THIS IS WHAT A TOTAL PHASE OUT LOOKS LIKE

REPORT BY THE MULTINATIONAL OBSERVATORY & 350.ORG

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The climate crisis is accelerating at an alarming rate. While no one denies that fossil fuels are the primary cause of the climate crisis and that, for a long time now, the international consensus has been that we must “leave it in the ground”, it’s clear that huge amounts of coal, gas and oil are still being extracted and new deposits are being explored. There has been a sharp acceleration in renewable energy development, but by continuing to exploit fossil fuels, we risk derailing the development of renewables and depriving the transition of the required resources.

After decades of denial and overt obstruction, big oil and gas multinationals like TotalEnergies are now choosing to adopt a more subtle and seemingly more constructive narrative on climate change. They’ve claimed to whoever would listen (mostly successfully when it comes to political leaders) that although they were definitely part of the problem, they are also part of the solution, if not the solution itself. They’ve hugely monopolized the climate action narrative — aiming to neutralize and undermine the arguments — while also managing to secure a large share of the funding to finance the development of the “solutions” they’re pushing. There’s no denying it. The apparent participation of oil and gas multinationals in the energy transition is merely a front. TotalEnergies and their peers have only jumped on the climate transition bandwagon so that they can continue to exploit fossil fuels for as long as possible.

In this report we analyze the following question: faced with Big Oil’s pursuit to continue exploiting fossil fuels and to block all ambitious climate initiatives, what can we do to take back control for an effective response and a fair and inclusive transition approach to the climate emergency? The choice to maintain the economic and political power of the fossil fuel industry, allowing them to block ambitious climate action and pass on the costs to others, has led us to an impasse. If we want to achieve a total phase out of fossil fuels by 2050, we need to address this power imbalance to accelerate the renewable energy transition.

Using the example of TotalEnergies, this report details different ways to regain control and rapidly phase out fossil fuels, within the "just transition" framework that is democratic, transparent, and inclusive. It also looks at the historic influence and disruptive power that the fossil fuel industry has wielded up until now and offers ways to steer that power back toward the general interest. The report suggests one avenue for this is to prioritize interests beyond shareholder profit demands through a nationalization process. Transforming TotalEnergies into a public entity, and engaging it, in an exit from fossil fuel extraction. Once complete, all the company's resources would be redirected to serve society and its needs. However, history shows that state control of a company's shareholding alone doesn't guarantee democratic supervision or the "right direction" of corporate decisions. This report proposes solutions such as requisition or implementing a climate safeguard procedure that could be explored to avoid these problems.

This report details what a different future for TotalEnergies could look like. Starting with a planned exit from oil and gas extraction activities and then broadening out to how France could apply this logic beyond oil and gas to electricity, transport and gas distribution sectors. And then outlining what a coordinated international approach to how transforming fossil fuel companies throughout Europe and North America would look.

TotalEnergies is the focus of this report, but the subject is not unique. Similar studies on ways to build decarbonized and democratic energy systems, serving populations rather than large corporations have been initiated on the future of the fossil energy industry players like Shell, Eni, or RWE. This proposal could fit into a coordinated and shared international approach targeting the entire fossil fuel sector, making it more plausible and easily achievable.

Faced with the climate crisis, there is no option other than the "radical choice." There is not enough time for gradual changes that do not materialize. The acceleration of the climate crisis and its impacts necessitates change at a faster pace and requires radical scenarios to become inevitable.

.

INTRODUCTION

The climate crisis is accelerating right before our eyes. If we wish to minimize the global rise in temperatures, not only do we need to stop exploiting new fossil fuel deposits but we also need to reduce gas and oil production by 5% and coal by 8% every year until 2050. These are the latest estimates from the International Energy Agency published in October 2023[1], which are broadly aligned with the UN climate change report findings.

In other words, we need a rapid exit from fossil fuels and massive investment in a carbon-free energy system based on renewables.

However, while no one denies that fossil fuels are the primary cause of the climate crisis and that, for a very long time, the international consensus has been that we must "leave it in the ground", it's clear to see that huge amounts of coal, gas and oil are still being extracted and new deposits are being explored. There has been a sharp acceleration in renewable technology developments (despite the uncertainty caused by current interest rate rises), but the other part of the equation has been completely abandoned. **By continuing to exploit fossil fuels, we risk derailing the development of renewables and depriving this movement of the required resources.**

Thanks to inflation and the war in Ukraine, we've recently started to see a backwards step. Large corporate polluters are going against their decarbonization strategies and climate commitments[2]. Some politicians are calling for a "pause" in environmental legislation. Climate crisis skepticism is gaining ground, fueled by feelings of powerlessness and bolstered by a number of political and industrial leaders.

After decades of denial and overt obstruction[3], big oil and gas multinationals like TotalEnergies are now choosing to adopt a more subtle, and seemingly more constructive, narrative on the climate question. They've claimed to whoever would listen (mostly successfully when it comes to political leaders) that although they

1 IEA, World Energy Outlook 2023, October 2023, Table A.1c: World energy supply, https://www.iea.org/reports/world-energy-outlook-2023.

2 https://www.lemonde.fr/idees/article/2023/07/02/climat-la-discrete-marche-arriere-des-geants-du-petrole_6180193_3232.html

3 https://www.totalment.fr/ et voir ci-dessous.

were definitely part of the problem, they were also part of the solution, if not the solution itself. They've hugely monopolized the climate action narrative — aiming to neutralize and undermine the arguments — while also managing to secure a large share of the funding to finance the development of the technological and market "solutions" they're pushing[4] ; They've also bought up the smallest players in the renewable and energy transition sector and are occupying more space in climate-related policies at a global level, within or around the margins of UN conferences. With an oil boss as president of COP28, we are witnessing the culmination of this process.

There's no denying it. The apparent participation of oil and gas supermajors in the energy transition is merely a front for a game of deception. TotalEnergies and their peers have only jumped on the climate transition bandwagon so that they can continue to exploit fossil fuels for as long as possible. We'll come back to this in more detail in part one.

The aim of this study is to open the debate and discuss next steps. **Faced with Big Oil's undeniable desire to continue exploiting fossil fuels and to block all ambitious climate initiatives, what can we do to take back control for an effective response and a fair and inclusive transition approach to the climate emergency?** Economic and political leaders have repeated often enough that we have no choice but to respect established interests, negotiating with the multinationals that are responsible for the climate crisis and hoping that they actually have the desire to envisage change. Evidence thus far shows that this approach doesn't work. We've lost an enormous amount of time. If we want to achieve a total exit from fossil fuels by 2050, we must commit to a rapid phaseout of oil and gas exploitation. It's time to reconsider other options, based on legal and historical precedents, which were previously disregarded. Essentially, we need to **re-examine all options.**

Our suggestions might be branded as "political fiction" or utopian. However, when faced with the climate crisis, there can only be "radical" action, in its purest etymological sense of going back to the

4 Read the following for the French context, https://multinationales.org/fr/enquetes/allo-bercy/100-du-cac40-a-oeuvre-contre-les-propositions-de-la-convention-citoyenne-pour. See the following for the hydrogen example in Europe: https://corpwatchers.eu/IMG/pdf/hijacking-recovery-hydrogen.pdf

roots. The era of progressive changes that never see the light of day is over. Global heating and its impacts are accelerating, just as war and pandemics have done, and this could be a trigger for change, with previously unthinkable scenarios quickly becoming credible or even unavoidable.

In this report, we're going to focus on the climate challenge and the way in which TotalEnergies and other oil and gas multinationals are escalating climate disruption and obstructing all ambitious initiatives to tackle it. All evidence suggests that the actions of these huge corporations have an extremely significant, large-scale impact on the local environment and biodiversity as well as on the civil and social rights of populations, particularly in areas where oil and gas are extracted. These impacts are yet another reason to take back control from TotalEnergies and its peers. By forcing TotalEnergies to commit to a rapid exit from fossil fuels, we can also respond to these issues.

Why are we targeting TotalEnergies in particular?

This study targets TotalEnergies in particular, but the scope of the study clearly goes much wider. We chose TotalEnergies because it is one of the world's major oil and gas companies and therefore responsible for a significant proportion of historical greenhouse gas emissions. The group is also headquartered in France with a leadership team from the elite French grandes écoles, so here in France, we have a clear view of the political and legal debates around climate responsibility and any actions TotalEnergies may or may not be taking. But everything we say about TotalEnergies is equally applicable to the other oil and gas majors. It's also worth noting that similar debates to those presented in this document are ongoing in the United States, relating to U.S. majors, and in Latin American countries, the UK, the Netherlands, Germany, Austria, Italy and elsewhere in the world[5].

This is why a potential, and indeed preferable, solution for "taking control" of the fossil fuel giants should involve an internationally coordinated process. This process could be kicked off in Europe, where oil and gas companies carry a heavy burden of historical responsibility and which seems more inclined to change at the present time. We'll come back to this in the third part of this study.

We can expect objections to our attack on TotalEnergies because we're focusing on supply rather than demand. This argument is frequently put forward by TotalEnergies' leadership, who maintain that they are simply meeting demand and needs outside of their control[6]. While we clearly shouldn't minimize the role of fossil-fuel-intensive industries (cars, aviation, chemicals, etc.) within the climate crisis or the lobbying efforts by their leaders aiming to obstruct any decisive

5 United States: https://priceofoil.org/2020/04/14/case-for-public-ownership-fossil-fuel-industry/. Germany (RWE) : https://rwe-enteignen.de/. Netherlands (Shell) : https://code-rood.org/nl/shell-must-fall/. UK: https://www.climatevanguard.org/publications-all/emergency-break. Italy (Eni) : https://www.recommon.org/en/italian-citizens-and-organisations-sue-fossil-fuel-company-eni-for-human-rights-violations-and-climate-change-impacts/.

6 https://www.ouest-france.fr/economie/energie/desole-jean-dialogue-de-sourds-entre-le-pdg-de-totalenergies-et-le-climatologue-jean-jouzel-ab852e08-466c-11ee-b203-68eb03acac75

action in this area, targeting oil and gas supermajors like TotalEnergies still remains the most critical and urgent activity. These companies represent key links in the chain of fossil fuel production, marketing and transformation (via the petrochemical industry). They continue to create demand for their own products by investing in gas-fired power stations, with new petrochemical plants on the horizon for the production of plastics and so-called "blue" hydrogen[7]. By continuing to flood the fossil fuel market and making it clear to governments and private economic stakeholders that they have no intention of changing direction in the decades to come, they're encouraging other industries to maintain their inertia and gamble on the preservation of fossil fuels. These companies have been at the forefront of political attempts to block all ambitious climate initiatives from the very beginning and they therefore represent the first hurdle to overcome. If we need to act at all levels, particularly when it comes to supporting the users, a rapid phaseout of fossil fuels requires taking action at the source.

Peaceful march, artistic performances, and slams in a public place in Goma, Democratic Republic of Congo. People denounced the presence of TOTAL, SOCO and EFORA PERENCO in the Democratic Republic of Congo and in the Great Lakes sub-region and demanded a just transition.

© MNKF Creatives / 350.org

7 Some examples of TotalEnergies' recent investments in gas-fired power stations in France (https://www.lesechos.fr/industrie-services/energie-environnement/totalenergies-inaugure-discretement-la-derniere-centrale-a-gaz-francaise-1397353) and in the United States (https://www.bfmtv.com/economie/entreprises/energie/totalenergies-acquiert-trois-centrales-au-gaz-au-texas_AD-202311130396.html), n the petrochemical industry (https://www.usinenouvelle.com/article/au-texas-totalenergies-muscle-ses-productions-petrochimiques.N2028532) and in blue hydrogen (https://totalenergies.com/media/news/press-releases/totalenergies-and-air-liquide-partner-develop-low-carbon-hydrogen).

