

# ESG in France: Will it Thrive or Dive?

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**S**INCE the adoption of the Paris Agreement on Climate Change in 2015, France has been at the forefront in the shift towards a sustainable and circular economy. This movement is reflected in the legal sector through the increasing prominence of Environmental, Social, and

Governance (“ESG”) standards that have moved from soft law instruments to binding legislation and regulations.

Every sector is concerned, in one way or another, with ESG criteria, and companies have no choice but to incorporate them into their business and operational

strategies, which means aligning with the broader European transition towards more eco-conscious decision-making.

Like every transition of this magnitude, the development and implementation of ESG gives rise to debate in the political sphere, in courts, and within the public at large. Businesses are the obvious target, and critics increasingly point out the impact of their activities on the environment and on human rights. However, the costs of the transition should not entirely be borne by businesses, and they should not be borne at any price. For example, businesses should not have to bear the lack of legal certainty concerning new regulations that have, or will soon, come into force.

Very recently, when the march towards ESG seemed irreversible, some voices actively challenged this trend by calling into question the far-reaching impacts of some regulations on companies' competitiveness in a context where international competition is exacerbating.

During the 2022 French elections, President Macron boldly stated, "The policy I will pursue over the next five years will be ecological, or it won't exist." In January 2025, his Minister for the Economy, Mr. Eric Lombard, called for a simplification of the Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive, and he also

proposed their suspension until such simplification had occurred. This lack of stability has put businesses in a difficult position. They must invest the necessary resources to adapt themselves to new ESG requirements in the face of conflicting political announcements. They are also pressured by NGOs eager to force the transition to sustainability and hold companies accountable for the climate crisis.

This article explores how France's dedication to environmental preservation already translates into a wide scope of binding obligations, including forcing companies to integrate ESG into their business operations in a way that will give rise to court disputes. Looking ahead, ESG practices will remain a core pillar of France's approach to business, investment, and governance.

## **I. A Multifaceted, yet Controverted, Legislative and Regulatory Framework**

It is tempting to narrow the scope of ESG in France to reporting obligations. Yet, under French law, ESG extends far beyond sustainability compliance and covers a wide scope of obligations ranging from manufacturing obligations to product waste management; from environmental allegations to mandatory reporting; and from corporate duties to shareholder activism.

This translates into a fragmented legislative and regulatory framework, both in France and the EU. Reporting obligations currently remain the center of attention, but there is a very recent ESG backlash movement that may have unexpected consequences.

### A. France's Legislative Framework

A myriad of laws have been passed over the past decade relating to environmental, governance, and social change, including:

- The *New Economic Regulation Law* (2001)<sup>1</sup> set the tone at the turn of the century by enabling shareholders and stakeholders to better assess the overall performance of companies. This early legislation mandates large companies disclose non-financial information, laying the groundwork for today's comprehensive ESG reporting standards in France and potentially influencing broader European initiatives in

corporate transparency and accountability.

- The Action Plan for Business Growth and Transformation, otherwise known as the *PACTE Law* (2019),<sup>2</sup> built on the framework of the New Economic Regulation Law by modifying Article 1833 of the French Civil Code by providing that a "company is now managed in its corporate interest, taking into consideration the social and environmental issues of its activity." In addition to this mandatory regulation, the same law provides for the possibility of a *raison d'être* in company bylaws, which includes "the principles with which the company equips itself and for the[in] respect of which it intends to allocate means in carrying out its activity."<sup>3</sup>

<sup>1</sup> Law no. 2001-420 of May 15, 2001 (Fr.).

<sup>2</sup> Law no. 2019-486 of May 22, 2019 (Fr.).

<sup>3</sup> C. civ., art. 1835 (Fr.).

