Avosetta meeting
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FRANCE Nathalie HERVE-FOURNEREAU[1]

Permit procedures for industrial installations and infrastructure projects: Assessing integration and speeding up

A. Baseline information

Context of the modernisation of environmental law and current legal developments

The modernization of the public action is currently in vogue, even an *idée fixe* for public authorities at different levels of governance. From EU to Members states, the watchwords are now well-known: - simplification – improvement of the quality of law – the fight against legislative inflation – reduce administrative delays and costs ..

In march 2013, a "*shock of simplification*" was launched by the French President. According to this ambitious mission, the general secretariat for the modernization of the public action (which reports to the French Prime Minister) develops various initiatives in order, in particular, to facilitate the life of companies (as the Programm "Tell us only once" (*Dites le nous une fois)*, intended to reduce the number of administrative formalities) and the relations between the citizens and the administration. In the light of this large process, largely initiated by the European initiatives (better regulation ..etc.), different laws have also been adopted (Law 2013/1005 related to the simplification of the relations between citizen and administration, Law 2013/1545 related to the simplification of the life of the companies, Law 2015/990 related to the growth, activity and equal economics opportunities). In parallel, the government decided to introduce a large territorial administrative reform by reducing the number of regions in France (Law 2015/29 related the delimitation of the regions (13 regions instead the existing 22 regions), that is not going systematically help the others process of modernization and normative simplification.

The modernization of the public action is clearly connected to the problematic of the quality of law. Without waiting the *shock of simplification,* the French government already adopted the law 2011/525 related to the simplification and the improvement of the quality of law. By extending this logic, the French Prime Minister commissioned a report related to the fight against the legal normative inflation. This report coordinated by two politicians (Lambert & Boulard), published in 2013, provoked strong reactions, in particular by the environmentalists and the environmental lawyers. In sum, this report gave a caricatural vision of environmental law and accused the environmentalist associations and the regional administrations in charge of environmental, planning and housing issues, to promote a "ecological normative fundamentalism" supporting a stringent legal interpretation source of bureaucracy and economics costs.

At the same period, the Ministry of Environnement, Energy and Sea promoted a large reflexion on the modernization of the environmental law according the road map of the environmental conference organized in September 2012. The major objective is to elaborate a more demanding, best designed and clearer environmental norm (*norme plus exigeante, mieux conçue et plus lisible*. For this, various topics are identified to reach this ambitious target without prejudice to the environmental protection level (non regression) and the European obligations. This large mobilisation of all stakeholders for the modernization of environmental Law called the *Etats généraux de l'environnement* produced different proposal presented at the national conference in june 2013. This major programme of environmental law's modernization is based on four principles: progress (excluding any regression of the environmental requirements), proportionality, efficiency, effectiveness. It covers three mains poles : improving the

[1] Research Director at the National Center of Scientific Research. Member of the Western Institut for Law and Europe, UMR 6262 CNRS- University of Rennes 1.

environmental law-making process – improving the procedures related to projects – improving the legal security and the sanctions against environmental damages.
In 2014, seven working groups were established by the Ministry of Environment to think about, in terms of short and long term, how to modernize environmental law according to those all objectives and principles required. All of working groups are managed in connection and continuity of the activities of the National Council for ecological transition (decree 2013/753 - this administrative advisory entity gives opinions on draft laws, on national strategy for sustainable development, biodiversity, energy, societal corporate responsibility (…). It is composed by 50 members (central administration and parliamentarians, local authorities, environmental associations, employers and unions).
Each working group produced a report submitted to the Minister:
1)- The future regional scheme and sustainable territorial development (report 2014 conducted by the general council for environment and sustainable development (established by decree 2008, the administrative entity produces expertise, audit and assessment for the Ministry of ecology and it is one of the environmental authority for the implementation of directives related the assessment of the effects of certain plans, programmes and projects on the environment)
2) Accelerate the building projects, simplify the environmental procedures and modernize the public participation (managed by JP Duport, Regional Prefect, 2015) In 2016, an another report intituled Going towards a unification of procedures and the merger of authorisations
3) Modernize the environmental assessment (managed by J. Vernier, 2015)
4) Democratize the environmental dialogue - Environmental democraty: debate and decide (managed by a commission of the national council for ecological transition presided by A. Richard)
5) The modernization of the Administrative environmental contentious (2015, managed by D. Hedary, member of the Council of State)
6) Improving the sequence "avoid, reduce, compensate" (2015, managed by Romain Dubois assistant-director SNCF (railways)
7) Improving the effectiveness of Law : Control and sanctions (The Minister asked to JP Rivaux, General substitute at the Amiens Court of appeal, to manage this reflexion)
In 2015, the General Council for environment and sustainable developed published a report on the assessment of the environmental police.

All those reports, recent laws and current legislative experimentation in the field of environmental permits for industrial installations are focused on three major topics directly connected to Avosetta meeting's questionnaire : substantive legal content and high of environmental protection– procedural aspects and simplification – Governance and environmental rights.
Of course, everyone recognizes the various legal failures to protect the environment and the criticisms against environmental law (too technical and complicated ("*mille-feuille*") with lots of inconsistency that obscures the understanding of environmental legal requirements and is prejudicial to the legal certainty). The improvement of the quality of environmental law appears to be a *sine qua non* condition for ensuring the efficiency and the effectiveness of the ecological protection and sustainable development. However, we need to ensure that the process of environmental law modernization does not become a legal environmental regression process in the name of short-term economic interests. The problematic of permit procedures for industrial installations and infrastructures projects is an interesting revealing example of the benefit and the risks of this ongoing process. In addition, we would like to insist on the singularity of the current context in France concerning two infrastructure projects: - The first one is the project of Sivens dam in the southwest of France. In October 2014, an environmental activist lost his life during the violent clashes between the police forces and the opponents to the project due to its serious ecological impacts (in particular the destruction of wetlands in contradiction with the framework Directive on water). In 2015, the government decided the abandonment of this project (for which the European commission initiated an infringement procedure). The second one is the airport project on the site of Notre Dame des Landes in Western France (Loire Altantique near Nantes). Face the determination ot the

