



**2019**  
**Annual**  
**report**  
**from the**  
**Environmental**  
**Authority**

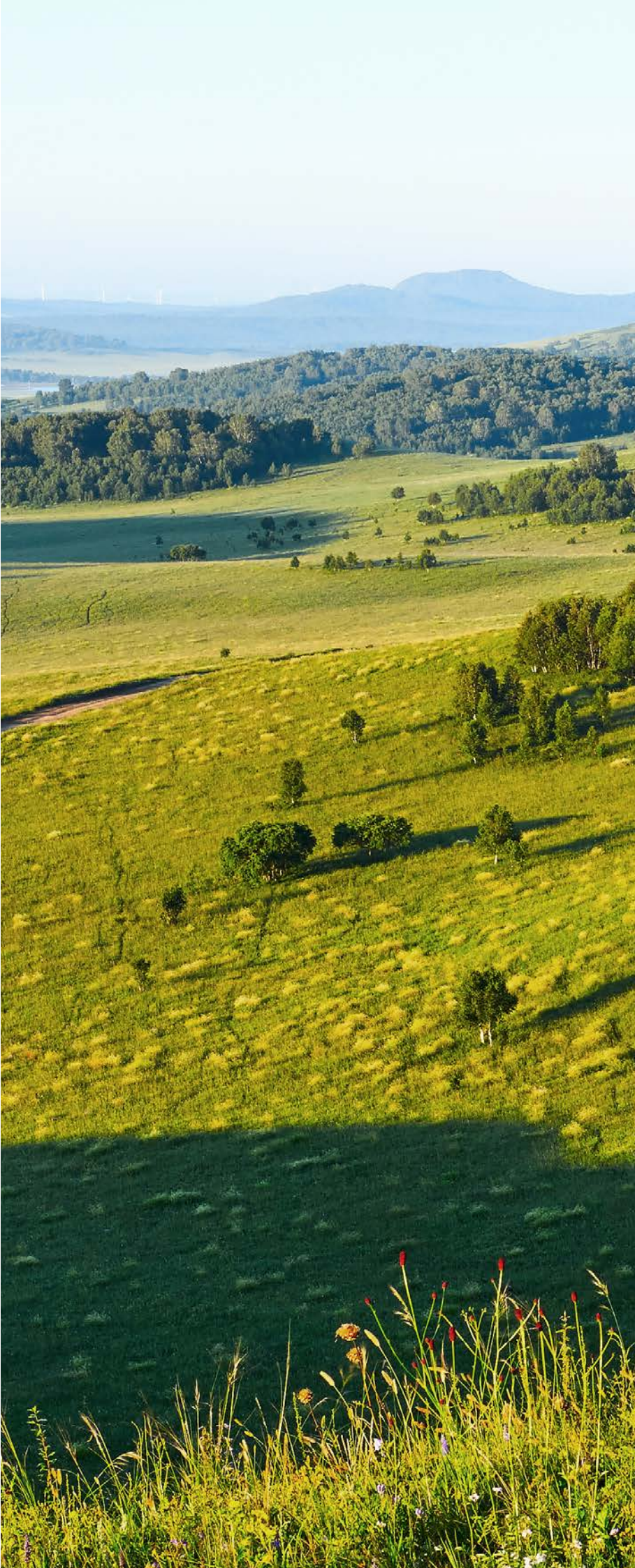


**2019**  
**Annual report**



**Environmental Authority**









## 2019 Annual report

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## 2009-2019: what progress for the environment?

For its 10th anniversary, on 26 June 2019 at the National Museum of Natural History, the Ae brought together all its founding members, all those who contributed to its strengthening, as well as the main stakeholders in the environmental assessment processes. This day made it possible to take stock of its action and its results, and to question the future of the environmental authorities.

Ever-growing production, as French law is brought into compliance with European law.

Approximately 1,000 opinions in 10 years, i.e. more than 100 per year (125 in 2019, with a growing share of advice on plans and programmes); approximately 1,000 decisions after case-by-case review of projects since 2012 (more than 200 in 2019).

Drawing on this experience, the Ae confirms the trend towards a significant improvement in the quality of the cases submitted to it and the attention paid by the contracting authority to its analyses during the on-site investigation, which are then completed and specified in its opinions.

However, in 2019, certain types of cases, in particular those relating to road infrastructure and regional plans, still highlight a misunderstanding of the value added by the environmental assessment. With few exceptions, these cases struggle to demonstrate adequate consideration of all components of the environment, when they are not based on an outdated vision and data (for many longstanding road projects).

Regional plans and programmes should contribute to ensuring more effective public action and policy coherence and at different scales (national, regional, local), such as the Notre<sup>1</sup> Law had led to hope for regional schemes for planning, sustainable development and equality between regions. Their development allows for a shared diagnosis of environmental issues. However, their environmental assessment too often remains a futile exercise, due to the lack of a relevant method but also to the lack of willingness to translate the results concretely and with sufficient ambition into the guidelines and recommendations of these plans. The Ae learnt from this experience that

the environmental assessment should focus more on plans and programmes with a more operational scope<sup>2</sup>.

Once again this year, the Ae has noted the indifference of contracting authorities to climate change and air quality, despite the insistent warnings and reminders from the public, the national and international scientific community, the main institutions of the Republic and the European Commission. This situation is particularly worrying for structuring projects that are part of a timeframe for which carbon neutrality must be achieved. It now seems equally essential to put the question of the compatibility of the development of air traffic with France's environmental commitments in several airport projects to be presented in 2020 on the agenda (Marseille-Provence, terminal 4 at Roissy, Nantes-Atlantique, etc.).

Soil artificialisation continues and offsetting measures are still encouraged over the avoidance and reduction of impacts and, even when they are planned and implemented, still far below the destruction caused, due to the failure to take into account an ecosystem approach and to consider the functionalities related to biomass and carbon storage capacity. The objectives of "zero net artificialisation" and "zero net loss of biodiversity" are still not very concrete objectives.

<sup>1</sup> Law of 7 August 2015 on the new territorial organisation of the French Republic.

<sup>2</sup> "which define the framework within which the implementation of the projects listed in Annexes I and II to Directive 85/337/EEC may be authorised in the future", according to Article L. 122-4 of the French Environmental Code.

An independence that has been won and recognised, shared by the Ae with the regional environmental authority missions.

This independence is a necessary condition for the public, when consulted, to give credibility to the information made available to it.

Stakeholders who spoke out during the tenth anniversary unanimously testified to the objectivity and competence of the Environmental Authorities. This trust is however not without conditions. It is based on a set of processes, based on interdisciplinary collegiality of experts internal to the Ministry for an Ecological and Inclusive Transition and qualified external leading figures named *intuitu personae*, collectively and freely shouldering the content of their opinions and decisions.

This perception could change if the public were no longer convinced of the objectivity of environmental authorities, which could happen in the event of changes in organisational patterns or in the event of ministerial directions or instructions that seek to influence their priorities, opinions or decisions (or could give the impression of doing so). This could lead to the creation of an independent authority bringing together all members and agents contributing to this function at national and regional level, an option which has not been considered necessary so far.

It is also essential to continue to consult the public and take their views into account. However, the Ae notes that many provisions, adopted or under consideration by the legislature and the executive, will significantly reduce the scope of public participation, which is at the very least a step back in terms of democracy.

It is in this context that the Ae hopes that in 2020, i.e. more than two years after the decision of the Council of State of 6 December 2017, which confirmed that regional prefects should not act as environmental authorities, texts will be adopted to put an end to an excessively long transitional period. In two opinions, in 2018 and then in 2020, the Ae expressed the fact that the provisions presented for consultation, which separate the function of environmental authority from that of the decision-making authority on a case-by-case basis, are not easily understandable, simplified or consistent. They reduce the possibility for the public to express itself and create complexity without guaranteeing the objectivity required by European directives and national law, which is a prerequisite for maintaining public confidence.

**Members of the Environmental Authority**









## **The Ae in 2019**

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# Expertise and missions

**Some projects, plans and programmes are subject to environmental assessment<sup>1</sup> based on their specific characteristics and their potential impacts on the environment or human health.**

The petitioners are responsible for these assessments. For the public to be properly informed when consulted and to participate in the decision-making process, an “environmental authority” is expected to issue an opinion to the public on the quality of assessments and the proper consideration of the environment by the assessed projects, plans or programmes.

## Projects

According to the French Environmental Code<sup>2</sup>, the Environmental Authority (Ae) exercises its powers as an environmental authority on project environmental assessments in the following cases:

- when the Minister for the environment is the authority responsible, under one of their ministerial powers, for taking the decision to authorise the project or to put it forward to the Government (decree of the Prime Minister issued on the basis of a report by the Minister for the environment);
- when the project owner or petitioner is the State represented by a department under the authority of that Minister or a public institution under its authority.

The Ae’s scope of competence also extends to all projects requiring several administrative decisions when one of them falls within the competence of the same minister or is suggested to the Government by them, or

when the minister decides to take up a case and entrust the Ae with it.

For other projects, this opinion is given either by the Minister himself, relying on his services, or by the regional environmental authority missions (MRAe) instead of the regional prefects<sup>3</sup>. The MRAe, of which there are 20 throughout the national territory, are moreover, and in accordance with Decree No. 2016-519 of 28 April 2016 which created them, competent for projects that are the subject of a legal referral from the National Commission for Public Debate and are not, moreover, subject to the opinion of the Minister for the Environment or the Ae.

In addition to its advisory competence, the Ae also makes decisions on whether or not to submit the project concerned to impact assessment after a case-by-case examination for projects not requiring an environmental assessment from the outset, but falling within the scope of such an examination in accordance with the table annexed to Article R. 122-2<sup>4</sup>. The review shall lead to a reasoned decision on the basis of the likely significant impacts of the project on the environment and human health and the measures envisaged by the contracting authority to reduce or avoid those impacts.

1 The environmental assessment is a process involving the preparation of an environmental impact assessment report by the contracting authority, the delivery of planned consultations, as well as an assessment, by the authority competent to authorise the project, of all the information submitted in the impact assessment or environmental report and received during the course of the consultations carried out. The “impact assessment” refers to the project impact assessment report while the “environmental report” relates to plans and programmes.

2 Article R. 122-6 of the French Environmental Code.

3 Cf. Article R. 122-6 of the French Environmental Code. In Decision No. 400559 of 6 December 2017, the Council of State cancelled, without transitional provision or modulation of the impacts over time, the provisions of Section 1 of Article 1 of the decree of 28 April 2016 insofar as it maintained in Section IVe of Article R. 122-6 of the French Environmental Code the regional prefect as the competent government authority for the environment. In order to secure projects, pending the publication of a decree amending these provisions, a technical note of 20 December 2017 provided for the possibility of opinions to be issued by the MRAe on the basis of draft opinions prepared by the regional services responsible for the environment. At the end of 2019, the decree amending IV of Article R. 122-6, which was annulled by the Council of State ruling of 6 December 2017, had still not been published.

4 Presented and defined in Articles L. 122-1 (IV), R. 122-2 and R. 122-3 of the French Environmental Code for the “projects” and L. 122-4 (III) and R. 122-17 (II) for the plans and programmes.

The choice made by Law N°. 2010-788 of 12 July 2010, known as the "Grenelle 2 Law", to entrust the competent environmental authority in order to issue opinions, with the power to issue decisions on a case-by-case basis, is subject to two main exceptions:

- the registration system for installations classified for environmental protection (ICPE) under which a case-by-case assessment is carried out by the Prefect of the Department ;
- the law of 10 August 2018 <sup>5</sup>now entrusts the authority mentioned in Article L. 171-8 of the French Environment Code (this is the environmental police authority, most often the prefect of the department) and no longer the environmental authority to issue the decision on a case-by-case basis for projects consisting of a modification or extension of activities, works or undertakings falling within the scope of the environmental permit, as well as for certain other industrial projects specified by this article.

More recently, Article 31 of Law No. 2019-1147 of 8 November 2019 on energy and climate now entrusts this examination to an "authority in charge of case-by-case assessment", which a decree is intended to define, in place of the "environmental authority". An article of this law further specifies that "the authority responsible for the case-by-case assessment and the environmental authority must not be in a position leading to a conflict of interest. To this end, no authority may be chosen as the authority responsible for the assessment on a case-by-case basis or as an environmental authority if the public services or establishments under its supervision are responsible for the preparation of the project or ensure its management".

Therefore, whereas the mechanism which stems from the "Grenelle 2 Law", then from the 2016 reform, entrusted the preparation of opinions of environmental authorities and case-by-case decisions mainly to the Minister, the Ae, the MRAe and the regional prefects, an option now excluded by the Council of State, the new mechanism now distinguishes the

environmental authority, also responsible for issuing opinions and taking decisions on a case-by-case basis for plans/programmes (probably the Minister, the Ae and the MRAe), from the authority responsible for taking decisions on a case-by-case basis for projects, i.e. already the Minister, the Ae, the regional prefects and the departmental prefects.

## Plans and programmes

Article R. 122-17 of the French Environment Code establishes the list of plans and programmes subject to environmental assessment. As with projects, some of these plans are a mandatory part of such an assessment, while others are reviewed on a case-by-case basis.

Decree No. 2016-1110 of 11 August 2016 also opened up the possibility for the Minister for the Environment to submit a category of plans/programmes not included in this new list for systematic environmental assessment or following a case-by-case examination<sup>6</sup>.

The Ae is automatically competent for twelve categories of plans/programmes subject to mandatory environmental assessment. This applies in particular to all national plans or those that go beyond the territorial limits of a region. It is also responsible for four categories of plans/programmes that are examined on a case-by-case basis: plans for the prevention of technological risks, plans for the prevention of foreseeable natural risks, plans for the prevention of mining risks and now plans for the protection of the atmosphere.

Since the decree of 28 April 2016, the other plans have come under the jurisdiction of the

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<sup>6</sup> This possibility has only been implemented for atmospheric protection plans (PPAs) subject to a case-by-case assessment by order of the Minister of the Ecological and Inclusive Transition of 28 June 2017; these plans, following this decision, have been added to the list in Article R. 122-17. The Council of State ruled (by Decision No. 408887 of 16 May 2018) that the list presented in Article R.122-17 was not exhaustive and that plans that did not appear in it could be subject to environmental assessment.

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<sup>5</sup> Law No. 2018-727 for a State at the service of a trusted company (Art. 62); the provision is codified in the 2<sup>nd</sup> paragraph of IV of Article L. 122-1.



regional environmental authority missions of the General Council for the Environment and Sustainable Development (MRAe), whereas they previously came under the jurisdiction of prefects<sup>1</sup>.

The regional missions have the power to issue environmental authority opinions on most urban planning documents (territorial coherence plans (SCoT), local urban plans (PLU) and municipal maps).

The decree of 28 April 2016 cited above also provided the Ae with the option to exercise the jurisdiction normally vested in a MRAe, for plans/programmes (including urban planning documents), on its own initiative and by a justified decision with regard to the case's complexity and environmental issues (known as the "evocation decision").

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In order to ensure the necessary coherence between the opinions delivered by the Ae and the MRAe, the decree of 2 October 2015 relating to the CGEDD, as last amended by the decree of 28 April 2016, provides that the president of the Ae ensures the proper performance of the role of environmental authority exercised by the network of the Ae and the MRAe.

To bring the practices and approaches of environmental authorities closer together, the MRAe Chairs shall inform the Chair of the Ae of the cases that present significant complexity or environmental issues in order to enable the Ae to exercise its power of evocation, if it considers it appropriate. They shall also inform the Ae of the agenda of each of their MRAe meetings. Symmetrically, when a case specifically concerns a region, the Ae Chair invites the Chair(s) of the relevant MRAes to the session at which this deliberation is included. The latter may be represented by one of the members of the MRAes they chair. The MRAe experts and representatives are not voting members at the Ae meeting.

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1 Decree No. 2016-519 of 28 April 2016 has indeed drawn the consequences of case law of both the Court of Justice of the European Union and the Council of State on the need to establish environmental authorities with real autonomy and with their own administrative and financial resources (Judgment CJEU C-474/10 "Seaport" of 20 October 2011 and Decision EC - FNE Association - 3 November 2016 - 360 212).

## A European Exercise Framework

The opinions and decisions of an environmental authority are part of the framework for the stipulations of the Aarhus Convention<sup>2</sup> and Espoo Convention<sup>3</sup> and the provisions of two European Union directives<sup>4</sup> transposed into French law<sup>5</sup> codified in articles L. 122-1 to L. 122-14 of the French Environmental Code and L. 104-1 to L. 104-8 of the Urban Planning Code.

The national legal framework, which dates back to the impact assessments of the draft Nature Protection Law of 1976<sup>6</sup>, was substantially modified in 2010 following a reasoned opinion from the European Commission. More recently in 2016, further important changes were made by Order No. 2016-1058 of 3 August 2016, which mainly concerned the transposition of Directive 2014/52/EU, and by Decrees No. 2016-519 of 28 April 2016 and No. 2016-1110 of 11 August 2016, which respectively led to the creation of the MRAe and modified the nomenclatures of projects and plans/programmes. These texts came into force between the 12 May 2016 and 17 May 2017.

The order of 3 August 2016 was ratified by Law No. 2018-148 of 2 March 2018 which provided (V of Article L. 122-1) that "the opinion of the Environmental Authority [relating to projects] shall be replied to in writing by the contracting authority" and that this reply shall be attached to the public inquiry file or to the electronic participation provided for in Article L. 123-19.

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2 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters signed in Aarhus (Denmark) on 25 June 1998 (see website of Secretariat to the Convention: <https://www.unep.org/env/pp/welcome.html>).

3 Convention on evaluation of the impact on the environment in a cross-border context (Espoo, 1991).

4 See Directive 2001/42/EU of 27 December 2001 on the assessment of the effects of certain plans and programmes on the environment, known as "Plans and Programmes", and Directive 2011/92/EC of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, known as the "Projects" directive.

5 The Directive 2011/92/EU was amended in 2014 by Directive 2014/52/EU of 16 April 2014 for which the transposition deadline of 16 May 2017 was set by the Member States.

6 Law No. 76-629 of 10 July 1976 on nature protection.

## An objective of improving projects or plans to take better account of the environment

Issued at a sufficiently early stage in the decision-making process regardless of their subject, the opinions are intended to improve the quality of the environmental assessment process and environmental considerations by the projects or plans/programmes in question. They relate therefore on the one hand to the quality of the project impact study or plan impact assessment report and, on the other hand, analyse how the environment has been taken into account by the project or plan/programme.

The opinions are aimed at:

- the petitioner or the project owner, usually assisted by one or several consultants, who conducted the assessment process and prepared the documents submitted to the environmental authority;
- the public, in accordance with the principle of participation and the right of access to environmental information, in order to clarify the quality of the documents submitted and to enable the public to take part in the debates;
- the authority responsible for approving the project or plan/programme at the end of the whole process.

The aim is to improve the design of projects or plans/programmes in an iterative process, and to involve the public in the decision-making process of issues that relate to them.

## An independent environmental authority

The function of the Ae is that of a guarantor who must attest to the proper consideration of environmental issues by the relevant contracting authorities and decision-making authorities. The credibility of the guarantor therefore requires the absence of any tie to the latter. This led to the establishment of a dedicated body backed by the CGEDD, with specific operating rules preserving its autonomy of judgement and expression, in cases where the decision to be taken falls within one of the ministerial responsibilities of the Minister for the

Environment. Although it predates the Directive 2014/52/EU, it is fully in line with the objective pursued by the latter in both Article 5 §3b)<sup>7</sup> and 9bis<sup>8</sup>.

The Ae, without being an independent administrative authority<sup>9</sup>, is careful to avoid any suspicion of bias, or even the exploitation of its opinions. The collegiality of discussions and the public nature of opinions and decisions immediately published on its website at the end of the discussions are in all likelihood the best guarantees in this field, as well as the public criticism to which they are subject.

The Ae also implements the provisions set out in its internal rules:

- individual declarations of interest filed by all members;
- publication of the names of the voting members on each opinion;
- non-participation of members liable to conflicts of interest in certain proceedings.

In 2019, this last provision applied to 35 opinions, concerning nine different members of the Ae in total.

### About the Ae

Composition, operation, referrals, opinions and decisions issued, on the Ae's website:

[www.cgedd.developpement-durable.gouv.fr](http://www.cgedd.developpement-durable.gouv.fr)

⇒ Ae section

7 Art. 5 §3b) "the competent authority shall ensure that it has, or has access to, sufficient expertise to examine the environmental impact assessment report".

8 Art. 9b: "The Member States shall ensure that the competent authority or authorities perform the tasks arising from this directive in an objective manner and are not in a position that may give rise to a conflict of interests".

9 See Law No. 2017-55 of 20 January 2017 on the general status of independent administrative authorities and independent public authorities. The Chairman is not subject to any specific status.



