JUDICIAL COURT OF NANTERRE

1st Chamber SETTLEMENT

ORDER

Delivered on 11 February 2021

At the hearing on 18 January 2021,

We, Julien RICHAUD, Pre-Trial Judge assisted by Christine DEGNY, Clerk;

N° RG 20/00915 - Portalis N° DB3R-W-B7E-VQFM

Minute number :

CASE

Association Notre Affaire à tous, Commune Correns, Commune Champneuville, Etablissement Public Territorial Est Ensemble, Commune Grenoble, Commune La Possession, Commune Mouans-Sartoux, Commune Nanterre, Commune Sevran, Commune Vitry-le-François, Commune Région Centre Val de Loire, Association SHERPA, Association ZEA, Association Eco-Maires, Association France Nature Environnement, Commune Arcueil, Commune Bayonne, Commune Bègles

C/

S.A. TOTAL

Copies issued on :

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represented by Maître Denis CHEMLA of LLP ALLEN & OVERY LLP, lawyers at the PARIS bar, courtroom: J022

ORDER

By public decision, rendered at first instance, contradictory, subject to appeal under the conditions of Article 795 of the Code of Civil Procedure, and made available at the court registry in accordance with the notice given at the end of the debates.

The lawyers of the parties were heard in their explanations, the case was then taken under advisement and referred back to order.

Have rendered the following decision:

STATEMENT OF THE CASE

SA Total, now SE Total, the leading French company in terms of cumulative profits over ten years, with revenues of nearly $210 billion in 2018 and more than 104,000 employees, is the leading company, listed on the Euronext Paris market, of a group of 1,191 companies as of December 31, 2018 whose activities, The group's activities, spread over 130 countries, include oil and gas exploration and production, refining, petrochemicals, low-carbon power generation and the distribution of energy in various forms, including petroleum products and electricity, to the end customer.

It is subject to Article L 225-102-4 of the Commercial Code created by Law No. 2399 of 27 March 2017 on the duty of care of parent companies and ordering companies and amended by Ordinance No. 2017-1162 of 12 July 2017, which imposes for each company that employs at least five thousand employees within itself and in its direct or indirect subsidiaries whose registered office is located on French territory, or at least ten thousand employees itself and in its direct or indirect subsidiaries whose registered office is located on French territory or abroad, the obligation to draw up, publish and implement a plan containing reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment, resulting from the activities of the company and those of the companies it controls, directly or indirectly, as well as from the activities of subcontractors or suppliers with which it has an established commercial relationship, when these activities are linked to this relationship.

As Total SE published its first vigilance plan in its 2017 registration document on 15 March 2018, fourteen local authorities and five French associations, in a letter from their advisors dated 22 October 2018, denounced its shortcomings in terms of the risks of serious damage to the climate system directly induced by its activities. In return, in a letter dated 14 January 2019, SE Total emphasised that these risks had been adequately taken into account.

Discussions continued but, despite the organisation of a meeting at SE Total's headquarters on 18 June 2019, did not lead to any amicable settlement of the said dispute. Therefore, by letter from their counsel dated 19 June 2019, the fourteen local authorities and five associations gave notice to Total to comply with the obligations set out in Article L 225-102-4 I of the French Commercial Code by publishing a new due diligence plan that complies with legal requirements within three months.

It is in these circumstances that, by bailiff's deed of 28 January 2020, the association Notre Affaire à tous, the association Sherpa, the association Zéa, the association Eco Maires - Association Nationale des Maires et des Elus Locaux pour l'Environnement et le Développement Durable (National Association of Mayors and Local Elected Officials for the Environment and Sustainable Development), the association France Nature Environnement (France Nature Environnement), the municipality of Arcueil, the municipality of Bayonne, the municipality of Bègles, the municipality of Bize-Minervois, the municipality of Correns, the municipality of Champneuville, the territorial public establishment Est Ensemble, the municipality of Grenoble, the municipality of La Possession, the municipality of Mouans-Sartoux, the municipality of Nanterre, the municipality of Sevran, the municipality of Vitry-Le-François and the Centre-Val de Loire region summoned SE Total to appear before the Nanterre court of law on the basis of Articles L 225-102-4 of the French Commercial Code and 1252 of the French Civil Code

