



ONEMA and the policing of water and aquatic environments

Alexis Delaunay

Director of inspection of uses and territorial action

Summary

1. ONEMA
2. Policing of water and aquatic environments
3. Development of cooperation with Public Prosecutors on post-inspection strategy

1. ONEMA

Creation of ONEMA

To better meet the needs of river basin management in the Community framework

• **Balancing**

- **important achievements of management by basin**
(involvement of elected officials and users, financing means, etc.)
- **with European specifications**
 - ✓ Compliance with directives for resources and results
 - ✓ Implementation on a uniform basis / basins (including DOM)
 - ✓ Ensure consistent reporting
 - and prevent litigation (see State Council, Court of Auditors, F. Keller report to the Senate, etc.)

ONEMA: a double role of steering / operator

- **Role of coordination and steering: agency that sets goals**
 - ✓ **Coordinate scientific expertise, particularly for negotiating the European texts (Irstea, Ifremer, BRGM, etc.)**
 - ✓ **Coordinate and steer the water information system: water agencies (quality), Basin Dreal (quantity), via numerous operators (state services, EP, one of which is ONEMA)**
 - ✓ **Schedule actions in a coordinated manner with the water agencies**
- **Operator role (Dir/Sd)**
 - ✓ **Produce data on aquatic environments (hydrology, biodiversity, etc.)**
 - ✓ **Contribute strongly to the policing of water and aquatic environments**
 - ✓ **Support local water policies (SDAGE, SAGE, Blue field, etc.)**

Some examples related to agriculture

● R&D

- ✓ Technical support for catchment protection in conjunction with INRA
- ✓ Participation in GIS for agricultural crops or high economic and environmental performance crops

● Financing the Ecophyto plan

- ✓ through a portion of the fee for diffuse pollution assigned to this effect (41 million €/year)
- ✓ Decision of the Executive Board of ONEMA after consulting the Advisory Committee on Governance.

Joint mobilization ONEMA and agencies

Strong interactions with the basins:

- CA Onema: consisting of basin members by 38%
- CNE advises on policies and reports on activities
- Monthly meeting of DG Onema / Agencies + numerous technical interbasin coordination groups
- Joint programming with AEs