- The *Anti-Waste Law* (2020),<sup>4</sup> which is aimed to reshape the economy based on the circular model by enhancing the requirements for transparency for end consumers by imposing labelling on waste-generating products and requiring producers inform consumers of the environmental and sustainable qualities of each product. The legislation chiefly targets waste reduction, with a notable emphasis on curbing single-use plastics like plastic straws. In addition, the law fosters a culture of product reparability and durability, setting ambitious goals for electronics refurbishment. By pushing companies to adopt more sustainable production and consumption models, the law reinforces France's commitment to creating an eco-conscious circular economy.
- The *Climate Resilience Law* (2021)<sup>5</sup> followed in the footsteps with of the Anti-Waste Law. Many of its provisions resulted from the Citizens' Climate Convention, which provided 140 measures to achieve at least a 40% reduction in greenhouse gas emissions by 2030 in the spirit of social justice.
- The *Law on Energy and Climate* (2019)<sup>6</sup> provides that portfolio management companies must make available to their subscribers and the public a document setting out their policy on the inclusion of ESG criteria in their investment strategy and the measures taken to contribute to the energy and ecological transition, as well as a strategy for implementing this policy.

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<sup>4</sup> Law no. 2020-105 of February 10, 2020 (Fr.).

<sup>5</sup> Law no. 2021-1104 of August 22, 2021 (Fr.).

<sup>6</sup> Law no. 2019-1147 of November 8, 2019 (Fr.).

- The *Law on the Duty of Vigilance* (2017)<sup>7</sup> targeted companies that either employ 5,000 individuals within France or those with a global workforce of 10,000 or more, provided their registered offices are situated in France. The law mandates that subject companies devise and implement a robust vigilance plan. The core objective of this plan is to pre-emptively identify and address potential human rights violations and environmental concerns, and ensure the health and safety of the employees. Notably, the reach of this law is not confined to the borders of France. It boasts an international ambit, holding companies accountable for their operations both domestically and abroad and setting a benchmark in corporate responsibility and accountability.
- *The Law on Transparency and the Fight Against Corruption and the Modernization of the Economic Life* (2016)<sup>8</sup> (the “Sapin II Law”) created a French version of the United States Deferred Prosecution Agreement –the *Convention Judiciaire d’Intérêt Public*. This mechanism has been used in a few landmark cases to impose fines on companies that have used corrupt practices. The Law on the European Public Prosecutor’s Office, Environmental Justice and Specialized Criminal Justice (2020)<sup>9</sup> has also expanded the scope of this mechanism to prosecute breaches of the Environmental Code

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<sup>7</sup> Law no. 2017-399 of March 27, 2017 (Fr.).

<sup>8</sup> Law no. 2016-1691 of December 9, 2016 (Fr.).

<sup>9</sup> Law no. 2020-1672 of December 24, 2020 (Fr.).

that constitute an offense.

- The *Rixain Law* (2021)<sup>10</sup> was designed—from a purely social perspective—to require balanced representation between men and women in boards of directors and supervisory boards, as well as to improve professional equality more broadly.
- The *Gender Equality in the Workplace Law* (2018)<sup>11</sup> is a similar testament to France’s dedication to bridging gender financial and representation disparities within the corporate landscape. This legislation mandates companies compute and publicize their gender equality indices, offering a transparent metric on wage differentials between male and female employees.

Firms that fail to demonstrate substantive efforts to reduce pay gaps face the prospect of financial penalties. By instituting this framework, the law aims to reduce gender pay parity and foster a more equitable work environment in France.

### **B. EU’s Regulatory Framework**

The influence of the EU has caused the French legal framework to become even more demanding for manufacturers. Manufacturers have to think carefully about the environmental impact of their products throughout their entire lifecycle—the way they are marketed, sold, used on the market, and ultimately disposed—or they will expose themselves to a serious risk of litigation.

In 2020, the European Commission adopted the “Green Pact”, a set of measures designed to put the EU on the path to ecological transition. The ultimate goal of the Green Pact is achieving carbon neutrality by 2050. To achieve this goal, the EC has proposed the “Fit for 55” package, a number of proposals aimed at revising and updating EU

<sup>10</sup> Law no. 2021-1774 of December 24, 2021 (Fr.).

<sup>11</sup> Law no. 2018-771 of September 5, 2018 (Fr.).

legislation so that greenhouse gas emissions in Europe will be reduced by 55% by 2030. In 2024, several of these proposals were successfully adopted and will be progressively implemented across Member States. The most notable of these concern consumers' right to repair, demand eco-design in production, and combat against greenwashing.

