



MINLEX - France Country Report

This version has been extracted from MINLEX 's Final Report

UPDATED IN 2019



Disclaimer: The information and views set out in this study are those of the MinPol team and do not necessarily reflect the official opinion of the European Commission. Neither the European Commission institutions and bodies nor any person acting on their behalf may be held responsible for the use which may be made of the information contained therein.

This project has received funding from the European Commission under Contract n° SI 2.717317



TABLE OF CONTENTS

- 1. FRANCE..... 2
 - 1.1. Summary of findings 2
 - 1.2. General introduction 4
 - 1.3. Legislation governing mineral exploration and extraction..... 6
 - 1.4. Authorities governing mineral exploration and extraction 34
 - 1.6. Licensing procedures for exploration and extraction in quarries 52
 - 1.7. Court cases on permitting procedures 58
 - 1.8. Success rates of exploration and extraction permits 93
 - 1.9. EU legislation impacting permits and licenses for exploration and extraction..... 93

1. FRANCE

1.1. Summary of findings

France has gradually transitioned in the past two decades from being a mineral producer and processor of mineral commodities to being principally a processor and manufacturer of mineral goods and commodities. In metropolitan France, some exploration for metals has been ongoing since 2013 but the mining of metals has ceased; however, the extraction of aggregates and industrial minerals and processing of metal commodities is ongoing. In the French overseas departments and territories, metals extraction is ongoing, e.g. nickel in New Caledonia, gold in Guyana. Metallic and industrial minerals are state-owned minerals ("mining substances"). Rights to extract quarried minerals (such as sand and gravel) belong to the landowner (§3 Mining Code).

Under French Law, the exploitation of materials defined as "eligible for concession" ("mining substances" according to Art. L. 111-1 of the Mining Code) **is ruled by the regulations on mines, and the exploitation of materials defined as "non-eligible for concession" ("quarried minerals") is ruled by the regulations on quarries.** The materials "eligible for concession" include mineral substances which were considered strategic and of prime importance for national sovereignty. These substances are hydrocarbons, salt, sulphur, potash and precious metals like gold and silver, base metals such as copper, lead, iron or zinc, strategic metals such as tungsten or indium. On the contrary, quarries are mainly used to extract building material (sand, gravel, limestone, chalk, slate, gypsum, ornamental stones). The legal difference between mines and quarries (Art L. 100-1 Mining Code) depends upon the extracted substance: mines operate where the products listed in Art. L. 111-1 of the Mining Code minerals are extracted. The extraction method (open pit or underground) is not relevant to the classification. Quarry products are those not listed in Art. L. 111-1 of the Mining Code, mainly building materials and industrial minerals. No industrial mineral can benefit from Mining Law exemptions unless a specific legal decision is made by the highest court (*Conseil d'Etat*) to re-attach it to the Mining Law. So far, few deposits have been granted this status. Talc, kaolin, quartz, andalousite, diatomite calcium carbonate, silica, clays, etc. are all under quarry regulation.

Exploration and extraction operations are governed mainly by two centralised items: the French Mining Code, which defines the mine nature and the exploitation conditions along with post-mine dispositions, and the **French Environmental Code**, which contains provisions related to nature conservation, water management, public participation, etc. The Mining Code includes three fundamental points: i) the separation of the quarry system from the mining system; ii) the possibility granted to an operator to work without the landowner's authorisation; iii) the separation between the authorisation system: mining title, concession (exploitation permit) granted by the State and the mining policy system depending upon the prefectural authority (work monitoring, goods and people protection). Quarries with extraction of materials intended to civil engineering and public construction works belong to **Classified Installations for the Protection of the Environment (ICPE¹)** section 2510.

The mining administrative procedures defined by Decree n°2006-648 and Decree n°2006-649 constitute the main mining legal corpus applicable in France, although its overseas administrative departments, territories and collectivities are, in certain instances, governed by other specific legislative and regulatory provisions which may vary

¹ In France, a "classified installation for environmental protection" (ICPE) is an installation operated or owned by any natural or legal person, public or private, that can present danger or nuisance to the convenience of residents, health, safety, public health, agriculture, protection of nature and environment, conservation of sites and monuments. ICPEs are ruled by "Book 5" (Livre 5) of the Environmental Code.

from or supplement those of the Mining Code and the aforementioned Decrees. The law applicable in the onshore jurisdiction is valid also on the French continental shelf. Mining regulations in France have been in the process of modernisation since 2011 (official announcement by the Prime Minister was made on 3 July 2012) but are still based on the 1994 latest version of the former Mining Code. The last amendment of the mining code comes from the law n° 2017-1839 of December 30th, 2017 putting an end to the research as well as to the exploitation of the hydrocarbons and bearing various provisions relating to the energy and the environment. This law ratified ordinance 2011-91 but not modify the mining code for non-energy substances. Reform work for these substances continues.. Decrees 2006-648 and 2006-649 describe the administrative procedures and obligations for permits (2006-648) and for mining operations (2006-649); both constitute the main regulation acts for mining in France.

Concerning offshore public domain and the continental shelf, procedures are governed by Decrees No 71-360, No 71-361 and No 71-362 of 6 May 1971 on prospecting, research and exploitation of mineral or fossil substances included in Art. L111-1 of the Mining Code. Decree No 2006-798 of 6 July 2006 is available on prospecting, research and exploitation of mineral or fossil substances not included in Art. L111-1 of the Mining Code.

The application of the Metropolitan mining code was extended to overseas departments; a specific regime has been adopted to adapt instructions to local specificities. In Guyana, a mining orientation departmental plan lists areas that are closed or open to mining activities. Polynesia and New Caledonia have a specific mining code. Since the Nouméa Accord and the adoption of the Organic law 99-209, mining jurisdiction is now shared between the State, New Caledonia and the provinces according to the substances and geographic location. On 16 April 2009, the Congress adopted law No. 2009-6 relating to the legislative part of the Mining Code of New Caledonia, which entered into force on 30 April 2009 together with Decree No. 2009-2205 / GNC of 28 April 2009 establishing the regulatory part of the mining code.

For onshore minerals, the main authority responsible for issuing mining permits (ministerial authorisation) for non-energy minerals is the Ministry of Economy and Finance. Quarry materials depend on the Ministry in charge of ecology. Quarries (ICPE) are divided into large ones including dump heaps & tips, under a Prefectural authorisation before starting field works and small ones which can be exempted from the whole opening procedure if the small extraction is done to meet the needs of historical buildings. Both are in accordance with the Quarry Departmental / Regional Scheme. For quarrying activities on the near Continental Platform and offshore minerals, permits are provided by the Ministry of Economy and Finances and fieldwork operations authorisations are provided by the Prefect based on Decree 2006-798 procedures.

Concerning exploration, the Mining Code gives an operator the possibility of starting exploration works through previously obtaining an exclusive exploration permit (PER), a preliminary prospecting authorisation for marine zones (APP), and the possibility of a mine exploitation permit (concession) without any authorisation from the landowner. The PER is granted for a maximum 5 year-period in return for a minimum financial effort that is specified in the award decree, with two potential prolongations of 5 years each. Since 1 January 2013, a law amending the Environment Code and aiming at ensuring compliance with Art. 7 of the Environmental Charter subjects the grant of a PER to compliance with provisions ensuring public participation. ***It takes between 18 months and two years between the application to the Minister of Mines*** (nowadays embodied in the Ministry of Economy and Finance and the Ministry of Ecological and Solidarity Transition) ***for an exclusive exploration permit and its granting. The PER does not grant in itself the right to carry out exploration works. Depending on the nature of the works, exploration works are subject to an authorisation granted by the Prefect,*** who may decide to impose additional requirements as to the conditions in which they are carried out. The fact that additional authorisations are needed after the granting of the PER creates

a longer procedure for PER holders, who need to apply for an authorisation for each exploration project they wish to carry out.

Concerning extraction, the mining Concession is granted by decree issued by the Council of State for an initial maximum term of 50 years, which may be subject to successive renewals for a duration shorter than or equal to 25 years. The grant of a Concession is also subject to the public enquiry provided for under the Environment Code. The opening of mining works subject to authorisation is also currently conditional on an environmental impact study and a public enquiry. **The concession does not grant in itself the right to carry out exploitation works. Depending on the nature of the works, exploitation works are also subject to authorisation granted by the Prefect. For a concession or an authorisation permit process, an additional (estimated) three years are needed, taking in account the environmental and public information considerations.**

Concerning permitting success rates for exploration, since 2010, 15 exploration permit applications for metal mines have been submitted on Continental France, of which 11 were granted, 4 refused and there was one withdrawal by the applicant. 1 new application is through the instruction process which renders a permitting success rate of 73 %. About quarries, estimations from the Ministry in charge of ecology provide a permitting success rate close to 95 %.

1.2. General introduction

France has gradually transitioned in the past two decades from being a mineral producer and processor of mineral commodities to being principally a processor and manufacturer of mineral goods and commodities. In metropolitan France, some exploration for metals has been ongoing since 2013 but the mining of metals has ceased; however, the extraction of aggregates and industrial minerals and processing of metal commodities is ongoing. In the French overseas departments and territories, metals extraction is ongoing, e.g. nickel in New Caledonia, gold in Guyana.

In France, the underground medium, the mine site or the lode are « *res nullius* ». Following the basic principle of French mining law whereby underground resources belong to the State, it's the State who grants the rights and the exploration & extraction conditions within a prescribed time.

Exploration and mining operations are governed by the French Mining Code. This text defines the mine nature and the extraction conditions along with repairing or compensating obligations in case of wrongdoing or accident. Any deposit containing mineral or fossil substances is subject either to the mining or to the quarry environmental legal system. The Mining Code (Art. L 111-1) defines a list of mining substances. The concept of "mine" is based solely on the nature of the substance, regardless of whether the operation is done by open pit or underground methods. Those substances which are mined and are therefore called **"mined substances" (or "mining substances") include hydrocarbons, precious metals like gold and silver, base metals such as copper, lead, iron or zinc, strategic metals such as tungsten or indium, and some important industrial minerals (salt, potash).**

The **quarry products** (or "quarried-minerals") are those not listed in Art. L. 111-1 of the Mining Code, mainly building materials (limestone, chalk, slate, sand and alluvial gravel, ornamental stones), and some materials of industrial uses such as silica sands (for glass production) or gypsum (for plaster).

If the *law of July 15 1994* has simplified the exploration permit granting procedure and introduced obligations concerning environmental protection, the *decree 2006-648*² has regulated the mining titles and the underground storage titles.

The current consolidated version of the Mining Code (revised December 30th, 2017)³ includes three fundamental points:

- The separation of the quarry system from the mining system;
- The possibility granted to an operator to work without the landowner authorisation (different from the quarry system);
- The separation between the authorisation system: mining title, concession (extraction permit), granted by the State and the mining policy system depending upon the prefectural authority (work monitoring, goods and people protection).

Mineral ownership

In France, metallic and some industrial minerals (called "mined substances" or "mining substances") are state-owned minerals (Art. L111-1 of the Mining Code). These include mineral substances which were considered as strategic and of prime importance for national sovereignty: hydrocarbons (oil, gas, coal), salt, potash and metals⁴ and are called "eligible for concession". Mineral substances are divided into:

- burning materials: coal, hydrocarbons, gas;
- metals: iron, copper, lead, zinc, nickel, silver, gold, mercury, uranium ... & rare earth metals;
- mineral and chemical resources: salt, sulphur, phosphate rocks, ...;
- geothermal substances (calorific energy): water, steam.

In contrast, "quarried minerals" (also called "quarries-extracted substances") including construction materials such as sand and gravel, limestone, chalk, gypsum, slate, clays, etc. belong to the landowner (§3 Mining Code, Art. 552 of Civil Code).

In France, the legal difference between mines and quarries (**Art 100-1 of the Mining Code**) is made according to the type of extracted material. Under French Law, the extraction of materials defined as "eligible for concession" is ruled by the regulations on mines, and the extraction of materials defined as "non-eligible for concession" is ruled by the regulations on quarries connected to the Environment Code.

Quarries with extraction of materials intended to civil engineering and public construction works belong to the **Classified Installations for the Environment Protection (ICPE)** and are mainly governed by the **French Environment Code**. Quarries are usually open cast exploited but sometimes works are carried out underground.

2 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000790913>

3 <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000023501962&dateTexte=20160802>

4 Substances listed on article L111-1 of the Mining Code

1.3. Legislation governing mineral exploration and extraction

In France, metallic and some industrial minerals (called “mined substances” or “mining substances”) are state-owned minerals (Art. L111-1 of the Mining Code). These include mineral substances which were considered as strategic and of prime importance for national sovereignty: hydrocarbons (oil, gas, coal), salt, potash and metals⁵ and are called "eligible for concession". Mineral substances are divided into:

- burning materials: coal, hydrocarbons, gas;
- metals: iron, copper, lead, zinc, nickel, silver, gold, mercury, uranium ... & rare earth metals;
- mineral and chemical resources: salt, sulphur, phosphate rocks, ...;
- geothermal substances (calorific energy): water, steam.

In contrast, “quarried minerals” (also called “quarries-extracted substances”) including construction materials such as sand and gravel, limestone, chalk, gypsum, slate, clays, etc. belong to the landowner (§3 Mining Code, Art. 552 of Civil Code).

In France, the legal difference between mines and quarries (**Art 100-1 of the Mining Code**) is made according to the type of extracted material. Under French Law, the extraction of materials defined as "eligible for concession" is ruled by the regulations on mines, and the extraction of materials defined as "non-eligible for concession" is ruled by the regulations on quarries connected to the Environment Code.

Quarries with extraction of materials intended to civil engineering and public construction works belong to the **Classified Installations for the Environment Protection (ICPE)** and are mainly governed by the **French Environment Code**. Quarries are usually open cast exploited but sometimes works are carried out underground.

⁵ Substances listed on article L111-1 of the Mining Code

Table 1: France. Legislation relevant to exploration and extraction permitting.

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
mining, minerals management, technical safety, concession	FR-L1	legal mining code	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 100-1 & L 100-2
	FR-L3	mining substances deposits	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 111-1 & L 111-2 & R 122-2, R 414-9, L 511-1
	FR-L3	Exploration	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	N	N	Y	Y	Y	L 121-1 to L 121-5
	FR-L3	exploration exclusive permit	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 122.1 to L 122 3
	FR-L3	exploration at sea bottom of mining substances	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 123-1 to L 123-4
	FR-L3	exploration at sea bottom of quarrying materials	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 123-5 to L 123-7

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	Information and public involvement	codes.droit.org/cod/minier.pdf	N	Y	Y	Y	Y	Y	Y	N	L 123-8 to L 123-12
	FR-L1	authorisations of preliminary exploration works	codes.droit.org/cod/minier.pdf	Y	Y	Y	N	N	Y	Y	Y	L 123-13 to L 123-15
	FR-L3	exploration of high temperature sites	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 124-2 + R 511-9
	FR-L1	low temperature sites; application fields	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 124-3
	FR-L3	low temperature sites	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 124-4 & L 124-5 + R 122-2
	FR-L1	information and public involvement	codes.droit.org/cod/minier.pdf	N	Y	Y	Y	Y	Y	Y	N	L 124-6 to L 124-8
	FR-L1	low temperature sites, other dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 124-9

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L4	extraction rights	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf & www.legifrance.gouv.fr/Droit-francais/Codification/.../Code-de-l-urbanisme	Y	Y	N	Y	Y	Y	Y	N	L 131-1 to L 131-5
	FR-L3	Concession grant	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 132-1 to L 132-7 + R 229-70
	FR-L3	Concession effects	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 132-8 to L 132-13
	FR-L1	dismissal of concession demands	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 132-14
	FR-L1	mining royalties	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	Y	L 132-15 to L 132-16
	FR-L1	diverse dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 132-17 to L 132-18

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L3	substances extraction at sea bottom	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 133-1 to L 133-4
	FR-L1	extraction at sea bottom of quarrying substances	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 133-6 to L 133-10
	FR-L1	information and public involvement	codes.droit.org/cod/minier.pdf	N	Y	Y	Y	Y	Y	Y	N	L 133-11 to L 133-13
	FR-L1	public information & involvement	codes.droit.org/cod/minier.pdf	N	Y	Y	Y	Y	Y	Y	N	L 134-10 to L 134-11
	FR-L1	diverse dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 134-12
	FR-L3	Fiscal and customs dispositions	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 134-14 + L 171 - 8
	FR-L1	exploration of calorific energy storage sites	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 135-1 to L 135-3

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	extraction of mines or sites owned by the State	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 136-1 to L 136-4
	FR-L3	Extraction of mine dump and tip	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 137-1 + R 511-9 + 512 - 11
	FR-L1	fusion of adjacent exclusive exploration permits	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 141-1 & L 141-2
	FR-L1	fusion of adjacent exclusive exploration permits	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 141-3
	FR-L1	fusion of adjacent exclusive exploration permits	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 141-4
	FR-L1	Prolongation of exclusive exploration permits	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 142-1 to L 142-6
	FR-L1	prolongation & extension of mine concessions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 142-7 to L 142-9

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	mining title extension	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 142-12 to L 142-14
	FR-L1	diverse dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 142-16
	FR-L3	Mining title mutation	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 143-1 to L 143-7 & L 322-8
	FR-L1	Mining concession subleasing	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 143-9 to L 143-13
	FR-L1	Geothermal title subleasing	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 143-14
	FR-L1	Application dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L143-15
	FR-L1	mining right renunciation	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 144- 1 to L 144-3
	FR-L1	Concession ending	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 144-4

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	Specific dispositions for geothermal title termination	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 144-5
	FR-L1	Application dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 144-6
	FR-L1	Mining rights and obligations	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 151-1
	FR-L1	Mutual rights and obligations of explorers & operators (extraction)	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 152-1
	FR-L1	rights & obligations with regards to third parties	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 153-1 to L 153-16
	FR-L1	rights & obligations of land surface owners	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 154-1 & L 154-2
	FR-L1	rights and obligations in front of damages	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 155-1 to L 155-7

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	specific dispositions for underground calorific energy storage sites	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 157-1
	FR-L3	General rules about extractive activities	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 161-1 & L 161-2 & decree 80-331
	FR-L3	Starting mining works	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 162-1 & L 162-2 & L 516 1 & 2, decree 2016-635
	FR-L1	Works subject to authorisation	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 162-3 to L 162-5
	FR-L3	Works at sea subject to authorisation	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 162-6 to L 162-9
	FR-L3	Works subject to declaration	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 162-10 & L 214-1 to 3

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	diverse dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 162-11 & L 162-12
	FR-L1	stopping works	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 163-1 to L 163-12
	FR-L3	specific dispositions for underground calorific energy storage sites	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 165-1 & L 165-2 & decree 2006-649
	FR-L1	Risk preventions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 174-1 & L 174-2
	FR-L1	Security and Safety at work	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 180-1
	FR-L1	Financial charge supported by the applicant or holder of the underground storage concession	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 282-1 & L 282-2
	FR-L3	legal rules applying to quarry	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 311-1 to L 311-3 & L 512-2, 11 & 15, 28 to 30, R 512-46-21

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L3	Admission to the category of mining substances	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 312-1 to L 312-11
	FR-L1	Exploration within the special quarrying zones (“zones spéciales de carrières”)	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 321-1 & 515-12
	FR-L3	Exploration authorisation	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	N	N	N	N	N	L 322-1 to L 322-8 & L 512-2, 11, 15 & L 515-1
	FR-L3	Quarry extraction; rules	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 331-1 & R 122-2
	FR-L3	Extraction right; Principle	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 332-1 to L 332-5 & R 414-19
	FR-L1	Rights and obligations of owners with respect	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 332-6 & 322 2, L 331-1

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
		to quarrying operators										
	FR-L1	Specific quarrying extraction rules	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	N	N	N	L 333-1 to L 333-12
	FR-L3	Specific quarrying extraction rules	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	N	N	N	L 334-1 to L 334-6 & L 515-3
	FR-L1	Schema of joint work	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	N	N	N	L 334-7 to L 334-9
	FR-L1	Applying dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	N	N	N	L 334-10
	FR-L1	Social regulation: health & security at work	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 351-1
	FR-L1	Delegates in charge of worker security	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	N	N	N	L 352-1 to L 352-3
	FR-L1	excavation and geophysical measuring; preliminary statements	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	N	N	N	L 411-1 to L 411-3

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	public person prerogatives	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	N	N	N	L 412-1 to L 412-6
	FR-L1	advertising and transfer of gathered information	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 413-1 to L 413-3
	FR-L1	applying conditions to underground storage	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 415-1
	FR-L1	Dispositions applying to the prospection, exploration, and extraction of strategic raw materials	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 671-1 to L 671-3
	FR-L1	Applying dispositions to substances needed to the nuclear energy	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 681-1 to L 681-5
	FR-L1	Dispositions applying to the prospection, exploration, and	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 691-1 to L 691-6

