"TotalEnergies is targeting a peak in oil production within the decade, followed by a reduction to around 1.4 Mboe/d in 2030. For gas, the target growth between 2015 and 2030 is around 50% (from 1.3 Mboe/d to 2 Mboe/d) and for electricity, the target is 120 TWh in 2030, compared to 1.7 TWh in 2015.*" (**Adverse Exhibit 23, p. 166**).

In other words, TOTALENERGIES expects its oil and gas production to grow in a way that is deeply incompatible with the above-mentioned trajectories.

As noted by Dr. Yann Robiou du Pont, a climatologist consulted by the concluding parties for the purposes of the present proceedings:

> *"The production peaks forecast by TotalEnergies in 2025 for oil and 2030 for gas are not in line with the IPCC's "no overshoot" 1.5°C scenario and the IEA's NZE scenario, which foresees an immediate end to oil and gas field expansion and a decline in fossil fuel use of around -2.7% for oil and -3.6% for gas[60]* " (**Pièce n°40, p. 9**).

The NGO *Oil Change International* also points out that :

> *"The company claims to be "inspired" by the IEA's 1.5°C scenario. However, even though the IEA has found that there is no room for new oil and gas production in a 1.5°C scenario, TotalEnergies' criteria for approving new hydrocarbon projects is that they must be less greenhouse gas intensive than the company's average portfolio - and highly profitable and low cost*" (**Pièce n°63Exhibit 63, p. 23**)[61] .

The same NGO highlighted in a report published in November 2022 that TOTALENERGIES is, among independent multinationals, the leading oil company in terms of expansion in 2022 and the second in terms of projections to 2025 (**Pièce n°64pp. 10 and 15**).

- **On the other hand,** as the 6th IPCC report published in 2022 established, reaching the ultimate goal of carbon neutrality in 2050 is in itself insufficient if emissions are not substantially reduced immediately:

> *" All modelled global trajectories that limit warming to 1.5°C (>50%) with no or limited overshoot, and those that limit warming to 2°C (>67%), imply **rapid and deep, and in most cases immediate, reductions in GHG emissions across all sectors***." (**Pièce n°43C.3, p. 24**)[62] .

In other words, setting a target only for 2050 without respecting the available carbon budget and without reducing GHG emissions now, with short and medium term targets (2025, 2030), does not allow us to respect the trajectory limiting global warming to 1.5°C.

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[59] Free translation. Original quote: "Non-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply. Coal, oil and gas account for over 75% of global greenhouse gas emissions. net zero is entirely incompatible with continued investment in fossil fuels".

[60] **Pièce n°45**p. 79 - 81 and p. 445.

[61] Free translation. Original quote: "*The company claims to be "inspired" by the IEA's 1.5°C-aligned scenario. However, even though the IEA found that there is no room for new oil and gas production in a 1.5°C-aligned scenario, TotalEnergies' criteria for approving new hydrocarbon projects is only that such projects must have a lower greenhouse gas intensity than the company's portfolio average - and be highly profitable and low-cost.*

[62] Free translation. Original quote: "*All global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, and those that limit warming to 2°C (>67%), involve rapid and deep and in most cases immediate GHG emission reductions in all sectors*.

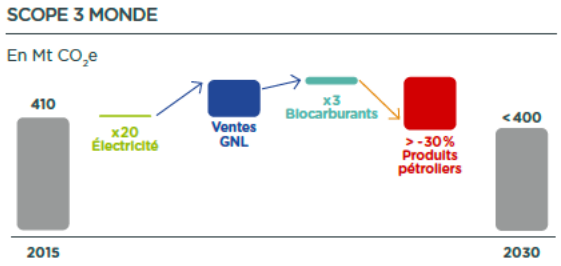
However, as mentioned above, TOTALENERGIES' short- and medium-term strategic choices, in particular the oil and gas production peaks planned between 2025 and 2030[63] , contribute to greatly exceeding the carbon budget available for a warming limited to 1.5°C, in direct contradiction with the scenarios compatible with the objectives of the Paris Agreement, the IEA, the IPCC and the UN-HLEG.

TOTALENERGIES itself openly admits that its ambitions are not compatible with the so-called "1.5°C" objectives in the short term:

> *"We do not believe that our societies can in the short term follow the trajectory proposed by this scenario, we share the vision of the 2050 end point described by the IEA needed for carbon neutrality*" (**Adverse Exhibit 30, p.5**).

TOTALENERGIES' 2022 GHG emission reduction and fossil fuel production targets are therefore necessarily incompatible with this trajectory.

The objective of "*reducing Scope 3 GHG emissions from petroleum products sold worldwide by more than 30% compared to 2015*" (**Adverse Exhibit 23, p.18**) is devoid of any effectiveness since the group's total emissions will remain stable overall (around 400Mt Co2e) since it is composed of an increase in gas sales, as illustrated by the following graph from the *Sustainability Climate 2022 Progress Report* of TOTALENERGIES (**Adverse Exhibit 30, p. 39**):



However, as the climatologist Dr. Yann Robiou du Pont, consulted for the purposes of this procedure, points out

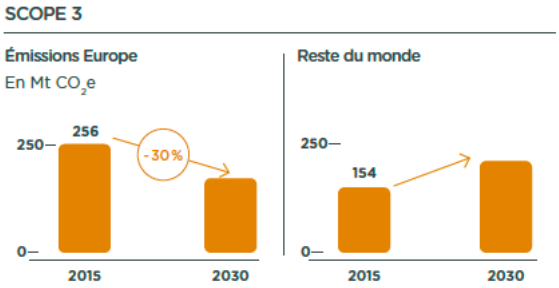
> *"The IEA indicates that the share of gas should decrease by 3.6% annually between 2021 and 2030, which corresponds to a 30% decrease between 2021 and 2030. However, if scope 3 emissions as a whole (oil + gas) are not reduced in line with the NZE or other 1.5°C scenarios, then TotalEnergies will not contribute sufficiently to the 1.5°C target.*" (**Pièce n°40, p. 8**).

In the words of the NGO *Oil Change International:*

> *"TotalEnergies strongly promotes the myth that fossil gas is a transition fuel. TotalEnergies falsely claims that fossil gas, and the hydrogen produced from it, are 'allies in the energy transition'*" (**Pièce n°63pp. 23-24**).

The target to "*reduce GHG emissions from customer use of energy products (Scope 3) in Europe, in absolute terms, by at least 30% compared to 2015*" is also ineffective because TOTALENERGIES will simply shift its emissions to another part of the world, as evidenced by the following graph also taken from TOTALENERGIES' *Sustainability Climate 2022 Progress Report* (**Adverse Exhibit 30, p. 39**):

[63] *"TotalEnergies is targeting a peak in oil production within the decade, followed by a reduction to around 1.4 Mboe/d in 2030. For gas, the target growth between 2015 and 2030 is around 50% (from 1.3 Mboe/d to 2 Mboe/d)*" (**Adverse Exhibit 23, p. 166**)



These reduction targets, apart from being manifestly devoid of any real effectiveness, are in any case insufficient in relation to the target of reducing global GHG emissions by around 45% by 2030 indicated by the IPCC in the 1.5°C special report and recognised by the international community as being necessary in the Glasgow Pact (cf. *supra,* §3).

54. In this regard, numerous reports from experts and civil society actors highlight TOTALENERGIES' persistent climate failure and conclude that it has still not taken and implemented the measures required to ensure compliance with the Paris Agreement, despite its latest commitments.

TOTALENERGIES' climate "strategy", as well as the actions described in its 2021 Compliance Plan, are "*grossly inadequate*" in this respect, as highlighted in a report published in May 2022 by *Oil Change International* :

> "*Despite the grandiose rhetoric around the "transformation" effected by Total's name change to TotalEnergies in 2021, the company has no Paris Agreement-aligned plan to phase out fossil fuel production, nor any exit date for fossil fuel production.*" [64] (**Pièce n°63, p. 23**).

Similarly, a report published by the NGO Reclaim Finance analysing TOTALENERGIES' climate strategy for 2022 clearly states:

> *"According to our calculations based on the company's own carbon intensity projections, the French oil and gas giant is not on track to meet the goal of limiting global warming to +1.5°C. The company may be committed to achieving carbon neutrality by 2050, but it is not planning or committed to reducing its greenhouse gas (GHG) emissions sufficiently to stabilise global warming below 1.5°C. Even under the conservative assumption that TotalEnergies meets its emissions targets by 2050 and reduces production in line with the IEA's 1.5°C scenario based on the "Net Zero" scenario (...), the company will have emitted at least 31.8% more GHGs than are allowed under a 1.5°C compatible carbon budget. As TotalEnergies will increase its production levels until at least 2024, it will exceed its share of the remaining carbon budget to limit global warming to 1.5°C from 2035. The overrun will occur even sooner if Total increases production until 2030 as announced."*[65] (**Pièce n°64, p. 4**).

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[64] Free translation. Original quote: "Despite the grandiose rhetoric around "transformation" in its 2021 rebrand from Total to TotalEnergies, the company has no Paris-aligned plan to phase out fossil fuel production, nor any stated end date for fossil fuel production.

[65] Free translation. Original quote: "based on our calculations using the company's own carbon intensity projections, the French oil and gas giant is not on track to meet the 1.5°C climate goal. The company may have committed to achieve carbon neutrality in 2050, but is not planning or committed to the deep greenhouse gas (GHG) emissions cuts required to stabilize global warming below 1.5°C. Even under the conservative assumption that TotalEnergies does reach its emissions targets by 2050 and reduces its production in line with the IEA's Net Zero-based 1.5°C scenario (referred to as the 1.5°C scenario in this briefing),1 the company will have emitted at least 31.8% more GHG than what is authorized under a 1.5°C compatible carbon budget. Given TotalEnergies will increase production levels until at least 2024, it will be overshooting its share of the remaining carbon budget to limit global warming to 1.5°C as soon as 2035. The overshoot will happen even earlier if Total increases production until 2030 as announced.

Moreover, TOTALENERGIES' short- and medium-term climate "strategy" had already been judged by the *Transition Pathway Initiative* (TPI) in the autumn of 2021 because of its inconsistency with the commitment to carbon neutrality by 2050:

> *"We analyse the alignment of companies not only in the long term (i.e. 2050), but also in the short and medium term (e.g. 2030).* ***Our analysis clearly shows that companies such as TotalEnergies and RWE are not aligned in the short term***"[66] (**Pièce n°66**).

The World Benchmarking Alliance **(WBA),** an alliance created in 2018 to accelerate, among other things, the global decarbonisation and energy transformation of the private sector **in partnership with, among others, ADEME (the French public agency for ecological transition),** concludes similarly in its Climate and Energy **2021** "*Benchmark"*, which ranks high-emitting companies:

> *"Total's emissions projections for scope 1 and 2 and in scope 1, 2 and 3 do not indicate an improvement in the company's alignment with its 1.5°C trajectory*"[67] (**Pièce n°67**).

55. Assuming that the elements included in TOTALENERGIES' climate "strategy"[68] , i.e. excluding the compliance plan[69] , which only includes some of them - which constitutes a first formal breach of Article L225-102-4 of the French Commercial Code - can be considered as actions to mitigate climate risks and prevent serious harm, **these are still insufficient because the short and medium-term objectives do not allow the company to align itself with a 1.5°C warming scenario.**

This analysis is further confirmed by the climatologist Dr Yann Robiou du Pont, who comes to the same conclusion:

> *"Total's strategy does not demonstrate alignment with the IPCC and IEA 1.5°C trajectories. Based on the existing literature, TotalEnergies is moving away from achieving the objectives of the Paris Agreement*" (**Pièce n°40, p. 9**)

56. **TOTALENERGIES' manifest breaches of its legal obligations under its duty of care, characterised in the letter of interpellation of 2018, the formal notice of 2019 and the summons issued in 2020, therefore persist, and even worsen in view of TOTALENERGIES' strategy to increase its oil and gas production**.

57. **In addition, it** will be emphasised that the plaintiffs also base their action on the provisions of Article 1252 of the Civil Code with regard to the prevention of damage caused to the environment. However, TOTALENERGIES has not adopted any of the measures requested at the stage of the summons in order to prevent serious environmental damage resulting from global warming. The Defendant is moreover well aware of the weakness of the plea based on the disappearance of the object of the action and, in an attempt to remedy this, argues that the action based on Article 1252 of the Civil Code would be "artificial" because it is identical (cf. *infra*, 2.3.1.3).

As a result of the above, TOTALENERGIES has still not published and implemented a due diligence plan that clearly complies with the legal provisions and allows for the identification, prevention and mitigation of the risks of serious harm to the atmosphere and the climate caused by its activities.

The purpose of the action, aimed at requiring TOTALENERGIES to publish and effectively implement a compliance plan in accordance with the provisions of Article L. 225-102-4 of the French Commercial Code and the objectives of the Paris Agreement, has therefore not disappeared.

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[66] Free translation. Original quote: "*Similarly, we analyse the alignment of companies not only in the long term (i.e., 2050), but also in the short and medium term (e.g., 2030). It is clear from our analysis that companies such as TotalEnergies and RWE are not aligned in the short term*".

[67] Free translation. Original quote: "Projections for Total's scope 1 and 2 and scope 1, 2 and 3 emissions intensities do not indicate an improvement in the company's alignment with its 1.5°C pathway".

[68] DEU Chapters 1.3 and 5.4 - **Adverse Exhibit 23**; Sustainability & Climate Progress Report - **Adverse Exhibit 30**

[69] Chapter 3.6 of the EDU - **Adverse Exhibit 23**

2.3.1.2. TOTALENERGIES was duly served with a formal notice, in accordance with Article L. 255-102-4 of the French Commercial Code

58. The lengthy discussion by the Defendant of the alleged inadmissibility of the claims under the Duty of Care Act for failure to comply with the requirement of prior notice is irrelevant, since in the present case **TOTALENERGIES was in fact given notice**.

In the present case, the Claimants even went beyond the legal requirements since they first contacted TOTALENERGIES, exchanged letters and participated in a meeting with its Chairman and CEO, Mr Patrick POUYANNE (**Exhibit n°2-1**). The Claimants, noting the inadequacy of its due diligence plan and the justifications given, then gave it regular notice to publish a plan that complied with the law (**Exhibit 3**).

59. In reality, TOTALENERGIES only formally contests this for (i) the associations France Nature Environnement and Amnesty International, (ii) the cities of Paris, Poitiers and New York (iii) and the Centre Val-de-Loire Region, in that these Claimants and Voluntary Intervenors did not send a formal notice to TOTALENERGIES (**A**)

It also claims that the content of the formal notice is not sufficiently precise in relation to the demands made in the summons (**B**).

A. The associations France Nature Environnement and Amnesty International, the cities of Paris, Poitiers and New York and the Région Centre Val-de-Loire are admissible despite their lack of formal notice

60. Contrary to what TOTALENERGIES claims, the fact that certain parties to the proceedings, whether Claimants (**a)** or Voluntary Intervenors (**b**), did not put TOTALENERGIES on notice is completely irrelevant.

a. The admissibility of the France Nature Environnement association and the Centre Val-de-Loire region despite their lack of formal notice

61. Article L. 255-102-4, II of the Commercial Code provides:

> *"Where a company which has been given formal notice to comply with the obligations provided for in I fails to do so within a period of three months from the date of the formal notice, the competent court may, at the request of any person having an interest in the matter, enjoin the company to comply with such obligations, where appropriate under a penalty payment*.

There is no requirement that the parties be identical between the notice of default and the summons issued. It is only required that the company has been duly served with notice. As indicated by the parliamentary works and the doctrine cited by TOTALENERGIES, it is important that the company has a minimum of three months to comply. This three-month period is also intended to encourage dialogue with the company and its representatives and to try to reconcile their points of view.

In this case, it is not disputed that the three-month period between the sending of the formal notice and the delivery of the summons was respected and that an exchange took place in the presence of the parties' representatives.

TOTALENERGIES can therefore not rely on any grievance.

62. It should also be noted that the texts and case law cited by TOTALENERGIES - apart from the fact that they concern fields as varied as they are unrelated to the present action based on the duty of vigilance and the prevention of ecological damage - only concern hypotheses in which the action is inadmissible **in the pure and simple absence of** a prior formal notice.

No consequences can be drawn from this in the present case, since the pre-litigation phase did take place and the parties even went beyond it in their discussions prior to the proceedings, as mentioned above.

63. Moreover, the requests of the France Nature Environnement association and the Centre Val-de-Loire Region are strictly identical to those of the other Claimants. There is therefore no specific request made by the latter that occurred after the formal notice was sent and to which TOTALENERGIES did not have the opportunity to respond.

b. The admissibility of the association Amnesty International and the cities of Paris, Poitiers and New York, despite the absence of a formal notice

64. The same reasoning can be applied in the case of women volunteers working in a secondary capacity.

Indeed, their requests correspond by definition to the main requests. Consequently, there is no separate request formulated by Amnesty International and the cities of Paris, Poitiers and New York for which TOTALENERGIES was not previously put on notice and to which it could not respond.

65. However, TOTALENERGIES goes so far as to state that "*the action based on Article L. 255-102-4 of the Commercial Code is therefore only open to certain parties who have complied with the prior legal formalism. In this respect, it is similar to an "attitudinal action*"[70] .

TOTALENERGIES thus distorts the concept of a designated action, which in no way concerns the sending of a prior formal notice but which relates to the interest in acting of certain persons, restrictively identified in the case of designated actions.

The assigned actions are defined as follows:

> *This is called* (...) *an "action attitudinal" in respect of claims that cannot be raised or opposed by all those who would have a legitimate legal interest in them. They are claims that can only be brought before the courts by certain legally determined persons, and for a legally defined interest*.[71]

[70] Incident findings 1, p. 58.

