

## LETTER OF FORMAL NOTICE TO OFFICIALS

France is a stakeholder in the international consensus recognizing both the dramatic causes and effects of climate change on the environment and human health, and the urge to do whatever it takes to limit the future global average temperature increase to 2°C above pre-industrial levels, in order to limit the damage on environment and human health **(I.A.)** France is already faced with these harmful effects, as it is the European country the most impacted by climate change on 1998-2017 period<sup>1</sup>. Each year, 1.120 deaths and 2.2 billion dollars of loss related to climate change are recorded in France<sup>2</sup> **(I.B.)**.

However, France has to actively act to limit climate change by virtue of the obligations to protect the environment, human health and security that can be inferred from the French Constitution and the European Convention on Human Rights, by also respecting goals and commitments regarding the fight against climate change **(II.A.)**.

Nonetheless, despite many announces of long-term ambitious objectives, it's now obvious that France, in contradiction with its international commitments, E.U. legislation and French domestic policies, does not respect its short-term objectives concerning greenhouse gas emissions reduction, development of renewable energy sources or energy efficiency improvement, due to the lack of well-identified measures known as crucial for social and ecological transition for climate change **(II.B.)**.

This incapacity of the State to set up practical and effective measures and the inevitable non respect by France of its multiples commitments and objectives characterizes a “carence fautive” (a failure to act), and entails the French State's responsibility **(II.C.)**. The causal link between this failure to act and the extent of present climate change is therefore indisputable **(III.A.)**.

The four applicant NGOs seek damages for their moral damage, the non-material damage suffered by their members as well as the ecological damage that affected the environment resulting from French State's failure to act. They also ask the State to immediately put an end to all these failures and, for this purpose, to implement any useful measures to (i) stabilize greenhouse gases concentration in the atmosphere throughout the national territory at a level that makes it possible to limit the planet's average temperature increase to 1.5°C compared to pre-industrial levels; at least (ii) to respect France short-term objectives under its international commitments, E.U. legislation and French domestic policies, including the implementation of all measures to achieve the minimum objectives of greenhouse gases emissions reduction throughout the national territory, renewable energies development and energetic efficiency increase.

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<sup>1</sup> Global climate Risk Index 2019, Germanwatch, [https://www.germanwatch.org/sites/germanwatch.org/files/Global%20Climate%20Risk%20Index%202019\\_2.pdf](https://www.germanwatch.org/sites/germanwatch.org/files/Global%20Climate%20Risk%20Index%202019_2.pdf).

<sup>2</sup> Ibid; see also: HIAULT, « Dégâts climatiques : la France en première ligne en Europe », *Les Echos*, 5 December 2018, <https://www.lesechos.fr/monde/enjeux-internationaux/0600274996127-degats-climatiques-la-france-en-premiere-ligne-en-europe-2227385.php> (last accessed December, 17 2018).

## I. Facts

### A. The climate urgency: a consensus on causes and tragic effects of climate change and the pressing need to limit its extent

On October 8<sup>th</sup> 2018, the Intergovernmental Panel on Climate Change (IPCC) published its last report on the consequences of a global average temperature increase of 1.5°C (special Report – Global warming of 1.5°C, hereafter the “IPCC Report”). This report sets out the most advanced knowledge about climate change<sup>3</sup>.

This report is of outstanding importance since its conclusions reach an unequaled scientific credibility.

The IPCC Report is the fruit of the collaboration of thousands of experts from about forty countries. Based on more than 6.000 scientific references, it was evaluated by public institutions worldwide which made more than 42.000 comments<sup>4</sup>. Moreover, the independence and objectivity of the IPCC Report is ensured by the very nature of the IPCC, an intergovernmental agency in which took part 195 countries. Its mission is not only to identify elements that have consensual support but also to address limitations in climate-related knowledge and in the interpretation of the results<sup>5</sup>.

As a member of the IPCC plenary, France adopted the Summary for policymakers<sup>6</sup>, showing its full endorsement of the IPCC Report findings<sup>7</sup>.

The IPCC Report, in an alarming assessment of climate change impacts on environment and human health, underlines that the hazard level of these impacts is much higher if the temperature increase is not contained under 1.5°C (**1.**). These alarming observations led authors to urge States to promptly take emergency measures to significantly reduce their GHG emissions (**2.**).

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<sup>3</sup> “An IPCC special report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty”, GIEC, 8 October 2018, <https://www.ipcc.ch/sr15/>.

<sup>4</sup> IPCC Press release, 8 October 2018, [https://www.ipcc.ch/site/assets/uploads/2018/11/pr\\_181008\\_P48\\_spm\\_en.pdf](https://www.ipcc.ch/site/assets/uploads/2018/11/pr_181008_P48_spm_en.pdf).

<sup>5</sup> In this respect, rundown “Understanding the IPCC”, Ministère de la Transition écologique et solidaire, <https://www.ecologique-solidaire.gouv.fr/comprendre-giec> (in french); En ce sens également, rapport « Mieux comprendre le GIEC », ONERC et ministère de la Transition écologique et solidaire, 3 mars 2018. Disponible sur : [https://www.diplomatie.gouv.fr/IMG/pdf/4\\_-\\_13188-3\\_mieux-comprendre-giec\\_2018\\_a5\\_light2\\_v2\\_cle427e91.pdf](https://www.diplomatie.gouv.fr/IMG/pdf/4_-_13188-3_mieux-comprendre-giec_2018_a5_light2_v2_cle427e91.pdf).

<sup>6</sup> Summary for policymakers, [https://www.ipcc.ch/site/assets/uploads/sites/2/2018/07/SR15\\_SPM\\_High\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2018/07/SR15_SPM_High_Res.pdf).

<sup>7</sup> See also, to that effect, a joint press release from the ministères de la Transition écologique et solidaire, de l’Europe et des affaires étrangères, et de la Recherche et de l’Innovation « Rapport spécial du GIEC », 8 octobre 2018.

Available on:

<https://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/climat/actualites-liees-au-dereglement-climatique/actualites-2018-liees-au-dereglement-climatique/article/quai-d-orsay-rapport-special-du-giec-communique-de-press-e-conjoint-de-mm-de>

## **1. An alarming situation about the impact of climate change on environment and human health**

The IPCC Report conclusions are unambiguous; in short, they reveal that:

- Human activities already caused a global average temperature increase of 1°C above pre-industrial levels. The average temperature continues to grow by around 0.2°C per decade owing to past and current greenhouse gas<sup>8</sup> (hereafter “GHG”) emissions. If GHG emissions continue on current path, global warming will reach 1.5°C between 2020 and 2030.
- Global warming impacts are already perceptible all over the world: it is responsible for changes in the composition of the atmosphere, ocean acidification, melting land ice which contributes to rising sea levels. These processes lead to degradation of air quality and enable a rising of frequency, intensity and/or duration of extreme weather events such as heat waves, heavy precipitation events and in some regions, droughts and hurricanes. These transformations deeply affect terrestrial and marine ecosystems, thus threatening biodiversity and the survival of many endangered species.
- These phenomena pose a risk to human health, means of subsistence, food safety, water supply, human security and economic growth.

Climate change consequences are even more serious given their mutual interdependence.

According to the IPCC Report, an average temperature increase of 2°C instead of 1.5°C would lead to even more harmful consequences. Detrimental effects would be intensified at all levels, leading to a runaway climate change.

Thereby, terrestrials and marine ecosystems would face more important or even irreversible impacts which subsequently affect their role in the regulation of climate change. Biodiversity loss would be even significant owing to the accrued destruction of ecosystems and the higher acidification of oceans. Ultimately, human health, means of subsistence, food safety, water supply, human security and economic growth would be increasingly threatened because of the drop in cereal crop yields, more frequent water shortages and increase in poverty all over the world.

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<sup>8</sup> These gases are defined by the Kyoto Protocol: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs), Annex A, Kyoto Protocol, United Nations Framework Convention on Climate Change, <https://unfccc.int/resource/docs/convkp/kpeng.pdf>.

## 2. The urge to adopt emergency measures to try to limit climate changer under 1.5°C

According to the IPCC Report, the only option for limiting global average temperature increase to 1.5°C is to reduce global emissions of GHG by approximately 45% before 2030 in comparison with 2010 and to reach net zero emissions around 2050. States have to heighten their GHG emission reduction objectives compared to those announced in the framework of Paris Agreement.

Achieving such objectives requires a major fast systemic transition regarding energy, urban, industrial and land-use-related systems, as well as a significant increase in investments. **Any further delay** in carrying out mitigation measures could lead to a global warming above 1.5°C<sup>9</sup>.

The IPCC Report insists on the need to urgently adopt such measures to prevent irreversible consequences and a runaway climate change.

Furthermore these conclusions have been endorsed by the United Nation Environment Program (UNEP) which insists, in its 2018 report, on the gap between needs and prospects regarding the reduction of GHG emissions<sup>10</sup>:

“Now more than ever, unprecedented and urgent action is required by all nations (...) Countries therefore need to move rapidly on the implementation of their current NDCs; at the same time, more ambitious NDCs are necessary by 2020 to meet the jointly agreed goals”.

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<sup>9</sup> IPCC Press release, 8 October 2018, p. 2

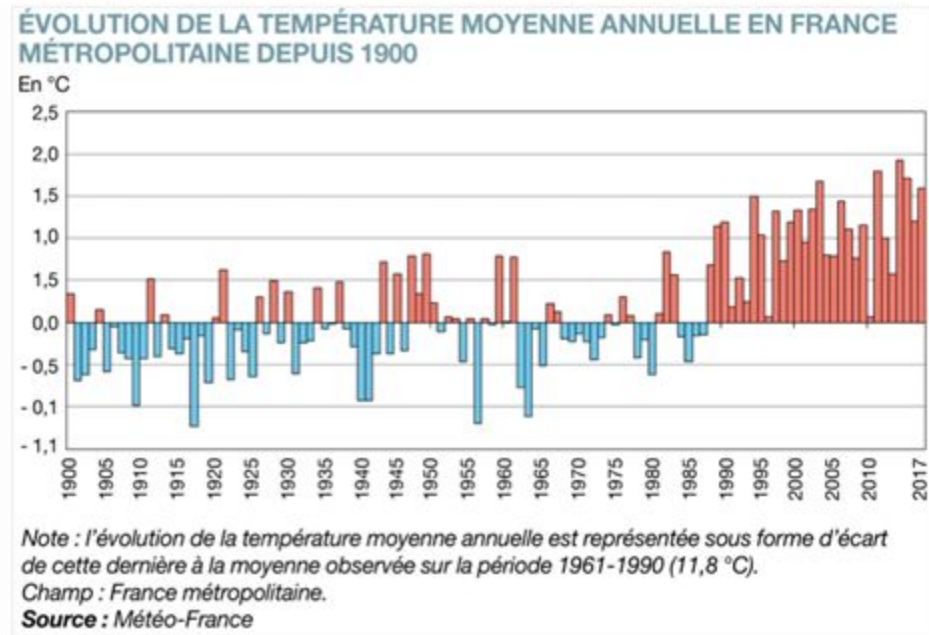
[https://www.ipcc.ch/site/assets/uploads/2018/11/pr\\_181008\\_P48\\_spm\\_en.pdf](https://www.ipcc.ch/site/assets/uploads/2018/11/pr_181008_P48_spm_en.pdf).

<sup>10</sup> Emissions Gap Report 2018, UNEP,

[https://wedocs.unep.org/bitstream/handle/20.500.11822/26879/EGR2018\\_ESEN.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/26879/EGR2018_ESEN.pdf).

## B. Harmful consequences of climate change in France

Global average temperature has increased of 1.4°C on the French metropolitan territory since 1900. This increase in temperatures is particularly noticeable since 1990 and has grown in recent years, as shown in the graph below<sup>11</sup>.



Average annual temperature evolution in Metropolitan France since 1990

Note: average annual temperature evolution is represented as its deviation from the average temperature over 1961-1990 (11.8°C)

Field: Metropolitan France

Source: Météo-France

This increase in temperature and others above mentioned manifestations of climate change come with multiples harmful consequences on environment (1.) as well as human health and safety (2.).

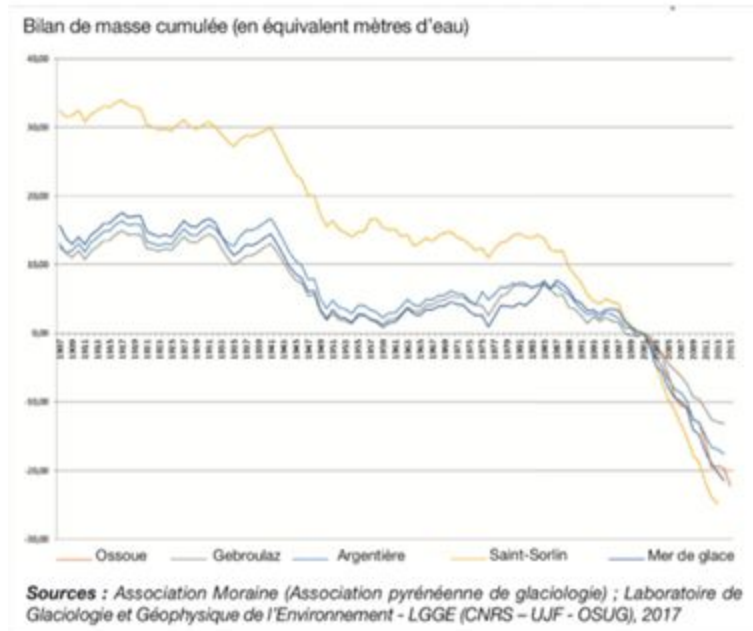
This brief presentation is not exhaustive since it is rather difficult to identify all the consequences, often in chain reaction, of climate change, especially if its extent is not contained.

