



**ANNUAL
REPORT**

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Autorité environnementale

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EDITORIAL

In 2017, the Ae issued 96 opinions, slightly less than in previous years, which can be explained in particular by the first measurable effects of the 2016 orders which have changed the regulatory framework for impact studies and especially the thresholds of submission for systematic or case-by-case impact assessment. These orders thus have a clear impact on the number of case-by-case decisions which, for projects, has increased in inverse proportion to that of opinions, and has also substantially increased for plans and programs.

Following the creation of environmental authority regional missions in 2016, the Ae actively supported them, whether for their current operation or to initiate the sharing of experience and good practices and consolidate some of their analyses. In 2017, as also provided for by the regulations, the Ae took up 8 cases within its competence, in view of their complexity and the environmental issues involved.

By its decision no. 400559 of 6 December 2017, the Council of State puts an end to a long period of controversies and hesitations regarding the role and the designation of environmental authorities. This decision extends to projects, the 2015 jurisprudence concerning plans and programs: the regional prefects no longer have vocation to be designated as an environmental authority. Its argumentation recalls in particular that the environmental authority “must be able to fulfil the consultation mission which is entrusted to it and to deliver an objective opinion on the project concerned”, this opinion being intended to enlighten the public and the decision-making authorities, prior to the authorisations they issue.

Based on this rule, the Council of State’s decision approves the creation of environmental authority regional missions and recognises their independence, especially in view of their collegial operation and their functional authority on the DREAL officials who prepare the opinions which they submit to them. The independence of the Ae which examines itself all its opinions, in a collegial manner and according to very strict ethic rules, is thereby reinforced.

Drawing all the consequences of the independence imperative recalled by the Council of State will guarantee the due recognition of the environment, as well as the legal security of authorisation decisions and thus of the projects. Regardless of the organisational option adopted, at the end of a transitional period that the Ae wishes to be very short, guarantees must be provided so that all the structures concerned have the necessary competences and resources to deliver high quality and consistent opinions across the country, in a sustainable way.

It is a matter of proper democratic functioning.

It is also a matter of compatibility of the plans/ programs and projects with the public policies, including France’s international commitments, particularly in the fight against climate change and the erosion of biodiversity.





THE Ae IN 2017

01





The Ae in 2017

Expertise and missions

Some projects, plans and programs are subject to environmental assessment based on their specific characteristics and their potential impacts on the environment.

The petitioners themselves are responsible for these assessments. For the public to be properly informed during its consultation 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 operations.

The Ae exercises its powers as an environmental authority on project environmental assessments in the following two cases:

- when the Minister for the Environment is the authority responsible for making the decision to authorise the project or propose it to the government, under his/her ministerial competencies;
- 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 remit also extends to all projects that require several administrative decisions, when one of them falls within its competence¹.

In other cases, this opinion is given by the Minister himself, based on his departments, or by the prefects, depending on the case².

The Ae also has the power as environmental authority regarding projects that do not necessarily require an environmental assessment but are subject to a “case-by-case” review³. The review results in a decision on whether or not to submit the project for an environmental impact assessment.



Stabilisation of banks of River Bléone



Electrification of Amiens - Abbeville - Rang-du-Fliers rail link

Until 2016, the Ae was the competent authority on a fairly restricted list of plans/programs initially defined by decree no. 2012-616 of 2 May 2012. Drawing on the consequences of case law from both the Court of Justice of the European Union and the Council of State⁴ on the need to set up environmental authorities with real autonomy and provided with administrative and financial means of their own, decree no. 2016-519 of 28 April 2016 amended the list of plans/programs subject to environmental assessment and decree no. 2016-1110 of 11 August 2016 allows the Minister for the Environment to submit an entire category of plans/programs that are not on this new list to a systematic environmental assessment or a “case-by-case” review⁵.

The decree of 28 April 2016 also created the Environmental Authority Regional Missions (MRAe) of the General Council for the Environment and Sustainable Development (CGEDD). In particular, it transferred the environmental authority expertise to the training of the CGEDD (Ae) environmental authority or to the MRAes, depending on the nature of the plans/programs, whereas it was previously entrusted to regional prefects or departmental prefects. These regional missions, of which there are 19 nationally,

now have the power to issue environmental authority opinions on certain local or regional plans or programs and on most urban planning documents (Territorial Coherence Plans (SCOT), land use plans (PLU) and municipal maps) instead of the prefects. On a more marginal scale, they are also the competent authority on projects that are referred to the National Commission for Public Debate and are not subject to an opinion from the Minister for the Environment or the Ae. To this end, they have technical support from officials in the Regional Directorates for Environment, Planning and Housing (DREAL) placed under the functional authority of the presidents of MRAe to carry out this environmental authority mission.

At the same time, the Ae has seen an increase in the number of plans/programs on which it has the authority to issue an opinion⁶, on the basis that (as with the principles established for the projects) the Ae is the competent authority, in particular when a plan/programme is prepared by the Minister for the Environment’s department or is approved by him/her (or by another Minister) and the Ae supervises the projects’ execution. The Ae is also responsible for all national plans or when a plan/programme goes beyond the territorial limits of a region⁷.

This extension of the Ae’s work on plans/programs concerns both the documents that must give rise to an opinion and certain documents that are subject to decisions on a “case-by-case” basis, such as natural risk prevention plans (PPRNs) or technological risk prevention plans (PPRTs).

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/programs (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*”).

1 | In accordance with Article R. 122-6 II section 3 of the Environmental Code.

2 | Cf. Article R. 122-6 of the Environmental Code. In decision no. 400559 of 6 December 2017, the Council of State cancelled the provisions of Section 1 of Article 1 of the decree of 28 April 2016 insofar as it maintained in Section IV of Article R. 122-6 of the Environmental Code the designation of the regional prefect as the competent government authority for the environment.

3 | Presented and defined in Articles L. 122-1, R. 122-2 and R. 122-3 of the Environmental Code.

4 | Judgement CJEU C-474/10 “Seaport” of 20 October 2011 and EC decision - France Nature Environment (FNE) Association - 3 November 2016 - 360212.

5 | This option was implemented for Atmospheric Protection Plans (PPAs) submitted for examination on a case-by-case basis by decree of the Minister for Ecological and Solidarity Transition on 28 June 2017.

6 | The Ae is now responsible for 27 plans/programs out of a total of 42, compared with 14 plans/programs out of a total of 43 before the entry into force of decrees no. 2016-519 of 28 April 2016 and No. 2016-1110 of 11 August 2016.

7 | Cf Article R. 122-17 of the Environmental Code.

The Ae in 2017

Finally, the decree of 2 October 2015 on the General Council for the Environment and Sustainable Development, last amended by the decree of 28 April 2016, now provides that the Ae president will ensure the correct operation of the environmental authority's function exercised by the Ae network and the MRAEs.

To bring the practices and approaches of environmental authorities closer together, the MRAe Chairs shall inform the Chair of the Ae, upon request, 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 several regions, the Ae Chair invites the Chairs 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.



Sansac-de-Marmiesse (national road RN 122) by-pass

A EUROPEAN EXERCISE FRAMEWORK

The opinions and decisions of an environmental authority are part of the framework for the implementation in France of the stipulations of the Aarhus Convention⁸ and the provisions of two European Union directives⁹ transposed into French law¹⁰. The law was substantially modified in 2016 by the provisions of order no. 2016-1058 of 3 August 2016, codified in Articles L. 122-1 to L. 122-14 of the Environmental Code and L. 104-1 to L. 104-8 of the Urban Planning Code, and by the provisions of decrees no. 2016-519 of 28 April 2016 and no. 2016-1110 of 11 August 2016, codified in Articles R. 122-1 to R. 122-28 of the Environmental Code and R. 104-1 to R. 104-33 of the Urban Planning Code. Their entry into force ranged from 12 May 2016 to 17 May 2017.

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. They relate therefore on the one hand to the quality of the impact assessment report (or environmental impact assessment) that reflects this approach 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 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/programs 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/project owners 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 General Council for the Environment and Sustainable Development (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.

The Ae strives to remove any suspicion of bias, even manipulation, in its opinions.

The collegiality of deliberations and the public nature of opinions and decisions at the end of the meetings 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 2017, this last provision applied to 22 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
section Ae**

8 | 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.unece.org/env/pp/welcome.html>).

9 | Cf. Directive 85/337/EEC known as "Projects" (codified by Directive 2011/92/EU of 13 December 2011) and Directive 2001/42/EC known as "Plans and programs".

10 | 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.



The Ae in 2017

Ae members

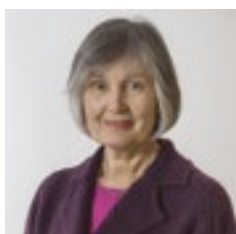


Philippe LEDENVIC
President of the
Environmental Authority

CGEDD PERMANENT MEMBERS



Fabienne ALLAG-DHUISME,
*also president
of the Pays-de-Loire
and Corsica MRAe*



Marie-Hélène AUBERT
(since 28 April 2017)



Christian BARTHOD
*(until 31 August 2017),
also president of the
Île-de-France MRAe*



François DUVAL



Thierry GALIBERT
*(until 31 October 2017)
also member of the
Nouvelle Aquitaine
MRAe*



Louis HUBERT
(since 16 October 2017)



François-Régis ORIZET
(until 31 October 2017)



Thérèse PERRIN,
*also member of the
Pays-de-Loire MRAe*



Mauricette STEINFELDER
*(until 28 April 2017), also
president of the French
Guiana, Guadeloupe and
Saint-Pierre-et-Miquelon
MRAe*



Éric VINDIMIAN,
*Also member of the
Provence - Alpes -
Côte d'Azur MRAe*



Michel VUILLOT
*(since 1 September
2017), also member of
the Normandy MRAe*



Véronique WORMSER
(as of 1 November 2017)

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.



Marc CLÉMENT

Rapporteur at the Administrative Court of Appeal of Lyon, founding member and member of the executive committee of the European Law Institute. Member of the Compliance Review Committee with respect to the provisions of the Aarhus Convention.



Sophie FONQUERNIE

Farmer in the Doubs. Vice-president of the Burgundy - Franche-Comté region in charge of 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.



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.



Serge MULLER

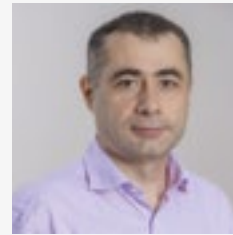
Professor of the National Museum of Natural History, President of the National Council for Nature Conservation (CNP), Member of the Scientific Council of Natural Heritage and Biodiversity (CSPNB), Chairman of the Species Protection Committee of the French committee of the IUCN.



Gabriel ULLMANN

Expert at the Grenoble Court of Appeal specialised in environment, investigations commissioner, doctor in environmental law, MBA from HEC.

THE PERMANENT TEAM



Daniel BERTHAULT
(as of 1 August 2017)



Charles BOURGEOIS



Thierry CARRIOL



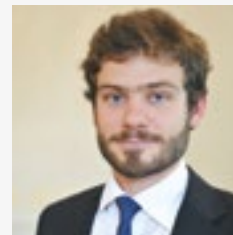
Armelle DIF



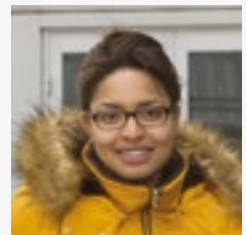
Nadia FRÉRY



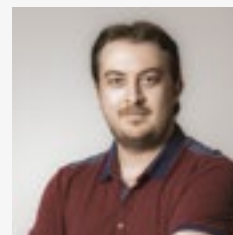
Caroli GARDET



Maxime GÉRARDIN
(until 30 June 2017)



Cindy HILDERAL
(as of 1 June 2017)



Vincent THIERRY
(until 31 August 2017)



François VAUGLIN

Methods and internal operations

The working methods are described below for each type of production: opinions, decisions to submit or not submit cases for environmental impact assessments on a case-by-case basis, decisions for evocation.

The Ae always delivers its opinions within a maximum of three months after the referral, by a collegiate deliberation, based on projects prepared by its members (or by non-voting members of the Ae permanent team). 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, initiated in 2016, continued in 2017.

The rapporteurs, usually two per project¹¹, carry out their investigations independently¹², 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, submit them for peer review, and then deliberate them at the collegiate level as detailed below. Opinions are made public as soon as they are deliberated. Opinions on preliminary framing are adopted according to the same principles, within a time frame which, although not fixed in a regulatory perspective, rarely exceeds two months.

The case-by-case review of projects and plans/programs, as well as the final decision-making process follow the same principle: a review panel, composed of two Ae members appointed quarterly, presents the draft decisions for signature to its chair, who has been delegated by the Ae. The decisions are delivered within the statutory deadline of 35 days after referral for projects and two months for plans/programs and are immediately made public. The President of the

Ae¹³, as part of the new 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, for example, systematic for any examination of a response to an informal appeal or a judicial appeal lodged against these decisions.

With regard to the preliminary framing, according to Article R. 122-4 of the 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 the difficulties in interpreting the provisions of the Environmental Code which justified the request for a preliminary framing. These opinions are deliberated and published, like all other Ae opinions. Such a request for a framing also exists for plans (Article R. 122-19).

