

The Grande Synthe Saga Continues

Nathan de Arriba-Sellier

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France's highest administrative court ruled that the French government had failed to take sufficient action to mitigate climate change and ordered it to take additional measures to redress that failure. The *Grande Synthe II* decision of 1 July 2021 follows the findings by the *Conseil d'État* in a previous decision that France's greenhouse gas (GHG) emissions reduction targets [constitute legal obligations that are enforceable against the state](#). However, how, and when to redress France's failure have been, to a broad extent, left to the discretion of the government. This all but ensures the *Grande Synthe* saga to continue.

In the initial case, the municipality of Grande Synthe, close to Dunkirk, challenged the government's refusal to take more regulatory action in order to mitigate climate change. The *Conseil d'État* admitted that request in a first decision last November, where it made a series of landmark determinations for climate litigation. However, the *Conseil d'État* refrained from deciding on the merits of the case, as it considered that it did not have sufficient elements to decide whether France took sufficient action to respect its obligations to reduce GHG emissions. After ordering further instruction, that determination is the focus of the ruling in *Grande Synthe II*.

France's failure to take sufficient measures

In *Grande Synthe II*, the *Conseil d'État* uses the five-years "Carbon budget" set by the French government in the Low-Carbon National Strategy (SNBC) as a benchmark, which was adopted by decrees having force of law. Although the *Conseil d'État* notes a reduction in GHG emissions in 2018 and 2019, this reduction is too limited to achieve the objectives set by the SNBC. Data for 2020 shows a greater reduction, but the *Conseil d'État* considers it insufficient, given the very peculiar context of health crisis and related lockdowns that year. This consideration is notably based on the [February 2021 report](#) of France's High Council on Climate (HCC), which deemed the 2020 reduction as "transitory" and "at risk of upturns". Coincidentally, the HCC released its [annual report](#) the day before the *Conseil d'État*'s ruling, highlighting the lost ground in climate action, which would require France to double its reduction efforts from 2021 to comply with the SNBC.

The *Conseil d'État* also takes a prospective approach in the case, noting that current "Carbon budget" only provides for a 6 percent reduction of GHG emissions over five years (2019-2023), while the next one (from 2024 to 2028) is much more ambitious by setting an objective of -12 percent. Yet, an accelerating pathway requires, according to the *Conseil d'État* and several independent bodies, the adoption of additional measures in the short-term. In this respect, the *Conseil d'État* also took into account the adoption of the [European Climate Law](#) by the European Parliament and the Council which dramatically increases EU's (and consequently France's) GHG emissions reduction targets by 2030, from 40 percent to 55 percent. The

impossibility to achieve that new objective in absence of new measures was not “seriously challenged” by the French government before the *Conseil d’État*. Even the [Climate and Resilience bill](#) currently discussed in the French Parliament would be insufficient to achieve the current target.

In conclusion, the *Conseil d’État* ruled that the French government failed to take the necessary measures to reduce GHG emissions and that its refusal to take further action is incompatible with France’s obligations under French and EU law. Hence, the *Conseil d’État* ordered the French government to take “all necessary measures” by 31 March 2022 to ensure France’s compliance with the GHG emissions reduction targets.

A Pyrrhic victory?

The *Grande Synthe II* decision of the *Conseil d’État* may be hailed as a new victory for climate litigants. While [Grande Synthe I](#) did set the foundations for this decision, there is now a clear judicial precedent in France to challenge climate inaction, set by the highest administrative court of the land. In line with *Urgenda* and *Friends of the Irish Environment*, insufficient action on the part of the state was again found by a national court and resulted in new constraints for the government to take climate action. In this case, the *Conseil d’État* put considerable pressure on the French government by requiring new, sufficient measures and by setting a clear deadline for these additional measures.

However, there is little reason to be particularly optimistic as to the tangible effects of the *Conseil d’État*’s decision. It is indeed uncertain that *Grande Synthe II* will encourage, not to say force, the French government to act more vigorously in order to reduce GHG emissions. First of all, the *Conseil d’État* did not prescribe any concrete measures to the government, merely ordering that it “takes all measures necessary” by 31 March 2022, which will surely require a new decision to appraise whether the government complied with that order. It also gives a wide margin of discretion to the government, including to do as little as possible. Secondly, the timeframe set by the *Conseil d’État* may enable the government to forbear from taking action and to further delay the adoption of any new measures. Indeed, the chosen date of 31 March 2022 corresponds approximately with the beginning of the official electoral campaign in France. Although forbearance could spark a timely political debate on climate action, the current government has little incentives to adopt potentially unpopular measures months before general elections, especially as it is its successor that will be held legally accountable for its inaction. Finally, the timeframe of the *Conseil d’État* probably defers to 2023 any new judicial decision in the *Grande Synthe* saga. That further delays any chance of compliance and stands in stark contrast with the *Conseil d’État*’s own concern that only “additional measures in the short-term” can result in sufficient reduction of GHG emissions from 2023.

Yet, there will be no reprieve for the French government. In February 2021, the Paris Administrative Tribunal (Tribunal), in the ambitiously nicknamed “[Case of the Century](#)” found the French government liable for “environmental damages” (*préjudice écologique*). In that case, the Tribunal broadly followed the reasoning of the *Conseil*

d'État in *Grande Synthe I*, relying not only on national law, but also on International and European law as well as on reports of independent expert bodies like the HCC. It noted that France and its population were particularly exposed to rising temperatures and the actual and potential impact of climate change. The Tribunal established a link of causality between the harm to the environment and France's failure to meet its GHG emissions reduction targets. Furthermore, any deviation, even temporary, from France's reduction pathway will have lasting effects and aggravate environmental damages. In this respect, the ruling of the *Conseil d'État* upholds the findings of the Tribunal. But, unlike the *Conseil d'État*, the Tribunal did not seem satisfied with a general command to take "all measures necessary", but required further instruction to decide on the injunctions that could be issued to compensate (in kind) the environmental damages and prevent their future aggravation. It might however be challenging for a lower court to force the hand of the government, months before general elections. Whereas the Tribunal does not enjoy the prestige of the *Conseil d'État*, it can nonetheless put further pressure on the government to act, especially as appeals do not have suspensive effect in French administrative procedure.

New developments could embolden French administrative courts in holding the government accountable for its climate inaction. In [Les Amis de la Terre](#), another case to be decided this summer, the *Conseil d'État* is expected to impose up to 10 million Euros in penalty against the government if the latter failed to curtail air pollution. The enactment of the European Climate Law will further heighten GHG emissions reduction targets and obligations and may provide new weapons to climate litigants.

Despite the fact that the *Conseil d'État* left open some critical issues and chose an unfortunate timeframe, the second judgment of the *Conseil d'État* in the *Grande Synthe* saga can still be considered a milestone in protecting environmental rights of future generations. The *Conseil d'État* cemented the enforceability of France's GHG emissions reduction targets, ruled against the French government and, for the first time, ordered it to redress its failure to take climate action.

