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**SUMMONS BEFORE THE JUDICIAL COURT OF PARIS**

**IN THE YEAR TWO THOUSAND AND TWENTY-TWO, ON 2 MARCH 2022**

**AT THE REQUEST OF :**

The association **Greenpeace France**, an association governed by the law of 1<sup>er</sup> July 1901, registered under the SIREN number 350 149 530, whose registered office is located at 13 rue d'Enghien 75010 Paris, represented by its Managing Director Jean-François Julliard, domiciled in this capacity at the said office, duly authorised by virtue of the article of the articles 12 of association ([Exhibit No1.1.](#)) and the delegation of powers and signature of the President of the association ([Exhibit No1.2.](#)) ;

The association **Friends of the Earth France**, an association governed by the law of 1<sup>er</sup> July 1901, registered under the SIREN number 309 266 773, whose head office is located at 47 avenue Pasteur, 93100 Montreuil, represented by its president Khaled Gaiji, domiciled in this capacity at the said head office, duly authorised by virtue of article 9 of the statutes ([Exhibit No2.1.](#)) and the decision of the board of directors of 4 December 2022 ([Exhibit No2.2.](#)) ;

The association **Notre Affaire à Tous**, an association governed by the law of 1<sup>er</sup> July 1901, registered under the SIREN number 842 790 735, whose registered office is located at 31 Rue Bichat 75010 Paris, represented by its president Clotilde Bato, domiciled in this capacity at the said office, duly authorised by virtue of article 11 of the statutes ([Exhibit No3.1.](#)) ;

Having as lawyer constituted :

**SELARLU BALDON AVOCATS**

**Represented by Maître Clémentine Baldon**

Member of the Paris Bar

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Toque: GV

*Taking up residence there*

**I HAVE**

Master

Bailiff

Residing at

**ISSUED A SUMMONS TO :**

**TOTALENERGIES SE**, a European company registered in the Nanterre Trade and Companies Register under number 542 051 180 and whose registered office is located at La Défense 6, 2 place Jean Millier 92400 Courbevoie, represented by its legal representatives domiciled in that capacity at the said office;

**TOTALENERGIES ELECTRICITE ET GAZ FRANCE**, a public limited company registered in the Paris Trade and Companies Register under number 442 395 448, whose registered office is located at 2 bis rue Louis Armand 75015 in Paris, represented by its legal representatives domiciled in that capacity at the said office.

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OR BEING AND SPEAKING AT

**TO BE COMPARED ON 28 JUNE 2022 at 13:35**

Before the Presidents and Judges composing the 1<sup>st</sup><sup>ère</sup> section of the 4<sup>th</sup><sup>ème</sup> chamber of the Tribunal judiciaire de Paris, Parvis du Tribunal de Paris, 75859 Paris, cedex 17.

### **IMPORTANT**

Within a period of FIFTEEN DAYS from the date of this document, you are required to constitute a lawyer to be represented before this court. If you fail to do so, you risk having a judgment rendered against you based solely on the elements provided by your adversaries.

The following provisions of Law No. 71-1130 of 31 December 1971 are also recalled:

**Art. 5:** *"Lawyers shall exercise their ministry and may plead without territorial limitation before all courts and jurisdictional or disciplinary bodies, subject to the reservations provided for in Article 4. They may appear before all the judicial courts of the jurisdiction of the court of appeal in which they have established their professional residence and before the said court of appeal.*

*By way of derogation from the second paragraph, lawyers may not appear before a court other than the one in which they have their professional residence, neither in the context of seizure of property, partition and auction proceedings, nor in the context of legal aid, nor in proceedings in which they are not the master of the case and are also responsible for pleading.*

**Art. 5-1:** *"By way of derogation from the second paragraph of Article 5, lawyers registered at the bar of one of the judicial courts of Paris, Bobigny, Créteil and Nanterre may apply to each of these courts. They may apply to the Court of Appeal of Paris when they have applied to one of the judicial courts of Paris, Bobigny and Créteil, and to the Court of Appeal of Versailles when they have applied to the judicial court of Nanterre. The derogation provided for in the last paragraph of the same Article 5 is applicable to them.*

The following articles of the Code of Civil Procedure are also recalled:

**Art. 641:** *"Where a period is expressed in days, the day of the act, event, decision or notification which causes it to run shall not count. Where a period is expressed in months or years, it expires on the day of the last month or year which bears the same date as the day of the act, event, decision or notification which causes the period to run. If there is no such date, the period shall expire on the last day of the month. Where a period is expressed in months and days, the months shall be counted first, then the days.*

**Art. 642:** *"Any time limit shall expire on the last day at twenty-four hours. A time limit which would normally expire on a Saturday, Sunday or public holiday shall be extended until the next working day.*

**Art. 642-1:** *"The provisions of Articles 640 to 642 shall also apply to the time limits within which registrations and other publicity formalities must be carried out.*

**Art. 643:** *"When the claim is brought before a court which has its seat in metropolitan France, the time limits for appearance, appeal, opposition, third party opposition in the hypothesis provided for in Article 586 paragraph 3, appeal for revision and appeal in cassation are increased by : 1. One month for persons living in Guadeloupe, Guyana, Martinique, Reunion, Mayotte, Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, the Wallis and Futuna Islands, New Caledonia and the French Southern and Antarctic Territories; 2. Two months for those living abroad.*

Finally, it is stated, pursuant to Article 752 of the Code of Civil Procedure, that the plaintiffs do not consent to the proceedings being conducted without a hearing, pursuant to Article L. 212-5-1 of the Code of Judicial Organisation.

The documents on which the application is based are indicated at the end of the document in accordance with the attached schedule.

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## EXECUTIVE SUMMARY

1. The present dispute concerns the commercial practices of TotalEnergies SE and TotalEnergies Electricité et Gaz France, respectively the parent company and one of the subsidiaries of the French petroleum and gas group TotalEnergies (hereinafter "the **TotalEnergies group**" or "the **group**").
2. These commercial practices are part of an advertising campaign launched by the group on 29 May 20021,, which continues to this day, following the change of name of Total to TotalEnergies, of which the two companies mentioned above are the advertisers.
3. Three types of claims in particular are targeted: the group's ambition to be "*carbon neutral by 2050*" and to play a "*major role in the transition*", as well as claims about the alleged environmental virtues of fossil gas and agrofuels, notably their carbon footprint (see **Facts below**).
4. In the greening of the electricity and fossil gas market, and in the particularly competitive fuel supply market, the TotalEnergies group's advertising campaign is part of a clear and quantified commercial approach, with a specific promotional objective for French consumers (see **section III below 2.3**).
5. The group's change of face is taking place in a context where consumers are paying more attention to the conditions in which the products they consume are manufactured and to their environmental impact, as well as to the role of oil and gas companies in global warming (see **section III below 2.3**).
6. Faced with growing public awareness of the oil and gas sector's responsibility for the climate crisis, the TotalEnergies group has therefore embarked on a massive advertising campaign designed to convince consumers of its transformation into a player in the transition and contributor to the fight against global warming. However, this impression does not stand up to a detailed and technical analysis of the facts which, on the contrary, reveals a company acting in total opposition to the requirements of the transition to carbon neutrality by 2050.
7. The normally informed and reasonably attentive consumer is not in a position to detect the gap between the group's claims and this reality (see **section III below 3.1**), nor between the claims relating to gas (see **section III below 3.2**) and agrofuels (see **section III below 3.3**) and the reality of their environmental impact. The TotalEnergies group is aware of this knowledge gap: the oil and gas industry is based on complex engineering techniques and a scientific understanding of the issues involved in reducing greenhouse gas (hereafter "**GHG**") emissions requires a particularly high level of knowledge.
8. It will be shown below that this communication contains environmental claims that are false or likely to mislead the consumer as to the environmental properties of the group's products and the scope of its environmental commitments, as well as omissions of information essential to the consumer's understanding that are likely to substantially alter his or her economic behaviour (cf. **sections III.3 and III. below 4**).
9. Consequently, they must be qualified as misleading commercial practices prohibited by Articles L.121-1 et seq. of the French Consumer Code and constitute tortious acts within the meaning of Article 1240 of the French Civil Code, which may give rise to liability on the part of TotalEnergies SE and TotalEnergies Electricité et Gaz France SA, which disseminated them (see **section IV** below).

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10. In order to allow a proper understanding of the legal qualification of the allegations in question with regard to the prohibition of misleading commercial practices, likely to constitute tortious offences, it is necessary first to review the role of the oil and gas industry - and in particular the TotalEnergies group - in the current climate crisis, as well as certain concepts used by the group in its communication.

*The role of the oil and gas industry and the TotalEnergies group in the current climate crisis*

11. The existence of climate change is now established. It is affecting all regions of the world through increased risk of extreme weather events, rising sea levels, worsening droughts and increased frequency and intensity of forest<sup>1</sup> fires.
12. It is equally well established that climate change is **anthropogenic**, i.e. it is linked to GHG emissions caused by human activities. Anthropogenic GHG emissions are composed of carbon dioxide (CO<sub>2</sub>), but also other gases such as methane (CH<sub>4</sub>), which have a very strong short-term warming effect.
13. The link between GHG emissions, rising temperatures and the impact on our environment has been indisputably demonstrated by the scientific community, notably within the framework of the Intergovernmental Panel on Climate Change (hereinafter "**IPCC**").
14. The IPCC confirms the urgent need to drastically reduce GHG emissions to limit the impacts of climate change to dangerous levels for life and humanity by limiting the rise in global average temperature to +1.5°C compared to pre-industrial levels. Above this threshold, climate-related risks to health, livelihoods, food security, water supply, human security and economic growth increase significantly<sup>2</sup>.
15. The oil and gas industry has a significant responsibility for climate change. According to recent scientific research, 100 companies are responsible for 71% of global industrial GHG emissions over the period 1988-2015, with TotalEnergies in first<sup>9<sup>ème</sup></sup> place<sup>3</sup>.
16. Today, the TotalEnergies group claims to emit around 450 million tonnes of CO<sub>2</sub> equivalent per year<sup>4</sup> - more than the total emissions of France<sup>5</sup>.
17. If its emissions continue at this rate until 2050, the TotalEnergy group alone will have consumed more than 3% of the global carbon budget established to maintain the 1.5°C warming trajectory<sup>6</sup>.

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<sup>1</sup> [Exhibit 4](#) - Summary for policy makers of the IPCC report "*Climate Change 2021: The Physical Science Basis*" and free translation

<sup>2</sup> [Exhibit 5](#) - Summary for Policymakers of the 2018 IPCC Special Report "*on the consequences of global warming of 1.5°C above pre-industrial levels and associated global greenhouse gas emission trajectories, in the context of strengthening the global response to climate change, sustainable development and poverty reduction*" (hereafter "**SR15 Report**").

<sup>3</sup> [Exhibit 6](#) - Excerpt from the Carbon Disclosure Project report, "*The Carbon Majors Database, CDP Carbon Majors Report 2017*" and free translation.

<sup>4</sup> [Exhibit 7](#) - Total Group Climate Report, "*Towards Carbon Neutrality*", 2020, p. 56.

<sup>5</sup> [Exhibit 8](#) - Executive summary of the annual report of the High Council for the Climate, "*Strengthening Mitigation, Engaging in Adaptation*", 2021, according to which France's total GHG emissions in 2019 are estimated at 436 Mt CO<sub>2</sub> eq.

<sup>6</sup> That is, the maximum amount of GHGs (expressed in CO<sub>2</sub> equivalent) that can still be emitted globally to have a chance of containing warming to 1.5°C. See [Exhibit 5](#) (SR15 Summary for Policymakers, p. 33): "*According to this*

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*The notion of a carbon neutral or 'net zero2050' target by 2050*

18. The notion of carbon neutrality targets by 2050 (or "*net zero 2050*") comes from the Paris Agreement and the IPCC reports.
19. As a preliminary point, it should be noted that several formulations are used by different reference systems, and by the TotalEnergies group itself, to define the same **objective of carbon neutrality by 2050 in an indiscriminate manner**: carbon neutrality by 2050, carbon neutrality in 2050, net zero by 2050, net zero in 2050 or net zero 2050. In the following, in addition to the quotes from the various formulations, the terms "*carbon neutrality by 2050*" and "*net zero 2050*" will be used to refer to them.
20. Adopted on 12 December 2015, **the Paris Agreement is an** international agreement signed by 195 states under which they set themselves the goal of containing :  
  

***This is to be achieved by "limiting the increase in global average temperature to well below 2°C above pre-industrial levels and by continuing efforts to limit the increase in temperature to 1.5°C above pre-industrial levels [...]"<sup>7</sup>.***
21. To achieve this temperature target, Article 4(1) of the Paris Agreement states that  
  

*"Parties shall aim to achieve the global cap on greenhouse gas emissions as soon as possible [...] and to make early reductions thereafter in accordance with the best available science so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of the century [...]".*
22. In October 2018, the IPCC published a special report, commissioned by the UN Conference of the Parties on Climate (hereafter "COP"<sup>8</sup>) in parallel with the adoption of the Paris Agreement. The report documents the climate emergency based on more than 6,000 scientific papers and predicts that **carbon neutrality must be achieved by 2050 to have a 50/50 chance of limiting global warming to 1.5°C<sup>9</sup>.**
23. According to this report, known as SR15<sup>10</sup>, limiting warming to 1.5°C requires a drastic, rapid and sustained reduction in GHG emissions, which implies an initial 45% reduction in CO<sub>2</sub> emissions by 2030 compared to 2010 levels, as well as a deep reduction in other non-CO<sub>2</sub> GHGs to achieve carbon neutrality by 2050.
24. **The goal of carbon neutrality by 2050 (or net zero 2050) is therefore a scientific concept defined by the physical science of climate. Since** the objective is to keep the

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*assessment, the remaining budget should be around 420 GtCO<sub>2</sub> for a 66% chance of not exceeding 1.5°C and around 580 GtCO<sub>2</sub> for a 50% chance (medium confidence level). In other words, to have a two out of three chance of succeeding in limiting warming to 1.5°C, the carbon budget should not exceed 420 billion tonnes of CO<sub>2</sub>*

<sup>7</sup> Article 2.1 of the Paris Agreement. The Paris Agreement was ratified by France on 5 October 2016 and entered into force on 4 November 2016.

<sup>8</sup> The Conference of the Parties (COP) was born following the 1992 Rio Earth Summit, which gave birth to the United Nations Framework Convention on Climate Change (UNFCCC). The 197 signatory countries to the UNFCCC have been meeting annually since 1995 at what is known as the Conference of the Parties. The purpose of these meetings is to verify the proper implementation of the UNFCCC objectives.

<sup>9</sup> **Exhibit 5**- Summary for Policymakers of the 2018 IPCC "SR15" Report, p. 34: "*To stay within a remaining carbon budget of 580 GtCO<sub>2</sub>, CO<sub>2</sub> emissions need to reach neutrality in about 30 years, about 20 years in the case of a remaining carbon budget of 420 GtCO<sub>2</sub> (high confidence).*"

<sup>10</sup> As a reminder, this is the abbreviation for "Special Report on 1.5°C".

increase in global average temperatures within certain limits (1.5°C), physics implies that there is a limited budget of CO<sub>2</sub> and other GHGs allowed in the atmosphere. Beyond this budget, any additional emissions must be compensated by absorption by sinks. **While the concept is scientific, it is necessarily made operational by political and economic choices informed by science.**

25. Thus, in line with their commitments under the Paris Agreement, many states have set carbon neutrality targets in their national legislation by 2050 with intermediate targets in 2030. For example, the European Union has set a European target of reducing GHG emissions by at least 55% by 2030 compared to 1990 levels with the aim of achieving carbon neutrality by 2050<sup>11</sup>. France has set a target of reducing GHG emissions by 40% by 2030 and is committed to achieving carbon neutrality by 2050. These targets are accompanied by a growing recognition by governments of the need to reduce dependence on fossil<sup>12</sup> fuels.
26. At the same time, some companies - including those in the fossil fuel sector - are appropriating the scientific terminology of the Paris Agreement and IPCC reports to communicate their ambition to be carbon neutral by 2050 and their contribution to the global goals of the Paris Agreement.
27. **This is the case of the TotalEnergies group, which since May 2020 has displayed an ambition to be carbon neutral by 2050 and presents itself as a major player in the energy transition, even though in January 2020, the group's chairman and CEO, Patrick Pouyanné, stated that :**  
  

*"This tendency to say that in 2050 everything will be neutral is nice, but none of us will be here in 2050."*<sup>13</sup>
28. Indeed, the analysis of the production plans and strategy of the TotalEnergies group shows that they are not aligned with a carbon neutrality trajectory by now and 2050 do not expect to be.
29. The TotalEnergies group's communication is thus compromised by a key issue: achieving carbon neutrality by 2050 and playing a major role in the transition implies a sharp reduction in its GHG emissions and therefore a significant and constant drop in its production of oil and gas, which are fossil fuels that emit a lot of GHG. However, the TotalEnergies group is actually planning the opposite.
30. Nevertheless, in the wake of its change of identity in May 2021, the TotalEnergies group has decided to engage in a major consumer advertising campaign on its ambition to be carbon neutral by 2050 and its alleged status as a major player in the transition that is the subject of this action.

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<sup>11</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing a framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ("European Climate Act"), Article 2.

<sup>12</sup> [Exhibit 9](#) - FranceInfo, "COP26: a coalition of 190 countries and organisations commit to phasing out coal power", 03/11/2021

<sup>13</sup> [Exhibit 10](#) - France Inter, "Davos, les patrons et le climat", 22/01/2020.

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## STATEMENT OF FACTS

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### 1. THE TOTALENERGIES GROUP

31. The TotalEnergies group is a major player in the global extractive, petrochemical and energy industries. It has more than 900 subsidiaries<sup>14</sup> and is present in over 130 countries<sup>15</sup>.
32. Founded in 1924, the limited company "Compagnie française des pétroles" developed through successive acquisitions of companies in the sector and adopted the name "Total" in 1991 and "TotalEnergies" in 2021. The group acquired the energy supply company Direct Energies in 2018 (which became Total Direct Energies and was later renamed TotalEnergies Electricité et Gaz France) and has over 5 million customers<sup>16</sup>.
33. According to the Group's 2020 Universal Registration Document, the Group's four main business areas are

*"an **Integrated Gas, Renewables & Power** business unit which includes the integrated gas chain (including upstream and midstream LNG activities), renewables and power;*

*- an **Exploration-Production** segment, which includes oil and gas exploration and production activities in more than 50 countries;*

*- a **Refining-Chemicals** sector which constitutes a large industrial pole containing refining, petrochemicals and speciality chemicals activities. This sector also covers oil supply and trading activities and maritime transport;*

*- a **Marketing & Services** sector comprising the marketing activities in the field of petroleum products as well as the corresponding supply and logistics activities.<sup>17</sup>*

34. Within the TotalEnergies group, the parent company of the group, TotalEnergies SE "performs a holding company function and drives the Group's strategy"<sup>18</sup> while TotalEnergies Electricité et Gaz France SA<sup>19</sup> is a wholly owned subsidiary of the parent company TotalEnergies SE, in charge of the production and supply of electricity and gas on the French market.

### 2. THE PRACTICES AT ISSUE

35. Against a backdrop of increasing criticism of its role as a major contributor to GHG emissions and thus to global warming, the TotalEnergies group announced in May 2020:

*"[support] **the objectives of the Paris Agreement** which calls for reducing greenhouse gas emissions, in the context of sustainable development and poverty alleviation, and which aims to contain the rise in global average temperature to well below 2°C above pre-industrial levels.<sup>20</sup>"*

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<sup>14</sup> [Exhibit 11](#) - Total Group press release, "Total makes public the full list of its 903 consolidated subsidiaries", 04/03/2015.

<sup>15</sup> [Exhibit 12](#) - Extracts from the Total Group's 2020 Universal Registration Document, p. 4.

<sup>16</sup> [Exhibit 13](#) - Total Group press release, "Total Direct Energie exceeds 5 million customers in France", 28/04/2021.

<sup>17</sup> [Exhibit 12](#) - Extracts from the Total Group's 2020 Universal Registration Document, p. 29.

<sup>18</sup> [Exhibit 14](#) - Kbis extract of TotalEnergies SE.

<sup>19</sup> [Exhibit 15](#) - Kbis extract of TotalEnergies électricité et gaz France SA.

<sup>20</sup> [Exhibit 16](#) - Statement by Total S.A. and Climate Action 100+ investors, "Total adopts new policies to achieve its 2050 carbon neutrality ambition", 05/05/2020.

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36. In a document entitled "*Towards Carbon Neutrality*", it stated

*"The year 2020 marks a major step forward for Total in its response to the challenge of climate change: the Group has set itself the new goal of achieving carbon neutrality in all its activities by 2050, in conjunction with society. In this way, Total aims to contribute to the neutrality objective defined by the Paris Agreement for the second half of the century."*<sup>21</sup>

37. Following this announcement, on 28 May 2021, the Annual General Meeting approved the change of the group's name to "TotalEnergies". On this occasion, Mr Patrick Pouyanné, CEO of the group, declared:

*"This is a historic day when the company is changing its face, its strategy. We will always be close to our customers and we will sell them all the new energies we need to face climate change."*<sup>22</sup>

38. In the age of climate change, there is no doubt that the TotalEnergies group has grasped the commercial challenge that lies in its brand image. It has therefore accompanied it, on 29 May 2021 - the day after the General Meeting of Shareholders approved the group's name change - with a large-scale advertising campaign, internationally and especially in France, broadcast on all available media: billboards, press, radio, websites, television, internet platforms and popular social networks.

39. As a preliminary point, it should be noted that the TotalEnergies group's advertising campaign directly reached **several million potential consumers of Total's products and services (fuel, electricity and gas)**. By way of example and only on a selected sample :

- An advertisement on Total's transformation into TotalEnergies and its environmental commitments (mentioned below in paragraphs 46 and 54) published in Le Figaro on 2 June 2021 reached an estimated audience of **1,517,000 readers at an** estimated cost of EUR 130,000, while the same advertisement published in the newspaper L'équipe on 4 June 2021 reached an estimated audience of **2,136,000 readers at an** estimated cost of EUR 134,500. From May 2021 to December 2021, the same advertisement was published in 25 national<sup>23</sup> newspapers.
- A television advert (mentioned below in paragraph 54) broadcast on TF1 on 3 July 2021 at 6.44 pm reached an audience of **1,940,000 viewers at an** estimated cost of Over the month of July 2021 and the period from 15 October to 15 November 2021, this spot was broadcast 90 times on the following channels TF1, France 2, France 3, M6, TMC<sup>24</sup>.
- For social networks, each of the sponsored ads on Facebook, according to Facebook statistics, was displayed on *at least* several tens of thousands of screens and sometimes several hundred thousand screens, most often resulting in an estimated audience of **more than one million people for each of them**<sup>25</sup>.

40. At the heart of its campaign are claims that the group is committed to a "carbon neutral" trajectory by 2050 and is "*a major player in the energy transition*" (2.1). These general

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<sup>21</sup> [Exhibit 7](#) - Total Group Climate Report, "*Towards Carbon Neutrality*", 2020, p. 2.

<sup>22</sup> [Exhibit 17](#) - La gazette de la défense, "*Total reinvents itself with a new name*", 02/06/2021.

<sup>23</sup> [Exhibit 18](#) - Mediatree, "*Costs and audiences of TotalEnergies ads*", 18/02/2022.

<sup>24</sup> *Idem*.

<sup>25</sup> [Exhibit 19](#) - Bailiff's report dated 20/01/2022, p. 25 ff.

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commitments are accompanied by targeted claims highlighting the alleged environmental virtues of the energy sources marketed by the group, in particular fossil gas ("natural gas" according to the TotalEnergies group) and agrofuels (2.2). The most important of these claims are grouped together in a thematic directory produced in [Exhibit 20](#), which centralises the claims listed in various exhibits.

## 2.1 [Claims relating to the TotalEnergies Group's ambition to be carbon neutral by 2050 and to be a major player in the energy transition](#)

41. The change of identity of the TotalEnergies group is promoted to consumers as the translation of a double ambition: that of achieving carbon neutrality by 2050 (2.1.1) and that of being a major player in the energy transition (2.1.2).
42. These claims are collected in Annex I of the thematic directory produced in [Exhibit 20](#).

### 2.1.1 [Claims about TotalEnergies' ambition to be carbon neutral by 2050](#)

43. The claim relating to the TotalEnergies group's ambition to be carbon neutral by 2050 was disseminated on the TotalEnergies group's website for private<sup>26</sup> individuals (hereinafter, "the **Commercial Site**"), on an *ad hoc* web page entitled "*Energy reinvents<sup>27</sup> itself*" created specifically to accompany its advertising campaign and on its social networks.
44. The commercial website contains a page dedicated to the announcement of the group's name change, which states: "*Faced with the challenge of climate change, the TotalEnergies Group is transforming itself (...) **by aiming for carbon neutrality in 2050 together with society***"<sup>28</sup>.
45. Another page of the Commercial Site entitled "*5 good reasons to choose us*" underlines: "*The Group **has set itself the ambition of achieving carbon neutrality by 2050, together with society, notably through the development of renewable energies***"<sup>29</sup>.
46. The *ad hoc* webpage entitled "*Energy reinvents itself*" is at the heart of the campaign: the homepage of the Commercial<sup>30</sup> Site as well as numerous advertisements on social<sup>31</sup> networks, radio and TV channels refer to it directly, either by a clickable link (<https://tot.al/3zgow5>) or by displaying it in writing in the TV spots, as illustrated by the screenshot below<sup>32</sup> :

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<sup>26</sup> Whose url is <https://www.totalenergies.fr>

<sup>27</sup> Whose url is <https://totalenergies.com/lenergie-se-reinvente/>

<sup>28</sup> [Exhibit 20](#) - Thematic Inventory of Allegations, p. 1.