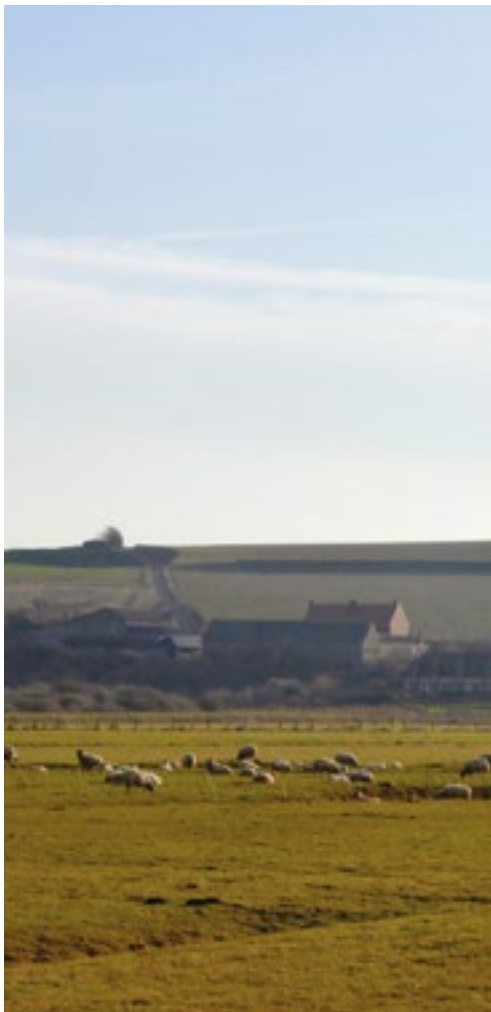
THE OPINIONS

The draft opinions prepared by the rapporteurs are distributed to all members one week before the Ae'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 com-

plementary 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 website¹⁴ 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.



Baie de Somme – Picardie Maritime Regional Natural Park (RNP)

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 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 programs, the texts anticipate that the Ae will issue an opinion on the environmental assessment report and the draft plan or programme.

DECISIONS ON WHETHER OR NOT TO SUBMIT FOR AN ENVIRONMENTAL IMPACT ASSESSMENT OR AN ENVIRONMENTAL ASSESSMENT ON A “CASE-BY-CASE” BASIS

For projects as for plans/programs, a draft decision is prepared by a rapporteur and then submitted to a review board, composed of two permanent members, which ensures the Ae's collegiality¹⁵. 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 preambles (nature of the project, location, environmental impacts expected), those on plans/programs are based on two categories of preambles (plan characteristics, zone characteristics and predictable impacts)¹⁶.

When the case is part of a larger project that is subject to an environmental impact assessment (for example, land clearing within the framework of completing a high-speed line (LGV) or a compression installation in the framework of building

11 | In 2017, over 80 % of opinions were drawn up by a team of two rapporteurs, with the other opinions being drawn up by a single rapporteur. One single opinion was delivered by three rapporteurs.

12 | Cf. Internal CGEDD regulations (Decree of 12 May 2016), particularly Paragraph 12: “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.”

13 | Cf. decision by the delegation of 31 May 2017, published in the Official Bulletin of the Ministry for an Ecological and Solidarity Transition.

14 | Internet link: http://www.cgedd.developpement-durable.gouv.fr/rubrique.php?id_rubrique=145.

15 | The analysis is based on the information provided by the petitioner, as indicated in Articles R. 122-3 and R. 122-18 of the Environmental Code.

16 | 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.



The Ae in 2017

a gas pipeline), the decision then includes a preamble stating that it is under the overall project that an environmental impact assessment is to be produced. Signing off on the decision is delegated to the Chair of the French Environmental Authority (and, if the latter is unable to do so, to a permanent member of the Ae).

The decision taken is either to submit the case for environmental impact assessment or not. It has no accompanying recommendation. The decision mentions, however, since the entry into force of the decree of 11 August 2016, in the case of non-submission for an environmental assessment, the obligation for the decision-making authority to check, at the authorisation stage, that the project corresponds to the characteristics and measures that justified the decision of exemption (V of Article R. 122-3).

DECISIONS FOR EVOCATION

On the basis of feedback from the MRAe Chairs, the Ae Chair consults the Ae members on the advisability of exercising the expertise normally assigned to the MRAe on 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 given by the DREAL acting on behalf of the MRAe. 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 2017, the French Environmental Authority's permanent team comprises nine persons. 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. Six 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.



Médoc Regional Natural Park (RNP)

The Ae in 2017

2017 Referrals

On account of the reform of the environmental assessment conducted in 2016 - the new nomenclature leading to the submission of fewer projects for systematic impact assessment but to the extension of the scope of case-by-case reviews - the year 2017 was characterised by a double phenomenon.

On the one hand, there was a relative decrease (14%) in the number of opinions issued (96¹⁷ compared with 112 in 2016). On the other hand, there was a very significant increase in the number of case-by-case decisions (251 decisions compared to 117 in 2016, i.e. a 114% increase), with this increase being observed both for projects (89 decisions in 2017 compared to 69 in 2016) and for plans/programs (162 decisions in 2017 compared to 48 in 2016¹⁸).



Orléans - Châteauneuf-sur-Loire railway line

OPINIONS

In 2017, the Ae was called upon on several occasions to give an opinion on projects for the expansion of motorways in service (2X2, 2X3 or 2X4 lanes) provided for by the motorway recovery plan decided by the public authorities in April 2015. It issued opinions on six operations; the junction between the A406 and the RN79, at the "droit de Macon", the A480 and

the interchange of Rondeau in the Grenoble conurbation, the A57 at the exit of Toulon, the A75 between Clermont-Ferrand and Le Crest, the A10 between the A71 and the A19, north of Orléans, and between Poitiers and Veigné, i.e. a total motorway length of about 137 kilometres. More ad hoc projects were added to these operations, such as the detour road of Sansac-de-Marmiesse, in Cantal, the works on the RN85 (consolidating the banks of the Bléone at Aiglun, servicing of Digne), the exchange on the A52 at Belcodène and securing the RN88 in the Albi conurbation.

At the same time, the guided transport projects referred to the Ae were of a smaller magnitude than in previous years, which were marked especially by the cases relating to the lines of the Greater Paris Express (GPE). Nevertheless, we can mention the rail bypass of the industrial sites at Donges, the Amiens - Abbeville - Rang du Fliers railway line electrification, the reopening of the Orléans - Châteauneuf-sur-Loire line to passenger traffic, the Nîmes-Manduel railway station and its service road, the implementation of a logistics and maintenance base at Lanne-mezan, in the Hautes-Pyrénées, the extension of the Strasbourg - Koenigshoffen tramway line F and the track plan development at the Saint-André le Gaz station. In addition to these operations, there were more ad hoc projects in the Paris region, related to the GPE (amending Declaration of Public Authority (DUP) of the line 15 East, overburden transit platform at Bonneuil-sur-Marne, new station of Bry-Villiers-Champigny, maintenance and storage site of the line 14 at Morangis) or independent of this project (creation of sidetracks of the Regional Express Network (RER) B at Saint-Rémy-les-Chevreuses, phase 2 of the tramway T13 Express between Saint-Germain-en-Laye and Achères). Finally, as in previous years, a few operations for the removal of level crossings in Brittany and Pays de Loire and two multimodal transit hubs (La Part-Dieu, in Lyon, and Auray, in Brittany) were referred to the Ae.

For new projects on the waterway and in the ports, the Ae issued opinions on the project for the dredging of the Oise river to make it navigable by larger vessels between Compiègne and Creil (MAGEO), an element of the Seine-Escaut large gauge fluvial connection, on the extension of the Flandres wharf led by the major maritime port (GPM) of Dunkirk and on a fluvial parking area at Goeulzin in the North.



Lyon-Part-Dieu shopping centre

Land-use and agricultural planning and forest management operations, which are the corollary of linear infrastructure projects, gave rise to 16 opinions issued in 2017 (compared to 10 in 2016), related to the South-Europe Atlantic high-speed line (7 opinions) or to various road projects.

In 2017, the Ae had to deal with marine or fluvial sediment dredging operations several times, to preserve access to navigation channels; non-immersible sediments of the GPM at La Rochelle, canal from the Rhone river to the Rhine, channels of Kourou and Mahury in Guyana, multi-annual dredging operation management programme of Huningue at Lauterbourg in the Haut-Rhin, re-sizing of the “Lys mitoyenne” river section

between Deülémont and Halluin, at the Belgium border, planning and maintenance of the Sasse-Durance confluence in the Sisteron area.

Several joint development zones (ZAC) were submitted to the Ae for an opinion, all located in the Île-de-France region; ZAC of the Triangle de Gonesse, in the Val d’Oise, ZAC of Six-Routes at La Courneuve, in Seine-Saint-Denis, ZAC of the Marine at Colombes, in the Hauts-de-Seine, Satory-Ouest ZAC, at Versailles, in the Yvelines, ZAC of Bordes in the communes of Crisenoy and Fouju, in Seine-et-Marne. Some development projects in the Lyon-Part-Dieu area (shopping centre, Two-Lyon project, Lyon-Part-Dieu railway station) can be attached to these operations.

Energy-related projects were very few this year. We can simply mention the dismantling of the regulated nuclear facility (INB) No. 25 at Cadarache, in Bouches-du-Rhône, and the construction of the electrical substation Sud-Aveyron and its interconnection with existing lines.

Other more original cases were the subject of an Ae opinion in 2017; the green lane cycle-road between Camaret-sur-Mer and Telgruc-sur-mer, in Finistère, the requalification of the approaches to the Pont d’Arc, in Ardèche, the bicycle plan III of Oléron island, the quarry restoration (Installation Classified for the Protection of the Environment - ICPE) of the Cemex company in Var, the removal of the well-field of Ventillon Fos-sur-Mer, the anti-submersion dyke at Couarde-sur-Mer, in Charente-Maritime and the creation of a dyke between Arles and Tarascon.

Unlike 2016 when the Ae received only one request for preliminary framing, four cases, representing high stakes, were the subject of a request for an opinion; re-equilibration of the Loire bed upstream of Nantes, projects relating to the 2024 Olympics, urban project of Toulouse EuroSud Ouest and the Euro3Lys project at Saint-Louis, in the Haut-Rhin.

17 | Including three applications to withdraw.

18 | It should be noted, however, that this figure only covers the last six months of 2016, with jurisdiction over decisions on case by case plans/programs having been allocated to the Ae with effect from 17 May 2016.

The Ae in 2017

With regard to plans/programs, the Ae had to issue opinions on two main types of documents; charters of regional natural parks in preparation (Aubrac, Somme Bay maritime Picardy, Médoc) or in the review process (Millevaches, Corsica) and four urban planning documents, on which the Ae decided to issue an opinion in application of its power of evocation¹⁹ (PLU of Saint-Claude, in Guadeloupe, PLUi of the community of communes of Haute-Saulx, in the Meuse, PLU of Gonesse, in Val d'Oise, PLUH of the city of Lyon). In addition to these documents, opinions were issued on two water development and management master plans (SAGE) (Huisne and Drac-Romanche) and on four programmatic documents including one that is national in scope (the national strategy for biomass mobilisation - SNMB), and three that are regional in scope; the multi-annual energy programme (PPE) of Martinique, the territorial climate-air-energy plan (PCAET) of Cergy-Pontoise, and the protection plan (PPA) of Île-de-France.

“CASE-BY-CASE” DECISIONS

As stated in the introduction, the number of case-by-case decisions significantly increased in 2017. This is due to the new authority attributed to the Ae by the decree of 28 April 2016 in the area of plans/programs, and more particularly on plans for preventing foreseeable natural risks. The first signs were already felt in 2016. This increase is also explained by the reform of the environmental assessment, which came into force in 2017. One of the effects of this reform was the submission to a case-by-case review of projects that were previously submitted for a systematic environmental assessment.

In total, the Ae made 251 decisions in 2017, of which 89 decisions were on projects and 162 were on plans/programs, compared to 117 decisions made in 2016.

Regarding case-by-case projects, the decisions led to a submission of projects for an environmental assessment in 46% of the cases (41 decisions to which a submission by implicit decision should be added). This figure, which is increasing significantly (the submission decisions represented 16% of referrals in 2016), is the logical consequence of the reform of the environmental assessment implemented during the course of 2016, whereby a number of projects that previously had to be submitted for an environmental assessment, fell within the “case-by-case” scope.



Orléans - Châteauneuf-sur-Loire railway line

Rail and road projects account for three-fifths of the case-by-case decisions and Île-de-France, New Aquitaine, Auvergne-Rhone-Alps and Provence - Alps Côte d'Azur (PACA) regions represent alone more than half of the referrals.

With regard to case-by-case plans/programs, natural risk prevention plans (PPRN) concern almost all the decisions (153 decisions, i.e. nearly 95%), with the other decisions concerning mainly technological risk prevention plans (PPRT) for 3.7% (6 decisions).

The decisions gave rise to 36 decisions submitting the plans for an environmental assessment, of which 31 concern the revisions of the PPRN for the communes of Guadeloupe. Outside of this particular context, only 5 plans were submitted for an environmental assessment, i.e. about 3%.

Concerning the natural risk prevention plans, partly mountainous regions (Occitany, Auvergne - Rhone-Alps and PACA) represent, unsurprisingly, the majority of the decisions made (nearly 52%).

Lastly, it should be noted that case-by-case decisions for projects and plans/programs were subject to eight informal appeals (four appeals for each type of decisions), i.e. a rate of 3.2%.

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/programs or urban planning documents normally falling under the competence of a MRAe. It then replaces the latter to issue the opinion on the documents that it has decided to evoke.

Hence, in 2017, the Ae took eight decisions for evocation (compared to seven in 2016) which,

besides several files on the compatibility of urban planning documents related to a project, concerned: the development of the PLUi of Haute-Saulx, in Haute-Marne, the revision of the PLU of Gonesse in Val d'Oise, the territorial climate-air-energy plan (PCAET) of the community of towns of Cergy-Pontoise, in the same département, the revision of the PLU-H of the city of Lyon.

