



Press release

# 3 points to understand the additional pleading

**1 - Which obligations are we talking about?**

**2 - Why is France liable?**

**3 - What are we asking for?**

The IPCC (intergovernmental panel on climate change) published a report in [October 2018](#) on the impacts of a 1.5°C global warming. This report demonstrates that global warming impacts are worsening.

However, despite this recent publication and the previous one in 2014, which was already urging for a change, **France is still failing to comply with its obligations to fight against climate change**. The consequences of this failure are already noticeable : **French greenhouse gas emissions (GHG) are not declining; instead, they have been increasing since 2016**.

## 1 - Which obligations are we talking about?

The French state has to comply with general and specific obligations.

First of all, the general obligation of fighting against climate change comes from the French Environmental Charter and the European Charter on Human Rights. More precisely, this obligation covers the **right for everyone to live in a healthy and protected environment, and the state obligation of due diligence**.

Moreover, France signed several international agreements (the most recent being the 2015 Paris agreement) which compel the State to tackle global warming and to reduce its impacts. On a regional point of view, in the European Charter on Human Rights, **the protection of the**

**fundamental rights of the present and future generations is fulfilled thanks to the protection of the environment.** Plus, several national courts have already issued corroborating findings (Pakistan, Colombia, Norway, Holland and US). From this general state of the law, a “general principle of law” emerges, namely **the right to live in a sustainable climatic system.**

Secondly, France has to comply with several specific obligations.

As a matter of fact, as soon as 2007, **the EU has endorsed quantified targets.** These targets are called “3x20”, and have set 3 aims for 2020 : reduce GHG emissions by 20% compared to 1990 levels, increase energy efficiency by 20% compared to the actual trend, and reach 20% of renewable energies in the energy mix. **These targets have also been identified in the 2020 Energy / Climate package** and in the 2030 package. In order to try to reach the targets, France adopted several pieces of legislation, some cross-cutting and others sector-based, but they are all globally inadequate.

More precisely, **concerning GHG emissions reduction, emissions are [higher than the maximum](#)** set by the decree on the low carbon national strategy (LCNS). The French government even recognised this excess in February 2019 : between 2015 and 2019, the carbon budget was in excess of 4 points. The maximums set by the LCNS were exceeded in mostly all sectors : transports (excess of 10.6% in 2017), buildings (22.7%) and agriculture (3.2%).

Furthermore, **energy efficiency, which is attained on one hand by consuming less energy and on the other hand by materially improving energy efficiency, is essential** in reducing GHG emissions. However, so far, energy efficiency has not been sufficiently improved in order to reach the target set by the [plurianual energy program](#) (PEP). The government even believes that the 2020 target won't be met before 2026 at best. Therefore, despite all the pledges, promises and targets of France, the outcome is crystal clear : French consumption of fossil fuels has been increasing since 2014. France is blatantly failing to meet its obligations.

**As far as renewable energies are concerned, France submitted its [national action plan](#) to the EU commission** in order to meet its 23% target in 2020. France is falling far short from its objectives : renewable energies hardly reached 16.3% in 2017. According to IDDRI (a French think-tank, the sustainable development and international relations institute), **this significant delay** jeopardizes the achievement of the 23% target of renewable energies of gross final energy consumption in the energy mix in 2020.

Regarding **sector-based measures**, France has to pass different measures, more particularly :

- **Transports** : the State must aim, in particular, to support the modal shift to carbon-free transports and to reduce GHG emissions from vehicle fleets by promoting, among other things, the development of clean vehicles (p. 43 of the pleading). However, France failed to take the measures which would have enabled the development of carbon-free transports, particularly railway. 400 billion euros were spent between 1990 and 2015 for transport networks : 69.4% went directly to roadworks, against only 19.6% to the national railway and 10% to the urban railway. Similarly, about the replacement of the fleet and

the improvement of the environmental performances of the vehicles, either state measures are indigent, or they don't even exist. This failure prevent any actual GHG reduction in order to reach the targets.

