France


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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in your jurisdiction and which agencies/bodies administer and enforce environmental law?

The sources of French environmental law are manifold: international law (bilateral and multilateral agreements); European Union law (directives and regulations); the Constitution (the 1958 Constitution, the Environment charter); laws (mostly codified in the Environment Code); regulations; decrees; and decisions.

Environmental law is historically derived from case law and is a law of practitioners. The law created sought to be autonomous, neither public law nor private law, but one which made it possible to overcome the traditional divisions between the public and private, and to characterise the obsolescence of the distinction.

At a national level, the Ministry of Ecological Transition implements the policies related to ecology, environmental policy, biodiversity and energy.

At a regional level, Regional Directorates for the Environment, Planning and Housing (DREALs in French) develops and enforces, under the authority of the regional Prefect (general administrator of the region), the State policies related to the environment and to sustainable development and planning. Therefore, the Prefect plays an important role by enforcing environmental regulations and issuing ICPE and IOTA authorisations (Installations Classified for Environmental Protection and Installations, Works and Activities) as well as exemptions for protected species.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

Essentially, the intention of the special environmental police is to prevent environmental damage. To this end, the Prefect and the Mayor have extensive prerogatives.

In the event of non-compliance with the regulations, administrative fines may be imposed. In addition, site remediation may be ordered. Regarding biodiversity, in a recent ruling concerning a by-pass structure near Beynac, the judge did not hesitate to impose the total demolition of the structures and the restoration of the site within a year, at an estimated cost of 40 million euros (*Conseil d'Etat*, 29 June 2020, No. 438403).

In the case of more serious environmental violations, failure to comply with environmental regulations exposes the perpetrator to criminal penalties. In this respect, non-compliance with a formal notice constitutes an offence.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

The principle of information, enshrined in Article 7 of the 2004 Environment Charter, has been a general principle in environmental matters since 1995. This principle is transcribed in Article L. 1101 of the Environment Code: "Everyone has access to information relating to the environment, including information relating to hazardous substances and activities".

This right of access to information relating to the environment is exercised under the conditions now codified in the Code of Relations between the Public and the Administration (CRPA), subject to the special provisions laid down in the Environment Code.

Public authorities are obliged to disclose environmental information held by or for them to persons who request it. Access to environmental information is open to any person, with no need for the applicant to prove an interest.

A request for access to information may be refused in certain specific cases involving, in particular, national defence secrecy, the conduct of France's foreign policy, State security, conduct of legal proceedings or the protection of intellectual property rights.

Furthermore, in the context of the implementation of industrial projects, the public authorities must set up a mechanism for consulting citizens.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Activities that present dangers and inconveniences for the environment, safety and public health are subject to special regulations:

- the regulation of Installations Classified for Environmental Protection (ICPE) (Article L. 511-1 of the Environment Code); and
- a similar regime which exists for the regulation of Installations, Works and Activities (IOTA) impacting water and aquatic environments (Article L. 214-3 of the Environment Code).

Industrial facilities which are likely to present serious health and environmental hazards and involve the use of hazardous substances may also be subject to additional requirements pursuant to the European Directives known as "SEVESO" and "IED".

The activities that fall under the ICPE legislation are classified under the "ICPE nomenclature" according to the activities in question and the substances used.

ICPEs are subject to three different procedures depending on the risk of installation: authorisation, registration and declaration.

Since 2017, a single environmental authorisation has enabled project owners to examine different authorisations under a single procedure.

In case of a change of operator, depending on the regime of the installation (declaration, registration or authorisation), the new operator must declare the change of operator to the Prefect within one to three months of taking over the operation. In certain cases, subject to financial guarantees, the change of operator must be authorised. It is imperative that the authorities be informed. In the absence of a declaration, the former operator can be considered responsible for any pollution discovered on the site.

The new law for the Acceleration and Simplification of Public Action (known as the "ASAP law"), provides for the possibility of partially transferring an environmental permit (Article L. 181-15-1 of the Environment Code).

