

France's new biodiversity law and implications for no net loss of biodiversity

October, 12th 2016

Webinar

Ophelie Darses,

Natural resources economics department
French Ministry of the environment, energy and the seas

With comments by Fabien Quétier, Biotope



Crédit photo : Arnaud Bouissou/MEDDE

Ministère de l'Écologie, du Développement durable et de l'Énergie

The French legal and regulatory framework

- 
- 1976** Law on nature protection: 1st reference to the mitigation hierarchy
- 2004** Constitutional law on the environment: reference to sustainable development (environment/economy/social progress)
- 2007** Protected species derogations “the net result of a derogation should be neutral or positive for a Species” (EC 2007 Guidance)
- 2009** Consultative process « Grenelle de l’environnement »
Grenelle Law I
- 2010** Grenelle Law II
- 2012** National doctrine on the mitigation hierarchy
National guidelines on the mitigation hierarchy
- 2014** First parliament review of draft law
- 2016** August 8th: Adoption of the law on “recovering” biodiversity, nature and landscape

Main EU directives

- 1979 : birds
- 1985 : EIA
- 1992 : habitats
- 2000 : water



Mitigation hierarchy

SCOPE (1)

Definitions

- Introduction of the mitigation hierarchy definition within the text and NNL principle

(**article 2**) – Modification National Environmental code (article L.110-1 modified)

« The principle implies to avoid the damages to biodiversity and the services it provides ; otherwise reduce the damages and in last step compensate the impacts that were not avoided neither reduced, considering the species, the natural habitat and the ecological functions that were impacted. »;

« The principle aims at achieving a no net loss objective, or tending to a gain of biodiversity. »

Mitigation hierarchy

SCOPE (2)

Existing rules

- Sectorial regulations (species, habitats) + EIA and SEA
- No-Go areas (definition and development of protected areas)

What's new

- Case by case analysis of need for EIA since 2012 law, modified this summer (*Order 2016-1058*)

Mitigation hierarchy : PRINCIPLES

Metrics and exchange rule

Existing rules

General guidelines and principles
through the National doctrine (2012)

(31 methodological sheets)

Key criteria : ecological equivalence -
proximity – feasibility – efficiency –
additionality – sustainability

Validation of project design :

- Respect of the mitigation hierarchy
- Respect of offsets design criteria

What's new in the law :

key principles of the national
doctrine are codified (**article 69**) and
more

- Principle of sustainability;
- Ecological equivalence : « Like for like » requirement ;
- Proximity for measures implementation;

Outcome based MH ("results obligation") ;

- Respect of the sequence order ;
- Non-realization of the project if the impacts on biodiversity can not be avoided, reduced and compensated in a well appropriate way

Mitigation hierarchy Implementation

Offset implementation (article 69)

- 3 options for developers to offset impacts and to implement offsets
 - In-house, **(already in place)**
 - *via* a third party service provider (offset operator), **(already in place)**
 - By purchasing offset units (according to the ecological equivalence principle) from “natural offsetting areas” (habitat bank), accredited by the State*. **(Almost) New !**
- * requirements to be accredited are defined in a forthcoming Decree.*
- In any case :
 - The nature of the offsets has to be explicitly mentioned in the EIA ;
 - Legal liability : assumed by the developer.

Additional elements

Permitting authorities **can** ask to the developer for financial guarantees **(article 69)**

Creation of “conservation easement” to secure land for offsets **(article 71)**

Specific focus on : The national experimentation of habitat banking (1)

- **The 1st pilot project was launched in 2008**
 - “operation Cossure” with CDC Biodiversité in the South of France
- **End of 2011:** 4 other pilot projects have been selected after a national call for proposals in order to explore a wide scope of strategies with a diversity :
 - of regions
 - of targeted species / habitats / ecosystems
 - of operators (private companies, associations, public authorities...)
- 2012-2013: participatory improvement of the pilot projects
- 2014: official launching of the pilot projects:
 - Subalpine valley (Alps) - *Black grouse* ; EDF
 - Hedgerow landscape (Britanny); DERVENN
 - Peri-urban green spaces (Paris); General Council of the Yvelines

Specific focus on : The national experimentation of habitat banking (2)

