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**The “*single authorisation*” procedure :
what are the development potentials for
the wind energy sector in France?**

Side-Event



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The “*single authorisation*” procedure : what are the development potentials for the wind energy sector in France?

Presentation outline

- 1. Overview of the “*single authorization*” procedure**
2. Operational feedback
3. Future Developments



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1. Overview of the “*single authorization*” procedure - 1

- The “*single authorization*” is one of the tangible results of the French Government’s willingness to simplify administrative procedures
- Article 14 of law 2014-1 of January 2nd 2014 authorises the Government to experiment in some regions and for 3 years 2 sorts of “*single authorisations*” for ICPEs:
 - “Single authorisation” for WTGs and biomass systems: “merger” of administrative procedures, including building and environmental permits
 - “Single authorisation” for other ICPEs: “merger” of the procedures regarding environmental permits
- Purposes of the reform:
 - Reduction of the time necessary to obtain an administrative decision (acceptance or refusal)
 - Rationalisation of the decision-making process: no more “isolated” decisions
 - Reduction of the number of interlocutors

1. Overview of the “*single authorization*” procedure - 2

- Progressive establishment of the “*single authorization*” procedure
 - Scope of the “*single authorization*” was gradually extended to all wind farm projects in France (since November 1st 2015)
 - It remains established on an “*experimental*” basis, for 3 years
- Transitional measures aimed at giving project developers the opportunity to move from the “old” framework to “*single authorization*”, depending on the stage reached in the procedure

1. Overview of the “*single authorization*” procedure - 3

- The “*single authorization*” brings together in one prefectural order:
 - The building permit (“*permis de construire*”)
 - The “*authorization to operate a facility classified for the protection of the Environment*” (“*autorisation ICPE*”)
 - The “*forest-clearing*” authorisation (“*autorisation de défrichement*”)
 - The “*derogation to the prohibition of destruction of protected species*” (“*dérogation à l’interdiction de destruction des espèces protégées*”)
 - The authorization to operate an electricity production operation
 - The approval of the construction of electricity supply and transport infrastructure



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1. Overview of the “*single authorization*” procedure - 4

- Procedure for obtaining the “single authorization”:
 - Application file shall contain:
 - ❖ Information and documents to be submitted according to “autorisation ICPE” procedure, including:
 - Impact study
 - Risk study
 - ❖ All documents required with the application for building permit, “forest-clearing” authorization, derogation to the prohibition of destruction of protected species
 - ❖ Approvals of Ministries in charge of Defense and Civil Aviation, of the military administration in charge of defense aviation area, of radar operator
 - Application file shall be sent to the locally competent “*Direction Régionale de l’Environnement, de l’Aménagement et du Logement*” (“*Regional Direction for the Environment, Planning and Housing*”, DREAL)
 - A dedicated contact person (in general an employee of DREAL) is appointed to supervise the procedure



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1. Overview of the “*single authorization*” procedure - 5

- First stage: examination of the completeness of the application file (1 month following the submission of the application file)
- The following opinions shall be requested by the Prefect:
 - Consultation of the Region’s “*Environmental Authority*” (“*Autorité environnementale*”) is compulsory
 - National Council for the Protection of Nature (if derogation to the prohibition of destruction of protected species required)
 - Architect from the “*Bâtiments de France*” administration, if necessary
 - Authorities in charge of National Defense, radars and air navigation (if no approval in the application file)
- Second stage: admissibility of the application file (4 months following the submission of the application file):
 - ↳ Prefect shall reject the request if: the “*Bâtiments de France*”’s architect or military, radars and air navigation authorities deliver a negative opinion
 - ↳ The Prefect can reject the request for AU if (i) the application file remains incomplete or non valid following Prefect’s request for additional information or documents, or (ii) the project does not meet environmental goals of the Environment Code, or (iii) the project contradicts with “*the rules applicable thereto*”



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1. Overview of the “*single authorization*” procedure - 6

- Third stage: “*public inquiry*” (“*enquête publique*”) and consultations of various public authorities and administrations
 - ↳ Public inquiry enables local citizens to take part in the examination procedure
 - ↳ It is conducted by a “public inquirer” (“*commissaire enquêteur*”) appointed by the administrative Court at the request of the Prefect
 - ↳ A notice shall be published by the mayors concerned in the town hall, local newspapers and close to the project site
 - ↳ Duration of public inquiry: 1 month, can be prorogated for 30 maximum more days
 - ↳ Timeframe for implementation of “*public inquiry*” for a “*single authorization*” is slightly reduced
 - ↳ The public inquirer shall draft a report for the Prefect and deliver an opinion on the project (non-binding)
 - ↳ Consultation of local municipalities is compulsory
 - ↳ Other consultations are at the Prefect’s discretion



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1. Overview of the “*single authorization*” procedure - 7

- Fourth stage: Prefect’s decision shall be taken within 3 months upon receipt of public inquirer’s report
- Overall timeframe for the examination of the application file should be 10 to 12 months
- Prefectural order granting the “*single authorisation*”:
 - ↳ Provides for the requirements to the construction and operation of the wind farm
 - ↳ Can be modified by the Prefect in the course of operation of the wind farm
 - ↳ Ceases to be valid if the wind farm is not commissioned within 3 years from the date of delivery of the “*single authorisation*”. This 3-year period can be prolonged for 7 more years (overall: 10 years) for wind farm projects
 - ↳ Can be challenged by the project holder if recourse is brought within 2 months from the day on which the order (or refusal) is notified to the project holder