- **Synergy: e.g. between 2 sections of SDAGE and PDM**

- Incentive action of the water agency

- **Onema field checks**

- ☞ with reporting to the Commission via a common tool

Complementarity and subsidiarity

Organization of ONEMA: 897 ETP in 2013

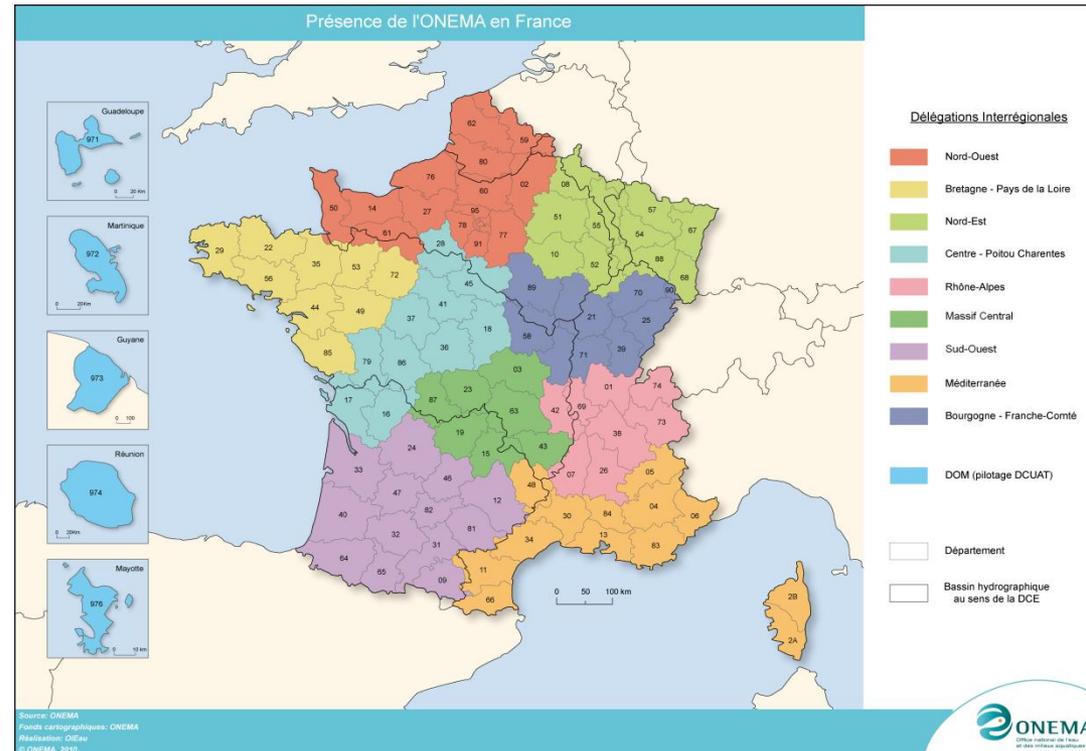
Directorate General

Directorate of scientific and technical activities

Directorate of knowledge and information on water

Directorate of use control and territorial activities

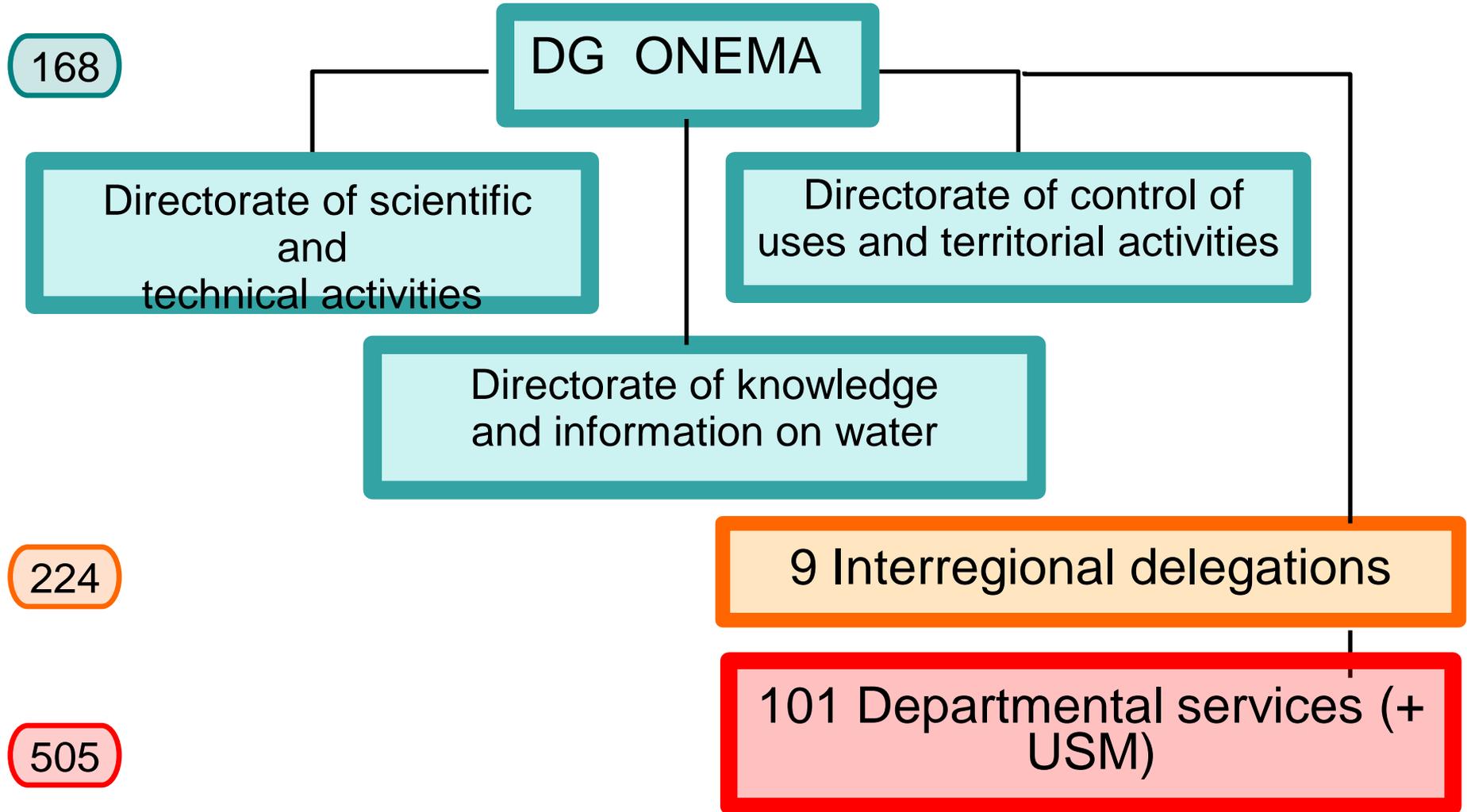
General Secretariat



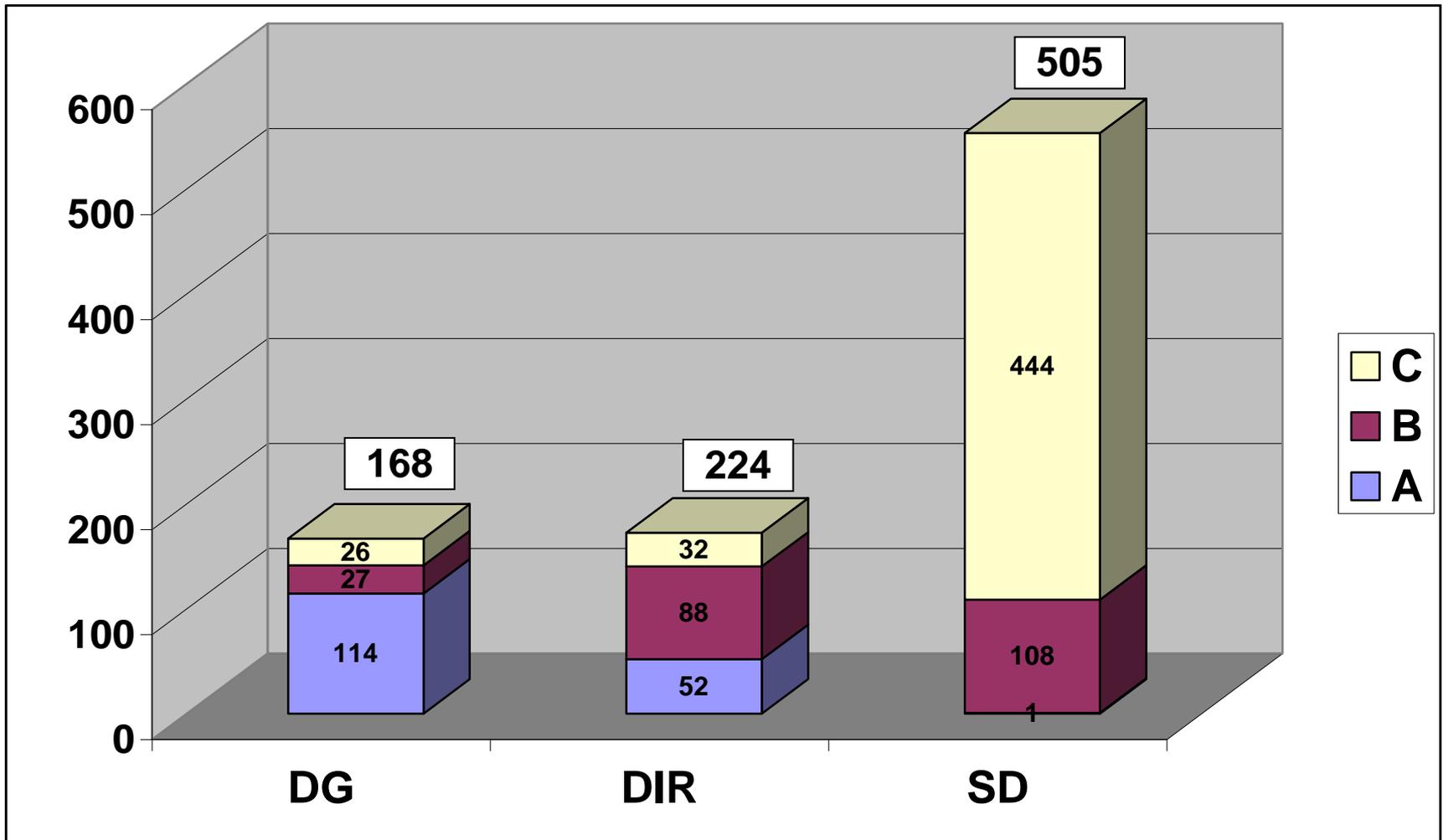
9 Interregional delegations

101 Departmental services

Organization of ONEMA



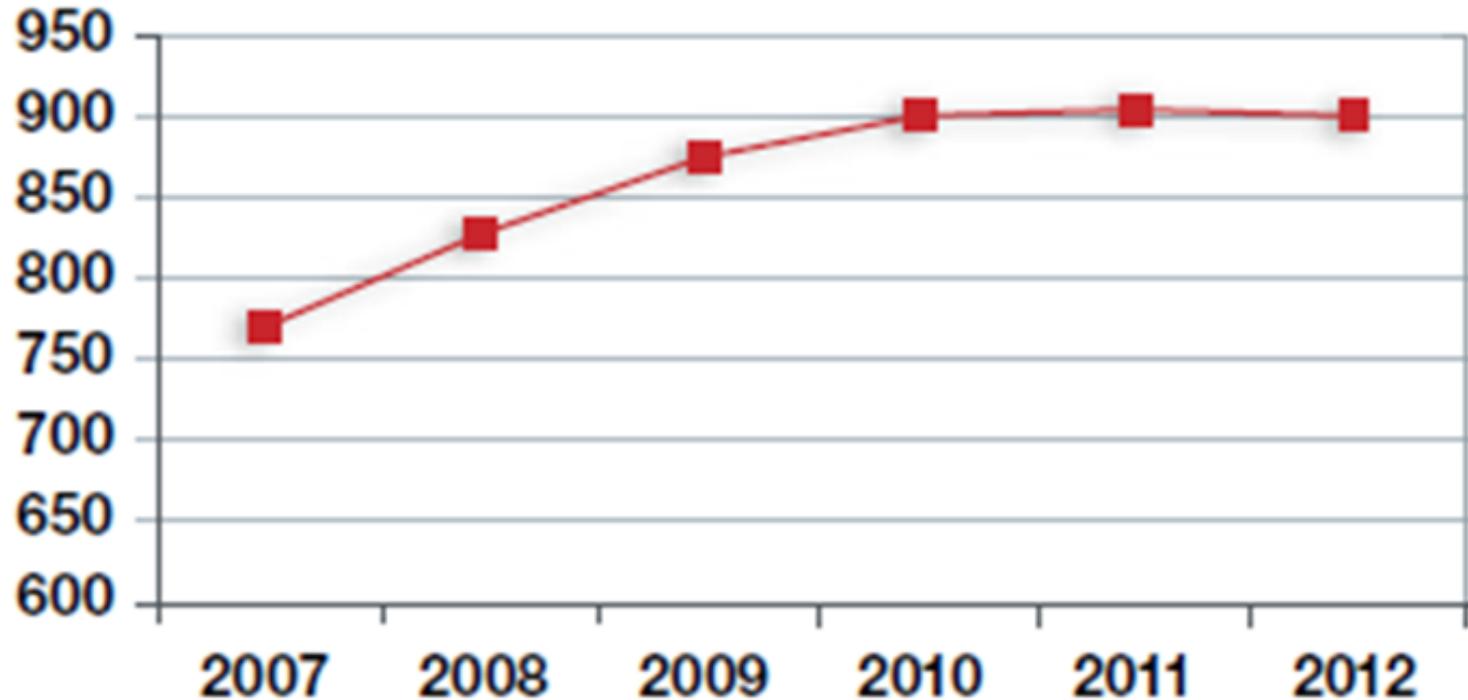
892.3 ETPT 2012 : distribution A, B and C



DIR : includes special migratory units

Growth of Onema

Development of ETPTs from 2007 to 2012

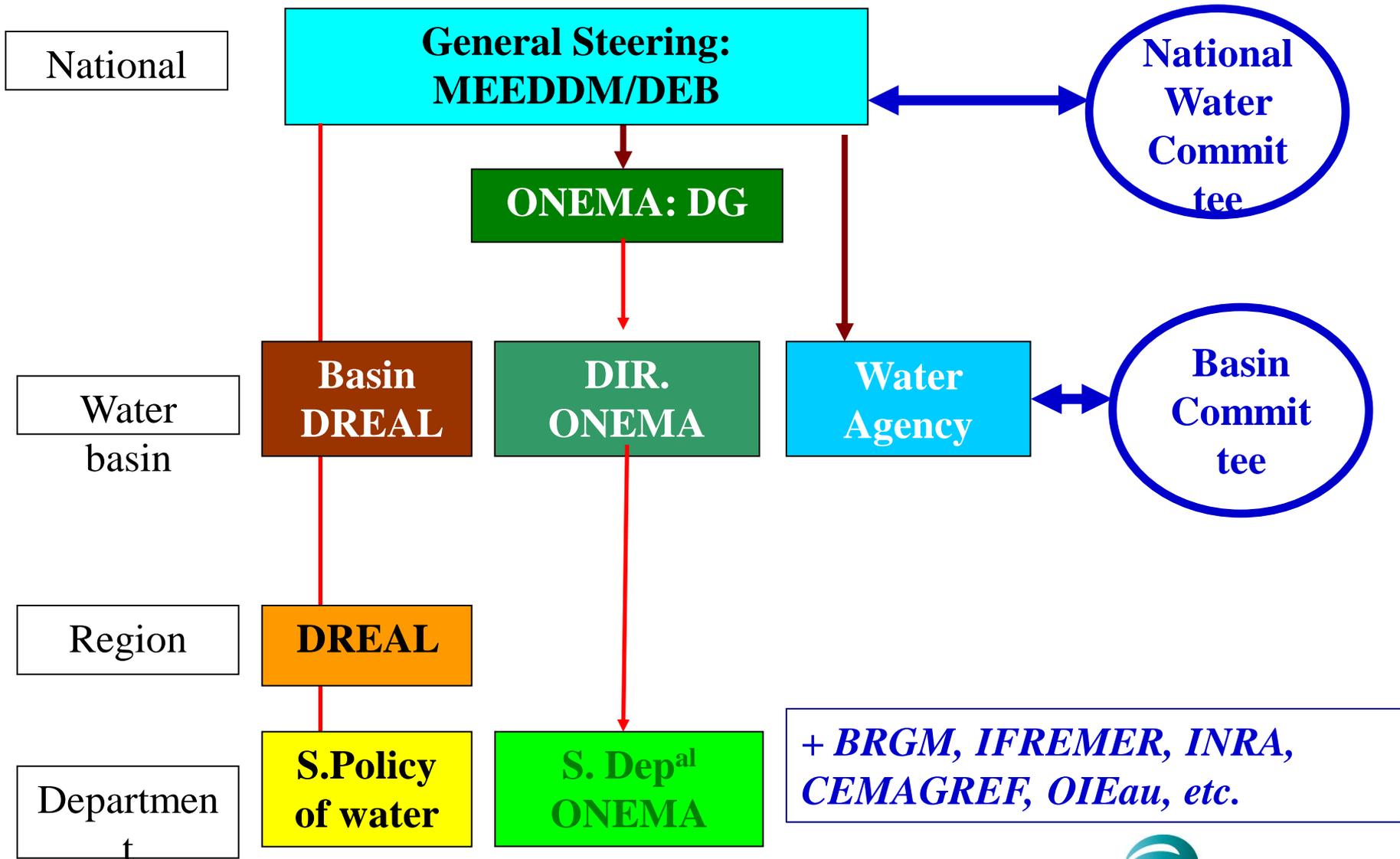


CSP April 27

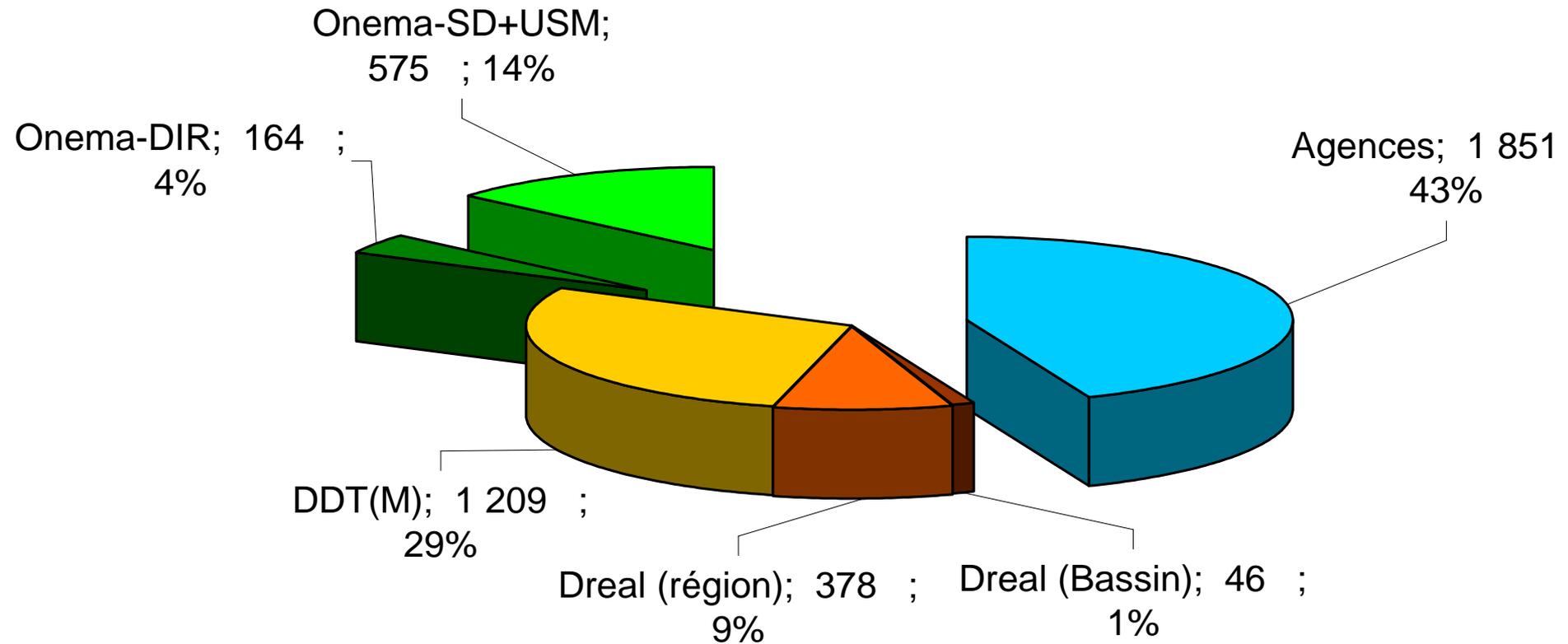
ONEMA

- ☁ Recruitment limited to 907 instead of 937 originally planned for
- ☁ CSP status not suitable for recruitment of experts on new missions