ANALYSIS OF THE TOTAL GROUP

2022 turnover: €261.8 billion

2022 profits: €19.1 billion

2022 dividend payouts based on profits: €10 billion

2022 stock repurchase: €7 billion

2022 CEO compensation: €6.5 million

Number of employees as at end 2022: 101,279, with a third based in France

Market capitalization (3 October 2023): €148 billion

Greenhouse gas emissions declared for 2022: 436 million tonnes equivalent CO2

Proven hydrocarbon reserves in 2022: 10.2 billion barrels of oil equivalent

2022 hydrocarbon production: 3 million barrels equivalent per day

Principal shareholders (as at 15 May 2023): Crédit Agricole Group, including Amundi, BlackRock Vanguard Group, Capital Group, Norges Bank[8].

Today, TotalEnergies group has several hundred subsidiaries throughout the world and operates in a variety of sectors, including oil and gas extraction and transport, hydrocarbon trading, refining, fuel distribution, petrochemicals and plastics and, more recently, agrofuels, carbon capture and storage, hydrogen, electricity generation (from gas or renewables), supply of gas and electricity to consumers and businesses, and batteries.

The activities described above have come about due to external purchases and acquisitions over the past few years, with the aim of diversifying the group's activities and justifying replacing the Total name with TotalEnergies.

The main driver for these activities is a process of vertical concentration. In other words, a desire to control all the links in the chain, which has been further enhanced in recent years with TotalEnergies making its appearance in the electricity sale and generation sector. This level of control is particularly strong in France, where Total has the highest concentration of refineries.

8 https://defundtotalenergies.org/qui-finance-totalenergies. Amundi manages TotalEnergies' company collective investment fund (employee shareholdings).

PART ONE. WHY?

1. BECAUSE TOTAL IS CONTINUING TO INVEST HUGE AMOUNTS IN OIL AND GAS AND HAS NO INTENTION OF STOPPING

TotalEnergies is one of the world's biggest private oil and gas companies and holds oil and gas reserves that will have a significant impact on world greenhouse gas emissions when burned.

TotalEnergies declared that the company produced 2,765 kboe/d[9] of oil and gas and generated 429 Mt of CO2 emissions through its operations in 2022[10]. The company was ranked as the 15th biggest oil and gas producer worldwide in 2022[11] and its declared worldwide CO2 emissions were greater than the total CO2 emissions in France in 2022[12].

Over the course of the past few years, the TotalEnergies group has been highly vocal about its intention to become a "multi-energy" company, moving wholeheartedly toward energy transition[13] and looking to 'contribute to the sustainable development of the planet facing the climate challenge[14].

Despite its stated ambition to move toward decarbonizing its operations, the reality of the group's current and future investments reveals a strategy focused on developing new fossil fuel extraction infrastructure and growing the production and sale of fossil fuels until at least 2030. This goes against all scientific climate recommendations. Increasing investment in renewable energy sources won't enable us to tackle the climate crisis if it goes hand in hand with new investments in fossil fuels.

9 TotalEnergies, "Universal Registration Document 2022 including the Annual Financial Report," March 2023, p. 52, https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2023-03/TotalEnergies_URD_2022_EN.pdf.

10 TotalEnergies, "More Energy, Less Emissions: Sustainability & Climate 2023 Progress Report," March 2023, p. 99-100, https://totalenergies.com/system/files/documents/2023-03/Sustainability_Climate_2023_Progress_Report_EN.pdf.

11 Urgewald, "2023 Global Oil & Gas Exit List," novembre 2023. https://gogel.org/.

12 CITEPA, "Emissions de gaz à effet de serre en France: estimations provisoires sur l'ensemble de l'année 2022 avec le baromètre des émissions mensuelles du Citepa, édition mars 2023," March 30, 2023, p.1, https://www.citepa.org/wp-content/uploads/CP-Citepa_Barometre_Emissions_GES_mars2023_VF.pdf.

13 https://totalenergies.com/fr/compagnie/identite

14 https://totalenergies.com/fr/medias/actualite/communiques-presse/total-se-transforme-devient-totalenergies

In 2022, TotalEnergies was ranked third place among oil and gas firms worldwide who are seeking to exploit new oil and gas deposits, in total contradiction with the 1.5 °C limit outlined in the IEA's "Net Zero Emissions" pathway[15]. The "Global Oil and Gas Exit" list places TotalEnergies in seventh place worldwide — and in first place for large oil and gas groups — for its short-term expansion plans for extraction. The group claims that there are almost 8 billion boe of new oil and gas deposits currently under development or about to be approved[16].

TotalEnergies' "Sustainability & Climate 2023" strategy forecasts an increase in fossil fuel production between 2022 and 2030, led by a planned 40% increase in liquefied natural gas (LNG) production. This has been enabled by major investments in countries such as Qatar, the United States and Papua New Guinea[17]. Reclaim Finance estimates that oil and gas will still account for over 80% of TotalEnergies' energy mix in 2030 if you include oil and gas production and gas-powered electricity generation.

These figures are reflected in the group's capex investment strategy. In 2022, 75% of TotalEnergies' investments were in oil and gas[18]. For every dollar TotalEnergies invests in "low carbon" energy (which for TotalEnergies includes gas-powered electricity generation), the company has invested three dollars in oil and gas[19]. In 2030, the company forecasts that two thirds of its investments will still be in fossil fuels, including 30% for developing new oil and gas deposits, while 33% will be in "low carbon" energy[20]. This investment figure involves categorizing certain fossil sources as "low carbon", including gas-powered electricity plants, fossil carbon capture and storage, and the production of hydrogen using gas[21].

So, far from planning their exit from fossil fuels, TotalEnergies' core strategy between now and 2030 is to maintain oil production and significantly increase gas production, particularly liquefied natural gas. The production of LNG is presented as a nod to energy transition[22] even though it emits over ten times more greenhouse gases than fossil gas transported via pipelines from Norway. This gas strategy is one of the main reasons why the total emissions of CO2 by burning TotalEnergies' fuel products in 2030 (scope 3) are liable to stay at around the same level rather than reducing, according to the company's own indications[23]. TotalEnergies' CEO, Patrick Pouyanné, even declared that he didn't consider the company to be responsible for the emissions linked to their products[24].

This is therefore not a case of decarbonizing the group's operations but instead a diversification strategy for the company's energy portfolio, which continues to focus for the most part on oil and gas.

15 David Tong and Romain Ioualalen, *Investing in Disaster: Recent and Anticipated Final Investment Decisions for New Oil And Gas Production Beyond the 1.5°C Limit*, Oil Change International, November 2022, see Figure 9 and Table A5, https://priceofoil.org/2022/11/16/investing-in-disaster/.

16 Urgewald, "2023 Global Oil & Gas Exit List," novembre 2023. https://gogel.org/.

17 TotalEnergies, "More Energy, Less Emissions: Sustainability & Climate 2023 Progress Report," March 2023, p. 13; p. 28-29, https://totalenergies.com/system/files/documents/2023-03/Sustainability_Climate_2023_Progress_Report_EN.pdf.

18 TotalEnergies, "Universal Registration Document 2022 including the Annual Financial Report," March 2023, p. 375,

19 Louis-Maxence Delaporte and Henri Her, "Assessment of TotalEnergies' Climate Strategy," Reclaim Finance, April 2023, https://reclaimfinance.org/site/en/assessment-of-oil-and-gas-companies-climate-strategy/#tab-f56e3c1c1f4ddcce528.

20 TotalEnergies, "More Energy, Less Emissions: Sustainability & Climate 2023 Progress Report," March 2023, p. 14, https://totalenergies.com/system/files/documents/2023-03/Sustainability_Climate_2023_Progress_Report_EN.pdf.

21 TotalEnergies, "More Energy, Less Emissions: Sustainability & Climate 2023 Progress Report," March 2023, pp. 9-10; 13; 25, https://totalenergies.com/system/files/documents/2023-03/Sustainability_Climate_2023_Progress_Report_EN.pdf.

22 https://www.mediapart.fr/journal/ecologie/030823/le-gaz-est-aussi-nocif-pour-le-climat-que-le-charbon

23 https://totalenergies.com/system/files/documents/2023-03/Sustainability_Climate_2023_Progress_Report_EN.pdf p 43

24 TotalEnergies, "Strategy, Sustainability & Climate investor meeting transcript," March 21, 2023, p. 23, https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2023-03/Strategy_Sustainability_and_Climate_investor_meeting_2023_transcript.

2. BECAUSE TOTALENERGIES HAS A LONG HISTORY OF BLOCKING EFFORTS TO TACKLE THE CLIMATE CRISIS

The TotalEnergies leadership was probably aware of the nature and causes of global heating as early as the 1960s, due to its links with the American oil industry and membership of the American Petroleum Institute — the leading American oil lobbyist. As Notre Affaire à Tous and 350.org revealed in their *Totalment*[25] study in 2021, an official document from Total group published in 1971 was already acknowledging the role of fossil fuels in CO2 emissions and climate impacts. This means that the oil sector has known for at least half a century that its products are responsible for the climate crisis.

As climate impact research intensified during the 1970s and 1980s, the scientific consensus became increasingly robust. This didn't stop the French oil sector from keeping quiet about the subject, deploying an internationally coordinated strategy with the aim of delaying any measures to reduce usage or production of fossil fuels in Europe and the rest of the world. This strategy began by aligning with the American oil industry's efforts to cast doubt on the reality and causes of the climate crisis. Elf group (which would later become part of TotalEnergies) was fully aligned with the American group Exxon's strategy, which aimed to protect the economic model within the oil and gas sector by highlighting the "uncertainties" around the climate crisis, the cost of taking action, and solutions that would be beneficial to the industry. This manufactured-uncertainty strategy[26] » was the guiding principle behind the oil and gas industry's response to the Rio summit in 1992 and formed the basis for its highly active lobbying campaign against the "ecotax" project put forward by the European Commission at the beginning of the 1990s.

In the aftermath of the 1992 summit in Rio, a new public awareness of the various environmental crises, one of which being the climate crisis, coincided with a change of approach from the oil and gas sector. To expand on its uncertainty strategy, the industry implemented an approach that involved promoting its "sustainable development" efforts without fundamentally challenging an economic model of continuous growth in extracting and selling fossil fuels. When Total joined forces with Petrofina and Elf in 1999, the new integrated French group adopted an approach that involved 'acknowledging the existence of global warming while downplaying its urgency and scientific certainty[27] », while defending its own emission reduction initiatives and market tools such as the EU Emissions Trading System (EU ETS).

25 https://www.totalment.fr/

26 See Naomi Oreskes, Erik Conway, Merchants of Doubt, Bloomsbury Press, 2010.

27 https://www.sciencedirect.com/science/article/pii/S0959378021001655

In 2006, Total organized a conference on climate disruption and abandoned its climate science uncertainty strategy, fully acknowledging the UN climate change report findings. With growing criticism from civil society regarding the impact of its activities on the climate, on local ecosystems and on populations affected by extraction projects, Total redoubled its efforts to give the appearance of a responsible business. The group ceased its (very marginal) coal activities in 2015, just before COP21 in Paris. It also joined new international climate initiatives and supported the principle of worldwide carbon pricing.

French grassroots groups hold a Total Ment demonstration in front of The Palais Brongniart, the historical Paris stock exchange, France to draw attention to oil giant Total responsibility in driving the climate crisis and for lying to their shareholders and the public since 1971.

3. BECAUSE TOTALENERGIES' CLIMATE STRATEGY AND "GREEN SHIFT" ARE FOUNDED ON MISLEADING SOLUTIONS WITH THE SOLE AIM OF DELAYING OR PREVENTING A TRUE EXIT FROM FOSSIL FUELS

Since signing the Paris Agreement in 2015, Total has been seeking to build a greener image for itself and has made multiple announcements aiming to prove its commitment. In 2020, the group announced its objective to achieve "carbon neutrality" by 2050[28], which includes an unspecified reduction in emissions relating to oil and gas produced by the company. In 2021, it was renamed TotalEnergies as part of a highly active communications campaign presenting the company as a major player in the energy transition and a "multi-energy" group.