<sup>29</sup> *Ibid.*

<sup>30</sup> [Exhibit 19](#) - Bailiff's report dated 20/01/2022, p. 2.

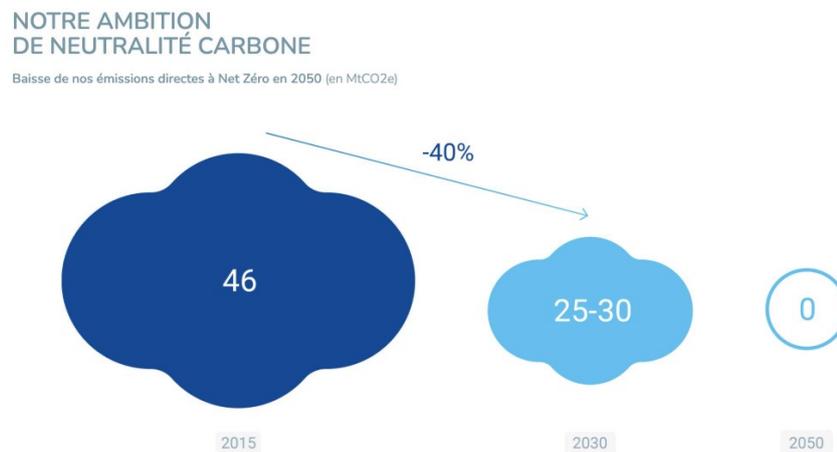
<sup>31</sup> *Idem*, p. 25 ff.

<sup>32</sup> [Exhibit 20](#) - Thematic Inventory of Allegations, p. 2.

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47. This *ad hoc* page features a first section entitled "Our carbon neutrality ambition" as well as the graph below illustrating the GHG emission reduction trajectory posted by the TotalEnergies group:



48. The TotalEnergies Group has also promoted its ambition to be carbon neutral by 2050 via several publications in 2021 on Facebook, Twitter and LinkedIn as illustrated by the targeted Facebook ad and the publications reproduced below<sup>33</sup>.

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<sup>33</sup> *Idem*, p. 3 ff. The targeted advertisement (left image) was broadcast between 18 May and 22 May 2021 and potentially reached up to 1 million people.



49. In addition, most of the group's energy-related posts on Facebook, Instagram and Twitter contain the slogan "#MoreEnergiesLessEmissions"<sup>34</sup>, which simplistically suggests that the group would reduce its GHG emissions ("less emissions") while increasing its production ("more energy").
50. Finally, the goal of "carbon neutrality" by 2050 is also promoted to the general public through the TotalEnergies group's sports sponsorship of cycling<sup>35</sup> and rugby<sup>36</sup>.

### 2.1.2 Claims relating to the TotalEnergies group's objective of becoming a major player in the energy transition through renewable energies

51. In addition to its ambition to be carbon neutral by 2050, the TotalEnergies group is committed to playing a pioneering role in the energy transition.
52. The commercial site states: "***Faced with the challenge of climate change, the TotalEnergies Group is transforming itself with the ambition of becoming a major player in the energy transition, in particular by accelerating its development in renewable energies and by aiming for carbon neutrality in 2050 together with society. To mark this transformation, Total is becoming TotalEnergies, a multi-energy group with one objective: to provide energy that is increasingly affordable, clean, reliable and accessible to as many people as possible.***"<sup>37</sup>

<sup>34</sup> As an illustration, see [Exhibit 19](#) - Bailiff's report dated 20/01/2022, p. 25 et seq. and [Exhibit 20](#) - Thematic list of allegations, p. 6.

<sup>35</sup> On the occasion of the 2021 Tour de France, for which the group was sponsoring a team, the commercial site referred to a website dedicated to following the team (<https://teamtotalenergies.com/>) indicating that the group's new brand identity "reflects the company's strong ambition to become the company of all energies, committed to carbon neutrality by 2050", [Exhibit 21](#) - Screenshot of the "New energies on the jersey" webpage (<https://teamtotalenergies.com/de-nouvelles-energies-sur-le-maillot/>)

<sup>36</sup> Regarding the Rugby World Cup 2023, the group states "*TotalEnergies wants to move the lines and do its part to meet the climate challenge. We want to move forward together along this path: that of new energies which must be at the heart of the Rugby World Cup 2023 and participate in its positive impact on society*", [Exhibit 22](#) - TotalEnergies Group press release, "TotalEnergies becomes official sponsor of the Rugby World Cup France 2023", 25/06/2021.

<sup>37</sup> [Exhibit 20](#) - Thematic list of allegations p. 2.

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53. In a spot broadcast on the *ad hoc* page "L'énergie se réinvente", the group states that: "**to contribute to the sustainable development of the planet in the face of the climate challenge**, we are moving forward, together, towards new energies. Energy is reinventing itself and this energy path is ours. **Our ambition is to be a major player in the energy transition**"<sup>38</sup>.
54. This type of advertisement has also been disseminated:
- In a television advert announcing: "Because [...] we must always **help to preserve the planet** [...]. In short, because energy is life, Total is transforming itself and becoming TotalEnergies, to meet your needs even better" - the ad ending with images of solar panels and wind<sup>39</sup> turbines.
  - In the press, from 29 May 2021, with this advertisement<sup>40</sup>:



55. The TotalEnergies group's allegations about its allegedly major role in the transition are combined with the message that the group is moving from its current status as an oil *major* to that of a "*multi-energy company*", an actor in the transition.
56. They therefore suggest that its transformation would be based on the development of renewable energy production, in particular electricity from wind and solar sources. This is indeed strongly promoted by the group, as evidenced by the numerous publications and advertisements on social networks targeting this theme:
- "*Because we will always want to be comfortable at home, and because we will contribute to preserving the planet, **TotalEnergies is committed to ever cleaner energy***"<sup>41</sup>;

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<sup>38</sup> [Exhibit 20](#) - Thematic list of allegations p. 2.

<sup>39</sup> *Ibid.* This spot was broadcast on several television channels with an estimated audience of several million viewers.

<sup>40</sup> *Ibid.* This advertisement was published in the newspapers Le Figaro and L'Equipe.

<sup>41</sup> *Ibid.* Thematic Inventory of Allegations, p. 3.

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- *"In order to make a success of our energy transition, we must change our energy production and focus on renewables. This is why we have changed our name to TotalEnergies"*<sup>42</sup>.
- *"Lighting, heating, moving: #electricity is the energy of the 21st century. TotalEnergies is investing to become one of the world's top 5 producers of #renewables. By 2030, electricity will represent 15% of our energy mix"*<sup>43</sup>;
- *"Onshore and offshore, TotalEnergies is banking on wind power, a 100% renewable energy. In Europe, our onshore wind farms constitute 1400 megawatts of renewable electricity generation capacity. In addition, we are deploying offshore wind farms around the world thanks to the experience of our teams in offshore platforms. Our ambition? To be one of the pioneers in the wind energy sector"*<sup>44</sup>;
- *"Solar energy is abundant, clean and inexhaustible. TotalEnergies is present in this sector through the production of photovoltaic cells, the development of solar power plants and the installation of panels as close as possible to the places of consumption. By 2025, thanks to our various projects around the world 80% of our renewable energy production capacity will come from the sun"*<sup>45</sup>.
- *"In 2021, 20% of our investments are dedicated to renewable energy."*<sup>46</sup>
- *"Today, we produce 1.5 GW of electricity from wind turbines. In 2030, our ambition is to reach an installed capacity of 100 GW of electricity production from renewable sources. This is why we are developing offshore wind power"*<sup>47</sup>. The associated image says: *"It is thanks to our expertise in offshore operations and maintenance that we can succeed in offshore wind."*
- A series of targeted ads on Facebook, Instagram and Messenger in particular are calling out to consumers in the following terms: *"How can you become a player in the energy transition? [...] Our green offer fixed for 1 year and 100% made in France is our solution for you! "*, accompanied by a short video stating, among other things, *"Green Electricity Offer"* and *"Wind and Solar"*<sup>48</sup>.

57. Finally, these messages relating to the Group's new strategy are condensed in the slogan *"Energy reinvents itself, Total becomes TotalEnergies"*, which is disseminated via advertising spots<sup>49</sup>, social<sup>50</sup> networks and billboards in high-traffic areas, particularly in cities, such as in the Orly and Roissy-Charles de Gaulle airports and in the TotalEnergies service stations,

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<sup>42</sup> [Exhibit 20](#) - Thematic Inventory of Claims, p. 5 (targeted advertising on Facebook from 4 August 2021).

<sup>43</sup> *Ibid.* p. 5 (Tweeter, 16 June 2021).

<sup>44</sup> *Id.* at 6 (Facebook, Instagram and Tweeter, 19 June 2021).

<sup>45</sup> *Ibid.* (Facebook, Instagram and Tweeter, 20 June 2021 and targeted advertising on Facebook and Instagram on 6 and 7 July to an estimated audience of over one million people).

<sup>46</sup> *Id.* at 4. (broadcast from 18 to 22 May on Facebook to an estimated audience of between 500,000 and one million people).

<sup>47</sup> *Id.* at 6. (broadcast July 22-23, 2021, and July 27-30 on Facebook to an estimated audience of over one million people).

<sup>48</sup> *Id.* at 7 (posted on Facebook as of January 1<sup>st</sup> 2021).

<sup>49</sup> *Idem.*, p. 2.

<sup>50</sup> *Ibid.*

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<sup>51</sup>accompanied by green imagery associated with sustainable development and renewable energies, as illustrated by the photograph reproduced below of the TotalEnergies service station located at 86 Rue de Paris in Montreuil<sup>52</sup>:



## 2.2 Fossil gas and agrofuel claims

58. The TotalEnergies group's claims of a major role in the transition are accompanied by messages highlighting the group's energy diversification supported by advertisements promoting seven types of energy on which the TotalEnergies group suggests it is now focusing: oil, gas, electricity, hydrogen, biomass, wind and solar.
59. This diversification is illustrated by the visuals and the new logo of the group reproduced below<sup>53</sup>, which have been designed to reflect the new climate strategy of the group through the association of each energy with a colour and the path traced by the logo from one energy to the other, from fossil energies to renewable<sup>54</sup> energies.



60. In addition to the fact that these advertisements tend to minimise the central and predominant place of oil for the TotalEnergies group today and in the years to come, these

<sup>51</sup> These are the locations where the applicants actually identified such displays, although the campaign certainly included others.

<sup>52</sup> Photo taken on 27 January 2022 at the TotalEnergies service station located at 86 Rue de Paris in Montreuil.

<sup>53</sup> [Exhibit 19](#) - Bailiff's report dated 20/01/2022, p. 2 and Annex 2.

<sup>54</sup> [Exhibit 23](#) - Bailiff's report dated 18/02/2022, p. 5 and Annex 8.

advertisements promote inaccurate and disproportionate environmental virtues of fossil gas ("natural gas" according to the TotalEnergies group) (2.2.1) and agrofuels (2.2.2).

### 2.2.1 Fossil gas claims

61. The fossil gas claims referred to below are listed in Annex II of the Thematic Inventory produced in [Exhibit 20](#).
62. The TotalEnergies Group's social media posts contain numerous mentions promoting gas as a low-GHG-emitting energy, and even as an energy needed for the energy transition, such as :
  - *"Abundant, cheap and flexible, gas is **the fossil energy that emits the least greenhouse gases. An essential complement to renewable energies.** it is also a substitute for coal & oil to supply millions of homes with energy ☐ and transform mobility ☐ It will play a major role in TotalEnergies' strategy and will represent 50% of our production and sales in 2030"<sup>55</sup>.*
  - *"Gas is the **essential complement to renewable energies.** Capable of supplying millions of homes with energy and transforming mobility, gas will represent 50% of our energy mix by 2030"<sup>56</sup>;*
  - *"The transport sector revolution ☐ ☐ is already underway. Here's how we're taking part in it ☐ ", and in the associated video: "How do we support the energy transition in transport? We are developing CNG, compressed natural gas, **an alternative with a lower carbon footprint than other fossil fuels**"<sup>57</sup> ;*
  - *"From industry to mobility to power generation, natural gas is a useful energy everywhere. **It is also the least polluting of the fossil fuels!** And did you know that in liquid form it is much easier to transport? ☐ ", followed by a video stating: "Developing a multi-use transition energy, we are working on it! "**LNG and natural gas are fantastic resources for decarbonising [...]. And to provide safer and cleaner energy, we continue our efforts to decarbonise the whole chain.** [...] One more step towards more **responsible** energy"<sup>58</sup>.*
  - *"In Denmark, we have modernised a platform that supplies 90% of the country's natural gas. We tell you all about it! ☐ " and in the associated video: "Meeting the growing demand for energy, while **limiting our impact on the environment,** is possible! TotalEnergies work in progress. In Denmark, we are developing the natural gas platform, "Tyra". It will be state of the art and will **emit 30% less CO2.** An offshore megaproject that fits in with TotalEnergies' climate strategy"<sup>59</sup>.*
63. Gas is also **often associated with renewable energies**, as in the first image below, taken from the *ad hoc* page "Energy reinvents itself". The image illustrating gas (a gas cooker) is placed next to three images illustrating wind turbines, an electric switch and photovoltaic panels and uses the same symbolism as that used to represent renewable energy (the colours of the rainbow).

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<sup>55</sup> [Exhibit 20](#) - Thematic Listing of Claims, p. 9 (Facebook and Instagram, 15 June 2021). These claims were also made in a targeted advertisement that ran on Facebook and Instagram on 6 and 7 July 2021 to an estimated audience of over one million consumers.

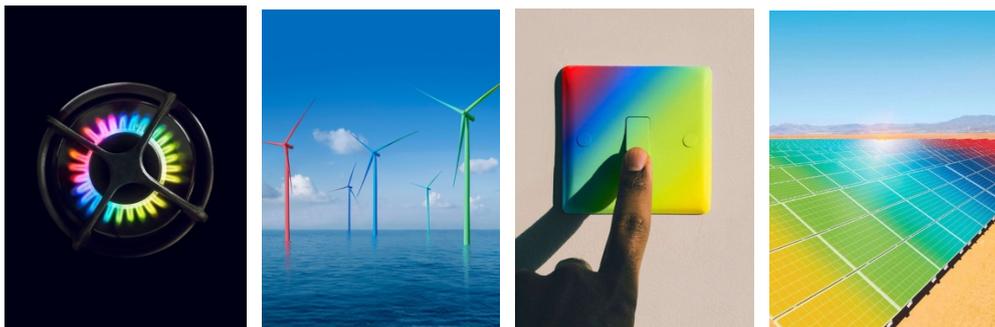
<sup>56</sup> *Ibid.* (Twitter, 15 June 2021).

<sup>57</sup> *Ibid.* (Facebook, 19 July 2021).

<sup>58</sup> *Id. Id.* at 10 (Facebook, Sept. 10, 2021).

<sup>59</sup> [Exhibit 20](#) - Thematic Inventory of Claims, p. 10 (targeted advertising on Facebook from 2 August 2021).

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### 2.2.2 Claims for agrofuels

64. The agrofuel claims referred to below are listed in Annex III of the Thematic Directory produced in [Exhibit 20](#).

65. The promotion of agrofuels to consumers is part of a more general promotion of biomass<sup>60</sup>. It is based in particular on numerous publications by the group on social networks. For example, one can read:

- *"Being one of the **major players in #energy transition** also means promoting the **#circulareconomy in the use of #biomass** by developing **#biogas, #bioplastics and #biofuels**. These **low-carbon alternatives allow a reduction of at least 50% of CO2 emissions compared to their fossil equivalents**. The use of biomass is a **concrete and immediate solution to participate in the decarbonisation of transport** and the improvement of the carbon footprint of everyday products such as packaging, car parts or medical equipment<sup>61</sup>;*
- *"Thanks to #biomass, TotalEnergies is developing **low-carbon alternatives: biogas, biofuels & bioplastics**. These #energies & products **emit half as much CO2 as their fossil equivalents, which is why we are banking on them**"<sup>62</sup>.*
- *"Biofuels are a future solution for **decarbonising transport** (...)"<sup>63</sup>, while the video states: "What are we doing to reduce the carbon intensity of road and air transport? Total Energies In Motion. We **produce biofuels from bio-based raw materials such as vegetable oils**, but also from waste and residues such as animal fats or used cooking oils. And by 2023, we will no longer use palm oil! **Biofuels can reduce CO2 emissions by 50 to 90% compared to their fossil equivalent**."*

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66. It is under these conditions that Greenpeace France, Friends of the Earth France and Notre Affaire à Tous consider that these allegations constitute misleading commercial practices

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<sup>60</sup> Biomass refers to organic matter of plant (wood, vegetable oils, etc.), animal (excrement), fungal or bacterial origin that can be used as a source of energy. It is then referred to as "bioenergy" in the broad sense, as biogas when biomass is transformed into gas (via methanisation) or as biofuel (or "agrofuel") when biomass is used as fuel.

<sup>61</sup> [Exhibit 20](#) - Thematic Inventory of Allegations, p. 11 (Facebook, Instagram and Tweeter, 18 June 2021). This message was also disseminated as a targeted advertisement broadcast on Facebook and Instagram from 6 to 8 July 2021 to an estimated audience of over one million people.

<sup>62</sup> [Exhibit 20](#) - Thematic Inventory of Claims p. 11 (Twitter, 23 June 2021).

<sup>63</sup> *Id.* at 12 (targeted advertising on Facebook from July 13 to 17, 2021 to an estimated audience of up to 500,000).

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prohibited by Articles L.121-1 et seq. of the Consumer Code and, consequently, tortuous acts within the meaning of Article 1240 of the Civil Code likely to engage the liability of the companies TotalEnergies SE and TotalEnergies Electricité et Gaz France, are bringing an action before the Court of Appeal in order to put a stop to these practices and to compensate for the damage caused.

## DISCUSSION

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67. As a preliminary point, the plaintiff associations' action is admissible **(I)** and the Paris Court of Justice has jurisdiction **(II)**.
68. The practices of TotalEnergies SE and TotalEnergies Electricité et Gaz France constitute unlawful deceptive commercial practices and, consequently, tortious acts that may render their authors liable **(III)**.
69. Since these commercial practices include environmental indications, they cause damage to the collective interests defended by the plaintiff associations, which must be stopped, as well as moral damage which must be compensated **(IV)**.

### I. ADMISSIBILITY OF THE ACTION

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70. Article L. 142-2 of the Environment Code states:

*"The approved associations referred to in Article L. 141-2 may exercise the rights granted to civil parties in respect of acts directly or indirectly prejudicial to the collective interests that they are intended to defend and constituting an infringement of the legislative provisions relating to the protection of nature and the environment, (...) and having as their object (...) commercial practices and advertising that are misleading or likely to be misleading when such practices or advertising include environmental indications, as well as the texts adopted for their application."*

71. It follows from this provision and Article 31 of the Code of Civil Procedure that environmental protection associations approved under Article L. 1411 of the Environmental Code may claim direct or indirect damage to the collective interests they are intended to defend caused by misleading commercial practices that are likely to mislead in environmental<sup>64</sup> matters. Article L. 142-2 does not require that the corporate purpose of approved associations be directly aimed at protecting consumer interests.
72. In the present case, the conditions set out in Article L.142-2 are met since, on the one hand, the claims made by the TotalEnergies group in its campaigns are based on "*environmental indications*" and must be qualified as misleading commercial practices, as demonstrated *below*, and, on the other hand, each of the plaintiff associations has environmental protection accreditation and defends collective interests that are prejudiced by the practices of the TotalEnergies group.
73. Greenpeace France is a non-profit association governed by the French law of 1901, created in 1977 and whose aim is to protect the environment. It is approved for environmental protection under Article L.141-1 of the Environmental Code by order of 15 March 2019<sup>65</sup>.

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<sup>64</sup> See in this respect, TGI Paris, 1st ch. sect. soc, 13 March 2018, No. 17/06330 - FNE / HYUNDAI: "*approved associations whose purpose is the protection of the environment are entitled to bring, before both civil and criminal courts, any action to obtain compensation for direct or indirect damage caused to the collective interests they are intended to defend, either by a breach of legal or regulatory provisions relating to the protection of nature, or by commercial practices and advertising that are misleading or likely to mislead when these include environmental indications.*"

<sup>65</sup> Exhibit 1.3 - Order of the Ministry of Ecological and Solidarity Transition of 15 March 2019.

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74. According to article 1<sup>er</sup> of its statutes, "*the purpose of GREENPEACE France is to protect the environment and the planet's biodiversity in all its forms, and in particular :*
- *the promotion of renewable energy and energy saving;*
  - *the fight against pollution and nuisances affecting the fundamental balance of the oceans, soil, subsoil, air, water, biosphere, climate, sites and landscapes;*
  - *action to defend the interests of consumers, users and taxpayers in the fields of the environment, health, food and energy*<sup>66</sup>.
75. Friends of the Earth France is a non-profit association governed by the law of 1<sup>er</sup> July 1901, created in 1970 to act for the protection of human beings and the environment. It is approved for the protection of the environment under Article L. 141-1 of the Environmental Code by order dated 12 December 2018<sup>67</sup>.
76. According to the article of 2its statutes<sup>68</sup>, its object is :
- " - *to act for the protection of human beings and the environment against the excesses of the consumer society,*
  - *combat abusive commercial practices and the production of goods or services that are harmful to people and the environment,*
  - *to protect biodiversity (fauna, flora), sites and landscapes, to preserve sensitive areas, and to encourage alternative practices favourable to the environment, in particular the use of renewable energy*
  - *encourage the consideration of environmental protection, democracy and social progress in all decisions of economic actors, and work towards the establishment of a legal framework to sanction those responsible for environmental degradation,*
  - *promote citizens' access to information, the exercise of civic rights and the participation of everyone in decisions affecting them, particularly those relating to the environment.*
77. Notre Affaire à Tous is a non-profit association governed by the law of 1<sup>er</sup> July 1901, created in and 2015now approved for the protection of the environment by virtue of article L. 141-1 of the environmental code following the tacit acceptance of its application for approval on 18 February2022<sup>69</sup>.
78. According to the article of 2its statutes, its object includes :
- " - *nature protection and environmental protection;*
  - *to organise, finance or support all actions, initiatives, in particular legal steps, ideas, speeches and ideas, speeches, pleas, whose purpose is to protect the living, the environment, the climate, present and future generations and the fauna and flora [...]"*<sup>70</sup>.
79. Greenpeace France, Friends of the Earth France and Notre Affaire à Tous carry out research, information, legal and advocacy work in favour of environmental protection, energy

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<sup>66</sup> [Exhibit 1.1](#) - Statutes Greenpeace France.

<sup>67</sup> [Exhibit 2.3](#) - Order of the Ministry of Ecological and Solidarity Transition of 12/12/2018.

<sup>68</sup> [Exhibit 2.1](#) - Statutes of Friends of the Earth France.

<sup>69</sup> [Exhibit 3.2](#) - Letter from the Ministry of Ecological Transition dated 19/08/2021.

<sup>70</sup> [Exhibit 3.1](#) - Statutes of the association Notre Affaire à Tous.

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transition, the fight against climate change and against harmful corporate practices, including greenwashing.<sup>71</sup>

80. Consequently, by virtue of Article L.142-2 of the Environmental Code, Greenpeace France, Friends of the Earth France and Notre Affaire à Tous are entitled to bring a civil liability action before the court of law and to seek compensation and an end to the damage caused by the misleading commercial practices in question.

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<sup>71</sup> [Exhibit 1.4](#) - Greenpeace France 2021 Activity Report, [Exhibit 2.4](#) - Friends of the Earth France 2021 Activity Report, and [Exhibit 3.3](#) - Notre Affaire à Tous 2021 Activity Report.

