

ADMINISTRATIVE COURT OF PARIS

N° 1901967, 1904968, 1904972, 1904976/4-1

REPUBLIQUE FRANÇAISE

IN THE NAME OF THE FRENCH PEOPLE

ASSOCIATION OXFAM France  
ASSOCIATION NOTRE AFFAIRE A TOUS  
FONDATION POUR LA NATURE ET L'HOMME  
ASSOCIATION GREENPEACE France

Mr. Anatole Pény  
Rapporteur

Administrative court  
4th section – 1st chamber

Mrs. Anne Baratin  
Public rapporteur

Hearing of September 30, 2021  
Decision of October 14, 2021

44-008  
60-01-02-02  
54-07-03  
R

Having regard to the following proceedings:

By judgement dated February 3, 2021, the court ordered the State, on the one hand, to pay Oxfam France, Notre Affaire à Tous, la Fondation pour la Nature et l'Homme and Greenpeace France the amount of one euro each in compensation for moral prejudice and, on the other hand, ordered additional investigations before reaching a decision on the four petitions demanding that the court order the State to take measures to meet the objectives set by France in terms of the reduction of greenhouse gases (GHG) in order to put a stop going forward to the worsening of the ecological damage identified.

- I. In four new briefs registered under n°1904967, on April 6, May 12, June 24 and August 2, 2021, Oxfam France, represented by its Managing Director, Mrs. Cécile Duflot and by Maître Alimi, maintained the remainder of its pleadings and petitioned the court in addition, based on its latest submissions:

1) to order the Prime Minister and the competent ministers to take the necessary measures to repair the ecological damaged linked to the surplus greenhouse gas emissions resulting from the State's failure to meet the first carbon budget and to stop the damage worsening and, in particular and as rapidly as possible, to take all useful steps to make it possible to meet the objectives that France set for itself in terms of the reduction of GHG emissions, defined by article L.100-4 of the French energy code, taking into account the surplus GHG emitted by France and the additional efforts that achieving these objectives requires, such as:

- amending decree n°2020-457 of April 21, 2020 relating to the national carbon budgets and to the national low-carbon strategy and, consequently, decree n°2020 relating to multiannual energy programming, in order to ensure that its past excesses are taken into account, to set in place corrective measures to compensate for potential future excesses and take into account the future amplification of GHG reduction obligations between now and 2030, in accordance with the European 2030 Climate Target Plan;
- in any event, set in place evaluation mechanisms for the measures adopted, whether past or future, and monitoring of GHG emissions in accordance with the recommendations of the High Council on Climate, in order to ensure that the State's action is in line with reduction targets defined by decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
- take all measures necessary in the transport sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
  - to take all useful measures to reach the objectives fixed for the transport sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
- take all measures to make up for the delay observed in the take-off of road transport's modal shift towards low-carbon transport, such as:
  - adopt an action plan to comply with the objectives to multiply the modal share of rail transport fixed by article 11 of Act n°2009-967 of August 3, 2009 for programming relating to the implementation of the Grenelle Environment policy and articles 36 and 37 of Act n°2015-992 of August 17, 2015 relating to the energy transition for green growth;

- take all useful measure to catch up for the delay and meet objectives to renew the automobile fleet towards low-carbon vehicles fixed by article 13, I of Act n°2009-967 of August 2, 2009 for programming relating to the implementation of the Grenelle Environment Policy and articles 36 and 37 of Act n°2015-992 of August 17, 2015 relating to the energy transition for green growth and article 73 of the Mobility Orientation Act n°2019-1428 of December 24, 2019;
- define a national strategy to reduce at source the demand for mobility linked to forced travel;
- take all measures necessary in the building sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
  - o to take all useful measures to reach the objectives fixed for the building sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
  - o take all measures to make up for the delay observed in the number of energy efficient renovations noted between January 1, 2017 and December 31, 2020, with regard to the objectives defined in articles 3 and 5 of Act n°2015-992 relating to the energy transition for green growth;
  - o adopt an action plan making it possible to meet the objectives defined in articles 3 and 5 of Act n°2015-992 relating to the energy transition for green growth;
  - o bring into line decree n°2021-19 of January 11, 2021 relating to the energy performance criterion in the definition of adequate lodging in metropolitan France and the objective defined in article 5 of Act n°2015-922 relating to the energy transition for green growth;
  - o set in place a mechanism for evaluating and monitoring compliance with the thermal insulation obligation during façade renovation work provided by article R. 131-28 of the French construction and housing code;
  - o adopt, without delay, the regulatory measures necessary for the application of articles 2, 15, 22 and 33 of Act n°2019-1147 of November 8, 2019 relating to energy and the climate in terms of the energy performance of housing;
- take all the measures necessary in the agricultural sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
  - o to take all useful measures to reach the objectives fixed for the agricultural sector by article 4 of decree n°2020-457 of April 21,

- 2020 relating to national carbon budgets and the national low-carbon strategy;
- o take all measures to make up for the delay in increasing the share of agricultural areas used for organic growth to 20% by 2020, in accordance with the objective provided by article 31 a) of Act n°2009-967 of August 3, 2009 for programming relating to the implementation of the Grenelle Environment policy, and adjust the ambitions and resources devoted to the Plan Ambition Bio 2022 with regard to this objective;
  - o take all the necessary measures to ensure the implementation and updating of France's agro-ecological project with regard to the objectives defined by decree n°202-457 of April 21, 2020 relating to the national carbon budgets and the national low-carbon strategy;
  - o take all the measures necessary to develop ecological and solidarity-based regional food projects, in accordance with the objectives defined by article L.1, I of the French rural and maritime fishing code;
- 2) to impose a fine of 78,537,500 euros each semester on the Prime Minister and the competent ministers for lateness if they cannot demonstrate, in the six months following notification of the forthcoming decision, that they have adopted the measures necessary to make good the ecological damage linked to surplus GHG emissions resulting from the State's failure to respect the first carbon budget and to prevent the situation worsening in the future;
  - 3) and to charge the State the amount of 3,000 euros in application of the provisions of article L. 761-1 of the administrative justice code.

The association claims that:

- - as opposed to what the Minister for ecological transition claims, the State's action will not enable it to adopt a trajectory that will meet the objectives fixed both by the decree of April 21, 2020 relating to the national carbon budgets and to the national low-carbon strategy and by article L. 100-4 of the energy code. Indeed, the current dynamics for reducing GHG emissions appear insufficient as the Government has decided to increase the carbon budget for the period 2019-2023, which amounts to 422 MTCO<sub>2</sub>-eq per year, excluding emissions and absorption associated with use of land and forestry, compared to 399 MTCO<sub>2</sub>-eq fixed by the decree of November 18, 2015. In these conditions, the fact that 2019 emissions, assessed at 437 MTCO<sub>2</sub>-eq,

met the annual share fixed by the decree of April 21, 2020 in no way reflects an acceleration of the pace of the reduction of GHG emissions, since this target remains below the objective initially fixed by the first national low-carbon strategy, i.e. 417 MTCO<sub>2</sub>-eq;

- while article 3 of the November 8, 2019 Energy and Climate Act provides for the instigation, as of January 1, 2022, of an “indicative ceiling of GHG emissions generated by transport links to and from France and not included in the carbon budgets” referred to as the “specific carbon budget for international transport”, it is clear that this ceiling will be added, without being integrated therein, to the sector-based budgets defined by the revised national low carbon strategy. As such, the mechanism envisaged in the framework of the Energy-Climate Act appears insufficient;
- the sharp decrease expected for the year 2020, of around 9% compared to 2019, merely results from the economic context linked to the health crisis and cannot be analysed as the result of a structural evolution, or a decisive and lasting acceleration of the rate of reduction of GHG emissions. In these conditions, meeting the global target of reducing GHG emissions by 40% by 2020, fixed by article L. 100-4 of the energy code, appears to be uncertain at the least, if not totally improbable;
- the study carried out at the request of the plaintiff associations by Carbone 4, a consulting firm specialising in the energy transition and adapting to climate change, indicates that out of the eleven structural parameters in the three key sectors, only two have a chance of reaching the target value by 2030. This same study also indicates that the extent to which we are behind schedule in each of the key sectors cannot be made up for by the other sectors of the economy, the possibility of these sectors outperforming vis-à-vis their GHG objectives by 2030 being excluded. This study concludes, with no ambiguity, that the measures adopted or envisaged by the State will not make it possible to reach the global target or reducing GHG emissions by 40% by 2030 as compared to 1990;
- the study ordered by the Government from Boston Consulting Group comes to the same conclusions. This study effectively indicates that if all the measure already adopted, as well as those proposed by the draft bill on the fight against climate disruption and strengthening resilience faced with its effects are globally adequate to meet the 2030 target, this

assessment is only valid “subject to their full and forceful execution”, which would require “committing unprecedented resources and a massive and long-term mobilisation of all the Nation’s components”. The outcome of this study is that the current measures will not make it possible to meet the targets, but at best, to come close. So supposing that there is a full and forceful execution of all these measures, and that the State commits unprecedented financial resources, France could only achieve a reduction of 38% of its GHG emissions, which is below the 40% reduction target fixed by the law;

- in application of article L. 222-1 B of the French environment code, the regulatory authorities are required to evaluate and take into account the impact of public decisions on GHG emissions but also to adapt the rules relating to the evaluation of projects which benefit from public funding, with regard to their impact in terms of GHG emissions or their compatibility with the national low-carbon strategy. Moreover, the law has brought in an obligation to monitor national low-carbon strategy objectives, via several provisions in the environment code and, in particular, articles L. 222-1 D, L. 229-95 and R. 229-47. However, the existing evaluation and monitoring tools used to take account of the impact of public decisions on GHG emissions appear to be largely insufficient today. Therefore, following the recommendations formulated back in 2019 by the High Council on Climate in its report on the challenges of evaluating laws, these tools should be reinforced to make it possible to assess the impact of public decisions on the climate;
- the fight against climate change requires private resources to be progressively redirected by the State towards activities that are compatible with climate objectives. It also needs public resources to be allocated in a way that is coherent with the trajectory and targets adopted by the French State. The Economic, Social and Environmental Council (CESE) evaluates the additional financing necessary for long-term compliance with the trajectories and targets fixed by the national low-carbon strategy at the amount of €20 billion. More recently, the Institute for Climate Economics flagged an investment deficit threatening compliance with the trajectory defined by the national low-carbon strategy, and considers that €13 to 17 billion more than in 2019 need to be invested, up until 2023, just for the transport, building and renewable energies sectors. To satisfy its commitments, the State therefore needs to massively increase public funding allocated to climate action. In the short term, according to the Institute for Climate Economics, this need for additional public investment is valued at €9

billion per year, which would make it possible to trigger €21 billion in additional climate investment each year. Moreover, to meet climate targets in the medium term, the public authorities will have to further increase their contribution to the funding of investments that are beneficial to the climate, by €22 billion per year compared to their historical level. Only on this condition will climate investments reach €89 billion per year between 2024 and 2028, close to the levels of investment estimated in relation to the national low-carbon strategy;