**Right to Repair.** The European Parliament and Council recently adopted Directive (EU) 2024/1799 of 13 June 2024, the "R2R" Directive.<sup>12</sup> This Directive must be implemented by Member States no later than July 31, 2026. Under the R2R Directive, manufacturers must provide fast and cost-effective repair services and must inform consumers of their repair rights.

Notably, after expiration of any product warranty, manufacturers will still be required to repair those products listed in an annex to the R2R Directive, including washing machines, dishwashers, refrigerators, vacuums, mobile phones, and tablets. This list will continue to grow as the European Commission has the ability update the annex in light of future regulatory developments.

Listed products must be repaired free of charge or at a

reasonable price. During the period of repair, manufacturers must provide consumers with a replacement product. Manufacturers established outside the EU are not exempt from this obligation, and obligations also fall to other economic operators established in the EU, like the manufacturers' authorized representatives, importers, or distributors. Further, manufacturers must make spare parts and tools available at a reasonable price that does not deter repair.

Manufacturers have no ability to limit these obligations; the directive prohibits both contractual clauses and hardware or software techniques hindering the right to repair listed products. Manufacturers also may not prevent independent repairers from using second-hand or 3D printed spare parts, nor may they refuse to repair a product because it has previously been repaired by someone else.

**Ecodesign Production.** The Ecodesign for Sustainable Products Regulation (or "ESPR"),<sup>13</sup> which entered into force on June 13, 2024, takes ecodesign one step further by setting out very clear and concrete rules for manufacturers.

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<sup>12</sup> Directive (EU) 2024/1799 of 13 June 2024 on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828, O.J. L 1799, July 10, 2024, at 1 (EU).

<sup>13</sup> Regulation (EU) 2024/1781 of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC.

To promote durability and reparability, manufacturers must design products in such a way as to maximize their period of use and, at the same time, minimize their need for replacement. Product design must allow for reasonably simple disassembly and repair, and components and sub-assemblies must be accessible to allow repair and replacement.

The ESPR also requires manufacturers to limit, or totally exclude, the use of materials or substances that could hinder their re-use or recycling, or that are harmful to the environment. Manufacturers must incorporate a minimum threshold of recycled materials in the products to stimulate the circular economy and encourage the use of secondary resources.

The European Commission will issue future guidance that requires companies to define certain indicators of a product's environmental performance before the product may be brought to market. For example, the European Commission must still define the minimum percentage of recycled materials required in the composition of products, as well as

the maximum quantity of emissions permitted in the manufacture, use, and disposal of products. Manufacturers should pay close attention to future acts to comply with future production requirements.

The Digital Product Passport is another core measure of the ESPR regulation. The Digital Product Passport will provide information on the environmental sustainability of products. The aim of the Digital Product Passport is to make sustainability information easily accessible by scanning a data medium and, by so doing, provide consumers with information on sustainability and reparability indicators, the use of recycled materials, and the availability of spare parts.

**Greenwashing.** the European Parliament and Council adopted Directive 2024/825, the "Greenwashing Directive",<sup>14</sup> to offer consumers the means to promote the green transition through more accurate information and more protection against unfair practices.

The Greenwashing Directive provides definitions for an "environmental claim" and a "generic environmental claim."

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<sup>14</sup> Directive (EU) 2024/825 of the European Parliament and of the Council of February 28, 2024, amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information, O.J. L 825, Mar. 6, 2024 (EU).

These are welcome in France, where environmental claims are mainly defined by professional recommendations.

The new Directive also punishes practices which mislead the consumer about the environmental characteristics of the product. In this respect, the law tracks existing French law, as the Climate and Resilience Law already targeted misleading practices regarding the environmental impact of a product or the scope of professional commitments. This Directive must be implemented by Member States by September 27, 2026.

Another proposal presented by the European Commission on March 22, 2023, known as the “Green Claims Directive”<sup>15</sup> also would require the substantiation and communication of explicit environmental claims.

The Green Claims Directive has not yet come into force, but we already know that it will set forth minimum requirements that businesses must employ to substantiate their environmental claims. More specifically, environmental claims must be based on widely recognized scientific evidence, and these claims must demonstrate that the environmental impact is significant

from the point of view of the product's life cycle.

The Directive also provides a framework for comparative environmental claims and proposes to regulate environmental labels so that only labels awarded under environmental labelling schemes established under EU law are permitted.

