

## **The ASN administrative enforcement committee**

### **Questions & answers**

#### **1. Since when has the ASN administrative enforcement committee been in place?**

The ASN administrative enforcement committee was created by Ordinance 2016-128 of 10 February 2016 (article L. 592-41 to L. 592-44 and L. 596-7 to L. 596-9 of the Environment Code); its implementation required that its regulatory application provisions be published: Decree 2019-190 of 14 March 2019 created Articles R. 592-34 to R. 592-38 and R. 596-10 to R. 596-15 of the Environment Code.

The members of the administrative enforcement committee were appointed by the Vice-President of the Council of State and the first President of the Cour de cassation (Court of appeal) respectively, with the exception of an alternate member, which does not prevent the committee from being installed.

After making contact with the ASN Commission and departments in 2020, the administrative enforcement committee was installed on 19 October 2021.

M. Maurice MEDA was elected Chair of the committee by the regular members.

The committee adopted its internal rules of procedure. These will be published in the Official Journal.

For the initial composition of the committee, the duration of the mandate of the two members appointed by the Vice-President of the Council of State and the First President of the Cour de cassation respectively is set, by a random draw, at three years for one and six years for the other.

#### **2. Why is an ASN administrative enforcement committee needed?**

Unlike administrative policing measures, which are intended to force those responsible for nuclear activities to put an end to any infringements (e.g.: deposit of a sum, work performed automatically, suspension or daily penalty payment), the fine is a sanction that is essentially repressive in nature.

The prosecution and investigation functions on the one hand must be separated from the sentencing function on the other, when these two functions are performed within the same entity, notably within certain independent administrative authorities, such as ASN. An obligation such as this arises from jurisprudence of the European Court of Human Rights (On Article 6 of the Convention safeguarding human rights and fundamental freedoms regarding the right to a fair trial) and the Constitutional Council (application to independent administrative authorities with enforcement powers of the principle of independence and

impartiality arising from Article 16 of the 1789 French Declaration of the Rights of Man and the Citizen).

This is why the legislator made provision for the creation of an administrative enforcement committee within ASN, exercising the sentencing function only.

### **3. What is the composition of the administrative enforcement committee?**

The committee comprises four regular members:

- Two State councillors appointed by the vice-president of the State Council;
- Two councillors to the Court of Cassation appointed by the First President of the Cour de Cassation (Court of appeal).

It also includes four alternate members, appointed under the same rules as the regular members.

The duration of the members' mandate is six years. The mandate of the members can be renewed once.

### **4. Who chairs the administrative enforcement committee?**

The committee Chair is elected for three years by the regular members of the committee. The Chair is M. Maurice MEDA.

### **5. What are the resources of the administrative enforcement committee?**

With the approval of the ASN Chairman, the administrative enforcement committee receives technical support from the staff of the ASN departments, who are then placed under the functional authority of the Chair of the administrative enforcement committee.

The committee's sessions will be held at ASN headquarters. Premises at headquarters will also be made available to the members of the committee on an ad hoc basis, whenever needed.

### **6. Who can refer matters to the administrative enforcement committee?**

The ASN Commission has the authority to decide to open a procedure leading to issue of a fine, after confirmation that the licensee or party responsible for transport or for nuclear activities governed by the Public Health Code has failed to comply with a formal notice, in other words has failed to take the measures required by this formal notice.

## **7. What are the powers of the administrative enforcement committee?**

The administrative enforcement committee may issue administrative fines on the licensees of basic nuclear installations (BNI), those responsible for the transport of radioactive substances, the operators of nuclear pressure equipment (NPE), or those responsible for nuclear activities regulated by the Public Health Code.

If the ASN Commission decides to issue a fine under a procedure known as “settlement” (article L. 596-8 of the Environment Code), the administrative enforcement committee as applicable approves the planned settlement between ASN and the responsible party concerned by notification of the grievances (see question 12).

## **8. What is the amount of the fines that can be issued by the administrative enforcement committee?**

The maximum amount of the fines that can be issued by the administrative enforcement committee is set by law at 10 million euros, in the event of a breach of the provisions applicable to basic nuclear installations, one million euros for a breach of the provisions applicable to nuclear pressure equipment, and 30,000 euros in the field of transport of radioactive substances.

This maximum amount is set at 15,000 euros for small-scale nuclear activities.

The fines will be proportional to the seriousness of the observed breaches and in particular take into account the extent of the impact on the environment.

## **9. What enforcement measures are available to the ASN Commission?**

For its part and in the event of non-compliance with formal notice within the allotted time, ASN has the power to take the following administrative policing measures:

- deposit of a sum covering the cost of the work to be performed;
- automatic performance of the works at the expense of the licensee;
- suspension of operation of the facility or of the transport operation until the person responsible has restored conformity;
- to which can be added the daily penalty payment, the amount of which is set per day and which must be paid by the party responsible until compliance with the requests stipulated in the formal notice served on them (up to 15,000 euros per day in the field of basic nuclear installations and 1,500 euros per day in the field of small-scale nuclear activities (Articles L. 596-4 of the Environment Code and L. 1333-31 of the Public Health Code)).

