

BLOG POST June 1st 2023

How to give the French National Biodiversity Strategy the necessary force?

Authors

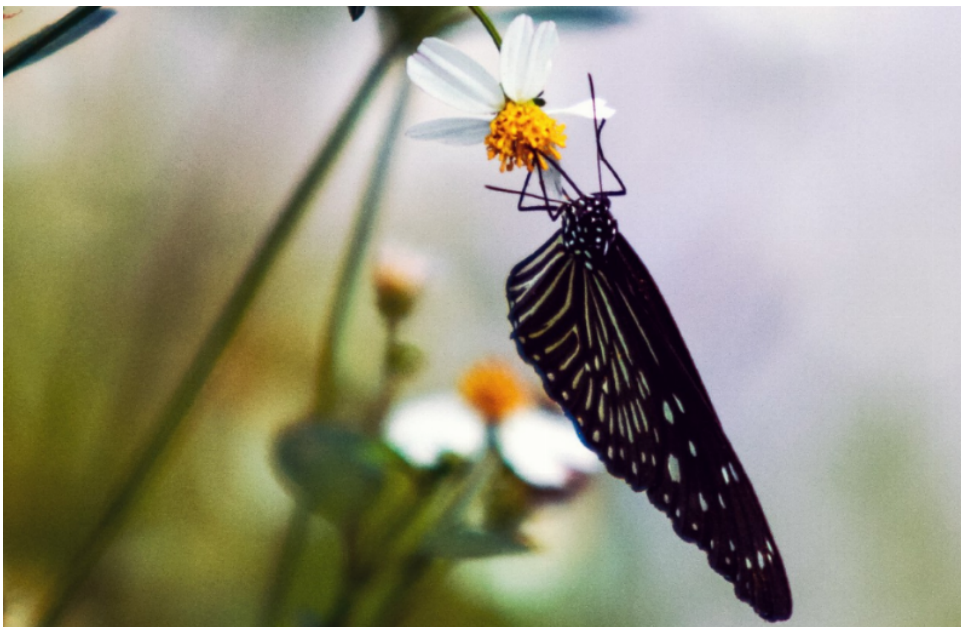
Agnès Hallosserie

Director, Biodiversity programme

Lucien Chabason

Senior Advisor

 Reading time: 8 min



The National Biodiversity Strategy, due to be made public by July, will be the third iteration of this document. The idea of having it adopted by the Parliament is already floating through the hallways of the National Assembly. This would represent a first for this type of political instrument. The Economic, Social and Environmental Council has, for its part, proposed the adoption of a statutory measure. At a time when recent political signals around the use of pesticides^{[1](#)} seem to risk exacerbating biodiversity loss, this blog post by IDDRI considers three possible scenarios for the adoption of the Biodiversity Strategy and examines the possible legislative options available to strengthen its force.

Strategy documents and other such political instruments prepared by government departments hardly ever have an influence beyond the inner circles. They can serve as roadmaps for the various actors (such as government departments, private sector, and civil society), who participated in the consultation process, following the example set by the [Grenelle Environment Initiative](#) (2007). However, their implementation still largely depends on the goodwill of a few crucial actors. This is because strategy documents remain outside the scope of binding legal or regulatory frameworks.

However, France has committed to implementing its National Biodiversity Strategy (SNB) in keeping with the [Kunming-Montréal Global Biodiversity Framework](#), which was adopted in December 2022. The recent clashes over water mega-basins or trawler fishing in marine protected areas reveal the social importance of land- and sea-use issues. It would therefore seem to be acceptable for the Parliament to launch a discussion on the subject, but could it take up the SNB? Would a law provide additional guarantees for improving the state of biodiversity?