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
		extraction of mineral substances										
environment	FR-L2	Impact surveys linked to projects dealing with field works, constructive works & mining operations	codes.droit.org/cod/environnement.pdf ; www.developpement-durable.gouv.fr	Y	Y	Y	Y	Y	Y	Y	N	L 122-1 to L 122-3.3 & R 229-65, & R 2141, R 122-7
	FR-L2	pollution linked to exploration works	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 218-32 to L 218-41
	FR-L2	action plan for the marine domain	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 219-7 to L 219.9 & R 331-50
	FR-L5	specific environmental conditions applying to quarries	codes.droit.org/cod/environnement.pdf & www.installationsclassées.developpement-durable.gouv.fr	Y	Y	Y	Y	Y	Y	N	N	r 515-1 to r 515-8
	FR-L2	specific conditions applying to underground storage	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	r 515-9 to r 515-23

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L5	dispositions applying to "installations classées"	codes.droit.org/cod/environnement.pdf & www.installationsclassées.developpement-durable.gouv/fr	Y	Y	Y	Y	Y	Y	N	N	r 515-24 to r 515-31
	FR-L2	specific dispositions applying to polluted soils	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	r 515-31-1 to 515-31-7 & R 557-1-1 to 1-3
	FR-L3	Underground storages, application field	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 211-1 to L 211-3 & R 229-66 & Directive 2009/ 31
	FR-L1	Storage site exploration	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	N	N	N	N	L 221-1 to L 221-3
	FR-L1	Storage site extraction; extraction rights	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 231-1 & L 231-2
	FR-L3	Underground storage; concession grant	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 231-3 to L 231-6 & L 229-29 & 30

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	Underground storage; concession effects	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 231-7 & L 231-8
	FR-L1	Royalties	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 231-9
	FR-L1	Diverse dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 231-10
	FR-L1	Prolongation of exploration permit for underground storage	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 241-1
	FR-L1	prolongation of concessions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 241.2
	FR-L1	mutation and subleasing	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 241-3
	FR-L1	right renunciation	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 241-4
	FR-L1	diverse dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 241-5
	FR-L1	rights & obligations linked to the	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 251-1

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
		underground storage										
	FR-L1	Mutual rights and obligations of explorers & operators (extraction)	codes.droit.org/cod/minier.pdf	Y	Y	Y	N	N	Y	Y	N	L 252-1 & L 252-2
	FR-L1	rights & obligations with regard to third parties	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 253-1 & L 253-2
	FR-L1	rights & obligations of land surface owners	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 254-1 & L 254-2
	FR-L1	rights and obligations in front of damages	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 255-1 & L 255-2
	FR-L3	Field works for underground storage	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 261-1 & L 261-2 & R 122-2 & Directive 96/82
	FR-L1	Opening work conditions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 262-1 to L 262-3

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	stopping works	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 263-1 & L 263-2
	FR-L1	security and technological risk prevention	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 264-1
	FR-L1	technological risk prevention	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 264-2
	FR-L1	diverse dispositions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 264-3
nature conservation, forestry	FR-L2	coastal protection	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 321-1 to L 321-10, L 218-32 & L 321 -1 & 2
	FR-L2	laminarian zone & dwelling shores	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 322-1 to L 322-14 & L 321-3 to 7
	FR-L2	National Parks	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 331 to L331-29 & L 331-1 to 7
	FR-L2	Natural Reserve	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 332-1 to L 332-27 & L 332-13 to 15
	FR-L2	Regional natural Parks	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 333-1 to L 333-3 & L 335-1

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L2	Protected marine areas	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 334-1 & L 334-2-1 & L 334_3 to 8
	FR-L2	Marine natural Parks	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 334 -3 to L 334-8
	FR-L2	Landscape protection	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 350-1 & L 350-2
	FR-L2	Natural biotope, wild fauna & flora	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 414-1 to L 414-11 & L 418-8
	FR-L2	Natural risks	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 561-1 to L 561-5
	FR-L2	Natural risk prevention	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 562-1 to L 562-9 & R 655-1
	FR-L6	general principles about forestry	codes.droit.org/cod/forestier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 112-1 to 112-4 & R 341-3, L 341-3
	FR-L6	forestry institutions	codes.droit.org/cod/forestier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 113-1 to 113-2 & 414-19, R 122-2

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
water management	FR-L2	water, fresh and marine domains	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	r 210-1 & r 210-2 & L 211 -1 to 14
	FR-L2	general regulations and resource management	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	r 211-1 to r 211-09 & L 214-1 & L 212-3 to 12
	FR-L2	water pollution by dangerous substances	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	r 211-11.1 to r 211-84
	FR-L2	humid areas	codes.droit.org/cod/environnement.pdf http://www.zones-humides.eaufrance.fr/reglementation	Y	Y	Y	Y	Y	Y	N	N	r 211-108 & r 211-109 & L 211 - 1-1
	FR-L2	drinking water & natural mineral waters	codes.droit.org/cod/environnement.pdf & codes.droit.org/cod/sante-publique.pdf	Y	Y	Y	Y	Y	Y	N	N	r 211 - 110 & R 1321 -6 & 10, R 1332-4
	FR-L2	irrigation waters	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	r 211-111 to r 211-117
	FR-L2	water management and control schemas	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	r 212-1 to r 212-11 & R 563-11 to 15, R 565-5 to 7

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L2	water National Committee	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 213 -1
	FR-L2	Water & aquatic domains National Office	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 213-2
	FR-L2	integrate management of coastal and offshore domains	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 219-1 to L 219-6
land use planning, spatial development, soil management	FR-L7	General rules about town planning	codes.droit.org/urbanisme.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 111-1 to L 111-13
	FR-L7	land use planning general rules	codes.droit.org/urbanisme.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 121-1 to L 121-9.1
	FR-L7	Environmental evaluation	codes.droit.org/urbanisme.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 121-10 to L 121-15
	FR-L8	SCOT Territorial coherence Schema	www.territoires.gouv.fr/pla-nification-territoriale	Y	Y	Y	Y	Y	Y	Y	Y	Ministère du logement et de l'habitat durable

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L9	sustainable planning & housing	www.territoires.gouv.fr/amenagement-et-urbanisme-durables	Y	Y	Y	Y	Y	Y	Y	Y	Ministère du logement et de l'habitat durable
	FR-L10	DTA Directive	www.territoires.gouv.fr/Directive-territoriale-d	Y	Y	Y	Y	Y	Y	Y	Y	Ministère du logement et de l'habitat durable
	FR-L11	Land planning policy PLUI & PLU	www.territoires.gouv.fr/politiques-foncieres-codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	decree 2015-1783 (28.12.2015) + L 120-1 to 3
	FR-L12	Soil rights (ADS)	www.territoires.gouv.fr/modernisation-de-l-application-du-droit-des-sols-ads	Y	Y	Y	Y	Y	Y	Y	Y	law 2014-366 (26.03.2014) ALUR
	FR-L13	Land equality rights	www.territoires.gouv.fr/egalite-des-territoires	Y	Y	Y	Y	Y	Y	Y	Y	Ministère du logement et de l'habitat durable
	FR-L14	rural space	www.territoires.gouv.fr/ruralites	Y	Y	Y	Y	Y	Y	Y	Y	Ministère du logement et de l'habitat durable
	FR-L15	land development contract CDT	www.territoires.gouv.fr/le-contrat-de-developpement-territorial	Y	Y	Y	Y	Y	Y	Y	Y	Ministère du logement et de l'habitat durable - Env.Code R 511 -9 decree 4

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
transportation, construction, catastrophe protection, police, military	FR-L16	drilling and underground work	codes.droit.org/cod/construction_habitation.pdf&codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 112-5 to L 112-7 + R 229-65 & decree 2006 - 649
	FR-L16	ground surface requisitioning	codes.droit.org/cod/construction_habitation.pdf	Y	Y	Y	Y	Y	Y		N	L 614-1
	FR-L2	natural or mining risks protection	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 562-1 to L 562-6
	FR-L1	Authorities in charge of administrative control and mining policy	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 175-1 to L 175-4
	FR-L1	Applied guarantees to police administrative missions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 175-5 to L 175-15
	FR-L1	Mining Police applied to sea	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 176-1 to L 176-3

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	Dispositions applying to the geothermal sites	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 177-1
	FR-L1	Dispositions applying to the underground calorific energy storage sites	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 178-1
	FR-L1	Administrative control & underground storage policy	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 271-1 & L 271-2
	FR-L1	obligations taken by the operators	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 272-1 & L 272-2
	FR-L1	administrative police powers	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 274-1 & L 274-2
	FR-L17	dangerous substances transportation	codes.droit.org/cod/transports.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 1251-1 to 1251-12
	FR-L17	transportation work duration & conditions	codes.droit.org/cod/transports.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 1321-1 to L 1321-10

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
culture heritage	FR-L18	After mine & valorisation	www.acomfrance.org/les-thematiques/patrimoine-minier-culture-miniére&codes.droit.org/cod/environnement.pdf	Y	Y	N	N	Y	Y	Y	N	R 511 -9, Annex 4
	FR-L19	mining heritage conservation	www.patrimoine-minier.fr	Y	Y	N	N	Y	Y	Y	Y	photos of mines
	FR-L2	natural heritage protection	codes.droit.org/cod/environnement.pdf	Y	Y	N	N	Y	Y	Y	Y	L 1411-1 to L 1411-7
	FR-L17	culture heritage conservation	www.culturecommunication.gouv.fr	Y	Y	N	N	Y	Y	Y	Y	culture heritage inventory
	FR-L18	culture heritage valorisation	www.enssib.fr/.../49518-valoriser-le-patrimoine-culturel-de-la-France.pdf	Y	Y	N	N	Y	Y	Y	Y	ENSSIB Heritage valorisation
public administration, court procedures	FR-L3	Mining administrative and police watching	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 171-1 & L 171-2 & L 541 - 44
	FR-L3	Obligations taken by the operators	codes.droit.org/cod/minier.pdf &	Y	Y	Y	Y	Y	Y	Y	N	L 172-1 & L 172-2, & L 541 -1

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
			codes.droit.org/cod/environnement.pdf									
	FR-L1	Administrative sanctions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 173-1 to L 173-7
	FR-L1	Social dispositions about the work duration	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 191-1 & L 191-2
	FR-L1	Delegate miners	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 192-1 to L 192-6
	FR-L1	Delegate miners	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 192-7 & L 192-8
	FR-L1	Delegate miners	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 192-9 to L 192-22
	FR-L1	Delegate miners	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 192-23 & L 192-24
	FR-L1	Delegate miners	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 192-25 to L 192-30
	FR-L1	Delegate miners	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 192-31

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L1	Delegate miners	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 192-32 to L 192-35
	FR-L1	Administrative sanctions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	N	N	L 273-1 & L 273-2
	FR-L2	extraction & administrative control of quarrying activities	codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	N	N	L 341-1 & ICPE
	FR-L2	Administrative control of quarrying activities	codes.droit.org/cod/environnementr.pdf ;	Y	Y	Y	Y	Y	Y	N	N	L 342-1 to L 342-6 & ICPE
	FR-L1	Infringements & penalty sanctions	codes.droit.org/cod/minier.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 511-1
	FR-L3	Penalty sanctions	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 512-1 to L 512-12, L 541 -3, L 218 - 14 & 19
	FR-L3	Infringements applying to the maritime public domain	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 513-1 to L 513- 3 & L 541 - 44, L 218 -26

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L3	dispositions applying within the continental platform & the exclusive economic zone	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 513-4 & L 513-5, L 211 -7, L 435 - 1
	FR-L1	specific adjusted dispositions	codes.droit.org/cod/minier.pdf	y	Y	Y	Y	Y	Y	Y	N	L 615-1 to L615-3
	FR-L3	Penalty dispositions	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 621-8, L 171 - 8, R 214-85, L 515 - 24, L 218-34, L 713-5, R 554-35
	FR-L3	administrative control and infringement verification	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 662-1, L 172-1, L 521 -12, L 218 -26, L 515 - 24, R 173 - 1 to 4
	FR-L3	Royalties	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	N	L 663-1, R511 - 9, decree 2015-1200
	FR-L3	control & administrative sanctions	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	r 514- 1 to r 514-3-1 & L 515- 16 & 24, L 542- 2&3, L 171-11

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	FR-L3	compensation linked to mining risks	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 75-2 & L 75- & decree 2000-465 (May 29 2000) & R 414-23
	FR-L3	expropriation & mining risks	codes.droit.org/cod/minier.pdf & codes.droit.org/cod/environnement.pdf	Y	Y	Y	Y	Y	Y	Y	Y	L 94 & L 95 & decree 2000-547 (June 16 2000) & R 561-1 to 5

1.4. Authorities governing mineral exploration and extraction

For exploration of onshore minerals, the responsible authority is the Prefect of the Department, local representative of the State, under the Government authority. For onshore “mining substances”, the main responsible authority for issuing mining permits (ministerial authorisation) is the Ministry of Economy and Finance.

Quarry materials or substances depend on the Ministry in charge of ecology. The quarries’ authorisation is regulated by the Environmental Code (Classified installations or ICPE) , under a Prefectoral authorisation before starting field works, in accordance with the *Schéma Départemental des Carrières* (Quarry Departmental Scheme). For quarrying activities on the near Continental Platform, permits are provided by the Prefectoral Administration, under the Ministry of ecological and solidary transition authority.

For offshore minerals, the main authority issuing permits is the Ministry of Economy and Finance. For decision making, the Committee relies on the following institutional operators: French Research Institute for the Extraction of the Sea (IFREMER), the National Centre for Scientific Research (CNRS), the French Geological Survey (BRGM) and the Institute of Research of the Development (IRD).

Table 2: France. Relevant authorities in exploration and extraction permitting.

	Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
First instance permitting (local, regional, central, national)	FR-E1	Ministère de l'Economie et des Finances	Ministry of Economy and Finance	http://www.economie.gouv.fr/	evaluating & implementing the policy (raw materials and mining substance); regulating & analysing (with control) public orders	Y	Y	Y		
	FR-E2	Conseil Général de l'Economie, de l'Industrie, de l'Energie et des Technologies CGEIET	General Council of Economy	www.economie.gouv.fr	Control of applying legislative dispositions	Y	Y	N	Decree n° 2009-64 (January 16 2009) and Decree 2011-1523 (November 14 2011)	None
	FR-E3	Ministère de la Transition écologique et solidaire (MTES)	Ministry of ecological and solidary transition	www.developpement-durable.gouv.fr/.../DGALN_textes_reglementaires	Technical financial guarantees before mining research and mining extraction	Y	Y	Y		None
	FR-E4	Direction Générale de la Prévention des Risques (DGPR), Ministère de la Transition	General Direction for risk prevention	www.developpement-durable.gouv.fr/en-jeux-et-principe-de-la-DGPR	Georisk evaluation, police mining works and underground storage, working conditions with respect to health	Y	Y	Y	Decree N° 2011-184 (February 15 2011)	None

Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
					exploration	extraction	post extraction		
	écologique et solidaire (MTES)								
FR-E5	Direction Générale de l'Aménagement, du Logement et de la Nature (DGALN), Ministère de la Transition écologique et solidaire (MTES)	General Direction of Planning, Lodging and Nature (DGALN)	www.developpement-durable.gouv.fr/DGALN	Control of urban construction, lodging conditions, water and mineral nonenergetic substances	Y	Y	Y	Decree 2006-304 (March 16 2006) modified on March 24 2011	None
FR-E6	Conseil Général de l'Environnement et du Développement durable, Ministère de la Transition écologique et solidaire (MTES)	General Council of Environment and sustainable	www.cgedd.developpement-durable.gouv.fr	Expert valuation in environmental & sustainable development	Y	N	N	Decree dated on July 09, 2009	none

Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
					exploration	extraction	post extraction		
FR-E7	Direction générale des Infrastructures, des Transports et de la Mer, Ministère de la Transition écologique et solidaire (MTES)	General Direction of Infrastructures, Transportation and Sea	www.developpement-durable.gouv.fr	Transportation conditions evaluation at maritime areas mainly	Y	Y	N	Decree N° 2003-425 (May 09 2003)	None
FR-E8	Aménagement du Territoire, de la Ruralité et des Collectivités Territoriales	Territorial planning, rurality and territorial communities	www.territoires.gouv.fr	Equal development control for territorial communities	Y	N	N	Decree N° 2016-870 (June 29, 2016)	None
FR-E9	Ministère du Travail, de l'Emploi, de la Formation professionnelle et du Dialogue social	Ministry of Labour, employment, professional Training & social dialogue	www.travail-emploi.gouv.fr/sante-au-travail	working conditions with respect to health	Y	Y	Y	Law L 4121-1 (work code) concerning the risk prevention at work	None
FR-E10	Installations classées; ICPE	Classified installations; ICPE + Prefects (Prefect grants permit to projects falling	www.installationsclassées.developpement-durable.gouv.fr	Quarry Opening and extraction	Y	Y	Y	the MTES (Ministry of Ecological and solidary transition) is the first level of regulations for ICPE. But MTES is working with several partners to get a full	None

Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
					exploration	extraction	post extraction		
		under the category ICPE)						knowledge of environmental conditions before granting any permit, including NGOs such as the CPEPESC (nature protection NGO). Prefect grants permit to projects falling under the category of ICPE	
FR-E11	Ministère des Outre-mer; Bureau BELDAD	Ministry of Overseas; (BELDAD Bureau)	www.outre-mer.gouv.fr	Bureau in charge of Ecology, Habitation, Sustainable development	Y	Y	Y	public policy sub-direction	None
FR-E12	Bureau de Recherche Géologique et Minière	Bureau of geological and mining research	www.brgm.fr	Geosurvey	Y	Y	Y	EPIC statute 1959 National education, higher education and research	None
FR-E13	IFREMER	French Institute for the sea resources exploitation	www.ifremer.fr	Oceanic resources and sustainable exploitation	Y	Y	Y	EPIC structure Decree N° 84-428 (June 05 1984)	None

	Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
	FR-E14	INERIS Institut National de l'Environnement industriel et des risques	INERIS National Institute of Industrial Environment and Risks	www.ineris.fr	Security and Environmental protection linked to natural resources research	Y	Y	Y	Decree N° 90- 1089 (December 07, 1990)	None
	FR-E15	Directions régionales de l'environnement, de l'aménagement et du logement (DREAL)	Regional Directorate of Environment, Land Development and Housing Environment	http://www.developpement-durable.gouv.fr/Liste-des-12-DREAL.html	Sustainable development at <u>regional level</u> concerning Mineral resources and water	Y	Y	Y	Decree N° 2009-235 (February 27 2009)	There are 12 DREALS in France
Court Jurisdiction	FR-E1	Ministère de l'Economie et des Finances	Ministry of Economy and Finance	www.economie.gouv.fr	State legal agent in charge of conflicts of interests	Y	Y	Y	decree 92-1369 (29.12.1992)	None
	FR-E16	Direction des Affaires Juridiques	Direction of judicial affairs	www.economie.gouv.fr/daj	State legal agent	Y	Y	Y	State agent	None
	FR-E17	Bureau du droit, de l'industrie, de l'énergie et des ressources de communication	Bureau of Industry, energy and communication resources	www.economie.gouv.fr/daj-4C	in charge of conflicts about mining substances and environmental affairs	Y	Y	Y	State agent	None

Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
					exploration	extraction	post extraction		
FR-E18	Cour administrative d'appel	Administrative Courts of appeal (8 courts)	-	An appeal can be brought before 8 Administrative Courts of Appeal (Cour administrative d'appel) and 254 judges. As a general rule, appeals do not have suspensive effect.	Y	Y	Y		8 courts
FR-E19	Conseil d'Etat	Council of State	-	an applicant can take further action by lodging a cassation appeal before the Council of State. The Council of State acts as a "procedural judge" which reviews legal aspects of the case and controls the lower Court's legal assessment. When the Council of State decides to quash the challenged judgment, they can either settle the case or refer it back to the Administrative Court of appeal, which will be bound by the	Y	Y	Y		

	Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
					Council of State's decision					

1.5. Licensing procedures for exploration and exploitation of Mining Substances

Exploration – Mining substances (metals and some industrial minerals mined)

Mineral exploration works are normally undertaken under an exploration permit that gives its holder an exclusive right to explore. The Mining Code gives an operator the possibility of starting exploration works through obtaining an **exclusive exploration permit (PER)**, a **preliminary prospecting authorisation for marine zones (APP)**, and the possibility of a **mine exploitation permit (concession)** through a concession title granting and this without any authorisation from the landowner.

