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Office franco-allemand pour
la transition énergétique

Land selection criteria in France: urban planning rules and support mechanisms

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Intervention plan

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Introduction

To select a site for a ground-based PV plant, many criteria are taken into account in addition to urban planning rules and the rules listed in the tender specifications :

- Land control
- Grid connection possibilities (prices and deadlines)
- Accessibility of the land plots
- Environmental sensitivity (location in Natural Areas of ecological, faunistic and floristic interest, sensitive areas, wetlands, Natura 2000...). This sensitivity will be considered in the environmental impact study and will require special authorisations where appropriate (exemptions for protected species, etc.)
- Constraints related to water protection (ie. water abstraction)

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I. Urban planning constraints

1. Urban planning constraints applicable to all projects

General urban planning rules contain binding provisions for ground-based PV projects :

- ❖ The project must not compromise public health and safety:
 - **Fire risks:** a PV project located in a high-risk area for forest fires must include provisions on accessibility to rescue and the need to provide a fire reserve (CAA Bordeaux, 03.04.2018)
 - **Visual disturbance risks:** a project located less than 3 km from an aerodrome requires the opinion of the Minister of Civil Aviation, who may refuse in the event of a risk of "glare" (Instruction of the Military Air Traffic Directorate, 09.07.2018)

- ❖ The project must not compromise the conservation or enhancement of an archaeological site (art. R.111-4 of the Town Planning Code)

- ❖ The project must not jeopardize the protection of sites and landscapes (art. R.111-27 of the Town Planning Code)
 - A project may be rejected if it is located in a natural sector that is part of a landscape protected under UNESCO (CAA Marseille, 11.12.2015, n°14MA00577).

I. Urban planning constraints

2. Urban planning constraints applicable to projects located in a municipality not covered by a local urban planning scheme (LUP) or an intercommunal local urban planning scheme (LUPi)

(municipality subject to the RNU* or covered by a municipal map)

❖ A ground-based PV plant = an installation necessary for equipment of collective interest:

- The qualification of installation necessary for equipment of public interest is justified by the production of electricity sold to the public, which raises the question of PV power plants which production would only be sold to a single consumer (via a "corporate PPA")
- A ground-based PV plant is authorised in the non-urbanised areas of the municipal maps and outside the urbanised parts of the municipality ***“as long as it is not incompatible with the exercise of an agricultural, pastoral or forestry activity on the land on which it is located and as long as it does not affect the protection of natural areas and landscapes”***.

*RNU: national urban planning rules

I. Urban planning constraints

2. Urban planning constraints applicable to projects located in a municipality not covered by a local urban planning scheme (LUP) or an intercommunal local urban planning scheme (LUPi)

(municipality in RNU or covered by a municipal map)

❖ The condition of compatibility with the exercise of an agricultural, pastoral or forestry activity on the site requires a thorough study of the characteristics of the site:

- What is the use of the land? Agricultural? Pastoral? Is it classified as an PDO* zone?
- In the absence of agricultural use, it remains to be demonstrated that the agronomic value is low, that the farm has ceased long ago (ACA Marseille, 09.05.2018 on post-agricultural wastelands)
- Case law is not consistent: ACA Marseille, 11.12.2018: confirmation of a refusal to authorise a project on land that has not been used for more than 50 years and has a low agronomic value (but the project did not include an agricultural component).

*PDO: Protected Designation of Origin

I. Urban planning constraints

3. Urban planning constraints applicable to projects located in a commune covered by a Local Urban Plan (LUP)

❖ Constraints in a PLU N zone (natural and forest zone) that does not expressly allow ground-based PV plants:

A zone N generally allows the installation of equipment of collective interest

The judge proceed to a case-by-case analysis and focuses on the characteristics of the area

- No damage to forest areas or natural resources when the project is located in an area where the woodlands composing the area have been cut several times and are characterized by the presence of depleted strains providing poor quality wood and when compensatory measures are planned (*ACA Bordeaux, 03.04.18*)
- In view of the rich flora and fauna of the site, the authorised project is not compatible, despite the compensation measures proposed by the petitioner, with the natural character of the area and cannot therefore be authorised in an N zone (*ACA Nantes, 22.12.17*)

