

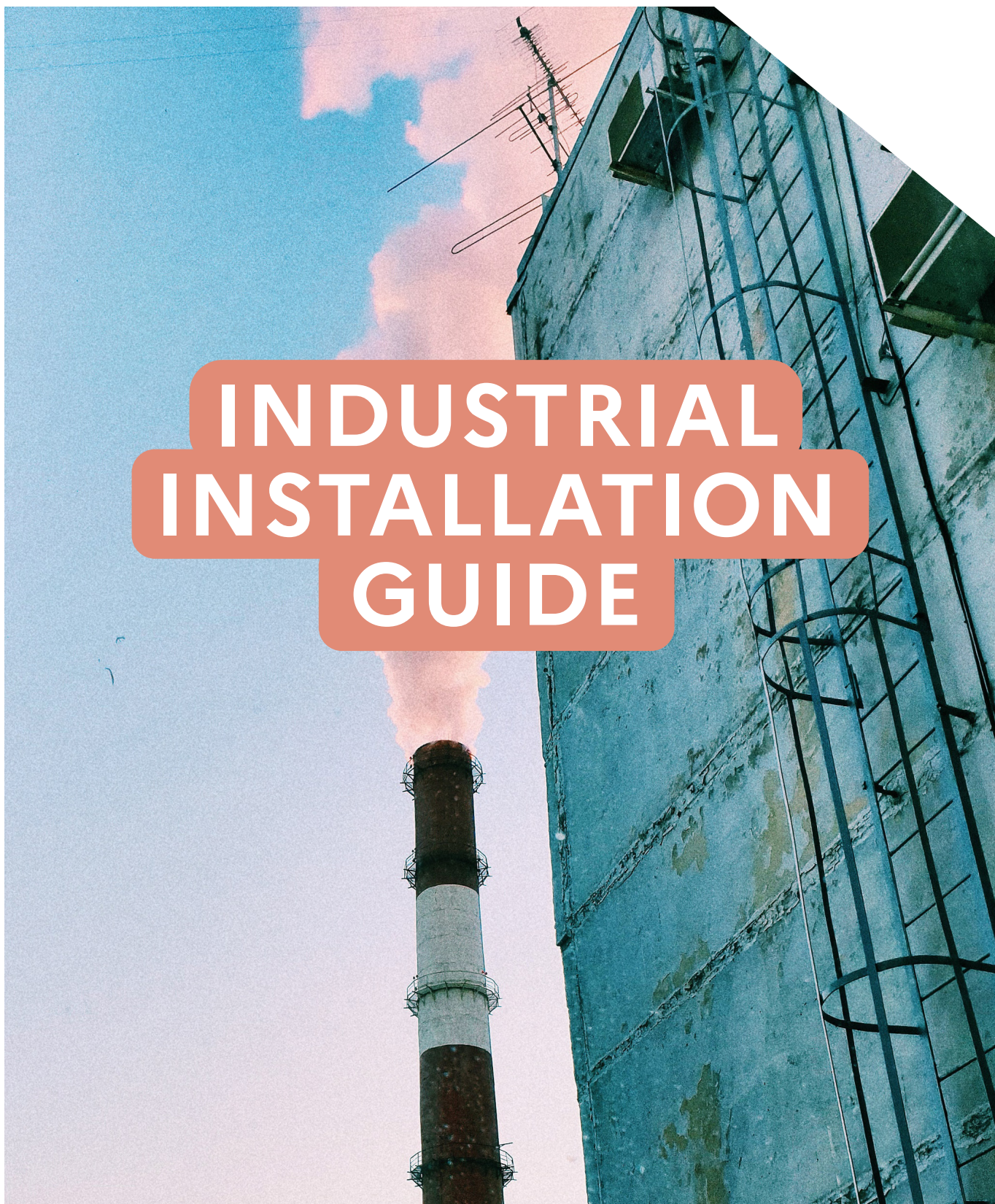


MINISTÈRE
DE L'ÉCONOMIE,
DES FINANCES
ET DE LA SOUVERAINETÉ
INDUSTRIELLE ET NUMÉRIQUE

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INDUSTRIAL INSTALLATION GUIDE





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INTRODUCTION

You are the sponsor of an industrial project – the construction of a new factory in France or the extension of an existing site: prior authorisations are required!

These authorisations are not simple "administrative formalities". They must enable you to incorporate your project into its future environment and are designed to guarantee operation that is compatible with the questions of safety of property and persons, public health and protection of natural and cultural heritage, while taking into account the economic development factors associated with your project.

This "**Industrial installation guide**" provides an overview of the authorisation process for an industrial project and walks you through the procedures it involves. Applying a chronological approach, it details the main elements to include so that you can plan the key stages in the authorisation applications as far ahead as possible and thereby facilitate processing of the files by the public authorities within controlled timeframes.

It also contains advice and information concerning the prerequisites for your application to succeed, while giving you an idea of the expectations of the

departments reviewing your application. On the other hand, this guide is not intended to provide an exhaustive technical description of the various authorisation procedures: links to other detailed information sources are indicated as appropriate in the text to enable you to examine certain technical points in greater depth if necessary.

Your ability to look ahead and make the necessary verifications as early as possible is a fundamental requirement for your installation project to obtain authorisation within controlled timeframes. This is why this guide places particular emphasis on the preparation of the files before submitting the authorisation applications, which is particularly important for organising your exchanges with the public authorities.

This guide is intended to address all industrial or logistic installation projects, whether they concern the creation of new facilities or the extension of existing ones, particularly when subject to the regulations governing Installations Classified for Protection of the Environment (ICPE). The particular cases of projects concerning wind turbines, quarries and livestock rearing, however, will not be addressed.

Cautionary statement

This guide is intended to provide to industrial projects' sponsors an overview of the authorisation process for an industrial project and walk them through the procedures it involves. These indications are provided for information only, do not have any regulatory value, and do not render the government liable.



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STEP I

PREPARATION OF

AUTHORISATION APPLICATIONS

You are the sponsor of an industrial project: you are considering building and/or operating a new industrial site, or modifying an existing site by increasing its capacities or diversifying its activities. This project may have an impact on the environment of the site. If applicable, your project will have to receive the required authorisations with regard to town planning rules and any environmental and archaeological issues.

Before you can implement your project, you must position yourself with respect to three procedures:

- the [environmental permit procedure](#)¹ in order to assess the potential environmental impacts of your project ;
- the [planning permission](#) procedure and the obtaining of a building permit, in order to register your project in compliance with the town planning rules ;
- the [rescue archaeology](#), procedure, to ascertain that the planned works will not threaten or lead to the destruction of any vestiges that are part of cultural¹ archaeological² heritage.

The assessment of the impact of your project on its immediate environment by establishing an environmental permit application file (or ICPE1 registration/declaration file) will be a key factor in your installation process. The content of this environmental permit application and the details of the procedure will depend on the nature and characteristics of your project. **You must therefore be particularly attentive to the defining and scoping of**

your project with regard to its scale and the induced environmental effects in order to determine the applicable regulatory framework and the required procedures. The environmental permit procedure is reviewed by the government departments within an indicative time frame of nine months⁵. You will have to prepare a planning permission application file at the same time. The planning permission application must be submitted to the Mayor of the intended municipality of installation. For projects involving the creation, modification or substantial extension of industrial sites, a building permit shall be required⁶, and issued within a standard timeframe of three months following receipt of a complete file⁷ by the Town Hall.

Lastly, particular attention must be paid to compliance with measures relating to rescue archaeology (RA) before commencing the works. Although any archaeological requirements may have been addressed by the developer of a ZAC (Zone d'Aménagement Concertée – Public Development Zone – a development zone managed by the public authorities) before an industrial project is defined, they are likely to have an impact on the project schedule if they have not been planned for.

Below are recommendations for the preparation of your authorisation applications, divided into three “steps” relative to the [regulatory framing of the project](#), the [choice of installation site](#) and the [conditions of project support](#). You do not have to follow our chosen order of presentation; on the contrary, the preparation and contact procedures can be carried out in a different order and/or simultaneously, depending on your specific situation.

1. Or, if applicable, a registration or notification file under the regulations for Installations Classified for Protection of the Environment (ICPE).
2. Cultural heritage, within the meaning of the heritage code, encompasses all immovable or movable assets, whether public or private property, which are of historical, artistic, archaeological, aesthetic, scientific or technical interest.
3. Items of archaeological heritage include all vestiges and other traces of existence of humanity, whose safeguarding and study, particularly by archaeological digs or discoveries, can be used to trace back the development of the history of humanity and its relation with the natural environment.
4. Installations Classified for Protection of the Environment.
5. These timeframes are governed by the regulations and are only mentioned for guidance. With regard to the environmental permit application file, additional information is often requested during application examination, and other regulatory timeframes can be introduced depending on the scale of the project, which can extend the examination time.
6. A demolition permit or a conversion permit may also be required in certain specific cases.
7. These timeframes are governed by regulations and are mentioned here for guidance only (note that they can be extended and their starting points adjusted according to the location or the nature of the project).

1ST STAGE

PROJECT SCOPING

In order to maximise forward planning of the steps inherent to the administrative authorisation process, you must be particularly attentive to the regulatory scoping of your project and precisely define all its components. Project scoping is necessary to identify all the applicable procedures and optimise their implementation, but it is also particularly important for the environmental permit application.

You have prime responsibility for this scoping work. On this basis, the government departments are at your disposal to hold preliminary discussions and answer any questions concerning the procedure or technical and regulatory requirements before submitting any formal application, during an “upstream phase” of the procedures, and of the environmental permit in particular.

The environmental permit application: project definition and classification with respect to the ICPE classification system

Giving a precise description of all the planned activities (industrial processes implemented, quantities of hazardous materials used or stored, etc.) will enable you to characterise your project with regard to the different sections of the classification system for Installations Classified for Protection of the Environment (ICPE)⁸.

This project will then be subject to the ICPE authorisation system comprising licensing, registration or notification, depending on the scale of the risks and nuisance factors associated with your project.

- The licensing system is used for the facilities presenting the most significant accident or chronic risks, making it necessary for the government departments to conduct an in-depth and personalised review of the file submitted by the project sponsor ;

- The registration system is devised as a simplified form of authorisation intended for sectors with well-known and standardised technical measures⁹ for preventing their detrimental effects ;
- The notification system applies to the least polluting and least dangerous activities.

In practice, large sized industrial projects will usually be subject to the licensing system. This is why this document will focus to a large extent on situations where the project is subject to the ICPE licensing system and forms the subject of an environmental permit procedure.

In addition, in each part of the guide – [review of applications](#), [public consultation](#), [issue of licenses](#) – a specific box will address the specific case of projects coming under the ICPE registration system.

We will not, however, examine in detail the case of industrial projects coming under the ICPE notification system, firstly because this situation is encountered less frequently in large industrial projects, and secondly because the administrative procedures in such cases are greatly simplified for the project sponsor (simple on-line notification¹⁰ is all that is required). Such projects are nevertheless likely to be subject to other procedures under the Environment Code¹¹, depending on the specific environmental issues they raise.

Under the ICPE regulations, the licensing system for which an environmental permit application procedure must be followed, implies carrying out an assessment of the environmental impact of the project, which can take the form of an impact assessment if the project has to undergo an environmental assessment, or failing this, a “limited” environmental impact assessment.

The environmental permit procedures shall take into consideration all the environmental implications of your industrial installation project. Although the nature¹² of the environmental impact can be

8. [Tout savoir sur les ICPE : nomenclature, gestion et déclaration](#)

9. The indicative timeframe for examination of an ICPE registration application is five months, see [article R. 512-46-18](#) of the Environment Code.

10. [service-public](#)

11. For example: Water Act authorisation or declaration, protected species waiver, etc.

12. And be subject to various regulations under, for example, the Environment, Forestry, Energy, Defence, Transport or Heritage Codes.

varied, the aquatic environment may be particularly concerned: by precisely defining all these effects, you will be able to position your project with regard to the Water Act classification system (IOTA)¹³ – targeted section(s) and system concerned – in order to include these issues in your file.

Ultimately, the environmental permit procedure will address all the identified environmental issues in one and the same file: ICPE, IOTA, but also various specific authorisations regulated by different codes which, where applicable, are “embedded” in the environmental permit¹⁴.

Taking the environment into account from the project inception phase : The environmental assessment process

The environmental assessment process aims to integrate consideration of the environment in the development of projects as from the early studies phase. Drawn from European law, it fits into the operational application of the principles of prevention, public participation and precaution¹⁵.

The environmental assessment process comprises :

- the development of an [impact study](#) by the project owner ;
- consultation of the [environmental authority](#), which gives an opinion on the quality of the impact study and the way the project takes the environment into account ;
- the holding of a [public inquiry](#).

This process is concluded by a reasoned decision (authorisation, etc.) with regard to the environmental impact of the project.

This is a “continuous improvement” process which involves several players and has several aims: improve the project, inform the public and inform the competent decision-making authority.

Whether your project is subject to an environmental assessment or not will depend on its nature and scale. To be more precise, the Environment Code provides for two cases and sets thresholds for them¹⁶ :

- systematic environmental assessment requirement ;
- case-by-case review to determine, with regard to the environmental impact of the project, whether an environmental assessment must be carried out.

It should be noted that the project subjected to environmental assessment must be considered as a whole, including if it is broken up in terms of time and space and if there are multiple project owners. It may differ from that for which you will apply for an environmental permit. The impact assessment will focus on all the operations or work necessary to achieve the targeted objective. This concerns works, installations, structures or other interventions which, without the project, would not be carried out or could not fulfil the purpose for which they are produced.

If your project does not enter into the scope of the environmental assessment, you will have to carry out a “limited” environmental impact assessment¹⁷ (more concise than the impact assessment) to describe the impact of the project on the environment in the context of your environmental permit application. The prior discussion phase with the authorities may enable this point to be clarified.

The performance and analysis of the studies associated with the environmental assessment process demand a considerable amount of time for both the project sponsor and the authorities, and a specific expert assessment. Particular attention must therefore be paid to the impact assessment (or the limited environmental impact assessment if applicable), which constitutes the cornerstone of the environmental permit application file. It describes the project’s characteristics, the current state of its environment, and the measures planned or to be planned (including with regard to rescue archaeology),

13. [Nomenclature des installations, ouvrages, travaux et activités](#) (IOTA)

14. This integration of procedures “embedded” in the environmental permit application procedure is specific to the ICPE licensing system. For the registration system, the procedures remain separate: for example, for a plant subject to ICPE registration and requiring, in addition, prior clearing of the land, a separate clearance authorisation application must be lodged by the project sponsor.

15. [L'évaluation environnementale](#)

16. [Appendix](#) of Article R. 122-2 of the Environment Code.

17. [Article R. 181-14](#) of the Environment Code.

18. [Article R. 122-5](#) of the Environment Code.

in order to avoid, reduce or compensate for the potential negative effects. Its content is clearly defined by the regulations¹⁸.

Although the impact assessment remains under your responsibility, you are strongly advised to get the assistance of competent service providers (design offices or environmental engineering firms) who have the required technical and methodological expertise, to ensure the conformity of your procedures.

Public participation in the assessment of the impact of your project: an important aspect to take into account from the design phase

The regulations require that public participation must be organised in order to assess the environmental impact of certain projects.

The authorisation procedures prior to setting up an industrial project include a public consultation phase before the competent authority makes a decision.

In a complementary manner, and depending on the scale of your project, you can involve the public from the preparation phase, in order to anticipate the potential difficulties, consolidate project acceptability and allow its improvement by taking into account the various observations.

In practice, public involvement is ensured through a prior consultation conducted over a period ranging from two weeks to three months¹⁹.

Note that if your project is subject to an environmental assessment, this prior consultation may be imposed by the competent authority (usually the Prefect of the relevant département) by a reasoned decision, as it may be for public projects or projects receiving state subsidies exceeding €5m in the context of a right of initiative open to citizens, elected officials or non-profit organisations.

