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## The “greening” of financial public law: reality and margins of progress

**„Zazielenianie” prawa finansów publicznych: rzeczywistość i marginesy postępu**

**Abstract.** Having in mind concerns on climate change, that theme occupies an increasing place in French legal order, in particular in public financial law. Current events provide a perfect illustration of this with an implementation of a “green budget”: a mechanism allowing a new classification of budgetary and tax expenditures according to their environmental impact on the one hand, and better identification of environmental revenues on the other hand. This new system should not obscure a variety of financial tools put in place by the State, sometimes for several years, whether expenditure or revenue, to fight against climate change. However, the fact remains that the ambition of the French State is not, as it stands, sufficient to respond to the climate emergency, which requires the emergence of new public financial engineering.

**Keywords:** public finance; tax law; public accounting; environment; green budget; energy transition.

**Streszczenie.** Wobec obaw, jakie wzbudza to zjawisko, zmiany klimatu zajmują coraz więcej miejsca we francuskim porządku prawnym, w szczególności w prawie finansów publicznych. Bieżące wydarzenia doskonale to ilustrują poprzez wdrażanie „zielonego budżetu”: mechanizmu pozwalającego na nową klasyfikację budżetowych wydatków i podatków zgodnie z ich wpływem na środowisko z jednej strony oraz z lepszą identyfikacją korzyści dla środowiska z drugiej strony. Ten nowy system nie powinien przesłaniać różnorodności narzędzi finansowych stosowanych przez państwo, niekiedy przez kilka lat, zarówno po stronie dochodów, jak i wydatków, do walki ze zmianami klimatu. Jednak pozostaje faktem, że ambicje państwa francuskiego nie są wystarczające, aby zareagować na pilne wyzwania w zakresie klimatu, które wymagają pojawienia się nowej inżynierii finansów publicznych.

**Słowa kluczowe:** finanse publiczne; prawo podatkowe; rachunkowość publiczna; środowisko; zielony budżet; transformacja energetyczna.

## 1. The urgency of greening financial public law

In the last thirty years, climate change has become an essential theme of political discourse and public action. Beyond the first effects of climate change that everyone is likely to feel, a prominent place given to this issue is explained by the alarmist conclusions of numerous public reports. As early as the 1990s, the Intergovernmental Panel on Climate Change (IPCC) stated in its first report that “Emissions resulting from human activities are substantially increasing the atmospheric concentrations of the greenhouse gases carbon dioxide, methane, chlorofluorocarbons (CFCs) and nitrous oxide. These increases will enhance the greenhouse effect, resulting on average in an additional warming of the Earth’s surface. The main greenhouse gas, water vapour, will increase in response to global warming and further enhance it”<sup>1</sup>. 32 years later, in April 2022, the IPCC reports the same alarming findings. In its sixth assessment report, it underlines the rapidity of climate change and once again shows the urgency of responding to the harmful effects of human activity on the environment

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<sup>1</sup> Intergovernmental Panel on Climate Change, *Climate change*, 1<sup>st</sup> report, 1990, p. XI.

and proposes solutions to limit the impact of this disorder<sup>2</sup>. The experts have thus shown that “Digital technologies can contribute to mitigation of climate change and the achievement of several SDGs (high confidence). For example, sensors, Internet of Things, robotics, and artificial intelligence can improve energy management in all sectors, increase energy efficiency, and promote the adoption of many low-emission technologies, including decentralised renewable energy, while creating economic opportunities (high confidence). However, some of these climate change mitigation gains can be reduced or counterbalanced by growth in demand for goods and services due to the use of digital devices (high confidence). Digitalisation can involve trade-offs across several SDGs, e.g., increasing electronic waste, negative impacts on labour markets, and exacerbating the existing digital divide. Digital technology supports decarbonisation only if appropriately governed (high confidence)”<sup>3</sup>. Even recently, the OECD noted, taking the example of the United Kingdom, that significant efforts are being made to limit greenhouse gas emissions by individuals, but they are largely insufficient to achieve the greenhouse gases zero emission objective in 2050<sup>4</sup>.

At the top of the concerns, climate change occupies an increasing place in the legal system, as evidenced by numerous laws adopted in recent years by the French Parliament<sup>5</sup>. Financial public law is no exception

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<sup>2</sup> R. Jachnik, A. Dobrinevski, *Measuring the alignment of real economy investments with climate mitigation objectives: The United Kingdom’s buildings sector*, “OECD Environment Working Papers” 2021, No 172, pp. 49–55.