- the opinion given by the High Council for Climate during the month of December 2020 highlights the insufficiency of public investments dedicated to the low-carbon transition in the context of the recovery plan adopted in the framework of the Finance Act of December 29, 2020 for 2021 known as "*France Relance*". The additional budget allocated to the low-carbon transition by the "*France Relance*" plan, i.e. around €15 billion per year over two years, on a non-permanent basis, remains largely insufficient faced with the additional public funding needs that the CESE and the Institute for Climate Economics consider necessary in order to achieve the GHG targets;
- in its opinion on the "*France Relance*" plan published in December 2020, the High Council for Climate underlines that the "*France Relance*" plan contains economic policy orientations which do not comply with the national low-carbon strategy orientations due to the fact that public funding supports activities which may be incompatible with meeting the country's climate targets. In addition, the Carbone 4 study identifies, in the Finance Act for 2021 and the recovery plan, several measures classified as "unfavourable for the environment" whose cost is evaluated, for the most significant of them, at €9.5 billion. More generally, the State itself has identified, in its report on the environmental impact of the State budget, published during the month of September 2020, more than 10 billion euro in budgetary and tax expenses that are unfavourable for the climate;
- as opposed to what the Government is claiming, the measures adopted since 2017 are not sufficient to achieve the targets fixed by the national low-carbon strategy and, in the end, the global objective to reduce GHG emissions by 40% by 2030, as well as the different related sector-based targets;
- the revised national low-carbon strategy aims for a 28% reduction of emissions in the transport sector in 2030 compared to 2015. According

to available data, these emissions come from road transport, i.e. 53% for privately owned cars, 22% for heavy goods vehicles (lorries or coaches), 20% for light utility vehicles and less than 6% for air, maritime, rail or inland waterway transport. Yet at present, the public policies implemented have shown themselves to be insufficient to reach the sector targets. In this respect, the CESE stressed in its opinion on the draft 'Climate and Resilience' bill, that reaching the targets of reducing emissions by 2030, then carbon neutrality by 2050, requires an inversion of the trend followed by a very sharp decrease in emissions to meet the trajectory defined by the national low-carbon strategy. On this point, the High Council on Climate noted that if the trend in emissions in the sector were to continue, complying with the next carbon budget could be compromised. In these conditions, in the absence of such a change in trend and in view of the insufficiency of the existing measures, the national low-carbon strategy objectives cannot be met;

- the GHG emissions in the housing and tertiary sector, 40% of which come from the tertiary sector buildings and 60% of which come from housing, represent the second highest source of French emissions in 2018, with 19% of the national total, or 24% taking into account indirect emissions linked to the production of electricity and heat. In 2019, they represented 18% of French territorial emissions, and 29% taking into account indirect emissions. According to the available data, the evolution of these emissions took the form of an average increase of 0.6% per year between 1990 and 2010, followed by an average decrease of 2.3% since then, despite the peaks observed in 2015, 2016 and 2017. Yet analysis shows once again the insufficiency of the measures adopted with regard to the targets fixed by the national low-carbon strategy. While the level of emissions has certainly dropped in 2019, to reach 81 MTCO<sub>2</sub>-eq according to CITEPA evaluations, i.e. a level lower than the indicative annual target of 85 MTCO<sub>2</sub>-eq fixed by the revised national low-carbon strategy, it is clear that it is still higher than the target initially fixed by the first national low carbon strategy, for the first carbon budget, and is largely below the average target that the latter has set for the second carbon budget, i.e. 61 MTCO<sub>2</sub>-eq. Therefore, while the sector emissions have dropped only by 7 MTCO<sub>2</sub>-eq between 2015 and 2019, i.e. an average rate of 1.4 MTCO<sub>2</sub>-eq per year, compliance with the target fixed by the national low-carbon strategy for the period 2019-2023 would require a rate of reduction of emissions that has yet to be attained, of 2.8 MTCO<sub>2</sub>-eq per year. And for the period 2024-2028, the rate of reduction necessary to reach the sector objectives would be even further from the rate of



reduction observed so far, since it would amount to 3 MTCO<sub>2</sub>-eq per year. Beyond the question of the already-accumulating delays, it is important to recognise that the current measures will clearly not make it possible to reach an average level of emissions of 45 MTCO<sub>2</sub>-eq in 2030, in accordance with the target fixed by the revised national low-carbon strategy. So the current measures are insufficient to make it possible to meet these targets. The measures contained in the framework of the recovery plan also appear insufficient to meet the targets fixed, according to the High Council for Climate;

- 
- the GHG emissions in the agricultural and forestry sector represent 19% in total of GHG emissions in France. Despite its importance in the global GHG emission reduction policy, the measures adopted in this sector once again have turned out to be insufficient to meet the targets fixed by the national low-carbon strategy. In 2015, emissions from the sector represented 89 MTCO<sub>2</sub>-eq. On this basis, the first national low-carbon strategy had defined the following reduction trajectory: 86 MTCO<sub>2</sub>-eq for the first carbon budget (2015-2018), 83 MTCO<sub>2</sub>-eq for the second carbon budget (2019-2023) and 80 MTCO<sub>2</sub>-eq for the third carbon budget (2024-2028). However, the second national low-carbon strategy reduced the reduction target, unlike for other sectors. The agricultural sector therefore finds itself with an annual average emissions target of 82 MTCO<sub>2</sub>-eq for the second carbon budget, 77 MTCO<sub>2</sub>-eq for the third carbon budget and 72 MTCO<sub>2</sub>-eq for the fourth carbon budget (2029-2033). Emissions from the sector have slightly exceeded the targets set in the first carbon budget: whereas emissions should, according to the adjusted data, amount to 340 MTCO<sub>2</sub>-eq over the period 2015-2019, they reached 347 MTCO<sub>2</sub>-eq, i.e. an overrun of 7 MTCO<sub>2</sub>-eq. In addition, according to the estimations supplied by CITEPA, emissions from the sector reached 85.5 MTCO<sub>2</sub>-eq in 2019, which is within 0.5 MTCO<sub>2</sub>-eq of the annual indicative target of 85 MTCO<sub>2</sub>-eq fixed by the revised national low-carbon budget. This rate is still insufficient. While emissions dropped effectively by only 3.5 MTCO<sub>2</sub>-eq between 2015 and 2019, i.e. an average decrease of 0.7 MTCO<sub>2</sub>-eq per year, compliance with the target fixed by the revised national low-carbon strategy would require the reduction of emissions by 5 MTCO<sub>2</sub>-eq between 2019 and 2023, i.e. a rate of 1 MTCO<sub>2</sub>-eq per year, which is higher than what we have seen so far. The outcome is similar for the following carbon budgets: meeting the targets fixed by the revised national low-carbon strategy would effectively require an identical reduction rate, by 1 MTCO<sub>2</sub>-eq per year between 2024 and 2028, then between 2029 and 2033. Both the CITEPA and the High

Council for Climate reveal that the reduction rate observed so far is insufficient compared to the rate necessary to meet the sector targets, such as fixed by the revised national low-carbon budget. In addition, it appears evident that the existing measures will not make it possible to meet the targets fixed by the national low-carbon budget, i.e. a reduction of the sector's emissions by 18% in 2030 compared to 2015 and by 46% by 2050, excluding agricultural land, whose emissions and absorptions are included in the land sector. Without the implementation of structural measures, the public policies implemented appear insufficient to achieve the sector's goals and are incompatible with the climate targets that France has set for itself;

- 
- the laws adopted concerning the climate, which have already been found to be insufficient to comply with the targets assigned to France, are all the more ineffective in that certain regulatory measures necessary for their application have not been implemented. Several measures stemming from the Energy - Climate Act of November 8, 2019 as well as the December 24, 2019 Mobility Orientation Act, have still not been implemented through regulatory policy;
- 
- the recognised insufficiency of the current measures to enable France to follow the path and reach the targets fixed by the national low-carbon strategy cannot be challenged by examining the provisions of the draft bill on the fight against climate disruption and the strengthening of resilience to its effects known as "Climate and Resilience" which was submitted to the National Assembly on February 10, 2021. Firstly, it is important to underline that the impact study attached to the draft bill does not make it possible to evaluate precisely the impact of the measures envisaged on global GHG emissions. Secondly, observers have underlined the limited effects and excessive time required for the measures proposed in this draft bill to be implemented. More widely speaking, analysis of the draft bill shows the weakness of the measures proposed. In particular, having compared them to the 2030 and 2050 targets, the CESE is concerned about an insufficient drop in GHG emissions brought about by this law and casts doubts on this bill's real contribution to the emission reduction target;
- a more in-depth analysis of the measures proposed in each of the three principal GHG emitting sectors corroborates this general assessment, either that the measures envisaged are not sufficiently precise to really contribute to achieving the goals fixed by the national low-carbon strategy, or that their effectiveness appears uncertain, or even that the

time required to implement them weakens their scope and reduces their real contribution to the emission reduction target fixed for 2030,

