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**THE PARIS AGREEMENT AND THE  
REGULATORY CHALLENGES RAISED  
BY THE CLIMATE EMERGENCY**

Autorité de la concurrence, AMF,  
Arcep, ART, CNIL, CRE, CSA, HADOPI



## WHO ARE WE?

Since 2017, twice a year an informal group brings together the presidents of several Independent Administrative or Public Authorities, as defined by the French Act no. 2017-55 of 20 January 2017, as well as their directors or secretary-generals, to discuss cross-cutting issues and steer joint work and reflection. This group is currently made up of nine institutions. These meetings are supplemented by regular technical exchanges on the implementation of pooling projects.

This publication is the result of the collaboration of the following institutions in the group, whose missions cover a broad spectrum of action:

- The **Autorité de la Concurrence** is the competition regulator in France, an independent body serving competitiveness and the consumer.
- The **Autorité des marchés financiers (AMF)** is an independent public authority responsible for ensuring that savings invested in financial products are protected, that investors are provided with adequate information and supervising the orderly operation of markets.
- The **Autorité de régulation des communications électroniques, des postes et de la distribution de la presse (Arcep)** is an independent administrative authority that is the guardian of exchange networks in France. Created in 1997 to accompany the opening of the electronic communications sector to competition, its missions were extended to the postal sector, the protection of neutrality in 2015, digital regional planning and the regulation of press distribution.
- Since 2009, the **Autorité de régulation des transports (ART)**, an independent public authority, has been assisting with the opening up of the rail sector to competition. In 2015 and 2016, its fields of competence were extended to road activities (coach transport, motorway sector concessions) and then to the airport sector in 2019. The 2019 Mobility Orientation Act entrusted it with new missions of opening up mobility and ticketing data and regulating the infrastructure management activities carried out by RATP in the Ile-de-France region.
- The **Commission nationale de l'informatique et des libertés (CNIL)** is an independent administrative authority whose mission is to ensure that data privacy law is applied to the collection, storage and use of personal data.
- The mission of the **Conseil supérieur de l'audiovisuel (CSA)** is to guarantee the freedom of audiovisual communication in France. Its responsibilities cover in particular the protection of minors, respect for the pluralist expression of currents of opinion, the rigorous treatment of information, the allocation of frequencies to operators, respect for human dignity and consumer protection.
- As an independent administrative authority, the **Commission de régulation de l'énergie (CRE)** ensures the proper functioning of the electricity and gas markets in France, for the benefit of end consumers and in line with energy policy objectives.
- The mission of the **Haute autorité pour la diffusion des œuvres et la protection des droits sur Internet (Hadopi)** is to protect works against copyright or neighbouring rights infringements committed on electronic communications networks, to encourage the development of legal offerings and to regulate technological protection measures.

## PARIS AGREEMENT AND CLIMATE EMERGENCY: REGULATORY CHALLENGES

Signed in December 2015 by 195 countries, [the Paris Agreement](#) was a major international political milestone, setting the objective of keeping global warming below 2°C compared to pre-industrial levels. Achieving the objectives of the Agreement not only commits the public authorities via the signatory States, but also requires profound and irreversible transformations of economic activities and models, with strong social and societal implications.

These transformations, which are essential to combat and cope with global warming, affect all activities, including those subjects in France to the supervision or regulation of Independent Administrative or Public Authorities (IAA/IPA). The effective implementation of these transformations by companies, as well as the opportunities and risks they entail, are therefore key factors that call regulators to consider:

- How to take these developments into account when conducting their missions;
- How to articulate their mandate and the objectives of the Paris Agreement as well as, in some cases, the implementation of new provisions linked to the evolution of their mandate;
- Tools for intervention that can be mobilised, both vis-à-vis professionals and the public, to contribute to the common objectives defined by the Paris Agreement.

Regulators must therefore be able to keep pace with changes at regulated entities, commensurate to the challenges arising from combating global warming and adapting to climate change, and to inform society, which also increasingly calls upon regulators regarding these matters.

This is why, as part of their joint work, the Presidents of nine IAA/IAs have decided to take up this subject. The present publication, which follows meeting organised on 16 December 2019, aims to formalize the initial reflections conducted by the relevant authorities, to report on their progress on this topic as well as to do discuss on the next steps of their work.

*Although they were conducted before the global Covid-19 epidemic spread in France, these initial reflections resonate with the challenges of sustainability and resilience that our societies and economies are facing today. They contribute to the debate on the responses that regulators can provide as we emerge from the health crisis.*