In its final incidental pleadings notified electronically on 13 July 2021, to which reference will be made for a statement of its arguments in accordance with Article 455 of the Code of Civil Procedure, SE Total requests in limine litis that the Pre-Trial Judge, in accordance with Articles L 225-102-4 and L 721-3 of the French Commercial Code, 1252 of the French Civil Code and Articles 789, 696, 699 and 700 of the French Code of Civil Procedure, should :

- DECLARE the judicial court of Nanterre materially incompetent;
- consequently, REFER the case to the Commercial Court of Nanterre;

- ORDER the plaintiffs to pay SE Total the sum of 5,000 euros jointly and severally under Article 700 of the Code of Civil Procedure;
- ORDER the plaintiffs to pay all the costs of the proceedings, with direct recovery for the benefit of Maîtres Denis Chemla.

In reply, in their final incidental pleadings notified electronically on 15 January 2021, to which reference will be made for a statement of their arguments in accordance with Article 455 of the Code of Civil Procedure, the plaintiffs request the Pre-Trial Judge to on the basis of Articles L 225-102-4, L 225-102-5 and L 721-3 of the French Commercial Code, Articles 1240, 1246 to 1252 of the French Civil Code, Articles L 211-3 et seq. and L 211-20 of the French Code of Judicial Organisation and Articles 789, 696, 699 and 700 of the French Code of Civil Procedure, to :

- DECLARE admissible and well-founded the claimants;
- DECLARE the judicial court of Nanterre materially competent;
- consequently, DISMISS SE Total's claims in their entirety;
- ORDER SE Total to pay the associations and local authorities in the main proceedings the sum of EUR 10,000 under Article 700 of the Code of Civil Procedure;
- ORDER SE Total to pay all the costs of the proceedings, including direct recovery from Maîtres Sébastien Mabile and François de Cambiaire.

The parties having duly constituted a lawyer, the order will be contradictory in accordance with Article 467 of the Code of Civil Procedure.

REASONS FOR THE ORDER

As a preliminary point, the Pre-Trial Judge noted that, although the commune of Champneuville does not appear on the first page of the last pleadings of the plaintiffs, the latter had not withdrawn its proceedings or its action. Nor has the mandate of its counsel been revoked within the meaning of Articles 418 and 419 of the Code of Civil Procedure. It therefore remains a party to the dispute, an analysis shared by SE Total, which refers to it in its final submissions.

1°) On the plea of lack of jurisdiction

Pleas in law of the parties

In support of its plea of lack of jurisdiction, SE Total states that, in the absence of any mention of Article L 225-102-4 of the French Commercial Code, the application of the provisions of ordinary law entails the exclusive jurisdiction of the commercial court to hear actions based on the breach of obligations relating to the due diligence plan because :

- Article L 721-3 2° of the Commercial Code gives exclusive jurisdiction to the commercial court to hear disputes relating to commercial companies, regardless of the status of the parties, provided that the alleged facts are directly related to the management of commercial companies. It specifies that this link, broadly understood, does not imply any act of management in the strict sense and that the legal rule applicable to the merits has no bearing on its application, a finding that renders irrelevant the invocation, which is unfounded, of the civil nature of the obligation laid down by Article L 225-102-4 of the Commercial Code;
- The 2018 Compliance Plan, drawn up under the authority of the Board of Directors and submitted to the vote of its shareholders' meeting when the annual financial statements and the management report are adopted in accordance with Article L 225-100 of the French Commercial Code, constitutes, in its preparation and adoption, a management act, as the actions implemented, like those desired by the plaintiffs that affect its overall strategy, directly affect its day-to-day operations (human resources management, governance, safety of employees and staff, choice of suppliers)

