

STERR-KÖLLN & PARTNER

# GO WEST FRANKREICH 2023

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

**GO WEST – MAY 10, 2023**

**AVOCAT, ME BENOÎT WILLIOT, SK & PARTNER, PARIS**

## 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 small white triangle at the bottom right corner, containing 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



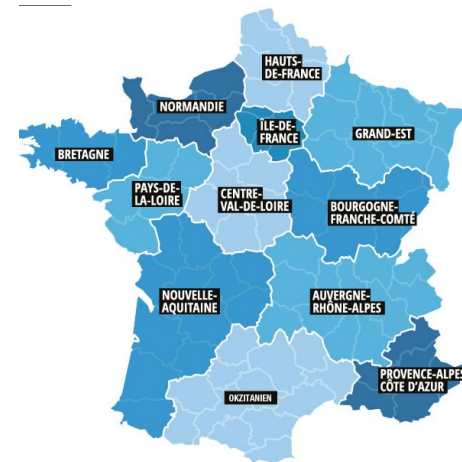
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# I. PROTECTED SPECIES AND DEROGATION

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



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## I. PROTECTED SPECIES AND DEROGATION

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- 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)**

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## I. PROTECTED SPECIES AND DEROGATION

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- 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



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## II. INFORMATION AND CONCERTATION WITH LOCAL PEOPLE

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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)

### What is challenged ?

- the sufficiency of the information and consultation with local actors at the first steps of the project (public meetings, follow-up comitees)
- 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

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## II. INFORMATION AND CONCERTATION WITH LOCAL PEOPLE

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### 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**