# Ae members

## CGEDD permanent members

**Philippe LEDENVIC**

*Chairman*

**Christian DUBOST**

*Also member of the  
Provence-Alpes-Côte d'Azur  
MRAe from 30 December 2019*

**Éric VINDIMIAN**

*Also member of the Provence-Alpes-Côte  
d'Azur MRAe until 29 December 2019*

**Marie-Hélène AUBERT**

*until 29 January 2019*

**Bertrand GALTIER**

*from 28 November 2019*

**Annie VIU**

**Michel VUILLOT**

*until 30 July 2019, who was also a member  
of the Normandy MRAe*

**Nathalie BERTRAND**

*from 2 May 2019*

**Louis HUBERT**

**Pascal DOUARD**

**Thérèse PERRIN**

*also member of the  
Pays-de-Loire MRAe*

**Véronique WORMSER**

*also member of the  
Auvergne-Rhône-Alpes MRAe*

## Members appointed as qualified persons

**Barbara BOUR-DESPREZ**

*General engineer of bridges, water and forests.  
Member of the General Council of Food, Agriculture  
and Rural Areas.*

**Christine JEAN**

*Vice-chairman of the Economic, Social and Environmental  
Regional Council of Nouvelle-Aquitaine and Chairman of  
its Environment Commission, deputy treasurer of  
the League for the Protection of Birds (LPO) France.*

**Marc CLÉMENT**

*Chair of the Administrative Tribunal of Lyon, founding  
member and member of the European Law Institute.  
Member of the Compliance Review Committee with  
respect to the provisions of the Aarhus Convention.*

**François LETOURNEUX**

*Vice-chairman of the French committee of the  
International Union for Conservation of Nature  
(IUCN), former Director of the Coastal and Lake  
Shore Conservatory, former Director of Nature and  
Landscapes within the Ministry for the Environment.*

**Sophie FONQUERNIE**

*Farmer in the Doubs. Vice-chairman of the  
Bourgogne-Franche-Comté region responsible  
for agriculture, viticulture and agri-food. Associative  
commitment to French Farmers and International  
Development (AFDI). Previous responsibilities  
in agricultural trade unionism, the commune,  
intermunicipality and the Chamber of Agriculture.*

**Serge MULLER**

*Professor of the National Museum of Natural History,  
Chairman of the National Council for Nature Conservation  
(CNP), Chairman of the Species Protection Committee  
of the French committee of the IUCN.*

## The permanent team

**Charles BOURGEOIS**

**Daniel CANARDON**

*as of 1<sup>st</sup> September 2019*

**Armelle DIF**

*until 1<sup>st</sup> July 2019*

**Martine MESGUICH**

*as of 1<sup>st</sup> March 2019*

**Marie-Françoise FACON**

**Caroll GARDET**

**François VAUGLIN**

**Gilles CROQUETTE**

*as of 2 January 2019*

## CGEDD permanent members



PHILIPPE LEDENVIC



MARIE-HÉLÈNE AUBERT



NATHALIE BERTRAND



PASCAL DOUARD



CHRISTIAN DUBOST



BERTRAND GALTIER



LOUIS HUBERT



THÉRÈSE PERRIN



ÉRIC VINDIMIAN



ANNIE VIU



MICHEL VUILLOT



VÉRONIQUE WORMSER

## Qualified persons



BARBARA BOUR-DESPREZ



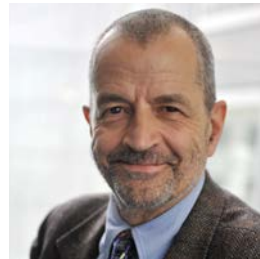
MARC CLÉMENT



SOPHIE FONQUERNIE



CHRISTINE JEAN



FRANÇOIS LETOURNEUX



SERGE MULLER

## The permanent team



CHARLES BOURGEOIS



DANIEL CANARDON



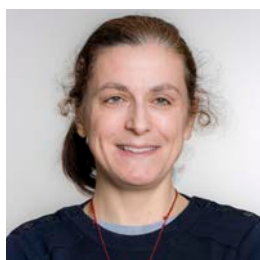
GILLES CROQUETTE



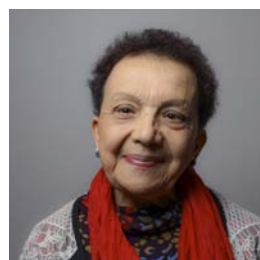
ARMELLE DIF



MARIE-FRANÇOISE FACON



CAROLL GARDET



MARTINE MESGUICH



FRANÇOIS VAUGLIN



# Methods and internal operations

The working methods are described below for each type of production: opinions, decisions to submit or not submit projects and plans or programmes for environmental assessment following a case-by-case examination, decisions for evocation.

## The opinions

The Ae systematically issues its opinions, within a maximum period of three months after referral (Article R. 122-7)<sup>1</sup>, by collegial deliberation, on the basis of drafts prepared by its members (or by members of the Ae's permanent team, who are not part of the debates). The implementation of the Environmental Authority Regional Missions (MRAe) provided an opportunity for MRAe members to be the rapporteurs of draft Ae opinions, with the aim of developing a common culture. This practice was started in 2016 and continued in 2019.

The rapporteurs, of which there are usually two<sup>2</sup>, carry out their assessments independently<sup>3</sup>, based on an analysis of the cases provided by the petitioners, organising site visits and those interviews they consider useful. If necessary, they request contributions from experts to

provide the Ae with a basic understanding of complex issues. They prepare draft opinions according to a common framework.

The draft opinions prepared by the rapporteurs are distributed to all members one week before the As's bi-monthly plenary meetings. They are the subject of comments and written communication by members before the session, followed by debates in plenary on all the fundamental issues raised during this prior examination. Whether substantive or procedural, each comment is explicitly taken into account. The definitive drafting, which has been systematically based on consensus for several years, is thus decided in session.

The contribution of the collegial discussion is decisive because it makes it possible to cross-reference expert assessments and complementary readings on each of the opinions and progressively establish stable elements of response to the questions of principle mentioned later in this report.

The opinions are posted on the Ae's website<sup>4</sup> on the same day as the opinion drafting session and are formally circulated to the petitioner and the authority responsible for examining the case by the following day. Since the Ae was created in 2009, all cases have received an explicit opinion.

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1 Within two months for projects identified by the Minister for the and delegated to the Ae (2° in Article R. 122-6).

2 In 2019, over 80% of opinions were drawn up by a team of two rapporteurs, with the other opinions (16%) being drawn up by a single rapporteur. The second multiannual electricity programme was entrusted to three rapporteurs, as was the first, as was the national low-carbon strategy.

3 See the CGEDD rules of procedure (decree of 12 May 2016), and in particular paragraph 12 thereof: "The rapporteur has full powers of investigation and consultation on the case under his/her responsibility, in accordance with the conditions defined by the mission guidelines and the CGEDD charter and within the limits imposed by the laws and regulations in force. In addition to the departments for which consultation is provided for by the regulations, the rapporteur consults any person whose opinion he/she considers useful."

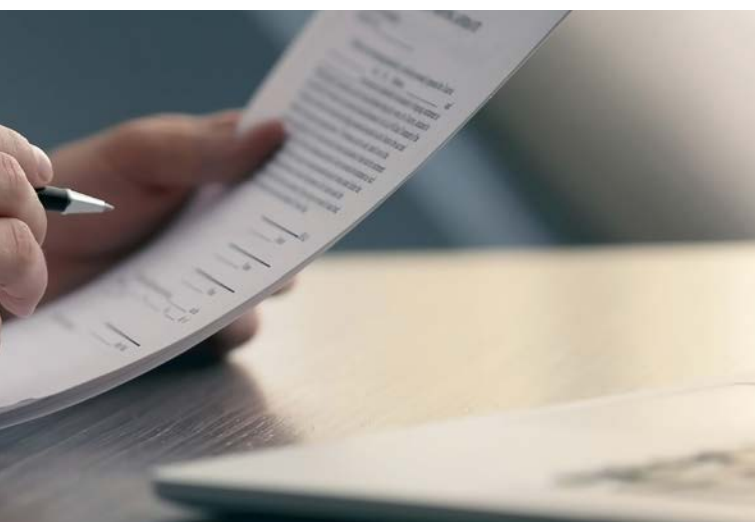
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4 Web link: [http://www.cgedd.developpement-durable.gouv.fr/rubrique.php3?id\\_rubrique=145](http://www.cgedd.developpement-durable.gouv.fr/rubrique.php3?id_rubrique=145)

In accordance with Article R. 122-4 of the French Environmental Code, a project owner may ask the authority responsible for approving the project - which then turns to the French Environmental Authority - to "deliver an opinion on the scope and the degree of precision of the information to be provided in the environmental impact assessment". The Ae also asks this authority to clarify any specific questions and any difficulties when interpreting the provisions of the Environmental Code which justify the request for a preliminary framing. This option is open for all plans and programmes (Article R. 122-19 of the French Environmental Code). These opinions, named "preliminary framing", are discussed and published, like all other Ae opinions.

The Ae does not provide an opinion on the appropriateness of a project; it therefore never concludes its opinions with a synthetic statement of a "favourable" or "unfavourable" rating. Article L. 122-1-1 of the French Environmental Code specifies that "the competent authority to authorise a project submitted for environmental assessment takes into consideration (...) the opinion of the authorities mentioned in V of Article L. 122-1" including the opinion of the environmental authority. The Ae recalls these elements in a box in the preamble of each of its opinions.

For plans and programmes, the texts set forth that the Ae will issue an opinion on the environmental assessment report and the draft plan or programme. Like with projects, it specifies, in a box in the preamble to the opinion, that the opinion is neither favourable nor unfavourable and does not deal with the appropriateness of the plan/programme. It sets out that under Article L. 122-9 of the French Environmental Code, the authority that adopted the plan or programme shall make available to the public a statement summarizing the way in which it has taken account of the environmental report and the consultations it has carried out.



## Decisions on whether or not to submit to an environmental assessment on a “case-by-case” basis

The case-by-case review of projects and plans/programmes, as well as the final decision-making process follow the same principle: the draft decisions, prepared by a member of the permanent team, are examined by a review panel, which includes two Ae members appointed weekly, and are then presented for signature to the Chair, who has been delegated this task by the Ae. The decisions are delivered within the statutory deadline of 35 days after referral for projects and two months for plans/programmes (as soon as the case is declared to be complete). They are immediately made public. The Ae Chair<sup>1</sup>, as part of the delegation of authority granted to him/her, as well as any member of the review board, may request that the review of a draft decision with a view to its adoption by collegial deliberation be put on the agenda of an Ae session, if he/she considers it useful. In practice, this inclusion in the agenda is systematic for any examination of a response to an informal appeal or a judicial appeal lodged against a decision.

Here also, the collegial discussion’s contribution is decisive as regards the reason of the decision and the meaning retained. The decisions on projects are motivated based on three categories of recitals (nature of the project, location, environmental impacts expected), those on plans/programmes are based on two categories of recitals (plan characteristics, zone characteristics and predictable impacts)<sup>2</sup>.

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1 See the decision by the delegation of 14 January 2019, published in the Official Bulletin of the Ministry for an Ecological and Inclusive Transition.

2 Drawing on the criteria described in Appendix III of Directive 2011/92/EU of 13 December 2011 and Appendix II of Directive 2001/42/EC of 27 June 2001 respectively.

When cases are part of a larger project<sup>3</sup> that is subject to an environmental impact assessment (for example, land clearing within the framework of completing a high-speed railway line (LGV) or a compression installation within the framework of building a gas pipeline), they may, depending on the case, be the subject of a letter specifying that the request for case-by-case review is not permissible or a decision including a recital stating that it is under the overall project that an environmental impact assessment must be produced.

The decision is then taken as to whether or not the case is submitted for environmental assessment. It has no accompanying recommendation. The decision mentions, however, that should the case not be submitted for an environmental assessment, the decision-making authority is obliged to check, at the authorisation stage, that the project corresponds to the characteristics and measures that justified the decision for exemption (V of Article R. 122-3 of the French Environmental Code). Since the entry into force of Law No. 2018-1021 of 23 November 2018 on the development of housing, planning and digital technology, when the Environmental Authority decides to submit a project or plan for an environmental assessment following a case-by-case examination, the decision shall define the specific objectives sought through the completion of an environmental assessment of a project or plan.

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3 Refer to the last paragraph of III in Article L. 122-1: “When a project consists of several works, installations, structures or other interventions in the natural environmental or landscape, it must be understood in its entirety, including in the case of a division of time and location and in the case of more than one project owner, so that its effects on the environment can be assessed from every angle”.





## Decision of evocation taken by the Ae

On the basis of feedback from the MR Ae Chairs, the Ae Chair consults the Ae members on the advisability of exercising the expertise normally assigned to the MR Ae for a plan/programme or a given urban planning document, in view of the complexity and environmental issues involved. Once the decision-in-principle has been adopted, a rapporteur from the permanent team prepares a draft decision of evocation, on the basis of elements provided by the Regional Directorate for Environment, Development and Housing (DREAL) acting on behalf of the MR Ae. This is then subject to deliberation by the Ae in the same way as the deliberations on the opinions.

## The permanent team

As of 31 December 2019, the French Environmental Authority's permanent team comprises eight members<sup>4</sup>. This team contributes to the day-to-day running of the Ae: analysing incoming cases (completeness of the case, the Ae's competence), administrative follow-up of cases and activity, online uploads, organising meetings, answering questions from project owners, administrative authorities and other interested bodies. Five of its members also participate as rapporteurs in the technical analysis of cases and the preparation of draft opinions and decisions on a case-by-case basis and in the drafting of administrative communications.

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<sup>4</sup> These are the persons actually present on 31 December, 2019 and not the theoretical number of employees.

# 2019 Referrals

The Ae met on 23 occasions in 2019 to discuss its opinions, along with other complex decisions.

## Opinions issued in 2019

In 2019, the Ae issued 123 opinions (compared to about 110 on a regular basis in previous years since the 2016 environmental assessment reform<sup>1</sup>): 78 for projects and 45 for plans/programmes. A higher proportion of plans/programmes and pre-project scoping was submitted to the Ae than in previous years.

In particular, for the first time plans/programmes for which it was given jurisdiction following the alignment of French law with the plans/programmes directive resulting from the Seaport ruling were referred to it (see footnote 1 on page 10). This trend should grow over the coming years.

Five preliminary framing opinions were requested, three of which concern airport projects (Terminal T4 ADP Charles de Gaulle, Terminal T1 Marseille-Provence Airport, Nantes-Atlantique Airport). The other two concern a development project (Wacken business district in Strasbourg) and a road project (reinforcement of the Fos-Salon road link). Three of these requests were made at the initiative of the National Commission for Public Debate, in anticipation of public consultations with guarantors.

<sup>1</sup> Which resulted in a significant change in the nomenclature table annexed to Article R. 122-2 of the French Environmental Code.

## PLANS/PROGRAMMES

With regard to plans/programmes, 2018 was characterised by the high number of referrals relating to the revision of the Regional Nitrate Action Programmes (RAPs) (10). In 2019, these referrals mainly concerned four types of plans: regional forest and wood plans (PRFB) (10), regional schemes for sustainable development and equality between regions (Sraddet) (8), sea basin strategy documents (which concern mainland France's four sea basins) and regional nature park charters, to create them or renew their label (4). This is mainly due to the fact that PRFB and Sraddet were intended to be approved before deadlines set by a law or decree.

With regard to plans or schemes relating to forests and wood, the Ae has also been consulted on a draft regional planning directive and regional development scheme for the Auvergne-Rhône-Alpes region and five regional schemes concerning biomass (Brittany, Occitanie, Auvergne-Rhône-Alpes, Burgundy-Franche-Comté and Guadeloupe).

The Ae also issued three opinions on national energy planning: the second national low-carbon strategy (SNBC), the second multi-annual energy programme (EPP 2019-2028) and the 10-year development plan for the electricity transmission network, which in fact covers the period 2020-2035.

The analysis of these opinions is detailed in the central section of this annual report.



the Nice local metropolitan urban plan (PLUM)



Seven cases concerned schemes or plans which fall under the French Environmental Code: three water development and management schemes (SAGE), three regional quarry schemes (Brittany, Centre-Val-de-Loire and Pays-de-la-Loire) and a modification of the 6<sup>th</sup> nitrate action programme in Brittany.

As part of its power of evocation, two urban planning documents were referred to the Ae, the Nice local metropolitan urban plan (PLUM) and the Roissy territorial coherence plan. The Ae considers that the Nice PLUM experience should lead to making statements of cases mandatory when responding to the opinions of environmental authorities on plans/programmes and that project owners should pay particular attention to their content.

Finally, following a decision taken after examination on a case-by-case basis, it also issued an opinion on the flood risk prevention plan for Lée (64).

## PROJECTS

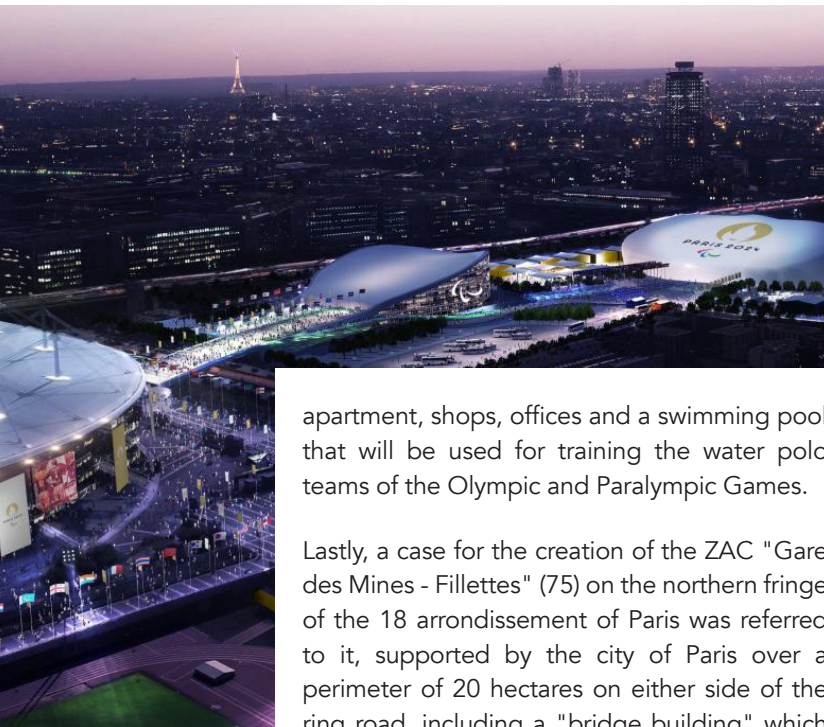
The Ae has assessed several cases for large-scale urban projects, in particular following the decision of the Minister of the Environment to take up several cases for joint development zones (ZAC), in the context the city of Paris being chosen by the International Olympic Committee for the 2024 Olympic and Paralympic Games, and to entrust the assessment to Ae.

### Urban developments in Île-de-France related to the 2024 Olympic Games

Therefore, after its 24 October 2018 opinion concerning the "Olympic and Paralympic Village" ZAC, the Ae was consulted again on this project in the autumn of 2019, during the environmental authorisation application stage. At the start of 2019, it was asked to issue an opinion on another ZAC project - "Media Cluster". This project is located on the territories of Dugny, Le Bourget and La Courneuve, and will host, during the Games, the site for the media village and the volleyball and shooting competitions, and will eventually provide 132,000 m<sup>2</sup> of floor space and a 13-hectare extension to Georges Valbon Park.

The Ae has also been approached with a project for an Olympic aquatic centre and the development of the Plaine Saulnier site in Saint-Denis (93) and a lot in the ZAC at the Plaine de l'Ourcq, to the north of the commune of Noisy-le-Sec (93), which will house 234,000 m<sup>2</sup> of buildings including housing, a hotel, a serviced





apartment, shops, offices and a swimming pool that will be used for training the water polo teams of the Olympic and Paralympic Games.

Lastly, a case for the creation of the ZAC "Gare des Mines - Fillettes" (75) on the northern fringe of the 18 arrondissement of Paris was referred to it, supported by the city of Paris over a perimeter of 20 hectares on either side of the ring road, including a "bridge building" which would sit on top of it. The project includes in the public facilities, over 20,000 m<sup>2</sup>, the Arena II, an 8,000-seat event and sports hall initially planned at Bercy, which will host the badminton and armchair fencing events during the 2024 Olympic and Paralympic Games (OPG).

All of these cases relate to large-scale urban building projects. If, on the whole, the impact studies, drawn up when creating the ZAC, are of a quality regularly underlined by the Ae's opinions, they still provide little information on the specific impacts of the Olympic Games. For all these projects in areas of heavy road traffic, health risks are the main issue that led Ae to question the programming and phasing of the developments.

## OTHER URBAN DEVELOPMENT PROJECTS

Following a preliminary framing opinion issued in 2017, the Ae issued an opinion on the Euro3Lys project located in the communes of Saint-Louis and Héringue (68), in the north-western part of the trinational conurbation of Basel. The elements provided by the Ae in its preliminary framing opinion have, on the whole, been properly accounted for in the impact study presented - particularly with regard to the content of the project and the coordination of the contracting authorities.

The Ae also issued an opinion on one of the components of the Île de Nantes ZAC, the university hospital centre (CHU) (which would bring the activities of the Nantes university hospital centre currently located on two other sites together on a single site in the Île de Nantes south-west ZAC). The Ae reiterated the importance of analysing the impacts across the scale of the entire development project, including when the application for authorisation concerns only one of its components.

The Ae has been asked to give its opinion on a project that includes the development of the Austerlitz station<sup>1</sup> in Paris (new retail space of 7,200 m<sup>2</sup>), the construction of a real estate complex in the Paris Rive Gauche ZAC (construction of offices (48,700 m<sup>2</sup>), shops (18,100 m<sup>2</sup>), housing (9,300 m<sup>2</sup>), as well as a hotel, a student residence and premises for use by the SNCF. This operation also includes the creation of a road link between Boulevard de l'Hôpital and Avenue Pierre Mendès France.

Also in Paris, the Ae updated an opinion it had issued on the construction of lots within the restructuring project of the RATP's Vaugirard workshops<sup>2</sup>.

Lastly, it updated another opinion on the creation of a leisure accommodation complex in Villeneuve-le-Comte and Bailly-Romainvilliers (77), "Villages Nature".

<sup>1</sup> Another similar case regarding the Gare du Nord station was the subject of an opinion from the regional mission of the environmental authority of Île-de-France.