However, if we look more closely, Total's climate strategy is essentially based on deploying a series of technological "solutions" that are supposed to replace the need to exit from fossil fuels. These fake solutions are paraded around by TotalEnergies as part of mass communication efforts arguing that there's no need to take any more restrictive actions to tackle the climate emergency. They are therefore an integral part of their lobbying strategy.

In some cases, these so-called solutions are no longer viable and simply shift the problem, offer minimal meaningful climate progress, create new risks and problems, or represent a combination of all these issues. They deliberately create confusion around what is or is not considered to be "green" or "climate compatible". They drain a large proportion of public funds set aside for climate action (hydrogen subsidies, etc.) to the detriment of real solutions.

Does Total truly believe in the solutions it proposes? The solutions are primarily designed to enable them to continue exploiting fossil fuels and avoid more ambitious actions by government bodies. They are an alibi for climate inaction in the short, medium and maybe even long term.

- **Electricity.** Total included its electricity generation and distribution activities within a new division covering low carbon and new molecule energy, but electricity is not a green solution in itself. According to TotalEnergies, "low carbon" electricity includes electricity generated in gas-powered plants. In addition, the so-called "green" electricity sold to private customers in France and other countries is based on "Renewable Energy Certificates" bought from other providers[29].
- **Gas:** TotalEnergies, like the other oil and gas majors, has been trying to promote gas as a "clean" fossil energy and as a "transitional" energy that will help to decarbonize power generation in the short term as a replacement for coal. The benefits of using gas as opposed to coal and oil are the subject of much discussion if you look at both the production and distribution chain as a whole and the leakage of methane gas. Methane has an even more powerful greenhouse effect than CO_2[30]. Current levels of investment in gas by TotalEnergies and other major providers, which include using the war in Ukraine and the end of Russian supplies as a cover, are a way of locking in fossil energy usage for decades to come.
- **Agrofuels**. TotalEnergies has invested in agrofuels by converting its La Mède refinery in the south of France. Positive effects on the climate from agrofuels have been grossly overestimated and in many cases there are no benefits. Increasing the production of crops used to produce energy results in changes to soil usage and even deforestation, plus violation of community land rights and rising food prices. While TotalEnergies has announced that their "biorefinery" would eventually use waste oils to generate biofuels, it currently uses imported palm oil.
- **Carbon capture and storage.** The approach used in carbon capture and storage involves capturing greenhouse gases produced by burning fossil fuels before they're emitted into the atmosphere and storing them underground — in depleted oil and gas reservoirs, for example. While the industry has been showcasing this technology for a long time, it remains non-viable, with all existing projects ending in failure

28 https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2020-10/total-climate-report-2020.pdf

29 https://www.lemonde.fr/economie/article/2019/08/26/electricite-l-imposture-des-offres-vertes_5502811_3234.html

30 https://www.mediapart.fr/journal/ecologie/030823/le-gaz-est-aussi-nocif-pour-le-climat-que-le-charbon

and being inherently expensive. It is highly unlikely that this technique can be implemented on a large enough scale to compensate for the currently huge amounts of greenhouse gas emissions. It also creates additional risks, including seismic disturbance.[31].

- **Reforestation/carbon sinks.** This key element of TotalEnergies' climate strategy involves relying on reforestation or anti-deforestation projects, since the trees planted or protected by these projects become "carbon sinks" to compensate for the group's greenhouse gas emissions. TotalEnergies announced its intention to make huge investments in African projects of this kind. The serious disadvantage of this approach is that multinationals will then monopolize the land and its resources, thereby disadvantaging traditional communities, as seen in the example of the project TotalEnergies financed in Congo[32]. The idea is even more concerning when you consider that the surface area of land required to compensate for major oil and gas companies' emissions would be vast. The benefits of reforestation programs should be treated with caution, especially if the trees being planted will be cut down and sold and if we consider the risks to a tree's lifecycle posed by fire and other effects of the climate crisis.

- Hydrogen. This is the final "miracle" decarbonization solution put forward by the oil and gas industry. Green hydrogen (produced by renewable electricity) only accounts for a fraction of the hydrogen produced today. It seems highly unrealistic that it will be fully rolled out and it will inevitably end up thwarting efforts to make electricity greener in other sectors. Dangling the (illusory) carrot of "green hydrogen" adoption just seems like a pretext to continue developing and using grey hydrogen (produced using fossil-fueled electricity) and blue hydrogen (produced using fossil-fueled electricity with carbon capture) in the short, medium and long term[33].

Obviously, the TotalEnergies group is also pursuing some "true" renewable energy projects. However, most of its solar and wind initiatives were bought from other providers rather than being developed in house[34]. These are often huge solar or wind farms designed to power other multinationals or government administrations via electricity purchase contracts, but the negative environmental effects of these are often greater than smaller, decentralized installations. The joint venture between TotalEnergies and the "green" subsidiary of Indian conglomerate Adani, involved in fast-paced wind and solar projects that have been strongly criticized for their impact on populations, is typical of the French group's favored approach toward renewable energy[35].

Apart from the fact that these wind and solar projects only represent a fraction of TotalEnergies' global investments, they seem to have been devised solely to make continued oil and gas exploitation seem more acceptable. A recent report by the Bloom association highlighted the fact that a large proportion of TotalEnergies' offshore solar and wind projects are now just extensions of its hydrocarbon projects, designed to portray a greener image for the group[36]. Oil and gas multinationals such as TotalEnergies use a meager percentage of their capital, accumulated over decades of fossil fuel exploitation, to give the impression that they are committed to renewable energy.

31 https://ieefa.org/resources/carbon-capture-crux-lessons-learned

32 https://ccfd-terresolidaire.org/total-au-congo-une-operation-de-greenwashing-destructrice/

33 See https://corporateeurope.org/en/hydrogen-hype

34 https://reclaimfinance.org/site/wp-content/uploads/2023/09/092023-TotalEnergies-Faut-il-croire-a-sa-diversification.pdf

35 Read https://multinationales.org/fr/enquetes/multinationales-vertes/

36 https://bloomassociation.org/une-analyse-inedite-revele-le-greenwashing-des-projets-climaticides-de-totalenergies-par-les-energies-renouvelables/.

4. PBECAUSE TOTALENERGIES WILL NEVER TURN ITS BACK ON FOSSIL FUEL PROFITS DUE TO FINANCIAL AND STRUCTURAL CONSTRAINTS AND INTERESTS.

From a purely financial standpoint, TotalEnergies has no other choice than to continue to invest in researching and exploring new fossil fuel deposits. The bulk of its current and future revenue depends on exploring, exploiting, dispatching and distributing fossil fuels. Its stock market valuation, as per other companies in the sector, is highly dependent on its future capacity to maintain (or grow) its fossil fuel production.

Based on the standard theory of economics, market capitalization depends on two factors — the expected profits and their associated financial risk. For companies operating in the fossil fuel sector, their stock market valuation is closely linked to the level of "proven reserves" announced to investors and markets, as well as projections created to demonstrate their capacity to exploit mature and late-life deposits. We usually estimate that 50% of the stock market valuation of oil and gas majors is based on reserves that the company claims can be exploited in the future — generally over a period of 10—12 years. Even before they're exploited, these reserves are transformed into assets and valued by the financial system.

This is why TotalEnergies continues to approve investments in its reserves, as they are financial assets that need to remain at the same high level without their value diminishing. Energy investors and multinationals are driven to gamble on being able to replace a year's worth of oil and gas consumption by finding new deposits or increasing exploitable reserves with new investments or new extraction technologies. The green energy projects announced by TotalEnergies and similar companies are simply not enough to counteract the drive to explore new deposits.

To guarantee short-term stability for their market capitalization and future profitability, TotalEnergies is forced to engage in the tireless exploration of new drilling sites, while neglecting the required action for the climate. TotalEnergies and similar companies are part of a sector that is structurally skeptical of the climate crisis, with stock market, financial and economic incentives working against climate goals, which require fossil fuel reserves to be frozen. A high percentage of TotalEnergies' stock market valuation is based on assets that must not be extracted from the earth over the short or medium term, otherwise we risk making the planet unlivable.

It's also a financial problem. From the climate perspective, the financial value of these reserves should really be zero. By giving them an artificial value well above zero, the markets are creating a carbon bubble and also a financial bubble[37]. If 80 to 90% of fossil fuels are left in the ground, this bubble will burst. 40 to 60% of the company value will go up in smoke and trigger a large-scale financial, industrial, and social crisis.

The systemic nature of this financial risk would justify the state taking back control to organize a coordinated fossil fuel phaseout. Energy multinationals are stock exchange heavyweights, representing a significant percentage of the stock market in New York, London and Paris financial centers. Shares in these companies also make up a high percentage of assets held within major public and private institutional investors' portfolios. The big asset management firms are particularly fond of the sector's profitability and continue to include fossil fuel investment as a central element in their strategy. BlackRock holds shares in TotalEnergies worth several billion euros.

37 https://carbontracker.org/terms/carbon-bubble/

5. BECAUSE TOTAL AND OTHER OIL AND GAS COMPANIES HAVE AN EXORBITANT LEVEL OF POLITICAL INFLUENCE, ENABLING THEM TO MAINTAIN THE STATUS QUO

The TotalEnergies group has in the past been actively involved in oil industry efforts to downplay climate risk and obstruct or delay any ambitious political plans to tackle it (see below). The group continues to pursue its strategy of influence to protect all facets of its economic model in France[38], within EU institutions, in the United States and within international forums.

If the transparency registers are to be believed, the TotalEnergies group is one of the most active lobbyists in both Paris and Brussels, where their spending runs into millions of euros[39]. However, these registers only cover part of the strategy of influence deployed by TotalEnergies, which also includes the system of "revolving doors" between public and private sectors[40], various industry associations or those promoting certain "solutions", communication, funding think tanks, research and specialist institutions, and sponsorship[41]. The main Big Oil companies and their allies coordinate their strategic efforts via huge industry lobbies and associations, with the IOGP (International Association of Oil & Gas Producers) being a prime example[42].

These lobbying resources have long been used as part of a purely obstructive strategy. Even when the group chose to act in a more open and less aggressive way, it continued to defend its position using its membership of employer and professional associations to protect its public image[43].

For a number of years now, rather than abandoning their obstructive climate strategy, they've been supplementing it by strategic appropriation of the energy transition. Sometimes this is literal appropriation, such as when TotalEnergies and friends in France and Europe went on a mission to acquire smaller businesses in the renewables sector and take control of professional associations[44] created to promote the use of solar and wind energy. This strategy enabled them to set the pace and ambition of the "transition" and to give the impression of being greener at a low cost.

Adding to this influential power, particularly in France, there's the power of extortion linked to TotalEnergies' economic weight and its crucial role in supplying oil and gas to the country. The company's leadership team can scaremonger with the threat of offshoring, shortages, and fuel price rises for consumers[45].

38 https://www.amisdelaterre.org/letat-francais-fait-le-jeu-de-total-en-ouganda/

39 https://multinationales.org/fr/enquetes/cac40-le-veritable-bilan-annuel-2020/le-prix-de-l-influence. These figures can be found in the lobbying transparency registers for France (https://www.hatvp.fr/le-repertoire/) and the EU (https://ec.europa.eu/transparencyregister/public/consultation/search.do?locale=en&reset=).

40 https://multinationales.org/fr/enquetes/comment-l-etat-francais-fait-le-jeu-de-total-en-ouganda/ + https://multinationales.org/fr/enquetes/les-portes-tournantes/

41 https://multinationales.org/fr/enquetes/total-une-strategie-climat-en-trompe-l-oeil/le-louvre-et-les-grands-musees-sont-ils-sous-l-influence-de-l-industrie et https://www.greenpeace.fr/comment-totalenergies-influence-la-science/.

