Corporate Duty of Vigilance in Climate Litigation

The TotalEnergies Judgment of 25 June 2026

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30.06.2026 doi: 10.59704/ea7ea9e9a75c5009

On 25 June 2026, the Paris Judicial Court ruled on the adequacy of TotalEnergies' vigilance plan. Among other things, the Court ruled that the company's Vigilance Plan must address the greenhouse gases generated through the downstream use of its products (Scope 3 emissions). The ruling comes as climate litigation assumes a central role in shaping the legal contours of corporate climate responsibility, providing courts with an increasingly prominent forum for defining private actors' obligations. It applies the French Duty of Vigilance Act to corporate climate strategy and raises fundamental questions regarding the scope and enforcement of statutory due diligence obligations (See §207-209). Although the French Duty of Vigilance Act served as a model for the EU Corporate Sustainability Due Diligence Directive (CSDDD), its practical implementation remained uncertain for several years. Substantive judicial guidance emerged only with the first decision on the merits in late 2023, while many corporate vigilance plans were criticized for being absent or insufficiently robust to identify and prevent the risks they were intended to address. The prospect of judicial interpretation of the Act in the context of climate change was therefore of particular legal significance, as it afforded the first opportunity to ascertain whether the statutory duty of vigilance could be construed as an effective legal framework through which corporations might be held accountable for their contribution to climate change.

The dispute was brought by several environmental non-governmental organizations and the City of Paris, who challenged the adequacy of the vigilance plan on the ground that it failed to sufficiently address climate-related risks arising from the company's activities and value chain, in particular by excluding Scope 3 greenhouse gas emissions associated with the downstream use of its products. The claimants also sought orders to halt all new fossil fuel development projects, to achieve a 40 per cent reduction in greenhouse gas emissions compared to 2020 levels, and, in the alternative, on the basis of Article 1252 of the French Civil Code, to implement preventive measures aimed at avoiding ecological damage by aligning its emissions trajectory with the Paris Agreement.

Beyond its outcome, the judgment raises three interconnected legal issues. First, it required the court to determine the extent of the duty of vigilance in climate matters, and in particular whether its scope extends to indirect emissions, including those generated through the use of the company's products. Second, it raises the question of whether the duty of vigilance should be understood as imposing binding legal obligations or whether it remains primarily a framework of enhanced corporate compliance. Third, it invites reflection on the relationship between this preventive regime and the French Civil Code's rules on ecological damage, as well as on the extent to which courts may integrate these different sources of environmental liability.

This post argues that the judgment simultaneously strengthens the normative content of the Duty of Vigilance while revealing the judiciary's reluctance to fully articulate a unified framework of corporate climate responsibility. It therefore combines substantive expansion with institutional restraint. The analysis proceeds in three stages. It first examines the court's interpretation of the scope of the duty of vigilance in climate matters. It then considers the unresolved relationship between preventive obligations and ecological damage liability. Finally, it analyses the judgment through the lens of judicial self-restraint and the limits of climate adjudication.

A Landmark Expansion of the Duty of Vigilance in Climate Litigation

The Paris Judicial Court grounds its reasoning in the preventive purpose of the vigilance plan under Article L. 225-102-1 of the French Commercial Code. Rather than treating the vigilance plan as a purely procedural requirement, the court interprets it as requiring companies to identify and prevent serious human rights and environmental risks arising from their own activities and those of entities with which they maintain established commercial relationships. In reaching this conclusion, the court relies both on the OECD Guidelines for Multinational Corporations and on the preamble to the Act, interpreted in light of the *preparatory works* that informed its adoption, thereby endorsing a purposive interpretation of the statutory duty of vigilance (paras. 203–208).

The central issue was whether this obligation extends beyond emissions directly generated or controlled by the company. Rejecting a narrow interpretation confined to Scopes 1 and 2 emissions, the court held that such an approach would undermine the preventive rationale of the Duty of Vigilance Act. The relevant criterion is not limited to an operational control but explores the existence of foreseeable climate risks connected to the company's activities (paras. 209 and 252).

The judgment is particularly significant for its treatment of Scope 3 emissions (paras. 151–170). By requiring emissions generated through the downstream use of TotalEnergies' products to be addressed in the vigilance plan, the court adopts a functional understanding of corporate responsibility. The duty of vigilance extends to risks that are economically and causally linked to the company's business model, even where the emissions are produced by third parties. The vigilance plan therefore becomes a forward-looking due diligence instrument designed to anticipate climate-related harm throughout the value chain, not a simple reporting obligation.

This interpretation considerably strengthens the legal significance of the Duty of Vigilance Act. Generic risk mapping or formal documentation is no longer sufficient. Companies must identify concrete climate risks and adopt preventive measures capable of addressing them across their value chain. The inclusion of Scope 3 emissions is therefore not merely a technical adjustment to emissions accounting but a recognition that climate-related risks fall within the legal scope of corporate due diligence.

The court presents this interpretation as a consequence of the Act's existing framework, not as an extension of the statutory duty. Climate-related risks are thus treated as falling within the ordinary operation of the vigilance obligation, rather than as giving rise to a distinct or additional duty (para. 170). The interpretation is expansive but stays textually grounded, so it broadens the vigilance obligation without departing from the legislative framework.

