

N° RG 22/02955

Findings served on 18 May 2022

Status hearing of 28 June 2022

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**SUBMISSIONS IN VOLUNTARY INTERVENTION**

**FOR :**

**ClientEarth**, a not-for-profit association and company limited by guarantee, registered in the United Kingdom under numbers 1053988 and 02863827, whose registered office is at 34 Drayton Park, London, N5 1PB (United Kingdom), represented by its CEO James Thornton, residing in that capacity at the said registered office, duly authorised under Article 15 of the Articles of Association (**Exhibit 1.1**) and the delegation of authority from its *Board* of Directors (**Exhibit 1.2**);

(hereafter "**ClientEarth**")

*Volunteer speaker*

Having as lawyer constituted :

**SELARLU BALDON AVOCATS**

**Represented by Maître Clémentine Baldon**

Lawyer at the Paris Bar

222 boulevard Saint Germain 75007 Paris

Tel: 01 42 60 04 31

Toque: GV

**WITH THE SUPPORT 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 head office is located at 13 rue d'Enghien 75010 Paris, represented by its Director General Jean-François Julliard, domiciled in this capacity at the said head office;

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;

The association **Notre Affaire A Tous**, an association governed by the law of 1<sup>er</sup> July 1901, registered under the SIREN number 842 790 735, whose head office is located at 31 Rue Bichat 75010 Paris, represented by its president Clotilde Bato, domiciled in this capacity at the said head office;

(hereinafter "**the applicant associations**")

*Applicants*

Having as lawyer constituted :

**SELARLU BALDON AVOCATS**

**Represented by Maître Clémentine Baldon**

Lawyer at the Paris Bar

222 boulevard Saint Germain 75007 Paris

Tel: 01 42 60 04 31

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**AGAINST :**

**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.

*Defendants*

Having as its lawyer : **Maître Cyril Philibert**  
**Lawyer at the Paris Bar**  
**Jones Day**  
2, rue Saint- Florentin 75001 Paris  
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**PLEASE THE COURT**

**REMINDER OF THE FACTS AND THE PROCEDURE**

1. By a writ of summons served on 2 March 2022, Greenpeace France, Les Amis de la Terre France and Notre Affaire A Tous brought a tort action on the basis of the prohibition of misleading commercial practices against TotalEnergies SE and TotalEnergies Electricité et Gaz France, respectively the parent company and one of the subsidiaries of the French petroleum-gas group TotalEnergies.
2. The plaintiff associations are targeting the TotalEnergies group's communication campaign following its change of identity and, in particular, the claims that the group "*has set itself the goal of achieving carbon neutrality by 2050*" and "*will transform itself with the goal of becoming a major player in the energy transition*". They also question targeted claims promoting alleged environmental benefits of the energy sources exploited and marketed by the TotalEnergies group, in particular with regard to fossil gas (known as "natural gas") and agrofuels from biomass.
3. In essence, they claim that these allegations constitute misleading commercial practices prohibited under Articles L. 121-2 et seq. of the Consumer Code and that they are prejudicial to the collective interests of consumers as well as to the protection of the environment promoted by the plaintiffs as part of their corporate purpose - as attested by their respective approvals.
4. **It is in this context that ClientEarth, a non-profit association registered in the United Kingdom, which for several years has been monitoring, analysing and engaging in advocacy regarding the environmental communication of oil and gas companies around the world, wished to intervene on a voluntary and ancillary basis in the present dispute, by bringing to the debate additional observations in support of the plaintiff associations' claims.**

**DISCUSSION**

5. After demonstrating the admissibility of its voluntary ancillary intervention **(I)**, ClientEarth will provide additional evidence in support of the plaintiff associations' claims **(II)**.

**I. ADMISSIBILITY OF THE VOLUNTARY ANCILLARY INTERVENTION OF CLIENTEARTH**

6. According to Articles 325 and 330 of the Code of Civil Procedure, voluntary intervention is admissible if "*it is linked to the claims of the parties by a sufficient connection*" and "*if its author has an interest, for the preservation of his rights, in supporting that party*".

7. These conditions are met in this case.

8. On the one hand, the present intervention is closely linked to the action of the plaintiff associations against the TotalEnergies group, as shown by the developments *below* which provide additional elements in support of the plaintiffs' claims.

9. On the other hand, the activities carried out by ClientEarth in accordance with its statutory purpose demonstrate its interest in intervening in the present proceedings to preserve its rights.

10. The statutory purpose of ClientEarth is defined in the following terms:

*"4.1 The objectives of the Association (the "Objectives") are:*

*4.2 Promote and encourage the improvement, restoration, conservation and protection of the environment, including the protection of human health, in the public interest.*

*4.3 Advance public education on all matters relating to the law, practice and administration of justice in relation to the environment. [...]*

*4.5 To promote, assist, undertake and commission research into the law, practice and administration of justice in relation to the environment and related matters, including the impact, direct or indirect, of any human activity on the environment, and to disseminate the useful results of such research."<sup>1</sup>*

11. To this end, Article 5 of the Statutes provides that "*The association shall have the power to do all things necessary to promote, contribute to or be incidental to its Objectives*" (Art. 5(1)), including "to institute legal proceedings, conduct litigation and participate in alternative forms of dispute resolution. (Art. 5(1)), including "*initiating legal proceedings, conducting litigation and participating in alternative forms of dispute resolution.*" (Art. 5(3)).

12. In this respect, the promotion of "*the enhancement, restoration, conservation and protection of the environment*" (Art. 4.2) requires action on corporate environmental communication and on "greenwashing" practices. Indeed, corporate communication has a crucial impact on the ecological transition, as will be developed *below*. Similarly, ClientEarth's mission to educate the public on "*the law, practice and administration of justice relating to the environment*" (Art. 4.3 and 4.5) includes the right to protect consumers from misleading environmental claims that constitute greenwashing.

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<sup>1</sup> **Exhibit 1.2** - Free translation of ClientEarth's articles of association.

13. With this in mind, ClientEarth is carrying out a number of actions aimed at alerting and fighting against greenwashing practices, particularly in the energy sector.
14. First of all, ClientEarth carries out public information work in order to raise awareness among citizen-consumers of the real and hidden environmental impact of companies, particularly those in the fossil fuel industry<sup>2</sup>. In April 2021, ClientEarth published a report entitled "*Greenwashing Files*", which analyses the environmental communication of nine fossil fuel companies in order to reveal the gap between their actions and their real impact.<sup>3</sup> The report focuses in particular on the TotalEnergies group and concludes that the group's environmental communication is misleading after an analysis similar to that carried out by the plaintiffs.
15. Secondly, ClientEarth regularly interacts with public bodies to promote a high level of consumer protection against the risks of deception generated by corporate climate greenwashing. To this end, ClientEarth interacts with the European Commission as well as with the UK Competition and Markets Authority ("CMA")<sup>4</sup>, which is the counterpart of the DGCCRF in charge of implementing the UK law transposing the Unfair Commercial Practices Directive 2005/29/EC (hereinafter "the Unfair Practices Directive")<sup>5</sup>. ClientEarth also engages with consumer organisations. In the financial sector, ClientEarth engages with the UK financial regulator and the international *Task Force on Climate-related Financial Disclosures* on issues related to corporate alignment with climate targets and corporate transition plans.<sup>6</sup>
16. Finally, ClientEarth is pursuing both contentious and non-contentious actions to strengthen corporate accountability in this area. For example, in December 2019, ClientEarth filed the world's first greenwashing complaint with the UK's OECD National Contact Point against the oil company BP.<sup>7</sup> In addition, with 150 lawyers and experts and over 160 actions or legal works underway in more than 50 countries, ClientEarth has brought numerous climate-related cases around the world, including a complaint to the UN Human Rights Committee against Australia<sup>8</sup>, and cases in the UK and Poland against gas and coal-fired power stations.<sup>9</sup> More recently, ClientEarth has taken legal action against Shell's Board of Directors, arguing that the company's failure to adopt and implement a climate strategy aligned with the Paris Agreement constitutes a breach of its legal

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<sup>2</sup> See for example: **Exhibit 2** - Le Monde, "Five years after 'Dieselgate', manufacturers still benefit from a 'confidentiality clause'", 18/09/2020 and **Exhibit 3** - Le Monde, "Climate: oil companies accused of 'false advertising'", 19/04/2021.