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

The refusal of the administrative authority to grant an environmental permit can be challenged before the Administrative Court located in the jurisdiction of the facility.

The beneficiary of the permit has two months to challenge the decision, while third parties, since the 2017 reform, have a period of four months.

Since 2017, the environmental claims procedure allows interested third parties to file a claim with the Prefect, at anytime, to contest the insufficiency or inappropriateness of the requirements defined in the authorisation (Article R. 181-52 in the Environment Code).

Like the granting of an illegal operating permit, an illegal refusal of an operating permit is the fault of the administration.

Litigation relating to ICPE is subject to full jurisdiction. Therefore, if necessary, the judge may overturn the administration's decision and thus authorise the operation of an installation.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Since the 1970s, awareness of the need to limit damage to nature has been reflected in laws requiring the reduction of nuisances and pollution as well as the mitigation of the impact of major projects on the environment.

Environmental impact studies have thus become mandatory prior to the construction of developments or works which, as a result of their size or impact on the natural environment, could harm the latter. Such studies enable the environmental impact assessment of the proposed project and are carried out either systematically or after examination on a case-by-case basis (Article R. 122-2 of the Environment Code).

A hazard study is required for ICPEs subject to authorisation, i.e. facilities with the greatest environmental hazards.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Failure to comply with a prescription imposed by the regulations for classified installations or the operation of an ICPE without the required authorisation leads to a prefectural order of formal notice inviting the operator to carry out work, or to regularise his situation within a given period.

If, at the end of the time limit the formal notice has not been complied with, the Prefect may impose administrative sanctions.

Article L. 171-8 of the Environment Code provides for such sanctions: consignment; suspension; carrying out work *ex officio*; and/or imposition of a fine and penalty payment.

The Prefect can order the closure of an ICPE in the following cases: operation of an ICPE without authorisation; refusal of the operator to file a regularisation file within the time limits; and if the ICPE presents uncontrollable risks.

In addition to administrative sanctions, penal sanctions may be imposed on the operator. For example, operating an installation without complying with the requirements of the administrative authority (Article L. 173-2 of the Environment Code) is punishable by two years of imprisonment and a fine of 100,000 euros. Fines are increased fivefold for legal persons. The court may also order measures to restore the premises that have been damaged or to repair the damage caused to the environment. The injunction may be accompanied by a daily penalty.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

French law has an extensive conception of waste. "Waste" refers to any substance or object which the holder discards or intends or is required to discard (Article L. 541-1-1 of the Environment Code). Waste falls under three classifications: inert; non-hazardous; and hazardous.

France also applies the "waste nomenclature" established at European level, which identifies each type of waste by a six-digit code referring to the sector in which the waste is produced. The Environment Code provides specific rules for certain categories of waste such as radioactive waste, electrical and electronic equipment waste, etc. Waste is increasingly affected by the Extended Producer Responsibility regime (EPR), such as with catering packaging in 2021.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

The storage of waste is regulated. In principle, the places assigned to the storage of hazardous and non-hazardous waste are classified installations.

However, temporary storage of waste for up to three years is permitted in certain circumstances on the site.

Excavated soil has special status:

- unexcavated soil, even if polluted, is not considered to be waste;
- soil removed from the excavation site is classified as waste;
- on-site management of excavated soil, as part of a rehabilitation operation, should not be considered as a waste storage operation; and
- the reuse of excavated land outside the site is subject to waste regulations but must not be considered to be a waste storage operation if the operation is useful.

Waste can lose its legal status of waste after having been treated and having undergone a recovery operation if it meets all of the following conditions:

- the substance is used for specific purposes;
- there is a demand for such a substance;
- the object fulfils the technical requirements for the specific purpose; and
- its use will not have any overall harmful effects on the environment or human health.

As regards excavated land, a draft decree specifying these criteria was the subject of a consultation in 2019.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/ disappears)?