It adds that the plaintiffs do not have a right of option because of its status as non-traders and that the so-called Uber decision handed down by the Commercial Chamber of the Court of Cassation on 18 November 2020 is not transposable in that it concerned an action for unfair competition and based the right of option on the existence of a mixed act that is incidentally non-existent in this case, since the enactment of the due diligence plan constitutes a management act

unilateral. It specifies that "commercial companies" constitute commercial acts by form and that the due diligence plan, insofar as it affects its operation, is a commercial act by form, a qualification that gives rise to the jurisdiction of the commercial court by application of Article L 721-3 3° of the Commercial Code.

Finally, SE Total explains that, since they are identical to the main claims, pursue exactly the same ends and are also linked to its operations, the additional complementary claims do not affect the determination of jurisdiction, since they do not fall within the exclusive jurisdiction of the court, since the rules opposed relate exclusively to the territorial concentration of the courts specialised in compensation for environmental damage.

In reply, the plaintiffs state that the court of law is, in principle, a court of special attribution of jurisdiction to another court, competent on the basis of Article L 211-3 of the Code of Judicial Organisation because of the civil nature of the duty of vigilance, this nature resulting from the objectives of the law (regulation of the activities of companies towards third parties), its consecration by the Constitutional Council on 23 March 2017, parliamentary work and the effects and purpose (prevention of risks in environmental matters, infringement of human rights and infringement of the health and safety of persons, which are all matters falling within the exclusive jurisdiction of the judicial court) of the standard of behaviour of which the due diligence plan is the support.

In the alternative, they contest any direct link between the due diligence plan and the management of the Total SE. Stressing the need to interpret this concept strictly because of the derogatory nature of commercial competence, they argue that this link presupposes the performance, in this case absent, of an act by the company's management bodies and that the commitments made by Total SE involve all the components of the company as well as all the stakeholders and have harmful consequences for third parties that exceed those of management acts.

They also invoke a right of option based on their status as non-traders and the mixed nature of the acts taken in application of the obligations relating to the duty of vigilance. And, relying on the Uber judgment, they oppose a general right of option based on their status independently of the existence of a mixed act.

Finally, they claim that their additional claims, insofar as they are based separately and autonomously on Article 1252 of the Civil Code, fall within the exclusive jurisdiction of the court.

Assessment of the pre-trial judge

Pursuant to Article 789 of the Code of Civil Procedure, as amended by Decree No 2019-1333 of 11 December 2019, applicable to the dispute in accordance with Article 55 thereof, when the claim is presented after his appointment, the Pre-Trial Judge has sole jurisdiction, to the exclusion of any other court formation, until he relinquishes jurisdiction, to rule on procedural objections, on applications made pursuant to Article 47 and on incidents putting an end to the proceedings, the parties no longer being entitled to raise these objections and incidents subsequently unless they arise or are revealed after the judge has relinquished jurisdiction.

In accordance with Articles 73 and 74 of the Code of Civil Procedure, procedural objections, consisting of any plea which tends either to declare the proceedings irregular or extinguished or to suspend their course, must, on pain of inadmissibility, be raised simultaneously and before any defence on the merits or plea of inadmissibility, irrespective of whether the rules invoked in support of the objection are of public order

And, according to articles 75 and 76 of the same code, if it is claimed that the court seised has no jurisdiction, the party raising this objection must, on pain of inadmissibility, give reasons for it and make known in all cases before which court he requests that the case be brought, the judge being able, in the same judgment, but by separate provisions, to

declare that it has jurisdiction and rule on the merits of the case, unless the parties are first given notice to conclude on the merits.

