

Translation in English Decision

CONSEIL D'ETAT

statuant au contentieux N° 427301

COMMUNE DE GRANDE-SYNTHÉ et autre
FRANÇAISE AU NOM DU PEUPLE FRANÇAIS

Mme Airelle Niepce Rapporteure

REPUBLIQUE

Le Conseil
d'Etat
statuant au
contentieux
(Section du
contentieux,
6^{ème} et 5^{ème}
chambres
réunies) Sur le
rapport de la
6^{ème}
chambre de la
Section du
contentieux

M. Stéphane Hoyneck Rapporteur public

Séance du 9 novembre 2020 Lecture du 19 novembre 2020

Having regard to the following procedure

By a query, a reply and a new memory, saved on January 23 and December 21, 2019 and October 30, 2020 at the Council's Litigation Secretariat d'Etat, the commune of Grande-Synthe and Mr. Damien Carême ask the Council of State

1°) to annul for excess of power the implicit decisions of rejection resulting from the silence kept by the President of the Republic, the Prime Minister and the Minister of State, Minister of Ecological and Solidarity Transition, on their requests that all useful measures are taken to influence the curve of gas emissions of greenhouse gases produced on the national territory in order to respect at least the commitments France at the international and national levels, on the other hand, to ensure that the following are implemented immediate measures to adapt to climate change in France, and finally to that all legislative and regulatory initiatives be taken to "make it easier for the public to climate priority" and prohibit any measures that could increase the greenhouse gas emissions ;

2°) to enjoin the Prime Minister and the Minister of State, Minister of the ecological and solidarity transition, to take the above measures and provisions within a period of time maximum of six months

3°) in the alternative, to transmit to the Court of Justice of the European Union a number of preliminary questions on interpretation

- of the provisions of Articles 2, 3, and 4 of the Paris Agreement, in order to determine if they constitute provisions of direct effect that individuals are entitled to rely on ;
- the provisions of Article 3 of Decision No. 406/2009/EC of the Parliament of the European Parliament and the Council of 23 April 2009 on the effort to be made by the Member States in order to reduce their greenhouse gas emissions in order to meet the commitments of the Community's commitment to reduce these emissions until 2020 ;
- the combined provisions of (a) of paragraph 1 er of Article 2 of the Agreement of Paris and the aforementioned Decision No. 406/2009/EC of April 23, 2009;
- the provisions of Directives 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency and 2009/28/EC of the Parliament of the European Parliament and the Council of 23 April 2009 on the promotion of energy use produced from renewable sources ;

4°) to charge the State the sum of 3,000 euros on the basis of Article L. 761-1 of the Code of Administrative Justice.

In view of the other documents in the file ;

Seen:

- the Constitution and its Preamble;
- the European Convention for the Protection of Human Rights and Freedoms fundamental ;
- the United Nations Framework Convention on Climate Change of the 9th May 1992 and its protocol signed in Kyoto on December 11, 1997;
- the Paris Agreement, adopted on December 12, 2015;
- Council Decision 94/69/EC of 15 December 1993;
- Decision 406/2009/EC of the European Parliament and of the Council of April 23, 2009. 2009 ;
- Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009; and

2009 ;

- Directive 2012/27/EU of the European Parliament and of the Council of October 25, 2009

2012 ;

- Regulation (EU) 2018/842 of the European Parliament and of the Council of May 30, 2008.

2018 ;

- the energy code;

- the environmental code;

- Law No. 2009-967 of August 3, 2009;

- Law No. 2015-992 of August 17, 2015;

- Law No. 2019-1147 of November 8, 2019;

N° 427301 - 3 -

- the decree n° 2015-1491 of November 18, 2015 ;

- Decree No. 2019-439 of May 14, 2019;

- Decree No. 2020-457 of April 21, 2020;

- the code of administrative justice;

After hearing in public session:

- the report of Mrs. Airelle Niepce, Maître des requêtes,

- the conclusions of Mr. Stéphane Hoynck, public rapporteur ;

The floor having been given, before and after the conclusions, to SCP Foussard, Froger, lawyer for the commune of Grande-Synthe and others, and at the SCP Nicolaÿ, of Lanouvelle, Hannotin, lawyer of the association Greenpeace France and others ;