Pursuant to Article L. 541-2 of the Environment Code, any producer or holder of waste is required to ensure or manage it.

He or she is liable until their final disposal or recovery, even when the waste is transferred for treatment to a third party, which must be able to treat it. Moreover, the contractual transfer of responsibility is not opposable to the administration.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

According to the hierarchy of waste treatment methods, priority must be given to treatment and recycling. Waste disposal must therefore be considered as a last resort. In addition, separate collection and sorting systems have been set up for a large number of products and are organised into channels through the EPR system. Under this system, producers, importers and distributors are required to provide for or contribute to the disposal of waste from what they produce or distribute. Compliance with this obligation involves setting up an individual or collective system (eco-organisations) for collecting and treating waste.

Some waste producers also have an obligation to take back their waste; this is the case for construction and public works waste and for electrical and electronic equipment waste.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defenses are typically available?

Failure to comply with the rules arising from authorisations under the ICPE regulations entails the operator's liability, which is threefold – administrative, civil and criminal.

In administrative matters, the operator may be held liable in the event that it does not comply with the requirements set out in the prefectural authorisation order. There maintains a possibility for the operator to regularise its situation.

In addition, it is worth mentioning the specific regime resulting from the law of 1 August 2008 which obliges operators to restore damage caused to the environment, in the name of the "polluter pays" principle. "Environmental damage" is defined as "serious" deterioration of the environment.

The operator may reduce the penalties incurred by demonstrating that all the necessary steps have been taken.

In civil matters, the civil liability of the operator is typically engaged if the following elements are present: a certain and direct bodily or material damage; a fact generating liability; and a causal link between the generating fact and the damage (it is up to the victim to prove it). Third parties who are victims of pollution damage from a classified installation are entitled to bring a civil liability action against the author of the damage on the basis of the theory of neighbourhood disturbances. In addition, since 2016, "non-negligible" damage to nature has been compensated as ecological damage.

The operator will be able, if necessary, to invoke the existence of a fault or a *force majeure* exempting from liability.

In penal matters, any operator or company may be held liable for failure to comply with the regulations. These may be either common law infringements (such as endangering the life of others, deterioration and damage to property) or specific to the environment (e.g. failure to comply with technical regulations in the event of cessation of operations or water pollution). The operator can often be exonerated if he provides proof of either a state of necessity or the contributory fault of a third party or one of his employees.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

The right to operate a facility classified for environmental protection is subject to the rights of third parties.

Thus, a private individual who is the victim of damage caused by an activity duly authorised or registered by the administration and carried out in compliance with the prescriptions imposed on him may appeal to the operator to obtain compensation.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

The directors and officers (D&Os) may be held criminally liable in the event of a criminal offence. It must be specified that the criminal liability of the legal entity and that of its D&Os may be combined (Article 121-2 of the French Criminal Code). D&Os may be civilly liable when the breach is detachable from their duties defined by case law as an intentional fault of a particularly serious nature incompatible with the normal exercise of corporate functions (Cass. Com, 20 May 2003, No. 99-17.092). The concept of detachable fault is currently the subject of a lively debate in France, suggesting that the concept may evolve in the future.

D&Os may take out liability insurance. However, in civil matters, this insurance has a residual role provided that the damage caused by an intentional fault cannot be legally covered. The criminal liability of D&Os cannot be insured, however, it is possible to cover the civil consequences of an act constituting a criminal offence.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

In the case of asset disposals, the purchaser, as the new operator, fully replaces the former operator in the implementation of legislation relating to facilities classified by the Prefect. It is incumbent on the purchaser to make the declaration of change of operator.

He assumes full responsibility for the environmental liabilities related to the activities transferred. However, in the event that previous pollution can be directly attributable to a former operator, the latter will bear the cost of cleaning up the pollution.