<sup>2</sup> Ae Opinion No. 2015-38 of 22 July 2015.

## RURAL DEVELOPMENT PROJECTS

A project for the construction of a residential and tourist centre in the Landes region, dominated by golf courses was referred to the Ae. This project is of an exceptional scale due to the planned developments (golf course, accommodation for 1,200 additional inhabitants), the rights-of-way concerned (nearly 250 hectares of natural and agricultural areas), and the offsetting measures over more than 500 hectares. Smaller ZAC projects have also been referred to it: the Rivel ZAC, located about twenty kilometers south-east of Toulouse in the Hers valley, in the communes of Baziège and Montgiscard, the project to create the "Les Haïes de Vic" business park in the commune of Castanet-Tolosan (31), and the development of the Montaigu railway station district (85).

In all cases, the main issue is that of soil artificialisation and avoiding of high-stake sectors. The Ae then analyses and criticises the soundness of the justification for the choices of location, sizing and densification of operations, in line with other developments under way in the same residential and employment areas.

Three more unusual projects were also referred to it:

- work to secure Mont Faron located north of the city of Toulon, in the Var department (supported by the Toulon Provence Méditerranée metropolis and the city of Toulon) - the majority of the work is located in a Natura 2000 site and a listed site;
- the development of the "beach plan" for the Lion beach in Lacanau, put forward by the National Forestry Office (protection and restoration of the environment, traffic, non-motorised traffic and public transport, reception and signage);
- to restore the dunes at the Puits d'Enfer "Littoral 3" in Château-d'Olonne (85), put forward by the new commune of Les Sables-d'Olonne and the Conservatoire de l'espace littoral et des rivages lacustres (the Coastal Protection Agency), which is planning to restore part of the Château-d'Olonne coastline and includes the seafront, the old Puits d'Enfer car racing circuit and a wooded massif (wooded part of the Fief Saint-Jean).

Attention is then focused on the impacts on sensitive natural environments and taking natural risks and climate change into full account.



Rivel ZAC, located around 20 kilometers south-east of Toulouse



Mount Faron safety work

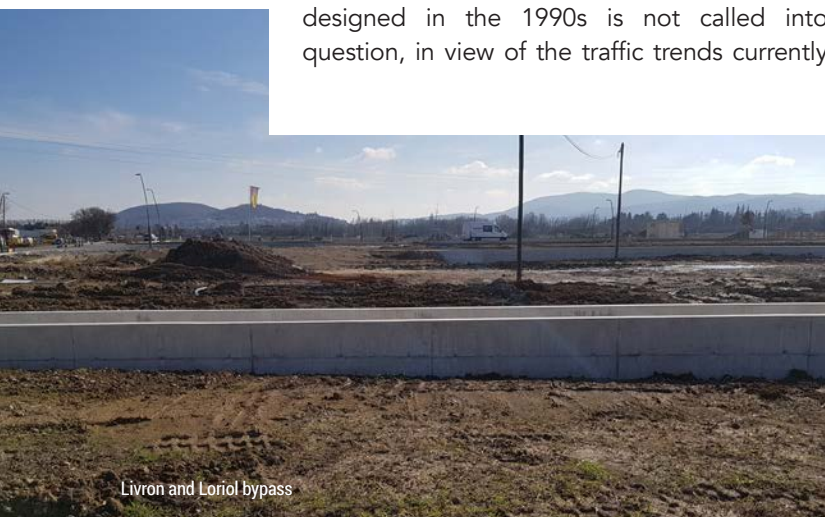


### ROAD AND RAILWAY INFRASTRUCTURE

The Ae once again issued many opinions in 2019 relating to road infrastructure projects:

- a project in the Lille metropolis: completion of the first three functional sections of the southern part of the north-western inter-municipal link (LINO), put forward by the European metropolis of Lille (MEL);
- the Montpellier western bypass road (COM), which aims to upgrade existing roads to create a double dual carriageway of about 6 km, linking the A750 and A709 motorways;
- the development of two dual carriageways on the RN 147 north of Limoges, as part of the overall development of the Poitiers-Limoges route (construction of a new 6.5 km long route on the RN 147 north-west of Limoges);
- two projects in the Drôme: the development of the crossroads of Les Couleures in Valence and Saint-Marcel-lès-Valence and the Livron and Loriol bypass project;
- several other bypass road projects: from the RN580, over a 2.2 km stretch, to Laudun-l'Ardoise (30), with the removal of a level crossing; the Caulnes bypass and the restructuring of the Kergoët interchange (22); as well as, on the RN88, doubling the Yssingeaux bypass (43) and the development of the Saint-Félix, Moutiers and Saint-Marc crossroads on the Rodez beltway (12).

Even if some of them have been gradually adapted, or even completely resized, the opportuneness of most of these projects designed in the 1990s is not called into question, in view of the traffic trends currently



Livron and Loriol bypass

observed and without taking into account a more multimodal approach to travel. In its preliminary framing opinion on the Fos-Salon project, the Ae noted that the project, which is to be presented for public debate, did not seem to have fully integrated the national guidelines in terms of displacement and greenhouse gas emissions, even though they had recently been approved by the legislator. The Ae underlined the importance of this issue and any health issues for these projects. It recommended that these impacts be the subject of the whole avoid, reduce, offset sequence provided for in the French Environmental Code.

Some projects are linked to the servicing of urban development projects for which the Ae had issued opinions: the Ratelle road in Saint-Cyr-l'École - ZAC Charles Renard (78); the Pleyel urban crossing in Saint-Denis (93). In the vicinity of the latter, the Ae also received a proposal to develop the interchange system at the Pleyel junction and the Porte de Paris in the municipality of Saint-Denis (93) (closure of the access ramps to the A1 at the Porte de Paris and creation of new ramps making it possible to re-establish the functionality of exchanges with the A86 at the Pleyel interchange). For this type of case, the main points concern the coherence of the project with the urban project of the territory, in terms of traffic redistribution, landscape integration or health impacts.

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#### Railway and tramway projects namely concerned:

- renovating the railway line between Dol-de-Bretagne and Dinan (22-35);
- Bordeaux Métropole's creation of a high-service bus link from Bordeaux's Saint-Jean de Bordeaux station to Saint-Aubin-de-Médoc (33);
- the project to extend line 1 of the Montpellier urban area tramway, which is part of the commissioning of the Montpellier-Sud-de-France railway station and the urbanisation of the Cambacérés district;





Creation of a flood control basin, bank reinforcement and water collection in the communes of Villers-Allerand and Germaine (51)

- two multimodal transit hubs (PEM):
  - Nice Saint-Augustin, in Nice (06), in the Grand Arénas area;
  - La Rochelle (17) ;
- adding a railway stop in the district of Sainte-Musse, to the east of the city of Toulon (83), of which it will be the "second station" ;
- removing a level crossing located on the Toulouse-Sète railway line in Escalquens (31) with the creation of a new track diverting the current departmental road 79 and two roundabouts ;
- creatively building a storm water retention tank, river bank reinforcement and water collection in the communes of Villers-Allerand and Germaine (51), in the Montagne de Reims Regional Natural Park, which aims to prevent flooding in the railway tunnel located on the Reims-Epernay axis during significant increases in the water level.

Many of these cases, which are looked at primarily as railway equipment restructuring projects, are in fact driving forces or key elements of road reclassifying and urban development that are insufficiently addressed as such, which is systematically pointed out in the Ae's opinions. The strongest impacts are

then not sufficiently addressed, as they are not on the right scale. However, the La Rochelle PEM, the development of the Montaigu and the Bourgoin-Jallieu station districts are exceptions, which the Ae believes should become more widespread.

As in previous years, the Ae also issued opinions (6) on land, agricultural and forestry developments designed to offset the damage caused by certain infrastructure projects for which the contracting authority is the DREAL or the SNCF. On the whole, the related works they provide for are limited in scope, unrelated to the reparcelling carried out in the twentieth century. However, the analysis of impacts sometimes remains insufficiently specific, in particular with regard to damage to protected species and the preservation of the tree network.

### SEA AND RIVER INFRASTRUCTURE

At the end of 2019, the Ae received an initial request for environmental authorisation for the project for a new "Seine-North Europe canal" (Carrefour), initially stated to be in the public interest in 2007. This request for authorisation relates only to the southern section of the canal, which includes the Oise river route and the Oise side channel. The case put forth is an unprecedented example of an impact study that has been significantly updated, more than ten years after its first version used for the public interest declaration survey. The Ae pointed out that some aspects of the impact study for the whole project still needed to be further developed in view of the second application for environmental authorisation for the rest of the project route. As for the impact study for the first environmental authorisation, on the section that is to be commissioned first, it was in fact very detailed, with a strong commitment to offset the damage caused to the functionalities of the surrounding environments.

The "Seine-Métropole West port" (PSMO) case was also submitted to the Ae. It is a multimodal port platform covering 101 hectares in the department of Yvelines which is part of the Achères flood plain, facing the Seine-Oise confluence. Due to several very complex issues (phasing related to the operation and redevelopment of a quarry, flood risk management), a preliminary framing opinion had been requested. The Ae was also able to note for this case that its analyses had been taken into account by the project owner Haropa - Ports of Paris and appear in the impact study presented.

The Ae has also assessed a project to set up a coal, quartz and wood storage platform on the Salaise-Sablons industrial-port site (38), which is part of the Inspira joint development zone (ZAC) project, with a total surface area of 336 ha, led by the joint association of the Salaise-Sablons industrial-port zone in partnership with the Compagnie Nationale du Rhône (CNR). Having initially received an opinion from the Auvergne-Rhône-Alpes regional mission of

environmental authority, the minister in charge of the environment took up the case to entrust the Ae with its examination. The Ae recalled, for this port platform case as for the cases relating to rail interchange centres or urban cases, the need to address the impacts of each operation in a holistic approach on the scale of the whole ZAC.

Other projects of more modest dimensions, put forward by Voies navigables de France, were analysed: the project to rebuild the canal bridges at Vadencourt and Macquigny (02), the Wambrechies sediment and rubble transit facility (59) and the reconstruction of the Meaux dam (77).

Several seaport development cases have also been referred to the Ae:

- The Port Horizon 2025 project, put forward by the La Rochelle seaport;
- The development of the Cap Janet (13) international terminal;
- improving reception conditions for cruise ships at the deep-water wharf (QEEP) in the port of national interest of Saint-Pierre (975).

An analysis of the maritime cases is included in the central part of this report.





Reconstruction of the major power transmission line between Avelin and Gavrelle (59-62)



Marseille-Provence airport extension

## AIRPORT INFRASTRUCTURE

For the first time since its creation in 2009, the Ae received airport applications in 2019: three opinions for the preliminary framing of three projects (terminal T4 at Roissy, extension of terminal 1 at Marseille-Provence, redevelopment of Nantes-Atlantique) and two opinions prior to the authorisation for the extension of Marseille-Provence and La Réunion Roland-Garros airports. In two cases (Roissy, Nantes-Atlantique), the opinions were intended to enlighten the National Commission for Public Debate, prior to consultations with the guarantor: the questions raised in the requests for opinions were primarily aimed at having as complete a case as possible for the consultation. These cases are part of a more detailed analysis in the central part of this report.

## ENERGY PROJECTS

2019 was particularly characterised by three projects:

- the pilot floating wind farm "EolMed-Gruissan" (11), which is made up of four wind turbines with a capacity of 6.15 MW and is connected to an onshore power station by a 27 km long underwater and then underground cable;

- the reconstruction of the major electricity transmission line between Avelin and Gavrelle (59-62) (extension of the Gavrelle substation, creation of the new 30 km long two-circuit line and dismantling the existing 28 km line). The Ae had issued an initial opinion prior to the declaration of public utility of the line. This new case is part of the application for environmental authorisation. The Ae once again questioned some of the assumptions in the impact study concerning the comparative impacts of an overhead and a buried line, in particular with regard to birds;
- the Lavriot power plant in French Guiana (973). The Ae raised many questions about the compatibility of the project, provided for in French Guiana's multi-annual energy plan, with the Energy Transition for Green Growth Law and the Littoral Law, but also with many other environmental regulations and plans (regional development plan, climate, energy, flooding, wetlands, protected species, etc.). It namely questioned the project sizing, the choice of site, and the issue of having a thermal power plant and a solar power plant on the same site. Above all, the Ae considered that the offsetting measures put forward at this stage do not represent reasonable offsetting of the destruction of natural environments. Its recommendations should lead to specifying the objectives to be achieved, the areas to be preserved and the features to be restored.



### INDUSTRIAL INSTALLATIONS

The Ae has issued several opinions relating the industrial installations in port areas.

Three opinions were therefore issued for installations in the Grand Port Maritime de Dunkerque (GPMD):

- SNF's construction of a plant with a production capacity of 200,000 tonnes of 50% acrylamide and 120,000 tonnes of polyacrylamide ;
- the creation of a potato processing unit on the territory of the communes of Bourbourg and Saint-Georges-sur-l'Aa ;
- the construction of a logistics warehouse (SFAN) in Loon-Plage.

It should be noted that all these projects are consistent with the programming defined in the GPMD's strategic project. Several impacts of these projects were taken into account at the stage and scale of this programming, which led the GPMD to define offsetting measures to be integrated into its development strategy. The Ae considers that the idea of connecting the environmental assessment of a programme and that of the projects whose implementation is to be enabled through the programme should be more systematically provided for by the regulations and the contracting authorities. In this case, the Ae's different opinions stressed that each of the impact studies presented would have benefited from echoing this more global information, for example, to justify the choice of sites and the measures already taken to reduce and offset their impacts, or to address certain issues on this scale (forced displacement, water supply and wastewater management, etc.).

The same issue was raised for a proposed wind turbine blade assembly plant in the large seaport of Le Havre (76).

After the Minister made reference to this case, the Ae also issued an opinion on the authorisation to operate the Alteo plant in Gardanne (13), since the Administrative Court of Marseille had decided that its initial environmental assessment was incomplete.

The relocation of a Seveso site (LPG Bulk Relay at Druye (37)), which required that a new motorway distributor be created, was also assessed.

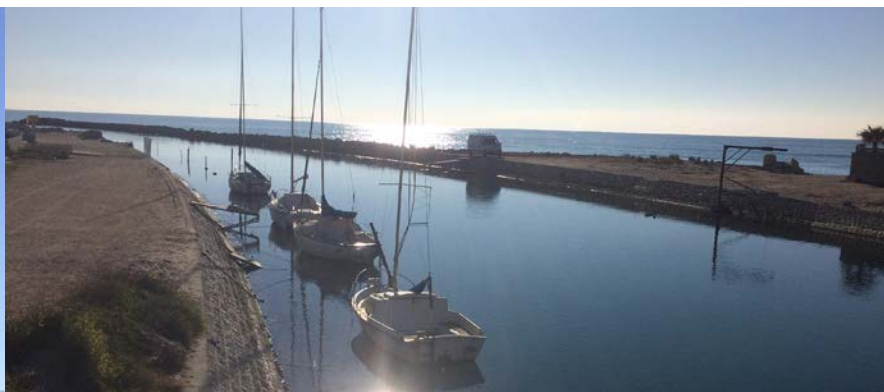
Much like every year, a few cases were referred to the Ae involving the decommissioning of basic nuclear installations (INB) and the creation of new waste management facilities, particularly storage facilities, at the La Hague (50), Saclay (91) and Tricastin (26) sites. Although the projects are precisely programmed by the national radioactive materials and waste management plan (PNGMDR) and the analysis of impacts is generally properly performed, leading to the conclusion that there are no significant health impacts from the decommissioning operations, the justification for the projects, in particular their size, is still insufficiently explicit.



Relocation of a Seveso site (LPG Bulk Relay in Druye (37))



Alteo site in Gardanne (13)



## Decisions made on a "case-by-case" basis in 2019

The Ae issued 217 decisions on a case-by-case basis, 127 for plans/programmes (97 in 2018) and 90 decisions for projects (83 in 2018).

The volume of applications in 2019 is lower than in 2017 (251 decisions), but slightly higher than in 2018 (180 decisions). This reduction in the number of decisions compared to 2017 can partly be explained, in the case of projects, by the entry into force of the law of 10th August 2018, which gives the departmental prefects powers for case-by-case decisions relating to "modifications and extensions of activities, installations or works covered by the authorisations provided for in articles L. 181-1, L. 512-7, L. 555-1 and L. 593-7". The effects of the Law of 8 November 2019 cannot yet be assessed, as its implementing decree has not yet been passed.

As a result of the decisions rendered, 40 projects (out of 90) were submitted for environmental assessment. This submission rate, significantly higher than before the 2016 change in nomenclature, confirms the main effect of the higher thresholds (fewer projects subject to systematic impact studies, but more projects submitted after case-by-case examination). As in 2018, the Ae was able to establish, for a certain number of cases submitted, that they were part of a broader "project" within the meaning of section III in Article L. or are analysed as a

### WASTEWATER TREATMENT PLANTS

Also for the first time in 2019, the Ae was sent cases relating to wastewater treatment plants in sectors subject to the Littoral law, as their authorisations require derogations from the minister in charge of the environment. These cases referred to:

- the urban area of Montpellier (MAERA project in the commune of Lattes) ;
- Perros-Guirec which also treats effluent from Saint-Quay-Perros ;
- Île-d'Olonne, replacing the existing plant.

These cases highlight the technical improvements provided for the operation of the wastewater treatment plant. The Ae endeavoured to recommend an analysis of the impacts on a wider scale: taking into account the improvement of networks, more precise evaluation of the impacts of the expected improvements on aquatic environments, analysing the coherence of the project with past and future urban developments, in the context of climate change.

modification to an existing project and not (as presented in the case-by-case application) as an entirely new project. This is the case most often for projects relating to road infrastructure.

Despite the legal security that it can provide, the provision introduced by the Law of 2 March 2018<sup>1</sup> which enables a contracting authority, "In case of doubt as to the assessment of the significance of modifications and the need to update the impact assessment, to consult the opinion of the Environmental Authority" has only been used once.<sup>2</sup>

Development projects (25 decisions) are, in 2019, the most represented category, followed by railway projects (24) and road projects (19). The "other" heading specifically concerns a project to develop part of the land formerly belonging to Aéroports de Paris for the Saint-Cyr-l'École aerodrome (78), clearing 2.3 ha of land for grazing in the commune of Meyrueis (48) and the construction of sheep fences on the classified site of the Dunes de la Gachère (85).

As in 2017 and 2018, 119 plan/programme decisions out of 127 concern foreseeable natural risk prevention plans (PPRN) (including three of the forest fire risk prevention plans and three of the coastal marine submersion risk prevention plans). To a much more limited extent, four concern Technological Risk Prevention Plans (PPRT). Sixteen plans/programmes were subject to environmental assessment and 111 were exempted.

The other decisions concern the directive on the protection and enhancement of landscapes in the commune of Chartres and the surrounding communes (28), the amendment of the draft charter for the Cévennes National Park, the atmosphere protection plan (PPA) for the urban area of Pointe-à-Pitre/Les Abymes (971) and the amendment of the regional quarry plan for La Réunion. The Ae exempted the first two from

environmental assessment, but subjected the last two to it.

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Nine decisions were appealed: six involved projects and three involved plans and programmes. For four projects and one PPR, the Ae withdrew its initial decision and made a new reasoned decision to waive environmental assessment. It upheld its submission decision in four cases (two projects and two PPR).

## Decisions for evocation

In accordance with the provisions introduced by the decree of 28 April 2016 reforming the environmental authority, the Ae may evoke at its level, with regard to a case's complexity and environmental issues, plans/programmes or urban planning documents normally falling under the competence of an MRAe. It then replaces the latter to issue the opinion on the documents that it has decided to evoke.

In 2019, the Ae took two evocation decisions (compared to eight in 2017 and four in 2018) concerning the Nice-Côte d'Azur local metropolitan urban plan and the development of the Roissy-Pays-de-France SCOT.

In the context of Decision No. 400559 of 6 December 2017 by the Council of State, the Minister for the Environment singled out nine particularly sensitive cases for the Ae to investigate. These opinions concerned the 2024 Olympic and Paralympic Games, the Tosse development project, the construction of a high level bus service (BHNS) from Bordeaux to Saint-Aubin-du-Médoc, the multimodal platform at the INSPIRA (38) industrial-port site, Altéo in Gardane (13) and the Larivot power plant in French Guiana.

<sup>1</sup> See Article L. 122-1-1 III of the French Environmental Code.

<sup>2</sup> About the Strasbourg exhibition centre project within the Wacken Europe programme.



## Ae administrative communications

Since 2014, the Environmental Authority produces “administrative communications” which take the form of summaries with a commentary of the opinions issued and the areas for further discussion, on a given theme or type of project. Each note is drawn up in light of the opinions issued by the Ae at the date of its deliberation, the reflections and questions raised within the Ae or following exchanges with various stakeholders, and according to the legislation and the regulations in force at the time. At its meeting on 23 January 2019, the Ae discussed a “Note on road transport infrastructure projects<sup>3</sup>”. A note on joint development areas<sup>4</sup> and a note on the consideration of greenhouse gas emissions are currently being drafted and will be discussed in 2020.

These two first notes are further discussed in the central part of this annual report.

## The Ae’s examination or contribution in the framework of the elaboration of draft texts

Within the framework of the energy and climate bill, the Ae was heard on Tuesday 28 May 2019 by the National Assembly’s Committee on Sustainable Development and Land Planning and on Wednesday 3 July 2019 by the Senate’s Committee on Land Planning and Sustainable Development.

It was also heard by MP Guillaume Kasbarian, as part of the mission entrusted to him by the Prime Minister to simplify and accelerate industrial installations. It has nevertheless chosen not to take part in the rest of the work carried out by this mission.