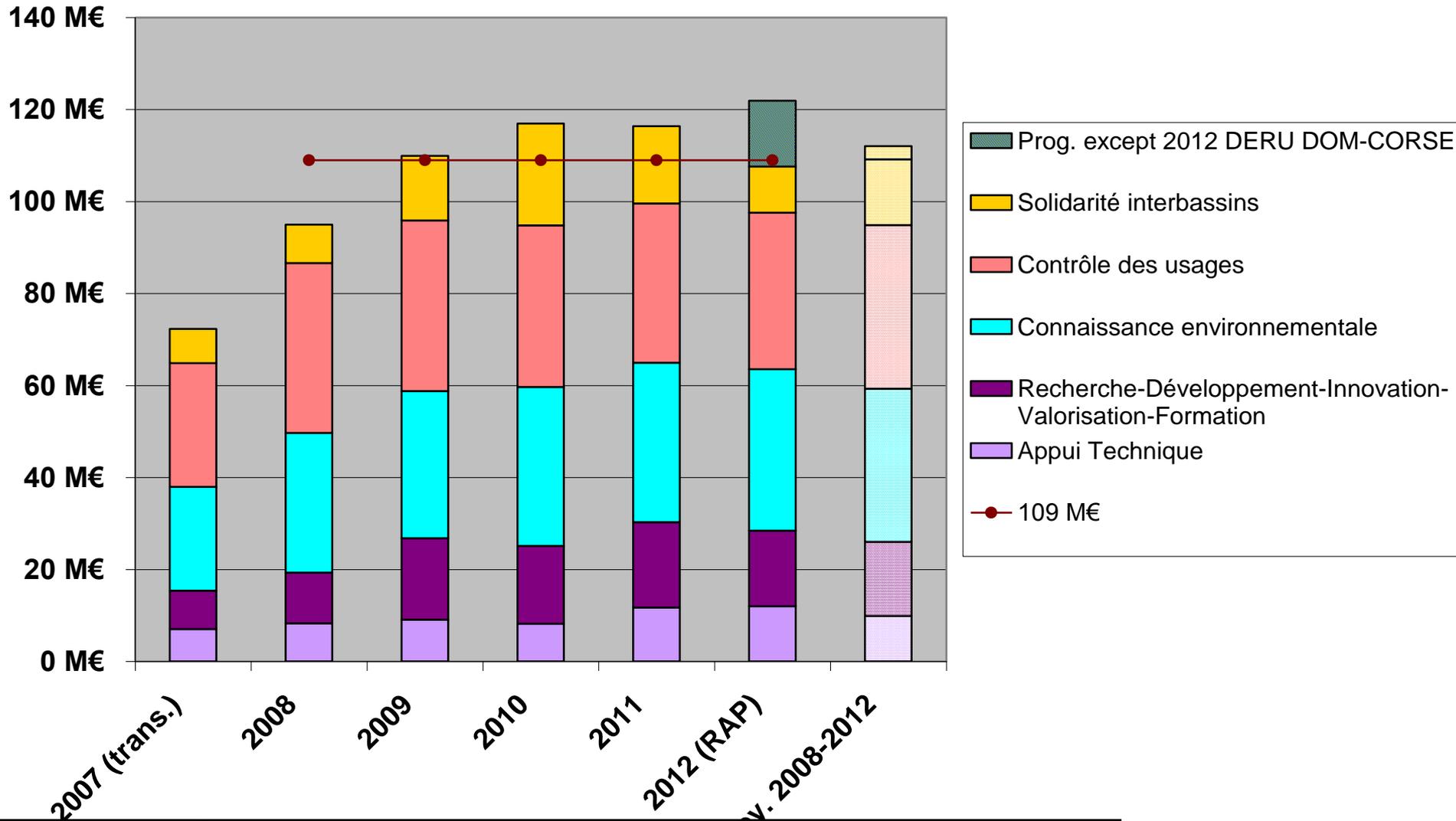
Governance in the field of water



Territorial services in the water domain



Changes to the budget 2008-2012



CSP April 27

ONEMA

PLF 2012 : progr. 2013-2018 Onema

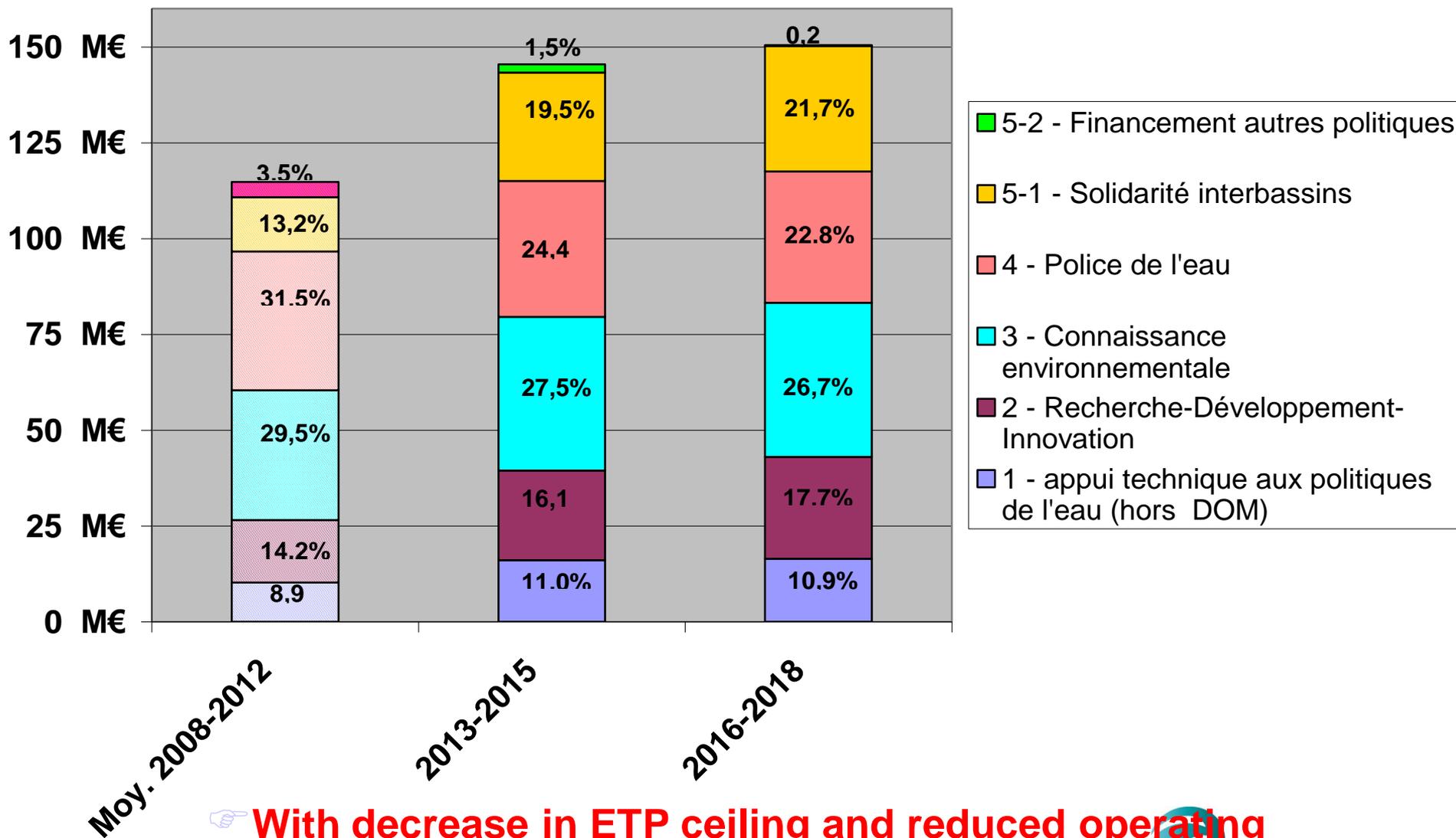
"Typical" Onema budget € 108 - 145 million

- 1/2 for inter-basin solidarity
- 1/2 for national actions
 - ✓ innovation (RDI)
 - ✓ Water information system
 - ✓ National plans (micropollutants, cessation of fishing activity pros / PCB and eel regulation, etc.)

Ecophyto

- fixed rate of € 41 million (for a "surplus" of € 60 million)
- **€ 19 million "yielded" to agencies for territorial actions**

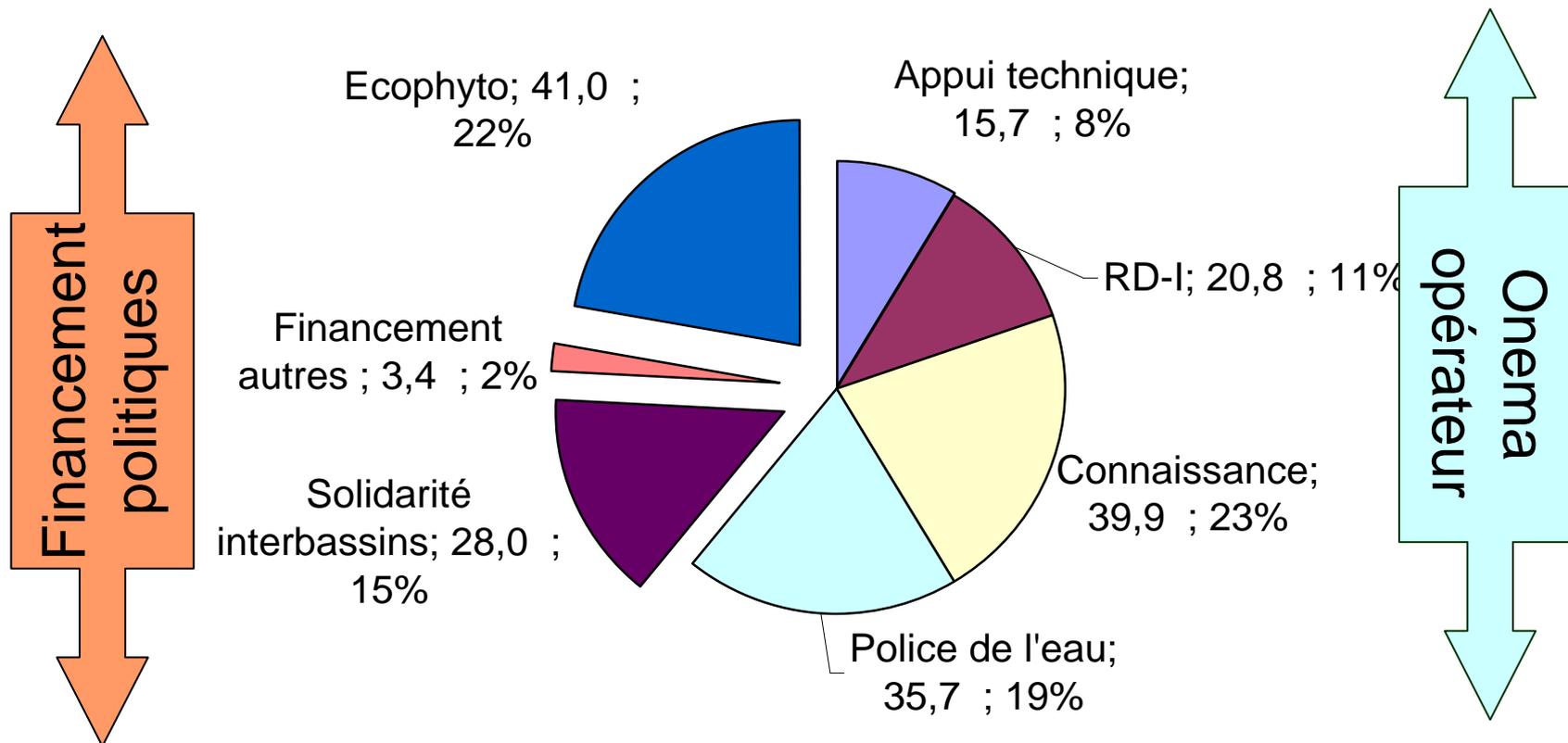
Onema 2013-2018 program



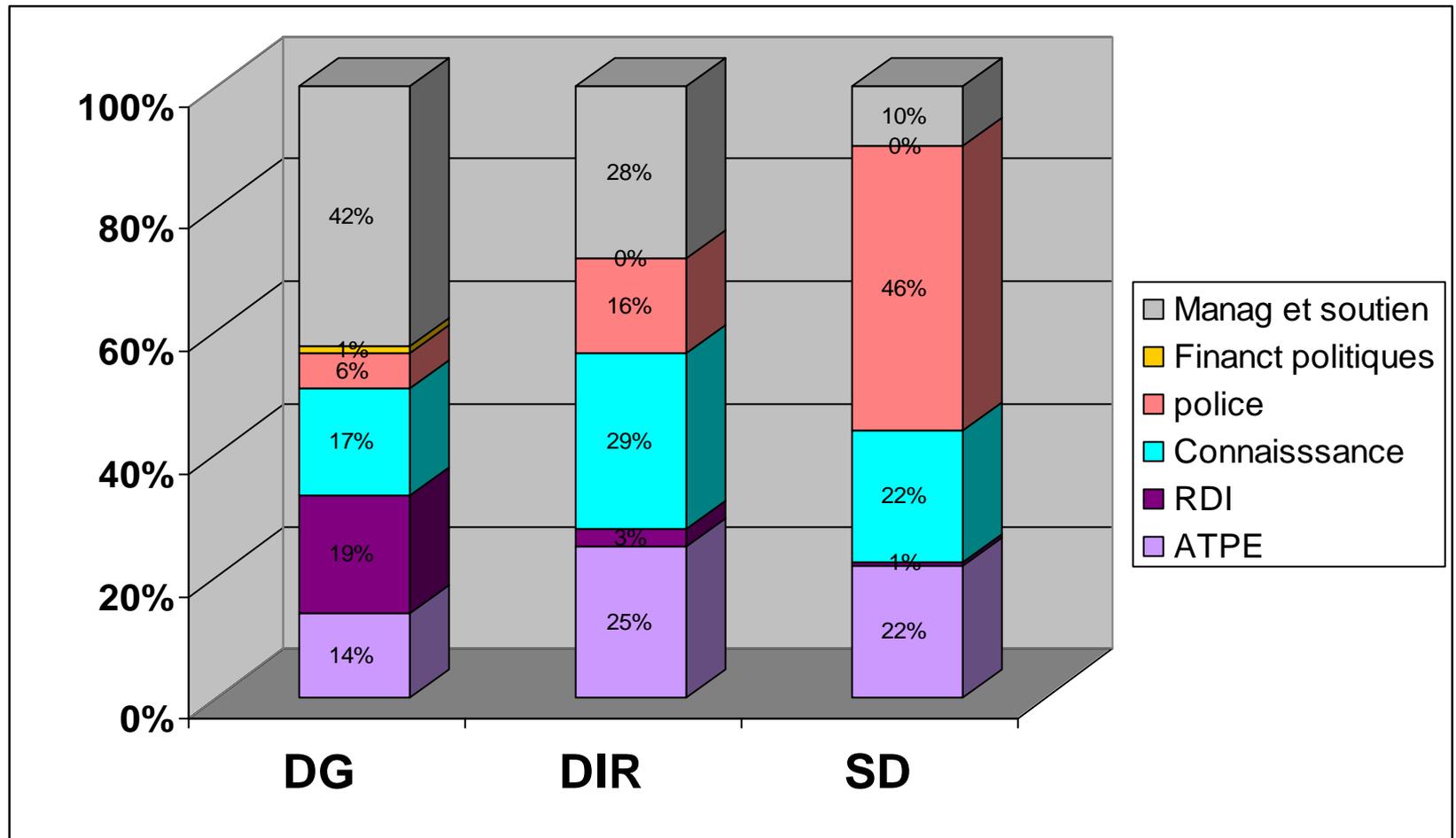
With decrease in ETP ceiling and reduced operating costs by 15%.

Budget 2013 CP: €186 million (of which € 41 million Ecophyto)

Répartition des moyens



ETP distribution by activity



2. Policing of water and aquatic environments

2010 public reports on water

■ Court of Auditors

- ✓ **Resource state of concern** / very ambitious objectives in the short term
- ✓ **The regulatory leverage: inadequate punishment/ fining and follow-up**
- ✓ **Water agencies** - improvable capital gain, lack of selectivity of aid, lack of incentives
- ✓ **Insufficient coordination between stakeholders** in water policy: **basin** level in terms of financial issues / **department** in terms of regulatory issues

■ Council of State

- ✓ Do not wait until the last moment **to take action to enforce Community law** (community sanction only effective tool to overcome inertia and economic interests of public authorities)
- ✓ Do not forget the strong bonds between water policing and the policing of **classified facilities**,
- ✓ **Be careful not to reduce field checks, insufficient**
- ✓ **Strictly implement the FDW and prepare 2015 reporting**, involves aggressive tackling of problems of **diffuse pollution from agriculture**, to encourage the **protection of catchments** and **improve the morphology of rivers**