Article L 225-102-4 II of the Commercial Code specifies that the action it opens up to any person with an interest in acting is subject to the "competent jurisdiction". The only relevant elements drawn from the parliamentary works invoked by the parties, which never mention a court with exclusive jurisdiction, are

- the clarification provided in these terms by Dominique Potier, MP, in opinion No. 2628 on behalf of the Committee on Constitutional Laws, Legislation and the General Administration of the Republic on the draft law (No. 2578) on the duty of care of parent companies and contractors: "The due diligence plan shall be made public and appended to the report referred to in Article L 225-102 of the Commercial Code. Any person with an interest in acting may request, possibly in summary proceedings, that the civil or commercial court order the company to draw up the due diligence plan, ensure its public disclosure and report on its implementation" (page 69). The only reason for deleting this reference was the need to bring into play the normal rules on the attribution of jurisdiction to avoid excluding "other courts with potential jurisdiction in particular cases" (pages 36, 71 and 75);
- the comparative table drawn up on page 57 of the report (No. 74) on behalf of the Committee on Constitutional Law, Legislation, Universal Suffrage, the Rules of Procedure and General Administration on the draft law, adopted by the National Assembly, on the duty of care of parent companies and ordering companies, presented by Senator Christophe-André Frassa, which reveals that the text of the draft law included the same option between "civil or commercial jurisdiction", which has been replaced by the general terms "competent jurisdiction". This substitution is not explained in any other way by the opinion drawn up on behalf of the Economic Affairs Committee on the draft law on the duty of care of parent companies and contractors (No. 2578) than by the lack of need "to derogate from the rules of jurisdictional competence under ordinary law by specifying that only civil or commercial courts are competent" (page 27), Opinion No. 2627 on behalf of the Committee on Sustainable Development and Town and Country Planning on the draft law on the duty of care of parent companies and contractors (No. 2578), which states that it was unnecessary to make the text more cumbersome by specifying the competent jurisdiction (page 25).

Thus, although these elements do not support the exclusive jurisdiction invoked by SE Total and leave open the possibility of concurrent jurisdiction of the judicial court and the commercial court, the parliamentary works do not allow any clear distinction to be made and refer, as does the letter of the text, to the rules of jurisdiction under ordinary law.

Under the terms of Articles L 211-3 and 4 of the Code of Judicial Organisation, the judicial court hears all civil and commercial cases for which jurisdiction is not attributed, due to the nature of the claim, to another court, and has exclusive jurisdiction in matters determined by the laws and regulations.

Thus, the judicial court has full jurisdiction in the sense that any dispute not expressly assigned to another court falls within its competence. It differs from the commercial court which is an exceptional court whose jurisdiction is, on the contrary, necessarily explicitly provided for by the law and is subject to strict interpretation. And, if SE Total, as plaintiff to the exception of lack of jurisdiction in favour of the commercial court, has to prove that the dispute falls within its exclusive jurisdiction, the local authorities and plaintiff associations, defendants to the incident, can be satisfied with a concurrent jurisdiction.

Pursuant to Article L 721-3 of the Commercial Code, the commercial courts are responsible for

1° Disputes relating to commitments between merchants, between credit institutions, between finance companies or between them;
2° Those relating to commercial companies;
3° Those relating to commercial acts between all persons.

It is accepted that, as none of the plaintiffs is a trader, this is irrelevant to the dispute.

Although it devotes most of its argument to the application of the second paragraph, SE Total incidentally raises the exclusive jurisdiction of the commercial court on the basis of the third paragraph (§96 of its pleadings) on the grounds that the due diligence plan is a commercial act in that it is linked to the company's operations.

This plea is lacking in law because the development of a vigilance plan, regardless of its actual impact on the internal organisation of Total SE and its commercial strategy, is unconnected with any production or supply of goods and is unrelated to any speculation on the value of the work of others or of any product whatsoever: it is not a commercial act by nature as defined in Articles L 110-1 and 2 of the French Commercial Code (trading, industry, services relating to entertainment activities or financial operations, intermediaries or goods, maritime activities). Nor is it a commercial act by form such as the bill of exchange referred to in Article L 110-1 10° of the Commercial Code. And the fact that the SE Total, a joint stock company, is commercial by form pursuant to Article L 210-1 of the Commercial Code does not imply that all its acts are commercial by accessory. The due diligence plan is a legally binding unilateral act of a civil nature, as confirmed not only by its purpose, but also by the characterisation adopted in the parliamentary work on the law.