[71] Dalloz action Droit et pratique de la procédure civile, Chapter 212 - Verification of standing - M. Bandrac - 2021-2022, n°212.11

There are a number of actions in family law and contract law, particularly in cases of relative nullity, such as

- action in matters of paternity and maternity (Articles 325 and 327 of the Civil Code), which are reserved for the child;
- the action for nullity of the marriage on the grounds of relative nullity (Article 180 of the Civil Code), which is an action open to both spouses, or to the spouse whose consent was not free, and to the Public Prosecutor;
- the action for nullity of a marriage contracted without the consent of the father and mother, the ascendants or the family council (Article 182 of the Civil Code), which can only be invoked by those whose consent was required, or by the spouse who needed this consent;
- the action for nullity of the sale of another person's property (C. civ., art. 1599) which belongs only to the buyer.

It is clear from these examples that the action based on the duty of vigilance is not a restricted action, since the law has not reserved it for certain persons and has, on the contrary, opened it widely to *"any person who can justify an interest in acting*", the interest in acting having to be assessed in a "loose" manner (cf. *below*, on the interest in acting).

The jurisprudence and doctrines cited by TOTALENERGIES concerning the limitation of the legal right to act that would extend to incidental interventions are therefore inapplicable and irrelevant.

66. It should be noted that, on the contrary, case law has already recognised that voluntary accessory interveners do not have to comply with the same prior formalities as the main claimants. This is the case in particular in social matters, the Douai Court of Appeal having, for example, accepted the admissibility of a voluntary intervention before the judgment office without it having been made before the conciliation office:

> *"Article L1411-1 of the Labour Code provides that the industrial tribunal shall settle by conciliation disputes which may arise in connection with any employment contract subject to the provisions of this Code between employers or their representatives and the employees they employ.*
>
> *However, this conciliation prerequisite is not applicable to the main or accessory intervention of the trade union before the judgment office, the fate of the intervention not being linked to that of the main action*. (**CA Douai, 26 March 2021, n°17/03934**).

67. **Consequently, the Pre-Trial Judge will dismiss the objection raised by TOTALENERGIES and will declare (i) the associations France Nature Environnement and Amnesty International, (ii) the cities of Paris, Poitiers and New York (iii) and the Region Centre Val-de-Loire admissible despite the fact that they did not personally put the Defendant on notice.**

B. The formal notice sent to TOTALENERGIES constitutes a sufficient challenge, in accordance with the legal requirements

68. The purpose of the formal notice referred to in Article L. 225-102-4, II of the Commercial Code is to enable the debtor of the obligation of vigilance to comply within a period of three months.

69. **On the one hand,** in general in civil law :

> *"Traditionally, a formal notice is the act by which the creditor of an obligation asks the debtor to fulfil his commitment without delay. However, the process is more broadly defined as the notification by one person to another of what he believes he is entitled to expect from him. By giving formal notice, the holder of a right expresses his impatience by telling his debtor that it is time to act* (...) *It is also a comminatory act, in the sense that it contains an injunction for its addressee, coupled with a threat of sanction (judicial or otherwise).*

(...) *The formality has the dual aspect of warning the addressee that he must immediately change his attitude and of establishing that he is already at fault*"[72] .

In civil law, the formal notice has a threefold function: (i) to establish the debtor's failure to fulfil his obligations; (ii) to specify what he is required to do to meet his obligations; and (iii) to give him a last chance to perform voluntarily before bringing the matter before the court.

Furthermore, the mechanism of the formal notice is based on the notion of sufficient interpellation of the defaulting debtor, in accordance with the requirement of Article 1344 of the Civil Code (although it refers to formal notice in respect of an obligation to pay).

As one author quoted by TOTALENERGIES points out, sufficiency is defined as follows:

"The prescription that is the subject of the notice must be clearly identified"[73] .

70. **In the present case,** the formal notice of 19 June 2019 very clearly calls on the Defendant to address its breaches of its climate duty of care and the actions to be taken to remedy them.

Indeed, the Defendant was asked to publish a vigilance plan which should "*in particular include, without prejudice to other measures that may be identified :*

- *An identification of the risk resulting from the GHG emissions generated by the use of the goods and services your group produces,*

- *An identification of the risks of serious harm as outlined in the latest IPCC Special Report of October 2018,*

- *Appropriate actions to ensure that the group is on a trajectory compatible with global warming "well below 2°C above pre-industrial levels and continuing the action taken to limit the temperature rise to 1.5°C" without taking into account the possible use of technologies whose deployment remains subject to multiple constraints and heavy uncertainties*. (**Exhibit 3**).

This formal notice thus constituted a sufficient challenge to the Defendant, enabling it to clearly identify what was expected of it, namely to comply with its obligations in terms of climate vigilance, and in particular to take appropriate action to reduce its GHG emissions, reduce its hydrocarbon production, and more generally to align itself on a trajectory compatible with the objectives of the Paris Agreement.

The numerous exchanges, both written and oral, that took place before this formal notice, also show that TOTALENERGIES was fully aware of the concrete actions that were expected of it (**exhibits n°2-1 to 2-6**).

71. **<u>On the other hand,</u>** the Defendant, relying on the requirement of precision and firmness of the formal notice also underlined by the above-mentioned author[74] , maintains that "*the requests for injunctions subsequently presented to a court under this article must correspond to the requests that were the subject of a formal notice*"[75] . It argues that this is not the case here, on the grounds that "*the summons includes much more extensive requests to complete the due diligence plan and* ultimately *to modify the group's strategy*"[76] .

72. **In law**, and according to the terms of this author, the requirement of precision aims to allow the debtor '*to determine exactly the unfulfilled obligation of which the author avails himself*', as in the case of a lessor who requires his tenant to carry out repairs and who must specify which ones (**Cass. 3e civ., 11 May 1995, n° 93-18.317**). Whereas the

[72] B. Grimonprez, Rép. civil, Dalloz, "Mise en demeure", April 2017, update 2022, n° 1.
[73] N. Cayrol, "Art. 1344 to 1344-2 - Fasc. unique: Régime Général Des Obligations, Extinction des obligations, Mise en demeure du débiteur, Jurisclasseur code civil", May 2018, n°49.
[74] N. Cayrol, "Art. 1344 to 1344-2 - Fasc. Unique : Régime Général Des Obligations, Extinction des obligations, Mise en demeure du débiteur, Jurisclasseur code civil", May 2018, n°49.
[75] Incident findings 1, p. 32.
[76] Incident findings 1, p. 33.

criterion of firmness makes it possible to avoid that the creditor "*asks for one thing and then another*", following the example of a creditor who has a summons issued for the purpose of seizure and sale, whereas he should have had a summons issued for the purpose of vacating the premises before instituting eviction proceedings (**CA Douai, 8th civ., 10 March 1994: JurisData no. 1994-042847; D. 1994, somm. p. 337, obs. P. Julien**).

In other words, it is simply a matter of enabling the debtor to understand precisely what he is accused of and to avoid the creditor subsequently being able to ask him for everything and its opposite.

This does not mean that the terms of the dispute are definitively fixed, as TOTALENERGIES would have us believe by indicating that the content of the formal notice can *only be* "*interpreted restrictively*".

In this respect, it should be recalled that Article 70 of the Code of Civil Procedure provides that :

> *"Counterclaims or additional claims shall be admissible only if they are sufficiently related to the original claims*.

If it is accepted that the parties to the proceedings may make claims during the proceedings that are not included in their initial claims, as long as they are linked to them by a "*sufficiently close link*" (**CA Paris, 17 December 2021, 21/07089**), *a fortiori,* it is possible to make additional claims in the writ of summons, as long as they complete or specify those appearing in the formal notice.

73. **In this case,** the requests made by the Claimants in the formal notice to identify the risks generated by TOTALENERGIES' activity and the appropriate actions to ensure alignment with a trajectory compatible with global warming "*well below 2°C compared to pre-industrial levels and continuing the action taken to limit the rise in temperature to 1.5°C*" (recalled *in extenso* above), meet the requirements of precision and firmness.

The claims referred to by TOTALENERGIES in its incidental conclusions, arising from the summons, and which it claims were not included in the formal notice sent to it, namely :

- In addition, the EU has a duty to "*align with a specific direct and indirect greenhouse gas (**GHG)** emissions reduction trajectory [the so-called "P1" trajectory as defined in 2018 by the IPCC],*
- *commitments to reduce its global oil and gas production in 2030 and 2050,*
- *a cessation by 2040 of some of the company's global activities (cessation of the search for and exploitation of new hydrocarbon deposits) and a "commitment to leave 80% of known reserves in the ground*"[77] ,

correspond to the request made to TOTALENERGIES to take appropriate measures to ensure alignment with a trajectory compatible with the objectives set out in the Paris Agreement, under the formal notice.

There is no contradiction between these requests, since the requests formulated in the summons simply specify and complete those of the formal notice, which moreover accompanied this request with a reservation: "*without prejudice to other measures that may be identified"* (**Exhibit 3**). There is clearly a sufficient link between them.

Indeed, the demands made in the summons result from the international reference standards defining prudent and diligent behaviour in climate matters, making it possible to limit global warming to 1.5°C (cf. *supra*, Section 1.1.2)**.**

In other words, the demands formulated in the summons are only the declination of concrete actions and measures that TOTALENERGIES must implement to align itself with a trajectory compatible with the objective of the Paris Agreement, which was precisely what was requested in the summons.

[77] Incident findings 1, p. 35

By raising an alleged lack of strict correspondence between the requests made in the formal notice and the summons, TOTALENERGIES is trying to add to the legal conditions a formalistic condition not provided for by the legislator.

74. In any event, the various measures requested in the alternative are formulated in the same way as in the formal notice.

75. **Consequently, the Pre-Trial Judge will dismiss the objection raised by TOTALENERGIES and declare the Claimants admissible in view of the compliance of the formal notice with the legal requirements.**

2.3.1.3. On the claims for prevention of ecological damage

76. TOTALENERGIES claims that the claims made by the Claimants for the prevention of ecological damage are "*artificial*" because they are identical to those made under the duty of care. It even goes so far as to assert that this legal basis was only used to "*repair the procedural shortcomings*" resulting from an alleged lack of prior notice, which would constitute a *"fraud on the law*"[78] .

In so doing, the Claimant is merely repeating the argument previously raised before the Pre-Trial Judge of the Nanterre Court of First Instance and expressly rejected by the order of 11 February 2021 (**Exhibit 21**), confirmed by the judgment of the Versailles Court of Appeal of 18 November 2021 (**Exhibit 22**).

77. **Firstly**, it will be recalled that nothing prevents a claimant from making the same claims on different and complementary legal grounds. These are "dual purpose" actions. The allegedly "identical" nature of the measures sought on the basis of the Commercial Code and the Civil Code is therefore not in itself such as to render inadmissible the claims based on Article 1252 of the Civil Code.

In any case, this is not the case in the present case, since the requests formulated under Article 1252 of the Civil Code are aimed at ordering TOTALENERGIES to take the appropriate measures to prevent the ecological damage resulting from uncontrolled global warming, in accordance with the powers specially granted to the judge on this basis.

Contrary to what TOTALENERGIES maintains, these complementary and autonomous requests are based on a distinct legal basis, different from those formulated under the provisions relating to the duty of care:

- They do not aim to enjoin TOTALENERGIES to establish, publish and effectively implement a vigilance plan in accordance with the law, but to have the judge prescribe and enjoin it to implement reasonable measures to prevent the occurrence of serious damage to the environment resulting from a warming greater than 1.5°C;

- Nor are they intended to direct TOTALENERGIES to identify the risks arising from its activities;

- The events justifying the action are distinct: the lack of vigilance results from the inadequacy of TOTALENERGIES' vigilance plan and the non-compliance of the measures implemented to limit the risks and serious harm resulting from its activities, as well as from its supply chain.

  The cause of action for the prevention of ecological damage lies in the direct and indirect greenhouse gas emissions emitted by TOTALENERGIES, contributing to the ecological damage resulting from global warming.

  This results in two distinct and cumulative faults attributable to TOTALENERGIES.

[78] Incident findings 1, p. 38

- Finally, the measures that can be ordered by the judge under Article 1252 of the Civil Code are specifically aimed at preventing damage to the environment itself, irrespective of the possible repercussions on people or property, whereas the provisions of the Duty of Care Act have a broader scope, covering both risks to people alone and those to the environment.

They are, however, identical to the main demands for action to reduce greenhouse gas emissions, as these are the only ones that can prevent the risk of serious environmental damage resulting from a warming beyond the 1.5°C threshold.

Like the "*reasonable vigilance measures*", including "*appropriate risk mitigation or harm prevention actions*" that must be included in the vigilance plan, the judge may here "*prescribe reasonable measures to prevent or halt the damage*".

While the "*reasonable measures"* are the same, the judge's powers are different depending on whether he acts on the basis of the provisions relating to the duty of care or on the basis of those relating to the prevention of environmental damage.

The scope of application of these provisions is also different, since any person can be prescribed measures under Article 1252 of the Civil Code, whereas only the largest companies are subject to the provisions on due diligence.

They are therefore separate requests, with their own purposes - the prevention of environmental damage on the one hand and the establishment, publication and effective implementation of climate vigilance measures on the other - and with a different legal basis.

In all cases, the provisions relating to the duty of care, which constitutes a new civil obligation, refer to the provisions of ordinary civil law (see *above*, § 50).50). This characterisation as a civil obligation justifies the possibility of bringing an action in parallel with that under pre-existing civil obligations, such as the prevention of ecological damage, which may provide a basis for complementary claims with similar aims.

The Versailles Court of Appeal, in its decision on the jurisdiction of the judicial court, was not mistaken:

> *"It is demonstrated that the respondents are arguing that there is ecological damage to justify their request for an injunction to be given to TotalEnergies.* (**Exhibit 22**)

78. **Secondly**, the fact justifying the judge's intervention under Article 1252 of the Civil Code does not lie in the inadequacy of its vigilance plan but in the existence of serious risks and damage to the environment considerably aggravated by TOTALENERGIES' inability to reduce its greenhouse gas emissions.

In the "affair of the century", several associations, including Notre Affaire à Tous, asked the Paris Administrative Court to condemn the French State for not having respected its own commitments on climate change (**Pièce n°68**).

At the hearing on 14 January 2021, the public rapporteur Amélie FORT-BESNARD concluded, according to the newspaper Le Monde, "*that 62% of the French population was particularly exposed to the serious effects of climate change and that the existence of 'ecological damage' could not therefore be disputed*". It added that "*the inability of the State to meet its commitments*" and "*the lack of binding rules* (...) *contributed to the "aggravation" of this ecological damage*" (**Pièce n°69**).

In its judgment of 3 February 2021, the Paris Administrative Court considered that the existence of ecological damage, "*not contested by the State, is manifested in particular by the constant increase in the average global temperature of the Earth, responsible for a modification of the atmosphere and its ecological functions*". And the judges "*held that the State should be considered responsible for part of this damage since it had not respected its commitments to reduce greenhouse gas emissions*" (**Pièce n°68**).

The Paris Administrative Court therefore expressly recognised that global warming and its consequences on the environment characterised an "ecological loss" within the meaning of the provisions of Articles 1246 et seq. of the Civil Code.

79. **Thirdly**, as demonstrated above, the Claimants have regularly put TOTALENERGIES on notice to comply with its obligations under its climate duty of care (see *supra,* §§60 et seq.)

In this respect, the Claimants did not have to mention this basis at the pre-litigation stage or in the notice of default, the criterion being in fact whether TOTALENERGIES' interpellation was sufficiently precise on the claims formulated on this basis.

It will be useful to refer to the author cited by TOTALENERGIES, who expressly indicates that the formal notice does not have to be motivated, except for legally provided exceptions, such as the implementation of a resolutory clause in the case of residential leases, which requires the articles of the law that the lessee has contravened to be mentioned[79] .

Furthermore, the prevention of environmental damage, like the constitutional duty of care in environmental matters[80] , are autonomous civil grounds which are not subject to the need for prior notice to the debtor.

The argument of fraud against the law is therefore completely irrelevant, apart from the fact that it is manifestly excessive, since in the present case the Claimants have not based their claims on Article 1252 of the Civil Code to make up for any procedural deficiency, since there is no deficiency in this case. The jurisprudence cited by TOTALENERGIES on this point, which concerns a misuse of procedure by the use of another legal action by the Claimants in order to try to circumvent the one that was closed to them, is perfectly foreign to the present case.

80. In any event, it seems contradictory to maintain, on the one hand, that the action based on the Duty of Care Act would be inadmissible (either because its object would have disappeared or because the prior stage of formal notice would not have been respected) and, on the other hand, that the action based on prevention of ecological damage would be inadmissible because of the identity of the claims.

The two grounds of inadmissibility raised cannot be admitted at the same time, and at least one of these grounds would remain admissible, even following the grounds set out by TOTALENERGIES. The plea of inadmissibility would therefore not be capable of putting an end to the proceedings.

In other words, if by some extraordinary means the Pre-Trial Judge considered that the action based on the Duty of Care Act was inadmissible, there would be no reason to consider that the action based on ecological damage was also inadmissible.

81. **Consequently, the Pre-Trial Judge will dismiss the objection raised by TOTALENERGIES and will declare the Claimants admissible for the purposes of the claims made under Article 1252 of the Civil Code.**

2.3.2. The inadmissibilities linked to the alleged lack of interest or standing of certain Claimants and Intervenors are unfounded

82. As a preliminary point, it will be recalled that the action based on the Duty of Vigilance Act was understood to be open in a very general way to "*any person with an interest in acting*".