<sup>3</sup> **Exhibit 4** - Free translation of the article "Greenwashing: the tipping point" from the ClientEarth website, 02/11/2020.

<sup>4</sup> For example, ClientEarth responded to the authority's call for evidence on consumer protection and environmental claims in December 2020 and then to the consultation on the draft guidance, entitled 'Misleading claims and net zero transition' in June 2021.

<sup>5</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>6</sup> See for example **Exhibit 5** - ClientEarth response to UK financial regulator consultation on climate reporting, August 2021 and **Exhibit 6** - ClientEarth response to TCFD consultation on metrics, targets and transition plans, 11/07/2021.

<sup>7</sup> ClientEarth's complaint alleged that BP's international advertising campaign violated the OECD Guidelines on Consumer Interests and the Environment by giving a misleading impression of BP's business and by disseminating misleading statements about the environmental impacts and qualities of the gas. The complaint was upheld and substantiated before BP withdrew its campaign, **Exhibit 7** - Lawyers take action against BP's climate "greenwashing" advertising campaign, 04/12/2019.

<sup>8</sup> **Exhibit 8** - Torres Strait Islander group submits response in historic climate case, 30/09/2020.

<sup>9</sup> **Exhibit 9**: "Major court win shows power of corporate law to fight climate change", 01/09/2019; **Exhibit 10**: "Huge coal win as judge orders Europe's largest power plant to work with ClientEarth to close", 22/09/2020; **Exhibit 11**: "Climate win as Drax scraps gas mega plant in UK", 25/02/2021

obligations under UK company law.<sup>10</sup> ClientEarth has also filed a complaint with other NGOs challenging the shortcomings of the UK government's plan to meet its 2050 carbon neutrality target.<sup>11</sup>

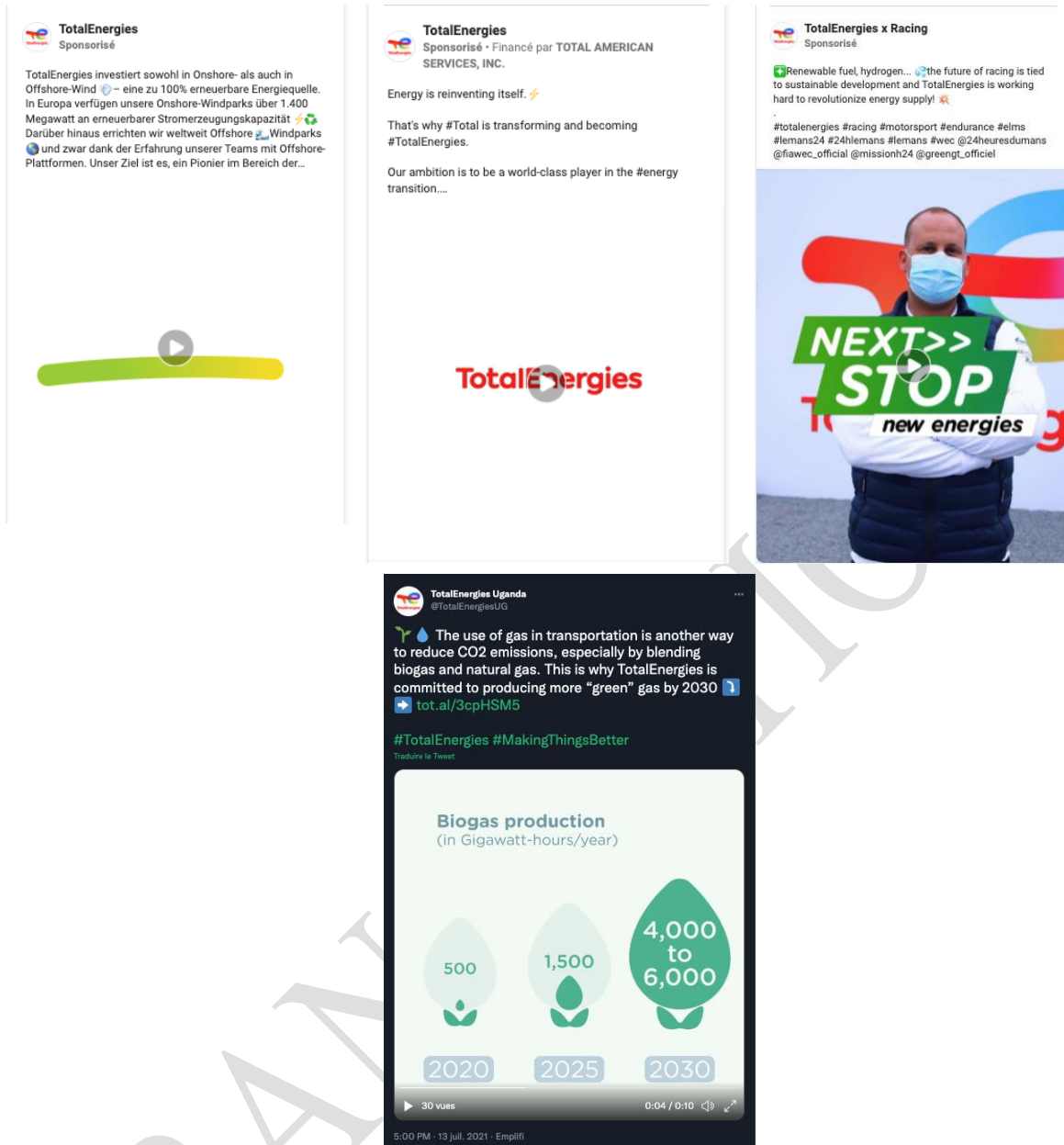
17. In this case, the dispute concerns allegations relating to the climate commitments of the TotalEnergies group and the environmental properties of its energy products. As a major oil and gas company with a significant impact on global greenhouse gas ("GHG") emissions, the outcome of this case is crucial to ClientEarth's projects and actions on misleading corporate communications about climate impact and strategy.
18. In addition, this case will obviously have a scope beyond France, in line with ClientEarth's scope of action. The practices in question are part of an international communication campaign. Practices similar to those committed in France and observed by the plaintiff associations were disseminated throughout the world via the same channels.
19. Although only TotalEnergies knows the geographical scope of its advertising campaign, the evidence observed by ClientEarth and listed in an *ad hoc* document shows a vast advertising campaign outside France.<sup>12</sup> In particular, the group used targeted advertisements broadcast on the Meta group's networks (formerly Facebook) and on Twitter in Germany (on wind energy), the United States (on the group's transformation), the United Kingdom (on its car sponsorship) and Uganda (on gas), as illustrated by the screenshots below.

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<sup>10</sup> **Exhibit 12** - ClientEarth starts legal action against Shell's Board over mismanagement of climate risk, 15/02/2022.

<sup>11</sup> **Exhibit 13** - Free translation from France 24, 'Campaigners sue UK over 'inadequate' climate plan', 12/01/2022.

<sup>12</sup> **Exhibit 14** - Directory of advertisements broadcast abroad.



20. Furthermore, in terms of principles, the practices referred to by the plaintiffs in their writ are intended to be analysed in the light of the consumer protection standards arising from the Unfair Practices Directive and its national transpositions, which are essentially identical in all the States of the European Union and in the United Kingdom and in an increasing number of foreign countries. Therefore, the reasoning developed in this decision is likely to have a significant impact, by way of legal "precedent", on cases involving similar practices brought before other jurisdictions abroad.
21. It is clear from the foregoing that the resolution of the dispute is of direct and obvious interest to ClientEarth. The present intervention thus contributes to the achievement of its corporate purpose and the preservation of its rights.
22. **ClientEarth's ancillary voluntary intervention in support of the plaintiff associations' claims must therefore be declared admissible.**

## II. THE MERITS OF THE PLAINTIFF ASSOCIATIONS' CLAIMS

23. In essence, the plaintiff associations' summons demonstrates that certain environmental claims made by the group and massively disseminated at the time of its change of identity mislead consumers on the scope of its climate commitments and on the environmental characteristics of its products.
24. On the one hand, claims relating to the ambitions of the TotalEnergies group to achieve carbon neutrality by 2050 and to play a major role in the transition, the analysis of the group's climate strategy reveals that they are not justified and are based on omissions towards consumers. On the other hand, claims promoting the properties and role of fossil gas and biofuels in the energy transition are contradicted by the best available scientific knowledge and contravene environmental communication guidelines.
25. ClientEarth intends to submit the following in this regard:
- a. As a preliminary matter, ClientEarth wishes to provide additional scientific insight into the issues raised by the disputed practices in the light of the latest reports of the Intergovernmental Panel on Climate Change (IPCC) **(1)**.
  - b. ClientEarth will then demonstrate that there is now a consensus in Europe on the interpretation of the law of misleading commercial practices in relation to environmental claims and specifically carbon neutrality (or "net zero") by 2050, which corroborates the misleading and unprofessional diligence nature of the practices in question **(2)**.
  - c. ClientEarth will finally demonstrate how these practices hinder the energy transition and thus harm the interests promoted by the plaintiff associations **(3)**.