Applying for an exploration permit on mining substances

The applicant must apply for an **exclusive exploration permit** (*permis exclusif de recherches or PER*). The PER for substances eligible for concession gives its holder the exclusive right to carry out any research work in the area it defines and freely dispose of products extracted during research and testing (Mining Code, Art. L122-1).

According to the Decree n°2006-648 dated June 02 2006, art. 17 and/or 24, the application should be written in French and should contain the following items:

1. a standard form letter of exploration permit application in French;
2. a map that specifies the application perimeter and the geographic points that define it;
3. a geological memorandum;
4. an impact assessment, explaining the impact of the work program on the environment;
5. a financial commitment to a work program;
6. a certified copy of the company statutes, stating that it is listed with the trade register and that its articles of incorporation were presented to the Administration in support of an application made less than ten years ago;
7. excerpts from the minutes of the applicant company's Board of Directors' meeting, confirming the authority of the person signing the application;
8. a delegation of power granted to the signatory of the application;
9. applying for an exploration permit to justify its technical capabilities, the applicant supplies the titles, diplomas and professional references of the corporate executives responsible for following and managing exploration and production work;
10. the list of exploration and production work the company has participated in during the past three years, accompanied by a descriptive summary of the most important work;
11. a description of the technical resources expected to be used to carry out the work;
12. applying for an exploration permit to justify its financial capabilities, the applicant supplies an appropriate bank statements (for example, bank credit rating letter);
13. the company's last three balance sheets and income statements.

The application should be addressed to the Ministry of Economy and Finance, DGALN/DEB/GR2 *Tour Séquoia, 92055 La Défense CEDEX*. Copies of the application should also be sent to the Prefect and to the Regional Director of Environment of the region concerned.

Procedure for granting a PER

Once the DREAL (*Regional Directorate of Environment, Land Development and Housing Environment*) has determined that the exploration permit application is technically admissible, competing applications are allowed for 30 days after publication of the notice in the Official Journal. Meanwhile, the DREAL consults with local administrative services to draw up a list of various constraints that could affect exploration work (urbanisation projects, archaeological or historic sites, etc.). After this consultation phase, the local procedure ends with submission of the DREAL report and the opinion of the Prefect (i.e., the State's representative at the local level) concerned.

The award plan is submitted to the General Council of Economy and Industry for its opinion. This consultative body has jurisdiction over matters concerning raw materials, quarries, energy, etc. Meanwhile the application documents are submitted to the public for its opinion (according to the French Constitution, "*All persons have the right to participate in the elaboration of public decisions having an impact on the environment*") during at least 15 days. The exploration permit is granted by a single ministerial order and is published in the Official Journal of the French Republic.

Public entities involved in the process

All the information provided on French mining exploration permit procedures are connected to the entities which are regulating any application for both mining and ICPE mining substances (cf. Table 2).

Geographic areas covered by the PER

Surface onshore exploration permits can range from a few hectares (extension of existing permits) to several hundred square kilometres depending on the environmental conditions (protected or urbanized areas).

The legal continental shelf has a minimum breadth of 200 nautical miles from the coasts. It is surrounded by several other maritime areas. From the coast, adjacent to the land territory, the sea territory, comprising the seabed and the waters above, extends on a breadth of 12 nautical miles. Beyond, over a distance of 200 nautical miles, the legal continental shelf and the exclusive economic Zone are juxtaposed (French programme for reasonable extension of the continental shelf, EXTRAPLAC). Further beyond, out to the sea, the legal extended continental shelf is situated, surmounted by the high seas.

Legal nature of rights and duties of an exploration permit holder

The current Mining Code which was implemented by a governmental decree on 20 January 2011 regulates mining activities (as well as oil and gas activities). The conditions for implementing the Mining Code are detailed in two Decrees dated 2 June 2006, **Decree no. 2006-648** relating to mining permits (and permits for underground storage) and **Decree no. 2006-649** relating to mining works.

The mining title allows its holder the land estate right reconnaissance but does not allow the work opening which is subject to a distinct procedure. The work opening authorisation is granted by the Prefect acting under the mining policy jurisdiction. The mining title is delivered by the Minister of Mines (nowadays embodied in the Ministry of Economy and Finance and the Ministry of ecological and solidary transition) to the applicant who has made proof of his technical and financial capacities.

A mining title can be transferred to a new holder but this selling validity needs a ministerial approval through a decree of mutation. With the same procedure, a title can be rented through a subleasing decree (*amodiation*) which can concern only a part of the concession (**Mining Code, Art 119-5⁶**). A title holder may also waive his title with a ministerial authorisation (relevant decree). Exploration works are carried out on the basis of an exclusive research permit "PER" that gives its holder an exclusive right to carry out exploration works within a defined perimeter and to freely make use of the deposits extracted during searches and test operations. No legal entity may obtain a PER if it does not have the technical capacities and financial resources to carry out exploration works. All PER holders must maintain their financial and technical capabilities in light of which the permit was granted.

Pursuant to **Art 43 of Decree 2006-648**, PER holders must notify the Minister in charge of mines in the following cases:

- a. any substantial change to the articles of association of the company holding the PER, within three months of the entry into force of the change;
- b. any planned transaction which, by a change in the distribution of shares or by any other means, would result in a change of control of the company or in a transfer to a third party of all or part of the rights resulting from the possession of the PER, including the right to transfer all or part of the present or future production; this notice must include any information required to ascertain the financial capacity of the proposed transferee;
- c. if the permit was granted to companies jointly and severally, any proposed amendment to the association agreements ("*contrats d'association*") existing between the parties which relates to research and extraction in the permit area.

The proposed changes or transactions referred to in **Art. 43 of Decree 2006-648** must not be implemented before the expiration of a period of two months from the receipt of the notification. During this period, the Minister in charge of mines may inform the PER holder that the transactions or amendments in question might be incompatible with its right to hold the mining title.

The PER holder must also inform the Minister in charge of mines of any substantial change which could alter the technical and financial capacities on the basis of which the permit was granted.

Other significant obligations of PER holders include:

- a. providing before 31 December of each year the works program for the next year;
- b. providing, at the beginning of each year, a report detailing the works carried out during the previous year;
- c. complying with the financial commitment indicated in the permit application and keeping their accounts in a way that allows monitoring of this compliance.

Holders of mining titles for deposits other than hydrocarbons are required to **provide a financial guarantee** (issued by a financial institution or an insurance company) prior to the start of exploration and extraction for mines comprising waste management facilities. The amount of the guarantee is defined on the basis of the information given by the permit

⁶ Replaced by article L143-1 of the new mining code.

holder to the prefect and must be sufficient in order to cover the cost of restoration of the land.

The work opening procedure is characterized by the obligation of taking in account the project environmental frame with specifications adapted to the site environmental protection. According to inherent risks and dangers on mining works, these works are subject either to a declaration to the Prefect or an authorisation only granted after a public investigation and an impact survey carried out by the applicant. The decree **2006-649 dated June 02 2006** connected with mining works, underground storage works and mining + underground storage policy, defines the prescribed frame of mining works.

The Mining policy is ensured by engineers and technicians under the supervision of DREAL regional directors (environmental, planning and housing Direction). This staff is also carrying out missions of work inspection at the mine sites.

License holders would also be required to restore any land that is disturbed during exploration activity. Penalties or sanctions would typically apply to companies that fail to comply. In cases where the license is surrendered or terminated, an in-migration management plan and a resettlement and compensation plan would also be mandated; these stipulations are both particularly important in the mining sector. **A scoping study of an environmental impact assessment (EIA) is required for exploration permits but the prefect may require that an EIA fully-fledged be prepared for certain types of exploration works.** In most of the above respects, there are strong parallels with the practice found in the oil sector.

Permit duration and average length to get a PER

The exclusive exploration permit (PER) is granted for a 5 year-period in return for a minimum financial effort that is specified in the award decree, with two potential prolongations of 5 years-duration each. The duration of the entire procedure can be estimated at 14/20 months. The Mining Code indicates that if the administration has not taken a decision on the application during 24 months, it is considered to be implicitly rejected.

Any area, offshore and onshore, which is not covered yet by such a permit may be subject to an application at any time. The renewal of a permit is automatic as long as the holder has met all his obligations and agreed, in his application for renewal, to financial commitments at least equal to the financial commitments made during the previous period. The surface of a permit may be extended to additional areas. The procedure is the same as for initial granting of the permit.

About an 14 months- 20 months duration is needed between the submission date to the Minister of Mines of an exclusive exploration permit and its granting.

For a concession or an authorisation permit granting, a three year- additional average duration is needed taking in account the environmental and public information processes. To get no interruption during the exploration phase, the prolongation demand shall be sent to the Minister of Mines, 4 months before the PER void date. When a title mutation or title subleasing is requested, the agreement from the Minister is due within a 15 month-period. No answer at that time means a demand dismissal.

Link between exploration licence and extraction permit

Mining exploration license holders **expect an exclusive right to apply for the mining extraction license** and to receive the mining license subject to fulfilment of specific criteria required by the extractive industry sector laws and regulations. Licenses are

generally exclusive and specify the main mineral products that will be or may be produced. The license should also give the license holder the exclusive right to exploit other minerals that may be found in the mining license area following approval and permits for such development.

The holder of a PER is exempt from a competitive tendering at the time of the application for a concession for all or part of the perimeter covered by the relevant PER.

Exploration for marine materials

Other substances (sand, limestone, marl... than the ones listed in the Art L. 111-I of the Mining Code are subject to obtaining three administrative acts (**Mining Code, Art L 412-6 & law n° 68-1181**, dated December 30 1968, art. 34⁷) and **decree 2006-798** dated July 06 2006⁸:

1. a mining title (an exclusive exploration permit, a concession or an exclusive permit of extraction on overseas territories) which is a ministerial act;
2. the work opening authorisation granted by a prefectural decree;
3. if needed, the occupation authorisation of the marine domain, given by the prefect.

The applicant can send together the three demands concerning the French marine public domain and continental shelf. To get the expected authorisation, the applicant shall deliver a detailed and relevant environmental impact dossier. Environmental exploration conditions are defined in the Art R 331-50.

At a local level, DREAL is instructing the demand with the support of the local collectivities, State Services and IFREMER; at a national level, instruction is carried out by the General Council of Economy, Industry, Energy and Technologies (CGEJET). A concession is granted through a decree from the State Council while an exclusive exploration permit is granted through an order ("*arrêté*").

Extraction – Mining substances

In France, landowners have no right over the underground minerals or substances eligible for concession. Indeed, mines are subject to the "concession" rule. "Concession" refers to the contract, signed between the French State and a legal person or corporate body, authorising the extraction of the substance subject to the contract against a fee. The word "concession" is also used to define the area granted to this person or body to perform his or its activity. Therefore, the concession is the administrative entity of reference in the **Mining Code (Art. L-132-1 to L 132 – 7)**.

Under the Mining Code, the Concession is granted by decree issued by the Council of State for an initial maximum term of 50 years, which may be subject to successive renewals of a duration shorter than or equal to 25 years, and confers on its holder, within the perimeter of the Concession, an exclusive right to exploit the substances set out in the granting decree. It is assignable and leasable but may not be mortgaged.

7 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000317510> (accessed 12.10.16)

8 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000240704> (accessed 12.10.16)

Applying for a concession

The application file for an extraction permit shall include the same piece of information as the one defined for the PER. It shall, however, include in addition, and when required, the convention agreed upon by the applicant with the holder of an existing license and setting their respective rights and obligations. The application for an extraction permit shall include:

1. The identification of the applicant;
2. The main characteristics of the contemplated work including all necessary documents and maps;
3. An environmental impact assessment;
4. A brief specifying the methods of extraction;
5. A health and safety report: study of dangers including a risk assessment which outlines mines and extraction activities
6. A brief indicating, on a provisional basis, the conditions under which work will be terminated as well as an estimation of the cost of this termination;
7. A report setting out the potential impacts of the contemplated work on water, appropriate measures to compensate such impacts and the compatibility of the project with the regional masterplan for water management and development;

Procedure for granting a concession

The competent authority to deal with the concession application is the Minister of Mines (nowadays embodied in the Ministry of Economy and Finance and the Ministry of ecological and solidary transition). The Prefect deals with the examination of the application. The application for an extraction license requires an EIA and a one-month public enquiry to take place. An effective press release announces the public enquiry. If no exploration license has been issued previously, competition shall also be allowed. A competition notice is published in the Official Journal and counter-applications can be submitted within one month.

Competent authorities, including the DREAL (*Regional Directorate of Environment, Land Development and Housing Environment*) and the geographically concerned mayors shall then provide their opinion on the application. The Prefect then submits these opinions, the comments raised during the public hearing as well as his own advice to the Minister. These documents are analysed by the Ministry in charge of mines administration and the draft decision is submitted to the General Council of Economy, Industry, Energy and Technologies (CGEJET). The extraction license is granted in the form of a decree issued by the Council of State. When the application is rejected, the refusal takes the form of a Ministerial Order. In theory, the Minister has a 3-year time limit to provide his decision on the application.

The opening of mining works is subject to authorisation currently conditional on the elaboration of an environmental impact study and a public enquiry provided for under the Environment Code. The grant of a Concession is also subject to a public enquiry, and, since 1st January 2013, a law amending the Environment Code and aiming at ensuring compliance with **Art. 7 of the Environmental Charter**⁹ subjects the grant of a PER to compliance with the provisions ensuring the participation of the public through a public consultation process. There is an alignment of the conditions for the information and participation of the public prior to the possible grant of a mining title or an authorisation for mining works.

⁹ <https://www.legifrance.gouv.fr/Droit-francais/Constitution/Charte-de-l-environnement-de-2004> (accessed 10.12.16)

The constitution of a **financial guarantee for mines for waste management facilities** is imposed by the mining code (Art. L162-2).

At the end of the exploration or production, a procedure conducted by the Prefect requires from the explorer or operator to provide security and environmental protection measures it intends to implement in order to cease the disturbances and nuisances caused by the mining operations, to prevent the risks of occurrences of such disturbances and to provide for the possibility of the extraction being taken over. The explorer or operator will also remain required to remit to the local authorities the hydraulic facilities it deems necessary or useful to the sanitation and distribution of water whose transfer is accompanied by the payment of an amount corresponding to the estimated cost of the first ten years of operation of such facilities.

The mining authorities can impose modifications to the applicant's project. Mayoralties and concerned State administrative services are consulted and the DREAL is drawing up a guidance report submitted to the prefect(s) then to the Ministry of Mines. The title agreement follows the same procedure as for the PER. If the permit demand is turned down, this dismissal is pronounced through a decree signed by the Minister of Mines (nowadays embodied in the Ministry of Economy and Finance and the Ministry of ecological and solidary transition).

Geographic areas covered by the concession

Surface covered by a concession is not larger than the occupation surface allowed by the granted exploration permit and may be split.

Right and duties of the licensee

The **decree dated September 8, 2004**¹⁰ details the final stoppage dossier contents related to mining activities.

These dispositions impose needed measures on the extraction operator concerning eventual damage prevention linked to the extraction works (ground collapse, flooding, polluted effluent casting up...). The work stoppage is associated with risk survey, hydrological impact evaluation and different security works (dumps and spoil heaps, old plant demolition, water pollution prevention...).

The Mining Code holds the former concession title holder responsible for damages created by his works and that without any duration limit. Nevertheless, if the former titular cannot ensure the damage repairs, that will be part of the State duty.

Investors will expect to have the right for the license holder to assign the license to another party with consent of the government. This consent should be based on the new license holder meeting certain financial and technical capacity criteria.

Moreover, the validity termination of the mining title conveys to the State a monitoring and prevention responsibility. **The law 99-245 dated March 30 1999**¹¹ named "after-mine law" entrusts the State with settling specific difficulties arising from the mining extraction termination as a national solidarity mark. Then the State is lead to support the charges of security maintenance works on old mining sites, particularly the ones after the initial titular

10 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000005855836> (accessed 10.12.16)

11 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000759770> (accessed 10.12.16)

disappearance along with the ones where the work cessation and the mining concession renunciation are more than ten years old.

Not complying with the Mining Code regarding the legal work duration for the personnel may trigger a € 45,000 fine. Starting exploration work without any authorisation faces a € 15,000 fine and one-year jail sanction (**Mining Code, Art 142**).

Environmental liability

As regards liability, the Mining Code provides for a presumption of the liability of the explorer or operator, or failing that, the holder of the mining title, concerning the damages caused by its operations, which may be exempted only where such damages have a "foreign cause", without such liability being limited to the perimeter of the mining title or its period of validity. The presumption of liability will be applied even when the mining works have been carried out in the state of the art and in the absence of any fault, as long as it is proven that the damages are actually the direct consequence of the mining works.

In addition, as contained in the law dated 1st August 2008, and based on the "polluter pays" principle, title VI of the **Environment Code (Art. L. 160-1 and subsequent)** provides a mechanism for implementing the liability of any legal entity running a mining operation, causing damages to the environment, whether for example causing serious harm to human health, or having a detrimental effect on the quality of water. A presumption of liability has been established by such provisions, which must be taken into account in the framework of mining exploration or extraction, although it is specified that the scope of such liability and the conditions for its application must be carefully considered, in each particular case, to assess whether a risk exists in respect of this liability regime. Only the entity in charge of exploration works or the holder of the mining title can be held liable for damages caused by its activity.

The current liability regime was the subject matter of a draft bill presented to the Senate on 21 September 2012, proposing in particular a wider definition of mining damage, including all damages resulting from a mining operation, whether direct or indirect. On this subject, the Draft extends the field of potentially liable persons to the "beneficiary of the extraction" or "the person who actually assumed leadership". The Draft however maintains the principle of exemption for a "foreign cause".

Average length to get an extraction permit

For a concession or an authorisation permit granting, a three-year average duration is needed taking in account the environmental impact assessment and public information steps.

Mining works cessation and the after-mine

Mining regulations deal also with work cessation procedures along with mining risks prevention and monitoring (**decree 2006-649, Art. 43 to 50 & Mining Code, Art. L 163-12 & L.174-1 to L.174-12**).

The closure and abandonment of mining sites do not result in the complete and definitive eradication of risks for people, activities and goods located in the area of influence of abandoned mines. Some potential occurrence of hazards and disorders on surface may persist at long term in the surroundings of former mining works. In addition to potential ground instability phenomena (subsidence, sinkholes, etc.), some mining sites may be affected by dangerous gas emissions, flooding events or environmental degradations. These effects can occur as soon as the mining extraction stops but also in certain circumstances, long time after closure.

The mining operator is responsible for the damages that can result from his activity, without any time restriction (even long time after mine closure). So it is his responsibility to compensate victims of mining damages. Nevertheless, it has to be proven that the damages resulting from any another origin cannot be attributed to another origin. One of the major innovations of the "post mining law" results in the guarantee of the State. In order to assure that victims are compensated in case of Concession-Holder disappearance or insolvency, the legislator expected the State to deal, in this specific context, with the victims' compensation. The post mining law also stipulated that, in case of a major mining hazard threatening seriously public safety, the goods exposed to this risk may be expropriated in case the protection and/or prevention measures are more expensive than the expropriation cost. This statutory process is restricted to the cases of major risks and extreme urgency.

The role of the French State concerning post-mining consists in identifying the risky abandoned mining sites and evaluating the corresponding risks in order to determine the suitable preventive measures able to secure, when necessary, population and activities. As described before, these measures can take the form of reinforcement works or constraints applied to town planning (MRPP). Moreover the French State has sometimes to assume exploitation and maintenance of water stations (pumping or physicochemical treatment), installations of firedamp management or devices of monitoring when concession holders no longer exist and public safety is threatened.

Extraction permits – Mines - Overseas territories

After the progressive closure of metropolitan mines through the twentieth century, French overseas territories are the focal point for mining extraction: gold in Guiana, nickel in New Caledonia.

The application of the Metropolitan Mining Code was extended to overseas departments; a specific regime has been adopted enabling faster instruction. In Guyana, a mining orientation departmental plan lists closed or open areas to mining activities. Polynesia and New Caledonia have a specific mining code. Since the Noumea Accord and adoption of the organic law 99-209, mining jurisdiction is now shared between the State, New Caledonia and the provinces according to the substances and geographic location.

Mining law No. 98-297 of April 21st 1998 also takes the specificity of mines in French overseas territories into consideration. Thus, for almost ten years now, gold mines in Guyana have benefited from a specific authorisation regime allowing rapid processing of authorisation requests. Further, **Law No. 2009-594** of May 27th 2009 on the economic development of overseas territories includes the development of a county-level mining plan. This plan defines the constraints that apply to mining operations right through to a ban on operation in the most environmentally sensitive zones, such as at the heart of Guiana's Amazonian park. Finally, **Law No. 2009-526** of May 12th 2009 simplifying and clarifying the law and lightening procedures authorised the government to reform the mining code to bring it into line with current legal standards, grouping together legislative and regulatory provisions which apply to mining activities.