- **Buildings energy efficiency** (old buildings and new ones) : buildings use a huge amount of energy, and improving their energy efficiency could definitely have a great impact on GHG emissions. The [Grenelle I Act](#) had set the objective to reduce the consumption of all existing buildings by 38% in 2020. However, the State did not create any follow-up of the targets. The problem is not limited to a lack of datas : France has even lowered its target. The [French Act on Energy transition](#) had initially set a target of 500.000 buildings renovated / year, now reduced to 300.000. The same Act had provided for the creation of a public service of the energy performance and habitat : we are still waiting for it. Last but not least, the renovation of tertiary buildings are at a dead end, as the State did not take any decree to plan the execution.
- **Agriculture** : in 2017, only 6.5% of utilised agricultural land was used for organic agriculture, while the target set by the Grenelle I Act is of 20% in 2020. Nitrogen fertilizers sales (which represent 41% of this sector's emissions) have increased by 13.000 tons between 2014-2016, while the LCNS had stated a target of reducing the use of these fertilizers : an absolute contradiction.

**Therefore, setting up targets is not enough. It is also essential to set up a real follow-up mechanism and to evaluate the execution of the measures.** The administrative authorities must comply with their obligations, while assessing and taking into account the impact of GHG emissions in the final assessment of the projects they have to deal with. Moreover, the State has to assess its GHG emissions, in order to publish an estimation of the volume of emissions released when carrying out its obligations or using its goods. Theses assessments have to be published on the electronic platform of a French agency (ADEME), and updated every 3 years. However, so far, [only 18 assessments have been published](#), and only 2 of them concern a central administration.

**Generally speaking, the French state follow-up and assessment obligations are not respected, demonstrating a passive attitude from France, coupled with a lack of willingness.**

**The multiple French failures** enumerated above, regarding either the steps taken, the inadequacy of the measures taken, or the indubitable lack of follow-up, **caused an increase of GHG emissions**, compromising the environment and public health.

## 2 - Why is France liable?

If it is necessary to demonstrate a causal link between the obligations and the failures of France, the case law is rich and gave precisions on several elements, particularly on environmental matters.

First of all, it is not necessary to have a single causal action. Indeed, it would not be reasonable to claim that the State is the only entity liable for climate change in France. However, **its actions participated significantly in the worsening of global warming**, and that single fact justifies the finding of its liability. This element was recognised in several famous French cases, namely the infected blood case, asbestos, or more recently, water pollution by nitrates. The landmark case is probably the green algae case : the French judge did identify several factors to the algae proliferation, but it did not prevent him from recognising a direct link between the French state failure in applying European law and internal law, and the damage caused by the algae.

Therefore, a damage can be direct, without being unique. The Administration can then be held liable, even though its behaviour is not the only cause of the damage.

Secondly, **the State cannot claim scientific uncertainty as an excuse not to act. Public authorities have the obligation to take measures in order to eliminate risks.** Thus, the obligation of fighting against global warming echoes the prevention principle in matter of public health : the risk does exist, and even though its realisation is not certain, it is necessary to act, for the sake of prudence. **The State not acting, the State which is not taking enough measures or with due diligence engages its liability.**

When France signs conventions such as the Paris Agreement, it does recognise the impact of GHG emissions on global warming, and the impact of its public policies on the volume of these emissions. **Yet, the emissions have not even been kept at the same level, let alone reduced.**

## 3 - What are we asking for?

The plaintiffs defend collective environmental interest, it is the mission of these charities. **Yet, having such an inconsistent, wait-and-see attitude, France has without any doubt aggravated GHG emissions.** The French state failures and deficiencies have in particular participated in releasing an additional amount of GHG emissions, which is a part of the GHG emissions volume continuously released since the moment that France had a precise knowledge of the dangerous impacts of climate change on health and the environment, and had committed (within the UNFCCC) to set up precaution measures in order to plan, prevent or mitigate the causes of climate change. At the latest, it means that France had this knowledge from the late 90's (P.87 of the pleading).

The plaintiffs therefore seek compensation for non-material harm, namely the damage caused to the collective interests they are protecting, for a token amount of 1 euro.

Furthermore, they seek from the French State a compensation for the environmental harm, and an injunction to take appropriate measures to end this damage and prevent its aggravation. The article 1247 of the French Civil Code defines this prejudice as a significant damage to the elements or to the functions of the ecosystems, or to the common benefits provided by the environment to humans. Yet, the failures and deficiencies of the French State and its public authorities damage the environmental functions of the atmosphere, particularly its climate regulation function, having important consequences on the environment and people's health and life. Finally, it is acknowledged that **GHG emissions released today will have an impact tomorrow**. Therefore, **the State failures have not only caused an environmental damage today, they will also be causing a damage tomorrow**.



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