## II. THE TERRITORIAL JURISDICTION OF THE PARIS COURT OF JUSTICE

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81. According to Article 46 of the Code of Civil Procedure, "*the plaintiff may, in addition to the court of the place where the defendant resides, [...] in matters of tort, choose the court of the place where the damage occurred or the court within whose jurisdiction the damage was suffered*".
82. In digital matters, the harmful event occurs in all places where the litigious practices are available to Internet users and the damage is suffered in all places where the litigious practices are available to Internet users.
83. Where a misleading commercial practice has been committed by dissemination on the Internet, the harmful event occurs wherever the information is made available to potential users of the site.
84. Thus, in matters of Internet advertising, the case law has specified this option by attributing jurisdiction to the judge of the place where the harmful element is received (location method)<sup>72</sup>.
85. In this case, the commercial website, the *ad hoc* internet page and all the social networks used by TotalEnergies SE and TotalEnergies Electricité et Gaz France SA are intended for a French audience and for all persons residing in France. Similarly, the billboards were displayed in many places, particularly in Paris, and the radio and television advertisements and the advertisements published in the press were accessible throughout France. By disseminating the allegations in question throughout the national territory, the harmful event occurs throughout the national territory and the damage is suffered throughout the national territory.
86. Since Greenpeace France, Friends of the Earth France and Notre Affaire à Tous carry out their statutory activities throughout the national territory, the harmful event and the damage they suffer as a result of the broadcasting is indeed carried out throughout the national territory.
87. In particular, the Parisian public is therefore the recipient of information distributed by TotalEnergies SE and TotalEnergies Electricité et Gaz France SA.
88. Consequently, pursuant to Article 46 of the Code of Civil Procedure, the Paris Court of Justice has jurisdiction.
89. Moreover, since the registered office of TotalEnergies Electricité et Gaz France SA, one of the defendants, is located in Paris, the Paris Court of First Instance also has jurisdiction under Articles 42 and 43 of the Code of Civil Procedure.

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<sup>72</sup> Cass. 1st civ. 6 November 2017, n° 16-10428; Yahoo jurisprudence, TGI Paris, 22 May and 20 November 2000; TGI Paris, 17th ch., 26 February 2002; Paris 11th ch., 17 March 2004; TGI Amiens, 13 April 2017 FNE c/ Jaguar Land Rover; TJ Paris 23 February 2021 FNE c/ CAMA

### III. MISLEADING COMMERCIAL PRACTICES COMMITTED BY TOTALENERGIES SE AND TOTALENERGIES ELECTRICITE ET GAZ FRANCE

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90. In the light of the legal framework applicable to misleading commercial practices (1), the allegations made by TotalEnergies SE and TotalEnergies Electricité et Gaz France SA can be qualified as misleading commercial practices (23) and likely to alter the economic behaviour of the consumer (4).

#### 1. THE LEGAL FRAMEWORK APPLICABLE TO THIS CASE

91. The prohibition of misleading commercial practices (1.1) applies to companies' environmental claims (1.2) in accordance with the criteria established by several national and European bodies (1.3).

##### 1.1 The prohibition of misleading commercial practices under consumer law

92. The prohibition of misleading commercial practices is based on Articles L.121-1 et seq. of the French Consumer Code, resulting from the transposition of the Unfair Commercial Practices Directive of 11 May 2005 (hereafter the "**Directive**")<sup>73</sup>. The provisions of French law must therefore be interpreted in the light of EU law and the case law of the Court of Justice of the European Union (hereinafter the "**CJEU**")<sup>74</sup>.

93. Article L.121-1 of the Consumer Code states that :

*"Unfair commercial practices are prohibited. A commercial practice is unfair when it is contrary to the requirements of professional diligence and alters or is likely to alter in a substantial manner the economic behaviour of the consumer who is reasonably well-informed and reasonably observant and circumspect with regard to a good or a service [...]"*.

94. Unfair commercial practices include misleading commercial practices as defined by Articles L.121-2 and L.121-3 of the Consumer Code and by the Directive.

95. According to the Directive, the notion of commercial practice is defined as "*any action, omission, course of conduct, commercial communication, including advertising and marketing, by a trader directly related to the promotion, sale or supply of a product to consumers*"<sup>75</sup>. Product means any good or service for the purposes of Article 2 of the Directive.

96. The CJEU further stressed that the material scope of the Directive is particularly broad and that "*the only criterion referred to in that provision is that the trader's practice must be directly related to the promotion, sale or supply of goods or services to the consumer*"<sup>76</sup>.

97. A misleading commercial practice can be materialised by a misleading action (Article L.121-2 of the Consumer Code) or by a misleading omission (Article L.121-3 of the Consumer Code).

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<sup>73</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

<sup>74</sup> See in this respect Cass. com, 20 Feb 2019, n° 17-13.215.

<sup>75</sup> Article 2 d) of the Directive.

<sup>76</sup> CJEU, 16 April 2015, No. C-388/13, *UPC*, para 35.

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98. Finally, the misleading nature of a commercial practice depends on whether it is likely to mislead the consumer and thus alter his or her economic behaviour towards a product.
99. Misleadingness is determined by reference to the standard of the "*normally informed and reasonably observant and circumspect consumer*" according to Article L.121-1 paragraph 2 of the Consumer Code, referred to as the "*average consumer*" under the Directive.
100. In this respect, the European Commission's new guidance on the interpretation of the Directive, entitled "*Guidance on the interpretation and application of Directive 2005/29/EC on unfair commercial practices*" (hereinafter, the "**European Commission Guidance**"), states that "*the concept of the average consumer in the UCPD [should] always be interpreted bearing in mind Article 114 of the Treaty, which ensures a high level of consumer protection*"<sup>77</sup>.

## **1.2 The applicability of the prohibition of misleading commercial practices to environmental claims**

101. Under the terms of Article L. 121-2 of the Consumer Code as amended by the so-called "Climate and Resilience" law<sup>78</sup>:

*"A commercial practice is misleading if it is committed in any of the following circumstances:  
[...]*

*2° When it is based on **false or misleading allegations, indications or presentations concerning one or more of the following elements:** [...]*

*(b) The **essential characteristics of the good or service, namely: its substantial qualities, composition, accessories, origin, [...]** its quantity, method and date of manufacture, the conditions of its use and its fitness for purpose, **its properties and the results expected from its use, in particular its environmental impact** [...].*

*e) The **extent of the advertiser's commitments, particularly with regard to the environment** [...]"*

102. This law, which comes into force on 24 August 2021, codifies the applicability of the prohibition of misleading commercial practices to environmental claims, which had already been affirmed by several court decisions <sup>79</sup>and recalled in a 2013<sup>80</sup> European Commission report.
103. In this respect, it is irrelevant that some of the practices referred to in the present action were committed before the entry into force of the law, since the law merely confirmed a previous situation and, in any event, the allegations at issue are to be found in the group's communication after the law came into force.

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<sup>77</sup> **Exhibit 24** - European Commission, "*Guidance on the interpretation and application of Directive 2005/29/EC on unfair commercial practices*", 29/21/2021, p. 33.

<sup>78</sup> Law n° 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to its effects.

<sup>79</sup> See in particular Cass. Crim, 6 Oct. 2009, n° 08-87.757 and CA Lyon, 29 Oct. 2008 (JurisData n° 2008-371645).

<sup>80</sup> **Exhibit 25** - European Parliament report on the application of the Directive. The Parliament recalls that the Directive "*is the main horizontal legislative instrument against which environmental claims should be assessed and whether a claim is misleading in its content or in the way it is presented to consumers*"

### 1.3 Criteria for assessing environmental claims

104. Several guidelines provide guidance on the assessment of environmental claims in relation to the prohibition of misleading commercial practices.

(i) European Commission guidelines

105. The European Commission's Guidelines reaffirm the general principle that "*environmental claims must be truthful, not contain false information and be presented in a clear, specific, accurate and unambiguous manner so as not to mislead consumers.*"<sup>81</sup> They further state that :

- "*The assessment of an environmental claim shall take into account the **most significant environmental impacts of the product during its life cycle, including its supply chain. An environmental claim must address significant aspects of the product's environmental impact. Highly polluting industries should ensure that their environmental claims are accurate in the sense that they should be made in a relative manner, for example by stating "less harmful to the environment" instead of "environmentally friendly.***"<sup>82</sup>
- "*Professionals must be **able to support their environmental claims with appropriate evidence.** Therefore, claims should be based on sound, independent, verifiable and generally accepted evidence, taking into account the latest scientific knowledge and methods.*"<sup>83</sup>
- "*The imagery and general presentation of the product (i.e. layout, colours, illustrations, photos, sounds, symbols or labels) should also accurately reflect the magnitude of the environmental benefit and not exaggerate the benefit obtained. Implied claims may, depending on the circumstances of the case, include the use of images (e.g. trees, rainforests, water, animals) and colours (e.g. blue or green background or text) associated with environmental sustainability.*"<sup>84</sup>

106. Following an enforcement operation carried out in 2020 on environmental claims posted on company websites, the European Commission recalled that a claim could be misleading and "*constitute an unfair commercial practice under the Unfair Commercial Practices Directive*" in the following cases

- "*The commercial operator did not provide sufficient information to enable consumers to judge the accuracy of the claim;*
- "*The claim included vague and general statements mentioning terms such as "conscious", "environmentally friendly" and "sustainable", intended to give consumers the unsubstantiated impression that a product did not have a negative impact on the environment;*
- "*The operator had not provided readily available evidence to support its claim.*"<sup>85</sup>

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<sup>81</sup> [Exhibit 24](#) - European Commission guidance, section 4.1.1.2

<sup>82</sup> *Idem*, section 4.1.1.3.

<sup>83</sup> *Idem*, section 4.1.1.5.

<sup>84</sup> *Idem*, section 4.1.1.3.

<sup>85</sup> [Exhibit 26](#) - European Commission press release on Operation *Sweep*, 28/01/2021.

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107. Thus, there is often an information asymmetry between advertisers and consumers on complex environmental issues, which hinders informed decision-making, and which companies are likely to exploit.

(ii) *Practical guide to environmental claims for professionals and consumers published by the DGCCRF*

108. The "*Practical Guide to Environmental Claims for Professionals and Consumers*" prepared by the Conseil National de la Consommation (hereinafter "CNC") under the aegis of the Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes (hereinafter the "*DGCCRF Guide*") sets <sup>86</sup> out the conditions under which certain environmental claims may be considered to comply with the rules on misleading commercial practices.

109. In this regard, it states that "*environmental claims that are not made in accordance with the conditions of use set out in the guide will have **a stronger presumption of non-compliance***" and that "*the rules of the CNC will be reminded to professionals and **may be used in support of a litigation procedure***"<sup>87</sup>.

110. The DGCCRF Guide requires that any environmental claim be "***explicit and precise so as not to mislead or sow doubt in the mind of the consumer***", "*based on **scientific evidence or recognised methods***"<sup>88</sup> and inform the consumer "*in a **fair** manner about the environmental characteristics of the product or service*". In addition, a company using claims that relate more broadly to its activities, such as "*our producers are committed to respecting the environment*", must justify "***that it has reduced the main environmental impacts associated with its activities***"<sup>89</sup>.

(iii) *Sustainable Development Recommendation of the Professional Advertising Regulatory Authority*

111. The "*Sustainable Development*" recommendation of the French Advertising Standards Authority ("**ARPP**"), (hereinafter the "*Sustainable Development Recommendation*") also <sup>90</sup>provides guidance on the minimum professional requirements that professionals have set themselves, in the context of self-regulation, in relation to environmental claims. The Sustainability Recommendation sets out a number of principles such as:

- Veracity of actions: the **advertiser** must be able to "*justify the arguments relating to sustainable development by means of **objective, reliable, truthful and verifiable elements** at the time of advertising*" as well as "*the origin of the results announced and the methodology used as a basis for calculation*" (point 2.3).
- Proportionality of messages: the message "*must accurately express the advertiser's action or the properties of its products, in accordance with the justifications that can be transmitted*" (point 3.1). The message "*must be **proportionate to** the extent of the advertiser's sustainable development actions and to the properties of the product being promoted*" (point 3.2). It must not "*unduly suggest a total absence of negative impact*" (point 3.3 b).

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<sup>86</sup> **Exhibit 27** - Practical guide to environmental claims for professionals and consumers ("**DGCCRF Guide**").

<sup>87</sup> *Idem*, pp. 41-42.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Idem*, p. 3.

<sup>90</sup> **Exhibit 28** - ARPP's "*Sustainable Development*" recommendation.

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- Clarity of the message: "*any **impact reduction argument [...] must be precise and accompanied by figures, indicating the basis of comparison used***" (point 4.6)
- Fairness: if the advertising argument is only valid in a particular context, this context should be clearly presented (point 4.2).

## **2. THE COMMERCIAL NATURE OF THE PRACTICES COMMITTED BY TOTALENERGIES SE AND TOTALENERGIES ELECTRICITE ET GAZ FRANCE**

112. The practices referred to in the statement of facts are of a commercial nature insofar as they were disseminated by professionals (2.1), the media used fall within the scope of Article L.1211 of the Consumer Code (2.2) and they fulfil a commercial objective within the meaning of Article 2(d) of the Directive (2.3).

### **2.1 The companies TotalEnergies SE and TotalEnergies Electricités et Gaz France, co-authors of the practices in question**

113. Under the Directive, a commercial practice is necessarily carried out by a 'trader'. Article 2(b) of the Directive defines a trader as "*any natural or legal person who, in respect of commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession, and any person acting in the name of or on behalf of a trader*".

114. In this case :

- TotalEnergies SE, the parent company, publishes the website <sup>91</sup><https://www.totalenergies.com> which hosts the *ad hoc* web page created for the advertising campaign, accessible to French consumers, in particular via the numerous links from the commercial website, the advertisements broadcast on social networks, television channels and radio.
- TotalEnergies Electricité et Gaz France SA publishes the commercial website for individual consumers <sup>92</sup><https://www.totalenergies.fr>

115. There is no doubt that the parent company and its subsidiary are acting for promotional purposes in the course of their commercial activity (see **section III. 2.3**). These companies are therefore professionals within the meaning of Article 2(b) of the Directive and must be regarded as co-authors of the practices referred to in the statement of facts, since this communication appears both on the Commercial Site and the *ad hoc* internet page.

116. Furthermore, as the parent company, TotalEnergies SE decides on the communication strategy and speaks on behalf of the entire TotalEnergies<sup>93</sup> group. Therefore, the misleading

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<sup>91</sup> **Exhibit 29** - Screenshot of the "Legal Notice" page of the website [www. totalenergies.com](https://www.totalenergies.com) (available at <https://totalenergies.com/fr/mentions-legales>).

<sup>92</sup> **Exhibit 30** - Screenshot of the "Legal Notice" page of the website [www. totalenergies.fr](https://www.totalenergies.fr) (available at <https://www.totalenergies.fr/mentions-legales>).

<sup>93</sup> By way of illustration, the disclaimer included in a 2022 press release (**Exhibit 31**- TotalEnergies Group press release "*TotalEnergies and Veolia partner to accelerate the development of biomethane production*", 02/02/2022) states that "*The terms 'TotalEnergies', 'TotalEnergies Company' and 'Company' appearing in this document are used to refer to TotalEnergies SE and to the consolidated entities that TotalEnergies SE controls directly or indirectly. Similarly, the terms 'we', 'us', 'our' may also be used to refer to these entities or their employees.*"

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allegations made on behalf of the TotalEnergies group must be imputed to TotalEnergies SE.

## 2.2 Support for environmental claims

117. As the notion of medium is interpreted broadly, all marketing processes used by a company for promotional purposes are likely to fall within the scope of the prohibition of misleading commercial practices.
118. In particular, with regard to digital advertising, access via the Internet is a recognised medium for commercial<sup>94</sup> practices, as are hypertext<sup>95</sup> links.
119. In this case, to maximise the impact of its campaign, the TotalEnergies group used all communication channels: television and radio spots, billboards (bus shelters, metro, train station, Orly airport) and digital communication media.
120. The commercial site and the *ad hoc* page are highly developed media. The *ad hoc* page contains simplified information and a video spot promoting the group<sup>96</sup>'s change of identity.
121. Social networks are a central communication tool for the TotalEnergies group, which maintains an account in France on Facebook, LinkedIn, Twitter, Instagram and YouTube. It uses these platforms to disseminate advertisements, some of which are so-called "targeted", i.e. messages appearing on these networks in return for payment and which are aimed at a particular audience according to criteria such as age, interests, behaviour, location, etc.<sup>97</sup>
122. The extent of this communication cannot be exhaustively traced as the ads are only shown to the audience corresponding to the chosen characteristics and only Facebook lists the targeted ads on a website called "Facebook Ad Library"<sup>98</sup>. However, only ads related to a "social, electoral or political issue" (including climate change) on the group's platforms (Facebook, Instagram, WhatsApp and Messenger) are permanently listed. This directory is not exhaustive, as some ads - sometimes related to climate change but not labelled as such - only appear temporarily in the Ad Library. This is particularly the case for some ads promoting the climate commitments of the TotalEnergies group which have not been labelled correctly<sup>99</sup>.
123. It follows that the scope of the TotalEnergies group's communication on its climate commitments is likely to be broader than the sample submitted to the debate.
124. **All these elements of the communication campaign are commercial practice materials within the meaning of Articles L. 121-1 et seq. of the Consumer Code and the Directive.**

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<sup>94</sup> TGI Paris, 7 January 2009, n°06/15309; Cass. Crim. 11 December 2007, n°07-82.903.

<sup>95</sup> CA Paris 28 June 2006, n°2006-315042.

<sup>96</sup> [Exhibit 19](#) - Bailiff's report dated 20/01/2022, p. 2 and Annex 2.

<sup>97</sup> [Exhibit 32](#) - Screenshot of the Facebook page "*Help your ads find people who will like your business*"

<sup>98</sup> The Facebook Ad Library was introduced in May 2018 as a transparency measure following the controversy over Facebook's role in the US election. It is freely available at: [https://fr-fr.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=FR&media\\_type=all](https://fr-fr.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=FR&media_type=all)

<sup>99</sup> These ads were, by default, listed in a separate document and identified via screenshots as well as their unique identification number: [Exhibit 33](#) - Directory of Targeted Ads Not Kept by the Facebook Advertising Library.

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### 2.3 The commercial objective of TotalEnergies' environmental claims

125. According to Article 2(d) of the Directive, to qualify as a commercial practice, claims must be "*directly related to the promotion, sale or supply of a product to consumers*".
126. In the greening electricity market, and in the particularly competitive fuel supply market, the TotalEnergies group's advertising campaign is part of a clear and quantified commercial approach, with a particular promotional objective among French consumers (2.3.1).
127. In addition, the TotalEnergies group's claims about its environmental commitments and the environmental impact of its products and services are based on criteria identified by consumers as being of primary importance (2.3.2) and are part of the promotion of its brand image (2.3.3) so that they are directly linked to the promotion and sale of its products and services to consumers.

#### 2.3.1 The commercial objective of the TotalEnergies group in the fuel, electricity and gas supply market

128. As a preliminary matter, it is necessary to identify which products and services offered and used by French consumers are targeted. **The B2C activities of the TotalEnergies group in France are based on two main sectors: the marketing of fuel on the one hand and the supply of electricity and gas on the other.**
129. With regard to fuel, the TotalEnergies group declared that it would have 3,418 service stations in France by 2020<sup>100</sup>. In addition, the group has equipped "*some sixty Total-branded service stations with fast electric charging stations. [...] Eleven Total and AS24 branded stations also distribute NGV (natural gas for vehicles)*"<sup>101</sup>.
130. This represents about 20% of the market share in the fuel sector, a figure that has fallen considerably since the liberalisation policies adopted in the 1980s. The group's main competitors are the supermarket chains.
131. The group sells agrofuel in its stations, ethanol or "biodiesel" which can be identified thanks to the European regulatory display of fuels<sup>102</sup>. The group also states that it is investing significantly in the development and production of agrofuels, as illustrated by the launch of a refinery in France (La Mède) with a capacity of 500,000 t/year of agrofuels<sup>103</sup>.
132. As regards energy supply, the TotalEnergies group presents itself as "*a major player in the distribution of gas and electricity from renewable sources and based on natural gas*"<sup>104</sup>.

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<sup>100</sup> **Exhibit No12**. - Extracts from the Total Group's 2020 Universal Registration Document, p. 85, footnote (a) stating that the Group's brands are: "TOTAL, TOTAL ACCESS, Elf, Elan and AS 24, including third party owned service stations and service stations under conversion"

<sup>101</sup> **Exhibit 34** - Screenshot of the "TotalEnergies in France" page of the website [www. totalenergies.com](http://www.totalenergies.com) (<https://totalenergies.com/fr/total-en-france-0>).

<sup>102</sup> "What is a biofuel?" webpage on the [totalenergies.fr](http://totalenergies.fr) website (<https://services.totalenergies.fr/mes-deplacements/tout-savoir-sur-les-carburants-total/point-complet-sur-le-biocarburant>).

<sup>103</sup> **Exhibit 7** - Total Group Climate Report, "Towards Carbon Neutrality", 2020, p. 32-33.

<sup>104</sup> **Exhibit 34** - Screenshot of the "TotalEnergies in France" page of the website [www. totalenergies.com](http://www.totalenergies.com).

133. One of the group's main economic strategies is based on the development of fossil gas (natural gas) sales. In 2021, it has announced that it will become the world's second largest LNG player with a record profit based on a 10% increase in global<sup>105</sup> sales.
134. In France, the gas and electricity supply market is particularly attractive with 38.9 million electricity consumers and 11.5 million natural gas consumers in 2019<sup>106</sup>.
135. The Commission de régulation de l'énergie ("**CRE**") notes in its 2019 report that the opening of the energy market to competition in 2007 offers a growing place to alternative suppliers with a substantial increase in their market share between 2017 and 2019, from 18% to 26% for electricity and from 26% to 33% for gas. In this market, the segment of so-called "green" offers is an increasingly important factor for consumers to switch supplier. In 2019, more than 11% (3.9 million) of residential consumers had already subscribed to a "green" electricity offer<sup>107</sup>.
136. The TotalEnergies group has a strong presence in this sector where competition is increasing. In 2019, through its subsidiary Total Direct Energie (now TotalEnergies Electricité et Gaz France SA), the group was the third largest supplier of electricity and gas, with 3 090million 35and 1 million customers respectively, i.e. an increase in its market share of 51% and 37% between 2017 and 2019. Its main competitors are the three other main suppliers: EDF, ENGIE and ENI<sup>108</sup>.
137. In this market, the TotalEnergies group has every interest in distinguishing itself from both the so-called historical suppliers (EDF and Engie) and the other alternative suppliers, who are better perceived in terms of their climate impact and their contribution to the transition.
138. The commercial objective of the TotalEnergies group in this area is clear. In April 2021, the group announced that *"Total, via its subsidiary Total Direct Energie, has passed the 5 million customer mark (B2C and B2B) in France and confirms its position as the leading alternative electricity and gas supplier. [Total Direct Energie is targeting net growth of 500,000 customers this year and a market share of 15% by 2025 in France, compared with nearly 10% today. In Europe, the Group's objective is to reach 9 million B2C customers by 2025*<sup>109</sup>.
139. Launching its advertising campaign a month later, the TotalEnergies group announced to consumers its ambition to grow from 8 to 12 million customers in Europe from 2020 to 2025<sup>110</sup>:

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<sup>105</sup> [Exhibit 7](#) - Total Group Climate Report, "*Towards Carbon Neutrality*", 2020, p. 5.

<sup>106</sup> [Exhibit 35](#) - Extracts from the CRE's 2018-2019 report "*The functioning of the French retail electricity and natural gas markets*", 2020, p. 2.

<sup>107</sup> *Idem*.

<sup>108</sup> *Idem*, p. 4.

<sup>109</sup> [Exhibit 13](#) - Total Group press release, "*Total Direct Energie exceeds 5 million customers in France*", 28/04/2021.

<sup>110</sup> [Exhibit 20](#) - Thematic Index of Allegations, p. 8 (Twitter, 1<sup>er</sup> June 2021).

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140. There is therefore no doubt that the main target of the above-mentioned commercial practices of the TotalEnergies group is the French consumer of fuels, agrofuels, electricity and gas.
141. This is also reflected in the content and format (imagery, music) of the promotional messages and the variety of communication channels used, which are aimed at the widest possible audience including potential consumers and the use of targeted advertising messages, some of which explicitly appeal to the consumer<sup>111</sup>.
142. For example, in its radio and television advertisements broadcast on a very large scale, the TotalEnergies group proposes services "*for better consumption*"<sup>112</sup> and presents its change of identity as a response to consumer needs: "*Total is transforming itself and becoming TotalEnergies, in order to respond even better to your needs*".<sup>113</sup>
143. The same is true of the advertisements reproduced below, one sponsored on Facebook with the following message linking one of the main commitments of the TotalEnergies group ("*How to become a player in the energy transition?*") to the decision of consumers to subscribe to its "*green*" offer<sup>114</sup>; the other published on Twitter and proposing to accompany consumers towards a more responsible<sup>115</sup> consumption.

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<sup>111</sup> *Idem*, p. 7.

<sup>112</sup> See the group's dedicated website for individuals: <https://mieux-consommer.totalenergies.fr/>

<sup>113</sup> [Exhibit 20](#) - Thematic Inventory of Allegations, p. 2.

<sup>114</sup> [Exhibit 20](#) - Thematic Inventory of Claims, p. 7 (series of targeted ads on Facebook in 2021 and 2022).

<sup>115</sup> *Ibid.* (Twitter, 28 August 2021).