In terms of the sale of shares, the operator remains the same; the risks are ultimately borne by the new shareholders. This means, in particular, that the buyer must manage the historical pollution generated by the company or the activity taken over, even if this pollution is not directly caused by him.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

In the event of pollution, the bank lender may, in certain cases, be required to make a financial contribution to the compensation of the damage. This is the case when they are the owner of property that has caused environmental damage or a shareholder of the company that operated the property. It is also the case when, as a shareholder of the company, they have wrongfully intervened in the management of the company.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

Under French law, the Environment Code establishes a hierarchy of responsibilities for the remediation of polluted sites and soils in Article L. 556-3.

In principle, the last operator of an activity on the site – or its assignees – is responsible for any pollution on its site and, therefore, is responsible for the remediation work.

Alternatively, the person responsible is the owner of the land where the soil polluted by waste or an activity is located if it is shown that he has been negligent or is no stranger to such pollution.

Since the ALUR (Access to Housing and Renovated Urban Planning) law of 2014, the third party claimant procedure permits the transfer of the responsibility for the rehabilitation of a site to a substituted third party.

In the event of historical pollution, or in general when the last operator at the origin of the pollution is not known, the State (through the Agency for Ecological Transition (ADEME)) takes charge of the clean-up work.

5.2 How is liability allocated where more than one person is responsible for the contamination?

In the hypothetical situation in which more than one person is responsible for soil pollution, in application of the common law of civil liability, each operator is liable for the damage caused up to the amount of its contribution.

The faulty producer or holder of waste may also be held liable for clean-up work.

From now on, as a subsidiary since the ALUR law of 2014, the owner of the land can be held subsidiarily liable if it is shown that he has been negligent or is not a stranger to the pollution.

5.3 If a programme of environmental remediation is "agreed" with an environmental regulator, can the regulator come back and require additional works or can a third party challenge the agreement?

In case of restoration, the report that certifies that the work has been carried out does not constitute a discharge. The Prefect can come back to the operator "at any time" to impose the additional restoration measures he deems necessary within the limit of a 30-year prescription.

The issuance of an additional restoration order is not systematic. This may be the case if, after completion of the work, new pollution phenomena not previously identified have come to light. This may also be the case if the evolution of scientific knowledge and/or applicable standards leads to an increase in the requirements for the clean-up of the site.

If third parties believe that the requirements of the remediation order are insufficient, they may challenge them before the administrative courts.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

The purchaser of a site may obtain damages and interest, or even the nullity of the contract, in the event that the former operator has not fulfilled its pre-contractual obligation to provide information. The seller has a special obligation of information under the ICPE regulations (Article L. 514-20 of the Environment Code). Furthermore, the buyer may also claim that the land is not in a state that conforms to what was agreed between the parties or is tainted by "hidden defects".

The buyer also has an administrative appeal. He can ask the Prefect to enjoin the person responsible for the pollution to restore the site as provided for in the Environment Code.

According to a recent ruling, if the buyer of a piece of land is informed of the classified activities carried out on the property and of the absence of a pollution diagnosis, and knew of the existence of a pollution risk, he cannot claim payment of the costs of depollution (Court of Cassation, Civil Chamber 3, 16 January 2020, 18-23.504).

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g. rivers?

The State can engage the civil liability of the operator at the origin of the pollution and claim compensation for aesthetic damage if it suffered a commercial, moral or reputational damage derived from the harm caused to the environment.

Significant damages to the environment may also be recovered through the ecological damage introduced in the Civil Code in 2016 which is designed to repair any harm caused to nature.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

Created in 2012, the "environment inspectors" are civil servants in charge of a judicial police mission and are specially empowered for this purpose. They can investigate and establish breaches of the provisions of the Environment Code and the provisions of the Criminal Code relating to the abandonment of rubbish, waste, materials and other objects as well as seeking out the perpetrators.

Inspectors have many investigative powers such as visiting buildings and vehicles, conducting hearings and making seizures. They can also take samples. These investigations may lead to the establishment of offences recorded in official reports, which form the first link in the chain of criminal proceedings.

