

STERR-KÖLLN & PARTNER

GO WEST FRANKREICH 2023

MAIN TRENDS OF CASE-LAW RELATED TO WIND FARMS AUTHORIZATIONS IN FRANCE

GO WEST – MAY 10, 2023

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Key figures (FRANCE) :

- Approx. 70 % of the administrative authorizations of Wind Farms are challenged in 2022
(NB : 50% in 2018)
- 80 % of the claimants were organizations in 2018
- Approx. 40/50 % of the recourses are successful in 2022

3 types of claimants :

- Neighbours
- Municipalities
- Organizations / Environmental protection associations

A teal-colored callout box with a white border and a drop shadow, tilted slightly to the right. It contains the text "similar in Germany" in white, italicized font.

similar in Germany

I. Protected species an derogation

II. Public Information

III. Landscape

I. PROTECTED SPECIES AND DEROGATION



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I. PROTECTED SPECIES AND DEROGATION

Principle of non-harming of limited protected species but derogation possible
(3 criteria to meet to get such derogation – dep)

Issue : dep sometimes abusively requested

Main regions affected in France : Grand est and Occitanie



Quelle: <https://www.frankreich-info.de/themen/politik/regionen>

What is challenged ?

- The residual impact on protected species qualified as „significant“
- The insufficiency of the avoiding and reduction measures
- The request of a derogation for protected species

I. PROTECTED SPECIES AND DEROGATION

- Evolution with recent case law (opinion of the Council of State, December 9, 2022, n° 463563 and subsequent case law) ;
- New criteria to determine if a Derogation for protected species is required or not : risk „sufficiently characterised“

Criteria more favourable to the developer (end/start of the end of the legal uncertainty regarding DEP and when is it required)

I. PROTECTED SPECIES AND DEROGATION

- Avoiding and reduction measures taken into account to analyse if a DEP is required (and effectiveness guarantees of such measures)
- (If dep required) avoiding, reduction and compensatory measures taken into account to analyse if a DEP can be delivered
- The judge analyses concretely the case (recent examples : CAA Lyon, March 30, 2023, n° 22LY00812)

II. PUBLIC INFORMATION



II. INFORMATION AND CONCERTATION WITH LOCAL PEOPLE

Information and consultation have to take place when all options and solutions are possible (See Conseil d'état, November 15, 2021, n° 434742)

→ In practice : first steps of the development

Issue : information and consultation actions at this stage not required by a legal provision as such (public inquiry occurs at a later stage)

II. INFORMATION AND CONCERTATION WITH LOCAL PEOPLE

What is challenged ?

- the sufficiency of the information and consultation with local actors at the first steps of the project (public meetings, follow-up committees)
- In general, the sufficiency of information of the local actors on each part of the project :
 - On financial capacities
 - On visual impact of the Project
 - More generally on the impact study and related subjects
 - Within the Public inquiry and related documents

II. INFORMATION AND CONCERTATION WITH LOCAL PEOPLE

Which actions to implement ?

- Favourable resolutions from the Municipalities
- Information public meetings
- Follow-up Committee
- Display of information posters, local press

Recent examples : CAA Douai, March 9, 2023, n° 21DA00667-70 (CCLG)

III. LANDSCAPE



What is challenged ?

- The visual saturation due to the wind farm for :
- the landscape
 - the perception of the view of the inhabitants

Appreciation IN concreto by the court (notably regarding the number of Wind farm, density and angle determination „angle de respiration visuelle“ with treshold) / recent case law examples : CAA Bordeaux, March 14, 2023, n° 20BX02943)

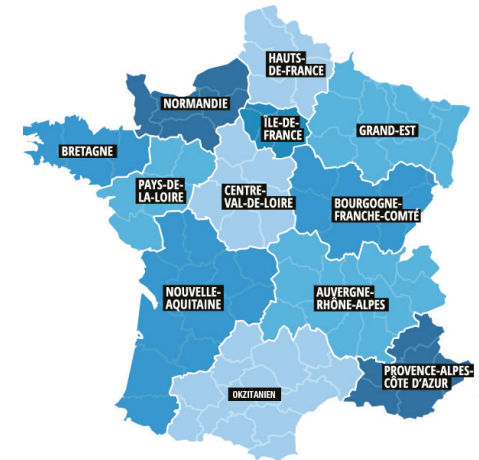
III. LANDSCAPE

especially in Hauts-de-France region

NB : Loi d'accélération des énergies renouvelables recently passed : Criteria of „visual saturation“ inserted in article L. 515-44 of the french environmental code

→ To be taken into account by the prefect to deliver the authorization

Consequences ?



Quelle: <https://www.frankreich-info.de/themen/politik/regionen>

THANK YOU FOR YOUR ATTENTION !

→ AT YOUR DISPOSAL FOR ANY QUESTION