

Expected actions and evidence from the French government on air pollution and greenhouse gas emissions: the Conseil d'État sets out the follow-up to its decisions of July and November 2020

The Conseil d'État, responding to applications by associations and local authorities, ordered the French government to take action on air pollution (subject to a penalty of €10 million, July 2020)¹ and provide evidence that the measures implemented were compatible with greenhouse gas reduction targets (November 2020)². The Conseil d'État outlines the actions currently underway to ensure that its decisions are being implemented and sets out a timeline for the next steps.

1. €10 million penalty for failure to act on air pollution

On 12 July 2017, the Conseil d'État responded to an application by several environmental protection associations by ordering the French Government to implement plans to reduce concentrations of nitrogen dioxide (NO₂) and fine particles (PM₁₀) in 13 areas in France, in accordance with the requirements of the European directive on air quality.

Noting on 10 July 2020, that the Government had still not taken the measures requested in eight areas (Grenoble, Lyon, Strasbourg, Reims, Marseille-Aix, Toulouse, Paris and Fort de France), it ordered it to act within six months, subject to a penalty of €10 million for every six months of delay (see [press release](#)).

On 25 January, the Conseil d'État received a statement from the French Ministry for the Ecological Transition setting out the measures taken to improve air quality since July. It forwarded the statement to the applicants on the following day, so that they could respond.

Next steps (anticipated)

- **In early March**, the Reports and Studies Section, which is responsible for monitoring the implementation of judicial decisions by the Conseil d'État, will analyse all the information provided by the Ministry and the applicants and will send an initial opinion to the Litigation Section (which is responsible for making judgments) in response to the following question: has the French Government taken the necessary measures in the eight areas to reduce concentrations of nitrogen dioxide (NO₂) and fine particles (PM₁₀)?
- **In mid-March**, the Litigation Section will open the preparatory stages of an adversarial procedure (see box below).
- **In the summer**, a new public hearing will be held at the Conseil d'État, attended by both the associations and representatives of the Government, who were also present at the hearing on 10 July 2020.

This will be the point at which the Conseil d'État either:

- Scenario 1: deems that the Government has taken the measures to prevent air pollution ordered;
- Scenario 2: if not, takes a decision on the payment of the penalty for the first six months' delay (January-July 2021). The amount of the penalty may vary depending on the actions implemented (a partial penalty may be imposed in the case of partial implementation, or the full (or even a higher) penalty in the absence of any efforts by the Government). The list of beneficiaries of the penalty³ and the amount allocated to each will be set out at the time.

1 Conseil d'État, 10 July 2020, Association Les Amis de la Terre, no. 428409

2 Conseil d'État, 19 November 2020, Municipality of Grande-Synthe, no. 427301

³ The amount of each six-monthly penalty can be paid to the applicants but also to public bodies with sufficient autonomy from the state, whose remit covers air quality, or to non-profit private-sector organisations that act in the public interest in this area.

- **After the summer, in scenario 2**, the process (request for evidence from the Government, preparatory stages, hearing and decision) will be repeated every six months, including a re-assessment of the penalty, until the Conseil d'État deems its decision has been fully implemented by the Government. This means that if the Government fails to take action, the Conseil d'État will be obliged to make a judgment every six months and may order the payment of the penalty for every six-month period of inaction or inadequate action.

2. Reduction in greenhouse gas emissions by 2030

On 19 November, responding to an application by the municipality of Grande-Synthe, the Conseil d'État asked the French government to provide evidence, within three months, that progress towards reducing greenhouse gas emissions by 2030 (by -40% compared with 1990) would be sufficient without the need for additional measures (see [press release](#)).

Today, 22 February, the Government sent the Conseil d'État its statement showing that the measures taken are sufficient to achieve the 2030 target on greenhouse gas emissions. This statement has been sent to the local authorities and associations that made the application or were joined to it, so that they can respond.

Next steps (anticipated)

- **In April**, the Litigation Section will open the preparatory stages of an adversarial procedure based on all the information provided (see box below).
- **In the summer**, a new public hearing will be held at the Conseil d'État, attended by both the local authorities and associations that made the application or were joined to it and representatives of the Government, who were also present at the hearing on 19 November 2020. At that point, the Conseil d'État will decide to:
 - Scenario 1: dismiss the application by the local authorities and associations if it deems that, on the date of the ruling, the measures taken by the Government are sufficient to reduce greenhouse gas emissions by the requisite amount by 2030;
 - Scenario 2: order the Government to take additional measures to ensure sufficient progress in order to fulfil France's commitments by 2030.
- **After the summer**, if additional measures are ordered (scenario 2), their implementation will be monitored by the Conseil d'État, with preparatory stages and an adversarial procedure leading to a new hearing and the possibility of a penalty if the measures ordered have not been taken.

The preparatory stages in brief

The preparatory stages precede the judgment of a case. During this period, which lasts a few weeks, the Conseil d'État gathers the arguments made by the administration and the applicants, generally in writing (in a "statement of case"), and forwards them to the opposing party. There may also be oral submissions. This is an adversarial procedure: each of the parties has the opportunity to debate and dispute the facts and legal arguments put forward by the other side.

After the written submissions have been received and analysed by a reporting judge (rapporteur) at the Conseil d'État, the public hearing takes place with the parties in attendance, and a decision is handed down two to three weeks later.

Press contacts

Lorraine Acquier – +33(0)1 72 60 58 42 – lorraine.acquier@conseil-etat.fr

Antoine Sourdril – +33(0)1 72 60 58 41 – antoine.sourdril@conseil-etat.fr

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