<sup>11</sup> Commissariat général au développement durable, “Chiffres clés du climat – France, Europe et Monde”, 2019, p. 9. [http://www.statistiques.developpement-durable.gouv.fr/fileadmin/documents/Produits\\_editoriaux/Publications/DataLab/2018/datalab-46-chiffres-cles-du-climat-edition-2019-novembre2018.pdf](http://www.statistiques.developpement-durable.gouv.fr/fileadmin/documents/Produits_editoriaux/Publications/DataLab/2018/datalab-46-chiffres-cles-du-climat-edition-2019-novembre2018.pdf)] (in french).

## 1. Impacts of climate change in France on the environment

### (i) Melting of the glaciers and rising sea levels

French mountain range are affected by glacier shrinkage. More worryingly, this phenomenon has sped up since 2003, as shown in the chart below about French glacier mass loss<sup>12</sup>. For instance, the Alps lost 25% of their surface over the past twelve years.



Cumulative mass-balance (in cubic meters of water equivalent)

Beyond the dramatic impact on a unique biodiversity, the melting of mountain glaciers contributes to rising sea levels that speeds up. According to Météo-France, “After a broadly stable rising of sea levels for millennia, it sped up noticeably in the 20<sup>th</sup> century”<sup>13</sup>. This phenomenon worsens coastal erosion: the extent of shoreline recession has been observed in many French provinces<sup>14</sup>.

<sup>12</sup> Commissariat général au développement durable, « Chiffres clés du climat », 2018, p. 10, [http://www.statistiques.developpement-durable.gouv.fr/fileadmin/documents/Produits\\_editoriaux/Publications/DataLab/2017/datalab-27-CC-climat-nov2017-b.pdf](http://www.statistiques.developpement-durable.gouv.fr/fileadmin/documents/Produits_editoriaux/Publications/DataLab/2017/datalab-27-CC-climat-nov2017-b.pdf) (in french).

<sup>13</sup> « Changement climatique et hausse du niveau de la mer », Météo-France, <http://www.meteofrance.fr/climat-passe-et-futur/impacts-du-changement-climatique-sur-les-phenomenes-hydrometeorologiques/changement-climatique-et-hausse-du-niveau-de-la-mer> (last accessed on December 17, 2018, in french).

<sup>14</sup> See, to that effect, LISON, C., “France : jusqu'où la mer va-t-elle monter ?”, National Geographic, 9 November 2015, <https://www.nationalgeographic.fr/environnement/2015/12/france-jusquou-la-mer-va-t-elle-monter> (last accessed on December 17, 2018). For example, in the “Nouvelle Aquitaine” French province, it has been estimated that in 2025, the coastline erosion could reach an average of 20 metres and an average of 50 meters by 2050, with a progression rate estimated within 1 and 3 meters per year : AcclimaTerra, LE TREUT, H. (dir.). Anticiper les changements climatiques en Nouvelle-Aquitaine. Pour agir dans les territoires – Synthèse. Éditions Région Nouvelle-Aquitaine, 2018, p. 67. Available on : <http://www.acclimaterra.fr/uploads/2018/05/Rapport-AcclimaTerra.pdf>.

Coastal erosion and associated risk of marine submersion could affect 27% of metropolitan coastline and its 7 millions inhabitants<sup>15</sup>. New Caledonia and French Polynesia are also threatened: 30% of their islands could disappear by 2100<sup>16</sup>.

## **(ii) Loss of biodiversity**

Scientific facts speak for themselves: according to the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), biodiversity is threatened on all continents and in every country.

The IPBES includes 127 member States and more than 1,300 experts for the preparation of its reports, including several researchers from the National Centre for Scientific Research (CNRS)[17]. In other words, IPBES is to biodiversity what GIEC is to climate[18].

Yet, in March 2018, during the sixth plenary session of the IPBES, five evaluation reports were disclosed[19]. The report for the regional assessments of biodiversity and ecosystem services for Europe and Central Asia leaves no doubt: biodiversity is rapidly declining[20]. For instance, half of the wetlands have disappeared since 1970. IPBES considers that climate change is one of the causes of biodiversity loss.

Likewise, the National Observatory on the Effects of Climate Change (ONERC) concluded in a report dated 2009: *“Although it is sometimes difficult to differentiate the impacts of climate change from the other impacts endured by ecosystems, and although the issue depends on the concerned ecosystems and species, signs of change in biodiversity attributable to progressive changes resulting from climate change are already noticeable[21].”*

To illustrate this purpose, the French territory has witnessed the disappearance of a significant number of birds due, in part, to climate change[22]. Similarly, climate change is identified as one of the causes leading to the rapid decline of many mammals[23].

The impact of climate change on biodiversity is alarming, notably in the Mediterranean region which concentrates 4 to 18 % of the world’s marine biodiversity for only 1% of the global marine volume[24]. Yet, the Mediterranean Sea is becoming warmer and more acidic at a faster pace than the rest of the seas and oceans[25], which leads certain experts to call it the “hot spot” of climate change. Rise of the sea temperatures has already increased the mortality rate of certain organisms such as red coral, sponges, groupers and moray eels. Due to the deep transformation of the Mediterranean ecosystem, the whole biodiversity is threatened today.

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<sup>15</sup> See, to that effect, <http://climat.francetv.fr/experience/futurs/littoral/>.

<sup>16</sup> See, MARQUAND, A. and MESINELE, A., “30 % des îles de Polynésie française menacées par le réchauffement climatique d’ici 2100”, 11 September 2013, France Info, <https://la1ere.francetvinfo.fr/polynesie/2013/09/11/30-des-iles-de-polynesie-francaise-menacees-par-le-rechauffement-climatique-d-ici-2100-69015.html> (last accessed on December 17, 2018).

In the region of *Nouvelle Aquitaine*, climate change also impacts marine biodiversity and natural habitat (forests, dunes, moors, wetlands, ...) located on coasts which are diminishing in size due to coastal erosion[26]. These effects have important economic consequences on the use of sea resources, together with a diminution of the productivity and profit in the fishing and shellfish farming industry[27].

Finally, overseas countries and territories are affected by deforestation, especially in Guyana where its 8 million hectares represent one third of the French forest cover[28]. According to WWF Guyana, deforestation has doubled between 2008 and 2014 on the Guyana continental shelf; and the amazon park of Guyana has recently indicated a 78% increase in the number of illegal sites on its territory compared to March 2017[29].

### **(iii) Degradation of air quality**

Climate change influences air quality and vice versa: increase in temperatures impacts the concentration of pollutants and this atmospheric pollution conversely contributes to global warming[30]. Thus, certain pollutants, including ozone and particles, negatively impact the climate and the air quality.

However, in France, the high administrative court (*Conseil d'Etat*) recently ruled that the maximum thresholds[31] for concentration of certain pollutants in the atmosphere (nitrogen dioxide and fine particles PM10) were exceeded, leading the high administrative court to order the French State to take all necessary measures to reduce such concentrations below the thresholds[32]. Despite this order, these thresholds are still not respected and an action for compulsory enforcement has started[33]. Moreover, in May 2018, the European Commission referred the French State to the Court of Justice of the European Union (CJEU) for non-respect of the thresholds of nitrogen dioxide[34].

## **2. Impacts of climate change on health and human safety in France**

The United Nations' (ONU) report titled "*World Economic and Social Survey 2016: climate change resilience – an opportunity for reducing inequalities*" published in 2016 has evidenced that the poorest, most vulnerable and excluded people are more likely to be exposed to the risks related to climate change, thus underlining the link between social and climatic inequalities.

In addition to the unavoidable aggravation of these social inequalities, consequences of climate change also have a significant impact on health due to, notably, extreme weather events **(i)** and aggravation of existing pathologies or advent of new diseases **(ii)**.

### **(i) Exposure of the population to extreme weather phenomena**

Because of climate change, French population is already exposed to extreme weather events which directly impact health[35] and human safety.



First of all, **heatwaves** were twice as many between 1982 and 2016 as between 1947 and 1980[36]. This trend is noticeable in 2017[37] and especially 2018 which was the second warmest summer in France after the one in 2003[38]. Increase of these heatwaves should become recurrent in the coming years since the simulations made by researchers of the CNRS show that in 2100, summer temperatures could be superior to 50 °C in certain areas of France and exceed from 6 °C to almost 13 °C the historical records[39].

Still, heatwaves provoke a **high mortality rate**, especially among the most vulnerable [40]. For instance, heatwaves in 2003 and 2018 have respectively resulted in 15,000[41] and 1,500 additional deaths[42].

Second, French population is already exposed to an **increase in droughts**. Thus, following researches performed by Météo-France[43] on the basis of the rainfalls data in France since 1958, the *“tendency in the increase of the frequency and the intensity of droughts (in terms of affected area) is particularly clear since the end of the 1980’s”*.

Moreover, another research coordinated by Météo-France concludes: *“Generally speaking, the results of these simulations highlight the continuous increase of soil droughts in terms of annual average on the metropolitan territory during the XXIst century. At the end of the century, the simulations made on the basis of three scenarios agree on an annual average level of humidity in the soils corresponding the an extremely dry level during the reference period 1961-1990.”*[44]

Soil drought directly affects forests and cereal crops and consequently food security for the population. Droughts and heatwaves reduce agricultural performance. According to the Postdam Institute for Climate Impacts Research[45], each day when a corn crop or a soya crop is exposed to a temperature above 30 °C, its yield is reduced by approximately 6%.

Third, French population is also exposed to an **augmentation of forest fires**. Thus, according to Météo-France,[46] *“By drying out vegetation, climate change generates an augmentation of the meteorological danger of forest fires*. Researchers of Météo-France have studied the evolution of this hazard during the last century and for the next decades to come: *it increases since the 1960’s and should increase again during the XXIst century.”*

More precisely, Météo-France studied the impact of climate change on the weather index system (IFM), which provides an estimate of the meteorological danger of forest fires taking into account the probability of their occurrence and their potential propagation. And, according to Météo-France: *“Simulations show a constant increase in the frequency of the days with a meteorological danger of forest fires, as well as an extension of the period subject to fires (such period would start in spring and end at the latest in autumn). The extension of the territories subject to this danger should also reach the North of France.”*

Fourth, French population in the **Mediterranean region** suffers from an aggravation of **extreme rainfalls**. Indeed, researches of Météo-France[47] highlight an intensification of 22% and strong rainfalls in the Mediterranean regions between 1961 and 2015 as well as an augmentation of the frequency of these strong phenomena, especially those above 200 mm in 24 hours.

According to another study[48], this tendency should worsen: “In south of France – notably in the Rhone basin – the North of Italy, the North of Greece and on the Adriatic coasts, the augmentation of the volume of the rainfalls could exceed 20% in 2100.”[49]

Fifth, the population of the **French overseas territories** is exposed to **hurricanes of higher intensity**. [50]

Indeed, although the existing knowledge does not allow to confirm that storms shall be slightly more numerous or violent in metropolitan France during the XXIst century[51], the situation could be different in terms of intensity of hurricanes in the French overseas territories. Hurricanes should become more intense, their effects more severe (notably due to coastal erosion and the vulnerability of the coastal ecosystems) because of climate change.

For instance, several experts establish the link between increase of the ocean temperature due to climate change[52] and the strong intensity of the Irma hurricane in September 2017 which devastated Barbuda islands, Saint-Martin and Saint-Barthélemy with strong winds of more than 350 km/h and heavy rainfalls.

Therefore, in total, the French ministry of ecology, sustainable development and energy estimated in 2014 that 74% of the French municipalities are exposed to at least one natural hazard which may be aggravated by climate change (floodings, forest fires, storms and hurricanes, avalanches, landslides)[53] as illustrated below:



On a regional scale, the most affected regions are overseas France. More than 90% of their overseas municipalities are significantly exposed, notably in Mayotte (100%), Guadeloupe (97%), Martinique (94%) and Reunion (92%) since their insular situation in a tropical zone brings about an important exposure to meteorological hazards (cyclones and storms). In metropolitan areas, the most exposed regions are Alsace (50%) and Provence – Alpes – Côte d’Azur (43%).

Meanwhile, on a global scale, it should be recalled that the number of people who were displaced due to climate change consequences keeps increasing and is likely to reach 143 million people from now to 2050 in the three most vulnerable regions of the planet. On these terms, France has committed to increase its contribution to the Green Fund for climate in support of developing countries, created in 2010 by the Parties to the United Nations Framework Convention on climate changes (UNFCCC), from 400 million euros to 1 billion euros from now to 2020 in favor of adaptation and climate change-related loss and damages.

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[17] [http://www.cnrs.fr/inee/communication/IPBES\\_2018.html](http://www.cnrs.fr/inee/communication/IPBES_2018.html) (last accessed on December 17, 2018)

[18] Press release: « *France honored to welcome the 7<sup>th</sup> IPBES conference in spring 2019* », ministry of ecology, Available at:

<https://www.ecologique-solidaire.gouv.fr/france-honoree-daccueillir-7e-conference-lipbes-au-printemps-2019>

[19] Report for the regional assessment of biodiversity and ecosystem services for Europe and Central Asia ; Report for the regional assessment of biodiversity and ecosystem services for Africa ; Report for the regional assessment of biodiversity and ecosystem services for the Americas ; Report for the assessment of land degradation and restoration.