Projects that stand out due to their significant socio-economic or environmental impact may be referred to the CNDP [Commission nationale du débat public](#) (French Public Debate Commission). Referral to the CNDP by the project sponsor is:

- **mandatory for projects costing more than €600m.** The CNDP then decides whether the public consultation shall be organised as a public debate or a pre-project consultation: for industrial facility projects, the latter option is usually chosen. This consultation will then be organised by the project owner under the auspices of one or more guarantor(s) designated by the CNDP. The review of the pre-project consultation drawn up by the guarantor(s) shall be enclosed with the subsequent participation file (i.e. consultation by public inquiry).
- **optional for projects costing [between €300m and €600m](#).** In this specific case, the project sponsor must, where applicable, explain and publish its decision not to refer the project to the CNDP and indicate the pre-project consultation measures it must implement. This consultation shall be organised under the auspices of a guarantor.

19. Legal timeframes regulated by the Environment Code ([article L.121-16](#)).

2ND STAGE

THE CHOICE OF PROJECT INSTALLATION SITE

If necessary, you will be required to indicate one or more potential installation sites for your project. The choice of site may be based on, for example, your previous installations (if applicable), the industrial culture of the targeted region, the environmental issues (consistent with avoiding the environmental impact of your project) or the availability of certain specific resources.

In relation with the local government departments and the local authorities concerned, you must first check whether the selected site is part of a broader development operation. You can be faced with different situations:

- **If the site has already undergone first level development** (greenfield site), for example through a ZAC procedure, some environmental protection and rescue archaeology procedures may have been carried out beforehand ;
- **If the installation is envisaged in a former industrial site or on a brownfield site**, particular attention shall be paid to the administrative situation of the site, to its possible pollution, and to its usage constraints; consequently, if a regulation linked to the technological risks is applicable (through the existence of a PPRT – Technological Risks Prevention Plan – linked to the presence of Seveso sites), specific urban planning and construction requirements shall have to be taken into account ;
- **If the chosen site is in an isolated position**, its preparation and all the technical studies appropriate for your project shall be under your responsibility.

These initial elements relating to the general context will enable you to verify the preliminary studies carried out during the first-level development phase²⁰ (if applicable) and will help you to characterise the immediate environment of the envisaged site. If a former industrial site is chosen, the project sponsor

may in certain cases use the land description studies produced when the former operator ceased its activity: topographical surveys, soil pollution surveys, etc. The technical studies to be carried out for the environmental permit application file will depend on this reference state (i.e. before installation) of the areas concerned by the project.

The time required to prepare the environmental permit application is often under-estimated by project sponsors. It is therefore important to allow for possible additional time resulting, for example, from having to conduct a specific technical study. A flora/fauna study, for example, may take more than one year in order to cover a complete biological cycle²¹.

You will usually need the assistance of a competent service provider (design offices or environmental engineering firms) to conduct these technical studies.

Planning permission

In order to select an installation site suited to your project's characteristics, you can start by familiarising yourself with the planning rules applicable to the area of the site in question, which is usually presented in the PLU (Plan Local d'Urbanisme – Local Urban Planning scheme) or a similar document. The PLU provides an initial description of the known cultural and environmental issues on the sites in question, and the potential active institutional controls²² and other administrative controls such as the ZPPA (Areas of Presumed Archaeological Requirements)²³, which can have a major impact on your project installation conditions and execution schedule. It is therefore vital to take these factors into account as early as possible and to integrate them in the overall project architecture to facilitate building permit obtainment.

You can contact the competent departments to obtain the necessary information concerning these urban planning documents (municipal or inter-municipal). You can, for example, make an inventory of existing

20. Or the developments specific to an initial industrial installation in the case of a site takeover project.

21. Observable timeframe, depending on the characteristics of the zone considered.

22. These active institutional controls formalise the consideration of issues specific to the territory in question (heritage conservation, use of certain resources and other facilities, public health and safety, national defence).

23. The Areas of Presumed Archaeological Requirements (ZPPA) are areas in which development works that are subject to planning permission (building permit, conversion permit, demolition permit) and Public Development Zones (ZAC) of less than three hectares can be subject to preventive archaeology requirements. They are defined by the DRAC according to the archaeological potential and sensitivity of the regions.

brownfield sites which constitute sites potentially suitable for the installation of new industrial projects. Note that if your project does not comply with the urban planning documents in effect, you can identify, in relation with the government departments and the local authorities concerned, possible alternatives (aiming to adapt your project or propose a change in the planning documents).

When conducting these searches you must be particularly attentive to the areas presenting serious environmental issues. If necessary, the ARC (Avoid-Reduce-Compensate) sequence must be implemented, especially its first step – avoidance²⁴.

In the same way, the Regional Directorate of Cultural Affairs (DRAC)²⁵ can help you to adapt your projects to best preserve the archaeological resources and avoid an excavation requirement in whole or in part.

During this planning permission application preparation phase, you can also, if necessary, file a planning certificate application with the Town Hall. This document will give you general information on the planning rules applicable to the prospective plot(s) of land and guarantee their stability: your building permit application will in this case be reviewed by the departments in accordance with the rules in effect at the time of certificate issue.

Once the plot of land is identified, it is recommended that you contact the Mayor of the municipality chosen for the prospective installation. You can present your project to the Mayor and obtain their initial observations in order to help promote local

acceptance of your initiative. The Mayor will also indicate the departments that are competent to review your planning permission application.

Rescue archaeology

Before confirming your choice of industrial installation site and before engaging procedures to obtain planning permission, it is advisable to check whether the intended site harbours resources that could concern archaeological heritage. If such resources are likely to be discovered on the prospective site, anticipating rescue archaeological procedures will enable you to optimise rollout of your project and avoid any limitations resulting from the authorisation application file review limitations resulting from the authorisation application file review.

In the case of land situated in a ZAC, the lessor or developer will be able to inform you of its history and any studies already carried out. You can also consult the urban planning documents available at the Town Hall, to obtain initial information.

As a guideline, 450 excavations are prescribed each year, corresponding to less than 2% of the files reviewed by the archaeology departments and about 20% of the projects that undergo an archaeological diagnosis.

Work is carried out at national or regional level to list the sites suitable for establishing, within reliable and controlled timeframes, new industrial activities, particularly within the framework of the "Turnkey industrial sites" scheme.

24. Avoidance, an essential step in the ARC sequence to avoid irreversible effects on the environment, may consist in displacing the entire project without changing the size or configuration, changing the configuration or perimeter of the project, or involving a more general redefining the project to eliminate the adverse impact on various issues identified on the installation site.

25. Or the Directorate of Cultural Affairs (DAC) or the Department of Subaquatic and Submarine Archaeological Research (DRASSM), depending on the region and the characteristics of your project.



Zoom : Turnkey industrial sites

To facilitate your search for an installation site and speed up your project, you can consult "turnkey industrial sites".

Introduced by the report from Guillaume Kasbarian²⁶, a member of the French Parliament, turnkey industrial sites are sites that can accommodate industrial or logistic activities and for which the procedures relating to urban planning, rescue archaeology and the environment have been planned for by the local authorities or operators to allow the authorisations necessary for the installation of a new plant to be reviewed within reliable and controlled timeframes.

The selected areas are readily accessible (close to transport networks, maritime port zones, multimodal transport, etc.) and offer immediate availability for sale or rental. The development work (servicing, access, network, etc.) has been carried out. The building permit and environmental permit applications can thus be filed immediately.

Turnkey industrial sites can equally well be greenfield sites (natural sites which have undergone a development procedure) or brownfield sites: industrial sites where activities are ceasing or have been stopped for some considerable time, etc.

26. [Report](#) from Guillaume Kasbarian, member of the French Parliament for the Eure-et-Loir département, "5 chantiers pour simplifier et accélérer les installations industrielles" (in French), submitted on 23 September 2019.

3RD STAGE

ACCOMPANYING THE PROJECT

Before formally filing your authorisation applications, you are urged to contact the local public officials, particularly the District Sub-Prefect, to determine the arrangements for accompanying your project.

As a general rule, your main government department contacts at département level will be:

- the District Sub-Prefect and the Prefecture teams (the Environment Office in particular) ;
- the technical department coordinating the environmental permit application procedure, which will usually be the département unit of the Regional Directorate for the Environment, Planning and Housing (DREAL)²⁷

“Project mode” organisation to optimise the scoping and monitoring of the authorisation process

Competence for reviewing the authorisation applications concerning your project will lie with several government departments and the local authorities. Proper coordination of their expertise and opinions will be necessary to ensure seamless procedures.

In this respect, “project mode” organisation bringing together all the relevant contacts within the government departments and local authorities can be set up to good advantage²⁸. A collegial organisation such as this will facilitate communication between the various stakeholders, allow the anticipation of any difficulties with regard to the project specifics and ultimately optimise the timeframes inherent to the procedures involved. To this end, it is recommended to contact the regionally competent District Sub-

Prefect. If justified by the scale of the project, the District Sub-Prefect will be able to promote such “project mode” organisation and marshal the various relevant authorities.

This organisation will facilitate the joint defining of project support by the authorities as appropriate for your needs and render collective organisation more fluid. The exhaustiveness and preciseness of your questions will enable the government departments to personalise their support with regard to your project’s features.

Technical discussions with the government departments before filing applications

Before formally filing authorisation applications for complex files, it is important to plan for technical discussions with the government departments. These discussions will serve to ascertain that the regulatory requirements and expectations of the authorities are properly taken into account through the various documents in your file. They are particularly useful for the environmental permit application procedure, for which they will come under the framework of the “Upstream phase of the environmental permit application”.

In addition to the technical elements, the authorities will warn you, if applicable, of the potential local specificities and the points requiring particular due diligence (particularly with regard to certain induced timeframes) to be planned for.

You must therefore establish your roadmap by scheduling the administrative steps required by the regulations at as early a stage as possible.

27. In specific cases, the role of the department coordinating the environmental permit application review may be assumed by other departments: Département Directorate for Population Protection (DDPP)/Département Directorate for Employment, Labour, Solidarity and Population Protection (DDETSPP) for agri-food business projects, the water policing department of the Département Directorate of Territories and the Sea (DDTM) for predominantly water-oriented projects/IOTA (Installations, Ouvrages, Travaux et Activités – Facilities, Structures, Works and Activities, etc).

28. These recommendations appear in the [report](#) from Guillaume Kasbarian, member of the French Parliament for the Eure-et-Loir département, “5 chantiers pour simplifier et accélérer les installations industrielles” (in French), submitted on 23 September 2019.

ADVICE

The phase of authorisation file preparation and preliminary discussion with the authorities is essential. It provides for mutual and fine-grained understanding of the implications and consequences of the installation project: for a seamless project authorisation process, it is essential to optimally prepare the file before filing the authorisation applications. It is therefore strongly recommended that you contact the local public stakeholders to hold preliminary discussions.

In the preparation of the environmental permit application file, as well as taking particular care with the impact assessment in general, be attentive to the potential need for a survey of the flora and fauna, which can take several months (up to one year if a “4 seasons” assessment is carried out). It must therefore be planned for as early as possible.

Similarly, particular attention must be paid to the verification of the provisions concerning rescue archaeology on the site in question. If these procedures have not been carried out by a first-level developer (ZAC or subdivided development) or by you yourself as part of advance procedures, they may be carried out during the review process and thereby increase the timeframes.

The insights provided by the authorities through the preparatory discussions cannot be compared to an advisory service and do not replace the services of competent persons. It is therefore strongly recommended to obtain the assistance of one or more specialised design offices in the preparation and follow-up of the authorisation applications.

CHECK LIST

- ✓ *Define the regulatory framework applicable to the project.*
- ✓ *Identify the environmental issues with the aim of avoiding and reducing the environmental impact of the project.*
- ✓ *Establish the inventory of the environmental assessments already carried out on the installation site or area: impact assessment, wetland characterisation survey, assessment of the impact on Natura 2000 sites, inventory of flora and fauna, hydraulic study, noise nuisance, soil pollution, etc.*
- ✓ *Assess whether the land covered by the site has been subject to rescue archaeology searches – contact the DRAC.*
- ✓ *Ascertain that the planning rules allow for the construction of an industrial unit on the chosen site and that a building permit application can be filed without delay if necessary.*
- ✓ *Contact the government departments for discussions prior to submission of the authorisation application file (upstream phase of the environmental permit application).*
- ✓ *Make contact with the Mayor of the municipality of prospective installation to present the project and prepare for filing an application for planning permission.*
- ✓ *If necessary, consult the District Sub-Prefect with a view to “project mode” coordination of the departments concerned by the various authorisations required.*

STEP II

THE REVIEW PROCESS

Planning permission and the environmental permit

You have finalised the files for your industrial installation or extension project and are preparing to submit your permit applications with respect to the various key procedures.

The two essential administrative procedures for building and then operating an industrial installation concern the planning permission application (building permit) and the environmental permit application. Although these procedures are reviewed by different departments, they may nonetheless be carried out in parallel and aim for a common milestone: [the public inquiry](#).

More broadly, the overall [environmental assessment approach](#) will require that you incorporate all the environmental issues, including archaeological, and those relating to the human health of the populations in the area concerned, as of creation of the project. This assessment will inform the decision-makers when reviewing the planning permission and environmental permit applications. It will concern all the operations or works needed to determine and attain the specified goal, all the works, facilities, structures or other operations which, without the project, would not be performed or would not be able to fulfil their specified role. The project must be considered as a whole, including if it is divided up in terms of time and space and if there are multiple project owners.

In addition, although the incompatibility of the project with town planning documents when the environmental permit application is reviewed does not usually constitute an obstacle to the continuation of the procedure²⁹, the project must be compatible when the environmental permit is signed.

Lastly, the building permit may only be implemented (start of works) once the environmental permit has been issued³⁰ and any rescue archaeology requirements have been stipulated.

ZOOM

Building permit and environmental permit

The environmental permit procedure may include the review of other permits required by your project and governed by various applicable legislation³¹. These “embedded” procedures, included in the overall process to review your environmental permit application can, depending on the specific aspect of your project, concern the permits required for completion of your project³². This is why the regulations require that you wait for the environmental permit to be issued before executing the building permit and beginning the works. This precaution also aims to protect your project and reduce the risk of litigation.

These two approaches are therefore closely linked until the environmental permit is issued.

This is why it is advisable to submit the building permit and environmental permit applications at the same time, in order to guarantee the overall consistency of the approach.

29. They can be brought into compatibility during the course of the file review.

30. [Article L. 425-14](#) of the Urban Planning Code.

31. Derived from the Environment, Forestry, Energy, Transport, Defence and Heritage Codes.

32. This is for example the case with a land clearance permit under the Forestry Code, or the protected species waiver.

ADVICE

- An [online procedure](#) is now available for electronic submission of your environmental permit application file, via the [service-public](#)³³ website. This interface is also designed to simplify your exchanges with the authorities throughout the procedure, in particular when they request additional information or documents, and to inform you of how the procedure is progressing. It is strongly recommended that you use this online procedure, which is more flexible and which also enables the review phase to be initiated more rapidly. It is however still possible to submit your file in paper format to the ICPE office at the Prefecture³⁴.

- With regard to the planning permission application, the file – which is to be based on form [Cerfa 13409*09](#) – must be submitted to the local Town Hall of the site chosen for the installation (consult the Town Hall's website for practical transmission or submission formalities).

NB - As of 1 January 2022, municipalities with more than 3,500 inhabitants will be required to adopt a specific online procedure enabling them to receive and review electronic planning permission application³⁵.

33. [Service-public](#)

34. This file submission method will not be detailed in this guide.

35. See [article L. 423-3](#) of the Urban Planning Code.

THE REVIEW PROCESS AS SEEN BY GOVERNMENT DEPARTMENTS AND LOCAL AUTHORITIES

Once the files have been submitted, the various government departments and local authorities concerned initiate a review of your applications. With regard to the environmental permit, the timeframe as set by the regulations begins with confirmation of submission of your file on the service-public.fr website. For planning permission, you will be given a receipt in the Town Hall.

The environmental permit application review phase

This review phase entails an in-depth examination of the file, given the nature of the installation project and the resulting socio-economic and environmental impact. A regulatory period of four months³⁶ is announced for the completion of this first environmental permit application review phase. This period is set owing to the numerous issues inherent in the file and the need for a large number of internal consultations.

