

Decrees, orders, circulars

GENERAL TEXTS

MINISTRY OF ECOLOGICAL TRANSITION

Decree no . 2022-667 of April 26, 2022
relating to the compensation of greenhouse gas emissions

NOR : TRER202234D

Public concerned: any actor carrying out compulsory or voluntary compensation, aircraft operators having to compensate for the greenhouse gas emissions of their flights carried out within the national territory.

Subject: decree implementing article 147 of law no . 2021-1104 of 22 August 2021 on the fight against climate change and building resilience to its effects.

Entry into force: the day after the publication of the decree.

Notice: the decree specifies the methods of application of the principles of carbon offsetting set out in article 147 of the climate and resilience law (measurable, verifiable, permanent, additional and transparent nature). The decree also specifies the conditions and procedures for applying the obligation to offset greenhouse gas emissions from domestic flights performed by aircraft operators introduced by article 147 of the climate and resilience law. This obligation applies from January 1 , 2022 and gradually until 2024 when all emissions will have to be offset. The draft decree specifies in particular the actors concerned, the elements of information to be provided by the aircraft operators and their transmission deadlines, as well as the methods of verification by the authority. The decree provides an exemption for operators of aircraft generating less than 1,000 tonnes of carbon dioxide (CO₂) per year. It specifies the eligibility criteria for the projects from which the carbon credits are issued, in particular the start date of the project, the geographical distribution of the projects selected, and the valuation of the co-benefits for biodiversity. The decree provides for arrangements for the ex-ante financing of European projects. It also specifies the process for purchasing and canceling carbon credits.

References: the decree can be consulted on the Légifrance website (<https://www.legifrance.gouv.fr>).

The Prime Minister,

On the report of the Minister for Ecological Transition,

Considering the Environment Code, in particular its articles L. 229-5 to L. 229-7 and L. 229-55 to L. 229-60;

Having regard to Law No. 2021-1104 of August 22, 2021 on the fight against climate change and strengthening the resilience to its effects, in particular II of its article 147;

Having regard to decree no . 97-1198 of December 19, 1997 taken for the application to the Minister of Equipment, Transport and Housing of the first paragraph of article 2 of decree no . 97-34 of January 15, 1997 relating to deconcentration individual administrative decisions;

Having regard to the observations made during the public consultation carried out from January 17 to February 6, 2022 inclusive, in application of article L. 123-19-1 of the environment code; The Council of State (public works section) heard,

Decrees :

Art. 1st. – In chapter IX of title II of book II of the environmental code, a section 7 is added as follows:

« Section 7

“Emission reductions resulting from projects to offset greenhouse gas emissions” Art. R. 229-102-1.

– The principles mentioned in Article L. 229-55 are applicable, for the purposes of mandatory or voluntary compensation, to projects for the reduction and sequestration of greenhouse gas emissions under the following conditions:

“ 1^o The reductions and sequestrations of greenhouse gas emissions are quantified, for each offset project, according to a methodology based on the most recent scientific and technical knowledge.

The data used in the calculations are clearly explained and referenced, so that they can be verified. Only the reductions and sequestrations of additional emissions are taken into account compared to a scenario of

reference which must be established, for each project, taking into account its nature and its specificities, its context, the trend of greenhouse gas emissions and existing best practices. The methodology takes into account the risks of calling into question the permanence of offset projects.

Emission reductions and sequestrations that are not sufficiently sustainable lead to a reduction in the number of carbon credits taken into account in the methodology;

" 2o The reductions and sequestrations of emissions are controlled and validated, for each project of compensation, by an independent natural or legal person with the required skills;

" 3o The reductions or sequestrations of emissions which could not occur, in any event, within the framework of the reference scenario mentioned in 1o are considered as having an additional character. To this end, account is taken in particular of the obligations resulting from the texts in force, the various mechanisms encouraging the reduction or sequestration of emissions, as well as existing practices in the sector of activity to which the project relates;

" 4o Are made available to the public, in an easily accessible manner, information relating to the main characteristics of the project, the methodology on which it is based, the methods of accounting for the reductions and sequestration of emissions, the price of the corresponding carbon credits, as well as those making it possible to ensure the permanence of the compensation measures.

"A decree from the Minister responsible for the environment specifies, as necessary, the technical methods of application of this article, in particular those tending to guarantee the permanent and additional nature of the compensation actions.

"Single sub-section

"Compensation for greenhouse gas emissions from flights performed within the national

territory" Art. R. 229-102-2. – This subsection applies to aircraft operators operating flights within the national territory mentioned in Article L. 229-56 and subject to the obligations provided for in Articles L. 229-57 and L. 229-58, when the emissions of these flights, determined under the conditions provided for in Article R. 229-37-7, are greater than 1,000 tonnes of carbon dioxide (CO₂) per year.

" Art. R. 229-102-3. – For the purposes of this sub-section, the words: "the competent authority" designate the minister responsible for civil aviation, with the exception of the provisions of articles R. 229-102-11 for the application of which the competent authority is the Minister responsible for the environment.

" Art. R. 229-102-4. – Aircraft operators shall fulfill their offsetting obligations each year by using or acquiring carbon credits relating to projects that comply with the provisions of this section, provided that they have not aimed at reducing aircraft emissions. They can meet these obligations if they benefit from recognized emission reductions pursuant to decree no. 2018-1043 of November 28, 2018 creating a "Low Carbon" label.

" Art. R. 229-102-5. – Recognized emission reductions and sequestrations pursuant to Decree No. 2018-1043 of November 28, 2018 creating a "Low Carbon" label, as well as those eligible for the carbon offsetting and reduction scheme for international aviation (CORSIA) implemented within the framework of the International Civil Aviation Organization (ICAO) are deemed to comply with the provisions of article R. 229-102-1.