- in its Commune de Grande-Synthe decision of July 1, 2021, the Council of State contradicts the analysis offered by the Minister, ruling unambiguously that the measures currently in place are insufficient to reach the 40% GHG emission reduction target by 2030. As such, the State's action appears clearly incompatible with the objectives defined by the decree of April 21, 2020 and the revised national low-carbon strategy, as well as article L. 100-4 of the French energy code.
- 
- supposing that current and planned measures were to make it possible to achieve the targets fixed by the revised national low-carbon strategy and article L. 100-4 of the energy code, their insufficiency will still have been established, in view of the incoherency of the trajectory defined by the national low-carbon strategy. As pointed out by the High Council for Climate, emissions have dropped by only 1.2% per year on average over the past five years, whereas the expected reduction in emissions should be 1.5% over the period of the second carbon budget (2019-2023) and 3.2% per year as of 2024. In other words, the impossibility of achieving, in seven years, the annual 2.2% reduction in emissions which respecting the trajectory defined by the first national low-carbon strategy should have entailed, has not led to an intensification of the effort. Going forwards, complying with the revised national low-carbon strategy would require an unprecedented emission reduction rate. In particular, the revised national low-carbon strategy relies on the exponential acceleration of the emission reduction rate at the end of the second carbon budget (2019-2023). So the revised national low-carbon strategy assumes that it will be possible, in five years, to achieve 10% more than was originally planned for 10 years, since the carbon budgets have been staggered over time whereas the 2030 global GHG emission reduction target has not been modified;
- 
- the revised national low-carbon strategy's inadequation with the targets fixed in article L. 100-4 of the energy code results from the clear lack of precision and coherency in the programming of the public action that it proposed. Firstly, although the effort is staged over time, the credibility of the trajectory depends on the measures set in place for the second carbon budget. The structural nature of the changes expected makes it necessary to set in place, as of now, the conditions required for a future acceleration or the rate of reduction of emissions. Yet the plaintiff has already demonstrated the general and sector-based insufficiency of the

measures currently implemented by the State, on which observers all agree. Furthermore, in order for these assumptions to be credible, the variances noted so far needed to be compensated for by including the surplus emissions identified in the new targets, and by the identification of specific solutions to avoid the repetition of these surpluses for future budgets. Yet this has not been the case. Lastly, the imprecision of the orientations defined by the national low-carbon strategy is obvious. This is illustrated, firstly, by the lack of evaluation of the probable increase in the total quantity of accrued GHG emissions by 2030. In this respect, it is important to recall that spreading the effort to reduce emissions over time, without compensating for past surplus emissions, will have an undeniable environment impact. According to the Environmental Authority, the revised national low-carbon strategy trajectory will lead, by 2050, to a different amount of total accrued GHG in the atmosphere than was foreseen by the first national low-carbon budget, which will probably be higher;

- the perimeter defined by the national low-carbon strategy, and by extension the targets that France has fixed for itself in terms of reducing GHG emissions, is too restrictive and results in understating France's actual GHG emissions. It is important, firstly, to recall that France's contribution to world GHG emissions includes both emissions produced on its territory and emissions associated with international exchanges. The latter cover three types of emissions: exported emissions, which is to say emissions on French territory but linked to a production destined for abroad, international transport emissions, resulting from non-domestic maritime and air traffic coming or going from France, and imported emissions, resulting from emissions from goods and services produced abroad and consumed in France. However, while the first of these are included in the national inventory of greenhouse gases, and covered by the carbon budgets, this is not the case for the two other categories. Thus emissions from France's international transports, which have increased by nearly 50% since 1990 to reach 24.4 MTCO<sub>2</sub>-eq in 2019, are not included in the carbon budgets defined by the revised national low-carbon strategy and are not reported in the national objective for carbon neutrality in 2050. While article 3 of the November 8, 2019 Energy - Climate Act provides for the instigation, as of January 1, 2022, of an 'indicative ceiling of GHG emissions generated by transport links to and from France and not included in the carbon budgets' referred to as the "specific carbon budget for international transport", it is clear that this ceiling will be added, without being integrated therein, to the sector-based budgets defined by the

revised national low carbon strategy. As such, the mechanism envisaged in the framework of the Energy-Climate Act appears insufficient;

- this is also the case for GHG emissions from imported products which are constantly on the rise. These emissions, which in 2019 represent 57% of France's carbon footprint, are not included in the national GHG inventories provided by the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, which only account for direct emissions linked to national activities within borders. For its part, the national low-carbon strategy addresses imported emissions via the carbon footprint indicator, which includes all emissions associated with the consumption of goods and services produced in France or imported. However, it does not include any quantified target for the reduction of imported emissions, neither does it take into account, in the determination of carbon budgets, their contribution to French GHG emissions. Yet this failure to take into account imported emissions appears incompatible with achieving the GHG emission reduction target which the State has fixed for itself. In this respect, the introduction, starting from January 1, 2022, by article 8 of the Energy-Climate Act, of a mechanism which provides an indicative ceiling of GHG emissions referred to as "France's carbon footprint" calculated by adding to the carbon budgets "the emissions generated by the production and transport to France of imported goods and services and by subtracting those generated by the production of exported goods and services" confirms the current insufficiency of the national low-carbon strategy, whose targets were defined on the basis of incomplete estimations of French GHG emissions. By extension, the measures implemented by the State, to the extent that they are based on incomplete estimations and do not take into account the reduction of imported emissions and emissions from international transport, are themselves insufficient;
- 
- the incoherency of the assumptions on which the national low-carbon strategy is based is reinforced by the appearance of new technologies and the development of digital, whose impact on GHG is neither measured nor taken into account. By failing to take into account emissions from digital, the national low-carbon strategy fails to provide a full and true vision of the evolution of the GHG emission reduction trajectory;
- 
- lastly, the trajectory defined by the national low-carbon strategy appears all the more ill-adapted in that the target for the reduction of GHG

emissions by 2030, currently fixed at 40%, will be upwardly reviewed shortly. In a communication with the title “Stepping up Europe's 2030 climate ambition - Investing in a climate-neutral future for the benefit of our people” sent to the European Parliament, to the Council, to the European Economic and Social Committee as well as the Committee of the Regions, the European Commission recently presented a new GHG target, with a reduction of at least 55% by 2030 compared to the 1990 level. Following this, on December 10 and 11, 2020, the European Council fixed itself a binding objective, consisting in a net reduction of GHG emissions in the European Union by at least 55% by 2030. The raising of the European target in terms of the reduction of emissions will necessarily require an effort on the part of France. In these conditions, the trajectory defined by the national low-carbon strategy appears out-of-date already, in that it is based on the 40% reduction target by 2030. More still, this circumstance worsens the already established insufficiency of the measures adopted up until now by the State. To the extent that its measures clearly do not make it possible to meet the objective of reducing GHG emissions by 40%, the new 55% target cannot be met, as matters stand, without additional measures to limit GHG emissions;

- contrary to what the Minister for Ecological Transition and the Minister for Agriculture claim, the combined actions taken by the State will not enable the targets in terms of the reduction of GHG emissions by 2030 to be met. More widely speaking, these measures are, in any event, insufficient to make good the ecological damage linked to the surplus GHG emissions resulting from the State's failure to comply with the first carbon budget or, at the least, to prevent this damage from becoming worse;
- 
- at the least, the State should take into consideration the recommendations formulated by the High Council for Climate, to rectify the measures already adopted and take new measures which would make it possible to meet, or even exceed, the target of reducing GHG emissions by 40% by 2030 as compared to their 1990 level and the carbon neutrality objective for 2050. The absolute need for urgent action stems from the accumulation of surplus emissions resulting from the State's failure to fulfil its obligations. Due to the continued accumulation of GHG in the atmosphere, any delay in reducing GHG emissions makes the possibility of limiting the rise in temperatures to well below 2°C uncertain, or even impossible or to limit the increase in temperature to 1.50°C compared to pre-industrial levels, in accordance

with the stipulations of the Paris Agreement. In these conditions, redressing the ecological damage observed and preventing it from worsening in the future necessitates, to begin with, reparation of the damage resulting from the accumulation of additional GHG emissions in the atmosphere, resulting from the first carbon budget overrun. Thereafter, it will be necessary to ensure that the State follows, in the future, the reduction trajectory which it set itself in order to achieve the emission reduction target fixed by article L. 100-4 of the energy code;

- 
- to begin with, as regards redressing the past ecological damage, the trajectory outlined by the revised national low-carbon strategy does not draw any consequences from the overrun of its first carbon budget by around 3.5%. As such the levels for the second, third and fourth carbon budgets have not been revised downwards in order to make up for the surplus emissions in the past. Similarly, no preventive adjustment instrument has been set in place in the revised national low-carbon strategy in the event of further overruns, which are likely nonetheless as of the second carbon budget. Obviously, the worsening of the ecological damage resulting from these surplus emissions may be difficult to identify. While today's emissions are already beginning to have a partial effect, their actual extent will only be known in several decades or centuries, which means that they cannot, as such, be immediately compensated for. On the other hand, the surplus emissions which worsen the ecological damage can be compensated for by including this volume of surplus emissions in the next carbon budgets for the period 2015 – 2018. More precisely, due to the impact of the delays in the reduction of emissions on the deterioration of the atmosphere, in order to be able to compensate for the ecological damage caused by the surplus emissions from the first carbon budget, these surplus emissions must be taken into account, as rapidly as possible, and if possible as of the second carbon budget (2019-2023), i.e. the 61 MTCO<sub>2</sub>-eq emitted in violation of the first carbon budget over the period 2015-2018;
- 
- secondly, in order to stop worsening the ecological damage caused by the surplus emissions, at the least, the State must respect, in the future, the emissions reduction trajectory that it set for itself for the application of articles L. 100-4 of the energy code and L. 222-1 A and B of the environment code. Consequently, to redress the ecological damage and stop it becoming worse, the State must be ordered to modify the decree of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy in order, on the one hand, to subtract from the

second carbon budget or the following carbon budgets the 61 MTCO<sub>2</sub>-eq emitted in violation of the first carbon budget over the period 2015-2018 and, on the other hand, to set in place corrective mechanisms which will make it possible to compensate for possible future overruns. In addition, to ensure that the ecological damage is not made worse, the State should be ordered to adopt all useful measures to allow for public action in line with the level of ambition of the reduction trajectory defined by the decree of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;

- while it is not up to the administrative jurisdiction to inspect the work of the lawmakers, the plaintiff association points out, nonetheless, that the Minister failed to explain the delays noted so far in the adoption of the regulatory decisions or the updating of the plans that are necessary for the implementation or launching of administrative action, in accordance with the objectives fixed by the national low-carbon strategy. In the same way, it does not prove that the administrative action is adequate with respect to the objectives identified by the national low-carbon strategy to meet the GHG emission reduction targets by 2030. In any event, the recent adoption of the draft bill on the fight against climate disruption and reinforcement of resilience to its effects will not enable the Government to satisfy its commitments. This law and its future implementation decrees therefore appear insufficient, on their own, to guarantee that France's climate objectives will be met and as such that the economic damage recognised by the court will not be made worse;
- 
- the injunction issued by the Council of State in its Grande Synthe decision of July 1, 2021 ordering the Government to proceed with the adoption of measures to facilitate compliance with the target or reducing GES emissions by 40% by 2030 as compared to their 1990 level is not the same as the injunction which the court is asked to issue within the context of these proceedings. Indeed, the Council of State was merely submitted the question of the compatibility of refusal to take all useful measures to deflect the curve of GHG emissions produced in France with article L. 100-4 of the energy code and annex I of EU regulation 2018/842 of May 30, 2018. It is up to the court to reach a decision, more widely speaking, on the measures that must be imposed on the State in order to redress the ecological damage identified, resulting from the first carbon budget overrun, and to prevent this damage from getting worse in the future, which means going beyond merely adopting measures destined to enable a 30% reduction in GHG emissions to be met by 2030.