42 See for example https://www.theguardian.com/world/2020/mar/04/climate-action-the-latest-target-of-europes-fossil-fuel-lobbyists

43 See the general work carried out on the InfluenceMap: https://influencemap.org/. And for example https://multinationales.org/fr/actualites/le-medef-et-plusieurs-grandes-entreprises-francaises-epingles-pour-leurs

44 EIn 2023 Patrick Pouyanné, CEO of TotalEnergies, became president of the professional association EpE (Entreprises pour l'Environnement). See also https://disclose.ngo/fr/article/total-engie-et-edf-noyaute-le-lobby-des-energies-renouvelables et https://multinationales.org/fr/enquetes/l-europe-du-gaz/comment-total-a-pris-le-controle-des-lobbies-europeens-des-energies.

45 See for example https://www.nouvelobs.com/ecologie/20220908.OBS62907/crise-energetique-la-grande-peur-du-black-out.html or https://www.latribune.fr/climat/energie-environnement/carburants-totalenergies-menace-de-stopper-son-plafonnement-a-1-99-euro-en-cas-de-nouvelle-taxe-979133.html.

6. BECAUSE TOTALENERGIES IS ABLE TO PASS ON ITS COSTS TO USERS AND WORKING PEOPLE, PARTICULARLY IN FRANCE, MAKING ANY CHANGES SOCIALLY UNACCEPTABLE

In France, TotalEnergies is in an ultra-dominant position in terms of oil and gas imports, refinery activities and gasoline distribution. The group has control of the entire oil and gas production chain and has the ability to assign profits drawn from these activities to its subsidiaries based outside France[46]. This is why TotalEnergies enjoys significant power today in fixing prices for end consumers. As we've seen in recent months, it can pass on global market-level energy price rises to consumers while accumulating unprecedented superprofits. With a dominant position and distinct lack of competition, there's no incentive to review its prices downward when the trend reverses.

There's also an internal power imbalance between TotalEnergies and its employees, with the group able to control salary increases, as seen in 2022 when refinery workers took industrial action seeking a better pay deal.

TotalEnergies are therefore in a position where they can pass on additional tax or regulatory costs related to climate transition to their consumers on one hand and their employees on the other, while retaining profitability to please their shareholders. The leadership regularly asserts that if the fossil fuel phaseout happens too quickly, this would be prohibitively costly for a large percentage of the population in terms of their access to energy and transport, while omitting to mention that shareholder income would never be impacted. TotalEnergies essentially has the power to make the transition more difficult and less socially acceptable, however crucial it may be, as amply demonstrated by the gilets jaunes movement in France and more recent inflation hikes.

If TotalEnergies continues to hold the balance of power over prices, users and society will pay a high price for a greatly limited transition.

On a more general note, which we'll come back to later, it seems that some form of public price control is needed if there is to be a successful climate transition with acceptable public outcomes, without being at the mercy of geopolitical tensions or strategies from the producing countries.

46 https://multinationales.org/fr/enquetes/guerre-en-ukraine-et-superprofits-petroliers/ristourne-le-coup-double-de-totalenergies-pour-enfoncer-ses-concurrents-et and Taxe sur les superprofits : TotalEnergies ne va (presque) rien payer

7. BECAUSE TRADITIONAL RESPONSES ARE SIMPLY NOT ENOUGH ON THEIR OWN

With the problems we've described above, the natural reaction would be to call upon public authorities to compel TotalEnergies to act, using binding regulations and sanctions if needed.

The experience of the last few decades shows, however, that going down the regulation route is not enough. Firstly, because companies like TotalEnergies have sufficient political support and resources to delay or prevent restrictive measures, but also because governments don't generally have the desire or the political means needed to force an exit from fossil fuels. By leaving oil and gas multinationals free to fix their hydrocarbon production levels with oil-producing countries, governments are rendered powerless.

On the international stage, oil and gas giants can rely on government support from numerous countries that produce oil or depend on fossil fuel revenue to remain in power, as well as international trade laws that pay little attention to climate issues (see box below regarding international arbitration).

Experience with climate-related litigation in France and elsewhere, whether it's based on existing law or new legislation such as the French law on corporate duty of vigilance, shows that TotalEnergies has the power to delay and prolong legal action indefinitely on the grounds of technical issues, all in the name of maintaining the status quo.

The same observation has been made with regard to climate finance and climate commitments from investors. This strategy has been developed extensively over recent years to push companies to change from the inside out, driven by shareholder commitment and votes requiring the leadership to take the climate crisis into account. These rather nebulous commitments remain largely rhetorical — with big investors like BlackRock simply paying lip service to the issues, much like TotalEnergies have done as described above — or marginal, with only a minority of investors voting for any ambitious climate initiatives.

Of course, this doesn't mean that these different strategies should be abandoned. New climate-related provisions have been adopted in recent years, particularly in Europe, such as the Green New Deal, the Carbon Border Adjustment Mechanism, and the end of combustion engine cars. Some progress has also been made internationally, with a UN treaty on transnationals and human rights currently under negotiation, and the Fossil Fuel Non-Proliferation Treaty Initiative. To ensure that these positive signs will lead to concrete action, it will still be necessary to break the political deadlock arising from the power wielded by major oil and gas players, including TotalEnergies, and to tackle the question of "taking back control".

Peaceful march, artistic performances, and slams in a public place in Goma, Democratic Republic of Congo. People denounced the presence of TOTAL, SOCO and EFORA PERENCO in the Democratic Republic of Congo and in the Great Lakes sub-region and demanded a just transition.

For all the reasons mentioned above, it seems hopeless to imagine that TotalEnergies would opt for a true exit from fossil fuels under the current circumstances, however keen or reluctant the leadership are to tackle the problems and whatever their personal opinions on the climate crisis. All the economic, political and legal factors involved are an incentive for inaction. The climate challenge can only make progress if the political and economic influence of oil and gas giants such as TotalEnergies are called into question.

Without external intervention, these oil and gas majors will continue to fuel climate disruption, actively contributing to their own demise and destroying the world which makes their very existence, and hefty profits, possible. They are marching headlong into climate collapse — a collapse whose first victims will be the most under-resourced populations in the world. A true fossil fuel phaseout will of course have a huge impact on our populations and the economy, but the consequences of failing to take action for the climate will be far more catastrophic at a global level. Our current trajectory is quite simply unsustainable. TotalEnergies and its allies are both too big to fail and too big not to fail. We can't allow them to lead us into a chaotic financial mess, nor can we let them retain all their power as we did with banks following the 2008 financial crisis..

ET LE RAYONNEMENT DE LA FRANCE ?

There are those who are hesitant to attack TotalEnergies or create policies to reduce their power and status in the world due to the fact that this would damage France's economic and diplomatic interests. Without TotalEnergies, would France still be a credible international force?

Even if we disregard the costs relating to TotalEnergies' contribution to a global rise in temperatures, the economic benefits that the company brings to France are increasingly difficult to determine while the group's profits are hoarded by shareholders and the company offshores its business units to other countries, particularly the Middle East[47].

Its contribution to France's diplomatic objectives is also doubtful at the very least. On the contrary, recent history has shown that concerns around defending TotalEnergies' interests have actually led France to backing out of these objectives (in Uganda, for example)[48]. The company has a tendency to conduct its own brand of diplomacy over and above any loyalty to the French state (as seen a few years ago, when the Total leadership team explicitly criticized Western sanctions against Russia in the first phase of their invasion of Ukraine)[49].

The intimate links between French economic diplomacy and TotalEnergies, bolstered by the revolving doors between the company and government ministries[50], seems to reflect an extremely outdated global vision. The desire to control certain material resources that are deemed to be strategic and to cultivate close-knit relationships with individuals and groups within the powers-that-be has pushed France and its businesses to consort with multiple dictatorships and authoritarian regimes in Africa and elsewhere[51]. LThe current situation in Africa bears testament to the limitations of this model.

France's geopolitical influence will no longer be able to depend on fossil fuels. Its global positioning could be expressed via other routes, including contributing to a fair and inclusive transition, climate justice on a worldwide scale and shared technological expertise.

47 https://reporterre.net/A-la-raffinerie-de-Grandpuits-Total-justifie-la-casse-sociale-par-la-transition and previously https://basta.media/Total-ne-delocalise-pas-par-hasard

48 https://multinationales.org/fr/enquetes/comment-l-etat-francais-fait-le-jeu-de-total-en-ouganda/

49 https://multinationales.org/fr/enquetes/total-dans-l-arctique-russe/

50 https://multinationales.org/fr/enquetes/comment-l-etat-francais-fait-le-jeu-de-total-en-ouganda/

51 For example, in Congo (https://basta.media/Congo-Sassou-Nguesso-corruption-rente-petroliere-ENI-Total-Trafigura-Glencore-Orion-Global-Witness, Gabon (https://www.france24.com/fr/afrique/20230901-le-syst%C3%A8me-bongo-ses-millions-et-l-affaire-des-biens-mal-acquis) and Myanmar (https://www.lemonde.fr/international/article/2021/05/04/birmanie-comment-total-finance-les-generaux-a-travers-des-comptes-offshore_6078990_3210.html). More generally, see Alain Deneault, *De quoi Total est-elle la somme ? Multinationales et perversion du droit, éditions rue de l'Échiquier et Écosociété.*

PART TWO. HOW?

The idea of "taking back control" from TotalEnergies, one of the richest and most powerful companies in the world today, which has political influence way beyond France's borders, might seem like a utopian one.

A multinational corporation like TotalEnergies loves to maintain the illusion that it is entirely independent of the state, a quasi-sovereign entity[52]. This idea of quasi-sovereignty is however only possible with state support and the national and international legal frameworks that have been put in place. Taken in isolation or in the context of a single state, a multinational might appear all-powerful, but its power resides within legal, political and economic conditions. These conditions could, in principle, be changed by governments at a local, national or international level.

In the second part of this report, we'll be examining different approaches to regaining control of TotalEnergies' strategy and forcing the company to plan its exit from fossil fuels. We'll also cover the questions arising from these different approaches. These ideas are not necessarily mutually exclusive and it's probably preferable to combine them in certain ways.

As far as possible, we'll refer to political levers and legal instruments that already exist or have been used in the past. However, national and international laws also reflect the power structures in place. More resources and effort have gone into strengthening international trade laws designed to protect companies and their investments than have gone into creating legal instruments to restrict activity for the protection of general interests, the climate or human rights[53]. National and international legal reforms are therefore required.

52 https://multinationales.org/fr/enquetes/state-of-power-2020/les-multinationales-des-pouvoirs-souverains-prives-le-cas-de-total

53 https://www.ritimo.org/Multinationales-et-droits-de-l-homme-l-autoregulation-n-a-jamais-fonctionne

PREAMBLE

The general political process that we are suggesting must be based on the following three foundations — a non-negotiable, rapid exit from fossil fuels; the participation of TotalEnergies' employees to ensure a fair and inclusive transition (so no one is left behind); and finally, democratic conduct and supervision in conjunction with the scientific community, all affected stakeholders and all citizens.

The progressive transformation of TotalEnergies, including the consequences this could have on the rest of society, can only be understood and accepted if the decisions and processes are transparent, collective and inclusive. If our suggestions are to see the light of day, we need a political majority to ensure they're adopted at an institutional level. They must be understood and supported by a large proportion of the population. This is why before we start any official political proceedings, we need to launch an extensive preparatory process in the form of general statements or an agreement for participation from citizens and various groups representing all stakeholders, including employees, energy users, scientists, and civil society. This approach must allow a robust, feasible consensus to be built on the concrete measures to be taken and the political steps that need to be followed. The approach must be aligned with the foundations listed above. The methodology could use past experience as inspiration, both in France and beyond, in terms of seeking consensus and citizen agreement, with a more precise objective and a guarantee that its conclusions will be implemented into policies.

By organizing a wide, participatory discussion on how to transform TotalEnergies and manage its exit from fossil fuels, we can raise awareness within the population. People could also be mobilized as part of a public crowd-funding campaign to help fund the group's transition and/or transformation into a new company, which will be owned by the people rather than by the financial markets (see below).

Before this process can begin, a social framework agreement must be developed in parallel with trade unions to manage the transformation, with guaranteed employment or retraining in another business area or support for retraining in other companies, sectors or business types.