Technological, institutional and social initiatives aim at protecting miners' health: provisions of the Employment Code supplemented by RGIE (general rules for extraction industries) in addition to those of the Employment Code. A ban on the use of mercury in Guyana, as of January 1st 2006, in all processes.

French Guiana

For French Guiana, mining exploration and exploitation is governed by the same legislative and regulatory regime applicable to the metropolitan France with the exception of certain provisions specific to this overseas territory, which can be summarized as follows:

- Mining activities have to be carried out in compliance with a specific mining plan (*schéma départemental d'orientation minière*). **The mining plan defines the terms and conditions applicable to mining prospection, as well as the terms of the implantation and exploration of onshore mining sites.** The mining plan defines, notably by zoning, the compatibility of Guiana's territory with mining activities, taking into account the necessity to protect the environment and also Guiana's economic interests. Such a plan, which is elaborated by the representative of the State, is subject to an environmental impact assessment and public consultation before enactment. The current mining plan entered into force on 1 January 2012. Any exploration and exploitation authorisations must comply with the mining plan and no authorisation can be granted for the areas where mining exploitation is forbidden. A ban on the use of mercury in Guyana, as of January 1st 2006, was taken in all processes.
- In addition to PERs and mining concessions, specific authorisations are set out for mining operations in French Guiana:
 - An exploitation authorisation, which confers to its holder an exclusive exploitation right, over a maximum surface of one kilometre and which is not assignable;
 - An exploitation permit, which confers to its holder an exclusive exploitation right with respect to certain substances, which is granted following a bidding process or is available to PER holders during the validity period of a PER if extractable deposits have been discovered within the PER perimeter during its period of validity.

New Caledonia

In 2000, New Caledonia was granted independent authority from France over the regulation of all mineral resources. A new mining code has been enacted in 2009 **through law no. 2009-6** dated 16 April 2009 and an implementing decree. The principles set out in this code are largely similar to the rules laid down in the French mining code. In particular, the exploration permit does not grant in itself the right to carry out exploration works which are subject to a different authorisation.

However, some provisions of the mining code are specific to New Caledonia:

- a specific authorisation is granted for prospection works, i.e., surface investigations, including geophysical investigations, for a maximum duration of five years. This authorisation only gives its holder the right to prospect, while exploration and exploitation activities require additional authorisations to be granted;
- mining titles must comply with a mining resources development scheme which provides global and long term guidelines;
- some areas which are no longer covered by a mining title can be frozen upon the decision of public authorities for a maximum period of twenty-five years during which no mining title can be granted over such areas;
- financial guarantees in the form of a monetary deposit or a first demand bank guarantee have to be provided for exploitation works with a view to ensure restoration works.

1.6. Licensing procedures for exploration and extraction in quarries

Exploration - Quarried minerals

Quarries exploration permitting does not involve big conflicts. It requires the agreement of the owners and the landowners who bought the land in general. The work is light and has little impact and is covered by the regulations relating to the protection of the environment under the declaration procedure (water particularly for drilling).

Extraction - Quarried minerals

Quarries are governed by the Environment Code **since they belong to Classified Facilities for the Protection of the Environment (ICPE, 2510 heading)**. Environmental inspectors, on behalf of the Prefects *authority*, are the main authorities in charge of enforcing environmental laws (*Art L. 170-1, Environment Code*). The law ALLUR (201-366 dated March 24 2014) defines the quarry extraction objectives: secure the quarry material supply through an effective access to the deposits, protect the Environment and establish a deposit hierarchy according to the nature and value (regional or national) of the materials.

The Prefect grants permit to projects falling under the category of "Classified facilities for the protection of the environment" (ICPE) that meet the necessary environmental requirements. Legislation includes either a prefectural declaration for a small sized quarry or a prefectural authorisation for a large sized quarry. Large soil undermining and mine dump and heaps using are also subject to a prefectural authorisation. For preliminary land clearing on a quarry site, if needed, a demand shall be sent to the Prefecture, Departmental Direction of Territories and Sea (DTTM), Service created by a decree dated on December 04 from the Ministry of ecological and solidary transition.

Small quarry

If the quarry's extractive surface is inferior to 500 m² and the extracted material annual tonnage does not exceed 250 tons and the quarry's total potential tonnage is inferior to 1000 tons, a quarry is considered small. This quarry type extract chalk, marl from the soil surface. Quarries extracting ornamental rocks, sand and clays destined to historical monuments or old building restorations are considered as small quarry when its annual extracted volume is inferior to 100 m³ and the total extraction potential does not exceed 500 m³.

Large quarry

A large quarry corresponds to extraction with size and expected total tonnage larger than the figures given above. Beyond the declaration procedure, the quarry activities are subject to a periodic control by environmental inspectors. Quarries with surfaces exceeding 5 ha or an extractive potential higher than 150,000 tons are subject to a public inquiry and an impact survey.

The environmental inspectors search and record environmental infractions. Some exclusively address ICPE and pollution prevention (**Art L. 172-1 et seq., Environment Code**). When inspectors detect non-compliance with environmental requirements, they report it to the prefect, who issues a formal notice to comply. In cases of non-compliance, the Prefect can impose administrative sanctions (**Art L. 171-8, Environment Code**) and courts can impose criminal penalties.

Permit demand for ICPE exploration works

Depending on the severity of the certain or likely effects of the ICPE operation, ICPE can fall under one of five distinct permit regimes:

1. Declaration (**Art L. 512-8, Environment Code**). The facility must be reported to the local state authority;
2. Declaration with control (**Art L.512-11, Environment Code**). In addition to the declaration regime requirements, the operator must be controlled every five years. This does not exempt the facility from other environmental inspections;
3. Registration with the Prefect (**Art L. 512-7, Environment Code**). Created in 2009, this regime applies to facilities for which safety measures are standardised and well known;
4. Authorisation by the Prefect (**Art L. 512-1, Environment Code**). In addition to enforcing the above requirements, the prefect can deny the authorisation. An impact study, a public inquiry and consultations of several public bodies (for example, administrative courts) are required for the issuance of the authorisation;
5. Authorisation with easements and financial warranties (**Art L. 515-8 et seq., Environment Code**). Easements are established to prevent third parties from settling near the facility. The Prefect can still deny the authorisation (**Environment Code, Art R 516 -1**).

A declaration shall contain a file including:

1. an Indication of the full legal identity and characteristics under which the file is submitted;
2. a memorandum explaining the major characteristics of the works planned with necessary documents, plans, cross-sections and, if applicable, the breakdown in stages;
3. the safety and health document;
4. a document indicating the consequences of the works on the water resource;
5. an impact statement, explaining the impact of exploration works on the environment;
6. A declaration shall be addressed to the Prefect of the concerned Department where the works are to be undertaken. The Prefect verifies the admissibility of the declaration and has it completed as need be. The Prefect shall transmit the application to the relevant administrative departments which shall have a period of one month to present their remarks. The Prefect can propose to add special requirements (if needed). The declarant shall have a period of fifteen days to reply to this communication. In other cases, a declarant may begin the works following a period of two months after the return receipt date for the mailing of his declaration.

Authorisation

The beginning of works for mineral exploration (quarried minerals) can be subject to an authorisation. The applicants submitting an authorisation shall file the following documents:

1. an Indication of the full legal identity and characteristics under which the file is submitted;
2. a description of the exploration methods considered;
3. a document indicating the consequences of the works on the water resource;

4. an impact assessment (cf. Environment Code) with one 1/25,000 scale map + one 1/ 2,500 scale map + one 1/200 scale plan including the intended installations and the location of existing buried pipe network;
5. a local danger assessment and ways to reduce its occurrence, probability;
6. a note dealing with the conformity of the planned installation with the personnel safety and hygiene;
7. technical and financial capacities;
8. administrative situation and experience in quarry management (personnel safety, environmental protection, financial guarantees);
9. Municipalities and department concerned by the quarry site.

Applications for authorisation shall be addressed to the Prefect of the Department where the works are to be undertaken. The Prefect verifies the admissibility of the authorisation applications and has them completed as need be. The Prefect shall transmit the file to the heads of the relevant administrative departments and to the mayors of the communes on the territories in which the works are planned. The Prefect decides to deliver or deny the permit. The permit contains comprehensive provisions relating to the settings and operations of the facility, its emissions and monitoring measures.

The environmental inspectors search and record environmental infractions. Some exclusively address ICPE and pollution prevention (**Art L. 172-1 et seq., Environment Code**). When inspectors detect non-compliance with environmental requirements, they report it to the Prefect, who issues a formal notice to comply. In cases of non-compliance, he can impose administrative sanctions (**Art. L. 171-8, Environment Code**) and courts can impose criminal penalties.

Timeframes

For ICPE authorisation the authorities have a period of one month to issue their remarks about the authorisation application. The Prefect shall refer this authorisation application to a public inquiry under the conditions provided for in the Environmental Code. Duration: one month. The Prefect shall also consult the District Health Council.

The denial of the authorisation shall be issued by the Prefect in a reasoned order. If the authorisation is granted, the Prefect shall inform the applicant of the special requirements included in the order. Applicants shall have a period of fifteen days to present their remarks. Duration of the procedure: 10/16 months.

Transfer of ICPE permit, validity and renewals

The takeover of the ICPE by a new operator must usually only be declared to the Prefect within a month from the beginning of the operation if no change in activity takes place (**Art R. 512-68, Environment Code**). However, the transfer of some facilities, including ICPE authorised with easements, quarries or waste storage facilities require the Prefect's prior authorisation (**Art R. 516-1, Environment Code**). The administration can also thoroughly control financial and technical guarantees. If the ICPE activity changes with the transfer, the new operator must follow the full procedure to obtain a new permit.

The seller of a property including a facility subject to authorisation or registration must inform the buyer in writing, as evidenced by the sale agreement.

ICPE permits are usually unlimited in time. If the operation of the ICPE has not begun within three years from the issuance of the permit, the permit becomes void (**Art. R. 512-74, Environment Code**).

The usual time delay for a declaration instruction is 6 months while it takes one year for the authorisation instruction.

However, if the operation is supposed to last less than a year and the regular procedure would take too long, **the Prefect can deliver a six-month permit, renewable once, under an expedited procedure (Art R. 512-37, Environment Code)**. This temporary authorisation cannot be transformed into a long-term permit unless the operator follows the regular procedure. This possibility is very rare because a quarry rarely has a lifetime of less than six months.

An ICPE permit must be renewed:

- If the on-site operations change.
- If the facility is put back into service after an accident.
- After a two-year interruption.
- If the ICPE permit regime changes.

An ICPE operator's liability is limited by the causal link between the permitted activities and a polluted land. Concerning site remediation, barring migrating pollution, liability is limited by the future use of the site.

Additionally, the statute of limitations for financial obligations relating to remediation of environmental damage caused by activities regulated by the Environment Code expires 30 years after the event that caused the damage (Art. L. 152-1, Environment Code). However, operators can still face liability, since the Prefect and mayor's police powers are not subject to a statute of limitations.

Exploration/extraction within special quarrying areas or zones ("zones spéciales de carrières")

The quarry special zone or 109 zone as defined in the Mining Code, art. L 321-1, following the 2011-91 Ordinance dated January 20 2011, aims at easing the exploration and exploitation of quarry substances seen as of national or regional economic interest despite their access difficulties.

Where the development of deposits of a quarrying substance cannot satisfy the needs of the consumer due to the lack of known and accessible resources of the substance, special quarry areas may be established to satisfy the national or regional economic interest (Art. L.321-1 of the Mining Code). In these areas, research and exploitation may be carried out without the consent of the landowner (s) (L.322-1 and L.333-1 of the Mining Code). An authorisation under the Environmental Code remains necessary before starting work.

In 2017, 15 special zones were identified (see <http://www.mineralinfo.fr/page/zones-speciales-carrieres>) with quarry substances as follows: gravels and sand, diatomite, cement rock, brick-clays, andalusite, kaolin and metamorphic minerals. 4 special zones are located inside the *Ile de France* region.

The exclusive exploration permit is depending on an environmental investigation (2 months of public inquiry) and can be obtained without the land owner agreement (L 322-2 & 333-1) through a three-year validity Prefectural authorisation. A **special exploitation zone** is subject to the Environmental Code, to the general regulations of the Industry and to DREAL

control for any of the concerned geographical department or region. An exploration permit is granted through a decree issued by the State Council.

Getting an exploration permit for a special quarry zone requires complying with the ICPE environmental regulations. Nevertheless, since the exploited substance is seen as a material of national economic importance, the permitting procedure is faster.

Planning quarries activity

Quarry Departmental schemas (*schémas départementaux des carrières*, **Environment Code Art. L 515-3 to L 515-7**) define the general conditions applying to the quarry installation and material extraction, taking in account:

- the national economic interest,
- the aggregates need,
- the supply and transportation conditions,
- the impact evaluation of the existing quarries
- the environment protection,
- the reasonable management of space while favouring the sustainable use of raw materials.

The mineral extraction, use and reintroduction into waste stockpiles should ensure appropriate confinement, i.e. that throughout the cycle, emissions into the environment, particularly the air and water, should be limited and controlled. Legislation has been enacted obliging departments to produce plans for quarried minerals.

Art. 1 specifies that the plan must include the following:

- Inventory of known resources,
- Analysis of the demand for minerals, Mining waste management in European Union Annex n°7 8/16,
- Impact of existing quarries on the environment;
- Evaluation of future local needs;
- Setting of objectives to ensure the wise use of resources and to minimise impacts on the environment;
- Examination of transport networks;
- Environmentally protected areas;
- Preferred after use for mineral extraction sites.

Environmental and planning standards for individual mineral operations are firstly controlled through the attaching of conditions to permissions. For quarries these are in the form of prefectural decrees.

These may cover a wide range of environmental concerns, such as noise and dust generation. The protection of surface and ground water quality is also believed to be of key importance. There is no specific text relating to emissions from quarrying and mining activities. The Prefect may define thresholds which must not be exceeded, and in addition the operator may be obliged to measure the fallout of dust and to forward the results to the Prefect. All measurement costs are charged to the operator.

Extraction of "mining substances" in a quarry

The geological formation can locally contain together mining and quarrying substances. Thus a quarrying operator can exploit mining substances following specific conditions with the authorisation from the Minister of Mines.

Penalties

An ICPE operator may be subject to penalties for:

- Violating the ICPE permit regime;
- Violating the legal requirements applicable to the operation;
- If an ICPE inspection reveals such violations, the inspectors inform the Prefect and the public prosecutor (**Art. L. 521-16, Environment Code**). Before inflicting sanctions, the Prefect must issue a formal notice to comply (**Art. L. 171-7, Environment Code**). If the operator does not comply, the Prefect can inflict any of the following administrative sanctions on the operator depending on the gravity of the non-compliance and the resulting damage to the environment (**Art. L. 514-4 and L. 171-8, Environment Code**);
- Force the operator to deposit a sum to be returned gradually as the facility is put in conformity;
- Implement the required measures on the behalf and at the operator's expense;
- Suspend the ICPE operation and take conservatory measures at the operator's expense;
- Order the payment of a fine along with periodic penalties.

Criminal sanctions can also apply, in the form of a fine of up to € 150,000 and two years of imprisonment (**Art. L. 514-11**). Not complying with the Mining Code regarding the legal work duration for the personnel may trigger a € 45,000 fine. Starting exploration work without any authorisation faces a € 15,000 fine and one-year jail sanction (Mining Code, Art. 142).

Applicable rules

Applicable rules for the operation and restoration of quarries are covered by a specific technical policy derived from the **Mining and Environment Codes** for classified installations as protective of the environment. To these provisions the **Employment Code** is added which is supplemented or adapted by the general Regulation of extraction industries, including provisions in respect of the health and safety of workers which are specific to the mine and quarry businesses (limiting exposure to dust, rules relating to the creation and maintenance of tracks and traffic rules, etc.). It should be noted that quarries plan includes all sustainable development restrictions. It is subject to an environmental assessment made by the Prefect of the region and allows balanced management of the resource which is compatible with the different natural environments concerned. The quarries plan will, where applicable, also include the exploitation of marine resources.

1.7. Court cases on permitting procedures

1 Procedural and institutional framework of court actions

1.1 Brief presentation of the French judicial system

The French judicial system, applying equally to the whole territory, is divided into two “orders”: the **judicial order**, which focuses on civil and commercial matters for disputes arising between private parties, as well as criminal matters, and the **administrative order**, which focuses, in a nutshell, on matters relating to administrative law and cases in which the Administration is involved.

The question of the legality of administrative authorisations, such as those required by quarry operators, falls under the jurisdiction of the administrative order. A third party can seek the annulment or, in some cases, the modification of various authorisations. The petitioner can also request the annulment of a refusal to award the requested authorisation.

Even if an operator operates the quarry in accordance with the rules defined in their authorisation, neighbours can bring claims before a civil Court (of the judicial order) in order to obtain damages for different kind of nuisances caused by quarrying activities. In this regard, claimants have to demonstrate that the inconveniences suffered exceed normal neighbourhood annoyances.

An operator committing violations of his operating permit or of quarry legislation could be prosecuted before a criminal Court (various ones exist, depending on the seriousness of the breach).

During any of the aforementioned proceedings, the claimant can invoke the violation of constitutional rules and bring a legal action before the Constitutional Court (French *Conseil constitutionnel*). However, the national jurisdiction which has initially been approached acts as a filter. To be referred to the Constitutional Court, the issue raised about the invoked violation must be unprecedented, serious, and relevant to the case resolution. Most of the time, operators invoke freedom of commerce and legal certainty. On the other hand, third parties often cite the principles of the Constitutional Environment Charter such as the precautionary and prevention principles, and the right of public to be informed and to participate.

1.2 Focus on procedures before the administrative order

The administrative order is composed of three levels.

First instance is allocated to 42 Administrative Courts (*Tribunal administratif*) and 736 judges.

An appeal can be brought before 8 Administrative Courts of Appeal (*Cour administrative d'appel*) and 254 judges. As a general rule, appeals do not have suspensive effect.

Finally, an applicant can take further action by lodging a cassation appeal before the Council of State (*Conseil d'Etat*). The Council of State acts as a “procedural judge” which reviews legal aspects of the case and controls the lower Court’s legal assessment. When the Council of State decides to quash the challenged judgment, they can either settle the case or refer it back to the Administrative Court of appeal, which will be bound by the

Council of State's decision. It should be noted that the Council of State is not bound by precedents and adaptations or reversals, which regularly happen. However, in practice, inferior courts always follow guidance given by Council of State's case law.

The 2016 French Administrative Council of State annual report indicates the following average timeframes between the introduction of an appeal and the judgment¹²:

- Before an Administrative Court: 10 months and 9 days;
- Before an Administrative Court of appeal: 10 months and 25 days;
- Before the Council of State acting as procedural judge (*i.e.*: not as a first instance judge): 11 months and 13 days.

Administrative judges do not have, as they do in Sweden for instance, technical backgrounds. However, at the Council of State, matters are handled by specialized chambers, which are thus used to certain types of matters.

European law is implemented in the French legal system through various juridical tools, such as laws and decrees. Most often, when an appellant brings a legal action against an administrative decision, European law applies indirectly. In other terms, administrative judges apply the "screen-law" system, which means that if a superior rule is implemented by a constitutional or conventional text (including EU law), the judge controls the decision's legality in respect to the immediate superior law, and not in respect to the implemented EU law. That explains why the majority of case law studied in the present review does not expressly refer to EU law but to domestic rules.

1.3 Procedures against quarry-related decisions

In order to carry out their projects, quarry operators have to obtain several administrative authorisations awarded by authorities in the form of a decree (*arrêté* from the Mayor, from the Prefect or from the Ministry of Industry).

A quarry project requires the award of at least an operating permit (*autorisation d'exploiter*)¹³, granted by the Prefect, based on classified installations rules (*police des installations classées*) and including, if need be, a water impact authorisation (*autorisation Loi sur l'eau*). Exploitation is also regulated by one or several decrees that can be implemented following the award of the initial operating permit. Most of the time, the operating permit will include quarrying activities (strictly speaking) and related industrial activities (such as initial treatment of materials - crushing, sieving etc...- which can be located in the quarry zone or close by). Usually a building permit (*permis de construire*) will be needed for treatment equipment and administrative buildings.

Depending on each project's characteristics, the following authorisations may also be required:

- Forest clearance (*autorisation de défrichement*);
- A waiver of the prohibition on the destruction of critical habitats of protected species (*dérogation à l'interdiction de destruction d'habitats d'espèces protégées*).

¹² It is important to understand that these average timeframes do not take account the complexity of the case. Cases involving quarries generally last longer.