To ensure that exchanges between the authorities and the project sponsor are as streamlined as possible, the department coordinating the environmental permit review³⁷ will be your primary point of contact throughout the procedure. During the review phase, it could send you one or more requests for additions to the environmental permit application, based on the consultations and the opinions of the various departments concerned. In particular for projects subject to an environmental impact assessment, these consultations will include an opinion from the regional archaeology department of the Regional Directorate of Cultural Affairs (DRAC).³⁸

On the basis of the various contributions resulting from the review phase consultations, the authorities will be able to assess whether your file is complete and compliant. Most of the time, they will ask you for a certain amount of additional technical information. These requests for additions to the file may suspend

the review period, to enable you to send the items requested. The authorities' total review period is thus partly determined by your responsiveness to this request for additional information. Particular care must be given to the quality of your answers as this is vital for optimising the review schedule and providing legal certainty for your approach. However, should the exchanges prove unsuccessful after the provision of additional information that is unsatisfactory, the government departments may have to reject your file following the review phase.³⁹

When the project requires an environmental impact assessment, the complete file is also sent by the coordinating department to the environmental authority. This authority then has a period of two months – a period which is generally used in full – in which to issue its opinion. The review process means that the environmental authority is frequently sent a file which has already been supplemented with returns from other departments.

Referral to the environmental authority and the opinion delivery procedure

At local level, and barring special cases, the role of the environmental authority is performed by the regional environmental authority task forces (MRAe).⁴⁰

The MRAe is contacted by the reviewing department when the environmental permit application file is considered to be complete. It then has two months in which to issue its opinion on the project's environmental impact.

The public inquiry can only be launched on the basis of a complete file, which notably includes this opinion and the response memorandum from the project sponsor. The final opinion will be published on the website of the competent environmental authority in your region.

36. This regulatory time period could be suspended pending the provision of additional information or, if necessary, extended by the Prefect, in accordance with [article R. 181-17](#) of the Environment Code.

37. This will usually be the département unit of the Regional Directorate for the Environment, Planning and Housing (DREAL); in some special cases, it could be the Département Directorate for Population Protection (DDPP)/Département Directorate for Employment, Labour, Solidarity and Population Protection (DDETSPP) for agri-food business projects, or the Département Directorate of Territories and the Sea (DDTM) for predominantly water-oriented projects/IOTA (Installations, Ouvrages, Travaux et Activités – Facilities, Structures, Works and Activities, etc).

38. Or, as applicable, the Directorate of Cultural Affairs (DAC) or the Department of Subaquatic and Submarine Archaeological Research (DRASSM).

39. [Article L. 181-9](#) of the Environment Code.

40. The MRAe reports to the Prefect and is a regional unit of the General Council for the Environment and Sustainable Development (CGEDD). It is an entity independent of the authority in charge of reviewing the environmental permit application, with complete freedom with regard to its opinions and decisions.



The environmental authority

Industrial installation projects with the greatest environmental impacts are submitted to an authority with competence for the environment, known as the “environmental authority”, for its opinion. This opinion is a fully-fledged component of the environmental assessment process.

This requirement is derived from European law⁴¹ and guarantees greater involvement of citizens in drafting public decisions, thus enhancing the environmental quality of industrial projects. The opinions from the environmental authority aim to ensure that all environmental issues have been correctly addressed when preparing an industrial installation project, upstream of the public consultation and the approval of the project by the competent authority. They therefore analyse the quality of the environmental assessment approach. They shed an informed light on the file through an environmental appraisal of the applicant’s approach. Lastly, they aim to improve the quality and legibility of the documents made available to the public, in order to optimise their involvement in the preparation of the decision.

Its opinion is made public and is attached to the file presented for the public consultation, along with your response memorandum. It thus helps inform the public and the decision-making competent authority with regard to the quality of environmental considerations in the industrial installation project.

NB : Following a request from the project sponsor to the authority in charge of the permit, the environmental authority may also intervene on an upstream “[preliminary scoping](#)” (at the preliminary design stage).

ADVICE

In order to guide you through the environmental assessment aspect of your project, you can submit precise queries to the Prefect of the département, to request an opinion, called the “preliminary scoping” regarding the scope and the degree of precision of the information to be provided in the impact assessment.

You will also be required to produce a memorandum in response to the opinion from the environmental authority, in order to inform the public. So as to optimise the review timeframes, it is advisable that you provide the authorities with a rapid and substantiated reply: the Prefect will in fact only be able to initiate the organisation of the public consultation once they have received this memorandum.

PARTICULAR CASE OF PROJECTS SUBJECT TO THE ICPE REGISTRATION SYSTEM

The initial review of an ICPE registration application follows the same principles as for an environmental permit, but the file review will not be as rigorous, as the risk levels in installations requiring registration are on the whole lower than in installations requiring authorisation and also correspond to more “standardised” installation categories.

More specifically, fewer consultations will be needed for a registration file. For instance, the environmental authority will not be consulted, because this opinion applies only to projects subject to the environmental assessment. The file review will thus be faster than in the case of an environmental permit.

One particular point is however worth mentioning: during the review of the registration application, the Prefect may decide, if for example – owing to the siting of the project – the environmental sensitivity so justifies, to “switch” the file to the authorisation system and thus submit it to the environmental permit and/or environmental assessment process.

Such cases are in practice rare; however, this situation naturally considerably lengthens the project authorisation procedure. So, if there is any doubt regarding your project with respect to the “risk” of such a switch, you should ideally talk about it as early as possible with the government departments and they will be able to advise you so that you can send the authorities the most appropriate file for your project from the outset.

41. For industrial installation projects: amended “Projects” Directive 2011/92/EU of 13 December 2011.

Following this review phase, a public consultation is organised, taking the form of a public inquiry or an online public participation.

My project has not undergone any upstream rescue archaeology procedures: what are the implications at this stage of the review ?

During the review of the environmental permit application, the examining department checks the project's compatibility with the regulatory obligations with regard to rescue archaeology. If no procedures have been initiated upstream in this respect, or in the event of a substantial change in the project liable to call into question the procedures already carried out, the authority responsible for issuing the environmental permit consults the DRAC⁴², which could then issue rescue archaeology requirements.

Review of the planning permission application

In the vast majority of cases, the Mayor of the municipality in which your industrial project is to be sited will have competence for ruling on your building permit application. He or she is thus your primary point of contact.

This building permit application will be examined within a standard time frame of three months⁴³ from receipt of a complete file in the Town Hall⁴⁴. This time frame may be extended according to the specific aspects of the siting location (for example if the land is part of a classified site⁴⁵) or certain characteristics inherent in the project (if the project involves the

creation of a public access building, for example). In this case, the administration will notify you of the total review time within one month following submission of the file. In addition, if your file is not complete, the competent authority will have a period of one month from submission of the file with the Town Hall in which to send you the list of missing items. You will then be required to submit the missing items to the Town Hall within three months and it is receipt of these items that will trigger the review period.

If a public inquiry has to be organised for your project, it will - barring exceptions - be organised with inclusion of the items required for the environmental permit and planning permission.

My project has not undergone any upstream rescue archaeology procedures: what are the implications at this stage of the review ?

The authority responsible for issuing planning permission may refer to the DRAC⁴⁶ any planning permission application file⁴⁷ on the basis of the archaeological heritage siting data in its possession⁴⁸. Following the same principle, the DRAC also has the authority to ask the Mayor, during the course of the review, to send it any planning permission application files of which it is aware and which could prejudice the conservation of archaeological heritage⁴⁹.

Rescue archaeology requirements may then be triggered when examining the building permit. To avoid penalising the works performance schedule, it is therefore highly recommended that you ensure that the corresponding searches are conducted as early as possible.

42. Or the DAC or DRASSM, depending on the regions.

43. Observable timeframe.

44. However, if the project is subject to a public inquiry (notably for an environmental permit), the time to review a complete file only starts once the report has been received from the inquiry commissioner, or the board of inquiry.

45. In this case, the works will require that the Prefect of the département issue a specific permit further to the opinion of the département committee for nature, landscapes and sites.

46. Or the DAC or DRASSM, depending on the regions.

47. In the case of a site located in an area of presumed archaeological requirements (ZPPA), this referral to the DRAC is mandatory.

48. [Article R. 523-8](#) of the Heritage Code.

49. [Article R. 523-7](#) of the Heritage Code.

THE REVIEW PROCESS AS SEEN BY THE INDUSTRIAL PROJECT SPONSOR

You have submitted your various permit application files and the review by the government departments and local authorities is ongoing.

Throughout this process, you are advised to be prepared to rapidly provide any additional information that could be requested by those conducting the review.

With regard to the environmental permit application, the government departments will ensure that you initially receive an overall request for information, based on feedback from the various departments consulted during the review. For the success of your project, it is essential to verify that the additional information you provide at this stage is exhaustive and complete. The coordinating review department may, if necessary, send you one or more requests for additional information, if the information you have transmitted is insufficient. Following the review of the file further to these clarifications, the authorities will send you a single reply. The quality of your response to the requests for additional information will therefore be a precondition for a successful outcome for your file.

It is strongly recommended that you take great care in ensuring that your response is exhaustive and that you meet the deadlines set by the Prefect, to avoid delaying the review and protecting yourself against an unfavourable outcome. The Environment Code⁵⁰ does authorise the authorities to reject your file if you fail to meet these requirements.

Lastly, should you fail to meet the deadlines for a response to the request for additional information, this could subsequently be used in any appeal against your environmental permit. You should therefore immediately inform the authorities of any difficulty you may be experiencing in producing your responses within the allotted time.

- PARTICULAR CASE - THE ADDITIONAL INFORMATION PROVIDED AT THE MOMENT OF THE REVIEW OF YOUR PROJECT BY THE ENVIRONMENTAL AUTHORITY

If your project is subject to an environmental assessment, you will be required to produce a memorandum to respond to the observations made in the opinion from the environmental authority. This document will be attached to the public inquiry file and thus determines whether or not the next public consultation step can be initiated. This response to the opinion from the environmental authority should therefore be planned well in advance to avoid generating additional delays.

ADVICE

The review phase usually entails requests from the authorities for additions to the file presented. You must be prepared to respond rapidly and exhaustively, in order to avoid extending the deadlines and to increase the chances of the file being accepted.

In order to achieve an optimal review timeframe, the coordinating department and the applicant may, notably during the upstream phase, hold discussions to agree on an overall schedule which is compatible with the environmental issues, the constraints of the review and the economic issues inherent in the industrial party's approach.

In the event of difficulties in responding to the requests for additional information within the allotted time, the project sponsor is asked to report its constraints to the authorities, which could then modify this response time, in accordance with the Environment Code. These modifications will avoid any risk of a dispute arising from a technicality and thus provide legal certainty for your approach.

Generally speaking, continuous dialogue with the authorities throughout the procedure is strongly recommended.

50. [Article R. 181-34](#) of the Environment Code.

STEP III

PUBLIC CONSULTATION

PUBLIC CONSULTATION ISSUES

The consultation procedures aim to involve the public in the public decision-making process regarding projects with environmental impact. During the environmental permit procedure, the public consultation phase takes place following the review by the government departments of the application file submitted by the project sponsor.

For industrial projects requiring an environmental assessment, the consultation will take the form of a public inquiry. The public inquiry covers the project as a whole and the inquiry file will therefore contain items concerning the environmental permit and the planning permission; the conclusions of the inquiry will then be taken into account in the

decision-making phases of the two procedures.

Within the environmental permit procedure, provision is made for a total of three months⁵¹, for the public inquiry phase, including preparation for the public inquiry, the actual consultation itself and the drafting of the inquiry commissioner's report.

The public inquiry is a fundamental component of the authorisation process and has a considerable influence on the acceptability of the project for the local residents and the stakeholders. The preparation and actual running of the inquiry must therefore be taken into account when planning the project.

It should be recalled that the project sponsor may have

THE PUBLIC INQUIRY PROCESS

to organise a mandatory or voluntary prior consultation upstream of submission of the authorisation applications. The public inquiry for the environmental permit is organised by the Prefect of the *département*. The inquiry cannot actually be started until the Prefect receives the complete file, notably including the opinion from the environmental authority and the project sponsor's response to this opinion⁵².

It should be recalled that the project sponsor's comments on the opinion issued by the environmental authority must be submitted in the form of a response memorandum, as part of the adversarial procedure. We therefore strongly recommend that you rapidly return this memorandum, to avoid delaying the start of the public consultation.

The Prefect then refers the matter to the locally competent administrative court, which appoints an inquiry commissioner⁵³, tasked with ensuring the smooth running of the procedure. The start of the inquiry must be publicised, in order to inform the public, at least 15 days prior to the opening of, and then during the course of, the inquiry⁵⁴.

The public inquiry file⁵⁵ is made accessible as a minimum at the public inquiry office (generally the Town Hall of the municipality where the project is sited) and made available on the website of the Prefecture of the *département*.

As a general rule, the inquiry will last one month⁵⁶.

51. Observed timeframe..

52. Article R. 181-36 of the Environment Code.

53. Or, in certain cases, a board of inquiry.

54. Time period regulated by article L. 123-10 of the Environment Code.

55. Its composition is regulated by : article R. 123-8 of the Environment Code.

56. Incompressible period of time regulated by article L. 123-9 of the Environment Code ; it should be noted that it can be extended by 15 days in certain specific cases and when requested by the inquiry commissioner.

In the light of the observations made by the public, the inquiry commissioner issues their report and substantiated conclusions regarding the project within 30 days following the end of the inquiry⁵⁷.

During this 30-day period, the inquiry commissioner will collect any responses you may have to the observations and proposals from the public. To this end they will send you the public's observations within eight days of the date on which they received the inquiry register and you will then have a period of 15 days⁵⁸ during which to send your observations, which will supplement the recommendations from the inquiry commissioner.

Once this consultation has been completed, the inquiry commissioner submits their report and conclusions to the Prefect, who will take account of them when taking their final decision.

PARTICULAR CASE – ONLINE PUBLIC PARTICIPATION

When the project does not require an environmental assessment, the public consultation set out in the environmental permit procedure is by default held entirely online, in the form of an “online public participation procedure”⁵⁹.

The purpose of this participation is similar to that of the public inquiry.

The procedure⁶⁰ is streamlined, with the file being made available and the public's observations being collected online, with no physical meetings or any intervention by an inquiry commissioner. The public is however entitled to consult the paper version of the consultation file, by submitting a request to the Prefecture or Sub-Prefecture.

Moreover, if the volume or characteristics of the application file prevent it from being made available online, the entire paper file will be available for consultation in the locations and at the times specified in the file presentation notice.

The duration of the online public participation procedure is 30 days⁶¹. After the consultation phase, a summary of the contributions received is produced by the authorities.

PARTICULAR CASE – PUBLIC CONSULTATION IN THE CASE OF A REGISTRATION PROCEDURE

When the project is subject to the ICPE registration procedure, the public concerned are asked to familiarise themselves with the applicant's consultation file in the Town Hall of the municipality concerned by the project, or on the website of the Prefecture of the *département*. They may then make their observations in a specific paper register available in the Town Hall, or by post or email.

This consultation lasts for a total of four weeks⁶².

57. If this deadline cannot be met, an additional period may be granted by the Prefect at the request of the inquiry commissioner, further to the opinion of the project manager ([article L. 123-15](#) of the Environment Code).

58. Periods of 8 and 15 days regulated by [article R. 123-18](#) of the Environment Code.

59. Notably in the light of the environmental impact and the socio-economic implications, the Prefect may however maintain the organisation of a public inquiry ([article L. 181-10](#) of the Environment Code). The duration of the inquiry may then be reduced to 15 days ([article L. 123-9](#) of the Environment Code).


60. [Article L123-19](#) of the Environment Code.

61. Incompressible time period regulated by ([article L. 123-19](#) of the Environment Code).

62. Time period regulated by ([article R. 512-46-14](#) of the Environment Code).



YOUR ROLE AS PROJECT SPONSOR



For the purposes of the environmental permit [online application procedure](#), your file subject to the environmental assessment will be automatically submitted and updated on the [Projets-Environnement](#) platform. You will be contacted by the departments of the Prefecture to prepare the public consultation, and you will be required to monitor progress up until publication of the inquiry commissioner's report or the summary of the observations received.