In the same vein, the legislator has also widely opened up the action for compensation for ecological damage provided for in Articles 1248 et seq. of the Civil Code and for the cessation of environmental damage provided for in Article 1252 of the same Code.

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[79] Nicolas Cayrol, "Art. 1344 to 1344-2 - Fasc. unique: Régime Général Des Obligations, Extinction des obligations, Mise en demeure du débiteur, Jurisclasseur code civil", May 2018, n°67 and following.
[80] Decision No. 2011-116 QPC of 8 April 2011, "Michel z.".

2.3.2.1. The interest and standing of the plaintiffs

A. <u>The plaintiffs have an interest in the duty of care</u>

a. In law

83. As the Defendant itself points out in its pleadings[81] , Article L. 225-102-4 of the French Commercial Code does not restrict the right of action on the basis of the duty of care, which is open to "*any person with a justified interest in acting*".

As a result, the interest to act has been assessed very flexibly and broadly in the first decisions rendered on the implementation of the action provided for in Article L. 225-102-4 of the Commercial Code.

Indeed, the Pre-Trial Judge of the Judicial Court of Nanterre in the present case, in his order of 11 February 2021, stated that :

> *"The letter of Article L. 225-102-4 of the Commercial Code reveals that the preservation of human rights and Nature in general (...) requires judicial control. And this can only be achieved through strong social control made possible by the publicity of the vigilance plan and by a <u>loose definition of the interest to act, the action being very widely open</u> ("any person justifying an interest to act"). <u>Here, the plaintiff associations and local authorities are not implementing a commercial interest but exclusively the part of the general interest that they represent and which is precisely that which goes beyond the commercial dimension of the management of SE Total</u>*" (**Exhibit 21**).

According to the doctrine, commenting on the order issued by the pre-trial judge of the Nanterre judicial court :

> *<u>"The Pre-Trial Judge observed that it is this part of the public interest that the plaintiff associations and communities are implementing in court, a part that necessarily goes beyond the commercial dimension of the management of the Total company. This particularly detailed analysis of the spirit and letter of the law leads him to conclude that the exclusive jurisdiction of the commercial court should be rejected. (...)</u> Translating the idea that CSR inextricably mixes commercial rules and the pursuit of the general interest, the judge remarkably holds the position of balance by acknowledging the jurisdiction of the commercial courts based on the direct link with management, but a non-exclusive jurisdiction when the associative plaintiffs representing this interest have the right to bring a case concurrently before the civil courts of common law*" (**P. Abadie, *"Les enseignements de la procédure sur la nature du devoir de vigilance : entre contestations relative aux sociétés commerciales et contestation relative à la responsabilité sociale"*, Recueil Dalloz 2021**).

The Pre-Trial Judge of the Paris Judicial Court reached an almost identical conclusion in another case against EDF, in an order dated 30 November 2021:

> *"The purpose of the actions based on Articles L.225-102-4 and L.225-102-5 of the French Commercial Code, in terms of the rights they aim to preserve, goes beyond the strict framework of the company's management and <u>concerns more broadly the impact of its activity on society, which is illustrated by the fact that these two actions are broadly open to "any person with an interest in acting"</u>* (**Exhibit 23**).

b. In this case

i. <u>The Eco Mayors Association</u>

[81] Incidental findings no. 1, p. 42, §§178 and 179

84. In accordance with the constant case law on the subject referred to above, an association's interest in acting on the basis of the duty of vigilance must be assessed broadly in the light of the interests it defends under the terms of its corporate purpose. As the Defendant points out, the parliamentary works refer precisely to this point:

> *"In accordance with common law, civil or legal persons with an interest in acting may bring a case before a judge, including certain associations if their statutes so provide. Non-governmental organisations (NGOs) as well as workers' unions, having an interest in acting, will therefore be able to bring cases before the courts*" (**Proposition de loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, n°2578**).

In this respect, it should be pointed out that France was condemned by the ECHR in the case to which the Defendant refers (**Cass., Civ. 3, 24 May 2018, no. 17-18.866**). In a judgment of 1er July 2021, the ECHR found, inter alia, that the interpretation of the statutes of an applicant association by the trial judges, which resulted in declaring its action inadmissible, was too restrictive and violated the right of access to the courts (Article 6§1 of the ECHR):

> *"The Court notes that, in concluding that the action of the MIRABEL-LNE association was inadmissible, the Versailles Court of Appeal held that, unlike the other applicant associations, its statutory object did not expressly include the fight against the risks to the environment and health posed by the nuclear industry and related activities and development projects, or informing the public about the dangers of burying radioactive waste, but was drafted in more general terms, according to which its aim was the protection of the environment. However, this approach cannot be accepted. On the one hand, it amounts to making a distinction between protection against nuclear risks and protection of the environment, whereas it is clear that the former is fully linked to the latter. On the other hand, the interpretation of the applicant association's statutes has the effect of limiting the scope of its corporate purpose in an excessively restrictive manner, even though, at the time of the events, Article 2 of its statutes referred to the prevention of "technological risks"*" (**ECHR, 1er July 2021, Association Burestop 55 and others v France, no. 71**).

85. In the present case, it follows from the statutes of the association Les Eco Maires that it clearly has an interest in acting in the present proceedings.

Article 2 of the Eco Maires' statutes explains the purpose of the association:

> *"The purpose of the association known as Les Eco Maires "National Association of Mayors and Local Elected Officials for the Environment and Sustainable Development", founded in 1989, is to bring together municipalities and their EPCIs who make the conquest of a more humane environment an absolute priority of their mandate. It aims in particular to promote the best local initiatives in favour of the environment and sustainable development and to encourage all types of action in the direction of an improvement in the environment led by the Mayor or President, who is the developer of the living environment of his or her citizens*. (**Exhibit 1-4**).

It is made clear that the purpose of the association is to support community action for the environment and human rights, terms which are mentioned several times.

In addition, the "*actions for the improvement of the environment by the Mayor or the President*" and the "*conquest of a more humane environment*" by them, to which the association Les Eco Maires contributes, can also involve the exercise of an action based on the Duty of Vigilance Act, with the aim of forcing a company to adopt and implement measures to prevent the risks of serious violations of human rights and the environment.

Moreover, the actions carried out by Les Eco Maires are not strictly limited to a "local scope", but have a national influence, particularly through its participation in the French Partnership for Cities and Territories (PFVT). The association led a working group on Citizenship and Social Innovation within the framework of the 2020 World Urban Forum. The objective of the PFVT is to formulate French proposals to bring to the international debate and recommendations to improve sustainable urban development practices (**Pièce n°71**).

The association also participates in debates related to the environment and sustainable development, at European and international level. For example, Les Eco Maires has participated in several COPs and the association works jointly with other NGOs, as well as with the European authorities (**Pièce n°71**).

Article 5 also specifies the means of action of the Eco Mayors:

> *"The association, acting for and with its members, organises conferences, seminars, commissions and training courses for elected representatives and their technicians. It publishes guides and methodologies, disseminates its work by all means, networks and connects with local authorities for debate and exchange. It supports local authorities in implementing local policies*". (**Exhibit 1-4**).

However, the association Les Eco Maires is necessarily concerned by the consequences of climate change when it has to accomplish its mission of accompanying the implementation of local policies by the communities that are themselves affected. It therefore has every interest in taking part in an action aimed at limiting these consequences, in particular as part of the duty of vigilance in climate matters that the TOTALENERGIES company must exercise.

86. **Consequently, the association Les Eco Maires does have an interest in acting under the Duty of Care Act.**

ii. Local and regional authorities

87. The Defendant argues that the action of the plaintiff local authorities would be inadmissible with regard to the claims relating to the vigilance plan, which could not be linked to a "local public interest" because the plan was part of the global strategy of a multinational company like TOTALENERGIES.

In particular, the Defendants argue that the conditions for a local public interest are not met in this case because their claims :

- would go beyond their territory;
- would impinge on the competence of the State, which alone has the competence to determine the trajectory of greenhouse gas emissions[82] .

88. **Firstly,** although climate change is a global phenomenon, it has consequences at the level of each territory, justifying the interest of the local authorities concerned to act.

It should be noted at the outset that, according to the IPCC, cities face particularly serious risks from global warming:

> *"people's health, lives and livelihoods, as well as physical assets and critical infrastructure such as energy and transport systems, are increasingly affected by the hazards of heat waves, storms, droughts and floods, as well as slow-onset phenomena such as sea-level rise.* (**Exhibit 25**).

In 2015, the National Observatory on the Effects of Global Warming (ONERC) found that 62% of the French population was already highly or very highly exposed to climate risks, while a comparison of exposure indicators between 2006 and 2015 shows a steady increase in the number of highly exposed communes[83] .

Human influence through greenhouse gas emissions has a general impact that is already visible and quantifiable, particularly with global warming, which has reached +1.1°C compared to the average temperature in pre-industrial times. In France, this warming is more rapid and has reached +1.7°C (**Pièce n°72p. 21**)[84] .

Global warming is leading to an increase in the number and intensity of extreme weather events: extreme rainfall, heat waves, droughts, rising sea levels (**Pièce n°72pp. 18-29**).

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[82] Incidental findings no. 1, p. 45 et seq.

[83] https://www.ecologie.gouv.fr/impacts-du-changement-climatique-sante-et-societe

[84] In view of the volume of the report (265 pages), the respondents are only submitting the first part, to which these submissions refer. The full report is available at the following link: https://www.hautconseilclimat.fr/wp-content/uploads/2022/06/Rapport-annuel-Haut-conseil-pour-le-climat-29062022.pdf

In the preamble to its latest report, the High Council for the Climate points out that :

> *"The impacts of climate change due to human influence are worsening in France as in every region of the world, with an intensification of chronic and acute effects, and significant human, material and financial consequences*" (**Pièce n°72, p.5**).

In other words, **local authorities and all territorial actors have a key role to play in adapting to climate change**, and "*are on the front line when it comes to the consequences of climate change*" according to I4CE, the Institute of Climate Economics founded by the Caisse des Dépôts and the French Development Agency (**Pièce n°73**).

This Institute stresses in particular that local authorities "*have a major role to play in achieving France's 2050 carbon neutrality objectives, as set out in the National Low-Carbon Strategy (SNBC)*" and estimates that at least 12 billion in climate investments should be made by local authorities each year, i.e. almost 20% of their investment budget (**Pièce n°74**).

It is therefore to mitigate the risks and prevent serious harm to their territories resulting from global warming that the plaintiff communities are asking TOTALENERGIES to reduce its emissions. This intervention by the communities therefore responds to the needs of their populations.

89. **Secondly,** the case law has expressly recognised the interest of local authorities exposed to climate change to act.

In order to contest the interest of the local authorities in bringing proceedings, the Defendant relies on the conditions under which local authorities can be recognised as having an interest in bringing proceedings **before the administrative court**, namely the existence of a local public interest.

However, it omits in its pleadings two decisions also rendered in administrative matters, in which the interest to act of local authorities to fight against global warming, the effects of which they suffer on their territory, was recognised.

Firstly, in the famous "***Commune de Grande Synthe***" case, the Conseil d'État specified, in a decision of 19 November 2020 on which there has been much commentary, the conditions under which local authorities could claim an interest in acting in climate matters (**Pièce n°70**).

The government contested the Commune's interest in acting on the grounds that its claims related to legislation on the prevention of climate change, and that this did not particularly affect its territory.

The highest court of the administrative order rejected the Minister's objection, ruling that :

> *"The municipality of Grande-Synthe, in view of its level of exposure to the risks arising from the phenomenon of climate change and their direct and certain impact on its situation and the interests for which it is responsible, justifies an interest that gives it the right to request the annulment of the implicit decisions under appeal*" (**Exhibit 62**, no. 3).

Thus, the Council of State ruled **that a municipality exposed in the medium term to risks arising from climate change had, for this reason, justified an interest giving it standing to act**.

The Minister of Ecological Transition and Solidarity argued in this case, like TOTALENERGIES, that the climate change affecting many communes was such as to exclude the interest in acting of a particular commune. The Conseil d'Etat firmly rejected this argument, considering that :

> *"The fact that the effects of climate change are likely to affect the interests of a large number of municipalities is not such as to call that interest into question*. (**Pièce n°70**, n°3).

As the rapporteur Mr Stéphane Hoynck pointed out in his conclusions of 9 November 2020,

> "In the *case of an issue as important as climate change, if an examination of the situation of all parts of the territory were to lead to the conclusion that they are all affected in a direct and certain manner, it would not be consistent with your way of proceeding to draw the conclusion that no territory could bring an action*. (**Conclusions of Mr Stéphane HOYNCK, public rapporteur, in the Grande-Synthe commune case n°427301, p. 3**).

Thus, for the Council of State, the exposure of the territory of local authorities to climate risks allows them to claim an interest in acting to request the respect of international commitments to limit the consequences of global warming.

The reasoning, which is perfectly transposable in this case, can be extended to other local and regional authorities whose territory is similarly exposed to the effects of climate change.

Secondly, in the Affaire du Siècle, the Paris Administrative Court expressly recognised the full effects of the agreement on national territory, and therefore on the territory of the plaintiff communities:

> *"The work of the National Observatory on the Effects of Global Warming, a body attached to the Ministry of Ecological Transition and responsible for describing the state of the climate and its impacts throughout the country, shows that in France, the increase in average temperature, which for the decade 2000-2009 was 1.14°C compared to the period 1960-1990, is causing an acceleration in the loss of glacier mass, particularly since 2003, and an increase in coastal erosion, which affects a quarter of the French coastline, and the risk of flooding, poses a serious threat to the biodiversity of glaciers and coastlines, leads to an increase in extreme climatic phenomena such as heat waves, droughts, forest fires, extreme precipitation, floods and hurricanes, risks to which 62% of the French population is strongly exposed, and contributes to an increase in ozone pollution and the expansion of insect vectors of infectious agents such as dengue fever or chikungunya*. " (**Pièce n°68, p. 28**).

90. **Thirdly, the action of the requesting local authorities is part of the objective of associating the *company's* "stakeholders" with the elaboration by TOTALENERGIES of a new compliance plan, in accordance with the provisions of Article L. 225-102-4 of the French Commercial Code relating to compliance plans.**

In this regard, reference should be made to the OECD's Due Diligence Guidance for Responsible Business Conduct, which defines "stakeholders" as follows

> *"Stakeholders are individuals or groups whose interests are or may be impacted by the activities of an enterprise. Not all individuals or groups considered to be stakeholders will have interests that are likely to be impacted by a specific activity of a company. It is therefore important for the company to identify those individuals and groups whose interests need to be taken into account in relation to a specific activity ("relevant stakeholders"). Furthermore, due diligence applies to the interests of stakeholders who have been affected by a company's activity ("impacted stakeholders") as well as to those stakeholders who have not been affected but are likely to be affected ("potentially impacted stakeholders")*. (**OECD, Due Diligence Guidance for Responsible Business Conduct, 2018 Q8, p. 52**).

The Guide also provides examples of stakeholders:

- *communities at local, regional or national level*" under "*stakeholders and rights holders impacted or likely to be impacted may include*";

- *public authorities (local, regional and national authorities)*" as "*relevant stakeholders*"[85] .

In this respect too, local authorities may therefore be entitled to act on the basis of Article L. 225-102-4 of the Commercial Code.

91. **Fourthly, the interest of the local authorities to act is finally justified because of the competences exercised by the local authorities in this field.**

The following developments are superfluous, insofar as the interest to act of the Applicant and Voluntary Intervening territorial authorities does not require to demonstrate that they have the competences to act against climate change, but only that they suffer its consequences, as recalled above.

Contrary to what is implied by the opposing conclusions that "*the State has exclusive competence at the national level to determine the trajectory of greenhouse gas emissions*"[86] , local and regional authorities have both general and specific competences to mitigate climate change and adapt their territory to its effects.

This general competence stems in particular from the provisions of Article L. 1111-2 of the General Code of Local Authorities, which stipulates that the municipalities and regions contribute, **together with the State, to the** protection of the environment and the fight against the greenhouse effect.

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[85] Idem.

[86] Incidental findings no. 1, p. 48, no. 221.

Article L. 110 of the Town Planning Code states that :

> *"The French territory is the common heritage of the nation.*
> *The public authorities are the managers and guarantors within the framework of their competences (...)*".

Article L.110-1 of the same code specifies that :

> *"7° The fight against climate change and adaptation to this change, the reduction of greenhouse gas emissions, the saving of fossil resources, energy management and energy production from renewable sources;*"

This general mission is therefore an integral part of the specific competences of each category of territorial authority:

- The regions :

  - are responsible for "*organising, in their capacity as lead partner, the arrangements for joint action by local and regional authorities and their public establishments for the exercise of competences relating (...) to climate, air quality and energy*"[87] ;

  - are required to adopt **SRADDETs** (regional planning, sustainable development and territorial equality schemes)[88] ;

  - take into account the SNBC (National Low Carbon Strategy)[89] , "a *national policy document that is legally binding on the State, local authorities and their public institutions. It is linked to many other planning documents, from the EPP to local town planning schemes, via the regional plans for development, sustainable development and territorial equality (SRADDET) (...)*"[90] ;

- Metropolises and inter-municipalities with more than 20,000 inhabitants[91] must also draw up territorial "climate-air-energy" plans (**PCAET)** which define objectives for mitigating climate change and the necessary adaptation measures. As specified in , article R. 229-51 of the Environment Code , "*the territorial climate-air-energy plan (...) is the operational tool for coordinating the energy transition in the territory*".