I. Urban planning constraints

3. Urban planning constraints applicable to projects located in a commune covered by a Local Urban Plan (LUP)

❖ Constraints in a LUP zone A (agricultural zone) that does not expressly allow ground-based PV plants:

Zone A generally allows the installation of equipment of collective interest

The judge checks whether the PV project allows a significant agricultural activity to be maintained on the site where the project is located (*CS, 08.02.2017*)

In concreto control of the activity in the field and the measures taken:

- Authorized PV project in zone A that allows the maintenance of breeding activity (alpacas) by raising the panels (*ACA Bordeaux, 15.03.2018*)
- However, confirmation of the refusal of a project for which the proposed beekeeping activity is not likely to compensate for the reduction in agricultural areas caused by the project (21.3 hectares of wheat cultivation and 5.2 hectares of maize) (*ACA Nantes, 29.12.2017*).

The judge takes into account the opinions delivered by the competent services during the investigation (Chamber of Agriculture, departmental commission for the preservation of natural, agricultural and forest areas)

I. Urban planning constraints

3. Urban planning constraints applicable to projects located in mountain or coastal area

❖ Principle applicable in mountain and coastal areas:

- **Principle:** the installation of a ground-based PV plant must be carried out "in continuity with existing agglomerations and villages" (art. L. 121-1 and following and L. 122-1 and following of the urban planning code and *CS, 28.07.17*)

❖ Application to ground PV:

- **Coastal zone: no continuity** with urbanization for a ground-based PV plant located :
 - a few hundred metres from the runways of an aerodrome (*CS, 28.07.17*) or
 - near a hamlet whose buildings are too few to be considered as constituting a village (*ACA Bordeaux, 17.10.2017*).
- **Continuity** for a PV power plant "adjacent to an AREVA industrial site" (*AT Montpellier, 09.11.18*)
- **Mountain area:** it is possible to derogate from the principle of continuous urbanisation in mountain areas, by virtue of a decision of the municipal council, provided that the general interest of the municipality justifies it (*ACA Lyon, 13.12.16*)

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II. The constraints linked with the CRE tender specifications

1. Conditions for the installation of ground-based PV installations in the call for tenders CRE 4

The conditions are based on the specifications of the call for tenders for the construction and operation of solar power plants "Ground-based power plants with a power output between 500 kWp and 30 MWp" (known as "CRE 4")

Installations whose location meets one of the following conditions (3 cases) are eligible:

Case 1: The site is located on an urbanized or to be urbanized area of a LUP (zones "U" and "AU")

Case 2: The establishment of the installation meets the following three cumulative conditions

- The site is located in a natural area of a LUP marked "renewable energy", "solar", or "photovoltaic" (N-pv, Ne, Nz, N-enr etc.), or in a natural area whose urban planning document regulations explicitly authorize renewable energy production facilities, solar or photovoltaic, or in a "building" area of a municipal map
- The site is not located in a wetland
- The project is not subject to a land clearing permit, and the site has not been cleared during the five years preceding the deadline for submission of bids. By way of derogation, land belonging to a local authority (or region, department, public institution, public utility establishment, etc.) and subject to land clearing authorisation (cases listed in Article L. 342-1 of the Forest Code)

II. The constraints of the specifications for calls for tenders

Case 3: The site is located on a degraded or priority site, defined as follows:

- The site is a polluted site or industrial wasteland
- The site is a former quarry, except where agricultural or forestry rehabilitation has been prescribed
- The site is a former mine, including a former slag heap, dock or land degraded by mining activity except where agricultural or forestry rehabilitation has been prescribed
- The site is a former Waste Storage Facility, except where agricultural or forestry rehabilitation has been prescribed
- The site is a former or abandoned aerodrome
- The site is a neglected port, road space or railway area
- The site is located within an classified facility for the protection of the environment (“ICPE”) subject to authorisation, with the exception of quarries
- The site is a water body (floating installation)
- The site is in the danger zone of a SEVESO establishment or in the high or major hazard zone of a PPRT

One difficulty concerns cases where agricultural or forestry rehabilitation has been prescribed but has not been properly carried out, so that the land is in fact degraded but not in law.