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 communication 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.

Within this framework, in September 2017, the Ae made public a communication on the socio-economic assessments of linear transport infrastructure projects. It is available on the Ae's website.





ZOOM ON

02

To complement a general analysis of its 2017 activity, the Ae addresses below the significant consequences of the evolution of the regulations applicable to environmental assessments as well as a few types of projects or referrals, involving recurring issues, which have led it to refine its analyses. It includes a synthesis, highlighting the main lessons learned.



ZOOM ON...

From work programs to “projects”

Order no. 2016-1058 of 3 August 2016 profoundly modified the frame of reference for the environmental assessment of projects. Its main effect is to remove, in the Environmental Code, the notion of “work programme” which corresponds to a term then widely used for transport infrastructures and to adopt now in the same code only the term “project”.



Land-use and Agricultural Planning and Forest Management (AFAF) in Bas-lieu, Floursies, Semousies, Beugnies and Dourlers

The year 2017, which is the first complete year for the implementation of the order, makes the scope of this modification more comprehensible, the question of the outline or, more precisely, the content of the project being systematically raised by the Ae in its opinions on the impact assessment of the projects. It constitutes however a transitional period, during which the previous provisions apply to the projects for which a first authorisation has been given before the order's date of entry into force. This can sometimes lead to difficulties of interpretation or misinterpretations which make it necessary to concentrate on the spirit of the directive, as often as possible.

THE WORK PROGRAMME

According to the previously applicable provisions, “a work, installation or development programme [consisted] of work, installation and development projects carried out by one or several project owners and constituting a functional unit”. The article of the Environmental Code that defines the content of the impact assessment required that “when the project contributes to the carrying out of a works programme whose execution is staggered over time, the impact assessment includes an assessment of the impacts of the whole programme”. On the other hand, the possible measures to avoid, reduce or compensate (ERC) the impacts concerned only those of the project, cumulated with those of other known projects²⁰, where appropriate.

This formulation had several disadvantages; the notion of functional unit could be very broadly interpreted, it could include many developments and make the finalisation of a project area difficult; on the other hand, the impacts of the “project”, as defined by the directive, could be analysed less precisely. ERC measures could then be lacking, in particular when the procedure concerned only a secondary development of the project - especially when it was the first one submitted for authorisation - whereas the impacts of the “project” as a whole were likely to be significantly greater, then engaging the process irreversibly, in disregard of all its impacts.

THE PROJECT

The order did not explicitly define this concept, both to remain in strict conformity with the spirit of the directive, and insofar as interpretations concerning the content of a project are based on a rich and complex European and national case-law, which requires a specific examination for each case. The Environmental Code now specifies nonetheless (III of Article L. 122-1) that “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". The General Commission on Sustainable Development (CGDD) published a first guide²¹ in 2017 to help project owners define the content of their projects.

The main consequence of these new provisions is to require a better determination of the area in which the public is to be informed, particularly during the first public inquiry on one of the components of the project, so that the scope of the first request for authorisation is fully understood.



Land-use and Agricultural Planning and Forest Management (AFAF) in Bas-lieu, Floursies, Semousies, Beugnies and Dourlers

They must also lead all the project owners concerned by a single project to define upstream their respective responsibilities with regard to the impacts of the project and all the avoidance, reduction and compensation measures, then incorporated into all the successive authorisations they request, individually or collectively.

Within this framework, the Ae took up a position, in all its opinions insofar as the case files enabled it to do so, on the content of the projects and, as a consequence, on the areas in which the impacts should be analysed in order to take the necessary measures.

The CGDD guide recalls that:

- *"The project must therefore be apprehended as the set of operations or works required to implement it and reach the objective set";*
- *"In practice, to determine "the project", the project owner(s) may rely on a body of evidence, in particular their geographic or temporal proximity, the similarities and interactions between the various components of the project or the subject and nature of operations";*
- *"If, at the end of this review, the components of the project are collectively likely to have notable negative impacts on the environment, they are dealt with in the impact assessment of the project".*

20 | *"These are the projects that, when an impact assessment is lodged, have been the subject of an impact paper under Article R.214-6 and of a public enquiry or an impact assessment under the Environmental Code. For these assessments, an opinion from the Environmental Authority was expressed publicly." Thus, for cumulative impacts, the analysis required should set out the same level of detail, the measures being the responsibility of the contractors in accordance with the order of priority of the projects.*

21 | <http://www.ecologique-solidaire.gouv.fr/sites/default/files/Th%C3%A9matique%20-%20Guide%20d%E2%80%99interpr%C3%A9tation%20de%20la%20r%C3%A9forme%20du%20a%C3%BAt%202016.pdf>



ZOOM ON...

These principles are set out in the guide for two types of situations that are commonly encountered by the Ae:

Case 1: a work programme becomes a project

The first example concerns a detour road consisting of several phases, previously a work programme and now a “project”. This interpretation has in particular several direct consequences, particularly for noise and ecological continuities (see chapter below on road widening). Several Ae opinions concerned this type of projects in 2017²².

Opinion no. 2016-122 on the removal of level crossings in Mayenne posed a particular problem given the history of the project, which led to its objectives being changed. The impact assessment deals however with a set of developments, designed on the one hand to remove level crossings and, on the other hand, to circumvent the town of Montsûrs. The main scope of this discussion concerns the choice of the scenario adopted, and therefore the impacts of the project, which can be distinct, according to whether each objective is dealt with together or separately.

This question has particular significance in opinion no. 2017-15 relating to the Bicycle plan III of Oléron Island, the request aiming to perfect a complete network of cycle paths, partly in high-stake natural sites; cycling continuity is a major issue for the shift in usage towards this soft mode; the whole completed network was well presented in the dossier, but the Ae recommended a further detailed analysis of some impacts on a global scale, in particular those related to the increase of the network's use, as well as the analysis of variants for some more sensitive links.



Removal of level crossings between Neau and Brée and Montsûrs northern by-pass

Case 2: a work programme consists of several projects

The second example concerns the large stadium of the Lyon conurbation, previously a works programme but now consisting of two distinct projects²³: on the one hand, the large stadium and its ancillary facilities, as well as the building of interchanges to allow for the site's accessibility; on the other hand, the extension of the tramway line T3, targeting the development of East Lyon.

The Ae noted, in several cases, that whereas a project was indeed a component of a work programme, it would have been excessive to systematically describe work programs as comprehensive projects²⁴.

These typical cases however represent only a limited sample of the problems encountered. The example of the joint development zones (ZAC) is discussed later on.

22 | See Ae opinion no. 2016-114 (western extension of Line F of the Strasbourg tramway), no. 2017-20 and 2017-64 (development of RN85), no. 2017-24 (expansion of Junction A406-RN79 on the RCEA to 2x2 lanes), no. 2017-29 (electrification of Amiens - Abbeville - Rang du Fliers line), no. 2017-43 (expansion of A75 at Clermont-Ferrand to 2x3 lanes)

23 | Also in the light of case law specific to this dossier.

24 | See opinion nos. 2016-117, 2016-118, 2017-13 and 2017-27 (redevelopment of Part-Dieu district in Lyon), resulting in a recommendation for a single impact assessment; no. 2017-51 (MAGEO, upgrading of Oise river to European gauge), whereby the Ae considered that previous dredging operations, the reconstruction of the Mours viaduct and MAGEO formed one programme of works whose shared objective was continuity along the Oise river; nos. 2016-109 and 2017-55 (creation of RER B sidings at Saint-Rémy and Le Plessis-Robinson railway stations), whereby the Ae considered that developments provided for under the roadmap for the southern branch of the RER constituted one programme of works whose objective was to improve the operation of the whole line.

The question of the “compensation measures” for a project is also worth mentioning. For the Ae, these measures are necessary for project completion, since they are intended to be prescribed when the residual impacts of the project (after the implementation of avoidance and reduction measures) remain notable. Consequently, the Ae systematically interpreted that they are a component of the project, whose impacts should be assessed, in the same way as the rest of the project. This question most often concerns “agricultural” compensation measures (cf. the routine case of land-use and agricultural development and forest management, the aim of which is to remedy the effects of the surface area removal related to the construction of the linear infrastructure, but also that of the measures considered pursuant to the provisions of decree no. 2016-1190 of 31 August 2016, which



Rail by-pass around Donges industrial estate

prescribes a preliminary study in the event of a removal exceeding 20 ha of agricultural lands²⁵).

Several opinions concerned two potentially related projects that may however be considered as independent. This is in particular the case when a project can only be initiated after the completion of another project²⁶. The particular case of the Donges rail bypass deserves special attention: this bypass can be achieved alone; however, its completion is a necessary prerequisite for the creation a new unit of the Total company that presents major risks. The Commissioner-General for Sustainable Development indicated, upstream of the various procedures, that “these two projects [did] not seem [...] to present a functional unit and, as such, to be likely to constitute a work programme within the meaning of Article L. 122-1 [of the Environmental Code]”. The Ae shared this analysis in its opinion no. 2017-08, while noting that since the in-service date of the Total unit was likely to be prior to that of the rail bypass, the content of the impact assessment of the rail project should take the anticipated effects of the other project into account, the risk analysis in the case file then being virtual.

The situation most subject to difficulty remains nonetheless that of rail transport infrastructure projects, including the new multimodal transit hubs, giving rise to urban projects of varying sizes, with impacts that are particularly significant as they are created in an under urbanised environment; a transit hub most often requires, around the station, a forecourt, car parks, access roads, a public transport service, etc. and is most often accompanied by building projects adjoining the station, or in a more substantial way, mixed activity areas that can cover several tens to hundreds of hectares. The case file of the Nîmes Manduel railway station²⁷, as presented, delimits the project to the station, its car parks and the access road²⁸, excluding the

25 | See Ae opinion no. 2017-64 (development of RN85), no. 2017-72 (Les Bordes ZAC)

26 | See Ae opinion no. 2016-116 (maintenance dredging of non-submersible sediment at La Rochelle seaport). This interpretation could also have been validated for the development of the Nantes wholesale market (Ae Opinion No. 2016-48), prior to the Ile de Nantes Sud-Ouest ZAC, provided that the impact of the demolition of the original site was described in the impact assessment of the first project.

27 | See Ae opinion nos. 2016-106 and 2017-60

28 | The new station at Montpellier did not even include parking areas and roadways (see Ae opinion no. 2014-28)



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railway line and a designated area of activity, yet explicitly resulting from this new railway station; the case file of the line 17 North of the Grand Paris express²⁹ strictly delimits the project to the line and its stations, to the exclusion, in the case of the Triangle de Gonesse railway station³⁰, of all the other components of the transit hub, to the extent that the scope of the declaration of public utility provides for no connection to the existing road network, the corresponding developments being provided for in the eponymous ZAC project, considered by the case file as independent.

As the Ae had the opportunity to recall in these various opinions:

- a railway station cannot be functional independently of the lines that serve it,
- the absence of transit hub and road network would lead to the creation of a railway station that is inaccessible by any other transport mode,
- according to the principles set out in the CGDD guide, project owners are responsible for assessing how these principles apply both

to the rail project and the urban development project, particularly in case of notable negative impacts. Most often however, the case files make it possible to characterise the body of evidence to which the guide refers.

For the Ae, these two case files did not allow the impacts of the two projects, similar and yet based on opposed approaches³¹, to be analysed at the proper scale; it is then impossible to know whether the measures presented enable the overall impacts to be reduced to a low residual level. In view of such a difficulty, it is important for the Ae, whatever the option chosen, that all the impacts are analysed as a whole and that all the project owners concerned present to the public, in a coordinated manner, all the avoidance, reduction and compensation measures they undertake to implement to reach this objective.



View of Triangle de Gonesse railway station

29 | See Ae opinion nos. 2015-78 and 2017-71

30 | See Ae opinion nos. 2015-103 and 2017-01

31 | Although the impact assessment for Nîmes railway station, updated for the environmental authorisation for access roads, did endeavour to analyse multiple impacts across the whole sector (lines, stations, planned ZAC), taking into account in particular a significant increase in the surface area of measures to compensate for the destruction of habitats of protected species.

Preliminary framing to specify the scope of the projects

The Environmental Authority can, at the request of the project owner³², work on a “preliminary framing” upstream of the impact assessment to help apprehend the scope and the degree of precision of the information to be provided in the impact assessment³³.

On the condition that the project is sufficiently advanced (after public debate, or at the stage of the preliminary project outline), the Ae issues a deliberated opinion, based on the formalised questions of the petitioner. Where appropriate, as provided for in the Environmental Code, the Ae reserves the possibility of requesting any further information or element that it deems useful to bring to the project owner’s attention, without its opinion being exhaustive.

So far, little use has been made of this possibility before the Ae CGEDD (eight times from 2009 to 2016). In 2017, four requests³⁴ were made, all aimed in particular to clarify the content of the projects.

For the Ae, the reasoning leading to the definition of a project’s content is based on the joint analysis of the functional links and objectives of the operations that potentially constitute it; in principle, all the operations or works required to reach the pursued objective, and without which the project would not proceed or could not fulfil the role for which it is carried out, must be identified

At the stage of a request for preliminary framing, the information is by definition less complete than in the impact assessment prepared for the public inquiry. The outlines of the various operations, sometimes led by different project owners, still remain to be clarified, or defined. The main function of the preliminary framing opinion is not to make the regulations explicit, which is a competence of the State departments

and the communities concerned, but rather to guide the project owners at the initial design stage of their projects, to understand the issues and the effects of the projects at the right scale and to avoid noticing the inadequacy of the impact assessment studies too late.