opponents to this project and the numerous protest against this project, the French government 's just decided to organize a local referendum in june 2016 (ordonnance 2016/488 and decree 2016/491 related to the local consultation for projects with potential environmental impacts and decree 2016/491 related to the consultation of the electors of the municipalities from the Loire-Atlantique departement regarding the transfer of the Nantes Airport to the Notre Dame municipality).
As for the Sivens projects, after petitions to the European Parliament related to the Airport project Notre Dame des Landes, the European Commission decided to launch infringement proceeding against France for failure to fulfil its obligations under the directive concerned environmental assessment for certain projects. At the same time, in 2015, the French Council of State (Conseil d'Etat) referred preliminary questions to the European Court (ECJ) related to the Directive 2001/42 on the environmental impacts assessments of certain plans et projects (case C 379/15, opinion of Advocate-General Kokott delivered on 28 april 2016). that it can determine whether provisions held by the national court to be contrary to EU law should be maintained temporarily in force? to maintain, until 1 January 2016, the effects of the provisions of the Article 1 of the Decree of 2 May 2012 concerning the assessment of certain plans and documents having an impact on the environment, which it holds to be illegal, justified in particular by an overriding consideration linked to the protection of the environment? The French judges consider the French regional parks law to be contrary to EU law
NHF France Nature Environnement annulment of the decree related to the environmental impact of certain plans and documents Directive 2001 EIA - arguments : participation du public sur le projet de décret – autorité environmentale effective autonomy : le décret a méconnu les exigences article 6§3 directive – illégalité car no applicable aux chartes des parcs naturels régionaux prescrites au 1er janvier 2013 – question rétroactivité de l'annulation partielle des dispo article 1 décret : remise en cause légalité ensemble des plans et programmes à cause risqué illégalité des actes règlementaires sur le fondement de ces plans et programmes – risqué de porter atteinte au niveau élevé de protection – sécurité juridique
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I. Industrial Installations[2]

In France, the roots of the legal framework of industrial installations due to the negative impacts on the environment go back to the beginning of 19th century with the famous imperial decree adopted on 15/10/1810 related to factories and ateliers which spread unhealthy or inconvenient odour (manufactures et ateliers qui répandent une odeur insalubre ou incommode). This first legal framework created the first nomenclature of industrial installations for the environmental protection and the system of prior authorization under the authority of the Prefect. In 1917, the law related to the dangerous, unhealthy or inconvenient industrial installations complemented this specific framework by creating the system of prior declaration. In the beginning of the seventies, after the creation of the Ministry of environmental in 1971, two major environmental law were adopted in 1976: the Law for Nature protection and the Law related to industrial installations for environmental protection (installations classées pour la protection de l'environnement). This last Law repealed the Law of 1917 and is the present basis of the singular legal framework for industrial installations for environmental protection. Due to the adoption of EU environmental directive related to industrial installations (including Seveso Directive), Environmental impacts assessment (projects, plans and programmes) and the occurrence of industrial disasters in France (as AZF factory explosion in 2001), the French government had to modify the law n°76/663 and to complete the legal framework through the adoption of others laws (as the Law 2003/699 related to the prevention of technological and natural risks and the repair of the damage). The main characteristics of the" model legal framework" are well-known: integrated environmental approach, specific administrative police, public consultation and rights of third parties, full remedy actions (broad powers of the administrative judge). In 2004, the number of the industrial installations was estimated at around 500 000 (450 000 subjected to prior declaration system, 60 000 subjected to prior authorization system (including

[2]We start here from the hypothesis that the construction and the operation will take place in an area in which, according planning law or nature protection law, there is, *prima facie*, no legal obstacle to do this (e.g. in an industrial area not in the vicinity of a *natura*2000 site, etc..)

23 000 farming installations) and 6000 subjected to the directive IPPC. It should also be noted that some activities of industrial installations could be subjected to others legislations (air, energy, or for the permit building in accordance to planning legislation in the light of the principle of legislation independence….).
In the middle of 2000, the French government decided to reform this important legal framework (called législation ICPE Installations classées pour l'environnement, Installations classified for the protection of the environment) in the name of the simplification and better regulation leitmotiv. Several industrial sectors complained of the expense and the excessive length of the procedures and considered that the legal and administrative obligations were disproportionate and too complicated. They criticized (as some politicians) a so-called over-implementation (gold plating, sur-transposition); in reality a pretext to justify an environmental regression process and an excuse to lower national norms at the service of economic interests. In 2006, the report of the general inspection for the environment (Ministry of the Environment), related to the simplification of the legislation ICPE, suggested several modifications (the increase the thresholds, the creation of a new system between the prior declaration system and the prior authorization system…). As result of all those debates and proposal, the government adopted in 2009 an Ordinance (executive act) that created the prior registration system (sort of simplified prior authorization with specific conditions). This new registration system cannot cover the industrial installations which are subjected to the Directive IPPC/IED or subjected to the directive Environmental impacts assessment for certain projects. Under this new registration system, the industrial installations which could be concerned are: - the industrial installations subjected to the prior authorisation system (if they respect various criteria, in particular if the industrial sector concerned, the technologies used and the risks are well-known and could be regulated with efficiency by national general technical requirements without impact assessment or hazard assessment study and without extensive consultation with the public). According the Ministry, around 40% of the industrial installations subjected to the prior authorization system will meet the criteria of this new prior registration system. Since the adoption of the Ordinance 2009/663 and the decree 2010, a process of modification of the nomenclature of the installations classified for the environmental protection has been initiated (still on going); several industrial installations which were before subjected to the prior authorization system are now subjected to the prior registration system (for eg. Farming installations cattle and & pigs (decree 2013/1301), pouldry and game birds (decree 2015/1200) ; such modifications has been criticized by the environmental protection associations).
The next step of the reform of the legal framework of the classified installations for environmental protection is to introduce a single authorisation system for industrial installations as a first step on an experimental basis (3 years for a few regions (as in Brittany) and specific industrial installations: wind farms and methanization installations) before being extended to the whole of France. The Law 2014/1 empowering the government to simplify and "*secure*" the life of companies provides the modalities of such normative experimentation to which we come back to.