Conclusions :

- Projects **located on a NUP, communal map or agricultural zone of a PLU are not eligible** (except for degraded sites)
- Projects located in **natural areas Npv or Nenr** are constrained (except wetlands and without clearing)

2. Summary Table

	General	CRE tender
Zone U	Yes	Yes
Zone N	Yes if the installations are necessary for farming, public facilities or public services and are not incompatible with the exercise of an agricultural, pastoral or forestry activity	Yes if the zone regulations expressly authorize the installation of photovoltaic panels (N-pv, Ne, Nz, Nz, N-enr etc.)
Zone A	Yes if the installations are necessary for farming, public facilities or public services and are not incompatible with the exercise of an agricultural, pastoral or forestry activity	No
NUR	Yes under conditions (principle of limited constructibility): <ul style="list-style-type: none"> - If the installation does not have the effect of harm the protection of natural, agricultural and forest areas - If it does not harm the preservation and restoration of ecological continuity, and if it does not lead to excessive consumption of space - If the departmental commission for the preservation of natural areas has been consulted - If the installation is not incompatible with the exercise of an agricultural, pastoral or forestry activity 	No
Municipal map	Yes, if the installation "are not incompatible with the exercise of an agricultural, pastoral or forestry activity on the land on which they are located and do not affect the protection of natural spaces and landscapes, agricultural or forestry exploitation and the development of natural resources".	No
Wooded area to be cleared	Yes if there is land clearing authorization (article L. 341-3 of the Forest Code)	No except if the land belongs to a local authority (or other legal entities listed in the Forest Code) and is subject to clearance authorization. ❖ For the 1st candidacy period, projects that do not respect the condition of no clearing are accepted
Coastal Law	No, except if the occupied area is limited and in continuity of existing urbanization <i>(article L. 121-8 of the urban planning code)</i>	Same
Mountain Law	<i>No except if the installation is located in immediate continuity with existing urbanization or the urban planning document has a special study that makes it possible to derogate from this rule (Article L. 122-5 of the Urban Planning Code)</i>	Same

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 - a) Ordinary LUP/LIUP revision procedure
 - b) Simplified LUP/LIUP revision procedure
 - c) LUP/LIP modifying procedure
 - d) Compatibility in the context of a project declaration

III. How to deal with these constraints?

1. Evolution of local urban planning rules to allow the implantation of the project

a) Ordinary LUP / LIUP revision procedure

❖ Scope of application :

The LUP is revised when the PEIC* or the municipality decides (art L.153-31 of the town planning code):

- (...)
- to reduce a classified wooded area, an agricultural zone or a natural and forested zone
- (...)

❖ Procedure :

- Deliberation of the Municipal Council / PEIC Council prescribing the revision of the LUP
- Consultation with the public
- Deliberation of the municipal council adopting the LUP project
- Opinions of the municipalities and public bodies concerned
- Public enquiry
- City Council Deliberation approving the revised LUP

(duration: more than a year)

- *SDPP: sustainable development and planning project
- *PEIC: public establishment for intermunicipal cooperation

III. How to deal with these constraints?

b) Simplified LUP/LIUP revision procedure

❖ Scope of application Champ d'application :

The simplified revision procedure makes it possible to reduce an agricultural or natural area when it does not affect the guidelines defined by the PADD (Art. L. 153-34 and L. 153-35 of the town planning code)

❖ Procédure :

- Similar to the normal revision procedure but joint examination of the draft revision by the municipality, the PEIC and associated public bodies, which reduces the duration of the procedure.

c) LUP / LIUP modifying procedure

❖ Scope of application Champ d'application :

- Cases in which a review is not necessary
- Occurs relatively rarely in practice due to the surface area of ground-based PV projects and their effect on land use (AT Montpellier, 09.11.18)

❖ Procedure :

- Initiative of the Mayor or President of the PEIC
- Notification of the project to the associated public entities and municipalities concerned
- Public Inquiry
- City Council Deliberation approving the amended LUP

III. How to deal with these constraints?

C. Compatibility in the context of a project declaration

❖ Scope of application :

Article L. 300-6 of the Town Planning Code provides that the State and its public establishments, local authorities and their groups "may, by means of a project declaration, decide on the general interest of a development action or operation ".

❖ Procédure :

- Deliberation of the municipal council pronouncing on the general interest of the project
- Joint examination
- Public inquiry
- Approval of the compatibility by the local authority or the prefect

REFERENCES OF CASE LAW

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