Euro3Lys project in Saint-Louis

The opinion relating to the Toulouse EuroSud Ouest project deals with the complex case of an urban project closely related to a rail project, in the hypercentre of a city (see chapter on the ZACs below). The two operations had a priori different purposes, which initially led the State and the project owners to consider treating them as distinct projects. Yet, the Ae replicated the analysis it had conducted for the development of the Part-Dieu district in Lyon, recommending a single impact assessment, because the completion of the rail project is the primary condition for

32 | This is also an option for administrations responsible for developing or modifying a plan or program.

33 | The preliminary study prior to the performance of the impact assessment is provided for by Article R. 122-4 of the Environmental Code.

34 | Opinion no. 2017-46 on the programme to rebalance the Loire riverbed upstream of Nantes (44-49), opinion no. 2017.65 on the request for a preliminary study into the Toulouse EuroSudOuest (TESO) urban project and the Toulouse Matabiau multi-modal interchange station (31), opinion no. 2017-67 on the request for a preliminary study into projects related to the 2024 Olympic Games and opinion no. 2017-82 on the request for a preliminary study into the Euro3Lys project in Saint-Louis (68).



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the feasibility of the urban project. Similarly, in the opinion on some projects for the 2024 Olympic Games, the building of noise barriers and the burial of high-voltage lines were considered as elements required for the acceptability and proper functioning of the Olympic village project. Unlike the cases mentioned in the first chapter (Donges rail bypass, relocation of the Nantes MIN), the two “projects” of Toulouse contribute to a common objective.



Euro3Lys project in Saint-Louis

In the opinion on the Euro3Lys project, in light of the current congestion situation in the area, the operations aimed at improving the road traffic flow and the tramway extension were retained as a component of the project, the functional link being based on the accessibility to the project's various planned developments; the absence of appropriate means of travel was likely to jeopardise the success of the project.

For a project totally different in nature, whereby the project owner considers many works staggered over time (re-equilibration of the Loire bed upstream of Nantes), the Ae considered, in its opinion no. 2017-46, that the works already carried out and those, of the same nature, already planned in a later phase, in neighbour-

ing areas, meeting the same functionalities and having effects that are likely to interact, were constituent of the project, regardless of their completion date, closely akin in this respect to the example of the transport infrastructures in the CGDD guide.

However, the Ae did not consider that a road interchange whose building was decided before hand based on various considerations and objectives, enabling in particular the improvement of access to the Olympic village project, without however being necessary - including during the phase of the Olympic Games - had to be taken into account in the village project. Similarly, despite the very integrated nature of the TESO project, the Ae did not consider that the extension of the Toulouse metro, which is part of a travel strategy at the scale of the greater Toulouse conurbation which is much larger than that of the project, was required to be taken into account in the project.

Along the same lines, the geographic entanglement of the Euro3Lys project and the new railway line between the Bâle-Mulhouse airport and the Saint-Louis railway station, was not considered by the Ae as sufficient to justify grouping them in a single project, their objectives or their functionalities appearing significantly different. The Ae reasoned in a similar manner regarding the criterion of immediate proximity of interventions on the Loire bed, some of them upstream and the others downstream of Nantes, which it did not consider sufficient in itself for them to be constituent parts of a single project. More specifically, considering the arrangements put in place by local actors to guarantee a global view of operations in the Loire bed, the Ae did not believe that including all the interventions planned in the project would bring a significant added value for the impact analysis. Nevertheless, the Ae recommended retaining at a minimal all the interventions that would rapidly benefit from the elevation of the waterline.

At the stage of a preliminary framing, the Ae does not necessarily have all the elements to form a precise opinion on the scope of a project. That is why, on several occasions, the Ae considered it appropriate to draw the attention of the project owners and the State on the need to reflect both on the framework for the projects, and on the interactions between the projects. Hence, opinion no. 2017-67 encouraged a study of the possibility of a single Olympics project, noticing that the organisation of transport at the conurbation scale during the Olympic Games' period will be important. Opinion no. 2017-82 suggests that project owners ensure, notably through the compatibility of their project with urban planning documents, that its contribution to the systemic impacts identified on the scale of a larger territory is taken into account. In both of these cases, the Ae recalled in particular the notion of "centre of gravity test" with reference to an interpretation by the European Commission³⁵.



Euro3Lys project in Saint-Louis

In these different situations, the Ae then recalled that, when operations are considered as being part of different projects, the analysis of cumulative effects, presented according to a view as wide as possible of other existing or approved projects, should then present a more global approach to the impacts of all the operations, the project owners for each project being responsible for their design and for the definition of avoidance, reduction and compensation measures, independently of each other; "A common reflection with the project owners of neighbouring projects (in particular Euro-airport) will ensure the consistency of ERC measures on the scale of the territory".

35 | Cf Memorandum of the European Commission ENV.A/SA/sb Ares(2011)33433 of 25 March 2011, interpretive of Directive 85/337/EEC as modified regarding associated and related works; "It is appropriate to verify whether these associated works could be considered an integral part of the main infrastructure work. Such verification should be based on objective factors such as intended purpose, characteristics, location of these related works and their links with the main activity." In order to determine whether such associated works could be considered an integral part of the main activity with regard to the environmental assessment, this same Memorandum also recommends a so-called "centre of gravity" verification/assessment test. "This centre of gravity test should verify whether these associated works are central or peripheral to the main works and the extent to which they are likely to predetermine the conclusions of the environmental impact assessment."



ZOOM ON...

Application of these principles to the joint development zone projects

CONSEQUENCES FOR THE MAIN ENVIRONMENTAL CHALLENGES

The purpose of the impact assessment of a ZAC and the various operations of which it is composed is to give an account of all their effects. The EA is hence led, from the outset, to raise the question of the relevance of the project area in which the project owner carried out the impact assessment.

First, the Ae notices that impact assessments of the ZACs tend to minimise the aspects related to the accessibility of operations, considering the developments and the servicing/feeding modes as being outside of the project. The Ae then recommends widening the study's geographical scope, and thus its area, to assess all the effects of the project. It must be ensured that its consequences, for example, in terms of road noise or air quality, are properly taken into account on all the project's access roads, and that the impact assessment takes the necessary reduction and compensation measures in this respect. The public, and especially the population concerned by this access, should be provided with full information on the situation prior to the project and on its effects.

The Ae raised this issue of scope in 2017 in three preliminary framing opinions already mentioned (for the Toulouse EuroSudOuest urban project, the Euro3Lys project near the Bâle-Mulhouse airport and some projects relating to the 2024 Olympics Games). It also fully concerns the ZACs of the Triangle de Gonesse and Satory Ouest.

Many ZACs are designed and created in the context of the creation of new infrastructures. They can then, in different ways, constitute resulting urban developments thereof, inseparable developments or any other intermediate option in which the design of the ZAC evolves over time in a manner consistent with this other "project". The Ae then ensures that the concept of "centre of gravity" of the above-mentioned interpretative

note is used. This interpretation then leads to a more precise qualification of the direct or indirect impacts of a project, which it is the concerned project owners' responsibility to avoid, reduce or compensate for, or the cumulative impacts with other projects, subject to more independent developments, but then requiring measures supplementing those considered for each project, according to differentiated responsibilities.



Euro3Lys project in Saint-Louis

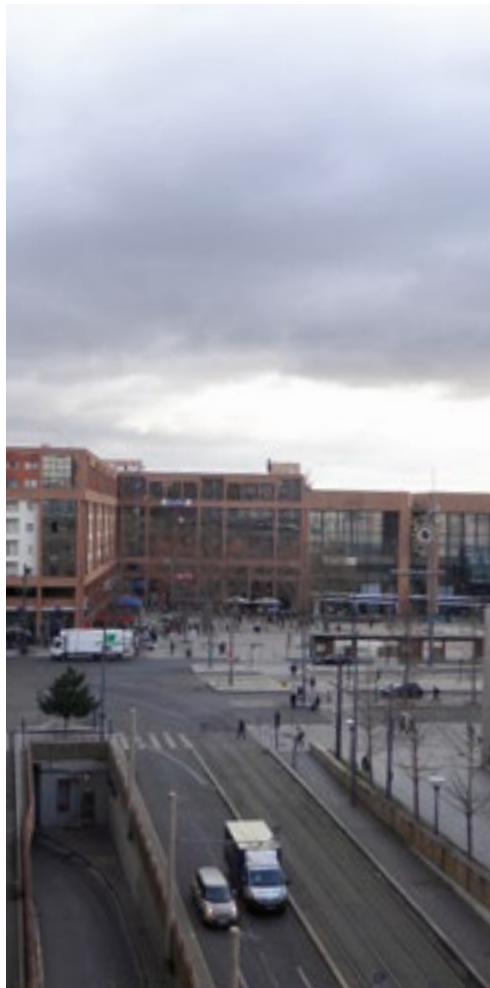
Hence, the consequences of the designated development area close to the Nîmes-Manduel railway station appear significant for space consumption and natural habitats (notably in the Natura 2000 site) compared to those of the railway station project; the Ae called them indirect effects. On the other hand, the successive case files presented for line 17 and the ZAC of the Triangle de Gonesse include many cross-references which, despite their separate presentations, do not convince the Ae that,

in this area, the conclusions of the environmental impact assessment for a development project are not predetermined by choices for the other development project - including in light of the socio-economic assessment of line 17. However, without prejudgement, the case files for the Part-Dieu Ouest ZAC and its multi-modal interchange station, initially designed separately as two projects with distinct but close centres of gravity, taking into account their shared impact, have gradually converged to become a single project.

The spatial distribution and phasing of development projects thus constitute the main determinants of the issues and impacts of these operations, particularly in terms of consumption and densification of the area or in terms of traffic flow.

Several projects appear to follow their own approach, making use of several necessary adaptations to take into account neighbouring projects (ZAC around other Grand Paris Express stations, particularly). Their objective is usually to create poles of economic and urban development around large transport terminals. These are constrained places, particularly in terms of traffic. Project owners address these projects with the intention of reducing car use in connection with these poles. Nevertheless, the transport strategies identified have not yet received the public support expected and the Ae has been compelled to recommend, as in the case of the Part-Dieu ZAC or the preliminary study into the Toulouse EuroSudOuest urban project, that the road be shared and a reduction in the rights-of-way that give priority to cars.

The contribution made by these operations to the reduction in greenhouse gases is achieved through both travel and energy provisions (reduced consumption and production using renewable energy). The Ae observed that development projects are still quite reluctant in these areas. Energy production in these large-scale development operations is in fact usually marginal. None of the ZACs for which the Ae was asked to deliver an opinion in 2017 has adopted a credible objective for an energy-plus neighbourhood.



Lyon-Part-Dieu shopping centre



ZOOM ON...

Adaptation to climate change is also an important aspect and the presence of plants and water in the projects also receives special attention on the part of the Ae. Although the presence of water and nature should serve to inspire the development option and to improve the summer comfort of public spaces, the projects still lag behind on these issues.



Six-Routes Joint Development Zone (ZAC) in Courneuve

Unless a regional scheme or a territorial coherence scheme (SCoT) has analysed, in its strategic environmental assessment, the different variants of possible establishment for a large-scale development project, such an analysis must be performed by the project and the consistency of the proposed option with this scheme which defines a more global coherence framework must be demonstrated. Hence, the issue of alternatives to the development of the Triangle de Gonesse ZAC and, more generally, of the local urban planning plan of Gonesse, was raised by the Ae, especially since important sites lie fallow in the immediate proximity of the Triangle; the framing of the Toulouse EuroSud Ouest urban project questions the work to rehabilitate the old districts located around this large urban renovation operation; that of Euro3Lys emphasises the need for a “centre of coherence” of all the projects - including this one - within the framework prescribed by the SCoT.

More profoundly, the opinions on these ZAC projects are also an opportunity to reflect on the broader urban strategy. In particular, most of the Île-de-France projects referred to the Ae were presented as consistent with the Île-de-France region master plan. Whereas this master plan locates development opportunities consistent with the servicing by public transport, it does not exempt each project from the demonstration of its relevance, particularly with regard to environmental reasons, in the context of which it forms a part.

Protection against coastal flooding; the project and the Flood Prevention Action Programme (PAPI)

The French coastline has already experienced the impact of climate change, and will do so increasingly in future, although it is still difficult to attribute a specific extreme weather event to this global phenomenon. Storm Xynthia in February 2010 was an event to remember, with 49 victims (and considerable damage).



Western railway embankment between Arles and Tarascon

Since then, national government and local authorities have taken steps to protect people and property more effectively from such events. The most badly affected regions and departments, particularly on the Atlantic coast, have undertaken to work with national government departments on the development of PAPIs.

The coastal dykes that are the subject of projects presented to the Ae are all located in classified sites or natural reserves and thus require the approval of the minister responsible for the environment. Therefore they concern only some

parts of the coastline. Hence the dossiers submitted lack an overall view that would link more effectively the different mechanisms under consideration, thus mitigating the risks in a cohesive and effective manner. This overall view would also yield a better assessment of the impact of works upon ecosystems. If PAPIs were submitted for an Ae opinion, which is not currently the case, it would without any doubt be easier to assess the impact and appropriateness of the different options under consideration across the entirety of the affected coastline, and not just on a short stretch of it. One of the environmental consequences is the effect on the landscape: in the case of both Ile d'Aix and La Couarde-sur-Mer, Ae had also recommended homogeneity in the treatment of the entire sea defense system on a wider scale, covering a greater distance than that of a single project.