- The municipalities have a specific competence:

  - in the area of **climate risk prevention**, an integral part of the natural risk prevention policy;

  - In terms of **town planning**, the authorities responsible for drawing up the Schémas de Cohérence Territoriale (SCoT), the Plans Locaux d'Urbanisme (PLU, PLUi) or the cartes communales (local maps) must achieve the objectives defined by Article L101-2 of the Town Planning Code. These objectives include "the prevention of foreseeable natural risks*, mining risks, technological risks, pollution and nuisances of any kind*".

92. **It will be demonstrated below that each of the Applicant and Intervening Voluntary Communities is directly exposed to the effects of global warming (in particular the rise in temperatures, which affects the whole of France).**

  - **The commune of ARCUEIL**

[87] Art. L. 1111-9 of the General Code of Local Authorities.
[88] Art. L. 4251-1 of the General Code of Local Authorities: "*This plan sets the medium and long-term objectives for the region in terms of* (...) combating *climate change* (...)".
[89] Art. L. 4251-2, 3°, f) of the General Code of Local Authorities.
[90] Annual report of the High Council for Climate 2021, "*Strengthening Mitigation, Engaging in Adaptation*", p. 60, accessible at the following link: https://www.hautconseilclimat.fr/wp-content/uploads/2021/06/HCC_rapport-annuel_0821.pdf
[91] Art. L. 229-26 of the Environmental Code.

The municipality of Arcueil, located in the Ile-de-France region, in the Val-de-Marne department, is directly exposed to the following climate change-related risks:

- Flooding ;
- Ground movement risks ;
- Heat waves.

In general, in the Ile-de-France region (where the cities of Nanterre and Sevran are also located, below), temperatures have already risen by about 2°C since the middle of the 20ème century. The temperature increase is continuing and could reach a further 1°C by 2050 (**Pièce n°75, p. 17)**. Climate projections indicate an increase in summer droughts of all types, which will be reinforced by heat wave episodes (**Pièce n°75, p. 14**).
The increase in average temperatures in Arcueil, as well as the frequency of heat waves, have forced Arcueil to update its heat wave plan (**Pièce n°76**).

Similarly, in the Ile-de-France region, extreme climatic phenomena will also increase, with in particular an increase in extreme precipitation of 20% in intensity by 2100 (**Pièce n°75**).

Furthermore, the City of Arcueil is vulnerable to the risk of shrinkage and swelling of the clay layers that make up its subsoil and the risk is classified as "Medium" to "Strong" over half of the territory of the commune (**Pièce n°77, p. 37**).

According to ONERC, Arcueil is subject to a "STRONG" risk of exposure to climatic risks.

- **The commune of NANTERRE**

The commune of Nanterre, located in the Ile-de-France region, in the Hauts-de-Seine department, is directly exposed to the following climate change-related risks:

- Flooding ;
- Ground movement risks ;
- Heat waves.

The commune of Nanterre is particularly affected by the multiplication and intensification of droughts and has been forced to request recognition of the state of natural disaster for the year 2022 (Pièce **n**°78). Indeed, global warming is leading to an increase in the number of days of drought, which will rise from 19 on average to around thirty by 2080, with a drop in rainfall of up to 14% (**Pièce n°79, p. 10**).

Nanterre is also affected by the rise in temperatures and the increase in heat waves. The number of heatwave days is expected to rise from an average of 5 days per year between 1951 and 2009 to around 30 in 2080 (**Pièce n°79, p. 10**).

The impact of global warming is also reinforced by the heat island phenomenon (**Pièce n°80p. 14-16**).

Finally, it should be emphasised that the poorest populations are even more exposed to the impacts of climate change, while the poverty rate in Nanterre in 2020 is 20%, compared to 15.5% in Ile-de-France and 16.4% in France, according to INSEE.

According to ONERC, Nanterre is subject to a "HIGH" risk of exposure to climatic risks.

- **The commune of SEVRAN**

The commune of Sevran, located in Seine-Saint-Denis, is directly exposed to the following risks linked to climate change:

- Heat waves ;

- Risk of ground movements.

The commune of Sevran is built on a clay zone and the risk of shrinkage and swelling of clay soils is currently classified as "low". With global warming, this hazard is likely to increase (Pièce **n°81**).

Like the whole of France, and in particular the Ile-de-France region (see *above*, on the town of Arcueil), Sevran will be the victim of an increase in average temperature, heat waves and subsequent droughts. These effects of global warming will be reinforced in the Ile-de-France region, and in particular in Sevran due to the high rate of urbanisation and the presence of heat islands (Pièce **n**°75).

Similarly, the most vulnerable populations in the city of Sevran are particularly exposed to climate change, given that the poverty rate there is 32% in 2020, according to INSEE.

According to ONERC, Sevran is subject to a "STRONG" risk of exposure to climatic risks.

- **The commune of BAYONNE**

The municipality of Bayonne, located in the Pyrénées-Atlantiques department, is directly exposed to the following climate change-related risks:

- Flooding ;
- Ground movement risks ;
- Heat waves.

Bayonne, being located at the confluence of the Adour and Nive rivers, is particularly exposed to the risk of flooding. Like the flood of 10 December 2021, the floods - resulting from the accentuation of the runoff phenomenon and the multiplication of extreme rainfall - can submerge the quays, as well as a large part of the city, causing significant material damage (Pièce **n**°82).

The rise in sea levels also contributes to the increase in flood risks. As Bayonne is located not far from the Atlantic Ocean, the rise in sea level will lead to a rise in the level of the Adour and Nive rivers. As a result, Bayonne will be more vulnerable to extreme weather events, such as storms or high tides, which can lead to flooding (**Pièce n°83**).

Rising sea levels also threaten to submerge parts of Bayonne as early as 2050. A rise in sea level of one metre would result in the submergence of the banks and a rise in sea level of 1.50 metres would result in the submergence of the northern part of the municipality[92] .

Bayonne is also affected by the phenomenon of shrinkage and swelling of the clay soils on which the town is built (layers of Alterite and flysch are found in the subsoil) which can cause buildings to crack (**Pièce n°84, p. 77**).

Finally, the average temperatures in Bayonne are increasing and in particular the number of abnormally hot days[93] .

According to ONERC, Bayonne is subject to a "HIGH" risk of exposure to climatic risks.

- **The commune of BÈGLES**

The commune of Bègles, located on the banks of the Gironde, not far from the Atlantic Ocean, is directly exposed to the following risks linked to climate change:

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[92] *Coastal Climate Central, a* tool created by Climate Central, a group of independent scientists and journalists. https://coastal.climatecentral.org/map/13/-1.4494/43.4958/?theme=water_level&map_type=water_level_above_mhhw&basemap=roadmap&contiguous=true&elevation_model=best_available&refresh=true&water_level=1.5&water_unit=m.

[93] https://www.meteoblue.com/fr/climate-change/bayonne_france_3034475

- Flooding ;
- Ground movement risks ;
- Heat waves

Bègles is exposed to the intensification of the risk of flooding by the combined action of the rise in sea level and the intensification of runoff phenomena and extreme rainfall (**Pièce n°85p. 47 and 73**).

In addition, the risk of shrinkage-swelling of the clays located in the subsoil of Bègles is increased by the intensification and the multiplication of the episodes of drought (**Pièce n°85, p. 40**).

Finally, the average annual temperature in Gironde will increase by 2.2°C by the end of the century. Despite its location near the coast, Bègles will experience longer and more intense heat waves. The number of heat wave days has increased from 8.4 on average over the period 1976-2005 to more than 20 over the period 2021-2025 and projections foresee 38 heat wave days after 2070 (**Pièce n°85, p. 13**). These hot spells will be accompanied by dry spells, which will increase from an average of 24.4 days over the 1976-2005 period to 26.9 over the 2021-2050 period and more than 31 after 2071 (**Pièce n°85, p. 13**).

Following the heat wave in June 2022 and the hailstorms between 19 and 21 June, an intervention fund to support the affected municipalities was created by Bordeaux Métropole, of which Bègles is a member, to which the municipality contributed 10,000 euros (**Pièce n°86**).

Under these conditions, Bègles was also forced to declare a state of climatic, environmental, social and democratic emergency in July 2020 (**Pièce n°87**).

According to ONERC, Bègles is subject to a "HIGH" risk of exposure to climatic risks.

- **The commune of BIZE-MINERVOIS**

The commune of Bize-Minervois, located in the Aude department, is directly exposed to the following risks linked to climate change:

- Forest fires ;
- Flooding.

The Commune of Bize-Minervois has experienced an increase in the average annual temperature of 0.6°C and the average maximum summer temperature of 1.1°C between 1961-1990 and 1981-2010. The number of very hot days (above 30°C) has also increased from 33.4 to 50.5 over the same periods (**Pièce n°88, p. 7).**

Projections call for continued annual warming of up to 3°C in 2100 compared to 1976 (**Pièce n°88, p. 22**).

The Commune of Bize-Minervois is also confronted with a multiplication and intensification of "Mediterranean" or "Cevennes" episodes of extreme rainfall, the phenomenon of which is aggravated by climate warming (**Pièce n°88p. 8; Exhibit 89**).

This intensification of heavy rainfall is likely to increase the risk of flooding, particularly by runoff and rising groundwater, to which the municipality is already exposed (**Pièce n°88p. 10 and 11 ; Pièce n°90p. 5 to 7**).

The river Cesse, which crosses the commune, overflowed in 2022, 2019, 2018, 2017, 2011, 2005 and 1999, showing the increase in the frequency of these floods over the last 25 years, seriously affecting the commune's finances (**Pièce n°91**).

1,635,630, in addition to the damage caused to insurable property and individuals (**Pièce n°92**).

In total, no less than 8 decrees recognising natural disasters have been issued for the commune of Bize-Minervois over the 2009-2019 decade, compared with 3 over the 1999-2009 decade (**Exhibit 90, p. 4**).

The commune of Bize-Minervois is also threatened by the risk of forest fires, which are likely to increase with global warming (**Pièce n°93**). The surface area affected by forest fires should therefore increase and the existing risks will become more pronounced as the soil dries out (**Pièce n°88p. 13-14 and 16**).

The commune of Bize-Minervois is experiencing an intensification of the phenomenon of shrinkage-swelling of clays with the rise in temperatures and the episodes of drought (**Pièce n°88p. 11; Exhibit 90, p. 7**).

According to ONERC, Bize-Minervois is subject to a "MEDIUM" risk of exposure to climatic risks.

- **The commune of CORRENS**

The municipality of Correns, located in the heart of the Var forest, is directly exposed to the following risks linked to climate change:

- Forest fires ;
- Flooding ;
- Risk of ground movements.

The town of Correns is particularly exposed to the risk of flooding. Municipal decrees recognising the state of natural disaster were issued in 2019 and 2021, in particular for '*flooding and mudslides for the period from 3 to 5 October*' for the town (**Pièce n°94**).

Similarly, Correns will experience more frequent and longer heat waves and an intensification of natural phenomena such as extreme precipitation, storms, drought (**Pièce n°95, p. 13**). These weather conditions increase the risk of fire.

The town of Correns is also vulnerable to the shrink-swell hazard, which is reinforced by the effects of global warming (**Pièce n°95, p. 39**).

According to ONERC, Correns is subject to a "MEDIUM" risk of exposure to climatic risks.

- **The commune of GRENOBLE**

The commune of Grenoble, located in the Alps, is directly exposed to the following climate change risks:

- Flooding ;
- Ground movement risks ;
- Heat waves ;
- Forest fires.

Grenoble is located at the confluence of the Drac and Isère rivers, which makes it particularly sensitive to flood risks. On the one hand, the melting of ice upstream of the rivers multiplies and intensifies floods, and on the other hand, the amplification of the phenomenon of runoff and extreme precipitation is likely to cause significant flooding.

Thus, the number of floods tends to multiply under the effect of global warming: extreme floods that used to occur every 10 years now occur every 2 or 3 years (Pièce **n**°96).

Grenoble, like the rest of France, is also exposed to an increase in the number and intensity of extreme heat days. The number of days of extreme heat, about 3 per year on average in 2022, should reach 43 days per year on average in 2050 (**Pièce n°97p. 2 and 3**).

According to ONERC, it is subject to a "HIGH" risk of exposure to climatic risks.

- **The commune of la POSSESSION**

The commune of La Possession, located on the island of La Réunion, is directly exposed to the following risks linked to climate change:

- Climate disasters ;
- Forest fires ;
- Flooding ;
- Risk of ground movements.

According to INSEE, average temperatures in Réunion have already risen by almost 1 degree in 50 years. Global warming will have an impact on the balance of rainfall: it will be less frequent, but more extreme. Réunion is also more exposed to extreme weather events: drought, heavy rainfall, cyclones, which are expected to be more frequent and more intense (Pièce **n**°98), and whose consequences will be reinforced on La Possession because of its location on the coast.

The risk of forest fires has also increased. The number of large fires, which used to occur on average every 20 years, now occurs more regularly. For example, 770 hectares burned at Maïdo in 2010 and 2700 hectares in 2011 (**Pièce n°99**).

According to ONERC, La Possession is subject to a "VERY HIGH" risk of exposure to climatic risks.

- **The commune of MOUANS-SARTOUX**

The commune of Mouans-Sartoux, located in the Alpes-Maritimes, is directly exposed to the following risks linked to climate change:

- Forest fires ;
- Ground movement risks ;
- Flooding.

The impact of global warming on the commune of Mouans-Sartoux can be seen in the increasing number of decrees declaring a state of natural disaster for floods and/or mudslides over the last decade: in 2009, 2011, 2014, 2015, 2016, twice in 2019 (**Pièce n°100**). These floods have resulted in heavy material costs for the municipality - for example, more than 210,000 euros in 2012 and approximately 100,000 euros in 2015, forcing the municipality to apply for subsidies from the State (**Pièce n°101**).

Mouans-Sartoux is also vulnerable to the increased risk of forest fires. In 2009, the commune was obliged to define a new plan for the prevention of foreseeable natural fire risks (Pièce **n**°102).

The same applies to the risk of land movements in 2019 (**Pièce n°103**).

According to ONERC, Mouans-Sartoux is subject to a "STRONG" risk of exposure to climatic risks.

- **The commune of VITRY-LE-FRANÇOIS**

The commune of Vitry-le-François, located in the Grand-East region, at the confluence of the Marne and Saulx rivers, is directly exposed to the following risks linked to climate change

- Flooding ;
- Landslide risks ;
- Heat waves.

The commune of Vitry-le-François is obviously suffering from the rise in average temperatures and the increase in periods of drought or extreme rainfall. For example, during the summer of 2022, the prefect of the Marne was forced to put in place measures to restrict water use (**Pièce n°104**Error! Reference source not found.).

Above all, Vitry-le-François is directly exposed to flooding caused by the Marne River. As with the 2021 flood, episodes of heavy rainfall will tend to multiply and intensify flooding by runoff and flooding (**Pièce n°105**).

According to ONERC, Vitry-le-François is subject to a "MEDIUM" risk of exposure to climatic risks.

- **The CENTRE VAL-DE-LOIRE region**

The Centre-Val de Loire Region includes territories of municipalities exposed to all climatic risks:

- Forest fires ;
- Flooding ;
- Ground movement risks ;
- Heat waves.

The number of hot days in the Centre Val-de-Loire region, currently averaging 18 per year, is expected to increase to 50 per year by 2060, with a 33% increase in the frequency of heatwaves and a decrease in rainfall, leading to more frequent periods of drought (**Pièce n°106**).

In this context, the "forest fire" risk in the region will be classified as strong or very strong. The region already has twice as much forest area vulnerable to fire since the 1980s. The risk of flooding will also be increased by the multiplication of extreme precipitation and runoff (**Pièce n°107**).

According to ONERC, some parts of its territory are subject to a "VERY HIGH" risk of exposure to climate risks.

- **The establishment IS TOGETHER**

Est Ensemble is a Public Territorial Establishment (EPT) covering the agglomeration community of Bagnolet, Bobigny, Bondy, le Pré Saint-Gervais, les Lilas, Montreuil, Noisy-le-Sec, Pantin and Romainville. This territory, located in the Ile-de-France region, is generally very vulnerable to the consequences of climate change (**Pièce n°75**).

The rate of urbanisation of the Est Ensemble member municipalities reinforces the impact of global warming and the multiplication of heat waves with the presence of heat islands (**Pièce n°108**).

The communes are also highly exposed to ground movements due to the presence of clay and gypsum in the subsoil. The shrink-swell hazard of these layers will be amplified by the impact of global warming on droughts and precipitations (**Pièce n°108, p. 17**).

Some municipalities, such as Bobigny, Bondy or Noisy-le-Sec, are particularly exposed to flood risks, which can be explained by the high level of urbanisation of these areas, which are consequently more vulnerable to extreme weather conditions and runoff (see Exhibit 10).**Pièce n°108, p. 17**).

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93. It is thus demonstrated that each of the Plaintiff communities has a legal interest in seeking an order that TOTALENERGIES reduce its emissions to a level consistent with the objective set by the Paris Agreement to limit global warming to 1.5°C.

Only by respecting this universal objective can the risks be mitigated and the serious damage to the territories over which they exercise their powers that would result from uncontrolled warming be prevented. Unless one considers that anthropogenic climate change does not exist, it cannot be seriously contested that its effects now affect the entire national territory.

In this way, the action of the requesting communities meets the needs of the population they administer.

It will thus be noted that the plaintiff municipalities, the CENTRE VAL DE LOIRE region and the EST ENSEMBLE territorial public establishment have an interest in the present action.