In addition to these general powers, environmental inspectors specialised in "water and nature" or ICPE have specific competencies within their fields.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

ICPE operators are required to report as soon as possible to the ICPE inspectorate any accident or incident that has occurred as a result of their classified facility and is likely to harm public health or the environment.

Generally speaking, case law considers that all incidents likely to harm the aforementioned interests must be declared, regardless of whether or not these interests have actually been harmed (Cass., Crim., 4 October 2005, No. 04-87654).

Outside the ICPE, any accident or incident obliges the operator or private individual (for example, in the event of an oil tank leak) to declare the incident and implement the means to remedy it.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

Land investigations are mandatory for certain activities subject to environmental authorisations (such as ICPE).

Moreover, a diagnosis of soil and/or groundwater pollution is mandatory:

- in the event of an accident or incident resulting in soil and/or water contamination, in order to determine the extent of the contamination and its impact on human health and the environment;
- for ICPEs that have ceased their activity – in this instance, the operator must return the site of the installation to such a state that none of the dangers or inconveniences for health and/or the environment are manifested; and/or
- for sites listed within the Soil Information Sectors (SIS) when there is a development project with a change of use (SISs are areas of land on which waste or chemicals have been dumped, or which have received industrial emissions, and are thus recorded on the BASOL database).

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

The disposal of a former industrial site essentially involves the communication of:

- the technical diagnoses provided for in Article 217-4 of the French Construction and Housing Code;
- written information on the Soil Information Sector (SIS); and
- written communication of the information that an ICPE subject to authorisation or registration has been operated on the land as well as the significant dangers and inconveniences resulting from it to its knowledge (Article L. 514-20 of the Environment Code).

The general pre-contractual information obligation based on Article 1112-1 of the Civil Code implies that any "information whose importance is decisive for the consent of the other party" must be communicated.

To limit the subsequent risks of liability on the basis of non-compliant delivery and/or latent defect, it is preferable that the information known with respect to the condition of the land and/or the diligence performed be shared by the seller with the purchaser.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

Under French law, there is no possibility for the operator to pay compensation to exonerate himself from any subsequent environmental liability.

Parties to a contract may contractually provide for such compensation; however, such contractual stipulation is not opposable to the administration.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

The role of the environment in accounting documents is becoming increasingly significant. In the context of collective proceedings, when a company operates a classified facility, the economic and social balance sheet is supplemented by an environmental balance sheet. This document is used for the preparation of the safeguard plan.

In addition, a parent company may be ordered to finance the restoration of the classified facilities of a subsidiary placed in compulsory liquidation, subject to proof that the parent company has committed a fault that has contributed to a shortfall in the subsidiary's assets (Article L. 512-17 of the Environment Code).

In the case of fraudulent dissolution of the company to escape environmental liability, the company representative can be personally prosecuted.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

Responsibility for the prevention and compensation of environmental damage lies with the operator, which is defined as "any natural or legal person, public or private, who effectively exercises or controls, on a professional basis, a lucrative or non-lucrative economic activity" (Article L. 160-1 of the Environment Code). Consequently, **only a shareholder or a parent company who exercises effective control of a company** can be held liable for the prevention and compensation of damage caused by its activity.

Parent companies can also be held liable for an act committed by their subsidiaries on the basis of certain CSR commitments, or on the basis of the duty of vigilance, introduced by law No. 2017-399 of 27 March 2017 for certain transnational companies. This plan includes vigilance measures aimed, in particular,

at preventing serious violations of environmental law resulting from the activities of daughter companies as well as from the activities of subcontractors or suppliers.

A parent company of French nationality can be brought before the French courts.

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

Originally, environmental alerts were regulated through civil security and health security.

The law of 13 August 2004 on the modernisation of civil security created a right of alert to protect public health.

In 2013, a law created a specific law on environmental matters.