Furthermore, the "project-free" scenario, namely a scenario that offers protection through the acquisition of the most exposed assets and through the natural management of the coastal areas affected, is rarely presented, while the construction or improvement of dykes involves significant costs, both financial and environmental (including the impact on the landscape), particularly in protected sites, without necessarily affording long-term protection. It would appear that a cost/benefit analysis covering the entire area affected, considering the different options available, is essential to inform decision-making. Theoretically, this analysis appears in applications for certification of PAPIs, but those submitted offer sometimes significant differences with those initially envisaged by the PAPIs.

The four opinions expressed by the Ae in 2016 and 2017 concerned communes affected by Storm Xynthia: La-Couarde-sur-Mer on Ile de Ré, Ile d'Aix, Fouras and Yves on Perthus-d'Antioche³⁶. Each time, its opinions raise the question, indirectly, of the actual long-term protection of the populations and sites affected.

36 | See opinion nos. 2016-61, 2016-80, 2016-81, 2017-70



ZOOM ON...

To protect boroughs in the communes in question, and certain agricultural activities and oyster farms particularly vulnerable to flooding, the department of Charente-Maritime presented four projects that offer protection. In the case of La Couarde, presented in 2017, the objective was to reinforce existing embankments along a four-kilometre stretch of the northern coastline, at a cost of EUR 5.8 million plus VAT.

In its opinion, the Ae expressed that the dossier presented dealt solely with the reinforcement of the commune's existing dyke. It pointed out that the dossier did not show how the project formed part of a continuous system of protection of the island's north coast, or how other dykes were protecting its extremes, given that the PAPI provided for a complete and continuous protection system with the Loix dyke. Since the single dyke in La Couarde-sur-Mer is insufficient on its own to deal with any lateral flood water, the absence of a connection to a broader protection system is likely to call its usefulness into question.

For the Ae, the scope of the project is determined by the protection strategy selected and its implementation through a system of protection. In this case, the risk assessment was unable to demonstrate the functional ability of the work unless a secondary dyke were added, and a side path located higher up, to the west of the main dyke, neither of which were mentioned in the dossier. The dossier referred instead to a "box" type protection strategy for La Couarde, different to the PAPI strategy, with its continuity of coastal protection works, particularly between the work at Loix and the planned dyke at La Couarde-sur-Mer.

Following flooding on the Fouras peninsula and on Ile d'Aix in 2010, several homes were classified as being in a so-called "solidarity zone", and therefore were authorised to be purchased for the purpose of destruction. After further studies were carried out, specific dyke systems were designed expressly to protect those homes that were not the subject of an amicable purchase, although, in both cases, neighbouring houses had been purchased then destroyed. Notwithstanding the issue of equality of citizens before the law and with regard to coastal flooding, the Ae then considered alternative solutions to the protection proposed (for example, a shorter course for a work in tandem with the destruction of unprotected houses).



La Couarde-sur-Mer dyke reinforcement project

Road widening projects - climate change and energy transition

There were a particularly large number of these projects in 2017, with the Ae expressing six opinions on the subject in relation to infrastructure in an urban and interurban context. Most of these developments constitute projects that form part of the motorway investment plan agreed between the State and motorway operators in 2015³⁷.

Following its analysis of road expansion dossiers over the years and, particularly in 2017, the Ae noted a number of repeated shortcomings despite a certain formal quality to these dossiers.

CONTENTS OF THE PROJECT

Identification of the scope of the project is just one essential element of the impact assessment. The Ae very often challenges the content of a project selected by contractors³⁸.

Thus, in its opinion on the widening of junction A 406 RN 79 (Central Europe-Atlantic Road, RCEA) to 2x2 lanes, in which it stated that the section adjacent to the RCEA section presented was the subject of a similar project for several kilometres, to be opened at the same time, the Ae had stated that, in accordance with the Environmental Code and with the Court of Justice of the European Union case law, the two operations had to be presented together, forming a single project and being the subject of a single impact assessment. In the case of the widening of motorway A75 between Clermont-Ferrand and Le Crest to 2x3 lanes, it emphasised the importance of considering it as a larger project with the A71 to the north as a single programme of work whose impact should be analysed in accordance with regulations in force at the time.

More generally speaking, the Ae invites contractors to reflect on the “appropriate scale”, since many impacts cannot be assessed on the

scale of the work being carried out in isolation. This “appropriate scale” furnishes a vision of mobility and the resulting effects in terms of traffic and urbanism across a generally larger geographic area than that spanned by the infrastructure. Under these conditions, variant analysis should take into account various options in terms of mobility and factor in their environmental impacts, particularly in terms of toxic and noise pollution and greenhouse gas emissions.



Development of Digne-les-Bains feeder road

INSUFFICIENT EVIDENCE FOR ASSUMPTIONS ABOUT TRAFFIC IN THE CONTEXT OF ENERGY TRANSITION

Traffic studies are the cornerstone of transport infrastructure dossiers. Firstly, they are used as evidence of the advisability of projects and, secondly, many of the studies carried out use traffic (noise, air quality, health, socioeconomic factors, etc.) as input data.

In most impact assessments, the effects of the project on traffic are calculated by comparing a project-free “reference” situation with changes in traffic post-project. The Ae generally observes that evidence for the assumptions that underpin the modelled results is too sparse, and shows no significant improvement as opinions are gathered.

37 | <http://www.plan-reliance-autoroutier.fr/presentation.html>

38 | As a result of the order of 3 August 2016 and the decree of 11 August 2016 on the modification of the rules applicable to the environmental assessment of projects, plans and programs, the notion of an overarching project has been enshrined in French law and the notion of the works programme has disappeared, in line with relevant European law.



ZOOM ON...

Most road widening dossiers assume that demand for journeys by road will increase inexorably and that widening is just one way of dealing with this and mitigating congestion without inducing any increase in traffic. This absence of induced traffic seems to lack credibility, at a time when systems providing real-time information on bottlenecks, to identify the fastest route, are being developed.



Six-Routes Joint Development Zone (ZAC) in Courneuve

Contractors have a detailed knowledge of the traffic structure in relation to the work and implement increasingly complex models, “rendering them highly opaque”, as found by the Quinet report³⁹. However, their forecasts are founded on an incomplete vision of transport systems which takes, in particular, insufficient account of the spatial effects of infrastructure. Although there are suitable land use transport integration models, the conditions for their implementation have yet to be defined by the administration following the recommendations in this report. The analysis of options based on behaviours and differentiated public policies would yield several impact scenarios and, as a consequence, would allow for the provision of measures to avoid, reduce and compensate, to be adjusted according to future changes in the situation. Instead

of agreeing to a project, the public could in future be invited to express a preference in terms of mobility and means of transport, informed by its impact upon the environment and on health.

These lines of argument do not incorporate the national commitments to reduce greenhouse gas emissions.

The biased assumption of an inevitable rise in traffic brings a serious disadvantage: the failure to take into account groundbreaking innovations or new political directions such as national commitments regarding fossil fuel consumption or greenhouse gas emissions. Yet France is committed to reducing its greenhouse gas emissions by one-quarter by 2050, ahead of most other nations. This national commitment was formally reiterated during the summit of the 21st Conference of the Parties to the International Convention on Climate Change in Paris in 2015. Such commitments should a priori call into question the reference scenario or even the project's objectives. The impact assessments of some projects suggest that greenhouse gas emissions may be falling as a result of improved traffic flow and steady vehicle numbers, a hypothesis that has never been substantiated.

Such reasoning invariably results in an absence of measures to reduce and compensate for greenhouse gas emissions, despite the urgent need to fight climate change.

MAINTAINING ECOLOGICAL CONTINUITY

Ecological corridors play a major role in the way ecosystems function and in limiting the effects of fragmentation caused by linear infrastructure.

The Ae systematically examines the steps taken to reduce this effect, including during motorway expansion programs, which have been a barrier for decades, and checks for consistency with mapped corridors, particularly in Regional Ecological Coherence Schemes (SRCE). This aspect is regularly treated in sufficient depth in the dossiers examined.

In its opinion on the widening of the A10 motorway to 2x3 lanes between Poitiers and Veigné it recommended, for example, that wildlife crossings be mapped, in line with the SRCE, to substantiate the measures provided for in light of SRCE, and to consider globally how to improve ecological continuities affected by infrastructure.

Compatibility of projects with Article L 371-2 of the Environmental Code which stipulates that linear transport infrastructure operated by the government and public bodies must be compatible with national approaches to conserve and restore ecological continuity (ONTVB) is analysed all too rarely.

NOISE AND SIGNIFICANT CHANGES TO INFRASTRUCTURE

While the Ae has noted an improvement in the quality of impact assessments on the issue of noise in some recent dossiers (cf. widening of the Benoit Malon/Pierre Ronde section of the A57 to 2x3 lanes), the level of importance of the change to the infrastructure in terms of acoustic regulations is all too often insufficiently analysed.

As it reiterated in its notice on noise from road and rail infrastructure, the level of importance of a change, that dictates the obligation to provide measures to protect the population,

may be applied only on the level of a section of infrastructure. In most dossiers submitted, contractors continue to identify the level of importance, dwelling by dwelling. The Ae regularly recommends, therefore, that arguments be constructed on the scale of a coherent section of infrastructure.

Furthermore, this level of importance is often assessed for a single project without taking into account other, adjacent, projects, and this analysis and noise protection should be provided for all noise pollution likely to affect an area.



Development of Digne-les-Bains feeder road

Conversely, in the impact assessment for the development of the A480 and the Rondeau interchange in the Traversée de Grenoble, the contractor considered that the change was significant although it did not reach the thresholds stipulated in regulations, thus offering greater protection to residents.

39 | CGSP- Socioeconomic evaluation of public investments. Report of the mission presided over by Émile Quinet. September 2013.



ZOOM ON...

TOO LITTLE CONSIDERATION OF ISSUES RELATED TO AIR QUALITY

Many atmospheric pollutants likely to have an effect on the health of residents are not analysed and are therefore not taken into account when assessing air quality and associated health risks. In its 2016 annual report, the Ae previously emphasised the obsolescence of Bulletin DGS/SD7B/2005/273 of 25 February 2005 on taking into account the effects of air pollution on health in impact assessments of road infrastructure. In this annual report and in several opinions expressed, it recommended that all pollutants listed in the Anses opinion of 12 July 2012 be taken into account.

Emissions modelling generally uses the Copert method developed with the coordination of the European Environment Agency. The Ae has sometimes stressed that the contractor has not used the most recent version of the software, an important observation since emission factors for diesel vehicles are updated regularly to take into account advances in knowledge on actual emissions that are significantly different to emissions calculated on the test bed.

On the whole, most dossiers provide for an eventual improvement in air quality thanks to a reduction in vehicle emissions. But this does not release contractors from the need to assess the impact at project launch with a constant rate of vehicles. Some projects emphasise that a reduction in road congestion would reduce emissions while others, more rarely, provide for a speed limit and indicate that this would contribute to a further reduction in emissions of pollutants and greenhouse gases.

From an environmental point of view, any increase in emissions in situations where the health of residents is already affected due to air quality standards being exceeded constitutes a significant impact for which few countermeasures are offered⁴⁰. 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.

40 | In 2017, the Council of State enjoined the government to take the necessary measures to develop and implement plans in relation to air quality, in order to meet regulatory thresholds within the shortest possible time frame.

41 | Section 25 of appendix to Article R. 122-2 of the Environmental Code.

42 | Operation consisting of dumping substances into sea (generally, dredging products or waste), in principle using a ship whose hold can be opened from underneath.

43 | Ae opinion no. 2016-116 of 25 January 2017 on the dredging of non-submersible sediment at La Rochelle seaport (17), Ae opinion no. 2017-10 of 26 April 2017 on UHC2 maintenance dredging operations on the Rhône to Rhine canal (68) over the 2018-2027 period, Ae opinion no. 2017-47 of 13 September 2017 on dredging of the Kourou channel and on the immersion of sediment by dumping (973), Ae opinion no. 2017-48 of 13 September 2017 on dredging of the Mahury channel and on the immersion of sediment by dumping (973), Ae opinion no. 2017-49 of 13 September 2017 on French Navigable Waterways dredging operations on the Rhine from Huningue (68) to Lauterbourg (67).



Development of Digne-les-Bains feeder road

Dredging - sediment classification and management

Plans for marine or river dredging are sometimes submitted for an impact assessment. They are submitted automatically in the case of new mineral extraction operations (ore and fossil substances) consisting of dredging sea beds in the public domain, within the Exclusive Economic Zone and on the continental shelf; they are submitted following case-by-case perusal⁴¹ for sea dredging when sediment extracted is polluted, according to the amount dredged, the pollution level and proximity to shellfish or marine cultivation areas, or for river dredging according to the amount dredged and the pollution level of sediment.

As such, these operations may, therefore, constitute a plan to extract minerals, or be a component of maintenance dredging operations, port development plans, rectification of channels or water courses or barrages, for example.

Whatever the reason for the project, there is the matter of disposal of the materials extracted; sediment resuspension in the environment, disposal at sea (usually by dumping⁴²) or on land, or recovery.

The projects examined by the Ae in 2017 covered a range of situations: dredging of sediment in port sites, their access channels or in water courses or canals to maintain navigation⁴³, dredging for other projects such as the extension of docks or terminals or to increase access capacity⁴⁴, and dredging of water courses for environmental reasons or linked to the risk of flooding⁴⁵. The projects examined included either the dumping of sediment or disposal on land.

RECURRENT OBSERVATIONS

Petitioners sometimes request authorisation for overall volumes that do not necessarily correspond to the volumes that are strictly required, in order to have greater flexibility in managing the dredging operations. Nevertheless, these choices mean that they have to examine and present the impacts of the volumes they declare, leading to an overestimation of most impacts. This is unlikely to facilitate public understanding of the dossier and its issues.



