

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

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Webinar

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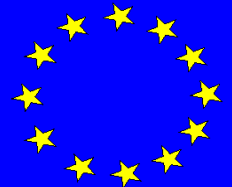
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The French legal and regulatory framework

- 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

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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 :

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Thanks for your attention