1. Forms and scope of permits

In broad terms, what are the forms and scope of permits[3] necessary to construct and operate an industrial installation (e.g. an industrial installation in the sense of Annexes I or II of Directive 2011/92/EU?

- planning permission and/or building permit
- special environmental decision[4]
- construction and operating permit,
- stepwise permitting,
- other types of permit (nature, water extraction…)

Under the current legal framework (except the legislative experimentation for the single authorisation system), we have to make a distinction between the building permit (**urban planning law**) that is necessary for the construction of the industrial installation and the different permits allowing the operation

[3] Or similar acts such as mandatory favourable opinions.
[4] For instance in Poland the investment process begins with the decision on the environmental conditions. In context of proceedings for adoption of that decision EIA is carried out. This decision provides environmental conditions and is binding for future decisions issued in the investment process.

of the industrial installation (permits under the **legal framework ICPE** (including, if need be, public enquiry, environmental impacts assessments, hazard study…) and others legislations (others **Environmental legal frameworks** : specific authorisation permit under the water law, Natura impacts assessment, permit for clear land, **Energy law**, …) depending on the type of the ecological impacts of the activities of the industrial installations.

If a plurality of permits etc. are required, is there a sort of co-ordination mechanism between them? Are they delivered by the same or different authorities, on what level (central, regional)?

Yes, coordination mechanisms (compliance verification, information & consultation of the public authorities involved and the public …) between them are in place, in particular to facilitate the relations between the different public authorities. For example, the local authorities are consulted on the request presented by the operators for the prior registration procedure, in a modernised and simplified form thanks the use of information technology and they could give their opinion on the registration dossier.

Planning and environmental permits are issued by separate authorities (except the case for specific projects of installations for which only the Ministry or the representative of State is competent). The building permit is normally delivered by the competent local authorities (except the case of the permits building delivered by the State[5]). The operating permit is delivered by the authority of the Prefect (the representative of the State in regions and department). For information, the installation, which are not included in the nomenclature of installations classified for environmental protection, is under the control of the municipality.

Is the procedure similar or not (including public participation)?

Depending on the type of industrial installations and their location, the procedures are different and all the environmental permits involved are not necessary required.

In accordance with the process of simplification of procedures, all the industrial installations subjected to **the prior declaration system** submit their applications online since the end of January 2016 (decree 2015/1664 and ministerial order 15/12/2015 related to the dematerialisation of the prior declaration procedure (around 12 000 installations concerned); after the confirmation with the acknowledgment of receipt, the industrial installation could *start (or stop if it is the request of the company). The proof of delivery of the prior declaration is published on the website of the Prefecture (for at least three years) where the industrial installation 'll operate and a copy is sent to the mayor of the municipality concerned. If the installation is included in the national or local list of projects subjected to Natura Impact assessment (L 414-4 of environmental code and R 414-18-1, quarries, waste disposal..), such assessment has to be attached to the request for operating declaration.*

*For the **new prior registration system**, the request for the registration is completed if need be by the request for building permit or for clear land (défrichement), the Natura 's impacts assessment (if the project is in a Natura area) and different elements permitting the assessment of the project for conformity with certain plans, schemes and programmes (as river basin district, waste management plans, action programme concerning the protection of water against pollution…). The complete dossier is submitted for opinions to the municipalities concerned and the public in the mayor's office and on internet for 4 weeks (the same duration as public enquiry).The inspection for the classified installations prepares a synthesis report; in the case of the adaptation of the technical general requirements (requested by the company or proposed by the inspection of ICPE), the synthesis report and the proposal of the inspection are presented, for opinion, to the departmental council for the environment and health and technological risks. After the Prefect takes its decision (registration, reject or switchover to the prior authorisation procedure).*

[5] Under the planning urban code : building, installations and infrastructural work carried out on behalf of the State, - certain infrastructural works for energy production, transport, distribution and storage, as well as those which use radioactive materials - building, installations and infrastructural work carried out within the perimeter of national interest operations

*In the case of the **prior authorisation procedure**[6] (under the decree of 13/10/2010 which modified the list of the elements needed for the full dossier) a public enquiry is organised and the opinion of the municipalities is needed and different administrative authorities (not only the service instructor, for example the regional agency for health, fire-fighting and rescue services, Labor inspectorate…) are consulted according to the characteristic of the industrial installation, its location and others specific issues. A synthesis report is prepared by the The inspection for the classified installations and submitted to the departmental Council for the environment and health and technological risks. Depending of the characteristics of the classified installations, the obtainment of a permit for clear land (défrichement) could be necessary (a proof of the request for such authorisation must be attached to the request for operating authorisation, as well as the authorisation requested under the law on water (related the installations, structures, works and activities due to their impacts on the quality and the quantity of water resources).*

What is the relation between them?

For example, in the **case of the operating declaration procedure**, if a Natura impact assessment is required, the operator has to wait the authorisation under Natura legislation before operating its classified installation.

For example, in the case of **the operating authorisation procedure**, if the operator needs a building permit, he has to send its request for a prior authorisation and a building permit in the same time (L512-15 environmental code). There, those two procedures are connected (except for the case of the legislative experimentation for the single authorisation for both building permit and environmental permit for operating). The operator has to give to the urbanism service instructor the proof that he has submitted its request for authorisation for its installation before obtaining a certificate for its building permit request; such certificate has to be given to the Prefecture which open the instruction of its request for the operating authorisation[7]. Since July 2007, the building permit could be granted but cannot be executed before the end of the public enquiry required by the authorisation procedure for the industrial installation.