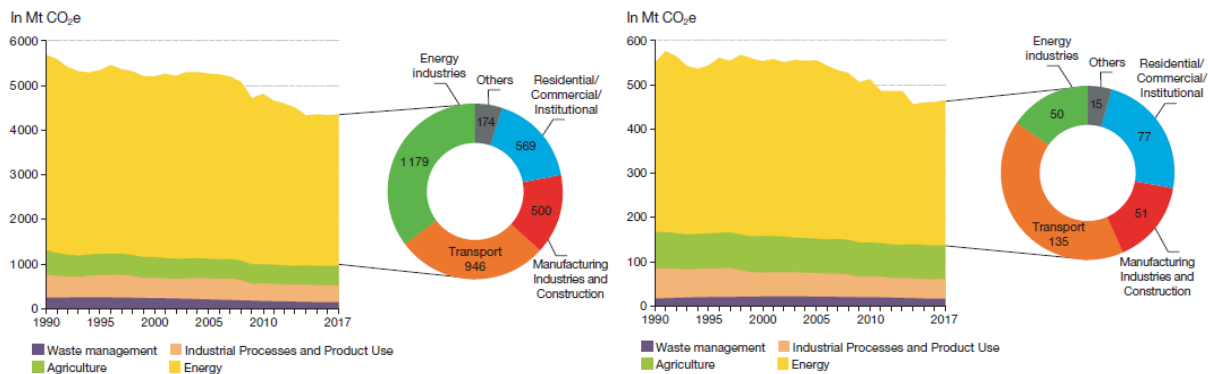
# 1. THE CLIMATE CHALLENGES FACING ECONOMIC ACTIVITIES ARE KEY FACTORS OF THE REGULATORY CONTEXT.

## 1.1. THE CLIMATE IMPACT OF BUSINESS SECTORS IN KEY FIGURES <sup>1</sup>

There is now a consensus in the scientific community that the global climate has been warming significantly since 1850 and that one of the main causes of this warming is the increase in the concentration of greenhouse gases (GHGs) in the atmosphere, caused by human activities, either through direct emissions or through attrition of the reservoir capacities of these GHGs.

In the European Union, energy use is the main source of GHG emissions (78.0% in 2017) ahead of agriculture (10.0%). The highest emitting energy sector uses are energy industry (27.3%), transport (21.9%) and tertiary residential (13.6%), followed by manufacturing and construction (11.5%). In France, energy use is also the leading source of GHG emissions (70.4%), but the share of emissions from the energy industry is low (10.7%), due to France's unique electricity production mix, which is made up of more than 70% nuclear power and around 20% renewable energies (hydraulic, wind and solar).<sup>2</sup> Transport (29.1%) and tertiary residential (16.6%) are major emission sectors in France, along with agriculture (16.4%).

**Figure 1 :** Breakdown by source of GHG emissions in the EU-28 (left) and France (right) between 1990 and 2017



**Source:** 2020 edition of Key figures on climate, CGDD/I4CE, based on data from the European Energy Agency.

In Europe and in France, the largest reductions in local emissions since 1990 have been observed in the energy sectors and especially in manufacturing industry. Total GHG emissions per capita decreased by 22.5% between 1990 and 2017 in France and by 24.8% in the EU-28. Transport is one of the few sectors where emission levels in 2016 are higher than in 1990, due to increased demand, even though these are below the peaks reached in the 2000s. The sector's emissions come mainly from road transport (95%), of which more than half (53.2%) come from private vehicles.

**Figure 2 :** Territorial GHG emissions per capita (in tonnes CO<sub>2</sub> equivalent per year)

|                | 2017 | Change 1990-2017 |
|----------------|------|------------------|
| EU28           | 6,9  | -24,8%           |
| Germany        | 9,6  | -0,7%            |
| <b>France</b>  | 5,2  | -22,5%           |
| Italy          | 6,0  | -21,5%           |
| United Kingdom | 6,0  | -44,2%           |
| World          | 4,9  | +14,8%           |

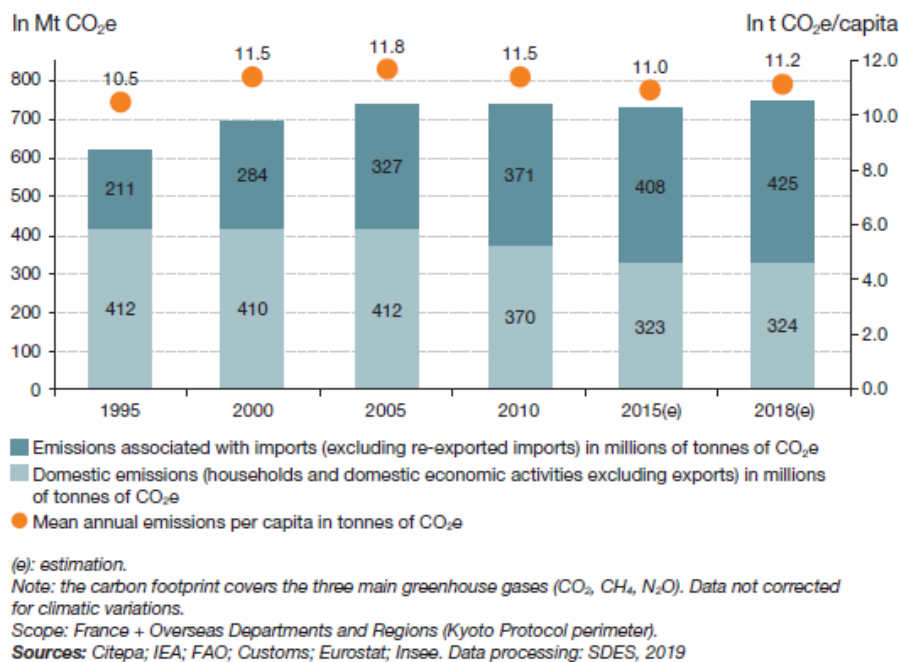
<sup>1</sup> Data from the 2020 Edition of *Key Climate Figures France, Europe and the World* published in November 2019 by the French General Commission for Sustainable Development with I4CE. GHG emissions are measured in tonnes of CO<sub>2</sub>.