Considering the following:

1. By three letters dated November 19, 2018, the commune of Grande-Synthe, represented by its incumbent mayor, Mr. Carême, also acting on his own behalf in

his capacity as mayor and citizen, respectively, asked the President of the Republic, the Prime Minister and to the Minister of State, Minister of Ecological and Solidarity Transition, of an to take all necessary measures to influence the curve of emissions of effect gases greenhouse gases produced on the national territory in order to meet the obligations of the France or even to go beyond it, on the other hand, to take all legislative initiatives to "make the climate priority mandatory" and to prohibit any measure that would likely to increase greenhouse gas emissions, and finally, to implement immediate measures to adapt to climate change in France. He was charged These applications will be received on November 20 and 21, 2018. The commune of Grande-Synthe and Mr. Lent request the annulment for excess of power of the decisions of implicit refusal that have arisen. silence kept for more than two months on these requests.

On the motion as it concludes to the annulment of the implied decisions refusing to take legislative action :

2. The request presented by the commune of Grande-Synthe et al. tends in part to the annulment of the implicit decisions of refusal arising from the silence kept by the President of the Republic, the Prime Minister and the Minister of State, Minister of Ecological Transition and solidarity on their requests for the adoption, and thus submission to Parliament, all legislative provisions to "make climate priority mandatory" and prohibit any measures that could increase greenhouse gas emissions. However, the fact, for the executive branch, to refrain from submitting a bill to Parliament, affects the relations between the constitutional public authorities, and is therefore outside the jurisdiction of the administrative jurisdiction. As a result, the conclusions of the application, in so far as they are directed against the implicit denials of their requests for the adoption of provisions for the legislation, must be rejected.

On the other conclusions of the motion :

With respect to the motion for dismissal opposed by the Minister of the ecological and solidarity transition :

3. It emerges from the documents in the file, and in particular from the data published by the national observatory on the effects of global warming, which the dunkerquois sector is identified as belonging to a climate risk exposure index qualified as very low. strong. In this respect, the commune of Grande-Synthe argues, without being seriously challenged, on the following points to this point that due to its immediate proximity to the coast and the physical characteristics of its territory, it is exposed in the medium term to increased and high risks floods, to an increase in episodes of severe droughts with a non only a decrease and degradation of the freshwater resource but also damage significant on the built-up areas given the geological characteristics of the soil. If these the concrete consequences of climate change are unlikely to be fully realized. effects on the territory of the commune that by 2030 or 2040, their inevitability, in the lack of effective measures taken quickly to prevent the causes of the problem and in view of the horizon for public policy action in this area, is such as to justify the need for to act without delay to this end. As a result, the commune of Grande-Synthe, in view of its level Exposure to and impact of risks arising from the phenomenon of climate change and certain about its situation and the interests for which it is responsible, justifies a direct and certain interest giving it standing to seek the annulment of the implied decisions under attack, the the Minister's argument in support of her dismissal, that these effects of the climate change are likely to affect the interests of a significant number of The common interest is not of such a nature as to call into question this interest.
4. On the other hand, Mr. Carême, who limits himself to maintaining that his current residence is located in an area prone to flooding at on the other hand, to claim his status as a citizen, does not justify such an interest.

In terms of interventions :

5. Firstly, the Paris region as well as the Grenoble conurbation are identified by the National Observatory on the Effects of Global Warming as with a climatic risk exposure index qualified as very high. In this respect, the City of Paris and the City of Grenoble argue, without being disputed, that the the phenomenon of global warming will lead to a significant increase in the peaks of heat observed on their territory, both in intensity and duration, as well as at an average temperature of a significant increase in winter rainfall, increasing the risk of major floods, and of subsequent flooding. Under these circumstances, both communities have a demonstrated interest in the project. sufficient to intervene in support of the application for annulment of the contested decisions.
6. Second, the associations Oxfam France, Greenpeace France and Notre Affaire A Tous, and the Foundation for Nature and Mankind, whose objectives are to Fight against anthropic attacks to the environment, one of the manifestations of which is in the contribution to the phenomenon of climate change, also justify an interest sufficient to intervene in support of the application for annulment of the contested decisions.
7. It follows from the foregoing that the interventions of the City of Paris, the city of Grenoble, the associations Oxfam France, Greenpeace France and Notre Affaire A Tous, and the Foundation for Nature and Mankind are admissible.

