
THE GLOBAL REGULATORY DEVELOPMENTS JOURNAL

Editor's Note: Environmental Vigilance

Victoria Prussen Spears

Supreme Court of the French Judicial System Establishes a General Duty of Environmental Vigilance

Stéphanie Floury

European Union Product Liability Directive: Countdown to December 9, 2026

Lisa M. Baird

Greece Finally Implements Cost-Sharing Provisions of Law for High-Voltage Grid Connections

Dimitris Assimakis and Minas Kitsilis

Plastics Regulation in Transition: Key Takeaways from the EU's Winter Package

Gerard McElwee, Begonia Filgueira, Aodhan McGourty, and Marie Escorneboueu

Foreign Ownership Rules and Filing Processes for Petitions for Declaratory Ruling Reformed by U.S. Federal Communications Commission

Eve Klindera Reed, Wayne D. Johnsen, Daniel P. Brooks, Edgar Class, Stephen J. Conley, and Anthony M. Paranzino

Directors and Officers of Certain Foreign Private Issuers Now Face U.S. Securities and Exchange Commission Insider Reporting Obligations

Kevin Friedmann, Scott Saks, Yi-Ping Chang, and Siyuan An

Japan's Reemergence in Global Standard Essential Patent Disputes

Bryan W. Lutz and Jason Sigalos

Hong Kong Issues Code of Practice Under the Protection of Critical Infrastructures (Computer Systems) Ordinance

Gabriela Kennedy and Joanna K.C. Wong

Abu Dhabi Global Market Proposes to Ease Regulations for Smaller and Institutional Fund Managers

Chris Macbeth, Michael J. Preston, Timofey Neklyudov, Olisa Maduegbuna, Chanel Yusuf-Bishop, and Omar Almansoori

What's New in European Arbitration?

Stephan Wilske, Björn P. Ebert, and Allard Kool

Supreme Court of the French Judicial System Establishes a General Duty of Environmental Vigilance

Stéphanie Floury*

In this article, the author examines two decisions by the French Supreme Court that endorsed the principle that “everyone is subject to a duty of vigilance with respect to harm to the environment that could result from his or her activity.”

The second half of 2025 was marked by the Cour de cassation’s recognition of a general duty of vigilance in environmental matters.

More precisely, by two decisions published in its official report,¹ the Cour de cassation endorsed the principle already enshrined by the Constitutional Council nearly 15 years earlier; namely, that “everyone is subject to a duty of vigilance with respect to harm to the environment that could result from his or her activity.”²

This new standard of behavior requires anyone whose activities are likely to cause damage to the environment to take the necessary steps to identify and prevent such damage. A breach of this environmental vigilance obligation may expose the party in breach to tortious and contractual liability alike.

The scope of these two decisions is therefore significant. In particular, it should induce economic operators, when faced with uncertainty about the environmental risks posed by their activities, to document the positive vigilance and prudence measures they have implemented (scientific monitoring, definition of a rational risk management strategy, etc.).

Background

It is settled law that wrongful conduct may be established where a defendant has intentionally violated a legal or regulatory obligation (tort) or where the damage results from negligence (quasi-tort).

In the latter case, the judge assesses fault by reference to the standard conduct expected of a normally prudent and diligent person.

Over the past two decades, the Cour de cassation has gone further and recognized the existence of a duty of vigilance in the medical field. For instance, it has held that the manufacturer of a medicine fails in its duty of vigilance when it takes no measures in the face of risks that are known and scientifically identified, or despite conflicting evidence as to the benefits and risks of the medicine.³

However, the existence of a duty of vigilance in environmental matters had until now been recognized only by the Constitutional Council. In its well-known 2011 decision in the *Michel Z.* case, handed down in the context of a priority question of constitutionality (in French, QPC), the Constitutional Council inferred from Articles 1 and 2 of the French Environmental Charter the principle that “everyone is subject to a duty of vigilance with respect to harm to the environment that could result from his or her activity.”⁴ For context, according to Article 1 of the Environmental Charter: “Everyone has the right to live in a balanced environment that is respectful of health”; and according to Article 2: “Every person has a duty to participate in the preservation and improvement of the environment.”

The binding effect of the Constitutional Council’s decisions on the judicial courts, as embodied in Article 62, paragraph 3, of the Constitution, is limited to the framework of the constitutional review of statutes. Accordingly, the recognition by the Constitutional Council of an environmental duty of vigilance did not automatically bind the judicial courts.

The *Dieselgate* Decision of 24 September 2025

The first time that the Cour de cassation recognized the existence of a duty of vigilance in environmental matters was in its decision of 24 September 2025, handed down in the *Dieselgate* case. In that case, the claimant, who was the owner of a Volkswagen diesel car equipped with a (prohibited) device intended to cheat antipollution measures, had brought proceedings seeking rescission of the sale, invoking the nonconformity of the purchased good with the applicable regulations.

The Cour de cassation assessed the seriousness of the seller's breach of its obligation to deliver goods in conformity with the Environmental Charter. In particular, the court held that the seller's breach was sufficiently serious to justify rescission of the contract, since it contravened Articles 1 and 2 of the Environmental Charter, as well as the principles established by the Constitutional Council in the *Michel Z.* decision.