As the civil nature of the disputed obligation does not imply any exclusive jurisdiction of the judicial court in the absence of a special legal or regulatory provision in accordance with Article L 211-3 of the Code of Judicial Organisation, and as the effects of the disputed act are not established by law as a criterion for determining the jurisdiction of a judicial court, the only relevant ground of jurisdiction is Article L 721-3 2° of the Commercial Code.

Article L 721-3 of the Commercial Code was created under constant law (Article 86 of Enabling Act No 2004-1343 of 9 December 2004 on the simplification of the law) by Order No 2006-673 of 8 June 2006 repealing Article L 411-4 of the Code of Judicial Organisation previously created by Act No 2001-420 of 15 May 2001 to retroactively fill the void left by the involuntary repeal of Article 631 of the Commercial Code resulting from the Act of 17 July 1856. Although the nature of this last legislative intervention implied a codification in constant law, article L 721-3 2° did not take up the exact terms of the article to which it gave new life by retaining only the 'disputes relating to commercial companies' without reference to the existence of a dispute between partners.

On the basis of this legislative amendment, positive law then saw a twofold extension of commercial jurisdiction to disputes relating to a transfer of shares in a commercial company, regardless of the civil or commercial nature of the transfer, which does not have to be a transfer of control, and of the defendant's status as a non-trading company (in this sense, Com. 27 October 2009, no. 08-20.384). In this context, it is accepted that the commercial court has jurisdiction over actions relating to facts that have a direct link to the management of commercial companies.

This notion has been understood extensively in case law and in doctrine to cover all situations which call into question the existence or application of the partnership agreement (expression used by Com. 6 December 1966). This covers disputes relating to the formation, operation or dissolution of a commercial company as well as the formation of the share capital and the status of partner (subscription of shares and transfers of shares). The operation of a commercial company has itself been defined in a broad sense so as not to be limited to disputes relating to the appointment, dismissal and liability of company directors, but to include all disputes directly related to the management, which is not necessarily expressed in a management act, of the company (in this sense, Com. 27 October 2009, already cited, and Com. 14 November 2018, no. 16-26.115 and the doctrinal comments produced as exhibits 11 and 13 in the application to the incident, the organic criterion opposed by

the plaintiffs - page 22 of their pleadings and exhibit 15 - is, on the other hand, not set out and is contrary to the extension made in respect of transfers of securities).

The link between the obligations imposed on the SE Total by Article L 225-102-4 I of the Commercial Code must be made with this broad interpretation, which is a matter of positive law despite the principle of strict interpretation of the jurisdiction of the special court.

According to this provision, any company which employs, at the end of two consecutive financial years, at least five thousand employees in its own company and in its direct or indirect subsidiaries whose registered office is located in France, or at least ten thousand employees in its own company and in its direct or indirect subsidiaries whose registered office is located in France or abroad, shall draw up and effectively implement a compliance plan.

The plan shall include reasonable vigilance measures to identify and prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment, resulting from the activities of the company and those of the companies it controls within the meaning of II of Article L 233-16, whether directly or indirectly, as well as from the activities of subcontractors or suppliers with which it has an established business relationship, when these activities are linked to this relationship.

The plan is intended to be drawn up in association with its stakeholders, where appropriate in the context of multi-stakeholder initiatives within sectors or on a territorial basis. It includes the following measures:

1° A risk map to identify, analyse and prioritise risks;

2° Procedures for regular assessment of the situation of subsidiaries, subcontractors or suppliers with whom an established commercial relationship is maintained, with regard to risk mapping;

3° Appropriate actions to mitigate risks or prevent serious harm;

4° A mechanism for alerting and collecting reports on the existence or occurrence of risks, established in consultation with the representative trade unions in the company;

5° A system for monitoring the measures implemented and for the effectiveness.