¹³ The need for numerous authorisations could, in the medium-term, come to an end as the French government has started experimenting with a global "Environmental permit" that embodies, in a single decision, all the formerly required authorisations. However, quarries are not yet included in the projected scope of the incoming reform.

1.3.1 General rules for proceedings

Permits and refusals may be directly challenged by a third party or by the quarry operator. The defendant is usually the administrative authority which signed the decision. However, when a third party asks for cancellation and challenges a permit granted to an operator, the quarry operator participates in the dispute along with the administrative authority.

The legal means (*i.e.* legal arguments) the applicant can invoke against an administrative decision are of two types:

Formal flaws in the decision itself or in the procedure preceding its adoption; for instance, if a certain administrative authority has not been consulted or if the project's environmental impact assessment has not analysed some potential effects; for such a formal irregularity to be deemed "substantial", and therefore to have an effect on decision's legality itself, it is necessary that the applicant demonstrates that this irregularity has had an impact on the authority's decision or on the provision of complete information to the public.

Legal violations, *i.e.* that the authorisation has violated a superior norm applying to it. Such norms include legislative and regulatory provisions, but also the "constitutional block" and the "conventional block", e.g. the freedoms and rights guaranteed by the ECHR or the provisions of EU directives and regulations. The Birds and Habitats Directives are some of the EU directives that could be invoked.

1.3.2 Building permit rules

Deadline: the time-limit for bringing an action is two months from publication of the decision.

Legal interest: one admissibility criterion is the existence of legal interest: the applicant must first demonstrate that they have a legal interest in bringing a legal claim (*intérêt à agir*).

Administrative Courts interpret the applicant's interest in seeking annulment for illegality in quite a liberal way. However, a review of case law demonstrates that legal interest is presumed when a petitioner challenges a refusal or an administrative requirement considered as being too strict. When a third-party claims for cancellation of a building permit, it must demonstrate there is a sufficient probability that, regarding its specific characteristics, the project will have a direct and negative impact on the claimant's living conditions, in his own property. In practice, this means that applicants have to, on the one hand, be neighbours of the project, and, on the other, provide tangible evidence demonstrating there is a risk of direct nuisance for them. Most often, the quarry operator will ask for the claim to be rejected on the grounds that the plaintiff does not suffer any real harm, and, consequently, had no basis on which to state a claim.

Regarding associations, the admissibility of claims will depend on their status. An association's legal interest is assessed in consideration of two requirements. Firstly, the "purpose" of the association, as defined in its statutes, has to be sufficiently precise and relevantly related to the project's alleged negative effects. Secondly, the project has to fall within the geographical scope of action of the association as stated in the statutes.

Some associations are granted a governmental approval (*agrément*) giving them lighter conditions of admissibility. Recognition of their legal interest is made easier as they are not geographically restricted.

Kind of claim: applicants can only claim for the cancellation of a building permit (both for the award and the refusal of a building permit). If the decision is found to be illegal, the judge will order its cancellation. Regarding refusal of a building permit, when the applicant so claims – which is generally done –, the judge refers it back to the administrative authority which will be required to issue a new decision based upon legal and factual circumstances as they existed when the refusal was issued.

Besides formal irregularities committed during the building permit adoption procedure, the main legal arguments an applicant can invoke against a building permit are based on the alleged violation of local or national building planning rules.

1.3.3 Operating permit rules

Deadline: the time-limit for bringing an action against a classified facility operating permit is:

- four months from publication of the decision (for a third party);
- two months from notification of the decision (for the quarry operator)

Moreover, the *Grenelle 2* French law, voted on in 2010, modified the legal recourse period (1 year instead of 6-months) and its starting point. Whereas the 6-month period began on from the publication of the quarry operator's declaration, a legal action can now be brought within a 1-year period from the publication of the operating permit, unless commissioning occurs after this 6-month period. In this case, the recourse period runs for an additional 6-months.

French quarry operators regret¹⁴ this change as it decreases their legal certainty.

Legal interest: as with building permits, the petitioner is presumed to have a legal interest in bringing an action against a refusal. Third parties have to establish that there is sufficient probability that the project will have negative impacts on the environment and that these negative impacts will also have direct repercussions on their personal living conditions. The interest of associations is assessed in the same way as for building permits (see above).

A Judge's inherent powers: litigation regarding classified facility decisions is characterized by the broad powers entrusted to the judge. Judges are hence allowed to replace an administration's decisions by their own. As such, when a refusal is found to be illegal, the judge has the ability to award the authorisation without the competent authority having a say. Conversely, the judge can uphold a decision found to be illegal by strengthening the obligations of the operator included in the authorisation. The judge can similarly issue a complementary decision reinforcing the initial one, or even deliver a temporary decision in order to allow time for the quarry operator to regularize the identified illegalities.

Operating permits can be challenged, aside from formal irregularities, by invoking a disproportionate impact of the project on environmental interests, or a violation of EU directives.

1.3.4 Special procedures

14 N. Vuillier, UNPC President, in *Industrial Environnement Law Review* (BDEI), December 2011, page 4.

Regarding the length of procedures before the administrative order, a specific type of procedure has been developed for urgent cases: the procedure for interim measures, or summary procedure (*référé-suspension*). The purpose of the procedure for interim measures is not to obtain annulment of the authorisation, but to suspend its execution.

Two main criteria have to be fulfilled in order to obtain a suspension of execution through a procedure for interim measures. Firstly, there must be an urgent reason to suspend the authorisation without waiting for the result of the main procedure. A case is deemed to be urgent when it is demonstrated that the execution of the decision would cause serious and immediate prejudice to the claimant. Secondly, the judge must have serious doubts regarding the legality of the authorisation.

A judge can also suspend permits awarded without a proper environmental impact assessment or a mandatory public inquiry (in these cases, fulfilment of the condition of urgency is not required).

2 Expert assessment of administrative quarry-related cases over the last 20 years

There are no official statistics regarding the proportion of quarry-related cases in annual administrative French case law. However, in 2006¹⁵, in a sample of 159 first instance judgments concerning classified facilities, 36 concerned quarries and their related facilities (*i.e.*: 22%).

A variety of stakes emerge from an assessment of the last 20 years of quarry-related cases. The development of a quarry must be accepted in the local area; therefore, changes to land-use planning can represent a bottleneck for new projects. Furthermore, opponents find in town planning documents a relevant tool in preventing quarry operators from obtaining authorisation (2.1.). The risk level is also significant regarding the sufficiency of the various assessments required by quarry operators (environmental impact assessment, hazard study, Natura 2000 assessment) (2.2.). In addition, the legality of the various authorisations regarding water resources, protected species and neighbourhoods can be challenged and can threaten quarry operations (2.3.). Quarry rehabilitation is not the main grounds for legal action; however, some legal issues are also raised at that stage (2.4.).

2.1 Change of land-use planning and adoption of other planning documents

It is of crucial importance for petitioners to anticipate and take into account the various planning documents relating to the area of the quarry. Administrative authorities also have to be careful, as several plans have a direct and indirect influence on quarry-related decisions.

2.1.1 Local quarry plan

15 Collective work under the supervision of R. Melot, October 2008, « Conflits environnementaux et gestion des espaces », page 13.

A local quarry plan¹⁶ sets out the quarry implementation rules based on both environmental and economic considerations.

According to the French environmental code, operating permits only have to be “compatible” with such schemes. But judicial practice shows that, as soon as a rule is sufficiently precise, administrative judges will tend to take it into account. Hence:

The amount of mineral resources the petitioner plans to extract has to be proportionate to local needs, as identified in the quarry plan¹⁷;

Where a quarry plan forbids, in principle, the development of a new quarry, principally due to insufficient exploitation of existing ones, an operating permit cannot be awarded without evidence of extraordinary grounds being presented by the petitioner¹⁸;

The perimeter of exploitation authorized in the permit cannot be inferior to the minimum threshold provided for by the scheme for the prevention of urban sprawl¹⁹;

The surface areas of future ponds presented as rehabilitation solutions have to comply with the minimum surface areas of ponds permitted by the quarry plan²⁰;

The construction of a dike required by the project may impact watercourses, which is expressly forbidden by the quarry plan, in application of the regional water plan²¹;

A new quarry authorisation contravenes the objective of the scheme to limit quarrying site sprawl²² when there are already five quarries within a 15km range around the projected site.

The Council of State (*Conseil d'Etat*) has explicitly recognized the binding effect of the graphic illustrations relating to the scheme²³ when they demarcate areas deserving specific environmental protection. Conversely, the mere fact that a quarry plan does not identify, as it should, an area as being of interest for quarrying development, is not sufficient to forbid the implementation of the project in the area²⁴.

2.1.2 Town planning documents

16 “Schémas départementaux des carrières”, soon to be replaced by the “schémas régionaux des carrières” (from 1 January of 2020).

17 ACA Nantes, 18 April 2014, n°12NT03215.

18 ACA Nancy, 1 February 2014, n°09NC01396.

19 ACA Lyon, 2 December 2008, n°07LY01364.

20 Council of State, 10 January 2011, n°317076.

21 ACA Nantes, 28 June 2002, n°00NT00037.

22 Administrative Court of Amiens, 21 March 2002, n°001346.

23 Council of State, 15 March 2006, n°264699.

24 ACA of Lyon, 5 July 2012, n°10LY02682.

Petitioners have to pay special attention to urban planning documents as building permits have to conform with their provisions, and operating permits must be compatible with them.

Oddly enough²⁵, town planning documents do not have to be made compatible with local quarry plans. Since communes are not required to allocate zones for industrial development, these documents do not usually address the issue of quarrying. In this hypothesis, quarry projects have to comply with rules that are not relevant to industrial projects such as quarrying operations, which can drive opponents to claim for cancellation on the basis of non-compliance with town planning documents.

It has long been ruled that quarries cannot be developed in agricultural zones²⁶, natural zones²⁷ and categorised woodland areas²⁸. However, this issue is currently changing and specific sectors can now be created.

In a recent decision, it was ruled that, even if a town planning document expressly authorizes quarries in an area, qualification, by a superior planning document, of this area as "important for biodiversity", precludes authorisation of the project²⁹ (see Chapter 3).

Provided that such an interdiction is justified by "local necessities", it was ruled that a plan can even prohibit the development of quarries in the whole territory of the commune³⁰. However, the provisions of town planning documents cannot exceed their legal purpose, which is to determine the use of land: a town planning document that determines the duration of a quarry authorisation is, therefore, illegal³¹.

2.1.3 Environmental and cultural protection tools

A number of environmental protection mechanisms have a more indirect effect on operating permits in that they substantiate that an area is in need of protection.

ZNIEFF: for instance, the classification of an area as "ZNIEFF"³², even though this does not have any legal value, will often, in practice, be taken into account during the development stage of a quarry³³. However, an operator can still raise arguments justifying

25 Town planning documents usually have to take into account or be compatible with dedicated schemes.

26 Council of State, 7 May 2008, n°306333.

27 Council of State, 12 March 1997, n°151240.

28 Council of State, 12 March 1999, n°142490.

29 ACA of Nantes, 11 March 2015, n°13NT01425.

30 Council of State, 21 May 2008, n°290241.

31 Council of State, 29 April 1998, n°168895.

32 The ZNIEFF inventory identifies areas having remarkable environmental features.

33 Council of State, 30 December 1996, n°160299; Council of State, 22 May 1996, n°145755.

why the relevant sector does not present specific aspects justifying environmental protection³⁴; or why the project's design makes its impacts acceptable³⁵.

NATURA 2000: Natura 2000 areas have special significance for quarry development, since special assessments are compulsory when substantial impacts are likely to be caused by quarry exploitation in a Natura 2000 zone. A methodological guide³⁶ providing details about administrative and legal standards has been published by the Environmental Ministry. The European Commission published new guidelines on the 4th of October 2010³⁷. Even when a project is not likely to have substantial impacts on a Natura 2000 area, the environmental impact assessment must analyse any eventual interactions and impacts on Natura 2000 resources. An Administrative judge reviews it when a legal claim is brought against an operating permit. For instance, an environmental impact assessment relating to a quarry partly located in a ZNIEFF and partly in a Natura 2000 must include a survey of flora and fauna³⁸.

HISTORICAL SITES: similarly, the proximity of a national historic site will lead the judge to review any visibility impacts caused by a quarry³⁹, unless the petitioner can demonstrate that the visual impact is in fact not substantial, or that the impact can be reduced through certain measures⁴⁰.

REGIONAL AND LOCAL WATER PLANS: It has been ruled that authorisations do not have to be compatible with regional and local water plans, except in regards to the regulatory provisions of regional water plans⁴¹ (See Chapter 3 - Case 7).

REGIONAL NATURE PARK: the guidelines of the Regional nature park Charter are generally stringent with regards to quarry authorisations (See Case 6). A Charter stating that quarrying activities "should be avoided" in some areas of high landscape interest cannot justify a refusal when the project is located close to this area, in a sector without particular landscape interest⁴².

Recommendations

As stakeholders, petitioners can, directly or indirectly, through their professional representatives, participate in the adoption process for the plans and schemes.

They can also contact national and local administrations in order to obtain, if possible, the modification of the plan or scheme so as to overcome barriers to their project. If the

34 Council of State, 20 April 2005, n°246690.

35 ACA of Douai, 22 July 2003, n°00DA00381.

36 Évaluer les incidences des projets de carrières sur les sites Natura 2000, Environmental Minister (April 2007).

37 http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

38 ACA of Bordeaux, 6 May 2014, n° 13BX02649.

39 Council of State, 8 Sept. 1997, n°161956.

40 Council of State, 4 July 1994, n°119303.

41 Council of State, 15 March 2006, n°264699; ACA of Nantes, 17 April 2015, n°14NT00056.

42 ACA of Lyon, 7 February 1994, n°10LY1554.

administration is convinced, the project can be qualified as being of “general interest” and the plan or scheme made compatible with it through a simplified process⁴³.

This is possible for both town planning and quarry planning documents⁴⁴.

If the plan or scheme has been in place for a long time or the administration is unwilling to initiate a modification process, petitioners can also request the annulment of their authorisation refusal and invoke, indirectly, the illegality of the plan. If illegality is admitted, the judge can set aside the plan’s application. However, the ability to invoke the illegality of a town planning document has recently been limited to a period of six months from its adoption.

For instance, a quarry operator can criticize a planning document on the grounds that justification of the chosen area is flawed or insufficient⁴⁵. The absolute prohibition of a quarry on municipal lands has been ruled as illegal when the existence of mineral resources was known about for a long time and no excessive negative impacts were forecasted⁴⁶.

2.2 Preliminary assessments

In the French, legal system, the administrative judge rules on the sufficiency of the environmental impact assessment in consideration of a legal principle: the principle of assessment’s proportionality to the quarry’s importance and its foreseeable impact on the environment⁴⁷. Insufficiencies are likely to lead the Courts to annul quarry authorisations.

2.2.1 Principle of proportionality

The **principle of proportionality** to the importance of the projected quarry and its foreseeable impact on the environment: case law provides significant examples of a jurisdiction’s control regarding proportionality with the various stakes relating to quarry exploitation. The impact study should be proportionate with:

The impact on water resources: specifically, the judges assessed proportionality in terms of impacts on water resources. An Administrative Court of Appeal validated an environmental impact assessment as proportionate in regards to the nature of the project, its importance and its predictable environmental impacts. Judges particularly underlined the hydrogeological assessment and the accuracy of the description of the facility’s systemic impact on water resources⁴⁸.

The presence of the waste dumping site: an Administrative Court of Appeal⁴⁹ considered that the content of an environmental impact study was not proportionate,

43 ACA of Nancy, 26 April 2012, n°11NC00776.

44 Council of State, 19 June 2015, n°386291.

45 ACA of Lyon, 7 July 2005, n°99LY02184.

46 Council of State, 30 December 1996, n°136796.

47 ACA of Bordeaux, 6 December 2001, n°01BX01665.

48 Same decision: ACA of Bordeaux, 6 December 2001, n°01BX01665.

49 ACA of Nancy 10 January 2005, n° 01NC00991, Société GSM.

mainly due to an insufficient analysis of the risk of pollution deriving from the presence of the dumping site.

The judge concluded that further studies and requirements were required and that, therefore, the impact of the landfill site had not been properly assessed in the original environmental impact assessment.

The importance of preparatory work: one decision shows how an environmental impact assessment can be seen as proportionate despite a lack of accuracy regarding preparatory works, the judges taking into account the fact that the preliminary works would have to be performed in a short period of time and in an isolated area. As such, there would be no particular consequences for the neighbourhood⁵⁰.

Safety risks (fire and clay pit): the judges⁵¹ considered that the content of the impact study was proportionate regarding the quarry's characteristics (no specific fire risk for a clay pit).

Recommendations regarding the principle of proportionality

Quarry operators and administrative authorities have not only to conduct a comprehensive review of quarry-related stakes (water, noise nuisance, dust, protected species...), but also to anticipate interests closer to the project in regards to timing (for instance: an area in the course of being categorised). The larger the project, the higher the jurisdiction's standards regarding the sufficiency of the environmental impact assessment will be.

2.2.2 Cumulative impact assessment

Cumulative impact assessment: an environmental impact assessment must take into account other impacts generated by the project and quarry-related equipment as soon as they are associated with the project. Administrative judges are vigilant about cumulative impacts since they are likely to affect the hazards and disadvantages associated with the main project.

As a consequence, French administrative Courts extended the scope of environmental impact assessments by consistently considering that the impacts of initial processing equipment also have to be analysed⁵².

A Court of Appeal considered that a functional and geographical relationship exists between a quarry and its initial processing equipment located 3 kilometres away⁵³. Similarly, an initial processing installation located 7 kilometres away is sufficient to require an assessment of cumulative impacts. Case law appears to be strict: a Court of Appeal⁵⁴ considered a relationship to exist and therefore required cumulative impacts assessment for conveyor belts located outside the quarry zone, due to the presence of a ZNIEFF in the area.

This tendency should continue in that a new law dated 3 August 2016 recently implemented the European legal definition of a "project" in French law. Before this reform, a "project" was not defined and for various projects to fall within the scope of a single environmental

50 ACA of Marseille 6 December 2010, n° 08MA02272, Société SOREDEM.

51 ACA of Nantes, 25 March 2011, n° 10NT00043, GUINTOLI.

52 ACA of Lyon, 28 June 2002, n° 01LY02603 and n° 02LY00014, Sté Bétons et Granulats du Centre.

53 Administrative Court of Melun, 27 October 2011, n°0806863.

54 ACA of Bordeaux, 23 December 2012, n° 09BX0287.

impact assessment, they had to be considered as being included in the same “works program”. The European definition is wider: “the execution of construction works or of other installations or schemes, or other interventions in the natural surroundings and landscape, including those involving the extraction of mineral resources”. A guide will soon be published in France.

2.2.3 Environmental impact assessment

The sufficiency of environmental impact assessments: An unchanging⁵⁵ principle guides French jurisdictions regarding environmental impact assessments: if its insufficiencies are seen as being substantial, an operating permit can subsequently be annulled. According to French case law, an insufficiency will be considered as substantial in two cases:

- If it hinders the public from being informed or from participating in the public inquiry;
- If it could influence an administrative authority’s decision (by underestimating project’s impacts for instance).

Sufficiency controls will be applied both for the description of the initial state of the site and the analysis of the project’s impacts.

Courts will also check that the original site is well described (for instance: regarding a complete hydrogeological assessment describing the hydrographic network⁵⁶; or the location of the project, its hydrological analysis, its hydrogeological analysis, its atmospheric pollution assessment, a fauna and flora survey (for instance: if there was no mention of the protected status of species at the quarry site when there were many species in an area of 26 hectares⁵⁷), and an analysis of ZNIEFF and Natura 2000 area⁵⁸. Environmental impact assessments must take into consideration the protection of archaeological heritage sites. It may not be based solely on the knowledge of the local population, but should be studied⁵⁹.

Some insufficiencies are neutral according to a Court of Appeal, after having compared the types of impacts the project is likely to have (for instance, the presence of three white-clawed crayfish located 3.5 kilometres away from the site had not been mentioned in the description of the initial state of the site⁶⁰).

The Courts will also make sure that the foreseeable impacts are well analysed.

Traffic: for instance, an assessment providing very little information about transport truck schedules will be considered to be substantially deficient⁶¹. An assessment that under-

55 ACA of Lyon, 7 February 2012, Parc Naturel regional, n° 10LY01554.

56 ACA of Bordeaux, 22 March 2010, n° 09BX00454.

57 ACA of Bordeaux, 24 January 2012, Commune de Lahontan contre Préfet des Pyrénées-Atlantiques, n° 11BX00555.

58 ACA of Marseille, 6 December 2010, n°08MA02272.

59 ACA of Lyon, 1 December 2015, n° 14LY03687.

60 ACA of Lyon 7 February 2012, n° 10LY01554.

61 ACA of Paris, 23 March 1999, n°96PA01757.

evaluates truck movements (impact study = 30 trucks per day / reality = 200 to 400 trucks per day) does not correctly inform the public and is, thus, substantially flawed⁶².