With regard to the legality of the contested decisions:

8. The useful effect of the annulment on grounds of excess of power of the refusal opposed to the request of the applicant municipality to take all useful measures to influence the greenhouse gas emissions produced on the national territory, to take all the necessary measures to reduce the a regulatory measure to "make the climate priority mandatory" and to put in place immediate adaptation measures to climate change, lies in the obligation, which the judge may prescribe ex officio under the provisions of article L. 911-1 of the Code of Civil Procedure. code of administrative justice, for the competent authority to take the measures judged to be necessary. necessary. It follows that, when it is seized with a claim for the annulment of such a refusal, the judge of excess of power is led to assess its legality in the light of the applicable rules and the circumstances prevailing at the date of its decision.
9. On the one hand, at the global level, Article 2 of the Framework Convention of the United Nations United Nations Framework Convention on Climate Change (UNFCCC) of May 9, 1992 states that: "The objective of this Convention and any related legal instruments to be adopted by the Conference of States Parties. of the Parties could adopt is to stabilize, in accordance with the relevant provisions of the Convention, the concentrations of greenhouse gases in the atmosphere at a level that prevents dangerous anthropogenic interference with the climate system. (...). ». In this respect, Paragraph 1 of Article 3 of the Convention provides, inter alia, that: "It is incumbent on the Parties to preserve the climate system for the benefit of present and future generations, based on of equity and in accordance with their common but differentiated responsibilities and their respective capacities. Accordingly, it is incumbent on developed country Parties to be at at the forefront

of the fight against climate change and its adverse effects. "By elsewhere, under the terms of Article 2 of the Paris Agreement of December 12, 2015, concluded in the framework of the of the Conference of the Parties referred to in Article 7 of the Convention: "1. This Agreement, in contributing to the implementation of the Convention, in particular its objective, aims to strengthen the global response to the threat of climate change in the context of development and the fight against poverty, particularly in : / a) Containing the elevation of the average global temperature well below 2° C compared to levels and by continuing the action taken to limit the rise in temperature to 1.5° C compared to pre-industrial levels, with the understanding that this would significantly reduce the (b) Building capacity to adapt to the risks and impacts of climate change; and adverse effects of climate change and promoting resilience to climate change; and low greenhouse gas emission development, in a way that does not threaten the environment. food production; / (...). / 2. This Agreement shall be applied in accordance with the equity and the principle of common but differentiated responsibilities and respective capabilities, eu with regard to different national situations. "According to the provisions of paragraph 1 of the Article 4 of this agreement states: "In order to achieve the long-term temperature objective set out in In Article 2, the Parties shall seek to achieve a global cap on emissions of gases at greenhouse gas emissions as soon as possible, with the understanding that the cap will take more than a year to achieve time for developing country Parties, and to achieve rapid reductions through the in accordance with the best available scientific evidence in order to achieve a balance between anthropogenic emissions by sources and anthropogenic removals by greenhouse gas sinks in the second half of the century on the basis of equity, and in the context of sustainable development and the fight against poverty. "According to the paragraph 2 of the same article: "Each Party shall communicate and update the contributions The Commission is planning to carry out a series of successive national-level determinations. The Parties shall take internal mitigation measures to achieve the objectives of these contributions. » Finally, under the terms of its paragraph 3: "The contribution determined at the national level of each Party will represent a progression in relation to the next contribution of each Party. determined at the previous national level and will correspond to its highest level of ambition possible, taking into account its common but differentiated responsibilities and its capabilities. respective, taking into account the different national situations. »