Do you feel that the various procedures, taken as a whole, assure a full and sufficient integrated assessment and control of the environmental impacts in the broad sense (nature, landscape, land use, climate, air, water, noise, soil, energy, mobility, safety…)?

Overall Yes. In accordance with the article L 511.1 of the environmental code, the legal framework concerning the classified installations for environmental protection take into account *all the hazards or nuisances either related to - convenience of neighbours, - health and the public security and sanitation, - agriculture – nature, environmental and landscape protection, - rational use of energy – conservation and protection of monuments, sites and the elements of the archaeological heritage"*. This integrated approach is one the main characteristics of this French legal framework which inspired the UE IPPC & IED directives.

According to the characteristics of the classified installations (type of the industrial installation and its activities and its location) and in line of the principle of legislative independence, others legislations (urban planning code, environmental code, energy code, forest code…) could complete this integrated approach.

Off course, there is always room for improvement in this matter, in particular for the effective implementation of this integrated approach, the further improvement of scientific and technical knowledge (which needs to be taken into account by decision makers), a better organization of the administrative services (including the effective consultation of relevant bodies as the *departmental council for the*

[6] A partir du moment où un établissement comporte plusieurs installations classées dont l'une est soumise à autorisation, le principe de connexité (code de l'environnement) amène à considérer que l'ensemble est soumis à autorisation

[7] l'autorisation d'exploiter une installation classée doit être compatible avec les dispositions contenues dans le schéma de cohérence territoriale [60] et dans le plan local d'urbanisme [61] applicables. il a été jugé que ne pouvait être autorisé l'exploitation d'une décharge sur un site classé en zone naturelle à protéger par le POS de la commune concernée

environment and health and technological risks) and better training requirements for administrative officers (same remarks for the operators off course !), an effective information, consultation and participation of the public.…

Has there been a tendency to partially or fully integrate different types of permits? Is it an on-going process?

Yes. As noted above, in the name of simplification and modernization of environmental law, the French government decided to start a legislative experimentation related to a single environmental authorisation procedure. Under the Law 2014/1 empowering the government to simplify and "*secure*" the life of companies, this legislative experimentation (for specific projects, only in a few regions and for three years) aims to gather in a single dossier several environmental procedures failing within the competencies of the State (ICPE authorization, building permits, clear land authorisation, Natura derogations for protected species, authorisation required by energy code…) leading to a single authorization decision taken by the Prefect. The public enquiry is also organized by the Prefect. The time needed for the examination of the dossier for a single authorization is reduced compared to the normal procedure for the operating authorisation ICPE.

Ordinance 2014/355 and Decree 2014/450 related to the experimentation of a single authorisation under the legal framework concerning the classified installations for environmental protection

2 types of industrial installation concerned (wind farms and methanization installations). 5 regions are concerned (and two of those regions (Champagne Ardenne and France-Comté) decided, on a voluntary basis, to apply this experimentation for all the classified installations subjected to the authorisation procedure). Since the 1/11/2015, the experimentation single authorisation généralisée à toutes les régions

The main objective of this legislative experimentation are to reduce the complexity of the procedures needed and the administrative delays without reducing the level of environmental protection and the public participation (presented as is by the Ministry). Published in december 2015, an official report on the implementation of this experimental single authorisation provides an interesting first assessment.

How do you assess the plurality and integration of permits?

The plurality of permits: Naturally complicated ! Complicated for all the stakeholders with risks for the respect of a high level of environmental protection. For the operators, such plurality imposes too much bureaucraty (different administrative authorities and consultative administrative entities concerned) which translates into waste of time and resources. However, all those different permits required (depending on the characteristics of the installation) could complete the integrated approach of the legal framework related to classified installations for environmental protection.

2. Procedures

Depending on the type of industrial installations, the procedures are different and, consequently, the time frames of the various steps also vary.

2.2 What are the main characteristics of the applicable permit procedure or procedures?

The questions are about the different permits if more than one permit is needed for an 'intended activity'

- Who is (are) the competent authority (authorities)?

For the different types of operating procedure for the ICPE (declaration, registration, authorization), the Prefect is the competent authority (departmental Prefect, if the classified installation is located in the territory of different department, a joint-decision is taken by the different Prefects concerned). For example, for the authorization procedure ICPE, the prefect provides the authorization after the examination of the full dossier by the administrative services, the public enquiry (for on month, may be up to 15 additional days) and the opinion of the *departmental council for the environment and health and*

technological risks for opinion and the opinion of municipal councils concerned by the project ICPE.

As noted above, for the building permit, the local authorities are the competent authority (except the case for certain projects for which the State is competent (see the previous developments on urban planning law).

- Is EIA integrated in the permitting procedure or is it an autonomous procedure that precedes the introduction of an application for a permit (or for the various permits)? In the latter case, can EIA be carried out once more at the next stage of the development process (e.g. in the building or environmental permit procedure)?

Under the legal framework related to classified installations for environmental protection, it depends on the type of procedure concerned by the project: EIA is necessary integrated in the authorisation procedure. For the registration procedure, this integration is decided case by case (the type of installations subjected to this procedure do not have to be subjected to a systematic environmental impact assessment in accordance to the annexe I of Directive EIA). By examining the dossier for registration, the Prefect could decide that the operator is required to submit an EIA according the criteria of the annexe III of the Directive EIA, in particular with regard to the environmental sensitivity (L 512-7 Environmental Code). In a judgement (340550 of 23/10/2013) the Council of State confirmed this environmental assessment exemption for classified installations subjected to the registration procedure and the Prefect's power to require an EIA according the criteria as we noted above.
If the project is in a Natura area, a Natura impact assessment is needed. The operator has to give elements to prove the compatibility of its projects with certain plans, schemes and programmes (as Waste management plans, river basin district, urban planning plans ……*)*.
The prefect can consider that the project has to be subjected to the authorization procedure and not to the registration procedure if – in relation to the localisation of the project, the sensitivity of the environment justified it (taking into account the criteria of annexe III Directive EIE) – cumulation with other projects located in this zone (.). Decree 2015/1614 revising and simplying the permitting system ICPE

For the operating authorisation procedure ICPE
The authorisation dossier, submitted by the operator, must include an environmental impact assessment of its industrial installation project and a hazard studies if need is.
*For quarry, he must give a document which proves his ownership or the right to use it.