In several defence briefs, recorded on January 8, May 14, June 25, July 24 and August 26, the Minister for Ecological Transition called for the petition to be dismissed:

She claims that:

- The State has not committed the errors attributed to it by the plaintiff, which consist in having wrongly abstained from taking the measures necessary to comply with its general obligation to fight against climate change and its specific obligations in terms of attenuating and adapting to climate change, resulting from the Paris Agreement, the European Convention of Human Rights, national and European law. At national level, the provisions of article L. 100-4 of the energy code, as currently drafted, fix an objective for France of reducing GHG emissions by 40% between 1990 and 2030. The regulatory provisions adopted in application of this legislation, with a view to effectively meeting this objective in 2030, now fix carbon budgets for the periods 2015-2018, 2019-2023 and 2024-2028 of 442, 359 and 300 MTCO<sub>2</sub>-eq per year;
- 
- issuing an injunction against the State obliging it to take measures to meet France's targets in terms of reducing GEG emissions does not appear necessary, as the State has already taken steps to compensate for the first carbon budget overrun. In this respect, on the one hand, the trajectory for GHG emissions has been defined by the new national low-carbon strategy to catch up on the delay linked to non-compliance with the first carbon budget. On the other hand, the currently level of emissions is in line with this trajectory. In addition, the implementation of measures since 2017 and in particular those contained in the draft "Climate-Resilience" bill will make it possible to meet the objective of reducing GES emissions by 40% by 2030 compared to their level in 1990, as fixed by article L. 100-4 of the energy code, on condition that they are executed in full,
- 
- when drawing up the revised national low-carbon budget, the accrued effect of greenhouse gas emissions by 2040 was modelled taking into account the first carbon budget overrun. In other words, the second national low-carbon strategy, reflecting the carbon neutrality objective by 2050, leads to a reduction in cumulated emissions over the 2015-2050 period compared to the first national low-carbon budget. Consequently, the revision of the trajectory will not lead to an increase of total GHG emissions, but to their diminution;

- 
- as opposed to what the plaintiff is claiming, the current emission reduction dynamics, reinforced by measures in the process of adoption and deployment, should make it possible to reach the 2030 target. According to an independent external study carried out by Boston Consulting Group on the climate assessment of public policy measures taken since 2017, the potential GHG emission reduction targeted by all the measures taken since 2017, added to the “Climate and Resilience” bill measures, is globally in line with the 2030 target, subject to complete execution. The full implementation of these measures will effectively make it possible to reach 339 MTCO<sub>2</sub>-eq in 2030, i.e; a decrease of 38% compared to 1990 (compared to 405 MTCO<sub>2</sub>-eq in the “AME” trend trajectory, i.e. a level of emissions that will be reached without these measures) for a target of – 40% corresponding to 330 MTCO<sub>2</sub>-eq in 2030. This means that 90% of the discrepancy between the 2019 emissions and the 2030 objective will have been made up for thanks to these measures, while a continuous process of improvement and steering of the trajectory has been set in place and other measures will follow in this respect to catch up the remaining 10% of the discrepancy.
- the principal measures adopted since 2018 and taken into account in these figures, implement, in particular, European regulations on transport and result from the 2019 Energy - Climate Act, the Mobility Orientation Act and the Fight against waste and the circular economy Act. We can also add the Recovery Plan funding, which should accelerate our economy’s low carbon transition, in particular with the support of industrial decarbonisation, thermal renovation and the greening up of our car fleets and the airline sector;
- the plaintiff refers on numerous occasions to the study carried out by Carbone 4 to try and justify its argumentation according to which the current dynamics in terms of reducing emissions is insufficient. However, the description of the subsectors reflects a selection by the authors of only 11 parameters, which are not enough for a precise description of the evolution of total emissions. Inversely, the Boston Consulting Group study is based on a more robust and transparent approach since all sectors of the French economy are examined, which guarantees a complete analysis;
- recent GHG emissions are lower than the trajectory provided by the second national low-carbon budget, confirming that the ecological

damage is not getting worse. The level of GHG emissions during the year 2019 is such that the annual indicative share of the revised 2<sup>nd</sup> national low-carbon strategy carbon budget (443 MTCO<sub>2</sub>-eq) has been easily respected, with a margin of 6 MTCO<sub>2</sub>-eq. The drop in emissions between 2018 and 2019 (-1.7%) has been higher than the average decrease anticipated by the 2<sup>nd</sup> national low-carbon strategy between these two years (-1.5%). For 2019, the final figures, recently published, show that the level of emissions amounts to 436 MTCO<sub>2</sub>-eq, i.e. a drop of 1.9% compared to 2018, which means that the target fixed for this year has been met. For 2020, the annual indicative share of the 2<sup>nd</sup> carbon budget is 436 MTCO<sub>2</sub>-eq. This level represents a drop of around 1.5% compared to 2019. In this respect, the CITEPA estimation of monthly emissions for 2020, which at this stage is a very provisional indicator, shows that for metropolitan France, 2020 emissions could be around 390 MTCO<sub>2</sub>-eq, to which 11 MTCO<sub>2</sub>-eq must be added to take into account French overseas territories. The indicative annual share of the 2<sup>nd</sup> carbon budget would thus also be respected for 2020, with a very high margin, of around 235 MTCO<sub>2</sub>-eq. For 2021, it may be possible to reach a level of GHG emissions that is significantly below the indicative annual share of the 2<sup>nd</sup> carbon budget, subject to the combined effect of the reinforcement of climate policies and the continuation of restrictions in response to the health crisis. In total, everything shows that the second carbon budget defined by the revised national low-carbon strategy will be respected, possibly with a considerable margin. There is therefore no need to impose injunctions on the State for this purpose.

- contrary to what the plaintiff indicates, the Council of State issued its Grande Synthe decision based only on the measures already in force on the date of its decision, i.e. on July 1, 2021. It therefore did not take into account the “Climate and Resilience” Act which was adopted by Parliament on July 20, 2021 and published in the Official Journal on August 24, 2021;
- all the actions within the regulatory competence of the Government to compensate for the first carbon budget overrun have already been deployed or are in the process of deployment, and all the more rapidly in that the Government has already been ordered by the Council of State in its decision of July 1, 2021 to proceed with the adoption of the measures within nine months. There is therefore no need for any further order to take the regulatory measures necessary, nor to impose any fine in this respect, which would, moreover, go against the position

adopted by the Council of State which deemed that there was no need for the injunction to be accompanied by a fine;

- parliamentary discussions have improved the draft bill thanks to numerous amendments which have not been taken into account in the GCG study. These amendments confirmed the ban on greenwashing, which has been included among the deceptive practices listed in the consumer code, with a dedicated sanction, the creation of a regional energy committee tasked with encouraging concertation on questions relating to energy within the region and proposing, at the request of the Ministry of Energy, regional objectives for the development of renewable energies, the implementation of a request for proposals procedure for the storage capacities provided by the multiannual energy programming or for which the need has been identified by the projected supply forecast and fixing an objective for the end of sales of heavy vehicles using mostly fossil energies by 2040; in addition to the objective for light vehicles included in the Mobility Orientation Act, the definition of a trajectory for the level of energy incandescence for housing, with the date of 2025 for class G housing and 2028 for class F housing and the creation of a national action plan for the reduction of emissions of ammonia and nitrous oxide linked to use in mineral nitrogen fertilisers;
- moreover, the injunction measures suggested by the plaintiff cannot be regarded as pertinent to redress the ecological damage that the court considers to be the result of the first carbon budget overrun or to prevent this damage getting worse in the future. Firstly, the pleadings requesting an order for the adoption of legislative measures, which is not within the competence of the administrative judge, must be rejected on the grounds that they are not brought before a court that is competent to rule on these matters. Secondly, in the framework of these proceedings, the plaintiff's criticism of the allegedly insufficiency of the legislative objectives in terms of the reduction of GHG emissions is ineffective. Furthermore, the modulation of the level of public spending on the fight against global warming is a legislative matter, meaning that once again, the plaintiff's line of argumentation is inoperative.
- in any case, in particular thanks to the implementation of the Recovery Plan, the level of financial investment pledged by the Government up until 2023 will be sufficient to enable the trajectory for the reduction of GHG emissions fixed by the decree of April 21, 2020 to be met;

- The potential failure to meet targets in terms of renewable energies and energy efficiency would not lead to failure to meet the targets in terms of reducing greenhouse gas emissions. The objectives in terms of reducing greenhouse gas emissions could be met even if the targets for renewable energies were not fully met. On the one hand, within the energy mix there are low GHG emission energy sources other than renewable energies which, by taking the place of fossil energies such as coal, petrol and gas, could reduce greenhouse gas emissions. In the same way, substitution within fossil energies, for example replacing petrol or fuel by gas, also lead to reductions in greenhouse gas emissions, without changing the share of renewal energies. Additionally, action in connection with the energy mix is not the only lever which the Member States have to reach the GHG reduction targets defined at European level, as these objectives are not set out per sector of activity and do not impose the means used to attain them. As such, a reduction in global energy consumption could also lead to a reduction in emissions without the share of renewable energies varying;
- concerning “energy sieves”: getting rid of these by 2030 represents a difference of around 2 MTCO<sub>2</sub>-eq per year in 2030 compared to the AME (with existing measures) scenario, and is also very important for reaching the energy efficiency targets since it represents energy savings of around 47 to 56 TWh/year in final energy consumption;
- concerning the heating of buildings with fuel oil, ending the use of fuel oil to heat buildings represents a difference of around 9 MTCO<sub>2</sub>-eq/year in 2030 compared to the AME scenario;
- concerning vehicle emissions; the application of European regulations on vehicle emissions represents a difference of around 14 MTCO<sub>2</sub>-eq/year in 2030 (including 8 MT for private vehicles and 6 MT for goods vehicles) compared to the AME scenario. By way of illustration, to achieve the targets set, electric vehicles need to represent around 35% of sales in 2030 and 12% of the vehicle fleet by then;
- concerning coal-fired plants, closing them down represents a difference of around 12 MTCO<sub>2</sub>-eq/year in 2030 compared to the AME scenario. The Government is committed to these closures, which are already well underway. On the basis of the provisions of the 2019 Energy - Climate Act, a decree has been issued setting a ceiling as of 2022 for electricity

production installations using fossil fuels. Their share in the production of electricity has dropped considerably, from 35TWh in 2015 to 5.8TWh in 2019 and 1.6TWh in 2019;