10. On the other hand, at the European level, by Decision 94/69/EC of December 15, 2009 1993 concerning the conclusion of the UNFCCC, the Council approved the convention on behalf of the European Community, now the European Union. In particular for the purposes of implementing of the above-mentioned stipulations, the European Union adopted a first "Energy Package". Climate 2020", consisting in particular of Decision No. 406/2009/EC of April 23, 2009 relating to the effort to be made by Member States to reduce their greenhouse gas emissions in order to meet the Community's commitments to reduce these emissions until 2020, with the aim of reducing greenhouse gas emissions by 20% by 2020. greenhouse effect compared to 1990. Under Annex II of the April 23, 2009 decision, a greenhouse gas emission limit of -14% compared to 2005 emission levels a The target date for 2020 has been set for France. Subsequently, the European Union, which has joined the Paris, has notified the Conference of the States Parties to the UNFCCC, pursuant to the provisions of Article 4 of this agreement, a "nationally determined contribution" (NDC) for the Union and its Member States corresponding to a minimum 40% reduction in emissions of greenhouse gases. greenhouse effect in 2030 compared to their 1990 level. It then adopted a

second "Package Climate Energy" based in particular on the EU regulation 2018/842 of May 30, 2018 on binding annual reductions in greenhouse gas emissions by the United States, and members from 2021 to 2030 contributing to climate action to meet commitments taken in the framework of the Paris Agreement, which, under the terms of its Article 1er established for the States members of their minimum contribution obligations for the period 2021-2030, with a view to achieving the Union's objective of reducing, by 2030, its emissions of greenhouse gas emissions by 30% over 2005 levels in the sectors covered under Article 2 of these Regulations, and contributes to the achievement of the objectives of the Paris Agreement. ». Annex I of the Regulation, provided for in Article 4 thereof, shall fix for each Member State the level of this minimum contribution and has assigned France an obligation to reduce gas emissions to greenhouse effect of -37% in 2030 compared to their 2005 level.

11. Finally, at the national level, the provisions of article L. 100-4 of the French energy, in their wording resulting from the law of November 8, 2019 on energy and climate, specify that: "I. - To respond to the ecological and climatic urgency, the policy 1° To reduce greenhouse gas emissions by 40% between 1990 and 2030, and to achieve carbon neutrality by 2050 by dividing the greenhouse gas emissions by a factor of more than six between 1990 and 2050. The trajectory is specified in the carbon budgets mentioned in Article L. 222-1 A of the French carbon code. the environment. For the application of this 1°, carbon neutrality is understood as a the balance, on the national territory, between anthropogenic emissions by sources and the N° 427301 - 7 - anthropogenic removals by sinks of greenhouse gases, as referred to in Article 4 of the the Paris Agreement ratified on October 5, 2016. Accounting for these emissions and absorptions is carried out according to the same procedures as those applicable to national inventories of gas at greenhouse gas emissions notified to the European Commission and within the framework of the Framework Convention on Climate Change. United Nations Climate Change Convention, without taking into account international credits from carbon offsetting; / (...)" . In order to achieve this objective of reducing emissions of greenhouse gas emissions, Article L. 222-1 A of the French Environmental Code provides that: "For the period 2015-2018, and then for each consecutive five-year period, a national cap of greenhouse gas emissions, known as the "carbon budget", is set by decree. "and the article L. 222-1 B of the same code, in its wording resulting from the aforementioned law of November 8, 2019, in particular that: "I. - The national low-carbon development strategy, known as the "low-carbon strategy", set by decree, defines the procedure to be followed in order to drive the policy of mitigating greenhouse gas emissions under sustainable conditions on the medium and long term economic level (...) / II. - The decree establishing the low-carbon strategy allocates the carbon budget for each of the periods mentioned in Article L. 222-1 A. by major sectors, particularly those for which France has made European commitments or international, by sector of activity as well as by category of greenhouse gases. The breakdown by period takes into account the cumulative effect of the issues in question with regard to the characteristics of each type of gas, in particular the duration of its stay in the upper atmosphere. atmosphere. (...) / It also divides the carbon budgets into indicative tranches of emissions annual / III. - The State, local authorities and their respective public institutions take the low-carbon strategy into account in their planning and implementation documents. programming that have a significant impact on greenhouse gas emissions. / As part of the low-carbon strategy, the level of financial support for public projects integrates, systematically and among other criteria, the criterion of contribution to the reduction of greenhouse gas emissions. The principles and

