



**DEVELOPMENT OF AGRIVOLTAIC
PROJECTS IN FRANCE
- IN PRACTICE -**

BMHAVOCATS

Anouk Darcet-Felgen
Partner, Paris



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I – REMINDER OF THE AGRIVOLTAIC FRAMEWORK

Article L.314-36 I of the Energy Code

An agrivoltaic installation "is an electricity generation facility that uses the sun's radiant energy and whose modules are located on an agricultural plot where they contribute sustainably to the establishment, maintenance or development of agricultural production". (see Article L.314-36 I of the Energy Code)

THE FOUR PILLARS

Primacy of agriculture Agriculture remains the primary land use	Reversibility Removable installations with no lasting impact	Income maintenance At least equivalent, sustainable and significant agricultural income	Agricultural improvement Agronomic potential, climate adaptation, protection against hazards, animal welfare, etc.
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SPECIFIC DIFFICULTIES REGARDING THE CRITERIA

The criterion of significant agricultural production (R314-114. I Energy Code) – A three-stage application

1 - Agricultural production is considered significant if the average yield per hectare on the plot is greater than 90% of the average yield per hectare observed in a control area (« *zone témoin* ») or reference area.

➡ It is very difficult to establish that the yield is greater than 90% of the average, and defining the control area or reference area can be problematic.

2 – This proportion may be reduced if the installation enables a significant and demonstrable improvement in the quality of agricultural production, compared with previous benchmarks, if they exist, the control area or the reference area.

➡ The measurement of improvements in agricultural performance is not currently governed by any quantitative criteria.

3 - It is possible to waive the requirement to refer to a control area if, among other things, the installation uses proven agrivoltaic technologies.

- The list of proven technologies that allow for exemption from the requirement to establish a control area or a reference framework has not yet been established.
- Due to a lack of data, this list will not be published immediately.
- This list of proven technologies is also necessary to set the maximum photovoltaic coverage rate per technology to ensure that agricultural activity remains the main activity on the plot (Article R314-19 of the Energy Code).

 **Result: developers find themselves in a situation of uncertainty, with many facing a yield requirement that is very difficult to establish.**

The criterion of sustainable income (Article R.314-117 of the Energy Code)

Income from agricultural production is considered sustainable when:

The average agricultural income after the installation of the agrivoltaic facility is not less than the average income before the installation of the agrivoltaic facility.

However, this same article provides for two exceptions:

- In the event of unforeseeable circumstances, upon duly justified request.
- In the case of a new farmer's installation, the comparison is not made with historical income, but with the results observed in other similar farms locally.

The blind spot regarding changes in agricultural activity and crop rotation

No legislation provides for exceptions in the event of a change in agricultural activity

A farmer may wish to change agricultural activity for economic, environmental or personal reasons (e.g. conversion to organic farming or livestock farming)

However, these transitions very often lead to an automatic drop in income

➡ **Major concern for developers and farmers**

➡ **Need for a framework that allows for realistic agricultural trajectories**

Crop rotation is not taken into account

Comparing income or yields "before/after" a project, when the farm practises long, sometimes multi-year rotations, poses a major methodological problem.

➡ **Crop rotations are a prerequisite for agricultural sustainability, and a lack of flexibility could undermine this ambition**

II – UNCERTAINTIES RELATED TO MONITORING CONTROLS

Agrivoltaic projects (and the control area) are subject to follow-up inspections (Art. R314-120 of the Energy Code).

- A preliminary inspection prior to commissioning
- An inspection six years after commissioning and thereafter;
- Periodic inspections every 5 years (proven technologies), 3 years (coverage rate below 30%) or annually after commissioning

Penalties

Failure to carry out these inspections or non-compliance of the project with the verified requirements is subject to a financial penalty or the withdrawal or suspension, for a period not exceeding one year, of the operating licence or supply licence (Article L142-31 of the Energy Code).

➡ What about the above-mentioned cases of change in agricultural activity or loss of yield due to crop rotation? Change of farmer ?

II – THE VETO RIGHT OF THE CDPENAF

CDPENAF

The Departmental Commission for the Preservation of Natural, Agricultural and Forest Areas (CDPENAF) is one of the tools used in the strategy to combat the artificialisation of agricultural land. It was established by the Law on the Future of Agriculture, Agri-Food and Forestry (LAAAF) of 13 October 2014.

A composition that influences the balance

CDPENAFs include, in particular: Representatives of the State; local authorities; chambers of agriculture; environmental protection associations; forestry professions

Opinion on the Preliminary Agricultural Study (EPA) - Art. D112-1-21 CRPM

The CDPENAF must issue a reasoned opinion on preliminary agricultural studies, focusing in particular on the adequacy of the proposed compensation measures.