- **The 1st pilot project was launched in 2008**
 - “operation Cossure” with CDC Biodiversité in the South of France
- Area of 357 ha of « Coussouls »
- Operation budget 30 ans (2008-2038) :
 - Land purchasing : 5 millions € (2008);
 - Ecological measures (restauration) : 5 M € (2008-2010);
 - Management: 2,5 M € (2010-2038) (around 89 k €/year).
- **Offset unit** : hectare of habitats specific to protected species (ex: Little Bustard, ganga cata, Ocellated lizard (Timon lepidus)
- **Offset units price**: 35 000 € HT (2008) ; 42 412 € HT (mars 2015).
- Mid-term assessment: 46% of units sold, 6 buyers

Mitigation hierarchy Implementation

Offset implementation (article 69)

- 3 options for developers to offset impacts and to implement offsets
 - In-house, **(already in place)**
 - *via* a third party service provider (offset operator), **(already in place)**
 - By purchasing offset units (according to the ecological equivalence principle) from “natural offsetting areas” (habitat bank), accredited by the State*. **(Almost) New !**
- * requirements to be accredited are defined in a forthcoming Decree.*
- In any case :
 - The nature of the offsets has to be explicitly mentioned in the EIA ;
 - Legal liability : assumed by the developer.

Additional elements

Permitting authorities **can** ask to the developer for financial guarantees **(article 69)**

Creation of “conservation easement” to secure land for offsets **(article 71)**

Mitigation hierarchy

ENFORCEMENT, MONITORING, TRANSPARENCY ISSUES (1)

Enforcement and monitoring

- Ex-ante :

- The EIA must include a description (no longer just a «sketch ») of alternative scenarios (*article 71*)
- Permitting authorities **can call upon third party expertise*** for external auditing of applications for protected species derogation (*article 68*)
- Permitting authorities **can** ask for financial guarantees (*article 69*)

- Ex-post (*article 69*):

- If offsets are not efficient, permitting authorities can order additional measures.
- If after sanctions are applied, in the case of non compliance, legal authorities **mandate that offsets executed through:**
 - An offset operator, or
 - A “natural offset area” (habitat bank).

Mitigation hierarchy

ENFORCEMENT, MONITORING, TRANSPARENCY ISSUES (2)

Transparency

- Creation of a **geo-referenced data based of offsettings measures** (and their description) (*article 69*)
 - Based on reporting by developers
 - Open access
- **Obligation for the developer to share data from EIA** : mandatory contribution to the national inventory of natural heritage (*article 7*)
- Creation of a **National Inventory of suitable locations for offsetting** and abandoned land holdings, to be led by the new Biodiversity agency (created by the law) (*article 70*)

More information :

- 2016 *The French Law :*
<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033016237&categorieLien=id%E2%80%8E>
- OECD Environmental Performance Review of France
<http://www.oecd.org/env/oecd-environmental-performance-reviews-france-2016-9789264252714-en.htm>
- 2014 **Le Point Sur ...** la séquence éviter, réduire, compenser, un outil de préservation des milieux naturels (4p)
<http://www.developpement-durable.gouv.fr/IMG/pdf/LPS184-2.pdf>
- Quétier F., Regnery B. & Levrel H. (2014): No net loss of biodiversity or paper offsets? A critical review of the French no net loss policy. Environmental Science & Policy 38: 120-131.*
- 2013 **National guidelines**
Lignes directrices sur la séquence éviter, réduire, compenser les impacts sur les milieux naturels (232p)
http://www.developpement-durable.gouv.fr/IMG/pdf/Ref_-_Lignes_directrices.pdf
- 2012 **Doctrine nationale « éviter, réduire, compenser »** (8p)
<http://www.developpement-durable.gouv.fr/IMG/pdf/doctrineERC-vpost-COPIL6mars2012vdef-2.pdf>
Le Point Sur... Compenser les atteintes à la biodiversité : l'expérience américaine des banques de zones humides (4p)
Le Point Sur... Compenser les atteintes à la biodiversité : expériences internationales et enseignements pour la France (4p)
Compensating for damage to biodiversity : the American experience of wetlands banks (4 pages)
<http://www.developpement-durable.gouv.fr/Compensating-for-damage-to,29263.html>
Guide « espèces protégées, aménagements et infrastructures » (65p)
- 2011 **Étude de parangonnage** : la compensation des atteintes à la biodiversité à l'étranger (136p)
Compensating for damage to biodiversity: an international benchmarking study (136 pages)
<http://www.developpement-durable.gouv.fr/IMG/pdf/ED68EN-2.pdf>

To know more :

erc-deb-cgdd@developpement-durable.gouv.fr

Thanks for your attention