Most recently, law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, has deepened the protection of whistleblowers. It provides for the criminal irresponsibility of whistleblowers who report a crime or misdemeanour, a serious violation of an international commitment, law or regulation, or a serious threat or harm to the public interest. Disclosure is protected if: it is necessary and proportionate to safeguard the interests involved; it is made in accordance with the reporting procedures defined by law; and the person meets the criteria for defining a whistleblower.

The protection does not, however, cover information covered by national defence secrecy, medical secrecy or attorney-client privilege.

8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

The law of 18 November 2016 on the modernisation of justice in the 21st century introduced group action in environmental matters (Article L. 142-3-1 of the Environment Code).

In the case of environmental group action, victims must ask an association to act as a civil party on their behalf and seek compensation for the damage suffered.

There are no punitive damages in France. However, to ensure that convictions do not appear derisory, certain penalties are proportionate to the companies' revenues.

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

A recognition of the interest to act does not exonerate associations, and *a fortiori* individuals must pay costs when pursuing environmental litigation. They are also subject to the obligation of consignment provided for in Article 88 of the Code of Criminal Procedure.

The losing party is ordered to pay costs and expenses, which allows individuals or associations to recover the legal costs incurred.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in your jurisdiction and how is the emissions trading market developing there?

The European Emissions Trading Scheme (known as the "EU ETS") is one of the keystones of the European Union's policy on global warming. It is also the main tool which enables the European Union and its Member States to achieve the greenhouse gas reduction objectives assigned to them by the Kyoto Protocol.

9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

Other reporting instruments are also being implemented.

At the international level, the Greenhouse Gas Protocol (GHP) harmonises accounting and reporting methods, as well as measurement and action tools to combat climate change.

In France, the most widely used methodology is that of the Bilan Carbone, a mandatory diagnostic tool adopted since the Grenelle II law of 12 July 2010, which makes it possible to analyse the entire life cycle of products and services offered by a public and private player. The carbon balances of public and private groups must be transmitted to the French Environment and Energy Management Agency (ADEME). This is mandatory for companies with more than 500 employees (250 in the French overseas departments), communities with more than 50,000 inhabitants and public institutions with more than 250 employees as well as State services.

9.3 What is the overall policy approach to climate change regulation in your jurisdiction?

The Energy Transition Law for Green Growth of 17 August 2015 introduced the National Strategy to Combat Climate Change. On 6 July 2017, France adopted the Climate Plan, which sets particularly ambitious climate objectives, including the implementation of the Paris Agreement.

The national courts are called upon to play an increasingly prominent role.

In this respect, NGOs recently appealed against the French State's inaction on climate change, with the aim to recognise the French State's general obligation to act in the fight against climate change.

On 3 February 2021, the Paris Administrative Court condemned the French State for failing to act on climate change.

At the beginning of 2021, the Government drew up a bill "on combating climate change and strengthening resilience to its effects", which provides for new measures to reduce the ecological impact of economic life in France.

10 Asbestos

10.1 What is the experience of asbestos litigation in your jurisdiction?

There is a significant amount of litigation in this area before the courts of law.

In labour law in particular, the judge has established an obligation to compensate for damage caused by asbestos, based both on health damage, on economic damage and anxiety damage.

In order to simplify litigation, the law of 23 December 2000 on the financing of social security for 2001 created the FIVA (Asbestos Victims Compensation Fund). This fund is a public administrative institution designed to compensate asbestos victims.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on-site?

It is the responsibility of owners and occupants of buildings constructed with building permits issued prior to 1 July 1997 to test for asbestos.

Depending on the result of the search, owners must either carry out a periodic assessment or asbestos containment or removal work. The information must be kept and made available for any other party. Special information must be disclosed in case of sale or rental.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in your jurisdiction?

Environmental insurances are not compulsory and are subject to the principle of freedom of contract.