First of all, you will be required to assist the departments of the Prefecture with the preparation of the file subject to public consultation, notably with regard to the composition of the paper file, which shall at a minimum be available for consultation at the inquiry

office (generally the Town Hall of the municipality in which the project is sited). You will also bear the cost of the publicity measures surrounding this consultation and the file reproduction services, as well as the fee of the inquiry commissioner.

You will also be asked to take part in public information meetings organised by the inquiry commissioner, in order to present your project and answer the initial queries from the public.

You should also be ready to answer questions from the inquiry commissioner, notably when they contact you at the time of drafting their report, in the conditions previously mentioned.



STEP IV

ISSUING AUTHORISATIONS

ISSUING THE ENVIRONMENTAL PERMIT

The decision phase – the third and last phase of the environmental permit application procedure – extends over a standard period of two months as from the date the Prefect sends the inquiry commissioner's report to the applicant, following the public inquiry.

Once the government departments have finalised the review, a draft prefectoral order granting or refusing the application is drawn up.

An adversarial phase will give you the opportunity to submit any observations concerning the draft prefectoral order before it is signed. It is important for you to read this draft document very attentively because this is the text that will govern your activities and to which you will be bound. You are therefore advised against entirely "outsourcing" the review of this document (to your design office for example).

Lastly, the Prefect has the possibility of referring the case to the Département Council for the Environment and Health and Technological Risks (CODERST)⁶³ before making a decision. This advisory body issues opinions concerning certain types of facilities (including ICPE). It should be noted that if the Prefect refers the matter to the CODERST, the decision phase is extended by one month, taking it to three months.

Your file is reviewed by the CODERST

If the CODERST is consulted, the review departments draw up a report that covers the entire environmental permit application file, including the conclusions of the [public inquiry](#). These documents are presented to the members of the CODERST along with the draft prefectoral order to serve as a basis for discussion and forming an opinion.

You will be invited to participate in the CODERST meeting to give you the opportunity to be heard. In

this case, the Prefect will send you the draft prefectoral order eight days at the latest before the meeting is held.

You are strongly advised to read the draft prefectoral order and its technical requirements in preparation for this meeting, if you have not already done so. Your design office, called upon for the preparation of the environmental permit application file, will be able to assist you. You should also take account of the result of the public inquiry and the recommendations of the inquiry commissioner.

After you have been heard by the CODERST, the Prefect will send you the draft prefectoral order along with any amendments stemming from the discussions at the CODERST meeting so that you can submit your comments on the planned requirements under the adversarial procedure. You will have 15 days⁶⁴ to submit your comments.

Your file is not reviewed by the CODERST

The Prefect will send you the draft prefectoral order directly and you will have 15 days⁶⁵ to submit your comments. On this basis, the reviewing department may contact you to provide details on certain requirements set out in the draft order: you must therefore be ready to answer the questions rapidly, if necessary by identifying the potential clarifications to be made as of the public inquiry stage.

Furthermore, if you agree with these requirements, it is in your interest to officialise your reply before the 15-day deadline has expired so that the Prefect can notify you of the order granting the environmental permit. On this basis, you will be able to execute your building permit and start the works.

63. [Article R. 181-39](#) of the Environment Code.

64. Maximum timeframe governed by the regulations ([article R. 181-40](#) of the Environment Code).

65. Maximum timeframe governed by the regulations ([article R. 181-40](#) of the Environment Code).

SPECIFIC CASE OF PROJECTS SUBJECT TO THE ICPE REGISTRATION SYSTEM

The very principle of the ICPE registration system is that it applies to facilities for which the requirements can be widely “standardised”, that is to say that the operating rules and constraints imposed on the company will be identical, or at least very similar, from one unit to the next.

Thus, the prefectural registration order will concern first and foremost the ministerial order of general requirements (for the ICPE section concerned), which of course does not have to be read by the project sponsor. However, specific requirements may be added by the reviewing department to take account of the project’s specific features.

As in the case of the environmental permit procedure, the decision to consult the CODERST or not is left to the discretion of the Prefect of the département. In practice, for the simplest files for which the national

requirements are applied directly, the CODERST will not usually be consulted; on the other hand, it will always be consulted if the draft prefectural order provides for an alleviation of a requirement with respect to the national framework.

On completion of the process, a prefectural order⁶⁶ granting authorisation is published on the website of the département Prefecture and on that of the municipality concerned, along with the file and the inquiry commissioner's report. This order can be appealed against in court. You have two months to submit your appeal, whereas third parties (local residents, non-profit organisations, etc.) have four months.⁶⁷

Lastly, it is your responsibility to inform the Prefect of any noteworthy or substantial changes made to the works and facilities concerned once the environmental permit has been obtained.

ISSUING PLANNING PERMISSION

The Mayor “in the name of the municipality” is the prime authority responsible for issuing the building permit. In certain cases and as an exception, competence may be delegated to the Chair of the EPCI (Public Establishment for Intermunicipal Cooperation), or, by determination of the law, to the Prefect or the Mayor in the name of the government.

The competent authority’s decision takes the form, in principle, of an order⁶⁸ that must be issued before expiry of the review deadline. For projects that are subject to an environmental assessment, this decision takes into account the conclusions of the public inquiry.

In the majority of cases, planning permission will be issued before the environmental permit. Be warned however: the building permit cannot be executed (start of the works) until the environmental permit

has been obtained.⁶⁹ Completion of the rescue archaeology requirements is also a prerequisite for performance of the works.

The project sponsor may exceptionally be authorised to go ahead, at its own expense and risk, with execution of part of the works before obtaining the environmental permit. This authorisation requires a special decision from the Prefect and can only be considered if the public has been informed beforehand of the possibility of some works starting ahead of schedule. It may moreover only concern works that do not affect the interests protected by the regulations (protected species, land clearance, etc.).⁷⁰

You are advised to take into account the appeal deadline of two months⁷¹ as from the posting of the permit on the site, and to wait for the deadline to expire before starting any works in order to protect your project site.

66. This order shall indicate that the rescue archaeology requirements constitute a prerequisite for performance of the works ([Article R. 181-43](#) of the Environment Code).

67. Maximum timeframes governed by the regulations ([Article R. 514-3-1](#) of the Environment Code).

68. This order shall indicate that the rescue archaeology requirements constitute a prerequisite for performance of the works [Article L. 425-11](#) of the Town Planning Code).

69. [Article L. 181-30](#) of the Environment Code.

70. This is because any “specific authorisations” required by your project, such as a protected species waiver and/or a land clearing permit, will be issued to you through your prefectural authorisation order, in accordance with the review process integrated in the environmental permit. This is why works requiring such specific authorisations cannot be granted an authorisation in advance.

71. Maximum timeframe governed by the regulations ([Article R*600-2](#) of the Town Planning Code).



INDUSTRIAL INSTALLATION FACTSHEETS

FACTSHEET

ENVIRONMENTAL PERMIT

Reviewing the compatibility of an industrial installation project with the environmental requirements is a mandatory prerequisite for the installation of any new industrial activity. You are therefore required to conduct an overall analysis of your industrial installation project with regard to its various environmental impacts and to assess the associated risks. This is part of the application process for the **environmental permit**, if applicable to your project, which needs to be obtained prior to the building permit and the start of work.

This environmental permit procedure includes a large number of technical verifications and requires the involvement of numerous government departments. Consequently, it will take at least nine months to review your permit application,¹ and possibly longer as additional information is often requested.

THE SINGLE ENVIRONMENTAL PERMIT: A STREAMLINED PROCESS FOR PROJECT SPONSORS

The environmental permit results from the 2017 merging of several procedures that were formerly conducted separately. It includes the procedures required for projects subject to regulations on classified facilities for environmental protection (ICPEs) and projects under the Water Act (IOTAs: facilities, structures, works, activities), and the various specific authorisations governed by different codes, called “embedded procedures”.²

The aim of this merged procedure is to provide a clearer overview of the environmental issues of a project and to simplify procedures for the applicant while at the same time safeguarding the project. The integrated nature of the procedure means that it reduces permit processing times.

THERE ARE FOUR SUCCESSIVE PHASES IN THE ENVIRONMENTAL PERMIT PROCEDURE:

- A phase of preliminary discussions between the project sponsor and the government authority, called the “upstream” phase (*optional phase – see below*)
- A review phase of your application by the government departments³ and the various

contributors (including the environmental authority), lasting at least four months

- A public consultation phase, lasting three months
- A decision phase lasting at least two months, after which the permit will be issued by the Prefect of the *département*

THE “UPSTREAM” PHASE: PRELIMINARY DISCUSSIONS WITH THE AUTHORITIES TO BETTER SCOPE THE PROJECT

The environmental permit application may require several technical studies to be conducted, particularly in the context of [the impact study](#), which is the cornerstone of the file. Some of these studies are very lengthy and can last several months. You should therefore plan ahead for these timelines as much as possible so as not fall behind schedule in your installation project.

With this in mind, the preliminary phase, before you submit your application, is particularly important. Although it is not compulsory under the regulations,⁴ you are nevertheless strongly recommended to contact the government authorities in order to present your project and obtain an initial opinion from the departments that will be responsible for reviewing your file.

This “upstream” phase is intended to bring together all the relevant and regionally competent points of contact, under the direction of a coordinating department tasked with organising this preliminary scoping procedure, in order to jointly identify the procedures you will need to complete based on the nature and scale of your project.

This dialogue will also be crucial to guarantee mutual understanding of the project: clearing up any concerns before you submit your application will help ensure the review goes smoothly, and it will help you plan ahead as much as possible for any potential difficulties, particularly in terms of your project schedule.

For further information:

www.ecologie.gouv.fr/lautorisation-environnementale

1. This timeframe, and those indicated below, are governed by the regulations and are only provided as guidance.

2. Under the Forestry Code, the Energy Code, the Transport Code, the Defence Code and the Heritage Code (protected species waiver, land clearing permit, etc.).

3. Including departments under the Regional Directorate of Cultural Affairs (DRAC).

4. The procedure is detailed in [Article L.181-5](#) of the Environment Code.



FACTSHEET

UPSTREAM PHASE OF THE ENVIRONMENTAL PERMIT APPLICATION



Depending on the nature of your industrial installation project, numerous studies may be necessary to complete your environmental permit application. It is therefore strongly recommended that you contact the competent authority¹ as early as possible in the project design phase to ensure that you have everything required for the environmental permit application. This “upstream” phase of the environmental permit application is explicitly provided for by the regulations.²

The upstream phase is intended to bring together all the relevant and regionally competent points of contact, under the direction of a coordinating department tasked with organising this preliminary scoping procedure, in order to identify the requirements and constraints applicable to your project. Depending on the complexity of your project, an ad hoc project group may be put together.

There are specific instruments available to simplify the steps you have to take, legally and technically safeguard the project and help you fully grasp all the associated environmental and heritage issues. Depending on the nature of your project, discussions may focus on your approach for the environmental assessment or on your environmental permit application. The authorities will advise you on the appropriate instrument for your situation.

This preliminary dialogue between the project sponsor and the authorities has several aims. Although the prime purpose is for the project sponsor to learn about the applicable procedures and the documents they need to provide, it also serves to facilitate communication and ensure both parties share the same understanding of the project. The better the quality of your application from the outset, the less likely the authorities are to request additional information, which could lead to delays.

Lastly, you can obtain a personalised estimate of the timeframes involved in processing your application, based on the details of your project.

This preliminary discussion should not be interpreted as “sign-off” on your project by the government authorities or a guarantee of the outcome.

To summarise, the purpose of this upstream phase is to give you an integrated overview of all the procedures and help you plan ahead for any potential difficulties, particularly in terms of your project schedule. Planning ahead for such constraints is essential for your control of the project.

1. Most often the Prefecture of the département, or one of the State departments by delegation (DREAL, DDETSP, DDT)

2. [Article L.181-5 of the Environment Code](#)

RESOURCES AVAILABLE TO PREPARE YOUR APPLICATION FOR AN ENVIRONMENTAL PERMIT “PRE-PERMIT APPLICATION” STAGE

If you are planning to build and operate a new industrial site or upgrade an existing one (e.g. by increasing its capacity or diversifying its operations), you may be required to apply for an environmental permit due to potential environmental and public health hazards and nuisances.

To apply for a permit, you will need to put together a dossier to be appraised by the authorities. An important component of this dossier is an **impact study** (*étude d'impact*) – or an *étude d'incidence environnementale*, a different type of environmental impact study for lower-impact projects – which will enable the government authorities, local residents and non-profit organisations to understand the environmental impacts of the project.

In preparing for this process, the government authorities can help you with a “pre-permit application” stage, which is provided for in the regulations. They may recommend various resources or procedures in advance of submitting your dossier in order to facilitate the appraisal process, ensure your dossier is robust from a technical and legal standpoint, and help you understand the main environmental issues of your project.

There are two general resources that can help you with your project, the applicable procedures and the dossier for your **environmental permit** application:

- **Preliminary discussions** (*échanges préalables*) – These are discussions with competent authorities in advance of submitting your permit application allowing you to get the information you need to prepare your project and your dossier. They also give the authorities the opportunity to prepare to work in “**project mode**” so that they can provide guidance during both the dossier preparation and appraisal stages.
- **Project certificate** (*certificat de projet*) – This is a document you can request from the government authorities that is specific to your project and details the applicable rules and procedures. It may also include a project-specific appraisal timetable.

There are two procedures specific to the **environmental assessment** of the project:

- **“Case-by-case” examination** (*examen au cas par cas*) – It is **mandatory** to apply for this if your project is not automatically subject to an environmental assessment but exceeds certain regulatory thresholds. Based on the features of your project, and any measures proposed to prevent or mitigate potential impacts, the authority responsible for this examination (typically the regional prefect) will determine whether an environmental assessment is required (with an impact study). It is important to plan ahead for this procedure.
- **Preliminary scoping** (*cadre préalable*) **of the impact study** – If your project is subject to an environmental assessment, you can request a preliminary scoping opinion for the impact study in order to get clarification on the level of detail that will be expected.

PRELIMINARY DISCUSSIONS

As part of the “pre-permit application” stage², you can ask to hold preliminary discussions with government authorities in advance of submitting your dossier.

These discussions will allow you to present your project to the administration and ask an initial series of technical questions. The chances of the project being successful can be boosted by the standard of these preliminary discussions as they will enable issues, which would have otherwise led to delays at the appraisal stage, to be settled beforehand.

While these discussions are strictly optional, it is a good idea to take the opportunity, at the outset of your project, to talk to the departments that will be responsible for appraising your application. If necessary, the design office helping you with presenting your dossier and monitoring the appraisal process can take part in the preliminary discussions with you.

1. Unlike the other three items presented in this document (preliminary discussions, project certificate, preliminary scoping), which are optional resources available to a project developer preparing to apply for an environmental permit, a case-by-case examination is a regulatory requirement that all project sponsors must go through if their project exceeds certain regulatory thresholds.

2. Article [L. 181-5](#) of the Environment Code.



How to proceed and what to expect

The format and comprehensiveness of these discussions will depend on the nature of your project, the specifics of the area where your site is located and the type of questions you have. For example, discussions could take the form of one-on-one meetings, or larger talks bringing together the various government departments involved.

This process can help you quickly identify the right government contacts to speak to, particularly at the prefecture (which is responsible for coordinating the administrative aspects of your application) and the environmental inspection office (responsible for coordinating the technical aspects of the appraisal). During your discussions, the government representatives walk you through the broad steps in the appraisal process, what is involved in preparing and submitting your dossier, and the various steps you can take in advance of submitting your application (see further below). Potential issues or areas of concern may also be raised in order to facilitate the forthcoming appraisal process.

It is also an opportunity for you and the government authorities to decide on a provisional timetable for the appraisal of your application.

What to keep in mind

It is important not to interpret this type of assistance as a “sign-off” on your project by the government authorities. They cannot make any kind of preliminary commitment as to the future approval of a project; a final decision can only come at the end of the appraisal process, which includes a public consultation stage. Another factor in its decision will be the quality of the dossier you put together to demonstrate the environmental acceptability of your project. Furthermore, even if certain areas of concern are raised during your preliminary discussions, it is still possible that the authorities will ask you for additional information during the appraisal stage.