### 1. THE STATE OF SCIENCE ON ENERGY TRANSITION AND CLIMATE CHANGE

26. The IPCC reports synthesise, at regular intervals, the best available knowledge from the scientific literature on climate change, its causes, effects and ways to mitigate and adapt to it. The reports are reviewed, commented on and accepted by governments, who also approve line by line the accuracy of the summaries for policymakers. The reports, especially the most recent ones, show that the energy transition away from fossil fuels is extremely urgent. Indeed, any further delay would be incompatible with the possibility of containing atmospheric warming to 1.5°C or even 2°C above pre-industrial levels, in line with the objective that states have collectively set themselves under the Paris Agreement.
27. The latest IPCC Working Group II report on the impacts of climate change, released on 28 February 2022,<sup>13</sup> is unequivocal in this regard:

*"Global warming to 1.5°C in the short term will inevitably increase multiple climate risks and present multiple threats to ecosystems and humans (very high confidence)<sup>14</sup>. [...] Short-term actions that limit global warming to near 1.5°C would significantly reduce projected climate change-related losses and damages to human systems and ecosystems compared to higher levels of warming (very high confidence). [...]"*

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<sup>13</sup> This report covers literature accepted for publication before 11 October 2021.

<sup>14</sup> The IPCC systematically specifies in its reports the "confidence level" associated with the stated facts. This level is determined by the degree of scientific consensus and the strength and consistency of the existing evidence.



*The magnitude and rate of climate change and its associated risks are highly dependent on short-term mitigation and adaptation measures, and the foreseeable adverse effects and associated losses and damages increase with each rise in temperature (very high confidence). [...]*

*If global warming transiently exceeds 1.5°C in the coming decades or later (overshoot), many human and natural systems will face serious additional risks, compared to staying below 1.5°C (high confidence)."<sup>15</sup>*

28. Thus, as the report states:

***"Any further delay in concerted and early global action on adaptation and mitigation will miss a short and rapidly closing window of opportunity to secure a liveable and sustainable future for all (high confidence)"<sup>16</sup>.***

29. Furthermore, in its report of 4 April 2022, the IPCC Working Group III, which focuses on climate change mitigation, also stressed the extreme urgency of the energy transition.

30. The report shows that the trend in GHG emissions must be curbed by 2025 if global warming is to be kept within the Paris Agreement's targets:

*"Global GHG emissions are expected to peak between 2020 and no later than 2025 in modelled global trajectories that limit warming to 1.5°C (>50%) with no or limited overshoot and in those that limit warming to 2°C (>67%) and assume immediate action."<sup>17</sup>*

*"Global GHG emissions in 2030 combined with the implementation of nationally determined contributions (NDCs) announced before COP26 would make warming above 1.5°C likely over the 21st century. [...] This implies that post-2030 mitigation can no longer establish a trajectory with less than a 67% probability of exceeding 1.5°C over the 21st century, a defining characteristic of the category of trajectories that limit warming to 1.5°C (>50%), with zero or limited overshoot, assessed in this report."<sup>18</sup>*

31. Seizing the "window of opportunity" mentioned above therefore requires immediate action, and above all a substantial reduction in GHG emissions by 2030. This calls for a particular focus on the energy sector and in particular the fossil fuel industry. In fact :

*"All modelled global warming trajectories that limit warming to 1.5°C (>50%) with no or limited overshoot, and those that limit warming to 2°C (>67%) imply rapid and deep, and in most cases immediate, reductions in GHG emissions across all sectors. [Reducing GHG emissions across the energy sector requires major transitions, **including substantial reductions in overall fossil fuel use**, deployment of low-emission energy sources, shifts to alternative energy sources, and energy efficiency and conservation. Continued installation of fossil fuel infrastructure without mitigation will "lock in" GHG emissions. (high confidence)"<sup>19</sup>*

32. However, the fossil fuel industry, like the TotalEnergies group, has developed and continues to develop fossil fuel infrastructure that will lead to global warming of more than 1.5°C :

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<sup>15</sup> **Exhibit 15.1** - Summary for Policymakers Headline Statements, 28/02/2022, p. 1.

<sup>16</sup> *Ibid*, p. 12.

<sup>17</sup> **Exhibit 15.3** - Summary for Policymakers Headline Statements, 04/04/2022, p. 3.

<sup>18</sup> *Ibid*, p. 2.

<sup>19</sup> **Exhibit 15.3** - Key findings of the IPCC Working Group III report, p. 4.

*"Cumulative future CO2 emissions projected for the lifetime of existing and currently planned fossil fuel infrastructure, without additional abatement, exceed total cumulative net CO2 emissions in trajectories that limit warming to 1.5°C (>50%) with zero or limited overshoot."*<sup>20</sup>

33. Industry's inaction is thus added to that of the states, insofar as the government policies implemented to date are leading us towards catastrophic warming in excess of 3°C :

*"In the absence of enhanced policies beyond those implemented at the end of 2020, GHG emissions are projected to increase beyond 2025, leading to a median global warming of 3.2 [2.2 to 3.5] °C by 2100 (medium confidence)."*<sup>21</sup>

34. This compelling scientific evidence shows that to maintain a chance of avoiding the current trajectory towards climate catastrophe, it is necessary to immediately and significantly reduce GHG emissions in order to roughly halve current emissions by 2030. It is in the light of this scientific reality that the environmental claims of the TotalEnergies group and its plans to increase its fossil fuel production must be analysed.

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<sup>20</sup> *Ibid*, p. 3.

<sup>21</sup> *Idem*.

**2. THE MISLEADING NATURE OF THE ENVIRONMENTAL CLAIMS PROMOTED BY THE TOTALENERGIES GROUP**

35. The plaintiffs have shown that the disputed commercial claims made by the TotalEnergies group were contradicted by science and did not comply with the standards governing corporate environmental communication. The plaintiffs conclude that these practices are misleading and contrary to professional diligence (see sections III.3.1.3, 3.2.3 and 3.3 of the summons).
36. However, as ClientEarth demonstrates below, the Claimants' analysis is largely confirmed by guidelines published by several foreign regulators. These include the UK Competition and Markets Authority's "*Green Claims Code*"<sup>22</sup> ("the UK Green Claims Code") and the Dutch Consumer and Markets Authority's "*Guidelines on Sustainability Claims*"<sup>23</sup> ("the Dutch Sustainability Claims Guidelines").
37. These guidelines are relevant because the law on unfair practices has been fully harmonised in the EU by the Unfair Practices Directive, including in the UK by way of pre-Brexit transposition. It follows that the substantive rules for defining the circumstances in which a claim constitutes a misleading commercial practice are identical in France, the UK, the Netherlands and the EU as a whole.
38. The above guidelines provide detailed views from national regulators on the principles that companies should follow to avoid breaching the prohibition on misleading marketing practices. They are specifically aimed at "net zero" claims by companies and are therefore particularly relevant to this case.
39. ClientEarth also relies on the European Association of Communication Agencies' guidance on environmental claims ("the EACA guidance")<sup>24</sup>, which is particularly appropriate for assessing professional diligence in communication, particularly in the light of Article 2(h) of the Unfair Practices Directive, which defines professional diligence as "*the standard of specialised skill and care which the trader may reasonably be expected to exercise in relation to the consumer, in accordance with honest market practice and/or the general principle of good faith in the trader's sphere of activity*".
40. Finally, ClientEarth refers below to the European Commission's proposal to revise the Unfair Practices Directive<sup>25</sup> ("the Unfair Practices Directive revision proposal"). This proposal provides further guidance on the interpretation of the provisions on the prohibition of misleading commercial practices. Indeed, in addition to the proposals for new provisions, the European Commission sets out in detail its analysis of certain types of claims. The proposal is thus intended to facilitate the application of the existing general principles of the Unfair Practices Directive to environmental claims, to which they are already applicable. As the proposal points out:

*"The general rules of the Unfair Commercial Practices Directive on misleading practices can be applied to greenwashing practices where they have a negative effect on consumers, using a case-by-case assessment. However, there are no specific rules in the Directive or its Annex I (the black list) defining these practices*

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<sup>22</sup> **Exhibit 16** - Free translation of the UK Green Claims Code, 20/09/2021.