### C. ESG Reporting Obligations

The French Duty of Vigilance Law<sup>16</sup> requires large French companies to establish and implement a vigilance plan, which is aimed at identifying and preventing potential human rights abuses and environmental damage resulting from their activities, as well as the activities of their subsidiaries and subcontractors.

Companies subject to the Duty of Vigilance Law are required to identify and prevent risks through a due diligence process. They must publish an annual vigilance plan that must contain five mandatory items: (i) a risk map; (ii) an evaluation process of subsidiaries, subcontractors, and suppliers with whom there is an established commercial relationship; (iii) risk mitigation and preventive actions; (iv) whistleblowing mechanisms; and (v) monitoring systems to

<sup>15</sup> Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims

Directive), COM (2023) 166 final, Mar. 22, 2023 (EU).

<sup>16</sup> *Supra* note 7.

evaluate measures and their effectiveness.

At the EU level, the Corporate Sustainability Reporting Directive (CSRD)<sup>17</sup> entered into force on January 5, 2023 and created the first EU-wide mandatory sustainability reporting obligation. These reports must contain the non-financial reporting necessary to provide a comprehensive understanding of the company's sustainability. The CSRD specifically requires companies to set targets and self-report on their progress towards them, mostly from an environmental and carbon-footprint perspective. To ensure they are providing reliable information, companies will be subject to independent audit and certification. France showed its (initial) eagerness to tackle ESG issues when it became the first country to implement this directive into its national law, passing a law on March 9, 2023 granting the government the power to draft measures that align with the CSRD. The first CSRD reports should be published by impacted companies in 2025 for the year 2024.

The EU Directive on Corporate Sustainability Due Diligence

(CSDDD)<sup>18</sup> entered into force on July 25, 2024. This Directive is designed to encourage and enforce more responsible corporate behavior, focusing on human rights and environmental sustainability. The directive aims to ensure that companies operating in the EU, especially large ones, respect human rights and mitigate environmental harm throughout their entire value chain, including suppliers and subcontractors, even outside of the EU.

Under the CSDDD, companies must identify, prevent, and address adverse effects on human rights and the environment linked to their activities. Companies must conduct due diligence to identify risks, take corrective actions, and be transparent in their reporting.

In addition, Article L 229-25 of the French Environmental Code requires companies with more than 500 employees to draw up an assessment of their greenhouse gas emissions and provide a summary of contemplated measures to reduce these emissions (along with a transition plan). Since January 1, 2023, in addition to the direct and indirect (Scope 1 and 2) greenhouse gas emissions generated by a

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<sup>17</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, O.J. L 322, Dec. 16, 2022, at 15 (EU).

<sup>18</sup> Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, O.J. L 1760, July 5, 2024, at 1 (EU).

company's activities, all significant indirect emissions resulting from the company's operations and activities and, where applicable, from the use of the goods and services it produces (Scope 3) must be taken into consideration when calculating this greenhouse gas emissions balance.

#### D. ESG Backlash Movement

The beginning of 2025 has been marked by an unforeseen reaction against ESG due to the negative impact on competitiveness the increase of binding regulations has had on businesses. Critics have, called into question particularly ESG reporting obligations. Without going into an analysis of the many reasons that triggered such a reaction, one major cause has been the effect of the deregulation movement taking place the United States, which is moving in the exact opposite direction from the EU.

In a context where companies have long criticized the complexity of the CSRD, the CSDDD, and its articulation with the French law on the duty of vigilance, seemingly out of nowhere the French government has started to echo these criticisms.

In January 2025, French authorities issued a note requesting a stay of the ESG reporting obligations until such requirements

are simplified. This request came as a surprise, as France has always shown strong support for the corporate duty of vigilance and, more broadly, for non-financial reporting.

The January 2025 note outlines a set of proposed measures aimed at simplifying regulations and administrative processes within the European Union to boost competitiveness and investment. The note proposes streamlining regulations, reducing administrative burden, and improving the predictability of regulatory frameworks, particularly for small and mid-sized companies.