Useful contacts

To arrange discussions, you can contact the environment office at the prefecture for the *département* where your project is to be located, or a technical department:

- For industrial projects, contact the department responsible for *installations classées pour la protection de l'environnement* (classified facilities for environmental protection); this is usually the *département* unit of the DREAL³ (or the DDPP⁴/DDETSP⁵ for agri-food projects).
- For projects on sites with significant water involvement (so-called “IOTAs”: facilities, structures, works and activities requiring a permit or declaration under water legislation), contact the water authority of the DDT(M)⁶ in the *département* where your project is to be located.

If in doubt, the environment office at the prefecture will be able to direct you to the appropriate department.

PROJECT CERTIFICATE

As part of the environmental permit procedure and during your preliminary discussions with the government authorities, you can apply for a project certificate.⁷ The purpose of this document is to formalise your intentions and obtain a commitment from the government authorities specifying the rules and procedures applicable to your project and establishing a provisional timetable for the appraisal process.

A project certificate will list the government regulatory regimes, decisions and procedures applicable to your project as at the date of your application. It will also indicate where the project stands with regard to rescue archaeology measures.

By default, a project certificate will indicate the standard regulatory timelines for the appraisal of the dossier and the granting of the permit. However, you may be able to negotiate with the authorities to establish a project-specific timeline instead. The certificate will be signed by all stakeholders, formalising each party's commitments.

3. Regional Directorate for the Environment, Planning and Housing.

4. *Département* Directorate for Citizen/Consumer Protection

5. *Département* Directorate for Employment, Labour, Solidarity and Citizen/Consumer Protection

6. *Département* Directorate for Regions (and the Sea)

7. Article [L. 181-6](#) of the Environment Code.

How to proceed

You can apply for a project certificate at the prefect of the *département* where your project is to be located. Your application should include:

- Your identifying information
- The location of the site (with a plot plan and land register numbers)
- The nature and main features of the project
- A brief description of the initial status of the areas concerned by the project and the potential environmental impacts

The prefect will issue a project certificate within two months⁸ of receiving your application.

While applying for a project certificate, you can take the opportunity to also apply for other “pre-permit application” measures, such as a **case-by-case examination**, **preliminary scoping of the impact study**, or an **urban planning certificate**. The government authorities will coordinate with the local planning authority and append its decisions to the project certificate.

What to keep in mind

The quality of the project certificate will depend on the completeness of the information you provide the government authorities about your project and the site. This information will also factor into the government’s ability to commit to a timetable that departs from the standard regulatory timelines.

The details indicated on the project certificate cannot be invoked as part of an appeal against the environmental permit that is eventually issued. However, it does create a liability for the administration in the event the execution of your project is adversely affected as a result of incorrect information or failure to keep to the timetable.⁹

CASE-BY-CASE EXAMINATION

Some projects to build, extend or modify industrial sites – depending on the specific project features, particularly if certain regulatory thresholds are exceeded – are automatically subject to an environmental assessment process, which includes an impact study. Other projects that are not automatically required to undergo an environmental assessment, whether due to the type of project or because they exceed “intermediate” thresholds, must apply for a “case by case” examination

to determine whether an environmental assessment must be conducted in light of potential impacts on the environment.

The list of project types subject to an environmental assessment either automatically or on a case-by-case basis is set out in the regulations.¹⁰

If a case-by-case examination determines that an environmental assessment is not required, this decision must be included in the dossier for the permit application (to explain why there is no impact study or, more broadly, an environmental assessment) along with an *étude d’incidence environnementale*.

How to proceed

With specific exceptions, the regional prefect is responsible for case-by-case examinations.

If you are also applying for a project certificate, you can append your application for a case-by-case examination. This will ensure both are handled by the same person.

Otherwise, you will need to submit your application for a case-by-case examination to the regional prefect, either online via service-public.fr (link in French only) or using another method depending on your region (email, post, etc.).

You will need to use form [Cerfa 14734*03](#) (link in French only), including Appendix 1 (identifying information on the project owner or applicant), and describe the features of the project, its potential environmental and public health impacts, and the measures planned to prevent or mitigate any potential negative impacts.

Upon receipt of your application for a case-by-case examination, the responsible authority has 15 days to verify that your application is complete and request any additional information. After evaluating the potential residual impacts of the project, the DREAL will decide whether or not an environmental assessment is required and notify you of their decision within 35 days. If you do not receive a response within 35 days, it means an environmental assessment is required.


What to keep in mind

Your application for a case-by-case examination must include all the information needed to fully understand your project and the associated environmental

8. Note that the prefect may extend this period by another month.

9. Subject to the accuracy and completeness of the information you originally provide to the administration.

10. The list can be found in the table appended to [Article R.122-2](#) of the Environment Code.




issues. The authority responsible for the case-by-case examination must be able to determine if there are any potential notable environmental impacts involved in your project (including archaeological heritage impacts) and see your proposed prevention and mitigation measures. As a result, it is recommended that you include on the form (or append as a separate document) any information demonstrating a lack of notable environmental and public health impacts, whether with or without implementing prevention or mitigation measures.

In the event you are not required to undergo an environmental assessment, the environmental inspector responsible for appraising your environmental permit application will verify that the features of your project (and any proposed prevention and mitigation measures) as described in your application dossier match the information used to decide an environmental assessment is not required. If there are any discrepancies, you may be asked to re-apply for a case-by-case examination.

PRELIMINARY SCOPING OF THE IMPACT STUDY

If an environmental assessment is required for your project, which involves an impact study, you can ask the prefect of the *département* to issue a preliminary opinion on the scope and degree of detail of information to be provided in the impact study. You can also ask the government authorities to arrange a meeting with local stakeholders that have an interest in your project so they can share their observations on the potential impacts of the project.

The purpose of the preliminary scoping is to provide you with information that will help you adapt the content of the impact study to the specific vulnerabilities of the local area and the potential



environmental or public health impacts of your project, in particular the degree of detail of the various topics covered in the impact study. The opinion may include other information the prefect deems useful for you to know (e.g. zoning rules applicable to your project) and it may define a specific scope for the study of each of the project's impacts.

You may also consider reaching out to local residents' associations and environmental protection groups to present your project and seek feedback for potential adjustments. This will help you identify which sections of the impact study will require especially careful and thorough consideration, to proactively address concerns that may arise during the public consultation.

Note that even with a preliminary scoping opinion, there is still a possibility that the authorities will ask you to expand on the impact study submitted with your permit application in the event they find it lacking or unclear while your dossier is being appraised.

How to proceed

You can apply for a preliminary scoping opinion from the prefect of the *département*.¹¹ Your application must include a document describing the specific features of your project, the area likely to be affected, the main environmental issues and the potential impacts of the project. You should specify which areas you require clarification on in terms of scope or the degree of detail expected to be provided in the impact study. Upon receipt of your application, the prefect will consult the environmental authority, the regional public health agency and the communities concerned by the project in order to prepare its opinion.

11. If you are also applying for a project certificate, this request can be appended to your application.



FACTSHEET IMPACT STUDY

In order to obtain your environmental permit, if your industrial installation project is subject to an environmental assessment, you will be required to assess the impacts of the project on the environment. This analysis will take the form of an impact study, which proposes a cross-cutting analysis framework for all the potential impacts of your project, specifically on the biodiversity present on the site, cultural/archaeological heritage, water, soil and human health, with the aim of preventing environmental impacts and hazards. Its content is governed by regulations.¹ This analysis will concern the construction and operational phases of your project.

The impact study is a key component of the application and one of the main factors on which the Prefect of the *département* will base its permit decision. Its purpose is also to improve your project in terms of preventing environmental impacts and ensuring the transparency of your approach, as it will be examined by stakeholders and local residents during the public inquiry. The quality of the impact study will thus influence the general acceptance of the project. The environmental authority will issue an opinion on it, which will be made public and to which you will be required to provide a response.

As project owner, you are responsible for taking the environment into account in your industrial installation project and for carrying out the impact study. It is, however, highly advisable to entrust all or part of the drafting of the study to a specialist consultant.

The quality and exhaustiveness of the impact study, which will be reviewed by the government departments and by the environmental authority, and on which the public will be consulted, will ultimately determine the granting of the environmental permit; it must therefore be produced with particular care. With a view to preventing impacts, you must extensively detail the measures designed to avoid, mitigate and/or offset (AMO) the effects of the industrial installation.

The impact study, which should demonstrate a continuous improvement approach presenting the alternatives studied, should ultimately make it possible to conclude that there will be no net loss in biodiversity after implementation of AMO measures. AMO measures should be planned far upstream of the project. The first type of measure, avoidance, which is to be preferred as it is the only solution guaranteeing no degradation of the environment, entails adapting the project (in terms of technical details, geography, etc.). The third type of measure, offsetting, which should only be used as a last resort, must follow standard practices to ensure the absence of any lasting residual impact.²

The exact content of the impact study will be determined in accordance with the principle of proportionality, according to the environmental sensitivity of the site and the influence of the project, the scale and nature of the development, and the foreseeable impacts of the project on the environment and human health.³ The issues identified will therefore have to be ranked, in order to determine those requiring an in-depth analysis, differentiating them from those that can be dealt with more succinctly. This principle of proportionality will determine the degree of exhaustiveness of the technical analysis to be carried out by the project sponsor or its design office. If the degree of exhaustiveness is adjusted during the production of the ecological evaluation (for example, if it proves necessary to acquire more detailed data on the fauna and flora present on the site via an ecological study of a complete biological cycle, in other words over all four seasons), this could mean that additional time may be needed: thorough advance planning of your overall approach will help you stay on schedule.

To ensure the appropriate degree of proportionality, you can ask the government departments for prior guidance as part of the “upstream” phase of the environmental permit. Together with the authorities, you will be able to specify the scope and content of the impact study based on the details of your project.

1. [Article R.122-5](#) of the Environment Code

2. [Guide “Approche standardisée du dimensionnement de la compensation écologique – Guide de mise en œuvre”, CGDD-OFB-CEREMA, 2021](#)

3. Even if the content of the impact study is proportional to the environmental sensitivity of the site, it must nonetheless deal with all the environmental factors listed in [Article L.122-1](#) of the Environment Code and provide all the information listed in [Article R.122-5](#) of the Environment Code.



Over and above the strictly environmental aspects of the impact study, it must include a section specifying the impacts of the project on cultural heritage, including archaeological heritage. You are therefore required to contact the Regional Directorate of Cultural Affairs (DRAC) to obtain any relevant information on the state of the site and the risks presented by the to any archaeological remains. The DRAC will be able to help you study the site (specifying whether the selected installation site is within an area of archaeological sensitivity or a heritage protection perimeter, for example) and will

inform you of any applicable rescue archaeology measures in order to avoid, mitigate or offset the impacts of your project on archaeological remains.

For reference, the [Projets-environnement](#) website offers access to permit application documents and environmental data for projects requiring an impact study. You may be able to find pre-existing environmental data or studies for your chosen site, or technical information for projects potentially similar to yours, thereby helping you with your impact study.



FACTSHEET

FLORA/FAUNA SURVEY

In application of the European directives on habitats, flora, fauna and birds,¹ the Environment Code² governs the protection of species listed as “protected”, which may not be harmed (this applies to both individuals of these species and their habitats), and the conservation of natural habitats.

To be able to implement your project, you have to determine whether protected species are present on or near the site of your industrial project and, should your project have the potential to harm them, propose measures to avoid, mitigate, or possibly offset its impacts.

This analysis is conducted through a flora/fauna survey, the aim of which is to identify biodiversity conservation issues on the project site and its surrounding area and determine any associated measures. It will include a description of the initial state of the project environment, a section on identifying the potential presence of protected animals or plant species and their habitats, and a map of the areas impacted by the project.

This survey is mandatory for projects subject to environmental assessment as part of an impact study. For other projects, to find out whether they are likely to harm protected species, a survey is to be carried out if a specific sensitivity is identified, that is to say if the presence of protected species and their habitats is confirmed or probable due to the nature and attributes of the natural environment (for example, in a wetland area, or if land clearing is being planned, or if the project is located near an area of ecological importance).³ You may call upon a specialised service provider to perform the survey or give you technical advice.

Collecting data on the local flora and fauna, which is vital for establishing the ecological evaluation, can take several months (most often a complete year in order to cover the entire biological cycle of any species actually or potentially present). This timeframe must be planned for and taken into account in the overall design of the impact study.

You are advised to carefully determine the scope of the flora/fauna survey and be meticulous about its content, by detailing and substantiating the choices and assumptions on which the analysis is based (size

of study areas, choice of species studied, etc.). The government departments may ask you to go into certain aspects in more detail and provide additional information if it finds that certain issues have been underestimated or poorly analysed. Any such requests for additional information – and the time it takes you to respond – are likely to introduce delays in the overall review of your environmental permit application.

Government departments may offer assistance in the upstream phase of the environmental permit application, to provide you with information to help you scope your project. They might, for example, give you an opinion on the delineation of the chosen area, on the methodology to be used or on the study validity period in view of the features and sensitivity of the chosen site. You will also be able to check whether your project requires a protected species waiver⁴: this procedure will be based on an in-depth flora/fauna survey and the defining of appropriate avoidance, mitigation and offsetting measures. Granting a waiver requires proof of the existence of compelling reasons of overriding public interest for the project to be carried out, and the absence of alternative solutions with a lesser environmental impact; the waiver should not adversely affect the favourable conservation status of species populations in their natural range in the wild.

To facilitate and safeguard future projects in areas intended to accommodate industrial activities, the first-level developer may have collected ecological data for the chosen areas and updated this data for the purpose of the flora/fauna inventory. This would mean up-to-date environmental information would be available for project sponsors, who could use it directly for the environmental permit application, and the impact study in particular.

It is therefore recommended that you contact the owner or manager of the area chosen for your installation to see whether this kind of environmental data is available.

For more details: See the [technical memo](#) of 5 November 2020 on the scoping of the production and updating of flora/fauna inventories for projects subject to environmental assessment.

1. [Council Directive 92/43/EEC of 21 May 1992](#) (the “Flora Fauna Habitat Directive”) and [Directive 2009/147/EC of 30 November 2009](#) (the “Birds Directive”)
2. [Articles L.411-1](#) et seq. of the Environment Code
3. Natura 2000 areas, Natural Areas of Ecological, Faunistic and Floristic Interest (ZNIEFFs), protected areas, etc.
4. [Article L.411-2](#) of the Environment Code

FACTSHEET

PRIOR CONSULTATION

The August 2016 reform of public participation in policy-making decisions with an environmental impact gave more prominence to “upstream” participation, in other words public involvement very early on in the life of the project, in particular before permit applications are submitted. “Upstream” participation complements “downstream” participation, which takes place after an application is reviewed but before the government authority issues a decision, for example in the form of a public inquiry or an online public participation procedure.

For industrial projects¹ where upstream participation is organised, it will take the form of a prior consultation procedure, which may or may not be overseen by sponsor.

A prior consultation can be held for any industrial project. In some cases, specific rules will need to be followed pursuant to the Environment Code.

WHAT IS A “PRIOR CONSULTATION” AS DEFINED IN THE ENVIRONMENT CODE?

A prior consultation is an opportunity to debate the appropriateness, objectives and main features of the project, any associated social or economic issues, and any significant impacts on the environment or land use.

If necessary, the consultation enables alternative solutions to be debated, including not proceeding with the project. It also addresses how the public will remain informed and be able to participate after the prior consultation.

A prior consultation can be held for any industrial project subject to an environmental assessment.²

Generally speaking, the organisation of a prior consultation is left to the initiative of the project owner. However, there are a number of situations in which the project sponsor may be required to organise a prior consultation.

SITUATIONS THAT CAN LEAD TO A PRIOR CONSULTATION

Depending on the details of the project, its scope and scale in particular, there are several situations that may make a prior consultation either mandatory or optional:

For projects of national interest, referral to the National Public Debates Commission (CNDP)³ may be either mandatory (projects of more than €600m) or optional (projects of between €300m and €600m), usually followed by a decision to hold a prior consultation overseen by one or more sponsors.

Certain projects below the CNDP referral thresholds may fall within the scope of application of the public right of initiative (see box below for more details). The right of initiative offers the public, municipalities and non-profit organisations the right to ask the Prefect to hold a prior consultation overseen by one or more sponsors.