Water: an environmental impact assessment can be seen as flawed if it does not take the risk of water pollution related to the operation sufficiently into account⁶³.

Hazard studies are subject to the same levels of control: in the French, legal system, if a hazard study is deemed to be substantially flawed, it can constitute an irregularity which will lead the administrative judge to annul the quarry operating permit⁶⁴. For instance, a hazard study regarding a quarry using a chemical product for the extraction of materials is deemed to be insufficient when it does not provide a description of the chemical's effects⁶⁵.

The Judge's controls regarding measures proposed by the quarry operator to protect endangered species⁶⁶ remain a contentious issue.

Various pieces of case law show how the judge can decide that, despite being based on an insufficient environmental impact assessment, an operating permit can retain its validity:

Detailed analysis of the scheme and quality of the surface and groundwater, and a presentation aimed to avoid pollution⁶⁷;

Accurate analysis of the project's impact on a Natura 2000 area: the judge noted in this case that a detailed analysis of the impacts on the natural habitat and fauna and flora was undertaken (species of Community interest). He further observed that the work did not jeopardize the conservation of the site⁶⁸;

Wetlands (water protection): some wetlands were not listed on the site, but many others were⁶⁹.

2.3 Exploration permit, exploitation license and waiver of the prohibition on the destruction of the critical habitats of protected species

An important constraint to the development of quarries arises from jurisdictional debates about the legality of administrative decisions. Four main arguments are invoked, either by the administrative authority (in case of a refusal), or by third parties (in case of legal action brought by opponents): technical and financial capabilities; land control; award of related authorisations; modifications during exploitation.

62 ACA of Nancy, 13 April 2000, n° 96NC02450.

63 Administrative Court of Toulouse, 21 June, n°00/0773, Assoc. préservation des sites menacés en Bouriane c/ préfet Lot.

64 Council of State, 18 December 1996, n° 156270, Société Omya ; Administrative Court of Amiens, 2 December 2003, n° 002593, Assoc. protection du site de Crépy c/ préfet Somme.

65 Council of State, 26 July 2011, n° 322828.

66 ACA of Lyon, 5 July 2012, Comité de défenses du Bois des Rochettes et autres, n°10LY02682.

67 Council of State, 17 December 1997 n° 153871.

68 Council of State, 27 July 2009, n° 307206.

69 ACA of Nantes, 22 September 2015, n° 13NT02579.

2.3.1 Demonstration of technical and financial capabilities and land control

When assessing the award of the requested exploitation license, the competent authority will verify that the applicant has the “**technical and financial capabilities**” to operate and, ultimately, to rehabilitate the site with regards to the nature and the characteristics of the project.

Obviously, if the application file does not even mention technical and financial capabilities, any authorisation subsequently awarded is immediately deemed to be illegal⁷⁰. However, said capabilities do not have to be the subject of a separate specific document when they can be deduced from the initial application⁷¹.

Financial capacities are to be demonstrated by presenting both the financing arrangements (letters of commitment from banks or loans with conditions precedent) and the financial situation of the applicant (income and expense account, balance sheet and an analysis of the maturities of receivables⁷²), in order to convince the judge that the applicant can undertake the operation, from commissioning through to rehabilitation.

It has been ruled that an applicant had demonstrated sufficient technical capabilities, despite the fact that the company had been convicted for water pollution and other permit infringements at another quarry operation, after having presented⁷³ :

- A nominative list and the qualifications of the employees working at the site on a day-to-day basis and, those likely to work there;
- A list of the machinery to be used at the site;
- A presentation of the prior experience of the firm with quarrying operations.

The judge also took into account the fact that the applicant belonged to an experienced business group. In this same interesting case, the Council of State emphasised that the mere fact that an applicant has no prior experience in quarrying activities does not preclude authorisation, provided that its technical capabilities are demonstrated⁷⁴.

The French Environmental Code requires that the applicant includes, in the application file, a document proving **ownership of or a right to use the quarrying site**.

The competent authority must check the regularity of this document. For instance, if the site belongs to the commune, the decision from the legislative body granting a right to use

70 ACA of Nantes, 28 June 2002, n° 98NT01302.

71 Council of State, 20 March 1985, n° 36419, Marquès et a..

72 ACA of Nantes, 15 February 2013, 11NT00154.

73 ACA of Douai, 15 February 2013, n° 11NT00154.

74 Council of State, 13 July 2006, n°285736.

it must be valid⁷⁵. Regarding private ownership, an undertaking to sell subject to, obtaining the necessary authorisations, has been deemed to be sufficient⁷⁶.

2.3.2 Related authorisations

The granting of a **clearing permit**, if needed, is a condition for the award of an operating permit⁷⁷. Such permits are to be refused, for instance, if the impact assessment does not cover all plots subject to clearance⁷⁸. Conversely, a clearing permit can be granted for an environmentally sensitive site, the surface to be cleared being reduced and sufficient compensatory measures having been presented by the applicant⁷⁹.

Because of the significant impacts of quarrying operations on wildlife, the granting of **waiver of the prohibition on the destruction of the habitats of protected species**, formulated in French law exactly as it is in European law, is a particularly sensitive issue.

The Council of State has given a very restrictive interpretation of the “imperative reasons for overriding public interest” concept by stating that the project in question could not be considered to be an “exceptional case, the implementation of which appears to be indispensable”⁸⁰. This strict interpretation has since been applied to a quarrying project⁸¹.

Recently, judges seem to have adopted a less stringent interpretation of the concept (see Chapter 3, case n°5)⁸².

Nonetheless, the rigidity of the expression makes it appear biased for quarrying developers as the economic interest appears to be intrinsically inferior to the environmental one. A guide will soon be published in France to provide information for both the administration and operators.

2.3.3 Modifications during exploitation

During a quarry’s operational life, **a number of modifications** are likely to be made. Quarry operator have to be careful to comply with administrative formalities and related assessments, which can sometimes be compulsory: this can cause bottlenecks for quarry development.

Transfer to another quarry operator: for instance, if the quarry is transferred to a new company, a declaration has to be made to the Prefect (*déclaration de changement*

75 Council of State, 11 June 2014 n°362620.

76 ACA of Lyon, 7 February 2012, n°10LY01554.

77 Council of State, 16 June 1999, n°169672.

78 Council of State, 14 February of 2011, n°342310.

79 Council of State, 4 July 1994, n°119303.

80 Council of State, 9 October, 2013, SEM Nièvre Aménagement, req. n° 366803.

81 Administrative Court of Montpellier, 20 July 2015, Fédération pour les Espaces naturels et l’Environnement des Pyrénées-Orientales, n° 1503629.

82 ACA of Douai, 15 October 2015, Association « Ecologie pour le Havre, n° 14DA02064 / Administrative Court of Grenoble, 16 July 2015, Union Régionale Fédération Rhône-Alpes de Protection de la Nature, n° 1406681) ; ACA of Douai, 15 October 2015, Association « Le rôle des genêts, n° 14DA00123 ; ACA of Nantes, 20 March 2015, Société des carrières de Bray-en-Val, n° 13NT00855).

d'exploitant). Opponents can be eligible to bring a legal action if the relevant declaration is not made. However, according to case law⁸³, a change of name alone is not considered to be a transfer of the operation.

Renewal request: the proximity of water resources can lead the Prefect to refuse a renewal request and to issue formal notification to a quarry operator to rehabilitate the site⁸⁴.

It is therefore recommended to conduct scientific and legal surveillance throughout the exploitation period in order to anticipate renewal requests (very often needed since operating permits are temporary).

Process modifications: a quarry's processes will often be modified during its exploitation. Such modifications have to be declared to the Prefect when they become significant. Operators can find it difficult to determine whether a modification is considered as being significant or not. However, the consequences can be serious if a quarry operator fails to comply with the declaration obligation.

Once the information is provided to the Prefect, he will assess whether the process modification is "substantial" with regards to new or worsening harm or damage to the environment, and decide, if that is the case, to submit the quarry to a whole new application process. This assessment represents a legal challenge for quarry operators in that they cannot accurately foresee if the intended modification will lead to a new authorisation application or not, or even to additional requirements.

A review of case law shows⁸⁵ that the administrative judge controls the types of modifications and their impacts on the environment and neighbourhoods but, statistically speaking, the number of cases relating to this issue does not appear to be significant.

2.4 Rehabilitation

Rehabilitation of the quarry zone is an old requirement under the French legal system and forms the grounds for a significant number of decisions. However, recent case law appears to particularly interesting in that it emphasises specific aspects relating to rules for quarries.

Rehabilitation measures detailed in operating permits: on the basis of art. R. 512-30 of the French Environmental Code, judges⁸⁶ make sure that the operating permit correctly sets out the conditions for rehabilitation.

Period of limitation for rehabilitation measures: judges control the period of limitation during which the Administration has the right to impose financial penalties for environmental damages. According to the Administrative Court of Appeal of Douai⁸⁷, the Administration cannot impose financial penalties relating to environmental damages on quarry operators (or their successor) after expiration of a 30 years' period. A difference

83 Administrative Court of Strasbourg, 17 May 2002, n°0000293, Assoc. qualité de la vie à Betschdorf.

84 Council of State, 11 February 2011, n°317432.

85 ACA of Nancy, 3 June 2004, n°98NC01096.

86 ACA of Lyon, 12 May 1998, n° 97LY01199 and 97LY02083 and Council of State, 15 March 1999, Sté cévenole de travaux routiers, n° 172591.

87 ACA of Douai, 28 May 2015, Société Hutchinson, n°13DA02130.

has to be made, as reaffirmed by Council of State's decisions⁸⁸, between the 30-year rehabilitation period, commencing when the declaration of cessation of activity is made, and the 30-year period for financial measures relating to environmental damages.

Legal liability for rehabilitation measures is another factor in quarry development in that the quarry zone is likely to be transferred to another operator, or to the owner.

The positions taken by the civil jurisdiction and administrative Courts may differ slightly. Regarding this issue, the French Court of Cassation⁸⁹ has ruled that the end of a lease agreement does not imply that the tenant is obligated to complete the rehabilitation of the site, especially when the owner is willing to take over the quarry.

In case of non-compliance with rehabilitation measures, a new operating permit can be refused. However, jurisdictions are currently divided on the following question: regarding French environmental code, can an operating permit required to extend a quarry area be refused on the grounds that the quarry operator has not implemented rehabilitation measures? According to the Administrative Court of Appeal of Lyon⁹⁰, the Prefect legally has this right. Conversely, the Administrative Court of Appeal of Nantes⁹¹ has annulled a refusal to award an extension permit application on these grounds.

Types of rehabilitation measures: a quarry operator's rehabilitation proposals must comply with the regional quarry plan⁹². These measures are likely to evolve, depending on whether new dangers or harm, not known about when the initial rehabilitation measures were adopted, have since appeared⁹³. Operators and authorities have to carefully monitor the evolution of their environment (neighbourhood, species etc.).

Third parties have a right to ask for the strengthening of rehabilitation measures they deem to be insufficient. However, a review of case law related to quarry operations does not reveal a significant number of decisions.

Issues regarding quarry backfilling: case law is not consistent⁹⁴ as to whether quarry backfilling must be authorized by a special permit (*permis d'aménager*) or whether it relates to classified installations rehabilitation measures. In a case-by-case examination, the jurisdiction oversees the period between the cessation of activity and the backfilling, as well as the importance of backfilling work.

The French Council of State recently⁹⁵ decided that quarry backfilling forms part of its exploitation. Compatibility with town planning documentary requirements must be analysed in this regard.

88 Council of State, 8 July 2005, Société Alusuisse-Lonza-France, n°247976 and Council of State 12 April 2013, SCI Chalet des Aulnes, n°363282.

89 Court of Cassation, 3 civil chamber, 8 April 2015, n°14-14.385.

90 ACA of Lyon, 22 October 2013, n°12LY01970.

91 ACA of Nancy, 4 June 2012, n°11NC01526.

92 Council of State, 10 January 2011, n° 317076.

93 ACA of Nancy, 23 January 2014, n°12NC01359.

94 ACA of Nancy, 21 January 1999, n° 94NC01195 vs. ACA of Lyon, 6 October 1998, n° 94LY00217.

95 Council of State, 6 April 2016, n°381552, Mentioned in Lebon.

Moreover, the administrative judge ensures⁹⁶ that rehabilitation measures comply with EU Directive n°1999/31/EC of 26 April 1999 and with the Annex to the Commission's decision of 3 May 2000 (Decision replacing Decision 94/3/EC establishing a list of waste materials pursuant to Art. 1(a) of Council Directive 75/442/EEC on waste, and Council Decision 94/904/EC establishing a list of hazardous waste materials pursuant to Art. 1(4) of Council Directive 91/689/EEC on hazardous waste).

3 Presentation of the most decisive and representative court judgements

Several illustrative court cases are analysed below.

Court cases - Quarried substances

Case 1 - Société Domaine de Sainte Marcelle, Puy de Dôme / France

Case No.: n°14LY03687

Name of court: Administrative Court of Appeal of Lyon

Date of judgment: 1 December 2015

Name of plaintiff (or appellant): Association de résistance à l'exploitation du Puy-de-Mur et ses environs (ARMURE)

Name of defendant:

Société Domaine de Sainte Marcelle, and Société Carrière de Vertaizon successor in law to Société Domaine de Sainte Marcelle.

French State

Judgement in favour of (NB: the case is still pending before the Council of State, n°396298): Association de résistance à l'exploitation du Puy-de-Mur et ses environs (ARMURE)

Relevance to which stage of permitting (exploration/extraction/post-extraction):

Operating permit

Piece of legislation on which the claim (or appeal) is based: the French Environmental Code (environmental impact assessment rules)

Description (summary) of the case: The legal action was brought by a local association against a quarry operating permit granted in June 2010. The case is still pending. The Administrative Court of Clermont-Ferrand first rejected the local association request

96 ACA of Nancy, 23 January 2014, n°12NC01359.

(N°1002246, 4 October 2011). The Administrative Court of Appeal of Lyon annulled its judgment as well as the operating permit (n°11LY02893, 28 March 2013).

The Council of State sent the case again to the Administrative Court of Appeal of Lyon after having annulled the Court of Appeal's decision on procedural grounds (n°368785, 28 November 2014).

The question which the Administrative Court of Appeal addressed in its decision of 1 December 2015 was whether the environmental impact assessment had fulfilled legal requirements regarding the local stake in the quarry area, and whether the insufficiency had an impact on the right of the public to be informed and to participate.

The Court of Appeal considered the environmental impact assessment to be substantially flawed on the grounds of insufficiencies in the initial archaeological state (the file stated that no archaeological relics of real interest were found in the studied area, whereas a noteworthy bibliography attested to the existence of archaeological relics). The Court of Appeal referenced the Council of State case law known as "Danthony", dated 2011, on the basis of which an insufficiency in an environmental impact assessment can be neutralized if it is demonstrated that it had no effect on the Prefect's decision or that it has not deprived the public of legal guarantees. The Court of Appeal therefore concluded in this case that the public was not sufficiently informed as of the issuance date of the operating permit, nor at the judgment date, in that important data about the value of the quarry zone had not been studied or analysed in the file.

The Court of Appeal implicitly admitted that the flaw could have been rectified between the operating permit date and the judgment date.

Beyond the environmental impact study insufficiency grounds, the Court of Appeal annulled the operating permit on the grounds of the serious impact of this quarry on archaeological relics.

NB: The case is still pending; consequently, we cannot comment on the final outcome of the legal assessments of this matter.

Implications of EU law for national law: This case is focused on national law more than EU law, although it deals with public participation rules.

Recommendations: regarding the severity of an annulment based on insufficiencies in an initial state assessment, and taking into account the slim possibility to rectify an authorisation by properly informing the public before the ruling, it is recommended (i) to quickly identify potential weaknesses regarding the sufficiency of the assessment and, if necessary (ii) to complete the assessment. An improvement can be achieved (iii) by giving the public broad access to new information and even the right to give its opinion, before the judgment.

Case 2-SARL Les Carrières de Pompignan, Aude / France

Case No.: n°13MA03284

Name of court: Administrative Court of Appeal of Marseille

Date of judgment: 19 May 2015

Name of plaintiff (or appellant): Syndicat viticole du Cru minervois and GAEC du Château de Villerembert-Moureau

Name of defendant:

SARL Les Carrières de Pompignan

French State

Judgment in favour of (*NB*: case is still pending before the Council of State, n°391848): Syndicat viticole du Cru minervois and GAEC du Château de Villerembert-Moureau

Relevance to which stage of permitting (exploration/extraction/post-extraction): Operating permit

Piece of legislation on which the claim (or appeal) is based: French Environmental Code (public inquiry rules and procedure of wine Controlled Appellation Area Commission opinion).

Description (summary) of the case: the legal action was brought by a professional wine association and a wine producer against a quarry operating permit. The case is still pending. The Administrative Court of Montpellier first rejected the appellant's request but the Administrative Court of Appeal of Marseille decided to annul both the first judgment and the quarry operating permit, on the grounds that a negative opinion which had been given by Minervois Controlled Appellation Area Wine Commission should have been included in the public inquiry file. After having referred to the Council of State ruling known as "Danthony" dated 2011 (see above), the Administrative Court of Appeal considered whether the absence of this negative opinion had had an impact on the public when they gave their opinion through the public inquiry. The Court of Appeal noted that the quarry area is located in a very important wine producing region, and therefore concluded that the absence of the negative Controlled Appellation Area Commission opinion in the public inquiry file had necessarily impacted the right of the inhabitants to be informed and to readily participate.

This decision is interesting (without being fundamental) because the Administrative Court of Appeal assessed the significance of public information and public participation regarding negative and well-founded opinions given by specialized authorities in regards to quarry operating permits. *NB*: The case is still pending; consequently, we cannot comment on the final outcome of the legal assessments of this matter, but we are able to make the following remarks.

Implications of EU law for national law: this case is focused on national law, rather than EU law, although it deals with public participation rules.

Recommendations: once again, regarding the severity of an annulment based on a procedural flaw, it is recommended (i) to identify, before an operating permit is granted, any potential procedural flaws and, if necessary (ii) to organise a new public enquiry or to lengthen it.

Case 3 - Schéma départemental des carrières de La Réunion – Reunion Island / FRANCE

Case No.: n°386291

Name of court: Council of State (*Conseil d'Etat - France*)

Date of judgment: 19 June 2015

Name of plaintiff (or appellant): Saint-Leu Commune and an individual

Name of defendant: French State – Reunion Region (as an intervening party)

Judgement in favour of (NB: case is maybe still pending): applicant (Saint-Leu Commune and an individual)

Relevance to which stage of permitting (exploration/extraction/post-extraction):

Exploration / extraction (legal action brought against the Reunion local quarry plan approval)

Piece of legislation on which the claim (or appeal) is based: French Environmental Code (environmental impact assessment rules and local quarry plan rules); Parliament and Council Directive n° 2011/92/EC of 27 June 2011, Annex II.

Description (summary) of the case: due to an important road project on the island involving four new quarries (one of them located on the St Leu commune), the Reunion region asked the State to adapt the local quarry plan. Two decisions were taken: one deciding, after examination on a case-by-case basis not to submit the quarry plan modification to an environmental impact assessment (which triggered parallel proceedings), and another one approving the quarry plan modification without a preliminary impact assessment.

The appellant requested an annulment of the modification approval.

St Leu commune and a single person brought a referee action (intended to immediately suspend an administrative decision) against the French State's approval. The appeal was grounded on a specific text in the French Environmental Code, providing for the right to bring an urgent referee action against a document (a planning document for instance) approved without an environmental impact assessment when one was required.

The Administrative Court of Reunion island first rejected the appellant's request, who then lodged a cassation recourse before the Council of State. The question addressed by the Council of State in its decision was whether an environmental impact assessment has to be done before modification of a local quarry plan approval and how a referee judge can control these provisions.

The Council of State referred implicitly to European Directive n° 2011/92/EC of 27 June 2011, Annex II (implemented in the French Environmental Code), relating to environmental impact assessment obligation, and subsequently noted that:

Environmental impact assessments must always be done before a quarry plan is approved;

An examination on a case-by-case basis by the "Environmental Authority" has to be done when the local quarry plan is simply modified, and the result of this examination will depend on whether the modification is seen as being substantial or not, based on the 2001 EU Directive criteria.

This is an important decision as the Council of State has ruled that a referee judge, ruling in a very short time (1 to 3 months after the appeal has been lodged), is also competent to check whether the Environmental Authority's decision on the submission of the project for an environmental impact assessment is legal or not.