Key proposals include the creation of a new "mid-cap" business category to ease administrative requirements for growing companies, a revision of the CSDDD to delay its implementation and adjust its obligations, and modifications to the CSRD to reduce reporting burdens. The note also calls for targeted amendments to the EU's green taxonomy and simplification of environmental reporting for industrial facilities.

This call for simplification, also supported by Germany, has given rise to a lively debate at the European Commission. On January 29, 2025, the European Commission issued a Competitiveness Compass for the EU.<sup>19</sup> This document out-

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<sup>19</sup> European Commission, *A Competitiveness Compass for the EU* (Jan. 29, 2025), available

at <https://commission.europa.eu/document/download/10017eb1-4722->

lines a strategic plan to boost the EU's economic strength over the next five years. The Competitiveness Compass addresses key challenges like lagging innovation, high energy costs, regulatory burden, and dependence on external supply chains. The European Commission proposes an "unprecedented simplification effort" and "a far-reaching simplification in the fields of sustainable finance reporting, sustainability due diligence and taxonomy."<sup>20</sup> The purpose is not to step back from the Green Deal, but to achieve the same goals while significantly simplifying the means.

To that end, a sustainability omnibus was proposed on February 26, 2025. It addressed sustainability reporting, due diligence, and the EU taxonomy as part of its broader effort to simplify regulations and reduce administrative burden. A target of at least a 25% reduction in reporting obligations for all companies and 35% for SMEs will ease compliance costs.

The EU's goal is to maintain strong sustainability reporting while making compliance faster, clearer, and less costly for businesses.

## II. Business Operations Must Integrate ESG

### A. Governance

In addition to non-financial reporting obligations, companies must also take into account other domestic legal requirements regarding environmental and social considerations.

Article 1833 of the French Civil Code requires a company to be managed in its social interest, taking into consideration the social and environmental impacts of its activities, irrespective of its size or corporate structure. The obligations of Article 1833, however, require merely management's best-efforts—non-compliance with this requirement cannot nullify a company's acts or reconsider the deliberations of the bodies of the company.

For limited companies, the board of directors determines the company's ESG strategy and the means to implement its strategy. In practice, the board of directors now ensures that ESG issues are at the heart of the company's strategy and commonly appoints a special board committee dedicated to monitoring ESG issues. The management board ensures a company's ability to comply with relevant ESG regulations.

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<sup>20</sup> *Id.* at 17.

If a company has adopted a *raison d'être* in its by-laws, the board of directors must take this *raison d'être* into account when performing its duties. The *raison d'être* encapsulates the values of the company, the social and environmental impacts of its activity, and – more generally – the responsibility that the company intends to carry in the future.

On this basis, some scholars advocate for a shift in companies' purpose beyond the maximization of profits, to include a positive impact on the environment and society.<sup>21</sup> More generally, some advocates have argued that companies should be more committed to sustainability and the fight against climate change.<sup>22</sup>

Nonetheless, a 2023 study by Heidrick & Struggles of 879 corporate directors revealed that management still finds environmental questions difficult to evaluate and concrete measures to promote environmental protection difficult to implement, despite the

directors' level of climate awareness.<sup>23</sup>

## B. Say on Climate

“Say on Climate” is one example of the way private initiatives have accompanied public legislation in the realm of sustainability. This initiative, led by the Sustainable Investment Forum, has gained notable traction in France. Say on Climate has the ambitious objective of reaching the “transition to net zero.” This initiative advocates to asset owners and companies directly that they should support a science-based Climate Transition Action Plan and submit such a plan to a shareholder vote.

“Say on Climate” is not mandatory for listed companies in France. Supporters of the initiative elaborated a proposed amendment to that end in the legislature as part of the negotiation of the Law on the Green Industry. However, this “Say on Climate” amendment was ultimately rejected.

Nevertheless, nine listed companies decided to subject their climate plan to a shareholders' vote

<sup>21</sup> See, for example, Grégoire Leray, *Renforcement normatif de la RSE*, REVUE LAMY DROIT DES AFFAIRES (Feb. 2023).

<sup>22</sup> Isabelle Kocher de Leyritz, *L'Entreprise engagée face aux défis du XXIème siècle*, CLUB DES JURISTES (Nov. 2024), available at <https://think-tank.leclubdesjuristes.com/les-commissions/presentation-du-rapport-lentreprise-engagee-face-aux-defis-du-xxie-siecle/> (last accessed June 17, 2025).