<sup>23</sup> **Exhibit 17** - Free translation of the Dutch Sustainability Claims Guidelines, 28/01/2021.

<sup>24</sup> **Exhibit 18** - Free translation of EACA guidance on environmental claims, 04/04/2022.

<sup>25</sup> **Exhibit 19** - Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU to empower consumers through better protection against unfair practices and better information (COM/2022/143 final), 30/03/2022

*as unfair in all circumstances. Recent scrutiny of websites by the Consumer Protection Cooperation Network authorities for misleading environmental claims has confirmed the need to strengthen the rules to facilitate enforcement in this area*<sup>26</sup>.

41. It is in the light of all these documents that ClientEarth will hereafter confirm the analysis of the plaintiff associations on the misleading nature and lack of professional diligence of the commercial practices of the TotalEnergies group, both with regard to its stated ambition to achieve carbon neutrality by 2050 and to be a major player in the transition **(2.1)**, and with regard to the alleged environmental virtues of gas and biofuels **(2.2)**.

### **2.1 Claims regarding the TotalEnergies Group's ambition to be carbon neutral by 2050 and to be a major player in the transition from fossil fuels to renewable energy**

42. In their writ of summons, the plaintiff associations demonstrate that the presentation by the TotalEnergies group of its ambitions to be carbon neutral by 2050 (or "net zero 2050") and to become a major player in the transition is not based on objective and accurate elements (see section III. 3.1.2 of the writ of summons).
43. Indeed, the presentation by the TotalEnergies group of its GHG emission reduction targets to achieve carbon neutrality by 2050 confuses the notions of direct and indirect emissions (§198 of the summons) and fails to mention that the group does not intend to significantly reduce its indirect emissions ("scope 3"), which nevertheless constitute the vast majority of its emissions (§194 of the summons). Nor is it specified that the group's emissions reduction plan excludes its indirect emissions outside Europe, nor that it is based in part on the use of controversial carbon offset mechanisms (§200 of the summons). Finally, this presentation emphasising the transformation of the group through diversification of its energy mix and investment in renewable energies conceals from consumers the contradiction between the group's plans for expansion in fossil energies and their necessary massive decline for the needs of the energy transition (§202 et seq. of the summons).
44. Through these manoeuvres, the TotalEnergies group is misleading consumers into believing that its climate commitments mean that it is on the way to achieving carbon neutrality by 2050, in line with European climate objectives, whereas the group's climate strategy is in complete contradiction with the requirements of the energy transition and, by the same token, with the group's stated ambitions (cf. section III. 3.1.3 of the summons).
45. The UK Green Claims Code, the Dutch Guidelines on Sustainability Claims and the European Commission's proposal to revise the Unfair Practices Directive reflect a consensus that reinforces the arguments developed in this respect by the plaintiff associations, with regard to claims about future carbon neutrality targets by 2050 **(i)** and more generally about the environmental commitments of companies **(ii)**.

*(i) The principles to be respected in relation to claims about future carbon neutrality targets*

46. The above-mentioned guidelines highlight the risk that company claims about future goals and strategies to achieve them may mislead consumers, and therefore recommend several precautions in this respect.

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<sup>26</sup> **Exhibit 19** - Proposal for revision of the Unfair Practices Directive, p. 3.

47. The UK Green Claims Code states that "*claims about future targets should **only** be used for marketing purposes **if the company has a clear and verifiable strategy for achieving them**" and "*should also be **proportionate to its actual efforts***"<sup>27</sup> . It adds that such claims are "*less likely to be misleading when they are **based on specific, short-term and measurable commitments** that the company is actively trying to meet*"<sup>28</sup> .*
48. The Code also states that claims relating to the technical concept of "carbon neutrality by 2050" are difficult for consumers to understand. Therefore, "*given the difficulties consumers have in understanding these terms, it is important that claims are as clear as possible. Companies should be clear about what they do and how they do it. They need to ensure that they use the right terminology. They should include accurate information on whether (and to what extent) they are actively reducing the carbon emissions created in the production of their products or provision of their services or offsetting emissions through carbon removal.*"<sup>29</sup>
49. More broadly, the UK Code states as a general recommendation that "[w]hen considering making environmental claims, companies should always consider the effect of the total life cycle of a product or service, or **of their activities as a whole**, on the accuracy of their claims."<sup>30</sup> . Therefore, "*Companies should consider which elements of a product or service's life cycle are most likely to be of interest to consumers when making an environmental claim and how they affect the accuracy of that claim.*"<sup>31</sup>
50. The Dutch guidelines on sustainability claims similarly emphasize the requirement for clarity of claims about future goals, which must be "*formulated as precisely as possible*", supported by a "*clear, concrete and verifiable*" strategy and allow for an understanding of "*which stages of the production and distribution chain [they] relate to.*"<sup>32</sup> .
51. The guidelines further emphasise the need to have "*started to implement this strategy*" or "*to do so in the near future*" and to accompany claims with detailed and accessible information on the results achieved. In particular, they add:
- "A statement about targets for which, at the time they are set, it is unlikely that your company will be able to achieve them, or vague statements about sustainability targets can mislead consumers. In addition, using sustainability targets for marketing purposes without any concrete action plans can be misleading. When sustainability initiatives are still in their infancy, you should avoid making such claims."**<sup>33</sup>
52. In the same vein, EACA guidance from the communications industry itself states that "*Marketing communications containing specific environmental commitments, even if ambitious and likely to be met only in many years (such as 'net zero', 'negative carbon', 'climate positive' claims), require the advertiser to demonstrate that it has the reasonable capacity and methodological approach to achieve these commitments within the specified timeframe.*"<sup>34</sup>

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<sup>27</sup> **Exhibit 16** - Free translation of the UK Green Claims Code, p. 34.

<sup>28</sup> *Idem*.

<sup>29</sup> *Ibid*, pp. 27-28. See also in this respect Section III. 3.1.3 and **Claimant's Exhibits 24 and 61** on the need for enhanced transparency with regard to technical claims such as carbon neutrality.

<sup>30</sup> *Ibid*, p. 36.

<sup>31</sup> *Idem*.

<sup>32</sup> **Exhibit 17** - Loose translation of the Dutch guidelines on sustainability claims, p. 24.

<sup>33</sup> **Exhibit 17** - Loose translation of the Dutch guidelines on sustainability claims, p. 24.

<sup>34</sup> **Exhibit 18** - Loose translation of EACA guidance on environmental claims, p. 7.

53. This consensus has been confirmed by the European Commission's recent proposal to revise the Unfair Practices Directive, which states:

*"Environmental claims, especially climate claims, increasingly refer to future performance, referring to a transition to carbon neutrality, climate neutrality or a similar goal in the future. By making such claims, the industry gives the impression that consumers are contributing to the emergence of a low-carbon economy by buying their products. In order to ensure the fairness and credibility of such claims, it is appropriate [...] to prohibit, following a case-by-case assessment, those claims which are not substantiated by clear, objective and verifiable commitments and targets made by traders. Such claims should also be supported by a system of independent monitoring of the progress of the trader in relation to these commitments and targets"*<sup>35</sup>.

54. The Commission's proposal also aims to prevent vague claims of the kind used by the TotalEnergies group in its advertising spots (such as "To contribute to the sustainable development of the planet in the face of the climate challenge, we are moving, together, towards new energies"<sup>36</sup>). In this respect, it provides for the prohibition of "generic" environmental claims, i.e. "any explicit environmental claim that is not part of an environmental label, where the specification of the claim is not provided in clear and prominent terms on the same medium"<sup>37</sup>.