Article 34 of the French Constitution specifies that the Parliament shall determine the fundamental principles guiding the preservation of the environment. While it is easy to argue that the level of detail and application of the SNB lies beyond the scope of fundamental principles, one must also note a growing trend in France for the Parliament to intervene in issues beyond its ambit without much opposition from the Constitutional Council. Indeed, if one considers certain articles of the Law [“for the Reconquest of Biodiversity”](#) (2016), which, for instance, bans the use of plastic in cotton swabs stems (Article 124), this wouldn't be a first for biodiversity. The law deals more fundamentally with the SNB, whose development process is outlined in the [Environmental Code \(Article L110-3\)](#). Even so, both the Code and the Law remain silent on the process of legally adopting such a strategy². What scenarios could one envisage?

Unilateral publication by the Environment Ministry: an SNB with limited scope

The first two SNBs for the period [2004-2010](#) (SNB-1) and [2011-2020](#) (SNB-2) were adopted by the Ministry of Ecological Transition with little to no fanfare, even though the second was developed through a consultation process that mobilized relevant actors and received a fair amount of attention, especially in the first few years of its implementation. The [biodiversity plan](#) of July 2018, which remained under the ambit of the Ministry of Ecological and Solidarity Transition, reiterated several measures of the SNB-2 and laid the foundations of the SNB-3. These included measures explicitly targeting certain sectors like agriculture, such as the phasing out of glyphosate by the end of 2023 and the ban on “all insecticides [...] with modes of action identical to the neonicotinoid group of substances.”

The [preliminary SNB-3 report](#) published by the Secretary of State responsible for Biodiversity seems to confirm this trend. The publication of the final document by the Minister for the Ecological Transition or the Secretary of State for Ecology would therefore be in keeping with tradition. While the development of the SNBs have given rise to consultation processes and inter-ministerial presentations, we must recognize that this level of engagement has still not made biodiversity a priority issue for the different government departments. In view of the [dramatic acceleration in biodiversity loss](#) over the last three decades, can we really continue to repeat this pattern ad infinitum?

It must be noted that the [EU Biodiversity Strategy](#) published in 2021 by the European Commission led by the Directorate-General for the Environment, takes a similar approach. It nevertheless proposes a “cooperation-based” implementation framework (roadmap for actors, monitoring and review mechanism, responsibility of actors from different sectors to fulfil reporting obligations). The European Commission will review the efficacy of this strategy in

2024 and, if necessary (in other words, if satisfactory progress has not been made) a legally binding approach may then be adopted for specific provisions.

An intermediate alternative: adoption by decree

The preliminary version of the SNB-3 looks at an implementation through “the coordination of inter-ministerial action by the Prime Minister”, while observing that “the specific modalities would be defined after the final adoption of the SNB”. The document states that “every actor [with a specific policy-making competence related to the implementation of an SNB measure] will draft [...] a document outlining the resources [...] it intends to allocate to the implementation of measures contained in the SNB which concerns it [...]; this document shall be annexed to the SNB in 2023.” All the ministries would be involved.

In view of this, a decree issued by the Prime Minister and co-signed by the relevant ministers³ could help bring everyone on board. However, the binding nature of the SNB was rejected by Parliament when it drafted the 2016 law. The first step would therefore be to amend the Environment Code to specify that the SNB is to be adopted by decree⁴, following the example of the National Low Carbon Strategy adopted by [decree on 21 April 2020](#), and including quantified targets. Although the current government's top-down approach has received bad press following the stormy debates on the 2023 budget and pension reform, a decree would nevertheless bring so-called “sectoral” policies into line with biodiversity protection policies. Parliament could be closely involved in monitoring the implementation of the SNB, as part of the follow-up to the application of the 2016 law, with, for example, regular reports to be submitted to it, [as suggested by an NGO group](#). Following the governance framework set out by the EU Biodiversity Strategy, the responses of different sectors could be assessed in light of the SNB targets, thereby prompting action by the Parliament to strengthen their implementation via legislation if needed.