B. The Plaintiffs have standing and interest in the prevention of environmental damage

a. The associations Applicants

➢ **The Eco-Mayors association,**

94. TOTALENERGIES claims that the association Les Eco Maires would not have standing to act on the basis of Article 1252 of the Civil Code, in view of the criteria required by Article 1248 of the Civil Code, which states:

> *"The action for compensation for ecological damage is open to any person with standing and an interest in acting, such as the State, the French Biodiversity Office, local authorities and their groupings whose territory is concerned, as well as public establishments and associations approved or created for at least five years on the date the proceedings are instituted, whose purpose is to protect nature and defend the environment*.

The Defendant claims that it follows from this text that '*only associations whose object is directly "the protection of nature and the defence of the environment" are recognised as having the capacity to act*' under the terms of Article 1248 of the Civil Code, whereas the Eco Maires association's object is only '*to bring together local authorities*'[94] .

95. This assertion is based on an erroneous interpretation of Article 1248 of the Civil Code, whose list of persons with standing is not exhaustive. While this text certainly establishes a **presumption of standing and interest in** bringing an **action** for the persons listed therein, the fact remains that '*any person having standing and interest in bringing an action*' is also admissible.

As one author summed it up very clearly:

> *"In short, the legislator considered that the action should be facilitated and that access to the courts should be quasi-automatic for all the persons on the list, while on the contrary, he expects all the others to provide positive proof of their standing and interest in acting*" (**G. Martin, "*De quelques évolutions du droit contemporain à la lumière de la réparation du préjudice écologique par le droit de la responsabilité civile*", Revue des juristes de SciencesPo, n°18, Janvier 2020, p. 74**).

The doctrine is perfectly clear on this point:

> *"This list is preceded by the words "such as", which gives it a merely indicative character. This extensive approach to the right of action for compensation for ecological damage deserves to be approved*. (**L. Neyret, "*La consécration du préjudice écologique dans le code civil*", Recueil Dalloz 2017, p. 924**).

According to the latter author, the extensive approach to the right of action for compensation (or prevention) of ecological damage makes it possible to open up the action to the greatest number of people:

> *"In this respect, there is no doubt that, in addition to the persons referred to in Article 1248 of the Civil Code, companies, farmers, compensation operators, indigenous communities and, more generally, all professionals working in connection with the environment could have an interest in acting for compensation for ecological damage. Furthermore, the reference to environmental protection associations that are approved or have been in existence for at least five years at the time of the proceedings, based on environmental law, could lead to fears of a step backwards in relation to judicial case law, which has dispensed with such conditions by holding that 'an association may act in the name of collective interests, provided that these fall within its corporate purpose*'.[95] .

[94] Incidental findings no. 1, p. 54, §267
[95] Idem.

96. In the present case, the association Les Eco Maires does have standing and interest to act in the present proceedings in order to defend the collective interests that fall within its corporate purpose, the relevant provisions of which have been recalled above (cf. *supra*, §84).

It has thus been previously demonstrated that the purpose of the association Les Eco Maires is to bring together, support and accompany local authorities that are fighting for a more humane environment, which may in particular imply acting in the context of an action aimed at preventing the ecological damage resulting from uncontrolled global warming that the association's member local authorities will have to face. Les Eco Maires is therefore entitled to act to defend the collective interest of its members.

Moreover, the association Les Eco Maires also has an interest in acting since, as for the action based on the duty of vigilance, it is directly concerned by the consequences of climate change which affects the local authorities that it supports in the implementation of local policies adapted to face it.

Consequently, the association Les Eco Maires is perfectly entitled to act on the grounds of preventing ecological damage.

- **The associations Notre Affaire à Tous (NAAT) and ZÉA**

97. TOTALENERGIES argues that NAAT and ZÉA do not have standing and interest to act on the grounds that it follows from article 1248 of the Civil Code that "*only associations that are (i) either approved (ii) or created for at least five years at the date of the introduction of the proceedings are recognised as having standing to act*"[96] .

Once again, this erroneous reading of Article 1248 of the Civil Code must be rejected, and reference may usefully be made to the previous explanations on the interpretation of this text which prevails in the legal literature (cf. *supra,* § 95).95), in particular the need to set aside the requirement that the association be approved or created at least five years ago, **since it is sufficient that its object be the protection of nature and the defence of the environment in order to have standing**.

98. In the present case, it is clear that the associations NAAT and ZÉA have standing and interest to act with regard to their corporate purpose, notwithstanding the fact that they have not been approved or created for more than five years at the date of the introduction of the proceedings.

99. With regard to NAAT, Article 2 of the Statutes provides that :

> *"The purpose of the association is :*
>
> - *nature conservation and environmental protection;*
> - *to organise, finance or support all actions, initiatives, in particular legal steps, ideas, speeches and pleas aimed at protecting the living world, the environment, the climate, present and future generations and the fauna and flora;* (...)
> - *to defend the collective interest as well as the particular interests of its members, in particular with regard to the right to a healthy environment and fundamental rights;*
> - *ensure compliance with local, national, European or international environmental and human rights regulations;*
> - *to fight against the impunity of political, economic or physical actors when their actions cause damage to the environment and to present or future generations;* (*...)*
>
> *To achieve its purpose, "Everybody's Business" will implement all necessary actions, in particular, by :*
>
> - *Using all existing legal means, in France and throughout the world, in particular by filing a civil suit, before the civil, administrative or criminal courts, whether by way of action or intervention*. (**Exhibit 1-1**).

[96] Incidental findings no. 1, p. 55, §272

It follows that the object of the association Notre Affaire à tous is expressly the protection of nature and the defence of the environment (which are strictly the same terms as those used in Article 1248 of the Civil Code), which gives it **standing to act**.

Furthermore, NAAT's Articles of Association expressly state that its purpose is to "*ensure compliance with local, national, European or international environmental and human rights regulations*" (similar to the Duty of Care Act) and that, in order to achieve this, it could use "*all existing legal means*", which is precisely the purpose of the present proceedings.

It is therefore indisputable that Our Case to All has an **interest in acting** in the present case on the grounds of prevention of environmental damage, as recognised by the administrative courts in the Affaire du Siècle (Pièce **n**°68), in which the State was condemned for the inadequacy of its climate action, and in the Grande Synthe case, in which the intervention of Notre Affaire à tous was deemed admissible (**Pièce n°70**).

100. As far as the ZÉA association is concerned, Article 2 of its statutes states that the association's aims and objectives are :

- *"Protection of the Ocean and the Climate;*
- *the defence and protection of life, ecosystems, the environment and the commons;*

In order to pursue the objectives it has set itself, the Association may, in particular, in relation to its object, implement the following means: (...)

- *fight against extractivism, climate change, pollution, privatisation and financialisation of nature;*
- *to defend and represent the direct or indirect victims of environmental, social and health damage.*

The association may take legal action, at national, regional or international level, on its own behalf, to defend the collective interests of its members or to implement its aims and objectives. (**Exhibit 1-3**).

The association ZÉA, whose object is, among other things, the protection and defence of the environment, thus has **standing** in the present proceedings.

The aforementioned provisions of its statutes show that the ZÉA association also has an **interest in acting** for the prevention of ecological damage by virtue of its statutory object, which expressly targets the fight "against extractivism" and "climate change". The statutes are as precise as they are unambiguous and also expressly provide for the possibility of taking legal action.

101. **Consequently, the Pre-Trial Judge will declare the associations Notre affaire à tous and ZÉA admissible to act on the basis of article 1252 of the Civil Code.**

b. Local and regional authorities

102. Article L.142-4 of the Environmental Code states that :

"Local authorities and their groupings may exercise the rights granted to civil parties in respect of acts that cause direct or indirect damage to the territory in which they exercise their powers and constitute an infringement of the legislative provisions relating to the protection of nature and the environment as well as the texts adopted for their application.

It was on the basis of this text that the Paris Court of Appeal, in the case of the sinking of the oil tanker Erika, ruled that the action of all the local authorities, which had already been contested by the TOTAL company at the time, was admissible and compensated several of them for ecological damage.

Considering that "*since the actions of the State and the territorial authorities are not the same, the damage caused by the infringement of their action in this field is specific to them and cannot be assimilated to damage caused to*

the Nation as a whole", the Court deduced that the pollution infringed "*the raison d'être of these territorial authorities, which is to protect and, if possible, improve the well-being of their citizens, to which their natural environment contributes*".

In this case, the Court had constantly recalled that "*the ultimate purpose of a local authority is the well-being of its inhabitants*" and that "*the ecological damage caused to their territory by the offence in question had negative consequences on the quality of life of the populations living there, an indirect prejudice*" (**CA Paris, 30 March 2010, No. 08/02278, *D.* 2010, p. 967, obs. S. Lavric; *ibid*. 1008, interview L. Neyret)**.

The Court of Cassation will confirm its decision on this point (**Cass. crim., 25 Sept 2012, n° 10-82938, D. 2012, p. 2673, obs. L. Neyret, p. 2675, note V. Ravit - O. Sutterlin, p. 2711, note Ph. Delbecque**).

103. As recalled above, Article 1248 of the Civil Code now provides that :

> *"The action for compensation for ecological damage is open to any person with standing and an interest in acting, such as the State, the French Biodiversity Office, local authorities and their groupings whose territory is concerned, as well as public establishments and associations approved or created for at least five years on the date the proceedings are instituted, whose purpose is to protect nature and defend the environment*.

As demonstrated above, these authorities and groupings are presumed to have standing and an interest in acting (see *above*, § 95).95) when their territory is concerned.

This presumption is explained in particular by the diversity of competences exercised by the authorities, in addition to those mentioned above (cf. *supra*, § 91).91), in the field of environmental protection:

- The municipality and the territorial cooperation establishments, through their competences in the field of **town planning**, participate in the preservation of natural and agricultural areas and parks and gardens. The municipal police include the task of preventing and stopping "*accidents and calamitous plagues as well as pollution of any kind, such as fires, floods, breaches of dykes, landslides or rockslides, avalanches or other natural accidents (...)*"[97] .

- The region participates in the preservation of natural heritage through the establishment of regional nature parks since 1983[98] and the classification of regional nature reserves[99] . It is responsible for drawing up and monitoring the regional ecological coherence scheme[100] (SRCE), so much so that the law of 27 January 2014 on the modernisation of territorial public action invested the region with the role of 'lead partner' for the organisation of sustainable land use planning and the protection of biodiversity[101] .

The working group of the Club des Juristes, in which Mrs Pascale KROMAREK, "legal delegate for the environment at Total" participated, rightly recalled in its report "*Better compensation for environmental damage*", concerning the admissibility of local authorities:

[97] Art. L. 2212-2 5° of the General Code of Local Authorities.
[98] Art. L. 333-1 al. 1 of the Environment Code.
[99] Art. L. 333-2-1 of the Environment Code.
[100] Art. L. 371-3 of the Environment Code.
[101] Art. L. 1111-9 II of the General Code of Local Authorities.

> *"It is therefore essentially a State competence, which is understandable: environmental issues go beyond the local framework, and often even the national framework. It is a question of scale. One might think, more simply, that the "legitimate interest" of local authorities in taking civil environmental action results from the general competence they have for matters within their territory*" (**Club des Juristes, "Mieux réparer le dommage environnemental", January 2012, page 51**).

Finally, it should be recalled that in the judgment of 18 November 2021 rendered by the Versailles Court of Appeal which ruled on the TOTALENERGIES' objection raised before the Nanterre Court, it was held that :

> *"There is no reason to make its application conditional on the analysis of the facts giving rise to the alleged environmental damage, since only the latter is a determining factor in jurisdiction, regardless of the link that could be established between the Vigilance Plan and the management of the commercial company*" (**Exhibit 22**).

Similarly, it is settled case law that the assessment of the interest to act does not require the demonstration of the merits of the action and therefore of the existence of a prejudice, but only of '*the advantage that the plaintiff would obtain from the judge's recognition of the merits of his claim*' (**S. Guinchard [ed.], Lexique de termes juridiques. 2018-2019, 26th ed, Dalloz, 2018, p. 594**). An identical reasoning will lead to considering that only the prevention of the alleged ecological damage is a determining factor of the interest to act of the plaintiff communities.

104. **In the present case**, and as amply demonstrated above (cf. *supra*, §92), each of the applicant municipalities, the CENTRE VAL DE LOIRE region and the EST ENSEMBLE establishment are exposed to the effects of climate change.

In particular, these effects are manifested by :

- heat peaks causing degradation of terrestrial and marine ecosystems, with adverse effects on human health;

- extreme events (floods, submersions, storms, landslides) that can cause significant damage to community assets.

Reference is made to the discussion of the assessment of the local authorities' interest in acting in the *Grande Synthe* case (**Pièce n°70**), which confirms that they are exposed to the harmful and concrete effects of climate change (cf. *supra*, § 89).89), such as those mentioned above:

- *"In this respect, the municipality of Grande-Synthe argues, without being seriously challenged on this point, that due to its immediate proximity to the coast and the physical characteristics of its territory, it is exposed in the medium term to increased and high risks of flooding, to an amplification of episodes of severe drought, with the consequence not only of a reduction and degradation of fresh water resources but also of significant damage to built-up areas, given the geological characteristics of the soil*.

- *"The Paris region and the Grenoble conurbation are identified by the National Observatory on the effects of global warming as having a very high exposure index to climate risks. In this respect, the City of Paris and the City of Grenoble argue, without being challenged, that the phenomenon of global warming will lead to a significant increase in the intensity and duration of heat peaks observed on their territory, as well as a significant increase in winter rainfall, reinforcing the risk of major flooding and subsequent flooding*.

105. Contrary to the Defendant's claim, the Claimants have clearly established the specific threats they face as a result of climate change, for which they seek judicial intervention. Once again, the argument that the global nature of global warming is a pretext cannot be accepted: the global nature of the phenomenon does not exclude localised consequences, quite the contrary.

Similarly, the fact that they are not able to implement the requested preventive measures is not a criterion determining their interest in acting, since TOTALENERGIES will be ordered to implement them.

It follows from the above that the Claimant communities are directly and specifically exposed to the consequences of climate change and therefore have an interest in bringing a claim to prevent the environmental damage that could result in the absence of appropriate measures.

2.3.2.2. Volunteer workers have an interest in volunteering as a sideline

106. As a preliminary matter, the Pre-Trial Judge will reject the argument that the claims of the Voluntary Intervenors are inadmissible due to the inadmissibility of the claims formulated by the Applicants, since it has just been shown that the grounds for inadmissibility invoked are unfounded.

A. The interest in intervening of all the voluntary workers

107. **In law**, reference may usefully be made to the developments relating to ancillary voluntary intervention in the pleadings of 29 July 2022 (p. 11, §7), which are not, moreover, contested by the Defendant.

108. As mentioned above, the interest in acting on the basis of the Duty of Care Act is assessed very broadly (see *above*, § 83).83), the interest in acting of accessory voluntary interveners in support of claims based on the duty of care must be assessed with the same flexibility, all the more so as they only need to have a "mitigated" interest.

Thus, both the judges of the court of first instance and the Court of Cassation have given favourable consideration to voluntary accessory interventions by associations on the basis of this text (**Versailles Court of Appeal, 10 December 2021, n°20/01692; confirmed by Cass. Com. 15 December 2021, n°21-11.882**).

Furthermore, the action of the volunteer participants is part of the objective of associating the "*company's stakeholders"* in the elaboration, by TOTALENERGIES, of a new vigilance plan, in accordance with the provisions of article L. 225-102-4 of the Commercial Code relating to the vigilance plan.

109. The Voluntary Interveners also have an interest in acting to prevent damage from occurring in the area of ecological damage (Article 1252 of the Civil Code), provided that they meet the conditions set out in Article 1248 of the Civil Code, as described above (cf. *supra*, §95) :

- Amnesty International aims to defend human rights, which are threatened by global warming and its consequences on the environment (**Conclusions in voluntary intervention, p. 13, §14**);

- the territories of the municipalities of Paris, Poitiers and New York are highly exposed to the consequences of global warming, as are those of the Applicant communities (see *below*, § 114).114).

110. **In this case,** the voluntary interventions of Amnesty International France and the cities of New York, Paris and Poitiers are intended to support the claims of the five associations and the thirteen local authorities, with which they share common values (the defence of human rights and the environment), in the case of the associations, and a common exposure to the risks arising from uncontrolled global warming, in the case of the local authorities.

They nevertheless demonstrate a specific interest in intervening in the present procedure:

- Amnesty International reports on its actions in defence of human rights and the fight against global warming, including its report "*Our Rights Are Burning! Governments and businesses must act to protect humanity from the climate crisis*", which clearly states that :

> "*Amnesty International urges companies to take responsibility for respecting human rights in the context of climate change and bring their operations and business model into line with the objectives of the Paris Agreement, in particular the need to limit the increase in global average temperature to 1.5°C above pre-industrial levels.*" (**Exhibit 27, p. 21**).

It is exactly in this capacity that Amnesty International is intervening in the present proceedings.

- the Intervening communities have each demonstrated their exposure to climate change and therefore their interest in intervening in these proceedings, as expressly set out in the Conclusions in Voluntary Intervention of 29 July 2022 :

> "*the cities of New York, Paris and Poitiers are entitled to intervene in the proceedings between the plaintiffs and the company TOTALENERGIES because of (i) the non-compliance of its due diligence plan with the obligations set out in the law of 27 March 2017 and (ii) its contribution to global warming, in contradiction with its obligation to prevent the occurrence of environmental damage as set out in Article 1252 of the Civil Code.*" (**Conclusions in voluntary intervention, p. 21**).