55. As mentioned above (§40), these new provisions will explicitly endorse the misleading nature of these practices, which is already apparent from the current provisions and the Commission's Guidance on the interpretation and application of the Unfair Practices Directive, cited by the claimants, which states that:

*"In accordance with Articles 6 and 7 of the CPD on misleading acts and omissions, 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>38</sup>

56. In sum, the guidelines of the UK and Dutch administrative authorities, those of the industry within the EACA and the proposed revision of the Unfair Practices Directive emphasise the need for companies to communicate clearly, accurately, fairly, objectively, comprehensively and proportionately about their strategy. When applied to the display of carbon neutrality commitments, a company's carbon neutrality claims should *at least*:

- be clear and precise on the extent of commitments in relation to the different emission scopes (1, 2 and 3);
- be objective and accurate: the company should not misuse the scientific terminology 'net zero' or 'carbon neutrality' by 2050;
- be supported by credible and verifiable evidence: the company must make available to the consumer evidence that it is implementing an appropriate strategy in the light of the best available scientific knowledge.

57. However, as explained by the plaintiff associations, the communication of the TotalEnergies group on its climate strategy is in total contradiction with these principles.

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<sup>35</sup> **Exhibit 19** - Proposal for a revision of the Unfair Practices Directive, Recital 4.

<sup>36</sup> **Claimant's Exhibit 20** - Thematic Inventory of Claims p. 2.

<sup>37</sup> **Exhibit 19** - Proposal for revision of the Unfair Practices Directive, Art. 1(1).

<sup>38</sup> **Claimant's Exhibit 24** - European Commission, "Guidance on the interpretation and application of Directive 2005/29/EC on unfair commercial practices", 29/21/2021, pp. 73 and 75.

58. First, the misleading omissions identified by the plaintiff associations clearly violate the principles of clarity and precision. This is the case in particular for the absence of any precision on what the notion of carbon neutrality by 2050 requires, as well as for the graph on the *ad hoc* page of the group's website presenting the emission reduction objectives of the TotalEnergies group, grouping together scopes 1 and 2 under the name of "[*direct*] emissions" and omitting to present the plans for the development of scope 3, which nevertheless represents 85 to 90% of the group's total emissions (cf. section III.3.1.2 of the summons)<sup>39</sup>.
59. Secondly, the use of the notion of "carbon neutrality by 2050" in the marketing practices of the TotalEnergies group contravenes the requirement of objectivity and accuracy by distorting its scientific meaning. In fact, the allegations at issue lead consumers to believe that the group is committed to a strategy that is compatible with a collective trajectory towards carbon neutrality by 2050 ("*together with society*"<sup>40</sup>), in accordance with the Paris Agreement and the best available scientific knowledge. However, the plaintiffs have shown that the group's strategy does not comply with the reference frameworks and standards for corporate carbon neutrality objectives (cf. section 3.1 of the summons), so that the group cannot validly claim to be carbon neutral by 2050 as it stands in the eyes of consumers (cf. §220 et seq. of the summons).
60. Thirdly, the TotalEnergies group's claims are not supported by a credible and verifiable strategy. In terms of credibility, an analysis of the group's climate strategy in the light of the relevant benchmarks shows that its projects do not match the ambitions it has stated to consumers. The plaintiff associations have produced analyses by the investor group Climate Action 100+ and the World Benchmarking Alliance confirming the shortcomings of the group's strategy (see §210 of the summons).<sup>41</sup> Furthermore, an update of the Climate Action 100+ analysis incorporating information disclosed by the group during the year 2021 - during which the group's advertising campaign was launched - has consolidated this conclusion.<sup>42</sup> This analysis confirms the inadequacy of the group's climate strategy, particularly in view of the absence of sufficient targets for reducing its GHG emissions in the short and medium term (see criteria 4.3 and 3.3 respectively of the Climate Action 100+ analysis).
61. The Group's stated strategy of carbon neutrality by 2050 does not appear to be verifiable either, insofar as consumers are not in a position to assess the medium and long-term objectives set by the Group. In particular, with regard to indirect emissions (scope 3) outside Europe, the plaintiff associations have shown that the TotalEnergies group has not set any absolute reduction targets for the level of emissions between now and 2030 and has no quantified target for 2050 (cf. section III.3.1.2 (i), §192 et seq. of the summons). Therefore, the group's strategy with regard to these emissions is not verifiable, even though it represents almost half of the group's emissions.
62. Consumers are therefore not in a position to grasp the significance of the group's stated ambition to be carbon neutral by 2050 or to appreciate the shortcomings of the group's actions to achieve this goal. As the European Commission observes, such a presentation risks giving consumers the false impression that they are "*contributing to the emergence of a low-*

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<sup>39</sup> Exhibit 7 - Total Group Climate Report, "Towards Carbon Neutrality", 2020, p. 15.

<sup>40</sup> Claimant's Exhibit 20 - Thematic Inventory of Claims, p. 1.

<sup>41</sup> Applicant Exhibits 60.1 and 60.2.

<sup>42</sup> Exhibit 20 - Free translation of the 2022 edition of the ClimateAction100+ analysis of TotalEnergies' climate strategy.

*carbon economy*"<sup>43</sup> by purchasing the products of the TotalEnergies group (see also in this respect, §212 et seq. of the summons).

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63. It follows from the above that the average consumer is misled into believing that the TotalEnergies group is indeed on track to reduce its GHG emissions in line with the climate objective of achieving carbon neutrality by 2050, when in fact its strategy is at odds with this objective.

*(ii) The principles to be respected by claims promoting corporate environmental commitments*

64. The greening of the TotalEnergies group's image on the grounds that it is developing its production of renewable energy poses a clear problem of proportionality between the allegations and the reality, which the recommendations on environmental communication warn about.

65. The guidelines of the British and Dutch authorities thus recall the requirement of proportionality, which prevents an incidental part of a company's activities or commitments from being extrapolated to green its image as a whole.

66. The UK Green Claims Code states in this regard that "[c]onsumers can be misled when claims are silent on environmental impacts. This can also occur where claims relate to only one aspect of the brand or company. **They may be misleading because of what they do not include or what they conceal.** Therefore, claims "should not focus solely on the positive environmental aspects [...] of a brand or company, when other aspects have a negative impact, thereby misleading consumers", which is "particularly true if the benefits claimed relate to only [...] part of a brand or company's products and activities"<sup>44</sup>.

67. The Code warns companies that "such a selection of information may lead consumers to believe that a [...] brand or company as a whole is more environmentally friendly than it actually is"<sup>45</sup>.

68. The Dutch guidelines on sustainability claims take up the same considerations:

*"If you emphasise specific initiatives or activities to the extent that you **give the impression that your company is more sustainable than it actually is** on the basis of an objective assessment, this can mislead consumers. **If your products or production processes have a significant negative impact on human rights [...] and the environment, you should use claims carefully to avoid misleading consumers about the sustainability aspects of your company and product.**"<sup>46</sup>*

69. These guidelines include specific examples of potentially misleading claims, such as the following, which has some similarities with the practices referred to in the subpoena:

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<sup>43</sup> "Environmental claims, in particular climate claims, increasingly refer to future performance, referring to a transition to carbon neutrality, climate neutrality or a similar goal, at a certain time horizon. By making such claims, traders give the impression that consumers are contributing to the emergence of a low-carbon economy by buying their products", **Exhibit 19** - Proposal for the revision of the Unfair Practices Directive, recital 4. The European Commission's position thus confirms that developed in its Guidelines on the interpretation of the Unfair Practices Directive (**Claimant's Exhibit 24**) as well as that of ADEME in its opinion on carbon neutrality (**Claimant's Exhibit 61**).

<sup>44</sup> **Exhibit 16** - Free translation of the UK Green Claims Code, 2021, p. 26-27.

<sup>45</sup> *Idem*.

<sup>46</sup> **Exhibit 17** - Loose translation of the Dutch Sustainability Claims Guidelines p. 23.