- concerning industrial decarbonisation, the decrease in the consumption of fossil fuels provided in the AMS (with supplementary measures) scenario trajectory should represent a drop of 3.5 MTCO<sub>2</sub>-eq/year in 2030 compared to the AME scenario;
- concerning the transition of the agricultural sector, achieving the national low-carbon strategy scenario of having 25% of agricultural areas used for organic farming by 2030 would make it possible to reduce emissions by around 4.5 MTCO<sub>2</sub>-eq/year compared to the AME scenario, taking into account all the changes in practices;
- concerning waste, the February 10, 2020 Act on the fight against waste and the circular economy contains several measures which aim to avoid the production of single-use plastics as well as to increase recycling rates for various products (in particular with a 100% recycled plastic objective by 2025). The implementation of these measures, in particular concerning plastics, will avoid (over their life cycle) around 5 MTCO<sub>2</sub>-eq/year by 2030. The plastic recycling rate has already risen from 25.5% in 2015 to 29% in 2019;
- concerning the production of renewable energy; achieving a 10% share of biogas in 2030 will make it possible to reduce emissions by around 8 MTCO<sub>2</sub>-eq/year compared to the AME scenario. The revised multiannual energy programming this year provides for price support mechanisms which will make it possible to achieve this target. The number of biomethane injection units has already risen from 17 in 2015 to 170 in 2020. Furthermore, the 1110 projects in the pipeline at the end of June 2020 accounted for nearly 256TWh per year, which would already represent 80% of the target;
- concerning the pleadings demanding that the State be ordered to revise the second national low-carbon strategy, it should be recalled that the national low-carbon strategy is a programming document, which contains orientations for public policies which then take the form of a certain number of precise measures that are not supposed to figure in the national low-carbon strategy. It defines the carbon budgets for periods of five years in order to smooth out economic climate related fluctuations, the annual targets being given only as an indication. The

AMS scenario is not a forecast based on a series of explicit measures, but a target trajectory that would allow France to meet the different objectives. As a result, the plaintiff's suggestion that failing to take into account imported GHG emissions and those linked to international transport is equivalent to understating French emissions is of no relevance. In this respect it should be recalled that French law explicitly stipulates that the objectives are fixed with respect to French territorial emissions and not the carbon footprint or international transport. The perimeter thus fixed by the law corresponds to international conventions and official greenhouse gas emission inventories. The latter are drawn up using methodologies validated at international level according to IPCC recommendations and enable a coherent addition, at international level, of the inventories destined to evaluate whether the Paris Agreement target has been respected. Lastly, the measure introduced by article 8 of the Energy-Climate Act instigating an indicative ceiling for greenhouse gas emissions called "France's carbon footprint" calculated by adding to the carbon budgets "the emissions generated by the production of transport to France of imported goods and services and the subtraction of those generated by the production of exported goods and services" specifies the indicative nature of this ceiling and is only intended to be applied as of January 1, 2022. A similar mechanism is planned for international transport;

- there is no need to order to the State to revise the second national low-carbon strategy as, on the one hand, the second national low-carbon strategy adopted by the decree of April 21, 2020 already takes into account the cumulated delay compared to the first carbon budget and, on the other hand, as the strategy's monitoring mechanism allows the State to adjust the actions it implements in order to ensure that the carbon budget is respected. In particular, the Ecological Defence Council created by decree n°2019-449 of May 15, 2019 is charged with monitoring the correct implementation of public policy in the field of the fight against climate change. In addition, the increase in the European Union reduction for 2030, which has not yet been shared out between the Member States, cannot be translated, at this stage, into a new precise target for France for 2030. In this respect, it cannot be considered that the increase in the EU's greenhouse gas reduction target from -40% to -55% in 2030, proposed by the European Commission and approved by the European Council, would mechanically lead to an increase in the target fixed for France in the context of the Effort Sharing Directive n°842/2018. Indeed, the increase in the global European target will certainly have implications on

European and national policies, but this impact will depend on the implementation conditions and the sharing of the effort between sectors and Member States, which is yet to be negotiated on the basis of the legislative proposals expected in June 2021 and which will not be finalised before 2022-2023 depending on the progress of negotiations;

- nor can the pleadings demanding that the State be obliged to revise the decree of Avril 21, 2020 on multiannual energy programming be upheld, as the court has concluded that failure to meet the targets which the State fixed for itself in terms of improving energy efficiency and increasing the share of renewable energies in its end consumption of energy cannot be considered to have contributed directly to worsening the ecological damage for which the associations are demanding redress. In these conditions, we cannot consider that the modification of these targets would be likely to redress or prevent the worsening of the ecological damage whose existence the court has recognised;
- the plaintiff's demands that the State be ordered to take sector-based measures should not be upheld. Indeed, it has already been demonstrated that the deployment of existing measures, added to measures in the process of adoption, should make it possible to meet the target fixed for 2030;
- more specifically as regards the transport sector, there is no need to adopt an action plan to meet the objective to multiply the modal rail share fixed by article 11 of Act n°2009-967 of August 3, 2009 for programming relating to the implementation of the Grenelle Environment policy and articles 36 and 37 of Act n°2015-992 of August 17, 2016 relating to the energy transition and green growth (LTECV). In addition to the fact that article 36 of the LTECV, which is programmatic, does not contain specific provisions on the modal shift towards rail, article 36 of the Climate and Resilience bill organises the shutdown of air links in France where there is a rail alternative in less than 2 and a half hours and a strategy for the development of rail freight is to be adopted soon, in application of article 178 of the LTECV,
- the fight against urban sprawl promoted by the Government, with the objective of halving the rate of artificialisation of land by 2030 fixed by the Climate and Resilience bill, and which provides Recovery Plan subsidies for the reconversion of wastelands and urban densification, will contribute to slowing down the demand for mobility;



- nearly all the implementing measures for the Mobility Orientation Act of December 24, 2019 have already been adopted or will be adopted soon. Thus 90% of the implementing measures exist, have been published or are awaiting signature or review by the Council of State;
- in the agricultural sector, article 45 of the Egalim Act has modified article L1 of the rural code, included in the Plan Ambition Bio whose aim, by December 31, 2022, is to meet the target of allocating 15% of useful agricultural land to organic farming. In addition, France's agro-ecological project with regard to the targets defined by the decree of April 21, 2020 will be monitored, and adjusted if necessary. Lastly, in application of the Recovery Plan, territorial food projects have been assigned a solid budget of €80 million;
- in the building sector, the Government has already taken measures to meet the targets, fixed in article 3 of the LTECV, in terms of the energy retrofit of 500,000 homes per year starting from 2017, of which at least half are occupied by low-income households, with a view to reducing energy precariousness by 15%. In addition, the objective fixed in article 5 of the LTECV, providing for an energy retrofit of all private residential buildings whose primary energy consumption is above 330 kilowatts/h primary energy per square meter and per year, has led to concrete measures which have been adopted in the context of the Climate and Resilience Act;
- the Climate and Resilience Act contains numerous provisions to accelerate considerably the rate of energy renovations for housing. In this respect, the energy performance diagnosis, the reference document which evaluates the energy performance of a housing unit and issues energy labels, has just been revised and should take climate stakes into account more. Class G housing according to the energy performance diagnosis will be considered indecent as of 2025, class F and G housing as of 2028 and class E, F and G housing as of 2034. It should be stressed that the energy renovation incentives for housing are producing good results, according to data published regularly by the National Energy Renovation Observatory (ONRE) created in September 2019 and whose mission includes improving knowledge of energy renovation dynamics for all residential and tertiary buildings.
- lastly, the Climate and Resilience Act provides authorisation for the Government to adopt, by order, the measures necessary for the revision of the supervisory control of building regulations, which will be

extended to all regulatory provisions of book I of the construction and housing code, extending its scope to new buildings but also to renovation work.

By a defence brief registered on January 8, 2021, the Ministry of Food and Agricultural called for the dismissal of the petition.

It claims that none of the claimant's pleas are founded.

Though statements in intervention registered on May 12, June 22 and August 20, 2021, the association Initiatives pour le climate et l'énergie, represented by Maître Gendreau, called on the court to dismiss Oxfam France's petition.

It claims that:

- the decarbonisation of the French economy must take significant account of the production of decarbonated electricity, which relies in France on the production of nuclear and hydraulic energy, which qualify as new renewable energies, wind farms and solar energy only representing a complement to the production of electricity, without any particular value added in France to the fight against the greenhouse effect, since French electricity is already decarbonated;
- by wishing to deprive France of French nuclear energy in the short term and criticising the State at the same time for not achieving satisfactory decarbonation, the claimant association is imposing a fourfold sanction on France by slowing down the decarbonisation of its energy, decreasing the production of energy at the lowest cost, imposing unjustifiable fines on the State and making the production of energy in France dependent on foreign input;
- supporting renewable electric energies in metropolitan France does not provide any value added in combating the greenhouse effect. The existing and diversified hydraulic and nuclear plants mean that French electricity is almost entirely decarbonated and the deployment of new intermittent energies requires sufficient steerable carbonated resources to balance out, at all times, the demand for electricity and the production of electricity available on the scale of the electrical grid.