Moreover, it has to be noted that the Council of State finally considered that no environmental impact assessment had to be done before the quarry plan modification approval, regarding the limited area of the four new quarries (compared to the total quarry area on the island) and regarding the fact that the total amount of quarry materials wouldn't be changed.

Implications of EU law for national law: the Council of State's decision is related, indirectly, to the Environmental Authority's decisions regarding environmental impact assessment subjection and the way national judges can make sure that the requirements of European Directive n°2011/92/EC of 27 June 2011, Annex II, implemented in the French, Environmental Code, have been met.

Even though the link with this specific case is indirect, this case could have been an opportunity for opponents to raise serious arguments against the Environmental Authority's independence.

A significant number of decisions taken by the French Environmental Authority (*Autorité environnementale* or *CGEDD*) could be flawed on the grounds of the Authority's lack of independence, not being in accordance with the 2001 Directive, art. 6, paragraph 3. Referring to ECJ decision n°C-474/10 of 20 October 2011, the Council of State assessed the French decree (implementing the EU Directive) as being illegal in a ruling of 26 June 2015 (EC, n°360212, 26 June 2015). As a consequence, the Council of State decided to ask (in a prejudicial question) the European Court of Justice whether a national judge is committed to approach the European Court every time a national rule is annulled due to a European requirement, in order to find out whether the national rule can be temporarily maintained and, when appropriate, how the French Council of State could decide to maintain the French Decree of 2 May 2012 until 1 January 2016 (implementing the EU Directive regarding the Environmental Authority).

The French Environmental Authority has now changed in order to meet EU requirements. (<http://www.developpement-durable.gouv.fr/Entree-en-vigueur-de-l.html>).

Regarding the European Court of Justice's answer⁹⁷, dated 28 July 2016, the French Council of State is given the power to neutralize the risk of annulment for several decisions taken after French Environmental Authority's decision, before its independence was organised. In fact, the European Court of Justice ruled:

1. *A national court may, when this is allowed by domestic law, exceptionally and case by case, limit in time certain effects of a declaration of the illegality of a provision of national law adopted in disregard of the obligations provided for by Directive 2001/42/EC of the Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, in particular the obligations arising from Art. 6(3) of the Directive, provided that such a limitation is dictated by an overriding consideration linked to environmental protection and having regard to the specific circumstances of the case pending before it. That exceptional power may, however, be exercised only if all the conditions flowing from the judgment of 28 February 2012 in *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103) are satisfied, namely:*

- *that the contested provision of national law constitutes a measure correctly transposing EU law on environmental protection;*
- *that the adoption and coming into force of a new provision of national law do not make it possible to avoid the damaging effects on the environment arising from annulment of the contested provision of national law;*
- *that annulment of the contested provision of national law would have the effect of creating a legal vacuum concerning the transposition of EU law on environmental protection which would be more damaging to the environment, in the sense that that annulment would result in lesser protection and would thus run counter to the essential objective of EU law; and*

97 European Court of Justice, 28 July 2016, n° C-379/15,

- *that any exceptional maintaining of the effects of the contested provision of national law lasts only for the period strictly necessary for the adoption of the measures making it possible to remedy the irregularity found.*

2. *As EU law now stands, a national court against whose decisions there is no longer any judicial remedy under law is in principle required to make a reference to the Court for a preliminary ruling, so that the Court may assess whether, exceptionally, provisions of national law held to be contrary to EU law may be provisionally maintained in the light of an overriding consideration linked to environmental protection and in view of the specific circumstances of the case pending before that national court. That national court is relieved of that obligation only when it is convinced, which it must establish in detail, that no reasonable doubt exists as to the interpretation and application of the conditions set out in the judgment of 28 February 2012 in *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103).»*

Case law relating to quarry operating permits seems to maintain this: for instance, the Administrative Court of Appeal of Marseille⁹⁸ refused to annul an operating permit even when its opponents argued as to the non-compliance of the French environmental rule with the EU Directive regarding Environmental Authority).

Recommendations:

Since the previous French Environmental Authority decisions could indirectly impact quarry operating permits, it would seem pertinent for the Council of State to give its interpretation of the European Court of Justice's answer as quickly as possible, bearing in mind the legal certainty of a huge number of consecutive decisions.

Case 4 -LA PROVENCALE, Yonne / FRANCE

Case No.: n°10LY02682 / n°362620 / n°14LY1869

Name of court: Administrative Court of Appeal of Lyon and Council of State.

Date of judgment: 5 July 2012 (1st Appeal); 11 June 2014 (Council of State), 16 December 2014 (2nd Appeal).

Name of plaintiff (or appellant): Comité de défense du bois des Rochottes et de ses riverains

Name of defendant:

Société la PROVENCALE

French State

Judgement in favour of: (NB: the case is still pending)

Société la PROVENCALE and French State (Administrative Court of Appeal of Lyon)

Comité de défense du bois des Rochottes et de ses riverains (Council of State and Administrative Court of Appeal of Lyon – 2nd judgment)

98 ACA of Marseille, 12 July 2016, n° 15MA00264, unpublished in Lebon.

Relevance to which stage of permitting (exploration/extraction/post-extraction):

Exploitation of limestone reserves

Piece of legislation on which the claim (or appeal) is based: the French Local Authorities Code (*code général des collectivités territoriales*) and the French Environmental Code.

Description (summary) of the case: after 7 years of legal action by an opponent association, LA PROVENCALE (the Company) lost the extraction permit granted in March 2008 in December 2014 (ACA of Lyon, 16 December 2014). The Court of Appeal considered that the contract by which two city councils authorised the operation on their land was not legal on the grounds that these two councils should have appointed a commission to sign the contract and not signed it themselves. The Administrative Court of Appeal of Lyon decided that the contract presented in the file was invalid based on this dubious technicality, and so invalidated the whole procedure and annulled the permit. However, LA PROVENCALE lodged a cassation recourse and the Council of State will have to make a ruling; consequently, we cannot comment with certainty on the final outcome of the legal assessments in this matter, but we can make the following remarks.

Implications of EU law for national law: This case is focused on national law rather than EU law.

Recommendations: according to the Council of State, the national authority has to verify the quarry zone owner's authorisation (existence and regularity) before granting an operating permit. Since the Administrative Court of Appeal of Lyon's analysis of the regularity of the authorisation appears rather strict, we recommend a high degree of vigilance regarding the specificities of ownership and the regularity of the owner's authorisation. The competent judge for classified installations has broad powers that could be used either by the State or by the quarry operator (for instance: obtaining a new and regular authorisation if the original one is deemed flawed, before the case is ruled on).

Case 5 -LA PROVENCALE, in Pyrenees Orientales / FRANCE

Case No.: n°1502035

Name of court: Administrative Court of Montpellier (France)

Date of judgment: 3 May 2016

Name of plaintiff (or appellant): Fédération pour les espaces naturels et l'environnement des Pyrénées-Orientales (FRENE 66)

Name of defendant: LAPROVENCALE

Judgement in favour of: (*NB:* case is still pending before the Administrative Appeals Court of Marseille, n°16MA02625, an appeal has been lodged)

Fédération pour les espaces naturels et l'environnement des Pyrénées-Orientales (FRENE 66)

Relevance to which stage of permitting (exploration/extraction/post-extraction): Waiver of the prohibition on the destruction of the critical habitats of protected species.

Piece of legislation on which the claim (or appeal) is based: Council Directive 92/43/EEC of 21 May 1992 *on the conservation of natural habitats and of wild fauna and flora* as transposed to French legislation, and art. L.411-2, 4^o, c) of the French Environmental Code.

Description (summary) of the case: after having completed comprehensive impact studies, presented compensatory measures and obtained the approval of the National Commission on Nature Protection (CNPN), LA PROVENCALE (“The Company”) obtained a waiver on the prohibition of impacting habitats of 27 protected animal species and 1 floral species. A local association asked for its annulment upon the grounds that the waiver didn’t meet legal requirements. In particular, the applicant argued that LA PROVENCALE’s request didn’t prove that there was no alternative (which is one of the legal conditions stipulated in art. L.411-2, 4^o of the French Environmental Code and EU law). The Administrative Court followed this argument, considering that the technical documents in the file did not sufficiently demonstrate the absence of an alternative solution. The Court seems to require a comparison between several quarry zone variants, prospective and geological assessments and studies demonstrating a lack of available similar areas.

Moreover, the waiver has been annulled upon the grounds that the “overriding public interest, including those of a social or economic nature” (which is another legal condition according to the French Environmental Code and the EU Directive, art. 6, §4) had not been ascertained, since the only interest of this extractive industry concerned local employment.

The case is pending before the Administrative Court of Appeal of Marseille; consequently, we cannot comment with certainty on the final outcome of the legal assessments in this matter, but we can make the following remarks.

Implications of EU law for national law:

The Administrative Court addressed, in its decision, the question of the French implementation of the EU Habitats Directive, and more precisely, the interpretation to be given to the concept of “overriding public interest, including those of a social or economic nature” and its application regarding quarry permits.

According to the doctrine, judgments by the Administrative Court of Montpellier are particularly rigorous regarding this condition. They are likely to threaten the award of quarry operating permits in that the Administrative Court annuls operating permits when the waiver of the prohibition on the destruction of the critical habitats of protected species is cancelled or refused. Moreover, no marked softening is observed in current case law relating to quarries (on the contrary, judgments⁹⁹ have annulled operating permits not preceded by a waiver regarding the destruction of habitats). As such, the quarry sector is particularly cautious on the issue of the waiver of the prohibition on the destruction of the critical habitats of protected species.

Recommendations: in view of the increasing uncertainty regarding the waiver of the prohibition on the destruction of the critical habitats of protected species for the French quarry sector, and the significant heterogeneity between the quarry sector and other industrial sectors, the concept of “overriding public interest, including those of a social or economic nature” would need to be accurately determined in order to give national authorities and jurisdictions more guidance. This could allow for more coherent and predictable case law in the French territory.

99 See: Administrative Court of Grenoble, 22 September 2014, n°1106017, Association Cyclamen.

Case 6 -UNICEM Midi-Pyrénées and UNICEM Languedoc-Roussillon / Regional Nature Park Haut Languedoc - FRANCE

Case No.: n°366007

Name of court: Conseil d'Etat (Council of State)

Date of judgment: 25 June 2014

Name of plaintiff (or appellant): UNICEM Midi-Pyrénées and UNICEM Languedoc-Roussillon

Name of defendant: French State

Judgement in favour of: French State

Relevance to which stage of permitting (exploration/extraction/post-extraction): exploration/extraction (action against a regional nature park classification decree)

Piece of legislation on which the claim (or appeal) is based: Art. L.333-1 French Environmental Code; art. L.515-3 environmental code.

Description (summary) of the case: the question which the Council of State addressed in its decision was whether the regional nature park Charter can legally require quarries to be developed in specific areas.

More precisely, the French Quarry Operators Union (UNICEM) asked for the annulment of a regional nature park categorisation decree signed by the French Prime Minister. This regional nature park Charter required new quarry operations to be developed in specific areas, while prohibiting them in other more sensitive areas. UNICEM argued the decree was not legal on the grounds that the Ministry had exceeded its legal competence in that the Prefect was the only competent authority to define preferential quarry areas through the local quarry planning documents.

The Council of State rejected this argument on the grounds that a regional nature park Charter has a legal right to define environmental objectives for the park and, therefore, to prohibit the creation of new quarry zones in environmentally sensitive areas.

This decision is a confirmation of a former Council of State's decision (Council of State, 8 February 2012, n°321219) by which the judge assessed a Regional Nature Park Charter can lawfully rule out specific locations for quarrying activities, even though the Council of State annulled the same Charter on the grounds that it had unlawfully exceeded its powers by adding procedures to the ones provided for by the French Environmental Code.

Implications of EU law on national law:

This case interest is focused on national law, more than EU law.

Recommendations: A regional nature park Charter is an important planning document with concrete effects for operating permits. We recommend legal monitoring of the Charter's negotiation and approval in order to guarantee that the Charter's provisions do not exceed its area of competence and, regarding the localisation rules which can be legally prescribed, that they are not erroneous.

Case 7 - Société Sagram - Vosges - FRANCE

Case No.: n°317076

Name of court: Conseil d'Etat (Council of State)

Date of judgment: 10 January 2011

Name of plaintiff (or appellant): Association Oiseaux Nature, Association de sauvegarde des vallées et de la prévention des pollutions

Name of defendant: French State and Société Sagram

Judgement in favour of: French State and Société Sagram

Relevance to which stage of permitting (exploration/extraction/post-extraction): Extraction (action against an operating permit)

Piece of legislation on which the claim (or appeal) is based: Art. L.212-1, XI of the French Environmental Code

Description (summary) of the case: the question which the Council of State addressed in its decision was whether an operating permit must comply with a regional water plan (*schéma directeur de gestion des eaux, SDAGE*).

Two local associations asked for the annulment of an operating permit granted in 2004. It seems that the Administrative Court first ruled in their favour, but at the appeal stage, the Administrative Court of Appeal of Nancy rejected their request and lengthened the term of the quarry operator's permit up to 20 years.

The appellant lodged a cassation recourse against the Court of Appeal's decision. One of their arguments was based on art. L 212-1, XI of French Environmental Code, stating that "administrative decisions regarding the water sector shall comply with regional water plans". According to the association, a quarry operating permit should be considered as "an administrative decision regarding the water sector", and therefore, shall comply with the regional water plan (with which it was not in compliance).

The Council of State rejected their appeal on the grounds that an operating permit cannot be considered as an "administrative decision affecting the water sector". As such, no argument can be raised regarding compliance with the regional water plan.

It has to be noted that the Administrative Court of Appeal of Marseille slightly modified¹⁰⁰ this principle by referring to art. R.212-47 of the French Environmental Code, concluding that a local water plan (*schéma d'aménagement des eaux- SAGE*) had a legal right to set binding requirements for classified installations (such as quarries).

Implications of EU law for national law: this case is focused on national law rather than EU law.

Recommendations: quarry zone development requires the accurate identification of binding and non-binding requirements contained in both regional and local water plans, which must be fairly accurate.

100 ACA of Marseille, n°15MA00264, 12 July 2016.

Case 8 - Société d'exploitation de gisements minéraux (SEGM) – Cher / FRANCE

Case No.: n°13NT02099

Name of court: Administrative Court of Appeal of Nantes (France)

Date of judgment: 11 May 2015

Name of plaintiff (or appellant): Association Saint-Just Avenir et Environnement

Name of defendant: French State – Société l'exploitation de gisements minéraux (SEGM)

Judgement in favour of (NB: this case may still be pending): applicant (Association Saint-Just Avenir et Environnement)

Relevance to which stage of permitting (exploration/extraction/post-extraction):
Extraction and treatment (legal action brought against an operating permit, including extraction and mobile processing installations)

Piece of legislation on which the claim (or appeal) is based: French Environmental Code (technical and financial capabilities).

Description (summary) of the case: the two questions which the Administrative Court of Appeal of Nantes addressed in its decision were, firstly, the levels of accuracy and certitude a quarry operator must provide regarding its technical and financial capabilities. Secondly, if an insufficiency of the presented capabilities is established, on what conditions this insufficiency can be considered as constituting a substantial procedural flaw leading to the annulment of the operating permit.

A local association asked for the annulment of an operating permit granted in 2011. The Administrative Court first found in favour of the applicant, on grounds, among others, that the quarry operator hadn't sufficiently proven its technical and financial capabilities in the authorisation application file. The quarry operator lodged an appeal before the Administrative Court of Appeal of Nantes. However, the Court of Appeal rejected its request considering that:

The technical and financial capabilities stated in the authorisation application file had not been sufficiently proven by the quarry operator. As a consequence, the right of the public to be informed and to participate during a public inquiry had been substantially violated;

At the appeals stage, the quarry operator introduced several justifying documents regarding its technical and financial capabilities, which led the Court of Appeal to consider that the authorisation had not infringed the French Environmental Code regarding the award of authorisations to operators who have proven their capabilities.

Therefore, even though the Court of Appeal finally recognized that the quarry operator's technical and financial capabilities were sufficient, their insufficient presentation in the application file constituted a substantial procedural breach affecting the legality of the operating permit, which was therefore annulled.

This interpretation has to be compared to an important Council of State ruling dated 22 February 2016¹⁰¹ relating to the issue of technical and financial capabilities. This decision

101 Council of State, n°384821, 22 February 2016, Hambregie.

draws a distinction between two types of legal consequences regarding the characterization of an insufficiency: violation of Environmental Code, on the one hand, and a procedural breach, on the other. According to a section of the doctrine¹⁰², the Council of State could have considered that the second issue was not relevant since demonstration of capabilities is a legal requirement for the award of authorisation and not a legal requirement regarding the legality of the public inquiry. However, careful analysis¹⁰³ leads us to consider that this criterion is both a procedural guarantee for the public and a basic requirement for operating permits to be granted.

The Court of Appeal of Nantes' decision is of interest regarding the judge's standards for required levels of accuracy regarding the demonstration of capabilities.

Concerning financial capabilities, the Court of Appeal judged that an authorisation request, relating to a €2.4M budget project, had to be deemed insufficient considering that:

- The company only had share capital of €3000
- The file contained a letter signed by a bank stating that a €1.3 M loan would be examined by a loan commission;
- There was a collateralised guarantee in place relating to rehabilitation measures;

Although the quarry operator had demonstrated its capabilities at the appeal stage by increasing the company's capital (to €200k) and producing a binding loan letter, a financial lease agreement and a collateralised guarantee relating to rehabilitation measures provided by an insurance company.

Implications of EU law for national law: this case is focused on national law rather than EU law.

Recommendations: French case law regarding an operator's technical and financial capabilities is evolving: industrial companies and lawyers are waiting to see how the important *Hambergie ruling*, dated 22 February 2016 will be applied by administrative judges. An escape hatch may have been opened to operators whose capabilities are rejected by strengthening their demonstration of both technical and financial capabilities before the judgment, but this must be either confirmed or denied in future case law. In our view, operators must identify, as quickly as possible, when an appellant brings a claim, the potential flaws regarding their capabilities and, if necessary, they must strengthen those aspects.

Case 9-Société Carrières Monneron – Cantal / FRANCE

Case No.: n°10LY02049

Name of court: Administrative Court of Appeal of Lyon (France)

102 A. De Lombardon, ICPE: le nouveau contrôle du juge sur les capacités techniques et financières est mal appliqué, avis d'expert, actu-environnement, 25 July 2016.

103 Especially of the French judge at the Council of State (Rapporteur public), Suzanne Van Coester's conclusions regarding this decision, Capacités techniques et financières: quelle est l'étendue de l'obligation?, in BDEI, 2016.

Date of judgment: 24 April 2012

Name of plaintiff (or appellant): Commune of Ste Anastasie and association bien vivre à Ste Anastasie

Name of defendant: French State – Société Carrières Monneron

Judgement in favour of: applicant (Commune of Ste Anastasie and association bien vivre à Ste Anastasie)

Relevance to which stage of permitting (exploration/extraction/post-extraction):

Extraction and processing (legal action brought against an operating permit, not including the processing facility)

Piece of legislation on which the claim (or appeal) is based:

French Environmental Code (environmental impact assessment rules: art. R122-5 et seq.).

Indirectly: Directive 85/337/EEC of 27 June 1985, modified by Directive 97/11/EC of 3 March 1997 and repealed by Directive n° 2011/92/EU of 13 December 2011 *on the assessment of the effects of certain public and private projects on the environment* (art. 4 and Annex III).

Description (summary) of the case: the question which the Administrative Court of Appeal of Lyon addressed in its decision related to the scope of environmental impact assessments regarding other installations exploited by quarry operators.

A commune and a local association brought a legal claim against an operating permit granted in 2009, arguing that the environmental impact assessment should have included an analysis of the impacts generated by a processing facility located in the appellant's commune. The processing facilities were exploited by the same quarry operator, but had their own operating permit, granted more than 10 years before the disputed permit.

The appellant invoked a provision of the French Environmental Code requiring that environmental impact assessments include an analysis of the impacts generated by other installations or equipment exploited by same operator, and which (i) have a geographical or functional connection with the quarry and (ii) are likely to modify the quarry's risks regarding hazards and harm.

The applicants obtained an annulment of the permit before the Administrative Court on those grounds and, despite an action being lodged by the quarry operator, the annulment was upheld at the appeal stage.

The operator invoked an absence of a geographical or functional connection between the quarry zone (located in a commune A) and the processing facility (located in a commune B).

Implications of EU law for national law: the Administrative Court of Appeal's decision concerns a French legal requirement on an environmental impact assessment's scope regarding other installation having a connection with the main project.