<sup>2</sup> The global energy mix remains dominated by fossil fuels (81% of production in 2016), far ahead of renewables (14%). Coal, which accounts for only 21% of the mix, is the largest source of CO<sub>2</sub> emissions.

Among other sectors, the digital sector is the focus of increasing attention, although its share of GHG emissions remains low, at around 3% of global emissions<sup>3</sup> (a footprint equivalent to air transport). Nevertheless, they are growing at a high rate of 8% to 9% per year. The current rate of growth of GHG emissions from digital technology would lead to a doubling of its overall footprint by 2025 compared to 2015, *i.e.* a carbon footprint equivalent to that of light vehicles (cars, motorcycles ...) <sup>4</sup>. In this respect, it seems that growing public awareness has led to a reversal of public perception of the role that digital technology can play with regard to the environment. Only 38% of the population, who consider themselves to be poorly informed on this issue, see this sector as an opportunity for the environment, whereas more than half (56%) thought so in 2008<sup>5</sup>.

Assessing the weight of a country’s pressure on the climate must also take into account the emissions associated with imports. The carbon footprint, which is the calculation of GHGs driven by a country’s domestic demand, has for example increased by 20% for France between 1995 and 2018, while emissions from domestic economic activities have decreased by 28% and those of households by 7%.

**Figure 3 : Change in France’s carbon footprint**



Source: 2020 edition of Key figures on climate, CGDD/I4CE.

## 1.2. MAIN CLIMATE TRANSITION CHALLENGES FOR REGULATED SECTORS

In France, the Government is establishing a National Low Carbon Strategy (NLCS) for all sectors in order to achieve the climate objectives enshrined in the law and to reduce the carbon footprint of French consumption. Public decision-makers, at both national and territorial levels, must take it into consideration. Adopted for the first time in 2015, the NLCS was revised in 2018 and 2019 to take into account the carbon neutrality objective in 2050 set by the law of 8 November 2019 on energy and climate. It is subject to public [consultation \(in French\)](#) before its final adoption. The Government is also adopting a national climate change adaptation plan.

<sup>3</sup> See ARCEP, [Digital tech's carbon footprint \(in French\)](#), October 2019.

<sup>4</sup> See The Shift Project, "Pour une sobriété numérique", October 2018 (p. 18) and the round table of 29 January 2020 organised by the Senate information mission on the environmental footprint of digital technology.

<sup>5</sup> See ARCEP, [Digital Market Barometer 2019 \(in French\)](#), November 2019.

In December 2019, the European Commission announced a [Green Deal](#) for Europe, which aims, among other things, to make the European Union carbon neutral by 2050: climate legislation will translate this political commitment into a legal obligation, along with a package of measures concerning the energy, building, industry and mobility sectors.

The main transition challenges for the activities falling within our regulatory scope are summarized here.

For the **energy industry**, the reduction of GHG emissions requires changes in the technologies used, whether in the production, distribution or supply of energy (e.g. smart grids to avoid consumption peaks, energy storage, energy intermittency management, etc.), but above all by decarbonisation and diversification of the energy mix (e.g. closing coal-fired power plants, developing biomethane, etc.) Finally, the energy industry must prepare itself for a requirement of energy sobriety, that will reduce the country's energy consumption. Climate change also affects the sector through various weather hazards: for example, droughts and floods significantly affect hydroelectric power production and even nuclear power generation; power lines are at risk of damage from storms and cyclones.

As far as the **transport** sector is concerned, the draft NLCS sets an ambition of total decarbonisation, with the exception of domestic air transport, by encouraging the control of transport demand (teleworking, car sharing, etc.), modal shift and improvement of the energy performance of vehicles. With regard to adaptation to climate change, the national climate change adaptation plan puts actions in place to minimise the consequences of extreme events such as floods or ground movements, but also to anticipate changes in average conditions: for example, frost cycles and high temperatures will accelerate road wear.

**Digital technology** carbon footprint is also a subject of attention highlighted by the European Green Deal. The Digital Agenda announced by the European Commission on 19 February 2020 sets a target of carbon neutrality for telecommunications networks and data centres by 2030. The reduction of GHG emissions from digital technology involves decarbonisation (of the energy consumed in the production of equipment and the operation of networks), optimisation of the energy needs of infrastructures (networks, data centres, etc.) and sobriety (longer equipment life, recycling circuits, reparability)<sup>6</sup>. There is also the question of maintaining certain technologies that are less and less used, which sometimes generate significant energy consumption on fixed networks, fibre consumes on average three times less than ADSL. Efficiency made possible by new technologies can, however, be offset by the increase in consumption induced by new uses: this is the "rebound effect". Finally, the increase in the number of extreme weather events challenges the resilience of digital networks.

**Broadcasting companies** have a responsibility both to be fully-fledged actors in the climate transition and to provide essential information to society. The issue of reducing the environmental footprint of broadcasting activity is particularly relevant to the digital sector, since these services are increasingly distributed via broadband networks and mobile networks, in the long term. The success of on-demand consumption of programmes explains in particular the majority share of traffic represented by television and audio contents. Furthermore, a great deal of attention is paid to the conditions under which programmes are produced, whether produced in-house by these companies or supplied by third parties. Society also expects media not only to provide extensive information on climate and environmental issues, but also to adapt their advertising strategy to the challenges of global warming.