Water policing: a tool to achieve good state of water

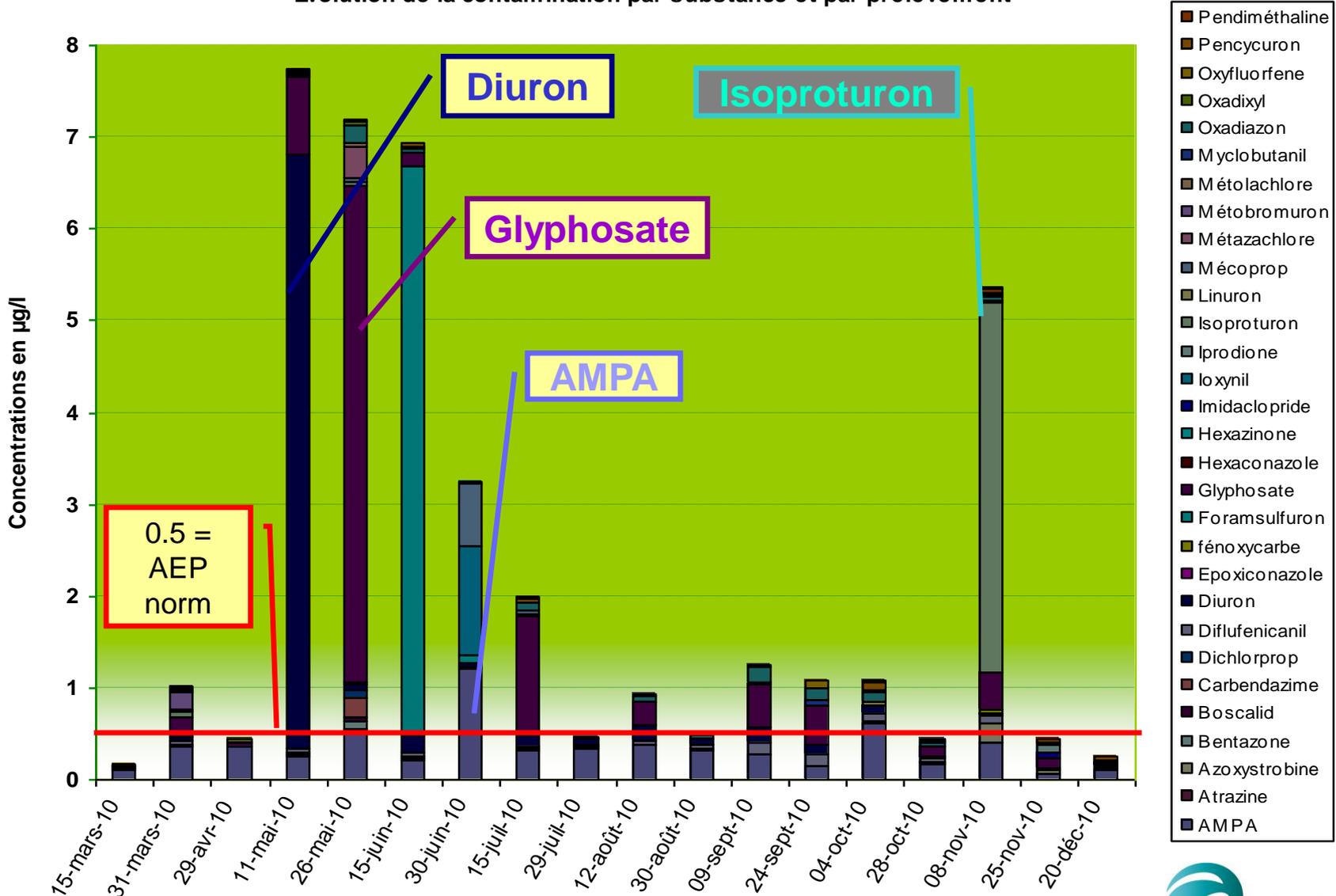
- **Control = baseline measurement of the measurement program**
 - ✓ already check the effective implementation of existing regulations
 - ✓ complementary to incentive action of the agencies
- **It is necessary to be able to report the results of the checks to the European Commission.**
- **Progressive approach building on the European Commission items for attention defined in 2005 litigation concerning undersized fish for the control of marine fisheries:**
 - ➔ **Inter-service coordination, Number of inspections, Quality of inspections, Sanctions, Training, Miscellaneous**

Items for attention of the Commission on policing (1)

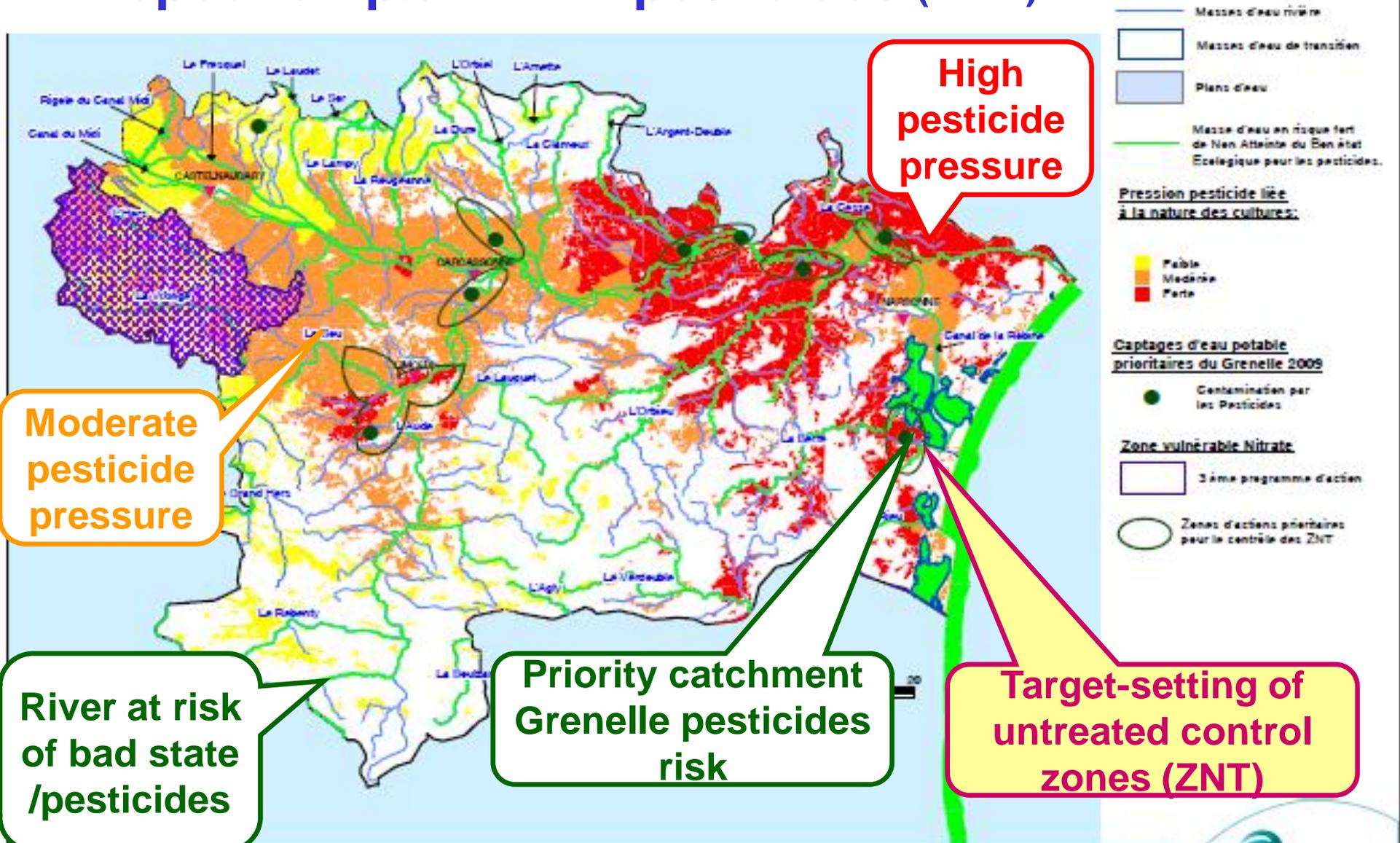
Commission items for attention	Actions engaged
<p>Inter-service coordination</p> <ul style="list-style-type: none"> • Cooperation of services, inspection strategy / inspection data 	<ul style="list-style-type: none"> - Inspection plan ordered by the Prefect - Database of authorizations / declarations (Cascade) - Database of previous inspection results (Opale then Opale convergence) - Target-setting strategy depending on FDW issues
<p>Number of inspections</p> <ul style="list-style-type: none"> • Objective of number of thorough inspections, Targeting risk situations 	<ul style="list-style-type: none"> - November 2010 circular with numbered objectives - Target-setting depending on FDW issues and types of violations found.

E.g.: Pesticides in water Ste-Suzanne (Bretagne)

Evolution de la contamination par substance et par prélèvement



Example of target-setting of an inspection plan: ZNT pesticides (Aude)



4. Control of uses

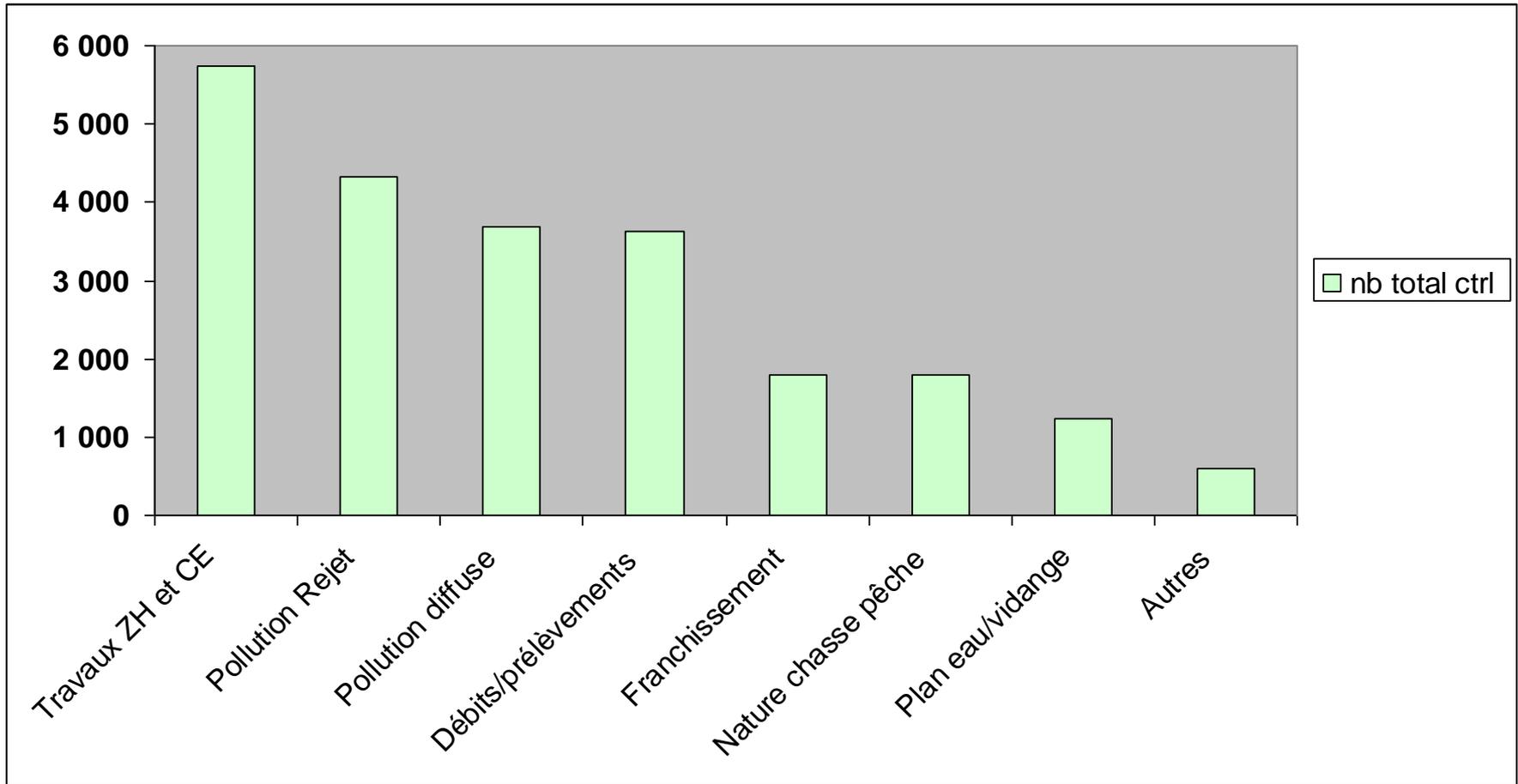
Enter policy activities in control plans geared towards achieving good water status (Obj 11)

➤ Complementarity of interventions of the different services



- national meeting to prevent European litigation
- protocols with 66% Public Prosecutors (better monitoring of action on official reports)
- 5,409 reviews for water police records (-4 %)
- e.g. TGV = 1,051 km new lines

Onema Results 2011: 22,798 inspections carried out (+ 4%)
92.6% as part of inspection plans (+ 1 %)