<sup>23</sup> Jeremy C. Hanson, Ron Soonieus, David Young, and Sonia Tatar, “The Role of the Board in the Sustainability Era,” HEIDRICK & STRUGGLES (Sept. 2023), available at <https://www.heidrick.com/-/media/heidrickcom/publications-and-reports/the-role-of-the-board-in-the-sustainability-era.pdf> (last accessed June 17, 2025).

in 2023. These climate plans were widely adopted by the shareholders at a rate of 93.3% on average.

### 1. Communication

Companies originally thought of ESG as a nice way to communicate the environmental benefits of their products and services. Marketing departments were placed in charge of fashioning statements that sometimes turned out to be misleading. These misleading statements led to claims of greenwashing, the practice prohibited under French law of making ecological and environmental claims to promote environmental responsibility that do not match the facts about the company's product or actions.

Claims of misleading commercial practices are the ideal ground to punish professionals who make environmental claims that mislead consumers about the true environmental impact of their product or company. Article L. 121-2 of the French Consumer Code

prohibits commercial practices that mislead consumers about the ecological characteristics of product, service, or company. The penalties incurred can be a fine of up to €300,000 for a natural person or €1,500,000 for a legal entity. These maximums may be increased to 10% of the annual average turnover calculated over the last three years, or 50% of the expense incurred to promote the misleading claim when the profit generated from the misleading practice exceeds the amount of the initial fine. The maximum amount of this fine may be increased to 80% of the expense incurred when it is a misleading environmental claim.<sup>24</sup>

Since January 1, 2023,<sup>25</sup> advertisers have been prohibited from claiming that a product or service is carbon neutral (or equivalent wording) without complying with a specific framework, the terms and

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<sup>24</sup> Art. L. 132-1 Code de la consommation (Fr.), available at [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000032227122](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000032227122) (last accessed June 17, 2025).

<sup>25</sup> Law no. 2021-1104 of August 22, 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets (loi Climat & Résilience), J.O. 196, at 1, Aug. 24, 2021 (Fr.), available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043956924> (last accessed June 17, 2025).

conditions of which are defined by decree.<sup>26</sup> Ignoring this obligation exposes professionals to a maximum fine of €20,000 for a natural person and €100,000 for a legal entity. The purpose of this measure is to ensure the transparency and accuracy of the information provided to consumers regarding a product's carbon footprint.

To provide guidance on what wording is "allowed" in environmental claims, the French National Consumer Council (NCC) established a Practical Guide on Environmental Claims.<sup>27</sup> The NCC puts forward several environmental claims<sup>28</sup> professionals may use provided certain conditions are met. For instance, the word "ecodesigned" may be used for a product only if the manufacturer is able to provide relevant, measurable, verifiable, and concrete elements proving that the manufacturer implemented an ecodesign measure that is specific to the product. The purpose of this limitation is to ensure that the product was designed in such a way as to minimize its ecological footprint across its lifecycle.

In contrast, wording that is misleading in its essence is prohibited as it will be misleading by essence. Article L. 541-9-1 of the French Environmental Code prohibits the use of the wording "biodegradable", "environmentally friendly" or any other equivalent on a product or its packaging. The NCC notes that the following wording may be considered equivalent to "environmentally friendly", and therefore prohibited: "environmentally responsible", "nature-friendly", "planet-friendly", "environmentally favorable", "good for the environment", "good for climate", "good for the planet", and "ecological". These claims are considered to be all-inclusive and present a high risk of misleading consumers regarding the real environmental qualities of the product, thus constituting greenwashing.

In this context, communicating on ESG is a real challenge for companies that may ultimately face court claims arising from their actions.

<sup>26</sup> Décret n° 2022-539 du 13 avril 2022 relatif à la compensation carbone et aux allégations de neutralité carbone dans la publicité, J.O. 0088, at 17, April 14, 2022 (Fr.), available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045570611> (last accessed June 17, 2025).