Digital solutions are also a vector of innovation enabling many sectors activity to contribute to the climate transition: intelligent adaptation of the thermal performance of a building, optimisation of transport, technologies for financing green activities, etc.

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<sup>6</sup> In addition to GHG emissions, there is the consumption of resources (rare earths and water) generated by the production of terminal equipment.

### 1.3. THE CASE OF THE FINANCIAL SECTOR

Finance plays, among the activity sectors, a specific role of intermediation by contributing to the allocation of capital and the sharing of individual and collective risks of economic actors. This role gives it a specific responsibility with regard to climate issues – beyond the direct impact related to the operation of financial institutions (buildings, travel, networks, etc.). Indeed, the Paris Agreement stresses the need to make “finance flows consistent with a pathway towards low greenhouse gas emission and climate-resilient development” (Article 2, c).

The aim is both to reduce funding for the activities that contribute most significantly to global warming and to support economic model transition. At European level, in June 2019 the European Commission estimated that the additional investment (public and private) needed to reach the targets set at that time in climate and energy issues by 2030 lies in the region of €260 billion per year. These needs have been reassessed to take into account the new objectives of the Green Deal. In this context, the Commission has proposed an investment plan to mobilise €1 000 billion of public and private funding between 2021 and 2030.

It was also in 2015 that the international financial community became more aware of the financial risks related to climate issues. Two types of risks stand out. On the one hand, physical risks, linked both to the increase in the severity and frequency of extreme climate events and to the gradual transformation of the climate (changes in rainfall, ocean acidification, rise in average temperatures and sea levels, etc.). On the other hand, the risks of transition, linked to the transition to a low-carbon economic model (regulatory, technological and consumer changes, etc.), which may, in particular, take the form of legal disputes or reputational damage. These risks weigh directly on the value of financial assets, with growing concern about “stranded assets”, and their devaluation due to risks associated with climate change.

Since then, initiatives have multiplied at the international level. In 2015, the Financial Stability Board formed the Task Force on climate related financial disclosures (TCFD). Central banks launched in November 2017 the Network for greening the financial system (NGFS), at the initiative of the Banque de France. The European Commission published its [Sustainable Finance Action Plan](#), one of the four pillars of the European strategy for achieving the 2050 carbon neutrality target, and an integral part of the Green Deal for Europe. Initial work was announced in 2019 on “climate stress tests” for banks and insurance companies.

In parallel, financial market participants – banks, insurance companies, asset managers, pension funds – are developing climate strategies. They are committed to the fight against global warming, through policies of exclusion or divestment in the activities that emit the most greenhouse gases (coal in particular). They finance green activities, or engage with clients or the companies in which they invest to encourage or demand fuller consideration of climate risks. The rapid development of the green bond market also illustrates the growing interest of the financial markets in environmental issues.

These movements are part of the broader development of sustainable finance, which aims to contribute to a more sustainable economic model by taking better account of environmental, social and governance (ESG) factors and long-term risks and opportunities.

### 1.4. A PROFOUND TRANSFORMATION OF COMPANIES AND BUSINESS MODELS

Companies, whether regulated or not, are facing increased transparency requirements from public authorities and all stakeholders (customers, investors, employees, civil society, etc.) with regard to their contribution – positive or negative – to the fight against climate change and their ability to respond to the strategic, technical, financial and social challenges associated with it.

In this respect, France has a pioneering legal framework, as shown by the declaration of the carbon

footprint of large companies (Article L229-25 of the Environment Code) and the transparency obligations for managers and investors (Article 173 of the Energy Transition Law for Green Growth).

This requirement for transparency raises the question of measure (quality and comparability of the data, choice and methodology of indicators, selected perimeters, use of scenarios, etc.) and therefore the need for standards, most often sector-specific, and even the development of environmental accounting that takes externalities into account.

The question of the cost of the transition is raised in all sectors: carbon prices, emission allowances, carbon tax, renewable energies production costs, higher cost of transporting people and goods, impact on the valuation of financial assets, as well as the related social costs. Costs may vary from country to country, depending on levels of development, energy mixes, climate ambitions and government choices. The European Commission thus puts the objective of “just transition” at the heart of the Green Deal.

The lack of coordination or sharing of climate policies can lead to competitiveness gaps between jurisdictions, which can undermine the effectiveness of the most ambitious climate policies. Also, under the Emissions Trading Scheme, the European Union takes into account the risk of “carbon leakage”, which is a situation where a company relocates its production to a country with less stringent rules for limiting emissions, leading to an increase in global emissions. More generally, the global footprint of certain economic players raises the question of their responsibility in the fight against global warming and their regulation, across borders and throughout their value chain.<sup>7</sup>

Finally, in order to cope with the constraints or the objective of environmental protection, companies may resort to concerted conduct aimed either at improving their environmental efficiency or, on the contrary, at delaying the adoption or implementation of measures or behaviour aimed at better environmental protection. Some of such conduct may be, in certain circumstances, in conflict with competition law, in particular the prohibition of cartels.

**Companies are facing increased transparency requirements regarding their contribution to the fight against global warming and their ability to respond to the related strategic, technical, financial and social challenges associated.**

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<sup>7</sup> See AMF, *4th Report on Corporate Social, Societal and Environmental Responsibility*, November 2019.