Specifically, the judgment states as follows:

In view of Articles 1604 and 1184 of the Civil Code, the latter in its version prior to Ordinance no. 2016-131 of 10 February 2016:

30. Under the first provision, the seller must deliver the thing in accordance with the stipulations of the sales contract and the applicable regulations.

31. Under the second, the condition subsequent is always implied in synallagmatic contracts, in the event that one of the two parties does not fulfill its undertaking. In this case, the contract is not rescinded as of right. The party to whom the undertaking has not been performed has the choice of either compelling the other to perform the agreement when performance is possible, or seeking rescission with damages. Rescission must be requested in court, and the defendant may be granted a time limit depending on the circumstances.

32. These provisions must be interpreted in the light of Articles 1 and 2 of the Environmental Charter, according to which, on the one hand, everyone has the right to live in a balanced environment that is respectful of health and, on the other hand, every person has the duty to participate in the preservation and improvement of the environment.

33. As the Constitutional Council has held, respect for the rights and duties expressed in general terms by these articles is binding not only on public authorities and administrative bodies in their respective spheres of competence, but also on all persons, and everyone is subject to a duty of vigilance with respect to harm to the environment that could result from his or her activity (Cons. const., 8 April 2011, decision no. 2011-116 QPC, para. 5).

34. It follows that a serious breach by the seller of its duty of compliant delivery, justifying rescission of the contract, is characterized by delivering to a purchaser a motor vehicle

equipped with a defeat device, such as the one described in paragraph 24 of this judgment, the use of which is prohibited under Article 5(2) of the Regulation (Cass. civ. 1st, 24 September 2025, no. 23-23.869).

Although this decision was handed down in the context of a contractual liability action, it paved the way for other claimants to assert a breach of this duty of environmental vigilance in other fields, particularly in tort liability litigation.

Indeed, this environmental duty of vigilance is merely a manifestation of the duty of prudence incumbent on all under Articles 1240 and 1241 of the Civil Code. It therefore has a general character—as opposed, for example, to the specific duty of vigilance arising from the Law of 27 March 2017 on the duty of vigilance of parent companies and contracting companies.

The *Bayer v. LPO* Decision of 13 November 2025

The second decision was handed down in the *Bayer* case on 13 November 2025 by the third civil chamber of the Cour de cassation, which has jurisdiction over all environmental disputes.

This decision confirms that the environmental duty of vigilance can be invoked in tort liability litigation and clarifies the scope of this duty.

By way of reminder, in this case the Ligue pour la protection des oiseaux (LPO) sued several companies, including Bayer, seeking compensation for ecological harm (within the meaning of Article 1247 of the Civil Code) caused to biodiversity, in particular to farmland birds, by imidacloprid—an insecticide in the neonicotinoid class.

The decision does not adjudicate the merits of the dispute, but rules on the jurisdiction of the judicial courts. The defendant companies argued that the principle of separation of the administrative and judicial authorities prevented the judicial court from substituting its assessment for that made by the administrative authority as to the dangers and drawbacks of imidacloprid for the environment when the authorization to place this insecticide on the market was granted.

By this decision, the Cour de cassation recognizes the competence of the judicial order on the grounds that the alleged faults “are such as to lead the judicial court, not to substitute its assessment

for that made by the administrative authority when granting authorizations to place products on the market, but to assess, in light of subsequent scientific studies, whether there have been any breaches of the environmental duty of vigilance resulting from Articles 1 and 2 of the Environmental (Charter Cons. const., decision no. 2011-116 of 8 April 2011).²⁵

It follows from this decision that failure to comply with the environmental duty of vigilance may in particular be established by reference to scientific studies published after the authorization to place the product on the market was granted. This means that obtaining the relevant administrative authorization does not exonerate the product's manufacturer, nor its distributors, from their environmental duty of vigilance, which requires them to monitor new scientific publications so as to identify environmental risks and to take any appropriate measures.

More broadly, when faced with uncertainty about the environmental risks posed by their activity, companies must implement positive measures of vigilance and prudence.

Accordingly, regulatory monitoring carried out by the company must be complemented by active scientific monitoring such as to enable it to:

1. identify publications relevant to the environmental risks linked to its activity;
2. where appropriate, reassess its practices; and
3. in any event, document its response to those publications.

As a result, companies may be reproached for inaction, because, as in the medical field, failure to act in the face of evolving scientific knowledge can constitute a civil fault.

Notes

* The author, an attorney in the Paris office of Mayer Brown, may be contacted at sfloury@mayerbrown.com.

1. Cass. civ. 1st, 24 September 2025, no. 23-23.869; Cass. civ. 3d, 13 November 2025, no. 24-10.954.

2. Cons. const., 8 April 2011, Michel Z., no. 2011-116 QPC.

3. Cass. civ. 1st, 7 March 2006, no. 04-16.179; see also Cass. civ. 1st, 25 May 2023, no. 21-14.843, the PIP prostheses case; and Cass. civ. 1st, 15 November 2023, no. 22-21178, the Mediator case.

4. Cons. const., 8 April 2011, no. 2011-116 QPC; see also, to similar effect, Cons. const., 10 November 2017, *NGO Entre Seine et Brotonne et autre*, no. 2017-672 QPC.

5. Cass. civ. 3e, *Bayer v. LPO*, no. 24-10.954.