[20] Summary for Policymakers of the Assessment Report on Biodiversity and Ecosystem Services for Europe and Central Asia, IPBES, 2018. Available at:

[https://www.ipbes.net/system/tdf/spm\\_2b\\_eca\\_digital\\_0.pdf?file=1&type=node&id=28318](https://www.ipbes.net/system/tdf/spm_2b_eca_digital_0.pdf?file=1&type=node&id=28318)

[21] “Climate change: impact costs and reflexion for adaptation”, National Observatory on the Effects of Climate Change, 2009. Available at: <https://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/094000463.pdf>

[22] BELLET, R., “Birds are disappearing because of climate change”, *Le Journal du dimanche*, 27 September 2015 (in French). Available at:

<https://www.lejdd.fr/Societe/Sciences/A-cause-du-rechauffement-climatique-des-oiseaux-disparaissent-752857> (last accessed on December 17, 2018)

[23] WWF, Report “Nature and the climatic shock”, March 2018. Available at :

[https://www.wwf.fr/sites/default/files/doc-2018-03/180314\\_Rapport\\_Especies\\_Climat.pdf](https://www.wwf.fr/sites/default/files/doc-2018-03/180314_Rapport_Especies_Climat.pdf) (in French)

[24] WWF, Project report “MedTrends”, January 2016, p. 16. Available at :

[https://www.wwf.fr/sites/default/files/doc-2017-07/1509\\_synthese\\_croissance\\_bleue\\_mediterranee.pdf](https://www.wwf.fr/sites/default/files/doc-2017-07/1509_synthese_croissance_bleue_mediterranee.pdf) (in French)

[25] See for instance : BARDOU, F., “The Mediterranean basin is warming up faster than the rest of the planet”, *Libération*, 30 October 2018. Available at :

[https://www.liberation.fr/planete/2018/10/30/le-bassin-mediterraneen-se-rechauffe-plus-vite-que-l-ensemble-de-la-planete\\_1687824](https://www.liberation.fr/planete/2018/10/30/le-bassin-mediterraneen-se-rechauffe-plus-vite-que-l-ensemble-de-la-planete_1687824) (last access on 17 December 2018) and the corresponding study: “Climate change and interconnected risks to sustainable development in the Mediterranean”, *Nature Climate Change*, Vol. 8, November 2018. Available at:

[https://www.nature.com/articles/s41558-018-0299-2.epdf?shared\\_access\\_token=5oFe2pAfuCJU5L5cPND9tRgN0jAjWel9jnR3ZoTv0PFWgT71pOviDNOpfWzHufG0ePw6l25Ncb4Hm28VF1gOIEhoi7avhM22ojL\\_I3KCU4aVD3meFv4aJJwe3UXoK7w2MBAkit0t4Ubp-LKC1G7h5Aj8YImBYkXWBYpmQpEOpl%3D](https://www.nature.com/articles/s41558-018-0299-2.epdf?shared_access_token=5oFe2pAfuCJU5L5cPND9tRgN0jAjWel9jnR3ZoTv0PFWgT71pOviDNOpfWzHufG0ePw6l25Ncb4Hm28VF1gOIEhoi7avhM22ojL_I3KCU4aVD3meFv4aJJwe3UXoK7w2MBAkit0t4Ubp-LKC1G7h5Aj8YImBYkXWBYpmQpEOpl%3D)

[26] *AcclimaTerra*, LE TREUT, H. (dir). « Anticiper les changements climatiques en Nouvelle-Aquitaine. Pour agir dans les territoires », Éditions Région Nouvelle-Aquitaine, 2018, p. 21.

Available at : <http://www.acclimaterra.fr/uploads/2018/05/Rapport-AcclimaTerra.pdf>

[27] *Ibid.*

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## **(ii) Exposure of the French population to new and/or aggravated pathologies**

Allergic and respiratory diseases are aggravated by climate change, which enables production and scattering of pollen and aggravates atmospheric pollution (particles, nitrogen dioxide, ozone...).

First, in France, atmospheric pollution – which is aggravated by greenhouse gas emissions – already causes 48 000 premature deaths per year. More generally, several international studies show an increase in mortality rates, hospitalisations or visits to emergency services due to respiratory and cardiovascular causes which are connected with atmospheric pollution.

As for studies pertaining to the chronic effects of long-term exposure to atmospheric pollution, they underline an increase in risks of developing lung cancers as well as cardiopulmonary diseases (myocardium infarctus, obstructive chronic bronchopneumonia, asthma...).

There is also a significant increase of allergic pathologies in France. According to governmental statistics, respiratory allergies linked to allergenic pollens affect 30% of adult population and 20% of children, while less than 4% of them were affected by those allergies in 1968. In particular, climate change leads to precocious blossoming and pollination, notably for species that pollinate at the end of winter and beginning of spring such as the cypress, the ash and the birch. For instance, studies concerning the birch, which has a high allergenic potential and releases big quantities of pollen in the air, demonstrate the quantity of pollen that birches produce has significantly increased between 1989 and 2018, leading therefore to a rise of allergies.

Similarly, ambrosia, an invasive species with high allergenic pollen, has become widespread in Bourgogne, Auvergne and in the Rhône-Alpes region. With climate change, it shall also spread out in regions where climate did not allow its spreading before. Moreover, due to rises in temperatures, from now on its pollination peak occurs in August and September, which extends, for all sensitive persons, the period of allergies until fall.

Besides, climate change fosters the spreading of insects carrying infectious agents and increases the frequency of insects' bites due to higher temperature. These manifestations of climate change have already noticeable impacts on France. Let's take the example of the Tiger Mosquito. This species originating from Asia is currently present in more than 80 countries, including France, since 2004. It could initially be found in Corsica and a few *départements* of South-East France; it has recently spread out to the North, to the point where it reached Paris in 2015.

The diseases transmitted by ticks have also developed in all regions, even in metropolitan areas of France, with 27 000 cases per year on average between 2009 and 2011. The Lyme borreliosis, for instance, has significantly increased in 2016 with 84 declared cases out of 100 000 inhabitants, due to several warm winters. This trend got confirmed for France in 2018.

In conclusion , climate change has got tragic consequences which worsen from one year to the other and constitute a growing danger for the whole French territory and its people.

## **II – the State’s failure to act in the fight against climate change**

France is part of the international consensus acknowledging the imperious necessity to implement every measure possible to avoid a rise in temperatures of 2°C above pre-industrial levels and further actions to limit a temperature increase to 1.5°C, so that climate change risks and effects can be reduced.

While knowing and acknowledging the risks of climate change for the environment and human health, the French government must actively and effectively fight to contain its extent, in accordance with the State’s obligation to protect the human environment, health and security (A.1). The demand to fight climate change is also expressed through international, European and domestic objectives and commitments, regarding in particular the reduction of greenhouse gas emissions, to which the French State has accepted to be bound by and which it should hence comply with (A.2).

However, it is clear that the government has not implemented concrete and effective measures to tackle climate change in France, which inevitably leads to a violation of its short-term objectives with regard to the reduction of greenhouse gas emissions. The most evident consequence of this failure is a recurrence of the increase of emissions in France since 2016 (B).

Furthermore, such failures constitute a blatant violation by the State of its general duty to protect the environment, the health and security of its citizens as well as a violation of specific obligations it is bound by in accordance with national law, European Union law and international law regarding the fight against climate change. These failures thus engage the State’s responsibility (C).

### **A) The Obligations lying on the State regarding the fight against climate change**

#### **1. General obligation lying on the State to tackle climate change stemming from its obligations to protect the human environment, health and security**

The State is bound by an obligation to protect the human environment, health and security, not only in line with constitutional requirements (1.1), but also with the European Convention on Human Rights (1.2). Beyond such obligations, a general principle of law, resulting in the duty for the State to fight against climate change, can be inferred from a framework of social, political and regulatory consensus (1.3).

##### **1.1. In accordance with the Constitution**

Under national law, the Charter for the Environment (*Charte de l’environnement*) of 2004 sets several fundamental principles, such as the right to live in a balanced and healthy environment (Article 1), the duty to take part in the protection and improvement of the environment (Article 2), the prevention principle (Article 3), the “polluter-pays” principle (Article 4), the precautionary principle (Article 5) and the promotion of sustainable development (Article 6).

The Constitutional Council (*Conseil Constitutionnel*), like the Council of State (*Conseil d'Etat*), have stated the constitutional value of those principles, as well as of the entirety of rights and duties defined in the Charter. They hold that such principles are imposed upon public and administrative authorities in their respective domains of competence.

The judiciary also recognized the normative value of Articles 1 and 2 of the Charter, as well as of its Articles 3, 4 and 5.

In particular, the *Conseil constitutionnel* claimed that it results from aforementioned Articles 1 and 2 of the Charter that “everyone is bound by an obligation of vigilance towards damages to the environment which can stem from one’s activity” and that “the legislator is free to define the conditions in which an action in liability can be engaged on the basis of a violation of this obligation”.

**In other words, the protection of the environment goes with a duty of environmental vigilance that is imposed upon public authorities, and implies that they implement all appropriate measures to guarantee environmental protection and to safeguard human life.**

When disregarded, this obligation can be the basis for an action in liability, directed against the State. Legal theorists explain that “the responsibility of polluters, private companies, can be engaged on the basis of [a violation of the vigilance obligation]. However this obligation should also bear down upon [...] the State, inasmuch as it did not take adequate measures to avoid or, at least, limit the disastrous consequences of climate change”.

Similarly, the provisions of Article 3 of the *Charte de l'environnement*, which constitutionalize the duty to prevent, require the legislator and, within legal frameworks, the regulatory power as well as administrative authorities, to define conditions to implement this duty and ensure its application, with the view to prevent potential damages to the environment, or, at least, to limit the consequences.

Thus, as the legal doctrine underlines, “it is for [public persons] not only to adopt rules that impose prevention, but also to apply this principle to all their activities. Their duty to act must be reinforced, and encompasses a wide range of modalities: from planning techniques [...] to the issuing of authorisations, by way of financial and tax tools or responsibility mechanisms”. If not, the State’s liability can be engaged.

Finally, regarding the precautionary principle, the judiciary holds, in a similar way, that the aforementioned provisions of Article 5 shall be imposed upon public and administrative authorities, in their respective domains of competence.

Yet, as judged by the First Instance Tribunal of the European Union, “the precautionary principle [...] imposes upon concerned authorities to take, in the precise framework of the exercise of competences that are attributed to them by relevant legislation, appropriate measures in order to prevent potential risks for public health, security and the environment, by ensuring the prevalence of the demands relating to the protection of those interests on economic interests”.



Concretely, it is not a question of “prohibiting all activities for which we would not have the absolute certainty that they are not presenting any risk”. Yet the precautionary principle, as guaranteed by Article 5 of the *Charte de l’environnement*, means “imposing, as soon as there is no certainty, an approach of prudence, through the adoption of adequate measures that are proportionate to the risk at stake”. Hence, this principle implies notably “that the legislator takes positive measures that are expressly provided [by aforementioned Article 5]”, so as to “consider the right conditions to enable the respect of this principle and its implementation by public authorities”.

In the end, the provisions of the *Charte de l’environnement* contribute to establish a general legal framework for the intervention of public authorities on environmental matters.

They impose positive obligations on the State, and imply that public authorities adopt effective, proportionate and binding measures, in order to prevent the occurrence of the gravest risks and prevent climate change from causing significant damages to the environment and human health.

In that regard, it should be added that the Conseil d’Etat has, in several emblematic public health cases, pointed to the failure of the State to implement an adapted regulatory framework capable of preventing the occurrence of well-known and characterized risks linked, for example, to workers’ exposure to asbestos, blood transfusion or the use of certain medicines.

Having regard to the rules and principles that were previously recalled, a similar solution should be applied to environmental matters.

### **1.2 In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms**

A similar approach concerning the role of the State applies with regard to the provisions of the European Convention on the protection of human rights and fundamental freedoms and the case-law of the European Court of Human Rights.

By applying the principles guaranteed under Articles 2 and 8 of the European Convention on the safeguard of human rights and fundamental freedoms – which respectively provides for a “right to life” and a “right to respect for one’s private and family life” – the European Court of human rights finds that the protection of life and health implies the protection of the environment and, thus, charges to the States a positive legal duty on this matter.

The Court emphasizes that the right to life, provided for by Article 2§1 of the Convention, obliges the States to “take all necessary measures to protect the life of persons within its jurisdiction”, and considers that this obligation applies to all risks that may be detrimental to life, including environmental risks, as well as “all activities, whether public or not, in which the right to life may be at stake”.

Additionally, “not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising”. However, the situation is different when the authorities “knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals [...] and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk”.

Put another way, public authorities must, pursuant to Article 2 of the Convention, take all measures that can be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge, including when threats linked with the realisation of environmental risks are at stake, as a consequence of climate change.

As well, the European Court of human rights judges that States have a positive obligation to take all reasonable and adequate measures to safeguard the rights of individuals found under Article 8§1 of the Convention. Yet, this legal duty shall also apply when damages to the environment are at stake, when “severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health”.

In that sense, the Strasbourg Court considers that:

“87. Article 8 may apply to environmental affairs, whether pollution has been directly caused by the State or if the responsibility of the State stems from the absence of adequate legislation regulating the activity of the private sector. Although Article 8 aims to protect the individual against arbitrary interference from public authorities, it is not limited to preventing the State from such interferences: on top of a negative duty, positive obligations that are inherent to an effective safeguard of private or family life may emerge (*Airey v. Ireland*, 9 October 1979). Whether this affair is dealt with in terms of positive obligation lying on the State, which consists in adopting reasonable and adequate measures to protect the applicants’ rights found in the first paragraph of Article 8, or in terms of interference from a public authority, pursuant to paragraph 2, the applicable principles are relatively similar.

88. The positive obligation which consists in taking all reasonable and adequate measures to protect the applicants’ rights found in the first paragraph of Article 8 implies, for the States, the essential duty to implement a legislative and administrative framework aiming for an efficient prevention of damages to the environment and human health ((*Budayeva c. Russie*, nos 15339/02, 21166/02, 20058/02, 11673/02 et 15343/02, §§ 129-132, 20 mars 2008). [...] Finally, concerned individuals must be able to appeal against any decision, action or omission before tribunals if they believe that their interests or observations were not sufficiently taken into account in the decision-making process (*Hatton*, aforementioned, § 128, et *Taşkın*, aforementioned, §§ 118-119) ».