- The project owner may also be required to hold a consultation procedure overseen by one or more sponsors by the authority responsible for authorising the project.
- The project owner of any project subject to an environmental assessment may always decide of their own initiative to hold a prior consultation, with or without a sponsor, in order to involve the public – local stakeholders in particular – in the preparation of the project and its integration into its environment.

1. Except for projects of national interest with particularly high stakes, which may be submitted for public debate further to a decision by the National Public Debates Commission (CNDP)

2. [Article L.121-15-1](#) of the Environment Code

3. See www.debatpublic.fr/comment-saisir-cndp

PUBLIC RIGHT OF INITIATIVE AND DECLARATION OF INTENT

The **right of initiative**, under which a prior consultation may be requested, applies to projects subject to an environmental assessment that meet the following criteria:

- Projects with a public project owner, for which the anticipated expenditure exceeds €5m, exclusive of taxes
- Private projects for which the total amount of public investment subsidies exceeds this same threshold

For projects falling within the scope of the right of initiative, the project owner must publish a **declaration of intent** containing certain details (reasons for the project, potential impacts on the environment, etc.).

Following publication of this declaration of intent, the public right of initiative may then be exercised with the Prefect, within a period of two months, by:

- a number of adult European Union citizens resident within the perimeter of the declaration of intent equal to 20% of the population registered in the municipalities within this same perimeter, or 10% of the census population of the *département(s)* or region(s) containing all or part of the land mentioned in the declaration of intent
- a regional, *département* or municipal council, or the deliberative body of a public intermunicipal cooperation establishment (EPCI) whose jurisdiction includes all or part of the land mentioned in the declaration of intent
- a nationally certified environmental protection association, or two associations, or a federation of certified associations within the region or *département* containing all or part of the land mentioned in the declaration of intent

PLANNING A PRIOR CONSULTATION

The prior consultation procedure must comply with certain requirements: it must last between 15 days and 3 months; it must be publicised 15 days before the beginning of the consultation (both online and by means of signs posted on the location(s) concerned, plus, in certain cases, by means of a local publication); a project file must be published online; and a post-consultation report must be published, in respect of which the project owner must indicate the measures it deems necessary to address the takeaways from the consultation.

As a best practice, the geographical area covered by the actions to publicise the prior consultation should at least cover the public inquiry radius. More broadly, all populations liable to be affected by the project should be informed, rather than simply the residents of the municipalities in which the project is intended to be located.

Moreover, when the prior consultation is overseen by one or more sponsors, they are appointed by the National Public Debates Commission (CNDP). Consultation sponsors are bound by an obligation of neutrality and impartiality and their role is to guarantee the quality, intelligibility and truthfulness of the information released, along with the public participation procedures enabling everyone who so wishes to express their opinion. On completion of the consultation, they are tasked with producing a report compiling the observations made and the proposals presented.

In order to optimise the organisation of this prior consultation, you should call on a service provider specialising in this type of procedure.

FACTSHEET

INSTALLATION ON A FORMER INDUSTRIAL SITE

In order to carry out your project, you may be required to identify one or more areas for the installation of your activities. The choice of the right site could make all the difference for your project, potentially facilitating certain technical or logistical aspects, or allowing you to benefit from prior development work.

In this respect, land which has previously housed industrial activities (brownfield sites) may be suitable for the installation of your project, for several reasons:

- From an administrative viewpoint, the local urban development plan would ostensibly be compatible with an industrial project
- Project engineering could be simplified, with some technical studies already having been carried out or simply needing to be updated (the flora/fauna study for example)
- These types of sites often have advantages in terms of logistics and accessibility
- There tends to be better social acceptance of industrial installations on these sites

This type of site could therefore facilitate the procedures involved in your project. However, particular attention must be paid to the site's general environment (reuse of wasteland does not mean that there are no environmental implications for the land in question), its administrative situation and any potential usage constraints that may have been set when the previous industrial activity ceased.

First of all, if you plan to establish your operations on a former industrial site, depending on what has happened to the site since activities ceased, you will be required to pay particular attention to any environmental issues (fauna, flora, wetlands), as well as to any residual pollution associated with previous periods of operation. This pollution status is a point of particular attention that needs to be planned for, by consulting the available documentation on the site.

In this respect, the provisions of the ALUR Act,¹ transcribed into the Environment Code,² aim to improve information about soil pollution and to regulate construction on polluted land. Such information is recorded in soil hazard information sectors (*secteur d'information sur les sols*, or SIS), which are areas of known soil pollution requiring soil surveys and pollution management measures in order to protect public health and safety and the environment. SIS details are appended to planning documents and published on the [Géorisques](#) portal.

If you acquire a site, you may request a soil analysis from the last operator or the owner of the land. If necessary, a management plan may also be drawn up by the remediation project manager, jointly with the competent local government (municipal or intermunicipal), in order to make the condition of the site compatible with the planned use.³

For more information, you can consult the [page](#) on polluted sites and soils on the website of the Ministry for the Ecological Transition, or the [Infoterre](#) portal.

The process of taking over a former industrial site will require that you check its administrative situation. If the land in question previously housed a classified facility for environmental protection (ICPE), you must ensure that there is administrative confirmation that activities have ceased. The cessation of activity is usually at the expense of the last operator of the site. It should be noted that before land which formerly housed an ICPE is sold, the seller must inform the buyer in writing.⁴

Finally, when old facilities are shut down, a consultation may have been organised between the operator, the local authorities and the owner, in order to determine a "future use" of the site. This process may have led to certain usage restrictions being placed on the soil, which will be transcribed into the town planning documents or notarial deeds: you will therefore need to ensure that your project is compatible with current usage restrictions. If not, you can submit an application to the Prefect of the *département* for a change in usage.

1. Act 2014-366 of 24 March 2014 on housing access and urban renovation, known as the "ALUR Act"

2. Article [L.125-6](#) of the Environment Code

3. For more information, consult the [national methodology for the management of polluted sites and soils](#)

4. Article [L.514-20](#) of the Environment Code



FACTSHEET

RESCUE ARCHAEOLOGY



Before undertaking any environmental permit or planning permission application procedure, you have to check whether the site in question has assets that could concern archaeological cultural heritage.

Your points of contact for this purpose, for projects anywhere in France, are the devolved departments of the Ministry of Culture, namely the Regional Directorates of Cultural Affairs (DRACs) and the Directorates of Cultural Affairs (DACs) in the overseas territories, and the Department of Subaquatic and Submarine Archaeological Research (DRASSM), which is responsible for subaquatic and submarine archaeological heritage.

If the intended site of your installation project is located in a public development zone (ZAC), the lessor or the developer will be able to inform you of the history of any studies or procedures that have been previously carried out. Town planning documents, available at the town hall, can also provide you with preliminary information. For instance, you can determine whether your site is located in an area of presumed archaeological requirements (ZPPA), where development work subject to planning permission (building permit, conversion permit, demolition permit) may be subject to rescue archaeology requirements.

These steps and checks may have previously been carried by the first-level developer. In the case of a ZAC or subdivision operation carried out after entry into effect of the Rescue Archaeology Act of 1 August 2003, rescue archaeology procedures should have already been carried out. However, if these procedures have not been carried out by the first-level developer or by yourself through an advance requirements analysis process, they may take place during the review process.

In order to check the state of the prospective installation site with regard to potential rescue archaeology requirements, it is recommended that you contact the competent regional archaeology department of the Regional Directorate of Cultural Affairs (DRAC)¹ for the region in question and file a prior information request. There are specific procedures in place to assist you in the administrative

steps. Depending on the state of available archaeological information (recorded in the French national archaeological map),² the DRAC will assess the likelihood of your installation project impacting any known, presumed or not-yet-assessed archaeological heritage, and may, if applicable, order different rescue operations.³ This information will also be useful for the impact study (or limited environmental impact assessment) for your environmental permit application.

In case of doubt about the archaeological potential of the site, a rescue archaeology evaluation may be ordered by the Prefect of the region on proposal by the DRAC or DAC, or by the Minister of Culture on proposal by the DRASSM, in order to identify any elements of archaeological heritage present on the site. This evaluation is always carried out by a public operator (the [French National Institute of Rescue Archaeology](#) – INRAP – or an [authorised local government archaeological department](#)).

If the evaluation finds remains of scientific or patrimonial significance, the Prefect of the region may require that in-depth excavations be carried out to rescue archaeological remains by means of study or request a project amendment to reduce its impact on the archaeological remains.

These excavations, if applicable, are to be carried out under the responsibility of the land owner/developer by a qualified rescue archaeology operator or by the INRAP. The duration and cost of the work will be set by means of a contract. The DRAC will help select the operator (based on whether the proposals meet the scientific specifications of the excavation order) and will authorise the start of excavation.

While the State funds evaluations through the rescue archaeology fee (payable by any public or private companies or individuals planning to perform works affecting the subsoil), the cost of excavation work is borne by the developer.⁴

The implementation of rescue archaeology work is a project prerequisite.

1. In some regions your point of contact may be the Directorate of Cultural Affairs (DAC), or the Department of Subaquatic and Submarine Archaeological Research (DRASSM).

2. Dedicated tooltip (see upstream phase document for RA)

3. If the regional archaeology department within the DRAC confirms that your project will give rise to requirements for rescue architecture operations, you may ask for them to be carried out in advance (without waiting for the outcome of the various procedures) so as not to impact your project schedule.

4. In some cases, the developer may receive a subsidy or have all or part of the cost of the excavation covered by the French national rescue archaeology fund.

FACTSHEET

UPSTREAM PHASE OF THE RESCUE ARCHAEOLOGY PROCEDURE

For your industrial installation project, you must check whether the prospective site contains assets that could concern archaeological¹ cultural² heritage. For this reason, rescue archaeology measures are required under various regulations.

Consequently, at the earliest stage possible of your intended project, it is recommended that you contact:

- for a project in a terrestrial environment, including inland waters: the Regional Directorate of Cultural Affairs (DRAC) or the Directorate of Cultural Affairs (DAC), specifically the regional archaeology department
- for a project located in the public maritime domain: the Department of Subaquatic and Submarine Archaeological Research (DRASSM)

The archaeology departments are there to inform and assist you with their expertise during the preparation of your project (as from the stage of technical studies, feasibility studies, scheduling, etc.), well before its actual implementation.

IDENTIFYING AN INSTALLATION SITE AND ANY POTENTIAL RESCUE ARCHAEOLOGY IMPLICATIONS

You can consult the urban planning documents (the appendices of the local urban development plan in particular) of the municipality in which you wish

to establish your project in order to get an initial idea of the potential presence of archaeological assets.³ Information about cultural heritage, including archaeological information, is reported to municipalities or their groupings⁴ and is available to the public.⁵

As a guideline, if all or part of the potential sites have been subject to a public development zone (ZAC) or subdivision procedure,⁶ the rescue archaeology procedures should have already been carried out. Specifically, subdivision or ZAC creation files concerning a surface area of at least 3 hectares, or located in an Area of Presumed Archaeological Requirements (ZPPA), are subject to the opinions of the DRAC, DAC, DRASSM and may be subject to rescue archaeology requirements (evaluation, excavation and/or project amendment).

However, this procedure does not in itself enable the existence of archaeological remains to be ruled out, or the state of archaeological knowledge of the potential site(s) for the installation of your project to be updated. Consequently, it is recommended that you contact the regional archaeology department directly, firstly to obtain the information recorded in the national archaeological map⁷ and secondly to find out the measures it considers taking in view of the potential impacts of your project. According to the state of progress of your project, whether one or more potential locations are involved, you may

1. Items of archaeological heritage include any remains or other traces of the existence of humanity whose safeguarding and study, particularly by archaeological excavations or discoveries, can be used to trace back the development of the history of humanity and its relationship with the natural environment.

2. Cultural heritage, within the meaning of the Heritage Code, encompasses all immovable or movable assets, whether public or private property, which are of historical, artistic, archaeological, aesthetic, scientific or technical interest. The cultural heritage management policy aims to identify and inventory elements of cultural heritage, to conduct studies so that they are taken into account in land use planning and development, to conserve and protect them through appropriate measures, and to inform society as a whole – from private individuals to authorities – of their existence.

3. Archaeological assets are inventoried in the national archaeological map (CAN) produced and managed by the archaeology departments. It contains location and identifying information about known archaeological assets (archaeological entities) and areas of presumed archaeological requirements (ZPPAs) defined according to the archaeological potential and sensitivity of each area.

Local government departments tasked with producing town planning documents and issuing works authorisations routinely receive deeds (orders and plans) for the creation of ZPPAs and, at their request, extracts from the national archaeological map ([Article R.522-4](#) of the Heritage Code). Updated map data is also periodically issued (when town planning documents are produced or revised) in accordance with rules for ensuring the conservation of archaeological assets ([Article L.522-6](#) of the Heritage Code). This is one of the reasons why it remains under the exclusive jurisdiction of the State. This information is available to the public from the Prefecture, town hall or DRAC.

4. [Article L.132-2](#) of the Town Planning Code

5. [Article L.132-3](#) of the Town Planning Code

6. After entry into force of the Rescue Archaeology Act of 1 August 2003

7. Cultural heritage concerning archaeology includes fragile and non-renewable assets concealed in the subsoil and above ground. Apart from certain confirmed archaeological assets, discovered thanks in particular to State-run archaeological operations, there remain a large number of assets yet to be discovered, verified and detailed. As new assets are constantly being added to the national archaeological map (CAN), the absence of data therefore does not necessarily mean an absence of archaeological assets. As it is continually being updated, the CAN only provides the status of knowledge at a specific point in time ([Articles R.522-3](#) to 5 of the Heritage Code).

be given a detailed and up-to-date statement of the archaeological information known to date, in order to guide your choice of installation site.

INTEGRATING RESCUE ARCHAEOLOGY MEASURES INTO THE PROJECT DESIGN PHASE

The late integration of any rescue archaeology measures can have impacts on the costs and timeframes of your project. It is therefore important to identify any archaeological assets present on the candidate site(s) as from the project design phase, because the project can still evolve and be fine-tuned to mitigate any impacts. The impact assessment work and, insofar as possible, project adjustments to avoid, reduce and, as a last resort, offset any impacts, can be conducted through the following instruments (governed by the Environment and Heritage Codes):

- An impact study (or limited environmental impact assessment)
- A prior information request
- An advance requirements analysis request
- If your project is required to undergo an impact study (or limited environmental impact assessment), the provisions of the Heritage Code may, at your request, be brought into play at key moments in the progress of your project:
- A prior information request may be made before or during the impact study (or limited environmental impact assessment), so that the response of the archaeology department can be integrated in it.
- An advance requirements analysis request may be made after finalising the impact study (or limited environmental impact assessment) to identify all the issues (particularly environmental issues) associated with your project and the land on which it is located. This will help ensure the archaeological work goes smoothly (in terms of procedure, schedule, etc.).

Impact study (or limited environmental impact assessment)

As from the stage of the impact study (or limited environmental impact assessment), you must analyse the impact of your project on heritage assets, including archaeological assets.⁸ You are encouraged, directly or via your design office, to contact the DRAC to obtain the following:

- An updated state of knowledge of the site chosen for your project; if that knowledge is cursory or deficient, the archaeology department may ask you to undertake complementary studies, or the DRASSM may propose to carry out an archaeological evaluation at sea.⁹

An assessment of the foreseeable impacts of your project on the archaeological assets: the archaeology department will inform you of any rescue archaeology measures that can be planned in order to avoid, reduce or offset these impacts.

The impact study (or limited environmental impact assessment) can allow several scenarios to be studied for your project, and thereby confirm whether the prospective location and the initially planned technical methods of implementation are appropriate or not, so that they can be adjusted if necessary.