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1. Overview of the “*single authorization*” procedure - 8

- Challenge of the Prefectural order by third parties

- ↳ The time limit for recourse is 2 months following the completion of formalities:

- Publication of the Prefectural order in the register of the Prefect’s decisions
 - Display in the town halls of the municipalities concerned
 - Publication of an information notice in a local newspaper

- ↳ The time-limit can be postponed by 4 months if the third party brings a first recourse before the Prefect of the Ministry of Ecology

- ↳ Each publication or notice shall recall that any recourse brought by a third party shall be notified to the project holder and to the Prefect within 15 days of the recourse’s date, otherwise recourse is inadmissible

- ↳ “locus standi”: the third party shall demonstrate the drawbacks or dangers for the interests protected by ICPE legislative framework and water law



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1. Overview of the “*single authorization*” procedure - 9

- Specificities of the rules regarding judicial review proceedings of “*single authorisation*”
 - ↳ Administrative courts have the broadest powers: “*plein contentieux*” vs. “*recours pour excès de pouvoir*”
 - ↳ Judges can decide e.g. to amend the “*single authorization*”, or to replace it with a new one
 - ↳ In case of refusal of the “*single authorization*” request by the Prefect, judges can deliver the authorization
 - ↳ Judges shall decide according to the state of substantive law at the date of the judgment for the section of the “*single authorization*” granting the ICPE authorization only
 - ↳ Judges can limit the scope of the judgment annulling the “*single authorization*” if the irregularity affecting the project can be “*regularized*”, wind farm can be erected while the application for “*regularization*” is pending before the Prefect
 - ↳ Judges can order a stay of proceedings if an irregularity can be “regularized” with an amending authorization (unless the modifications shake up the project’s original features or design)



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2. Operational feedback - 1

- Major advances brought by the “*single authorization*”
 - ↳ “Single window” approach has allowed for a streamlining of procedures and facilitates the monitoring of the project’s development
 - ↳ Judicial proceedings can be brought against “only” one authorization, which allows to “control the timetable”
 - ↳ Increased dialog between the DREALs and the project developers
 - ↳ Improved cooperation between administrative departments under the supervision of the DREAL
 - ↳ Cooperation between administrative departments leads to more reasoned decisions from the Prefect
 - ↳ The partial annulment mechanism and the possibility to “regularize” the “*single authorization*” in the course of judicial proceedings allows the project holder to proceed with the construction/operation of the non-affected part of the wind farm
 - ↳ Encourages local initiatives towards greater integration and coordination, e.g. in the former region Midi-Pyrénées, “*single landscape impact opinion*” by DREAL, “*Department’s Direction for Territorial Planning*” (“*Direction départementale des Territoires*”, DDT) and the “*Archeological Survey Services*” (“*Service territorial de l’Archéologie préventive*”, STAP)



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2. Operational feedback - 2

- Possible points for improvement
 - ↳ Target to reduce the length of the procedure to 10 – 12 months often not met because of frequent requests for information by DREAL (not bound by any deadline)
 - ↳ AU procedure still obliges the developer to comply with the different rules applicable to all the authorizations encompassed in the AU: basis of “established law”
 - ↳ DREALs and other services concerned cannot prioritize the “*single authorization’s*” requests
 - ↳ Derogation to the prohibition of the destruction of protected species in some regions systematically requested by DREALs, even prior to analysis of the impact study and request file: linked to its integration in the scope of “*single authorization*”?
 - ↳ Reasons for the rejection of application at the end of the 4-month period for examination of the request’s admissibility often unclear
 - ↳ Recourse in case of refusal by the Prefect to deliver the “*single authorization*” not attractive, for it may oblige project developers to update their projects



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3. Future developments - 1

- Removal of the obligation to obtain a building permit for wind farms?
 - ↳ Fact is that topics examined for the delivery of the ICPE authorisation often overlap those of the building permit (e.g. landscape, public safety, noise, piece of the vicinity)
 - ↳ Ministry of Environment, Energy and the Sea is considering to remove the building permit from the necessary authorisations for wind farms
 - ↳ Issues: tax related to building permits, no more specific town-planning authorisation
 - ↳ Part of a bill modifying the land-planning code or the environmental code?
 - ↳ Middle path: towards the creation of a specific town-planning procedure in the “*single authorisation*”?

3. Future developments - 2

- Creation of a “*single environmental permit*” (“*permis environnemental unique*”)
 - ↳ This permit would merge the ICPE authorization, the derogation to the prohibition to the destruction of protected species, the forest-clearing authorization and the authorization to operate an electricity production operation
 - ↳ The first draft legislation suggests that the procedure would be more or less the same as for the “*single authorisation*”
 - ↳ The procedure would allow the applicant to ask the DREAL or the Prefect for the documents and information to be included in the application file (“*project certificate*”, “*certificat de projet*”)
 - ↳ Recourse should be brought by the applicant (against refusal) within 2 months, by third parties within 4 months
 - ↳ Third parties would have the right to make a claim after commissioning if they consider that the operator does not comply with the provisions of the prefectural order. The Prefect could modify the order to add new provisions
 - ↳ The current financial guarantee mechanism for wind farms would be reformed in order to take into account “future” guarantees that are not yet constituted at the date of submission of the application file



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Thank you for your attention!

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