In the end, European law, in the same way as national law, entrusts public authorities with the duty to adopt necessary and adequate measures to protect the rights of individuals and guarantee the protection of the environment and human health.

Compliance with such an obligation requires, in particular, implementing a legislative and regulatory binding framework as well as effective measures that enable the efficient prevention of the occurrence of risks of damages to the environment and human health.

### **1.3 In accordance with the general principle of law laying down an obligation to fight against climate change**

In addition, obligations stemming from the Constitution and the European Convention are linked with a social, political and regulatory consensus, articulated by many texts of national, European and international law at all levels in the hierarchy of norms, which charges to the State a general duty to fight against climate change.

Although no general principle has yet been formulated in climate cases, the whole set of recent norms, France's commitments, as well as the gravity and emergency state of the climate situation, show that there is a normative consensus (nay, a legal awareness) calling for the recognition of a general obligation to fight against climate change.

In other words, today a general principle of law exists, which lays down the binding obligation for the French State to tackle climate change, shedding light on all other rules and norms.

## **2. Specific obligations for the State on matters of fight against climate change**

The specific obligations of France on matters of climate change are numerous, and those stem from norms and texts that were adopted at international, European and national levels.

On an international scale, in the framework of the United Nations Framework Convention on climate changes (UNFCCC) of 1992, ratified by France in 1994, signatory States have committed to “stabilize, (...), the concentration of greenhouse gas emissions in the atmosphere to a level which prevents any anthropic disturbance that would be dangerous for the climate system.” They have also committed to abide by numbered objectives of reduction of greenhouse gas emissions in the framework of the Kyoto Protocol of 1997, annexed to the UNFCCC.

Ultimately, in the framework of the Paris Agreement of 12 December 2015, ratified by France in 2016, signatory States have agreed on the objective of containing “the elevation of average temperature of the planet below 2°C compared to preindustrial levels (...), bearing in mind that this would significantly reduce the risks and effects of climate changes”. All parties have also accepted to communicate their nationally determined contributions (NDCs) to the international riposte on climate changes.

Furthermore the States have committed to reinforce their specific capacities to adapt to climate change, which means ensuring financial support to the most vulnerable countries (article 6.6). The States must also adopt a global and integrated approach to adaptation (article 6.8 and 7.1), in a framework of strengthened transparency in order to enable all citizens to understand and monitor the strategies that are being developed to answer this fundamental imperative of adaptation to climate change.

At European Union level, following the Commission’s communication regarding the need to act to contain climate change, the European council in March 2007 has adopted the first numbered objectives (so-called “3x20”, standing for: 20% of greenhouse gas emissions’ reduction, 20% of renewable energies within the energetic mix and 20% increase of the energetic efficiency). As of 2009, those objectives have been defined through specific legislative instruments of the 2009 Climate & Energy Package, in particular: Decision 406/2009/CE setting national objectives of reduction of greenhouse gas emissions which Member States shall reach in 2020, Directive 2009/28/CE regarding the promotion of the use of energy from renewable sources and the Directive on energetic performance. Besides, Regulation 2018/842 EU elaborated on efforts to reduce Member States’ greenhouse gas emissions for the 2021-2030 period.

At national level, the current objectives and obligations of France on matters of fight against climate change have mainly been introduced through the Law n°2009-967 of 3 August 2009 on the planning regarding the implementation of the *Grenelle de l’environnement* (Loi “Grenelle I) and the Law n°2015-992 of 17 August 2015 concerning the energetic transition for a green growth (“LTECV”). The LTECV defines several management and planning tools to enhance the energetic transition, in particular a “low carbon” national strategy (SNBC) and a multiannual planning of energy (PPE).

Pursuant of the law LTECV and Article L. 222-1A of the *Code de l’environnement*, the SNBC was adopted on the 18 November 2015 by decree. It sets forth measures that shall be implemented to enable France to reach its national objectives of reduction of greenhouse gas emissions. The decree adopted on the 18<sup>th</sup> November 2015 sets “carbon budgets” for the 2015-2018, 2019-2023 and 2024-2028 periods. These budgets are national emissions’ limits for greenhouse gas emissions which shall not be exceeded, and which were formulated by the SNBC for different domains of activity: transports, residential buildings, industry, agriculture, production of energy and waste.

As a complement to the SNBC, the pluriannual energy planning (*programmation pluriannuelle de l’énergie*, PPE) defines action priorities for public authorities regarding all energies. The first PPE that was adopted on the 28<sup>th</sup> October 2016 by decree covers the 2016-2018 period with objectives set for each energetic sector, and the 2019-2023 period with objectives defined in the form of ranges.

## **2.1 Commitments and objectives of France on matters of reduction of greenhouse gas emissions**

Concerning the global reduction of greenhouse gas emissions, France must, pursuant to Decision 406/2009/EC and Regulation 2018/842 EU, reduce its global emissions by 14% compared to 2005, for 2020, and by 37%, for 2030.

Under national law, pursuant to Article 2 of Decree n°2015-1491 on SNBC, France shall comply with its carbon budgets of average annual emissions at levels of 442 MtCO<sub>2</sub>e for the 2015-2018 period, 399 MtCO<sub>2</sub>e for 2019-2023 and 358 MtCO<sub>2</sub>e for 2024-2028.

These global carbon budgets have been formulated by the SNCB on the basis of the following objectives:

(en Mt CO <sub>2</sub> eq)	1990	2013	1st carbon budget 2015-2018	2nd carbon budget 2019-2023	3rd carbon budget 2024-2028
Transports	121	136	127	110	96
Residential-Tertiary Sector	90	99	76	61	46
Manufacturing Industry	148	88	80	75	68
Energy Industry	78	57	55	55	55
Agriculture	98	92	86	83	80
Waste treatment	17	20	18	15	13
<b>Total (average annual emissions)</b>	<b>552</b>	<b>492</b>	<b>442</b>	<b>399</b>	<b>358</b>

Moreover, pursuant to Article 20 of the law Grenelle I, France set itself the objective to reduce greenhouse gas emissions in the transport sector by 20% before 2020, in order to bring emission levels back to their 1990 levels.

In addition, in accordance with Article L. 100-4 of the *Code de l'énergie*, France must reduce its greenhouse gas emissions by 40% compared to 1990, for 2030, and divide by four its emissions for 2050. The ambition for 2050 should even be raised to match the new objective announced by the SNCB; that is reaching carbon neutrality by 2050.

In conclusion, it should be noted that the accounting of general and sectorial emissions of greenhouse gas must be made by France pursuant to the imperative framework elaborated, notably, by Regulation (EU) 525/2013 of the 21<sup>st</sup> May 2013 and Regulation (EU) 666/2014 of 12<sup>th</sup> March 2014.

## 2.2 Objectives and commitments of France on matters of renewable energies

The development of renewable energies is a vital element enabling the States and the European Union to reduce their greenhouse gas emissions and limit their reliance on fossil fuel energies (in particular, oil and gas) and nuclear energy.

That is why Directive 2009/28/EU sets for France the binding objective to bring its share of energy produced from renewable sources to 23% in its general energetic consumption for 2020, with a sectorial objective of 10% in the transport sector.

In national law, this objective was introduced by the law *Grenelle I* according to which France must “commit to bring the share of renewable energies to at least 23% of its final energy consumption by 2020” (Article 2). The LTECV confirmed this objective and introduced a new one, that is to bring the

share of renewable energies to 32% of France's final energetic consumption for 2030 (codified by Article L. 100-4 of the *Code de l'Energie*).

The pluriannual energy planning (PPE) confirms for 2023 an objective of significant acceleration concerning the rhythm of renewable energies development, in order to place France in the capacity to reach its legal objectives for 2030<sup>17</sup>.

### 2.3. France's objectives and commitments in the matter of energetic efficiency

The 2012/27/UE Directive<sup>18</sup> set an objective of a 20% decrease of the energetic consumption compared to the forecasts for the year 2020. For France, this means **the double objective** for 2020 of decreasing **its consumption of both final energy to a level of 131,4 Mtoe and primary energy to a level of 219,9 Mtoe**<sup>19</sup>. The 2012/27/UE Directive also includes several objectives regarding the renovation of buildings meant for both residential and commercial purposes.

At national level, the *Grenelle I* Bill already provided for the objective of becoming the most efficient carbon-equivalent economy of the European community before 2020.

Thereafter, the "LTECV" transposed European objectives for 2020 into French law and supplemented them with:

- An objective of decreasing the final energy consumption by 50% in 2050 compared to the 2012 reference, by aiming for a transitional goal of 20% in 2030.
- An objective of decreasing the primary energy consumption of fossil fuels by 30% in 2030 compared to 2012 (year of reference).

Furthermore, Article 2 of the October 27th Decree n.2016-1442 concerning the pluriannual energy planning (PPE) provides for the annual objectives in terms of reducing the global energy consumption compared to 2012, in order to contribute to reaching the European and French goals (-7% in 2018 and -12.6% in 2023), as well as goals by sources of energy, and mainly:

- as for natural gas: - 8.4% in 2018 and - 15.8% in 2023;
- as for oil: - 15.6% in 2018 and - 23.4% in 2023;
- as for coal: - 27.6% in 2018 and - 37% in 2023.

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<sup>17</sup> PPE: Synthesis. Available at: <https://www.ecologique-solidaire.gouv.fr/sites/default/files/Synthèse.pdf> (last accessed on December 17, 2018) See also : Decree n°2016-1442 dated October 26th 2016 concerning pluriannual energy planning.

<sup>18</sup> 2012/27/UE Directive of the European Parliament and European Council dated October 2th 2012 concerning energy efficiency, modifying the 2009/125/CE and 2010/30/ Directives and repealing the 2004/8/CE and 2006/32 CE Directives.

<sup>19</sup> France's report in accordance with Articles 24.1 and 24.2 of the 2012/27/UE Directive, pages 9 and 106; sources of these objectives to be narrowed down, see page 13. Available at : <https://www.ecologique-solidaire.gouv.fr/sites/default/files/PNAEE%202017.pdf>.

## **B) On the violation by the State of its obligations in terms of the fight against global warming**

### **1. France's non-compliance with its commitments and specific objectives in the fight against climate change**

As it will be demonstrated below, it is now proven that France does not comply with the commitments and objectives mentioned above.

#### **1.1. France's non-compliance with its commitments and objectives in terms of reducing the greenhouse gas emissions**

**Greenhouse gas global emissions have started to increase again in France since 2016, which constitutes in itself the expression of France's undeniable deficiency concerning its commitments and obligations, notably under the Paris Agreement<sup>20</sup>.**

**France also went over the limits of greenhouse gas annual emissions** set by the SNBC, both in 2016 and 2017<sup>21</sup>, and is about to go over the carbon budget set by the Decree n.2015-1491 for the whole of the 2015-2018 range period.

On these terms, the reformed SBNC project published in December 2018 states that ***“France will not be able to comply with the first carbon budget of 2015-2018”*** and temporarily predicts that the overtaking will be of 72 Mt CO<sub>2</sub>eq for the whole of the 2015-2018 range<sup>22</sup>. The reformed SBNC project notes this overtaking by **raising the carbon budgets until 2023**, as well as postponing a great part of the efforts on the upcoming years<sup>23</sup>, even though France displays the long-term objective of reaching neutrality in greenhouse gas by 2050.

The non-compliance of the global objectives occurs in virtually every sector:

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<sup>20</sup> In this regard, it may be noted that France's position is unique in this matter, with results below the European average. See: “Chiffres clés du climat”, 2018, Commissioner General on Sustainable Development (CGSD), page 33. Available at:

[http://www.statistiques.developpement-durable.gouv.fr/fileadmin/documents/Produits\\_editoriaux/Publications/Datalab/2017/datalab-27-CC-climat-nov2017-b.pdf](http://www.statistiques.developpement-durable.gouv.fr/fileadmin/documents/Produits_editoriaux/Publications/Datalab/2017/datalab-27-CC-climat-nov2017-b.pdf)

<sup>21</sup> “Emissions globales de gaz à effet de serre (GES) en France”, Observatoire climat-énergie, <https://www.observatoire-climat-energie.fr/climat/global/>

<sup>22</sup> December 2018 Reformed SNBC project, page 35. Available at:

<https://www.ecologique-solidaire.gouv.fr/sites/default/files/Projet%20strategie%20nationale%20bas%20carbone.pdf>

<sup>23</sup> December 2018 Reformed SNBC project mentioned above, pages 36 to 38.

- In the transport sector, the 2017 objective is **exceeded by 10.6%**<sup>24</sup>. The level of emissions in this industry exceed by 12.4% the 1990 level, which is in obvious contradiction with the goal set by Article 10 of the Grenelle I bill;
- in the building sector, the 2017 objective is **exceeded by 22.7%**<sup>25</sup>;
- in the agriculture sector, the 2017 objective is **exceeded by 3.2%**<sup>26</sup>.

Because of these poor performances (both globally and by sector of industry), and when no alternative scenario plans on any significant improvement considering France’s critical and proved failure to act, France will not be able to reach in the future its long-term objectives of greenhouse gas emissions reduction.

Furthermore, this failure is even more alarming as greenhouse gas emissions are established by France itself, after the exclusion of certain industries and in violation of its obligation to make a transparent and reliable inventory and assessment. It is important to recall that yet this accounting is made by the French State on the basis of a very favorable method as it does not take into account the “imported” greenhouse gas emissions, that is to say greenhouse gas emissions that are linked to the manufacturing of imported products, that have increased by 93% since 1995.

## **1.2 France’s non-compliance with its commitments and objectives in the matter of renewable energies**

According to the Commissioner General on Sustainable Development (CGSD)’s report on renewable energies in France in 2017<sup>27</sup>, the proportion of renewable energies in the gross final energy consumption in France amounted to 16.3% in 2017<sup>28</sup>, that is to say well below the 19.5% objective planned by the annual path between 2005 and 2020, in application of the national plan of action in favor of renewable energies (PNA EnR) presented to the European Commission in 2010<sup>29</sup>.