Maintenance dredging on Rhone-Rhine canal

Certain projects to rectify or increase capacity (particularly the case for MAGEO and the Lys Mitoyenne) are, furthermore, usually transport infrastructure projects, subject to specific regulations. The Ae has issued recommendations related to their socioeconomic assessment; coherence of assumptions made, account taken of shifts of traffic from road to waterway, and clarity of presentation and ease of understanding by the public.

The Ae has commented repeatedly on some other aspects of impact assessments and, more specifically, of dredging. These comments relate particularly to the scope of the project, the baseline status of the area dredged, the classification and management of sediment, and the resulting impact.

44 | Ae opinion no. 2017-21 of 14 June 2017 on the Quai de Flandre expansion project at Dunkirk seaport (59) - second opinion by Ae, Ae opinion no. 2017-51 of 13 September 2017 on the upgrading of the Oise river to European gauge (MAGEO) between Compiègne and Creil (60), opinion no. 2017-62 of 25 October 2017 on the recalibration of the Lys Mitoyenne between Deülémont and Halluin (France - 59, Belgium).

45 | Ae opinion no. 2017-38 of 26 July 2017 on the development and maintenance work at the Sasse-Durance confluence in Valernes and Sisteron (04), opinion no. 2017-46 of 13 September 2017 on the programme to rebalance the Loire riverbed upstream of Nantes (44-49) - preliminary study.



ZOOM ON...

CONTENTS OF THE PROJECT

The dossiers examined often simply describe just the dredging area, describing the impact and deducing measures to avoid, reduce or compensate (ERC). However, whether sediment is dumped at sea or deposited on land, the associated impacts may be significant, particularly in sensitive areas that are destroyed by the massive addition of materials. When the impact assessment is limited to the direct impact of dredging (which is, happily, not always the case), the effects on dumping or disposal sites are omitted, as is the assessment of the capacity to restore biodiversity at these sites (resilience of the ecosystem, risk of spread of exotic invasive species, etc.).



Maintenance dredging on Rhone-Rhine canal

As with many projects, often some aspects of analysis of the construction period are omitted, particularly the location, baseline status and description of the building site and associated impacts. Nor is any restoration of the sites affected generally described.

For maintenance operations in particular, the question about which area to take into account and the time frame also arises sometimes. Generally speaking, it is intended that this question be identified upstream by “coherent hydrographic units” as defined in the Environmental Code. Nevertheless, operations performed on rivers are often ad hoc even now and are rarely the subject of a coordinated approach between the different managers of the body of water concerned.

BASELINE STATUS

The dredging operation in itself is likely to destroy the ecosystem of the dredged beds and to alter the biocenosis⁴⁶ in the adjacent water column. Now, the description of the environment in the impact assessments examined was sometimes incomplete and sometimes non-existent. Time and again, the dossier presented did not contain anything other than bibliographic references to establish the baseline status, sometimes on an inappropriate scale even for projects located at sites with remarkable biodiversity. Therefore, the impact assessment cannot be performed satisfactorily. This situation was encountered even in the case of projects planned for environmental reasons.

Thus for two dredging projects in 2017 the Ae considered that the detail about the baseline status, on which the impact assessment was based, was sufficiently lacking that the dossiers could not, as they stood, be presented to the public enquiry.

River and marine transit of sediment may be affected by dredging operations. Its continuation or restoration may be at stake, or even be one of the reasons for the project. As the case may be, the baseline status should therefore include detailed information on sedimentology and hydrodynamics in order to provide a benchmark for assessing the effects of the project on currents and sediment transport. This aspect has not always been sufficiently covered even in

projects where it was important in terms of both related impacts and of providing evidence of the long-term effectiveness of the project.

CLASSIFICATION OF SEDIMENT

This is an essential and strategically important question, since it allows us to identify the procedure to be applied to the dossier (automatic submission for impact assessment, examination on a case-by-case basis, exemption from environmental assessment, and regime relating to the law on water) and the environmental and health impact of the project.



Maintenance dredging on Rhone-Rhine canal

However, such classification of sediment is very often incomplete: survey designs may be insufficient or omit sectors of the project, there may be a failure to take into account too large a number of measurements deemed non-representative, classification may be imprecise or may use ranges of values that prevent the placement of samples within prescribed categories or questions about the polluted or non-polluted nature of sediment, or even its status as waste. The regulations are cited in dossiers presented but are interpreted and applied in a variable manner.

IMPACT RELATED TO THE FUTURE OF SEDIMENT AND ITS MANAGEMENT

Some dredging operations present potentially significant issues linked to the remobilisation of polluted sediment, whether disposed of in the aquatic environment or on land (potential transfer of pollution into soil or water). The introduction of pollutants into the food chain⁴⁷ may then have to be assessed, including any health aspects when the human food chain is likely to be affected. These assessments are usually little developed in impact assessments, being often of similar quality to the classification of sediment.

In several cases, the level of pollution should lead to questions about the method of managing sediment selected (for example, in the case of dumping of polluted sediment, backfilling quarries, or a dedicated disposal site). On the contrary, in fact, dossiers consider that these may be disregarded or, conversely, that they are proper to another project, which means the matter is sidestepped. The pollution level may also lead to questions about the design of any facilities that may be required (mechanism for collecting and processing leachates in the case of disposal on land). Thus an incomplete classification of sediment also often results in weaknesses when justifying choices made with regard to pollution levels, with some dossiers focusing on the maintenance operation without considering the more virtuous preventive management of the riverbed.

46 | In ecology, biocenosis is the entirety of living things that coexist in a given ecological area, plus their organisation and interaction. Together, the biotope and biocenosis form an ecosystem (source: Wikipedia).

47 | A trophic network is a set of linked food chains within an ecosystem, through which energy and biomass circulate (source: Wikipedia).



ZOOM ON...

Regional natural parks: issues of environmental reporting - environmental arbitration

After Sainte-Baume and Oise-Pays de France in 2016, five new charters for regional natural parks were submitted for the opinion of the Ae in 2017: Baie de Somme in Picardie Maritime, Aubrac, Corsica, Millevaches and Médoc.

These documents are generally the result of several years of consultation to build a shared vision of a region. The introduction of an environmental assessment, accompanied by an Ae opinion prior to a public inquiry, is a new and specific step in the process of creating or renewing a PNR.



Baie de Somme – Picardie Maritime Regional Natural Park (RNP)

What are the benefits of an environmental assessment? What added value can the Ae opinion bring?

RNP charters articulate the search for a delicate balance between preservation of the environment and promotion of economic development that is rooted in local values. For reasons beyond their control, RNPs, whether being created or renewed, have become involved in the process of environmental assessment somewhat late in the day. Nevertheless, their reports do provide interesting insights into the process and into the analysis of priorities and choices made. Environmental considerations are a constitutive factor of the existence of a park and, hence, of its charter, and Ae opinions have noted no obvious mismatch between the environmental issues of the regions concerned and the targets in their charters.

Nevertheless, the environmental assessment does allow us to highlight the risks, that are slight but not to be overlooked, of failing to achieve certain environmental objectives, particularly as a result of the possible negative effects of certain measures that reflect the main aspects, including the environmental aspects⁴⁸, of the charter. It also allows us to identify key points in its implementation and thus seek the optimum balance between the different priorities identified.

Methodological problems can impair the assessment process. This is, however, rarely prejudicial and does not hinder an accurate overall assessment of environmental consideration. The Ae also takes further action for the creation of RNPs as is the case for Medoc⁴⁹, Aubrac⁵⁰, Baie de Somme, Picardie Maritime⁵¹ and Sainte-Baume⁵², since the lack of distance that allows us to judge how the various actors work together and grasp the difficulties of operational implementation could limit the scope of the environmental assessment process. It does, therefore, recommend that environmental specifications be produced for the implementation of measures to which the joint

association and its contracted partners are committed. It might also end up recommending, as in the case of Sainte-Baume, that the added value provided by the RNP and the chosen position for the joint association be highlighted more clearly. In a context that is, admittedly, significantly different, the creation of the RNP Baie de Somme, Picardie Maritime, it similarly requested that decisions in terms of scope and the priority strategic measures to be implemented be rendered more clearly; and that synergies be developed with regional structures facing the same issues. And for Aubrac certain difficulties of prioritisation and the operational translation of relevant but weighty targets were encountered, with the RNP being required to coordinate the initiatives of three departments, two regions and eight inter-municipal associations, whose expected roles need to be clarified.

Revision projects, affecting Oise-Pays de France⁵³, Corsica⁵⁴ and Millevaches⁵⁵, will provide valuable feedback and observations formulated during assessment of the preceding charter. They are also likely to bring changes that merit extra attention. For the RNP Oise-Pays de France, while the Ae commends the maturity of projects that draw on advanced engineering and relevant tools that allow truly collaborative work with all partners, it did require elaboration on the success factors for the integration of 27 new communes for improved management of the pressures on the periphery of the region, to give a clearer picture of the interactions between the various measures in the charter and to provide details of the level of involvement of the RNP in the recommended avoidance and reduction measures. Revision of the RNP Corsica charter followed on from a period of uncertainty on the scope and guidelines to be followed, and marked the resumption of a collective desire for restructuring and revitalisation. The lessons drawn from the assessment of the 1999 charter and the choices regarding priority operational objectives were not, however, spelt out, and the Ae recommended in particular that operational

methods for the planned regional rebalancing and for the construction of a unified mountain, countryside and coastal region be set out in detail.



Aubrac Regional Natural Park (RNP)

Ae opinions emphasise quite regularly the need to better prioritise certain issues and goals, to state in detail the methods of achieving these goals and to highlight more clearly the added value of the charter compared with a reference situation without a park. They stress the need to ensure the long-term commitment of all actors, not just the signatories to the charter, in order to achieve the stated objectives. As in 2016, the opinions expressed in 2017 emphasised the importance of the monitoring mechanism which should be put in place rapidly in order to constitute a useful framework over the long term and to act as an alert to the risks of failing to achieve the targets, particularly the environmental ones, set in the charter. They insist on the pragmatism that must govern the choice of indicators and on the need to distinguish between those that apply to the context of the region covered by the programme or plan, in order to highlight more clearly the indicators that relate to the priority provisions in the charter and to the efficiency and effectiveness of the park's contribution to the delivery of the regional project.

- 48 | For example, in support of energy transition
- 49 | Ae opinion no. 2017-28 of 12 July 2017 – Charter for Médoc regional natural park (33).
- 50 | Ae opinion no. 2016-111 of 25 January 2017 - Aubrac regional natural park (12-15-48).
- 51 | Ae opinion no. 2016-108 of 11 January 2017- Baie de Somme regional natural park, Picardie Maritime (80).
- 52 | Ae opinion no. 2016-063 of 5 October 2016 - Ste-Baume regional natural park (13-83).
- 53 | Ae opinion no. 2016-72 of 19 October 2016 - Oise-Pays de France regional natural park (60-95).
- 54 | Ae opinion no. 2017-005 of 26 April 2017- Review of charter of Corsica regional natural park (2A-2B).
- 55 | Ae opinion no. 2017-23 of 14 June 2017- Millevaches regional natural park in Limousin (19-23-87).



ZOOM ON...

“ERC”: the ABC

Challenging the quality of an “avoid, reduce, compensate” approach entails challenging, more generally, the quality of the environmental assessment approach. Comparable to an environmental quality approach, its quality lies primarily in the same keys to success: initiation from project launch, methodological rigour based on up-to-date reference data and relevant indicators, traceability of decisions, etc. On the other hand, it is exposed to the same risks: lack of proportion to what is at stake, excessive formalism that overlooks the essence of the problem, or a highly theoretical “quality paper”, etc.

While not wishing to produce an anthology of the best and worst examples, the Ae would like to highlight a few guidelines, resulting from the analysis of opinions expressed in 2017.

- Avoidance is not necessarily a complex choice: not infrequently have certain sectors with particular natural sensitivity been identified at the design stage of a project and its areas of coverage changed slightly so they can be avoided. This has been the case with many land-use, agricultural planning and forest management (AFAF) projects, whose boundaries are often selected to exclude such environments. As a preliminary step, it is important to identify and classify all the environmental issues in detail from the start, and then prioritise them accurately, insofar as is possible in consultation with the stakeholders.
- The total absence of alternatives, or the absence of the most obvious alternatives in the eyes of the public, is for the Ae the main indicator of an approach carried out too late, when the impact assessment can do no more than favourably present choices that most often have not given due consideration to environmental matters. This is self-evident when some of the most important issues have not been avoided. The Ae had found that the project for an SNCF logistics base at Lannemezan⁵⁶ did

not implement an avoidance strategy upstream of identifying the project site, leading to the destruction of a natural environment (20 ha of wetlands). This was also the case with many other, smaller scale projects (removal of level crossings, destruction of hedges in AFAFs, etc.).

Action prior to this stage should consist of identifying the objectives and functionalities expected from the project, in a sufficiently open manner.