<sup>3</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change*, p. 13.

<sup>4</sup> Organisation for Economic Co-operation and Development, *Collaborative on green budgeting*, 2017, <https://www.oecd.org/environment/green-budgeting/> (access on-line: 1.03.2022).

<sup>5</sup> See for example: Loi No 2016-1087 from 8 August 2016 pour la reconquête de la biodiversité, de la nature et des paysages, JORF No 184, 9 August 2016; Loi No 2021-1485 from 15 November 2021 visant à réduire l’empreinte environnementale du numérique en France, JORF No 266, 16 November 2021; Loi No 2021-1104 from 22 August 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets, JORF No 196, 24 August 2021.

in this regard<sup>6</sup>. On the contrary, it is presented as a figurehead, an essential piece in the policy of combating climate change. And that calls out. It has long been presented as making it possible to set up either a state in withdrawal, with expenditure intended to cover only sovereign expenditure (police, justice, defense) and low taxation, or an interventionist state with the objective of full employment<sup>7</sup>, financial public law has gone beyond these rivalries and is now conceived as a powerful means of bringing virtuous of a State in the management of public funds and in the protection of the environment and biodiversity.

Current events provide a perfect illustration of this with the implementation of the “green budget”: a mechanism allowing a new classification of budgetary and tax expenditures according to their environmental impact on the one hand and better identification of environmental revenues on the other hand. This system has three objectives. First, it should make it possible to assess compliance by the French budget with French commitments made under the Paris Climate Agreement<sup>8</sup>. This evaluation, which is reminiscent of the spirit of the organic law relating to the finance laws of 1 August 2001, is based on the identification of objectives, the setting of means and, above all, the rendering of accounts in environmental matters. Secondly, and in a more traditional way, the “green budget” is an additional tool for informing national elected representatives during debates on the finance bill for the coming year. Finally, thirdly, the “green budget” aims to inform citizens who are expressing increasingly numerous and recurring expectations in favor of environmental protection.

The methodology followed is in fact that recommended by a mission carried out jointly by the General Inspectorate of Finance and the General Council for the Environment and Sustainable Development in 2019. This one “distinguished six environmental axes, inspired by the taxonomy of activities under discussion at European level: fight against climate change,

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<sup>6</sup> R. Degron, *Les finances publiques vertes. Entre ambition budgétaire et réalité fiscalosociale*, “Action publique. Recherche et pratiques” 2021, No 11, pp. 16–25.

<sup>7</sup> On this point, see : M. Duverger, *Finances publiques*, Paryż 1956, p. 228 et seq.

<sup>8</sup> See: Le «collaboratif de Paris sur les budgets verts», <https://www.oneplanetsummit.fr/les-coalitions-82/collaboratif-de-paris-sur-la-budgetisation-verte-103> (access on-line: 1.03.2022).

adaptation to climate change, sustainable management of water resources, transition to a circular economy and risk prevention, pollution prevention, preservation of biodiversity and sustainable management of natural, agricultural and forest areas. It proposes to classify each expenditure on each of these six axes and to rate them from unfavorable (category 1) to very favorable (category 3) on each environmental axis”<sup>9</sup>.

In practice, the “green reading of the budget”<sup>10</sup> was made possible, by an amendment introduced by parliamentarians in the finance law for 2019 which stated, in its Article 206, that “the Government presents to Parliament, as an appendix to the finance bill of the year, a report entitled Financing the ecological transition: economic, fiscal and budgetary instruments in the service of the environment and the climate”. This report, which replaces three budget sheets, aims to present three types of information: financing for the environment, the state of public and private financial resources to finance the ecological transition and the strategy in relation to ecological taxation and energy. Then, the finance law for 2020 modified this mechanism by requiring that a report on the environmental impact of the budget must be annexed to the finance bill<sup>11</sup>. It includes the results of the actions carried out in favor of the environment and the tax instruments to encourage environmental protection.

To date, two green budgets have been voted on this basis. The finance bill for 2021 was thus accompanied by an annex on the environmental impact of the State budget which presented the impacts of the State budget in relation to six objectives. The impact can be favorable, neutral or unfavorable. The six objectives are: the fight against climate change, adaptation to climate change and the prevention of natural risks, the management of water resources, the circular economy, waste and the prevention of technological risks, the fight against pollution, biodiversity and the protection of natural, agricultural and forestry areas. The appendix on the

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<sup>9</sup> Inspection générale des finances et Conseil général de l’environnement et du développement durable, *Green Budgeting: proposition de méthode pour une budgétisation environnementale*, 25 septembre 2019, p. 2.