### Advances in corporate climate reporting

The publication of extra-financial information of companies is governed in Europe by Directive 2014/95/EU on extra-financial reporting, which will be revised in 2020.

In June 2017, the TCFD (see above) delivered its recommendations on corporate transparency on climate issues. These are organised around four pillars: governance, strategy, risk management, indicators and metrics. These recommendations are strengthened for the sectors the most impacted: finance, energy, transport, materials and construction, agriculture, food, forestry. The approach has gained international acceptance (at the end of 2019, more than 930 organizations representing a market capitalization of \$11 trillion), although progress is needed to implement the recommendations and many challenges remain.

In June 2019, the European Commission published guidelines on climate reporting that integrate and complement TCFD recommendations. It invites companies subject to the Non-financial reporting directive to describe how their business model can have an impact, both positive and negative, on the climate and to publish all indirect GHG produced in the value chain, including upstream and downstream emissions.

At the beginning of 2020, the European Commission mandated the European Financial Reporting Advisory Group (EFRAG) to conduct preparatory work for a new European standard for extra-financial reporting. The objective is twofold: on the one hand, to provide a clear framework for companies to meet their growing extra-financial reporting obligations and, on the other hand, to enable investors to access comprehensive and comparable information.

## 2. THE REGULATORS UNDERLINE THE NECESSARY LINKAGE BETWEEN THEIR MANDATE AND THE OBJECTIVES OF THE PARIS AGREEMENT.

### 2.1. THE LEGAL FRAMEWORK

The law entrusts the **CRE** with the task of regulating the markets and energy network operators in a monopoly position *“for the benefit of the end consumer”* and *“in line with the nation’s energy policy”*. Taking climate issues into account is therefore at the heart of its missions, without being explicitly mentioned by the law.

The mission of the **ART** is to ensure the proper functioning of the markets that contribute to the production of mobility services. The transport code, which specifies its missions in railway matters, requires it to carry out its duties *“by ensuring compliance with the law of 12 July 2010 on national commitment to the environment, in particular the objectives and provisions aimed at encouraging the development of alternatives to road transport for goods transport”*<sup>8</sup>. However, since its tasks concerning each mode of transport are now set independently, it is not asked to assess the control of overall transport demand or modal shift.

The law provides that the **Arcep** shall take *“reasonable and proportionate measures to achieve [the objective] of a high level of environmental protection jointly with the ministers responsible for health and the environment”*<sup>9</sup>. In view of the growing importance of the social issues associated with networks, the Arcep worked on the carbon footprint of digital technology as part of the *“Networks of the Future”* project<sup>10</sup>. The Arcep will continue its work on environmental issues raised by digital, in partnership with the ADEME (French Environment & Energy Management Agency).

<sup>8</sup> Article L2131-1 of the Transport Code.

<sup>9</sup> Article L. 32-1, II, 8° of the French Post and Electronic Communications Code.

<sup>10</sup> The Future Networks project represents a cycle of reflection to anticipate the evolution of networks, with a horizon of 5 to 10 years, for which Arcep has set up a Scientific Committee composed of 10 personalities from the academic, entrepreneurial and industrial world.

The **AMF**, whose mission is to ensure that investors are properly informed, mainly aims to verify that issuers (companies whose shares or bonds are listed on a stock exchange) and portfolio managers comply with their disclosure obligations. These obligations are determined at European level (Directive 2014/95/EU on extra-financial information, new EU Regulation 2019/2088 on sustainability disclosures) and at national level (law on new economic regulations in 2001, the so-called “2<sup>nd</sup> Grenelle” law in 2010 and the law on energy transition for green growth in 2015). The authority has recently seen its missions evolve to take into account the issue of climate risk explicitly. The PACTE bill<sup>11</sup> of 2019 has entrusted it with the task of monitoring the quality of information provided by management companies with regard to climate risk.

For the other authorities, the links are more diffuse but they question the regulator’s missions.

The **Competition Authority** can thus apprehend the conduct of undertakings that affect, positively or negatively, the objectives of the Paris Agreement when the competitive aspects of such conduct fall within its field of competence. This is the case when the behaviour concerns a potential element of differentiation or, more generally, an element in the value chain of the products or services offered. The mandate given by the legislator is to protect competition and not, per se, to protect the environment. Behaviour presented as having the objective of ensuring better environmental protection could prove to be contrary to competition law, for example if it led undertakings to form a cartel<sup>12</sup>. Conversely, the Authority may act in favour of environmental protection when it sanctions anti-competitive agreements, which have led undertakings to neutralise a differentiation factor involving fuller environmental protection<sup>13</sup>. Finally, when the Authority takes decisions on merger control, it takes into account the preservation of consumer welfare, which is also characterised by its environmental dimension.

In the case of the **CNIL**, the Paris Agreement has limited and indirect consequences for the regulation of personal data. The legislations protecting this data – GDPR<sup>14</sup>, law of 6 January 1978 – clearly have a distinct purpose. However, some fundamental principles, such as minimising data collection and limiting the retention period, if not intended to do so, may have the effect of contributing to the objectives of digital sobriety. The development of devices based on large-scale data collection, processing and storage contribute to GHG emissions while at the same time having an impact on the protection of data and freedoms. The application of the GDPR, by limiting the massive consumption of data, thus produces positive externalities for the environment. Furthermore, raising awareness among organizations and individuals about the environmental impact of digital technology and the challenges of digital sobriety can be linked to the mission of reflection on the social and ethical issues raised by digital uses, entrusted to the CNIL by the law for a Digital Republic of 7 October 2016.