<sup>27</sup> Conseil national de la consommation, *Guide pratique des allégations*

*environnementales*, (2023 Ed.), available at [https://www.economie.gouv.fr/files/files/directions\\_services/cnc/avis/2023/Allegations\\_environmentales/guide\\_2023.pdf?v=1685082633#:~:text=Une%20all%C3%A9gation%20environnementale%20sert%20%C3%A0,le%20produit%20et%20son%20emballage](https://www.economie.gouv.fr/files/files/directions_services/cnc/avis/2023/Allegations_environmentales/guide_2023.pdf?v=1685082633#:~:text=Une%20all%C3%A9gation%20environnementale%20sert%20%C3%A0,le%20produit%20et%20son%20emballage) (last accessed June 17, 2025).

<sup>28</sup> *Id.* at 35-64.

### III. ESG-related Litigation: Today and Tomorrow

#### A. Actors

Nongovernmental organizations (“NGOs”) play a critical role in ESG-related litigation. They are particularly active before the French courts and have already initiated several claims and formal notices against large companies to seek liability on various grounds. These NGOs are extremely well informed; have sophisticated legal experts; and know how to leverage the reputational impact of ESG claims on businesses by reporting their actions to the media and on social networks.

The regulator is another natural actor in a field as regulated as ESG – at least until an eventual simplification begins. Several regulators theoretically come into play on ESG issues. But, in practice, the bulk of ESG enforcement comes from two distinct bodies: the French Financial Market Authority (*Autorité des Marchés Financiers*, or AMF) and the Directorate for Competition, Consumer Affairs and Fraud Control (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Frauds*, or DGCCRF).

Because this area of law is relatively new and their scope authority is untested, these regulators have been tasked with exploring previously uncharted

territory. This will necessarily cause some confusion over where the jurisdictional responsibilities of one body ends and another begins.

The AMF plans to ensure that ESG target information conveyed to investors is trustworthy. The DGCCRF also aims to tackle ESG issues and will focus on greenwashing, sustainability, and the implementation of the circular economy.

In addition, businesses are, themselves, an obvious participant in these disputes. They will be defendants when NGOs or regulators seek to hold them responsible for compliance, but they can also act as claimant against their competitors. In fact, with the enhanced transparency that will come with ESG reporting, businesses have unprecedented access to data on their competitors, and access to competitor data may eventually provide facts to substantiate claims of unfair competition or commercial denigration.

#### B. Pending disputes

In the context of the ecological transition, and given the public pressure for transparency about ESG strategies, corporate ESG-related litigation risks are high. There are already a number of proceedings pending before the French courts in this area.

Nongovernmental organizations have filed a number of noteworthy claims relating to the French Duty of Vigilance law. There have been around 20 cases filed on this ground with one decision on the merits to date.<sup>29</sup> Only large companies like TotalEnergies, EDF, Suez, or BNP Paribas have been brought into court. The energy and finance sectors are a particular focus of this litigation.

When it comes to greenwashing, the scope of targets is broader. Companies of all sizes have been targeted. Advertising campaigns with a large outreach are likely to be scrutinized by nongovernmental organizations and the DGCCRF. For example, Nespresso's advertising campaign, which claimed that their coffee sold in single-use capsules is "100% carbon neutral" thanks to the "planting of 500,000 trees each year;" is sourced 95% from "sustainable" farms certified by an internal "AAA" program; and is packaged in "100% recyclable" aluminum capsules. The consumer

rights protection association CLCV sued Nespresso in the Paris Civil Court and demanded the removal of the allegedly misleading environmental claims. The lower court ruled that the CLCV's claim was time-barred, but the decision has been set-aside by the Paris Court of Appeal, which found the claim admissible.<sup>30</sup> There will be an evaluation of the merits of the claim to determine whether Nespresso's environmental allegations are misleading.

In the aviation industry, following an alert from the European Consumers' Organization (BEUC), the European Commission and EU consumer protection authorities sent letters to twenty airlines identifying several types of potentially misleading environmental claims. The regulators demanded the airlines bring their practices into compliance with EU consumer protection legislation.<sup>31</sup> The European Commission identified several

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<sup>29</sup> SUD PTT v. S.A. LaPoste, Cour de cass., comm. ch., Dec. 5, 2023, No. 21-15827 (Fr.), available at <https://www.lexisnexis.fr/LexisActu/laposte.pdf> (last accessed June 17, 2025).