" Art. R. 229-102-6. – Projects to reduce or sequester greenhouse gas emissions are only eligible for this compensation scheme if the work intended for their implementation began after 31 December 2019 and if they have no net negative impact on biodiversity.

" Art. R. 229-102-7. – I. – A joint order of the ministers responsible for the environment and civil aviation sets a minimum percentage of emissions reduced or sequestered by projects located in the European Union. This percentage increases gradually between 2022 and 2025. From 2025, it must be at least 50%. Compliance with this percentage is assessed annually and for each aircraft operator subject to the compensation obligation.

"II. – The decree mentioned in I also sets a ceiling price for the carbon credit beyond which operators are exempted from applying the rate mentioned in the previous paragraph, if they are no longer able to find projects located in the European Union whose carbon credit price is below this ceiling.

" Art. R. 229-102-8. – Projects that make significant improvements in terms of the preservation and restoration of natural ecosystems and their functions may benefit from an increase in the amount of carbon credits taken into account to assess compliance with the offsetting obligation, within the limit a ceiling increase of 15% per operator and per year.

"An order from the Minister for the Environment specifies the criteria for evaluating these projects with regard to these objectives and the rate of increase.

" Art. R. 229-102-9. – Aircraft operators submit to the competent authority, no later than March 31 of each year, a declaration relating to the emissions of the previous year as defined in the fourth paragraph of Article R. 229-37-7. They are verified in accordance with the provisions of III of Article L. 229-7 and those of this section.

"In the absence of a declaration within the required period or if the competent authority finds that it does not comply with the conditions set by the order relating to aircraft provided for in the fifth paragraph of Article L. 229-6, authority

competent authority proceeds automatically, after unsuccessful formal notice to the operator, to calculate the emissions, in accordance with the fourth paragraph of article R. 229-37-7.

“ Art. R. 229-102-10. – The cancellation of carbon credits used or acquired with a view to offsetting issues of the previous year must take place no later than April 30 of each year.

“ Art. R. 229-102-11. – The aircraft operator sends the competent authority, before 1 June of each year, a compensation report checked by the verifier mentioned in article R. 229-102-12 as well as a copy of the compensation report. this one.

“The offset report includes the list of greenhouse gas emission reduction or sequestration projects implemented. It indicates, for each of them, the location, the sector of activity and the nature of the project, the quantity of emissions concerned, the methodology used, the year in which the project started, the methods of its financing, as well as all the relevant elements enabling the eligibility of the projects to be assessed with regard to the conditions provided for in Article R. 229-102-1.

“The compensation report is accompanied by supporting documents making it possible to verify that the reductions and sequestrations of emissions that it mentions are indeed attributable to the aircraft operator and that these are exclusively intended to meet its obligations of compensation for the year in question.

“The aircraft operator shall provide the competent authority with the supporting documents requested by the latter.

“ Art. R. 229-102-12. – The verifier is responsible for ensuring compliance with the requirements provided for in this sub-section, including with regard to the preservation and restoration of natural ecosystems. Accredited organizations are empowered to carry out this verification under the conditions provided for by order of the Minister responsible for civil aviation.

“ Art. R. 229-102-13. – The penalty provided for in Article L. 229-59 in the event of non-compliance with the compensation obligation also applies when the aircraft operator has not, within the prescribed time limits, transmitted the compensation report. has verified or has not taken the necessary steps to cancel the carbon credits used to fulfill its obligations to offset emissions from the previous year.

“The decision pronouncing the fine pursuant to Article L. 229-59, which is taken by the Minister responsible for civil aviation, is notified to the aircraft operator. The sanction decision may provide for its publication in *the Official Journal* of the French Republic. »

Art. 2. – The carbon credits relating to greenhouse gas emission reduction or sequestration projects located in the European Union can be taken into account to meet the offsetting obligations, without it being necessary to carry out the controls and validations prescribed in 2° of article R. 229-102-1 of the environment code, if they are provided for in a contract concluded for this purpose between the aircraft operator and the project manager before the January 1, 2026.

The same applies, when the project is implemented by the aircraft operator, if it notifies the Minister responsible for civil aviation, before the date mentioned in the preceding paragraph, of the commitment to use exclusively these carbon credits to meet its offsetting obligations under this decree.

However, if the reductions or sequestration of emissions provided for in the contract or the commitment prove to be different from those observed pursuant to 2o of Article R. 229-102-1, an adjustment is made under the conditions set by joint order of the ministers responsible for the environment and civil aviation.

Art. 3. – After line 59 of the “Civil aviation” section of appendix 1 “List of individual administrative decisions taken by the minister responsible for ecological and inclusive transition” of the aforementioned decree of 19 December 1997, the following line is added :

«

60	Penalty imposed on aircraft operators who have not offset their greenhouse gas emissions for flights carried out within the national territory	Environmental Code Article L. 229-59	Minister responsible for civil aviation
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Art. 4. – This decree applies to emissions for the year 2022, under the conditions provided for in 1o of Article L. 229-57 of the Environment Code and, for the following years, under the conditions provided for in 2o and 3o of the same article.

Art. 5. – The Minister for Ecological Transition and the Minister Delegate to the Minister for Ecological Transition, in charge of transport, are responsible, each in his respective capacity, for the execution of this decree, which will be published in *the Official Journal* . of the French Republic.

Done on April 26, 2022.

JOHN CASTEX

By the Prime Minister :

The Minister for Ecological Transition,
BARBARA POMPILI

The Minister
Delegate to the Minister for Ecological Transition,
responsible for transport,
JEAN-BAPTISTE DJEBBARI