Management and maintenance of Sasse-Durance confluence

Dossiers often identify several objectives but without verifying that the project meets these objectives - or, especially, that another project could do so. Thus the impact assessment of the development and maintenance work at the Sasse-Durance⁵⁷ confluence was unable to demonstrate the extent to which the different works planned were likely to ensure the healthy ecological status of the habitat over the medium and long term, although this was, theoretically, its objective. Nor is it rare for contractors to find themselves placed in the position of a “forced choice”: many motorway investment plans are

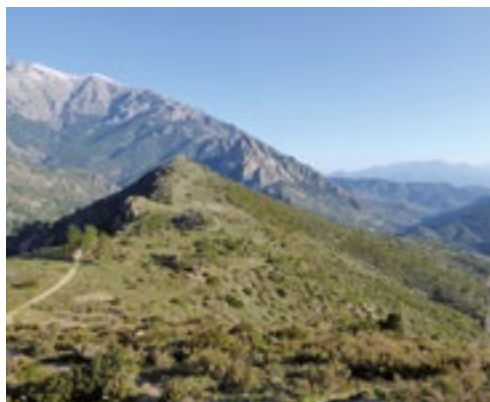
the result of the framework identified by the conceding government (for example, expansion of existing motorways); some new railway stations are located at interconnections⁵⁶; no modal alternative to transportation by road is considered, etc. It is evident that the plans that dictate these choices have rarely been the subject of a strategic environmental assessment approach.

In several cases, the dossier presented to the Ae did not appear to take full account of significant changes in context, that in fact required the approach to be resumed on a different basis altogether⁵⁹.

Changes made to the texts governing environmental assessment now require that, at the least, the scenario proposed be compared with “the probable development of the environment in the absence of project implementation”.

- Most frequently, a good ERC approach ensures that the variant analysis covers many choices and details the characteristics of a project in an iterative manner. Thus the Donges rail bypass dossier set out, step by step, the iterative process that led to the route chosen, beginning with the choice of preferred corridor, then an alternative route, then the establishment of the new railway stop. Each of these steps was underpinned by an analysis of every environmental issue, on every scale. The first version of the Quai de Flandres⁶⁰ expansion project had followed a similar logic, in order to select the version having the lowest impact. The presentation of the second version of the project did not feature the same qualities, with choices being restricted in theory by the commencement of involvement in the first project. This first project had, however, proved impossible to implement, falling within the scope of a public debate about an even more important development project.

Another indicator of an effective ERC approach lies in the quality of prior consultation driven by the contractor, generally translated into consultation statements provided in dossiers or recorded in minutes of any other public meetings. Here, too, the Donges rail bypass project relied on in-depth public consultation, to the point that an alternative was selected only after consultation had ended, taking into account the reactions of the public. Conversely, for the Quai de Flandres expansion as for the development of Triangle de Gonesse⁶¹, the presentation of an ERC approach upstream of a public debate on an even broader matter appears to lack credibility, the debate probably being intended to inform public opinion about the most important options of a project.



Corsica Regional Natural Park (RNP)

The opening and presentation of a maximum of alternatives for dialogue as far upstream as possible thus appears to be the best factor in understanding the issues presented by a project and the gradual endorsement by the public.

Reduction methods are more common. Although they would appear to involve just a few issues (natural environments, noise, etc.), in fact they are often incorporated into the project design itself: suction dredging that limits the risk of resuspension of material, tunnelling methods

56 | Ae opinion no. 2016-119 of 8 February 2017

57 | Ae opinion no. 2017-38 of 26 July 2017

58 | Ae opinion no. 2017-74 of 6 December 2017 on Bry-Villiers-Champigny station

59 | Significant reduction in the volume of excavated material from Line 15 South of the Grand Paris Express to be evacuated by waterway via Bonneuil-sur-Marne transit hub (Ae opinion no. 2017-57 of 11 October 2017), abandonment of Bitschwiller diversion for Kerlenbach roundabout (Ae opinion no. 2017-63 of 25 October 2017)

60 | Ae opinion no. 2017-21 of 14 June 2017

61 | Ae opinion no. 2015-78 of 2 December 2015 on Line 17 of the Grand Paris Express and no. 2015-103 of 2 March 2016 on the Triangle de Gonesse ZAC



ZOOM ON...

using a tunnel-boring machine, inclusion of green spaces in urban development projects, etc. Rarely do they involve atmospheric emissions (pollutants, greenhouse gases); polluted waste material is, generally speaking, classified at a later stage, with management plans not always available even at the environmental authorisation application stage, etc.

The breadth and quality of compensation measures are also indicators of the quality of the approach, with a significant need for compensation suggesting insufficient avoidance or unsuccessful reduction. The fact that the derogation procedure in relation to protected species is likely to present a barrier to authorisation, unless significant public interest in the project can be demonstrated along with the absence of an alternative offering lower impact, does however represent a strong incentive for improving the approach upstream. The Ae recalls that Article L 110-1 of the Environmental Code, as provided for in Law N°. 2016-1087 dated 8 August 2016 on reclaiming biodiversity, natural spaces and landscapes, stipulates that the “principle of preventive and corrective action, by priority at source, to mitigate environmental damage [...] should have as its goal no net loss of biodiversity, or should even aim for a gain in biodiversity”. The Ae can see only advantages if these obligations were to be applied to other issues.

The Ae may perform an assessment on the nature, ratios, surface area, location and duration of implementation and monitoring of these measures with regard to environments or species affected, taking particular interest in their conservation status and in expected gains in functionality, which presupposes a high quality initial diagnosis at the different compensation sites examined.

The Ae does not consider certain regulations that apply to compensation to be a priori inviolable. However, it does consider the criteria of

geographic proximity or, for example, hydrographic coherence to be determining factors, at least for climatic, geological, pedological and water-related reasons and, as the case may be, to enable inclusion within the same network of habitats and corridors as that occupied by the destroyed site. The Ae also endeavours to verify that compensatory measures are sufficient to preserve or restore population levels, the structure of habitats and the functionality of the green and blue network within the affected region. It has illustrated this many times in its opinions on AFAF projects, by encouraging contractors to include planting schemes provided as compensation for removed hedges in the recreation of the hedgerow network, often eroded by previous reparcelling.



Marigny-Chemereau Land-use and Agricultural Planning and Forest Management (AFAF)

Medium-term follow-up to Ae opinions

In accordance with the provisions of the Environmental Code, the Ae only communicates upstream of the public enquiries and consultations into the matters on which it delivers an opinion. It has only very rarely expressed an opinion upstream of public discussions⁶². Since 2014 it has deliberated on average once a year, producing a communication that draws lessons on recurrent themes, having the benefit of a sufficient number of opinions.



Maintenance dredging on Rhone-Rhine canal

As a result of the significant delay between the date of delivery of its opinion and the date of launch of a project, the Ae is usually unable to establish the actual action taken on its recommendations, nor their medium-term effects on the segments of the environment affected. For this reason, the Ae favours several lines of action to consolidate its action over time:

- There are recurrent contacts with certain contractors (particularly SNCF) and with the world of research (ITTECOP⁶³ programme; the “Land transport infrastructure ecosystem and landscape” Programme led by the Ministry for an Ecological and Solidarity Transition), that notably bring together the managers of transport infrastructure, Ademe, Cerema and the FRB (Foundation for Research into Biodiversity).

- For linear infrastructure, the Ae is approached at several stages of the approval process (in particular, declaration of public utility and environmental authorisations with several components). Through the instruction of its opinions on updated impact assessments, it regularly notes positive follow-ups to several recommendations in its initial opinion (see, for example, the increase in compensatory surface area for the little bustard for the Nimes-Manduel railway station).

- In its 2017-75 and 2017-83 opinions on the latest AFAF projects in the department of Charente, on either side of the Southern-Europe Atlantic high speed railway line, it made a more general recommendation that an overall assessment, on the Charente department level at least, be made of the rate of achievement of the environmental and biodiversity objectives for the projects linked to the high speed line, since the line is now in service and many AFAFs have been created.

The president of the Ae spoke before the enquiry commission about the reality of compensatory measures for damage to biodiversity as part of large scale infrastructure projects, incorporating anticipatory measures, preliminary studies, performance conditions and monitoring⁶⁴. The Ae's main recommendations deal with territorial coherence and, over time, with compensatory measures. In the field of biodiversity, the Ae's recommendations and their outcomes are achieved more effectively with good coordination with the National Council for Nature Conservation (CNPN).

62 | Cf Ae opinion no. 2013-62 on the preliminary study into the CIGEO project

63 | <http://www.ittecop.fr/>

64 | See report: http://www.senat.fr/commission/enquete/atteintes_a_la_biodiversite.html





APPENDICES

03

APPENDICES



You can find all the opinions and case-by-case decisions taken by the Ae in 2017 at the following addresses:

OPINIONS ISSUED IN 2017

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



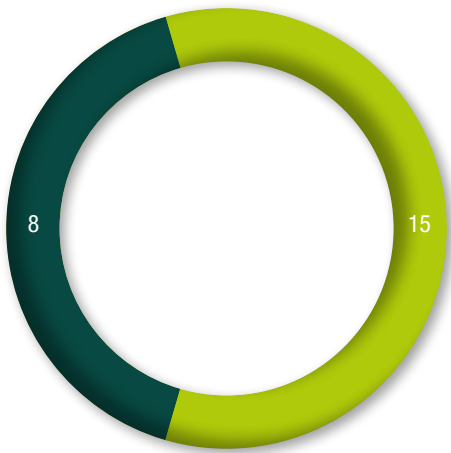
DECISIONS ISSUED

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



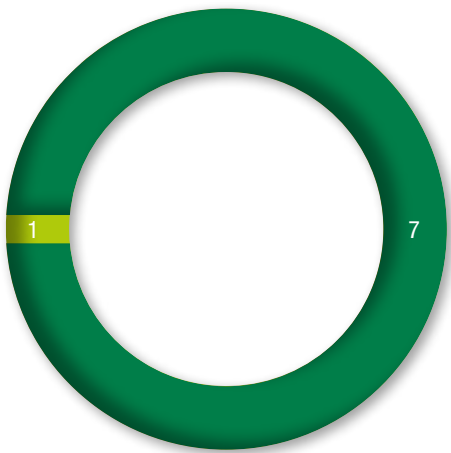
Decisions for evocation 2017

DECISIONS FOR EVOCATION MADE (in number)



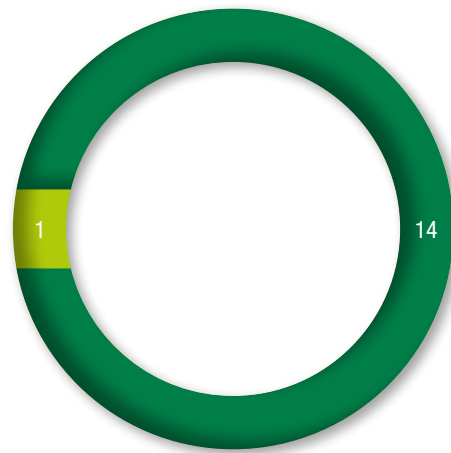
■ SINCE 2016 ■ 2017

THEMATIC BREAKDOWN OF 2017 DECISIONS (in number)



■ TOWN PLANNING DOCUMENTS ■ PLAN/PROGRAM

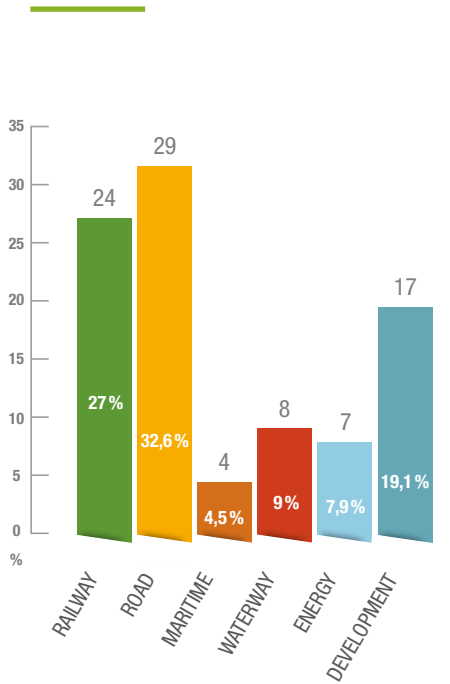
THEMATIC BREAKDOWN OF DECISIONS CUMULATIVE TOTAL SINCE 2016 (in number)



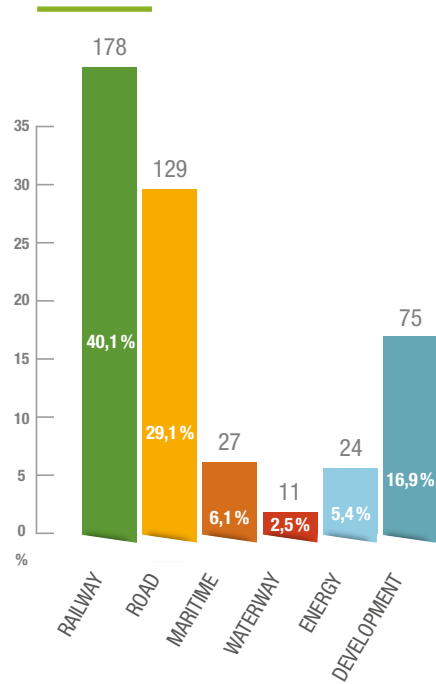
APPENDICES

Case-by-case decisions for 2017 projects

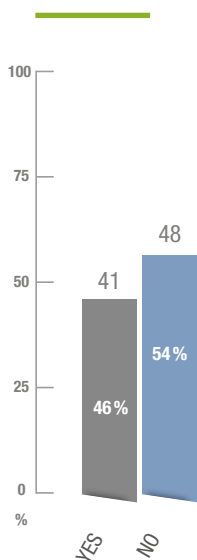
89 DECISIONS IN 2017
(Thematic breakdown in % and number)