- II. In four briefs registered under n° 1904968, on April 6, May 12, June 24 and August 2, 2021, Notre Affaire A Tous, represented by its Chair, Mrs. Clotilde

Batto and by Maître Daoud, maintained the remainder of its pleadings and petitioned the court in addition, based in its latest submissions:

1). to order the Prime Minister and the competent ministers to take the necessary measures to repair the ecological damaged linked to the surplus greenhouse gas emissions resulting from the State's failure to meet the first carbon budget and to stop the damage worsening and, in particular and as rapidly as possible, to take all useful steps to make it possible to meet the objectives that France set for itself in terms of the reduction of GHG emissions, defined by article L.100-4 of the French energy code, taking into account the surplus GHG emitted by France and the additional efforts that achieving these objectives requires, such as:

- amending decree n°2020-457 of April 21, 2020 relating to the national carbon budgets and to the national low-carbon strategy and, consequently, decree n°2020 relating to multiannual energy programming, in order to ensure that its past excesses are taken into account, to set in place corrective measures to compensate for potential future excesses and take into account the future amplification of GHG reduction obligations between now and 2030, in accordance with the European 2030 Climate Target Plan;
- in any event, set in place evaluation mechanisms for the measures adopted, whether past or future, and monitoring of GHG emissions in accordance with the recommendations of the High Council on Climate, in order to ensure that the State's action is in line with reduction targets defined by decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
- take all measures necessary in the transport sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
  - o to take all useful measures to reach the objectives fixed for the transport sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
  - o take all measures to make up for the delay observed in the take-off of road transport's modal shift towards low-carbon transport, such as:
    - adopt an action plan to comply with the objectives to multiply the modal share of rail transport fixed by article 11 of Act n°2009-967 of August 3, 2009 for programming relating to the implementation of the Grenelle Environment policy and articles 36 and 37 of Act

n°2015-992 of August 17, 2015 relating to the energy transition for green growth;

- take all useful measure to catch up for the delay and meet objectives to renew the automobile fleet towards low-carbon vehicles fixed by article 13, I of Act n°2009-967 of August 2, 2009 for programming relating to the implementation of the Grenelle Environment Policy and articles 36 and 37 of Act n°2015-992 of August 17, 2015 relating to the energy transition for green growth and article 73 of the Mobility Orientation Act n°2019-1428 of December 24, 2019;
- define a national strategy to reduce at source the demand for mobility linked to forced travel;
- take all measures necessary in the building sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
  - o to take all useful measures to reach the objectives fixed for the building sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
  - o take all measures to make up for the delay observed in the number of energy efficient renovations noted between January 1, 2017 and December 31, 2020, with regard to the objectives defined in articles 3 and 5 of Act n°2015-992 relating to the energy transition for green growth;
  - o adopt an action plan making it possible to meet the objectives defined in articles 3 and 5 of Act n°2015-992 relating to the energy transition for green growth;
  - o bring into line decree n°2021-19 of January 11, 2021 relating to the energy performance criterion in the definition of adequate lodging in metropolitan France and the objective defined in article 5 of Act n°2015-922 relating to the energy transition for green growth;
  - o set in place a mechanism for evaluating and monitoring compliance with the thermal insulation obligation during façade renovation work provided by article R. 131-28 of the French construction and housing code;
  - o adopt, without delay, the regulatory measures necessary for the application of articles 2, 15, 22 and 33 of Act n°2019-1147 of November 8, 2019 relating to energy and the climate in terms of the energy performance of housing;
- take all the measures necessary in the agricultural sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:

- o to take all useful measures to reach the objectives fixed for the agricultural sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
  - o take all measures to make up for the delay in increasing the share of agricultural areas used for organic growth to 20% by 2020, in accordance with the objective provided by article 31 a) of Act n°2009-967 of August 3, 2009 for programming relating to the implementation of the Grenelle Environment policy, and adjust the ambitions and resources devoted to the Plan Ambition Bio 2022 with regard to this objective;
  - o take all the necessary measures to ensure the implementation and updating of France's agro-ecological project with regard to the objectives defined by decree n°202-457 of April 21, 2020 relating to the national carbon budgets and the national low-carbon strategy;
  - o take all the measures necessary to develop ecological and solidarity-based regional food projects, in accordance with the objectives defined by article L.1, I of the French rural and maritime fishing code;
- 2) to impose a fine of 78,537,500 euros each semester on the Prime Minister and the competent ministers for lateness if they cannot demonstrate, in the six months following notification of the forthcoming decision, that they have adopted the measures necessary to make good the ecological damage linked to surplus GHG emissions resulting from the State's failure to respect the first carbon budget and to prevent the situation worsening in the future;
- 3) and to charge the State the amount of 3,000 euros in application of the provisions of article L. 761-1 of the administrative justice code.

Its arguments are the same as those developed in support of petition n°1904967.

In several defence briefs, recorded on January 8, May 14, June 25, July 24 and August 26, the Minister for Ecological Transition called for the petition to be dismissed:

She claims that none of the arguments put forward by the claimant association are founded.

In a defence brief recorded on January 8, 2021, the Ministry for Food and Agriculture calls for the petition to be dismissed.

It claims that none of the arguments put forward by the claimant association are founded.

Though statements in intervention registered on May 12, June 22 and August 20, 2021, the association Initiatives pour le climate et l'énergie, represented by Maître Gendreau, called on the court to dismiss Notre Affaire A Tous' petition.

Its arguments are the same as those developed in support of petition n°1904967.

III. In four new briefs registered under n° 1904972, on April 6, May 12, June 24 and August 2, 2021, La Fondation pour la Nature et l'Homme, represented by its managing director, Mr. Alain Grandjean, represented by Maître Baldon, maintained the remainder of its pleadings and petitioned the court in addition, based in its latest submissions:

- 1) to order the Prime Minister and the competent ministers to take the necessary measures to repair the ecological damaged linked to the surplus greenhouse gas emissions resulting from the State's failure to meet the first carbon budget and to stop the damage worsening and, in particular and as rapidly as possible, to take all useful steps to make it possible to meet the objectives that France set for itself in terms of the reduction of GHG emissions, defined by article L.100-4 of the French energy code, taking into account the surplus GHG emitted by France and the additional efforts that achieving these objectives requires, such as:
  - amending decree n°2020-457 of April 21, 2020 relating to the national carbon budgets and to the national low-carbon strategy and, consequently, decree n°2020 relating to multiannual energy programming, in order to ensure that its past excesses are taken into account, to set in place corrective measures to compensate for potential future excesses and take into account the future amplification of GHG reduction obligations between now and 2030, in accordance with the European 2030 Climate Target Plan;
  - in any event, set in place evaluation mechanisms for the measures adopted, whether past or future, and monitoring of GHG emissions in

accordance with the recommendations of the High Council on Climate, in order to ensure that the State's action is in line with reduction targets defined by decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;

- take all measures necessary in the transport sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
  - to take all useful measures to reach the objectives fixed for the transport sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
- take all measures to make up for the delay observed in the take-off of road transport's modal shift towards low-carbon transport, such as:
  - adopt an action plan to comply with the objectives to multiply the modal share of rail transport fixed by article 11 of Act n°2009-967 of August 3, 2009 for programming relating to the implementation of the Grenelle Environment policy and articles 36 and 37 of Act n°2015-992 of August 17, 2015 relating to the energy transition for green growth;
  - take all useful measure to catch up for the delay and meet objectives to renew the automobile fleet towards low-carbon vehicles fixed by article 13, I of Act n°2009-967 of August 2, 2009 for programming relating to the implementation of the Grenelle Environment Policy and articles 36 and 37 of Act n°2015-992 of August 17, 2015 relating to the energy transition for green growth and article 73 of the Mobility Orientation Act n°2019-1428 of December 24, 2019;
  - define a national strategy to reduce at source the demand for mobility linked to forced travel;
- take all measures necessary in the building sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
  - o to take all useful measures to reach the objectives fixed for the building sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
  - o take all measures to make up for the delay observed in the number of energy efficient renovations noted between January 1, 2017 and December 31, 2020, with regard to the objectives defined in articles

- 3 and 5 of Act n°2015-992 relating to the energy transition for green growth;
  - o adopt an action plan making it possible to meet the objectives defined in articles 3 and 5 of Act n°2015-992 relating to the energy transition for green growth;
  - o bring into line decree n°2021-19 of January 11, 2021 relating to the energy performance criterion in the definition of adequate lodging in metropolitan France and the objective defined in article 5 of Act n°2015-922 relating to the energy transition for green growth;
  - o set in place a mechanism for evaluating and monitoring compliance with the thermal insulation obligation during façade renovation work provided by article R. 131-28 of the French construction and housing code;
  - o adopt, without delay, the regulatory measures necessary for the application of articles 2, 15, 22 and 33 of Act n°2019-1147 of November 8, 2019 relating to energy and the climate in terms of the energy performance of housing;
- take all the measures necessary in the agricultural sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
  - o to take all useful measures to reach the objectives fixed for the agricultural sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
  - o take all measures to make up for the delay in increasing the share of agricultural areas used for organic growth to 20% by 2020, in accordance with the objective provided by article 31 a) of Act n°2009-967 of August 3, 2009 for programming relating to the implementation of the Grenelle Environment policy, and adjust the ambitions and resources devoted to the Plan Ambition Bio 2022 with regard to this objective;
  - o take all the necessary measures to ensure the implementation and updating of France's agro-ecological project with regard to the objectives defined by decree n°202-457 of April 21, 2020 relating to the national carbon budgets and the national low-carbon strategy;
  - o take all the measures necessary to develop ecological and solidarity-based regional food projects, in accordance with the objectives defined by article L.1, I of the French rural and maritime fishing code;
- 2) to impose a fine of 78,537,500 euros each semester on the Prime Minister and the competent ministers for lateness if they cannot



demonstrate, in the six months following notification of the forthcoming decision, that they have adopted the measures necessary to make good the ecological damage linked to surplus GHG emissions resulting from the State's failure to respect the first carbon budget and to prevent the situation worsening in the future;

- 3) and to charge the State the amount of 3,000 euros in application of the provisions of article L. 761-1 of the administrative justice code.

Its arguments are the same as those developed in support of petition n°1904967.

In several defence briefs, recorded on January 8, May 14, June 25, July 24 and August 26, the Minister for Ecological transition called for the petition to be dismissed:

She claims that none of the arguments put forward by the claimant association are founded.

In a defence brief recorded on January 8, 2021, the Ministry for Food and Agriculture calls for the petition to be dismissed.

It claims that none of the arguments put forward by the claimant association are founded.

- Though statements in intervention registered on May 12, June 22 and August 20, 2021, the association Initiatives pour le climate et l'énergie, represented by Maître Gendreau, called on the court to dismiss la Fondation pour la Nature et l'Homme' petition.

Its arguments are the same as those developed in support of petition n°1904967.

