

STERR-KÖLLN & PARTNER

GO WEST FRANKREICH



# HOW TO PREVENT THE LITIGATION RISK ? ONSHORE WINDFARMS AUTHORIZATIONS

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# IDENTIFICATION OF THE CURRENT HOT SPOTS...

... within litigation cases

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**A. Evidence of the sufficiency of the financial capacities of the SPV to operate the wind farm**

**B. Absence of significant impact on the protected species**

**C. Information and concertation with local people**

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# GOOD PRACTICE / RECOMMENDATIONS ...

... in the development phase to reduce the litigation risk

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→ Which recommendations could be made to reduce this litigation risk ?

→ Which good practice to implement in the development phase to reduce this risk ?

## A. EVIDENCE OF THE SUFFICIENCY OF THE FINANCIAL CAPACITIES OF THE SPV TO OPERATE THE WIND FARM

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# LITIGATION HOT SPOTS IDENTIFIED

## Evidence of the sufficiency of the financial capacities of the SPV

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Characteristics of the financing project for wind farms

→ Based on the parent company financial capacities

Issue : How to evidence that such mechanism is sufficient?

Evolution of the case law and the enforceable legislation

→ Recommendations?

### The request file should contain:

- A financing plan containing the costs of the project
- The repartition between the bringing of own funds and the bank loan
- A provisional business plan of the wind farm on the 20 years of operation

### The request file should contain:

- detailed and precise reference to the financial capacities of the parent company and its experience
- A comfort letter of the parent company



## B. ABSENCE OF SIGNIFICANT IMPACT ON THE PROTECTED SPECIES

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# LITIGATION HOT SPOTS IDENTIFIED

## Absence of significant impact on protected species

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→ Principle of non-harming limited protected species but derogation possible (3 criterias to fulfill to get such derogation – dep)

Issue: dep sometimes abusively requested

Main regions affected in France: grand-est and occitanie

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# GOOD PRACTICE / RECOMMENDATIONS

## Absence of significant impact on protected species

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→ Evidence in the request file absence of significant impact

- The naturalist engineering offices are a key player (field visits, measurements...)
- Importance of the guidelines published

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# GOOD PRACTICE / RECOMMENDATIONS

## Absence of significant impact on protected species

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→ Which actions to implement and when doing that?

- avoid, reduce compensate measures
- conclude that no dep is required

## C. INFORMATION AND CONCERTATION WITH LOCAL PEOPLE

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# LITIGATION HOT SPOTS IDENTIFIED

## Information and concertation with local people

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Information and concertation to occur when all options and solutions are possible (See conseil d'état, November 15, 2021, n° 434742)

→ in practice : first steps of the developement

Issue: Information and concertation actions are not required by a legal provision at this stage. Public inquiry occurs at a later stage.

→ Which actions to implement and when doing what ?

- Favourable deliberation of the Municipal Council
- Public meetings with local elected representatives and local population
- Follow-up committes („*comités de suivi*“)

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# GOOD PRACTICE / RECOMMENDATIONS

## Information and concertation with local people

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→ Which actions to implement and when doing what ?

- Posters displayed in municipalities, published in the local press
- Visit of other wind farms of the developer in operation

→ Doing that at the first steps of the development of the project

Good practice : [https://www.normandie.developpement-durable.gouv.fr/IMG/pdf/synthese\\_acceptabilite\\_projets\\_eoliens.pdf](https://www.normandie.developpement-durable.gouv.fr/IMG/pdf/synthese_acceptabilite_projets_eoliens.pdf)



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