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144. In addition, the claims on gas and agrofuels are directly associated with services and products offered by the TotalEnergies group to French consumers: domestic heating, natural gas and electricity solutions, service stations and fuels.

### 2.3.2 Criteria that are important to consumers

145. The claims made by the TotalEnergies group are based on criteria that are of prime importance to consumers. Consumers attach greater importance to the production conditions and impacts of the products they consume, but also to the values that companies commit to.

146. Thus, according to a recent European opinion survey including France, **90% of consumers expect brands to commit and help them to consume<sup>116</sup> better**. As such, the normally informed consumer is increasingly interested in the environmental practices and commitments of companies, and advertisers are fully aware of this.

147. This is all the more true for an oil and gas company: the communication challenge of its contribution to global warming has become crucial in the 21<sup>st</sup> century. As the consequences of global warming become increasingly visible and the IPCC's warnings grow in magnitude, the normally informed consumer is no longer unaware of either the existence of global warming or the urgent need to reduce GHG emissions.

148. According to a Eurobarometer survey published by the European Commission in July 2021 and conducted over the period March-April 2021, the following are now :

- 81% of French citizens who believe that climate change is a very serious problem.
- 69% of citizens who say they have taken personal action to help combat climate change in the last six months.

<sup>116</sup> [Exhibit 36](#) - Oney and OpinionWay, "European Study on Sustainable Consumption", 19 February 2020.

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- 92% of citizens agree that we should reduce our GHG emissions to a minimum while offsetting the remaining emissions in order to make the European Union climate neutral by 2050<sup>117</sup>.
149. According to a consumer trends survey published in 2021, 70% of French consumers believe it is extremely or very urgent to act<sup>118</sup>. Furthermore, for a large majority of consumers who are concerned about climate change (80%), from 12 countries, including France, companies must now act by :
- Investing in clean and renewable energy (60%),
  - Adopting sustainable business practices (59%)
  - **Committing to a net zero emissions target (53%).**
150. Most consumers therefore also feel an urgent need to act. In order to contribute individually, **77% think that the solution is to buy "greener"**<sup>119</sup>.
151. However, the TotalEnergies group is a major player in the fossil fuel industry whose activities and products are the main cause of climate<sup>120</sup> change. It is therefore increasingly exposed to the risk of consumer diversion, particularly to competing energy suppliers. The group itself recognises this:
- "The attention of many stakeholders towards large industrial groups is increasing, particularly in view of the challenges of climate change. As a major player in the oil and gas sector, TOTAL is facing strong national and international media exposure. This phenomenon is amplified by the use of social networks."*<sup>121</sup>
152. Therefore, as it can no longer ignore it, it is in the group's interest to take up the climate issue and the impact of its products in order to improve its image, which has been tarnished by public awareness. It therefore promotes its climate commitments directly to consumers, such as on its *ad hoc* page with the **cloud graphic**, or the page on its commercial site "**The 5 good reasons to choose us**" and press advertisements where consumers can read:
- "Faced with the challenge of climate change, TotalEnergies has made climate change a central part of its strategy, with the aim of providing cleaner, safer and more affordable energy to as many people as possible."**<sup>122</sup>
153. In this regard, advertisements promoted by the TotalEnergies group were aired before, during and after the international climate summit (COP 26) held in November 2021, thus benefiting from the public attention created by this occasion<sup>123</sup>.

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<sup>117</sup> [Exhibit 1 37](#)- Results of the Eurobarometer survey on climate change in France, 2021.

<sup>118</sup> [Exhibit No38](#). - Excerpts from Dynata's study, "*Global Consumer Trends: The Urgent Fight Against Climate Change*", 2021 and free translation.

<sup>119</sup> *Idem*.

<sup>120</sup> [Exhibit 6](#) - Excerpt from the Carbon Disclosure Project report, "*The Carbon Majors Database, CDP Carbon Majors Report 2017*" and free translation.

<sup>121</sup> [Exhibit No12](#). - Extracts from the Total Group's 2020 Universal Registration Document, p 93.

<sup>122</sup> [Exhibit 20](#) - Thematic Inventory of Allegations, p. 1.

<sup>123</sup> See for illustration [Exhibit 33](#) - Directory of Targeted Ads Not Kept by the Facebook Advertising Library, pp. 2-6.

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### 2.3.3 Promotion of the TotalEnergies Group's brand image with a commercial objective

154. In total, according to a study, the TotalEnergies group spends an average of 52 million dollars a year on communication to promote its environmental commitments and in particular its "green" activities such as the production of energy from renewable<sup>124</sup> sources.
155. Such an investment can be explained by **the importance of brand image, which has become an essential lever for** the promotion of companies' products and services, to which it contributes directly<sup>125</sup>. This is why companies are increasingly communicating to consumers about their brand, and in particular about their environmental commitments.
156. In this regard, the European Commission's Guidelines make clear that general corporate environmental claims "***have become a marketing tool used to respond to growing consumer concern about traders' compliance with ethical and social standards***" which "***can be considered as 'directly linked to the promotion, sale or supply of a product' and therefore qualified as a commercial practice within the meaning of the Unfair Commercial Practices Directive***".<sup>126</sup>
157. In this respect, the fact that the TotalEnergies group uses the term "*ambition*" cannot protect its claims from the application of the rules on deceptive marketing practices. Indeed, these claims are numerous, repeated, illustrated, and associated with various other environmental claims. They are therefore likely to create expectations among consumers and should naturally be analysed as environmental commitments. **To analyse them otherwise would be to give companies a licence to promote unrealistic environmental ambitions in order to improve their brand image**, which would clearly run counter to the spirit of the Misleading Commercial Practices Regulation. Thus, the claims about the ambitions of the TotalEnergies group cannot be analysed as mere statements of intent. Insofar as they contribute to the promotion of the group's products and services, they constitute commercial practices.
158. Ultimately, all of the aforementioned allegations made by the TotalEnergies group (ambition of carbon neutrality by 2050, role as a major player in the transition, alleged properties of fossil gas and agrofuels) contribute to the promotion of its products and services (energy supply offers, fuels at the pump, etc.) by improving its brand image among consumers.
159. This is all the more important in the energy supply market where there is very little differentiation between the same product from different companies, since the product is essentially the same and the price depends mainly on world market prices. **The image of the company, and in particular its environmental commitments, therefore plays a crucial role in consumers' choice of supplier.**

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160. **The claims made by the TotalEnergies group in all of the aforementioned media have a direct link with the sale and promotion of its products and services to French**

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<sup>124</sup> [Exhibit 39](#) - Libération, "Oil companies spend \$200 million a year lobbying against the climate", 28/05/2019.

<sup>125</sup> See for example [Exhibit 40](#) - The Conversation, "*What companies forget when building strong brands*", 07/04/2019: "*Brands have always been symbols to identify and differentiate products or services. They are also social markers. But beyond these functions, brands today claim values that aim to become a growth lever by giving meaning to individuals: consumers [...], but also employees*".

<sup>126</sup> [Exhibit 24](#) - Commission Guidance, Section 2.3.

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**consumers. They must therefore be qualified as commercial practices within the meaning of Articles L. 121-1 et seq. of the Consumer Code.**

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### 3. THE MISLEADING NATURE OF THE ENVIRONMENTAL CLAIMS PROMOTED BY TOTALENERGIES SE AND TOTAL ENERGIES ELECTRICITE ET GAZ FRANCE

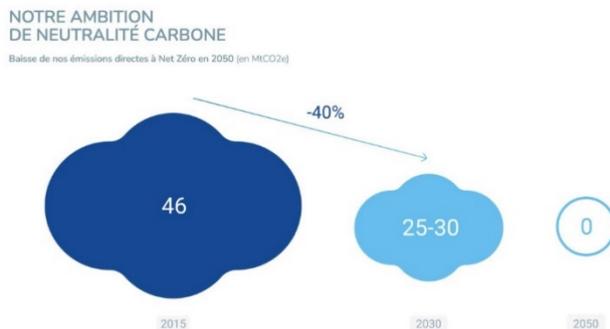
161. The environmental claims made by the TotalEnergies group constitute misleading commercial practices within the meaning of Articles L.121-2 and L.121-3 of the French Consumer Code, both with regard to its "*ambition*" to achieve carbon neutrality by 2050 and its role as a major player in the transition (3.1) and with regard to the alleged environmental virtues of gas (3.2) and agrofuels (3.3).

#### 3.1 Carbon neutrality by 2050 and energy transition claims

162. The claims referred to below are listed in Annex I of the thematic list produced in Exhibit 20.

163. As a reminder, the TotalEnergies group uses the following terms in its claims to be carbon neutral by 2050:

- On its commercial website (<https://www.totalenergies.fr>): "*Faced with the challenge of climate change, TotalEnergies is transforming itself with the ambition of becoming a major player in the energy transition, in particular by accelerating its development in renewable energies and by aiming for carbon neutrality in 2050 together with society*" or "*The Group has set itself the ambition of achieving carbon neutrality by 2050*"<sup>127</sup>
- On the *ad hoc* web page (<https://totalenergies.com/lenergie-se-reinvente/>) and on several advertisements published on social networks, the TotalEnergies group uses the following graphic which combines images and words<sup>128</sup>:



- More specifically:
  - on Facebook: "*To reach Net Zero by 2050, we are sparing no effort*"<sup>129</sup>;
  - on Twitter "*@TotalEnergies will reduce its net emissions by 40% between 2015 and 2030! A key step towards achieving #NeutralCarbon by 2050, in line with the Paris Agreement targets.*" accompanied by the visual above<sup>130</sup>;
  - on LinkedIn "*Achieving a #NetZero society by 2050 is our common goal. This is why we must collectively commit ourselves. Reinventing energy production and consumption to meet the climate*

<sup>127</sup> Exhibit 20 - Thematic Inventory of Allegations, p. 1.

<sup>128</sup> *Idem*, pp. 3-4.

<sup>129</sup> *Idem*, p. 3.

<sup>130</sup> *Idem*, p. 5.

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*challenge is TotalEnergies' ambition"* accompanied by a simplified version of the visual in the cloud with the following title "*lowering our direct emissions to Net Zero by 2050 (in MtCO2)*"<sup>131</sup>.

164. These messages are accompanied by more vague and broad references to the climate issue and the alleged contribution of the TotalEnergies group:

- "*Because we will always want to be comfortable at home, and **because we will contribute to preserving the planet**, TotalEnergies is committed to ever cleaner energy"*, words used in a sponsored advert on Facebook but also in a television advert with the following words "*and because we will always have to contribute to preserving the planet [...] Total is transforming itself and becoming TotalEnergies to meet your needs even better"* with a link to the *ad hoc*<sup>132</sup> page.
- "*So today, **to contribute to the sustainable development of the planet in the face of the climate challenge**, we are moving forward, together, towards new energies"* in a paper advertisement published in the press, notably in Le Figaro, L'équipe, Les Echos, Télérama Libération, Les Inrockuptibles, Aujourd'hui en France<sup>133</sup>.

165. Finally, as to its status or ambition to be a major player in the energy transition:

- "*Our ambition is to be a major player in the energy transition. That is why Total is transforming itself and becoming TotalEnergies"* in the above-mentioned press advertisement.
- On the Commercial Site, in a spot broadcast on the *ad hoc* page, and in advertisements broadcast on social networks (see facts, **section 2.1.2**).

166. In the light of the guidelines and standards defining the minimum requirements of professional diligence in this area (**3.1.1**), the current conduct of the activities of the TotalEnergies group and its strategy for the future are in flagrant contradiction with the ambitions promoted in its communication (**3.1.2**). The TotalEnergies group is thus misleading consumers about the impact of its activities and its environmental commitments (**3.1.3**).

### **3.1.1 Oil and gas companies'2050 net zero commitment benchmarks and standards**

167. These minimum requirements for carbon neutrality commitments by companies by 2050 are defined by some general (**i**) and energy sector specific (**ii**) benchmarks and standards.

(i) *Benchmarks and standards on the net zero 2050*

168. The following benchmarks for corporate carbon neutrality commitments by 2050 are intended to serve as an interpretive reference standard for the terms used by the TotalEnergies Group with consumers and the scope of its commitments. They are used to establish the requirements for due diligence in this area.

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<sup>131</sup> [Exhibit 20](#) - Thematic Index of Allegations, p 4.

<sup>132</sup> *Idem*, p. 3.

<sup>133</sup> *Idem*, p. 2.

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169. Among these, the "Net Zero" benchmark of the Science Based Targets Initiative ("SBTi")<sup>134</sup> enjoys wide international recognition, as does the "Net Zero Initiative" benchmark of the French climate economics specialist Carbone 4<sup>135</sup>.
170. 2050Companies' carbon neutrality commitments can also be analysed in the light of the report by the AMF's Climate and Sustainable Finance Commission<sup>136</sup>, the "Assessing low carbon transition" ("ACT") methodology promoted by ADEME, and the international campaign coordinated by the UN "Target Zero" (or "Race to Net Zero")<sup>137</sup>.
171. Some common principles emerge from all these guidelines and standards.
172. Firstly, the benchmarks agree that a company's goal of carbon neutrality by 2050 must be based on **a commitment to reduce the company's GHG emissions throughout its value chain**.
173. This requirement refers to the three GHG emission items accounted for by companies, according to the internationally recognised *Greenhouse Gas Protocol* standard used by the TotalEnergies group itself. These are:
- **Scope 1**, which covers direct emissions from production activities;
  - **Scope 2"**, which includes indirect emissions related to the energy consumption of the operated sites;
  - **Scope 3"**, which covers all indirect emissions related to the use of goods and services produced and is the most important for oil and gas companies, as the emissions from their products represent at least 85% of their overall emissions.
174. All the guidelines consider that the objective of carbon neutrality by 2050 must cover both direct emissions (**scope 1**) and indirect emissions (**scope 2 and 3**), particularly when scope 3 represents a major<sup>138</sup> share.
175. According to the SBTi standard: "*Rapid and deep emissions reductions **across the value chain** are the most effective and scientifically sound way to limit the global temperature increase to 1.5°C. This is the central objective of the Net Zero standard and **must be the top priority for companies**. The Net Zero standard covers all emissions in a company's value chain, including those generated by its own*

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<sup>134</sup> SBTi is a collaboration between CDP, United Nations Global Compact, World Resources Institute (WRI) and World Wide Fund for Nature (WWF). It has designed a standard for companies with more than 500 employees, the "Net Zero Standard" (<https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf>). An excerpt from this standard (and its free translation) is provided in [Exhibit 41](#)

<sup>135</sup> [Exhibit 42](#) - Executive summary of Carbone 4 report, *Net Zero Initiative*, 2020.

<sup>136</sup> [Exhibit 43](#) - AMF Climate and Sustainable Finance Commission, "Companies and Neutrality: Initial Findings and Identified Issues", October 2021, p. 7.

<sup>137</sup> [Exhibit 44](#) - Race to Net Zero, "Minimum criteria required for participation in the Race to Zero campaign", 2020.

<sup>138</sup> [Exhibit 43](#) - AMF Climate and Sustainable Finance Commission, "Companies and Neutrality: Initial Findings and Identified Issues", October 2021, p. 7; [Exhibit 42](#) - Executive Summary of Carbone 4 report, "Net Zero Initiative", 2020 and [Exhibit 44](#) - Race to Net Zero, "Minimum criteria required for participation in the Race to Zero campaign", 2020 and free translation, p. 2, emission reduction targets should cover "all greenhouse gas emissions: including scope 3 for companies and investors where they are significant in relation to total emissions and where available data allows for sufficient measurement."

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*processes (scope 1), purchased electricity and heat (scope 2), and those generated by suppliers and end users (scope 3). Most companies will need to decarbonise by 90-95% to reach net zero*<sup>139</sup>.

176. These findings are particularly relevant to the oil and gas industry as **the "vast majority of total GHG emissions (approximately 80% along the oil and gas value chain) produced by oil and gas companies occur in the downstream segment, in the combustion of products sold for energy end-use"**, which requires that the **"company's emissions reduction targets clearly include indirect emissions from products sold, which is the priority commitment for the sector"**<sup>140</sup>.
177. **Secondly**, these benchmarks and standards recall that commitments to carbon neutrality by 2050 must be accompanied by a commitment to a GHG emissions reduction trajectory that is **compatible with the global objective of limiting warming to 1.5°C in accordance with the Paris Agreement** - in the light of the best available<sup>141</sup> scientific knowledge.
178. The AMF's Climate and Finance Commission thus recommends aligning *"targets with the most recent scientific knowledge, for example via an ACT (Assessing low Carbon Transition) assessment or validation by the SBTi (Science-based Targets Initiative), making it possible to define a decarbonisation trajectory (or transition plan) in line with the objectives of the Paris Agreement"*<sup>142</sup>. ADEME refers to the ACT methodology for defining a trajectory in line with the Paris<sup>143</sup> Agreement.
179. **Thirdly**, the most recent benchmarks and standards agree on the need for companies to set **an interim GHG emissions reduction target of at least 45% by 2030 compared to 2010** (as indicated by the IPCC for the global target) or a more appropriate base year<sup>144</sup>. According to the SBTi *"companies that refer to the net zero standard must set science-based targets in the short term and the long term. This means reducing emissions quickly now, by 50%."*<sup>145</sup> This requirement is now the subject of an international consensus, as recalled in the "pact" endorsed at the end of COP 26<sup>146</sup>.

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<sup>139</sup> [Exhibit 45](#) - Screenshot of the "The net-zero standard" page of the SBTi website and free translation.

<sup>140</sup> [Exhibit 46](#) - ACT, "Assessing low carbon transition - Oil and gas", 2021.

<sup>141</sup> [Exhibit 47](#) - Screenshot from the "How it works" page of the SBTi website and free translation: "Targets are considered "science-based" if they are consistent with what the latest climate science deems necessary to achieve the goals of the Paris Agreement, namely to limit global warming to well below 2°C above pre-industrial levels and to continue efforts to limit warming to 1.5°C".

<sup>142</sup> [Exhibit 43](#) - AMF Climate and Sustainable Finance Commission, "Companies and Neutrality: Initial Findings and Identified Issues", October 2021, p. 7.

<sup>143</sup> [Exhibit 48](#) - Screenshot of the ADEME website page "ACT - Les méthodologies": the ACT methodology is described as enabling "the development of a decarbonisation strategy and transition plan, taking into account the carbon neutrality objective of the Paris Agreement and the climate issues specific to its sector of activity".

<sup>144</sup> [Exhibit 44](#) - Race to Net Zero, "Minimum criteria required for participation in the Race to Zero campaign", 2020 and free translation, p. 2: carbon neutrality for business implies setting an "intermediate target to be achieved within the next decade, reflecting the maximum effort to meet or exceed a reasonable share of the global 50% emissions reduction by 2030, as identified by the IPCC in its 1.5°C report".

<sup>145</sup> [Exhibit 45](#) - Screenshot of the "The net-zero standard" page of the SBTi website and free translation.

<sup>146</sup> [Exhibit 49](#) - Glasgow Climate Pact, 2021 and free translation, §22: "Recognises that limiting global warming to 1.5°C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45% by 2030 from 2010 levels and to zero by mid-century, as well as deep reductions in other greenhouse gases."

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(ii) Benchmarks and standards relating to the specific role of the oil and gas sector

180. The United Nations Environment Programme's report "*The Production Gap*" reminds us that ***"global fossil fuel production must begin to decline immediately and sharply if it is to be compatible with limiting global warming to 1.5°C in the long term"***<sup>147</sup>.
181. Given the dominant role of the oil and gas industry, limiting warming to 1.5°C therefore requires :
- limit the exploitation of fossil fuel reserves (oil, gas, coal): 80% of known fossil fuel reserves must remain in the ground<sup>148</sup>;
  - to reduce oil and gas production by at least 4% and 3% respectively each year until 2030 compared to 2020<sup>149</sup>.
182. From an energy transition perspective, the International Energy Agency ("**IEA**") has translated this requirement into a reference scenario outlining its vision of a technically feasible, economically viable and socially acceptable pathway to global carbon neutrality (the so-called "NZE" scenario)<sup>150</sup>. According to this reference scenario, achieving the goal of carbon neutrality by 2050 requires :
- A "*considerable decrease in the use of fossil fuels. From almost four-fifths of total energy supply today to just over one-fifth in 2050*"<sup>151</sup>.
  - A considerable increase in renewable energy production. According to the IEA's baseline scenario: "*Instead of fossil fuels, the energy sector relies heavily on renewables [...] Solar photovoltaic capacity increases 20-fold by 2050, and wind power capacity increases 11-fold*"<sup>152</sup>.
  - An immediate halt to all investment in new fossil fuel resources: "*no fossil exploration is required and no new oil and gas fields are needed beyond those already approved*"<sup>153</sup>.
  - Drastically limit the development of liquefied gas (LNG) and new projects in this sector, which the IEA<sup>154</sup> considers "*unnecessary*".
- \*\*\*
183. **It is clear from these various scientific guidelines and recommendations that the TotalEnergies Group can only demonstrate to consumers its ambition to be carbon neutral by 2050 and its claim to be or to become a major player in the energy**

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<sup>147</sup> [Exhibit 50](#) - The Production Gap, "*Executive Summary of the gap between the level of fossil fuel production projected by states and the global level of production consistent with limiting warming to 1.5°C or 2°C*", 2021, p. 3.

<sup>148</sup> In this regard, the explanatory memorandum of Law No. 2017-1839 of 30 December 2017 putting an end to the exploration and exploitation of hydrocarbons and containing various provisions relating to energy and the environment states that "*80% of the fossil reserves already known must remain in the ground in order to meet the temperature increase trajectory targeted by the Paris Agreement. In this context, granting new exploration permits is incompatible with the Paris Agreement.*" (Chapter I - Stopping the exploration and exploitation of hydrocarbons). See also [Exhibit 51](#) - Nature magazine article, "*Unextractable fossil fuels in a 1.5 °C world*", 2021.

<sup>149</sup> [Exhibit 52](#) - Extract from "*The production gap executive summary*", 2020 and free translation p.3.

<sup>150</sup> [Exhibit 53](#) - IEA report, "*Net Zero by 2050, A roadmap for the global energy sector*", October 2021.

<sup>151</sup> *Idem*, p. 18 and p. 57.

<sup>152</sup> [Exhibit 53](#) - IEA report, "*Net Zero by 2050, A roadmap for the global energy sector*", October 2021, p. 18.

<sup>153</sup> *Idem*, pp. 101-103.

<sup>154</sup> *Idem*, p. 102.

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**transition if it complies with several minimum requirements according to professional diligence:**

- TotalEnergies' GHG emission reduction targets should cover all of the Group's emissions, and in particular include Scope 3.
- TotalEnergies' emissions reduction targets should be aligned with a global emissions reduction trajectory of at least 45% by 2030 compared to 2010 or a more appropriate base year in order to achieve carbon neutrality by 2050, in line with the Paris Agreement.
- The TotalEnergies group should reduce its oil and gas production by at least 4% and 3% respectively per year from its 2020 production volumes, should immediately cease all fossil exploration and new oil and gas field development beyond those already approved.

### 3.1.2 THE CONTRADICTION BETWEEN THE GROUP'S STRATEGY AND ITS CLAIMS ABOUT ITS NET ZERO 2050 AMBITION AND ITS ROLE IN THE ENERGY TRANSITION

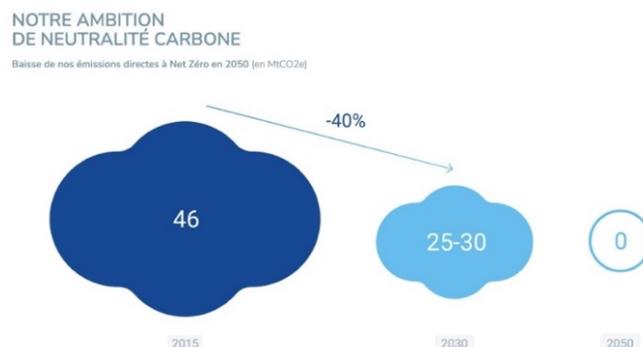
184. The TotalEnergies group repeatedly suggests that consumers should aim for carbon neutrality by (2050 or net zero 2050) in line with the Paris Agreement and that it would be at the forefront of the energy transition needed to achieve this.

185. However, a detailed analysis of the objectives set by the group shows that it does not comply with the minimum requirements of the guidelines and recommendations in this area, either in terms of its GHG emission reduction objectives (i) or its fossil energy production projects (ii).