<sup>3</sup> Note 2019-N-06.

<sup>4</sup> Note discussed on 5 February 2020.

Following Decision No. 400559 of 6 December 2017 referred to in footnote 3, page 8, the Government prepared a draft decree reforming the Environmental Authority on projects. In a similar configuration in 2012, the Minister for the Environment called upon the Ae for an opinion on the draft decree relating to the assessment of certain plans and documents with an impact on the environment<sup>5</sup>. Members of the Ae, an organisation set up ten years ago to provide independent opinions on matters involving the Minister for the Environment, wanted to debate, on a collegial basis, a contribution to the public consultation on this new draft<sup>6</sup>.

When finalizing this annual report, the draft decree was still being drafted. It should be made public in 2020.

<sup>5</sup> See Ae Opinion No. 2012-11 of 14 March 2012. Decree No. 2012-616 of 2 May 2016 was the subject of a dispute which led to the approval of Decree No. 2016-519 of 28 April 2016. Several recent rulings have led to the cancellation of plans drawn up according to the contested decree (most regional climate-air-energy and ecological coherence plans and, more recently, following the decree of 2016, the Seine-Normandie SDAGE and the Vallée de la Chimie PPRT).

<sup>6</sup> See the contribution of 11 July 2018.









# Ae

## Focus on...

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- Regional schemes for land planning, sustainable development and equality between regions p.35
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- Ae note on the environmental impacts of road transport infrastructure projects p.48
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# National energy plans

In 2019, the Ae formulated opinions on the national low-carbon strategy (SNBC), on the multi-annual energy plan (PPE) and on the 10-year development plan of RTE. In 2020 it will also have to issue an opinion on the multi-annual energy plans for non-interconnected territories.

## National low carbon strategy

The SNBC reflects France's commitments in the fight against the man-made greenhouse effect, which should lead to carbon neutrality by 2050. This concept of carbon neutrality consists of balancing greenhouse gas emissions with its capture in biomass and soil sinks, possibly complemented by other, more marginal technological solutions. The aims are ambitious and involve, depending on the sector, drastic reductions in greenhouse gas emissions. The Ae has suggested that a mechanism be put in place to ensure that these aims are adhered to.

The regional breakdown of the SNBC has yet to be established. The Ae has highlighted its importance at all levels of the country, to ensure that it is consistent. It calls on all decision-makers to rally together for the shared goals of reducing greenhouse gas emissions.

The Ae recognises the SNBC's ambition and the value of a single document that leads all sectors of the economy towards carbon neutrality, the only solution which, if shared on a global scale, is likely to keep global warming below 2°C or even 1.5°C. It calls for a better presentation of the SNBC's choices in order to ensure that the assumptions used are likely to allow the targets to be respected.

It suggests that a mechanism for offsetting greenhouse gas emissions be developed, in

order to make it easier for projects to take them into account. It also recommends improving the SNBC's ability to be used in conjunction with planning documents that may have an impact on greenhouse gas emissions. It therefore suggests putting in place the tools that allow the avoid, reduce, offset approach to greenhouse gas emissions in planning documents and projects to be properly applied.

In the field of innovation, the Ae calls for part of public energy research to be redirected towards the energy transition. It highlights the difficulties in implementing the SNBC, for which certain technologies need to be developed and could be limited by the availability of mineral resources, such as rare earths and lithium.

It also recommends that the environmental impacts of land-use changes linked to the need for biomass production be assessed and controlled. The same applies to the interactions between the combustion of biomass and pollution, particularly air pollution, with its health consequences. Finally, it believes that the SNBC should account for all greenhouse gas emissions through a carbon footprint that would add to domestic emissions those related to imports.

## Multi-Annual Energy Plan

The Multi-Annual Energy Plan (PPE), provided for in the Energy Transition for Green Growth Law, must be compatible with the SNBC. It establishes priorities for action for the management of all forms of energy in continental mainland France. The non-interconnected territories: Corsica, Guadeloupe, French Guiana, Martinique, Reunion, Mayotte, Saint Pierre and Miquelon, and Wallis and Futuna have their own PPE which provides for their energy autonomy.

In its opinion on the second PPE, the Ae took a critical look at the previous one, stressing the importance of providing information on the discrepancies between forecasts and achievements and indicating how they have been corrected, if at all. It also recommended adjusting the PPE to take into account the cancellation of the carbon tax, without abandoning the projected trajectory. It stressed the importance of PPE coherence with all regional programming in the field of energy and climate and the need to ensure through specific measures that the consolidation of regional strategies ensures that the national goals are respected. It considered that the means that will be deployed to achieve the objectives of reducing energy consumption in residential and tertiary buildings needed to be explicitly listed.

It also stressed the value of assessing the negative environmental effects of land and marine renewable energies and putting forward measures to avoid, reduce and, where appropriate, offset them. It has been attentive to the need for quality environmental assessments notwithstanding simplified administrative procedures.

The Ae also took a critical look at the subsidies still granted to fossil fuels, stressing the importance of assessing their negative effect on greenhouse gas emissions, and suggested presenting what would happen to these emissions if these same subsidies were directed towards the fight against climate change. In this respect, it questioned the compatibility of the savings expected from the renewable heat fund with the objectives sought, and called for the further development of thermal solar energy.

The use of biomass, whether from forests or second-generation biofuels, with the aim of partially decarbonising air and sea transport, which will remain net emitters of greenhouse gases, should, according to the Ae, be carefully managed: the need to preserve soils, to promote carbon storage and not to worsen the disruption of the nitrogen cycle is essential. The Ae recommends that imported biomass be controlled and subject to new environmental quality criteria. The resources that will be needed to replace coal in thermal power stations should also be assessed. In this sector, it also recommended specifying which levers will make it possible to reduce energy consumption and greenhouse gas emissions in the agricultural and forestry sector.

With specific regard to air transport, the Ae recommended that proactive measures be put in place, as part of the strategy to develop clean mobility, in order to reduce greenhouse gas emissions from domestic flights and offset residual emissions.

The share of nuclear power generation is expected to decline in the future, but to remain a major component of the national energy mix, accounting for half of electricity generation by 2035. Several of the PPE's research and development proposals concern small modular reactors, multi-recycling of fuels or the extension of deep storage capacities for nuclear waste.

The Ae reiterated the importance of carrying out environmental assessments of these innovative sectors upstream of strategic choices. Too often, knowledge of impacts develops after technological innovations, which leads to imprecise impact studies and decisions taken in an unpredictable world.

## Ten-year Electric Transport Network Development Scheme

The Ten-year Electric Transport Network Development Scheme, prepared by RTE, is based on the PPE as well as on alternative scenarios developed by RTE. It supports the profound changes in the network linked to the planned reduction in the share of nuclear power in electricity production and the increasing use of renewable energies, which are more scattered throughout the country, with their intermittency requiring more fine-tuned management.

RTE extended its analysis over a period of 15 years (2020-2035). In addition to changes in power generation, this period will also be characterised by very strong growth in investments to renew the network, many components of which are now becoming outdated, and by completing interconnections with neighbouring countries and creating underwater links required by offshore wind projects.

In its opinion, the Ae stressed the need for a better understanding of the impacts of certain choices (overhead lines versus underground lines, technologies used in substations, techniques for laying underwater cables, etc.). It recommended that a more assertive policy be introduced to reduce the network's greenhouse gas emissions, particularly in the works phase, and stressed the need to finalise the strategy currently being considered on adaptation to climate change.

The Ae reiterated the importance of taking better account of the natural environment (in particular birdlife) and Natura 2000 sites (through further analysis of impacts) with commitments, as well as finding solutions to avoid and reduce significant impacts at the scale of the whole scheme and, if necessary, offset residual effects, in order to contribute to achieving the objective of zero net artificialisation.





# Regional schemes for land planning, sustainable development and equality between regions

In 2018, like the other stakeholders, the Ae did not know a priori what a regional scheme for land planning, sustainable development and equality between regions (Sraddet) would be in 2018. Three regions (Grand-Est<sup>1</sup>, Centre-Val-de-Loire<sup>2</sup>, Auvergne-Rhône-Alpes<sup>3</sup>) raised a few questions about the methodology to be applied for their environmental assessment prior to their preparation. The Ae replied to these questions with preliminary framing opinions (see 2018 annual report: "Sraddet preliminary framing", page 35).

In 2019, eight Sraddet projects were referred to the Ae for an opinion<sup>4</sup>. As with all plans undergoing an environmental assessment for the first time, their drafting is intended to be part of a long-term process of continuous improvement, from one generation of documents to the next, over the course of the environmental assessments: their success and effects can only be assessed over several years. One of the special features of a Sraddet is that it is designed for a period of about 15 years, with no obligation to revise it in the short term.

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1 Ae Opinion No. 2018-42 of 11 July 2018.

2 Ae Opinion No. 2018-52 of 12 September 2018

3 Ae Opinion No. 2018-86 of 5 December 2018

4 In chronological order: Provence-Alpes-Côte d'Azur, Centre-Val-de-Loire, Grand-Est, Normandie, Hauts-de-France, Auvergne-Rhône-Alpes, Nouvelle-Aquitaine, Bourgogne-Franche-Comté.

This is why the Ae has made recommendations, some of them quite serious, particularly on the environmental assessment method and reports, at least as much with a view to seeing them implemented for this first generation of Sraddet as for its revisions.

In the third part of its opinions on the inclusion of the environment in the scheme, the Ae also endeavoured to assess the environmental ambition of the scheme in a context of ecological urgency.

Below are several questions that highlight the limitations of the "Sraddet tool" and how different regions have appropriated it.

## Inclusive plans

A Sraddet is an inclusive document that brings the regional infrastructure and transport plan (SRIT), the regional intermodality plan (SRI), the regional climate-air-energy plan (SRCAE), the new regional waste prevention and management plan (PRPGD) and the regional ecological coherence plan (SRCE) together in a single document.

The various mandatory themes are managed differently: while the Sraddets fully accept their "land planning" dimension in all its different meanings (land consumption, territorial structuring, protection of high-stake areas), they generally struggle to integrate the sectoral

themes in a coherent manner, which then appear to be dealt with "concurrently".

The plans that the Sraddet brought together defined a fairly precise and often opposable framework, scenarios and provisions. The inclusion of provisions from previous plans in the Sraddet is often less precise and less prescriptive. The maps of the former regional ecological coherence plans are most often added as extras, without any particular information, and are not included in the booklet which is the only part of the Sraddet offering an obligation of compatibility. The waste components do not seem to have fully assessed the European obligations and never locate the installations necessary for their management. In two cases, the Ae even considered that this could be seen as contrary to the principle of environmental non-regression introduced by the law.

## The limits of the Sraddet's prescriptivity

As specified in the general code of local and regional authorities, the legal scope of the Sraddet is reflected in the consideration of its objectives and compatibility with the rules of its publication.

The design of objectives and rules seems to have been regularly balanced against the constitutional principle of the free administration of communities. This interpretation is supported by the State but in some cases can lead to fears of a risk of litigation, which would deprive the rules of their substance. The Sraddet stressed the Sraddet/territorial coherence plans (SCoT) subsidiarity, without always setting the expected coherence framework at the inter-SCoT level. Most of the plans make use of terms in the conditional tense or are expressed as recommendations (appropriate, proposed, will be proposed, etc.). Even if the general code of local and regional authorities does not lay down any specific etiquette for drafting rules, the present tense of the indicative should be favoured in order to reinforce the rule.

Moreover, the effectiveness of the rule implies that it can be checked, which is not systematically provided for in the monitoring arrangements, or is insufficiently so, for example because of the absence of initial values and targets.

Lastly, the added value of some of the rules put forward by the Sraddet is not clear, as they are only a repetition of national or European regulations (e.g. achieving good status of water bodies).

The Ae wondered about some of the Sraddet's respect for the principle of environmental non-regression. Demonstrating the compatibility of "inferior" documents, such as urban planning documents, with the Sraddet does not exempt them from respecting this principle.

## An imbalance between mandatory environmental issues and others

The analysis of environmental issues takes into account the capacity of the regions and their legitimacy to act according to the topics addressed. The result is a generally shared observation: the Sraddet tool has few levers for action for several of them (for example, with regard to "agricultural, domestic and industrial pollution" or "heritage and landscapes").

Nevertheless, while the Sraddet must, according to the general code of local and regional authorities, handle several mandatory issues, some environmental issues that are not included in the Sraddet are indeed intended to be fully taken into account in their environmental assessment, at least in terms of possible avoidance, reduction or offsetting measures (ARO). The Sraddet could have kept these essential topics as optional topics, but none of them did so. At this stage, the Sraddet did not always make the link between the measures that the environmental assessment allowed them to define and the content of the rules into which they would be translated. The Ae recommended in most of its opinions that a regionally coordinated offsetting policy

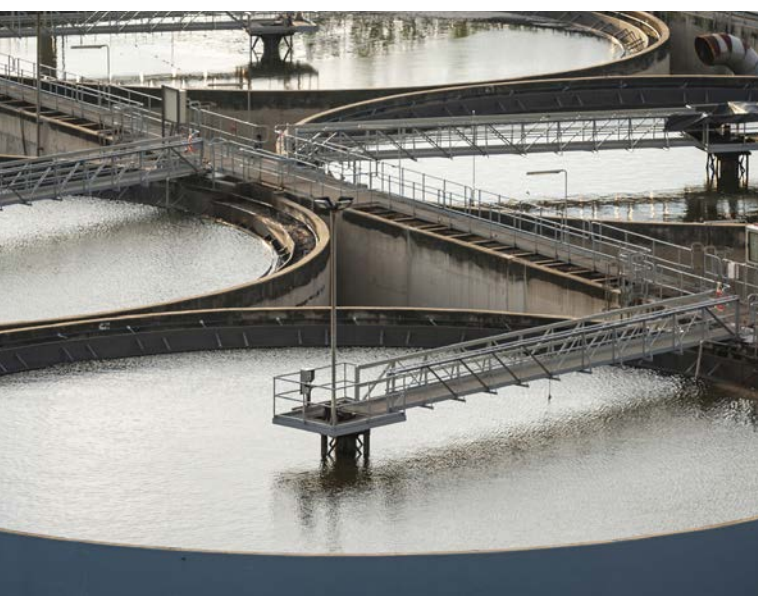
be put in place, targeting sectors favourable to the conservation and restoration of species and habitats.

A fortiori, few Srdadet have explicitly defined ARO measures for "non-mandatory" environmental topics, particularly with regard to natural risks.

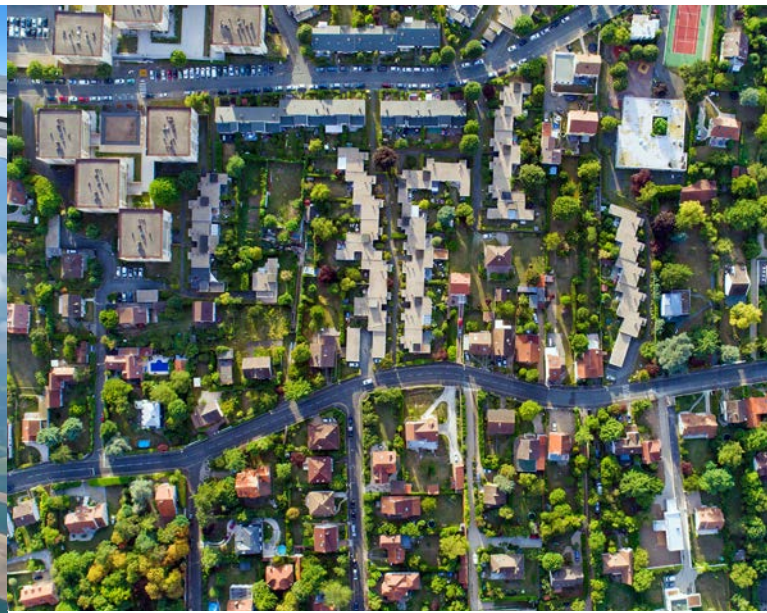
## The specific case of water

Preserving water resources requires special treatment. It is the subject of many provisions in the master plans for water development and management (Sdage) and the water development and management plans (Sage). These generally include cross-compliance rules concerning the quantitative management or preservation of water quality. The Ae was able to identify good practices in some Srdadet (e.g. making these provisions explicit in certain rules, in particular to suggest a way of incorporating them in "inferior" documents). However, the Ae in some cases underlined the risk of not addressing this issue in its own right, while several provisions of the Srdadet, concerning other issues, could increase competing uses, particularly in areas of proven quantitative deficit. For example, the strong

principle highlighted in the Srdadet Nouvelle-Aquitaine to preserve all agricultural activities and promote many different developments on the same territories, without being more explicit on the mobilisation of new water resources and the associated impacts, should lead, in fact, to non-compliance with some of the stated objectives. The environmental assessment approach should therefore more clearly highlight the risk that some of the objectives of the Srdadet will not be achieved, since this contradiction was not resolved by defining appropriate ARO measures.







## Territorialisation: a missed opportunity

One of the great expectations of Sraddet was to enable the coherence of many public policies at the right level of integration by bringing all local authorities together.

The Sraddet's development has most often made it possible to build a shared diagnosis of the territory, particularly in new regions resulting from the merger of several former regions. The regions studied show great diversity, even regional contrasts, which are generally well analysed in the environmental report. Functional geographical units have been identified in most cases.

However, this analysis of the specificity of territories is generally confined to the environmental report, and is only operationally taken into account in very few Sraddet, the rules and objectives tend to remain general and not ordered. The Ae believes that territorialisation is a factor of efficiency, equity and acceptability. The regions emphasise their concern not to stigmatise or favour any territory over another, or even to penalise territories that have already made significant efforts. However, this caution is reflected in practice in the difficulties of assimilation at the local level, given the initially very varied contexts.

For example, differentiated assumptions are never taken into account to determine urban expansion; while the Sraddet diagnoses always identify disadvantaged or even forgotten territories, the lack of territorialisation of objectives and rules deprives the Sraddet of levers to take full account of these structural differences; air quality objectives do not target the sectors really concerned. Moreover, the lack of priority generates a lack of clarity in the accompanying measures and the associated means. This shortcoming is sometimes mitigated by interpretation or application guides, or the establishment of annual roadmaps.

## Systematic oversights

Three issues are almost always insufficiently addressed - or, if they are raised, are not sufficiently addressed in the objectives: interactions with neighbouring regions, interactions with neighbouring countries, and the marine environment.

However, interactions with neighbouring territories can be produced through dynamics, particularly demographic and socio-economic dynamics, which have significant effects on the direction a Sraddet takes. The topics to be managed, in particular waste, use of materials, intermodality and ecological continuities concern perimeters which, most of the time, cross boundaries or go beyond the regional framework. Environmental diagnoses or reports allude to or even analyse this need for continuity across borders. However, most Sraddet do not take this issue into account and do not convey it through the objectives or rules. Although this was undoubtedly a difficult exercise when simultaneously preparing the Sraddet in all regions, coherence between neighbouring Sraddet will have to be strengthened when implementing their provisions and their subsequent revision. The same type of approach is to be encouraged with neighbouring countries. The shape this would take has yet to be determined.

As for marine environments, which are often ignored, they still appear as outlets for the effects of land-based activities, whereas they can also increasingly offer opportunities or constitute challenges to be taken into account, particularly for the preservation of coastal environments. Several regions have coastlines, and in 2018 work will begin on drawing up sea basin strategy documents, which are currently being approved. In the Sraddet presented to the Ae in 2019, marine environments are not taken into account as an issue and, with one exception, coastal and back-coastal areas are not subject to specific measures, even though it is of vital importance for these areas to adapt to climate change. Territorialisation could naturally

find areas of interest for implementing measures in these regions.

## Sraddet governance

Only a few Sraddet have actually defined methodical and precise implementation and monitoring procedures. The Ae believes that this component is, along with the prescriptiveness of the document, the main guarantee that the stated objectives will be achieved. Generally speaking, Sraddet cannot be operational without long-term support and involvement. Several regions have already made provision for regional coordination and the translation of the objectives and rules into the regional opinions during consultations on other draft plans (town planning documents in particular).

The Ae has drafted several joint recommendations. First of all, it seems timely that the provisions of the Sraddet should be fully supported by the State and the other main communities of the region (departments, metropolises). The link with the metropolises is often not very explicit in the Sraddet: how to apply them in these central and driving territories should be the subject of more explicit provisions and precise commitments. Since the regions are also present in the governance of many bodies (regional nature parks, conservatories, etc.), these bodies should showcase the provisions of the Sraddet and be prime levers for their implementation. Lastly, given the sometimes very general character of the rules defined, common standards should be developed and application guides be made necessary.

## How to ensure that consolidating regional priorities will enable France to reach its goals?

In order to ensure that national commitments on climate, air and energy are properly implemented, Article R. 4251-5 of the General Code of Local and Regional Authorities (CGCT) stipulates that Srdadet should set objectives for climate change mitigation and adaptation, the fight against air pollution, the management of energy consumption and the development of renewable energies. Quantitative targets are required for energy control, climate change mitigation and air pollution management. The French Environmental Code also contains numerous waste regulations, most of which derive from a European directive. The plans should commit to comply with this requirement.

The development of the Srdadet has raised the awareness of elected officials in the territories to the overall objectives to be achieved in terms of environmental protection. The Srdadet of some of the merged regions also made it possible to uncover the differences between the former regions and then to draw up a territorial project with shared objectives.

In some cases, however, the objectives set are the same as the national objectives. They are not adapted to the regional context, and some have set different deadlines, which makes comparisons difficult. Conversely, some Srdadet set ambitious targets, sometimes even more so than national targets or very out of step with the trajectories observed to date. The cases do not always analyse the causes and obstacles that have prevented the objectives set by the SRCAE from being achieved, nor the often very significant means that will have to be mobilised to buck current trends.

