



# SEATTLE

avocats

**Monsieur Patrick Pouyanné**  
Président Directeur Général  
Total SA  
Tour Coupole - 2 place Jean Millier  
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**Par porteur**  
**Par courrier recommandé avec AR**

Paris, June 19th, 2019

N/Réf : Duty of Vigilance / Total SA

**Formal notice to comply with the Duty of Vigilance Law – article L. 225-102-4.-I et II of the French commercial Code**

Dear CEO,

We have been commissioned by **French Communities** Christian Métairie, Mayor of Arcueil, Jean-René Etchegaray, Mayor of Bayonne, Clément Rossignol Puech, Mayor of Bègles, Michaël Latz, Mayor of Correns, Gerard Cosme, Chair of the Territorial Public Agency « Est Ensemble », Damien Carême, Mayor of Grande-Synthe, Eric Piolle, Mayor of Grenoble, Vanessa Miranville, Mayor of La Possession, Pierre Aschieri, Mayor of Mouans-Sartoux, Patrick Jarry, Mayor of Nanterre, Stéphane Blanchet, Mayor of Saint-Yon, Alexandre Touzet, Mayor of Sevran et Jean-Pierre Bouquet, Mayor of Vitry-le-François, as well as by the **NGOs** “Les Eco Maires”, “Notre Affaire à Tous”, “Sherpa” et “Zéa”.

These fifteen communities, each exposed to varying effects of climate change, and four associations whose mission is to protect the environment or prevent environmental damage by economic actors, have mandated us to require you to comply with legal obligations imposed on your group’s as regards duty of vigilance and climate risk.

Article L. 225-102-4.-I of the Commercial Code requires you to establish, effectively implement and publish a "plan of vigilance", which:

*« shall include the reasonable vigilance measures to allow for risk identification and for the prevention of severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks resulting directly or indirectly from the operations of the company and of the companies it controls (...) as well as from the operations of the subcontractors or suppliers with whom it maintains an established commercial relationship, when such operations derive from this relationship. »*

This plan must also include:

*« 1° A mapping that identifies, analyses and ranks risks ; (...)*

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« 3° *Appropriate actions to mitigate risks or prevent serious violations; (...)* ».

In march, 2018, in accordance with these provisions, your Group has published a first “*vigilance plan*” in its “*2017 registration document*”. However, it did not appear to comply with legal requirements.

In fact, the risk published did not mention the risks associated with climate change, resulting from the overall increase in greenhouse gas emission from your activities. Then, this plan did not include any appropriate action to mitigate the risk and prevent serious harm from the climate change.

In a spirit of dialogue, as it stands out from the provision of article L 225-102-4.-I of the French commercial code which encourages the establishment of a vigilance plan “*with the stakeholders of the company*”, our clients have challenged you about the above-mentioned deficiencies, within the registered letter with acknowledgement of receipt dated October, 22 2018.

Moreover, on March 20, 2019, your company published a second ‘*vigilance plan*’ integrated into the 2018 reference document, which now explicitly identifies climate change within its risk mapping section.

Nonetheless, your group has solely defined this risk as a “*global risk for the planet and results from various diverse human actions including the production and consumption of energy*”, without conducting the analyse and the prioritization of this risk in relation to the activities of the group, its suppliers and subcontractors. Your group has not drawn the consequences of the identification of climate risk and has not yet established, effectively implemented or published “*adapted mitigation actions of risks or prevention of serious harms*” to the health and safety of people, the environment and the corresponding human rights.

In particular, in terms of risks identification, your vigilance plan does not take into account the emission of greenhouse gas resulting from the lifecycle and the use of the products you commercialize (scope 3), identified in the declaration of extra-financial performance provided in article L 225-102-1 of the commercial code. Its emissions yet constitute an essential factor of Total group contribution to climate warming. The risk of serious harm resulting from climate change that are clearly apparent from the last IPCC special report of October 2018 are not identified in your plan.

In terms of appropriates to mitigate risk or prevent serious harms, your vigilance plan does not ensure that your group aligns with a trajectory compatible with the objectives of the Paris Agreement. Passed on 12 december 2015, it plans to restrict the global warming restriction “*well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C*”. Compliance with this objective is the only way to prevent serious harms to the environment, human health and safety and human rights, as reflected in the IPCC's latest special report. As a result of this report, the measures announced in your Vigilance Plan for your GHG emissions are well below the GHG emission reduction efforts required by your company to comply with the Paris Agreement.

The [report published on May 28, 2019 by several NGOs](#)<sup>1</sup> clearly reveals the inadequacy of your plan to respect the Sustainable Development Goals and those emerging from the Paris Agreement.

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<sup>1</sup> [https://notreaffaireatous.org/wp-content/uploads/2019/05/ResumeTOTAL\\_A4\\_ENGLISH.pdf](https://notreaffaireatous.org/wp-content/uploads/2019/05/ResumeTOTAL_A4_ENGLISH.pdf)

You yourself acknowledged on 6 November 2018 that your strategy "leads to a warming of between 2 and 2.5 ° C"<sup>2</sup>.

Our clients wish to recall you the serious and irreversible consequences of a large-scale warming. Your second plan still does not reflect the exercise of "reasonable vigilance" on the part of your group, at the level of Total's share of responsibility for global warming.

The dialogue has not removed their doubts about your group's compliance with the goal of limiting global warming to such an extent that it does not cause serious damage to the territories of the communities and to the environmental interests defended by the NGOs.

In consequence, we address you a formal notice required under the article L 225-102-4 I of the French commercial code by publishing a new "vigilance plan", within three months from the receipt of the notification, which is a formal notice required under the article L 225-102-4 II of the French commercial code.

The new plan must include, without prejudice to other measures that may be identified:

- An identification of the risk resulting from the GHG emissions generated by the use of goods and services that your group produces.
- An identification of the risks of serious harm as outlined in the last IPCC special report of October 2018.
- Adapted actions to ensure that your group is on a trajectory compatible with global warming "well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C" without taking into account the possible use of technologies whose deployment remains subject to multiple constraints and serious uncertainties.

Otherwise, we would be forced request the competent jurisdiction to order you, if necessary under periodic penalty payments, to bring you into compliance with the legal requirements.

We remain naturally at the disposal of the one of the Lawyers whom you would like to designate and to whom you can communicate this letter.

Yours sincerely,

**Sébastien MABILE & François de CAMBIAIRE**  
Lawyer at the Paris Bar

  
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<sup>2</sup> Intervention of M. Pouyanné at the « Positive Investors Forum », in Paris the 6th November 2018.