<sup>30</sup> Confederation Consommation, Logement et Cadre de Vie v. Comite Catholique Contre la Faim et Pour le Developpement Terre Solidaire, Cour de cass., comm. ch., Mar. 20, 2024, No. 22-10.771 (Fr.), available at <https://www.courdecassation.fr/decision/65fbd1dc2b82d00086fa500> (last accessed June 17, 2025).

<sup>31</sup> European Commission, "Commission and national consumer authorities take action against 20 airlines for misleading greenwashing practices," (April 30, 2024), available at <https://france.representation>.

potentially misleading practices by the airlines, including:

- creating the false impression that paying an additional fee to finance climate change projects with a lower environmental impact, or to support the use of alternative aviation fuels, reduces or fully offsets CO<sub>2</sub> emissions associated with their purchase;
- using the term “sustainable aviation fuels” (SAF) without clearly articulating the environmental impact of these fuels;
- using the terms “green”, “sustainable”, or “responsible” in the abstract, or making other implicit environmental claims;
- claiming that the airline is moving towards net zero greenhouse gas (GHG) emissions, or any future environmental

performance, without clear and verifiable commitments, targets, or independent monitoring systems;

- presenting consumers with a “calculator” to quantify the CO<sub>2</sub> emissions of a given flight, without providing sufficient scientific evidence as to the reliability of this calculation and without giving any information on the elements used for this calculation; and
- presenting consumers with a comparison of flights in terms of their CO<sub>2</sub> emissions, without providing sufficient and precise information on the elements on which the comparison is based.

It remains to be seen how the identified airlines responded to the notification and whether the European Commission will, at some point, impose sanctions.

The circular economy and the obligations to manufacture

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[ec.europa.eu/informations/la-commission-et-les-autorites-nationales-de-protection-des-consommateurs-intentent-une-action-](https://ec.europa.eu/informations/la-commission-et-les-autorites-nationales-de-protection-des-consommateurs-intentent-une-action-)

2024-04-30\_en (last accessed June 17, 2025).

sustainable and repairable products also give rise to disputes. The French nongovernmental organization HOP, known as Stop Planned Obsolescence in English, has filed a complaint against HP for its ink cartridges, accusing HP of producing these ink cartridges with a strategy of planned obsolescence. HOP also accuses HP of voluntarily limiting the use of reconditioned cartridges, despite the consumer's interest in purchasing reconditioned cartridges and the importance of recycling in the development of the circular economy. The public prosecutor is, or will soon be, investigating this complaint.

### C. What to expect?

Litigation and regulatory investigations linked to ESG will continue to grow as the legal and regulatory framework becomes more fully implemented. With the rise of binding ESG requirements, businesses' legal exposure will mechanically increase. Reporting requirements will also generate peripheral disputes. The access to transparent non-financial information may give rise to unfair competition disputes or lead to the termination of contracts in the event that a partner in the supply chain fails to meet ESG requirements. There is also the risk of disputes about the accuracy of the information disclosed.

In September 2024, the Presiding Judge of the Paris Commercial Court announced that he anticipated a massive increase in ESG related disputes. Similarly, the Paris Civil Court (lower court and court of appeal) has created divisions dedicated to disputes the court called "emerging disputes."

## IV. Concluding Remarks

France's ESG landscape offers a compelling lens through which to understand the evolving paradigms of corporate responsibility. Historically, the primary objective of a corporation was clear-cut—profit maximization. Today, in the context of the ecological transition, ESG principles can no longer be ignored and, for some, are seen as a significant opportunity. ESG principles must be integrated into the core operational and strategic facets of business or else companies will face significant exposure for unsustainable or unethical business practices.

In essence, in France there has been a progressive shift in the purpose of corporations. No longer is it enough to merely generate profit. There is a public demand that the pursuit of profit should be harmoniously combined with sustainability goals. Corporations are gradually being recast not just as economic entities but as societal stakeholders with a profound obligation to ensure that their

actions are both profitable and sustainable. This expansion of the environmental and social responsibility of companies seems difficult to reverse. Yet, it does not mean that the costs of such transition should only be borne by companies who, at present, lack legal clarity and legal certainty.