<sup>10</sup> J.-L. Albert, *Les moyens financiers du ministère de l’environnement*, “Revue du Droit Public et de la Science Politique en France et à l’Étranger” 2022, No 1, p. 7.

<sup>11</sup> Article 179 of the loi No 2019-1479 from 28 December 2019 de finances pour 2020.

environmental impact of the State budget for 2022 is part of this framework and provides for 32.5 billion euros in expenditure favorable to the environment (compared to 38.1 in the draft finance law for 2021), 4.5 billion euros of neutral expenditure in relation to the environment (compared to 4.7 in the finance bill for 2021) and 10.8 billion of expenditure unfavorable to the environment (compared to 10 billion in the finance bill for 2021).

This new system, which will have to be evaluated sooner or later, should not obscure a variety of financial tools put in place by the State, sometimes for several years, whether in terms of expenditure or revenue, to combat climate change (2). The fact remains that the ambition displayed by the State is not, as it stands, sufficient to respond to the climate emergency, which requires the emergence of new public financial engineering (3).

## **2. The greening of financial public law: an obvious structuring**

At first glance, one could legitimately think that everything or almost everything has been said about the “greening” of financial public law. The Tax Council, which has become the Council for Compulsory Levies, noted in its 23<sup>rd</sup> report to the President of the Republic in 2005 that “along with regulations and, more recently, pollution rights markets, taxation is one of the instruments for implementing an environmental protection policy. The use of taxation for this purpose has been subject to numerous economic analyses”<sup>12</sup>. Even recently, the Council for Compulsory Levies regretted in a report entitled Environmental taxation to the challenge of the climate emergency and made public in 2019, in particular that environmental taxation “has seen its challenges renewed for two decades by the objectives reduction of greenhouse gas emissions” and that “the continuous strengthening of France’s climate objectives has justified in-

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<sup>12</sup> Conseil des impôts, *Fiscalité et environnement*, Synthèse du 23<sup>ème</sup> rapport au Président de la République, 2005, p. 7.

creased use of carbon taxation to encourage households and businesses to change their behavior. Although it is an effective instrument of environmental policy, the handling of carbon taxation is subject to constraints that limit its room for maneuver”<sup>13</sup>.

As evidenced by these reports, the State uses taxation to marginalize carbon-intensive production and consumption and to encourage those that emit low carbon. France has in fact adopted a tax system on the consumption of products producing a lot of greenhouse gases. We are thinking here in particular of the carbon component of domestic consumption taxes<sup>14</sup> which is divided between: fraction collected on electricity (ex-domestic final consumption tax on electricity), fraction collected on natural gas (formerly internal tax consumption on natural gas), fraction collected in mainland France on energy products, other than natural gas and coal (ex-domestic consumption tax on energy products), fraction collected overseas on energy products other than natural gas and coal (formerly a special consumption tax applicable in five overseas departments and regions) and, finally, the fraction collected on coal (formerly a domestic consumption tax on coal, lignite and shell). The finance law for 2022 provides for an increase in revenue from this tax of 0.4 billion euros, due to the improvement in the economic situation (i.e. 17.5 billion euros in 2022). In total, environmental taxation should bring in nearly 66 billion euros to the State in 2022<sup>15</sup>.

The increasingly important role played by environmental taxation in public revenue should not, however, overshadow the other financial mechanisms put in place by public administrations to contribute to the fight against climate change.

The State also resorts to tax expenditures, i.e. it adopts derogatory legislation or regulatory provisions which result in a loss of revenue. The trend is also to increase tax expenditures aimed at accelerating the ecolog-

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<sup>13</sup> Conseil des prélèvements obligatoires, *La fiscalité environnementale au défi de l'urgence climatique, Synthèse*, septembre 2019, p. 7 et p. 11.

<sup>14</sup> Created by Article 32 of the loi No 2013-1278 from 29 December 2013 de finances pour 2014.