(i) The Group's emission reduction targets are incompatible with a net zero 2050 trajectory

186. As mentioned, the most recent benchmarks and standards condition the claim of carbon neutrality by (2050 or net zero 2050) on the **setting of reduction targets aligned with global emissions of at least 45% by 2030 compared to 2010 or a more appropriate base year.**

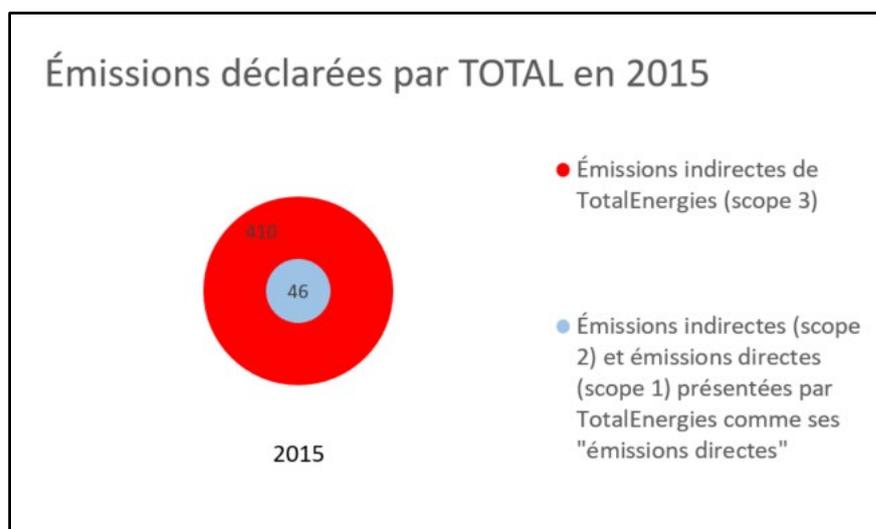
187. However, it appears that the group's GHG emission reduction targets presented to consumers contravene these requirements. As a reminder, this presentation is summarised in the graph below:



188. Claims about the TotalEnergies Group's goal of carbon neutrality by 2050 are misleading in several ways.

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189. Firstly, the TotalEnergies group **excludes scope 3 from its communication on its ambition to reduce its emissions** to achieve carbon neutrality by 2050, even though scope 3 represents 85 to 90% of its total<sup>155</sup> emissions. In doing so, it is misinterpreting the concept of carbon neutrality by 2050, its scientific understanding and its application to companies by the relevant standards.
190. By way of comparison, based on an analysis of the figures made public by the TotalEnergies<sup>156</sup> group, it is possible to summarise the group's complete emissions in 2015 in the following graph.



191. This first **graph A** illustrates the glaring difference between the picture presented to consumers - in blue - and the picture of their actual emissions once Scope 3 emissions - in red - are included.
192. Furthermore, analysis of the group's public data shows that it **has not set any overall reduction target for its Scope 3 emissions by 2030 and 2050**<sup>157</sup>:

Scope 3 emissions	Carried forward in 2015	Objective 2030	Objective 2050
<b>Mondial</b>	410 MtCO <sub>2e</sub>	< 410 MtCO <sub>2e</sub>	No specific objective
Of which <b>Europe</b>	256 MtCO <sub>2e</sub>	-30% vs 2015 or 179,2MtCO <sub>2e</sub> <sup>158</sup>	<b>Net zero (carbon neutral)</b>
Of which <b>outside Europe</b>	154 MtCO <sub>2e</sub> (410 - 256)	< 23 0,8MtCO <sub>2e</sub> <sup>159</sup> (<410 - 179)	< 230,8MtCO <sub>2e</sub> , the same level as in 2030 <sup>160</sup>

<sup>155</sup> [Exhibit 7](#) - Total Group Climate Report, "Towards Carbon Neutrality", 2020, p. 15.

<sup>156</sup> [Exhibit 54](#) - Methodology for the preparation of the graphics.

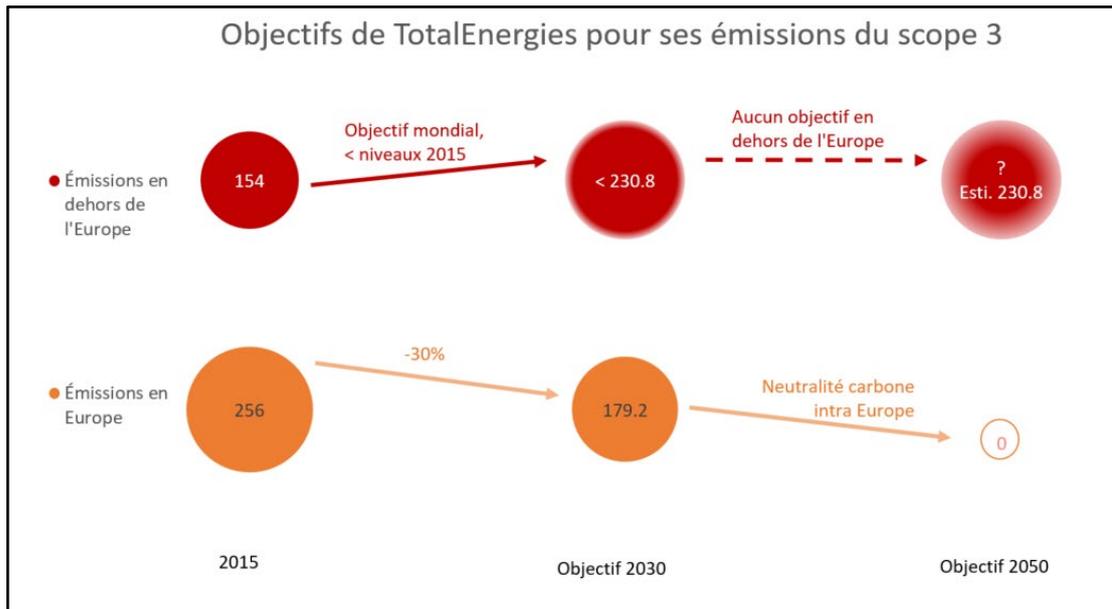
<sup>157</sup> [Exhibit 54](#) - Methodology for the preparation of the graphics.

<sup>158</sup> This calculation shows the reported emissions in 2015 for Europe, minus 30%.

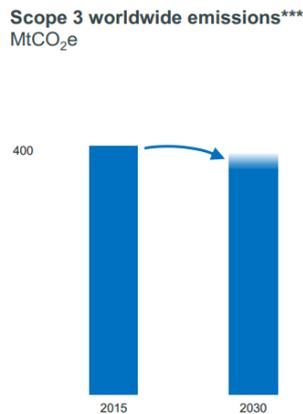
<sup>159</sup> TotalEnergies does not provide a target for Scope 3 emissions outside of Europe, but the projected emissions can be calculated by subtracting the emissions targeted for Europe (179.2 MtCO<sub>2e</sub>) from the global target (< 410 MtCO<sub>2e</sub>), giving the total projected emissions outside of Europe (< 230.8 MtCO<sub>2e</sub>).

<sup>160</sup> The TotalEnergies group does not indicate a carbon neutrality target by 2050 for Scope 3 for countries outside Europe. As an indicative estimate, it is therefore assumed that Scope 3 emissions in 2050 will be the same as in 2030.

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193. This second **graph B** - which illustrates the table of calculations made by the plaintiffs on the basis of the group's projections - reveals the real scope of the group's emission reduction commitments on its scope 3, which in reality only concern intra-European emissions.
194. In terms of its target for 2030, the group has only announced a target to reduce the absolute level of its Scope 3 emissions for Europe. Its global commitment is only to keep its emissions below the levels recorded in 2015<sup>161</sup>. In this respect, it should be noted that since its emissions in 2020 are lower than in 2015 (even excluding the impact of the health crisis), the group can anticipate a margin of increase in its scope 3 emissions between 2020 and 2030<sup>162</sup>.
195. The TotalEnergies Group's own presentation to its investors shows that its reduction strategy for its global Scope 3 emissions by 2030 is almost non-existent<sup>163</sup>:



<sup>161</sup> [Exhibit 7](#) - Total Group Climate Report, "Towards Carbon Neutrality", 2020, p. 16.

<sup>162</sup> [Exhibit 12](#) - Extracts from the Total Group's 2020 Universal Registration Document, p. 255.

<sup>163</sup> [Exhibit 55](#) - Excerpts from TotalEnergies, Strategy and Outlook, "Building a sustainable multi-energy company", September 2021 and free translation, slide 8.

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196. With regard to its target for 2050, the TotalEnergies group has only set a quantified target for scope 3 for Europe, which excludes almost half of its emissions, as these are generated outside this geographical<sup>164</sup> area.
197. **Therefore, it is inaccurate and misleading for the TotalEnergies group to claim to consumers that it has a "carbon neutral ambition by 2050"**<sup>165</sup>.
198. Secondly, the TotalEnergies group omits part of its Scope 1 and 2 emissions. The figure shown in the first "cloud" of graph "46" (MtCO<sub>2</sub>eq) corresponds to emissions generated by "oil and gas installations"<sup>166</sup> only, i.e. only oil and gas<sup>167</sup> installations. This excludes the *Integrated Gas, Renewables & Power* sector, which includes activities with high GHG emissions, such as its liquefied natural gas (LNG) production activities and the operation of gas-fired power plants, which the group plans to develop.
199. The analysis of the TotalEnergies Group graph also shows that the use of the term "*direct emissions*" is misleading. The group presents its indirect Scope 2 emissions to consumers as direct emissions and makes a general commitment to reduce "*direct emissions*". **This statement is factually misleading as scope 2 emissions are not direct emissions but indirect**<sup>168</sup> emissions. Above all, it can be seen that this confusion makes it possible to avoid mentioning "*indirect emissions*", and thus to have to make it clear to consumers that the group does not have such ambitious targets for its scope 3 emissions (the largest share of indirect emissions).
200. Thirdly, the TotalEnergies Group's climate report shows that the figures presented as a "*reduction*" in scope 1 and 2 emissions actually correspond in part to controversial carbon offsetting mechanisms. However, these are not included in the presentation of the Group<sup>169</sup>'s ambitions to consumers.
201. It is therefore clear from the above that there is a clear disproportion between the ambition displayed by the TotalEnergies group to consumers through the use of unambiguous and mathematical terms (such as "*carbon neutrality*" associated with the date 2050, There is a clear

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<sup>164</sup> For example, in 2020, the TotalEnergies group's scope 3 emissions amounted to 215 MtCO<sub>2</sub>eq for Europe out of a total of 400 MtCO<sub>2</sub>eq ("excluding the COVID-19 effect"), see [Exhibit 12](#) - Excerpts from the Total Group's 2020 Universal Registration Document, p. 255.

<sup>165</sup> Several recent studies have concluded that TotalEnergies is not aligned with a 2050 net zero trajectory, including a recent study based on independent calculations by Reclaim Finance: [Exhibit 57](#) - Reclaim Finance press release, "*Climate: TotalEnergies, BP, Shell and ENI will exceed their carbon budgets by 2035*", 23/02/2022.

<sup>166</sup> [Exhibit 56](#) - Screenshot of the page "*Being a major player in the energy transition*": "*On the road to energy neutrality, TotalEnergies has set itself the intermediate goal of reducing greenhouse gas emissions (Scopes 1 & 2) from the Company's operated oil & gas facilities from 46 Mt CO<sub>2</sub>e in 2015 to less than 40 Mt CO<sub>2</sub>e by 2025, i.e. a 15% reduction, and then by 2030, to reduce net emissions(1) (Scopes 1 & 2) from its operated oil & gas activities by at least 40% compared to 2015, while the Company's production will have risen sharply over the same period.*

<sup>167</sup> According to the lexicon of the report ([Exhibit 7](#) - Total Group Climate Report, "*Towards Carbon Neutrality*", 2020, p. 58): "*Facilities operated by the Group in the context of Upstream oil and gas activities and Refining & Chemicals and Marketing & Services activities. It does not include renewable or natural gas power generation facilities such as natural gas-fired combined cycle plants.*

<sup>168</sup> [Exhibit 12](#) - Extracts from the Total Group's 2020 Universal Registration Document, p. 255. In contradiction with its presentation to consumers, TotalEnergies SE itself refers in its annual report to the following denomination for its GHG emissions declaration: Scope 1 corresponds to "*direct GHG emissions from operated sites*", Scope 2 to "**indirect** GHG emissions related to the energy consumption of operated sites" and Scope 3 to "*indirect GHG emissions related to the use by customers of energy products sold for end use*".

<sup>169</sup> [Exhibit 7](#) - Total Group Climate Report, "*Towards Carbon Neutrality*", 2020, p. 41: according to the Total Group, this lever will only make it possible to offset 5Mt CO<sub>2</sub>eq per year from 2030, which seems at the very least marginal compared to the 450 Mt CO<sub>2</sub>eq declared each year.

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disproportion between the ambition displayed by the TotalEnergies group to consumers through the use of unambiguous and mathematical terms (such as "carbon neutrality" associated with the date 2050, "*carbon neutrality by 2050*" or "*net zero 2050*") and the presentation in the "cloud" graph of an apparently clear and sustained trajectory of reducing its emissions by 40% in 2030 until it reaches "0" in 2050), on the one hand, and the reality of its objectives on the other hand.

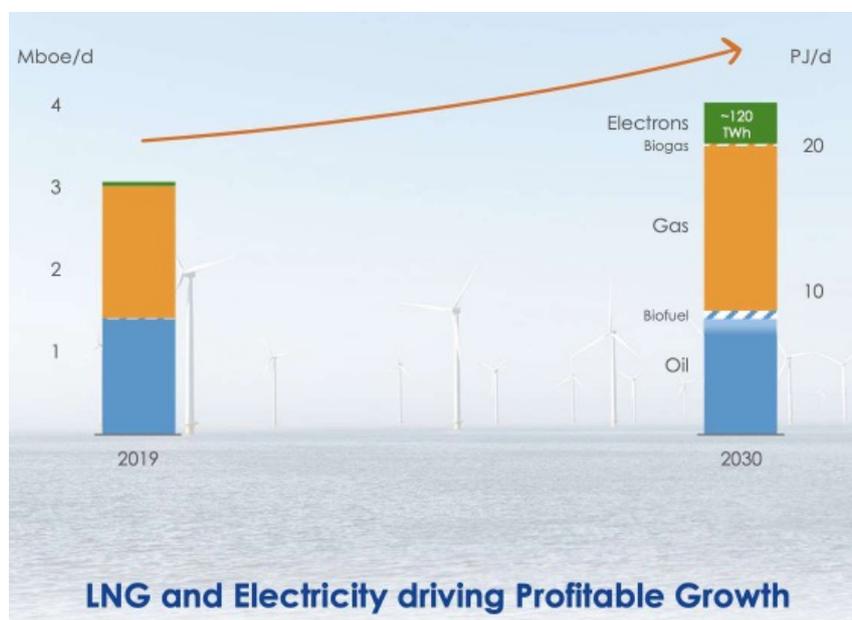
(ii) *The Group's planned investments in oil and gas are inconsistent with the net zero target and 2050 the energy transition*

202. In line with the definition of energy transition and the reference scenarios presenting the conditions for it to be compatible with the Paris Agreement, for an energy group to present itself as a major player in the transition and aim for carbon neutrality by 2050, it must *at least* reduce its oil and gas production and put an end to investments linked to the exploration and exploitation of new deposits.

203. However, **the TotalEnergies group is above all a major player in fossil fuels with a still marginal renewable activity.** In 2020, the TotalEnergies group still produced 447 units of fossil fuels against one unit of renewable energy, so that **fossil fuels represent more than 99.7% of its energy<sup>170</sup> mix.**

204. Moreover, far from becoming or already being a "*major player in the transition*", it does not actually plan any real transition away from fossil fuels as **it does not plan any decrease in its oil production by 2030, while its gas production will grow.**

205. This increase in the group's total fossil fuel production can be seen in the graph below from an investor<sup>171</sup> presentation.



<sup>170</sup> [Exhibit 58](#) - Report by Greenpeace France and Reclaim Finance, "*Total fait du sale: La Finance complice?*", February 2021, p.4, 7 and 18.

<sup>171</sup> [Exhibit 59](#) - Excerpts from the Total Group's presentation "*From Net Zero ambition to Total strategy*", September 2020 and free translation, p. 7 and 9.

206. Thus, while the energy transition to carbon neutrality by 2050 implies a reduction in gas and oil production of at least 3 to 4% per year<sup>172</sup>, the TotalEnergies group clearly plans to increase its fossil fuel production between 2019 and 2030.
207. This increase will be all the more significant as at least part of the TotalEnergies group's electricity production (referred to as "*Electrons*" in the graph and deceptively coloured green) will actually come from gas-fired power plants which generate significant GHG emissions through the production and combustion of fossil<sup>173</sup> gas.
208. TotalEnergies' continued focus on oil and gas activities is illustrated by **its investment of around \$1 billion in 2020 in the exploration of new oil and gas fields, in stark contrast to the IEA's NZE scenario**<sup>174</sup>.
209. Globally, TotalEnergies plans to devote more than 75% of its investments to oil and gas activities (including fossil-fired power) over the period 2022-2025<sup>175</sup> and more than 80% of them over the 2026- period2030<sup>176</sup>.
210. It is in light of this clear contradiction between TotalEnergies' stated commitments and its actual strategy that the institutional shareholder group Climate Action 100+ has judged the group's climate strategy to be insufficient<sup>177</sup>, pointing out that the group's emission reduction targets and investments are not compatible with the energy transition or a carbon neutrality trajectory by 2050<sup>178</sup>. Similarly, the World Benchmarking Alliance assessed TotalEnergies' climate actions and found that "*the evidence provided suggests [it] is not ready to align with its 1.5°C trajectory*" and noted that "*to add credibility to its climate rhetoric, Total should focus on immediate actions to move away from oil and gas and develop its new low-carbon businesses*"<sup>179</sup>.
211. **Clearly, it is neither easy nor quick to make a change in business model. However, in accordance with the scientific guidelines and recommendations on the subject, it is the only way for an oil and gas group to be consistent with the public display of commitments to carbon neutrality by 2050 and its presentation as a major player in the transition, as well as the image projected to consumers.**

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<sup>172</sup> [Exhibit 52](#) - Extract from the report, "*The production gap executive summary*", 2020.

<sup>173</sup> [Exhibit 59](#) - Excerpts from the Total Group's presentation "*From Net Zero ambition to Total strategy*", September 2020 and free translation, p. 29.

<sup>174</sup> [Exhibit 12](#) - Excerpts from Total's 2020 Universal Registration Document, p. 18 and 66 and [Exhibit 57](#) - Greenpeace France and Reclaim Finance report, "*Total does dirty: Is finance complicit?*", February 2021. The TotalEnergies group plans to continue to invest in the exploration of new oil and gas fields and the development of new projects in Uganda, Mozambique and the Arctic, among others.

<sup>175</sup> [Exhibit 55](#) - Excerpts from TotalEnergies, Strategy and Outlook, "*Building a sustainable multi-energy company*", September 2021 and free translation, slide 8.

<sup>176</sup> [Exhibit 59](#) - Excerpts from the Total Group presentation "*From Net Zero ambition to Total strategy*", September 2020 and free translation, slide 10.

<sup>177</sup> "Climate Action 100+" is a global initiative supported by 615 investors, responsible for more than 60,000 billion dollars of assets, which aims to drive change within the largest GHG-emitting companies so that they commit to the fight against climate change. In this respect, the Climate Action 100+ initiative has carried out a benchmark of the climate strategies of companies including the TotalEnergies group.

<sup>178</sup> [Exhibit 60.1](#) - Screenshot of the Climate Action 100+ website page "*Company assessment: Total*" and free translation.

<sup>179</sup> [Exhibit 60.2](#) - Report on the evaluation of the Total Group's climate strategy by the World Benchmarking Alliance and free translation.

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### 3.1.3 THE MISLEADING NATURE OF THE CLAIMS ABOUT THE NET ZERO 2050 AMBITIONS OF THE TOTALENERGIES GROUP AND ITS MAJOR ROLE IN THE TRANSITION

212. For the record, according to the European Commission's Guidelines on the Directive :

- "Environmental claims are likely to be misleading when they consist of vague and general claims about environmental benefits, without proper substantiation of the benefits and without indicating the relevant aspect of the product to which the claim refers. Other examples of such claims include [...] "zero emission", "low carbon", "reduced CO2 emissions", "carbon neutral", "environmentally neutral", and even the broader claims of "conscious" and "responsible".

Such unsubstantiated claims may, in some cases, give consumers the impression that a product or activity of a trader has no negative, or only a positive, impact on the environment. They could fall under Article 6(1)(a) and (b) of the CPD if they are likely to mislead the average consumer into making a commercial decision that he would not otherwise have made.

<sup>180</sup>

- "If climate claims are based on carbon/greenhouse gas offsets, they must be transparent and detailed, given the associated risks of greenwashing."<sup>181</sup>

213. The details of a carbon neutrality trajectory by 2050 are a technical and scientific matter and are neither known nor easily understood by the average consumer. As ADEME recently pointed out in its opinion on the use of the term neutrality in communication:

*"From a marketing and communication point of view, the abusive and undue use of the "neutrality" argument is problematic: **by definition, it misleads the public**, it is based on the concept of "compensation" which covers different realities, it prevents the identification of actors who are really involved, it contributes to the public's mistrust of the organisations' discourse and it hinders the dissemination of mobilising stories."*<sup>182</sup>

214. Communication of commitments to carbon neutrality by 2050 is therefore potentially very confusing for consumers. Consumers are naturally inclined to believe that a company making this type of commitment is committed to helping combat global warming in a manner consistent with the 1.5° trajectory and, at the very least, not to worsen it. According to the ADEME opinion:

*"The meaning of the term "neutrality" in everyday language misleads **the public** both about the reality of the organisation's actions and the impacts associated with a behaviour or purchase.*

*Thus, "neutrality" is defined and commonly understood as the attitude of "a person or organisation that abstains from taking part in a debate, discussion or conflict" (TLFi). **Applied to the field of climate change, this term suggests that the territory, company, product or service does not contribute to the problem, that it is 'transparent'.** [...]*

*In short, **the claim of carbon neutrality may suggest that it is possible to fight climate change effectively without drastically reducing emissions and without changing***

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<sup>180</sup> [Exhibit 24](#) - European Commission Guidelines, section 4.1.1.3.

<sup>181</sup> *Idem*, section 4.1.1.7

<sup>182</sup> [Exhibit 61](#) - ADEME, "Expert opinion - Use of the "carbon neutrality" argument in communications", February 2022

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*individual and collective behaviour, whereas this is unfortunately not possible in view of our objectives. Drastic and widespread emission reductions are the priority and must be applied to all actors: companies, institutions and individuals.*<sup>183</sup>

215. Companies wishing to make such claims must therefore **be particularly vigilant in being at least transparent about** how they use these concepts and in following the minimum requirements of the standards of professional diligence.
216. As a preliminary point, it should be recalled that Article L.121-2 of the Consumer Code now explicitly targets false or misleading claims, indications or presentations relating to "*the scope of the advertiser's commitments, in particular in environmental matters*".
217. In this case, the misleading nature of the TotalEnergies group's claims promoting its ambitions to be carbon neutral by 2050 and presenting it as a major player (or major player in the making) in the transition is characterised in several respects.
218. As a reminder, with regard to the presentation of its ambition to be carbon neutral by 2050 :
- The TotalEnergies Group fails to include the forecasted trends in Scope 3 emissions and therefore also fails to state that its Scope 3 strategy does not include its emissions outside Europe;
  - It omits part of its scope 1 and 2 emissions without specifying it and confuses the notion of direct and indirect emissions;
  - It fails to mention its intention to use carbon offsetting techniques to achieve carbon neutrality by 2050.
219. As for its ambition to become a major player in the transition, the TotalEnergies group is hiding from consumers its plans to increase its fossil fuel production and the fact that this strategy is the opposite of the energy transition needed to achieve the Paris Agreement objective.
220. Thus, **firstly**, the above-mentioned commercial practices lead the consumer to believe that the TotalEnergies group would be committed to a sustained and rapid reduction of its emissions that would not aggravate the climate crisis and would be compatible with a carbon neutrality trajectory by 2050, in line with the Paris Agreement.
221. This is indeed the logical and common sense understanding of an average consumer exposed to claims such as those made by the TotalEnergies group in the context of a climate emergency. It is also about the interpretation that the group clearly hopes to elicit from consumers itself through its manoeuvres.
222. The need for a firm GHG emissions reduction target towards net zero 2050 has been widely popularised in recent years, particularly through the media and government commitments to the general public. **However, while consumers are aware of this need and expect**

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<sup>183</sup> *Ibid.*

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companies to commit<sup>184</sup>, they are not able to identify what the all-encompassing claim of "*carbon neutrality by 2050*" for an oil and gas company might entail, nor what a true trajectory towards neutrality would therefore potentially imply for the changes in consumption and production patterns required by the climate emergency.