More broadly, TotalEnergies' employees must be involved in contributing to the discussions around converting certain activities that could be profoundly transformed to make them greener and more useful to society. Their experience, skills and knowledge of the production process make them ideally placed to design the their company's transformation. We can use the Lucas Plan example as inspiration for this kind of process. Workers who were threatened with redundancy from a UK-based arms business were involved in designing a plan to convert production to a more socially useful purpose[54].

54 https://en.wikipedia.org/wiki/The_Lucas_Plan. See also http://lucasplan.org.uk/.

1. (TRUE) REGULATION)

In part one of this study, we explained why going down the route of regulation was often disappointing and ineffective in forcing the fossil fuel industry to change its behavior, due to the current interplay of political forces.

However, we could still consider pushing further down this road as a way of diverting the current trajectory of TotalEnergies, its partners, and those who fund its activities. We might hope that by activating other levers described below (democratization or, potentially, nationalization), we could change this power dynamic, making it easier to adopt more ambitious and effective regulations. In return, implementing appropriate regulations would probably result in reducing expected profits from oil and gas multinationals, thereby lowering TotalEnergies' stock market valuation and the resultant cost of nationalization (see below).

In this scenario, TotalEnergies group would be retained as is, as would the market, but this market would need to adapt to clear signs from government via laws and regulations. A form of restriction, unlike anything we have in place today, is needed for the market to truly recognize the climate emergency and the urgent need to exit from fossil fuels so it can act accordingly.

A SPECIAL STATUS FOR TOTALENERGIES AND THE OTHER OIL AND GAS GIANTS

Of course, this framework must not only target TotalEnergies and the other major fossil fuel players. It must cover the whole economic system they inhabit. Regulations around the behavior of TotalEnergies will remain firmly in the starting blocks if, at the same time, the behavior of other industries that consume oil and gas produced and sold by the company is not altered and the rules that apply to financing companies, particularly with regard to their fiduciary duties (beyond striving for profit at all costs), are not reformed[55]. For reasons outlined in the introduction, however, taking action against the oil and gas giants remains a priority.

There are numerous precedents to justify granting a special status to companies like TotalEnergies based on the impact of their activities, and consequently imposing more far-reaching and restrictive obligations and rules on them compared to those governing other companies. In the United States, some private companies providing essential services, known as regulated utilities and including electricity suppliers, are subject to certain obligations relating to their public service provision, and a specific type of supervision and regulation by dedicated committees known as the utilities board. Since the 2008 financial crisis, systemically important banks (i.e., those deemed too big to fail), have been subject to increased supervision and special obligations, especially in terms of capital

55 This subject is currently being debated in the context of the EU directive on duty of vigilance within multinationals. See https://multinationales.org/fr/enquetes/la-boite-noire-de-la-france-a-bruxelles/

requirements and transparency, to avoid them jeopardizing the stability of the financial system. In Europe, recent legislation in the digital sector has introduced the notion of “gatekeepers” to indicate the special status (and considerable power) of tech giants such as Google, Amazon, Facebook, Microsoft and Apple.

Given the level of liability of oil and gas giants, their capacity for harm and their critical position as “gatekeepers” for fossil fuels, it seems natural to confer a similar status on them too. TotalEnergies cannot be treated like just another company.

A FULL REGULATORY FRAMEWORK

Any regulatory framework applied to oil and gas giants must clearly revolve around an orderly exit from fossil fuels. But it must also be robust enough to tackle all of the factors that drive the private sector and financial markets to maintain business as usual in the fossil fuel market.

Some of the highest priority factors to be addressed are detailed below. From the political point of view, it would seem sensible to introduce provisions as part of a single “legislative package”.

Climate regulation in the strictest sense of the term obviously includes the requirement for a rapid exit from fossil fuels and a trajectory to reduce direct and indirect greenhouse gas emissions (scopes 1, 2, and 3) to meet the 1.5 °C limit by defining precise steps with narrow timeframes between each step. Adherence to this trajectory must be regularly and independently monitored, with reassessments when required and sanctions applied to any breaches.

We need to take parallel, coordinated action to set binding goals for reducing fossil fuel usage and greenhouse gas emissions in other industries by adopting the necessary monitoring and support measures as part of what we call “environmental planning”.

Climate regulation must also include more specific obligations that contribute to the general goal of reducing greenhouse gas emissions, such as eliminating gas flaring, reducing leaks or taking on the full cost of dismantling oil and gas fields and infrastructures.

Regulating lobbying and influence is often a strict prerequisite to ensure that these efforts will be successful. As long as the regulators remain unprotected from being “preyed upon” by the regulated and are not given the means (including financial means) to fulfill their objectives independently, it will be extremely difficult to implement any truly ambitious regulations.

Currently, lobbying regulations involve rather limited transparency measures relating to expenses and certain lobbying activities, including meetings and contact with decision makers. These transparency measures need to be expanded to all expenses and influential activities (including advertising, sponsorship, and relationships with research bodies).

As far as the fossil fuel sector is concerned, given its fundamental role in the climate crisis and its history of obstruction, some forms of influential activity must quite simply be outlawed. This has already been seen at the World Health Organization level, where any contact with tobacco industry lobbyists and representatives has been banned. The mere presence of fossil fuel players in climate negotiations could even become outlawed, as proposed by the Kick Big Polluters Out campaign[56]. From a wider perspective, contact between national and international decision makers and industry representatives could be more strictly monitored and restricted, as could the "revolving doors" between these companies and the public sector, and funding for cultural and research institutions. The boundary between the regulators and the regulated needs to be sufficiently solid to guarantee the integrity of the regulations.

In conjunction with the previous point on regulating lobbying activities, ***freedom of information rights*** need to be extended along the lines of what exists in Norway or in the realm of nuclear power in France. Currently, only public authorities are obligated (albeit partially) to provide administrative documents and other information to citizens who request it. This obligation must be extended to companies to make them reveal their environmental impacts and greenhouse gas emissions. This would mean that public authorities and civil society will be more empowered to monitor TotalEnergies, thus limiting their ability to manipulate figures, greenwash their image and delay necessary action. The recent lawsuit filed by TotalEnergies against Greenpeace, who condemned the group for drastically understating their greenhouse gas emission declarations, illustrates the sensitive and strategic nature of this kind of information[57]. The ability to publicly examine and cross-examine this information is essential.

Financial regulation is also crucial. As indicated above, this needs to apply not only to Big Oil & Gas but also to banks and funding institutions that contribute financially to their activities.

As for the oil and gas firms themselves, any regulation must first limit their exposure to financial markets and their demands for return on investment. It makes total sense to take action downstream on the redistribution of profits by simply banning share repurchase and strictly limiting dividend payouts, or at least by making these payments conditional on meeting social and environmental goals, particularly those relating to exiting fossil fuels. By reshaping these financial incentives, there will be direct and indirect repercussions on the behavior and decisions of company leaders when it comes to the proportion of their remuneration that is variable or taken in shares.

Much like the regulations applied to systemically important banks, financial regulation must also cover provisioning obligations to ensure that major oil and gas companies account for and cover the social costs generated by their activities. These costs include not only the global costs of adapting to the climate crisis but also costs relating to environmental reparations in areas where oil and gas have been exploited.

Tax regulation is another essential pillar in any attempt to regulate the oil and gas supermajors. As a general rule, taxation must be designed to discourage further exploitation and usage of fossil fuels. Oil and gas companies or some of their business activities could be subject to special taxation (either higher rates or a dedicated tax), particularly in the case of the kind of superprofits we've been seeing since 2021. All tax resources earned from this must go toward supporting the exit from fossil fuels and contributing to climate reparation funds that will be set up on an international scale, as well as others at the UN level (see below).

It goes without saying that these tax reforms applying to oil and gas companies must be part of a wider, fairer and more transparent international taxation regime. It's extremely important that multinationals such as TotalEnergies pay fair taxes in the countries where they operate without reducing their tax bills via shady tactics such as using subsidiaries in other countries to evade tax.

56 https://kickbigpollutersout.org/

57 https://www.greenpeace.fr/totalenergies-attaque-greenpeace-en-justice/

On the other hand, governments provide oil and gas companies with generous direct and indirect support. The IEA estimates that worldwide subsidies for fossil fuels run into 1000 billion dollars per year[58]. It is unacceptable for TotalEnergies to benefit from climate-killing public subsidies that should simply be withdrawn. They could be replaced with other aid to meet the real needs of certain populations and social bodies to support them in a rapid exit from fossil fuels without continuing to line the pockets of multinationals along the way.

During the COVID-19 pandemic, the leadership team at TotalEnergies were shouting from the rooftops that they had no access to public aid from the French government. This allegation simply doesn't hold water. TotalEnergies receives employer contribution exemptions and various types of tax credits implemented by successive governments over the past decades. The group can also benefit from free quotas created as part of the European carbon market, the European Central Bank share buyback scheme and any number of subsidy programs set up over recent years to help industry become "greener" (including a subsidy of several hundred million euros for a battery plant in Douvrin, France). Given the superprofits enjoyed by the group, these subsidies are clearly not required. In any case, this aid should come with strict environmental conditions — primarily relating to exiting from fossil fuels[59].

Price control is a particularly sensitive topic. The climate crisis and the fossil fuel phaseout will involve profound transformations which, as we've seen in recent events, will increase price volatility. Price control mechanisms can therefore be justified, especially because they would at least partially prevent oil and gas companies from passing on the cost of their new obligations to consumers. The price of fossil fuels must be sufficiently high to provide the incentive for a rapid exit without harming small-scale consumers or lower earners within the population, and this could justify support mechanisms or cross-subsidization. If governments fix the prices in a relatively transparent way and if consumers know that the money they spend won't end up lining the pockets of the leaders and shareholders at TotalEnergies and the like, the gradual elimination of fossil fuels will become far more socially acceptable.

Measures could be implemented in other industries to complete this regulatory package. Let's consider ***competition law*** by looking at measures adopted or debated in Europe and the United States following the 2008 crisis to limit the harm that banks can cause. At that time, the idea of dismantling huge banking conglomerates by force was discussed, mainly by separating investment and retail banking activity to avoid the retail side from having to bail out

58 https://www.iea.org/reports/fossil-fuels-consumption-subsidies-2022

59 All of this is touched upon in studies by "Allô Bercy" for the Multinationals Observatory: https://allobercy.multinationales.org/. See the following for carbon quotas in particular https://multinationales.org/fr/actualites/les-50-sites-industriels-les-plus-polluants-de-france-ont-recu-pour-3-milliards

the investment side. The legal proposals to support this didn’t last, however, as the French law which came into force in 2013 remained too modest to have any impact. A similar idea has recently come back to the forefront, but this time relating to the enormous power that Big Tech firms have accumulated, with some calling for them to be dismantled. The Digital Markets Act recently adopted by the European Union even mentions forced separation of certain activities as a possible last resort.

Applying this same logic, we could envisage banning a single oil and gas company from conducting oil and gas extraction and refining at the same time as gasoline distribution and energy distribution to private customers (known as vertical integration). The goal would be to prevent multinationals from holding excessive control over energy provision within a country like France and leveraging their ability to apply extortion tactics to block any decisive action.

Climate activists organise an art performance in front of Total Energies headquarters in La Defense, France, to denounce Total’s climate wrecking pipeline project, the East Africa Crude Oil Pipeline.

© Léa Garson

2. DEMOCRATIZING TOTALENERGIES WHAT WOULD THE ROLE OF WORKERS AND CITIZENS BE?

Going down the regulatory route means redirecting TotalEnergies' strategy from the outside — more specifically, by state powers. Another complementary route to change would be to transform the company's strategic direction and governance from the inside, so that they reflect a wider set of interests and objectives that go beyond profitability and return on investment for shareholders, starting of course with a key goal of rectifying the climate crisis. This is what we could call TotalEnergies' democratization roadmap.