<sup>15</sup> Projet de loi de finances pour 2022, *Rapport sur l'impact environnemental du budget de l'État*, September 2021, p. 150.

ical transition: for 2022 they represent nearly 3.4 billion euros. Among these expenditures are: a reduced VAT rate of 5.5% for energy improvement works (1.5 billion euros), tax exemption schemes in old housing (0.3 billion euros) or even domestic consumption tax reductions on diesel (0.2 billion euros) and electricity (0.2 billion euros) in favor of public transport.

The State also intends to fight against climate change through public spending. For 2022 expenditure favorable to the environment will reach 32.5 billion euros. Budget appropriations favorable to the environment mainly cover expenditure in favor of a development of renewable energies (6.9 billion euros in the finance bill for 2022), expenditure to support the energy transition (2.2 billion euros in the finance bill for 2022) and taxes allocated to water agencies (2.2 billion euros in the finance bill for 2022). In addition, some expenditures are mixed, i.e. they are favorable to the environment while having negative effects on it. For example, the taxes allocated to the Agency for the Financing of Transport Infrastructures in France relating to major rail and river projects (0.5 billion euros in the finance bill for 2022) lead to a artificialization of soils, but mitigate greenhouse gas emissions in the medium term by favoring less polluting modes of transport. This is also illustrated by operating and investment subsidies or even future investment programs which are intervention expenses. These are public co-financing of private investments.

Moreover, insofar as the classic economic indicator, gross domestic product (GDP) does not take into account the negative externalities of environmental policies, Eurostat developed in 1994, under the impetus of numerous organizations (United Nations, World Bank, International Monetary Fund, Organization for Economic Co-operation and Development, European Union), a European system for gathering economic information on the environment. The European environmental economic accounts, which serve mainly the European Commission and the European Environment Agency, show a share of environmental goods and services in the global economy and the quantity of production and consumption of re-

sources natural and energy<sup>16</sup>. These accounts answer four main questions: What are the implications for the sustainability of our current production and consumption patterns? What impact would new environmental taxes have? Who bears the tax burden? Producers (industries) or consumers (households)? What pressures on the environment are caused by our trade patterns in third countries? How many people work in the environmental industry, producing environmental goods and services such as wind turbines or solar panels? This accounting has the advantage of determining the costs of environmental protection and those who pay them. But this accounting tool is not the only one since Eurostat also provides States with a system called NAMEA (National Accounting Matrix with Environmental Accounts). It is a tool for analyzing a relationship between the economy and the environment. The objective of NAMEA is to identify the contribution of the various economic actors to environmental problems. It also has the advantage of linking macro-economic indicators such as gross national product, net savings or exports and the environment. Finally, let's mention a use of the shadow value of carbon which allows public authorities to evaluate the ton of CO<sub>2</sub> avoided in the socio-economic analysis of public investments, which allows them to choose the best actions for the environment. The idea is that the shadow price of carbon increases over time<sup>17</sup>. It was 87 euros per ton of CO<sub>2</sub> in 2020, it should be 250 euros in 2030, 500 euros in 2040 and 775 euros in 2050<sup>18</sup>. “In concrete terms, a value of 250 euros/ton of CO<sub>2</sub> means that any action allowing emissions to be reduced and having a cost of less than 250 euros/ton of CO<sub>2</sub> makes sense for the community and must therefore be undertaken”<sup>19</sup>.

Finally, public funding mechanisms sometimes take ecological issues into account: the funds raised are backed by an equivalent amount of eligible green expenditure, with banks taking climate issues into account and

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<sup>16</sup> European Court of Auditors, *European Environmental Economic Accounts: usefulness for policymakers can be improved*, Special Report, 2019, No 16, p. 8.

<sup>17</sup> Haut conseil pour le climat, *Agir en cohérence avec les ambitions*, June 2019.

<sup>18</sup> A. Quinet (Rapport spécial sous la dir. d'), *La valeur de l'action pour le climat. Une valeur tutélaire du carbone pour évaluer les investissements et les politiques publiques*, February 2019, p. 32.

<sup>19</sup> Haut conseil pour le climat, *Agir en cohérence avec les ambitions*, June 2019, p. 52.

participating in collective efforts to reduce the negative impact of climate change on the environment. In 2007 the European Investment Bank issued its first green bonds. In 2017 the French Treasury issued its first green sovereign bond and in 2019 became the world's leading issuer of green bonds.

