

The French 2021 Bill on the fight against climate change and on resilience strengthening in the face of its effects – first overall impressions

The 2021 Climate and Resilience Bill: 12 key measures to give a new impetus in the fight against global warming and a double objective to meet France's international commitments and make the planet more habitable for present and future generations.

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As the Special Committee of the French National Assembly in charge of examining the Bill on the fight against climate change and on resilience strengthening in the face of its effects (*Projet de loi portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets*) (the Climate and Resilience Bill) put it in the first volume of its report,

“(t)he climate emergency is undeniable. If no action is taken, the global warming will lead to rising oceans, precipitation increased in some areas and desertification in others. The social, economic and geopolitical consequences will be disastrous.”

However, “(a)wareness of the climate problem has unfortunately been slow.”<sup>1</sup>

It took three decades indeed since the emergence of the concept of sustainable development by the United Nations in the Brundtland report before governments agreed in December 2015 in Paris on a roadmap to safeguard the environment.

For France, compliance with the Paris Agreement meant the reduction by six of its greenhouse gas emissions compared to 1990. To that effect, two major pieces of legislation were adopted: the 2015 Act on energy transition for green growth setting a target a 40% emissions reduction in 2030 and the 2019 Act on energy and climate setting the objective of carbon neutrality to be achieved in 2050.<sup>2</sup> However, this was still insufficient to attain the objectives set under the Paris Agreement and the European agenda. As the *Haut Conseil pour le Climat* put it in its 2020 annual report,

(g)lobal warming induced by human activities continues to worsen, whereas France's climate actions are not up to the challenges or goals they set for themselves. The government must get back on track towards carbon neutrality.<sup>3</sup>

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<sup>1</sup> Rapport fait au nom de la commission spéciale chargée d'examiner le projet de loi, après engagement de la procédure accélérée, portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets (n° 3875 rect.), volume 1 p.5 available at [https://www.assemblee-nationale.fr/dyn/15/rapports/csldcrre/l15b3995-ti\\_rapport-fond](https://www.assemblee-nationale.fr/dyn/15/rapports/csldcrre/l15b3995-ti_rapport-fond) <accessed 20 March 2021>.

<sup>2</sup> Loi n° 2015-992 du 17 août 2015 de transition énergétique pour la croissance verte and loi n° 2019-1147 du 8 novembre 2019 relative à l'énergie et au climat.

<sup>3</sup> “le réchauffement climatique induit par les activités humaines continue de s'aggraver, alors que les actions climatiques de la France ne sont pas à la hauteur des enjeux ni des objectifs qu'elle s'est donnés. Le gouvernement doit reprendre le cap vers la neutralité carbone” (author's translation).

Hence the particular importance of this new Bill which purports to give a new impetus to the fight against global warming.

This Bill is the result of a wide consultation process that involved a representative sample of the French population.

Indeed, following the French President's speech of 25 April 2019 in which he announced a change in the decision-making process regarding the ecological transition agenda, a Citizens' Convention for climate change was set up in October 2019.

Unprecedented experiment of participatory and deliberative democracy in France<sup>4</sup>, the mandate and the objective of this Convention were to rethink all concrete and practical measures designed to help French citizens cope better with climatic change in the fields of transports, home insulation and home energy-efficiency improvements; to design complementary incentives or restricting measures and their financing.

Following 8 months of discussion and debate, the Citizens' Convention on climate made public its 150 proposals on 18 June 2020<sup>5</sup>, which are grouped into 6 clusters namely housing, food, consumer behaviour, means of transport and means of production. The proposals which also included constitutional amendments were communicated to the government and Parliament.

In his response to the members of the Convention of 29 June 2020, the President of the Republic declared that he accepted all but three proposals<sup>6</sup>.

5% of the 146 proposals fall within the scope of international and European negotiations; 10% of those that are of a regulatory nature are to be implemented by way of secondary legislation

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*Redresser le cap, relancer la transition*, Rapport annuel 2020 p. 5 (Executive summary in English) available at <https://www.hautconseilclimat.fr/publications/rapport-annuel-2020/> <accessed 14 May 2021>.

<sup>4</sup> Unique in its format, this is not however the first time that ambitious environmental legislation is the result of a wide democratic consultation process; see the 2007 "*Grenelle de l'Environnement*" which brought together representative of the government, local authorities, trade unions, businesses and voluntary sectors. Over the Summer of 2007, its six working groups produced 265 commitments articulated around 4 major objectives: fight against climate change; conservation and management of biodiversity and natural environment; protection of health and the environment, while stimulating the economy; creation of a real ecologically-responsible democracy. Those commitments led to the adoption in 2009 and 2010 of two major environmental Acts called "*Grenelle I*" (*Loi n° 2009-967 du 3 août 2009 de programmation relative à la mise en œuvre du Grenelle de l'environnement*) and "*Grenelle II*" (*Loi n° 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement*); see also the 2018 *EGALIM* Act (Act for a balance of commercial relations in the agricultural and food sector and healthy, sustainable and accessible food) which was also the result of a process ensuring the participation of citizens to its elaboration; and the 2018 *ELAN* Act (Act on housing development, planning and digital sector) which was drawn up after seven months of consultation involving professionals and citizens' associations of the housing sector giving rise to 1,200 proposals.

<sup>5</sup> See C. Dadomo, "The French Citizens' Convention on Climate Change" in 11 (2021) *IUCN AEL journal of environmental law* 76-84 <https://www.iucnael.org/en/academy-journal/current-issue>.