Prior information request

To obtain an expert opinion on the risk of your project impacting archaeological assets and the possibility of being subject to an archaeological requirement, you can send a letter requesting prior information directly to the archaeology department.¹⁰ In this letter, you must indicate or enclose documents relating to your project, namely:

- Its location: land-register reference(s), surface area(s), where on the land it is to be located
- A description of the project: the technical methods of implementation being planned, specifically the foundation construction techniques and depth

8. Articles [L.122-1-III-4°](#), [R.122-5-II-4°](#), [R.181-14](#), [L.181-3](#), [L.511-1](#) and [L.211-1](#) of the Environment Code

9. Complementary archaeological studies: These enable the presence of archaeological assets that could be affected by the project to be assessed and identified. In terrestrial environments they take the form of documentary research and field surveys. In marine environments, the archaeological assessment at sea ([Article R.523-15-1](#) of the Heritage Code) consists in performing undersea studies, exploration or expert assessments. For this latter assessment you have to sign an agreement ([Article R.523-38-1](#) of the Heritage Code) with the INRAP or the DRASSM ([Article R.52333](#) of the Heritage Code). This assessment results in the submission of a report which enables the DRASSM to assess any subsequent follow-up actions.

10. Article [R.523-12](#) of the Heritage Code



Within a period of two months, provided it has received sufficient information to assess the impact, the archaeology department will inform you whether the project will give rise to a rescue archaeology requirement, supported by an updated archaeological knowledge status. There are three types of requirement: evaluation, excavation and project amendment.¹¹ If no reply is given by the end of the two-month period, the archaeology department is deemed to have waived any rescue archaeology requirements. This waiver is valid for five years,¹² but only:

- outside areas of presumed archaeological requirement (ZPPA)
- if your project undergoes no substantial amendments
- if the status of archaeological knowledge does not change



Advance requirements analysis request

Following a prior information request (see above), if the response from the archaeology department is that your project will give rise to rescue archaeology requirements, you can request that they be performed in advance.¹³ This will allow you to undertake and implement the archaeological requirement(s) without waiting for the finalisation of your project and before submitting the permit application(s) required under the various regulations applicable to your project. You must guarantee the accessibility of the site(s) to the archaeologists.

There are three types of archaeological requirement: evaluation, excavation and project amendment. Most frequently an evaluation is carried out first. Depending on the scientific results, an excavation and/or project amendment may be called for, in which case next steps will be discussed with you.

11. Article [R.523-15](#) of the Heritage Code

12. Article [R.523-13](#) of the Heritage Code

13. Article [R.523-14](#) of the Heritage Code

FACTSHEET

FACTORING RESCUE ARCHAEOLOGY INTO PROJECT PLANNING

In the context of your industrial installation project, you must check whether the prospective site contains assets that could concern archaeological cultural heritage. For this reason, rescue archaeology measures are required under various regulations.

These rescue archaeology requirements have to be taken into consideration in your overall approach. To this end, you can apply for the following, simultaneously or separately:

- Planning certificates (for information and/or operational)
- A project certificate, which will inform you of the situation of your project with regard to rescue archaeology requirements
- If not previously requested, prior archaeological information and, if applicable, an advance requirements analysis request

If you have already started the recommended rescue archaeology procedures before making the permit applications and your project has not changed since, you can consult the DRAC¹ to make sure you have no further steps to take concerning archaeology. If not (or if your project has undergone changes since the procedures were carried out), your project may be subject to rescue archaeology requirements as part of its review.

Your project may therefore be subject to review by the DRAC as part of the review of your environmental permit and planning permission applications. So as not to cause delays in the review phase, you are strongly recommended to make sure that these aspects have been addressed before you submit your environmental permit and planning permission applications.

IN THE CONTEXT OF PROCEDURES REQUIRED UNDER THE ENVIRONMENT CODE

For projects subject to an environmental permit and impact study, the coordinating department will handle the referral to the DRAC, which may issue rescue archaeology requirements (evaluation, excavation, project amendment). You will be notified directly of its response within two months. It should be noted that if your project is not subject to an impact study (including after case-by-case examination by the environmental authority) but is subject to an environmental permit, a referral may still be made to the DRAC for its opinion.²

Any requirements issued will be incorporated into the environmental permit order. This order will specify that performance of your works is conditional upon the fulfilment of the rescue archaeology requirements:³ this obligation should be planned for in the organisation of your project.

Subject to the timeline involved in preparing for the issued archaeological requirements (appointing or selecting an operator, developing the scientific protocol, drawing up the agreement with the operator, etc.), it is possible to begin before the environmental permit application is filed. It is nevertheless recommended to use the impact study to ensure the field archaeology work is carried out in consideration of any environmental heritage conservation requirements.

If your project is subject to notification or registration, you must send it for review directly to the DRAC, which has one month (or two months if the project requires an impact study) to issue any rescue archaeology requirements.

1. The Regional Directorate of Cultural Affairs (DRAC), the Directorate of Cultural Affairs (DAC) or the Department of Subaquatic and Submarine Archaeological Research (DRASSM)

2. [Article D.181-17-1](#) of the Environment Code

3. [Article R.181-43](#) of the Environment Code

IN THE CONTEXT OF PROCEDURES REQUIRED UNDER THE TOWN PLANNING CODE

The Prefect of the region, through the DRAC and counting from the time of referral to the DRAC, has one month from receipt of a complete file (or two months if the project requires an impact study) to order an archaeological evaluation or make known their intention to issue a requirement for rescue archaeology excavation and/or project amendment. These latter two decisions are made within three months following referral to the DRAC.

Planning permission cannot be granted before the Prefect of the region has ruled on the rescue archaeology requirements. If the Prefect of the region has issued rescue archaeology requirements, the construction or development work cannot be undertaken until these requirements have been fulfilled.⁴

It is recommended to take action before filing the planning permission application in anticipation of rescue archaeology requirements (e.g. request for opinion or advance evaluation request made to the DRAC).

Referral to the DRAC is mandatory if the projected work is in an area of presumed archaeological requirements.

If the project consists in creating a public development zone (ZAC – zone d'aménagement concerté) with a surface area of less than 3 hectares, it is mandatory for the public entity that took the initiative to create the ZAC to refer the project to the DRAC by sending it the approved project file.⁵ More generally, ZAC creation projects and subdivision operations that concern a surface area exceeding 3 hectares, whatever their location, are mandatorily referred to the DRAC.

The authorities responsible for issuing planning permission can refer any planning permission application or prior declaration file⁶ to the DRAC, on the basis of the information concerning the location of the archaeological heritage of which they have knowledge (and in particular the information communicated under the State public information notice).

Lastly, the DRAC also has the authority to ask the Mayor to provide, during the review, files on any planning permission applications, public development zone construction projects or prior declarations they may be aware of that could compromise the conservation of archaeological remains.⁷

4. Articles [L.425-11](#) and [R*425-31](#) of the Town Planning Code

5. [Article R*311-7](#) of the Town Planning Code

6. [Article R.523-8](#) of the Heritage Code

7. [Article R.523-7](#) of the Heritage Code



FACTSHEET

RESCUE ARCHAEOLOGY

EVALUATION



The purpose of the evaluation¹ is to assess the presence of archaeological assets, to identify them and determine their state of conservation. It is conducted by the [French National Institute of Rescue Archaeology](#) (INRAP) or, under certain conditions, by a [State-authorised local government archaeology department](#). The evaluation is financed by the operator tasked with performing it, who receives State subsidies for this purpose. The evaluation consists in carrying out research (of documents, archives, etc.), field surveys, laboratory analyses, archaeological surveys in the soil and subsoil (covering on average 10% of the area of the work) and studies of standing buildings. It results in the submission of a report, which the archaeology department uses to determine any subsequent follow-up action. Some 3,500 evaluations are ordered each year, which represents less than 10% of the files reviewed by archaeology departments.

If the archaeology department sends notice of an evaluation requirement to you and to the department(s) responsible for issuing the permit(s) required by your project,² it will assign the evaluation to a rescue archaeology operator. No later than two months after assignment notification, the operator will send you a draft agreement³ specifying the conditions of the evaluation (timeframes, work methods, etc.). The evaluation period begins as soon as you make the site available.

If the evaluation finds remains of scientific or heritage significance, the Prefect of the region may, on proposal by the DRAC, order archaeological excavations, or request a project amendment to reduce the impact of the development on any elements of archaeological heritage.

The State funds evaluation operations through the rescue archaeology fee (RAP).

1. Article [R.523-15-1°](#) of the Heritage Code

2. Article [R.523-24](#) of the Heritage Code

3. Articles [L.523-7](#) and [R.523-30](#) et seq. of the Heritage Code



FACTSHEET EXCAVATIONS

If a rescue archaeology evaluation finds remains of scientific or heritage significance, an archaeological excavation may be ordered by the Prefect of the region, further to a proposal by the DRAC. It should be noted that an excavation may also be ordered immediately, without prior evaluation.

Excavations are to be carried out under the responsibility of the owner/developer of the land, by a qualified rescue archaeology operator, or by the INRAP (French National Institute of Rescue Archaeology). The duration and cost of the work will be set by means of a contract. The DRAC will help select the operator (based on whether the proposals meet the scientific specifications of the excavation order) and will validate the contract by authorising the start of excavation.

**ARCHAEOLOGICAL EXCAVATION: RESCUING
ARCHAEOLOGICAL REMAINS DESTINED TO
COMPLETELY OR PARTIALLY DISAPPEAR AS
A RESULT OF DEVELOPMENT BY MEANS OF STUDY
(OFFSETTING MEASURE)**

Excavation¹ consists in carrying out studies, field work (removal of successive layers) over all or part of the project site, laboratory analysis, etc. Its duration varies according to the nature and size of the project, the land features and the archaeological remains present on and below the surface. It leads to the production of a report containing the scientific results with respect to the rescue of the archaeological remains affected by the project. It thus enables the land to be considered

free of constraints and available for the needs of the development project. Its financing is the responsibility of the developer. Every year, about 450 excavations are ordered, corresponding to fewer than 2% of the files reviewed by archaeology departments and about 20% of the projects subject to an archaeological evaluation.

If the archaeology department orders a rescue excavation, an order accompanied by scientific specifications² will be sent to you and to the department(s) responsible for issuing the permit(s) required for your project.³ As project owner for the excavations, you must select State-approved or accredited rescue archaeology operator⁴ or call on the INRAP. You must first of all send the proposals received in response to your call to the archaeology department so that it can ensure they meet the scientific specifications of the excavation order. You will then sign a contract with the operator you select, setting the duration and cost of the excavation, among other details. To obtain authorisation to initiate the excavations,⁵ you will forward this contract to the archaeology department, which has a period of one month to respond (or three months if the proposal from the selected operator was not sent to it beforehand for review or if the contract is based on a proposal different from those reviewed). If you receive no response after one (or three) months, this is equivalent to authorisation.⁶

The excavation work is at the expense of the developer. In some cases, the developer may receive a subsidy or have all or part of the cost of the excavation covered by the French national rescue archaeology fund.

1. Article [R.523-15-2°](#) of the Heritage Code

2. Article [R.523-39](#) of the Heritage Code

3. Article [R.523-40](#) of the Heritage Code

4. Articles [R.523-41](#) et seq. of the Heritage Code

5. Articles [R.523-44](#) et seq. of the Heritage Code

6. Article [R.523-46](#) of the Heritage Code



FACTSHEET

PROJECT AMENDMENT



A PROJECT AMENDMENTS: A MEASURE FOR RECONCILING DEVELOPMENT AND PRESERVATION (AVOIDANCE AND/OR MITIGATION MEASURES)

A project amendment¹ may be proposed by the archaeology department, subject to the developer's approval, in order to:

- avoid all or part of any excavation and thereby reduce the cost and time needed to carry out the project
- mitigate the effects of the project, to preserve all or part of the archaeological assets on the site; in exceptional cases, the archaeology department may request protection under historical monument provisions²

A project amendment enables the scope and/or technical implementation methods to be adapted (e.g. foundation type, construction or demolition methods). The solutions, which will not necessarily entail substantial changes, will be jointly defined by the archaeology department, the project sponsor and, if possible, the project owner. They will then be formally set out in the Prefect's instruction order,³ which may be applicable in the event of an advance referral. The developer may be advised to contact the DRAC (for a request for prior information and an advance request for instructions) as of the preparation phase of its project.

Note: If a project amendment is made while the permit application(s) are being reviewed or after they have been issued, it may require:

- submitting an amended building permit or, in the event of a substantial change, applying for a new one⁴
- if the impact study needs to be updated, holding an online public participation procedure in addition to the initial public inquiry

1. Article [R.523-15-3°](#) of the Heritage Code

2. Article [R.523-16](#) of the Heritage Code

3. Articles [R.523-17-1](#) and [R.523-18](#) of the Heritage Code

4. Article [R.523-17-1](#) of the Heritage Code



FACTSHEET

RESCUE ARCHAEOLOGY FEE



The rescue archaeology fee (RAP - *redevance d'archéologie préventive*) is defined in Articles [L.524-2](#) to L.524-16 and [R.524-3](#) to R.524-11 of the Heritage Code.

It is payable for projects affecting the subsoil which are subject to:

- planning authorisation or a prior declaration in application of the Town Planning Code
- an impact study in application of the Environment Code
- a prior declaration in application of Article R.523-5 of the Heritage Code

Article [L.524-3](#) of the Heritage Code specifies exemption cases.

If the event generating the RAP is the granting of planning permission, it is equal to 0.4% of the value of the property complex. This value is determined according to the same tax base rules as those for the land development tax under Articles [L.331-10](#) to L.331-13 of the Town Planning Code. The RAP is calculated and administered by the *Département* Regional Planning Directorates (DDTs).¹

If the RAP is due for other development categories, the amount is €0.58/m² (rate in effect for the year 2021, adjusted for inflation based on the construction cost index).² The surface area to take into account is the ground surface area covered by the work necessary to produce the development (the RAP is not due if this surface area is less than 3,000 m²). The RAP is calculated and administered by the Regional Directorates of Cultural Affairs (DRACs) or by the DRASSM (for projects in the public maritime domain).

If the developer submits a voluntary evaluation request [see *Factsheet – Upstream phase of the rescue archaeology procedure*], this constitutes an RAP generating event, which is submitted to the DRACs for calculation. The fee paid on account of this advance requirements analysis request will be deducted from the fee that is subsequently due for the construction of the development.

1. A reform is currently being prepared to give responsibility for calculating the RAP to the *Département* Public Finances Directorates as of 1 September 2022.

2. A specific rate of 0.10€/m² applies to developments located in the public maritime domain more than one nautical mile offshore as measured from the low water mark.



FACTSHEET

PLANNING PERMISSION



In order to carry out your industrial installation project, you will have to obtain planning permission before you start any work. This permission enables the municipality to verify that the work being planned is compatible with the town planning rules in force on the site in question. For overall projects involving the creation or renovation of an industrial site, a building permit will generally be required.

To start with, you must familiarise yourself with the planning regulations with which your project will be required to comply. The characteristics of the installation site and the relevant constructability rules will determine the nature of the planning permission and the documentation to be provided. These rules are set out in the planning documents applicable to the land in question.¹ The town planning departments of the municipality of the installation will be able to guide you.

If you have not yet identified a specific area for your project, you can contact the relevant departments of the potential municipalities, in particular those in charge of planning documents (local urban development plan, intermunicipal local urban development plan, urban development master plan). They will be able to advise you regarding appropriate areas, based on the details of your project.

The Mayor of the municipality concerned by your installation project will in most cases be responsible for issuing your building permit. It is therefore advisable for you to meet with the Mayor before submitting your planning permission application, in order to present your project and obtain their initial observations. This information can help you prepare your project, notably in terms of public acceptance.

With this in mind, you should contact the town planning departments of the local authorities concerned – municipality or EPCI (public intermunicipal cooperation establishment) – before submitting your planning permission application, in order to

present the stakes and details of your project to the authorities. As applicable, this will enable you to obtain a personalised analysis of the applicable planning rules, along with a preliminary technical opinion on your project.

Over and above the purely planning-related aspects of the building and development permit, they will both be linked to the granting of other administrative permits, notably the environmental permit.² You should consider the potential impacts of your project on its direct environment as early in advance as possible: if these issues are taken into account too late, it could affect your schedule, because your project can only legally be carried out once all the required permits have been obtained. Given the complexity of some of the studies to be carried out beforehand (such as the flora/fauna study), it is essential to plan for the timeframes involved if you are to be able to stay on schedule. The same applies to rescue archaeology, if your project is within an area of presumed archaeological requirements (ZPPA). As applicable, the Regional Directorate of Cultural Affairs (DRAC)³ may issue requirements which must be met before your project can be carried out.