In the end, there is little doubt that the issue of climate change now occupies an important place in the French public financial system. It is also fashionable. Five European countries vote annually for a “green budget” (Finland, France, Ireland, Italy and Sweden), as well as some German and Italian municipalities. For its part, the European Union has a rate of 30% of its 2021–2027 multiannual financial framework devoted to the fight against climate change<sup>20</sup>. As we can see, many public structures have developed a multitude of tools that pursue a virtuous objective according to which the good management of public finances does not only pass through effective and efficient management but it must also and above all result in a beneficial effect on the transformation of our ecological and environmental model. However, this building appears in many respects to be fragile.

### **3. The “greening” of financial public law: a structure to be consolidated**

As a counterpoint to the efforts made by public structures to integrate the ecological dimension into their financial policy, the United Nations Organization has shown that the global flows aimed at reducing greenhouse gas emissions are insufficient: the G20 countries should invest \$285 billion a year when they only spend \$120 billion a year. In addition, only 2% of the G20's 120 billion investments were devoted to official development assistance in 2020. The United Nations Organization has also shown that private sector investments remain low, with only 14 billion Euros per

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<sup>20</sup> European Commission, *Green Budgeting Practices in the EU: A First Review*, May 2021, 34 p.

year<sup>21</sup>. The European Commission, for its part, has shown that the European Union has an investment deficit of 180 billion Euros compared to its climate and energy commitments by 2030<sup>22</sup>. In France, the situation is no different: The High Council for the Climate thus notes, in its annual report for 2021, that “the effects of public climate policies are manifested in 2019 by an accentuation of the reduction in emissions at the national level and in most regions. The decrease observed in 2020 is mainly attributable to measures related to Covid-19. However, current efforts are insufficient to guarantee the achievement of the 2030 objectives”<sup>23</sup>.

These criticisms are clearly accentuated by the shortcomings affecting the financial instruments put in place by the State to respond to climate issues. In reality, two sets of criticism emerge.

First of all, the financial mechanisms adopted by the State are the subject of sharp and recurring technical criticism, first and foremost those directed against environmental taxation. On the one hand, the tax incentive remains too low. To realize this, it suffices to take an example of the general tax on polluting activities, the rates of the “air” component of which are low in relation to the costs of the environmental damage of air pollution<sup>24</sup>. Moreover, only manufacturers pay for it, even though they are not the only ones to pollute the air. The rates must be genuine incentives to consume less, or rather, otherwise. Added to this is the fact that tax reforms of recent years correspond to “sprinkling”<sup>25</sup> and tend to protect the climate more than biodiversity. Ph. Billet and R. Dufal have thus shown that “the measures in favor of the protection of biodiversity are therefore rather light. Although taxation of urban planning is today one of

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<sup>21</sup> United Nations Environment Programme, *The State of Finance for Nature in the G20*, 2022, 44 p.

<sup>22</sup> European Commission, *A Sustainable Europe by 2030*, 2019, p. 25.

<sup>23</sup> Haut conseil pour le climat, *Renforcer l'atténuation, engager l'adaptation*, Rapport annuel 2021, p. 5.

<sup>24</sup> Inspection générale des finances, Conseil général de l'économie, Conseil général de l'environnement et du développement durable, *Evaluation de l'impact environnemental et économique de la Taxe générale sur les activités polluantes (TGAP) sur les émissions de polluants atmosphériques*, October 2018, p. 42.

<sup>25</sup> C. Viessant, *Une opportunité financière de circonstance: la transition écologique*, “Gestion et finances publiques” 2021, No 4, p. 56.

the main vectors for achieving this objective, it has not been the subject of any adjustment in this direction, despite the numerous proposals formulated by the Committee for the green to fight against the artificialization of soils, taking up and developing those which had been formulated by the Committee for Ecological Taxation, its predecessor... which had not been followed by any effects”<sup>26</sup>. In the same spirit, and more broadly, Mark Carney, Governor of the British Central Bank, notes that States are pursuing “the tragedy of horizons”, namely that they are politically locked into the short term because the results will not be noticeable only in the medium and long term.