We could set out a general principle that corporate governance, particularly relating to the climate challenge, must involve participation from employees, representatives from the scientific community, user-consumers, users of the products and services provided by the company, public authorities, and civil society at domestic level (i.e., France, in the case of TotalEnergies), in countries where the company operates and internationally. The same principle was applied within the French duty of vigilance law of 2017[60]. No single stakeholder can claim to speak wholly "on behalf of the climate". Specific provisions could be introduced, such as a climate commissioner for governance matters, as we see today in certain state-owned companies in the form of a government commissioner.

Other more or less recent precedents could also provide inspiration or act as a basis. Unfortunately, they all share the common fate of not having given rise to significant change in company behaviors or strategies.

Widen company co-management

For several decades, the idea of social dialogue and associating workers, via their representatives, with the company's management has been enshrined in EU social law. This takes the form of discussion, information and consultation bodies within organizations, companies and, increasingly, in multinational groups via international framework agreements. Their rights and actual powers are highly variable but remain limited overall. We could consider extending the membership and prerogatives of these mechanisms or create supplementary bodies dedicated to the climate crisis at all levels of a company. Some groups now have stakeholder committees who partially fulfill this function, but the participants are selected at the leadership team's discretion.

On one hand, we need to set clear rules to guarantee that these governing bodies are independent and representative, while on the other we need to strengthen their rights and powers (for example,

60 The French "Devoir de Vigilance" (duty of vigilance) law (No. 2017-399 of 27 March 2017) stipulates in article 1 on the subject of a vigilance plan, (which must 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') that:

'The plan shall be drafted in association with the company stakeholders involved [...]'

freedom of information rights, the right to expertise, the right to raise alerts the right to visit drilling sites for inspection purposes, etc.), as well as the financial and human resources to apply these powers in an effective way. These bodies could have the right to veto certain decisions or reject the company's annual climate report with a view to launching a public inquiry or demanding a response.

In the event of nationalization, the governance model for the future public entity will be a critical success factor. This new governance mechanism could use some of the principles described here as a starting point. We'll come back to this question in the next section

Change the company's purpose?

A few years ago in France, the PACTE law introduced the option for companies to add their core purpose to their articles of association in an attempt to articulate their positive contribution to society and their social and environmental goals. Many French companies chose to do this. However, the vague and non-binding commitments they made only served to illustrate that this was purely a public relations exercise. In the case of TotalEnergies, their stated purpose is to 'provide more affordable, more reliable and cleaner energy to as many people as possible'.

Mentioning social and environmental considerations in a company's articles of association does not bind the leadership to any real commitments and, with the current status of the law, these considerations are always secondary to the primary purpose of creating a company, which is to make a financial profit. It is however possible in theory to amend corporate law to give climate responsibility at least the same weighting as financial considerations, but it's unlikely that this change alone will be enough to transform business conduct.

3. TAKING PUBLIC CONTROL

There's no doubt that taking public control seems like the first crucial step in releasing TotalEnergies from the stranglehold of the financial markets, reducing its capacity for harm and imposing a new trajectory to exit from fossil fuels in a transparent and democratic way. Only the state has the capacity and resources necessary to successfully implement or supervise the process as we see it, while guaranteeing that the objectives are met.

NATIONALIZATION

The most common form of public control is nationalization. The idea of nationalizing the company was even mentioned in 2022 when Patrick Pouyanné (TotalEnergies' CEO) was questioned by a parliamentary committee. 'L'entreprise vaut 150 milliards' (the company is worth €150 billion), he answered (the stock market valuation of the company at the time)[61]. This is clearly a simplistic estimate (see box "What is the true value of TotalEnergies?").

61 https://www.assemblee-nationale.fr/dyn/16/comptes-rendus/ceindener/l16ceindener2223007_compte-rendu

A HISTORY OF NATIONALIZATION IN FRANCE AND ELSEWHERE

In France, nationalizing companies has in the past involved establishing democratic control, planning and wealth distribution objectives.

French-style nationalizations due to national betrayal (in 1945) or socialist economic policies (in 1981) were never carried out with the ambition of completely transforming the economic and industrial model of large companies. The process simply involved taking private property into public hands, sometimes only for a short period, much like some of the 1981 nationalizations that were abandoned after just a few years.

Elsewhere in the world, banks were nationalized after the 2008 financial crisis, as were energy companies during the war in Ukraine (e.g., Uniper in Germany). Far from seeking to bring about any real change, these reactive, provisional nationalizations were more concerned with maintaining order.

However, these experiences provide rich learning opportunities. Some provided a way for the state to re-establish expertise, information and skills and to regain control of industrial machinery.

The nationalization of EDF-GDF (French electricity and gas supply)[62] gives us an example of nationalization without full guardianship of the state, as the executive board only had 6 state representatives out of 18 total members. The board also included consumer and local spokespersons, technical experts and 6 employee representatives. As was the case with SNCF (the French railways), where employees were represented not by ordinary employees, but managers and representatives from major state bodies.

The social security example gives us another source of inspiration. Up until the French government reforms under Alain Juppé's premiership, social security was jointly managed entirely by trade union and employee organizations rather than by state structures.

Returning public services to municipal control, even at a local level, gives us interesting precedents in terms of governance, democratization and alignment for managing social and environmental issues. When Paris's water services were returned to municipal control, a wider and more transparent governance structure was put in place, with an expanded executive committee and a Paris Water Observatory that was open to citizens and included significant freedom of information powers[63].

62 https://www.cairn.info/revue-annales-historiques-de-l-electricite-2003-1-page-53.htm?contenu=article#no1

63 https://multinationales.org/fr/enquetes/remunicipalisation-de-l-eau/anne-le-strat-la-remunicipalisation-a-permis-a-paris-de-mener-une-politique-de

In real terms, the decision to nationalize TotalEnergies, which will involve the state acquiring capital in the TotalEnergies SE parent company and its shares and assets, must take the form of a law to be adopted by the French parliament. To ensure a consolidated process and minimize the risks of backtracking, this nationalization law could take the form of an "organic" law (in accordance with the French Constitution and Charter for the Environment). It could also be a "simple" law combined with other types of measures to prevent any backtracking (see below). This law could go beyond TotalEnergies to cover other French companies that own or exploit fossil fuel deposits and could include supplementary provisions to ban fossil fuel assets from being held as private property and forbid companies operating under French law from being involved in developing or exploiting new fossil fuel sources.

The nationalization law would define the stages of the process, governance of the future entity and the ways in which shareholders and other eligible parties would be compensated. The compensation procedure is already covered in the constitutional jurisprudence, which provides the mechanisms needed to avoid price manipulation (for example, speculative market valuation price hikes when nationalization plans are announced). It also requires compensation amounts to be fixed based on market prices using an independent expert committee[64]. The committee membership, whose role is to calculate the real value of the TotalEnergies group and its fossil fuel assets, must reflect the full diversity of expertise and consider the issue of "stranded assets" brought about by the climate emergency to estimate this value and the correct level of compensation for current shareholders (see box).

It is clear, however, that state control of company shares does not in itself guarantee democratic supervision and decisions that will lead the company in the "right direction". There are numerous examples of oil and gas companies under public or semi-public control that continue to exploit new deposits, such as Aramco, Gazprom, OMV and ENI. This was also the case for Elf, the oil and gas provider that was absorbed into Total in 2000.

In addition to this, if the state itself is not democratic or does not have structures in place to democratically control and guide these public companies, the public property control indicated on paper will remain theoretical. The case of EDF shows the ability of a "public" company to disobey politicians and obstruct government decisions while waiting for the next election to bring about a reshuffle[65]. As a general rule, France's "Agence des participations de l'État" exists today to manage the shares in public companies that are held by the state (energy, arms, transport, etc.) purely as

64 See successive decisions on the nationalization laws of 1981 and 1982: https://www.conseil-constitutionnel.fr/decision/1982/81132DC.htm and https://www.conseil-constitutionnel.fr/decision/1982/82139DC.htm.

65 https://multinationales.org/fr/enquetes/les-portes-tournantes/comment-le-lobby-nucleaire-a-paralyse-la-loi-de-transition-energetique

a form of asset management (with the aim of managing and growing public money) and not to influence the strategy or prioritize general interestsl[66].

Acquiring TotalEnergies is therefore only the first step, and must be followed by at least two further steps — democratizing governance and operational management and, at least initially, transforming the company into a public, industrial, commercial institution with a clear mission to exit from fossil fuels. Based on the chosen scenario (see below in part three), this entity could then become a private cooperative or citizen-owned company, or remain a publicly owned establishment with a new mission, or a combination of the two.

Governance of this public institution should be determined to ensure pluralism and avoid the leadership being dependent on the state powers who appoint them, as is often the case at present.

The future public institution would be under parliament control, in a similar way to the French "Caisse de dépots et consignations" (state-owned bank), at least in theory. As well as parliamentary control mechanisms, the institution would need to be supervised and monitored by an employee committee and a transformation committee composed of experts and representatives from civil society.

More than 200 people, activists, young people, marginalized people, people victims of climate injustice run for a peaceful march of 11.5 km in the streets of Lomé. With T-shirts reading 11,5 which represents the 11.5 billion EURO in annual revenue of the TOTAL oil company, published in July 2023, they are calling on governments to use all financial means possible to reclaim the excessive profits of the fossil fuels industry. They must use this money to power up the renewable energy project, to repair climate injustice and energy injustice in Togo.

66 https://multinationales.org/fr/enquetes/cac40-le-veritable-bilan-annuel-2018/comment-l-etat-actionnaire-est-vide-peu-a-peu-de-sa-substance

WHAT IS THE TRUE VALUE OF TOTALENERGIES?

If someone wanted to buy all of the shares in TotalEnergies on 2 October 2023, it would cost them €151.2 billion, which represents the company's market capitalization.

However, acquiring a company also involves taking on its debts. A report focusing on the UK fossil fuel industry suggested that this debt should be purchased by the government and restructured to be paid off over the long-term, limiting the immediate cost[67]. It should be noted that part of this debt is held by the European Central Bank, which would be in a position to restructure the debt if it really wanted to make a serious commitment to the climate[68].

The company's estimated value is based on several hypotheses, one of which is that all fossil fuel assets belonging to the company will be exploited. However, in accordance with the Paris Agreement, a proportion of the oil and gas reserves must not be exploited and the corresponding assets are known as "stranded". Based on different scenarios, in the case of Shell, these stranded assets represent between 4 and 72% of its gas reserves and 66 to 90% of its oil reserves[69]. It is difficult to estimate the value of these assets, which depend on future oil prices (based on different climate scenarios and price movements, the value oscillates between 25 and 608 billion dollars), but these reserves are undoubtedly a contributory factor in the artificial inflation of the company's value. Taking these stranded assets into account would necessarily have a negative impact on the company's market capitalization.

A high enough social cost of carbon would also provide fairer compensation. By taking this into account, all costs borne by impacted communities due to the company and its projects would reduce the company's profitability.

More restrictive climate and corporate climate responsibility regulations would also help to reduce the unjustifiably high value of the company's assets.

We might also consider who would benefit from this compensation, from an ethical point of view. Buying back TotalEnergies shares would benefit the shareholders, who are principally institutional investors such as BlackRock and Amundi. One of the proposals in the UK report mentioned earlier is actually to only compensate pension funds. The authors of the report believe that groups consciously investing in planetary destruction should receive nothing in return and that pension funds are the least responsible and the most under-resourced if fossil-fuel investments were lost.

As previously mentioned, in the French scenario, the "fair price" for TotalEnergies would be assessed by an expert committee appointed for this purpose, which would ultimately analyze the possible legal bases for different treatment of shareholders.

Whatever the final assessment, taking control of TotalEnergies would require purchasing and restructuring the organization, and this would represent a significant cost. This burden on public finances could be partially compensated by targeted taxes (on wealth), in the spirit of social justice. The cost of not adopting ambitious measures (see box "The cost of inaction") must also be borne in mind. From the perspective of democratizing the company and its management, one potentially desirable option would be to call for crowd funding, for example, a people's subscription (see below).