For the declaration procedure ICPE
Under the article R. 512-47 of the environmental code, if the industrial installation is included in the national or local lists (defined by prefectoral order L 414-4 environmental code), a Natura impact assessment is needed. Two months after the submission of the Natura impact assessment by the operator to the Prefecture (by internet), the Prefect shall inform the operator if the project is accepted or not or need to complete. In the absence of a response with the period of two months after the receipt of the full dossier, this administrative silence shall be deemed to be consent (article R. 414-24 environmental code).

Decree 2011/2019 related to the reform of impact assessment for works, development programmes and projects

CATÉGORIES D'AMÉNAGEMENTS, d'ouvrages et de travaux	PROJETS soumis à étude d'impact	PROJETS soumis à la procédure de « cas par cas » en application de l'annexe III de la directive 85/337/ CE
Installations classées pour la protection de l'environnement (ICPE)		
1° Installations classées pour la protection de l'environnement (dans les conditions prévues au titre Ier du livre V du code de l'environnement notamment en matière de modification ou d'extension en application du dernier alinéa du II de l'article R. 122-2 du même code).	Installations soumises à autorisation.	Pour les installations soumises à enregistrement, l'examen au cas par cas est réalisé dans les conditions et formes prévues à l'article L. 512-7-2 du code de l'environnement.
Installations nucléaires de base (INB)		
2° Installations nucléaires de base (dans les conditions prévues au titre IV de la loi n ° 2006-686 du 13 juin 2006 et de ses décrets d'application, notamment en matière de modification ou d'extension en application de l'article 31 du décret n° 2007-1557 du 2 novembre 2007).	Installations soumises à une autorisation de création, une autorisation de courte durée, une autorisation de mise à l'arrêt définitif et de démantèlement ou une autorisation de mise à l'arrêt définitif et de passage en phase de surveillance.	
Installations nucléaires de base secrètes (INBs)		
3° Installations nucléaires de base secrètes	Installations soumises à une autorisation de création ou une autorisation de poursuite d'exploitation de création.	
Stockage de déchets radioactifs		
4° Forages nécessaires au stockage de déchets radioactifs.	a) Forages de plus d'un an effectués pour la recherche des stockages souterrains des déchets radioactifs, quelle que soit leur profondeur.	
	b) Forages pour l'exploitation des stockages souterrains de déchets radioactifs.	
	c) Installation et exploitation des laboratoires souterrains destinés à étudier l'aptitude des formations géologiques profondes au stockage souterrain des déchets radioactifs.	

- Is there a differentiation between large, intermediate and smaller installations? Is a notification to the relevant public authority in some cases sufficient? Is there a possibility to exclude certain installations even from the notification requirement?

As noted above, the legal framework for classified installations for environmental protection is based on a nomenclature which must be in conformity with EU Directives. The industrial installations are classified according to the degree of risks and nuisances. The nomenclature is divided into two parts (the use or storage of certain substances and the type of the activities (waste, wood, food industry …); As I explained before we have three type of administrative procedure for the operation of the industrial installation depending on the threshold defined in the nomenclature: D for declaration, E in French (enregistrement) for registration and A for authorisation. This means that all the industrial installations are not classified installations for the environmental protection (ICPE) if they are below the threshold defined. Of course, nothing is set in stone and an industrial installation subjected to the registration procedure could switch to another procedure (declaration or authorization).

The registration procedure was created to take into account, in particular the intermediate and smaller installations. Such installations present significant risks to human health and to the environment; however, the government considers that it is possible to prevent those risks by imposing national technical standard requirements.

- Are competent planning and environmental authorities consulted during the decision-making procedure or procedures, if more than one permit is needed? Within what time limit have they to give their opinion? Are these opinions binding or not? Do they have some weight in practice?

See above.

For the operating registration procedure: the full registration dossier is submitted to the opinion of the municipalities concerned by the ICPE Projects. A synthesis report is prepared by the inspection body for the classified installations. In the case of the need to adapt the national technical standards requirements for the project (at the request of the operator or based on proposals of the inspection body for the classified installations) or in the case of a negative opinion of the inspection body for the classified installations, the synthesis report and the proposal of the inspection body for the classified installations are presented to the *departmental council for the environment and health and technological risks* for opinion.

- Is there public participation in every case? At which stage of the development? Is it broadly announced and used? What time frames apply? Is the public participation on the application or on the draft decision?

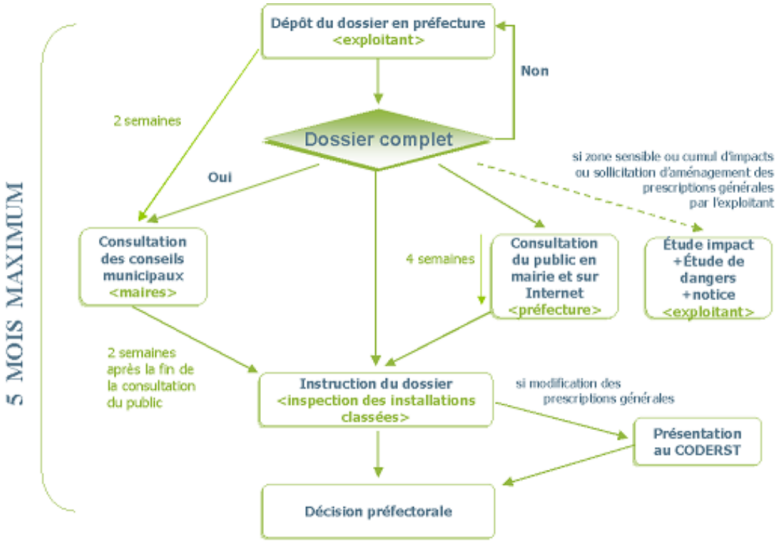
Yes, but with differences depending on the type of operating procedure ICPE

For the operating registration procedure: the full registration dossier is submitted to the public consultation (in the mayor's office) and on internet (website of the Prefecture) during 4 weeks. The public could give its comments and put them on a special register or send them to the Prefect.