The report thus states *“The 2010 national plan of action in favor of renewable energies (PNA EnR) set paths to follow in order to reach the objectives set by the 2009/28/CE Directive. In particular, it provides for a final gross consumption of renewable energies objective of 30.7 Mtoe in 2017 (chart n.2). With 25.5*

<sup>24</sup> “Emissions globales de gaz à effet de serre (GES) du secteur transport en France”, Observatoire climat-énergie, Available at: <https://www.observatoire-climat-energie.fr/climat/transport/>

<sup>25</sup> “Emissions globales de gaz à effet de serre (GES) du secteur bâtiment en France”, Observatoire climat-énergie, Available at: <https://www.observatoire-climat-energie.fr/climat/batiments/> (last accessed on December 17, 2018)

<sup>26</sup> “Emissions globales de gaz à effet de serre (GES) du secteur agricole en France”, Observatoire climat-énergie, Available at: <https://www.observatoire-climat-energie.fr/climat/agriculture/> (last accessed on December 17, 2018)

<sup>27</sup> Report of the Commissioner General on Sustainable Development (CGSD) on renewable energies in France in 2017, October 2018, page 1, available at: [http://www.statistiques.developpement-durable.gouv.fr/fileadmin/documents/Produits\\_editoriaux/Publications/Datalab\\_essentiel/2018/datalab-essentiel-155-enr-france-2017-octobre2018.pdf](http://www.statistiques.developpement-durable.gouv.fr/fileadmin/documents/Produits_editoriaux/Publications/Datalab_essentiel/2018/datalab-essentiel-155-enr-france-2017-octobre2018.pdf)

<sup>28</sup> Ibid, see chart n.1.

<sup>29</sup> National action plan for the promotion of renewable energies 2009-2020, page 12, available at: <https://ec.europa.eu/energy/en/topics/renewable-energy/national-action-plans> (last accessed on December 17, 2018)



*Mtoe achieved, it is at a level inferior by 17% to the target.*<sup>30</sup>

The French state fails its performance obligation provided for by the 2009/28/CE Directive, that imposes reaching a development of renewable energy at least equal to the one provided for by the indicative path. It also fails to respect its obligation of means to implement efficient and appropriate measures to reach these objectives.

This delay taken by France regarding renewable energies is unique inside the European Union. Indeed, Eurostat noted *“Compared to the indicative trajectory average of 2015-2016 established by the Directive on the renewable energies, it is noticed that France, Luxemburg, the Netherlands and the former Yugoslav Republic of Macedonia were below the values of the second indicative trajectory, when all other countries were above them”*.<sup>31</sup>

As of now, France’s inevitable non-compliance with its objectives for the 2019 horizon concerning renewable energies constituted a violation of the 2012/27/UE Directive and Article 2 of the *Grenelle I* Bill.

### **1.3 France’s non-compliance with its commitments and objectives in the matter of energetic efficiency**

In the matter of energetic efficiency, France does not comply with its PPE 2017 objectives<sup>32</sup>, nor its trajectory to comply with the 2020 objectives under Directive 2012/27/UE.

Indeed, Eurostat noted that the French final energy consumption was at 147,1 Mtoe in 2017<sup>33</sup>, which is superior to the trajectory of 139,9 Mtoe provided for under the Directive and will not allow to reach the 2020 objective of 131,4 Mtoe. Besides, the state acknowledges that this objective will only be reached by approximately 2026 and plans a reviewed objective of 138,4 Mtoe for 2020<sup>34</sup>.

The Ministry had already acknowledged that the 2020 objective would not have been met : *“The objective*

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<sup>30</sup> Ibid, page 2.

<sup>31</sup> “Statistiques sur les énergies renouvelables”, Eurostat, data extracted in January 2018, available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Renewable\\_energy\\_statistics/fr](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Renewable_energy_statistics/fr) (last accessed on December 17, 2018).

<sup>32</sup> In this regard, Final energy consumption not including bunker fuel tanks, Observatoire climat-énergie, available at: <https://www.observatoire-climat-energie.fr/energie/consommation-denergie/> (last accessed on December 17, 2018).

<sup>33</sup> France’s report in accordance with Articles 24.1 and 24.2 of the 2012/27/UE Directive, pages 9 and 106; sources of these objectives to be narrowed down, available at <https://www.ecologique-solidaire.gouv.fr/sites/default/files/PNAEE%202017.pdf>.

<sup>34</sup> “La France pourrait manquer ses objectifs climat”, Le Figaro avec AFP, July 20th 2018, available at: <http://www.lefigaro.fr/flash-eco/2018/07/20/97002-20180720FILWWW00116-la-france-pourrait-manquer-ses-objectifs-climat.php>

*for 2020 is nevertheless very ambitious and will only be able to be reached thanks to very quick step up of the measures taken or of new ones.*<sup>35</sup>

Concerning the 2023 objectives set by the PPE, a report by the Institute of sustainable development and international relations (IDDRI) that was published in October 2018 indicates:

***“In order to reach the PPE 2023 objective and to be positioned on a path to reach the 2030 objective, the annual rhythm of improvement of energetic efficiency in final sectors should be multiplied by 4.***

*The recent stall is furthermore important concerning the evolution of the fossil primary energy consumption. Indeed, after reaching its lowest level in 2014, it increased by 6% each year to reach 120 Mtoe in 2017. The decrease observed between 2012 and 2017 (- 0.8% each year) remains about 3 times inferior to the required rhythm to reach the 2023 and 2030 objectives (- 30% compared to 2012).*<sup>36</sup>

Non-compliance with these objectives occurs in every sector, and most notably:

- In the tertiary sector, between 2012 and 2016, a consumption decrease of only 2% was registered, that is, at this pace, a decrease of 6% by 2023 instead of the 18% planned<sup>37</sup>.
- In the sector of transport, the energetic final consumption keeps on increasing, of more than 1.3% in 2015, in complete contradiction with the State's obligation<sup>38</sup>.

France's non-compliance with its short-term objectives in the matter of energetic efficiency thus characterizes a violation of Directive 2012/27/UE.

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Thus, despite numerous announcements and objectives, the state of play established above is particularly concerning: France fails to comply with almost every one of its objectives and commitments by merely postponing the efforts to the coming years.

The State's liability is thus characterized by its deficiency regarding its commitments and binding and specific objectives in the fight against climate change. This deficiency is furthermore obvious that the

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<sup>35</sup> France's actions for energy efficiency, Ministère de la Transition Ecologique et solidaire, January 31st 2018, available at: <https://www.ecologique-solidaire.gouv.fr/action-france-lefficacite-energetique> (last accessed on December 17, 2018).

<sup>36</sup> RUDINER A. and others (2018), Evaluation de l'Etat d'avancement de la transition bas-carbone en France, Iddri, Study N°12/18, October 2018, available at : <https://www.iddri.org/sites/default/files/PDF/Publications/Catalogue%20Iddri/Etude/201810-ST12118FR-bilan%20transition.pdf>

<sup>37</sup> CHARRU M. and DUVAL G. “Comment accélérer la transition énergétique? Avis du Conseil économique, social et environnemental”, February 28th 2018, available at: [https://www.lecese.fr/sites/default/files/pdf/Avis/2018/2018\\_04\\_loi\\_transition\\_energetique.pdf](https://www.lecese.fr/sites/default/files/pdf/Avis/2018/2018_04_loi_transition_energetique.pdf)

<sup>38</sup> France's report in accordance with Articles 24.1 and 24.2 of the 2012/27/UE Directive, pages 9 and 106; sources of these objectives to be narrowed down, available at: <https://www.ecologique-solidaire.gouv.fr/sites/default/files/PNAEE%202017.pdf>

State itself acknowledges and admits **not only its inability to reach its future objectives for the 2020 or 2050 deadlines, but also the fact that its annual objectives had not been met**, that constitute as well binding performance obligations.

## **2. The State's violation of its general obligation in the fight against climate change**

To comply with the objectives that the State assigned itself, it is essential to dopt practical and short-term, mid-term and long-term efficient actions within the framework of a transversal and coherent approach permeating every sector and action of the State.

The State is particularly liable in this task, as it disposes of numerous levers of action, such as public investments, budget arbitration and taxation, the adoption of binding or incentive legislation and norms to influence investments and actions from private actors, public awareness and information and accompanying measures for the most affected populations.

However, despite the well-know risks of damaging the environment, health and human safety caused by global warming, and notwithstanding its numerous commitments in the matter of the fight against global warming, the State refrained from implementing efficient measures to mitigate climate change allowing it to comply with its objectives and commitments (2.1), as well as measures adapted to climate change (2.2)

### **2.1 The State's deficiency in implementing means allowing to reach its objectives in the matter of the fight against climate change**

While the international community was widely alerted by scientists on the dangers of climate change as soon as the 1970's, France only started its political fight against climate change very late on, with its first national program of fight against climate change (PNLCC) in July 2000<sup>39</sup>. Furthermore, this program was limited to presenting energy-oriented measures and its outcome was quickly considered insufficient<sup>40</sup>.

What is more, it was only in 2015, in the framework of LTEVC, that the French State equipped itself with real management tools and a political direction identifying the means to deploy in order to reach its objectives.

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<sup>39</sup> In this regard, BRESSOL E., *Les Enjeux de l'après Kyoto; les avis et rapport du Conseil économique, social et environmental*, Les Editions des Journaux officiels, April 2006.

<sup>40</sup> See Bill n. 2005-781 dated July 13th 2005 of the program determining the directions of the energy policies (referred to as the POPE Bill) providing for the objective of decreasing by a 3% average France's yearly greenhouse gas emissions and by 4 to 5 times towards 2050; Bill n.2009-973 dated August 3rd 2009 concerning the implementation of the "Grenelle de l'environnement" (referred to as the Grenelle I Bill), transposing into French law the objectives of the European Climate-Energy Pack consisting of decreasing y 20% towards 2020 the greenhouse gas emission compared to 1990 and the energy consumption compared to a trend consumption and of take the proportion of energy produced from renewable sources in the final energy consumption to 23% Finally, the Bill concerning the energy transition for a eco-friendly growth referred to as the LTECV Bill) dated August 17th 2015 reviewing France's objectives and determining the 2030 objectives.

However, despite these numerous objectives and commitments, the State never exerted any coherent strategy to reach them. The gaps between the declared objectives and measures and the effectively deployed means are evident, in terms of the amounts of global investments (i), as well as in terms of specific implemented measures (ii), thus illustrating an obvious incoherence in the conduct of public policies.

**(i) Investments clearly out of the kilter with identified needs**

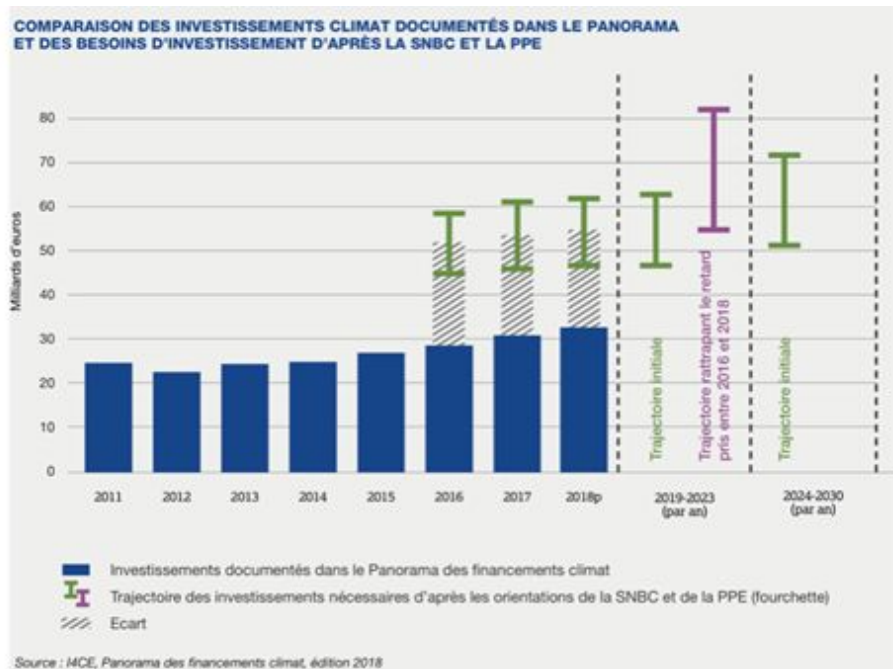
Public and private investments into a low-carbon economy are a powerful and indispensable lever for action to enable States to achieve their goals regarding the fight against climate change and energy transition.

Now, it has become clear that **climate-friendly investments are seriously insufficient**. Indeed, the Institute for Climate Economics (I4CE), a research institute commissioned by the French Environment and Energy Management Agency (ADEME) and the Ministry of Ecological and Solidary Transition in charge of analyzing investment expenditures in favor of climate in France, concludes in a 2018 report: *"In order to reach the national climate targets trajectory, we are still missing 10 to 30 billion euros annual investments »: "In order to reach the path of the national climate objective, there is still a lack of 10 to 30 billions of euros in annual investments"*<sup>41</sup>. This annual delay leads to a cumulative delay becoming increasingly difficult to catch up: *"the delay between 2016 and 2018 represents missed investments up to 40 to 90 billion euros. To catch up between 2019 and 2023 and cover the initial needs, it would be necessary to invest between 55 and 85 billion euros per year."*<sup>42</sup>

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<sup>41</sup> In this regard, "Panorama des financements climat, Edition 2018", Institute for Climate Economics (I4CE), page 1, available at: <https://www.i4ce.org/wp-core/wp-content/uploads/2018/11/I4CE-Panorama-des-financements-climat-résumé-2018-FR.pdf>

<sup>42</sup> Ibid, page 2.