Adoption by law: the “Holy Grail” of Parliament

The National Assembly could consider the provisions of the SNB after its publication by the ministry as a continuation of its work on the Law “for the Reconquest of Biodiversity”, which was adopted halfway through the development of the SNB-2. This 2016 Law represented a step forward in terms of its approach, because it specifically targeted the main factors of biodiversity loss [even before the IPBES report made clear that their consideration is indispensable to biodiversity protection](#). It identified specific sources of pollution such as phytopharmaceutical products and plastics⁵, for instance, and put in place tangible reduction measures. The Parliament could potentially build on some of the measures outlined in the SNB-3 to strengthen the targets of certain dispositions, or to include areas that were absent or poorly addressed by the 2016 law.

While a parliamentary review exercise would take longer than unilateral publication by a single ministry or adoption by decree, it could provide an opportunity for real debate on biodiversity protection. In addition, parliamentary consideration of the measures outlined by the SNB could make actions that harm biodiversity more legally actionable. Courts would have a legal basis on which to rule, giving civil society and citizens new means of action. This has already proven to be the case for climate action with the 2015 law on [“energy transition for green growth”](#), the 2019 law on [“energy and the climate”](#), the 2021 law on [“climate and resilience”](#) and the 2023 law for the [“acceleration of renewable energy.”](#) In addition, the revision of the National Low Carbon Strategy, [associated with the five-year programmatic law on energy and climate](#) has clearly reinforced the [ability of courts to take up strategic litigation on climate inaction](#), and to issue judgements encouraging the State to take more effective action.

Considering parliamentary adoption of the provisions of SNB-3 is a considerable undertaking: the SNB-3 has been in the making for four years now, if one includes the preparation of the preliminary version of the document⁶, with the

participation of several stakeholders, including some associations and companies from the agricultural, fishing, and industrial sectors. Re-launching these discussions in Parliament could risk compromising the integrity and coherence of the document drafted by the Ministry for Ecology, but represents an essential step towards a firm foundation for the SNB. Over the last 7 years, societal expectations for the protection of biodiversity have continued to grow and have been imposed on populations, for example at the height of the Covid-19 pandemic. Parliament should listen carefully and raise the profile of the SNB compared with recent decades, shaking up the status quo it maintained in 2016.

Be it a decree or a law, beyond its legally enforceable nature, [the evolution of climate governance in recent years](#) illustrates that the elements of law provide a common point of reference for civil society actors such as academics or NGOs. These actors could use it as a tool to regularly assess government action and remind it of its ambitions to bring ministries into alignment around these goals. A governance innovation that could prove to be very valuable to the cause of biodiversity protection, and in which Parliament will have a role to play.

1 Request to extend the derogation on neonicotinoids (since abandoned) and to reverse the ban on S-metolachlor, among others.

2 For comparison, Article 173 of the 2015 Law on the Energy Transition for Green Growth states that the National Low Carbon Strategy shall come into force by decree. It further specifies both the contents of the strategy (achieving the targets outlined by the law while accounting for the specificity of the agricultural sector and the risk of "carbon leakage" via imports) as well as of the decree (carbon budget allocation by period, sector and category of greenhouse gas, emissions caps etc.).

3 This option would be in keeping with the Economic, Social and Environmental Council's (CESE) 2021 advisory on the SNB which recommends regulatory adoption of the strategy. <https://www.lecese.fr/travaux-publies/contribution-du-cese-l-elaboration-de-la-strategie-nationale-pour-la-biodiversite-snb3>

4 As it stands, the government could justify issuing a decree on the SNB by invoking France's commitment to the Convention on Biological Diversity (article 6); this rather weak link could however be rejected by the courts in the event of a dispute.

5 Articles 116 and 124 respectively.

6 Repeated deferral of the COP 15 Biological Diversity Summit due to the COVID-19 pandemic has delayed the preparation of the 2nd draft between 2020 and 2022.

BIODIVERSITÉ

CBD INTERNATIONAL NEGOTIATIONS

COP15 BIODIVERSITY

BIODIVERSITÉ FRANCE