This is the case for greenhouse gas emissions. The national objectives, although sometimes set out in the SRCAE, are posted as they are in the Srdadet without translating the efforts required to achieve them into action. In some regions, the baseline analysis is not sufficiently documented and does not provide a reliable picture of the past evolution of greenhouse gas emissions. In this case, they are a far cry from coming up with a convincing document on compliance with the carbon trajectory. More often than not, the levers for the involvement of all the economic players in the regions are not specified, nor are the corrective actions needed in case of deviation from the objectives. The modal shift, highlighted as a lever to reduce emissions, is generally not quantified. Few Srdadet regulations are sufficiently far-reaching to make a firm commitment to the energy-efficient conversion of buildings. The link between the prospects for urbanisation and changes in the way territories are served is not always analysed. The carbon content of imports is not laid out. The method used to monitor the region's carbon balance is not indicated and the means are not specified.

Similarly, France's indictment of air quality is almost never taken into consideration and the Srdadet do not provide a response commensurate with what is at stake. The considerable health effects of air pollution, even for concentrations below the regulatory quality thresholds, do not seem to guide strategic choices in terms of both transport infrastructure development and urbanisation.

In the 2018 biodiversity plan, France set itself the objective of "zero net artificialisation of soils" by 2050, which requires both a reduction in soil artificialisation and the restoration of artificial land. While the general code of local and regional authorities does not provide any details on this subject, most Srdadet generally include an objective previously defined in another plan or scheme (a two or even three-fold decrease in land consumption). The corresponding rules still suffer from an imprecise or incomplete definition (scope of the rule and exceptions, definition of

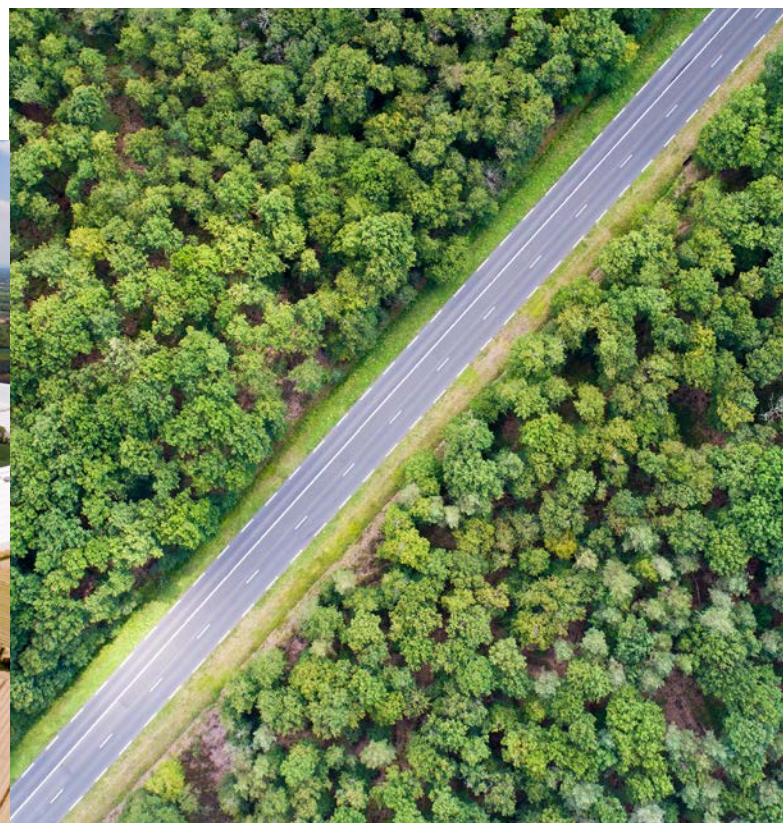


"urban blot", etc.) which leaves room for interpretations which, if not corrected, could lead to them being rendered meaningless. The restoration of artificial land requires an inventory of industrial and commercial brownfields at the level of local municipal and inter-municipal urban development plans or SCoTs. However, this type of measure cannot be used as a pretext for the implementation of tolerant or even ineffective rules to combat artificialisation. The Ae has therefore systematically advocated defining common methods for defining and territorialising objectives, taking into account demographic prospects, and to break the objective down over time (2030, 2040 and 2050).

These two examples have most often led to the observation that there are in fact very few SCoTs with ambitions commensurate with the ecological urgency, now regularly mentioned by Parliament and the State, and which adopt tools (objectives, rules, measures) that seem sufficiently precise and quantified to blaze the trail for all the other stakeholders. The regions do not bear sole responsibility

for this, but the analysis of the environmental assessments carried out during this first exercise highlights the significant gap between the regional balances and the challenges that are recognised at the national level. While most regions have tried, as much as they can, to express regional ambitions through this new scheme, imposed by the NOTRE<sup>1</sup> law, some have opted to establish their policies without fully respecting this framework, which then raises the question of their contribution to national environmental ambitions.

<sup>1</sup> Law on the new territorial organisation of the French Republic.



# Plans and programmes relating to forest land, wood and biomass

In 2016, the Ae had discussed an opinion on the National Forestry and Wood Programme 2016-2026, which was to be broken down as regional programmes (PRFB) under Article L. 122-1 of the French Forestry Code. While the Ae issued an opinion on the first one for Burgundy-Franche-Comté in 2018, it was in 2019 that most of the regional programmes were submitted to it and that it discussed ten opinions on PRFB<sup>1</sup>. However, only one region, Auvergne-Rhône-Alpes, immediately approached the Ae about turning its PRFB into a directive and a regional forest management plan (DRA and SRA)<sup>2</sup>. Alongside these programmes, five regions<sup>3</sup> have also drawn up their regional biomass plans, the first of which was presented to the Ae in 2018 by the Provence-Alpes-Côte d'Azur region. The Ae had previously issued an opinion on the national biomass mobilisation strategy in 2017.

The regional forestry and wood programmes, drawn up by stakeholders in the forest-wood sector in conjunction with the State, focus on the development of the wood economy within the framework of sustainable forest management, with a view to adapting to society's expectations and to climate change. The environmental

challenges of these programmes<sup>4</sup> have proved to be identical from one region to another, even if the contexts encountered and the responses to each of these challenges may have been different.

The regional biomass plans define energy development objectives with reference to those defined in the PRFBs and in connection with the regional waste prevention and management plans. They are drawn up jointly by regional government departments and the regional authority.

PRFBs and SRBs share the need to set guidelines and quantitative targets for mobilisation, of wood for PRFBs, of biomass resources (including forest and wood) that could be used as energy for SRBs. The Ae's opinions on these different plans/programmes coincide on the insufficient analysis of the impacts of increased biomass removal on the functioning of ecosystems, the poorly operational nature and the uncertainty about the financial sustainability of their objectives. Finally, the Ae notes the lack of territorialisation of their challenges, impacts, objectives and actions.

1 Occitanie, Grand-Est, Auvergne-Rhône-Alpes, Île-de-France, Centre-Val-de-Loire, Normandie, Guadeloupe, French Guiana, Nouvelle-Aquitaine, Martinique. The one in the Provence-Alpes-Côte d'Azur region was discussed on 5th February 2020.

2 These two regulatory documents define the PRFB in public forests, particularly in terms of management.

3 Brittany, Occitanie, Auvergne-Rhône-Alpes, Bourgogne-Franche-Comté, and Guadeloupe.

4

- forest ecosystem adaptation to global warming;
- the forest's ability to contribute to France's climate change objectives, namely through carbon storage in wood and soils;
- forest biodiversity, aquatic ecosystems and ecological continuities;
- the quantitative and qualitative protection of this water resource by the forest land;
- the forest landscape and its consideration in the choice of forestry methods;
- the sustainability of the forest land, in particular by maintaining forest soils and the balance between forests and game.



## Recurring points in opinions on PRFB projects

The PRFBs referred to the Ae demonstrated the willingness of regional forest and timber stakeholders to meet the requirements of the PNFB in a timely manner. However, they are not supported by an inter-regional thought process, which would be justified for certain forest massifs, nor a national thought process, which would be necessary given the organisation and missions of certain actors such as the ONF<sup>5</sup> (National Forestry Commission), the CNPF<sup>6</sup> (National Forest Ownership Centres) or the FNCofor<sup>7</sup>, for example in terms of climate change strategy or the evaluation of carbon storage. The operability and ensured implementation of the principles and actions enshrined in the PRFBs are not highlighted, either through their financing methods or through their breakdown into regional forestry management plans, directives and forest management schemes and then in simple forest management plans and developments. These findings and the following deserve specific analysis as part of the follow-up on the implementation of the PNFB and its impacts.

5 National Forestry Commission

6 National Forest Ownership Centre

7 French National Federation of Forest Communities

The Ae's recommendations also addressed the following topics:

### COMBINATION WITH OTHER PLANS AND PROGRAMMES

Consistency with the national PPE<sup>8</sup>, SNBC<sup>9</sup> and local SRCAE<sup>10</sup> (or even future SRB) plans to ensure that carbon storage and air quality objectives are met is analysed most of the time from a qualitative point of view, rarely from a quantitative point of view, which does not make it possible to measure the contribution of the PRFB to the achievement of France's commitments. It seems necessary to question the gap between the ambitious targets for increased timber harvesting set by the PNFB (in conjunction with the SNBC and the PPE) and the much lower targets in the PRFBs, with the exception of Nouvelle-Aquitaine, where this trend is reversed. This gap appears to reflect a contradiction between the objectives of increasing carbon storage and the environmental impacts of increased removals. The development of an analytical grid to clarify and justify the choices made as a compromise between these two objectives, with their advantages and disadvantages, would be welcome.

Furthermore, forests have an important role to play in meeting water quality objectives, particularly in relation to their capacity to absorb nitrates and play a role in regulating water regimes. In this context, the Ae expected more detailed description of the use of plant protection products in forest land, wetlands and alluvial forests in the PRFBs. This would have made it possible to deepen the PRFB's

8 Programmation Pluriannuelle de l'Énergie / Multi-Annual Energy Plan

9 National low carbon strategy

10 Regional Climate Air Energy Plan





contribution to achieving the objectives of the water development and management master plans (Sdage) and their combination with the regional action plans (PAR) Nitrates.

### **FORESTRY AND GAME BALANCE**

Almost all PRFBs report an imbalance between forestry and game, to the detriment of the forest's ability to regenerate. However, despite the recurrence of this situation, which has been reported for decades, any action to remedy it has been postponed, pending further characterisation of the imbalance.

The consideration of large predators (wolves, lynxes, even bears in the Pyrenees) as a regulatory factor and the risk of disturbing other species in the event of an increase in hunting pressure do not fall within the scope of the debates.

Since these situations vary greatly depending on the mountains, the PRFBs could at least suggest spatial framing elements with a view to developing population density objectives by nature of the forest massif, to qualify the importance of the forestry-game imbalance. Experiments on a more ecological management of the forest in favour of natural organisation are also expected.

### **CARBON STORAGE**

Assessing the carbon balance of the forestry activity would make sense if it were carried out on the full scale of the sector, by precisely evaluating the additional quantity of CO<sub>2</sub> stored and the greenhouse gas emissions theoretically avoided as a result of the implementation of the PRFB. This assessment must take into account capture in living trees, forest soils and ecosystems as well as in wood products. It should also address the substitution of wood for other materials and energy replacement through the use of firewood. Quantitative analysis of greenhouse gas (GHG) emissions from wood harvesting and

processing is too often lacking<sup>1</sup>.

Forestry practices also affect the carbon storage capacity of soils. On the other hand, the competition between carbon storage in "industry" wood and the energy use of wood does not feature.

As a result, no figures are available to measure the PRFB's contribution to the 2050 carbon neutrality objective.

### **AIR QUALITY**

Wood combustion leads to air pollution by particulate matter. The importance of this deserves to be territorialised. The Ae recommends assessing the health impacts of the development of wood heating and introducing measures to renew individual wood heating.

### **ADAPTATION TO CLIMATE CHANGE**

The forest massifs' vulnerability to drought and heat waves (increased fire risk, decline of species, vulnerability to pathogens), provided for by the PNFB, is not always diagnosed.

The research, development and innovation component is rightly highlighted. Genetic diversity, the choice of adapted tree species and the adaptation of forestry methods are likely to increase the resilience of forest stands, which leads us to suggest setting up or strengthening monitoring and experimentation networks with a time frame adapted to forest ecosystems, i.e. "long" (30 years).

The Ae has not come across a PRFB that goes beyond the traditional forest management view to address the issue through the improvement of forest biodiversity. In most regions, there is

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<sup>1</sup> Although a reference method has been developed by the National Research Institute for Agriculture, Food and the Environment (INRAE) and the French National Geographic Institute (IGN): Inra-IGN study for the forestry minister: Roux et al., "Quel rôle pour les forêts et la filière forêt-bois française dans l'atténuation du changement climatique ? (Role of forest land and the French forest-wood sector in mitigating climate change)", June 2017.



a lack of recommendations for the adoption of "new" management methods, which have already been tried and tested elsewhere, such as uneven-aged high stands and agroforestry.

#### **NATURA 2000, BIODIVERSITY AND ECOLOGICAL CONTINUITY**

In general, the Ae has reiterated in its opinions the need for a more complete and precise description of the natural habitats and species at stake, in order to put forward reinforced advice for these targets. The Ae acknowledges that the scale of the PRFB does not allow us to be very precise about the impacts that more intense forest management would have on biodiversity and the green and blue belt network (TVB). However, a classification of impacts could be established as well as framing elements, in particular avoid, reduce, offset (ARO) measures to be implemented, which downstream documents (DRA, SRA and regional forestry management schemes SRGS) would have to comply with. For Natura 2000 sites, the reference to documents of objectives (Docob) should be reaffirmed in a more systematic way. Lastly, wording relating to taking biodiversity into account, such as "if possible",

weaken the commitment of stakeholders and the scope of their actions.

Training and awareness-raising programmes for stakeholders to take environmental issues into account are not systematically provided for.

#### **SOIL STRUCTURE AND FERTILITY**

The PRFBs partly justify the choice of retaining additional mobilisation objectives that are inferior to the objectives set by the PNFB by the goal of not harvesting wood residue, which is a constant of all PRFBs. This choice, which encourages putting nutrients back in the soil and reduces the sensitivity of the soil to compaction by farm machinery, is considered positive from an environmental standpoint. Several regions have carried out studies on this issue, one of them in particular to lay out the amount of wood residue that can be harvested without inconvenience, while others simply choose not to define targets for wood residue, without excluding their export. This discrepancy between the PNFB and the PRFBs would warrant consideration as part of the PNFB follow-up.

### **SERVICE ROUTES, PLANTATION ROADMAPS AND TERRITORIALISATION**

These topics, although required by the PNFB, are rarely developed (if at all for the service plans) leaving the PRFB and the assessment of its impacts incomplete. While these issues should be addressed at the relevant territorial levels, it is important that they be supported by an environmental assessment.

### **Recurring points in opinions on SRB projects**

Regional biomass plans deal with the mobilisation of biomass that can be used for energy purposes: production of heat, electricity and fuels.

### **NITROGEN CYCLE**

The consideration of the nitrogen cycle appears to be a fundamental point of improvement for future versions of the SRBs and their environmental assessment. Nitrogen inputs, used in agriculture, and the production of nitrogenous GHGs that enter the nitrogen cycle are not formally addressed. The environmental importance of the nitrogen cycle, which is disrupted by anthropogenic activities, has been stressed in several Ae opinions, as these increase the amounts of ammoniacal nitrogen (a direct air pollutant and precursor of GHGs and particulate matter affecting air quality) and nitrogen oxides on the planet's surface (causing, inter alia, eutrophication).

### **HIERARCHY OF USES AND AGRICULTURAL POTENTIAL**

The projects studied by the Ae, four in mainland France and one overseas, are based on mobilising biomass of forest, agricultural and bio-waste origin, even though the production scopes may subsequently differ (for example with or without the inclusion of biofuel production, as in Auvergne-Rhône-Alpes). The classification

of uses, as set by the national sustainable development strategy, placing food first and then energy, has been systematically referred to by the Ae, as some projects have not analysed the potential competition that may exist between them nor its consequences, for example in terms of food, changes in agricultural systems, land pressure and environmental impacts. The evolution of agricultural production systems in the face of the need to develop biomass is not addressed during the SRBs, despite this subject being identified as requiring strategic thinking.

### **AVAILABLE POTENTIAL AND MOBILISATION OBJECTIVES**

The projects speak of an "available potential" without always highlighting a mobilisation objective (as in Brittany). The discrepancy between the two concepts may prove to be significant and it is therefore essential that the petitioners do not confine themselves to merely describing or furthering knowledge of the available deposits and the capacities for developing biomass production, but make a clear commitment to biomass mobilisation objectives based on explicit and justified hypotheses.

In the specific case of Guadeloupe's SRB, the plan clearly shows that energy autonomy in 2030, although required by regulations in the overseas territories, will not be achieved, despite the idea of using the entire available deposit and developing the biomass production chain. Other SRBs do not seek to demonstrate their ability to achieve their stated mobilisation potential. The level of contribution of each of these schemes to achieving national objectives is therefore neither evident nor ensured. This is all the more true since the consistency of the





SRBs with the PRFBs or the PRPGDs (regional waste prevention and management plan) is not automatic.

### **QUALITY OF THE ENVIRONMENTAL ASSESSMENT**

Most of the time, the environmental assessment has little input or is out of step with the plan presented, and does not clearly shed light on the content chosen for the plan itself. However, the Ae notes the case of SRB Occitanie, which has a good environmental assessment and a well-conducted ARO sequence. However, the implementation of all the measures stipulated in the evaluation does not appear to be ensured and the Ae has therefore issued recommendations on this subject.

### **TERRITORIALISATION OF THE ANALYSES**

The environmental assessments appear to be based for the most part on data at the regional level or only partly at sub-regional level, which does not appear to be the appropriate level of analysis for assessing the environmental and other issues associated with SRBs. Each of the SRBs presented to the Ae therefore led to observations and recommendations on the

need to territorialise the issues, mobilisation objectives, mobilisation impacts or planned actions. The term put forward by the Ae for this territorialisation is the one of the following scheme. The assessment of the impacts of SRBs on Natura 2000 network sites was particularly subject to recommendations in this respect: an insufficiently territorialised analysis needs to be substantially reworked.

### **AIR QUALITY AND HEALTH**

The fact that the air quality and health issues are poorly taken into account, or even not dealt with at all, by the various SRBs has led the Ae to recommend, for example, that they be taken into account on the basis of quantitative analyses that could potentially be supplemented by impact studies of boiler room projects and the implementation of a follow-up process for the development of individual wood heating.



# Ae note on the environmental impacts of road transport infrastructure projects

On 23 January 2019, the Ae deliberated on a note on road transport infrastructure projects<sup>1</sup>, whether they involve the construction, widening or modification of roads. Its objective is twofold: on the one hand, to establish feedback on the consideration of the environment and the quality of the environmental assessments of these projects and, on the other hand, to present the Ae's point of view on any avenues for progress to be explored to improve these assessments, their place in the process of public participation and project authorisation, and ultimately to improve the projects themselves.

Some of the findings reiterated by the Ae have already been taken into account in the revision of the "Impact assessment: linear transport infrastructure projects" guide by the Centre d'études et d'expertises sur les risques, l'environnement, la mobilité et l'aménagement (Centre for Studies and Expertise on Risks, the Environment, Mobility and Development), and have also contributed to revising the technical note on taking into account the health effects of air pollution in road infrastructure impact assessments.

This focus is an opportunity for the Ae to reiterate the main conclusions of its note and to illustrate some of them on the basis of the few projects studied by the Ae in 2019.

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<sup>1</sup> Environmental Authority (Ae) note no. 2019-N-06 of 23 January 2019.

## The concept of project

The Ae reiterates that the scope chosen for a project potentially made up of different operations is intended to be justified as regards the functional links and interferences existing between these operations, and the way in which they are each likely to predetermine the conclusions of the environmental impact assessment. This kind of global approach is the only way to understand the environmental challenges of the overall project.

This concept is still ill-suited to network-based transport infrastructure that connects to pre-existing routes. This is why the Ae urges contracting authorities to think about the "right scale" of impact assessment, as many impacts cannot be assessed solely in terms of the sections to be created or modified. This was illustrated in several of the opinions discussed this year, in which the Ae recommended to the contracting authorities that they set forth the environmental impacts of operations related to the project presented. This should go beyond the simple inclusion of these operations in the project scope. For example, in its opinion on the development of the Pleyel and Porte de Paris interchange system<sup>2</sup>, it recommended that the La Courneuve Bar Association be included in the analyses, particularly with regard to traffic, air quality and noise, and that the impact study be completed accordingly. In the opinion on changing the RN 147 to a

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<sup>2</sup> Deliberated Opinion No. 2018-92 from 16 January 2019.

dual carriageway to the north of Limoges<sup>3</sup>, it was the adjacent project for doubling the RN 520 that it had recommended presenting, by assessing the specific impacts linked to its connection to the project presented, and describing how it was taken into account in the traffic studies.

In addition, some road projects are only justified when connected to an urban development project. Once again, the impact study only makes sense if it focuses on the project as a whole.

## Development and Multimodality intentions

The Ae noted in its note that it has too often had to give its opinion on projects with already fixed variants. Sometimes the case is based on development intentions or options defined several decades before the impact study<sup>4</sup>. The environment is therefore only considered after the more structuring, sometimes obsolete, choices have been made. Like the Livron-Loriol bypass<sup>5</sup>, the Ae has noted that resuming investigations and studies can make it particularly difficult to take into account the issues related to risks and natural environments, which were insufficiently considered at the outset.