*"A major oil company has developed a new technology to produce fuel from biomass ("biofuel"). This new fuel produces 50% less CO2 emissions than existing fossil fuels. The oil company is advertising this new technology extensively and in its advertising uses claims such as "Towards carbon neutrality", "Better for the environment" and "50% less CO2 emissions". The oil company aims to produce 25,000 tonnes of the new biofuel by 2025, which should represent about 2% of the company's total fuel production (including fossil fuels). In these circumstances, the oil company's sustainability claims may be misleading to consumers, as they give the impression that the company is more sustainable than it actually is, given the limited share of biofuel production compared to total fossil fuel production."<sup>47</sup>*

70. This example, as well as the above-mentioned principles, largely echo the discrepancy between the TotalEnergies group's disproportionate emphasis on its role in transition and renewable energy, and the priority that the TotalEnergies group continues to give to oil and gas activities, as demonstrated in the summons (see §186 and 187 of the summons).
71. Thus, the allegations stating without further explanation that the group has *"the ambition to become a major player in the energy transition, in particular by accelerating its development in renewable energies"* and intends to *"contribute to preserving the planet"* or *"contribute to the sustainable development of the planet in the face of the climate challenge"*<sup>48</sup> are not proportionate to the group's actual activities and investments in renewable energies. As the plaintiffs point out, fossil fuels account for more than 99.7% of its energy mix<sup>49</sup> and the group does not plan to reduce its oil production by 2030, while its fossil gas production will increase (see section III.3.1.2 (ii) of the summons).

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72. The analysis of the group's climate claims in the light of the common set of principles emerging from the Guidelines and the proposed revision of the Unfair Practices Directive thus completes the picture of their misleading nature and their contravention of the requirements of professional diligence.

## 2.2 Misleading environmental claims for fossil gas and agrofuels

73. The plaintiff associations have demonstrated with the best available scientific knowledge that the promotion of fossil gas and biofuels by the TotalEnergies group leads consumers to minimise the climate impact of these energy sources and to overestimate their role in the energy transition (see sections III.3.2 and 3.3 of the writ).
74. In particular, fossil gas is presented as *"abundant, cheap and flexible"*, *"the least greenhouse gas emitting fossil energy"*, an *"indispensable complement to renewable energies"*.<sup>50</sup> Biofuels, on the other hand, are promoted as *"low-carbon alternatives that allow a reduction of at least 50% of CO2 emissions compared to their fossil equivalents"*, or even *"from 50 to 90%"*<sup>51</sup>.
75. The misleading nature of these claims is, again, confirmed by the fact that they are contrary to the principles set out in the guidelines mentioned above. The UK Green Claims Code and the Dutch Guidelines on Sustainability Claims, like the DGCCRF's Practical Guide to

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<sup>47</sup> *Idem*.

<sup>48</sup> **Applicants' Exhibit 20** - Thematic Inventory of Claims p. 2 and 3.

<sup>49</sup> **Exhibit 58** - Report by Greenpeace France and Reclaim Finance, *"Total fait du sale: La Finance complice?"*, February 2021, pp. 4, 7 and 18.

<sup>50</sup> **Exhibit 20** - Thematic Inventory of Allegations, p. 9 (Facebook and Instagram, 15 June 2021).

<sup>51</sup> *Ibid*, p. 11 (Facebook, Instagram and Twitter, 18 June 2021).

Environmental Claims for Professionals and Consumers cited in the summons (see section III, 1.3(ii) of the summons)<sup>52</sup>, emphasise the role of scientific evidence in justifying environmental claims.

76. The UK Green Claims Code notes in this regard that "[m]ost environmental claims are likely to be objective or factual statements that can be tested against scientific or other evidence", unlike some communications that are easily recognised by the consumer as subjective or hyperbolic<sup>53</sup>. Accordingly, "companies should therefore be able to substantiate their claims with **sound, credible, relevant and up-to-date evidence**" - the latter criterion being developed in particular<sup>54</sup>. The Code adds that :
- "Claims based on evidence that deviates significantly from accepted scientific understanding or methodology, or for which there is conflicting evidence, are more likely to be misleading."<sup>55</sup>
  - "Companies should review any new evidence on the environmental impact of products to see if they should include it in current or future claims to avoid consumers being misled."<sup>56</sup>
77. In the same vein, the Dutch guidelines on sustainability claims require companies to have "factual and correct" evidence to support their claims or to be able to refer to "verifiable sources/studies"<sup>57</sup>. They also require companies to be clear about the "procedure, scientific method and criteria" underpinning their claims and insist on keeping information up to date<sup>58</sup>.
78. In this respect, an Italian court issued a decision in December 2021 sanctioning a company's environmental claims promoting the reduced carbon footprint of a textile product. On this occasion, the court noted that "awareness of environmental issues is now very high and that ecological virtues influence the purchasing choices of the average consumer" and recalled that advertising based on environmental commitments must be "clear, true, precise and reliable, based on scientific data presented in an understandable way."<sup>59</sup>.
79. This requirement of scientific basis appears to be consubstantial with those of proportionality and precision emphasised by the plaintiffs (cf. section III.3.2.3, §268 et seq. of the summons).
80. In this sense, in addition to the prohibition of generic claims, the proposed revision of the Unfair Practices Directive states that "[a] further misleading commercial practice that should be prohibited in all circumstances [...] is making an environmental claim about a product as a whole when in fact it relates to only one aspect of the product."<sup>60</sup>
81. More specifically, the UK Green Claims Code refers to the need to apply caveats to certain types of claims. It states that :

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<sup>52</sup> **Requesting documents n°27** - DGCCRF guide.

<sup>53</sup> **Exhibit 16** - Free translation of the UK Green Claims Code, p. 39-40.

<sup>54</sup> *Idem*.

<sup>55</sup> **Exhibit 16** - Free translation of the UK Green Claims Code, p. 41.

<sup>56</sup> *Ibid*, p. 29.

<sup>57</sup> **Exhibit 17** - Loose translation of the Dutch guidelines on sustainability claims, p. 19.

<sup>58</sup> *Idem*.

<sup>59</sup> **Exhibit 21** - Free translation of the decision Alcantara SPA v. Miko SRL (712/2021) of the Tribunale Ordinario di Gorizia, p. 3.

<sup>60</sup> **Exhibit 19** - Proposal for a revision of the Unfair Practices Directive, Recital 11.

*"Some claims can **only be true if certain conditions are met or with certain qualifications or caveats.** As long as it also complies with other relevant principles, a company may be able to make such claims legally.*

*However, **the conditions, qualifications and warnings must be sufficiently clear and visible for consumers to see and understand them.** Otherwise, they are more likely to take the claim as unqualified and unconditionally true, which would be inaccurate.<sup>61</sup>*

82. Thus, it follows from the above that claims which appear to be objective must be verifiable in the light of accessible and understandable scientific evidence. In the light of the latter, the claims in question must specify to what extent and under what conditions the information given to consumers is true, failing which they constitute a commercial practice that is misleading by omission.
83. In this case, the claims for gas and biofuels relate to technical matters (the volumes of GHGs emitted by these energy sources over all or part of their life cycle) and contain quantitative data (such as "*a reduction of at least 50% in CO2 emissions*"<sup>62</sup> and "*the least GHG-emitting fossil fuel*"<sup>63</sup>) giving consumers the appearance of objectivity. They should therefore at least comply with the principles outlined above.
84. However, not only are none of these claims supported by scientific evidence made directly accessible to consumers, but they are also contradicted by the evidence submitted by the plaintiff associations. It is clear from the scientific evidence that the claims do not take into account all the GHGs generated by these energy sources over their entire life cycle, which is much higher than the claims suggest.
85. In fact, the exact amount of GHGs emitted by fossil gas and biofuels depends on several factors that the group's claims ignore in order to present a disproportionately positive picture of the climate impact of these energies (see assignment, section III.3.2 and 3.3).
86. In doing so, the claims fail to meet the requirement to specify and qualify this type of message and provide information contrary to the state of science.

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87. **The comparison of the commercial practices of the TotalEnergies group with the guidelines and recommendations of the national and European authorities designed to regulate companies' environmental communication thus completes the demonstration of their misleading nature.**

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<sup>61</sup> **Exhibit 16** - Free translation of the UK Green Claims Code, p. 18.

<sup>62</sup> **Claimant Exhibit 20** - Thematic Inventory of Allegations, p. 11 (Facebook, Instagram and Twitter, 18 June 2021).

<sup>63</sup> *Ibid*, p. 9 (Facebook and Instagram, 15 June 2021).

