



Autorité environnementale



The **Autorité environnementale** (Environmental Authority) contributes to a high level of protection of the environment and human health in the projects, plans and programmes submitted to its examination and enlightens the public and decision-makers about the environmental consequences. In this respect, Ae opinions, made available to the public on the internet, confirm or, in certain cases, recommend additions to the analysis and proposals put forward in the developer's own assessment. These opinions establish priorities and encourage greater perspective and further analysis.

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The commitments of the Autorité environnementale

To implement the principles of French and European legislation

European legislation is fully enforced. French legislation provides the framework for Ae's mission based on three principles:

- 1 • Authorisation for public and private projects likely to have a significant effect on the environment can only be granted once the environmental impact has been assessed. The same principle is applied to plans and programmes;
- 2 • The assessment must take into account human health, quality of life, biodiversity and the functioning of ecosystems¹;
- 3 • The assessment is based on appropriate information supplied by the developer, possibly supplemented in accordance with the opinion of the competent authority (Ae) available to the public.

This legal framework incorporates the objectives of the Aarhus Convention (also included in directive 2003/4/EC), defending three fundamental rights for citizens and associations: access to information, participation in decision-making processes and access to justice.

To ensure independent judgement and expression

Ae's function is that of a guarantor, analysing how far the project developer has taken environmental issues into consideration and, when relevant, recommending improvements.

To ensure its independence of judgement and expression, Ae has put in place a transparent governance based on detailed, public rules of procedure and structured as to provide the best possible guarantees of quality and impartiality in its published opinions:

- rapporteurs are appointed on the basis of the project's details and the range of skills required to screen them;
- diverse scope of activities can be made use of internally and complementary analyses or joint expert views are taken into account to prepare the draft opinion;
- collective discussions take place behind closed doors;
- opinions are made available to the public on the Ae website immediately after being approved.

Ae opinions: benefits for stakeholders

Project developers and applicants for plans or programmes

Ae's opinions create the conditions in which a project, plan or programme can evolve thanks to better consideration for environmental and health issues by project developers at all stages: design, authorisation and follow-up.

Project developers may ask Ae beforehand to specify the field of application, the level of detail of the environmental information required and the methodology for dealing with questions to help them produce their impact assessment reports.

During the preparatory phase of the opinion, discussions with Ae's rapporteurs are an opportunity for the project developers to compare their vision on the project's environmental issues with the «experts»

vision, which can help identify possible areas for improvements.

When the public inquiry takes place, the documentation gives all the relevant information to the public.

Authorities responsible for approving the project, plan or programme

Before the public consultation and the exercise of their responsibility for overall arbitration, the authorities have a full, rigorous and impartial opinion about how the operation in question takes environmental issues into account and, where relevant, a vision of the improvements made by the applicant in the light of the Ae opinion.

The public

Thanks to Ae's opinions, the public benefits from the analyses of an environmental guarantor where the project developer or applicant could be suspected of bias in their analyses of the project's impact.

With the clear, non-technical overview of Ae's opinion summary, the public can more easily exercise its right to take part in environmental decision-making procedures.

Investigating commissioners («commissaires enquêteurs»)

Ae's opinion contributes useful information to the document used to prepare the public inquiry and the analysis and synthesis carried out by the investigating commissioners. It makes it easier to reach reasoned conclusions.

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The European and national legislative framework:

- directive 2011/92/EU² of 13/12/2011, codifying directive 85/337/EEC, the so-called «project directive». The 2001/42/EC «plans and programmes» directive on assessing the environmental impact of certain plans and programmes;
- their transposition into French legislation by articles L122-1 and thereafter of the French Environmental Code (code de l'environnement), L121-10 and thereafter of the Planning Code (code de l'urbanisme) and the associated regulatory articles;
- the Aarhus Convention and article 7³ of the Environmental Charter (Charte de l'environnement), adopted by the constitutional law of 1 March 2005.



The process, from referral to opinion:

Referral⁴

- 1 • The decision-making authority submits the application for authorisation to Ae. The application includes the assessment report on the environmental impact of the project, plan or programme.
- 2 • The permanent team analyses the application form and ensures it is complete and well-founded, and acknowledges receipt of the documentation.

Analysis

- 1 • **The Ae president appoints the rapporteurs** responsible for the application from among Ae's voluntary members, including the permanent team, according to their skills, workload and the scale of the application.
- 2 • **The rapporteurs analyse all the documentation** and, to provide initial elements for their report:
 - meet the project developer;
 - carry out a site visit;
 - call for additional contributions:
 - from the prefect, DREAL (regional environment, development and housing department) and the health ministry,
 - from specific experts if necessary;
 - use unsolicited contributions, such as input from naturalist associations or neighbours.
- 3 • **The rapporteurs draft a preliminary opinion:**
 - description of the project in its context and the procedures;
 - hierarchy of issues;
 - operational recommendations to improve:
 - the project's consideration for the environment,
 - the quality of the impact study and the legibility of the application.
- 4 • **A first draft is submitted** by the Ae president to the Ae members for joint written discussions lasting a week.
- 5 • **The rapporteurs prepare an amended draft** based on the reactions and suggestions made and discussed in writing, identifying changes and sensitive questions to be debated by the Ae college.