The Prefect can request the organisation of a public enquiry if the project presents a singular environmentally sensitive.

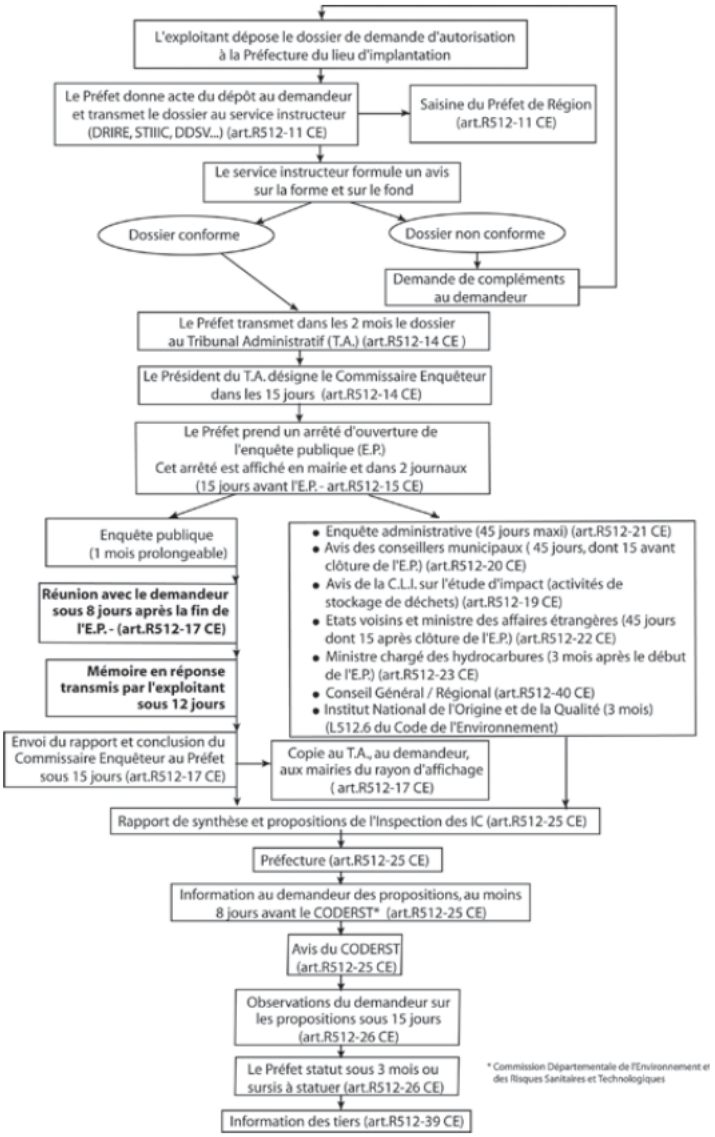
- What time frame applies from the introduction of the application to the decision in first administrative instance (i.e. when a developer receives final decision allowing to start development, however, before possible appeal to a higher authority)?

Registration procedure ICPE (pattern included in the Circular 2010 related to this procedure) : in theory, the time limit for the examination of the full dossier is around 4 to 6 months (two times less than the authorization procedure).



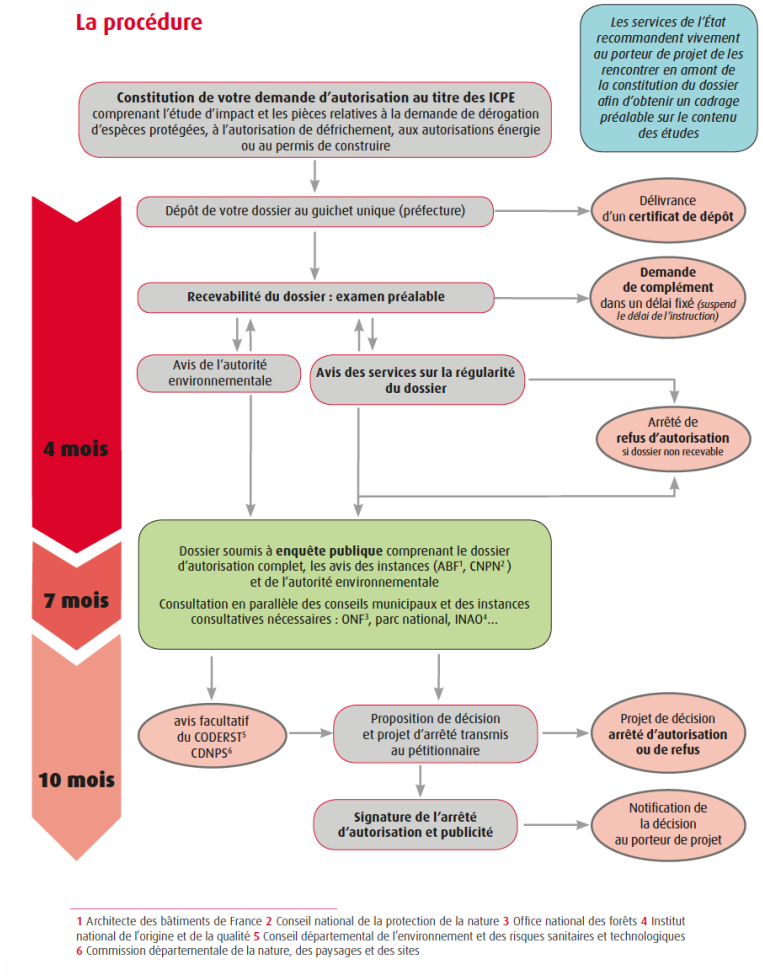
Authorisation procedure ICPE

This procedure should take about one year (full dossier to prefectoral authorisation order). The objective of the Ministry is the exam all the full dossier in less than one year.



