

Grande Synthe case, Season 3: The judge tries to keep up the pressure on the French Government to achieve the objective of reducing greenhouse gas emissions by 40% by 2030

On July 1, 2021, in a case brought by the municipality of Grande-Synthe and several environmental organizations, the *Conseil d'État* (French Administrative Supreme Court) had ordered the French Government to take all necessary measures before March 31, 2022 to meet the objective of reducing greenhouse gas emissions by 40% by 2030, compared to 1990 levels, in order *inter alia* to comply with the Paris Agreement and the European commitments taken on by the French legislature^[1].

Almost two years later, the *Conseil d'État* found that its decision had not been enforced. In a ruling dated May 10, 2023, it ordered the French Government to take new measures by June 30, 2024, and to submit a progress report by December 31, 2023 detailing these new measures and their effectiveness^[2].

Background

This is the 3rd time that the *Conseil d'État* has ruled on this case brought *inter alia* by the municipality of Grande-Synthe and several environmental associations.

On November 19, 2020, in an initial ruling, the *Conseil d'État* had held that the target for reducing the level of GHG produced by France set by Article L. 100-4 of the French Energy Code and Annex I of Regulation (EU) 2018/842 of May 30, 2018 was binding on the French Government and that the *Conseil d'État* had jurisdiction to monitor the achievement of this target^[3]. As the *Conseil d'État* had agreed to monitor compliance with a future trajectory, without waiting for the 2030 deadline to check whether such trajectory it has been effectively met, it ordered further preparatory inquiries to obtain from the French Government any information or elements likely to establish that it was taking adequate actions to meet the *GHG emissions reduction trajectory*.

On July 1, 2021, in a second ruling, the *Conseil d'État* found that the measures already taken at that date were not compatible with this trajectory and that additional measures were necessary. It therefore enjoined the French Government to take by March 31, 2022 “*all appropriate measures*” to curb greenhouse gas emissions produced in France, in order to meet the GHG emissions reduction trajectory and to achieve the reduction targets set by law. Once again, the *Conseil d'État* attempted to adapt to this unusual dispute by leaving it up to the French Government to decide on the appropriate measures to be taken.

It is in these circumstances that judicial enforcement proceedings were instituted in October 2022 as the claimants asked the *Conseil d'État* to hold that its ruling of July 1, 2021 had not been enforced by the French Government.

Having received the information transmitted by the Government to substantiate its actions, as well as the observations of the Grande-Synthe municipality, the city of Paris and the claimant associations, the *Conseil d'État* had to determine whether the ruling of July 1, 2021 had been properly enforced and, if not, whether to issue any injunctions or penalty orders likely to ensure the effective enforcement of this ruling^[4].

Acknowledgment of non-enforcement

In practical terms, this means that the *Conseil d'État* was to examine whether the measures taken by the French Government – or the measures which can still be adopted to produce effects within a sufficiently short timeframe – ensure that the curve of GHG emissions is compatible with the achievement of the targets set for 2030.

The *Conseil d'État* first explained its three-stage review process:

- Examining whether the intermediate targets have been met,
- Examining whether the measures adopted or announced by the French Government are such as to reduce greenhouse gas emissions, or, on the contrary, likely to generate an increase in such emissions,
- Taking into consideration the observed or foreseeable effects of these various measures and, more widely, the effectiveness of the public policies implemented, based on the different methods of assessment available, including the opinions issued by experts, in particular the French High Council on Climate (*Haut Conseil pour le Climat*, also known by its acronym HCC).

This process should allow determining whether the GHG emissions reduction targets set for 2030 could be considered as reasonably attainable.

Assessment of the trajectory so far

To achieve the target of a 40 % reduction in GHG emissions compared to 1990 levels, the French Government has adopted a reduction trajectory extending over 4 periods called “carbon budget” periods (2015-2018, 2019-2023, 2024-2028 and 2029-2033), each of them with emissions reduction targets.

The *Conseil d'État* noted that data published by the French Technical Reference Center for Air Pollution and Climate Change (*Centre Interprofessionnel Technique d'Etudes de la Pollution Atmosphérique*, also known by its acronym CITEPA) shows that so far, the 2019-2023 targets, corresponding to an average emissions reduction of 1.9% per year, could be met.

It noted, however, that beyond this average, annual emissions reductions were highly contrasted: -1.9% in 2019, then -9.6% in 2020 – and that the provisional data available showed that emissions rose again in 2021 (+6.4%) before falling again in 2022 (-2.5%).

The *Conseil d'État* pointed out that there was some uncertainty as to whether these results are due to governmental actions or to the specific context of recent years, characterized by sharp declines in business activity (in 2020, with the COVID-19 pandemic and two lockdowns) and then the energy crisis (2022 with the war in Ukraine).

Review of the measures adopted since the 2021 injunction

The information and evidence put forward by the French Government showed that a number of measures have indeed been taken since July 1, 2021, with a specific budget allocated to their financing and, more broadly, to the financing of the ecological and energy transition.

The *Conseil d'État* briefly described each measure adopted or announced by the French Government in the transport, construction, agriculture, industry, energy, and waste sectors.