According to a section of the doctrine, French texts have implemented EU Directive 2011/92, Annex III, by imposing a criterion for “geographical and functional connection”, as it is a relevant criterion for the scope of an assessment:

"ANNEX III

SELECTION CRITERIA REFERRED TO IN ART. 4(3)

1. CHARACTERISTICS OF PROJECTS

The characteristics of projects must be considered having regard, in particular, to:

(a) the size of the project;

(b) the cumulating with other projects;

(c) the use of natural resources;

(d) the production of waste;

(e) pollution and nuisances;

(f) the risk of accidents, having regard in particular to substances or technologies used."

Art. 4's "implementation" does not appear to be obvious in our opinion ¹⁰⁴ and we underline the fact that the impacts of connected activities have to be analysed in accordance with the global approach desired by the EU directives¹⁰⁵ in the environmental field.

The French system¹⁰⁶ tends to include all impacts generated by a specific activity by enlarging the scope of the environmental impact assessment and, in this regard, by referring to the concept of "cumulative impacts".

This concept has two meanings:

The one is related to the impacts generated by an activity performed by the same operator, classified or not, and having a geographical and functional link with the main project (*équipements ou installations connexes*); the other is related to impacts of different types that could accumulate, increase, or modify the project's impact, regardless of who operates the activity or whether it is industrial in nature.

In the opinion of the quarry sector, the Administrative Court of Appeal's decision has very serious consequences: besides the risk of annulment of previously awarded operating permits, the general legal certainty of the permit process is under threat as the evolution

104 Since Annex III and Article 4, Directive 2011/92 relate to 3 case-by-case examinations which do not concern classified installations subject to administrative authorisation, such as quarries, and since "connected activities" is an old concept in French law, in existence since 1976.

105 See: European Court of Justice regarding Article 2, § 1 EU Directive 85/337: n°C-142/07, 25 July 2008,

Ecologistas en Acción-CODA, point 44.

106 A new law was passed on 3 August 2016 modifying, in particular, the concept of a "project" so as to include the global impacts of related activities: Ordonnance n° 2016-1058 du 3 août 2016 relative à la modification des règles applicables à l'évaluation environnementale des projets, plans et programmes, NOR: DEVD1614708R.

of case law appears to be unpredictable. Precedent case law¹⁰⁷ had already annulled operating permits on the grounds that the relevant assessment had not covered the impact of other activities, but only for equipment located on the same site.

According to the representatives of quarry operators¹⁰⁸, this decision creates a presumption that an activity exploited by the same operator always increases the main project's environmental harm and damage. Moreover, this case law could imply that a quarry's environmental impact assessment systematically deals not only with the quarry's effects, but also with initial processing equipment, regardless of the distance, the technical and functional relationship and the interrelated effects.

Recommendations: as with case law concerning an operator's technical and financial capabilities, French law concerning environmental impact assessments is evolving. The current text is not precise enough and very strict case law has been published. This is increasingly worrying for quarry operators, but without bringing any actual benefit for the environment since an analysis of cumulative impacts could be conducted without having to renew the whole procedure after the annulment of the operating permit.

Therefore, the EU Directive on the assessment of the effects of certain public and private projects on the environment should be more clearly defined in order to give the competent authorities more precise guidance regarding the concept of the "cumulative effects" of quarry operation. Since initial processing zones can be located some kilometres away from the quarry zone itself, and are often subject to their own environmental assessments, legal certainty should be improved in order to save procedural time and allow more strategic challenges to be focused on.

Case 10-Société Bétons Granulats Services – Gard / France

Case No.: n°10MA03195

Name of court: Administrative Court of Appeal of Marseille (France)

Date of judgment: 6 November 2012

Name of plaintiff (or appellant): commune of Gaujac

Name of defendant: French State – Société Bétons Granulats Services (BGS)

Judgement in favour of: applicant (commune of Gaujac)

Relevance to which stage of permitting (exploration/extraction/post-extraction):

Extraction and processing (legal action brought against an operating permit, not preceded by building permit)

Piece of legislation on which the claim (or appeal) is based:

French Environmental Code (the relationship between operating permits and building permits)

107 ACA of Lyon, 28 June 2002, n°01LY02603, Sté Bétons et granulats du Centre.

108 UNICEM, Annual case law review, 2012/2013, page 2.

Description (summary) of the case: the question which the Administrative Court of Appeal of Marseille addressed in its ruling was to determine the circumstances under which mobile initial processing equipment requires a building permit, and the consequences the absence of such a permit would have on the legality of the operating permit.

A commune claimed for the annulment of an operating permit granted in 2007 arguing that the project included initial processing equipment that that should have required a building permit to be obtained. However, the French Environmental Code states that, when an industrial project requires both an operating permit and a building permit, the quarry operator must demonstrate, before obtaining an exploitation license, that he has correctly filed a building permit application.

Therefore, the issue was to find out whether a building permit was required. According to the commune, it was required due to the characteristics of the processing facilities, which were both mobile and of a temporary nature.

The commune won the case put before the Court and the quarry operator lodged an appeal. The Administrative Court of Appeal referred:

- To provisions of the French Environmental Code stating that, when the performance of an activity involves construction work, the authorisation application file must include proof that a building permit has already been applied for;
- To provisions of the French Town planning code (*code de l'urbanisme*) requiring that any construction work (stationary and solid installation) must be preceded by the award of a building permit.

The Administrative Court of Appeal stated that the equipment's' characteristics justified the requirement for a building permit and, as a consequence of its absence, the quarry's operating permit had to be annulled.

More precisely, the judges took into account several elements:

Even though crushing and screening installations were to be movable, the project also included a mobile concrete batching plant due to become immovable after 5 years of operation.

Several pieces of immovable equipment were included in the project: aggregate silos, a washing station and a concrete production platform.

In conclusion, the judges decided that while some pieces of equipment were indeed going to be movable, most of them were going to be immovable (whether from the outset or later on). As the operating permit application file should therefore have included justification of a building permit application, it had to be annulled due to this substantial procedural flaw.

Implications of EU law for national law: This case is focused on national law rather than EU law.

Recommendations: Quarry operators frequently face the question of the scope of a building permit when some of the equipment is not immovable.

Case 11 – Quarry zone and town planning documents (three cases)

Case No.: n°09LY01538 / n°13LY01335 / n°14NT00581

Name of court:

Administrative Court of Appeal of Lyon

Administrative Court of Appeal of Lyon and Administrative Court of Appeal of Nantes (France)

Date of judgment: 18 October 2011 / 26 May 2015 / 1 June 2015

Name of plaintiff (or appellant):

Communes de Thonon-les-Bains, d'Allinges et d'Anthy-sur-Leman

Société des carrières et matériaux de Savoie (SCMS)

Neighbours of a quarry zone.

Name of defendant: French State and DESCOMBES PERE ET FILS Company

Communauté d'agglomération du Lac du Bourget

GSM Company

Judgement in favour of:

Appellant

Appellant

State and GSM Company (defendant)

Relevance to which stage of permitting (exploration/extraction/post-extraction):

Exploration and Extraction

Piece of legislation on which the claim (or appeal) is based: French town planning code

Description (summary) of the case: a series of Administrative Courts of Appeal's decisions dealt with the admissibility of quarrying in a non-mining sector, as identified in town planning documents. The issue was to discover whether an operating permit complied with the town planning documents regarding the requirements applying to the area (case n°1), or to determine on what conditions a modification to a town planning document, decided on by a commune, could prohibit quarrying in a specific area (case n°2) or allow it in an agricultural area (case n°3).

Case n°1 results from a claim brought by the communes against a quarry operating permit which was eventually annulled on the grounds that the town planning documents did not authorise activities such as quarrying in the affected area.

The Administrative Court of Appeal of Lyon considered in 2011 that a quarry is not, due to its nature, compatible with agricultural areas (as defined in town planning documents).

Moreover, the Administrative Court of Appeal rejected the operator's argument that a quarry could be qualified as an "installation necessary to public services or of general interest".

Case law evolved after this and an answer from the French Territory Ministry in 2014¹⁰⁹ clarified this important issue. The French Ministry explained that, according to the new town planning Code rules, as consolidated in 2012, communes have the right to identify specific areas in their town planning documents, dedicated to quarry exploitation, on condition that it is justified by the area's subsoil richness. The Administrative Courts should, considering this answer, soften their position. However, some decisions have implemented a stricter interpretation.

Case n°2 is a good example of how town planning document compatibility can be a bottleneck for quarry development procedures. A commune decided, during processing of an authorisation application, to modify the planning document's provisions in order to prohibit quarrying in the specific area. Despite the quarry operator's legal action, the Administrative Court of Appeal of Lyon decided in 2015 that the prohibition was justified for environmental reasons, as well as the need to protect the neighbourhood.

Case n°3 appears to be particularly strict and has caused a certain degree of worry among quarry operators. The Court of Appeal upheld a commune's choice to modify agricultural zoning regulations so as to prohibit quarrying activities, despite an appeal from both the operator and the owners of the land.

The three commented decisions ***show how town planning documents can be an additional variable in the admissibility of quarrying activities***. If a commune wishes to prevent a quarry operator from exploiting the area, French law will leave the door open, in that:

Either no specific sector is created, meaning quarrying is not allowed in natural or agricultural zones.

Or a commune modifies its own planning documents in order to prohibit, in explicit terms, quarrying, which would be upheld by the jurisdiction¹¹⁰.

Conversely, if a commune wishes to promote quarrying operations, the French town planning code provides a regulatory tool for this: the creation of a specific quarry sector.

In this hypothesis, case law upholds the commune's wishes, as did the Administrative Court of Appeal of Lyon in a ruling of May 2016¹¹¹. A local association claimed and obtained an annulment, before the Court, of a town planning document modified so as to create a specific quarry sector within a natural area. The commune and the quarry operator lodged an appeal and the Administrative Court of Appeal of Lyon finally annulled the first judgment and validated the modification of the town planning document on the grounds that French law empowers a commune to identify particular zones for quarry exploitation. This solution

109 Answer to Parliamentary question n°27926, published in the National Assembly Official Journal, 21 January 2014, page 705.

110 See: Council of State, 30 July 1997, n°119897.

111 ACA of Lyon, n°15LY00073, 12 May 2016, Fédération Rhône-Alpes de protection de la nature (FRAPNA) de la Drôme.

must be associated with the increasing importance of town planning documents in the admissibility of quarrying on municipal lands.

Implications of EU law for national law: This case is focused on national law rather than EU law.

Recommendations: according to doctrine¹¹², town planning documents either ignore the quarry admissibility issue or are used as a tool to exclude quarrying in the region. Therefore, our recommendation is that the French Administration specifies the conditions under which quarries can be qualified as “installations of general interest”. Even though the public interest of quarrying is generally recognized, neither the EU Directives nor French legislation and case law are clear about the criteria enabling quarries to be qualified as “installations of general interest”, allowing them to be set up in agricultural areas.

4 Conclusions

According to our French legal experts: *“A review of French quarry-related case law of the last 20 years reveals three main bottlenecks to the development of quarries. **Quarry development must be accepted in the local area**; however, changes in land use planning limit the implementation of new projects as the creation of specific quarry sectors is often challenged by opponents. Furthermore, **opponents are able to use town planning documents as a tool to hinder quarry operators in obtaining authorisations**. It would be pertinent to clearly qualify quarries as installations of general interest that are, subsequently, permissible in agricultural areas.*

*A new restriction appeared in recent case law regarding the **issue of cumulative impacts**. **Several decisions, not yet confirmed by the Council of State, create a presumption that an activity exploited by the same operator automatically increases the risks of environmental harm and damage associated with the main project, especially regarding quarrying and initial processing equipment**. This could imply that environmental impact assessments for quarries should systematically deal not only with a quarry’s effects, but also the effects of initial processing equipment, regardless of distance, technical and functional relationships and interrelated effects. It is highly recommended to determine accurate criteria to improve the legal certainty of administrative decisions and the quality of environmental impact assessments.*

*The waiver of the prohibition on the destruction of the critical habitats of endangered species is one of the most important restrictions. **French case law appears to be very strict regarding the fulfilment of an important legal condition: the existence of “overriding public interest, including those of a social or economic nature”** (according to the French Environmental Code and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, art. 6, §4). This issue is evolving but, **according to the most recent case law, quarrying is currently not seen as representing an “overriding public interest” since the only interest of the extraction industry is local employment**. It is highly recommended to lay down accurate guidelines in order to determine under which circumstances a quarry can have such an interest, and to improve legal certainty regarding authorisation”.*

112 S. Hercé, BDEI, Carrières et granulats, December 2011 page 12 to 20.

1.8. Success rates of exploration and extraction permits

Exploration permits

Concerning permitting success rates for exploration, since 2010 and non-energy substances, 15 exploration permit applications for metal mines have been submitted on Continental France, of which 11 were granted, 4 refused and there was one withdrawal by the applicant. 1 new application is through the instruction process which renders a permitting success rate of 73 %. About quarries, estimations from the Ministry in charge of ecology provide a permitting success rate close to 95 %. About quarries, estimations from the Ministry provide a permitting success rate close to 95%.

Extraction permits

Usually an exploration permit is granted if the owner of the exclusive exploration permit has fulfilled the environmental and public information plan and report as requested by the Environment Code, Art R 122-17.

Taking only into account the permits, non-energy substances, related to Continental France, between 2013 and 2018, 8 applications have been achieved and totally was granted (success rate of 100%).

The list of French quarries exploiting industrial minerals is available upon request. Now the Mining Code is under reform mainly because French people are eager to protect the Environment. Mining permit grants are often delayed due to environmental or public constraints while establishing the exploration and/or extraction plans.

All mining title is available on [Camino \(Cadastre minier ouvert\)](#) still in development.

1.9. EU legislation impacting permits and licenses for exploration and extraction

- 1) Does your country have any restrictive regulation on the private or legal entities performing the duties of an exploration or extraction concessioner, operator and/or holder of mineral rights as compared to the Services Directive (2006/123/EC)?

Yes. Ordinance No. 2010-1232 of 21 October 2010 laying down various provisions for adapting to European Union law on the environment NOR: DEVX1018790R - Consolidated version of 18 January 2016, including Directive 2006/123 / EC

- 2) Does any of your permitting documentation require the involvement/signature of a geologist or mining engineer? If yes, which are these permits? Does it require a BSc or MSc or PhD or chartered (certified) professional?

Decree No. 2011-2106 of 30 December 2011 - Art. 3

No. However, the application for a permit is accompanied by proof of "quality". Yes, when a competent person is required for operation.

In order to justify his technical capacity, the applicant for a title shall, in addition to the documents referred to in Art. 17 or 24, provide in support of his application:

a) The titles, diplomas and professional references of the executives of the company responsible for the conduct and follow-up of the exploration or exploitation of mines or the conduct of research, creation, testing, development and underground storage operation;

b) The list of exploration works, extraction, research, development, testing, development and operation of underground storage that the company has participated in over the past three years, accompanied of a summary description of the most important works

c) A description of the human and technical resources envisaged for the execution of the work.

d) In Guyana, where the application concerns an area included in zones 1 or 2 of the departmental mining orientation scheme, the justification for accession to a charter of good practice approved by the State representative and respect thereof.

- 3) Do you have legislation on financial guarantees (with regard to the Extractive Waste Directive, Art. 14)? Is the cost calculation of this guarantee done by an independent third party?

Yes. Decree No. 2010-1389 of 12 November 2010 on the obligation to establish financial guarantees before the opening of research or exploitation of mines. Art. L. 162-2. The opening of research or mining operations is subject to the provision of financial guarantees for mines with waste management facilities where an operational or operational failure such as the collapse of one Could result in a major accident on the basis of a risk assessment taking into account factors such as current or future size, location and the impact of the facility on the life of the facility, environment. The calculation of financial guarantees (Decree of 9 February 2004) concerning the determination of the number of financial guarantees for the rehabilitation of quarries provided for in the legislation of classified installations (NOR: DEVP0430043A) (JO 31 March 2004) refers to a Reference amount whose revisions are carried out by a third party body approved under Art. 40 of the Decree.

- 4) Is there a list of inert mine waste published in your country in accordance with Art. 1(3) of Comm. Dec. 2009/359/EC?

Yes. Order of 19/04/10 on the management of waste from extractive industries (OJ No 180 of 6 August 2010) Art. R. 541-8 of the Environment Code (European Waste Catalog). Circular of 22 August 2011 on the definition of inert waste for the quarry industry.

- 5) Do you use the risk assessment of 2009/337/EC Commission Decision of 20 April 2009 on the definition of the criteria for the classification of waste facilities in accordance with Annex III of Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries for abandoned sites as well?

Yes. Draft decree containing various provisions relating to Book V of the Environmental Code. Finally, at the request of the Ministry of Sustainable Development, BRGM experts will contribute to the Seville process. The purpose of this three-year process is to review and update the best available techniques reference document (MWEI BREF), entitled "Management of tailings and waste rock from mining activities", published in 2009 by the European Commission.

- 6) Has your country applied the waiver of the Landfill Directive paragraph 3 of Art. 3: MS may declare at their own option, that the deposit of non-hazardous non-inert mine waste, to be defined by the committee established under Art. 17 of this Directive can be exempted from the provisions in Annex I, points 2, 3.1, 3.2 and 3.3 (location screening, multiple barriers, leachate collection)?

Yes. JORF No 0061 dated 12 March 2006: N°4 text decree 2016-288 dated March 10 2016: various adaptation and simplification provisions in the field of waste prevention and management.

- 7) Does a mine operator have to prepare and submit both a general waste management plan and a mine waste management plan as well? To the same or separate authorities?

Yes. JORF n° 0180 dated 6 August 2010 page 9 text n° 6 – Order of 19 April 2010 on the management of waste from extractive industries - Excluding waste other than extraction

- 8) Has your national legislation transposed the Accounting Directive (2013/34/EC), with special regards its Art. 41-48 on the extractive industry? Do these rules on financial reporting appear in the concession law or mining act either?

Yes. Ordinance 2015-900 and Decree 2015-903 of 23 July 2015 constitute the first step in the transposition of Directive 2013/34 / EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, the consolidated financial statements and the related reports of certain types of business.

Decree on the transparency of payments to public authorities of undertakings in the extractive and forestry sector taken for the application of Art. 12 of Law 2014-1662 of 30 December 2014 laying down various provisions for the adaptation of economic and financial legislation of the European Union. Ministry of Economy, Industry and Digital. Art. L225-102-3, L 223-26-1 and L 221-7-1 of the Commercial Code.

- 9) Has your national legislation transposed the Transparency Directive (2004/109/EC, 2013/50/EU), especially Art. on the extractive industry? Do these rules appear in the concession law or mining act either?

Yes. Ordinance 2015-1576 of 3 December 2015 transposing Directive 2013/50 / EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109 / EC of the European Parliament and of the Council on the harmonization of obligations of transparency concerning information on issuers whose securities are admitted to trading on a regulated market NOR: FCPT1519260R - Consolidated version to May 21, 2016 - Monetary and Financial Code and Commercial Code.

- 10) Does your competent authority ask for or check the CE marks of the exploration or extraction equipments when permitting or when having on-site inspections? Does the mining authority have a regulatory/supervision right in product safety/market surveillance in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance?

Yes. Title V of Book V of the Environment Code (Regulatory Part) is supplemented by Chapter VII – Art. L. 55761 of the Environmental Code Transposes Regulation 765/2008 / EC

- 11) Do you have national or regional guidance document or a piece of legislation specific to the Environmental Impact Assessment (EIA) on mineral extraction (incl. mineral processing, waste management, closure)? If yes, please provide link and/or text in English and/or in original language.

No.

- 12) Could you please specify that at which permitting stage (value chain stage, e.g. non-penetrative prospection, exploration, setting mining plot, approving technical operation plan, starting extraction) is a detailed EIA is required in your country?

EIA is only required for open mining work (decree 2006-649 art. 3) and installation (Classified Installations for the Protection of the Environment – ICPE) subject to authorization.

- 13) Does your country apply the option of Article 4(b) of the EIA Directive (2011/92/EU) („... for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10 ... through thresholds or criteria set by the Member State”) for mining projects? If yes, under what criteria?

Yes. Criteria are mentioned both in decree 2006-649 art. 3 and 4 and in code of environment, [annexe of art. R122-2 rubric 25, 27 and 28](#).

- 14) Was there any case in your country when Article 10 of the EIA Directive (2011/92/EU) was applied („limitations ... with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest”)? Which were these exclusions, if any?

No known case.

- 15) Do competent authorities in your country apply the IPPC permit and the Extractive Waste BREF for mining under the scope of the Industrial Emissions Directive?

Yes.

- 16) Do you have national BREF(s) (Best Available Technique Reference Document(s)) specific to the whole (or stages or subsectors) minerals extractive sector?

No.