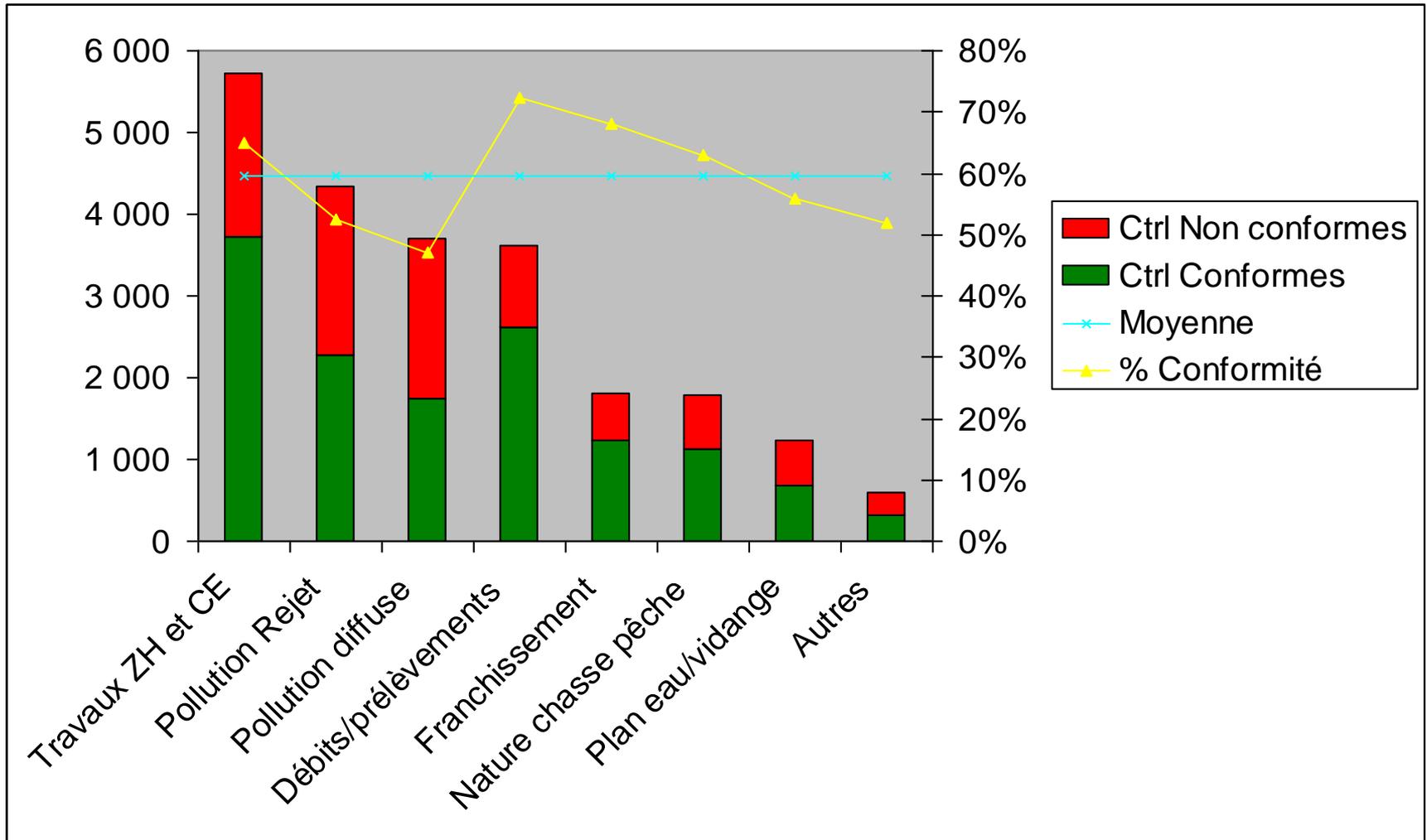
Items for attention of the Commission on policing (2)

Commission items for attention	Actions engaged
<p>Quality of inspections</p> <ul style="list-style-type: none">• Rigor-effectiveness / procedural manual	<ul style="list-style-type: none">- Generic inspection sheet for any compliant or non-compliant inspection (Opale / OSPC)- Under Onema development: procedural manual with technical sheet by inspection type setting the mandatory inspection points (+ mobile tool)

Items for attention of the Commission on policing (3)

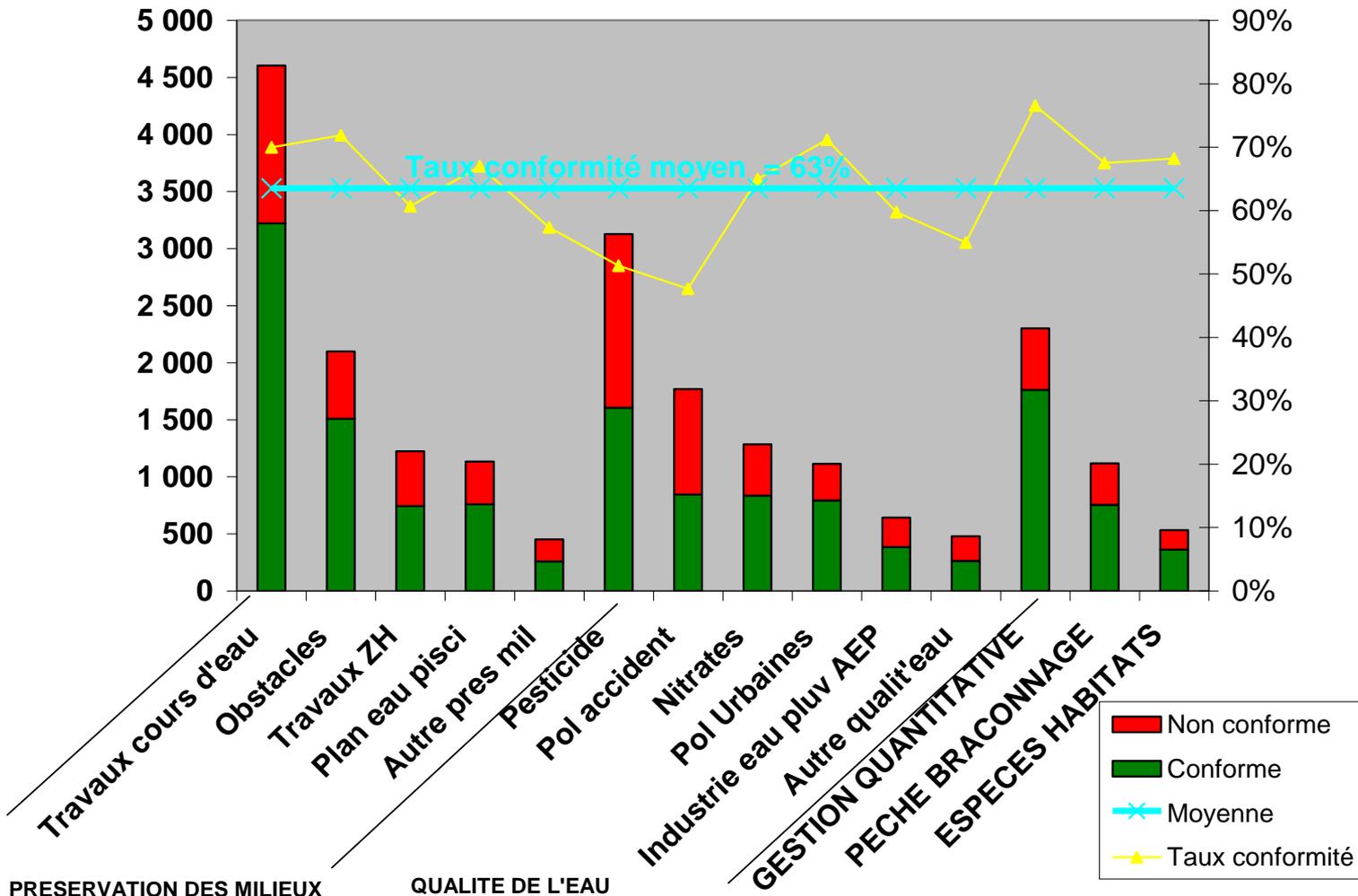
Commission items of attention	•Actions engaged
<p>Sanctions</p> <ul style="list-style-type: none">• Deterrent amount / undue benefit	<ul style="list-style-type: none">▪ Order for environmental police harmonization▪ Memoranda of Understanding with the Public Prosecutors on post-inspection strategy (~60% of depts of which 42% four-way)▪ Awareness-raising of prosecutors and general prosecutors▪ Information on follow-ups to inspections (current: manual, future: partnership with judicial databases / Opale convergence)

Onema Results 2011: 40% non-compliant inspections



2012 Results

- 22,798 inspections carried out in 2012 (+1%)
- 93% as part of inspection plans (+1%)

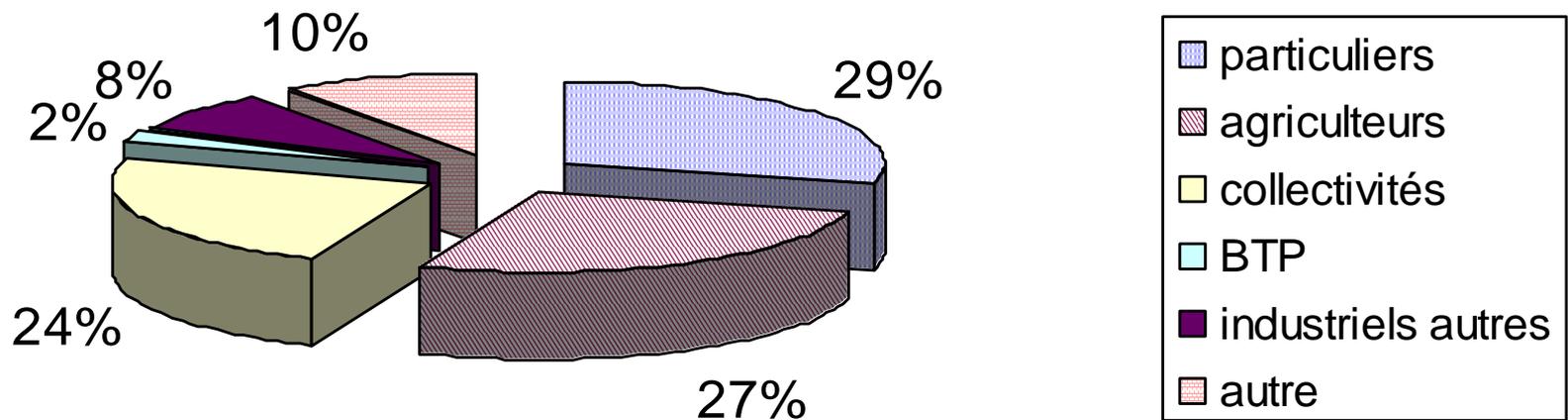


PRESERVATION DES MILIEUX

QUALITE DE L'EAU

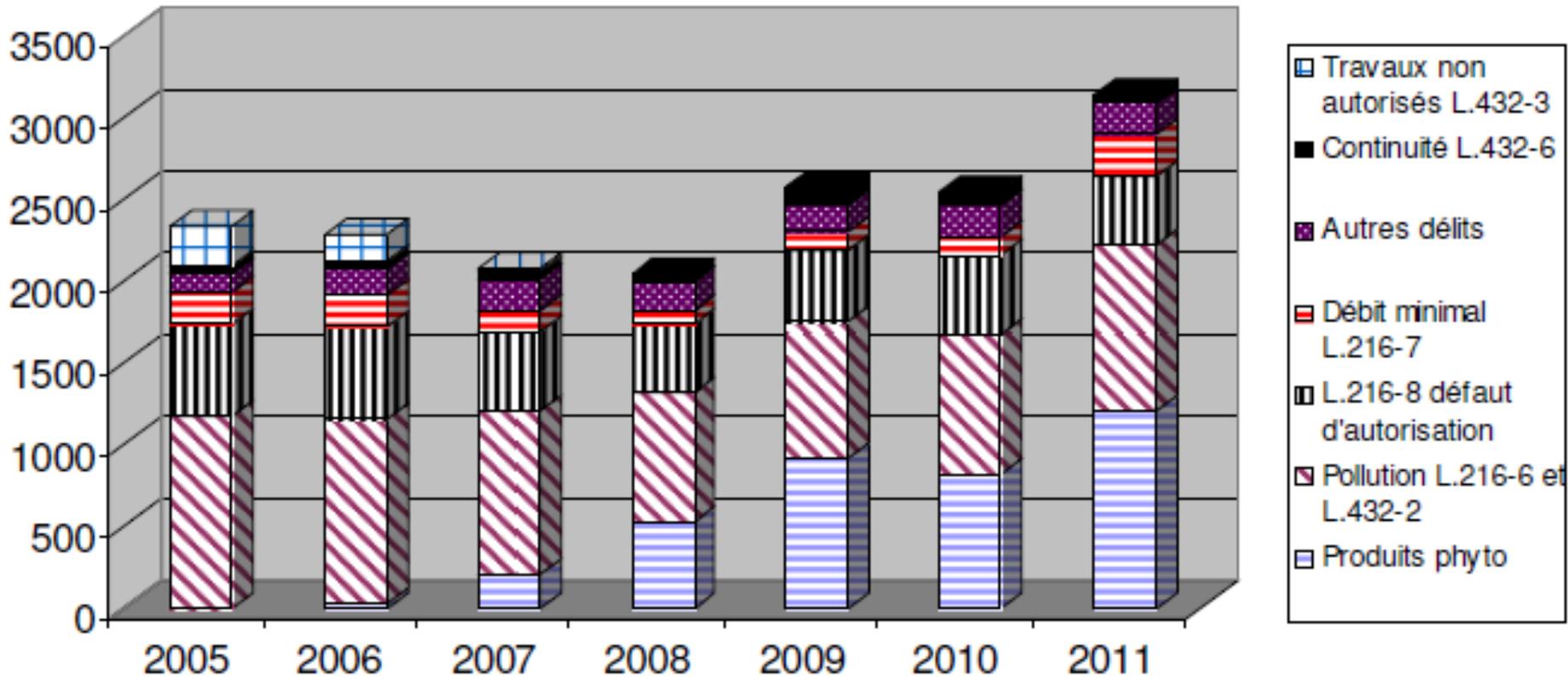
Inspections: who is involved?