111. It is disconcerting, to say the least, to read in TOTALENERGIES' letter that "*the current proceedings relate to TotalEnergies' compliance plan, and not to climate change*", which would render inadmissible interventions whose interest in acting has been demonstrated only with regard to climate change[102] .

On the one hand, if the main requests do indeed concern the TOTALENERGIES vigilance plan, they are intended to make this plan evolve so that it takes climate risks into account.

On the other hand, the additional claims for the prevention of ecological damage exclusively concern the consequences of climate change to which TOTALENERGIES' activities contribute.

112. **Consequently, the Pre-Trial Judge can only declare that the Voluntary Interveners have an interest in intervening in the present proceedings and will declare them admissible.**

B. The specific interest in intervening of the communities Intervenantes Volontaires

113. The Defendant maintains that the intervention of the Intervening communities is inadmissible for lack of interest in acting, in the same way as that of the Plaintiff communities, in that the claims manifestly exceed the scope of their territory and encroach on the competence of the State[103] .

114. It will therefore be useful to refer to the discussion of this subject in relation to the interest of the applicant communities in bringing proceedings (see *above*, §§88 et seq.) and recall that in substance:

- if climate change is a global phenomenon, it has consequences at the level of each territory, justifying the interest of each territorial authority to act Speakers;

[102] Incidental findings no. 1, p. 62, §335
[103] Incidental findings no. 1, p. 63, §343 and 345

- case law has already recognised the interest of communities exposed to the consequences of climate change to act;
- Local authorities have general and specific competences to act in favour of the fight against global warming;

115. These developments are all the more relevant as in the aforementioned *Commune de Grande Synthe* case, the Conseil d'Etat specified the conditions for the interest of local authorities in intervening in a climate dispute.

After noting that both the Paris region and the Grenoble conurbation were identified by the National Observatory on the Effects of Global Warming as having a "very high" exposure to climate risks, the Council of State decided that the interventions of the cities of Paris and Grenoble were admissible insofar as :

> *"the phenomenon of global warming will lead to a significant increase in the intensity and duration of heat peaks observed in their territory, as well as to a significant increase in winter rainfall, which will increase the risk of large-scale flooding and subsequent flooding*" (**Pièce n°70, n°5**).

It therefore considered that "*these two local authorities have a sufficient interest to intervene in support of the application to annul the contested decisions*" (**Pièce n°70, n°5**).

It follows from this decision that a municipality exposed to risks arising from climate change does have an interest in intervening.

Thus, the interest to intervene of the local authorities was admitted as soon as they are exposed to the risks linked to climate change and this exposure was assessed in exactly the same way as for the Commune of Grande Synthe, the main plaintiff.

116. In the present case, each of the intervening municipalities, namely Paris, Poitiers and New York, are particularly exposed to the consequences of climate change and have had to adopt adaptation policies, as set out in detail, with numerous supporting documents, in the Conclusions in voluntary intervention of 29 July 2022 (pp. 16 to 20).

The Pre-Trial Judge will establish that the intervening communities have an interest in the action and will declare them admissible.

2.4. Counterclaim: the urgency of the situation justifies the Pre-Trial Judge ordering TOTALENERGIES to take provisional measures as a precautionary measure

117. **Given the urgency to act to fight global warming and the persistent failure of TOTALENERGIES to put in place and implement appropriate measures to achieve the objective of the Paris Agreement - which is the main purpose of the action initiated by the concluding companies** (cf. *supra*, § 53) - **TOTALENERGIES has decided to take the necessary steps to ensure that the measures taken by the company are in line with the Paris Agreement.**53) -, the latter request that the Pre-Trial Judge order TOTALENERGIES to take provisional measures as a precautionary measure under the conditions set out below.

118. Article 789 of the Code of Civil Procedure states that :

> *"Where the application is submitted after his designation, the Pre-Trial Judge shall, until he relinquishes jurisdiction, have sole competence, to the exclusion of any other court formation, to :*
>
> *4° To order all other provisional measures, including protective measures, with the exception of protective attachments and provisional mortgages and pledges, as well as to modify or supplement, in the event of the occurrence of a new fact, the measures which have already been ordered*.

119. Generally speaking, "*the provisional measures referred to in this text are those whose purpose is to authorise or promote the treatment of a situation that cannot wait to be examined by the court in the context of its judgment*" (**Court of Appeal, Paris, Pôle 1, chamber 8, 23 June 2017 - No. 16/08244**).

120. The provisional measures that can be ordered by the juge de la mise en état on the basis of this text are very varied, with the exception of those that are explicitly excluded. For example, the juge de la mise en état can order the necessary works to preserve a building from imminent perils "*without conferring on* [this measure] *a character that excludes the liability of the author of the damage before the court of first instance*" (**Bastia Court of Appeal, 8 July 2016, n°14/00232**).

121. In concrete terms, the Pre-Trial Judge may order any measure justified by the urgency, which does not allow to wait for the judgment on the merits, as long as it does not prejudice the main issue or does not settle the dispute on the merits (**Fasc. 1100-85: Judicial Court - Written Litigation Procedure - Ordinary Procedure: Pre-Trial, n°52**) and it is proportionate to the situation (**Repertoire of Civil Procedure - Judicial Court: Ordinary Written Procedure - Nicolas CAYROL - November 2020, n°227**)

122. At this stage, it should be recalled that environmental emergencies are precisely a preferred area for judicial intervention in the form of provisional or conservatory measures, in order to "*be the actor of effective prevention*" (**Eve Truilhé, "Le traitement de l'urgence environnementale par les juridictions internationales : vers plus de mesures provisoires et au-delà", Revue juridique de l'environnement, 2022/HS21 n° spécial, pages 225 to 240**).

The precautionary and preventive principles must guide the judge in deciding on measures to prevent environmental damage, as the same author points out:

> *"The preventive purpose of environmental law supported by various legal rules, in particular the duty of prevention recognised in Articles 2 and 3 of the Charter of the Environment, would therefore be reinforced by the preventive measures themselves imposed by the judge"* (**Ève Truilhé Mathilde Hautereau-Boutonnet, Le procès environnemental: Du procès sur l'environnement au procès pour l'environnement, May 2019**).

For example, in an order issued on 20 November 2017, in the case of Commission v Poland, the Court of Justice of the European Union (CJEU) ordered Poland to take a number of interim measures, and in particular, to cease the felling plan it had initiated in a forest. The Court took into account the precautionary principle in its assessment of the urgency criterion, and thus intended to prevent the occurrence of "*irreparable"* damage and the "*irreversible metamorphosis of a natural forest*" (**CJEU, Order of 20 November 2017, C-441/17, *European Commission v Poland***).

123. **In the present case,** the urgency to act to avoid a worsening of the climate crisis, amply demonstrated in the summons and in the present pleadings (cf. *supra,* Sections 1.1.1 and 1.1.2), is the subject of an international, scientific and political consensus.

It will simply be recalled here that the objective set by the Paris Agreement, and reaffirmed by the Glasgow Pact, of limiting the increase in temperature to 1.5°C is an imperative necessity for the survival of humanity, as **the UN Secretary General, Antonio Gutteres,** recently reminded us, **alerting us to the specific responsibility of fossil fuel producers in this respect:**

> ***"Today, fossil fuel producers and their supporters continue to fight to increase production, knowing full well that their economic model is incompatible with human survival****.* (...) *This madness is science fiction, but we know that the collapse of the ecosystem is an undeniable scientific fact*" (**Pièce n°**110)[104] .

It should also be noted that the present proceedings were initiated in **January 2020** and that, given the number of incidents raised by TOTALENERGIES, **the judgment on the merits will probably not be delivered before 2024 or even 2025**.

However, the last eight years (between 2015 and 2022) have been the warmest on record according to the World Meteorological Organization (Pièce **n°**111) and the IPCC identified in the publication of the third part of its 6ème report, in April 2022, that emissions must peak by 2025 at the latest and then decrease by about 43% by 2030 to have any chance of limiting warming to 1.5°C (**Pièce n°112**).

In other words, every year that passes makes the phenomenon worse and it is vitally urgent that the major GHG emitters, including TOTALENERGIES, take immediate precautionary measures to preserve a chance of preventing the risks of uncontrolled climate warming above 1.5°C.

These measures also appear to be essential to prevent applications on the merits from becoming ineffective if they succeed before the Court of First Instance, as they would be made too late.

124. The measures are also proportionate, as the above-mentioned conclusions show that the company has still not taken the necessary measures to align itself with a trajectory compatible with the objective of limiting warming to 1.5°C, as also confirmed by the climatologist Dr. Yann Robiou du Pont, who was consulted for the purposes of the present procedure (cf. *above,* § 53).53 ; **Pièce n°40, p. 9**).

The proportionality of the measures must also be assessed in the light of the historical responsibility of TOTALENERGIES, which has been aware of the risks associated with global warming for a very long time (cf. *above*, Section 1.1.4), as well as the demands of the plaintiffs since their first letter of interpellation of 22 October 2018 (**Exhibit 2-1**).

It should also be recalled that TOTALENERGIES is currently being investigated for unfair and deceptive marketing practices in relation to its alleged climate "strategy" (**Pièce n°53**).

Furthermore, in the words of UN Secretary-General Antonio Guterres when announcing the creation of the UN-HLEG, "The UN-HLEG is a unique organisation, which has been created to promote the development of a common vision of the world:

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[104] Free translation. Original quote: "*Today, fossil fuel producers and their enablers are still racing to expand production, knowing full well that their business model is inconsistent with human survival. This insanity belongs in science fiction, yet we know the ecosystem meltdown is cold, hard scientific fact*.

> *"I also have a message for fossil fuel companies and their backers. So-called 'net zero commitments' that exclude essential products and activities are poisoning our planet. They need to thoroughly review their commitments and bring them into line with these new directions. Let's tell it like it is.* ***The use of bogus 'net-zero' commitments to cover up the massive expansion of fossil fuels is reprehensible. It is pure deception. This toxic cover-up could send our world over the climate cliff. This sham must stop***. (**Pièce n°46**)[105] .

In view of the above, TOTALENERGIES is therefore necessarily aware of the inadequacy of its measures and the associated risks for the environment, human rights and compliance with the objective of the Paris Agreement. In view of what is at stake, namely the "*survival of humanity*", it is fully justified that provisional measures be ordered before any judgment on the merits.

125. **It is under these conditions and for the reasons set out above that the Pre-Trial Judge is asked to order TOTALENERGIES to take the measures described below on a provisional basis and until the judgment on the merits is given.**

2.4.1. Primarily, order TOTALENERGIES to suspend, including for companies it controls within the meaning of Article L. 233-16 of the French Commercial Code, exploration and exploitation projects for new hydrocarbon deposits that have not been the subject of a final investment decision

126. As noted above, the main purpose of the measures requested in the subpoena is to ensure that TOTALENERGIES is on a trajectory consistent with the Paris Agreement's objective of limiting global warming to 1.5°C, which can only be achieved if TOTALENERGIES contributes to the reduction of global GHG emissions immediately by suspending its new hydrocarbon exploration and exploitation projects.

Indeed, without TOTALENERGIES' contribution to the fight against climate change, a major player in the oil and gas sector that is listed in the historical and current ranking of the 20 most GHG-emitting multinational companies (Exhibits 6 and 7), it will be impossible to meet the Paris Agreement target.

A suspension of its new exploration-production activities would effectively set in motion a "*natural depletion of fields of about 4% per year*", as the company acknowledges (**Adverse Exhibit 30 p. 8**), bringing its activities *de facto* in line with a 1.5°C trajectory (**Pièce n°49**Error! Reference source not found.**p. 35**)[106] ; the subject of the plaintiffs' claims.

127. As mentioned above, there is an indisputable scientific consensus that the search for new oil and gas fields (exploration), as well as their potential exploitation, must stop immediately in order to respect the remaining carbon budget available to limit warming to 1.5°C.

Indeed, the IPCC, the IEA and the UN-HLEG consider that **the exploration and exploitation of new oil and gas fields is not compatible with the 1.5°C trajectories without overshoot** (cf. *above*, §10), since existing and planned infrastructures are sufficient to exhaust the remaining carbon budget to limit global warming to 1.5°C or even 2°C (**Pièce n°43B.7, p. 16**).

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[105] Free translation. Original quote: "*I also have a message to fossil fuel companies and their financial enablers. So-called 'net-zero pledges' that exclude core products and activities are poisoning our planet. They must thoroughly review their pledges and align them with this new guidance. Let's tell it like it is. Using bogus 'net-zero' pledges to cover up massive fossil fuel expansion is reprehensible. It is rank deception. This toxic cover-up could push our world over the climate cliff. The sham must end*.

[106] The *Production Gap Report 2021* published by the United Nations Environment Programme, which states that "[a]ggregate annual decline rates of about 11% for coal, 4% for oil and 3% for gas between 2020 and 2030 would be consistent with limiting warming to 1.5°C, based on the mitigation scenarios developed by the Intergovernmental Panel on Climate Change (IPCC)".

Based on this finding, the UN-HLEG report recommends that, in order to meet a 1.5°C trajectory with no or limited overshoot, companies should "*cease (i) exploration for new oil and gas fields, (ii) expansion of oil and gas reserves, and (iii) oil and gas production*" (**Pièce n°48, p. 24**).

In addition to these reports issued by or under the auspices of intergovernmental organisations, numerous publications by climate experts confirm the need to halt all fossil fuel expansion and assess the share of fossil fuels that must remain untapped (see, for example, **Pièce n°113**).

128. It should also be recalled that the French legislator has shared such a scientific observation since 2017, when it adopted the so-called "Hulot" Law No. 2017-1839 of 30 December 2017 **putting an end to the exploration as well as the exploitation of hydrocarbons**, which states in its explanatory statement:

> *"The work of the Intergovernmental Panel on Climate Change (IPCC) shows that achieving the objective of limiting the temperature increase since the pre-industrial era to 2°C requires limiting the exploitation of fossil energy reserves (oil, gas, coal) present underground.* ***80% of the fossil reserves already known must remain in the ground in order to respect the temperature increase trajectory targeted by the Paris Agreement. In this context, granting new exploration permits is incompatible with the Paris Agreement. Given the lead times for exploration and exploitation of a hydrocarbon lease, new projects started today would begin exploitation in the 2020s/2030s and still be producing oil in the 2050s/2060s, well beyond the periods by which our emissions will have to be reduced***"[107] .

Although the legislator has only banned the exploration and exploitation of new fields in France, the above reasoning is valid for the whole world. Indeed, France is a member of the international alliance *Beyond Oil and Gas*, which brings together governments and stakeholders to facilitate the phasing out of oil and gas production (**Pièce n°113**).

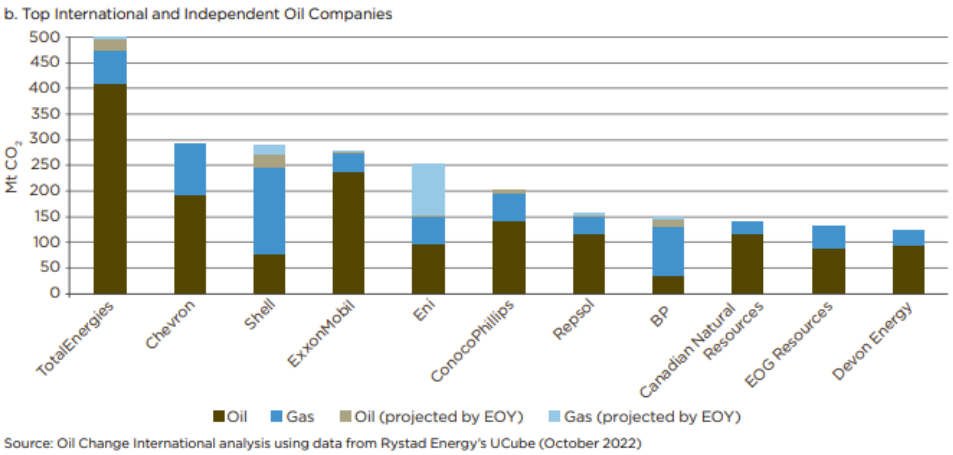
In other words, TOTALENERGIES' exploration and exploitation of new deposits contravenes the will of the French legislator.

129. As noted above, TOTALENERGIES is one of the most active companies in terms of expanding its oil and gas reserves worldwide.

It is the private company with the largest expansion strategy for the year 2022:

[107] Explanatory Memorandum, Bill n°155 to put an end to the exploration and exploitation of conventional and unconventional hydrocarbons and to lay down various provisions relating to energy and the environment, Registered with the Presidency of the National Assembly on 6 September 2017

> *"TotalEnergies, which this year approved a massive new extraction project in Uganda linked to its controversial EACOP pipeline, is the oil and gas company that has approved the largest expansion in 2022, followed by Chevron and Shell*" (**Pièce n°64p. 10**)[108] .



Source: Oil Change International analysis using data from Rystad Energy's UCube (October 2022)

Yet, as noted above, the IEA report published in May 2021 states very clearly:

> "***Apart from the projects already committed from 2021***, *no new oil and gas fields are approved for development on our trajectory.*" (**Pièce n°44, p. 21**).

Since the publication of this report - of which TOTALENERGIES is perfectly aware as it is mentioned in its 2021 Vigilance Plan (**Adverse Exhibit 24**) - no new pre-gas exploitation project should therefore have been approved, in accordance with the scientific consensus and the concordant opinions of climate experts.