### 3. TOTALENERGIES' BUSINESS PRACTICES HINDER ENERGY TRANSITION

88. The plaintiffs recalled in their summons the impact of the deceptive commercial practices of the TotalEnergies group on the interests they defend.
89. ClientEarth would like to highlight some of the scientific and political evidence supporting this analysis by showing that such "greenwashing" practices are an obstacle to the energy transition.<sup>64</sup> Indeed, such practices distort public understanding of the public policy measures needed for the transition to achieve climate goals (3.1) and prevent consumers from playing the full role they should in implementing the transition (3.2).

#### 3.1 The practices of the TotalEnergies group distort public understanding in order to maintain a wait-and-see attitude towards climate change

90. The practices in question are likely to hinder collective action in favour of climate change mitigation and energy transition.
91. According to the latest IPCC Working Group III report, the media are shaping crucial debates on climate change governance, particularly through the corporate communications they broadcast:
- "The media provides another platform for diverse actors to present, interpret and shape debates around climate change and its governance (Tindall et al. 2018)."*<sup>65</sup>
92. This power of influence has been widely exploited by some companies, particularly those in the fossil fuel industry, to obstruct the energy transition by diverting companies from their responsibilities through lobbying and influencing consumer behaviour:

***"Companies and business organisations play a key role in mitigating global warming, through their own commitments to a zero carbon footprint (Mendiluce 2021), their decisions to invest in research and implementation of new energy technologies and energy efficiency measures, and the interaction of the supply side with changing consumer preferences and behaviours, for example through marketing. Business models and strategies are both a barrier and an accelerator of decarbonisation. The lock-in that still exists in infrastructure and business models favours the fossil fuel industry at the expense of the renewable energy industry and the energy efficient end-use industry (Klitkou et al. 2015). The fossil fuel-based energy production and distribution system is therefore a barrier to the acceptance and implementation of new, cleaner renewable energy technologies (Kariuki 2018). A number of economic actors have attempted to derail climate change mitigation through targeted lobbying and doubt-inducing media strategies (Oreskes and Conway 2011). A number of companies involved in the upstream and downstream supply chain of fossil fuel companies constitute the majority of organisations opposed to climate action (Dunlap and McCright 2015; Cory et al. 2021; Brulle 2019). Corporate advertising and branding strategies also attempt to divert corporate responsibility to individuals, and/or to appropriate climate concerns in their own branding; climate change mitigation is framed solely through product and consumption choice, avoiding the notion of a political sphere of collective action (Doyle 2011; Doyle et al. 2019)"***<sup>66</sup>.

93. Like the scientific article analysing the strategies successively adopted by the TotalEnergies group with regard to climate change (cf. §338 of the summons and Exhibit 90.1), the IPCC

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<sup>64</sup> **Exhibit 49** - Glasgow Climate Pact, 2021 and free translation.

<sup>65</sup> **Exhibit 15.4** - Free translation of extracts from the IPCC Working Group III report, 04/04/2022, p. 5.

<sup>66</sup> **Exhibit 15.4** - Free translation of extracts from the IPCC Working Group III report, p. 3.

identifies the singular role of the fossil fuel industry in the development of opposition to climate policies promoting the energy transition:

*"Fossil fuel industries have unique access to the mainstream media (Geels 2014) through advertising, shaping the narratives of media reports and exerting political influence in countries such as Australia and the United States (Holmes and Star 2018; Karceski et al. 2020)."*<sup>67</sup>

*"Fossil fuel industries have played an important role in setting the agenda in many countries, including [...] in the EU (Skjærseth and Skodvin 2010; Boasson and Wettestad 2013) [...], with different positions and impacts across countries (Kim et al. 2016; Nasiritousi 2017)."*<sup>68</sup>

94. These influence manoeuvres, which rely in particular on publicity such as the practices in question, contribute to the public's lack of understanding of the need and urgency to make the energy transition, the responsibility of the fossil fuel industry to change and therefore to the general wait-and-see attitude towards the fight against climate change.
95. Fossil fuel companies are therefore responsible for the climate crisis and continue to exacerbate it by double-talking about their actual actions, as denounced by the UN Secretary General on the occasion of the publication of the latest IPCC working group report in April 2022 :

*"This report by the Intergovernmental Panel on Climate Change is a litany of broken climate promises. It is a record of shame, listing **the empty promises that put us firmly on course for an unlivable world.***

*We are on the fast track to climate catastrophe. Large cities under water. Unprecedented heat waves. Terrifying storms. Widespread water shortages. The extinction of a million plant and animal species. This is not fiction or exaggeration. This is what science tells us will happen as a result of our current energy policies.*

*We are on track for more than double the 1.5°C limit agreed in Paris. **Some governments and business leaders say one thing, but do another. Simply put, they are lying.** And the results will be catastrophic. This is a climate emergency.*

*Climate scientists are warning that we are already dangerously close to tipping points that could lead to cascading and irreversible climate impacts. **But governments and corporate emitters are not only turning a blind eye, they are adding fuel to the fire.***

***They are choking our planet, based on their vested interests and historical investments in fossil fuels, when cheaper, renewable alternatives offer green jobs, energy security and greater price stability.***<sup>69</sup>

### 3.2 TotalEnergies' practices prevent consumers from making informed choices in favour of the transition

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<sup>67</sup> Ibid, p. 5.

<sup>68</sup> Ibid p. 4.

<sup>69</sup> **Exhibit 22** - UN Secretary General's reaction to IPCC report, 04/04/2022.

96. In addition to the general confusion that it is likely to aggravate through its misleading practices, the TotalEnergies group's communication is likely to harm the energy transition by distorting consumers' choices (see sections III.2.3 and 4 of the summons).
97. Consumers have a major role to play in the transition by stimulating the supply of green products through their consumption choices. In this sense, the above-mentioned Dutch guidelines state that "[s]ustainable consumption plays an essential role in the transition to a sustainable society"<sup>70</sup>. In its "New Consumer Agenda" cited by the plaintiffs, the European Commission already stated that "consumers' energy choices will be essential to achieve the new climate objectives for 2030 and climate neutrality by 2050" (cf. §303 of the summons and **Plaintiffs' Exhibit n°84**).
98. The International Energy Agency ("IEA") report cited by the plaintiff associations also states that :
- "The large-scale transformation of the energy sector demonstrated in the [IEA's projection of a net-zero pathway - the 'NZE'] cannot be achieved without the active and voluntary participation of citizens. Ultimately, it is people who determine the demand for energy-related goods and services, and societal norms and personal choices will play a key role in steering the energy system towards a sustainable path. Furthermore, 55% of emissions reductions require a mix of low-carbon technology deployment and **active citizen and consumer participation or engagement**, such as installing a solar water heater or buying an electric vehicle. [...] Consumer attitudes can also influence the investment decisions of companies concerned about their public image."*<sup>71</sup>
99. The above-mentioned IPCC Working Group III report also points out the role of consumers and companies in influencing consumers through advertising:
- "Demand mitigation involves five groups of social actors: individuals (consumption choices, habits, etc.), groups and collectives (social movements, values, etc.), companies (investments, advertising, etc.), institutions (political agencies, regulations, etc.) and infrastructure (very long-term investments and financing, etc.). Actors either contribute to the status quo of a high-carbon, consumption- and GDP-growth-driven global economy, or to the desired shift towards a low-carbon, welfare and equity energy service economy."*<sup>72</sup>
- "Incremental interventions change social practices, simultaneously affecting emissions and well-being. **Transformative change requires coordinated action** among the five stakeholder groups (Table 5.4), using social science knowledge on the intersection of behavioural, cultural, institutional and infrastructural changes for policy design and implementation. **Avoidance, displacement and enhancement choices made by individuals, households and communities promote mitigation {5.3.1.1, Table 5.1}. They are driven by behavioural patterns, evolving social norms, driven by policies and social movements**"*<sup>73</sup>.
100. However, this active and necessary engagement of consumers is only possible if they have transparent and accurate information on the impact of their consumption. Indeed, consumers are increasingly sensitive to ecological and climate issues (see sections III, 2.3 and 4 of the assignment).

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<sup>70</sup> **Exhibit 17** - Loose translation of the Dutch guidelines on sustainability claims, p. 2.

<sup>71</sup> **Exhibit 53** - Free translation of the International Energy Agency report "Net Zero by 2050, A roadmap for the global energy sector", October 2021, p. 67.

<sup>72</sup> **Exhibit 15.4** - Free translation of extracts from the IPCC Working Group III report, p. 1.