223. However, in the light of the best available scientific knowledge and relevant scientific standards, it has been demonstrated that not only does TotalEnergies' strategy not justify these claims, but also that its communication of its alleged commitments **misrepresents the scientific definition of the concept of carbon neutrality or net zero by 2050**.
224. Consequently, the commercial practices relating to its commitment or "ambition" of net zero 2050 are false and likely to mislead the consumer about the group's environmental commitments within the meaning of Article L.121-2 of the Consumer Code, by making him or her overestimate their scope while minimising the real climate impact of its activities.
225. **Secondly**, this communication leads consumers to believe that the TotalEnergies group would be a major player in the energy transition, i.e. that it would significantly reduce its production of fossil fuels and increase its production of renewable energy, in a manner consistent with a net zero 2050<sup>185</sup> trajectory.
226. However, the picture presented to consumers is fundamentally inaccurate as demonstrated *above*, as the TotalEnergies group plans to continue to invest heavily in, and increase, its fossil fuel production, and renewables will remain a marginal part of its energy mix.
227. The group's fossil fuel expansion strategy and its investments in the exploration and exploitation of new oil and gas reserves are in total contradiction with the IEA's conclusions and the average consumer's understanding of the group<sup>186</sup>'s commitments and claims.
228. The allegations promoting its alleged role as a leader in the transition do not therefore reflect the group's real strategy and are therefore false and likely to mislead the consumer about the group's environmental commitments within the meaning of Article L.121-2 of the Consumer Code.
229. This analysis is supported by the recent opinion of the Dutch advertising regulator on a communication campaign of the oil and gas group Shell, which found that it was not justified for Shell to present itself as "*one of the main drivers of the energy transition*", thus giving the impression that it would be an initiator and accelerator of the transition [*while*] Shell continues to invest in fossil projects almost uninterruptedly". The authority concluded that "*the professional standard of care for environmental claims implies that an advertiser should not present itself as a promoter - let alone one of the largest promoters - of renewable energy, if at the same time it continues to invest in fossil fuels*".<sup>187</sup> The same conclusion applies to the TotalEnergies group's claim to be a major player in the energy transition.

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<sup>184</sup> See [Exhibit 36](#) - Oney and OpinionWay, "*European Study on Sustainable Consumption*", 19 February 2020, [Exhibit 37](#) - Results of the Eurobarometer survey on climate change in France, 2021 and [Exhibit 38](#) - Excerpts from the results of the Dynata study, "*Global Consumer Trends: The Urgent Fight Against Climate Change*", 2021 and free translation

<sup>185</sup> "*Production and sales of petroleum products will represent less than 20% in 2050 compared to 55% in 2020*", [Exhibit 20](#) - Thematic Directory of Allegations p. (8Facebook, Instagram and Twitter, 14 June 2021).

<sup>186</sup> [Exhibit 53](#) - IEA Report, "*Net Zero by 2050, A roadmap for the global energy sector*", October 2021, p. 21.

<sup>187</sup> [Exhibit 62](#) - Opinion of the Dutch Advertising Regulatory Authority on Shell's "*We are changing*" campaign and free translation.

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230. **Thirdly**, consumer deception is enabled and reinforced by the omission of substantial information within the meaning of Article L.121-3 of the Consumer Code. As demonstrated *above*, consumers are now influenced in their choices by environmental commitments, and are paying increased attention not only to climate commitments but also to the impact of their own consumption patterns on the climate. Applied to the particularly polluting areas of energy supply and fuel use, the actual climate impact of a company should be seen as substantial information.
231. Indeed, the group's communication has been shown to "*omit, conceal or provide unintelligible, ambiguous or untimely* information".
232. However, **the information omitted on the commitment to carbon neutrality by 2050 and the role played by the TotalEnergies group in the energy transition is substantial** insofar as it is necessary for the consumer to understand the claims correctly and, consequently, to give informed consent to an offer of fuel or energy supply from the group. This substantial nature of the omitted information is affirmed by the TotalEnergies group itself, which places these environmental issues at the heart of its communication to consumers, but also by the legislator.
233. Indeed, as mentioned *above*, the environmental characteristics of products and the advertiser's environmental commitments are major criteria for consumer choices today, as the legislator has recognised by including them in Article L. 121-2 of the Consumer Code. These elements must therefore also be considered as "*substantial*" in the context of Article L. 121-3 of the same code.
234. Finally, **the ambition of carbon neutrality by 2050 stated by the TotalEnergies group is not explained in a fair and transparent manner**. In this respect, it should be noted that the group never takes the trouble to define this notion in order to explain the trajectory required by this notion and its implications for fossil fuel production. The conditions guaranteeing the fairness and accuracy of its communication are thus not respected, thereby reinforcing its misleading character.

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235. **The allegations and omissions made by TotalEnergies SE and TotalEnergies Electricité et Gaz France SA concerning the group's environmental commitments must be qualified as misleading within the meaning of Articles L. 121-1, L. 121-2 and L. 121-3 of the Consumer Code.**

### 3.2 Misleading environmental claims for fossil gas

236. The claims referred to below are listed in Annex II of the thematic register produced in [Exhibit 20](#).
237. As a reminder, the marketing practices of the TotalEnergies group present fossil gas as :
- It is "*abundant*", "*cheap*" and "*flexible*";
  - "*It is the least greenhouse gas emitting fossil fuel*,"
  - *It is a "substitute for coal & oil" and an "indispensable complement to renewable energy"*;
  - The European Commission is committed to providing "*fantastic resources for decarbonisation*" and "*safer and cleaner energy*".<sup>188</sup>
238. In view of the characteristics of fossil gas (3.2.1), such claims are clearly misleading (3.2.2) and particularly likely to mislead the consumer (3.2.3).

#### 3.2.1 Reminder of the characteristics of fossil gas

239. Fossil gas is a fossil hydrocarbon produced by the same physical and chemical process as oil. It is almost exclusively composed of methane (CH<sub>4</sub>). Methane is a GHG that has 84 times the atmospheric warming potential of CO<sub>2</sub>: after being emitted into the atmosphere, one tonne of CH<sub>4</sub> has the same climate impact as 84 tonnes of CO<sub>2</sub> over a 20-year period.<sup>189</sup> This explains why fossil gas is a **high emitter of GHGs and a significant contributor to climate change**.
240. Fossil gas generates GHG emissions over its entire **life cycle**:
- **Gas production is particularly energy-intensive**, especially as producers are forced to search for deposits in hard-to-reach areas, such as the Arctic where the TotalEnergies group has contested<sup>190</sup> exploration projects, or to use unconventional extraction techniques such as hydraulic fracturing.
  - **Methane escapes from** gas infrastructures at every stage of the supply chain: extraction, storage, processing (compression and decompression for compressed natural gas and liquefaction for LNG), transport and combustion.
  - The **burning of fossil gas** in power stations, by consumers, mainly for heating and cooking, and by industrial emissions, **releases CO<sub>2</sub>** which contributes to global warming. Fossil gas accounts for over 21% of global CO<sub>2</sub> emissions from energy<sup>191</sup> combustion.

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<sup>188</sup> [Exhibit 20](#) - Thematic list of allegations p. 9 ff.

<sup>189</sup> GHGs are generally measured by their "global warming potential" relative to CO<sub>2</sub>. By this measure, methane has a global warming effect 84-86 times greater than CO<sub>2</sub> over a 20-year period and 28-34 times greater over a 100-year period. See [Exhibit 63](#) - Table from IPCC report "AR5" and free translation.

<sup>190</sup> [Exhibit 64](#) - Mediapart, "*Méga-projet climaticide en Arctique : Total mise sur le "greenwashing"*", 20/10/2021.

<sup>191</sup> [Exhibit 65](#) - Energy Literacy, "IEA releases 2020 edition of Key World Energy Statistics", 28/08/2020.

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- Even when fossil gas is used in the **production of plastics**, it often generates emissions during incineration or degradation of the plastic.

241. For example, fossil gas "*was the main source of the increase in fossil CO2 emissions (42%) over the decade 2010-2019, is responsible for about 60% of methane emissions from fossil fuel production and about 70% of the projected increase in fossil CO2 emissions under current policies to 2030*"<sup>192</sup>.

### 3.2.2 Claims about the properties of fossil gas are unsubstantiated and contradicted by science

242. Given the characteristics of fossil gas, it is not true that it emits fewer GHGs than other fossil fuels (i). Furthermore, other claims about the role and properties of fossil gas are unfounded and unsupported (ii).

(i) Claims that fossil gas has lower emissions than other fossil fuels

243. The TotalEnergies group tells consumers that fossil gas is "*the least polluting of the fossil fuels*" in a sponsored advertisement followed by a video announcing that "*LNG and natural gas are fantastic resources for decarbonising [...]. And to provide safer and cleaner energy, we continue our efforts to decarbonise the whole chain. [...] One more step towards more responsible energy*"<sup>193</sup>. It also claims that fossil gas is "*the lowest greenhouse gas emitting fossil fuel*"<sup>194</sup> and that "*compressed natural gas, [is] an alternative with a lower carbon footprint than other fossil fuels*".<sup>195</sup> Such claims are misleading in several respects.

244. Firstly, by association with the word '*natural*', fossil gas is often associated by consumers - wrongly - with clean energy. According to a survey conducted in France, 78% of consumers were unaware of the fossil origin of fossil gas, 38% confused it with biogas and 20% mistook it more widely for a renewable<sup>196</sup> energy.

245. Under these conditions, **it is easy for the TotalEnergies group to play on the confusion inherent in the commonly used expression "*natural gas*" to give the consumer the impression that fossil gas is a clean energy**. In this respect, the use of the adjective "*abundant*" to describe both "*natural gas*"<sup>197</sup> and solar<sup>198</sup> energy, thus helping to blur the distinction between fossil and renewable energy, as well as the use of a similar symbolism to represent "*natural gas*" alongside renewable energy, are particularly noteworthy.

246. Furthermore, while it is true that the combustion of gas as such by consumers or in gas-fired power plants emits less GHGs than oil or coal, the **TotalEnergies** group's claim **conceals**

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<sup>192</sup> [Exhibit 66](https://climateanalytics.org/publications/2021/why-gas-is-the-new-coal/) - Screenshot of the climateanalytics.org website page "*Why gas is the new coal*" and free translation (<https://climateanalytics.org/publications/2021/why-gas-is-the-new-coal/>).

<sup>193</sup> [Exhibit 20](#) - Thematic list of allegations p. 10 (Facebook, 10 September 2021).

<sup>194</sup> *Id.* at 9 (Facebook and Instagram, June 15, 2021). These claims were also made in a targeted advertisement that ran on Facebook and Instagram on July 6 and 7, 2021 to an estimated audience of over one million consumers (*Ibid.*).

<sup>195</sup> *Id.* at 10 (Facebook, July 19, 2021).

<sup>196</sup> [Exhibit 67](#) - ilek, "*ilek/YouGov study: 78% of French people do not know that the natural gas they consume is of fossil origin*", 07/03/2019.

<sup>197</sup> [Exhibit 20](#) - Thematic Inventory of Allegations p. 9 (Facebook, Instagram, Twitter, 15/06/2021 and Facebook Targeted Ad Served to Nearly 1 Million People from 6-7 July 2021).

<sup>198</sup> *Id.* at 6 (Facebook, Instagram, Twitter, 6/2021 and Facebook targeted ad served to nearly 1 million people on July 6, 2021).

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**the structural problem of methane leakage, which can make gas more emissive than coal**<sup>199</sup>.

247. Whether a fossil gas is more or less GHG emitting thus depends on its value chain and on the identification and, if necessary, reduction of methane leakage from the gas infrastructure at each stage.
248. These leaks can be accidental but also deliberate, in the form of "flaring"<sup>200</sup> or "venting" the gas for safety reasons in particular. A recent scientific study published in Science reveals that 1,800 massive methane leaks occurred between 2019 and 2020, of which 1,200 were attributed to the oil and gas industry, and most of which were intentional<sup>201</sup>. TotalEnergies itself recognises that it must stop its own venting practices, and claims that it will end flaring by 2030<sup>202</sup>.
249. Methane leakage is also very difficult to measure accurately<sup>203</sup> - a fact that the<sup>204</sup> TotalEnergies group acknowledges. Recent satellite studies indicate that leakage is actually much higher than measured and reported<sup>205</sup>.
250. However, due to **the high warming power of methane, if leakage reaches a certain level** (estimated at around 3% of production and already observed<sup>206</sup>), **the carbon footprint of fossil gas becomes as heavy as that of coal (and worse than that of oil)**.
251. The TotalEnergies group's claims therefore falsely imply that fossil gas is a low GHG emitter by concealing the fact that gas-fired electricity is far too emissive to play a major role in the energy transition needed to achieve net-zero 2050.
252. This is why the IEA's "Net Zero" scenario implies an immediate end to investment in new gas reserves and LNG projects, and a sharp reduction in gas production by 2030<sup>207</sup>.

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<sup>199</sup> [Exhibit 66](#) - Screenshot from the climateanalytics.org website page "Why gas is the new coal" and free translation.

<sup>200</sup> Flaring is a technique that consists of "burning" the escaping gas to produce CO<sub>2</sub>. This also produces methane leakage if combustion is incomplete.

<sup>201</sup> [Exhibit 68](#) - Science article "Global assessment of oil and gas methane ultra-emitters", 2022.

<sup>202</sup> See [Exhibit 7](#) - Total, "Towards Carbon Neutrality", p. 3 in which the TotalEnergies group acknowledges that it intends to eliminate "routine flaring" of methane only by 2030. This means that it will stop flaring methane as part of normal oil production operations, but does not include deliberate flaring of methane for safety reasons or "non-routine" flaring. The company says it has made changes to three of its fossil fuel operations in an attempt to stop some of the venting.

<sup>203</sup> [Exhibit 69](#) - Screenshot from the IEA website page "Improving methane data: Focus on the role of satellites" and free translation (<https://www.iea.org/reports/methane-tracker-2021/improving-methane-data-focus-on-the-role-of-satellites>).

<sup>204</sup> See [Exhibit 7](#) - Total Group Climate Report, "Towards Carbon Neutrality", p. 23. The TotalEnergies group acknowledges that its methane monitoring tools are not yet perfected: "The Group has a vast research programme to develop technologies for measuring emissions - with a fixed camera, drones or satellites - and has established a specific test site in the south of France dedicated to these technologies (TADI - Total Anomaly Detection Initiatives).

<sup>205</sup> [Exhibit 70](#) - IISD, Summary of the [Step Off the Gas](#) Report, 2021, p. 4: "Recent findings on the extent of methane leakage from gas infrastructure call into question claims about the environmental benefits of gas compared to other fossil fuels.

<sup>206</sup> *Idem*.

<sup>207</sup> See in particular [Exhibit 53](#) - International Energy Agency report, "[Net Zero by 2050, A roadmap for the global energy sector](#)", October 2021.

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253. Furthermore, while the TotalEnergies group is turning a blind eye to the methane problem, this is not the case with the IEA, which is calling for a 75% reduction in methane emissions by 2030 to maintain a carbon neutral pathway by 2050.
254. Furthermore, TotalEnergies' claim obscures the fact that its business is focused - and will increasingly be focused - on the most carbon-intensive type of fossil gas, liquefied natural gas (LNG). The GHG footprint of the entire life cycle of LNG (including extraction, liquefaction, transport and gasification) is twice as large as the GHG emissions generated by the combustion of this fossil fuel alone <sup>208</sup> - *even more so* if methane leakage and flaring are taken into account.
255. As a recent example, the Australian LNG production platform Ichthys, which is presented by TotalEnergies as '*carbon neutral*', is in fact a major emitter. According to Australia's offshore gas regulator (Nopsema), delays in "*commissioning key greenhouse gas emission reduction technologies*" have led to unplanned flaring of gas at the site. **The flaring is estimated to have released up to 2 million tonnes of CO2 equivalent into the atmosphere by 2020, causing risks to marine wildlife and air quality that have led to Nopsema<sup>209</sup> warnings.**
256. Today, about half of TotalEnergies' gas production is LNG, and the group plans to double its sales by 2030<sup>210</sup>.
257. Thus, the TotalEnergies group is hiding from consumers the problematic reality of gas production and use, and in particular its own LNG production, which involves uncertain amounts of methane leakage.
258. Therefore, the claim that "*LNG and natural gas are fantastic resources for decarbonisation*", the claims that their carbon footprint is lower than that of other fossil fuels and the association with the terms "*more responsible energy*" are misleading.
- (ii) Other claims about the role and properties of fossil gas
259. The TotalEnergies group also describes fossil gas as "*abundant*" and "*cheap*", or as an "*essential complement*" or even "*indispensable*" to renewable energies for electricity<sup>211</sup> production. These qualities would make gas a key energy for the energy transition, particularly for certain sectors such as transport, as it would allow "*transforming mobility*" and "*accompanying the energy transition in transport*"<sup>212</sup>.
260. In accordance with the criteria for assessing environmental claims mentioned *above*, the TotalEnergies group is supposed to be able to support such claims with scientific evidence. In this case, however, there is every reason to believe that the group is not in a position to provide the consumer with such evidence.
261. **First of all**, the price of gas depends not only on the economic and geopolitical situation - which explains the significant increase in costs for consumers since 2021<sup>213</sup> - but also on the

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<sup>208</sup> [Exhibit 66](#) - Free translation of the Climate Analytics website page "*Why gas is the new coal*".

<sup>209</sup> [Exhibit 71](#) - Mediapart, "*Le gaz " neutre en carbone ", la nouvelle combine de Total*", 11/01/2022.

<sup>210</sup> [Exhibit 12](#) - Excerpts from Total's 2020 Universal Registration Document, p. 16: "*TOTAL's LNG sales are expected to reach 50 Mt/year by 2025 and double between 2020 and 2030.*"

<sup>211</sup> [Exhibit 20](#) - Thematic list of allegations p. 9 ff.

<sup>212</sup> *Ibid.*

<sup>213</sup> [Exhibit 72](#) - Le Monde, "*Gaz en Europe : quatre questions pour comprendre l'envolée des prix et ses conséquences*", 23/12/2021.

increase in the price of CO<sub>2</sub> within the European<sup>214</sup> Union. Thus, **gas will continue to become more and more expensive, while electricity production from renewable sources becomes less expensive.** ADEME and the International Renewable Energy Agency (IRENA) highlight the cost advantage of electricity from renewable sources over that from gas<sup>215</sup>.

262. **Secondly**, on a global level, it is inaccurate to say that gas is used to supplement renewable energy, which provides intermittent energy. In fact, about half of the gas is burned for heating and industrial applications, not for electricity generation to supplement renewable<sup>216</sup> electricity. Globally, when gas is used to generate electricity, it provides a significant proportion of the base load electricity, not a supplement to renewable<sup>217</sup> energy. This is the case with the TotalEnergies group's combined cycle power plants, which are not suitable for intermittent supplementation of renewables but are designed to provide base<sup>218</sup> load power.
263. **Furthermore, it is** incorrect to say that gas is an "*indispensable complement*" to renewables. Renewables can be significantly expanded **without the need for gas**, and there are other options for managing the intermittency of renewables<sup>219</sup>.
264. **Finally**, according to the IEA's "NZE" scenario, the energy transition of the three key sectors of household energy consumption (electricity generation, buildings and transport) should be through renewables, not fossil gas. On the contrary, in this scenario, gas should be reduced by 2030 and no new fields should be exploited.
265. This promotion by the TotalEnergies group of the virtues of fossil gas without nuance or justification is thus likely to create or perpetuate among the average consumer a misunderstanding of the substantial qualities of fossil gas and the need to reduce its production and use for the energy transition.

### 3.2.3 The misleading nature of environmental claims for fossil gas

266. The TotalEnergies group already supplies 1.090 . 000 customers with natural gas and plans to increase its market share. Its promotion of fossil gas is also underpinned by its overall business strategy: its so-called energy diversification is in fact based on a plan for massive expansion of its gas activities, in particular LNG, in total contradiction with its stated environmental ambitions.
267. In a sector where competition from alternative suppliers is growing, this commercial strategy, which concerns a product supplied directly to private individuals, is based on the attention they pay to the environmental impact of their consumption and that of the suppliers. **The**

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<sup>214</sup> **Exhibit 73** - Energy News, "Europe raises its Carbon Price Forecast", 27/01/2022.

<sup>215</sup> **Exhibit 74** - ADEME, "*Cost of Renewable and Recoverable Energy in France*", 2020 and **Exhibit 75** - IRENA, "*Cost of Renewable Energy Production in 2019*", 2020.

<sup>216</sup> **Exhibit 76** - Screenshot of the IEA website page "Global natural gas demand per sector, 2007-2025" and free translation (<https://www.iea.org/data-and-statistics/charts/global-natural-gas-demand-per-sector-2007-2025>).

<sup>217</sup> **Exhibit 77** - Screenshot from Our World in Data page "Electricity production by source, World" and free translation (<https://ourworldindata.org/grapher/electricity-prod-source-stacked>).

<sup>218</sup> **Exhibit 12** - Extracts from the Total Group's 2020 Universal Registration Document, p. 49.

<sup>219</sup> See in this regard **Exhibit 53** - International Energy Agency Report, "*Net Zero by 2050. A roadmap for the global energy sector*", October 2021, p. 23: "*Power system flexibility - needed to balance wind and solar power with changing demand - quadruples by 2050, even as fossil fuel capacity retirements reduce traditional sources of flexibility. The transition requires a significant increase in all sources of flexibility: batteries, demand response and flexible low-carbon power plants, supported by smarter, more digital electricity grids.*

**group is trying to make fossil gas desirable to consumers by presenting it as responsible and necessary for the energy transition.**

268. The group's communication on fossil gas does not comply with the requirements of the European Commission's Guidelines, which require that environmental claims be "*significant in terms of the overall environmental impact of the product throughout its life cycle*" and that professionals refrain from "*unduly emphasising the importance of its positive aspects when these are in fact only marginal or when the overall environmental impact of the product throughout its life cycle is negative*."<sup>220</sup> This is all the more relevant in this case since the TotalEnergies group uses the term "*carbon footprint*", which commonly refers to all GHG emissions associated with the life cycle of a product.
269. In this document, the European Commission cites as an example "[a] *self-regulatory body considered that a claim on a website presenting fossil gas as an 'environmentally friendly energy source' was in breach of the applicable advertising regulations, as the wording was too categorical and lacked explanation or contextualisation*."<sup>221</sup>
270. **Firstly**, claims relating to the climate impact, the level of emissions and the usefulness of fossil gas for the energy transition concern essential characteristics of the gas and in particular its environmental impact within the meaning of Article L.121-2 of the Consumer Code.
271. However, as has been demonstrated, these claims, by not taking into account the real carbon footprint involved in the production of gas, lead consumers to believe - falsely - that they are using a low-emission energy, which is useful and necessary for the energy transition, and that their own use of this energy will allow them to participate in the decarbonisation necessary for the transition.
272. Other precedents have found the presentation of fossil fuels as environmentally friendly or transitional to be misleading. For example, the energy company Equinor's poster presenting gas as a "*low-carbon energy*" was the subject of a complaint to the UK's Advertising Standards Authority, following which the company admitted that such a claim could not be substantiated and removed the poster<sup>222</sup>.
273. Consequently, the TotalEnergies group's communication is not "*based on solid, independent, verifiable and generally recognised evidence, taking into account the most recent scientific findings and methods*"<sup>223</sup> is false and likely to mislead the consumer as to the substantial characteristics of the fossil gas within the meaning of Article L.121-2 of the Consumer Code.
274. **Secondly**, the TotalEnergies group combines fossil gas and biogas<sup>224</sup> in the same supply offer presented as "Fixed Green Offer"<sup>225</sup>:

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<sup>220</sup> [Exhibit 24](#) - European Commission Guidelines, section 4.1.1.2, p. 78.

<sup>221</sup> *Idem*, this is the Belgian Advertising Ethics Jury (JEP), Gas.be - decision to modify/judge, 21 May 2021.

<sup>222</sup> [Exhibit 78](#) - Global Witness, "*Oil company forced to backtrack on claims gas is low carbon*", 12/09/2020.

<sup>223</sup> [Exhibit 24](#) - European Commission Guidelines, section 4.1.1.5, p. 81.

<sup>224</sup> Biogas is a so-called renewable gas because it is produced from organic plant or animal matter.

<sup>225</sup> [Exhibit 19](#) - Bailiff's report dated 20/01/2022, p. 24 and Annex 41.



275. Such an association can only aggravate the confusion observed among consumers in this area. The DGCCRF is paying increased attention to so-called green offers in this area. As the DGCCRF has pointed out, "*consumers are increasingly attentive to their consumption habits, particularly because of ecological awareness. This ecological transition is thus reflected in electricity and gas supply offers. Concerning "green" gas offers, she specified that these only refer to "offers where the gas comes from biogas.*"<sup>226</sup>
276. The false and misleading nature of these claims is reinforced by the omission of information necessary for understanding and, therefore, substantial within the meaning of Article L.121-3 of the Consumer Code. Indeed, the claims relating to the climate impact and those concerning the complementary nature of renewable and cheap energy omit the main characteristics of fossil gas.
277. **By claiming that it is the least GHG-emitting fossil fuel, the group's communication attempts to conceal the technical and scientific knowledge on the true environmental impact that contradicts this claim and fails to take into account the "significant aspects of the product's overall environmental impact throughout its life cycle".**
278. Thus, **thirdly**, for reasons similar to those developed above on the group's ambitions (cf. **section III. 3.1.3**), the absence of certain information necessary for the fair and proportionate presentation of the environmental characteristics of fossil gas (impact of leakage, particularly high emissions compared to renewables, etc.) also constitutes misleading practices by omission in that it conceals substantial information to ensure an informed consumer choice.
279. By deploying manoeuvres and omissions in the presentation of the real characteristics of fossil gas, the TotalEnergies group is deliberately maintaining the confusion inherent in so-called "*natural*" fossil gas. By minimising its environmental impact, these allegations are clearly likely to mislead the consumer likely to buy fossil gas from the TotalEnergies group, as well as the real role that gas should play in the transition and therefore the opportunity to increase its production.