methods for calculating greenhouse gas emissions are as follows greenhouse effect of public projects are defined by decree. "According to the terms of article D. 222-1-A of the environmental code in its wording resulting from the decree of November 18, 2015 relating to the national carbon budgets and the national low-carbon strategy: "I. - Emissions of greenhouse gases greenhouse gas emissions accounted for under the carbon budgets established pursuant to Article L. 222 1 A are those that France notifies to the European Commission and in the framework of the United Nations Framework Convention on Climate Change / (...)"Under the terms of the Article D. 222-1-B of the same Code: "I. - Compliance with carbon budgets is assessed on the basis of annual inventories transmitted to the European Commission or within the framework of the United Nations Framework Convention on Climate Change. "Finally, in pursuant to Article 2 of the decree of November 18, 2015: "Carbon budgets for the periods 2015-2018, 2019-2023 and 2024-2028 are set at 442, 399 and 358 Mt CO₂eq respectively per year, compared to annual emissions in 1990, 2005 and 2013 of, respectively, 551, 556 and 492 Mt of CO₂eq".

12. As a result of these stipulations and provisions, the European Union and the France, a signatory to the UNFCCC and the Paris Agreement, has committed to fight against harmful effects of climate change induced in particular by the increase, over the course of the era greenhouse gas emissions from human activities, by conducting research and development in the field of industrial policies aimed at reducing the level of these emissions in successive stages, in order to to assume, in accordance with the principle of an equitable contribution by all States Parties to the objective of reducing greenhouse gas emissions, their common responsibilities but differentiated according to their participation in the emissions acquired and their capacities and means to reduce them in the future in relation to their level of economic development and the intervention of complementary acts to produce effects with regard to individuals and are, therefore have no direct effect, they must nevertheless be taken into consideration in the interpretation of provisions of national law, in particular those referred to in point 11, which, if not interpreted referring to the objectives they set, are precisely intended to implement them.social. If the stipulations of the UNFCCC and the Paris Agreement cited in point 9 require

13. In this respect, the objective of reducing greenhouse gas emissions by 40% between 1990 and 2030 set in article L. 100-4 of the energy code, which now states the United Nations Framework Convention on Climate Change, and the United Nations Framework Convention on the Paris Agreement, aims to ensure, as far as France is concerned, the implementation of the following effective of the principles set forth in this convention and agreement. In this respect, in order to achieve this reduction target, the provisions of Article L. 222-1-A of the French Commercial Code (Code de the environment entrust to a decree to set a national ceiling on gas emissions at greenhouse effect for the period 2015-2018 and then for each consecutive five-year period. In Within this framework, article 2 of the decree of November 18, 2015 cited in point 11 has set for the period 2015- 2018, corresponding to the first carbon budget and the only period completed to the date of the This decision sets a limit value of 442 Mt of CO₂eq per year.

With regard to the implicit refusal to take any useful measure allowing to influence the curve of greenhouse gas emissions produced on the national territory:

14. It emerges from the documents in the file, in particular the data commonly greenhouse gas emissions, that at the end of the period 2015-2018, the France substantially exceeded the first carbon budget it had set for itself, by approximately 62 Mt of CO₂eq per year, achieving an average decrease in its emissions of 1% per year while the budget set required a reduction of around 2.2% per year. The years 2015, 2016 and 2017 have thus led to an increase in greenhouse gas emissions and the year 2018, despite a return to a decrease in these emissions, led to a 4.5% overrun of the annual share set by this first carbon budget, with all business sectors posting an annual share of exceeding their objectives for the same year. In this respect, in its first two annual reports published in June 2019 and July 2020, the High Council for the Climate, the body created by the decree of May 14, 2019, to issue opinions and recommendations on the implementation of public policies and measures to reduce greenhouse gas emissions France's greenhouse gas emissions, highlighted the inadequacies of the policies implemented to achieve the objectives. fixed.