As the NGO *Oil Change International* points out, bringing the world's approved oil and gas projects into operation in 2022 will result in far more CO2 emissions than the carbon budget available to maintain a 1.5°C trajectory:

> *"The FIDs [Final Investment Decisions] made to date in 2022 and expected by the end of the year could lock in enough new oil and gas production to result in an additional 11 Gt of carbon dioxide pollution over the life of the approved fields and wells. This is equivalent to the emissions from the construction of 75 new coal-fired power plants, and more than doubles the total US carbon emissions from energy in 2021*" (**Pièce n°64p. 7**)[109] .

130. ème According to *Oil Change International*, **TOTALENERGIES is the world's 2nd largest CO2 emitter for its expansion projects with a final investment decision projected for the period 2023-2025, which** is clearly inconsistent with the IEA's NZE trajectory:

[108] Free translation. Original quote: "*TotalEnergies, which this year approved massive new greenfield extraction in Uganda related to its controversial EACOP pipeline, is the oil and gas major that approved the most significant expansion in 2022, followed by Chevron and Shell.*

[109] Free translation. Original quote: "*The FIDs made to-date in 2022 and anticipated by the end of the year could lock in enough new oil and gas production to cause an additional 11 Gt of carbon dioxide pollution over the lifetime of the approved fields and wells.46 That is equivalent to the lifetime emissions of building 75 new coal power plants, and amounts to more than doubling the United States' total carbon emissions from energy in 2021*".

> *"Some oil and gas companies - including some that have nominally committed to achieving "net zero emissions" by 2050 (e.g. TotalEnergies and Shell) - are still among the leading developers of new projects globally. This highlights the clear disconnect between the greenwashing that some of these companies have deployed in recent years and the continuation of their climate-dependent business models.*" (**Pièce n°64p. 14**)[110] .

Clearly, the development of new projects by TOTALNERGIES would contribute to significantly exceeding the 1.5°C and 2°C carbon budgets, significantly jeopardising the achievement of the Paris Agreement target, as confirmed by the climate scientist Dr. Yann Robiou du Pont in point 6 of his note (**Pièce n°40, p. 6**).

IPCC experts, who signed an opinion piece on 8 February 2023, denounced the use of their work by TOTALENERGIES to justify its lack of a plan to get out of fossil fuels:

> *"They criticise the company, which is due to announce its results for 2022 later today, for ignoring the Paris climate agreement and the scientific consensus on the need to drastically reduce our consumption of fossil fuels (oil, coal, gas), the driving force behind global warming. "The more we invest in fossil fuels, the harder it will be to decarbonise the energy system and limit the risks to the economy, health and biodiversity," they write.*" (**Pièce n°54**).

In the same vein, five Goldman Environmental Prize laureates called on financial institutions, in an opinion piece in "Le Monde", to stop supporting TOTALENERGIES' oil and gas expansion strategy, which they consider to be responsible for accelerating global warming and social injustices (**Pièce n°116**).

In other words, the continued expansion of TOTALENERGIES' activities could lead to a warming of potentially more than 2°C, with dramatic consequences for the environment and all of humanity.

131. **In view of the above, the Pre-Trial Judge is therefore asked to order TOTALENERGIES, as a precautionary measure on the basis of article 789, 4° of the Code of Civil Procedure, to suspend the exploration and exploitation projects for new hydrocarbon deposits that have not yet been the subject of a final investment decision, on a provisional basis and pending the judgment on the merits.**

Such a measure, recommended by the UN-HLEG (detailed recommendation 5), would clearly contribute to the prevention of irreversible damage to the environment and human rights.

This measure must be implemented by TOTALENERGIES on its behalf and for all the companies it controls within the meaning of II of Article L. 233-16 of the French Commercial Code.

It is noted that the final investment decision is the last stage of project development before construction and financing begin. Until this stage, it is uncertain whether the project will go into production.

132. Finally, several concordant reports from intergovernmental organisations clearly highlight the imperative to accompany the exit from fossil fuels with an increase in financing for renewable energy[111] :

- For the UN-HLEG, "*In its WEO 2020 update on the 'net zero emissions' roadmap, the IEA also highlights the need to synchronise the development of clean energy technologies with fossil fuel reduction and that*

[110] Free translation. Original quote: "*some international oil and gas companies - including some that have nominally committed to reaching "net zero emissions" by 2050 (e.g., TotalEnergies and Shell) - are still among the top projected expanders globally. This highlights the clear disconnect between the greenwashing some of these companies have deployed over the past few years82 and the protraction of their business models dependent upon climate failure*".

[111] See also the above-mentioned ISSD report, which states (p. IV): "*The investment levels needed for wind and solar technologies in 1.5C-aligned trajectories can be achieved by redirecting funding from new 1.5C-incompatible oil and gas fields*.

investment in clean energy rather than fossil fuel supply offers 'a more sustainable solution to the current energy crisis while reducing emissions"** (**Pièce n°48p. 23**)[112] ;

- According to the IEA itself (OECD), "*Clean energy is becoming a tremendous opportunity for growth and jobs, and a major issue in international economic competition.*" (**Pièce n°45p. 20**)[113] .

The summons issued on 28 January 2020 by the Claimants to TOTALENERGIES specifically highlighted the fact that TOTALENERGIES' exploration expenses for new deposits continue to be high, and consequently requested to "put an *end to the exploration and solicitation of new hydrocarbon research permits*".

While TOTALENERGIES claims to have reduced its exploration expenditures to **$800,000 million** in 2021 (**Adverse Exhibit 24, p. 90**), these expenditures continue to seriously jeopardise compliance with the Paris Agreement target and illustrate TOTALENERGIES' desire to continue expanding its oil and gas reserves, as it has done in 2021 in Suriname, Guyana, Angola and Brazil.

It should be recalled that TOTALENERGIES has itself committed to a "*capital allocation strategy aligned with the transformation strategy*", which implies devoting "*half of its investments to the maintenance and adaptation of its oil activities*" as opposed to only 25% to so-called low-carbon energies (**Adverse Exhibit 30, p. 24**).

Specifically, the ACT initiative, which was developed by ADEME and to which Carbone 4 and TOTALENERGIES contributed, recommends that oil and gas companies direct at least 49% of their total expenditure (CAPEX - or "*Capital Expenditures"*) towards low-carbon energies and to align themselves with a trajectory "well below 2°C" (**Pièce n°115**Error! Reference source not found.**, p. 128**). Although TOTALENERGIES claims to be "*transforming* itself *into a multi-energy company with the ambition of being a major player in the energy transition*" (**Exhibit 24, p. 9**), the actions to achieve this are clearly insufficient.

This should be seen in the context of TOTALENERGIES' recent announcement of a profit of 19.2 billion euros for the year 2022, the largest profit in its history (Pièce n°**118**). Excluding accounting losses related to its exit from Russia, amounting to nearly $15 billion, the company's adjusted net profit (which excludes exceptional items) is $36.2 billion.

133. **<u>In conclusion</u>**, the requested measure is therefore (i) essential to prevent TOTALENERGIES from developing new projects likely to generate CO2 emissions that would risk exploding the remaining global carbon budget, in defiance of the numerous scientific warnings and removing any chance of complying with the Paris Agreement, which is the subject of the main request and (ii) proportionate given the urgency of the situation, TOTALENERGIES' economic weight, its knowledge of climate risks and its faulty contribution since 1971, its means of action as well as its own commitments to carbon neutrality in 2050.

[112] Free translation. Original quote: "*In its WEO 2020 update on the net zero Roadmap, the IEA also emphasises the need to synchronise scaling up clean energy technologies with scaling back of fossil fuels and that investment in clean energy rather than fossil fuel supply provides "a more lasting solution to today's energy crisis while cutting emissions*".
[113] Free translation. Original quote: "*Clean energy becomes a huge opportunity for growth and jobs, and a major arena for international economic competition*".

134. **The Pre-Trial Judge will therefore order TOTALENERGIES, including the companies it controls within the meaning of Article L. 233-16 of the French Commercial Code, to suspend the exploration and exploitation of new hydrocarbon deposits that have not yet been the subject of a final investment decision, as a provisional and protective measure pending the judgment on the merits.**

2.4.2. In the alternative, order TOTALENERGIES to immediately implement the necessary precautionary measures to reduce its direct and indirect GHG emissions (scopes 1, 2 and 3) in order to align with a 1.5°C trajectory with no or limited exceedance, in accordance with the UN-HLEG report

135. As noted above, the Paris Agreement objective can only be achieved if non-state actors commit to a greenhouse gas emission reduction pathway consistent with a 1.5°C no-exceedance or limited-exceedance warming, such as the IEA's NZE.

However, such trajectories require, in **addition to compliance with the long-term objective of carbon neutrality by 2050, an immediate reduction in GHG emissions** (cf. *above,* § 11).11).

As Dr. Yann Robiou du Pont, who was consulted for the purposes of this proceeding, clearly summarizes:

> "The *achievement of the global warming limitation objective of a trajectory (e.g. 1.5°C) can only be guaranteed by respecting emission levels over the entire duration of a trajectory compatible with 1.5°C.*" (**Pièce n°40, p. 7**)

It is therefore also necessary to take immediate and short-term measures to reduce GHG emissions.

This is what the UN-HLEG expressly concludes in its above-mentioned report:

> *"A net greenhouse gas (GHG) emission reduction commitment must contain interim targets every five years and present concrete means to achieve this target in line with the Intergovernmental Panel on Climate Change (IPCC) or International Energy Agency (IEA) emission scenarios that limit warming to 1.5°C with no or limited overshoot*"[114] . (**Pièce n°48, p. 12**)

> ***"All non-state actors must reduce their emissions as quickly as possible**, aligning with or exceeding national targets, roadmaps and timetables. **Those that have the capacity to go faster than a 50% reduction by 2030 and a net zero reduction by 2050 should do so***" (**Pièce n°48, p. 16**).

In this regard, on 6 February 2023, UN Secretary General Antonio Guterres called on all actors in the fossil fuel industry and their financial backers to immediately implement the measures recommended by the HLEG:

> *"I have a particular message for fossil fuel producers and their accomplices who are rushing to increase production and reap huge profits: If you cannot credibly commit to net zero, with targets for 2025 and 2030 covering all your operations, you should not be in business. Your core product is our core problem. We need a renewable energy revolution, not a self-destructive fossil fuel resurgence."*[115] (**Pièce n°117**).

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[114] *A net zero pledge must contain stepping stone targets for every five years, and se out concrete ways to reach net zero in line with the Intergovernmental Panel on Climate Change (IPCC) or International Energy Agency (IEA) net zero greenhouse gas (GHG) emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot*.

136. As demonstrated above, **while TOTALENERGIES is committed to achieving carbon neutrality by 2050, it has not taken any of the necessary measures in the short and medium term (2025, 2030)** to reduce its GHG emissions in line with the remaining carbon budget to limit global warming to 1.5°C (see *above*, § 53).53)[116] .

In view of the urgency to act - the IPCC having stressed that it was essential to reduce GHG emissions immediately, and in any case before 2025[117] - it is fundamental to require TOTALENERGIES to take immediately, on a provisional basis and without waiting for the intervention of the judgment on the merits, the measures recommended by the UN-HLEG in order to reduce its direct and indirect (scopes 1, 2 and 3) GHG emissions in proportions that will enable it to maintain a trajectory compatible with the 1.5°C objective.

137. It is also notable that in the internationally acclaimed *Royal Dutch Shell* climate case, the Hague Tribunal ordered the parent company of the Royal Dutch Shell group, "RDS", to adopt a similar absolute reduction target for all its direct and indirect emissions:

> *"Orders RDS, both directly and through the companies and legal entities that it commonly includes in its consolidated annual accounts and with which it jointly forms the Shell Group, to limit or cause to be limited the aggregate annual volume of all CO_2 emissions to the atmosphere (Scopes 1, 2 and 3) from the Shell Group's commercial activities and energy-carrying products sold, so that this volume is reduced by at least 45% net by the end of 2030, compared to 2019 levels*" (Pièce **n°**119**§5.3, p. 44**)[118] **.**

138. In this case, such an injunction must be ordered to maintain a chance of achieving the objective of limiting global warming to 1.5°C, which was requested of TOTALENERGIES in the writ. It is therefore (i) manifestly proportionate in view of the urgency of the situation, the time that has elapsed since the start of the legal proceedings and TOTALENERGIES' capacity to act and its long-standing knowledge of the climate risks arising from its activities and, (ii) moreover, would not prejudice the main proceedings.

In reality, all that is required is the implementation of appropriate and necessary measures **in the short and medium term** to ensure compliance with the commitment to carbon neutrality by 2050 made by TOTALENERGIES in its 2021 Compliance Plan, and thus to prevent the serious harm associated with the worsening of global warming.

These concrete measures are identified in particular in the UN-HLEG report, which sets out appropriate actions on Net-Zero commitments for private actors, and in particular oil and gas companies (**Pièce n°48**).

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116 See also the consultation by Dr. Yann Robiou du Pont: "*In view of the existing literature, TotalEnergies takes us further away from achieving the objectives of the Paris Agreement. Aligning short-term measures with the long-term objective and taking into account all the emissions resulting from fossil fuel extraction activities would help to meet the sectoral objectives of the transition scenarios*. (**Pièce n°40, p. 9**).

117 **Pièce n°41**, C.1.

118 Original quote: "*orders RDS, both directly and via the companies and legal entities it commonly includes in its consolidated annual accounts and with which it jointly forms the Shell group, to limit or cause to be limited the aggregate annual volume of all CO2 emissions into the atmosphere (Scope 1, 2 and 3) due to the business operations and sold energy-carrying products of the Shell group to such an extent that this volume will have reduced by at least net 45% at end 2030, relative to 2019 levels*.

It is therefore recommended that :

- to reduce its overall GHG emissions as soon as possible (**Detailed Recommendation 1, p. 16**) and by at least 50% by 2030 (**General Recommendation 1, p. 15**), or even faster for those who have the capacity to do so (**Detailed Recommendation 1, p. 16**);
- provide for intermediate targets (2025, 2030 and 2035) consistent with the IPCC and IEA trajectories limiting warming to 1.5°C with no or limited overshoot (**General Recommendation 1, p. 15**);
- Include short, medium and long-term absolute GHG emission reduction targets and, where appropriate, intensity-based emission reduction targets for the whole value chain (**General Recommendation 2, p. 17**).

139. **The Pre-Trial Judge will therefore order TOTALENERGIES to immediately implement the necessary precautionary measures to reduce its direct and indirect GHG emissions (scopes 1, 2 and 3) in order to align itself with a 1.5°C trajectory with no or limited overshoot, in accordance with the UN-HLEG report, until the intervention of the judgment on the merits**

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140. In order to defend their interests in court, the Claimants have had to incur irreparable costs which it would be unfair to leave to their account.

Consequently, the Paris Court is asked to order TOTALENERGIES to pay them the sum of 2,000 euros each on the basis of Article 700 of the Code of Civil Procedure, and to reserve the costs of the proceedings.

THEREFORE

Having regard to the formal notice sent by the plaintiffs on 19 June 2019 and the summons issued to the company TOTAL (now TOTALENERGIES) on 28 January 2020;

Having regard to Articles 70, 117, 121, 122, 789 of the Code of Civil Procedure
Having regard to Articles L. 225-102-4 and L. 233-16 of the Commercial Code
Having regard to articles 1248 to 1252 of the Civil Code,
Having regard to Articles L. 142-4, L. 229-26, L. 333-1, L. 333-2-1, L. 371-3, R. 229-51 of the Environment Code
Having regard to Articles L. 1111-2, L. 1111-9, L. 2212-2, L. 2122-22, 16°, L. 4251-1, L. 4251-2 of the General Code of Local Authorities
Having regard to Articles L. 110 et seq. of the Town Planning Code
Having regard to the Charter of the Environment,
Having regard to Section 394(c) of the New York City Charter,
Having regard to the report by u~~ol~~' UN-HLEG

The Paris Court of Justice is asked to :

1. **IN LIMINE LITIS, ON PROCEDURAL OBJECTIONS**

- **JUDGE that** the TOTALENERGIES company is not entitled to rely on the lack of authority of certain mayors and representatives, as this procedural exception can only be invoked by the community concerned

Alternatively,

- **REJECT** the procedural objections raised by TOTALENERGIES, as the mayors and representatives of the local authorities clearly have the power to represent them in court

2. **MAINLY, ON THE GROUNDS OF INADMISSIBILITY**

- **TO REMAND** the examination of the grounds for dismissal raised by the company TOTALENERGIES before the Court with the merits of the case and to fix a timetable for the merits;

3. **IN THE ALTERNATIVE, ON THE GROUNDS OF INADMISSIBILITY**

- **REJECT** all the grounds for dismissal put forward by TOTALENERGIES;

As a result,

- **JUDGE** the action brought by the Applicants and Voluntary Intervenors admissible, both on the basis of the Duty of Care Act and on the basis of the constitutional duty of care in environmental matters and the prevention of ecological damage;

4. **AS A COUNTERCLAIM**

- **ORDER** TOTALENERGIES to suspend, including for the companies it controls within the meaning of Article L. 233-16 of the French Commercial Code, the exploration and exploitation projects for new hydrocarbon deposits that have not been the subject of a final investment decision, until the judgment on the merits is handed down*;*

Alternatively,

- **ORDER** TOTALENERGIES to immediately implement the necessary precautionary measures to reduce its direct and indirect GHG emissions (scopes 1, 2 and 3) in order to align itself with a 1.5°C trajectory with no or limited overshoot, in accordance with the UN-HLEG report, until the judgment on the merits is handed down;

In any case,

- **ORDER** that the implementation of the measures shall be subject to a penalty of 100,000 euros per day of delay from the date of the order;

5. IN ANY CASE,

- **ORDER** TOTALENERGIES to pay each of the Claimants the sum of 2,000 euros under Article 700 of the Code of Civil Procedure,

- **TO SET** a timetable for the proceedings on the merits, and to remit the case to the next status hearing for the defendant's submissions

- **RESERVE** the costs.