The compliance plan and the report on its effective implementation shall be made public and included in the management report referred to in the second paragraph of Article L 225-100.

As noted by the interim relief judge of the judicial court and the Versailles Court of Appeal confirming its decision in a very similar dispute which the parties are debating (order of 20 January 2020 RG 19/02833 and decision of 10 December 2020 RG 20/01692), beyond the formal arguments based on, on the one hand the insertion of the new provisions in Section 3 "Shareholders' meetings" of Chapter V "Public limited companies" of Title II "Provisions specific to the various commercial companies" of Book II "Commercial companies and economic interest groupings" and on the other hand, the inclusion of the compliance plan in the management report provided for in Article L 225-100 of the Commercial Code, in particular to provide a framework for its disclosure, the preparation and implementation of the compliance plan directly and significantly affect the business of the Total SE, and hence its management, by requiring it to :

- develop "assessment procedures" for risks in its relations with its subsidiaries, subcontractors and suppliers, a "warning and reporting mechanism" and a "system for monitoring the measures implemented and evaluating their effectiveness". The fulfilment of these additional obligations requires the creation of dedicated posts and regularly updated monitoring, control and dialogue tools with the identified partners: it directly affects the day-to-day management of its personnel (tasks and working hours) by SE Total and the activities of its employees as well as its relations with its subcontractors and suppliers;
- actions to mitigate or prevent previously mapped risks that have a direct impact on the strategic choices of the Total EM do not

In accordance with Article 1833 of the Civil Code, a company must now be managed 'in its social interest, taking into consideration the social and environmental challenges of its activity' (wording resulting from Law No. 2019-486 of 22 May 2019). It must integrate into its strategic orientations the risks of human rights and environmental violations and, in fact, in view of the nature of its activity, proceed to substantial abandonment or reorientation.

In fact, without the incident being the place to examine the sufficiency of the measures the 2018 reference document of the SE Total (excerpts in Exhibit 13) testifies to the changes adopted by the latter in its internal organisation and operation (development of guides and a code of conduct, creation of self-assessment and risk analysis tools, conclusion of agreements in the framework of a "dedicated organisation" in the area of human rights; creation of a specific unit to integrate climate issues into the group's strategy and change in the criteria for the variable remuneration of the Chairman and CEO to take into account compliance with the objectives set in this area, which also requires strategic actions and investments of its own; standardisation of suppliers' activities...). And, under the terms of their summons, the plaintiffs intend to impose on SE Total, through the modification of its vigilance plan, reductions in its gas and oil production that are likely to radically modify its commercial activity.

Thus, the preparation and implementation of the due diligence plan are directly related to the management of the Total SE, a criterion that is the basis for the jurisdiction of the commercial court. However, this finding alone does not mean that the court does not have jurisdiction, as the law does not specify that the jurisdiction defined by Article L 721-3 of the Commercial Code, in particular in 2°, is exclusive. This character thus remains to be determined and touches on the question of the right of option invoked by the plaintiffs.

They rely in this respect on the Uber judgment handed down by the Court of Cassation on 18 November 2020 (No. 19-19.463). The dispute, brought before the district court, pitted Parisian taxi drivers and the union of their cooperative companies against the company Uber, which they accused of acts of unfair competition relating to the creation and marketing of an UberPop application enabling private individuals to be put in contact with each other, with some being able to benefit from vehicles owned by others. On appeal against the judgment of the district court which had rejected its jurisdiction in favour of the commercial court on the basis of Article L 721-3 2° of the Commercial Code, the Paris Court of Appeal, upholding a general right of option belonging to all non-trading plaintiffs (which it describes as a "fundamental principle" on page 98), overturned the judgment by judgment of 16 May 2019. The Court of Cassation dismissed the appeal against this judgment on the grounds, which merits a full citation because of its generality, which is also emphasised by the summary of the widely published judgment, that "after having recalled that the jurisdiction of the consular courts may be retained when the defendants are persons who are neither merchants nor directors of a commercial company, provided that the facts of which they are accused are directly related to the management of that company, the judgment rightly states that, however, when the plaintiff is a non-trading person, he has the choice of bringing the case before the civil court or the commercial court and that, having noted that the plaintiffs were not traders, it deduces that they had an option of jurisdiction allowing them to bring a valid case before the civil court for unfair competition against a commercial company and two of its employees.