On the other hand, it appears that many tax expenditures are anti-ecological. This is a case, for example, of the reduced rate of domestic consumption tax on energy products which makes it possible to pay less for fossil fuels. Moreover, if the organic law relating to the finance laws of 1 August 2001 obliges to assess tax expenditures, in fact they are not well known<sup>27</sup>. The Court of Auditors regularly notes the lack of costing and information on certain tax expenditures and more broadly recommends establishing “a shared methodology for evaluating the effectiveness and efficiency of tax expenditures (...), in order to make these assessments more operational with a view to arbitration on whether or not to maintain this or that system”<sup>28</sup>; to which is added the fact that certain tax expenditures are not quantified, due in particular, according to the administration, to the unavailability of the necessary data<sup>29</sup>. The Court of Auditors estimates that their number increased from 8% to 14% between 2011 and 2020<sup>30</sup>. For example, “the exemptions on kerosene enjoyed by the airline sector from a legal and fiscal point of view are not considered as

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<sup>26</sup> Ph. Billet, R. Dufal, *Chronique de fiscalité française. Tour d’horizon des principales évolutions législatives des cinq dernières années*, “Revue juridique de l’environnement” 2021, No 1, pp. 161–181.

<sup>27</sup> D. Lamarque, *Finance verte: l’évaluation de l’impact environnemental des finances publiques: enjeux et méthodes*, “Gestion et finances publiques” 2021, No 2, p. 44.

<sup>28</sup> Cour des comptes, *Le budget de l’Etat en 2020*, April 2021, p. 169.

<sup>29</sup> *Ibidem*, p. 167.

<sup>30</sup> *Ibidem*, p. 167.

a tax expenditure and therefore are not within the scope of «unfavorable expenditure» retained in the green budget”<sup>31</sup>.

It is also surprising that green expenditure is not taken into account in the rating criteria of States. Rating agencies will have to measure an impact of climate risk on a probability of default by States. Admittedly, “they are not a priori intended to arbitrarily integrate environmental criteria (like extra-financial rating agencies), but will be required to measure the impact of climate risk on the probability of default. (...) The destruction of an ecosystem can make the country more vulnerable to physical climate risk in the longer term and ultimately increase the risk of default”<sup>32</sup>.

Finally, environmental policy appears to be a financial object that is difficult to assess<sup>33</sup>. Environmental objectives, therefore, often conflict with other objectives. Thus a support measure for truck drivers as we have seen recently following a rise in oil prices amounts to financing an activity that emits a lot of CO<sub>2</sub><sup>34</sup>. Similarly, support for the purchase of less polluting cars increases the production of cars, production which is by nature polluting. In addition, there are elements that have not been evaluated but which are nevertheless at stake<sup>35</sup>. Thus, “no objective or indicator makes it possible to measure the effectiveness of the decisions taken to fight against fraud in energy savings certificates, which is nevertheless one of the strategic priorities retained by the law of 8 November 2019 relating to

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<sup>31</sup> C. Blatrix, Ph. Ledenic, *Entretien croisé avec V. Marcus et F. Tordjman. Le budget vert, une vue d'ensemble de l'incidence environnementale de l'Etat*, “Revue Française d'Administration Publique” 2021, No 3, p. 665.

<sup>32</sup> P. Deschryver (ed.), *Accélérer la transition énergétique. Le rôle de la finance verte et ses enjeux pour l'Europe*, “Études de l'IFRI”, Paryż 2020, p. 24.

<sup>33</sup> J.-L. Albert, *La performance environnementale au trébuchet de la LOLF* [in:] Ch. Roux (ed.), *L'environnementalisation du droit. Études en l'honneur de Sylvie Caudal*, “Institut Francophone Justice et Démocratie – Colloques et Essais” 2020, No 101, pp. 121–136.

<sup>34</sup> In any case, there is a technological obstacle, in the state of advances in science, which makes it impossible to do without fossil fuels. For example, biofuels are incorporated into conventional fuels; they therefore reduce greenhouse gases while ensuring the sustainability of the use of fossil fuels.

<sup>35</sup> Écalle F. *Le budget vert de l'État*, FIPECO, 29 juin 2021, <https://fipeco.fr/commentaire/Le%20budget%20vert%20de%20l%27Etat> (access on-line: 1.03.2022).

the energy and climate”<sup>36</sup>. Finally, against unclear and sometimes contradictory objectives, the impact indicators should include economic but also social effect of the measure, ecological benefits also being social benefits. However, we doubt that this can influence public financial decisions because we know that the organic law on finance laws has introduced hundreds of objectives and indicators with very little impact on public decision-making<sup>37</sup>.

Secondly and above all, the financial mechanisms put in place by the State to contribute to the fight against climate change raise a number of questions on budgetary principles. They basically question the sustainability of the public financial system as we know it and perhaps also our ability to give it up and invent a new one.