Répartition des usagers contrôlés



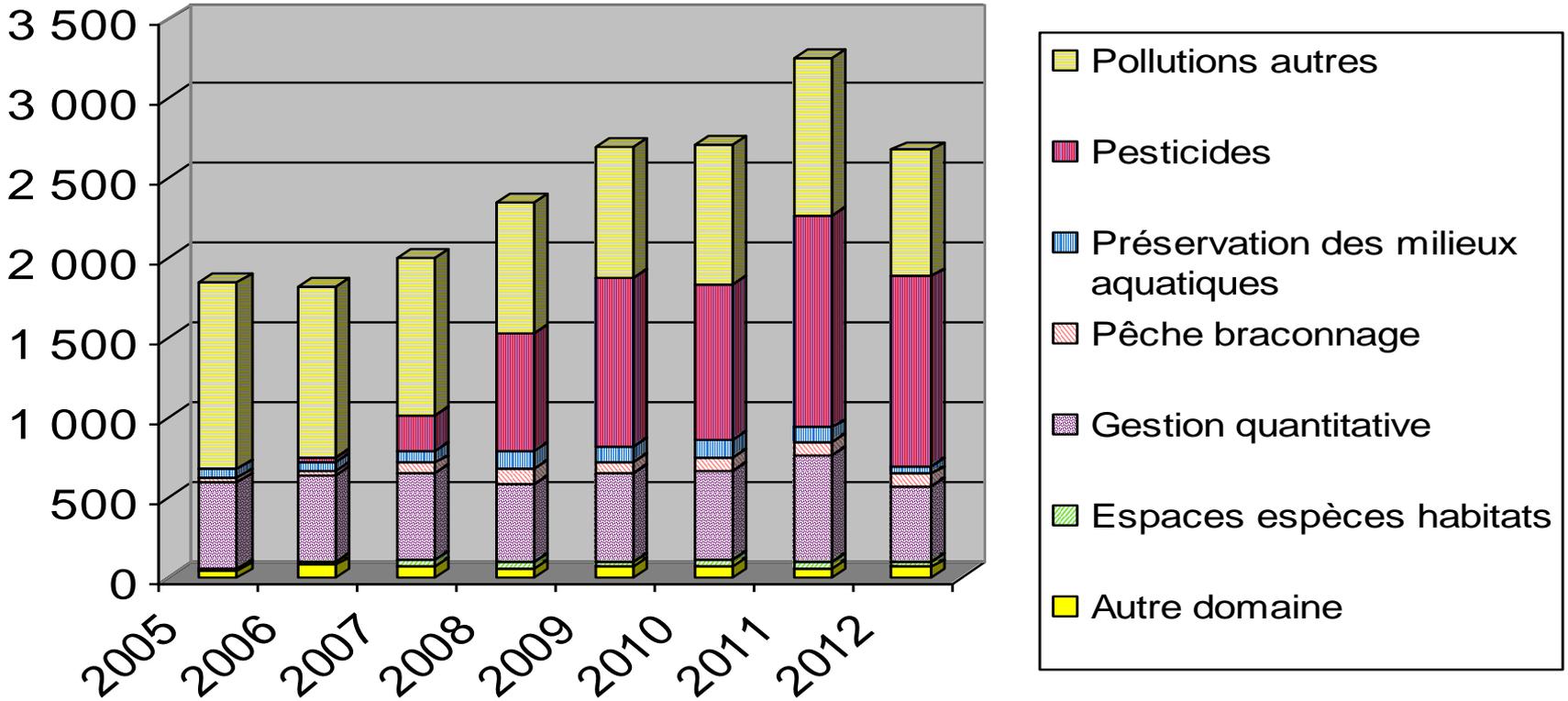
Onema Results 2011: 3,143 offenses (+24% = Increase; 14% / nb ctrl)

Evolution du nombre de documents de police Onema délits 2005-2011



- 4,596 police documents + fine payment stamps
- 2,675 offenses (-18% = Decrease)

Evolution du nombre de documents de police Onema
Délits constatés de 2005 à 2012



- 1,921 violations and fine payment stamps (-9%)

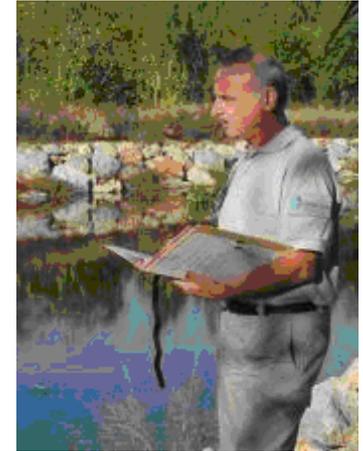
Items for attention of the Commission on policing (3)

Commission items for attention	•Actions engaged
<p>Training</p> <ul style="list-style-type: none"> • Training of all stakeholders, awareness of legal rules 	<ul style="list-style-type: none"> ▪ Plan of training for all agents ▪ Specialized training (hydrometry, continuity, pollution, etc.) ▪ Training in order for alignment of criminal law
<p>Other</p> <ul style="list-style-type: none"> • Awareness-raising (inspection agents, users, public, etc.) 	<ul style="list-style-type: none"> ▪ Campaign for user awareness (role of inspection, benefits derived from good water state).

Strengthen the quality and technical nature of policing

Display progress

- Appropriate best practices
- Audit process and trace inspection procedures: **16 audit reports in 2012.**
- Training: applied water policing, conflict prevention, e.g. training with General Council 66.



Define common standards and tools to serve environmental policy

- Technical tools and documentary reference material: **405 reference sheets** with technical opinions (validated/ongoing)
- **Shared tools for writing procedures and monitoring follow-up:** joint project with water police services



Better inform and educate

- **E.g. joint training with CGal 66**
 - ✓ better consideration of aquatic environments during the construction phase and exchange of best practices for reconciling work in the river and consideration of environmental issues right from the project design.
- **Need to develop awareness-raising leaflets**
 - ✓ e.g. untreated zones along rivers little known to communities and individuals
 - ✓ better known to farmers but can jointly develop awareness-raising tools.

Inspection powers

- **Heterogeneous judicial police powers by environmental domain**
 - ✓ **Water**
 - ✓ **Freshwater fishing**
 - ✓ **Use of plant protection products**
 - ✓ **Sea fishing**
 - ✓ **etc**
- **Towards aligned powers of environmental administrative and judicial police units**
 - ✓ **Order for environmental police alignment**
 - ✓ **published on Jan. 11, 2012**
 - ✓ **applicable from Jul. 1, 2013**

Inspection powers

- **Current heterogeneous powers**
 - ✓ **Access to private property (including home visits with OPJ)**
 - ✓ **Communication of any document**
 - ✓ **Collection of oral statements**
 - ✓ **Profile Reports**
 - ✓ **Seizure (various forms)**
 - ✓ **Requisition of law enforcement**
 - ✓ **Arrest**
- **Powers effectively implemented**
 - ✓ **depending on utility and necessity, on case by case basis**
 - ✓ **under the direction of the Public Prosecutor**

Inspection powers

● Inspection powers defended

- ✓ **by inspection obstruction violations:**
 - ✓ **Water (CEnv, art. L. 216-10 point 3: 6 months jail, fine €7,500);**
 - ✓ **Freshwater Fishing (CSLS, R. 437-13 art: class 3 violation);**
 - ✓ **Sea fishing diadromous species (CPMR, 1° or 2° of art. L. 945-3: 6 months jail, fine €15,000);**
 - ✓ **Natural reserves (CEnv, art. L. 332-23: 6 months jail, fine €9,000)**
- ✓ **by violations for incidents against the person of an agent:**
 - ✓ **Abuse**
 - ✓ **Offense (CP art 433 5.: 6 months jail, fine €7,500)**
 - ✓ **Threat (CP, art. 433-3: 2 years jail, fine €30,000)**

Inspection powers

- From July 1, 2013, in implementation of the order for policing alignment
 - ✓ Homogeneous and reinforced powers of administrative and judicial policing (**environmental inspector**)
 - ✓ Access to private property (including home visits and vehicles, with or without OPJ or JLD)
 - ✓ Requisition of any document
 - ✓ Hearing (or collection of statement)
 - ✓ Profile Reports
 - ✓ Seizure and recording of goods (various forms)
 - ✓ Requisition of law enforcement
 - ✓ Detention, or arrest exceptionally
 - ✓ Obstruction to inspection functions:
 - ✓ a general offense for the entire Environmental Code (art. L. 173-4: 6 months jail, fine €15,000)

The course and the follow-up of inspections

● Implementation of the inter-departmental inspection plan "Water & Nature"

- ✓ Preparation of the inspection operation, announced or unannounced (except flagrante delicto)
- ✓ Transport and on-site observations
- ✓ Cross-examination with the potential respondent (encouraged unless impossible)
- ✓ Profile reports
- ✓ Writing and sending a police document to the public prosecutor (copy the prefect)

● Subsequent judicial follow-up

- ✓ Examination of the respondent by the police or gendarmerie (collection of remarks of the person concerned)
- ✓ Collection of information on the context of the violation (note on the seriousness in relation to local, national and European issues)
- ✓ Determination of judicial follow-up (6 months to 3 years)

**3. Development of
cooperation with Public
Prosecutors
on post-inspection strategy**

MoUs with the Public Prosecutors

- ✓ Associate Public Prosecutors upstream with inspection policy
 - ✓ Target major Water & Nature policy issues in their territory
 - ✓ Organize investigation management in practice between Public Prosecutor's officials and environmental inspectors
 - ✓ Build jointly an inspection follow-up policy
 - ✓ Identify the Water & Nature implementation field for different tools of judicial follow-up
 - ✓ Monitor follow-up of official reports
 - ✓ Share judicial and administrative follow-up status reports
 - ✓ Control measures or penalties for environmental reparation
- 42% of departments have signed a four-way agreement public prosecutor/ prefect/ ONEMA/ ONCFS

Build jointly an inspection follow-up policy depending on gravity/intentionality

Administrative follow-up

- Formal notice
- Recording
- Suspension
- Withdrawal of authorization
- Financial penalties
- Administrative fine

Criminal follow-up

- Reminder of law
- Conditional classification
- Criminal mediation
- Criminal composition
- Simplified proceedings
- **Judicial proceedings**

Plea agreement

Proposed / prefect → Accepted / respondent
→ Approved / Public Prosecutor

OFFICIAL REPORT SUMMARY

II – INVESTIGATION SUMMARY:

- **Judicial referral:** *Briefly mention the origin of the judicial investigation*
- **Nature of facts:** *Briefly mention the nature of facts*
- **Investigation:** *Briefly mention the date and main investigative procedures performed successively, as well as key information or conclusions arising*

OFFICIAL REPORT SUMMARY

III – RESPONDENTS AND VIOLATIONS:

• Issues of additional assessment:

- Recognition of the offense: *Check box + any additional comments*
- Existence of previous established environmental offenses: *Check box + any additional comments*
- Attitude when checked: *Check box + any additional comments*
- Post control behavior: *Check box + any additional comments*
- Existence of environmental damage: *Check box + any additional comments*
- Subsequent management measures for the disturbance of environmental public order (administrative regularization/ environmental reparation): *Check box + any additional comments*

OFFICIAL REPORT SUMMARY

APPENDIX – NOTE OF ISSUES:

- Environmental context:

Natural environment concerned and public policy goal

- Collective issues:

Ranking from 0 to 5 on a scale

- Ecological issues: *Check box + any additional comments*
- European issues: *Check box + any additional comments*
- Economic issues: *Check box + any additional comments*

4. Practical examples

Some examples of inspection follow-up

Burgundy-Franche-Comté

- 👉 Conditional reminder of law after cleaning out a disused forged forebay
- 👉 Re-establishment of free flow of Digeanne for 1.1 km



North-East

- 👉 PV follow-up due to roadworks in suburban area of Metz
- 👉 Plea agreement leads to basin restoration project

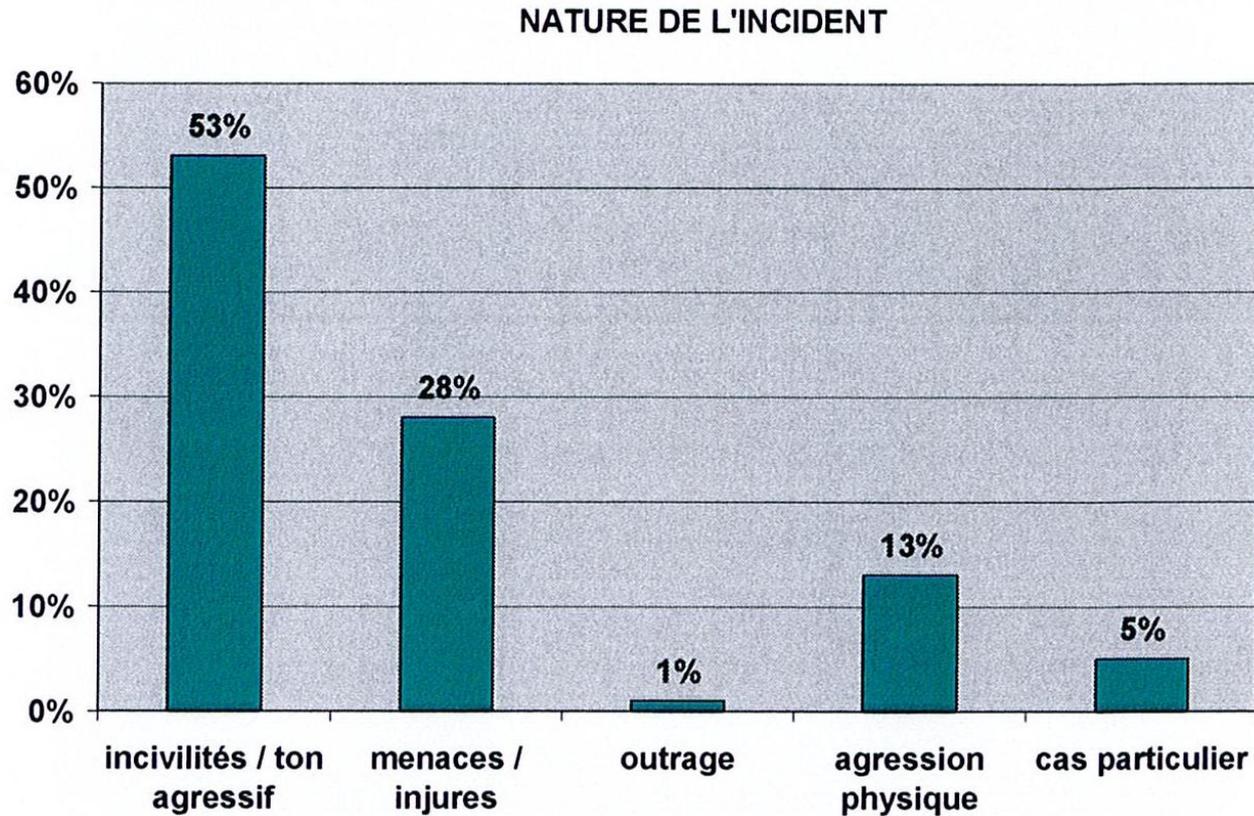
Mediterranean

- 👉 Official report for non-compliance of the reserved flow downstream of the water supply
- 👉 Plea agreement led the ASA of the Gignac canal to a global project to optimize the irrigation of the sector and water saving