Contrary to what SE Total maintains, which moreover conceals the fact that the previous judgments handed down in this matter involved commercial plaintiffs and that they did not rule on the exclusive nature of the jurisdiction of the commercial court, the fact that the dispute concerns acts of unfair competition does not prevent it from being transposed to the debate, since the theory of the mixed act, which is the basis for an option of jurisdiction in favour of the non-trading plaintiff and which has been used to extend commercial jurisdiction to non-trading defendants, could not be mobilised by the Court: it is only valid in contractual matters for acts concluded between a trader and a non-trading person. However, an act of unfair competition is a legal fact. And, if unfair competition was able to come within the jurisdiction of the commercial court in that it was an accessory

of a commercial act, it is now accepted that the due diligence plan is not co Moreover, this praetorian basis only makes sense when the jurisdiction is based on Article L 721-3 1° of the Commercial Code in that it refers exclusively to the status of the parties to the act. It no longer has any meaning on the basis of the second paragraph, which is more objective and indifferent to the latter since it is based exclusively on the subject matter of the dispute.

Moreover, the fact that this dispute concerns unfair competition when the qu before the court falls within the scope of Article L 225-102-4 of the Commercial Code is in no way decisive. Indeed, II of this text provides for an action for cessation of unlawful conduct which is, in the same way as reparation, a function of tort liability. The legal framework is thus the same, a fact that is not likely to lead to separate jurisdictions in application of Articles L 225-2014-2 and 3, which both subject in the same terms to
In this case, the action they initiate is referred to "the competent court". And the option was retained even tough the dispute was much more commercial than the current proceedings, due to the facts of unfair competition in which certain authors saw acts that were objectively commercial by accessory.

The basis for such an option, which is laid down in all generality by the Court of Cassation, actually derives from the nature of the commercial court and the spirit which presided over its creation, and which remains in part, as well as from the subject matter of the dispute concerning the commercial company.

The commercial court, as has been pointed out, is an exceptional court inspired by regional creations and then instituted in Paris in the 16th century on the initiative of Chancellor Michel de l'Hospital to satisfy the need for "justice for merchants, by merchants, for merchants". Although commercial jurisdiction has been extended, particularly under the Act of 15 May 2001, and adapted to changes in trade, this idea persists, as shown by the structure of the commercial court, a consular court composed of elected non-professional judges: it is a court of peers whose jurisdiction is essentially justified by the greater speed and lower cost of processing cases, as well as by its members' technical knowledge of the customs and habits of trade and of the practical operation of commercial companies.

While the due diligence plan undoubtedly affects the operation of the TSE, its purpose and the risks it is intended to prevent go far beyond the strict framework of the management of a commercial company. Thus, no one disputes, and the preparatory work for Act No. 2017-399 of 27 March 2017 affirms, that the provisions of Article L 225-102-4 of the Commercial Code were passed because it was no longer possible to tolerate "the perpetuation of the most obvious forms of modern slavery, the most disrespectful behaviours of the dignity of workers, which we had hoped would disappear
with the 19th century, the most irresponsible exploitation of natural resources and
It was also argued that, while not "embodying the 'great night' of environmental policy", the new law "pursued the more modest but also more realistic objective of opening the way and showing the world that action is possible, that the economy has not entirely, as some claim, taken over politics, (introduction to report No. 2628 on behalf of the Committee on Constitutional Law, Legislation and General Administration of the Republic on the draft law (No. 2578) on the duty of care of parent companies and contractors). It is thus certain, given the nature of the violations to be mapped, monitored and prevented, beyond the already extensive circle of workers working directly or indirectly for Total, that the vigilance plan of such a company directly affects the Company as a whole, an impact that constitutes its raison d'être, and falls within the social responsibility of Total, in an even more obvious manner than the action that was the subject of the Uber ruling.