On the one hand, climate change is analyzed under a sectoral prism, without a transversal and strategic conception. Evidenced by the “green budget” which only concerns the state budget. Social finances<sup>38</sup> and especially those of local authorities are thus largely excluded, even if, for the latter, the Ecological Transition Agency and I4CE<sup>39</sup> provide them with tools to assess the impact of local budgets on the climate. Similarly, it is regrettable that “the Green Budget does not analyze the effects of extra-budgetary public policy instruments, such as regulations (e.g.: a level of thermal performance of new buildings, an obligation to renovate “strain-ers” etc.), or guarantee mechanisms, which can also contribute to the energy transition”<sup>40</sup>.

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<sup>36</sup> C. Ballandras, R. Dufal, *Chiffre(s), finances publiques et protection de l’environnement*, “Revue Française de Finances Publiques” 2021, No 155, p. 155.

<sup>37</sup> See for example the *Rapport d’information en conclusion des travaux d’une mission d’information relative à la mise en œuvre de la loi organique relative aux lois de finances* déposé par E. Woerth et L. Saint-Martin, September 2019, p. 115.

<sup>38</sup> M. Saoudi, *Vers un budget public vert? A la recherche de la bonne gouvernance financière climatique*, “Revue du Droit Public et de la Science Politique en France et à l’Étranger” 2021, p. 1711.

<sup>39</sup> Institute for climate economics: laboratory founded by the Caisse des dépôts et the agence française de développement.

<sup>40</sup> C. Blatrix, Ph. Ledenic, *Entretien croisé avec V. Marcus et F. Tordjman. Le budget vert, une vue d’ensemble de l’incidence environnementale de l’État*, “Revue Française d’Administration Publique” 2021, No 3, p. 663.

On the other hand, French budgetary principles do not adapt well to requirements linked to the “greening” of public action. This is the case with annual budgeting, which means that the State budget only forecasts and authorizes revenue and expenditure for one calendar year. However, the means put in place to fight against climate change will be assessed in the long term and the programming laws only marginally address environmental issues<sup>41</sup>. This is also the case with the principle of universality, which prevents the allocation of specific revenue to expenditure in favor of environmental protection. Moreover, until 2021, there was an Energy Transition special allocation account collecting the proceeds of several taxes, including the domestic consumption tax on energy products. It has been abolished and now the public energy service charges are financed directly by the State budget. However, there are still allocated tax revenues, such as the transmission tariff contribution, which finances old-age insurance for personnel of electricity and natural gas transport and distribution network companies (but only for rights acquired before 2005).

Finally, and above all, as evidenced by the movement of “yellow vests” or that of “freedom convoys”, taxation must be used with moderation, to remain acceptable from a point of view of the taxpayer and avoid the socio-territorial tensions of the ecological transition. This is why “several levers can be mobilized: pedagogy of reform; device stability and predictability; transparency in the use of revenues. This last factor seems particularly important to facilitate acceptability”<sup>42</sup>.

All these elements show that the “greening” of financial public law is not a successful process. The “green budget”, which is actually yet another appendix to the finance bill, does not follow through on the logic it promotes: the data on the costs of efficiency measures are not sufficient. Similarly, taxation remains a marginal tool because of social tensions it arouses which are amplified by a decline in purchasing power. Finally, faced with the alarmist observations and the urgency that is being felt,

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<sup>41</sup> J.-L. Albert, *Les moyens financiers du ministère de l’environnement*, “Revue du Droit Public et de la Science Politique en France et à l’Étranger” 2022, p. 7.

<sup>42</sup> Conseil des prélèvements obligatoires, *La fiscalité environnementale au défi de l’urgence climatique*, September 2019, p. 108.

public financial law imposes its own timing but once again manages to show a great capacity for adaptation. Basically, as with all transformations, “the current reconnects with the old. The historical fault lines of national budgetary law in terms of the long-term relationship and the fragmentation of public action play together when defining and implementing a medium-to-long-term strategy. It is no longer a question here of laying down trajectories for a return to the balance of public accounts but of tracing the critical path of an ecological transition and socio-economic recovery which will necessarily take time”<sup>43</sup>.

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<sup>43</sup> R. Degron, L. Stroeymeyt, *Le budget vert de l'Etat français: quelle genèse et quel contenu pour quels horizons et effets?*, “Gestion et finances publiques” 2021, No 2, p. 11.

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