Assessment of whether the measures taken can result in the achievement of the reduction targets set for 2030

The *Conseil d'État* further elaborated on the difficulties in assessing France's ability to meet its GHG emissions reduction targets.

The *Conseil d'État* then explained that while the simulation carried out by Technical Reference Center for Air Pollution and Climate Change, at the request of the French Government, showed that the measures taken since July 2017 could enable a reduction of more than 38% in GHG emissions in 2030 compared with their 1990 levels, it presented, however, a significant degree of uncertainty.

As a matter of fact, the *Conseil d'État* relied on the report published in June 2022 by the High Council for

Climate to issue its ruling.

In its 2022 report, the High Council for Climate considered that there was a clear risk that the 2030 reduction target would not be met. Out of the 25 orientations set out in the French Government's emissions reduction strategy (known as the national low-carbon strategy or NLCS), only 6 have benefited from measures in line with the reduction trajectory that has been set. In fact, 4 of these orientations could even be considered as having been accompanied by measures likely to compromise the achievement of the targets set within the framework of the NLCS (especially in the transport, building, agriculture and energy sectors).

All in all, as the *Conseil d'État* held that:

"The High Council for Climate considers that there are major persistent risks of not achieving the greenhouse gas emissions reduction targets set for 2030, especially given the need, from the period covered by the 3rd carbon budget (2024-2028), to double the annual emissions reduction rate compared with what has been observed since 2010. Indeed, the average annual emissions reduction rate observed since then is around -1.7%, whereas the 3rd and 4th carbon budgets impose an average annual rate of around -3.2%, without taking into account the increased emissions reduction targets adopted at the European Union level".

In addition, the *Conseil d'État* pointed out the lack of any real steering based on relevant indicators and the absence of a systematic assessment of the impact of public policies on climate, as highlighted by the High Council for Climate in its 2022 report.

In conclusion, the *Conseil d'État* noted that all the measures adopted since July 1, 2021 showed the French Government's willingness to achieve the targets set for 2030 but added that the assessment of these measures was based on hypotheses that have not yet been verified, and that the conclusions of this assessment contradicted the analysis made by the High Council for Climate.

Given the need to accelerate emissions reduction from 2024 onwards, and in view of the new targets adopted by the European Union for 2030 (-55% compared with 1990 levels), the *Conseil d'État* considered that:

"Persistent uncertainties remained – which have not been lifted by the preparatory inquiries and the preparatory hearing – as to whether the measures taken so far and the terms and conditions of the strategic and operational coordination of all public policies that have been implemented can make sufficiently credible the achievement of a pace of reduction of territorial GHG emissions consistent with the reduction targets set for 2030 by national legal provisions or by the relevant provisions of European Union law."

For all these reasons, the *Conseil d'État* held that its ruling of July 1, 2021 cannot be regarded as enforced.

Consequences of this non-enforcement

The claimants asked the *Conseil d'État* to draw all consequences from these findings and to impose a penalty of €50 million per six-month period of non-compliance^[5].

However, the *Conseil d'État*, which took into account the French Government's conduct (the steps already taken and those still likely to be taken), considered that it was not appropriate at this stage to impose a penalty payment. It preferred to opt for a regular supervision of the enforcement of its ruling.

As such, without imposing a penalty, it issued a new injunction and ordered to the French Government to ***"take all useful supplementary measures to ensure that the pace of reduction of greenhouse gas emissions is consistent with the trajectory for reducing these emissions specified in the aforementioned Decree No. 2020-457 of April 21, 2020 with a view to achieving the reduction targets set by Article L. 100-4 of the [French] Energy Code and by Annex I to Regulation (EU) 2018/842 of May 30, 2018 before 30 June 2024, and to produce, by 31 December 2023, then by 30 June 2024 at the latest, all the elements evidencing the adoption of these measures and allowing for the assessment of their impact on these greenhouse gas emission reduction targets"***.

It remains to be seen what will emerge from this "judicial oversight^[6]" of compliance with the reduction trajectory.

[1] *Conseil d'État*, July 1, 2021, No. 427301. Available here: <https://www.conseil-etat.fr/en/news/greenhouse-gas-emissions-the-conseil-d-etat-annuls-the-government-s-refusal-to-take-additional-measures-and-orders-it-to-take-these-measures-before>

[2] *Conseil d'État*, May 10, 2023, No. 467982. Available here: <https://www.conseil-etat.fr/en/news/greenhouse-gas-emissions-the-government-must-take-new-measures-and-submit-an-initial-report-by-the-end-of-the-year>

[3] *Conseil d'État*, November 19, 2020, No. 427301. Available here: <https://www.conseil-etat.fr/en/news/greenhouse-gas-emissions-the-government-must-justify-within-3-months-that-the-reduction-path-to-2030-can-be-achieved>

[4] See Articles L. 911-5 and R. 931-2 of the French Code of Administrative Justice

[5] This request is inspired *inter alia* by the penalty payment imposed in the air pollution dispute against the French State. See our article entitled [Air pollution: The French State fined again](#) published on our Blog in October 2022

[6] Béatrice Parance and Judith Rochfeld, "'Grande Synthèse', l'émergence d'un contrôle judiciaire continu de la conformité de la trajectoire climatique", *La Semaine juridique - General edition*, No.20, May 22, 2023, act.

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