<sup>73</sup> **Exhibit 15.4** - Free translation of extracts from the IPCC Working Group III report, p. 1.

101. The Dutch guidelines on sustainability claims state, among other things, that "*Consumers and companies are increasingly interested in contributing to a sustainable world in the long term, and making sustainable choices is becoming more and more important to them. Increasingly, consumers want to know the sustainability impact of the products and services they buy and **are taking this into account in their purchasing decisions.***"<sup>74</sup>
102. Similarly, the UK Green Claims Code states that "*In a transition to a low carbon economy, these [environmental] considerations are likely to become even more important.*"<sup>75</sup> It adds that "[t]he changing awareness, expectations and behaviour of consumers is also relevant, because as **people become more aware of the environmental impact of what they consume, the information they need to make informed decisions is likely to change.**"<sup>76</sup>
103. Thus, business communication plays a key role in changing consumer preferences and behaviours, as highlighted by IPCC Working Group III:  
**"Businesses and corporate organisations play a key role in mitigating global warming, through their own commitments to a neutralised carbon footprint (Mendiluce 2021) decisions to invest in research and implementation of new energy technologies and energy efficiency measures, and supply-side interaction with changing consumer preferences and behaviours, for example via marketing."**<sup>77</sup>
104. As the EACA finally summarises:  
**"Experts from around the world have emphasised that in order to achieve net zero and other climate-related goals, business and consumer behaviour must change. Given the role that marketing communication can play in influencing consumer behaviour, this policy context is important for marketers who make claims about the environmental virtues of their companies and products. If marketers cannot substantiate their claims, they face a real risk of enforcement action by regulators and reputational damage to their brands and companies. Conversely, if marketers use accurate environmental claims, backed up by robust evidence, this contributes to their credibility and consumer confidence and ultimately helps consumers make less environmentally damaging choices."**<sup>78</sup>
105. However, this unbiased functioning of the market in favour of transition is conditional on transparency of information. *On the other hand*, misleading communication by companies hinders the role of consumers, since "*unfair commercial practices [...] divert [consumers] from making sustainable consumption choices*".<sup>79</sup>
106. In this respect, the Dutch guidelines on sustainability claims note that these practices put companies that genuinely invest in sustainability at a significant disadvantage, as they '*are not able to distinguish themselves from companies that [mislead consumers] about the sustainability aspects of their products*',<sup>80</sup> thus distorting competition.
107. In the same sense, the proposal for a revision of the Unfair Practices Directive states: "*(1) In order to combat **unfair commercial practices that prevent consumers from making***

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<sup>74</sup> **Exhibit 17** - Loose translation of the Dutch guidelines on sustainability claims, p. 5.

<sup>75</sup> **Exhibit 16** - Free translation of the UK Green Claims Code, p. 26.

<sup>76</sup> *Ibid*, p. 29.

<sup>77</sup> **Exhibit 15.4** - Free translation of extracts from the IPCC Working Group III report, p. 3.

<sup>78</sup> **Exhibit 18** - Loose translation of EACA guidance on environmental claims, p. 2.

<sup>79</sup> **Exhibit 19** - Proposal for revision of the Unfair Practices Directive, p. 1.

<sup>80</sup> **Exhibit 17** - Loose translation of the Dutch guidelines on sustainability claims, p. 6.

*sustainable consumption choices, in particular practices related to [...] misleading environmental claims ("greenwashing"), [...] specific rules should be introduced into EU consumer protection law. [If environmental claims are fair, consumers will be able to choose products that are genuinely better for the environment than competing products. Competition will favour more environmentally sustainable products, thereby reducing negative environmental impacts.]*<sup>81</sup>

108. For these reasons, the above-mentioned IPCC Working Group III report includes "regulation of advertising" as one of the "[e]xamples of policies that can help change development trajectories".<sup>82</sup>
109. In this case, the misleading commercial practices of the TotalEnergies group certainly contribute to altering the economic behaviour of consumers, since their choice of an energy or fuel supplier will be guided in part by their actual or supposed environmental virtues. By this very fact, the practices in question prevent consumers from playing their role and distort competition to the detriment of the transition.

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110. Thus, by misleading consumers about the scope of its climate commitments and the environmental characteristics of fossil gas and agrofuels, the TotalEnergies group is obstructing the achievement of these objectives in France and everywhere else where similar practices have been committed. In so doing, the group is committing particularly serious practices that are detrimental to both the collective interest of consumers and to the protection of the environment.

**THEREFORE**

*Having regard to Article 330 of the Code of Civil Procedure and Articles L. 121-1 et seq. of the Consumer Code,*

**DECLARE** the voluntary ancillary intervention of ClientEarth to be **admissible**.

**RIGHT** to the demands of Greenpeace France, Friends of the Earth France and Notre Affaire A Tous.

**WITHOUT PREJUDICE**

<sup>81</sup> **Exhibit 19** - Proposal for revision of the Unfair Practices Directive.

<sup>82</sup> **Exhibit 15.4** - Free translation of extracts from the IPCC Working Group III report, p. 3.



<b>DOCUMENTS PROVIDED</b>
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<b><u>Exhibit n°1</u></b>	Supporting documents for the admissibility of ClientEarth
<b><u>Exhibit 1.1</u></b>	Delegation of power of 29/02/2022
<b><u>Exhibit 1.2</u></b>	Free translation of ClientEarth's statutes
<b><u>Exhibit 2</u></b>	Le Monde, "Five years after 'Dieselgate', manufacturers still benefit from a 'confidentiality clause'", 18/09/2020
<b><u>Exhibit 3</u></b>	Le Monde, "Climate: oil companies accused of 'false advertising'", 19/04/2021
<b><u>Exhibit 4</u></b>	Free translation of the article "Greenwashing: the tipping point" from the ClientEarth website, 02/11/2020
<b><u>Exhibit 5</u></b>	ClientEarth's response to the UK Financial Regulator's consultation on climate reporting, August 2021
<b><u>Exhibit 6</u></b>	ClientEarth response to TCFD consultation on metrics, targets and transition plans, 11/07/2021
<b><u>Exhibit n°7</u></b>	Lawyers take action against BP's climate 'greenwashing' advertising campaign", 04/12/2019
<b><u>Exhibit 8</u></b>	Torres Strait Islander group submits response in historic climate case, 30/09/2020
<b><u>Exhibit 9</u></b>	Major court win shows power of corporate law to fight climate change", 01/09/2019
<b><u>Exhibit 10</u></b>	Huge coal win as judge orders Europe's largest power plant to work with ClientEarth to close", 22/09/2020
<b><u>Exhibit 11</u></b>	Climate win as Drax scraps gas mega plant in UK", 25/02/2021
<b><u>Exhibit 12</u></b>	ClientEarth starts legal action against Shell's Board over mismanagement of climate risk", 15/02/2022
<b><u>Exhibit 13</u></b>	France 24, "Campaigners sue UK over 'inadequate' climate plan", 12/01/2022
<b><u>Exhibit 14</u></b>	Directory of advertisements broadcast abroad
<b><u>Exhibit 15</u></b>	Excerpts and summaries from IPCC Assessment Report 6 (2021-2022)
<b><u>Exhibit 15.1</u></b>	Free translation of the main findings of the IPCC Working Group II report, 28/02/2022

- Exhibit 15.2** Synthesis of the IPCC Working Group II Report by the Centre for International Environmental Law, 01/03/2022
- Exhibit 15.3** Free translation of the main findings of the IPCC Working Group III report, 04/04/2022
- Exhibit 15.4** Excerpts from the IPCC Working Group III Report 2022, 04/04/2022
- Exhibit 16** Free translation of the UK Green Claims Code, 20/09/2021
- Exhibit 17** Free translation of the Dutch guidelines on sustainability claims, 28/01/2021
- Exhibit 18** Free translation of EACA guidance on environmental claims, 04/04/2022
- Exhibit 19** Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU to empower consumers through better protection against unfair practices and better information (COM/2022/143 final), 30/03/2022
- Exhibit n°20** Free translation of the 2022 edition of the ClimateAction100+ analysis of the TotalEnergies Group's climate strategy
- Exhibit n°21** Free translation of the decision Alcantara SPA v. Miko SRL (712/2021) of the Tribunale Ordinario di Gorizia, 25/11/2021
- Pieces n°22** UN Secretary General's reaction to the IPCC report, 04/04/2022