15. However, the decree of April 21, 2020 on national carbon budgets and the national low-carbon strategy has significantly modified the 2th carbon budget (corresponding to the period 2019-2023) provided for by the decree of November 18, 2015, under the following terms 399 Mt CO₂eq to 422 Mt CO₂eq per year the emissions cap for this period. It has, in on the other hand, maintained the objective assigned to the 3th carbon budget (corresponding to the period 2024- 2028), increasing it from 358 Mt of CO₂eq per year provided for in the same decree of November 18, 2015. to 359 Mt of CO₂eq, and set the 4^s carbon budget (corresponding to the period 2029-2033) at 300 Mt of CO₂eq per year. This 4th carbon budget is likely to enable the final objective to be achieved. reduction of greenhouse gas emissions by 40% in 2030 compared to their level in the past. 1990, set out in Article L. 100-4 of the Energy Code, and 37% compared to their levels of 2005, assigned to France by Annex I of Regulation (EU) 2018/842 of May 30, 2018. However, the changes made by the decree of April 21, 2020 compared to what had been envisaged in 2015, revise downwards the objective of reducing emissions of effect gases at the end of the period 2019-2023, corresponding to the 2^s carbon budget, and thus provide for a shift of the emissions reduction trajectory that leads to deferring the bulk of the effort beyond 2020, on a trajectory that has never been reached before. Moreover, the data the most recent scientific literature, including reports published by the Expert Group Intergovernmental Panel on Climate Change (IPCC), on the contrary, highlight a aggravation of the climatic risks at constant temperature increases, so that, in In a recent communication, the European Commission is considering proposing to increase the number of the European Union's greenhouse gas emissions reduction target for 2030 by notifying the Conference of the States Parties to the UNFCCC of a new NDC of - 55 % by compared to the 1990 emission level.

16. As a result, it is not possible to rule on the conclusions of the motion to the cancellation of the implicit refusal to take any useful measure allowing to inflect the curve of the greenhouse gas emissions produced on the national territory in the current state of the file,

the latter not highlighting in particular the elements and reasons allowing to establish the compatibility of the refusal with the trajectory of reduction of greenhouse gas emissions such as it is the result of the decree of 21 April 2020, which makes it possible to achieve the objective of reducing the level of greenhouse gas emissions produced by France, as set by Article L. 100-4 of the French Code of Commerce. energy and by Annex I of EU Regulation 2018/842 of May 30, 2018. It is therefore necessary to to order further instruction for the production of these items.

With respect to the implied refusal to take any regulatory action tending to "make the climate priority mandatory":

17. The means derived from the implicit refusal to take any action regulatory initiative to "make climate priority mandatory" would be tainted of manifest error of assessment is not accompanied by sufficient details to enable it to be assessed. appreciate the merits.

With respect to the implied refusal to implement accommodation measures immediate response to climate change :

18. If the commune of Grande-Synthe maintains that the decision it is attacking disregards the stipulations of article 2 of the Paris Agreement cited in point 9, these stipulations, as well as as stated in point 12, are of no direct effect. Consequently, their mere ignorance does not can be usefully invoked against the contested decision.

With regard to the conclusions of the application under Article L. 761-1 in so far as it concerns Mr. Carême :

19. It follows from what was said in point 4 that the conclusions of the motion presented under Article L. 761-1 in so far as they concern Mr. Carême can only be rejected.

D E C I D E : -----

Article 1 er: The conclusions of the request of the commune of Grande-Synthe and other directed against the implied refusal to take any legislative initiative to "make the climate priority" are dismissed as brought before a court of law. incompetent to know about them.

Article 2: The conclusions of the request presented under Article L. 761-1 of the French Code of Civil Procedure are to be submitted to the court. administrative justice are rejected as they concern Mr. Carême.

Article 3: The interventions of the City of Paris, the City of Grenoble, Oxfam associations, etc., are not accepted. France, Greenpeace France and Notre Affaire A Tous and the Fondation pour la Nature and Man are admitted within the limit of the admissibility of the request of the commune of GrandeSynthe.

Article 4: The conclusions of the request of the commune of Grande-Synthe for the annulment of the decision of the court of Grande-Synthe. for abuse of power of implied refusals to take any regulatory initiative action to "make the climate priority mandatory" and to implement measures of immediate adaptation to climate change are rejected.

Article 5: Before ruling on the surplus of the conclusions of the request of the commune of Grande-Synthe, additional instruction will be given for the production by the parts of the elements in point 16 of this Decision.

Article 6: These elements must be sent to the Secretariat of the Litigation Section in a period of three months from the notification of this decision.

Article 7: This decision shall be notified to the commune of Grande-Synthe, the first commune to be notified. applicant named, to the City of Paris, the City of Grenoble, to the Oxfam France associations, Greenpeace France and Notre Affaire à Tous and the Fondation pour la Nature et l'Homme, at the President of the Republic, the Prime Minister and the Minister of Ecological Transition.