<sup>6</sup> The three rejected proposals are those to amend the preamble to the Constitution, to limit speed on motorway to 110 km/h and the 4% tax on corporate dividends exceeding 10 million euros to "participate in the collective financing effort of the ecological transition". See Elysée Palace, 'Emmanuel Macron dit oui à 146 propositions de la Convention citoyenne pour le climat !' 29 June 2020 <https://www.elysee.fr/emmanuel-macron/2020/06/29/le-president-emmanuel-macron-repond-aux-150-citoyens-de-la-convention-citoyenne-pour-le-climat> <accessed 30 July 2020>

in the form of *décrets* and *arrêtés*<sup>7</sup>; 20% of those that of a fiscal and budgetary nature will be implemented in the 2021 Budget and Finance Act; 40% of the proposals of a legislative nature were transposed into the Climate and Resilience Bill; the remaining 25% of the proposals will be implemented through a variety of channels.<sup>8</sup>

In February 2021, an amendment of Article 1 of the Constitution to include the “concepts of biodiversity, environment and fight against climate change” and the Climate and Resilience Bill were presented to Parliament.

Taking account of the French low-carbon strategy set up under the 2015 Act on energy transition, this bill has a double objective: that of respecting France’s international commitments and that of making the planet more habitable for present and future generations.

An ambitious text marking a new stage in France's commitment to climate change with an overall aim to cut greenhouse emissions by 40% by 2030 compared to 1990 levels, it is part of a body of legislation covering all dimensions of ecology from the preservation of nature to its various economic, health and social aspects.<sup>9</sup>

The Bill is divided up into under six titles and 17 chapters with a total of 65 articles. The first 5 titles mirror exactly the 5 headings of the Convention report<sup>10</sup> (consuming, producing and working, moving around, housing and food)<sup>11</sup> and title 6 covers extended judicial powers for the protection of the environment.

The 12 key measures of the Climate and Resilience Bill are:

1. a carbon score indicating the impact on climate of goods and services will have to be displayed on the packaging of all consumer products and services (Article 1);
2. all advertising for fossil fuels will be banned (Article 4);
3. local authorities and mayors will be given greater powers to control advertising space inside shop windows, in particular digital screens facing outside (Articles 6 and 7);
4. cities with a population of over 150000 inhabitants will have to create low emission mobility zones, notably by encouraging the use of bicycles, car-sharing and public transport (Article 25);

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<sup>7</sup> For instance, the ban of the use of gas heaters on outdoor terraces of cafes and restaurants or domestic fuel heating systems.

<sup>8</sup> These are proposals which can be implemented directly by state agencies such as communication and awareness-raising campaigns of ADEME (the agency for ecological transition), instructions to prefects, in particular for the moratorium on new peri-urban commercial zones, national strategies or action plans such as the development of the national strategic plan or the national strategy for biodiversity.

<sup>9</sup> See the 2018 Act for a balance of commercial relations in the agricultural and food sector and healthy, sustainable and accessible food (loi *EGalim*), the 2018 Act on housing development, planning and digital sector (loi *ELAN*), the 2019 Act on energy and climate and the 2020 Act the fight against waste and the circular economy (loi *AGEC*).

<sup>10</sup> See final 460-page report entitled “*Les Propositions de la Convention citoyenne pour le climat*” (The Citizens’ Convention’s Proposals on Climate Change) available in French at <https://propositions.conventioncitoyennepourleclimat.fr/pdf/ccc-rapport-final.pdf> <accessed 30 July 2020>

<sup>11</sup> See Dadomo fn 5 at 79-81.

5. the sale of the most polluting motor vehicles ie those emitting more than 95 grammes of CO2 per kilometre will be banned from 2030 (Article 28);
6. from 2024, airlines will have to comply with a compulsory 100% compensation scheme for greenhouse gas emissions for all domestic flights and with a voluntary scheme for flights to and from French overseas territories (Article 37);
7. all domestic flights will be banned when an alternative by train exists for journeys under 2 and a half hours (Article 35);
8. the rate of soil artificialization will have to be reduced by half over the next 10 years compared to the previous 10 years (Articles 46 and 47);
9. as from 2028, landlords will be prohibited from renting out poorly insulated properties (so-called "*passoires thermiques*" or "thermal strainers") through a gradual increase in energy efficiency requirements from 2025 (Article 46);
10. companies in the collective catering sector will have to introduce daily vegetarian meals on an experimental basis for two years as from September 2021 (Article 56);
11. companies in the collective catering sector will have to provide meals made up of 50% sustainable products or products with certified origin and quality (including 20% of organic products) (Article 57); and
12. a major offence (*délit*) of ecocide applicable to all natural and legal persons will be created (Article 64).

Currently debated in Parliament under a fast-tracked procedure<sup>12</sup> and adopted in first reading by the National Assembly, the Climate and Resilience Bill<sup>13</sup> was transmitted to the Senate on 4 May 2021 and is scheduled for debate in the second chamber between 15 and 18 June, 22 and 25 and possibly on 28 and 29 June 2021.

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<sup>12</sup> Known as *procédure accélérée* in French constitutional law, it involves a single reading of a bill by both chambers of parliament.

<sup>13</sup> Adopted by 332 against 77 votes, the full text with links to over 7550 amendments is available at [https://www.assemblee-nationale.fr/dyn/15/dossiers/lutte\\_contre\\_le\\_dereglement\\_climatique?etape=15-AN1](https://www.assemblee-nationale.fr/dyn/15/dossiers/lutte_contre_le_dereglement_climatique?etape=15-AN1) <accessed 5 May 2021>.