

Report on France

Impact Assessments – Preventive Measures against Significant Environmental Impacts in the 21st Century

Legal Framework

1. How is the EIA Directive (Directive 2011/92/EU) transposed in your country? Please provide a list of your national pieces of legislation transposing the EIA Directive.

The Directive is transposed in the “ Code de l’environnement” in the first book, title second, “Dispositions communes, Information et participation des citoyens”, this covers legislative provisions (law) as well as governmental acts (Decrees).

2. Are the EIA Directive and the IPPC Directive¹ transposed in your country through the same legislation?

The industrial emissions are covered by book five of the “Code de l’environnement”. However, the EIA part of this legislation is included in book one. It should be considered that in French law, the same legislation applies for IPPC and other projects as regard EIA.

3. What procedure is set up to determine whether a project (listed in Annex II) shall be made subject to an assessment, case by case examination, thresholds or criteria or a combination of these procedures?

The historical approach in France was exclusively based on lists: until the reform of 2010 (Law 2010-788 12 July 2010) and 2011 (Decree 2011-2019 29 December 2011) no case by case approach existed. However, due to an infringement proceeding launch by the European Commission, this approach was modified in 2010 and 2011. Thresholds are now completed by a case by case approach referring explicitly to the criteria of Annex III.

EIA Procedural Provisions

4. Is the environmental impact assessment procedure considered in a separate administrative procedure (e.g. - different from the development consent procedure) by the competent authority? If yes, please provide a short description of the applicable arrangements for the implementation of the Directive (including what administrative act is considered a development consent).

The EIA procedure is to be considered as totally integrated in the development consent procedure.

5. Is the EIA process part of a permitting procedure in your legal system? How are the results of the consultations with environmental authorities and the public and environmental information taken into consideration in the development consent procedure? To what extent does an EIA influence the final decision, i.e. its approval or refusal and attached conditions?

The EIA process is part of the permitting procedure. The results of the consultation of the public as well as the EIA are to be taken into consideration by the authorities when delivering the consent (Article L. 122-1 IV of the Code de l'environnement). However, there is no obligation for the authorities to follow the prescriptions of the EIA (if any). This does not mean that the EIA is not taken into consideration: the case-law (CE 14 October 2011 Ocreal n°323257) considers that if the EIA is not correct then the incomplete information of the authority may lead to annul the development consent.

6. In case of a multi-stage development consent procedure (e.g. combination of several distinct decisions), at what stage does the environmental impact assessment procedure take place during the development consent procedure in your country?

There is no multistage decisions, except in the case by case assessment of the need of an EIA where the first decision leads, on the basis of a questionnaire, to determine if an EIA is needed.

7. What kind of authority (local, regional, central) is responsible for making decisions on EIA and/or to grant/refuse development consent.

The governmental authorities are responsible for making decisions on EIA and development consent. Depending on the type of project, this may be the Préfet (level of

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the Département or Région) or the Minister of the environment. A national Environmental authority is in charge giving an opinion on the quality of the EIA.

8. Is the decision resulting from the environmental impact assessment a pre-condition to grant development consent? In case of a multi-stage development consent procedure, at what stage are the results of the consultations with environmental authorities and the public and environmental information taken into consideration?

An opinion from the national or regional Environmental Authority is needed before the EIA is submitted to the public. The results of the consultations are taken into account by the authority in charge of granting the development consent.

9. In case of projects for which the obligation to carry out environmental impact assessment arises simultaneously from the EIA Directive and other Union legislation, does your country ensure a coordinated or joint (e.g. single) procedure (“one stop shop”)? If yes, please provide a list of the Directives covered.

Yes, this is the case of the Directive 2008/1/EC (IPPC) and for 92/43/CEE (Habitats) and 2009/147/CE (Birds): Article R. 122-5 of the “Code de l’environnement”.

10. Is it possible to carry out joint or coordinated environmental assessments, fulfilling the requirements of the EIA Directive, and Directive 92/32/EEC and/or Directive 2009/147/EC? Is there a legal basis for carrying out such assessments?

Yes, see question above.