- IV. In four briefs registered under n° 1904968, on April 6, May 12, June 24 and August 2, 2021, Greenpeace France, represented by its executive director, Mr. Jean-François Julliard, and by Maître Capdebos, maintained the remainder of its pleadings and petitioned the court in addition, based in its latest submissions:

- 1) To order the Prime Minister and the competent ministers to take the necessary measures to repair the ecological damage linked to the excess greenhouse gas emissions (GHG) resulting from the State's failure to meet the first carbon budget and to stop the damage worsening and, in particular and as rapidly as possible, to take all useful steps to make it possible to meet the objectives that France set for itself in terms of the reduction of GHG emissions, defined by article L.100-4 of the French energy code, taking into account the excess GHG emitted by France and the additional efforts that achieving these objectives requires, such as:
  - amending decree n°2020-457 of April 21, 2020 relating to the national carbon budgets and to the national low-carbon strategy and, consequently, decree n°2020 relating to multiannual energy programming, in order to ensure that its past excesses are dealt with, to set in place corrective measures to compensate for potential future excesses and take into account the future amplification of GHG reduction obligations between now and 2030, in accordance with the European 2030 Climate Target Plan;
  - in any event, set in place evaluation mechanisms for the measures adopted, whether past or future, and monitoring of GHG emissions in accordance with the recommendations of the High Council on Climate, in order to ensure that the State's action is in line with reduction objectives defined by decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
  - take all measures necessary in the transport sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
    - to take all useful measures to reach the objectives fixed for the transport sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
  - take all measures to make up for the delay observed in the take-off of the modal shift of road transport towards low-carbon transport, such as:
    - adopt an action plan to comply with the objectives to multiply the modal share of rail transport fixed by article 11 of law n°2009-967 of August 3, 2009 for programming relating to the implementation of the Grenelle Environment policy and articles 36 and 37 of law n°2015-992 of August 17, 2015 relating to the energy transition for green growth;
    - take all useful measure to catch up for the delay and meet objectives to renew the automobile fleet towards low-carbon vehicles fixed by

article 13, I of law n°2009-967 of August 2, 2009 for programming relating to the implementation of the Grenelle Environment Policy and articles 36 and 37 of law n°2015-992 of August 17, 2015 relating to the energy transition for green growth and article 73 of the French Mobility Orientation Act n°2019-1428 of December 24, 2019;

- define a national strategy to reduce at source the demand for mobility linked to forced travel;
- take all measures necessary in the building sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
  - to take all useful measures to reach the objectives fixed for the building sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;
- take all measures to make up for the delay observed in the number of energy efficient renovations noted between January 1, 2017 and December 31, 2020, with regard to the objectives defined in articles 3 and 5 of law n°2015-992 relating to the energy transition for green growth;
  - adopt an action plan making it possible to meet the objectives defined in articles 3 and 5 of law n°2015-992 relating to the energy transition for green growth;
  - establish coherence between decree n°2021-19 of January 11, 2021 relating to the energy performance criterion in the definition of adequate lodging in metropolitan France and the objective defined in article 5 of law n°2015-922 relating to the energy transition for green growth;
  - set in place a mechanism for evaluating and monitoring compliance with the thermal insulation obligation façade renovation work provided by article R. 131-28 of the French construction and housing code;
  - adopt, without delay, the regulatory measures necessary for the application of articles 2, 15, 22 and 33 of law n°2019-1147 of November 8, 2019 relating to energy and the climate in terms of the energy performance of housing;
- take all the measures necessary in the agricultural sector, as rapidly as possible, to make good and prevent the aggravation of the ecological damage and, in particular:
  - to take all useful measures to reach the objectives fixed for the agricultural sector by article 4 of decree n°2020-457 of April 21, 2020 relating to national carbon budgets and the national low-carbon strategy;

- take all measures to make up for the delay in increasing the share of agricultural areas used for organic growth to 20% by 2020, in accordance with the objective provided by article 31 a) of law n°2009-967 of August 3, 2009 for programming relating to the implementation of the Grenelle Environment policy, and adjust the ambitions and resources devoted to the Plan Ambition Bio 2022 with regard to this objective;
- take all the necessary measures to ensure the implementation and updating of France's agro-ecological project with regard to the objectives defined by decree n°202-457 of April 21, 2020 relating to the national carbon budgets and the national low-carbon strategy;
- take all the measures necessary to develop ecological and solidarity-based regional food projects, in accordance with the objectives defined by article L.1, I of the French rural and maritime fishing code;

2) to impose a fine of 78,537,500 euros each semester on the prime minister and the competent ministers for lateness if they cannot demonstrate, in the six months following notification of the forthcoming decision, that they have adopted the measures necessary to make good the ecological damage linked to excess GHG emissions resulting from the State's failure to respect the first carbon budget and to prevent the situation worsening in the future;

3) and to charge the State the amount of 3,000 euros in application of the provisions of article L. 761-1 of the administrative justice code.

In several defence briefs, recorded on January 8, May 14, June 25, July 24 and August 26, the Minister for Ecological Transition called for the petition to be dismissed:

She claims that none of the arguments put forward by the claimant association are founded.

In a defence brief recorded on January 8, 2021, the Ministry for Food and Agriculture calls for the petition to be dismissed.

It claims that none of the arguments put forward by the claimant association are founded.

The association France Nature Environnement, represented by Maître Le Briero, intervening in support of Greenpeace France, did not make any additional observations.

In a brief registered on February 13, 2021, L'Association nationale de protection des eaux et des rivières (ANPER-TOS) represented by its chairman Mr. Jean-Michel Ferry, and by Maître Le Briero, intervening in support of Greenpeace France, asked the court:

- 1) to allow its intervention;
- 2) to rule that the State is responsible for failure to act to protect its aquatic resources and its biodiversity against the effects of climate change;
- 3) to order the State to take all measures useful and necessary to preserve aquatic resources and aquatic biodiversity against the effects of climate change.

Though statements in intervention registered on May 12, June 22 and August 20, 2021, the association Initiatives pour le climate et l'énergie, represented by Maître Gendreau, called on the court to dismiss Greenpeace France's petition.

The association's arguments are the same as those developed in support of petition n°1904967

Having regard to the other exhibits submitted to the proceedings;

Having regard to:

- the Constitution and its Preamble;
- the United Nations Framework Convention on Climate Change of May 9, 1992 and the Kyoto Protocol signed on December 11, 1997;
- the Paris Agreement adopted on December 12, 2015;
- Council decision n°94/69/EC of 15 December 1993;
- Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009;
- Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009;
- Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012;

- Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018;
- the civil code;
- the energy code;
- the environment code;
- Act n°2009-967 of August 3, 2009 on programming relating to the implementation of the Grenelle environment policy, known as Grenelle 1;
- Act No. 2015-992 of 17 August 2015 on Energy Transition for Green Growth;
- Act no. 2019-1147 of 8 November 2019 relating to Energy and Climate;
- Act n° 2021-1104 of August 22, 2021-on the fight against climate disruption and reinforcement of resilience to its effects;
- Decree No. 2015-1491 of 18 November 2015 on National Carbon Budgets and the National Low-Carbon Strategy;
- Decree No. 2016-1442 of 27 October 2016 on Multiannual Energy Programming;
- Decree no. 2019-439 of 14 May 2019 on the High Council for the Climate;
- Decree no. 2020-456 of 21 April 2020 on Multiannual Energy Programming;
- Decree no. 2020-457 of 21 April 2020 relating to National Carbon Budgets and the National Low-Carbon Strategy;
- the Council of State decision of July 1, 2021 Commune de Grande-Synthe, n°427301;
- the administrative justice code.

Having heard during the public hearing:

- the report by Mr. Pény, rapporteur;
- the conclusions of Ms. Baratin, public rapporteur;
- the observations of Mr. Alimi, lawyer for Oxfam France, Mr. Daoud, lawyer for Notre Affaire À Tous, Mr. Baldon, lawyer for la Fondation pour la Nature et l'Homme, Mr. Capdebos, lawyer for Greenpeace France, Mr. Le Briero, lawyer for France Nature Environnement and l'Association Nationale de protection des eaux et rivières;
- and the observations of Ms. Bretonneau, representing the Minister for Ecological Transition, and Mr. Maillard, representing Initiatives pour le climat et l'énergie.

Notes taken during deliberations were recorded on October 6, 2021 for Oxfam France, Notre Affaire A Tous, la Fondation pour la Nature et l'Homme and Greenpeace France.

Considering the following:

1. By letter dated December 17, 2018, the associations Oxfam France, Notre Affaire À Tous, Greenpeace France, and la Fondation pour la Nature et l'Homme, asked the Prime Minister, the Minister of Ecological and Solidarity Transition, the Minister of Solidarity and Health, the Minister of Food and Agriculture, the Minister of Territorial Cohesion and Relations with Territorial Authorities, the Minister of Transport, the Minister for the Economy and Finance, the Minister for Public Action and Public Accounts, the Minister for Europe and Foreign Affairs, the Minister for the Interior, and the Minister of the Overseas, firstly, to remedy the moral and ecological damage resulting from the State's shortcomings in combating climate change and, secondly, to put an end without delay to all these shortcomings which, failing this, continue to engage its responsibility, i.e. to take all appropriate measures to stabilise atmospheric greenhouse gas concentrations throughout the country at a level that would limit the increase in global warming to 1.5° C compared to pre-industrial levels, in combination with appropriate targets for developed and developing countries, to take all appropriate measures to adapt the national territory, and particularly vulnerable areas, to the effects of climate change, to cease any direct or indirect contribution by the French State to climate change, to implement all measures to achieve the minimum targets set for reducing greenhouse gas emissions throughout the national territory, developing renewable energies and increasing energy efficiency. This request was rejected by a letter dated February 15, 2019. By judgement handed down on February 3, 2021, the court recognised that the State, to the extent that it had failed to meet the targets fixed by the first carbon budget, was responsible for part of the ecological damage linked to the direct impact of the surplus GHG emissions on global warming. Before reaching a final decision in this case, the court ordered further investigations to be carried out. In these proceedings, the four aforementioned associations ask the court to enjoin the Prime Minister and the competent ministers to take the necessary measures to repair the ecological damage linked to the surplus GHG emissions linked to its non-compliance with the first carbon budget and to ensure that the extent of damage is not made worse in the future, in particular by taking all measures, as rapidly as possible, to achieve France's objectives in terms of reducing greenhouse gas emissions, as defined by article L. 100-4 of the energy code, taking into account France's surplus GHG emission and the additional

measures necessary to achieve these objectives, under penalty of a fine of 78,537,500 euros per semester delay.

### **On the interventions:**

- 2) Firstly, l'Association nationale pour la protection des eaux et des rivières claims that it's intervention in these proceedings is admissible right up until the judgement is issued. For this purpose, it submits a special authorisation issued in the name of its representative, Mr. Le Briero, by the chairman of l'Association nationale pour la protection des eaux et des rivières, who alone has the power to represent the association by virtue of article 10 of its articles of association. In this case, as the examination phase was reopened by the interim injunction of February 3, 2021, the intervention of l'Association nationale pour la protection des eaux et des rivières in support of Greenpeace France is admissible.
- 3) Secondly, the association Initiatives pour le climat et l'énergie, which intervenes in support of the State, has produced a reasoned submission which was transmitted following the reopening of the proceedings after the interim injunction of February 3, 2021. This intervention is therefore also admissible.