In the audiovisual sector, the Law of 30 September 1986 on the freedom of communication gives the **Conseil supérieur de l’audiovisuel** an objective formulated in very general terms since it must “*ensure that the development of the audiovisual sector is accompanied by a high level of environmental protection*”. The Audiovisual Media Services Directive, revised in 2018, sets out more precisely the objectives for Member States that “*audiovisual commercial communications shall not [...] encourage behaviour grossly prejudicial to the protection of the environment*” (Article 9). The conditions of its transposition into French law are being defined by Parliament as part of the discussion of the draft bill on “*audiovisual communication and cultural sovereignty in the digital age*”.

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<sup>11</sup> *Business Growth and Transformation Act.*

<sup>12</sup> *Under conditions prohibited by Article L. 420-1 of the French Commercial Code or Article 101 TFEU.*

<sup>13</sup> *See, for a typical case, Decision No 17-D-20 of 18 October 2017 on practices implemented in the resilient flooring sector, paragraphs 388 to 407 and 436 to 440.*

<sup>14</sup> *General Data Protection Regulations.*

## 2.2. A RESPONSIBILITY SHARED WITH OTHER PUBLIC AUTHORITIES

The Paris Agreement is an agreement signed by States, which commits them to be responsible for the public policies they implement. In France, energy policy, policy on the mobility of people and goods, environmental policy and the nation's economic and social policies are the responsibility of the State. At national level, there is therefore a link to be found between the missions of the regulators and the State policies.

At the same time, the growing accountability of private actors – and public actors in the free-market field – (definition of a social interest<sup>15</sup>, transparency obligations, pressure from civil society, etc.) introduces new requirements for the authorities that regulate them. Accordingly, regulators, although independent and not responsible for climate policies, must be able to inform society that questions them on these issues and accompany entities under their control.

Regardless of the degree to which climate objectives are integrated into the authorities' legal framework, they can draw the attention of public authorities to various issues that may involve changes in regulation, particularly climate issues. As such, the coherence of the regulatory framework is an important matter in a context of regulation that can be carried out at several levels (national, European, international) and via a multi-sectoral approach. The recent adoption of the so-called "taxonomy" European regulation, establishing a unified system for classifying sustainable investments in the financial sector, starting with global warming mitigation and adaptation activities, provides a good example of this, as this regulation will have an impact on all sectors of activity.

## 2.3. POSSIBLE AREAS OF FRICTION BETWEEN REGULATORS' MISSIONS AND CLIMATE OBJECTIVES

The implementation of a mission to protect consumers' interests, in the framework of economic regulation, may run up against climate objectives, if the externalities linked to GHG emissions are not taken into account in the form of an appropriate price signal, and without any other assessment method offered to the regulator by the texts. Horizontal cooperation agreements aimed at enhancing environmental protection may also sometimes create friction with competition law compliance. At the same time, regulation, by promoting dynamic competition, can lead players to differentiate themselves by turning environmental constraints into a competitive advantage.

In the sphere of finance, the AMF must reconcile its mission to protect savings invested in financial instruments with a proactive approach to sustainable finance. However, there are uncertainties about the assessment of climate risks and occurrence horizons, and the related opportunities: impact of exclusion strategies on short-term financial returns, risk assessment and return profiles of green projects, etc. There are two possible emerging responses to these questions, over and above investor disclosure requirements and risk management: firstly, the mandatory consideration of investors' environmental preferences when investing or divesting; secondly, a better understanding of the links between extra-financial performance (and environmental performance in particular) and financial performance and the sensitivity of investment portfolios to climate risk. Certain provisions of financial regulation may also be reconsidered in the light of new issues and practices: for example, the growing role of investor coalition on climate and other forms of collective engagement could lead to clarifying the limits with respect to the rules applicable, for example, to "action in concert".<sup>16</sup>

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<sup>15</sup> The PACTE law of 22 May 2019 added a paragraph to Article 1833 of the Civil Code: "The company is managed in its social interest, taking into consideration the social and environmental issues of its activity. »

<sup>16</sup> Cf. European Securities Markets Authority, [Report on Undue short-term pressure on corporations](#), Dec. 2019 (§202).

### 3. THE REGULATORS MOBILISE THEIR TOOLS OF INTERVENTION TO DEAL WITH COMMON PROBLEMS

#### 3.1. THE DIFFERENT LEVELS OF ACTION VIS-A-VIS PROFESSIONALS

Climate change is bringing about profound and irreversible changes in the economy: it is also the role of regulators to accompany these changes so that they constitute an opportunity for development with controlled risks rather than a source of disorder or regression.

**CRE's** decisions in terms of economic regulation (competitive tendering, price approval, definition of market rules, etc.) can contribute directly to mitigating climate change. In particular, CRE implements support schemes for renewable energy production with a constant concern for economic efficiency, cost control being a factor in the success of the energy transition. It has recently proposed that the assessment of such projects should also be based on ecodesign criteria: mandatory submission of the life-cycle analysis of equipment, possible end-of-life recycling of equipment, in particular wind turbine blades. In addition, the CRE provides incentive regulation for electricity system operators to encourage them to limit their own energy consumption. The CRE also has a support role, which it implements with the actors in the gas sector (greening, emergence of hydrogen).