Binding opinion for planning permission - Art. L111-31 of the Planning Code

The CDPENAF must issue a binding opinion for all agrivoltaic power plants. The prefect is therefore required to follow the opinion issued by the CDPENAF in the context of planning permission, unless the opinion is illegal.

Control criteria within the framework of the binding opinion

- ✓ The project's compliance with the above criteria (primacy of agriculture, reversibility, improved performance, etc.);

Control criteria in the context of the reasoned opinion on the EPA

- ✓ The accuracy of the EPA, the existence of significant negative impacts of the project on the agricultural economy, the necessity and the adequacy of the proposed collective agricultural compensation measures;

➡ **The CDPENAFs have the power of life and death over projects**

➡ **Their significant regional diversity are a source of insecurity** : Some CDPENAFs are very open, others extremely restrictive

In a ruling dated 18 September 2025, the *Conseil d'État* refused to refer the QPC (priority preliminary ruling on constitutionality) concerning the existence of a delegation of decision-making power from the decision-making authority to the CDPENAFs by means of their binding opinion on the necessary permits. The *Conseil d'Etat* considered that, legally speaking, this transfer of power had not been established. Nevertheless, in practical terms, it is clear that this risk remains.

➡ **The « bureaux d'études » play a key role in assuring compliance with the criteria**

SOME EXAMPLES OF BLOCKAGES CAUSED BY THE CDPENAF

Failure to comply with the transitional regime

- The APER law introduced the requirement for a compliant opinion from the CDPENAF. The decree of 8 April 2024 (Article 8) provided for a transitional regime: its provisions apply to all agrivoltaic installations for which a building permit application has been submitted on or after 9 May 2024. Projects examined under the old regime will continue to be subject to a simple opinion.

However, some prefects have refused building permits on the basis of negative simple opinions issued by the CDPENAF, or recommended that developers resubmit a building permit application under the new regime.

Uncertainties surrounding collective agricultural compensation measures

- Some CDPENAFs have been able to block projects until the proposed compensation measures were deemed "sufficient". However, there is no legislation specifying what constitutes sufficient compensation.

IV – THE ABSENCE OF A VALUE SHARING SCHEME

The principle of "value sharing"

The value generated by agrivoltaics must be distributed fairly and equitably among the main stakeholders (farmers/landowners, local authorities, investors and local residents), especially since the installation of solar panels raises sensitive issues.

Pascal Lecamp's proposed bill for the fair and sensible development of agrivoltaics

The Lecamp bill proposes among others to introduce a mandatory contribution that would replace any other contribution not provided for in the contracts between owner, agrivoltaic operator and farmer.

The bill is currently on hold. The Decree on value-sharing to be implemented (article 93 of the APER law) is still to come. In the absence of a law on value sharing, contracts are the central tool for securing.

V – TWO EXAMPLES OF CONTRACT STRUCTURING

STRUCTURE 1

Long-term lease

The owner leases the plot to the energy company

+

Partial termination of the rural lease

+

Loan for use and service provision contract

The energy company makes the plot available to the farmer and signs a service contract to maintain agricultural activity



Offers little protection for the farmer

STRUCTURE 2

Long-term lease with volumetric division

The owner leases the upper area to the energy producer

+

Rural lease with agrivoltaic clause on the land

The owner and the farmer sign a rural lease adapted to agrivoltaics (needs intervention of the legislator)

+

The energy company pays the farmer through a **service contract**

+

Easements on the land for the energy producer to maintain the installations

VI – GRID CONNECTION: A MAJOR BARRIER

Waiting lists for grid connection are a systemic obstacle to implementation

Access to the grid is a guaranteed right for all producers. Electricity production facilities using renewable sources do not have priority over other types of electricity production facilities.

- Waiting times can exceed five years
- This saturation applies to almost all regions
- Deterrent connection costs

➡ The profitability and feasibility of agrivoltaic projects are undermined by long delays and connection costs

According to RTE, this shall be resolved by 2030 with the construction of new substations and powerlines in order to progressively increase the grid capacity

CONCLUSION

**The French framework is one of the most ambitious in Europe.
It aims for genuine compatibility between energy and agriculture.**

But today, in practice:

- the criteria are difficult to demonstrate,
- some exemptions are ineffective due to a lack of a list or methodology,
- the CDPENAFs wield considerable power,
- value sharing is unregulated,
- and contracts become the primary tool for stabilizing projects.

Agrivoltaics is therefore feasible — but growingly complex.

The message from the agriPV sector: simplification is key!

Thank you for your attention !



CONTACT

Anouk DARCET-FELGEN
Partner

adarcet@bmhavocats.com