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Air pollution: The French State ordered for the third time to pay €10 million

Noting that the French State had failed to take the necessary measures to ensure compliance with European air pollution thresholds in several urban areas in France, the *Conseil d'État* (French Administrative Supreme Court) ordered it in 2021 and 2022 to pay 3 penalty payments of €10 million each per six-month period of non-compliance.

In a ruling handed down on November 24, 2023, considering the persistence of pollution in Paris and Lyon and the improvements observed, the *Conseil d'État* once again ordered the French State to pay two penalty payments of €5 million each for the two six-month periods from July 2022 to July 2023^[1].

Background

In 2017, the *Conseil d'État* ordered the French State to implement plans to reduce nitrogen dioxide (NO₂) and particulate matter (PM₁₀) pollution in 13 urban areas in France in order to comply with European Directive No. 2008/50 of May 11, 2008 on ambient air quality and cleaner air in Europe, which had been transposed into the French Environmental Code, in Articles L. 221-1 and R. 221-1 in particular^[2].

The *Conseil d'État* then issued several decisions in connection with the enforcement of this ruling. First, noting that three years after the issuance of the 2017 ruling the measures taken were insufficient to achieve the aforementioned objectives, it imposed a €10 million penalty payment per each six-month period of non-compliance until full enforcement of the 2017 ruling^[3]. It then ordered the French State to pay €10 million for

nitrogen dioxide pollution in five zones in France and for PM10 pollution in the Paris conurbation for the period from January 11, 2021 to July 11, 2021^[4]. It then ordered the French State to pay two further penalty payments of €10 million each for the two periods from July 2021 to January 2022 and from January 2022 to July 2022, with a planned review in 2023 of the actions taken the French State from the second half of 2022^[5].

PM10 particulate matter concentrations

In its previous decision of October 17, 2022, the *Conseil d'État* had found that the Paris conurbation was the only area where PM10 concentration levels still exceeded limit values.

No exceedances were observed in 2021 and 2022.

On this basis, the *Conseil d'État* considered that the absence of exceedances in the Paris conurbation could now be “*considered as consolidated*”, and therefore that the ruling of July 12, 2017 could “*be considered as having been enforced with regard to compliance with particulate matter concentration levels*”.

Nitrogen dioxide concentrations

Concerning nitrogen dioxide, for the four conurbations where failure to enforce the July 12, 2017 ruling had been observed, the *Conseil d'État* noted that:

- The Toulouse conurbation and the Marseille-Aix conurbation no longer exceeded in 2022 the limit value set in Article R. 221-1 of the French Environmental Code. However, the Marseille-Aix conurbation still has one monitoring station (*Marseille Rabatau*) that recorded an average value of 39 µg/m³ over the calendar year, i.e., a value just below the limit value of 40 µg/m³;
- The Paris conurbation and Lyon conurbation continued to record exceedances: While the average recorded annual nitrogen dioxide concentration decreased overall at all monitoring stations in 2022 compared with 2019, the concentration limit value of 40 µg/m³ was exceeded during the period under review at eight monitoring stations in the Paris conurbation and one monitoring station in the Lyon conurbation.

Under these circumstances, the *Conseil d'État* held that the July 12, 2017 ruling could be considered as having been duly enforced only for the Toulouse conurbation. The situation in the Marseille-Aix conurbation could not, due to the persistence of a value very close to the limit value, be considered as sufficiently consolidated, and the Lyon and Paris conurbations continued to record significant exceedances for this pollutant.

For these three conurbations, the *Conseil d'État* examined the measures which had been adopted since its October 17, 2022 decision in order to assess whether such measures were likely to bring within the shortest possible time the nitrogen dioxide concentration levels below the limit value set in Articles R. 221-1 of the French Environmental Code in zones still recording exceedances of this limit value, or to consolidate the situation in zones where concentration levels are very close to this limit value.

Marseille-Aix conurbation

The *Conseil d'État* held that the following measures which had been taken were sufficiently specific and detailed to ensure that compliance with the nitrogen dioxide concentration limit values already observed in this zone in 2022 would continue:

- Revision and approval of an atmospheric protection plan in May 2022, which includes measures relating to transportation (aimed in particular at reducing air pollution resulting from maritime transport and from road transport in urban areas);
- Implementation of specific measures to limit pollution caused by ships (in particular, the deployment of charging stations on quaysides, so that ships are supplied with electricity and no longer produce emissions when docked, or the decrease in navigation speed in and around the harbor);
- Creation of a “low emission mobility zone” (*zone à faibles émissions mobilité* or “ZFE-m”), i.e., a zone setting out traffic restrictions and determining the categories of vehicles affected by these restrictions, covering the extended city center of Marseille, on September 1, 2022 (with a ban on vehicles displaying a Crit’Air 4 sticker^[6] in the area covered by the ZFE-m from September 2023, and a ban on vehicles displaying a Crit’Air 3 sticker planned to be effective from September 2024).