Opinion

- 1 • **The text of the opinion is submitted to the Ae college.** The college meets every two weeks. The opinion is adopted in its final form during the session.
- 2 • **The opinion is immediately published on the Ae website.** A copy is sent to the project developer or applicant and the authority responsible for referring applications.
- 3 • **Follow-up.** The Ae opinion is inserted into the documentation provided for the public inquiry. Where relevant, Ae invites the project developer to submit its responses to any recommendations made.

Case-by-case examination and decision:

Referral

- 1 • **The project owner informs Ae** of certain projects⁵ so that it can decide whether an impact assessment is necessary or not.
- 2 • **A rapporteur is appointed in rotation from the Ae permanent team** to prepare the draft decision.
- 3 • **An examination committee is appointed** consisting of two permanent Ae members in rotation.

Examination

- 1 • **The committee analyses** draft decisions before they are submitted to the Ae president for signature.
- 2 • **Each decision is justified based on three categories of considerations:** the nature of the project, its location and its environmental impacts. Sometimes, an additional consideration repositions the application within a wider project submitted for a systematic impact assessment due to its nature.

Decision

The decision results in either the project's submission for an impact assessment, or its non-submission; this cannot be combined with any recommendations or reservations.

Ae, competent for case-by-case decisions, delegated its competence to its president under the conditions above in a deliberation on 25 April 2012. In the event of obstacles, the president delegates his signature to a permanent member of Ae.

Time:
3 months
from
referral

Time:
35 days
after
referral

¹ More specifically, the European directive clarifies that the environmental impact assessment must appropriately identify, describe and evaluate the notable direct and indirect effects of a project on a number of factors according to each specific case.

² Directive 2014/52/EU, modifying certain aspects of directive 2011/92/EU (known as the EIA Directive), has to be transposed into French legislation by May 15th 2017.

³ Article 7: «Everybody has the right to access information about the environment held by the public authorities and to take part in the development of public decisions that have an impact on the environment, subject to the conditions and limits defined by the law.»

⁴ All projects, plans or programmes subject to environmental assessment are referred to the Ae before the public inquiry and before any decisions are taken; see articles R.122-2 and thereafter of the environmental code and R.121-14 and thereafter of the planning code.

⁵ In accordance with the list in the appendix to article R.122-2 of the Environmental Code.



Ae's collegial governance

Ae operates on the principle of collective deliberation. This provides a guarantee of a constructive comparison between expert opinions and diverse knowledge within an internal process for preparing opinions.

Permanent members

- They are generalist engineers and inspectors with skills in water and biodiversity, local development, transport, infrastructure and environmental legislation;
- the rapporteurs are chosen from the permanent members and the permanent team;
- permanent members devote 50% of their time to this work, alongside audit, expert advice and consultancy tasks;
- they represent two thirds of Ae's decision-making members.

External qualified members

These members contribute to the Ae according to their specific environmental skills:

- natural heritage and biodiversity, nature and landscapes, water and aquatic habitats, environmental legislation, etc.
- they represent one third of the decision-making members.

Members of the permanent team

They are in charge of:

- ensuring that applications are complete;
- answering questions from project developers and administrative authorities;
- preparing case-by-case decisions;
- administrative follow-up and organising meetings;
- publishing opinions online immediately after their approval.

The members of the permanent team also act as rapporteurs for a significant number of draft opinions.

Ae, one of the state's environmental authorities

In France, the competent administrative authority of the state for environmental matters is either the minister of the environment, the CGEDD Ae, the prefect of the region (assisted by DREAL staff) or the prefect of the «département» (French administrative district) for certain plans and programmes.

The CGEDD's Ae exercises its role as the environmental authority for projects in the following two cases:

- if the minister for the environment is the authority responsible, under his ministerial competence, for taking the decision to authorise the project or suggest it to the government;
- if the project developer or applicant is the state, represented by a service reporting to this minister or a public-sector institution under his supervision.

The scope of Ae's competence with regard to projects also extends to:

- all the projects in a programme of functionally linked operations if one of the projects requires a decision taken by the minister for the environment or proposed by him to the government;
- all the projects requiring several administrative decisions if one of them falls inside the competence of the minister or is proposed by him to the government.

Ae's competence also extends to a set of plans and programmes.

