

Courtesy translation

Dear Chair of the Implementation Committee,

In a letter of 11 April 2019, you asked France about the implementation of article 6.1 of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) in French law.

The article 6.1 provides that « 1. *The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received pursuant to Article 3, paragraph 8 and Article 4, paragraph 2, and the outcome of the consultations as referred to in Article 5.* »

In application of this article, the competent authority shall take due account of the following elements, in the final decision :

- the outcome of the environmental impact assessment, including the environmental impact assessment documentation (article 4.2 of the Convention) ;
- the comments of the public of the affected Party in the areas likely to be affected (article 3.8 of the Convention) ;
- the transboundary consultations (article 5 of the Convention).

In its reply to the implementation questionnaire for the time period 2013-2015 sent to the secretariat on 31 March 2016, France indicated, in the part related to the implementation of Article 6.1, that “*French law does not include an exhaustive list to be covered in the decisions authorizing projects subject to an environmental impact assessment*”. Article 6.1 of the Convention does not require a list in the provisions of the national law but that those elements are taken into due account by the competent authority in the final decision.

Nevertheless, French law and Directive 2011/92/UE, which transposes the provisions of the Espoo Convention in EU legislation, required that the competent authority takes due account of the elements listed in the article 6.1. At the time of the 5th implementation questionnaire, the provisions of the French Environmental Code in force were the following :

*“Article L 122-1 of the Environmental Code*

*IV. — The decision of the competent authority, who authorises the developer or the applicant to realise the project takes into account the impact assessment documentation, the opinion of the environmental authority et the results of the public consultation.”*

I draw your attention to the fact that a recent reform was adopted in France in 2016, which has specified the elements which must be taken into due account by the competent authority in its final decision when authorising the project. Article L 122-1-1 of the Environmental Code requires now that :

*“I.- The competent authority for authorising the project subject to an environmental impact assessment takes account of the impact assessment documentation, the opinion of the authorities mentioned in article L122-1 V [environmental authority and local public*

*authorities] as well as the result of the public consultation and, where appropriate, of the transboundary consultations.*

*The decision of the competent authority is motivated with regard to the likely significant effects on the environment of the project. It specifies the obligations the developer has to conform with as well as the measures and project features envisaged to avoid significant adverse effects on the environment, reduce the ones which could not be avoided and offset the ones which could not be neither avoided nor reduced. It specifies also monitoring measures of the significant adverse effects on the environment and human health.*

*The decision to refuse development consent shall state the main reasons for the refusal, in particular the ones based on the likely significant adverse effects on the environment.”*

Therefore, when implementing these provisions, the competent authority for authorising the project must take due account of the elements listed in article 6.1 of the Convention.

Best regards.