## **10. How do ASN's enforcement and sanctions powers interface with criminal sanctions?**

At the same time, ASN can also initiate criminal actions of two different types. When the events potentially constitute a breach which is not within the competence of ASN, and in accordance with Article 40 of the Criminal Procedure Code, these events are reported to the Public Prosecutor's office. When the events detected potentially constitute a violation which is within the field of competence of ASN, its inspectors draw up a violation report, pursuant to the Environment Code or the Public Health Code.

## **11. What is the procedure when the Commission decides to refer a matter to the administrative enforcement committee?**

The ASN Commission notifies the persons concerned of the grievances and refers the matter to the administrative enforcement committee.

The committee appoints a rapporteur from among its members. This person may conduct any hearings they consider to be necessary. They draft an investigation report and present the results of their investigation during the session that is to lead to issue of the fine.

The administrative fine issue procedure adheres to the adversarial principle.

No penalty can be imposed without the party concerned or their representative having been heard or summoned.

The Committee's decision may be made public.

The decisions pronounced by the administrative enforcement committee may be referred to the administrative jurisdiction (Council of State) by the person concerned, by the ASN Chairman or by the third parties.

Events that date back more than three years cannot be brought before the committee if nothing has been done during this period to try to look for, record or sanction the events. In addition, the fine cannot be imposed more than three years after the violations have been recorded.

## **12. What is the settlement procedure?**

The Environment Code makes provision for a "settlement" procedure (article L. 596-8), in which the committee also intervenes. This is in fact a transactional fine.

At the same time as notification of the grievances to the administrative enforcement committee, ASN may send the party concerned a proposal for a settlement (article L. 596-8 of the Environment Code).

The settlement proposal is determined *"according to the circumstances and seriousness of the violations, the personality of the party concerned, their resources and their expenses"*. It specifies the settlement fine that the party concerned must pay (the amount of which may

not exceed one third of the maximum amount of the relevant fine) and, where applicable, the obligations that will be imposed on the party to bring the violations to an end, to prevent them from recurring, and to repair the damage or restore conformity on the sites. It also sets the allotted time for payment and, if applicable, for compliance with the obligations.

The proposed settlement between ASN and the party concerned must be approved by the administrative enforcement committee and then made public.

### **13. What are the rules of professional ethics applicable to the members of the administrative enforcement committee?**

Notably pursuant to Act 2017-55 of 20 January 2017 *constituting the general statutes of independent administrative authorities and independent public authorities*, the members of the administrative enforcement committee are required:

- to perform their duties with dignity, probity, integrity and independence,
- to attempt to prevent or obtain immediate cessation of all conflicts of interest, as defined in Act 2013-907 of 11 October 2013 *regarding transparency in public life*,
- to comply with the duty of restraint and therefore not publicly adopt a personal position prejudicial to the smooth running of ASN,
- to respect the confidentiality of the deliberations and professional secrecy, as well as to exercise professional discretion regarding all facts, information or documents of which they become aware in the exercise of or on the occasion of the exercise of their duties.

### **14. What are the committee's guarantees of independence and autonomous decision-making?**

The independence of the administrative enforcement committee and its autonomous decision-making powers are guaranteed by law. Article 9 of Act 2017-55 of 20 January 2017 states that in the performance of their duties, its members "*neither receive nor ask for instruction from any authority*".

The legislative provisions designed to identify and prevent conflict of interest situations also contribute to the committee's completely impartial decisions:

- the above-mentioned Act of 20 January 2017 thus stipulates that the mandate of a member of an administrative enforcement committee is incompatible with certain electoral mandates and certain professional occupations. It also stipulates several incompatibilities between mandates and functions carried out within several or within the same independent authority;
- pursuant to Act 2013-907 of 11 October 2013 *regarding transparency in public life*, the members of the administrative enforcement committee are required to submit a declaration of interest and a declaration of assets to the High Authority for Transparency in Public Life (HATVP);

- Article 12 of the Act of 20 January 2017 stipulates that when there is a risk that the impartiality of a member of the committee could be compromised during the examination of a case, owing to the member concerned holding an interest, or performing a function, or holding a mandate, or representing an interested party, then they shall not participate in this examination. The process whereby the member shall abstain is defined in the committee's internal rules of procedure;
- finally, a provision of the committee's internal rules of procedure recalls that, in the performance of their duties, its members may not request or accept any benefit or gift for themselves or for third parties, liable to influence or appear to influence their independence, their impartiality, or the manner in which they perform their duties.

**15. What is set out in the internal rules of procedure of the administrative enforcement committee?**

The administrative enforcement committee adopted its internal rules of procedure during the session devoted to its installation, on 19 October 2021. This comprises the provisions regarding its working, how it investigates requests for issue of a fine referred to it, summons procedures, the running of sessions, deliberations, as well as a reminder of the references of the texts governing incompatibilities and the professional ethics obligations of its members.