* For information, a public enquiry may not be less than 30 days and cannot exceed two months (the opinion of the commissioner of inquiry is not binding but if the Prefect decides in contradiction with this opinion, it could be subjected to further litigation.

Experimental single authorisation ICPE
Pattern from the Ministry website



Is there an administrative appeal against a decision on a permit or the various needed permits? What is the competent authority (or authorities) to whom an appeal can be lodged? Who can lodge the appeal (only parties of the proceeding, NGO, everybody), within what time? What time frame applies to reach a decision on appeal? What if the time frames are not respected?

All administrative decision related to ICPE may be appealed before an administrative Court for excess of powers (L 514-6 of environmental code). Two months for an internal administrative appeal (recours gracieux). According of the article L L 514-19 of the environmental code, the authorisation permits are granted, subject to the respect third party rights (droits des tiers, including municipalities).
There is no harmonisation of the time limits for administrative appeals; it depends on the type of permits concerned, the type of procedure or even the type of activities.
For authorisation procedure ICPE: since 2010: One year after the authorisation decision of the Prefect and 6 months after the commissioning of the installation. Before 2010 : 4 years!
For farming installations subjected to registration procedure ICPE: 4 months according to the Law 2015/990 related to the growth, activity and equal economics opportunities

For the experimental single authorisation ICPE: only two months following the Prefect's decision; such delay was strongly criticised by the NGO. Several NGO against wind farm have asked the administrative

Court to annul the decree 2014/251 related to the experimental single authorisation procedure. In December 2015, the Council of State rejected this claim "*considering the possibility for the regulatory power, **for simplification purposes**, to define the conditions governing the right to appeal against an administrative decision in order to conciliate an appropriate equilibrium between the interest of the operator, of the administration and of the litigant*". The Council of State rejected the NGO's argument and concluded that the provisions of Aarhus Convention (article 6§4 and 8) are not binding on third because they only created obligations between the States parties to the Convention. Furthermore, the Council State considered that the experimental single authorisation permit includes a public enquiry which allow the information of the third parties on the project.
Concerning building permits: two months starting from the posting on the site

II. Infrastructural Projects

Here we would like to investigate how according to environmental and planning law a project that is not as such provided for in the land use plans can be realized.
We can take as an example the construction of a highway of the type indicated in Annex I, point 7, (b), of the EIA Directive
1. Is there a need to draw up a plan or to review a plan in the sense of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment?
If yes, can you in a concise way give an overview of what this means in terms of procedure, including SEA, public participation, administrative appeal (if any), and time frames?
You may refer, when the occasion arises, to what has been said under part I of the questionnaire.

The legal context of transport infrastructure projects.
Since 2009, the government adopted a national transport infrastructure scheme which established the orientations concerning the modernisation and development of networks, the reduction of environmental impacts, the reduction of the consumption of agricultural and natural spaces (…). In 2014, a ministerial order specified the conditions for the conception and the management of investment of the national road network. Those linear transport infrastructures include a preparatory studies phase and different administrative procedure which could take for or five years (for small projects) to 10/15 years for the most important transport infrastructure. The process for implementing the investment of the national road network is is divided into 7 steps : The two first are:
1st Step -Opportunities studies (socio-economics and environmental assessments related to the needs of mobility and the identification of the main objectives of a new transport infrastructure (road, railways..); such studies are accompagnied by public concertation or if the need is, by a referral from the National Commission for Public Debate (this Commission was created by the Law 1995 related to the environmental protection and became an independent administrative authority under the Law 2002 related to the local democracy, the Grenelle environmental Law 2010 extended its competencies and revised its composition).
An obligatory referral the National Commission for Public Debate for important road infrastructure

Catégories	Seuils
Création d'autoroutes, de routes express ou de routes à 2x2 voies à chaussées séparées ou élargissement d'une route existante à 2 ou 3 voies pour en faire une route à 2x2 voies ou plus à chaussées séparées	Coût du projet supérieur à 300 millions d'euros ou de longueur supérieure à 40 km

Second Step : Preliminary studies : they are designed to allow the choice of the best management solution and they end with the launching of preliminary study to the public interest declaration. For the road infrastructure projects which need a decision of the Environmental Ministry, the environmental assessment is subjected to the opinion of the environmental authority of the general Council for

environment and sustainable development. This opinion delivered within a period of 3 months is integrated in the dossier related to the preliminary study to the public interest declaration.
In the full dossier (or file) submitted to the public, we find in particular the environmental impact assessment, the opinion of the environmental authority, the socio-economic impact assessment, and if need is the prove of the compatibility with the urban planning documents. The public interest declaration is adopted by the prime Minister (after the opinion of Council of State) for the highways, by a ministerial order for important national roads (routes expresses), by a prefectoral order for this others national roads.
The others steps concerned the detailed project studies with the respect of specific procedures as ICPE procedures, Water procedures, Natura and protected species procedures…., the road works, the operation of the highway and the last step concerned the assessment (socio-economics and environmental impacts) of those projects (3 or 5 years after the operation)

2. Would there be a need to obtain one or more permits to construct and operate the highway mentioned under point II? Is an EIA necessary? Is there a coordination mechanism integrating the substance and procedure of the permits? If appropriate and available, a flow chart could be attached. What are the characteristics of the procedures?