The decision confirms that the Duty of Vigilance Act imposes enforceable legal obligations rather than merely encouraging voluntary corporate compliance and establishes climate change as a legally relevant risk that companies must anticipate through effective governance measures.

The Articulation Between Preventive Vigilance and Ecological Damage Liability

Beyond interpreting the Duty of Vigilance Act, the judgment addresses the relationship between corporate due diligence and the regime of liability governing ecological damage under the French Civil Code. The claimants invited the court to assess the deficiencies of TotalEnergies' vigilance plan not only under the Duty of Vigilance Act but also through the preventive obligation established by Article 1252 of the Civil Code (paras. 223–235). This approach would have extended to the corporate sphere the reasoning already developed in *Affaire du Siècle*, where the Paris Administrative Court relied on ecological damage liability to hold the State accountable for inadequate climate action and in *Fédération départementale pour la pêche et la protection du milieu aquatique de Haute-Saône.* The present case therefore offered an opportunity to combine the preventive mechanisms of the Duty of Vigilance Act with the regime of ecological damage and liability codified in the Civil Code.

The claimants argued that these two regimes should be read together. The Duty of Vigilance Act imposes ex ante obligations to identify and prevent serious environmental risks, while Article 1252 establishes a general duty to prevent ecological harm. Read together, they would enable the court to assess not only the formal adequacy of the vigilance plan but also whether the company's climate strategy satisfied its broader preventive obligations under civil law.

The court does not reject this approach. On the contrary, it recognizes that both instruments pursue the same preventive objective and therefore belong to a common framework of environmental risk prevention (paras. 248–253). This acknowledgement is a significant development, as it moves beyond a compartmentalized understanding of French environmental law.

The court nevertheless declines to order additional preventive measures under Article 1252. Its reasoning is procedural rather than substantive. Having ordered TotalEnergies to revise its vigilance plan within six months, the court considers that it cannot determine whether further measures are necessary until the revised plan has been submitted and assessed (paras. 253–254). The application of Article 1252 is therefore postponed, not excluded.

The judgment thus distinguishes between recognizing the legal relationship between the two regimes and enforcing it. While the court accepts that the Duty of Vigilance Act and the Civil Code form part of the same preventive framework, it postpones any combined application until the company's revised vigilance plan has been examined. This sequential approach preserves procedural coherence while leaving open the possibility that Article 1252 may subsequently complement the statutory duty of vigilance.

The decision therefore marks an important step towards integrating corporate due diligence and ecological damage prevention without yet completing that process. Rather than establishing a unified model of corporate climate responsibility, it lays the foundations for one, leaving future litigation to determine the practical consequences of this emerging relationship.

Judicial Self-Restraint in Corporate Climate Governance

Beyond its recognition of corporate climate obligations, the judgment is of particular institutional interest for the way in which the court articulates the scope of its own judicial role.

Throughout the proceedings, TotalEnergies argued that the principle of separation of powers prevented the court from prescribing the substantive content of the vigilance plan or from determining the preventive measures that the company should adopt (paras. 191, 198 and 200). The defendants further submitted that Article 1252 of the Civil Code could not provide an independent basis for judicially imposed climate measures.

The court rejects this objection only in part. It confirms that the Duty of Vigilance Act and the preventive obligation embodied in Article 1252 pursue the same objective of environmental risk prevention and therefore belong to a common normative framework (para. 209). At the same time, however, it distinguishes between recognizing this legal relationship and drawing immediate remedial consequences from it.

That distinction is dictated by the procedural posture of the case. Having ordered TotalEnergies to revise its vigilance plan within six months, the court considers that it cannot yet determine whether additional preventive measures under Article 1252 are necessary. Any assessment of such measures necessarily depends on the content of the revised plan. The articulation between the two regimes is therefore not rejected but deferred.

This reasoning reflects a measured conception of the judicial function. The court accepts responsibility for reviewing the legality and adequacy of the vigilance plan, but declines to substitute its own assessment for that of the company's governing bodies by prescribing climate strategy or preventive measures before the revised plan has been examined. Judicial review is thus conceived as sequential rather than comprehensive: compliance with the Duty of Vigilance Act must first be assessed before the court can

consider whether the general preventive regime of the Civil Code requires further intervention.

The judgment consequently adopts a nuanced form of judicial self-restraint. It neither excludes the application of Article 1252 nor treats the Duty of Vigilance Act as a self-contained regime. Instead, it postpones the combined operation of both instruments until the factual and legal basis for such intervention has been established. The decision therefore leaves open the possibility of a more integrated model of corporate climate accountability while confirming that its judicial construction will develop incrementally rather than through a single ruling.

Final remarks

More broadly, the judgment reflects the gradual consolidation of corporate climate accountability within French private law. It clarifies aspects of the legal framework governing the duty of vigilance in relation to human rights and environmental harm, while leaving its precise contours to be further developed in subsequent case law. In this respect, the decision may be seen as contributing to an emerging line of authority rather than definitively settling the question.

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SUGGESTED CITATION

Torre-Schaub, Marta: Corporate Duty of Vigilance in Climate Litigation: The TotalEnergies Judgment of 25 June 2026, Verfassungsblog, 30.06.2026, doi: 10.59704/ea7ea9e9a75c5009.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260630-190627-0.