5. Record of incidents

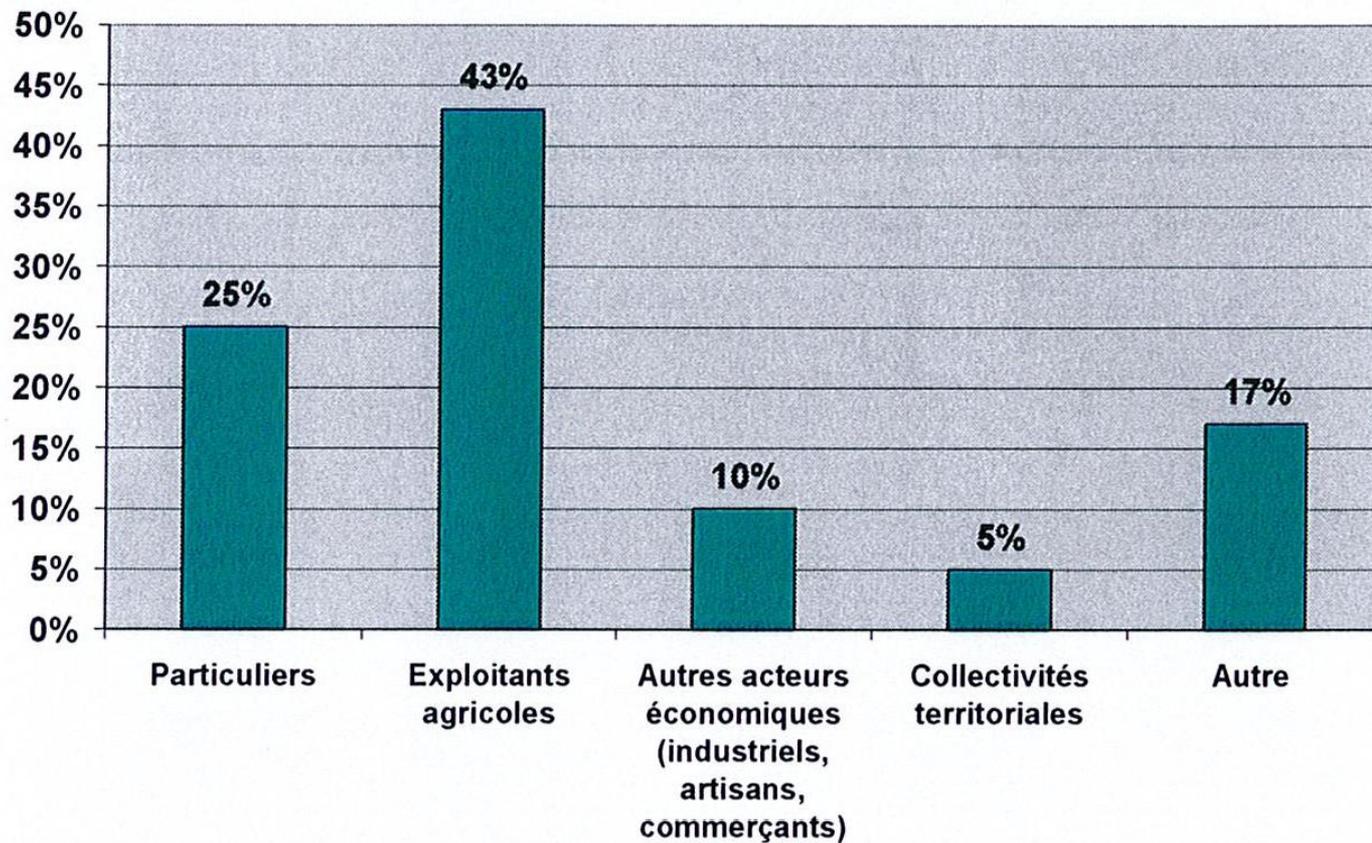
Incidents during inspections

79 incidents going back to DG in 2012 (32 / inspections)



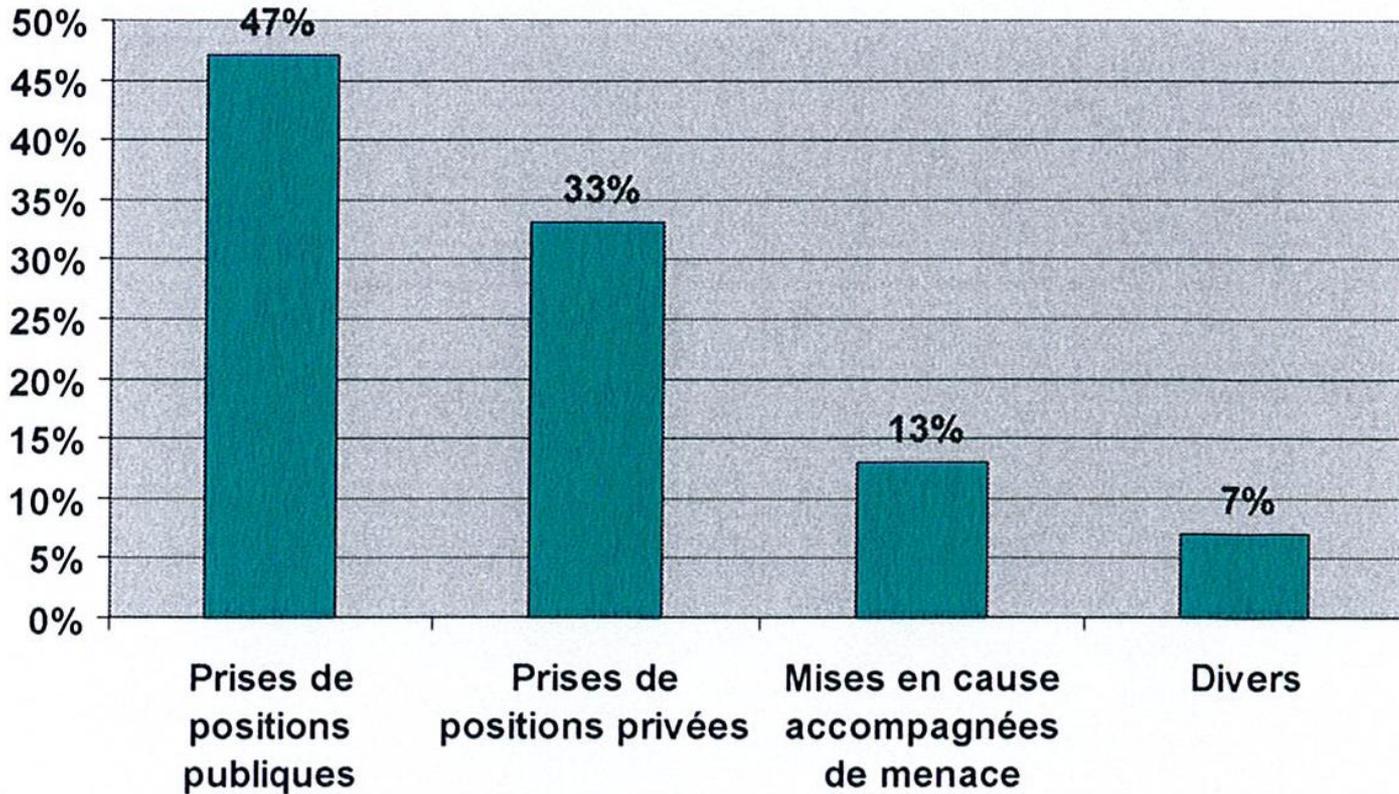
Socio-occupational incidents

ORIGINE SOCIO PROFESSIONNELLE DE L'INCIDENT



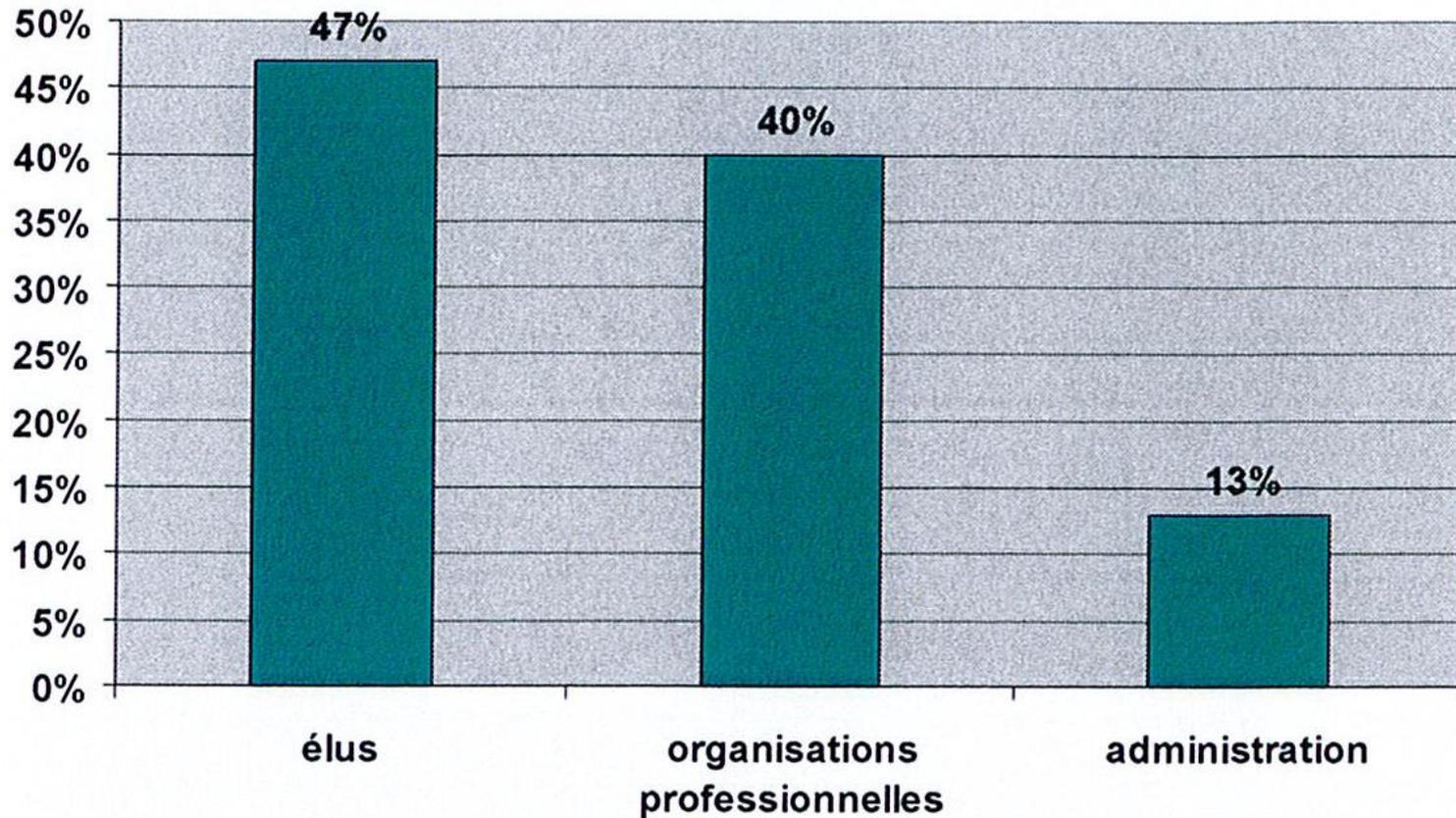
Offenses (press, private, threats, etc.)

MODE DE MISE EN CAUSE



Origin of offenses

ORIGINE SOCIO-PROFESSIONNELLE DE LA MISE EN CAUSE

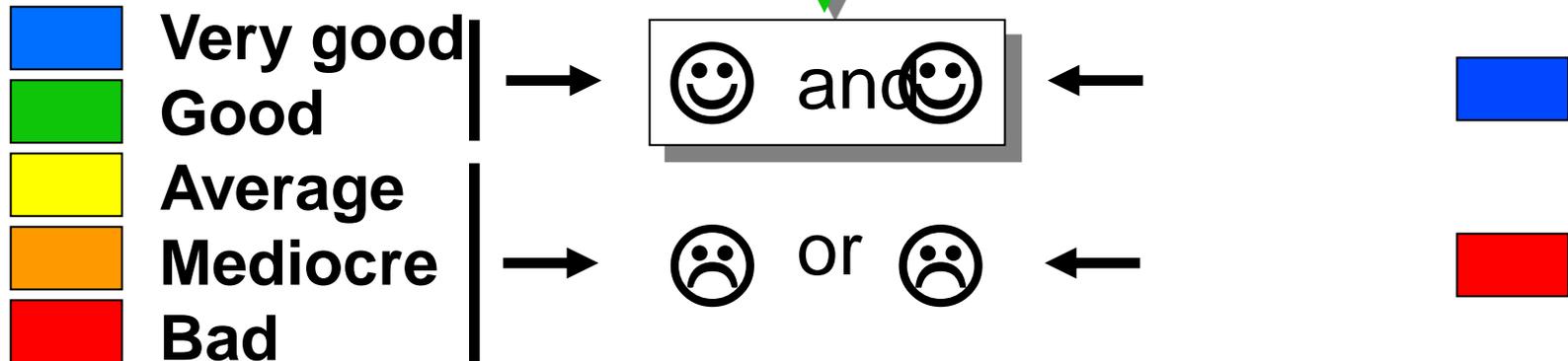


**Thank you for your
attention**

The good state of aquatic environments

Ecological state / ecological potential
(physical chemistry, biology)

Chemical state
(standards)