11. What arrangements are established with neighboring Member States for exchange of information and consultation?

The exchange of information and consultation with other Member States results from the Article R. 122-10 of the “Code de l’environnement”. However the procedure includes the other Member State only at stage of the public consultation on the basis of the EIA. However, in the preparation of the EIA, it is clear that the developer needs to include elements covering the other Member State (although not stated by law, absence of such information in the EIA would mean that the EIA is insufficient).

EIA Content

12. Is the developer obliged by national legislation to consider specified alternatives to the proposed project?

The Article R. 122-5 of the Code de l'environnement states the different components that are to be included in the EIA. Alternatives (only main alternatives considered by the developer) to be considered are not to be analyzed comprehensively but should only be broadly described.

13. Is scoping (e.g. scope of information to be provided by the developer) a mandatory step in the EIA procedure?

No, the scoping is optional (Article R. 122-4 du code de l'environnement).

14. Are there any provisions to ensure the quality of the EIA report prepared by the developer?

A detailed list of elements to be included in the EIA and the opinion given on the EIA by the Environmental Authority ensure the quality of the EIA report. The opinion of the Environmental Authority may lead the developer to complete the EIA before submission to the public.

15. How is the cumulation with other existing and/or approved/already proposed projects considered? Please illustrate your answer by referring to examples of national case law!

It is mandatory to take into account the cumulative effects of the project (R. 122-5 of the code de l'environnement). For instance CAA Lyon 3 mars 2009 Famy n°06LY02413 the development consent for a quarry is cancelled due to the absence of study of cumulative effects of the quarry and the installations needed to process stone extracted (installations distant from the quarry).

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16. How is it ensured that the purpose of the EIA Directive is not circumvented by splitting of projects – e.g. ‘salami slicing’ of projects (i.e. the assessment and permitting of large-scale, usually linear infrastructure projects by pieces)? Please illustrate your answer by referring to examples of national case law!

The control is ensured by the Environmental Authority (opinion on EIA) and the judge. For instance CE 21 January 1983 Bayle et Frabregues n°36856 for a urban project split in 2 phases, many case-law related to large projects (high speed trains, motorways: CE 2 June 2003 Union fédérale des consommateurs Que choisir ? De Côte-d'Or n°243215.). However, the general practice in France of developers is not to take risks and to avoid “salami slicing”: the cost of annulation of procedure is much higher than the cost of production of a comprehensive EIA.

17. Can the screening decision be appealed? If yes, who can lodge an appeal?

Yes, it is a decision from the Environmental Authority which is published. It can be appealed by any person or association justifying an interest or the developer. Before judicial appeal, an appeal to reconsider the decision is to be done before the Environmental Authority.

18. Is there a time limit for the validity of the EIA-decision and the development consent? Is the permit holder obliged to apply for a new permit after a certain period of time?

No time-limit are explicitly introduced in the law. However, if new information or developments have taken place, a new EIA is to be produced.

Access to Information Provisions

19. How is the public informed about the project and the EIA? When is the public informed about a project requiring an EIA and about a pertaining administrative procedure? Where can the information be accessed? What does the information contain? Who gets access to this information?

For case-by-case decisions, the decisions are published on the website of the Environmental Authority. The public consultation starts at the initiative of the authority granting the permit. The public is informed of the place where all documents are accessible (EIA) through publication in newspapers, internet, official publication in town-halls etc.

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20. How does the authority ensure public access to environmental information in the procedures based on the EIA Directive? To what extent is this provision of information user-friendly (easy to find, free of charge, searchable, online, downloadable, etc.)?

The information is accessible free of charge and combines different sources of information depending on the size of the project (Internet and paper publications). In addition the opinion of the Environmental Authority is submitted to the public (available on Internet).

Public Participation Provisions

21. What are the criteria for taking part in an environmental impact assessment procedure, besides the project developer and the competent authority? What rights can people living in the neighborhood, NGOs, authorities invoke in the procedure? What legal rights do participants of the proceeding have? What happens if the competent authority denies someone's legal standing? Please illustrate your answer by referring to examples of national case law!

In the French approach, the right to take part in the public consultation is not limited. No legal standing is required or needs to be granted.