.

67 Johnson, J. and Herfort, N. (2022). 'The Emergency Brake: Nationalising and Dismantling the Fossil Fuel Industry in the Global North,' Climate Vanguard: London. https://www.climatevanguard.org/publications-all/emergency-break

68 Some economists recently called for sovereign debts held by the ECB to be cancelled. This could be applied to publicly owned companies who are committing to a quick and effective energy transition. https://www.euractiv.com/section/economy-jobs/opinion/cancel-the-public-debt-held-by-the-ecb-and-take-back-control-of-our-destiny/

69 https://www.somo.nl/shells-risky-bet-on-climate-chaos-the-deceptive-path-to-net-zero/

TOTALENERGIES' COUNTER MEASURES

BUT WHAT IF TOTALENERGIES LEAVES FRANCE?

Could the TotalEnergies leadership team decide to leave France to escape nationalization by relocating their head office or stripping the parent company of any meaningful substance? There's no shortage of precedents, such as the relocation of the finance department to London between 2013 and 2020 (at a time when the French government started showing signs of increased tax monitoring), Shell abandoning their head office in The Hague in favour of the London office in 2022 or transferring assets to Switzerland and elsewhere in 1981 to escape from the wave of nationalizations. Some capital cities would undoubtedly be happy to welcome the group with open arms. Decisions like these would pose no problem to the group's current leadership, but would be harder to sell to their employees.

What if TotalEnergies sold its oil and gas assets to third parties to artificially reduce its own emissions while raising money?

To ensure its economic model is compatible with the Paris Agreement and block any attempt at state control, TotalEnergies could decide to quickly give up some of its oil and gas assets and this carries the risk that these assets will continue to be exploited by other organizations. We'll cover the issue around the future of TotalEnergies' fossil fuel assets in part three. In this case, the strategy would be to sell the company's fossil-related assets for cash that would be immediately redistributed to shareholders, stripping the group of its assets before being taken under public control. There are preventive measures that could be applied here too.

B. REQUISITIONING

Nationalization, as in public acquisition of TotalEnergies' capital, is the most common way for the state to take control of a private company. It requires the state to comply at least temporarily to market forces, even if the end goal is to transform the private company into a public institution.

For ethical, political and financial reasons, we might ask if there are other, more desirable, ways of doing it. Nationalization in its simplest terms would absolve TotalEnergies' leadership team and shareholders of their past responsibilities when running the company and their deliberate choice to continue exploiting fossil fuels.

The first alternative option would be requisitioning. Historically, this has been used during wartime to meet emergency needs, to counteract slow performance or bad faith in private companies or just to simplify the chains of command. Requisitioning was also used in 1944 to take control of Renault as part of the liberation process but also to punish the group's leadership for collaborating with the Nazi occupiers. Requisitioning is a topic that came up during the COVID-19 pandemic in response to the healthcare crisis but it was never implemented due to lack of political motivation and because the most useful products and units of production were not generally located in France. It's worth noting, though, that the French government had no hesitation in requisitioning workers in the context of the 2022 strikes in TotalEnergies' refineries.

Requisitioning can be justified on two levels:

- Firstly, due to the urgency needed to tackle the climate crisis and phase out fossil fuels and the bad faith shown thus far by TotalEnergies' leadership team in this regard.
- Secondly, due to TotalEnergies' historic liability for environmental destruction, corruption and wealth hoarding since the group was created in the 1920s. Following this logic, we can say that TotalEnergies' current capital is the fruit of serious violations of laws and of the environment, and of historic crimes, some of which aren't yet defined. This would justify treating the company and its riches as "ill-gotten gains" that need to be restored to their rightful owners, whether they be employees, French citizens or local populations in countries where oil and gas were plundered. In the light of this, the French state would take possession of Total to retrieve some of these assets and return others to the relevant countries' public powers. This approach could involve implementing a historical audit of TotalEnergies, using the example of debt audits where "odious debt" could be identified and agreement reached on restitution methods. This process would be closely linked with the issue of reparations that will be covered in the next section.

By definition, requisitioning TotalEnergies would only include its assets and activities based in France. The French government must therefore invite other affected governments to do the same, coordinating their approaches as far as possible.

C. STARTING LEGAL PROCEEDINGS FOR CLIMATE SAFEGUARDING?

There's a third option to consider, which has no historical precedent. This would involve taking inspiration from financial safeguarding proceedings and applying these to the climate context. The underlying problem is that given the level of stranded assets and environmental and climate reparation costs incurred by its activities, an oil and gas giant such as TotalEnergies would be unable to honor its responsibilities, and risks "climate-change bankruptcy". This approach could draw upon a detailed environmental audit.

The safeguarding proceedings would involve placing TotalEnergies group under the control of a legal provider who would represent its "creditors", which in this case would be populations, employees, governments and the environment both locally and at a planetary level. It would be up to the company's leadership team, assisted by the legal representative, to present a "climate recovery plan" that is convincing enough to close the proceedings[70]. It appears that French commercial courts in their current form would not have the resources and expertise — nor the desire — to handle and judge such proceedings with the required level of rigor.

This third option doesn't involve direct public property and there would therefore be no direct acquisition costs or compensation for shareholders. It's a process of provisional guardianship (at least in theory) that could also enable TotalEnergies to renegotiate their debts with banks and other creditors in the more traditional sense of the term.

More than 200 people, activists, young people, marginalized people, people victims of climate injustice run for a peaceful march of 11.5 km in the streets of Lomé. With T-shirts reading 11,5 which represents the 11.5 billion EURO in annual revenue of the TOTAL oil company, published in July 2023, they are calling on governments to use all financial means possible to reclaim the excessive profits of the fossil fuels industry. They must use this money to power up the renewable energy project, to repair climate injustice, energy injustice in Togo.

© 350.org

70 This option was mentioned by Claude Henry a few years ago in a column in *Le Monde*: https://www.lemonde.fr/idees/article/2018/09/05/claude-henry-trois-mesures-pour-sortir-du-desastre-ecologique_5350348_3232.html

THE THREAT OF INTERNATIONAL ARBITRATION

Whichever solution is chosen — nationalization, requisitioning or implementing an ambitious set of restrictive regulations forcing TotalEnergies to exit from fossil fuels — would inevitably carry a risk of international arbitration for the investment and exorbitant compensation requests from TotalEnergies' shareholders.

Investor state dispute settlements (or ISDS) have been designed precisely to protect multinationals and investors against any form of transformative action imposed by governments. They have been used to contest nationalizations and changes to environmental, social, or tax regulations on the grounds that they would jeopardize future profits to which the investors claimed entitlement. Experience shows that these legal disputes, presided over by private arbitrators who favor international business law over environmental or humanitarian law, are in the majority of cases resolved to the benefit of companies or via amicable resolutions that prove costly to governments.

These mechanisms were used recently to contest measures relating to climate transition and the exit from coal, particularly as part of the Energy Charter Treaty[71].

So, there is a real risk here, which has led a growing number of governments to withdraw from these treaties. On another note, the climate emergency has provoked a debate over the need to exclude climate-related policies from the scope of ISDS[72]. Whatever the issues, even within the current system it's possible to 1) ensure that any measures taken, in this case by the French government, do not have any ulterior, selfish motives but are driven by France's international commitments to climate action, and 2) contest the total compensation amount, due to the devaluation of fossil-related assets. If countries like France and other Western nations, which have in the past been on the investors' side, commit to the same approach to phasing out fossil fuels, this will definitely contribute to changing the legal status quo.

71 https://reporterre.net/Comment-le-Traite-sur-la-charte-de-l-energie-plombe-la-transition-ecologique

72 https://www.iisd.org/itn/en/2020/06/20/valuing-fossil-fuel-assets-in-an-era-of-climate-disruption/

PART THREE. WHAT'S THE END GOAL?

1. ONE OR MANY NEW COMPANIES?

Once TotalEnergies has been taken over by the state, the question we need to ask is what will happen to this new entity, beyond the fossil fuel phaseout?

This is a two-part question.

Firstly, should the future organization remain in the public sector or should it be transformed into a different type of company, managed in a way that serves the public interest and owned by its users, employees and citizens as a whole?

Being publicly owned is not in itself a guarantee of good management and will not protect against potential backtracking. One option would be to give the new group cooperative status once its fossil-related assets have been stripped, with the progressive phaseout and associated costs being managed by the state. A company structure such as the French SCIC (shared interest cooperative enterprise) has the advantage of a system of governance that is open to all stakeholders (employees, users, qualified individuals, and civil society). This legal structure has only been used in France for small organizations up to now, but in theory, there's nothing to stop it being applied to much larger companies. In any case, this status change will remain meaningless if it isn't followed up with more significant operational changes in the production process and employee relations.

The idea of the company being owned as a collective or by citizens could go hand in hand with the crowd-funding idea (where citizens can buy shares and will each get one vote regardless of how many shares they hold), which would lower operational costs for the state. This solution has the advantage of providing a more solid guarantee against any backtracking attempts by a government that has retained full control of the group.

Secondly, would it be preferable to retain the future entity as it is or allow the different parts of the business to go their separate ways (apart from the fossil fuel assets that will be disappearing)? As we've seen, the TotalEnergies group as it currently stands holds a number of links in the energy chain within its business. This grouping of different activities is not strictly necessary or natural, but it is a way for the group to exert its power on a number of levels.

By taking democratic control of the company and transforming it into a public institution, the group's activities could be separated over the medium and long terms. These decisions could be made collectively throughout the envisaged democratic consultation period, obviously with the participation of the employees affected. By way of an example, the following options could be considered:

- Supply of oil and gas and refining activities will stay in public hands and remain the responsibility of a fair transition agency, at least during the fossil fuel phaseout process. Nationalization would simply be a logical response to the quasi-monopoly that TotalEnergies currently holds over the sector in France. It would enable an environmental planning approach to be implemented over the long term across the entire chain, including the largest proportion of players within this chain under the same umbrella. This agency, or another of the same type, could ultimately take over some of ADEME's responsibilities (The French Agency for Ecological Transition), such as supporting users in their fossil fuel phaseout as part of a democratic governance approach. TotalEnergies' existing employees could be integrated into this new agency with an equivalent status.
- The planned exit from oil and gas extraction activities, which is a discrete, short-term project, could be managed by the same agency or by an ASEF (Agence de sortie des énergies fossiles — Fossil Abolition Agency or FAA)

created specifically for this purpose[73], and still within the public domain.

- Common interest activities such as ecotechnology could be transformed into a public research and development institution, which would issue open licenses giving access to its expertise and technologies and provide support to public and private bodies who need it. These responsibilities could be joined up with those assigned to the French IFP Energies nouvelles (IFPEN) organization, which will no longer be beholden to the industry but governed in a democratic way to serve the public interest and society as a whole over the long term.
- Petrochemical and refining activities could be converted and used to contribute to the transition rather than perpetuating fossil fuel usage. This could take the form of a new public institution (in the case of refining) or a cooperative or citizen-owned business.
- Energy supply activities could be restructured into user cooperatives or included as part of a future, newly created public energy provider.
- If we consider that the future public version of TotalEnergies will have no further need to access markets in outside countries, certain activities such as developing renewable energy outside of France could be sold off, preferably to public bodies or citizens, to free up funds to finance fossil fuel phaseout and a fair and inclusive transition.

2. A DEMOCRATIC ENERGY SYSTEM

Taking control of TotalEnergies and forcing them to put democratic processes in place to address energy and climate issues in France is clearly not enough on its own. This company is not the only player in France's energy system and a larger-scale democratization needs to be implemented to support all industry players fairly.

In this report, we are only covering TotalEnergies and the oil and gas sector. Solutions involving reorganization and public control that are similar to our proposals for this sector must clearly be applied to the electricity, transport and gas distribution sectors, which are currently undergoing a disguised privatization and dismantling process.