This investment gap is mostly related to the French state’s **lack of a clear strategy and strong-willed policy** to mobilize public and private funding for transition, as these non-exhaustive illustrations show:

The first lever consists in **mobilizing public fundings** to make investments that are within the public sector (public buildings energy efficiency, fleets of vehicle transformation, public transport infrastructures, etc.) and to support private investment belonging to households or businesses. In the case of buildings energy efficiency, households are not expected to involve themselves in important renovation works without getting public aids. Public investments are estimated as insufficient in all sectors to expect any orientations included in the SNBC.

In the absence of general data published by the State, it is not possible to provide accurate figures but the public building efficiency renovation shows the difference between needs and measures adopted.

According to the I4CE report as above-mentioned, *“the renovation market moderate growth falls short of ambitious objectives found in this sector. In 2017, the funding deficit stands between 5 and 8 billion of euros per year. Remedying these shortcomings would require an increase of 35 to 60% annual investments”*.<sup>43</sup>

A second lever consists in public actors transparency and exemplary character for their investments. If it is hardly conceivable to target the whole public fundings to climate and energy transition only, it is in fact necessary to set clear objectives regarding to public fundings dedicated to this transition. For now, these assets are not available or even detailed by actor or mission.

<sup>43</sup> Climate Financing at a Glance, Edition 2018", Institute for Climate Economics (I4CE).

Moreover, **no clear rules have been adopted in order to exclude fossil fuels energy projects, urban spread or high-carbon transportation infrastructures from public fundings**. On the contrary, a lot of current examples show how negative projects for climate are maintained and still supported by the State: Strasbourg bypass motorway, Europacity or cogeneration fundings in coal-power station. Moreover, as an EDF stakeholder - managing 34 coal-power stations in the world and holding own shares (from 19% to 100%) in 100 fossil-fuel stations including 13 coal stations<sup>44</sup> - the French State contributes indirectly in funding climate damaging activities.

From an international perspective, in 2016, nearly all of the 4 billion of euros dedicated to the energy sector by the Agence Française de Développement (AFD) have been used as loans for projects that may not benefit to the more vulnerable people, as 8% of energy fundings have been dedicated to fossil fuel energy projects<sup>45</sup>.

Ultimately, a last lever consists in encouraging financial actors to take into account climate risks they are exposed to and to evaluate their contribution to greenhouse gas emissions reduction objectives<sup>46</sup>. On these terms, France took a step further by adopting the 173 article of the LTECV which obliges investors, insurers and assets managers to publish annually informations on how they a) take into account their exposure to climate risks b) measure the greenhouse gas emissions in their detained assets and c) contribute to the respect of the international objective in terms of limiting climate change.<sup>47</sup>

However, financial regulation authorities [Autorité des marchés financiers, (AMF), Autorité de contrôle prudentiel et de résolution (ACPR)] that are controlling this law implementation (and the decrees related) have not been fully resourced to implement new missions involved by the law LTECV. Moreover, banks (beside their assets management business) are not concerned by this obligation of transparency. Thus, the article 173, V, B, of the LTECV imposed the government to submit a report to the Parliament about the implementation of a regular stress test scenario representing risks associated with climate change, before the 31st december 2016. If a draft proposal has been prepared in february 2017, no final report has been adopted two years after the original maturity date.<sup>48</sup>

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<sup>44</sup>"State Emissions: How EDF and Engie's coal-fired power plants warm the planet", Oxfam, May 20, 2015.

Available at:

[https://www.oxfamfrance.org/wp-content/uploads/2015/10/file\\_attachments\\_emissions\\_detat\\_comment\\_les\\_centrales\\_dedf\\_et\\_engie\\_rechauffent\\_la\\_planete\\_0.pdf](https://www.oxfamfrance.org/wp-content/uploads/2015/10/file_attachments_emissions_detat_comment_les_centrales_dedf_et_engie_rechauffent_la_planete_0.pdf)

<sup>45</sup> RUDINER, A. et al. Assessment of the state of play of the low-carbon transition in France. Iddri, Study N ° 12/18, October 2018 p. 6. Available at:

<https://www.iddri.org/sites/default/files/PDF/Publications/Catalogue%20Iddri/Etude/201810-ST12118FR-bilan%20transition.pdf>

<sup>46</sup> The risks posed by global warming to financial stability have been theorized by Mark Carney, Governor of the Bank of England and Chairman of the Financial Stability Board in his speech: "Breaking the tragedy of the horizon - climate change and financial stability" - delivered at Lloyd's headquarters on 29 September 2015. Available at: <https://www.bis.org/review/r151009a.pdf> (last accessed on December 17, 2018)

<sup>47</sup>Article L. 533-22-1 of the Monetary and Financial Code

<sup>48</sup>In this sense: Annual assessment of the laws application on the March 31, 2018. Available at: <http://www.senat.fr/rap/r17-510/r17-51029.html> (last accessed on December 17, 2018). This report indicates "the report on the implementation by credit institutions and finance companies of a scenario of regular stress tests

The State has failed to set up a financial system taking into account challenges of climate change. Neither public investment nor private investment have been encouraged to move towards climate-friendly investments. Public and private investments into a low-carbon economy are a powerful and indispensable lever for action to enable States to achieve their goals regarding the fight against climate change and energy transition.

Now, it has become clear that **climate-friendly investments are seriously insufficient**. Indeed, the Institute for Climate Economics (I4CE), a research institute commissioned by the French Environment and Energy Management Agency (ADEME) and the Ministry of Ecological and Solidary Transition in charge of analyzing investment expenditures in favor of climate in France, concludes in 2018 report: "*In order to reach the national climate targets trajectory, we are still missing 10 to 30 billion euros annual investments* »<sup>49</sup>. *This annual delay leads to a cumulative delay becoming increasingly difficult to catch up: "the delay between 2016 and 2018 represents missed investments up to 40 to 90 billion euros. To catch up between 2019 and 2023 and cover the initial needs, it would be necessary to invest between 55 and 85 billion euros per year.* "<sup>50</sup>

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representative of the risks associated with climate change (Article 173), the delivery of which was expected before December 31, 2016; between February and April 2017, the General Directorate of the Treasury made available, on its website, a draft report entitled "The assessment of risks related to climate change in the banking sector", which is supposed to apply Article 173 but which does not actually does not deal directly with the implementation of a stress testing scenario as required by law; moreover, the final report has never been published".

<sup>49</sup>In this sense, "Panorama of climate finance, Edition 2018", Institute for Climate Economics (I4CE), p. 1. Available at:<https://www.i4ce.org/wp-core/wp-content/uploads/2018/11/I4CE-Panorama-of-financements-climate-summary-2018-EN.pdf>

<sup>50</sup> 128. Ibid, page 2.

euros per year. Remedying these shortcomings would require an increase of 35 to 60% annual investments”.<sup>51</sup>

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Moreover, **no clear rules have been adopted in order to exclude fossil fuels energy projects, urban spread or high-carbon transportation infrastructures from public fundings**. On the contrary, a lot of current examples show how negative projects for climate are maintained and still supported by the State: Strasbourg bypass motorway, Europacity or cogeneration fundings in coal-power station. Moreover, as an EDF stakeholder - managing 34 coal-power stations in the world and holding own shares (from 19% to 100%) in 100 fossil-fuel stations including 13 coal stations<sup>52</sup> - the French State contributes indirectly in funding climate damaging activities.

From an international perspective, in 2016, nearly all of the 4 billion of euros dedicated to the energy sector by the Agence Française de Développement (AFD) have been used as loans for projects that may not benefit to the more vulnerable people, as 8% of energy fundings have been dedicated to fossil fuel energy projects<sup>53</sup>.

Ultimately, a last lever consists in encouraging financial actors to take into account climate risks they are exposed to and to evaluate their contribution to greenhouse gas emissions reduction objectives<sup>54</sup>. On these terms, France took a step further by adopting the 173 article of the LTECV which obliges investors, insurers and assets managers to publish annually informations on how they a) take into account their exposure to climate risks b) measure the greenhouse gas emissions in their detained assets and c) contribute to the respect of the international objective in terms of limiting climate change.<sup>55</sup>

However, financial regulation authorities [Autorité des marchés financiers, (AMF), Autorité de contrôle prudentiel et de résolution (ACPR)] that are controlling this law implementation (and the decrees related) have not been fully resourced to implement new missions involved by the law LTECV. Moreover, banks

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<sup>51</sup> Climate Financing at a Glance, Edition 2018", Institute for Climate Economics (I4CE), p.

<sup>52</sup> "State Emissions: How EDF and Engie's coal-fired power plants warm the planet", Oxfam, May 20, 2015.

Available at:

[https://www.oxfamfrance.org/wp-content/uploads/2015/10/file\\_attachments\\_emissions\\_detat\\_comment\\_les\\_centrales\\_dedf\\_et\\_engie\\_rechauffent\\_la\\_planete\\_0.pdf](https://www.oxfamfrance.org/wp-content/uploads/2015/10/file_attachments_emissions_detat_comment_les_centrales_dedf_et_engie_rechauffent_la_planete_0.pdf)

<sup>53</sup> RUDINER, A. et al. Assessment of the state of play of the low-carbon transition in France. Iddri, Study N ° 12/18, October 2018 p. 6. Available at:

<https://www.iddri.org/sites/default/files/PDF/Publications/Catalogue%20Iddri/Etude/201810-ST12118FR-bilan%20transition.pdf>

<sup>54</sup> The risks posed by global warming to financial stability have been theorized by Mark Carney, Governor of the Bank of England and Chairman of the Financial Stability Board in his speech: "Breaking the tragedy of the horizon - climate change and financial stability" - delivered at Lloyd's headquarters on 29 September 2015. Available at: <https://www.bis.org/review/r151009a.pdf> (last accessed on December 17, 2018)

<sup>55</sup> Article L. 533-22-1 of the Monetary and Financial Code.



(beside their assets management business) are not concerned by this obligation of transparency. Thus, the article 173, V, B, of the LTECV imposed the government to submit a report to the Parliament about the implementation of a regular stress test scenario representing risks associated with climate change, before the 31st december 2016. If a draft proposal has been prepared in february 2017, no final report has been adopted two years after the original maturity date.<sup>56</sup>

The State has failed to set up a financial system taking into account challenges of climate change. Neither public investment nor private investment have been encouraged to move towards climate-friendly investments.

## **ii) The lack of progress in the implementation of greenhouse gas emissions reduction objectives**

Besides the global deficiency of both public and private investments for a transition towards a low carbon economy, and their occasional incoherence with the declared objectives, the State didn't implement specific measures even when they were previously identified as appropriate levers to achieve these goals.

Notably, having regard to the three branches (transport, building, agriculture) where the Ministry for the Ecological and Inclusive Transition found that « *results are clearly less good than expected* [1] », measures and means employed by the State were rather insufficient to achieve the announced greenhouse gas emissions reduction.

First, in the transport branch, which represents about a third of greenhouse gas emissions in France, the State failed to use identified levers to reduce greenhouse gas emissions of the branch to the target level. This led to exceed the reduction goal in 2017 of more than 10%.

With regard to **modal shift** to carbon-free transportations ( mainly railway[2]), the State didn't implement sufficient means to achieve the objectives set by the low carbon national strategy (SNBC) and to reverse the downward trend of rail transportation in favor of road and air passenger transportation since 2010[3], including the rail freight collapse started in 2001[4]. This trend can be partially explained by the priority given to road transportation investments. Thus, between 1990 and 2015, France invested 276 billions in roads against 78 billion for rail transportation. Because of this underinvestment in the rail network, « *the total length of operational rail lines decreased by 11% between 1996 and 2016* [5]». Since 2015, no new nor stable financial resources have been made available for railways maintenance and improvement,

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<sup>56</sup> In this sense: Annual assessment of the laws application on the March 31, 2018. Available at: <http://www.senat.fr/rap/r17-510/r17-51029.html> (last accessed on December 17, 2018). This report indicates "the report on the implementation by credit institutions and finance companies of a scenario of regular stress tests representative of the risks associated with climate change (Article 173), the delivery of which was expected before December 31, 2016; between February and April 2017, the General Directorate of the Treasury made available, on its website, a draft report entitled "The assessment of risks related to climate change in the banking sector", which is supposed to apply Article 173 but which does not actually does not deal directly with the implementation of a stress testing scenario as required by law; moreover, the final report has never been published ".

especially to the disadvantage of secondary lines. This divestment feeds the preference for the use of the individual vehicles in comparison with train.

With regard to **vehicles energy efficiency**, the SNBC foresaw the development of a new standard and counted on a wide diffusion of the 2L/100 vehicle, stating that « *it will constitute the bulk of new vehicles sales by 2030*»[6]. To support the motor industry towards a sustainable transition, the State mobilized a significant budget[7]. However, very few concrete results have been achieved, which is therefore recognized by the new SNBC project published in December 2018, now targeting a 4L/100 standard by 2030[8].

Lastly, with regard to **fiscal tools, State policies appear particularly unequal and inefficient**. First of all, in its plan of fiscal tools for a sustainable transition, the State didn't include analysis of differential impacts in terms of carbon footprint of the wealthiest and poorest populations whereas, in France, it has been estimated that the wealthiest 10% emits 40 times more greenhouse gas than the poorest 10%.

For example, the carbon tax affects the poorest in a disproportionate way compared to the wealthiest, as it represents a four times higher percentage of their income [9]. Now, as no support measure for the poorest and the more affected has been associated to the recent implementation of the new increase of this tax, this led to its massive rejection and then to the government decision, in december 2018, to suspend the application of its expected increase[10] in contradiction with the LTECV and with France commitments within the European Union. In the field of road freight transport, there is still a glaring fiscal inequality, expensive for the State and totally incompatible with the objectives of greenhouse gas emissions reduction. This sector, which massively contributes to emissions, benefits without any real justification from a refund of the Internal Consumption Tax on Energy Products (TICPE)[11] while being exempted from road user charges since the eco-tax setback[12].