The letter of Article L 225-102-4 of the Commercial Code reveals that the preservation of human rights and of Nature in general cannot be satisfied with the open "insurance management" mentioned in the parliamentary works and with the standardisation by the market induced by the presentation of the vigilance plan at the shareholders' meeting, but requires a judicial control. And this can only be achieved through strong social control made possible by the publicity of the due diligence plan and by a loose definition of the interest to act, the action being very largely

open ("any person with an interest in acting"). In this case, the plaintiff associations and local authorities not acting in a commercial interest, but exclusively in that part of the general interest that they represent and which is precisely that which goes beyond the commercial dimension of the management of SE Total. On this point, the exclusive jurisdiction of the commercial court is not justified, given the criteria on which it is based, a finding that no doubt explains the reference made in the parliamentary proceedings to the alternative between civil and commercial jurisdictions, which was abandoned in favour of a neutral formula that does not exclude it.

Consequently, the full jurisdiction of the judicial court combined with the absence of any provision for the exclusive jurisdiction of the commercial court, as well as the direct involvement of the corporate liability of the Total SE far beyond the effectively direct link with its management taken in connection with the plaintiffs' status as non-traders, give them a right of option, which they can exercise at their convenience, between the judicial court, which they have validly referred to, and the commercial court.

Consequently, SE Total's plea of lack of jurisdiction will be dismissed, without being necessary to examine the pleas relating to the additional claims.

2°) On the ancillary claims

Unsuccessful in the action, SE Total, whose claim for unrecoverable costs will be dismissed, will be ordered to pay the plaintiffs the sum of EUR 6,000, to be shared equally between them.

Costs will be reserved for the examination of the merits of the case.

THEREFORE

The Preliminary Examining Magistrate, ruling by a contradictory order delivered at first instance, made available to the parties at the clerk's office on the day of the deliberation,

Rejects the objection of lack of jurisdiction as to subject matter raised by SE Total;

Dismisses SE Total's claim under Article 700 of the Code of Civil Procedure;

Orders SE Total to pay to the Notre Affaire à tous association, the Sherpa association, the Zéa association, the Eco Maires - Association Nationale des Maires et des Elus Locaux pour l'Environnement et le Développement Durable (National Association of Mayors and Local Elected for the Environment and Sustainable Development), the France Nature Environnement association, the Arcueil municipality, the Bayonne municipality, the Bègles municipality, the Bize-Minervois municipality, the Correns municipality, the Champneuville municipality, l'établissement public territorial Est Ensemble, la commune de Grenoble, la commune de la Possession, la commune de Mouans-Sartoux, la commune de Nanterre, la commune de Sevran, la commune de Vitry-Le-François et la région Centre - Val de Loire la somme globale de SIX MILLE EUROS (6 000 €) en application de l'article 700 du code de procédure civile, à charge pour elles de se répartir ce montant à parts égales;

Reserves for the court's consideration of the merits of the case the parties' claims for costs;

In accordance with Articles 780 and 781 of the Code of Civil Procedure, the case and the parties are remitted to the pre-trial hearing of 11 March 2021 at 10 a.m. for SE Total's submissions on the merits and the setting of a foreseeable date for closure and oral arguments.

signed by Julien RICHAUD, Vice-President, in charge of the preparation of the case, and by Christine DEGNY, Registrar present at the time of the pronouncement.

THE REGISTRAR
Christine DEGNY

THE PRE-TRIAL JUDGE
Julien RICHAUD