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Overview of barriers to wind energy in the context of emission protection in France



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Introduction

- Wind turbines are classified in the nomenclature of classified installations (Article L.511-2 Environmental Code) under the heading 2980 entitled "*on-shore installation for the production of electricity from the mechanical energy of the wind and comprising one or more wind turbines*".
- The regulations applicable to wind turbines are set out in the ministerial order of August 26, 2011, modified by the ministerial order of December 10, 2021, which require in particular compliance with a regulation on emissions for the construction and operating of wind turbines.
- The applicable regime depends on the qualification of the facilities as specified in the order of December 10, 2021:

Regime	Date	
Existing historical facilities	July 13, 2011	<ul style="list-style-type: none">- Facilities that were commissioned before this date- Facilities that obtained a construction permit before that same date- Facilities for which the order opening the public inquiry was issued before this date.
Existing facilities		Facilities that do not qualify as existing historical facilities or new facilities.
New facilities	January 1, 2022	Facilities for which the complete application for environmental authorization has been submitted after this date.

Emission requirements applicable in the permitting and operating phase (1)

- Wind turbines above **50 meters** are subject to a single environmental authorization (L.515-44 Environnement Code). The potential impacts of the project must be evaluated in the **environmental and health impact assessment** which is part of the environmental authorization application file.
- It is the **wind farms operated by the same operator** that constitute a **classified installation** and **not each individual turbine** in order to take into account all the potential impacts of each project.
- The impact study must take into account all the significant impacts of the wind farm on the environment during its whole life cycle (construction, operation, dismantling).
- The impact assessment is governed by the principle of proportionality: it should pay particular attention to the major impacts of the wind turbines.

- The major negative impacts to be considered include:
 - **The acoustic impact**,
 - **Impacts on radars** (meteorological, port, civilian and military aviation),
 - **The impact on the neighborhood** (infrasound, shadows, electromagnetic fields, the emission of light because of the aeronautical regulation).
- **Characterization of the impacts** (direct, indirect, temporary, permanent) by taking into account the **cumulative effects** with existing facilities (wind farms or others).
- **Measures be presented** to avoid, reduce and, if necessary, compensate for the negative impacts.
- The consideration of impacts (including on radars) is also part of the instruction of the request for authorization which includes a consultative stage.

Emission requirements applicable in the permitting and operating phase (2)

➤ The acoustic impacts

- The **wind farm sound emissions** is subject to Article 26 of the Order of August 26, 2011 amended by Order of December 10, 2021 which defines a **protocol for acoustic measuring to be implemented** and establishes a systematic control at the reception which requires compliance with global emergence values in dB. The levels of emergence retained are the ones resulting from the public health regulation related to the neighborhood noise.
- The provisional acoustic study is an important part of the impact assessment. An insufficient acoustic study constitutes, after that of the visual and landscape impact of the park, one of the reasons for rejecting a request for authorization or a ground for appeal.
- **The operator shall have the acoustic compliance of the installation verified** within 12 months following the industrial implementation. If an exemption is granted by the Prefect, within 18 months. The measurements carried out must respect the acoustic measurement protocol for onshore wind farms approved by the minister in charge of classified installations.
- The operator must set up a monitoring system to estimate, most notably, noise pollution, visual pollution and acoustic pollution due to the presence of the wind turbines.

➤ Wind turbine beaconing

- Regulation imposes a specific **diurnal and nocturnal beaconing of a white and red color** (intensity 20.000cd during the day, 2000cd at night).
- Possibility of introducing, for certain wind turbines within a wind farm, a fixed beaconing or a beaconing with a lower intensity, of beaconing only the periphery of the wind farms during the day as well as the mandatory synchronization of the beaconing lights.
- The impact of the beaconing on the ambient light will have to be taken into account when conducting the **impact assessment**. The presence of several wind farms generates a cumulative light impact. This impact can be reduced by synchronizing all the wind farms between them, which is difficult to implement in case of multiple operators. Commitment from an operator to synchronize the farms of the same operator located in the same area?

➤ Impact on radars

- Regulation set protective distances and separation distances between wind turbines and radars . Distance are different if meteorological radar, a military radar, a harbor radar or a civil aviation radar.
- The Préfet has to consult the following authorities for their approval (Article R.181-32 Environmental Code):
 - ✓ The minister in charge of civil aviation on the criteria of distance between wind turbines and radars or for other aspects of air traffic based on the criteria of height of wind turbines.
 - ✓ The establishment of meteorological safety on the basis of the criteria of distance to wind turbines.
 - ✓ For military radars, the operator to install wind turbines in a specific configuration that must be approved in writing by the competent military authority. Ministry of Defense prohibits or limits the installation of wind turbines around its air bases or near training areas.

Third Party Recourse against the single environmental authorization

➤ Appeal before the administrative judge

R.181-50 Environmental Code: by third parties within a period of 4 months as of the end of the formalities of posting and publication of the authorization order.

➤ L.551-1 Environmental Code: wind turbines must respect the protected interests listed in L.551-1, notably in terms of neighborhood convenience, health and safety, and protection of nature and the environment.

- Recourse on the grounds of an insufficient impact assessment, alleged insufficiency has been harmful for the complete public information or has exercised influence on the competent authority's decision.
- An insufficient acoustic assessment constitutes with visual and landscape impact, one of the grounds of recourse, few success on that sole ground, often combined with the impact of the project on, landscapes or species.

➤ Recent Decisions :

- Administrative Court of Appeal Lyon 9 Avril 2019, n°17LY00752: Annulment of environmental authorization in part justified by the insufficiency of the acoustic impact assessment: *"The claimants are, under these conditions, entitled to argue that the acoustic assessment was not conducted to guarantee a proper assessment of the acoustic impact of the project and that such insufficiencies, regarding both the objectivity and the reliability of the conclusions drawn from it, were of such nature as to be detrimental to the full information of the public."*
- Administrative Court of Appeal Lyon 30 December 2021, n°19 LY01557: The claimants' argument was that the risk of stroboscopic effect and the risk of infrasound emissions constitutes a health risk and that the light beaconing is harmful to them. →Appeal dismissed on the grounds, inter alia, that the developer had taken measures to modulate the lighting and that its perception was lessened by the distance from residential areas and other light sources

Third Party Recourse in the operating phase

➤ Recourse before the judicial judge on the basis of abnormal neighborhood disturbance

- recourse against a park in operation , notably because of the acoustic and visual emissions of the wind farm.
- even if the time limits for appeal against the single environmental permit have expired.
- The abnormality of the disturbance is examined *in concreto* by the relevant court.

➤ Recent Decisions:

- Since the decision of the *Cour de Cassation* of January 25, 2017 n°. 15-25-526: Neighborhood disturbances remedied only by an award of damages
- Court of Appeal of Toulouse, March 9, 2020 n°17/04106 : Wind farm operator ordered to pay 50.000€ for noise and visual disturbances and 100.000€ for the depreciation of the building
- Court of Appeal of Toulouse, July 8, 2021 n°659/2021: Recognition of a wind syndrome and a nocebo effect as a result of the noise and visual nuisances. The owner of the wind farm was condemned to pay 28.650€ for the loss of value of the property, 39.500€ for the disturbance of the peaceful enjoyment, 8.000€ for the suffering endured.
- Cour de Cassation, September 17, 2020 n°19-16-937: Confirmation decision of the Court of Appeal of Amiens of March 26, 2019, which rejects the existence of an abnormal neighborhood nuisance given the public interest objective pursued by the development of wind energy: " *Noise emission volume below applicable regulations* " " *No one has a vested right to the conservation of his environment* ".

Thank you for your attention !

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