

ENERGIEZUKUNFT.
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NEU GESTALTET.

Main trends of case-law related to wind and solar authorizations in France

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IHR REFERENT



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- Umweltrecht
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SPECIFICITIES OF FRENCH ADMINISTRATIVE LITIGATION ON WIND FARMS



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

SPECIFICITIES OF FRENCH ADMINISTRATIVE LITIGATION ON SOLAR FARMS



Key figures (France):

- Approx. 15-20 % of the administrative authorizations of Solar Farms are challenged in 2022
- Approx. 2/3 request of authorization delivered in 2021
- Litigation on solar authorizations is increasing

SPECIFICITIES OF FRENCH ADMINISTRATIVE LITIGATION ON BOTH WIND AND SOLAR FARMS

3 types of claimants:

- Neighbours
- Municipalities
- Organizations / Environmental protection associations

similar in Germany

WIND FARMS AUTHORIZATIONS

I. Protected species an derogation

II. Public Information

III. Landscape

I. PROTECTED SPECIES AND DEROGATION



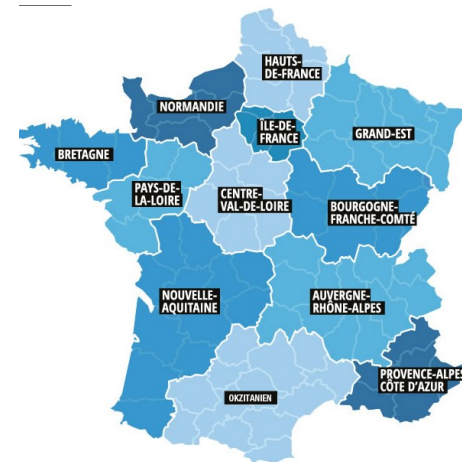
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I. PROTECTED SPECIES AND DEROGATION

Principle of non-harming of limited protected species but derogation possible
(3 criteria to fulfill 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 developers (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
- In concreto analysis of the judge (recent examples: CAA Lyon, March 30, 2023, n° 22LY00812)

II. PUBLIC INFORMATION



II. INFORMATION AND CONCERTATION WITH LOCAL PEOPLE

Information and consultation to occur when all the options and solutions are possible
(See Conseil d'Etat, November 15, 2021, n° 434742)

→ **In practice:** first steps of the development

Issue: information and concertation 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 concertation 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 committees
- Display of information posters in the 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

Practical approach by the judges (notably regarding the number of Wind Farms, 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>

SOLAR FARMS AUTHORIZATIONS

I. Urban planning areas

II. Agricultural land consumption

III. Landscape & heritage

I. URBAN PLANNING AREAS



Natural, agricultural or forestry areas and solar projects

What was challenged?

- Goal of zero net artificial development (avoid land clearing) – Exclusion of solar projects as artificializing sites
- AREAS determined in the urban planning documents (priority to brownfield sites)
- Safety (adjacent facility) and fire risk also taken into account (prefectural guidelines to be published)

I. URBAN PLANNING AREAS

New legal framework (waiting for decrees) and future case-law:

- Law dated March 10, 2023 related to the acceleration of the development of renewables:
- Agri-PV (criterias to be fulfilled, importance of the CDPENAF opinion)
 - Solar projects compatible with agricultural, pastoral or forestry activities (areas identified in a framework document to be set by prefectural order - wastelands)

Main goal: to preserve agricultural land and develop solar projects

II. AGRICULTURAL LAND CONSUMPTION / AGRI-PV



II. AGRICULTURAL LAND CONSUMPTION / AGRI-PV

New legal framework : 2 main kinds of solar projets (on agricultural sites)

Regarding Agri-pv:

→ Draft decree to determine criterias to fulfill for agri-pv's project :

- significant agricultural production
- Services brought to the plot by the Agri-PV Project

Key issue: transitory provisions or not

II. AGRICULTURAL LAND CONSUMPTION / AGRI-PV

Key points:

- To demonstrate the fulfillment of the required criterias in the request file
- To no reduce the agricultural part of the plot preexisting to the agri-pv project

→ These points will certainly be subject of future recourses by opponents (or basis for refusal of the prefect)

III. LANDSCAPE & HERITAGE



What is challenged?

→ The impact due to the solar farm for:

- the landscape (and visibility from houses)
- the heritage preservation (churches, castles...)

III. LANDSCAPE & HERITAGE

Especially in the south of France (Regional Nature Reserve in occitanie region)

Measures to be taken:

- Hedge planting to reduce visual impact around the site
- Paying attention to the landscape integration of the solar plant appendices (water tank, delivery substation)



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

VIELEN DANK!

Ich schicke Ihnen den Vortrag auf Wunsch gerne per Mail.
Kommen Sie einfach auf mich zu.

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