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<sup>226</sup> **Exhibit 79** - Screenshot of the [www.economie.gouv.fr website](https://www.economie.gouv.fr/dgccrf/energie-les-offres-vertes) page "*Energy: green offers*" (<https://www.economie.gouv.fr/dgccrf/energie-les-offres-vertes>).

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280. **The allegations and omissions of TotalEnergies SE and TotalEnergies Electricité et Gaz France SA relating to fossil gas must be qualified as misleading commercial practices within the meaning of Articles L. 121-1, L. 121-2 and L. 121-3 of the Consumer Code.**

### 3.3 Misleading environmental claims for agrofuels

281. The claims referred to below are listed in Annex III of the thematic list produced in [Exhibit 20](#).
282. The TotalEnergies group has repeatedly stated that energy from biomass (i.e. biogas and agrofuels produced from organic matter) :
- would be "*low-carbon alternatives*" that "*emit half the CO<sub>2</sub> of their fossil counterparts [...]*"<sup>227</sup>.
  - *emissions by at least 50% compared to their fossil equivalent*" or "*reduce CO<sub>2</sub> emissions by 50-90% compared to their fossil equivalent*"<sup>228</sup>.
  - Thus, "*the use of biomass [would be] a concrete and immediate solution to decarbonise transport and plastics*"<sup>229</sup>.
283. This simplified promotion of the use of biomass for energy purposes, which covers very different realities, means that **essential information on the environmental impact of biomass energy products is omitted**. This is particularly true for agrofuels.
284. The TotalEnergies group's claims about agrofuels are misleading because they omit essential information about the life cycle and production of biomass and misleadingly present it as less CO emitting without specifying or substantiating this claim.
285. **Firstly**, the arguments put forward by the TotalEnergies group concerning the 50% reduction in CO<sub>2</sub> emissions that would be achieved by the use of biomass-based agrofuels compared to fossil fuels are in no way justified by "*solid, independent, verifiable and generally recognised evidence, taking into account the most recent scientific findings and methods*", in contradiction with the recommendations of the European Commission, which requires that such claims "*be duly substantiated*"<sup>230</sup>.
286. Neither the origin of the reported results nor the methodology used as a basis for calculating the emissions guarantee have been published regarding this scientific claim.
287. **Secondly**, these claims are clearly misleading and disproportionate. Numerous studies show *a contrario* that agrofuels from food crops, in particular those based on vegetable oil, **lead to an increase in CO<sub>2</sub> emissions**, due to indirect changes in land use (the so-called CASI<sup>231</sup> effect) and induced<sup>232</sup> deforestation. In addition, palm oil production prevents the use of land for the restoration of degraded ecosystems that is now needed to recover effective terrestrial carbon sinks.

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<sup>227</sup> [Exhibit 20](#) - Thematic list of allegations p. 11 (Twitter, 23 June 2021).

<sup>228</sup> *Id.* at 12 (Facebook, Instagram and Tweeter, 18 June 2021). This message also ran as a targeted ad on Facebook and Instagram from July 6-8, 2021 to an estimated audience of over one million people

<sup>229</sup> *Id.* at 13 (Facebook, Instagram and Tweeter, 18 June 2021). This message also ran as a targeted ad on Facebook and Instagram from July 6-8, 2021 to an estimated audience of over one million people

<sup>230</sup> [Exhibit 24](#) - European Commission Guidelines, section 4.1.1.5, p. 81.

<sup>231</sup> Clarification of the CASI effect (Recital 2 Regulation No. 2019/807): "*an indirect change in land use may occur when land previously used for food or feed production is subsequently used for the production of biofuels, bioliquids and biomass fuels. In such cases, the demand for food and feed must still be met, which can lead to an expansion of agricultural land into areas with high carbon stocks, such as forests, wetlands and peatlands, which in turn leads to increased greenhouse gas emissions.*"

<sup>232</sup> [Exhibit 80](#) - Le Monde, "Biofuels emit more CO<sub>2</sub> than petrol and diesel", 28/04/2016

288. For example, studies show that a litre of biodiesel can emit up to 80% more GHG emissions than a litre of pure<sup>233</sup> diesel.
289. More specifically, concerning palm oil, which will be part of the supply of the TotalEnergies<sup>234</sup> group's La Mède biorefinery until at least 2023, it should be recalled that the legislator amended Article 266 *quindecies* of the Customs Code, by the Finance Act of 28 December 2018 for 2019, which states that: "*Soybean oil and palm oil-based products, including PFADs, shall not be considered as biofuels*".
290. This new legislative provision, which came into force on 1 January 2020, was challenged in the context of a priority question of constitutionality filed by the company Total Raffinage France. The Constitutional Council declared it to be in conformity with the Constitution in a decision handed down on 11 October 2019 on the grounds that:

*" 7. Firstly, it is clear from the preparatory work that, by instituting the incentive tax on the incorporation of biofuels, **the legislator intended to combat greenhouse gas emissions worldwide. In this respect, it sought to reduce both direct emissions, in particular from fossil fuels, and indirect emissions, caused by the substitution of agricultural crops intended to produce biofuels for those intended for food, leading to the cultivation, for food purposes, of non-agricultural land with a large carbon stock, such as forests or peat bogs.***

*8. Secondly, in adopting the contested provisions, the legislature based itself on the finding that palm oil is characterised by the strong growth and significant extension of the area of the world devoted to its production, in particular on carbon-rich land, which leads to deforestation and the drying up of peat bogs. It has thus taken into account the fact that **palm oil cultivation has a higher risk of indirectly increasing greenhouse gas emissions than the cultivation of other oilseed crops.***  
[...]

*9. Consequently, by excluding for the calculation of the tax the possibility of demonstrating that palm oil could be produced under specific conditions allowing the risk of an indirect increase in greenhouse gas emissions to be avoided, **the legislator has, in the light of the state of knowledge and of the worldwide conditions for the exploitation of palm oil, retained objective and rational criteria in relation to the aim pursued.***

291. The information report N°2609 issued by the information mission on agrofuels registered with the Presidency of the National Assembly on 22 January 2020 also highlights the environmental impacts of palm oil:

*"With two main accusations: **a responsibility for global warming** due to a significant contribution to GHG emissions through deforestation and post-drainage exploitation of peatlands, and **a worrying contribution to biodiversity loss through the destruction of remarkable natural environments.***

292. Finally, pursuant to the Delegated Regulation of 13 March 2019 of the European Commission n°2019/807<sup>235</sup>, in particular its articles 2 and 3, palm oil can no longer be

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<sup>233</sup> *Idem.*

<sup>234</sup> **Exhibit 81** - Screenshot of the totalenergies.com page "*La Mède: a multi-purpose site focused on the energies of the future*" (<https://totalenergies.com/fr/expertise-energies/projets/bioenergies/la-mede-un-site-tourne-vers-avenir>).

<sup>235</sup> Available at <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32019R0807&from=EN>

considered as an agrofuel with a low risk of inducing indirect land-use changes ("CASI effect") and, therefore, a sustainable resource.

293. In this respect, the authorisation to operate the La Mède biorefinery by the TotalEnergies group was partially annulled insofar as it did not provide for a limit on the supply of palm<sup>236</sup> oil. **In particular, the judge emphasised the inadequacy of the impact study carried out by the group on the climatic repercussions of its supply<sup>237</sup>.**
294. The failure to take into account the emissions linked to the cultivation of the plants from which certain agrofuels are made, and in particular those linked to changes in land use or even deforestation, was also highlighted by the Italian competition authority in its above-mentioned decision concerning Eni's biodiesel<sup>238</sup>.
295. **Thus, the claims made by the TotalEnergies group clearly contravene the requirement of the European Commission's recommendations that "*an environmental claim shall take into account the most significant environmental impacts of the product during its life cycle, including its supply chain.*"**
296. In doing so, the TotalEnergies group cannot ensure that agrofuels guarantee at least a 50% reduction in CO<sub>2</sub> emissions compared to their fossil equivalent without misleading the consumer.
297. By making allegations without explanation or reference to explanations to support and qualify them, the companies TotalEnergies SE and TotalEnergies Electricité et Gaz France SA are leading consumers to overestimate the environmental benefits of biofuels. These commercial practices are therefore clearly likely to mislead consumers who may buy biofuels at the group's service stations.
298. **Consequently, the commercial practices relating to agrofuels are misleading both by action and by omission within the meaning of Articles L. 121-1, L.121-2 and L. 121-3 of the Consumer Code.**

\* \* \*

299. The misleading statements and omissions disseminated by TotalEnergies SE and TotalEnergies Electricité et Gaz France SA also violate the **obligation of environmental vigilance** incumbent upon them under Articles 1241 and 1246 of the Civil Code combined

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<sup>236</sup> TA Marseille, n°18052381 et April 2021.

<sup>237</sup>The court ruled that: "*Given the impact on the climate that the use of palm oil in the production of biofuels is likely to generate, and the substantial quantities likely to be used for the operation of the La Mède biorefinery, the impact study for the project should therefore include an analysis of its direct and indirect effects on the climate, a notion that cannot be understood in a strictly local manner within the immediate perimeter of the project alone.*"

<sup>238</sup> **Exhibit n°82**- Decision of the Italian Competition Authority against Eni, 26/12/2019 and free translation, note n°54, p. 33: The authority "*notes in this regard, among other things, the fact that the measure used for the purpose of proper compliance with regulatory obligations was recognised as deficient with regard to the assessment of the actual environmental impact by the European Court of Auditors in 2016, in particular because it does not take into account the effect of indirect land-use change, which EU Directive 2015/1513 already indicated as a relevant phenomenon to be taken into account. Furthermore, a reflection process on indirect land-use change emissions was already underway at the beginning of the advertising campaign in question, following which the European Commission established in 2019 the total exclusion of palm oil from the composition of biofuels marketed in Europe by 2030. Especially since the waste used for the production [of the biofuel promoted by Eni] represented in 2017 and 2018 respectively only 5% and 16% of the total processed, while the main raw material used was palm oil. Finally, we must point out that the European Commission's report of 13 March 2019, cited in ENI's defence, also mentions palm oil as the main raw material at risk [of indirect land use change].*"

with Article 2 of the Environmental Charter, which states that: "*Everyone has a duty to take part in preserving and improving the environment*", and Article 3 which states that "*Everyone must, under the conditions defined by the law, prevent the damage that they are likely to cause to the environment or, failing that, limit its consequences.*"

300. Under these two articles, the Constitutional Council stated that "*respect for the rights and duties set out in general terms by these articles is imposed not only on the public authorities and the administrative authorities in their respective fields of competence **but also on all persons**; it follows from these provisions that everyone is bound by an obligation of vigilance with regard to environmental damage that may result from their activity*"<sup>239</sup>. The Court of Cassation has already recognised that a general duty of care could be imposed on companies in a 2006 ruling in the Distilbene<sup>240</sup> case.
301. As such, informed professionals whose activities are highly damaging to the climate and the environment have an obligation of prevention with regard to the environmental damage that could result from their activities and, by extension, their products. Therefore, these professionals must at the very least be required to inform consumers about the dangerousness of the products they place on the market.
302. In the present case, the omission of substantial information by the TotalEnergies group on its climate commitments, fossil gas and agrofuels from biomass thus constitutes a breach of its duty of care expected of a professional and, consequently, a fault of imprudence and negligence within the meaning of Article 1241 of the Civil Code. This fault is all the more reinforced as it is part of a large-scale communication campaign that takes the form of a vast disinformation operation on the real risks of its activity and its products.

#### **4. SUBSTANTIAL ALTERATION OF THE ECONOMIC BEHAVIOUR OF THE CONSUMER**

303. As a preliminary point, it is recalled that under Article 2(c) of the Directive, substantial distortion of the consumer's economic behaviour is defined as "*the use of a commercial practice which significantly impairs the consumer's ability to make an informed decision and thereby causes him to take a transactional decision that he would not have taken otherwise*".
304. In this respect, the case law carries out an analysis *in abstracto* by referring to the normally informed and reasonably observant and circumspect consumer. Furthermore, the demonstration of the misleading nature of commercial practices may be sufficient to establish a presumption of substantial alteration of consumers' economic behaviour if the practices could lead them to prefer the trader concerned to one of his competitors<sup>241</sup>.
305. In any case, as has been discussed *above*, French consumers are increasingly concerned and aware of the consequences of global warming. They are also increasingly aware of the role

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<sup>239</sup> Decision No. 2011-116 QPC "Michel z.". This solution was reaffirmed in Decision No. 2017-672 QPC of 10 November 2017 "Association Entre Seine et Brotonne et autre".

<sup>240</sup> Civ. 1<sup>ère</sup>, 7 March 2006 - No. 04-16.179 and 04-16.180 : "*But whereas the Court of Appeal noted that before 1971 and from 1953-1954 there were doubts about the harmlessness of distilbene, that the experimental literature reported the occurrence of a wide variety of cancers and that, in addition, from 1971 onwards, numerous experimental studies and clinical observations contraindicated the use of distilbene; that it was able to deduce, without distorting the expert reports, that UCB Pharma, which, faced with these known and scientifically identified risks, had not taken any measures, which it should have done even in the presence of discordant results as to the advantages and disadvantages, **had failed in its duty of care.***"

<sup>241</sup> See Cass. com, 13 June 2018, n°16-22.054 and Cass. com, 13 June 2018, n°16-22.054.

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that companies, and in particular oil and gas companies, play in global warming, and expect them to make commitments in line with scientific expectations:

- 92% of citizens agree that we should reduce our GHG emissions to a minimum while offsetting the remaining emissions in order to make the European Union climate neutral by 2050<sup>242</sup>.
- 52% of French people think that business and industry are responsible for tackling climate change
- In order to contribute individually, 77% think that the solution is to buy "greener"<sup>243</sup>, so already 10% of French consumers have opted for a supplier offering a greater share of energy from renewable sources than the previous one.

306. Above all, a majority of them now want to take action themselves, i.e. through their own consumption choices. Thus, 86% of French people believe that changing our consumption patterns is useful in the fight against global warming, and 87% consider the development of renewable energies useful<sup>244</sup>.
307. **Therefore, one of the most obvious actions available to them is to choose to buy electricity, gas or fuel from a company with a strong environmental commitment.**
308. As the European Commission has pointed out, "*consumers' energy choices will be crucial to achieving the new climate targets for 2030 and climate neutrality by 2050*"<sup>245</sup>. Consumers are aware of this fact, as 72% of them say they are particularly interested in green<sup>246</sup> electricity offers.
309. In this respect, the impact on consumers' economic behaviour of this type of commitment is already taken into account by electricity and gas supplier comparators, which include the TotalEnergies group's commitments in their opinions on their supply offer, while sometimes citing counter-analyses by environmental<sup>247</sup> associations.
310. Therefore, misleading commercial practices relating to a company's climate commitments are likely to distort the economic behaviour of the average consumer.
311. This risk is further increased by the circumstances of the present case. Indeed, while the TotalEnergies group is primarily identified by the average consumer as an oil company, it has taken over and developed energy supply offers on French territory since 2018 and the acquisition of the energy supply company Direct Energies.
312. Faced with a growing reputational risk, *especially* in the context of the emergence of energy supplier competitors whose brand image is based on strong environmental commitments (Planète Oui, Enercoop, etc.) and faced with historical competitors that are not oil groups

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<sup>242</sup> [Exhibit 37](#) - Results of the Eurobarometer survey on climate change in France, 2021.

<sup>243</sup> [Exhibit 38](#) - Excerpts from Dynata's study, "*Global Consumer Trends: The Urgent Fight Against Climate Change*", 2021.

<sup>244</sup> [Exhibit 83](#) - Results of the IFOP/SER survey, "*Les Français et les énergies renouvelables*", 07/10/2021.

<sup>245</sup> [Exhibit 84](#) - Communication from the European Commission to the European Parliament and the Council, "*A new consumer agenda to build consumer resilience for a sustainable recovery*", 13/11/2011.

<sup>246</sup> [Exhibit 85](#) - Baromètre énergie info 2021 of the National Energy Ombudsman.

<sup>247</sup> [Exhibit 86](#) - Screenshot of the Selectra online comparator website page presenting the TotalEnergies group (<https://selectra.info/energie/fournisseurs/totalenergies-t>).

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(EDF, Engie and ENI), the TotalEnergies group has launched a marketing offensive aimed at greening its image.

313. Each of the environmental claims presented *above* is thus an **important selling point that is increasingly highlighted in the communication of the TotalEnergies group**, as can be seen from its growing importance in the group's advertising campaigns.
314. The means used by the TotalEnergies group in its communication and in particular the campaign following its change of identity can thus be analysed as an attempt to break with its image associated with fossil fuels in a context where the environmental commitments of companies have become a determining factor in consumers' choices, in the face of alternative energy suppliers and, in general, in the face of competitors perceived as less harmful and polluting.
315. Advertisements highlighting the TotalEnergies Group's ambition to be carbon neutral by 2050 or 2050 "net zero" are therefore likely to play a key role in consumers' decision making and therefore alter their economic behaviour.
316. These allegations are closely linked to the presentation of the group as a multi-energy group. The group's new image is based on the diversification of its energy mix, with the emphasis on energy presented as green (as opposed to oil), even though this is and will remain a minor part of its production.
317. For the same reasons, and particularly in a context of strong environmental commitments, advertisements specifically targeting certain energies also help to influence consumer choice:
- In the case of fossil gas, these are products that are marketed directly to consumers, who are also particularly associated with the supply of electricity through the TotalEnergies group's communication. This communication is therefore clearly likely to play a key role in the decision of consumers to choose to buy from the TotalEnergies group or its competitors in the field of gas and electricity supply.
  - With regard to the agrofuels offered for sale in the group's service stations, the claims relating to their production method and their impact lead consumers to underestimate the consequences of their consumption and thus induce them to prefer TotalEnergies service stations to those of its competitors.

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318. **In conclusion, the economic behaviour of the normally informed and reasonably observant and circumspect consumer is necessarily distorted by the misleading commercial practices of TotalEnergies SE and TotalEnergies Electricité et Gaz France SA.**

#### IV. OBJECT OF THE CLAIM: COMPENSATION FOR DAMAGE AND CESSATION OF THE PRACTICES

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319. According to the constant interpretation of Article 1240 of the Civil Code, the engagement of tort liability requires the qualification of a fault, a prejudice and a causal link between the two. In this respect, the case law considers that the violation of the prohibition of misleading commercial practices constitutes a civil fault causing damage to associations approved for the protection of the environment<sup>248</sup>. Furthermore, in view of the legislative powers and the specific purpose and object of the mission of approved associations, the existence of a compensable loss and a causal link tends to be presumed by the case law as soon as an infringement is established<sup>249</sup>.
320. Thus, the misleading commercial practices implemented by TotalEnergies SE and TotalEnergies Electricité et Gaz France SA have caused damage to the collective interests linked to the protection of the environment and consumers that the associations Greenpeace France, Friends of the Earth France and Notre Affaire à Tous are defending, and that it is necessary to put a stop to and compensate for by providing consumers with fair information (1), as well as moral damage to each association that should also be compensated for (2).
321. Finally, the opposing party should be ordered to pay the costs and irreducible expenses (3).

##### 1. THE HARM TO THE COLLECTIVE INTERESTS DEFENDED BY THE PLAINTIFFS AND THE REQUESTS FOR AN INJUNCTION

322. Pursuant to Article L.142-2 of the Environmental Code, the plaintiff associations are entitled to claim compensation for the damage caused by the infringement of the collective interests that they have the purpose of defending as approved environmental protection associations whose statutory purpose is the protection of the environment.
323. To this end, the associations may request an injunction to stop the damage to the collective interests they defend caused by misleading practices under the aforementioned Article L. 142-2 and by analogy with Article L. 621-2 of the Consumer Code, which provides that approved consumer associations are entitled to request "*any measure intended to put an end to unlawful conduct*", if necessary under a penalty payment. Furthermore, under Article L. 621-11, the "*court seised may order the dissemination, by all appropriate means, of information to the public of the judgment given*".
324. In the present case, the practices implemented by TotalEnergies SE and TotalEnergies Electricité et Gaz France constitute misleading commercial practices, prohibited by Articles

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<sup>248</sup> See for example TGI Versailles, 20 Sept. 2016, No. 14/09018: "*The admissibility of the association is not discussed, while it is constant that the FNE association carries out an educational action aimed at raising awareness of the prohibition on practising motorised leisure activities in natural areas. It is indeed an approved association [...] and recognised as being of public utility. [Under these conditions, the principle of compensation for the damage suffered by the FNE association in its capacity as an environmental protection association approved under Article L 141-1 of the Environment Code cannot be challenged as damage to the collective interests of this association. [Under these conditions, while the behaviour of the company FMC Automobiles also constitutes a fault within the meaning of Article 1382 of the Civil Code, the association FNE will be awarded the sum of 24,000 euros as compensation for its damage.*

<sup>249</sup> See in this respect, CA Paris, 6 Feb 2019, No 18/27101 concerning an approved consumer protection association: "*the misleading commercial practice having been characterised, the collective interest of consumers that company A B is responsible for protecting has necessarily been harmed*". In the case of an infringement of an environmental regulation, see Crim., 29 June 2021, No. 20-82245: "*the mere violation of the applicable regulation is such as to cause the associations concerned a compensable moral prejudice*".

L. 121-1 et seq. of the French Consumer Code, which significantly harm the collective interests defended by the plaintiff associations.

325. **Firstly, the misleading commercial practices in question are by definition detrimental to the collective interests of consumers.** Consumers have an interest in receiving fair information on the properties and environmental impact of highly polluting products and the extent of companies' environmental commitments. However, the vast advertising campaign of the TotalEnergies group - distributed to millions of consumers in France - has contributed to lasting misunderstandings on subjects that are crucial to the energy transition and in particular on the role of the TotalEnergies group and its products in this respect.
326. **Secondly, and more broadly, these practices are detrimental to the collective interests of environmental protection defended by the associations.** Indeed, they falsely maintain the demand for fossil fuels while sowing confusion about the changes needed to achieve carbon neutrality by 2050<sup>250</sup>. In doing so, they are likely to delay the energy transition and thereby contribute to the worsening of climate change which directly threatens the environment.
327. **Finally, the damage to the collective interests defended by the associations is particularly significant and aggravated by the unprecedented scale of the practices and their dissemination,** as well as :
- TotalEnergies' past and present responsibility as a major contributor to climate<sup>251</sup> change;
  - The context in which these practices take place, marked by a growing sensitivity of public opinion due to recurrent warnings on the urgency to act against climate change, as the debates during the COP26 have again shown.
328. It will therefore be appropriate to **order the immediate cessation of misleading commercial practices under penalty** in order to put an end to the damage caused to the collective interests defended by the associations.
329. This involves ordering TotalEnergies SE and TotalEnergies Electricité et Gaz France SA to modify, under penalty, within one week of service of the judgment, the presentation, marketing and advertising materials of the TotalEnergies group and its products in order to remove the following allegations as well as any other allegation that is found to be misleading
- Claims that the TotalEnergies group has a "*carbon neutrality ambition by 2050*" (or "*net zero 2050*"), is or will become a "*major player in the transition*", as well as claims that consumers believe that the TotalEnergies group has adopted a climate strategy that places it on a trajectory compatible with a global "1.5°" trajectory in accordance with the Paris Agreement and the relevant benchmarks;

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<sup>250</sup> In this regard, the IEA notes that "[a]bout 55% of the cumulative emissions reductions in the trajectory are related to consumption choices such as buying an electric vehicle, retrofitting a house with energy-efficient technologies or installing a heat pump" - [Exhibit 53](#) - International Energy Agency Report, "Net Zero by 2050, A roadmap for the global energy sector", October 2021, p. 17.

<sup>251</sup> [Exhibit 6](#) - Excerpt from the Carbon Disclosure Project report, "The Carbon Majors Database, CDP Carbon Majors Report 2017" and [Exhibit 87](#) - Article "Early warnings and emerging environmental responsibility: Total's responses to global warming, 1968-2021", 2021.

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- Claims that fossil gas is "*cheap*", "*the lowest emission*" and an "*indispensable complement to renewables*" or that its derivatives have a "*lower carbon footprint than other fossil fuels*", claims that fossil gas is a renewable energy, and claims that fossil gas is essential to the energy transition or desirable for decarbonising key sectors of the economy are all misleading;
- Claims that agrofuels would "*reduce CO2 emissions by at least 50% compared to their fossil equivalents*" or even "*90%*", and would be a key solution to decarbonising transport.