The **AMF** does not have economic regulatory powers but supervises the conduct of professionals and ensures the quality of information provided to investors. In this regard, the AMF can take action to raise awareness and support regulated entities in dealing with climate issues, as well as to monitor and control them. This includes monitoring the responsible investment practices of portfolio management companies, reviewing the information provided by listed companies and management companies on climate risk management, reviewing the information on green investment products (green bonds, low-carbon funds, etc.), monitoring and assessing climate-related commitments<sup>17</sup>. The AMF can also highlight best practice (e.g. on the use of carbon data) or define new requirements via its regulatory powers (AMF General Regulation, doctrine). The AMF's [Roadmap for sustainable finance](#) was published in November 2018, sets out its different mode of action. It aims to integrate sustainability issues into all of the AMF's missions and activities.

The **Competition Authority** can provide, through its decisions but also through its opinions, a competitive framework allowing the emergence of corporate behaviour that can respond to climate change issues. When necessary, to remind about appropriate conduct may involve the sanctioning of deviant conduct.

**Data-based regulation complements the traditional tools of the regulator.**

Data-based regulation also complements the traditional tools of the regulator. Instead of prescribing a certain behaviour to economic actors, the aim is to create a network of information and incentives to reduce information asymmetries and multiply the impact of the regulator's action by mobilising users and their intermediaries and providing them with accurate and tailored information.

In the case of the **digital** sector, this regulation could take the form of public sharing of data by the regulator or by the companies themselves under the aegis of a regulator in order to support public awareness. This awareness could then induce a certain form of sobriety and direct consumers' choices towards the most virtuous economic actors allowing a higher level of environmental protection by informing, for example, the carbon footprint linked to the manufacture of terminals or certain digital uses.

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<sup>17</sup> [Joint mission with the Autorité de contrôle prudentiel et de résolution \(ACPR\) announced in July 2019.](#)

In the **audiovisual sector**, the CSA could draw on legislative provisions or take decisions on its own initiative, in addition to the tools relating to digital networks. On the one hand, the CSA could foster actors to enhance and develop their internal actions. On the other hand, the CSA could ask them to make commitments aimed at ensuring that their economic model and programmes increasingly reflect the challenges of the climate transition.

Regulators are required to analyse and monitor the climate data of a number of actors, with some actors being monitored by several authorities. Avenues for collaboration or pooling are therefore being considered.

### **3.2. THE RIGHT INFORMATION FOR THE PUBLIC**

While the public increasingly expresses strong convictions about the actions to be taken in the fight against global warming, its knowledge of the issues and the driving forces behind its actions, as an energy consumer, transport user, digital user or saver, is often limited<sup>18</sup>. Education is therefore an important lever for regulators within their remit and more generally on climate matters.

Greenwashing or the disproportionate use of greening as a business argument is of major concern to regulators. For example, the CRE is working on “green” energy supply offers. The AMF ensures that the information provided to investors about green investment offers is accurate, clear and not misleading: preserving the conditions of trust is a prerequisite for the development of sustainable finance.

Over and above the fight against greenwashing, the aim is to provide the public with terms of reference so that their decisions correspond to their preferences and convictions on the fight against global warming. The AMF supports, for example, the European Commission’s plan to create a European eco-label for financial products, inspired by the French public label GreenFin. The definition of a framework for market indices aligned with climate objectives (Climate Transition Benchmark and Paris-Aligned Benchmark), via a European regulation adopted in 2019, effectively contributes to this objective. This is also the case for the new transparency obligations on the risks to the sustainability of investments imposed by the new European regulation inspired by Article 173.

More generally, in an era of major technical transformation, which generates massive information as well as misinformation, regulators must remain a key player whose communications are expected, deemed objective and to be influential on the public, operators and markets.

Thus, new initiatives may be taken, involving regulators: the law of 10 February 2020 on the fight against waste and for the circular economy, which requires telecommunications operators to inform their subscribers of the level of data consumed and the associated GHGs, according to a methodology to be established by the French Environment and Energy Management Agency (ADEME). The Arcep will contribute to this methodology and wishes reach out to operators in order to obtain more precise data at regular intervals. The Arcep is currently exploring the publication of information in the form of a “green barometer” of telecommunications networks and their uses. The CSA could contribute to this

**Beyond the fight against greenwashing, the aim is to provide the public with references so that their decisions correspond to their preferences and convictions in relation with the fight against global warming.**

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<sup>18</sup> See the example of the [AMF’s survey among French investors on responsible investment](#) published in June 2019.

initiative since video consumption is a major use of digital networks. More generally, it will also contribute to the fight against greenwashing as part of its mission to combat the dissemination of false information.

### 3.3. STRENGTHENING THE REGULATORS' EXPERTISE

Conducting studies provides regulators with a better understanding of the climate impact of regulated activities, as well as the challenges of mitigating or adapting to climate change and the links with other environmental risks, including those related to biodiversity conservation. Studies can be carried out internally or in partnership with other institutions or the academic community.