The suggested variants rely exclusively on road transport and do not appear to be consistent with current mobility needs and the challenges of the ecological transition, including France's commitment to achieve carbon neutrality by 2050.

Several opinions still illustrated this issue in 2019, for example the one on the western bypass of Montpellier<sup>6</sup>, where it was pointed out that the case insufficiently highlighted the essential challenge of transforming mobility and

really containing road traffic, while managing the ensuing urbanisation<sup>7</sup>.

The Ae believes that these cases should be referred to it earlier with a preliminary framing exercise, at a stage when the major planning works are still being discussed. This was the case in 2019 for the Fos-Salon road link<sup>8</sup>. While recalling that the case was presented prior to a public consultation with a guarantor, and was intended both to comply with the framework of the Mobility Guideline Law and also to open up the field of possible variants for the consultation, the Ae urged the discussions to be broadened beyond road infrastructure alone, in a more defined way for a sustainable land development project, giving significant importance to multimodality and integrating environmental issues at a high level of consideration.

## Traffic studies

Traffic studies are the keystone of the transport infrastructure impact study, as they feed into the project justification and condition the assessment of many impacts on human health (noise, air pollution) or greenhouse gas emissions. The Ae note notes that their results are often presented too tersely, on too small a scale, and sometimes without taking into account other operations that could have an effect on the expected evolution of traffic, independently of the project.

This remains the case for the projects analysed in 2019, with no major changes. The issue of the quality of traffic studies is criticised almost systematically in the different deliberated opinions. For example, in its opinion on the development of the RN 147 dual carriageway north of Limoges, the Ae states that "the main weakness [of the impact study] is that it is too incomplete in its presentation of the impacts on traffic, including on adjacent routes likely to undergo significant changes, which

3 Deliberated Opinion No. 2018-111 from 6 March 2019.

4 This was particularly emphasised in its deliberated opinion no. 2019-82 of 23 October 2019 on the Yssingaux bypass.

5 Deliberated Opinion No. 2018-109 from 20 February 2019.

6 Deliberated Opinion No. 2019-94 from 4 December 2019.

7 Whereas the Ae, in its Deliberated Opinion No. 2018-75 of 24 October 2018 on the Montpellier territorial cohesion scheme, had already recommended that a deeper analysis of possible alternatives for the transport network be carried out on this scale.

8 Deliberated Opinion No. 2019-93 from 4 December 2019.



makes it impossible to assess all the impacts of the project, particularly on noise and air quality." It makes a similar observation, during development projects, such as the Bougoin ZAC<sup>1</sup> or the Rivel ZAC<sup>2</sup>, relating to the limited way in which traffic is considered for an urban project. It then recommended that "traffic studies on a sufficient scope be resumed to identify the standard sections of infrastructure surrounding the perimeter of the ZAC and which include the cumulative effects of development projects in the area". In one case - the Laudun L'Ardoise bypass<sup>3</sup> - the Ae even noted that real traffic had fallen since 1995, not related to the forecasts in the impact study.

## Impacts on health (air quality, noise)

The Ae repeatedly points out that many impact studies of road projects do not take sufficient account of air quality issues. The importance of the risk to health posed by road traffic would appear to justify more in-depth studies and the more systematic adoption of methods to avoid and reduce such risks. This is still too rarely the case in the studies assessed in 2019. A new technical note on taking into account the health effects of air pollution in road infrastructure impact assessments was published on 22 February 2019<sup>4</sup>. It includes a number of steps forward that the Ae had called for in its opinions, such as carrying out an assessment of the impacts of the infrastructure when it is put into service or the use of nitrogen dioxide as a tracer of air pollution.

The Ae has expressed strong expectations on the improvement of this aspect, while

France has now been denounced for non-compliance with the Air Quality Directive, the effectiveness of measures to put an end to this situation has not yet been demonstrated and some projects have remained silent on reducing the corresponding health risks. The Fos-Salon bypass case submitted to the Ae as part of a request for preliminary framing<sup>5</sup> said nothing on health risks, even though the area is already strongly affected by the health effects of pollution. In its opinion on the western bypass of Montpellier<sup>6</sup>, the Ae also recalled that State authorisation of a project that would lead to further exceeding the thresholds set by European texts would not be in line with the obligations under these texts. The Ministry for an Ecological and Inclusive Transition is preparing a guide on taking air quality into account in impact studies, which is due to be published in 2020.

On the other hand, noise-related issues are generally better taken into account in impact studies, despite some recurring weaknesses, often linked to the narrow scope used for traffic, but also to an overly fragmented view of the effects that some developments may have on the same section of the road. The opinions discussed in 2019 seem to confirm this observation. Beyond the strict application of regulations, which are sometimes ill-suited to certain complex setups, the Ae recommended that contracting authorities implement an ambitious noise reduction strategy that takes into account the many types of noise sources (in particular road, rail and air noise), and provide for the most comprehensive treatment possible on the scale of the project as a whole and of the cumulative developments "in order to determine whether the modification due to all these developments is significant in terms of noise and then to assess the noise impacts as a whole"<sup>7</sup>.

1 Deliberated Opinion No. 2019-56 from 24 July 2019.

2 Deliberated Opinion No. 2019-60 from 28 August 2019.

3 Deliberated Opinion No. 2018-110 from 20 February 2019.

4 Technical Note of 22 February 2019 on taking into account the health effects of air pollution in road infrastructure impact studies - Ministry for an Ecological and Inclusive Transition, Ministry of Solidarity and Health.

5 Deliberated Opinion No. 2019-93 from 4 December 2019.

6 Deliberated Opinion No. 2019-94 from 4 December 2019.

7 Deliberated Opinion No. 2019-51 from 24 July 2019.

## Assessing and managing greenhouse gas emissions

In its deliberated note, the Ae noted that project owners do not integrate France's commitments to achieve carbon neutrality by 2050 at the right level, sometimes the project's impact on greenhouse gas emissions is not at all analysed.

In the opinions deliberated in 2019, the Ae has several times reiterated the need to assess greenhouse gas emissions at the scale of the entire project, including the operation phase, but also the works phase, which in some cases may account for the majority of emissions. It reiterated once again the need to implement measures to avoid, reduce and also offset these impacts, which should not be limited to impacts on natural environments.

For example, in its opinion on turning the Yssingaux bypass on the RN88 into a dual carriageway<sup>8</sup>, the Ae recommended that the case be completed by an assessment of the greenhouse gas emissions generated by the operation and, more broadly, by the overall project, in the works phase and in the operation phase, and that measures taken to avoid, reduce and, if necessary, offset them be underlined.

It also pointed out, in its preliminary framing opinion on the Fos-Salon road link, that it was generally irrelevant to assume that carbon neutrality, which is now enshrined in law, will be achieved by the middle of the century only through technological progress on vehicles, the development of global plans or virtuous individual behaviour, but that each project owner must also commit within its area of responsibility to contribute to this ambition.

Beyond the individual impact of each project, taking environmental issues into account upstream of major development choices and within the planning of infrastructure programmes is also an essential link in meeting France's commitments to ecological and

energy transition, an aspect that cannot only be addressed by environmental studies specific to each development.

## Developments affected by urbanisation

Despite there being a the Ministry for an Ecological and Inclusive Transition guide entitled "Transport infrastructure and urbanisation - methodological recommendations"<sup>9</sup> since November 2017, this section, although required by the regulations, is still very lacking in infrastructure projects. The Ae note noted this in a few emblematic cases (widening of road infrastructures in urban areas), including, paradoxically, when the case has positive consequences for the urban areas affected. It then stressed the importance for urban planning documents to provide measures to limit residential urbanisation close to infrastructure, based in particular on the results of health risk studies, and to organise travel, including active and collective modes, in such a way as to avoid increasing road traffic in urban areas.

In addition to implementing the guide, the Ae's main recommendations concern the management of these developments in urban planning documents, as was the case for the Les Couleures crossroads<sup>10</sup>, for which the Ae believed that the local authority's commitments had yet to be translated into the revision of the local urban planning of Saint-Marcel-lès-Valence.

<sup>9</sup> <https://www.ecologique-solidaire.gouv.fr/sites/default/files/Th%C3%A9matique%20-%20Infrastructures%20de%20transport%20et%20urbanisation.pdf>

<sup>10</sup> Deliberated Opinion No. 2018-93 from 23 January 2019.

<sup>8</sup> Deliberated Opinion No. 2019-82 from 23 October 2019.

# Ae note on town planning projects

In the wake of the rulings on environmental assessment and environmental authorisation, in 2018, the Ae believed it appropriate to begin work on reviewing more than one hundred opinions on urban development cases, mostly through concerted development zones (ZAC), but also sometimes with development permits or building permit applications.

This work has been part of a sustained legislative and regulatory agenda (in particular the adoption of the law for the development of housing, planning and digital technology (ELAN)). This was also part of a deeper awareness of the ever-increasing pace of urbanisation to the detriment of natural, agricultural and forest environments and the need to better manage land consumption and soil artificialisation.

The note produced from this work was discussed at the start of 2020. Firstly, the Ae provides a summary of the evolving provisions of the French urban planning and environmental codes. The note sets out the main challenges identified: how to approach the project, structuring choices, natural environments, risks, etc. For each issue, the Ae discusses the questions that should be addressed during the environmental assessment process, noting, with examples, the errors or shortcomings that it has been able to point out during its first ten years of existence. Six challenges will be addressed in the next part.

## The project approach

More so than in other areas, the Ae believes that the project approach, which gives structure to the directive of the same name, makes sense for urban development projects. Even if they involve a large number of contracting authorities, it is only possible for them to have functional and environmental consistency through of a territorial development strategy, supported by urban planning documents and set out in their planning and programming guidelines (OAP). Moreover, the ELAN law now provides for the possibility that the OAP of an urban planning document is deemed to create a ZAC. For the Ae, this poses a challenge to the degree of precision in the OAP, as well as the quality of the environmental assessment of planning documents.

Based on its opinions, but also on emerging case law, the Ae summarises all the components of such projects in its circular. A ZAC may be a single project, but in some cases the scope of the project may be broader<sup>1</sup>. The Ae systematically includes internal infrastructures and roads or all operations located within its scope, including facilities classified for protection of the environment, components that are often omitted in the cases presented to it. The Ae also frequently includes operations outside the perimeter of the ZAC, as it considers that the ZAC would not be functional without these operations<sup>2</sup>.

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1 For example, the scope of the project covered by Ae Opinion No. 2019-100 of 18 December 2019 relating to Euro3Lys, comprising two ZACs, road improvements and the extension of a tramway.

2 For example, the reclassification of the northern section of the Montaigu bypass, in Ae Deliberated Opinion No. 2019-24 of 15 May 2019 relating to the development of the Montaigu station district.





For the Ae, this functionality analysis may lead to the need to include other components, without which the impact analysis would appear incomplete: where the administrative court has sometimes considered that the analysis of cumulative impacts was insufficient, the Ae sees in this an overly-limited project scope. This interpretation also applies to certain projects prior to the recent rulings that enabled France to comply with the project directive and related European case law. In several opinions, the Ae has pointed out the risks of a restrictive interpretation of the content of the project, based on the precedence of the ZAC's first authorisations.

The concept of project is reviewed over the course of successive applications for the authorisations required to carry out a project (creation, implementation, environmental authorisation, building permit, for example). Updating the impact study is also a point raised during each of these stages and the answers provided by the contracting authorities vary greatly in terms of the "updated" scope and level of updating. In several cases, a proportionate update of the ZAC impact study was produced<sup>3</sup>. In many other cases, the case

3 Ae Opinion No. 2019-15 of 24 April 2019 relating to the development of the Ratelle roadway in Saint-Cyr-l'École, Ae Opinion No. 2019-53 relating to the multimodal hub in La Rochelle, Ae Opinion No. 2019-56 relating to the Bourgoin Jallieu station area ZAC, Ae Opinion No. 2018-100 of 16 January 2019 relating to the "Media Cluster" ZAC, Ae Opinion No. 2019-83 of 9 October 2019 relating to the Olympic and Paralympic Village ZAC.

included an impact study of the operation<sup>4</sup>, as separate from the ZAC impact study in which it is included, or an update of the ZAC impact study which assesses an insufficient range of topics or at an insufficient, even sometimes basic, level of detail,<sup>56</sup> given the authorisations being requested. In particular, the Ae noted shortcomings in the scale of the impact analysis (inappropriate for the scale of the operation alone), the link between the study produced and the initial study and therefore its accessibility for the public, and the accuracy of the data provided.

Furthermore, the Ae has on several occasions recalled or reiterated recommendations made on the same projects in previous opinions, apparently not taken into account by the contracting authorities<sup>7</sup>. This was the case particularly for projects relating to the 2024 Olympic and Paralympic Games. This led to the Ae reiterating the need to assess, both at the project level and on a broader scale, the impacts of the temporary facilities and events generated by the temporary nature of the Games.

The degree of detail expected in the impact assessment depends on the stage of its

4 See in particular Ae Opinion No. 2018-103 of 20 February 2019 relating to the Nantes University Hospital, Ae Opinion No. 2019-35 of 15 May 2019 relating to the Mines Fillettes ZAC, Ae Opinion No. 2019-64 of 10 July 2019 relating to the Inspira project, Ae Opinion No. 2019-67 of 28 August 2019 relating to the Plaine de l'Ourcq ZAC, Ae Opinion No. 2019-18 of 24 April 2019 relating to the Nice Saint-Augustin TER multimodal transport hub (as part of the Grand Arénas operation).

5 See in particular Ae Opinion No. 2019-60 of 28 August 2019 relating to the Rivel ZAC, Ae Opinion No. 2018-100 of 16 January 2019 relating to the "Media Cluster" ZAC.

6 See Ae Opinion No. 2019-06 of 3 April 2019 relating to the Villages Nature project - Creation of a leisure accommodation complex in Villeneuve-le-Comte and Bailly-Romainvilliers.

7 See Ae Opinion No. 2018-100 of 16 January 2019 relating to the "Media Cluster" ZAC.

submission. It is understandable that the information is not complete in the creation stage; however, the Ae has analysed cases in the past that were already quite advanced at this stage. Conversely, the implementation document and, a fortiori, the application for an environmental permit should contain all the information needed to define precise requirements, which is sometimes not the case.

## The structural choices of the project: reasonable replacement solutions

The approach consisting of considering reasonable alternatives and indicating the main reasons for the choices made, in particular through a comparison of the impact on the environment and human health is recommended in the French Environmental Code. Despite this, it not only remains partial, or in some cases non-existent, in the project's impact study, but it should in fact be part and parcel with the environmental assessments of town planning documents, in which the same type of analysis is expected, but is also very often absent.

While several cases in 2019<sup>1</sup> displayed a coherent and coordinated approach between urban planning documents and development projects, in several other cases<sup>2</sup> however, the Ae has had to question the compatibility of a project with the economy of the development and sustainable development plan of the urban planning document concerned, which may then require it be revised and not only made compatible with the project.

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1 See in particular Ae Opinion No. 2019-24 of 15 May 2019 relating to the development of the Montaigu station area, Ae Opinion No. 2019-100 of 18 December 2019 relating to Euro3Lys.

2 See in particular:  
- Ae Opinion No. 2018-100 of 16 January 2019 relating to the "Media Cluster" ZAC.  
- Ae Opinion No. 2018-101 of 16 January 2019 relating to the residential and tourist centre of Tosse, which is predominantly a golf course.  
- Ae Opinion No. 2019-60 of 28 August 2019 relating to the Rivel ZAC.  
- Ae Opinion No. 2019-53 of 27 June 2019 relating to the multimodal transport hub at La Rochelle station.

However, the consistency between the project and the urban planning document does not necessarily guarantee that the choice made will be justified or optimised, particularly from an environmental standpoint<sup>3</sup>.

Taking into account the issue of efficient land management in certain territories has been questioned by the Ae<sup>4</sup> in the context of the "zero net artificialisation" objective. There is not always a bridge to the current town planning documents. The note recalls that, without being able to reproduce the assessment of alternatives at the PLU level, the impact study of the project should explicitly include this issue. The main substantive issues concerned are the location of the project, the distribution of housing objectives or the location of different types of activity, density objectives, phasing and the progressive occupation of the space with a view to the efficient use of building land.

## Natural environments

The Ae note underlines the overall careful analysis of the initial state of natural environments, with a few recurring exceptions. On the other hand, there is only a partial effort taken to try to avoid or reduce the impact, when the choice of the perimeter of the ZAC and its initial planning are predetermined without any analysis of reasonable replacement solutions. Some of these cases avoid the environments with the highest stakes; several cases reduce the impacts by other typical measures: choice of work periods, having "no-go" areas in sectors requiring protection. On the other hand, the Ae had to reiterate that stating that there has been a "reduction" in surface area in relation to a pre-existing intention remains meaningless if this intention was not originally based on an assessment of

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3 See Ae Opinion No. 2019-84 of 23 October 2019 relating to the Les haies de Vic business park in Castanet-Tolosan.

4 See Ae Opinion No. 2019-60 of 28 August 2019 relating to the Rivel ZAC.

a specific need. Some projects<sup>5</sup> still seem to be designed without any adequate assessment or consideration for their impact on natural environments.

In this case, offsetting measures are required. They are rarely enough, in surface or functionality. The Ae is not aware in any ZAC case of any measures to re-establish corridors identified as "to be strengthened" or "to be re-established", despite the fragmentation of natural habitats caused by the project, whether it be the ZAC itself or the roads providing access to it (the construction of this sentence makes it difficult to read). The creation of green space areas can only be regarded as an ecological measure if they are designed from a multifunctional perspective (for landscape, water, biodiversity, ecological continuities, etc.).

What these projects have in common is that they profoundly modify soils: their pedological and agronomic values are rarely characterised as such; as for their other functions (biodiversity of the soils themselves, permeability for the water cycle, capacity to store carbon, ability to regulate temperature), they are most often forgotten. The note notes that changes in land use should lead more systematically to thinking about how to optimise all land uses in order to make the best use of natural resources (sunshine, rainwater, biomass produced, etc.).

Water is often seriously taken into account in impact studies, with significant improvement during successive updates of the case, particularly at the environmental authorisation stage, although this is not always sufficient<sup>6</sup>. There have been changes in the design of the

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5 See Ae Opinion No. 2018-101 of 16 January 2016 relating to the residential and tourist centre of Tosse, which is predominantly a golf course.

6 See Ae Opinion No. 2019-34 of 29 May 2019 relating to the Saint-Jean-Belcier ZAC - Quai de Brienne real estate project in Bordeaux; Ae Opinion No. 2019-83 of 9 October 2019 relating to the Olympic and Paralympic Village ZAC

plans<sup>7</sup>. Issues related to artificialisation as well as drainage should nevertheless be further developed. Indirect effects related to flow changes are also rarely addressed. Lastly, access to resources and sanitation means are still too often addressed as issues that are dealt with elsewhere, even though for some development plans they could become central in a context of climate change.

## Natural and technological risks

For the Ae, taking into account the flooding or submersion risks, which are already quite high for certain developments, should be at the heart of the strategies adopted. To date, many impact studies have limited themselves to reiterating the applicable, sometimes obsolete, flood risk prevention plans. The Ae regularly urges project owners to take into account the maps of areas at significant risk of flooding, published in 2010.

It also invites project owners to model, as early as possible in the process of designing a ZAC, the impacts of the project on water levels and velocities in the event of flooding, in order to confirm the acceptability of the planned developments, but also to grasp their impact on neighbouring areas. As Decree No. 2019-715 of 5 July 2019 relating to risk prevention plans concerning "river overflow hazards and marine submersion" has now been published, the PPRIs may need to be revised so that they incorporate updated maps and guarantee better consideration of the ban on building in high hazard sectors and in floodplains in non-built-up sectors. More and more contracting authorities are significantly changing the planning and design of developments (sites, greenways, roads, car parks, etc.) in order to reduce the risks involved<sup>8</sup>.

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7 Introduction of the idea of expansion (sharing between commercial and residential uses in particular) for car parks, reduction in the number of basements limiting the necessary pumping and watertight lining, for example, landscaped rainwater management systems, the idea of "river-street", etc. See cases in the previous note.

8 See previous note.



## Focus on...

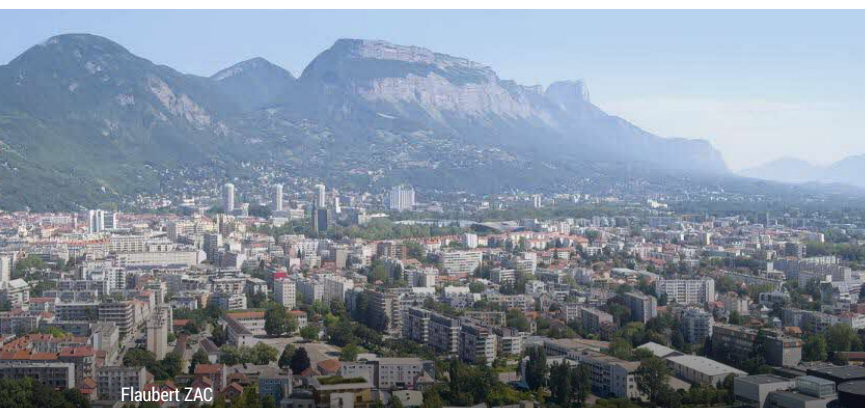
The other frequent risk for urban renewal projects is soil pollution. This is most often a poorly or inadequately informed component in a ZAC creation document, which is then looked at in more detail as the project studies are carried out. This soil pollution can constitute a major risk for the cost and schedule of the operation, and even lead to it being challenged. Pollution management plans are rarely available when creating a ZAC. In some cases, fortunately more rarely, these issues are poorly addressed in the implementation or environmental authorisation document. The avoidance approach did not then make it possible to optimally define the programme: reduction (decontamination, covering polluted soils) becomes the only possible option, but it can prove to be very costly, or time-consuming. This is undoubtedly a particular challenge for achieving housing objectives and the location of any sensitive establishments, with regard to the populations they are likely to house. This is the case for most of the large-scale urban renewal projects studied in 2019, with weaker planning at the environmental authorisation stage and even at the building permit application stage.