330. **Furthermore, in order to anticipate the risk of new communication campaigns containing modified claims that are still misleading for the consumer, it is necessary to impose mandatory information when environmental claims relating to its climate commitments are used in the context of a commercial practice of TotalEnergies SE and TotalEnergies Electricité et Gaz France.**

331. Therefore, TotalEnergies SE and TotalEnergies Electricité et Gaz France should refrain from disseminating to consumers claims about the environmental commitments of the TotalEnergies group in relation to climate change (using terms such as "energy transition", "net zero", "carbon neutrality", "climate") that could be understood by the average consumer as a claim to contribute to the fight against climate change unless they ensure that such communication includes **an informative message** containing the following elements

- (i) An informative message to be defined and specified in accordance with the standards in force at the time of the judgement to be handed down, based on the following model:

*"Fossil fuels (oil, natural gas and coal), such as those sold by TotalEnergies, are the dominant cause of climate change.*

*The Paris Agreement set a target of limiting global warming to 1.5°C, which means achieving carbon neutrality by the year 2050. Beyond that 2050., the effects of global warming will worsen: rising sea levels, extreme weather events, loss of biodiversity and species extinction, food shortages, poor health and poverty for millions of people around the world.*

*To limit global warming to 1.5°C, in accordance with the Paris Agreement, greenhouse gas emissions must be reduced by at least 45% by 2030, which necessarily implies reducing fossil fuel production as well as ending any investment in new oil or gas reserves";* and

- (ii) By way of comparison, information on the projected evolution of the TotalEnergies group's global direct (scope 1) and indirect (scope 2 and 3) emissions by 2030, its production plans up to 2030 and its plans to open new oil and gas fields.

332. In this sense, the European Commission's guidance on the Directive states that "*Courts or authorities could require highly polluting industries to make it clear to consumers in their environmental claims that the product has an overall adverse effect on the environment*".<sup>252</sup>

333. In order to mitigate the harmful consequences of the disputed commercial practices and to educate consumers, it should also be ordered, within 15 days of notification of the judgment and under a fine of 20. 000 per day of delay and per medium concerned, the publication of the operative part of the judgment :

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<sup>252</sup> [Exhibit 24](#) - European Commission Guidelines, section 4.1.1.2, p. 78.

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- for a period of six months, on the websites <https://www.totalenergies.fr/> and <https://www.totalenergies.com/> and on its LinkedIn, Facebook, Twitter and Instagram pages, accompanied by a link to the judgement in a sufficiently visible manner at the top of the home pages of the sites and by tweet and pinned post on Twitter, Facebook and LinkedIn.
- in five newspapers in which the companies publicised the misleading commercial practices at issue, at the choice of the plaintiff associations.

334. The maximum amount of publication costs to be paid by the companies to ensure judicial publication will be fixed by the court.

## 2. THE PLAINTIFFS' MORAL PREJUDICE

335. As demonstrated above, the misleading commercial practices of TotalEnergies SE and TotalEnergies Electricité et Gaz France SA undermine the protection of the environment, which is at the heart of the plaintiff associations' activities. **In this sense, these practices constitute an obstacle to the realisation of their social purpose, and therefore cause them personal moral prejudice distinct from the prejudice to the collective interests they defend.**

336. Indeed, these manoeuvres, carried out for economic profit, are countering the efforts made by Greenpeace France to protect the environment - and, more specifically, to fight against climate change and the "greenwashing" that hinders<sup>253</sup> it. These efforts consist, in particular, of organising public awareness campaigns, scientific research, civil disobedience actions, legal action against texts that weaken environmental protection, industrial projects that have an impact on climate change, and actions linked to the influence of the TotalEnergies group in various areas of public<sup>254</sup> life<sup>255</sup>.

337. The practices in question also threaten the work carried out by Friends of the Earth France, a large part of whose activities aim to highlight the double discourse of multinational oil companies (as well as that of the public institutions that support them and the private institutions that finance them), and to inform the public about the social, environmental and climatic impacts of the fossil<sup>256</sup> industries. For example, since 2008, Friends of the Earth France has been organising the annual "*Pinocchio Greenwashing Awards*" to highlight the *greenwashing* practices of large companies<sup>257</sup>. The association also collaborates with its affiliate

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<sup>253</sup> To this end, it is at the origin of a European citizens' initiative project aimed at banning advertising promoting fossil fuels because of their climate impact, [Exhibit 88.1](#) - Greenpeace France, "*Industrie fossile : ni pub, ni mécénat - Lancement d'une initiative européenne*", 04/10/2021.

<sup>254</sup> [Exhibit 88.2](#) - Le Monde, "Enquête ouverte après la plainte contre Patrick Pouyanné, le PDG de TotalEnergies, pour prise illégale d'intérêts", 22/09/2021, [Exhibit 88.3](#) - Greenpeace France, "*Huile de palme à la Mède : plainte contre le greenwashing de Total*", 28/02/2020, [Exhibit 88.4](#) - Greenpeace France, "*Casse sociale et greenwashing : à Grandpuits, Total fait du sale*", 08/02/2021

<sup>255</sup> In this respect, a recently published scientific analysis of the TotalEnergies group's climate strategy reveals the gaps in its stated rhetoric, [Exhibit 88.5](#) - Greenpeace France, "*La pseudo neutralité carbone de TotalEnergies, Décryptage de la stratégie net zéro de TotalEnergies et du mythe de la compensation*", February 2022.

<sup>256</sup> [Exhibit 89.1](#) - Friends of the Earth France, "*New investigation: How the French state is playing into Total's hands in Uganda*", 14/10/2021, [Exhibit 89.2](#) - Friends of the Earth France, "*COP26: unpublished research reveals the dangerous expansion plans of the oil and gas industry*", 04/11/2021, [Exhibit 89.3](#) - Friends of the Earth France, "*Victory: France will not support Total's Arctic gas megaproject*", 01/12/2021 and [Exhibit #89.4](#) - Friends of the Earth France, "*Employment and climate: action against Total's greenwashing*", 10/01/2022.

<sup>257</sup> [Exhibit 89.5](#) - Friends of the Earth France, "*The 2020 Pinocchio Awards are launched*", 15/01/2020.

organisation Résistance à l'Agression Advertizing (RAP), which fights against the advertising system and its negative effects, through mobilisation, awareness-raising and advocacy campaigns.

338. Finally, Notre Affaire à Tous is also seeing the objective of its actions thwarted by the deceptive practices deployed by the companies TotalEnergies SE and TotalEnergies Electricité et Gaz France SA. In particular, alongside other associations and local authorities, it initiated litigation against the group in January 2020 to establish its breaches of Law No. 2017-399 of 27 March 2017 on the duty of care of parent companies and ordering companies as well as to prevent ecological damage resulting from climate change under Article 1252 of the Civil<sup>258</sup> Code. In addition, the association Notre Affaire à Tous also regularly denounces the wrongful omissions and/or inaccurate and misleading discourse of the TotalEnergies group, by creating a website entitled "Totalsavait/Totalment"<sup>259</sup> to support the results of a scientific article that demonstrates the strategy of doubt implemented by the company despite its knowledge of global warming as early as 1971, and by reporting to the AMF the lack of sincerity of the information published by the TotalEnergies group on climate<sup>260</sup> matters.
339. In view of all these elements, the plaintiff associations are entitled to request compensation for their moral prejudice, **which should be set at 10,000 euros each.**

### 3. COSTS AND IRREDUCIBLE EXPENSES

340. The plaintiff associations have had to incur costs and irreducible expenses in the context of the present proceedings, **which should be compensated in the amount of EUR 10.000 under Article 700 of the Code of Civil Procedure.**

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<sup>258</sup> Exhibit 90.1 - Notre Affaire à Tous, "*Premier contentieux climatique contre une multinationale du pétrole en France: 14 collectivités et 5 associations assignent Total en justice pour manquement à son devoir de vigilance*", 28/01/2020.

<sup>259</sup> The website can be accessed at: <https://total-savait.squarespace.com/>

<sup>260</sup> Exhibit 90.1 - Notre Affaire à Tous, "*Notre Affaire à Tous and Sherpa ask the Autorité des Marchés Financiers to verify the sincerity of Total's financial information on climate risks*", 28/05/2020.

**THEREFORE**

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*Having regard to Articles L. 121-1 et seq. and L. 621-2 of the Consumer Code, Articles 1240 and 1241 of the Civil Code, Article L. 142-2 of the Environmental Code and Article 2 of the Environmental Charter;*

**The Court is asked to :**

**DECLARE** the action of the associations Greenpeace France, Friends of the Earth France and Notre Affaire à Tous admissible;

**To classify as** misleading commercial practices within the meaning of Articles L. 121-1 et seq. of the Consumer Code, the allegations and omissions made by TotalEnergies SE and TotalEnergies Electricité et Gaz France in their communications to consumers, namely

- Claims that the TotalEnergies group has a "*carbon neutrality ambition by 2050*" 2050(or "*net zero 2050*"), that the group is or will become a "*major player in the transition*", as well as claims that lead consumers to believe that the TotalEnergies group has adopted a climate strategy that places it on a trajectory compatible with a global "1.5°" trajectory in accordance with the Paris Agreement and existing benchmarks;
- Claims that fossil gas is "*cheap*", "*the lowest emission*" and an "*indispensable complement to renewables*" or that its derivatives have a "*lower carbon footprint than other fossil fuels*", claims that fossil gas is a renewable energy, and claims that fossil gas is essential to the energy transition or desirable for decarbonising key sectors of the economy are all misleading;
- Claims that agrofuels would "*reduce CO2 emissions by at least 50% compared to their fossil equivalents*" or even "*90%*", and would be a key solution to decarbonising transport.

20,000 per day of delay, of the aforementioned allegations and any other allegations constituting misleading commercial practices, from all presentation, marketing and advertising media, in particular the websites <https://www.totalenergies.fr/> and <https://www.totalenergies.com/> and the online platforms used by the TotalEnergies group, including Facebook, Instagram, Twitter and LinkedIn;

**ORDER**, consequently, the cessation of the broadcasting of advertising spots and online advertisements containing the allegations whose suppression will have been ordered by the decision to intervene, on all broadcasting media contributing to the promotion of the group's products and services or its environmental commitments, within one week of the notification of the judgment to intervene, under a penalty of 20,000 euros per day of delay;

**ORDER** TotalEnergies SE and TotalEnergies Electricité et Gaz France to refrain from disseminating to consumers claims relating to the environmental commitments of the TotalEnergies group in the field of climate change (using terms such as "energy transition", "net zero", "carbon neutrality" and "climate") that could be understood by the average consumer as a claim to contribute to the fight against climate change unless they ensure that such claims include an informative message containing the following information

- (i) A message to be defined and specified in accordance with the standards in force at the time of the judgement to be made, based on the following model:

*"Fossil fuels (oil, natural gas and coal), such as those sold by TotalEnergies, are the dominant cause of climate change.*

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*The Paris Agreement set a target of limiting global warming to 1.5°C, which means zero net emissions by 2050. Beyond that, the effects of global warming will worsen: rising sea levels, extreme weather events, loss of biodiversity and species extinction, as well as food shortages, poor health and poverty for millions of people around the world.*

*To limit global warming to 1.5°C, in line with the Paris Agreement, greenhouse gas emissions must be reduced by at least 45% by 2030, which necessarily implies reducing fossil fuel production as well as ending any investment in new oil or gas reserves"; and*

- (ii) By way of comparison, information on the projected evolution of the TotalEnergies group's global direct (scope 1) and indirect (scope 2 and 3) emissions by 2030, its production plans up to 2030 and its plans to open new oil and gas fields;

**ORDER** TotalEnergies SE and TotalEnergies Electricité et Gaz France jointly and severally to publish, at their own expense, the operative part of the judgment for a period of six months, preceded by the title "*Condemnation by the Paris Court of First Instance for misleading commercial practices*" and accompanied by an activatable link to the full judgment in an insert on the home pages of the websites <https://www.totalenergies.fr/> and <https://www.totalenergies.com/> and published on the social networks Facebook (<https://www.facebook.com/TotalEnergiesFrance>), Instagram ([https://www.instagram.com/totalenergies\\_fr](https://www.instagram.com/totalenergies_fr)), LinkedIn (<https://www.linkedin.com/totalenergies>) and Twitter (<https://twitter.com/TotalEnergiesFR>), within fifteen days of the notification of the judgement, under a penalty of 20,000 euros per day of delay;

**ORDER** the companies TotalEnergies SE and TotalEnergies Electricité et Gaz France jointly and severally to publish the operative part of the judgment in five newspapers in which the companies have disseminated the misleading commercial practices in question, at the choice of the plaintiff associations, within one month of the date of service of the judgment, subject to a penalty of EUR 20,000 per day of delay and per newspaper;

**ORDER** TotalEnergies SE and TotalEnergies Electricité et Gaz France jointly and severally to pay each of the applicant associations the sum of 10,000 euros in compensation for the non-material damage suffered;

**ORDER** TotalEnergies SE and TotalEnergies Electricité et Gaz France jointly and severally to pay the applicant associations the sum of 10,000 euros under Article 700 of the Code of Civil Procedure and to pay all the costs.

**WITHOUT PREJUDICE**

## COMMUNICATED DOCUMENTS

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- Pièce n°1** Supporting documents for admissibility Greenpeace France  
1.1 Statutes of Greenpeace France  
1.2 Delegation of powers and signature of 25/22/2022  
1.3 Order of the Ministry of Ecological and Solidarity Transition of 15 March 2019  
1.4 Greenpeace France 2021 Activity Report
- Pièce n°2** Supporting documents for the eligibility of Friends of the Earth France  
2.1 Statutes of Friends of the Earth France  
2.2 Minutes of the Friends of the Earth France board meeting of 04/12/2021  
2.3 Order of the Ministry of Ecological and Solidarity Transition of 12 December 2018  
2.4 Friends of the Earth France 2021 Activity Report
- Pièce n°3** Supporting documents for the admissibility of Our Common Cause  
3.1 Statutes of Our Common Cause  
3.2 Letter from the Ministry of Ecological Transition dated 19/08/2021  
3.3 Our Shared Responsibility 2021 Activity Report
- Pièce n°4** Summary for policy makers of the IPCC report "*Climate Change 2021: The Physical Science Basis*" and free translation
- Pièce n°5** Summary for Policymakers of the 2018 IPCC Special Report "*On the Consequences of 1.5°C of Global Warming*"
- Pièce n°6** Extract from the Carbon Disclosure Project report, "*The Carbon Majors Database, CDP Carbon Majors Report 2017*" and free translation
- Pièce n°7** Total Group Climate Report, "*Towards Carbon Neutrality*", 2020
- Pièce n°8** Executive summary of the High Council for the Climate's annual report, "*Strengthening mitigation, engaging adaptation*", 2021
- Pièce n°9** FranceInfo, "*COP26: a coalition of 190 countries and organisations commit to phasing out coal-fired power*", 03/11/2021
- Pièce n°10** France Inter "*Davos, the bosses and the climate*", 22/01/2020
- Pièce n°11** Total Group press release, "*Total makes public the full list of its 903 consolidated subsidiaries*", 04/03/2015
- Pièce n°12** Extracts from the 2020 Universal Registration Document of the Total Group
- Pièce n°13** Press release, "*Total Direct Energie exceeds 5 million customers in France*", 28/04/2021
- Pièce n°14** Kbis extract of TotalEnergies SE
- Pièce n°15** Extract from the Kbis of the company TotalEnergies électricité et gaz France
- Pièce n°16** Joint statement by Total S.A. and investors, "*Total adopts new policies to achieve its 2050 carbon neutrality ambition*", 05/05/2020
- Pièce n°17** La gazette de la défense, "*Total reinvents itself with a new name*", 02/06/2021
- Pièce n°18** Mediatree, "*Costs and audiences of TotalEnergies ads*", 18/02/2022
- Pièce n°19** Bailiff's report dated 20/01/2022
- Pièce n°20** Thematic directory of claims covered
- Pièce n°21** Screenshot of the "*New energies on the shirt*" webpage
- Pièce n°22** TotalEnergies Group press release, "*TotalEnergies becomes official sponsor of the Rugby World Cup France 2023*", 25/06/2021
- Pièce n°23** Bailiff's report dated 18/02/2022

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- Pièce n°24** European Commission, "*Guidance on the interpretation and application of Directive 2005/29/EC on unfair commercial practices*", 29/12/2021
- Pièce n°25** European Parliament report on the application of Directive 2005/29/EC on unfair commercial practices
- Pièce n°26** European Commission press release on Operation *Sweep*, 28/01/2021
- Pièce n°27** Practical guide to environmental claims for professionals and consumers
- Pièce n°28** ARPP's "*Sustainable Development*" recommendation
- Pièce n°29** Screenshot of the "Legal Notice" page of the totalenergies.com website
- Pièce n°30** Screenshot of the "Legal Notice" page of the totalenergies.fr website
- Pièce n°31** TotalEnergies Group press release, "*TotalEnergies and Veolia join forces to accelerate the development of biomethane production*", 02/02/2022
- Pièce n°32** Screenshot of the "*Help your ads find people who will like your business*" page on Facebook's website
- Pièce n°33** Directory of targeted ads not retained by the Facebook Ad Library
- Pièce n°34** Screenshot of the "*TotalEnergies in France*" page of the totalenergies.com website
- Pièce n°35** Extract from the 2018-2019 report of the Commission de Régulation de l'Energie, "*The functioning of the French retail electricity and natural gas markets*", 2020
- Pièce n°36** Oney and OpinionWay, "*European study on rational consumption*", 19/02/2020
- Pièce n°37** Results of the Eurobarometer survey on climate change in France, 2021
- Pièce n°38** Excerpts from Dynata's study, "*Global Consumer Trends: The Urgent Fight Against Climate Change*", 2021
- Pièce n°39** Libération, "*Oil companies spend \$200 million a year lobbying against the climate*", 28/05/2019.
- Pièce n°40** The Conversation, "*What companies forget when they build strong brands*", 07/04/2019
- Pièce n°41** Extract from the SBTi report "*Corporate Net-Zero Standard*", 2021 and free translation
- Pièce n°42** Executive summary of the Carbon 4 report, *Net Zero Initiative*, 2020
- Pièce n°43** AMF Climate and Sustainable Finance Commission, "*Companies and neutrality: initial conclusions and identified issues*", October 2021
- Pièce n°44** Race to Net Zero, "[Minimum criteria required for participation in the Race to Zero campaign](#)", 2020
- Pièce n°45** Screenshot of the "*The net-zero standard*" page of the SBTi website and free translation
- Pièce n°46** ACT, "*Assessing low carbon transition - Oil and gas*", 2021
- Pièce n°47** Screenshot of the "*How it works*" page of the SBTi website and free translation
- Pièce n°48** Screenshot of the ADEME website page "*ACT - Methodologies*".
- Pièce n°49** Glasgow Climate Pact, 2021 and free translation
- Pièce n°50** The Production Gap, "*Executive summary of the gap between the level of fossil fuel production projected by governments and the global level of production compatible with limiting warming to 1.5°C or 2°C*", 2021
- Pièce n°51** Article in Nature "*Unextractable fossil fuels in a 1.5 °C world*", 2021
- Pièce n°52** Extract from "*The production gap executive summary*", 2020
- Pièce n°53** International Energy Agency report, "*Net Zero by 2050, A roadmap for the global energy sector*", October 2021
- Pièce n°54** Methodology for the elaboration of the graphs

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- Pièce n°55** Excerpts from TotalEnergies' presentation "*Building a sustainable multi-energy company*" of September 2021 and free translation
- Pièce n°56** Screenshot from the website [www.totalenergies.com](http://www.totalenergies.com) "*Being a major player in the energy transition*".
- Pièce n°57** Reclaim Finance press release, "*Climate: TotalEnergies, BP, Shell and ENI to exceed their carbon budgets by 2035*", 23/02/2022
- Pièce n°58** Report by Greenpeace France and Reclaim Finance, "*Total fait du sale: La Finance complice?*", February 2021
- Pièce n°59** Excerpts from the presentation "*From Net Zero ambition to Total strategy*" of September 2020 and free translation
- Pièce n°60** Third-party analysis of TotalEnergies' climate strategy
- 60.1** Screenshot of the Climate Action 100+ website page "*Company assessment: Total*" and free translation
- 60.2** Report on the evaluation of the Total Group's climate strategy by the Work Benchmarking Alliance and free translation
- Pièce n°61** ADEME, "*Expert opinion - Use of the 'carbon neutrality' argument in communications*", February 2022
- Pièce n°62** Opinion of the Dutch Advertising Regulatory Authority on Shell's 'We are changing' campaign and free translation
- Pièce n°63** Table taken from chapter 8 of the GIEG report "AR5" and free translation
- Pièce n°64** Mediapart, "*Méga-projet climaticide en Arctique : Total mise sur le 'greenwashing'*", 20/10/2021
- Pièce n°65** Energy Knowledge, "*IEA releases 2020 edition of Key World Energy Statistics*", 28/08/2020
- Pièce n°66** Screenshot from the [climateanalytics.org](http://climateanalytics.org) website "*Why gas is the new coal*" and free translation
- Pièce n°67** ilek, "*ilek/YouGov study: 78% of French people do not know that the natural gas they consume is of fossil origin*", 07/03/2019
- Pièce n°68** Article published in the journal Science "*Global assessment of oil and gas methane ultra-emitters*", 2022
- Pièce n°69** Screenshot from the IEA website page "*Improving methane data: Focus on the role of satellites*" and free translation
- Pièce n°70** IISD, Summary of the Step Off the Gas report, 2021
- Pièce n°71** Mediapart, "*Le gaz 'neutre en carbone', la nouvelle combine de Total*", 11/01/2022
- Pièce n°72** Le Monde, "*Gaz en Europe : quatre questions pour comprendre l'envolée des prix et ses conséquences*", 23/12/2021
- Pièce n°73** Energy News, "*Europe raises its Carbon Price Forecast*", 27/01/2022
- Pièce n°74** ADEME, "*Costs of renewable and recovered energy in France*", 2020
- Pièce n°75** IRENA, "*Renewable energy production costs in 2019*", 2020
- Pièce n°76** Screenshot from the IEA website page "*Global natural gas demand per sector, 2007-2025*" and free translation
- Pièce n°77** Screenshot from Our World in Data page "*Electricity production by source, World*" and free translation
- Pièce n°78** Global Witness, "*Oil company forced to backtrack on claims gas is low carbon*", 12/09/2020
- Pièce n°79** Screenshot of the [economie.gouv.fr](http://economie.gouv.fr) (or DGCCRF) website page "*Energy: green offers*"
- Pièce n°80** Le Monde, "*Biofuels emit more CO2 than petrol and diesel*", 28/04/2016
- Pièce n°81** Screenshot of the [totalenergies.com](http://totalenergies.com) website page "*La Mède: a multi-purpose site focused on the energies of the future*"

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- Pièce n°82** Decision of the Italian Competition Authority against Eni, 26/12/2019 and free translation
- Pièce n°83** Results of the IFOP/SER survey, "*The French and renewable energy*", 07/10/2021
- Pièce n°84** Communication from the European Commission, "*A new consumer agenda to build consumer resilience for a sustainable recovery*", 13/11/2011
- Pièce n°85** National Energy Ombudsman's 2021 Energy Info Barometer
- Pièce n°86** Screenshot of the Selectra website page presenting TotalEnergies
- Pièce n°87** Article "*Early warnings and emerging environmental responsibility: Total's responses to global warming, 1968-2021*", 2021
- Pièce n°88** Supporting documents for the moral prejudice of Greenpeace France
- 88.1** Greenpeace France, "*Fossil fuel industry: no advertising, no sponsorship - Launch of a European initiative*", 04/10/2021
- 88.2** Le Monde, "*Enquête ouverte après la plainte contre Patrick Puyanné, le PDG de TotalEnergies, pour prise illégale d'intérêts*", 22/09/2021
- 88.3** Greenpeace France, "*Huile de palme à la Mède: plainte contre le greenwashing de Total*", 28/02/2020
- 88.4** Greenpeace France, "*Casse sociale et greenwashing : à Grandpuits, Total fait du sale*", 08/02/2021
- 88.5** Greenpeace France, "*La pseudo neutralité carbone de TotalEnergies, Décryptage de la stratégie net zéro de TotalEnergies et du mythe de la compensation*", February 2022
- Pièce n°89** Supporting documents for the moral damage of Friends of the Earth
- 89.1** Friends of the Earth France, "*New investigation: How the French state is playing into Total's hands in Uganda*", 14/10/2021
- 89.2** Friends of the Earth France, "*COP26: groundbreaking research reveals the oil and gas industry's dangerous expansion plans*", 04/11/2021
- 89.3** Friends of the Earth France, "*Victory: France will not support Total's Arctic gas mega-project*", 01/12/2021
- 89.4** Friends of the Earth France, "*Employment and climate: action against Total's greenwashing*", 10/01/2022
- 89.5** Friends of the Earth France, "*The 2020 Pinocchio Awards are launched*", 15/01/2020
- Pièce n°90** Supporting documents for the moral prejudice of Notre Affaire à Tous
- 90.1** Notre Affaire à Tous, "*Premier contentieux climatique contre une multinationale du pétrole en France : 14 collectivités et 5 associations assignent Total en justice pour manquement à son devoir de vigilance*", 28/01/2020
- 90.2** Notre Affaire à Tous, "*Notre Affaire à Tous and Sherpa ask the Autorité des Marchés Financiers to verify the sincerity of Total's financial information on climate risks*", 28/05/202