For example, **ART** has collaborated with ADEME to establish emission factors for road passenger transport or supported a Capstone project, led by the *École des Ponts Paristech* and the *Paris School of Economics*, to carry out a comparative life-cycle analysis of coach transport versus rail transport. Future ART's single-modal reports, notably the rail balance sheet and the report on the road passenger transport market, will include an assessment of their environmental impacts. ART also plans to create a report offering a multimodal view of the sectors which will analyse the cross-impact of the markets in terms of emissions.

The **Arcep** has also produced a first assessment of the environmental impact of digital technology based on expert opinions and review of relevant literature. On 26 March, Arcep began collecting information on this subject from electronic communication operators.

More generally, climate issues are prompting regulators to expand their institutional networks. For example, the **AMF** participates in the FinanceClimAct project, supported by the European Commission and coordinated by ADEME, under the impetus of the Ministry of Energy and Solidarity Transition. One of the objectives of the project, which will run for a period of five years until 2025, is to promote the development and sharing of expertise on climate risk and institutional collaboration in the field between public and private sector participants in the Paris financial centre. In September 2019, the AMF set up a Climate and Sustainable Finance Commission, composed of experts from the financial, business, civil society and academic worlds, to provide it with information on sustainable development issues and the responses developed by the financial sector. The AMF is also implementing a training programme for its staff. Authorities could consider cooperation in this field.



## NEXT STEPS

The authorities will continue their joint reflection on the subject and to pave the path for collaboration, in parallel with the actions they plan to take:

- The **Autorité de la concurrence** has made sustainable development one of its priorities for action for the year 2020. The Authority will seek to develop its thinking on the close links between competition law and the environment, for example by targeting infringements of competition law that also may harm the environment. The Authority will be taking the discussion to its international network and to European level, in the context of the revisions in 2020 of the European exemption regulations on vertical restraints and on certain categories of research and development agreements, as well as on certain categories of specialisation agreements.
- The **AMF** will continue its different activities of support, supervision and education. The Authority is active at European level, in the context of the European Commission's action plan for sustainable finance, and at national level, in particular to monitor the information provided to retail investors on green investments and to prevent green washing. The AMF will also implement the monitoring of climate-related commitments made by French financial institutions (jointly with the ACPR).
- The **Arcep** will continue the action initiated in 2019 on the environmental footprint of digital technology. It will first include a dedicated section in its report on the state of the Internet, which will be enriched in the years ahead. It intends to use the power of data to give consumers the tools they need to drive the market towards more sustainable offers. Through the introduction of a green barometer, the regulator will promote good practice by collecting environmental information from operators (as per a decision taken on 26 March) and will set up consumption measurement tools, publishing information enabling users to steer the market towards environmental objectives. It will also take this action at European level by co-chairing the new "sustainability" expert group within the Body of European Regulators for Electronic Communications.
- The **ART** has already undertaken several actions: the Authority's forthcoming single-mode reports, notably the rail balance sheet and the report on the road passenger transport market, will include an assessment of their environmental impact. It also plans to create a report offering a multimodal view of the sector, which will analyse the cross-impact of the markets in terms of emissions. Finally, the Authority reaches out to various organisations in charge of carrying out environmental studies but also to academic circles in order to establish collaboration.
- The **CNIL** is continuing its work to explore the links between the protection of individual freedoms and environmental transition. In conjunction with scientific partners, it plans to carry out life cycle analyses in 2020 to measure and compare the energy impact of several connected objects based on the transmission of personal data.
- The **CRE** will continue its action in the fight against global warming at several levels. The CRE has drawn up ten thematic fact sheets to contribute to the debate on future legislative developments to best lead the transition to a Europe with zero net greenhouse gas emissions by 2050 ("European Green Deal" proposed by the European Commission). At national level, CRE has initiated collaboration with the High Council for the Climate (an independent body reporting to the Prime Minister). The CRE's Foresight Committee will work in 2020 on marine energies, electric mobility and biomethane. Finally, this work was initiated before the health and economic crisis linked to the Covid-19 epidemic, but it should take into account the effects of the crisis as the energy sector is impacted. Although the climate emergency may seem more distant at the moment, the absolute fight against climate change will have to resume.

- The **CSA** has initiated a new collaboration with the **Hadopi** to deepen the analysis of subscription video-on-demand services in France during the year 2020. These services, which are demanding in terms of digital network consumption, will be observed in terms of both offers and uses. The presence of **Arcep** in this study will help shed light on the environmental issues raised by the increase in online video viewing in terms of energy consumption and the ecological impact of data centres.
- The **Hadopi** proposes to include information on the environmental impact of digital technology in the teaching modules it distributes to primary and secondary school pupils and will distribute from September 2020 to high school pupils, to raise their awareness of the protection of creation on the Internet and more generally of responsible digital use. In addition, the perception of the environmental impact of dematerialised cultural practices will be an issue addressed in the 2020 edition of the Consumption Barometer, carried out annually among a representative sample of French Internet users.



Autorité  
de la concurrence



AUTORITÉ  
DES MARCHÉS FINANCIERS



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Autorité  
DE RÉGULATION  
DES TRANSPORTS



CNIL  
COMMISSION NATIONALE  
INFORMATIQUE & LIBERTÉS



COMMISSION  
DE RÉGULATION  
DE L'ÉNERGIE



CONSEIL SUPÉRIEUR DE L'AUDIOVISUEL

Hadopi