The agreement that we're proposing as a first step will serve to engage the wider public in a systematic review of the different stakeholders and their positioning. Creating a fair transition agency will bring the various stakeholders together within a dedicated ministry to prepare for a process of reduction in fossil fuel consumption. Different areas within TotalEnergies will all have a role to play in this process, such as (transitional) provisioning, power generation and supporting communities and other stakeholders. Once again, it will be important to ensure coordination between the different stakeholders to ensure that plans are consistent and fair.

The fair transition agency will set the general pricing framework, which must include support mechanisms for the most deprived as well as cross-subsidies. If the general public can see that there is a fair distribution of effort — unlike what we see today — with no dividends or exorbitant salaries for leaders, together with democratic decision-making processes, any energy price rises that are needed for particular purposes will be considered more socially acceptable. Instead of being sold to the highest bidder on the market, energy will primarily serve the needs of society and public services.

73 Johnson, J. and Herfort, N. (2022). 'The Emergency Brake: Nationalising and Dismantling the Fossil Fuel Industry in the Global North,' Climate Vanguard: London. https://www.climatevanguard.org/publications-all/emergency-break

3. AN INTERNATIONAL, OR AT LEAST EUROPEAN, APPROACH

Clearly, the proposals we are outlining here for TotalEnergies would make more sense and be more effective as part of a European or international effort. As previously mentioned, there have been similar debates in different countries about other fossil fuel companies, such as Shell, ENI and RWE. So, it is possible to imagine a coordinated movement at the European level to start with, which could then be gradually rolled out to private multinationals headquartered in North America and elsewhere and to publicly owned oil companies, including some (like in Latin America) that have been public organizations with social objectives at different times in their history.

A coordinated international approach would present several advantages:

- Creating the critical mass needed to consolidate the process, prevent backtracking and promote a ripple effect in other countries and among other industry players.
- Limiting the risk of certain less scrupulous companies rushing in to fill the newly vacated space and continue their fossil-related projects.
- Preparing for a system where costs, skills and expertise are shared between the entities emerging from the former oil and gas giants.

This international coordination effort would need to be subject to international multilateral agreements or treaties (with a growing number of countries signing up to them) to hold the conditions. It would be a perfect addition to the Fossil Fuel Non-Proliferation Treaty Initiative put forward by some Pacific nations and civil society organizations[74]. Along the same lines, a coalition of social organizations recently penned an open letter to Ursula von der Leyen requesting that the European Union legislate to ban European companies and banks from engaging in new fossil-fuel projects[75].

The international coordination process would also align with principles of equity and common but differentiated responsibility, as per the Paris Agreement on climate change. This is a particularly important point given the historical responsibility of developed countries and justifies their leading the way and guaranteeing climate transition by taking control of the oil and gas giants based in their countries.

From an operational point of view, the international process we're discussing here could be placed under the guardianship of the UN or the OECD (if the process initially covers western oil and gas companies), which would coordinate activities and manage shared funding used to transform companies, phase out fossil fuels and arrange reparations, which will be covered below.

74 https://fossilfueltreaty.org/

75 https://bloomassociation.org/totalenergies-lettre-ursula-von-der-leyen/

4. TOTAL'S CONTRACTS ABROAD

As part of a rapid exit from fossil fuels, once TotalEnergies has stopped extracting oil and is hardly extracting any gas in France, the future of its oil and gas extraction projects abroad will become crucial.

It's clear to see that if TotalEnergies withdraws from these projects and is simply replaced by other companies, there will be zero benefit for the climate. The issue, therefore, is to ensure that TotalEnergies' withdrawal happens alongside the end of oil and gas exploitation. In other words, the withdrawal needs to be negotiated with governments and other affected partners in such a way that projects already under way will not come to fruition, or that current explorations will be cut short, essentially to ensure that the oil and gas stay underground. Our proposal here will focus on extraction activities, which need to be stopped as a priority, but a similar approach could be applied to oil and gas infrastructure assets (oil and gas pipelines, LNG).

NEGOTIATING REDUCED PRODUCTION

In most cases, the TotalEnergies group operates in a joint venture with other companies or is linked to them via concession agreements or licenses. We can't therefore expect it over the long term to simply "freeze" its projects and stop extracting gas and oil. TotalEnergies would be likely to face legal proceedings or indemnities relating to breach of contract. It will need to negotiate with public and private partners to reduce production (involving agreeing to stop using part of their reserves) in line with the Paris Agreement, citing the need to address the climate crisis in court if required.

DEDICATED FUNDING TO LEAVE FOSSIL FUELS IN THE GROUND

When it comes to projects currently under development, an option in some cases could be to set up a fund along the same lines as the one developed by Ecuador a few years ago. Instead of investing billions of euros to launch and develop new projects, the new TotalEnergies group would set up a green fund to support activities to ease poverty, invest in the ecological transition and adapt to the climate crisis, which would enable the affected countries to meet their needs without exploiting their fossil fuel resources. Of course, this would mean managing the fund in a transparent and democratic way that won't end up benefiting any authoritarian regimes. In the absence of local action, there is a risk that no real changes will be made. Finally, it must not be limited to particular fossil fuel deposits but instead it should be linked to a general commitment to stop exploiting all deposits.

If an international approach is adopted, public or private money dedicated to the climate could be mobilized to finance these funds and focus on certain agreements.

The same type of approach could be naturally extended to countries that decide to cut short or significantly reduce exploitation of their oil and gas reserves.

THE MOST DIFFICULT SCENARIOS

For some of TotalEnergies' partners (both governmental and commercial), it seems highly unlikely that they would agree to a short-term commitment to phase out fossil fuels. A decision is therefore needed as to whether TotalEnergies should be retained until the deposits are exhausted, as long as the group's general trajectory and that of affected countries remain in line with the Paris Agreement, or whether to bring these deposits to a controlled end (with contractual obligations on the part of the buyers to manage their own climate transition) to free up funding for other fossil fuel phaseout activities.

‘THIS WILL JUST CLEAR THE WAY FOR WORSE COMPANIES THAN US’

This is the classic argument used to counter any criticisms leveled against western multinationals in general, and French companies in particular. These companies portray themselves as the least harmful option, and claim that forcing them to cease their activities would open the door for Chinese, American, Russian or Indian companies to step in, who are even less responsible. Withdrawing investment in TotalEnergies would not only serve no purpose (for the climate), but it would also be counterproductive, because it would leave the field open to less scrupulous players.

Without entering into a discussion on the respective merits of TotalEnergies (which we spoke about in part one) and its Chinese (or other) equivalents, we can respond to this type of objection by saying that we don’t envisage a unilateral withdrawal, but we would negotiate reduced production in partnership with the affected countries. This would be done as part of the coordinated international movement we mentioned above, designed to minimize risk.

However, it goes without saying that the new-look TotalEnergies would no longer be involved in exploring or exploiting new deposits. We might imagine that setting about this process of abandoning potential energy sources will result in reduced demand for combustibles, in turn reducing the economic viability of opening new deposits over the medium to long term.

StopEACOP activists hold an action at COP27 in Sharm El-Sheikh and demand an end to oil in Africa.

5. THE ISSUE OF REPARATIONS

The TotalEnergies group is closely linked to French imperial history (particularly in the Middle East) and France's relationship with Africa. Any process to cease extracting oil and gas would therefore need to be accompanied by a parallel process to document the historical exploitation of fossil fuels and its consequences on populations and the environment, with a view to arranging the required reparations. TotalEnergies cannot be brought into the public domain without facing up to its past activities. Any legislation relating to the group's exit from fossil fuels must explicitly mention that withdrawal without reparations for damage caused is unacceptable.

The question around the form these reparations should take cannot be tackled without the participation of the affected populations and their representatives. Reparations wouldn't necessarily be monetary. Environmental reparations should be given priority wherever possible. We could use the discussions carried out by the communities in Ecuador that were victims of Chevron/Texaco as inspiration for this[76].

During the COP27 in Egypt, the international community finally agreed in principle to setting up a fund to compensate for loss and damage relating to climate impacts. TotalEnergies' contribution to the reparations could use this mechanism when the time comes.

76 See https://multinationales.org/fr/enquetes/devoir-de-vigilance/injustice-sans-frontieres-chevron-contre-l-equateur

THE COST OF INACTION?

Throughout this publication, we've listed the different costs associated with taking control of the TotalEnergies group. These costs include nationalization processes, compensation for shareholders, company transformation and employee redeployment costs, TotalEnergies' debts, the repayment of which could be complicated by the gradual withdrawal from fossil fuels, funding to support cutting short extraction projects, reparations, and more.

At first glance, the total costs might seem prohibitive. But if we look at the money France spent on tackling the pandemic and that is spent every year supporting companies, it starts to seem more reasonable. The money spent would also bring about many benefits to the environment, health and even diplomacy[77]. Part of the cost incurred could ultimately be covered by continuing or ceasing certain activities within the group. Setting up a shared international fund could also mitigate the financial impact. Either way, these sums of money could be raised using specific obligations and paid back over the long term.

Essentially, if we look at the global cost of climate inaction and the percentage of these costs that would need to be met by France (based on its current and past responsibilities), the sums seem rather modest in reality.

77 https://climatenetwork.org/resource/report-co-benefits-of-climate-action/

OUTLINE SUMMARY

PREPARATORY PHASE: • Citizens' convention/general assembly • Social agreement		Governance committee for the convention Expert, worker, ONG working groups, etc. Social dialogue
Regulations/framework	Legal package	Parliament
Democratization	Legal amendments	Company stakeholders
Nationalize/requisition	Law (simple or organic)	Parliament
Formation of one or more public institutions to manage transforming the group, exiting from fossil fuels and shutting down its fossil-related assets abroad		Parliament supervision and open governance (workers, experts, civil society)
One or more new companies; public and citizen ownership		Open public governance or cooperative governance

CONCLUSION

Activists march in solidarity and support of StopEACOP campaign as part of the Big One demonstrations in London, United Kingdom.

© Natasa Leoni

For many years, governments in France and elsewhere have contributed to their own impotence and, as a consequence, ours too. They made the choice not to address the political and economic power of the multinational oil and gas giants, like TotalEnergies, hoping (or seeming to hope) that these companies would of their own volition help us to solve the climate emergency using market forces. The governments let them use their modest investment in renewable energy as an excuse for continuing to exploit oil and gas for decades to come. If we don't phase out fossil fuels, recent achievements in developing renewables will be in vain.

This illusion no longer holds water. We need to tackle this power at its source, since it's not "part of the solution" at all, it's actually the problem itself.

The aim of this study was to suggest ideas and avenues to explore when discussing ways of bringing these huge companies under control and committing them to a true fossil fuel phaseout. Some of these ideas are drawn from past models and experience, where we've tried to pinpoint relevant lessons learned. Other newer ideas have been fueled by current debates and discussions in various countries aiming to find real solutions to the climate emergency. This study is only the first step of a longer, more laborious, process.

Similar discussions are being held in other countries around the future of oil and gas multinationals and ways of building decarbonized, democratic energy systems that exist to serve the needs of the population rather than the needs of large businesses. The proposals we've put forward concerning TotalEnergies could be used in an international approach targeting the fossil fuel sector as a whole, making the proposals more feasible and achievable.

TotalEnergies clearly isn't our only problem. But if we don't take back control from this French group and the other fossil fuel giants, we will never have the means to avoid the worst. There are ways of taking action, some of which are enshrined in our political heritage, whereas others will need to be invented. We just need the political will to take back control.

Publié en décembre 2023 par 350 France
Published in December 2023 by 350.org and the Multinationals Observatory.

Coordinated by: Clémence Dubois and Olivier Petitjean

Researched and written by: Olivier Petitjean and Ulysse Vassas

Design by: Lully Duque

With thanks to: Romain Ioualalen, Johanna Bozuwa, Michel Capron, Pierre-Louis Choquet, Maxime Combes, Louis-Maxence Delaporte, Alain Deneault, Aude Epstein, Paul Mougeolle, Thomas Perroud, Dominique Plihon, Juliette Renaud, Justine Ripoll, Marie Toussaint

POWER UP FOR CLIMATE JUSTICE