**Situation assessed in comparison
to benchmark conditions (very good state /
maximum ecological potential)...**

Surface water: report of 22 March 2009

2009

indeterminate

bad ecological state

mediocre ecological state

very good ecological state

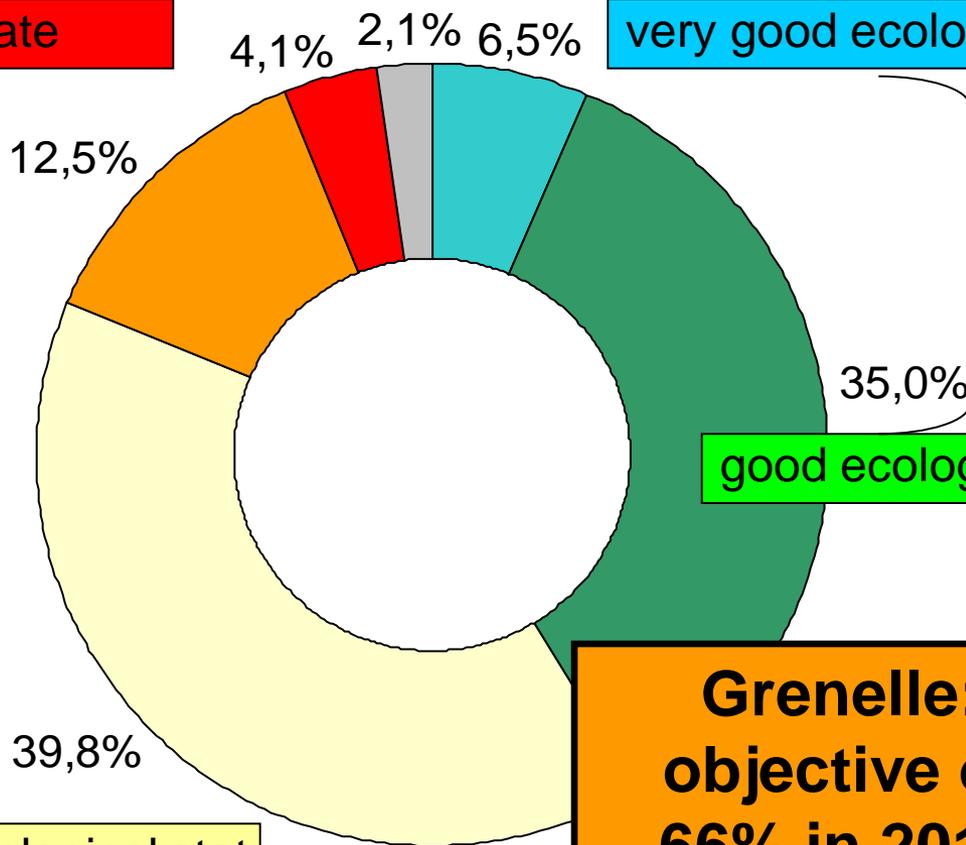
41.5%

good ecological state

**Grenelle:
objective of
66% in 2015**

average ecological state

- 6,5% très bon état écologique
- 35,0% bon état écologique (ou potentiel)
- 39,8% état écologique moyen (ou potentiel)
- 12,5% état écologique médiocre (ou potentiel)
- 4,1% mauvais état écologique (ou potentiel)
- 2,1% indéterminées.

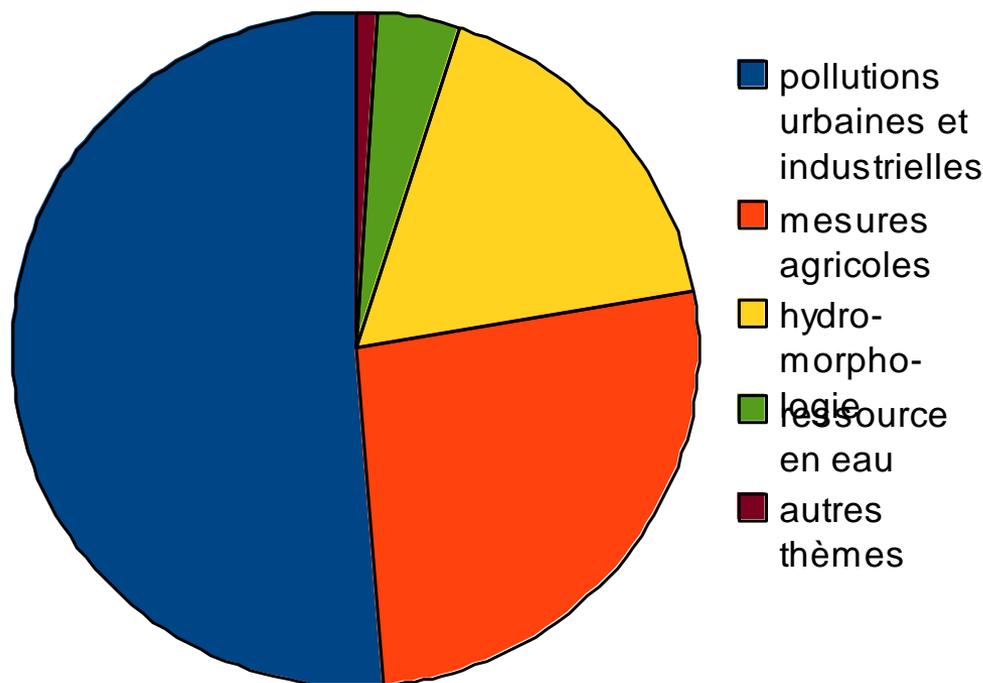


From the 2009 state to the 2015 objective: programs of measures (~€27 billion)

Causes of change of water state are often multiple:

- urban (ERU, phosphates) or industrial pollution
- confined or diffuse agricultural pollution (nitrates, pesticides),
- Hydromorphological changes, disturbance of hydrologic state,
- excessive collection...

Coûts des PDM par thèmes



**Increase of power
of European law and
awareness
of risk of litigation**

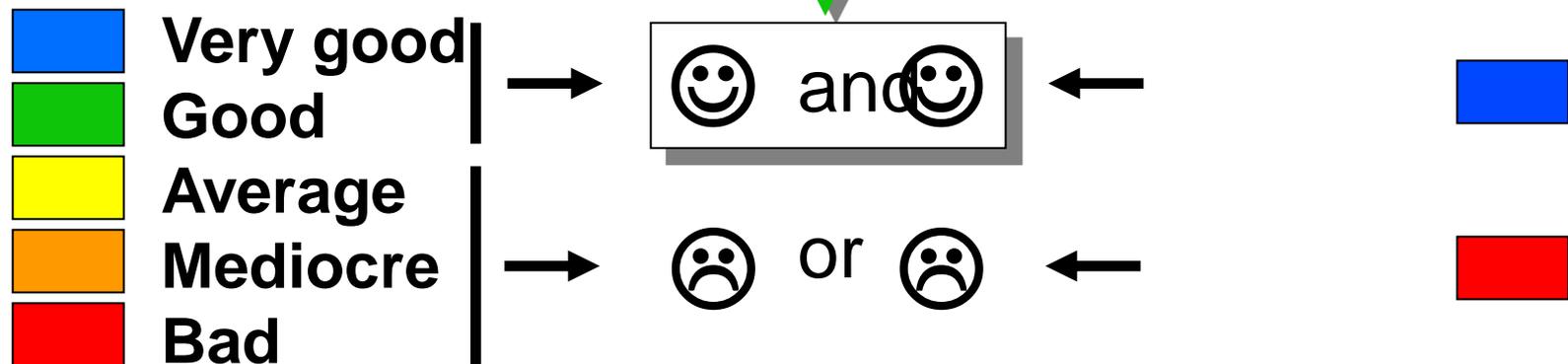
European law

- **After sectorial directives**
 - raw water for drinking water, urban waste water, nitrates, bathing water, fish water, etc.
- **Primacy to the integrated approach: the Water Framework Directive,**
 - which sets the objective of achieving good ecological state for water by 2015,
 - subject to potential postponement of objectives and delays
 - integrating benchmarks of good condition, and renewing the sectoral directives in force

The good state of aquatic environments

Ecological state / ecological potential
(physical chemistry, biology)

Chemical state
(standards)



**Situation assessed in comparison
to benchmark conditions (very good state /
maximum ecological potential)...**

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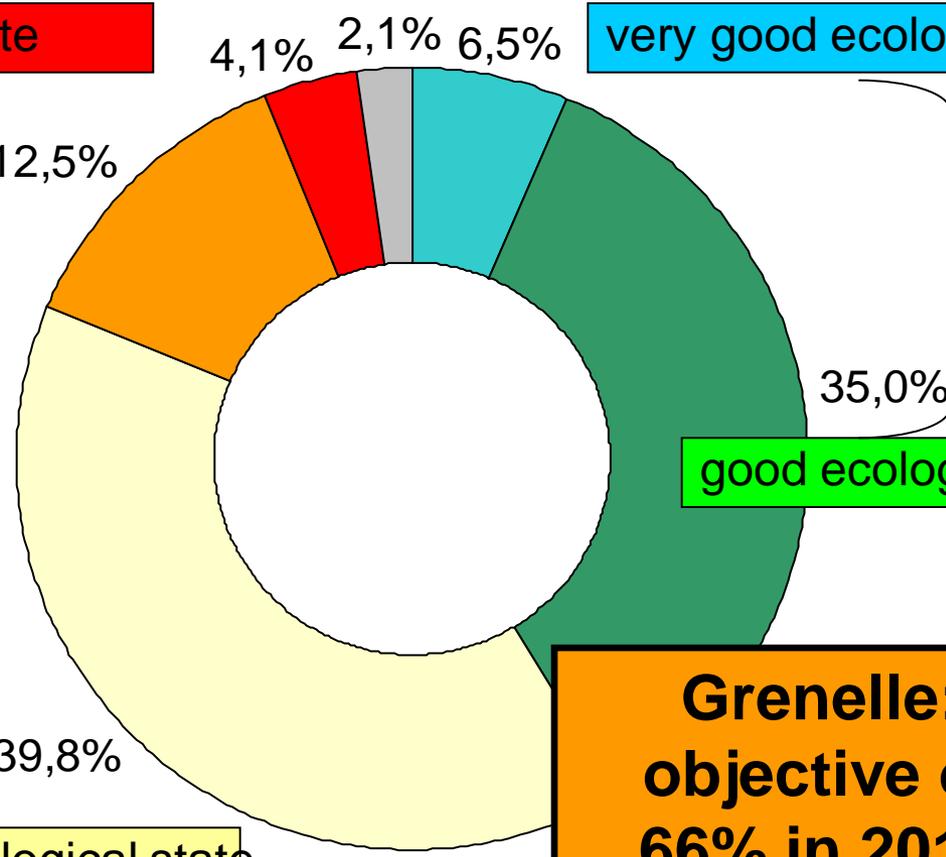
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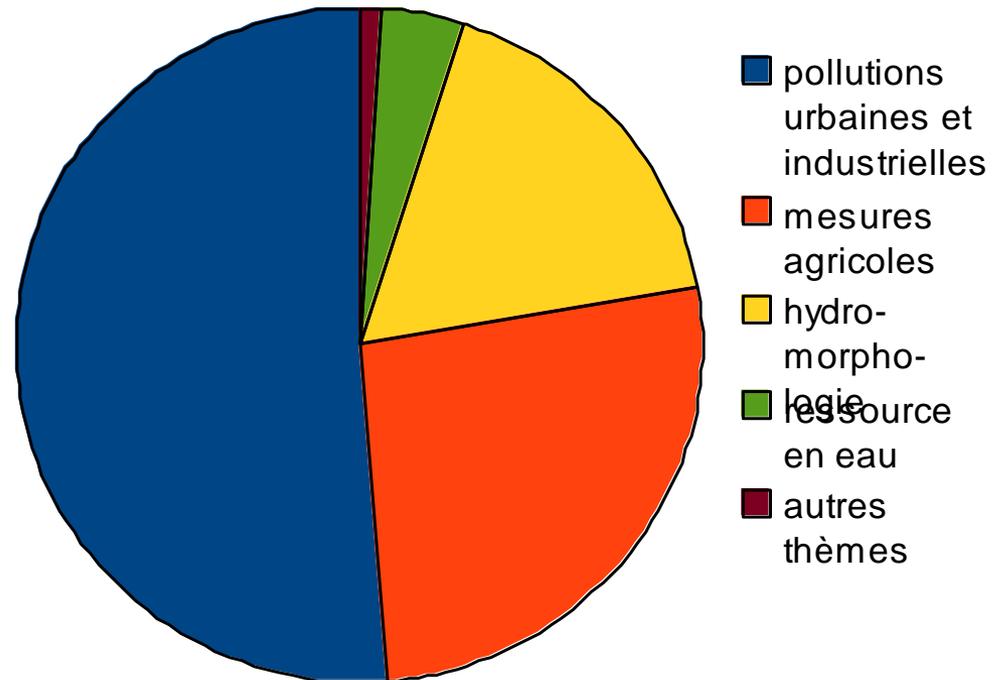


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- excessive collection...

Coûts des PDM par thèmes



E.G. : Community litigation DERU

Commission complaint or own-initiative court referral

Formal notice

Reasoned opinion

Court referral CJUE

Court decision: breach

Formal notice

Reasoned opinion

Court referral CJUE

**Court decision:
breach upon breach:
fine + penalty payment**

DERU 2005

DERU 2000

DERU 1998

Filed

1st level

2nd level

The financial sanctions in case of breach upon breach

Penalty payment and fixed amount

- The standard **fixed amount**
 - For penalty payment (€640 per day)
 - For fixed amount (€210)
- **Factor of seriousness** (importance of violated rules and consequences) and **duration** (0.10/month as of the first decision)
- **Special factor "n"*** (function of PIB EM: Fr = 18.68)

Undersized fish in 2005: €20 million fine and €57 million penalty payment per half-year

SGAE: Global development between end 2010 and end 2011

- The remaining provisions of 31/12/2011, pending the final inventory, is estimated at €153 million against €254 million at the end of 2010 (down by 40%).