### **On the reparable damage:**

- 4) The plaintiff associations claim that the measures adopted since 2017 are insufficient to meet the global target of reducing GHG emissions by 40% by 2030 and that, in any case, they are insufficient to repair the ecological damage linked to the surplus GHG emissions resulting from failure to meet the first carbon budget or, at the least, to prevent the damage from worsening.
- 5) In defence, the Minister of Ecological Transition claims that the State has already taken measures to compensate for the overrun of the first carbon budget. She points out that the GHG emissions trajectory has been defined by the new national low-carbon strategy so as to catch up for the delay resulting from non-compliance with the first carbon budget and that the current level of GHG emission is in line with this trajectory. She also indicates that the implementation of measures since 2017, in particular those contained in the July 20, 2021 Act on combating climate change and



reinforcing resistance to its effects, will make it possible to meet the target of reducing GHG emissions by 40% by 2030 as compared to their 1990 level, fixed by article L. 100-4 of the energy code, on condition that these measures are fully implemented. Lastly, she affirms that in the framework of the preparation of the revised national low-carbon strategy, the accrued effect of greenhouse gas emissions by 2050 was modelled taking into account the first carbon budget overrun and that, as such, the revised national low-carbon strategy, with its carbon neutrality by 2050 target, will result in a reduction of cumulated emissions over the 2015-2050 period as compared to the first national low-carbon strategy, meaning that the revision of the trajectory will not lead to an increase in total greenhouse gas emissions, but to their decrease.

- 6) It is not up to the court, to which a dispute has been referred demanding reparation for the ecological damage stemming from the first carbon budget overrun and demanding that the damage be prevented or stopped, to decide whether the measures defined to make it possible to meet the target of reducing GHG emissions by 40% by 2030 as compared to their 1990 level are sufficient, but merely to check, on the date of this judgement, whether the damage continues to exist and whether reparation measures have already been taken.
- 7) The investigation, and in particular the annual report published in June 2021 by the High Council for Climate, based on firm data provided by the Centre Interprofessionnel Technique d'Etudes de la Pollution, has established that the surplus of 62 MTCO<sub>2</sub>-eq excluding UTCAF for the period 2015-2018, i.e. around 15.5 MTCO<sub>2</sub>-eq per year, has not been taken into account in the second carbon budget, whose ceiling for GHG emissions over the period 2019-2023 was revised upwards, increasing as an annual average excluding LULUCF, from 399 MTCO<sub>2</sub>-eq to 422 MTCO<sub>2</sub>-eq by virtue of the decree of April 21, 2020. Neither has this surplus been taken into account in the third carbon budget, whose ceiling, as an annual average excluding LULUCF, has remained stable at 359 MTCO<sub>2</sub>-eq/year compared to 357 MTCO<sub>2</sub>-eq/year in the first national low-carbon strategy. However, the official data from the official CITEPA climate report show that greenhouse gas emissions for 2019 totalled 436 MTCO<sub>2</sub>-eq, below the indicative annual share of 443 MTCO<sub>2</sub>-eq, i.e. a difference of 7 MTCO<sub>2</sub>-eq. An initial estimation in the official CITEPA report, whose last update was on July 28, 2021, shows that emissions should amount to 396 MTCO<sub>2</sub>-eq for the year 2020, i.e. a difference of around 40 MTCO<sub>2</sub>-eq compared to the annual indicative share fixed at 436 MTCO<sub>2</sub>-eq. Although this unprecedented reduction is closely linked to the

effects of the Covid-19 health crisis in France during the past year and not to specific action implemented by the State, it is nonetheless necessary to take this into account in that it makes it possible, in part, to repair the damage observed and to prevent it from worsening. Furthermore, while the Minister for Ecological Transition claims that the level of GHG emissions could be significantly lower than the indicative annual share of the second carbon budget fixed at 423 MTCO<sub>2</sub>-eq for 2021, under the combined effect of the strengthening of climate policies and the continuation of restrictions following on from the health crisis, the CITEPA estimates for the first quarter of 2021, available at the date of this judgement, show that GHG emissions are stable at 113 MTCO<sub>2</sub>-eq, which is an annual rate that does not make it possible to be certain, on the basis of the investigation process, that this decrease will make it possible to repair the damage or prevent it from worsening. Therefore, while this 47 MTCO<sub>2</sub>-eq decrease in GHG emissions must be taken into account to the extent that, in part, it repairs the ecological damage, it is also necessary to acknowledge that the damage continues to exist on the date of this judgement, in relation to the 15 MTCO<sub>2</sub>-eq surplus.

#### **On the injunction and fine:**

8. In application of article 1246 of the French Civil Code “*Any person responsible for ecological damage is required to repair it*”. In application of article 1249 of the French civil code: “*Reparation of the ecological damage is carried out in priority in kind. / In case of de jure or de facto impossibility or insufficient reparation measures, the judge sentences the person responsible to pay damages, allocated to the reparation of the environment, to the plaintiff or, if the latter cannot take useful measures in this respect, to the State (....)*”. In application of article 1252 of the French civil code “*Irrespective of the reparation of the ecological damage, the judge, to whom a claim in this respect is referred by a person mentioned in article 1248, can order reasonable measures to prevent or put an end to the damage*”.

#### ***On the necessity of issuing an injunction:***

9. The plaintiff associations are requesting that an injunction be issued against the State obliging it to adopt all measures necessary to repair the ecological damage linked to the surplus GHG emissions and prevent, in the future, the worsening of the damage. They also demand that the State

takes all the measures necessary to meet France's targets as fixed in terms of the reduction of GHG emissions by 2030 and defined by article L. 100-4 of the energy code.

10. The Minister claims that the injunction issued by the Council of State in its Commune de Grande-Synthe decision of July 1, 2021 makes it possible to repair the ecological damage identified. However, while this injunction aims at ensuring compliance with the global 40% GHG emission reduction target by 2030 compared to the 1990 level, it does not specifically relate to reparation of the extent of the damage caused by the first carbon budget overrun. Therefore, it still has a useful purpose. In these conditions, the plaintiff associations have due grounds for requesting an injunction to repair the damage linked to the surplus greenhouse gas emissions and prevent the potential worsening of the damage.

*On the content of the injunction:*

11. The ecological damage stemming from the surplus greenhouse gas emissions is of a continuous and cumulative nature to the extent that failure to comply with the first carbon budget has resulted in additional greenhouse gas emissions on top of the preceding emissions which will continue to have an effect over the life of these gases in the atmosphere, which is for around 100 years. Consequently, the measures ordered by the judge in the framework of his power of injunction must be carried out rapidly enough, wherever possible, to repair the damage and prevent it from worsening in the future.
12. The plaintiff associations request that the State be ordered to take all measures necessary to repair the ecological damage linked to the surplus greenhouse gas emissions, in particular by ordering measures which will make it possible to reach the targets fixed for the agricultural, transport, waste, industry and energy production sectors by virtue of article 4 of the decree of April 21, 2020. While the Minister for Ecological Transition stipulates that the different measures contained in the July 20, 2021 Act, as well as the regulatory texts which will be implemented shortly for its application, will enable the damage to be repaired, she does not demonstrate, on the date of this judgement, that this damage will be fully reversed, in particular based on the data published by CITEPA.
13. In these circumstances, the court has reason to order the Prime Minister and the competent Ministers to take all the sector-based measures necessary to repair the damage with respect to the first carbon budget for

the share that has not been made good, i.e. MTCO<sub>2</sub>-eq, and subject to adjustment with respect to the estimated CITEPA data known at January 31, 2022, which enable GHG emissions to be monitored. As regards the cumulated effect of the damage linked to the persistence of greenhouse gas in the atmosphere and the likely resulting damage, without elements to quantify this damage, and whereas the claim for the payment of a symbolic amount of 1 euro in damages in reparation for the ecological damage has already been considered to be without any link to the extent of the damage, it is necessary, as has been said, to order measures to be carried out rapidly enough to prevent further damage. In this case, concrete measures to enable the damage to be made good may take different forms and reflect the Government's freedom of discretion.

14. Lastly, with regard to the extent of the damage noted, it appears reasonable for this reparation to be effective as at December 31, 2022, at the latest. There is no need, however, to impose a sanction on top of this injunction.

On procedural costs:

15. In the circumstances of this case, the State shall pay the plaintiffs the sum of 2,000 euros each on the grounds of article L. 761-1 of the administrative justice code.

**THE COURT DECIDES:**

Article 1: the interventions of l'Association nationale de protection des eaux et des rivières in support of Greenpeace France and the association 'Initiatives pour le climat et l'énergie are admissible.

Article 2 : the Prime Minister and the competent Ministers are ordered to take all useful measures to repair the ecological damage and prevent it worsening for the share of greenhouse gas emissions not made good compared to the first carbon budget, i.e. 15 MTCO<sub>2</sub>-eq and subject to adjustment with regard to the CITEPA estimates at January 31, 2022. The reparation of the damage should be effective at December 31, 2022 at the latest.

Article 3: The State shall pay Oxfam France, Notre Affaire A Tous, la Fondation pour la Nature et l'Homme and Greenpeace France the amount of 2,000 euros each on the grounds of article L. 761-1 of the administrative justice code.

Article 4: The remainder of the plaintiff's pleas are dismissed.

Article 5: This judgement will be notified to Oxfam France, Notre Affaire À Tous, la Fondation pour la Nature et l'Homme, Greenpeace France, France Nature Environnement, the Fondation Abbé Pierre, the Fédération nationale de l'agriculture biologique, the Association Initiatives pour le climat et l'énergie, the Association Nationale pour la protection des eaux et rivières, the Secretary General of the Government, the Minister for Ecological Transition, the Minister for the Economy, Finance and Recovery, the Minister for the Interior, the Minister for Solidarity and Health, the Minister for Agriculture and Food, the Minister for Europe and Foreign Affairs and the Minister for Territorial Cohesion and Relations with Territorial Authorities.

Deliberated after the hearing of September 30, 2021 composing:

Mr. Duchon-Doris, President,  
Ms. Pény, First Counsellor,  
Mr. Perrot, Counsellor.

Made public by transmission to the court clerk on October 14, 2021.

The Rapporteur, A  
A. Pény

The President,  
J.-C. DUCHON-DORIS

The court clerk,

L. THOMAS

The Republic requests and orders the Secretary General of the Government, the Minister of Ecological Transition, the Minister of Economy, Finance and Recovery, the Minister of the Interior, the Minister of Solidarity and Health, the Minister of Food and Agriculture, the Minister for Europe and Foreign Affairs and the Minister for Territorial Cohesion and Relations with Territorial Authorities, each in so far as he or she is concerned, and to

all judicial officers, to provide for the enforcement of this Decision as regards the ordinary legal remedies against private parties.