Secondly, in the **building sector**, the significant recorded delay - in terms of both reducing its energy consumption and its greenhouse gas emissions ( + 22.7% compared to the 2017 target) - is attributable to insufficient energy renovations, as the SNBC draft indicates that their « pace and scale are insufficient [13]».

LTECV has set a target of 500,000 housing per year to benefit from an energy renovation starting in 2017, where half of them were intended for low-income households (Article 3). All private residential buildings with a very important primary energy consumption had to be subject to energy renovation by 2025 (Article 5).

In the absence of the implementation of any monitoring mechanism by the State, it is not possible to accurately measure the number of actually completed renovations, nor the level of achieved energy performance and all the reports on the subject underline the significant delay in renovations. This is the case of the revised SNBC project of December 2018 which indicates a pace of 300,000 full and equivalent renovations on average over the 2015-2030 period[14] instead of the 500,000 renovations previously planned by LTECV.

This delay is primarily due to the **investment deficit** in the abovementioned sector.

It can also be explained by the lack of a national support system explicitly aimed at encouraging efficient renovations[15]. LTECV provided for the possibility of merging all existing financial support in order to grant only one global aid with an amount indexed on the level of ambition of the renovation project[16], but this possibility has hardly been put into practice [17].

In the **tertiary building sector**, the State has demonstrated a flagrant lack of diligence by enacting with more than a seven years delay the decree related to tertiary building renovation [18] provided for by the law of July 12<sup>th</sup>, 2010[19]. This law was supposed to give rise to many renovations imposing to carry out an energy study and in some cases to conduct works to reduce energy consumption. Nevertheless, because of its late adoption and its proximity to the target date (January 1<sup>st</sup>, 2020), this decree was overruled by the Highest Administrative Court on June 2017[20], resulting in a ten-year delay in the renovation of tertiary use buildings.

Thirdly, in the **agricultural sector**, 41% of the greenhouse gas emissions are made of nitrous oxide emissions which mainly result from nitrogen fertilization, therefore a reduction in the use of fertilizers is a crucial element to allow States to reduce their greenhouse gas emissions in this sector.

However, in France, between 1972 and 2012, sales of synthetic fertilizers have increased by 29% as regards nitrogen, whereas fertilizable areas decreased by 11% [21]. Moreover, France had a surplus of nitrogen (i.e. nitrogen which was not used for crop growth) of about 28% of the total nitrogen fertilization during 2010 [22].

This is why the SNBC aimed at reducing greenhouse gas emissions related to nitrous dioxide by enhancing the implementation of the agro-ecological project, notably, on the one hand, by optimizing the use of agricultural inputs (fertilizers, animal feed, etc.) and the gain of autonomy with local resources (replacement of mineral fertilizers by organic fertilizers, protein autonomy and optimization of the feed rations for animals...) and, on the other hand, with a diversification of crop rotations and the development of legumes. The SNBC project, revised in 2018, confirms these orientations.

Yet, while certain public policies exist [23], they hardly lead to concrete outcomes and no effective measure is provided in order to reduce the use of nitrogen fertilizers.

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[1] In this sense, *Bilan Annuel de l'application des lois au 31 March 2018*. Available at: <http://www.senat.fr/rap/r17-510/r17-51029.html> (last accessed on December 17, 2018), this statement shows « the report about the implementation, by credit institutions and financing companies, of a regular stress test scenario representative of the risks associated with climate change (article 173) whose delivery was expected before December 31, 2016 ; between february and april 2017, the budget DG start a consultation about a report project called « *The assessment of climate change risks in the banking sector* ». This project was supposed to apply the article 173 but, in reality, it does not deal directly with the implementation of a stress test scenario as required by the law. For the rest, the final report never appeared.

- [2] SNBC revised project, December 6, 2018, p.11. Available at :  
<https://www.ecologique-solidaire.gouv.fr/sites/default/files/Projet%20strategie%20nationale%20bas%20carbone.pdf>
- [3] In this sense, « *Intercités : Valoriser l'offre ferroviaire en répondant aux besoins de nos clients et aux enjeux du développement durable* », Carbone 4. Available at:  
<http://www.carbone4.com/wp-content/uploads/2017/06/Plaque-SNCF-Intercite%CC%81s.pdf>
- [4] Ibid. p. 21
- [5] Report « *Chiffres clés du transport* », Commissariat général au développement durable, March 2018, p. 6. available at :  
[http://www.statistiques.developpementdurable.gouv.fr/fileadmin/documents/Produits\\_editoriaux/Publications/DataLab/2018/datalab-31- chiffres-cles-transport-mars2018.pdf](http://www.statistiques.developpementdurable.gouv.fr/fileadmin/documents/Produits_editoriaux/Publications/DataLab/2018/datalab-31- chiffres-cles-transport-mars2018.pdf)
- [6] SNBC 2015, pp. 18 et 58. Available at:  
[https://www.ecologique-solidaire.gouv.fr/sites/default/files/SNBC\\_Strategie\\_Nationale\\_Bas\\_Carbone\\_France\\_2015.pdf](https://www.ecologique-solidaire.gouv.fr/sites/default/files/SNBC_Strategie_Nationale_Bas_Carbone_France_2015.pdf)
- [7] In this sense, « *Le plan de soutien à la filière automobile* », Direction générale des entreprises, updated on September 30, 2015. Available at:  
<https://www.entreprises.gouv.fr/secteurs-professionnels/automobile/plan-soutien-a-filiere-automobile>. It refers to bonus for the conversion of a state stake of 800 million of euro in PSA «to ensure the necessary development of the company in France and abroad » and an envelope of 750 million of euro devoted to the program *Vehicle of the Future*, operated by ADEME.
- [8] SNBC, December 2018, p. 21. available at:  
<https://www.actu-environnement.com/media/pdf/news-32550-projet-snbc.pdf>
- [9] « Inégalités extrêmes et émissions de CO<sub>2</sub> », Oxfam, december 2<sup>nd</sup> 2015. Available at:  
[https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/mb-extreme-carbon-inequality-021215-fr.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/mb-extreme-carbon-inequality-021215-fr.pdf) ; Also : CHANCEL, L. et PIKETTY, T., « Carbon and inequality: from Kyoto to Paris Trends in the global inequality of carbon emissions (1998- 2013) and prospects for an equitable adaptation fund », Iddri & Paris School of Economics Thomas Piketty, Paris School of Economics, November 3, 2015. Available at:  
<http://piketty.pse.ens.fr/files/ChancelPiketty2015.pdf>
- [10] For example : « *Moratoire : une mauvaise décision pour le climat et la justice sociale* », Réseau action climat France, December 4, 2018. Available at:  
<https://reseauactionclimat.org/moratoire-mauvaise-decision-climat-justice-sociale/> (last access on December 17, 2018) ; Also, BARROUX, R. et ROGER, S., « *Gilets jaunes: la fiscalité écologique, variable d'ajustement des gouvernements* », Le Monde, December 5, 2018. Available at:  
[https://www.lemonde.fr/planete/article/2018/12/05/la-fiscalite-ecologique-variable-d-ajustement-des-gouvernements\\_5393118\\_3244.html](https://www.lemonde.fr/planete/article/2018/12/05/la-fiscalite-ecologique-variable-d-ajustement-des-gouvernements_5393118_3244.html) (dernier accès le 17 décembre 2018) ; Also , « *Gilets jaunes : le gouvernement suspend la hausse des prix du carburant et de l'énergie* », La Tribune, December 4, 2018. Available at:  
<https://www.latribune.fr/economie/france/gilets-jaunes-vers-un-moratoire-sur-la-hausse-de-la-taxe-carbone-799723.html> (last accessed on December 17, 2018).
- [11] Article 265 septies of the Customs Code.
- [12] 2017 Annual Public Report (Audit office) « *L'écotaxe poids lourds : un échec stratégique, un abandon coûteux* », February 2017. Available at:  
<https://www.ccomptes.fr/sites/default/files/EzPublish/05-ecotaxe-poids-lourds-Tome-1.pdf>
- [13] LCNS revised project op. cit. p. 12.
- [14] Revised LCNS project op. cit., pp. 22 et 23
- [15] Cf., Inspectorate General of Finance april 2017 « *Aides à la rénovation énergétique des logements privés* ». available on : [http://cgedd.documentation.developpement-durable.gouv.fr/documents/cgedd/010867-01\\_rapport.pdf](http://cgedd.documentation.developpement-durable.gouv.fr/documents/cgedd/010867-01_rapport.pdf)
- [16] LTECV du 17 août 2015, Art. 14 VII. : « *Le Gouvernement remet au Parlement (...) un rapport sur les moyens de substituer à l'ensemble des aides fiscales attachées à l'installation de certains produits de la construction une aide globale dont l'octroi serait subordonné, pour chaque bâtiment, à la présentation d'un projet complet de*

*renovation, (...) et un rapport sur la nécessité d'effectuer une évaluation de la performance énergétique des travaux réalisés ».*

[17] Only the program « *Habiter mieux* » of the Agence Nationale de l'Habitat (ANAH), specifically targeting low-income households includes a performance diagnosis before and after the construction, and a minimum threshold of energy efficiency to be respected. But, it concerned only about 52,000 housings in 2017, the 52% of a target of 100,000. Cf. : Sénat, report n° 399 (2017-2018), M. Philippe DALLIER, Finance Committee, April 4, 2018, p.15. Available at : [http://www.senat.fr/rap/r17-399/r17-399\\_mono.html#toc34](http://www.senat.fr/rap/r17-399/r17-399_mono.html#toc34).

[18] Décret n° 2017-918 du 9 mai 2017 *relatif aux obligations d'amélioration de la performance énergétique dans les bâtiments existants à usage tertiaire*.

[19] 3 Article 3 Law n° 2010-788 , July 12, 2010 *portant engagement national pour l'environnement*, Article L111-10-3 Code on Construction and Housing.

[20] *Conseil d'Etat*, 5/6 SSR, June 18, 2018, req. N°411583

[21] Website of the French ministry of ecology: “The use of nitrogen fertilizers in France”. Available at : <http://www.statistiques.developpement-durable.gouv.fr/lessentiel/ar/2396/0/lutilisation-engrais-azotes-france.html>

(last accessed on December 17, 2018)

[22] *Ibid.*

[23] 2014-2020 Vegetable Proteins Plan, 2016 Nitrate Plan or 2013 Energy Methanization Autonomy Nitrogen Plan

## **2.2 The failure to enact and implement a regulatory framework for climate change adaptation**

Having regarding to climate change adaptation, the French State should have adopted, under the United Nations Framework Convention on Climate Change, a national adaptation plan since 1992, together with mitigatory measures; nevertheless, it was only developed in 2006. In 2005 and 2006<sup>57</sup>, two reports from the National Observatory on the Effects of Global Warming (ONERC) already pointed out the Administration's wait-and-see policy and its lack of responsiveness.

**Public authorities should have passed the necessary regulatory framework earlier, given the climate issues and urgency.**

For its part, in 2007, the publication of the European Commission's Green Paper on “*Adapting to climate change in Europe : options for EU action*”<sup>58</sup> charted a course of action for Member States. Then, in 2013, the Commission adopted a communication on the “*European Union strategy on adaptation to climate change*”<sup>59</sup>, divided in different areas such as the forestry sector, coastal areas, biodiversity, durability of buildings, energy security, transportation, health, water shortage and drought issues.

Thus, in 2011, even though France adopted its first national plan on climate change adaptation (PNACC) for the 2011-2015 period, the latter **did not contain any binding and specific regulatory provision**.

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<sup>57</sup> Report : National climate change adaptation strategy, ONERC, 2005. Available at :

[https://www.ecologique-solidaire.gouv.fr/sites/default/files/ONERC\\_Rapport\\_2005\\_ClimatAdaptation\\_WEB.pdf](https://www.ecologique-solidaire.gouv.fr/sites/default/files/ONERC_Rapport_2005_ClimatAdaptation_WEB.pdf) ;

Report : National climate change adaptation strategy, ONERC, 2006. Available at :

[https://www.ecologique-solidaire.gouv.fr/sites/default/files/ONERC\\_Rapport\\_2006\\_Strategie\\_Nationale\\_WEB.pdf](https://www.ecologique-solidaire.gouv.fr/sites/default/files/ONERC_Rapport_2006_Strategie_Nationale_WEB.pdf)

<sup>58</sup> OM (2007) 354 final.

<sup>59</sup> OM (2013) 216 final.

First, a study<sup>60</sup> underlined the **lack of intelligibility of the goals fixed in the plan**. (intermediary or additional objectives are often incoherent) This prevents a transparent and efficient monitoring of the measures.

Then, the **estimated budget for the PNACC was judged incomplete and insufficiently reliable to evaluate the plan taken by the government in 2015**<sup>61</sup>.

Lastly, **having regard to implementation, no less than 20% of the measures were delayed or completely discarded**: *“80% of measures will be entirely completed by the end of the current plan or in the process of being implemented by the end of the year 2015. The 20% left represents the action that were delayed or discard”*<sup>62</sup>. That being said, this high percentage does not take into an account all of the actions that were not taken, as the Economic, Social, and Environmental Council (CESE) reported: *“Some measures part of an action can be delayed or postponed without the action itself being considered as delayed or discarded”*<sup>63</sup>. For example, the State do not reach its objectives in some sectors presented by the **national climate change adaptation plan (PNACC)** as priority, such as the water sector. According to the evaluation report of the PNACC published in 2015, measures relative to water saving “have known some delays”<sup>64</sup>.