Administrative and Judicial Review & Enforcement Provisions

22. Can the decisions of the authority (local, regional, central) responsible for making decisions on EIA be appealed? Who is the superior authority deciding over the appeal?

The administrative appeal for case-by-case decisions is to be done to the same authority (R. 122-3 of the Code de l'environnement). No superior authority is involved as the possibility for judicial review are broad.

23. Is there a judicial review against decisions made in EIA procedures? If yes, what matters can be challenged and what decisions can the court take?

Judicial review of case-by-case decisions is possible (see questions 17 And 23). The EIA process and the EIA quality can be challenged as part of a case challenging the development consent. Absence of EIA in case where it is needed automatically leads to

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interim measures automatically suspending the decision (Article L.122-12 of the code de l'environnement).

24. What are the criteria of legal standing against decisions based on EIA? Who (individuals, NGOs, others) is entitled to challenge the EIA decision at the court? Do individuals need to be affected? If yes, in what way do individuals need to be affected by the decisions in order to have standing?

The French approach of legal standing in administrative law does not limit the possibilities to challenge decisions : in general a mere 'intérêt à agir' (interest to act) is recognized as qualifying a party. This covers individuals as well as NGOs. It does not require an individual to be directly affected. NGOs would for instance have legal standing if their Statutes include environmental protection as one of their objectives.

25. Does an administrative appeal or an application for judicial review have suspensive effect on the decision? Under which conditions can the EIA decision be suspended by the court?

The administrative appeal or the application for judicial review does not have suspensive effect. However, it is possible to suspend the decision in parallel to the main case by asking the judge to pronounce suspension. The suspension requires that urgency is demonstrated and that at least one argument is considered by the judge as an argument likely to lead to cancellation of the decision.

26. Does the court have the competence to change/amend an EIA decision? Can it decide on a new condition or change the conditions of the EIA decision?

The Court can fully change all conditions of the permit resulting from the EIA. The Court takes all elements available at the date of its decision.

27. In general, is it required to include monitoring of environmental impacts in the EIA? How is compliance with the monitoring conditions being checked? Is the public informed about the results of monitoring and if yes, how?

Yes, monitoring is one of the elements that should be included in the development consent. Public authorities are in charge of checking monitoring performed by developers. Public is generally not proactively informed of results of monitoring. However for certain large projects, committees including representatives of the public could be set up to check monitoring or compensation measures.

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28. Who controls compliance with EIA decisions in your country? Are there specialized inspectorates checking compliance? How often do inspections take place? What enforcement policy do the authorities have (warnings, injunctions, sanctions and so on) in case of detected non-compliance? Has information on the results of inspections and related enforcement actions been disseminated to the wider public, and if yes, how?

The services of the Préfet, in charge of industrial installations are in charge of monitoring compliance. The Préfet could issue a wide range of measures from warnings, injunctions and possibilities to start works in absence of reaction of the developer. It is also possible to withdraw or modify the permit content. Public does not have access to results of inspections however, in case of modification of permit, the new permit will be published.

29. If EIA decisions are infringed, what types of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and are they considered to be effective? Can those sanctions be applied on legal persons? Please illustrate your answer by referring to examples of national case law!

Criminal sanctions are linked to damages to the environment that can result from breach of the permits delivered (Title 6 of Book I of the “Code de l’environnement”). Criminal sanctions can be applied to legal persons. Administrative sanctions are mainly related to modification of the initial permit or its annulment. No overall statistics are available on the number of sanctions however, the administrative controls are privileging negotiated agreements which would lead to criminal sanctions only in extreme cases.

30. If a given activity falls under the provisions of the EIA legislation, but the developer started the activity without the required authorization, what kind of measures can be taken by the competent authority?

The authority can immediately require the activity to stop and impose prevention/reparation measures. This may lead to criminal sanctions.

31. Are there any penalties applicable to infringements of the national provisions adopted pursuant to the EIA Directive?

No penalties are attached to the infringement of the national provisions adopted pursuant to the EIA Directive: the sanctions are linked to the development consent issued following the EIA. However, it is only breaches of the content of the permit that may be sanctioned.