COMMUNICATED DOCUMENTS

DOCUMENTS IN SUPPORT OF THE SUMMONS ISSUED ON 28 JANUARY 2020

Exhibit 1-1: Our Business to All statutes;

Exhibit 1-2: SHERPA statutes;

Exhibit 1-3: ZEA statutes and decision of the Board of Directors of 14 September 2019 ;

Exhibit 1-4: Statutes of ECO-MAIRES "National Association of Mayors and Local Elected Officials for the Environment and Sustainable Development";

Exhibit 1-5: Statutes of France Nature Environnement;

Exhibit 1-6: deliberation 2019DEL106 of the ARCUEIL City Council, dated 3 October 2019;

Exhibit 1-7: BAYONNE City Council deliberation of 14 April 2014 delegating powers to the Mayor of Bayonne and the Mayor's decision of 25 June 2019;

Exhibit 1-8: Deliberation 1 of the Municipal Council of BÈGLES dated 3 October 2019;

Exhibit 1-9: Deliberation n°2019-33 of the BIZE-MINERVOIS Municipal Council dated 29 May 2019;

Exhibit 1-10: Deliberation n°2019/056 of the Municipal Council of CORRENS dated 6 August 2019;

Exhibit 1-11: Deliberation DE_2019_0_31 of the Municipal Council of CHAMPNEUVILLE dated 26 September 2019;

Exhibit 1-12: Deliberation 2016- 01-07-05 of the Territorial Council and decision n°D2019-598 of 28 November 2019;

Exhibit 1-13: Deliberation n°27-E016 of the GRENOBLE City Council and ARR_2019_026 of the Mayor of GRENOBLE dated 9 January 2019;

Exhibit 1-14: Deliberation n°09 of the Municipal Council of LA POSSESSION and decision of the mayor decision n°10/2019-SG of 25 July 2019 ;

Exhibit n°1-15: deliberation authorising the Mayor of MOUANS SARTOUS to initiate legal action.

Exhibit 1-16: Deliberation DEL2014-79 of the NANTERRE City Council dated 29 March 2014 and decision of the Mayor dated 4 October 2019;

Exhibit 1-17: Deliberation No. 4 of the SEVRAN Municipal Council dated 15 May 2018 and decision of the mayor dated 19 October 2018;

Exhibit 1-18: Deliberation DEL 36-2014 of the Municipal Council of VITRY-LE-FRANÇOIS dated 17 April 2014;

Exhibit 1-19: REGION CENTRE VAL DE LOIRE deliberation n° 15.05.04 of 21 December 2015;

Exhibit 2-1: Letter from SEATTLE AVOCATS to Mr Patrick POUYANNÉ, dated 22 October 2018;

Exhibit 2-2: letter from Mr Aurélien HAMELLE to SEATTLE AVOCATS dated 14 January 2019;

Exhibit 2-3: Letter from SEATTLE AVOCATS to Mr Aurélien HAMELLE dated 14 February 2019;

Exhibit 2-4: letter from Mr Patrick POUYANNÉ to Mr Jean-Pierre BOUQUET, mayor of the commune of VITRY-LE-FRANÇOIS dated 27 February 2019;

Exhibit 2-5: letter from Mr Aurélien HAMELLE to SEATTLE AVOCATS dated 17 September 2019;

Exhibit 2-6: letter from Mr Patrick POUYANNÉ to Mr Alain FABRE, mayor of the commune of BIZE-MINERVOIS dated 20 September 2019;

Exhibit 3: Formal notice from TOTAL dated 19 June 2019;

Exhibit 3-1: Acknowledgement of receipt n°1A 166 153 7995 0 of the formal notice dated 20 June 2019 ;

Exhibit 4: IPCC, Summary for Policymakers "*Global Warming of 1.5°C, IPCC Special Report on the Implications of Global Warming of 1.5°C above Pre-industrial Levels and Associated Global Greenhouse Gas Emission Trajectories in the Context of Enhancing Global Response to Climate Change, Sustainable Development and Poverty Alleviation*", edited by V. Masson-Delmotte et al, World Meteorological Organization, Geneva, Switzerland, 32 p. ;

Exhibit 5: TOTAL, Registration Document, 2018;

Exhibit 6: Richard HEEDE, "Carbon Majors: Accounting for carbon and methane emissions 1854-2010, Methods and Results Report, Snowmass, Climate Mitigation Services, 2013";

Exhibit 7: Carbon Disclosure Project, Richard HEEDE, "The Carbon Majors Database, CDP Carbon Majors Report 2017" ;

Exhibit 8: TOTAL's Registration Document, 2017;

Exhibit 9: ONERC's Letter to Elected Officials, Adaptation Plan, 30 December 2018;

Exhibit 10: United Nations Environment Programme & Columbia Law School, *The State of Climate Litigation*, Global Review, Nairobi, May 2017;

Exhibit 11: latribune.fr, *Pour respecter l'accord de Paris, les géants du pétrole vont devoir réduire leur production*, 4 November 2011 and Carbon Tracker report, "Balancing the budget. Why deflating the carbon bubble requires oil and gas companies to shrink", 1 November 2019 ;

Exhibit 12: Interview with Patrick POUYANNÉ by Cash investigation;

Exhibit 13: France Inter, Camille Crosnier, *Davos, les patrons et le climat,* Wednesday 22 January 2020;

Exhibit 14: Total, *Making climate part of our strategy*, September 2018;

Exhibit 15: Special Report of the European Court of Auditors (N°18/2016) ;

Exhibit n°16: Report of interministerial advisory mission n°16089 CGAAER - CGEDD "*Sustainability of palm oil and other vegetable oils*", December 2016;

Exhibit 17: Total, *Integrating climate into our strategy*, November 2019;

Exhibit 18: IPCC, *IPCC Fact Sheet: How the IPCC Approves Reports*, 30 August 2013 ;

Exhibit 19: International Energy Agency (IEA), "World Energy Outlook 2018", November 2018;

Exhibit 20: International Energy Agency (IEA), "World Energy Outlook 2019", November 2019;

DOCUMENTS SUBMITTED IN SUPPORT OF THE CONCLUSIONS IN VOLUNTARY INTERVENTION

Exhibit 21: Order of the JME of the Judicial Court of Nanterre of 11 February 2021;

Exhibit 22: Judgment of the CA of Versailles of 18 November 2021;

Exhibit 23: Order of the JME of the Judicial Court of Paris of 30 November 2021;

Exhibit 24: Extracts from the TOTALENERGIES 2021 Universal Registration Document;

Exhibit 24-1: Chapter 1 "*Presentation of the Company - Integrated Report*" ;

Exhibit 24-2: Chapter 3.6 "*Vigilance plan*

Exhibit 25: Press release "Climate change: a threat to human well-being and the health of the planet", 28 February 2022 (2022/08/PR)

Exhibit 26 Statutes of Amnesty International France as voted on 18 June 2017

Exhibit 27: Amnesty International Report, *Our Rights Are Burning, Governments and Businesses Must Act to Protect Humanity from the Climate Crisis*, 2021

Exhibit 28: Deliberation of the Board of Directors of Amnesty International France dated 26 July 2022

Exhibit 29: New York City Counsel's Deliberation dated 22 July 2022

Exhibit 30: OneNYC 2050, *Building a Strong and Fair City: A Livable Climate (Volume 7)* at 6, available at: https://onenyc.cityofnewyork.us/reports-resources/

Exhibit 31: City of Paris Climate Plan 2018

Exhibit 32: Diagnosis of vulnerabilities and robustness of the city of Paris, "*Paris in the face of climate change*", 2021

Exhibit 33: Deliberation of the Paris City Council of 3 July 2020

Exhibit 34: Letter from the Mayor of Paris dated 28 July 2022

Exhibit 35: Deliberation of the City Council of Poitiers of 20 July 2020

Exhibit 36: Press release from the Prefect of the Vienne on 2 June 2022

Exhibit 37: Screenshots from the City of Poitiers website

Exhibit 38: Deliberation of the City Council of Poitiers of 7 December 2020

Exhibit 39: Note and slide show presented to the Poitiers Municipal Bureau on 27 June 2022

DOCUMENTS SUBMITTED IN SUPPORT OF THE PRESENT CONCLUSIONS

Pièce n°40 Dr. Yann Robiou du Pont, Consultation on the alignment of TotalEnergies with the objective of limiting global warming to 1.5°C (Paris Agreement), Our shared responsibility et al. v. TotalEnergies, 8 February 2023

Pièce n°41 IPCC, AR6, Summary for Policymakers, WGI , "The physical science basis", August 2021

Pièce n°42 IPCC, AR6, Summary for Policymakers, WGII , "Impacts, Adaptation and Vulnerability", February 2022

Pièce n°43 IPCC, Summary for Policymakers, WGIII , "Mitigation of Climate Change", April 2022

Pièce n°44 IEA, "Net Zero by 2050. A Roadmap for the Global Energy Sector", 2021 , extracts and free translation

Pièce n°45 IEA, "World Energy Outlook", 2022 , excerpts and free translation

Pièce n°46 Statement by the UN Secretary General at the launch of the report of the High Level Panel on Net-Zero Commitments, 8 November 2022

Pièce n°47 Annex outlining the terms of reference of the UN High Level Panel on Net-Zero Commitments

Pièce n°48 UN High Level Expert Group (UN-HLEG), "Integrity matters: net zero commitments by businesses financial institutions, cities and region", November 2022

Pièce n°49 UNEP, "The production Gap Report 2021", October 2021 , extracts

Pièce n°50 C. Bonneuil, P.-L. Choquet, B. Franta, "Early warnings and emerging accountability: Total's responses to global warming, 1971-2021", Global Environmental Change, 2021

Pièce n°51 Mediapart, "Dérèglement climatique : Total savait dès 1971", Interview with Christophe Bonneuil, 20 October 2021

Pièce n°52 Notre Affaire à Tous, 350.org, Friends of the Earth, "Total: the strategy of climate chaos", 28 May 2019

Pièce n°53 Mediapart, "TotalEnergies is targeted by a preliminary investigation for climate lies", 26 January 2023

Pièce n°54 FranceInfo, "TotalEnergies is far from taking into account the conclusions of the IPCC": scientists denounce the instrumentalisation of their reports by the oil giant", 8 February 2023

Pièce n°55 Declarations in the ZEA prefecture and publication in the Official Journal

Pièce n°56 Deliberation of the City Council of Bayonne dated 14 April 2014

Pièce n°57 Order n° ARR-2018_2168 dated 21 November 2018 issued by the Mayor of Grenoble

Pièce n°58 Deliberation of the Grenoble City Council dated 14 April 2014

Pièce n°59 Deliberation of the Municipal Council of the city of La Possession of 29 March 2017

Pièce n°60 Deliberation of the Mouans le Sartoux City Council of 26 May 2020

Pièce n°61 Reserved

Pièce n°62 Certification by Alice Baker, Senior Counsel of the New York City Law Department, 2 February 2023

Pièce n°63 Oil Change International, "Big oil reality check", May 2022

Pièce n°64 Oil Change International, "Investing in disaster", November 2022

Pièce n°65 Reclaim Finance, "Is Total on track for 1.5°C - Reality check for financial institutions", May 2022 p. 4

Pièce n°66 IPT communication of 6 December 2021

Pièce n°67 World Benchmarking Alliance, Climate and Energy Benchmark 2021, Total

Pièce n°68 Administrative Court of Paris, 3 February 2021, No. 1904967, 1904968, 1904972, 1904976/4-1, "Affaire du Siècle

Pièce n°69 Le Monde, "Climat : la justice invitée à condamner l'Etat pour " carence fautive " dans " L'affaire du siècle ", January 2021

Pièce n°70 Council of State 6e and 5e united chambers 19 Nov. 2020 no. 427301, Grande Synthe case

Pièce n°71 Extracts from the website of the association Les Ecos Maires

Pièce n°72 Annual report of the High Council for Climate 2022 "Moving beyond the facts, implementing the solutions", extract

Pièce n°73 I4CE, 'Adaptation: What communities can and should do', January 2023

Pièce n°74 I4CE, "Local authorities: investment and engineering needs in carbon neutrality", October 2022

Pièce n°75 Institut Paris Région, "Vulnerabilities of the Île-de-France region to the effects of climate change", November 2022

Pièce n°76 Heat wave plan for the municipality of Arcueil dated 6 June 2022

Pièce n°77 Initial state of the environment of the municipality of Arcueil

Pièce n°78 Municipal application for recognition of the state of natural disaster by the commune of Nanterre

Pièce n°79 Vulnerability study of the territory to climate change, Communauté d'agglomération du Mont-Valérien, November 2013

Pièce n°80 Study "Urban heat and cold spots: diagnosis and recommendations for the city of Nanterre", February 2021

Pièce n°81 Map of clay soil shrinkage and swelling hazard, Seine-Saint-Denis department

Pièce n°82 France Info, 10 December 2021, "Flooding in Bayonne: the city has its feet in the water after the flooding of the Nive, record broken and new flood peak at 10 pm".

Pièce n°83 France Info, 26 September 2019, "Rising waters: what are the most vulnerable sites in Aquitaine?"

Pièce n°84 Mapping of the shrink-swell hazard of clay soils in the department of Pyrénées-Atlantiques, September 2008
Pièce n°85 Overview of the effects of climate change and their consequences in Gironde , January 2015
Pièce n°86 Deliberation of 12 July 2022 of the Bègles City Council
Pièce n°87 Deliberation of 16 July 2020 of the Bègles City Council
Pièce n°88 Trajectory of adaptation to territorial climate change, Diagnosis of vulnerability of the Grand Narbonne
Pièce n°89 Adaptation to climate change, Aude Chamber of Agriculture, 2020
Pièce n°90 Dossier départemental des risques majeurs, Transmission d'informations au maire, 2020
Pièce n°91 France 3, "Aude : les finances de Bize-Minervois sont dans le rouge à la multiplication des inondations", 31 October 2019, updated 11 June 2020
Pièce n°92 Amount of damage to uninsurable property of the commune of Bize-Minervois until October 2019
Pièce n°93 Actu Toulouse, "Incendie dans l'Aude : 850 hectares de végétation ravagés par les flames", 25 July 2021
Pièce n°94 Orders of 12 December 2019 and 15 October 2021 of the municipality of Correns recognising the state of natural disaster
Pièce n°95 Departmental file on natural risks in the Var
Pièce n°96 "Climate change and floods : What risks for the territory ?", 5 July 2022
Pièce n°97 City of Grenoble, "Adapting to climate change in Grenoble, Climate developments, issues, strategies ", September 2018.
Pièce n°98 INSEE, "La Réunion face au défi du changement climatique : entre constats et solutions", 8 October 2021
Pièce n°99 Le Monde, "L'incendie du Parc national de la Réunion est "contenu"", 31 October 2011
Pièce n°100 List of Cat-nat decrees issued in the commune of Mouans-Sartoux
Pièce n°101 Deliberations of the Mouans-Sartoux municipal council dated 6 March 2012 and 17 December 2015

Pièce n°102 Order n°2009-432 of 30 June 2009 approving the plan for the prevention of foreseeable natural risks of forest fires in the commune of Mouans-Sartoux
Pièce n°103 Order n°2019-031 of 9 August 2019 approving the plan for the prevention of foreseeable natural risks of land movements in the commune of Mouans-Sartoux
Pièce n°104 Le Chambre d'agriculture de la Marne, " Sécheresse 2022 : restrictions des usages de l'eau ", 23 August 2022
Pièce n°105 Vitry-le-François, flood watch
Pièce n°106 Regional Biodiversity Agency of the Centre-Val de Loire, "Climate change in the Centre-Val de Loire", 19 October 2022
Pièce n°107 Regional Biodiversity Agency of the Centre-Val de Loire, "Key figures on the climate in the Centre-Val de Loire ", November 2022
Pièce n°108 Le Monde, "Le Grand Paris est particulièrement vulnérable à la crise climatique", 5 November 2021
Pièce n°109 Est Ensemble, Territorial Climate Air and Energy Plan 2017-2023
Pièce n°110 UN press release of 18 January 2023, Statement by Antonio Gutteres
Pièce n°111 WMO press release of 6 November 2022, on the occasion of the release of the Interim Report on the State of the World Climate in 2022
Pièce n°112 IPCC press release, "It's *clear: we can halve emissions by 2030, but we need to act now*", 4 April 2022 (2022/15/PR)
Pièce n°113 D. Welsby, J. Price, S. Pye & P. Ekins, "Unextractable fossil fuels in a 1.5 °C world", Nature, 29 February 2021
Pièce n°114 Screenshots from Beyond Oil and Gas and translation

Pièce n°115 Assessing low-Carbon Transition initiative (ACT), "Sector Methodology oil & gas" (verion 2.0), ADEME and CDP, February 2021

Pièce n°116 Le Monde, "Energies : "Les acteurs financiers finiront par être rattrapés par les impacts du dérèglement climatique", 6 February 2023

Pièce n°117 Transcript of the UN Secretary General's speech to the General Assembly on 6 February 2023

Pièce n°118 Le Monde, "TotalEnergies made more than 19 billion euros in profit in 2022, the largest in its history", 8 February 2023

Pièce n°119 District Court of The Hague, 26 May 2021, C/09/571932 / HA ZA 19-379, Associations Vereniging Milieudefensie, Greenpeace Netherlands, Actionaid v/Royal Dutch Shell