You may refer, when the occasion arises, to what has been said under part A of the questionnaire.
Decree 2011/2019 related to the reform of impact assessment for works, development programmes and projects
Table related to the projects submitted (systematic or case by case)

CATÉGORIES D'AMÉNAGEMENTS, d'ouvrages et de travaux	PROJETS soumis à étude d'impact	PROJETS soumis à la procédure de « cas par cas » en application de l'annexe III de la directive 85/337/ CE
Infrastructures de transport		
5° Infrastructures ferroviaires.	a) Voies pour le trafic ferroviaire à grande distance, à l'exclusion des voies de garage.	a) Autres voies ferroviaires de plus de 500 mètres.
	b) Création de gares de voyageurs et de marchandises, de plates-formes ferroviaires et intermodales et de terminaux intermodaux.	b) Haltes ferroviaires ou points d'arrêt non gérés ; travaux entraînant une modification substantielle de l'emprise des ouvrages.
6° Infrastructures routières.	a) Travaux de création, d'élargissement, ou d'allongement d'autoroutes, voies rapides, y compris échangeurs.	
	b) Modification ou extension substantielle d'autoroutes et voies rapides, y compris échangeurs.	b) Modification ou extension non substantielle d'autoroutes et voies rapides, y compris échangeurs.
	c) Travaux de création d'une route à 4 voies ou plus, d'allongement, d'alignement et/ ou d'élargissement d'une route existante à 2 voies ou moins pour en faire une route à 4 voies ou plus.	
	d) Toutes autres routes d'une longueur égale ou supérieure à 3 kilomètres.	d) Toutes routes d'une longueur inférieure à 3 kilomètres.
		e) Tout giratoire dont l'emprise est supérieure ou égale à 0,4 hectare.
7° Ouvrages d'art.	a) Ponts d'une longueur supérieure à 100 mètres.	a) Ponts d'une longueur inférieure à 100 mètres.
	b) Tunnels et tranchées couvertes d'une longueur supérieure à 300 mètres.	b) Tunnels et tranchées couvertes d'une longueur inférieure à 300 mètres.
8° Transports guidés de personnes.	Tramways, métros aériens et souterrains, lignes suspendues ou lignes analogues de type particulier servant exclusivement ou principalement au transport des personnes.	Toutes modifications ou extensions.

CATÉGORIES D'AMÉNAGEMENTS, d'ouvrages et de travaux	PROJETS soumis à étude d'impact	PROJETS soumis à la procédure de « cas par cas » en application de l'annexe III de la directive 85/337/ CE
9° Aéroports et aérodromes.	a) Toute construction d'un aérodrome ou d'une piste.	
	b) Toute modification d'un aérodrome, ou ancien aérodrome, militaire en vue de l'accueil d'une activité aéronautique civile.	
	c) Toute construction ou modification d'infrastructures aéronautiques en vue d'un changement du code de référence de ces infrastructures au sens des articles 3 et 4 de l'arrêté du 10 juillet 2006 relatif aux caractéristiques techniques de certains aérodromes terrestres utilisés par les aéronefs à voilure fixe.	
	d) Toute construction ou extension d'infrastructures sur l'aire de mouvement d'un aérodrome dont une piste, avant ou après réalisation du projet, à une longueur égale ou supérieure à 1 800 mètres.	d) Toute construction ou extension d'infrastructures sur l'aire de mouvement d'un aérodrome dont la ou les pistes ont une longueur inférieure à 1 800 mètres.
	e) Toute construction ou modification d'installations spécifiques aux opérations de dégivrage.	

B. Describing and evaluating integration and speed up legislation

Have there been initiatives in your legal order to introduce specific legislation to integrate and speed up decision making for infrastructure projects/industrial installations?

If so:

(a) When was this done?

See Above. Legislative experimentation for a single environmental permit

L'expérimentation « certificat de projet » consiste, pour un porteur de projet qui n'est pas certain du cadre juridique de son projet et de toutes les formalités administratives qu'il aura à accomplir pour pouvoir le réaliser, à **demander à l'administration de lui apporter les informations dont il a besoin**. Cette réponse prend la forme d'un document appelé certificat de projet, délivré en deux mois par le préfet de département

(b) What was the general justification?

See above.

(c) What types of projects does it apply to?

See above.

(d) What key aspects of procedure are speeded up? (public participation, greater integration of criteria and procedures to avoid duplication, notification instead of permit requirement, consent by time lapse, stepwise permitting etc.)

Dematerialisation of the operating declaration procedure (since january 2016)
Lightened public participation related to the operating declaration procedure and registration procedure (ordonnance 2009 and decree 2010 registration procedure)
Experimentation for a single environmental permit (including building permit and operating permit)
Reducing delays (declaration registration procedure, experimentation for single environmental permit)
Adoption of standard technical prescriptions for industrial installations subjected to the prior registration procedure (ordonnance 2009, decree 2010 and the different ministerial order …)
Greater coordination between the different administrative services (instructor services, services in charge of the assessment, inspector….) at different level (European, national, local)

(e) Have there been any legal challenges to the changes? (e.g. non-compliance with EU environmental law, Aarhus etc.)
Access to information
Effective participation of the public
Independence of the environmental authority
Access to justice (deadline for appeal, judges power)
(f) Has there been any evaluation of previous situations and/or the impact of speeding up? What is your own assessment of integration and speeding up measures?
Positive points
Potential threats

C. Locus standi for a local government within the permitting procedure

Under what conditions (and whether at all) a local government may file a complaint against an environmental permit for an installation or infrastructure project.[8]
As third parties

D. Further Comments

Please feel free to add any comment on your legal system you like to share.

[8] Right now this is topical issue in Latvia as well as locus standi for municipality was recently intesively discussed before the Aarhus Convention Compliance Committee in connection with admissibility of the case from a local government of Germany.