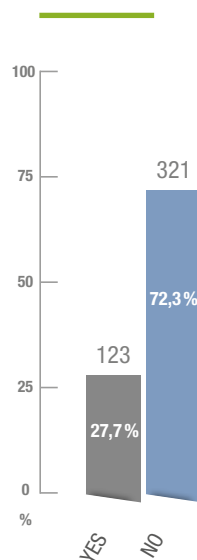
444 CUMULATIVE DECISIONS SINCE 2012
(Thematic breakdown in % and number)



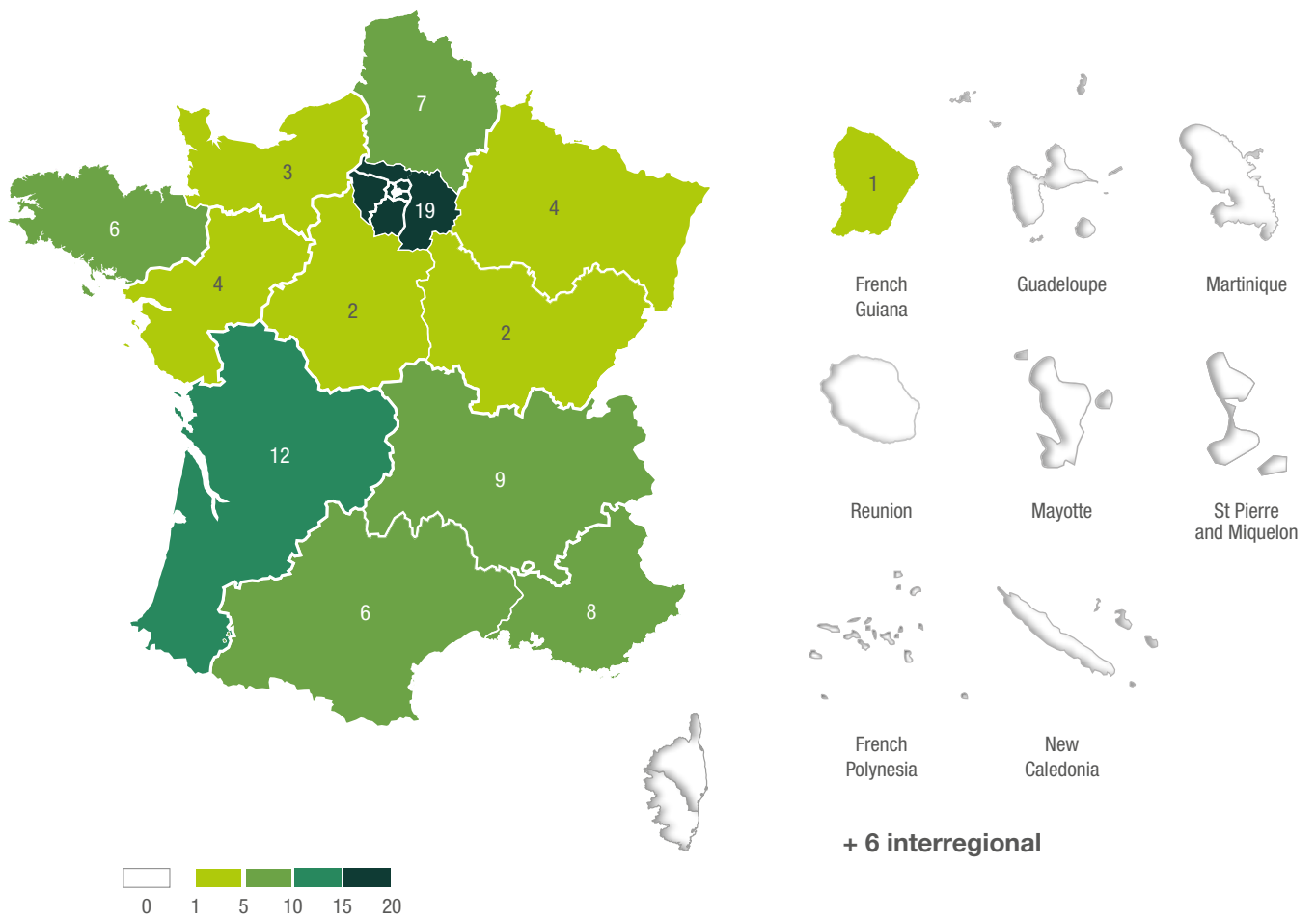
TYPE OF DECISIONS MADE 2017
(in % and number)



TYPE OF DECISIONS MADE CUMULATIVE SINCE 2012 (in % and number)



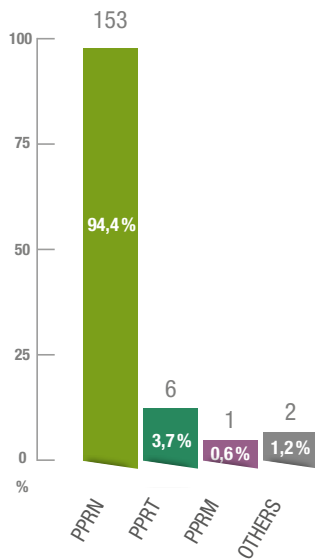
GEOGRAPHICAL DISTRIBUTION OF 2017 DECISIONS (in number)



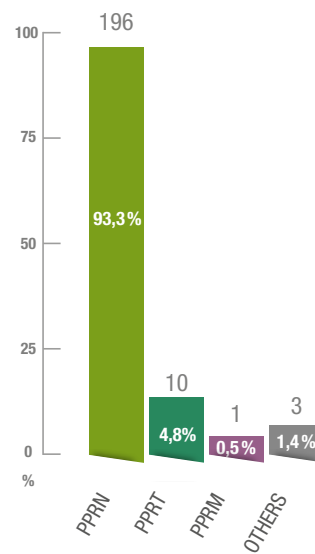
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Case-by-case decisions for 2017 plans/programs

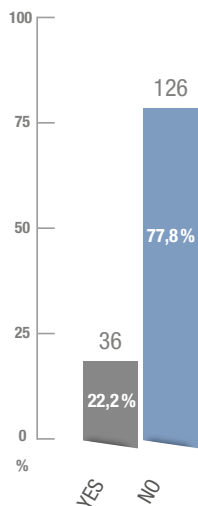
162 DECISIONS IN 2017
(Thematic breakdown in % and number)



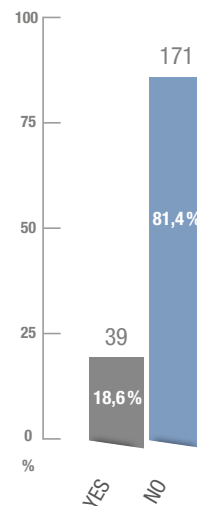
210 CUMULATIVE DECISIONS SINCE 2016
(Thematic breakdown in % and number)



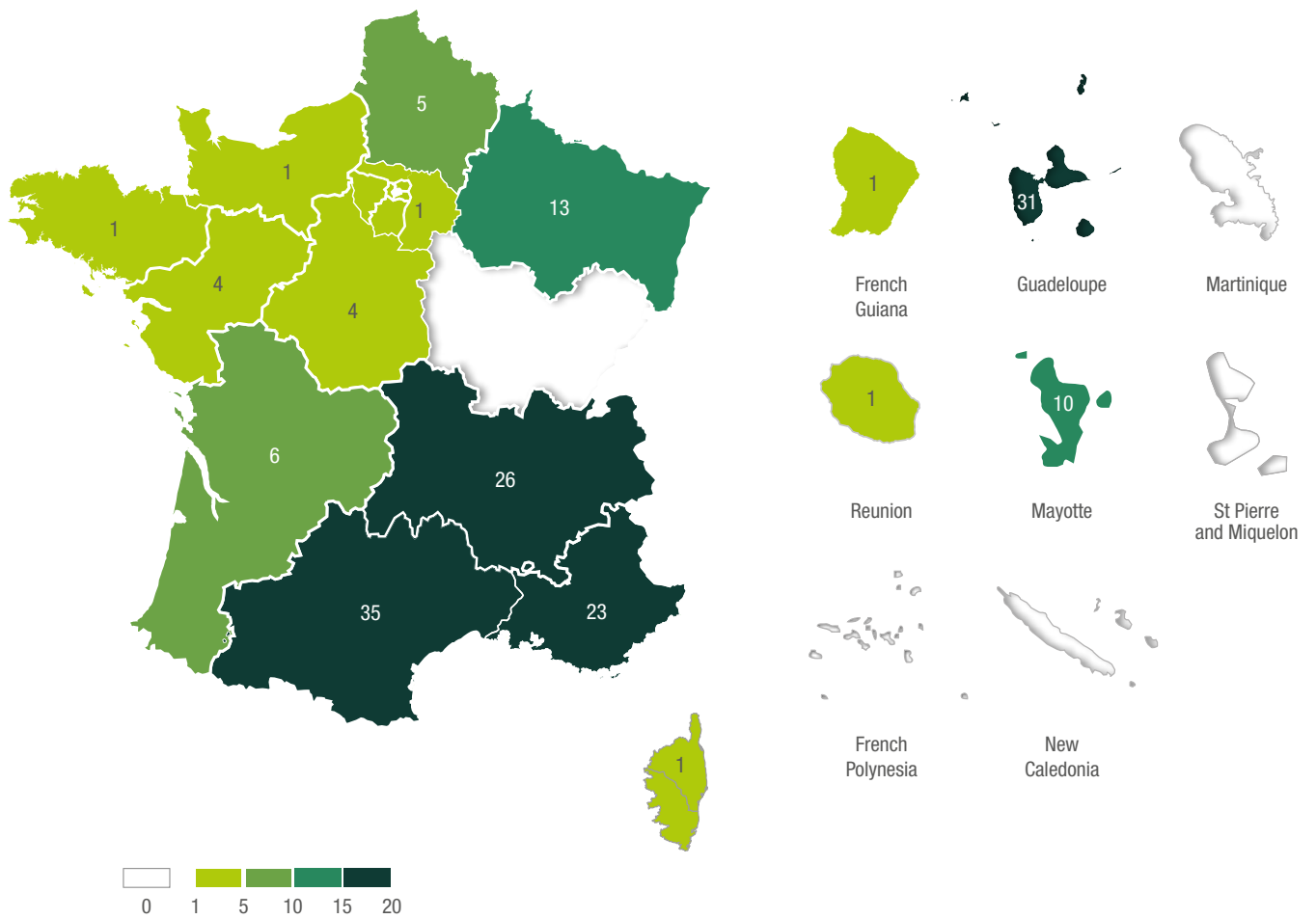
TYPE OF DECISIONS MADE 2017
(in % and number)



TYPE OF DECISIONS MADE CUMULATIVE SINCE 2012 (in % and number)



GEOGRAPHICAL DISTRIBUTION OF 2017 DECISIONS (in number)



APPENDICES

Abbreviations and acronyms

ADEME	The French Environment and Energy Management Agency
Ae	Environmental Authority
AFAF	Land-use and Agricultural Planning and Forest Management
AFDI	French Farmers and International Development
CEREMA	The Centre for Studies and Expertise on Hazards, the Environment, Mobility and Development
CGAAER	General Council of Food, Agriculture and Rural Areas
CGEDD	General Commission on Sustainable Development
CGDD	General Council for the Environment and Sustainable Development
CJUE	Court of Justice of the European Union
CNDP	National Commission for Public Debate
CNPN	National Council for Nature Conservation
CSPNB	Scientific Council of Natural Heritage and Biodiversity
DREAL	Regional Directorate for the Environment, Planning and Housing
DUP	Declaration of public utility
ERC	Avoid, reduce, compensate
FRB	Foundation for Research into Biodiversity
GES	Greenhouse Gas
GPE	Grand Paris Express
GPM	Major maritime port
ICPE	Installation Classified for Environmental Protection
INB	Regulated nuclear facility
ITTECOP	Infrastructure of land transport, ecosystem and landscape
IUCN	International Union for Conservation of Nature
LGV	High-speed line
MAGEO	Upgrading of Oise river to European gauge
MIN	Market of National Importance
MRAe	Environmental Authority Regional Mission
ONTVB	National Approaches to the Conservation and Restoration of Ecological Continuity
PAPI	Action Programs for Flood Prevention

PCAET	Territorial Climate Air Energy Plan
PLU	Local Town Plan
PLU-H	Local Urban Plan - Housing
PLUi	Local Intercommunal Urban Plan
PPA	Atmospheric Protection Plan
PPE	Multi-annual energy program
PPRN	Natural Risk Prevention Plan
PPRT	Technological Risk Prevention Plan
RCEA	Central Europe-Atlantic Road
RNP	Regional Natural Park
SAGE	Water Planning and Management Scheme
SCOT	Territorial Coherence Plan
SGP	Society of Greater Paris
SNMB	National Biomass Mobilisation Strategy
SRCAE	Regional Air Energy and Climate Scheme
SRCE	Regional Ecological Coherence Scheme
TESO	Toulouse Euro South-West (urban project)
VNF	French Navigable Waterways
ZAC	Joint Development Zone
ZNIEFF	Natural area of interest for its ecology, flora or fauna
ZPS	Special Protection Zone
ZSC	Special Conservation Zone

Publication director: Philippe Ledenvic – Editor-in-Chief: Maud de Crépy – Copy Editor: Mélanie Mouëza // Graphic design and production: agencezebra.com – Imprim'Vert certified printer (guarantees the management of hazardous waste in approved sectors). The printer has certified its control chain: FSC BV-COC-839867. Printed on partially recycled paper from sustainably managed forests. // Photo credits: © MTES - MCT: Gérard Crossay, Bernard Suard; © Xavier Granet; © REA / Gilles Rolle; © Société du Grand Paris / Atelier Novembre; © Géoportail / Shutterstock

Acknowledgements to Ae members for their contributions to this annual report.



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