The *Conseil d'État* therefore considered that such measures ensured, for the area where they apply, a proper enforcement of its July 12, 2017 ruling.

Lyon conurbation

In Lyon, one monitoring station (*Lyon périphérique*) still recorded exceedances, with a value of 47 µg/m³, down from that observed at this station in 2021 and approaching the limit value of 40 µg/m³.

The *Conseil d'État* held that, while the following measures which had been taken were likely to reduce the nitrogen dioxide concentration level below the limit value for all monitoring stations in Lyon, they were not sufficient to guarantee compliance with the limit values:

- Adoption of a revised atmospheric protection plan on November 24, 2022;
- Adoption of new traffic restrictions within the Lyon Metropolitan Area’s ZFE-m (with a ban on vehicles displaying a Crit’Air 4 sticker planned to be effective from January 1, 2024, and a ban on vehicles displaying a Crit’Air 3 sticker planned to be effective from January 1, 2025);
- Extension of the ZFE-m from January 1, 2024 to expressways (including the monitoring station that still recorded exceedances).

Paris conurbations

In Paris, 8 monitoring stations still recorded exceedances, with values reaching 52 µg/m³ in two stations

(Autoroute A1 in Saint-Denis and boulevard périphérique Est).

The *Conseil d'État* held that no new measures likely to significantly and rapidly reduce nitrogen dioxide concentration levels had, in practice, been implemented since its previous decision:

- The revised atmospheric protection plan, which in any case is unlikely to have an immediate and noticeable effect on air pollution, is only in the process of being adopted (even though the Paris conurbation has been recording significant exceedances of nitrogen dioxide limit values for many years);
- The ban on vehicles displaying a Crit'Air 3 sticker, originally scheduled for July 1, 2023, has been postponed until January 1, 2025.

As a matter of fact, it appears that, as things stand, compliance with the limit values at all monitoring stations in the Île-de-France region is not expected before 2030!

Conclusion: Two penalty payments of €5 million each

In light of the situation in Lyon and Paris, the *Conseil d'État* held that its July 12, 2017 ruling could not be considered as fully enforced.

Given both the persistence of exceedances, in particular in the Paris region, and the improvements observed (6 out of the 8 zones identified as problematic in the July 2020 decision no longer recorded exceedances), the French State was ordered to pay two penalty payments of a reduced amount of €5 millions for the second half of 2022 and for the first half of 2023 (the amount of the penalty per half-year of non-compliance is thus divided by two).

The *Conseil d'État* indicated that in 2024 it will review and assess the actions taken from the second half of 2023 (from July 2023 to January 2024).

[1] *Conseil d'État*, November 24, 2023, No. 28409. Available here: <https://www.conseil-etat.fr/actualites/pollution-de-l-air-le-conseil-d-etat-condamne-l-etat-a-payer-deux-astreintes-de-5-millions-d-euros> (in French)

[2] *Conseil d'État*, July 12, 2017, No. 394254. Available here: <https://www.conseil-etat.fr/actualites/pollution-de-l-air> (in French)

[3] *Conseil d'État*, July 10, 2020, No. 428409. Available here: <https://www.conseil-etat.fr/actualites/le-conseil-d-etat-ordonne-au-gouvernement-de-prendre-des-mesures-pour-reduire-la-pollution-de-l-air-sous-astreinte-de-10-m-par-semestre-de-retard> (in French)

[4] *Conseil d'État*, August 4, 2021, No. 428409. Available here:



<https://www.conseil-etat.fr/actualites/pollution-de-l-air-le-conseil-d-etat-condamne-l-etat-a-payer-10-millions-d-euros> (in French)

[5] *Conseil d'État*, October 17, 2022, No. 428409. Available here: <https://www.conseil-etat.fr/actualites/pollution-de-l-air-le-conseil-d-etat-condamne-l-etat-a-payer-deux-astreintes-de-10-millions-d-euros> (in French)

[6] Crit'air is an air quality certificate that classifies vehicles according to their emission levels

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