Lastly, the technological risks related to the proximity of industrial facilities or transport routes for hazardous materials are very poorly taken into account: the risks are poorly described; as for polluted soils, risk avoidance is taken into account at the very least through compatibility with technological risk prevention plans. The circular, which has been in preparation since 2018, echoes the

recommendations of Ae Opinion No. 2016-09 on the Flaubert ZAC: "The Ae recommends presenting the potential effects in the event of a major accident at the Lubrizol site on the scope of the ZAC"; "The Ae recommends specifying the nature and volumes, as well as the expected evolution of hazardous materials transported or stored within the perimeter of the ZAC, and specifying the future exposure of the populations that will settle there, based on how the programme is scheduled".

## Health impacts

While this concern is mostly minor for urban developments in rural areas, the other ZACs on which the Ae has been asked to give an opinion are highly exposed to noise and air pollution from transport infrastructure. The analysis of the sound environment in its initial state is generally satisfactory; that of the air quality is



often less complete, not always proportionate to the sensitivity of this issue.

When assessing health risks, most contracting authorities must now rely on the technical note of 22 February 2019 relating to the consideration of the health effects of air pollution in road infrastructure impact studies<sup>1</sup>. This method makes it possible to comprehensively assess the increase in health risks linked to the arrival of new populations in initially polluted areas.

Nevertheless, this comprehensive approach does not take sufficient account of individual sensitivities and exposures. For the Ae, the landscape scheme that will be adopted is a lever to help limit health impacts. However, such a concern is rarely underlined in an environmental assessment of planning documents. The Ae noted this in several ZAC impact studies. However, in several opinions in 2019<sup>2</sup>, its recommendations questioned the consequences to be drawn from this in order to avoid exposing the population to excessive health risks, including for planning the ZAC, which is already in its initial state, with potential deterioration in the medium and long term, despite the technical progress expected in terms of reducing vehicle emissions.

All the opinions deliberated in 2019 look at this topic and the inadequacy of its treatment, for all projects.

## Energy efficiency and greenhouse gas emissions

While urban developments, designed for several decades, should prepare a more sustainable future in order to contribute to carbon neutrality, integrating the best available techniques, or even cutting-edge innovations, as each new project can demonstrate new solutions to transform existing urbanisation,

the Ae is still surprised to note that many urban projects remain focused on short-term functionalities and compliance with regulations, some of which are already old, with no real climate ambitions.

Although the French Urban Planning Code has long recommended that an analysis of the renewable energy production potential in development projects be performed, very few projects specify the operational means to implement them, a fortiori in the most ambitious scenario.

Some projects set higher ambitions than energy efficiency regulations. However, greenhouse gas emissions are not considered to be a central issue in the “avoid, reduce and offset” approach. The impact studies merely highlight solutions based on the regulations in force without providing for any reduction or offsetting measures. If this issue is absent for new development projects, the adaptation speed of existing buildings and the capacity of the highest emitting sector to respect the trajectory planned by the national low-carbon strategy is then rightly called into question. Defining means to achieve carbon neutrality as early as possible should be a more systematic requirement.

All the opinions deliberated in 2019 look at this topic and the inadequacy of its treatment.

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1 Which replaced the interministerial circular DGS/SD7B no. 2005-273 of 25 February 2005, now repealed.

2 Ae Opinion No. 2019-35 of 15 May 2019 (Mines Fillettes ZAC), Ae Opinion No. 2019-32 of 29 May 2019 (Saulnier ZAC), Ae Opinion No. 2019-67 of 28 August 2019 (Plaine de l'Ourcq ZAC).

# Airport projects

## The content of an airport project

The strategic development planning of each airport is the subject of a framework entitled "The major guidelines for the development of the airfield infrastructures and facilities set by the Minister for civil aviation" (or "GOS" for "major strategic guidelines"). This document provides for the elaboration of a General Composition Scheme (SCG) which describes the location and dimensioning of the infrastructures and installations to be built at different timelines.

In this context of well-organised planning, the main purpose of requests for preliminary framing (or in one case, the only issue) was to define as precisely as possible the content of the project to be subject to environmental assessment. This issue was precisely analysed and defined by the authority that referred the matter to Ae for the proposed T4 terminal at Roissy. The Ae provided as precise an answer as possible, given the elements that were provided to it. It also made sure, in each individual case, to clarify the concept of "likely evolution of the environment if the project is not implemented".

In the various cases presented, the basis of the project corresponds to a set of operations within the airport domain related to the creation or extension of a terminal and functionally linked to each other. The different requests have many points in common: creation or modification of taxiways<sup>1</sup> and aircraft parking areas, restructuring of air terminals or other aviation infrastructures, creation of internal road services, public interfaces (forecourts, parking areas, associated tertiary centres, etc.),

<sup>1</sup> Aircraft taxiway at an airport.

technical equipment (fluid and energy supply).

As the T4 terminal at Roissy is replacing the T3 terminal, the dismantling of this terminal as well as the effects linked to its removal are one of the components of the project. On the other hand, the Ae accepted the reasoning that the extension of terminal T2 at Marseille-Provence airport can be taken as a separate project from the extension of terminal T1, provided that it is demonstrated and that it nevertheless displays an overall view of the environmental impact of the planned developments on the scale of the airport.

### **Other components sometimes required more complex analysis:**

**Other operations already performed or relating to regulatory compliance:** the Ae notes with interest that airport companies are gradually becoming aware of the appropriateness of implementing the provisions of Directive 2011/92/EU on the assessment of certain public and private projects on the environment, enshrined by Law 2018-148 of 2 March 2018. Several cases submitted to it show the inclusion of work sometimes already carried out into an overall project. This is notably the case for the extension of the La Réunion Roland-Garros airport, which began in 2011 and is scheduled for completion in 2022: the Ae opinion summarises all the operations which they believe represent the entire project.

This issue was also central to the request for preliminary framing for Nantes-Atlantique: instead, the Ae took the view that most of the maintenance and upkeep work to be carried out by the authorised representative should not be considered as part of the redevelopment project.

The question of modifying the approaching aircraft path is more complex, presented by the





consultation document as ensuring compliance and not as part of the project. Some airports have modified approach paths due to their configuration. For the Ae, putting an end to such exemptions may require developments with significant environmental impacts, which are indissociable from this choice. Under these circumstances, the Ae concluded that "the re-alignment (of landing aircraft) may have to be considered as part of the project scope".

**Airport platform accessibility and parking area sizing:** as a general rule, the main objective of an airport extension is to increase the platform traffic: the question of access to the platform is a central issue when defining the content of the project. For Ae, since the European Commission's dispute with France relating to the Grand Ouest (Notre-Dame-des-Landes) airport project, all the developments necessary to serve an airport are part of the airport project and, as such, must be taken into account in the assessment of its impacts.

The rationale used for the T4 terminal project made it possible to distinguish between infrastructures that already had a declaration of public utility, or even an environmental permit, and those still awaiting building approval. For the former, the Ae considered that they should be taken into account a priori in the "likely evolution of the environment if the project is not implemented, taking into account their respective authorisation schedules". The Ae had also made sure to specify that "if, on

the day the impact study [of the terminal] was submitted, some of these projects were experiencing any uncertainties or delays in fulfilment, for whatever reason, it might then seem appropriate to take them into account when analysing the cumulative impacts with those of the terminal, taking into account their respective schedules", which should namely be the case for line 17 of the Grand Paris express. For the others, the Ae believed that any new rail or road infrastructure or any modification of an existing infrastructure whose route or size would be mainly justified by the airport project should be considered as part of the overall project. For example, the construction of a dedicated station on line 17 to serve terminal T4 is indeed a component of the terminal project. The same rationale can be applied to any service road or other dedicated interchange.

It therefore questioned the assumptions used for extending terminal T1 at Marseille-Provence airport and, in so doing, increasing the number of parking spaces. The Ae recommended demonstrating that the intended capacity of the airport at the end of the project could be reached without increasing the supply of public transport and, if this could not be demonstrated, that serving the airport was to be considered part of the overall project and that the necessary capacity in new car parks should be determined accordingly.

On the other hand in its preliminary framing opinions, the Ae considered certain rail service projects taken into account in the domestic transport framework act as being independent and subject to their own schedule as specified in its explanatory memorandum. This independence should nevertheless be demonstrated in terminal impact studies;

the cumulative impacts will then have to be analysed.

**Urban projects:** Urban operations within the airport hub are generally very much linked to terminal projects. In the opinion on the Nantes-Atlantique platform, some redevelopment outside the platform was also considered part and parcel of the redevelopment project.

## The environmental assessment of an overall programme

According to the Ae, the difficulty in defining the content of an airport project lies in the absence of an overall environmental assessment at the level of a strategic plan or scheme. However, these projects are generally planned within the SCG, decided by the governing body of the airport in accordance with the GOS defined by the minister for civil aviation. The lack of a holistic assessment makes it impossible to measure the effects of a project taken separately for many impacts: water management and the issue of biodiversity generally only make sense on a platform scale; noise management measures are generally borne by plans that concern platforms in their entirety; as for air and ground traffic and their ensuing impacts, it is difficult to take the effects of a single terminal independently in relation to the effects of all the movements generated by the airport.

In the two cases mentioned above, the Ae recommended that a strategic environmental assessment of the general composition of the airport be undertaken to evaluate the environmental impact, in particular with regard to the natural environment, pollutants and greenhouse gas emissions, the organisation of services and rainwater management, in order to be able to establish comprehensive measures to avoid, reduce and, if necessary, offset them.

## Noise impacts

Airports are subject to several noise management plans with different scopes: noise exposure plan, specific to airport platforms, which is an urban planning easement prohibiting new construction or noise insulation requirements; environmental noise protection plan, including the entire mapping of all noise sources and measures to reduce the population's exposure. Some airports also have noise inconvenience plans, which give the right to apply for financial assistance for soundproofing work.

Surprisingly enough when assessing its opinions, the Ae found that several of these plans were not up to date or had not yet been finalised. Based on the recommendations of the Airport noise nuisance control authority, it can only recommend that they be swiftly updated and made consistent with actual traffic, on the basis of scenarios that are more representative of the noise pollution. Such a recommendation is all the more necessary since airport cases do not include noise avoidance or reduction measures, as it is often thought that such measures are covered by these plans.

The Ae also regularly points out that the exposure of populations to noise should be taken into account as a whole, where most of the cases only deal with road, rail and aircraft noise pollution through separate modelling<sup>1</sup>, with the impacts of Le Bourget and Roissy airports being dealt with separately. Finally, the impact analysis does not sufficiently describe the parameters of the baseline scenario, particularly with regard to flight times and aircraft characteristics (their "noise signature"): changing these parameters may, in some cases, constitute a measure to avoid or reduce noise pollution, never really discussed in the environmental assessments examined by the Ae.

<sup>1</sup> The same goes for air pollution.

## Greenhouse gas emissions

All the cases presented to the Ae involve increases in traffic: they always result in strong increases in passenger flows and, depending on the case, more or less strong increases in aircraft movements. To date, all of the cases submitted have only included a very partial presentation of the greenhouse gas emissions related to the project.

As a general rule, at least the direct greenhouse gas emissions related to ground operations (e.g. energy production) are assessed, with airports often committing to providing electric power to aircraft while they are parked on the platform. Greenhouse gas emissions when landing or taking off below a certain ceiling (3,000 feet) are also calculated. The Ae has regularly pointed out that this conventional approach, which is applied to releases of air pollutants that may have local health impacts, makes no sense for greenhouse gas emissions, the effects of which are aggregated in the atmosphere. Emission for building and materials are not provided.

The Ae has systematically established that the main shortcoming of these analyses is that they never take into account the indirect effects of the planned extensions, caused by increases in aircraft traffic or the increased land travel for getting travelers and employees to the platform.

The ARO approach is in fact only applied to some of these emissions. The cases systematically refer to an international mechanism (Corsia) whose objective is to offset emissions at the global level from 2020 onwards. The Ae stated that this kind of mechanism does not exempt developers and airlines from a project-specific avoidance and mitigation approach.

The Ae also pointed out that the projects had to fall within the framework of the Energy Transition for Green Growth Law, as well as the resulting plans (territorial climate-air-energy plans, for example) and France's compliance with its commitment to achieve carbon neutrality by 2050. At this stage, none of the projects presented demonstrate this level of consistency and, by default, no offsetting measures are even mentioned. Similarly, none of the territorial planning documents for which the Ae has issued an opinion<sup>2</sup> includes emissions related to the airport platforms in its greenhouse gas emissions report. The compatibility of air transport development with the commitments made by France has therefore not been demonstrated in these cases<sup>3</sup>. In particular, the development prospects of each terminal are always considered as an intangible modelled input, without taking into consideration the acceptable limits of this level of growth, whether in terms of noise impacts for local residents or the increase in the related greenhouse gas emissions. The Ae recommended therefore, in particular for Marseille-Provence airport, that the consequences of a lower air traffic growth for the T2 terminal extension project be studied. On this point again, the environmental assessment of the strategic planning of the airport development project would be the most appropriate level at which to study this subject.

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2 Ae Opinion No. 2019-21 of 3 April 2019 (Nice local inter-municipal urban plan), Ae Opinion No. 2019-77 of 11 September 2019 (Roissy territorial coherence plan).

3 The Ae had also stressed in its Ae Opinion No. 2019-01 on the draft national low-carbon strategy that it was not possible, with the data on file, to ensure that the air transport trajectory would indeed lead to carbon neutrality in the absence of appropriate national measures.



# Sea cases

Several projects concerning the marine environment were referred to the Ae in 2019: port developments and a floating wind farm case which completes a series of offshore wind projects analysed in 2018. The questions raised by the offshore wind turbine projects were the focus of the 2018 annual report. The Ae also issued a first series of opinions on the first two chapters of the four sea basin strategy documents, which should frame activities at sea in a way that respects the marine environment for the next few years.

## Port facilities

Three port development projects, Port Horizon in La Rochelle, which will increase the port's capacity to accommodate deep-draught ships, the Cap Janet terminal in the eastern basins of the port of Marseille and the cruise terminal in Saint-Pierre-et-Miquelon, were examined by the Ae in 2019. The Ae was pleased to note that the two major seaports were implementing high quality impact assessments, supported by in-depth analyses.

It did however note that the studies on air quality and noise were insufficient for the La Rochelle case. Although the port is relatively far from the city, some neighbourhoods could experience significant inconvenience that could affect the health of local residents, as large ships are powerful emitters of air pollutants and port facilities can be noisy.

In Marseille, where the eastern basins of the port are part of the city, there were in-depth studies on air quality and health risks. Grouping ships bound for the Maghreb together within the international terminal is supported by an effort to reduce emissions thanks to the electric fueling of ships, which allows them to stop their engines when they are at berth. However, the Ae underlined the importance of increasing



Chef de Baie Terminal in La Rochelle.

the scope of the project and above all of integrating all port activities into the health risk studies, taking into account the whole of the population concerned.

A third project has been studied by the Ae, which consists of improving the conditions for receiving cruise ships in the port of Saint-Pierre, in Saint-Pierre-et-Miquelon. Its objective, in a sector affected by natural and technological risks, is to be able to increase the cruise ship tourist activity by 50% and, to that end, to improve the safety of ships and cruise passengers as well as the quality of the on-shore facilities inherent to this activity.

With there being a lack of detailed elements shared by the territory's stakeholders characterizing the archipelago's tourism development policy in the case, the assessment of the project's impacts, particularly at the archipelago level, seemed vague and even incomplete. This has been accentuated by the fragmented nature of environmental data, in some instances completely absent.



Deep-water wharf, oil depot and Ile aux Marins - Saint-Pierre-et-Miquelon



Gruissan wind energy farm

The situation of the archipelago, in particular its energy dependence and rich biodiversity, has led the Ae to issue specific recommendations, for example on the archipelago's tourism development policy, the future multi-annual energy plan, fuels used by cruise ships, and waste, rainwater and wastewater management practices.

## The Gruissan wind energy farm

The opinion on the EolMed pilot wind farm project located in Gruissan in the Aude<sup>1</sup> enabled the Ae to reiterate the importance of considering the risk of collision with migrating passerines as a strong issue, something which was already underlined in the two other similar opinions in the Gulf of Lion. These birds cross the Mediterranean in large numbers, in flight, without any particular migration corridor. This risk of collision is very poorly understood, in contrast to seabirds, for which feedback from off-shore wind farms in Northern Europe is available. The same applies to chiropterans, including species known to be "short-range", whose presence at sea, far from the coast, has been confirmed by the impact study.

The Ae therefore confirmed its 2018 analysis. These pilot wind projects, which are platforms for experimenting with renewable energy production technologies, must also make it possible to observe the potential impacts and provide contracting authorities and the government with the knowledge to enable them, when the time comes, to properly assess the impacts of industrial-scale wind farms and their cumulative effects. It is important that the monitoring and study programmes relating to these pilot farms be adequate. It is also important that schedules be coordinated and that calls for industrial park projects be implemented after feedback on the pilot parks is established.

Through its recommendations, the Ae has also questioned the public authorities on the environmental reasons behind the choice of development zones for wind farms and on the cumulative impacts with the Port La Nouvelle port project and with navigation (boating and fishing activities). This question, asked during a project referral, illustrates the strategic importance of environmental assessments and the choices made in marine spatial planning.

<sup>1</sup> Ae Deliberated Opinion 2019-116 from 6 February 2019.

## The seafront strategy documents

The sea basin strategy documents<sup>1</sup> (DSF) set out the national strategy for the sea and the coastline<sup>2</sup> for each of the four French sea basins: Eastern Channel - North Sea, North Atlantic-Western Channel, South Atlantic and Mediterranean. The national strategy is itself the French response to the two European framework directives: Marine Strategy (DCSMM)<sup>3</sup> and Maritime Spatial Planning<sup>4</sup> (DCPEM).

Each DSF has a significant environmental component that already existed in the form

of the Marine Environmental Action Plan, with the objective of achieving good environmental status in the marine environment by 2020. This deadline has now been reached and the review of action plans every six years has led France to suggest that this objective be met by 2026, which remains ambitious. By 2014, the Ae had deliberated on four opinions<sup>5</sup> on the Marine Environmental Action Plans of the four sea basins Channel - North Sea, Celtic Seas, Bay of Biscay and Mediterranean. It questioned the division of the North Atlantic Coast into three sub-regions with very similar issues. This division into DSF sea basins has evolved as far as the North Atlantic and the English Channel are concerned, Brittany is now only concerned by one sea basin, the new distribution corresponds to the administrative regions and also to the large river basins.

1 Article R. 219-1-17 of the French Environmental Code.  
 2 Decree No. 2017-222 of 23 February 2017 National strategy for the sea and coast.  
 3 European Parliament and Council Directive 2008/56/EC of 17 June 2008.  
 4 European Parliament and Council Directive 2014/89/EU of 23 July 2014.

5 Ae Deliberated Opinion No. 2014-81, 2014-83, 2014-84, 2014-85 from 3 December 2014.





### The DSF consist of 4 parts:

1. **The current situation within the perimeter of the sea basin** which includes a diagnosis of the state of the coastal and marine environment and a presentation of the uses of the marine and coastal space as well as land-sea interactions, their prospects for evolution and the main issues and conflicts of use.
2. **The definition of strategic objectives and associated indicators**, environmental, social and economic objectives with conditions for the coexistence of activities and coherent areas with regard to the issues at stake.
3. **The procedure for assessing the implementation of the strategy document.**
4. **An action plan.**

The opinions discussed in 2019<sup>6</sup> relate to the first two parts of each of the DSFs. The State wished to have the Ae's analysis at an early stage in the development of the DSFs before submitting them for public comment. The final drafting of the four components of the DSFs is under way, with a view to their adoption by 31 December 2022 at the latest.

The purpose of this chapter is not to go through the specific elements of each of the sea basins, which are accessible to the public in the text of the Ae opinions available online. In general, the Ae noted some improvement in the environmental components of the DSFs compared to the 2014 Marine Environmental Action Plans. However, the lack of an as yet stable definition of good environmental status of the marine environment limits their scope. Although observation of the marine environment is difficult and expensive, there has been an improvement in the knowledge of its ecosystems, which the DSFs are, however, struggling to exploit. In particular, the impacts of some human activities in the marine environment are not properly measured, and the pressures that these activities exert on ecosystems are sometimes poorly known.

<sup>6</sup> Ae Deliberated Opinion No. 2018-104, 2018-105, 2018-106, 2018-107 from 20 February 2019.

Beyond the need to improve the points mentioned above, in order to put in place programmes to be able to sufficiently measure the ecological status of the environment, the Ae pointed out, in its recommendations, several ways to improve the DSFs. In particular, the links between the DSFs and the main plans/programmes relating to maritime activities and pollution need to be reinforced. This is also true for land-based land planning documents, which can have a significant impact on the marine environment. The intended uses of the different maritime zones involve a more explicit and prioritised choice of activity. Reasonable alternatives will need to be properly described in order to inform the public of the reasons for the decisions taken, taking into account environmental and health impacts. In particular, the Ae expects the documents to demonstrate the consistency of activity zoning with marine protected areas and Natura 2000 areas<sup>7</sup>.