Any company can take out environmental liability insurance in France, which is intended to be triggered following a claim by a victim seeking compensation for damages (bodily injury, material or immaterial damage) caused by the pollution generated by the company's activity.

This basic insurance must now be completed by a section integrating coverage for ecological damage following the introduction of the recognition of this kind of damage in the French Civil Code by the law of 8 August 2016 No. 2016-1087. This insurance is intended to cover damages to the elements or functions of ecosystems or to the collective benefits derived by the public from the environment.

Any company can also take out insurance to cover its environmental administrative liability. This regime, introduced by the EC Directive 2004/35, must be distinguished from the civil liability regime. This guarantees a pecuniary loss insurance provided that it is exclusive of any direct action by an injured third party and covers the costs incurred by the operator under this administrative regime.

Furthermore, over the past 20 years, many insurance companies have developed environmental liability insurance policies designed to cover the financial losses suffered by the insured in connection with the sale of a site over a period of 10 years, in the event of the discovery of historical pollution.

11.2 What is the environmental insurance claims experience in your jurisdiction?

There is no specific feature related to environmental insurance claims, but it is possible that litigation in this area will develop in the near future due to the introduction of the ecological damage in the French Civil Code by the law of 8 August 2016 No. 2016-1087.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in environment law in your jurisdiction.

France is committed, through the Paris Agreement (signed on 12 December 2015 and ratified by law No. 2016-786 of 15 June 2016), to reduce its emissions by 37% compared to 2005 by 2030. Moreover, by the Energy-Climate law of 8 November 2019, it has set itself the objective of reducing these emissions by 40% compared to 1990.

Thus, the Council of State, seized by the municipality of Grande-Synthe, ruled that although France is committed to reducing its emissions by 40% by 2030, in recent years it has regularly exceeded the emission ceilings it had set itself, and that the decree of 21 April 2020 has postponed most of the reduction efforts until after 2020.

In a ruling of 19 November 2020 (No. 427301), before making a final decision on the application, the Council of State asked the Government to justify, within three months, that its refusal to take additional measures was indeed compatible with compliance with the reduction path chosen to achieve the objectives set for 2030.

Furthermore, on 3 February 2021, the Paris Administrative Court, which was seized in 2019 by NGOs, recognised the State as being responsible for failures in the fight against global warming. It ordered the State to pay the symbolic sum of one euro to the NGOs and ordered further investigation before ruling to determine precisely the measures necessary to repair the ecological damage.

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His successive experiences have enabled him to acquire a cross-disciplinary approach to environmental law and a recognised practice in the field of industrial risks at national and international level.
He is regularly appointed as a mediator, third party conciliator by the parties to the contract or by judges, but also as an arbitrator.
Yvon is a Knight of the National Order of Merit and former Vice-Bâtonnier of the Paris Bar Association (2012–2013). He is also a former Member of the Bar Council (2014–2016) and of the National Council of the Bars (1999–2001), Member of the French delegation to the Council of the Bars of the European Union (CCBE) (1999–2004), and representative of the Paris Bar on the board of the International Bar Association (IBA) (2002–2004).

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Patricia Savin is in charge of matters related to environmental and sustainable development law, in particular in the fields of pollution and nuisance, property, renewable energy, protected species, water, facilities subject to environmental protection (ICPE), etc.
She was part of the working group set up by the Ministry of Justice to prepare the introduction of the concept of environmental harm into the Civil Code. She was also a member of the legal committee of the French Ministry for the Environment and Sustainable Development in charge of drafting the Environmental Charter.
Patricia is in charge of the Environmental and Sustainable Development Commission of the Paris Bar. She regularly advises on public debates and consultations launched by ministries, local economic, social and environmental councils (CESER), the Senate and the Sustainable Development Commission (CGDD), among others.
Patricia is also an associate professor for the Master's course in environmental law, sustainable cities and heritage.
Lastly, she is the chair of the OREE think tank, which brings together companies and local authorities to discuss circular economy, biodiversity and corporate social responsibility.

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