Following the COP21 in 2015, a review process of the PNACC **has been made** in the attempt to comply with the Paris Agreement’s new objectives. A governmental roadmap for ecological transition<sup>65</sup> was published in June 2016, indicating the main guidelines review process of the PNACC in six dimensions (Governance and Project Coordination; Knowledge and information, including awareness; Prevention and resilience; Adaptation and preservation of the environment; Vulnerability of economic sectors; Reinforcement of the international action)

Between June 2016 and May 2017, six work groups dedicated to each of the six PNACC’s axes were reunited multiple times in order to ultimately propose a new plan (PNACC-2). Broadly speaking, this

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<sup>60</sup> RUDNINGER, A., “Best practices and challenges for effective climate governance frameworks : a case study on the French experience”, sustainable development and international relations Institute of Sciences-Po, mai 2018, p.22.

<sup>61</sup> Report : “Evaluation of the national climate change adaptation plan”, General council of the environment and sustainable development, novembre 2015, p. 42. Available at:

[http://cgedd.documentation.developpement-durable.gouv.fr/documents/cgedd/010178-01\\_rapport.pdf](http://cgedd.documentation.developpement-durable.gouv.fr/documents/cgedd/010178-01_rapport.pdf)

<sup>62</sup> Report : “Evaluation of the national climate change adaptation plan”, above-mentioned, p.38

<sup>63</sup> CESE Opinion, France’s adaptation to world climate change, p. 16. Available at :

[https://www.lecese.fr/sites/default/files/pdf/Avis/2014/2014\\_13\\_adaptation\\_changement\\_climatique.pdf](https://www.lecese.fr/sites/default/files/pdf/Avis/2014/2014_13_adaptation_changement_climatique.pdf)

<sup>64</sup> PNACC evaluation Report, 2015, p. 108.

<sup>65</sup> Governmental roadmap for ecological transition, june 2016. Available at :

<https://www.ecologique-solidaire.gouv.fr/sites/default/files/Feuille%20de%20route%20gouvernementale%20pour%20la%20transition%20%C3%A9cologique%202016.pdf>

plan should be “*more compact, more strategic with reinforced steering and a broader scope*”<sup>66</sup>. Notably, the aim to reinforce links between different economic actors in various levels (local, regional, national), especially to answer PNACC’s main critics.

Despite many technical datasheets drawn up for each aspect of the PNACC, **the PNACC-2 has just been published<sup>67</sup>, more than a year after the release of the first PNACC’s work results**. The PNACC-2 only presents very broad thematic areas on sectors and governance addressing the adaptation to implement in France. Therefore, this document cannot be used as a wide scale planning tool indicating the main adaptation measures to adopt urgently on the whole metropolitan and overseas territory. Henceforth, no truly accurate, enticing or binding regulatory framework addressed to actors and stakeholders goes along with it. Conversely, the PNACC-2 postpone these urgent actions: “*Actions required to stabilize, or reduce ultimately, the overall cost of climate risk’s management on a medium term and long term should be identified quickly*”<sup>68</sup>.

In view of PNACC-2’s substance, the State underestimates climate emergency and the need to define priority measures to counter climate change effects, including reducing vulnerability and social and climate inequality.

### **C) Conclusion on the State’s failure to exercise its powers regarding the fight against climate change**

Thus, the whole mechanism implemented by the French government to fight against climate change, on both its adaptation and mitigation components, is severely inadequate and inefficient in light of the current issues, and that is therefore confirmed by France’s inability to comply with its objectives.

These results show the **State breaching both its general duty to fight climate change and its specific objectives**. Furthermore, this failure is even more problematic considering that France is already experiencing climate change effects and is exposed to significant environmental and human health risks: average temperatures on the metropolitan territory increased by 1.4°C since 1900, proliferation of heat waves, increased risks of flooding, augmentation of allergic and respiratory pathologies, degradation of air quality, spread of infectious diseases, deterioration of the seas and coastal areas, etc.

As a result, by failing to implement an efficient legal and regulatory framework and to pass effective measures in order to prevent the occurrence of known risks to the environment and human health, the State has violated its duties to act, in violation of the Charter for the Environment and the Convention for

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<sup>66</sup> New PNACC : first potential solutions, 5 juillet 2017. Available on : <https://www.ecologique-solidaire.gouv.fr/nouveau-plan-national-dadaptation-au-changement-climatique-premieres-pistes> (last acces 17th december 2018)

<sup>67</sup> PNACC-2, october 2018. Available at : <https://www.ecologique-solidaire.gouv.fr/sites/default/files/Plan%20national%20d%27adaptation%20au%20change-ment%20climatique.pdf>

<sup>68</sup> *Ibid.* p.2.

the Protection of Human Rights and Fundamental Freedoms as well as the general principle of law which imposes a duty to act.

As summarized by the legal doctrine:

*“The fault of the State can be looked at from three perspectives.*

*First, as a regulatory authority, the State failed its duty to prevent and its duty to protect its citizen [...]. Public authorities should have taken a more effective legal and regulatory framework. [...]*

*Furthermore [...], public authorities have delayed the decision-making process, even failing to take decision. Additionally, the decisions are inadequate in view of the state of crisis [...]. The application of available measures is deficient.*

*Ultimately, even if they took some measures, these were ineffective [and insufficient] to assure satisfying results. Public authorities did not ensure the adequacy of the means deployed [...]. This is a failure in exercising its police power. The State’s failure to enact a legal framework that would protect the population against risks [in relation climate change] is underlined”<sup>69</sup>.*

Yet, the administrative jurisdiction has, in the most tragic cases, the opportunity **and the responsibility** to sanction the government’s normative or executive failure, especially if this deficiency caused intolerable consequences for its constituents. The State’s responsibility for failure to act was recognized a long time ago by the Administrative Court, notably in cases of serious damages caused to public health or the environment.

As consistently observed in the asbestos contamination case<sup>70</sup>, the HIV contaminated blood case<sup>71</sup> or once more in cases of nitrate pollution<sup>72</sup>, the administrative courts condemned the State for breach of obligations on different grounds, where its failure to act caused severe damages to public health.

In terms of environmental protection, when measures taken by the State proved to be insufficient in view of the objective to be achieved the State was condemned several times for merely adopting simple administrative procedures without practical and effective measures, notably regarding soil pollution<sup>73</sup> or endangered species’ protection<sup>74</sup>.

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<sup>69</sup> LAFFORGUE, F., “The establishment of liability in environmental-health cases in front of the French courts and its potential for climate litigation”, in C. COURNIL et L. VARISON (dir.), “*Les procès climatiques - Entre le national et l'international*”, éd. PEDONE, 2018, p. 237

<sup>70</sup> CE, Ass. 3rd march 2004, Minister of employment and Solidarity c/ Cts Bourdignon, req. n°241150 ; Minister of employment and Solidarity c/ Cts Xueref, n°241153 ; Minister of employment and Solidarity c/ Cts Thomas, req. n° 241152 ; Minister of employment and Solidarity c/ Botella, n°241151

<sup>71</sup> CE, Ass., 9th avril 1993, req. n° 138652

<sup>72</sup> CAA Nantes, 2nd Ch., 1st december 2009, n°07NT03775

<sup>73</sup> CE, Sect, 28 October 1977, req. n°95537 ; CAA, Marseille, 9th ch., 13th march 2018, n°17MA04122

<sup>74</sup> TA Toulouse, 6th ch., 6th march 2018, n°1501887, 1502320



Secondly, by not meeting its specific objectives, the State failed to observe its obligations and commitments regarding the fight against climate change.

In this respect, the administrative court has already recognized State's liability when insufficient actions inevitably made compliance with upcoming obligations impossible<sup>75</sup>.

On these terms, in the matter of tackling climate change and having regard to its specificity and the seriousness of this emergency, on top of the violation of objectives and commitments that has already been observed, it is necessary to hold France responsible for its incapability to reach its long-term objectives in 2020.

To conclude, the State's lack of action to fight climate change points to **the State's failure to act to respect its obligations to protect the environment, health and human safety** under the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms, and constitute violation of several obligations and specific domestic commitments regarding the fight against climate change under international, European and French law.

### III. THE CAUSAL RELATIONSHIP AND THE DAMAGES

#### A) The causal relationship

In France, administrative judges characterized the existence of a causal relationship in several public health cases, where the public authority failed to properly exercise its statutory prerogatives: *Mediator* case[1], *Algues Vertes* case[2], the *contaminated blood* case[3] and the *Hepatitis B Vaccine* lawsuits[4].

Climate change is a global-scale phenomenon that finds its source in a large number of different causes (governments, business, individuals) and the consequences are measurable on a global scale[5]. On these terms, it is not possible to specifically assess the consequences on climate change that every single State induces with its actions or inactions. Nevertheless, States must be held responsible for the implementation of effective strategies aimed at successfully tackling climate change.

It is in this sense that the Dutch judge at the first instance in the *Urgenda* case, by a decision of 24 June 2015[6] upheld on appeal[7], ordered Netherlands - whose GHG emissions are lower than those of the France[8] - to reduce its GHG emissions. On the basis of the duty of care and more specifically on the basis of the texts of the Dutch Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Dutch court points out that the obligation to reduce GHG emissions applies to all States, which are responsible for tackling climate change[9].

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<sup>75</sup> TA Toulouse, 6th ch., 6th march 2018, n°1501887, 1502320

To reason differently, in reality, would mean admitting that States can get rid of their sovereign prerogatives and responsibilities[10]. More precisely, this would result in disempowering the State of its mission in terms of public health and protection of the environment.

Therefore, in this context of public health and extremely alarming environment, the existence of a causal relationship between the French State's failure to act and the effect of the climate change whose scales and harmful consequences are already being felt in France, is proven.

## **B) The damages**

The NGOs are claiming compensation for the moral damage suffered by their members as well as the ecological damage that affected the environment resulting from the State's failure to act.

The moral damage suffered by the NGOs is direct, personal and certain as the State's failure to act directly infringes the social purpose of the four applicant associations, for their annual activity reports establish the importance of the actions carried out, including the organization of conferences, exhibitions or other events, the release of information and communication materials or the implementation of action on the ground, especially to raise the awareness of citizens and public authorities given the climate emergency. Furthermore, Greenpeace and FNH have a legitimate right to act for environmental protection issues under Article 141-1 of the Environmental Code.

Thus, having regard to their social purpose, their seniority, their level of expertise and the importance of the actions carried out by these associations, State's failure to act has adversely affected the collective interests they defend and caused a personal, direct and certain moral damage they are entitled to claim compensation for.

In addition, the moral damages of the members of associations are just as direct, certain and personal, since State's failure to act directly affects their environment and their health by putting on them the burden of all the above-mentioned risks.

In conclusion, the errors committed by the State have affected and still affects the elements and functions of the ecosystems, as well as the collective benefits that the mankind could draw from the environment and a stable climate system.

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In lights of the above the applicants are entitled to ask the State to:

- Repair the aforementioned damages of each of the applicants;
- Immediately put an end to all these failure, which otherwise, will continue to engage its responsibility;

And this heard,

- To take any useful measures to stabilize GHG concentrations in the atmosphere throughout the national territory at a level that makes it possible to limit the planet's average temperature increase to 1.5 ° C compared to pre-industrial levels, in combination with appropriate targets for developed and developing countries;
- Take any necessary measure for the national territory adaptation, and particularly the vulnerable zones adaptation, to the effects of climate change;
- Cease any direct or indirect French State contribution to climate change;
- Implement all measures to achieve the minimum objectives of:
  - GHG emissions reduction throughout the national territory;
  - renewable energies development;
  - energetic efficiency increase.

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[1] Conseil d'Etat, 9 Nov. 2016 n°393108

[2] CAA de Nantes, 1st Dec. 2009, n°07NT03775

[3] Conseil d'Etat, 9 Apr. 1993, n°138652

[4] Conseil d'Etat, 9 Mar. 2007, n°267635

[5] PEEL, J., « Issues in Climate Change Litigation », *Carbon & Climate Law Review*, 2011, p. 16: « *Climate change is the paradigmatic global environmental problem. Anthropogenic emissions of carbon dioxide and the other GHGs that give rise to atmospheric warming are produced in all countries by innumerable entities. In this sense no one country or entity can be said to be the cause of climate change [...] As Hari Osofsky has argued, climate change is thus a "multiscalar" regulatory problem capable of simultaneously engaging more than one level of governance (local, state, national, regional, international)* »

[6] Decision of the District Court of the Hague 24 June 2015, *Urgenda v. Government of the Netherlands* ; cf. comments : TABAU, A-S. et CURNIL, C., « Nouvelles perspectives pour la justice climatique, Cour du district de La Haye, 24 June 2015, Fondation Urgenda contre Pays-Bas », *Revue Juridique de l'Environnement*, 4/2015, pp. 674-695. ; PERRUSO., C., et CANAL-FORGUES, E. ? « La lutte contre le changement climatique en tant qu'objet juridique identifié ? », *Énergie - Environnement - Infrastructure*, LexisNexis, august 2015.

[7] Decision of the Hague Court of Appeal 9 Dec. 2018. Available at :

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:2610&showbutton=true&keyword=urgenza> (last accessed on December 17, 2018)

[8] In 2016 : 244 MMTons CO2 aux Pays-Bas et 33 7MMTons CO2 en France. International Energy Statistics Available on : <https://www.eia.gov/> (last accessed on December 17, 2018)

[9] § 387 of the District Court of the Hague of June 24, 2014 , et § 41 et s. of the October 9, 2018 appeal decision.

[10] Conclusions of Mrs. PRADA-BORDENAVE, Government commissioner, concerning the legal action of the Ministry of employment and solidarity against 4 decision of Marseille Court of appeal of Marseille, lecture March 3, 2004 : « *Reasoning in other ways would absolve the State of all responsibility in the areas of police and regulation.*

*In deciding that the illness contracted by these workers was directly related to the lack of adequate measure of protection of hygiene and safety, the court did not commit any mistake of qualification”.*

[MANUSCRIPT SIGNATURES]

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