The DSF objectives will need to be adjusted to the requirement to achieve good ecological status. The environmental assessment of the DSFs will need to focus on a methodical "avoid, reduce and offset" sequence and ensuring full compensation for residual impacts. In view of the degraded condition of marine ecosystems, ecological restoration actions should be undertaken, which could provide an opportunity to set up, right from the planning stage, pooled offsetting zones financed by contributions from the contracting authorities.

<sup>7</sup> Natura 2000 sites form a European network under the Birds Directive 79/409/EEC (standardised in 2009) and the Habitats Directive 92/43/EEC, ensuring the favourable conservation status of habitats and species of Community interest. Sites inventoried under the Habitats Directive are Special Areas of Conservation (SACs), those inventoried under the Birds Directive are Special Protection Areas (SPAs).





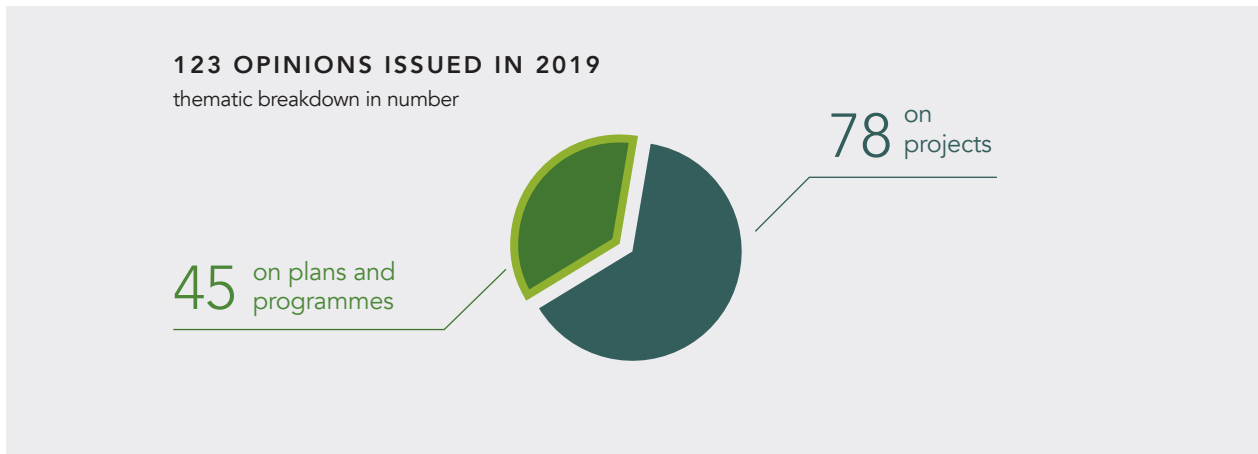
# AG

## **Appendices**

- Opinions issued p.68
- Decisions issued p.70
- Decisions for evocation p.72



## Number of opinions issued in 2019 (projects and plans/programmes)



## Opinions issued on projects in 2019

### 78 OPINIONS ON PROJECTS IN 2019

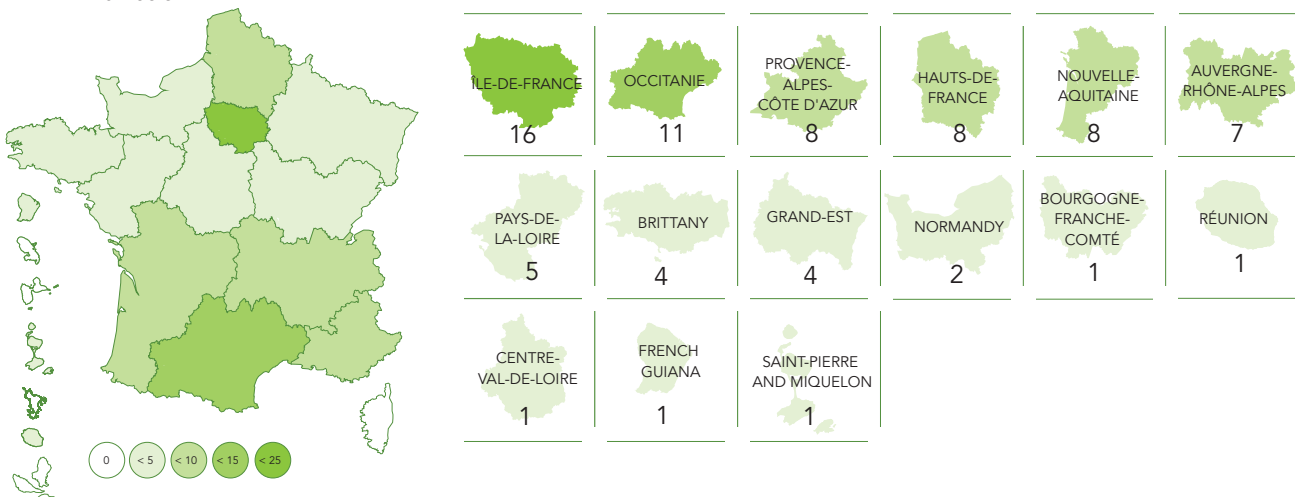
thematic breakdown in % and number



### GEOGRAPHICAL DISTRIBUTION

#### OPINIONS ON PROJECTS IN 2019

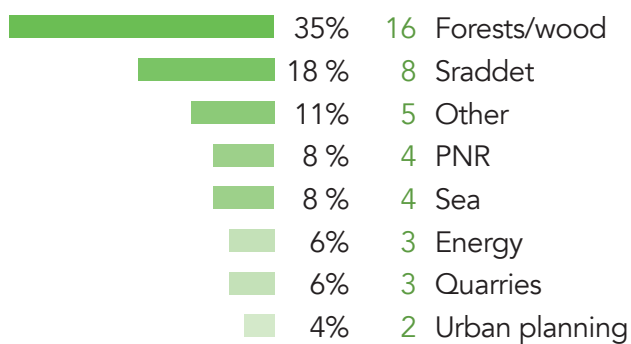
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# Opinions issued for plans/programmes in 2019

## 45 OPINIONS ON PLANS/PROGRAMMES IN 2019

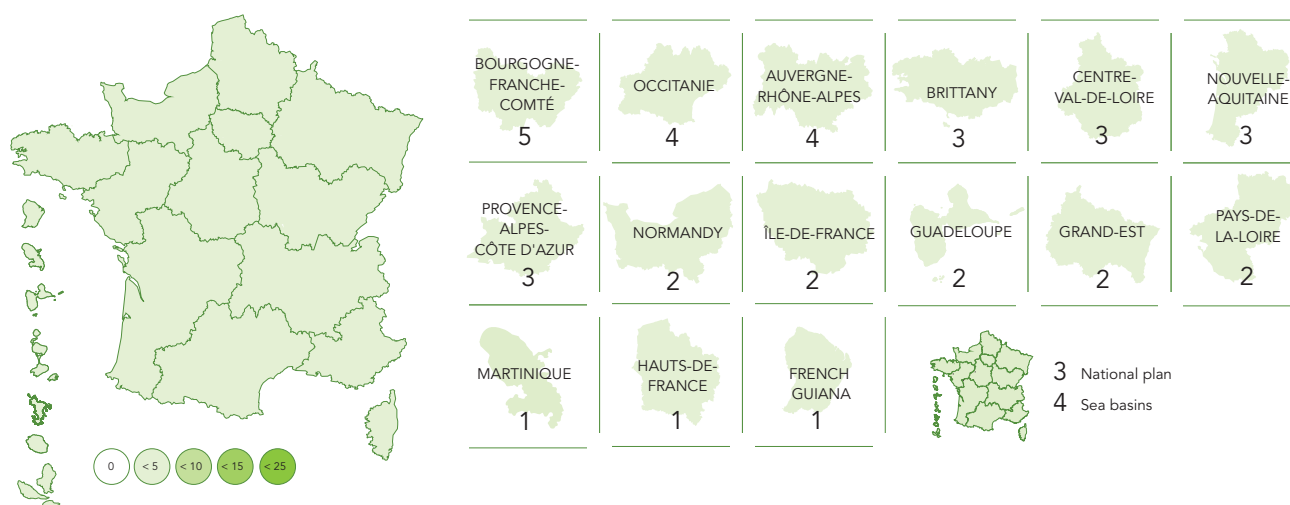
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## GEOGRAPHICAL DISTRIBUTION

### OPINIONS ON PLANS/PROGRAMMES IN 2019

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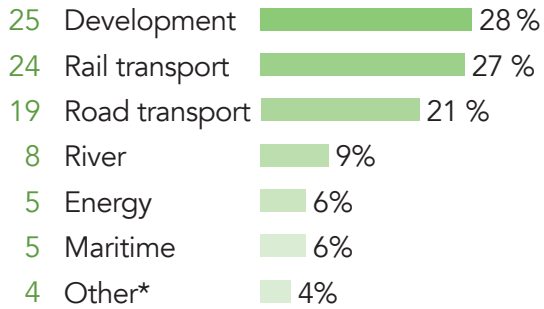


NB: the figures refer to the opinions and decisions issued in 2019 (even if the case file was submitted in 2018); they do not take into account the case files submitted in 2019, the opinions and decisions for which are issued in 2020.

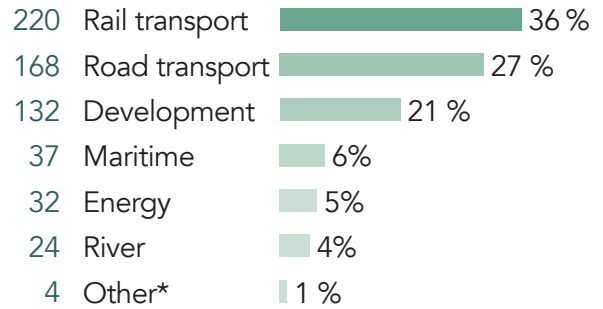
## Case-by-case decisions for projects in 2019

thematic breakdown in % and number

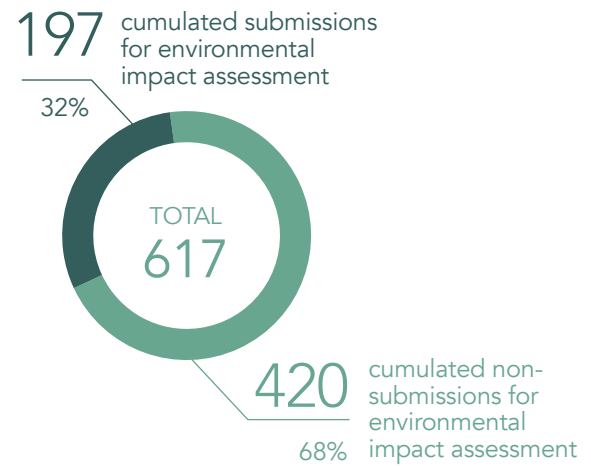
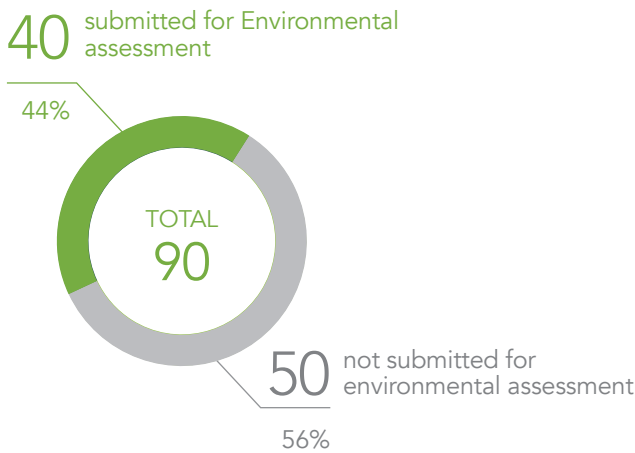
### 90 DECISIONS IN 2019



### 617 OVERALL DECISIONS SINCE 2012



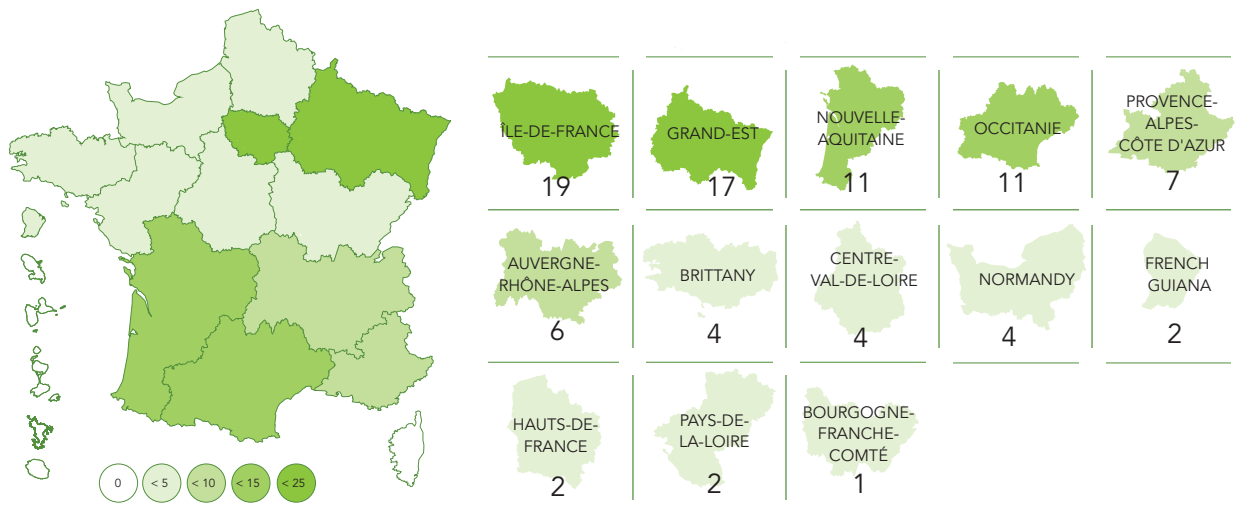
\* clearing of plots, fencing, aerial



### GEOGRAPHICAL DISTRIBUTION

#### CASE-BY-CASE DECISIONS FOR PROJECTS IN 2019

in numbers

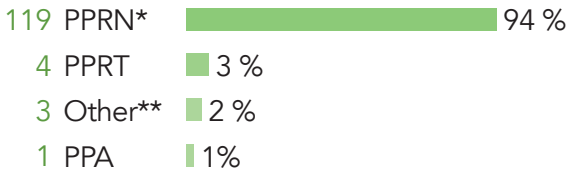




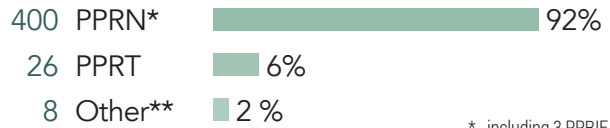
# Case-by-case decisions for plans/programmes in 2019

thematic breakdown in % and number

## 127 DECISIONS IN 2019



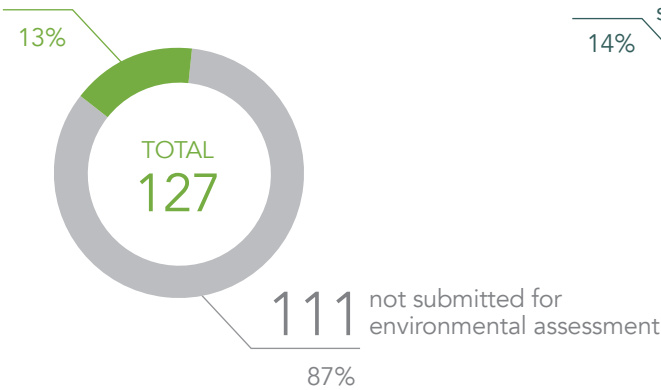
## 434 OVERALL DECISIONS SINCE 2016



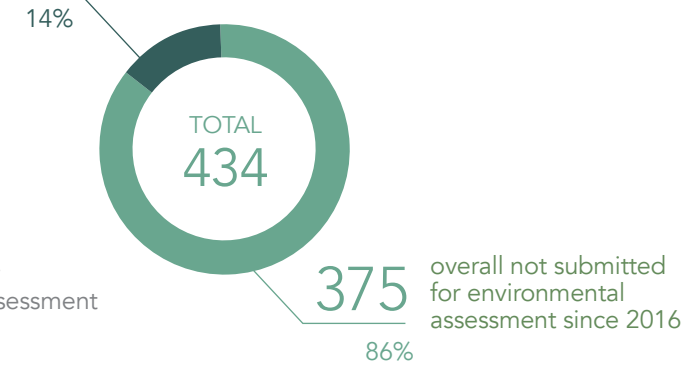
\* including 3 PPRIF (fire, forests) and 3 coastal PPR

\*\* including 1 landscape development and protection directive, 1 national park charter covering 2 regions and 1 regional quarry plan for Reunion Island.

16 submitted for Environmental assessment



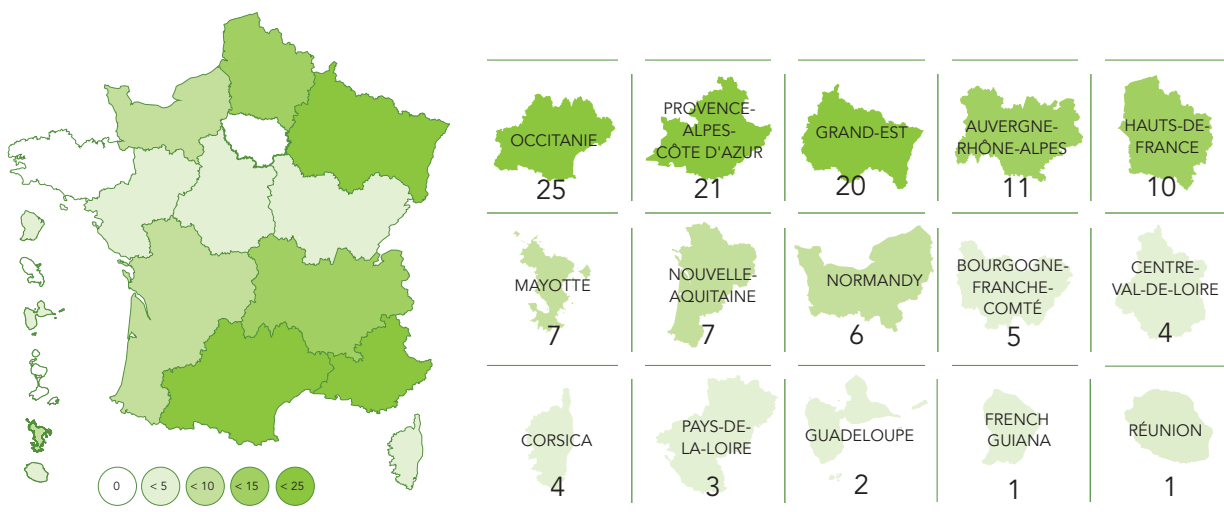
59 overall submitted for environmental assessment since 2016



## GEOGRAPHICAL DISTRIBUTION

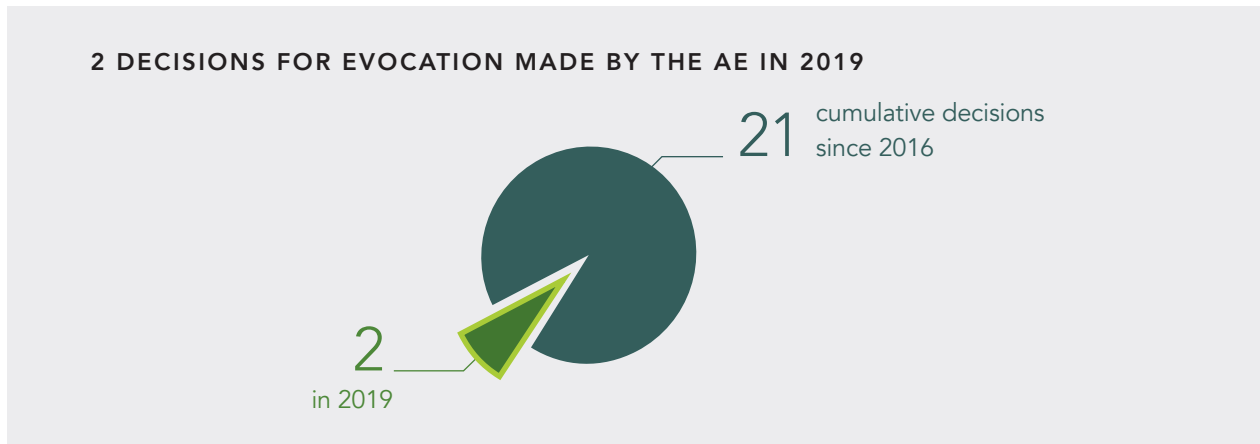
### OF CASE-BY-CASE DECISIONS FOR PLANS/PROGRAMMES IN 2018

in numbers



## Ae decisions for evocation in 2019

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## Decisions for evocation made by the minister in 2019

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### 9 DECISIONS FOR EVOCATION MADE BY THE MINISTER IN 2019

In the context of Decision No. 400559 of 6 December 2017 by the Council of State, the Minister for the Environment singled out 9 particularly sensitive cases for the Ae to investigate.

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You can find all the opinions and case-by-case decisions taken by the Ae in 2019 at the following addresses:

#### OPINIONS ISSUED IN 2019

<http://www.cgedd.developpement-durable.gouv.fr/les-avis-deliberes-de-l-autorite-environnementale-a331.html>

#### DECISIONS ISSUED IN 2019

<http://www.cgedd.developpement-durable.gouv.fr/examen-au-cas-par-cas-et-autres-decisions-r432.html>

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