For information, you can request project owner assistance, notably from your design office, to help you with the upstream town planning and environmental details.

Once completed, the planning permission application must be submitted to the town hall of the site chosen for the installation. As of 1 January 2022, a special online procedure is available for municipalities of more than 3,500 inhabitants, allowing planning permission applications to be submitted and reviewed electronically.⁴

1. These rules will be referenced in the local urban development plan, the intermunicipal local land use plan, the municipal land use map or the national land use planning regulations.
2. For instance, the regulations concerning classified facilities for environmental protection (ICPEs) will be incorporated into the building permit.
3. Or the Directorate of Cultural Affairs (DAC), or the Department of Subaquatic and Submarine Archaeological Research (DRASSM), depending on the region.
4. [Article L.423-3](#) of the Town Planning Code

FACTSHEET

UPSTREAM PHASE OF THE PLANNING PERMISSION APPLICATION

In order to carry out your industrial installation project, you will have to obtain planning permission before you start any work. For overall projects involving the creation or renovation of an industrial site, a building permit will generally be required.

Particular attention should be paid to preparing your planning permission application, which will be specific to the site being considered and the nature of your project. A comprehensive examination of the site and the potential environmental impacts of your project, including archaeological impacts, will be required in order to ensure a successful outcome.

Preparation of the planning permission application first of all requires identifying the constructability rules applying to the intended site. These rules are contained in:

- the local urban development plan (PLU) of the municipality
- the intermunicipal local urban development plan (PLUi), if this document has been drawn up for the area by the public intermunicipal cooperation establishment (EPCI) with authority for the PLU
- the municipal map, which serves as a simplified town planning document for small municipalities which have not produced a PLU
- the national urban planning regulations (RNU), which constitute the national framework for the applicable rules in addition to or in place of an urban planning document applicable to a municipality (PLU, PLUi, document serving as PLU or municipal map)

In addition, active institutional controls¹ and other administrative land use restrictions, such as areas of presumed archaeological requirements, may be appended to the planning documents to take account of certain issues specific to the land in question: conservation of heritage assets (natural, cultural and sporting), the use of certain resources and equipment, national defence, public health and safety (notably owing to natural and technological hazards). These

restrictions may determine how your project is carried out and should be examined carefully in order to plan for any underlying constraints and facilitate granting of the building permit.

When applying for planning permission, there is an instrument that can help you put together a strong application: the **planning certificate (CU)**. This is a background document containing information about the planning provisions applicable to the plots being considered for your project. There are two types of certificate:

- A simple informational planning certificate, or CUa: This is a “neutral” informational CU, not based on any specific project, that can help the applicant find out about the situation of the land (i.e. applicable planning rules, administrative property rights limitations² and town planning taxes and contributions).
- A pre-operational planning certificate, or CUb: In addition to the information given by the CUa, this certificate informs the applicant of the legal feasibility of a project on the land. It specifies whether the land can be used for a project and the status of the existing or planned public equipment (roads and networks) serving the site.

The planning certificate is above all a background document but, whether simple informational or pre-operational, it guarantees that the rules it describes will remain static for a period of 18 months following its date of issue. Therefore, when you apply for your building permit, it will be reviewed in accordance with the rules in force on the date the certificate was issued and the tax rates will not be increased. There is, however, one exception: rules designed to protect public health and safety.

This document may be obtained within a period of two months (depending on the type of certificate) from receipt of the application in the town hall.³ We do, however, recommend that you not apply for your building permit too far in advance, in order to guarantee the accuracy of the information on the certificate.

1. Notably historical monuments and their immediate surroundings, heritage sites of particular interest, etc.

2. Active institutional controls, notably historical monuments and their immediate surroundings, heritage sites of particular interest and other administrative restrictions such as areas of presumed archaeological requirements.

3. [Article R*410-11](#) of the Town Planning Code.

You can contact the relevant department for more information. The rules regarding authority to issue and review planning certificates are the same as the common law rules for planning permission (see appendix).

Finally, it is advisable to plan the analysis of the environmental issues present on the potential sites well in advance, even if your intended installation is on a former industrial site or a former quarry. Keep in mind that abandoned sites are often favourable to the renaturation process, due to the termination of industrial activity, industrial waste and sound pollution, and protected animal or plant species may be found there. It is also necessary to ensure that the land is not liable to contain any archaeological remains of interest with respect to cultural heritage.

For information, if these issues (biodiversity, wooded areas, cultural heritage, etc.) are taken into account too late following the planning permission procedure, it could affect your schedule, because your project can only legally be carried out once all the required permits have been obtained.

A project engineering approach will enable you to manage the overall schedule and involve the right people at the right time. You can, for instance, request project owner assistance to help you with the upstream town planning and environmental details.

APPENDIX – CONTACTS FOR TOWN PLANNING MATTERS

As a rule, powers relating to land use rules are decentralised. In principle, the Mayor of the municipality in which your project is to be located will have the authority to issue the building permit⁴ “on behalf of the municipality.” The municipality may, however, delegate this authority to the public intermunicipal cooperation establishment (EPCI) to which it belongs. In this case, the planning permission will be issued in the name of this EPCI by its President.

When making its decision, the municipal authority will refer to the analysis report to be produced by the relevant reviewing department (depending on the organisation selected: municipal urban planning department, pooled departments, appointed government departments or departments from another municipality, delegated private service provider).

There are exceptions. The State has jurisdiction in two cases: (1) in municipalities without a local urban development plan (PLU) or land use plan (POS) and in certain municipalities with a municipal land use map; and (2) for certain projects defined by law, in particular:

- Certain energy production, transport, distribution and storage facilities, as well as those using radioactive materials
- Works, constructions and facilities built within the perimeter of operations of national interest

With regard to decisions, it is the State that conducts the review according to the cases defined in the regulatory part of the Town Planning Code, with planning permission issued by the Mayor on behalf of the State, or by the Prefect.

The Mayor is thus the preferred point of contact to whom you will present your project and from whom you will receive the first observations. This information can help you prepare your project, notably in terms of public acceptance. This meeting will also enable you to identify the competent reviewing departments for planning permission applications in the municipality.

If the permit were to be issued by the State or reviewed by State departments, more particularly if your project concerns energy production, transport, distribution and storage facilities (or those using radioactive materials), it could also be particularly useful to meet the competent departments of the Prefect. This meeting could also be an opportunity to discuss the environmental permits or those required by the Energy Code, and which could apply to your project.

4. In municipalities which have always been subject to the national urban planning regulations, it is the Mayor who issues the permit on behalf of the State. In municipalities which have “returned” to the national urban planning regulations, it is the Mayor who issues the permit on behalf of the municipality, further to a positive opinion from the Prefect.

FACTSHEET

PROJECT COMPLIANCE WITH PLANNING PERMISSION DOCUMENTS

In order to carry out your industrial installation project, you will have to obtain planning permission before you start any work. This permission enables the municipality to verify that the work being planned is compatible with the town planning rules in force on the site in question. For overall projects involving the creation or renovation of an industrial site, a building permit will generally be required.

The issuance of this permit is dependent on your project complying with the planning rules applicable to the installation site. These rules are as set out in the planning documents applicable to the land in question.¹

If your project is not compatible with these documents, the municipality's town planning department, which is in charge of producing the local urban development plan (PLU), will be able to help you identify possible solutions. There are two types of possible solutions: adapting your project to the planning documents, or amending the planning documents.

Adapting the technical features of your project to bring them into line with the planning rules is the preferred solution whenever possible. However, some major projects have inherent constraints, involving the extension of an existing site or access to roads or power networks, for example, which sometimes mean that adapting the PLU is necessary.

In these cases, there are three possible types of procedure:

- A revision of the PLU, allowing it to be extensively adapted (timeline: two to four years)²
- An amendment to the PLU, enabling the town planning rules to be amended for certain areas already approved for construction (timeline: six to nine months)
- A "project declaration" serving to bring the PLU in line

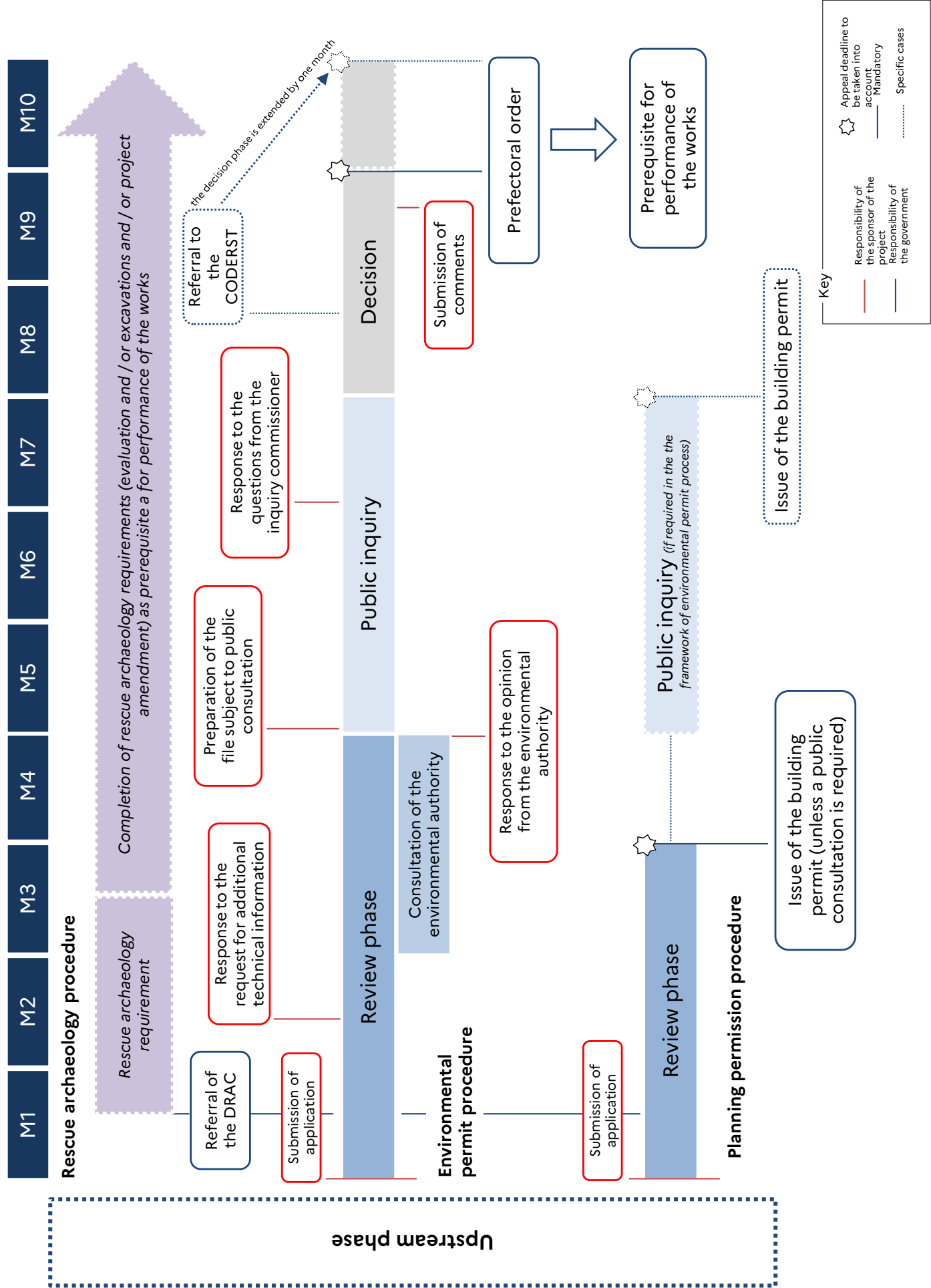
This last option is most appropriate for complex projects, provided that the municipality is able to confirm they are in the public interest. It should take about nine months, if the file is well-prepared, and will be subject to a public inquiry.

Generally speaking, you should be attentive to changes in planning documents, in particular the local urban development plan (PLU), especially if you have acquired additional land for future projects. These changes will be liable to affect your right to build on your land.

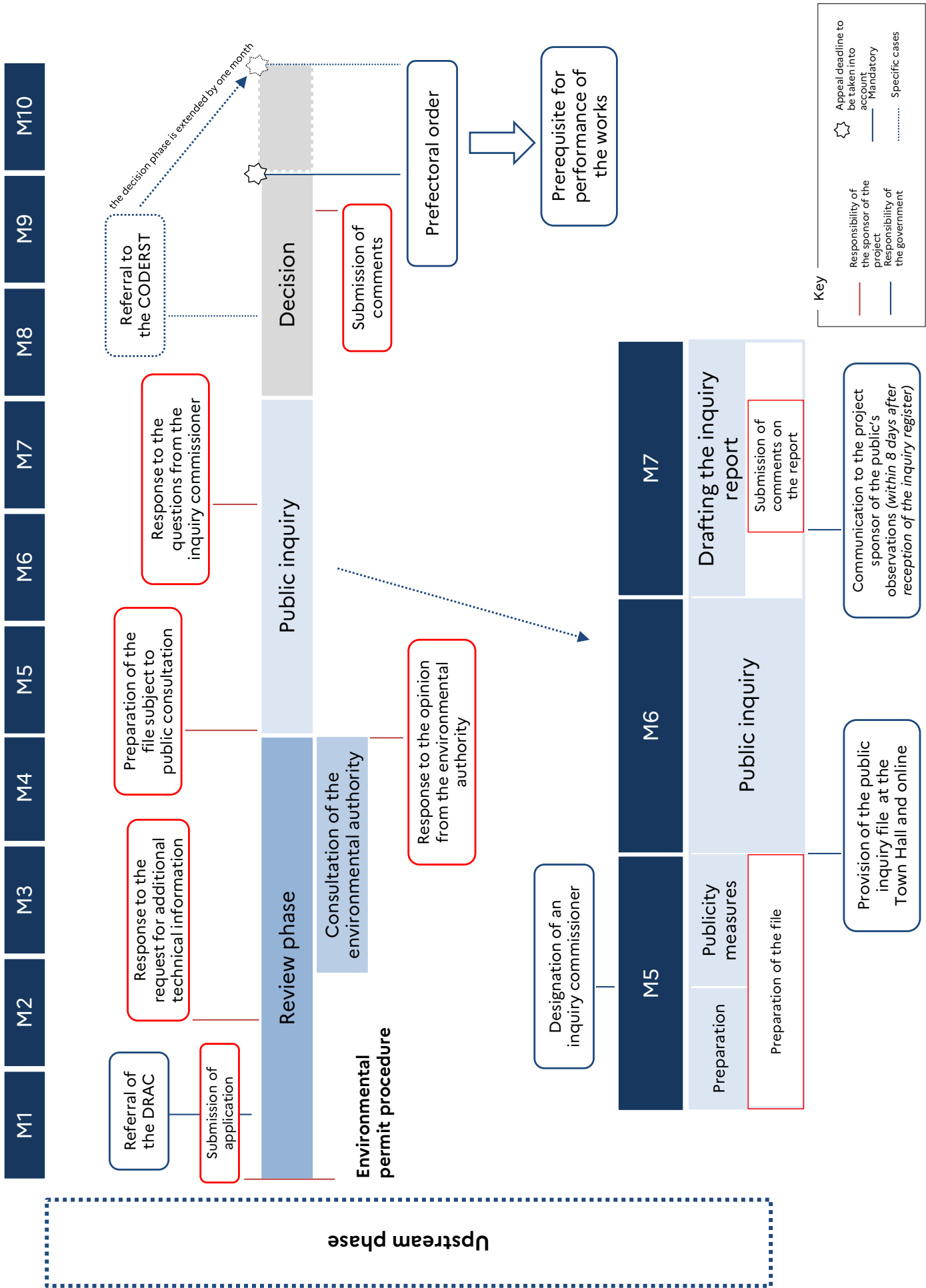
You can contact the municipality's town planning department for more information.

1. These rules will be referenced in the local urban development, the intermunicipal local urban development plan, the municipal land use map or the national land use planning regulations.
2. A streamlined version of the procedure can reduce the time to 12 months, but offers fewer possibilities for changes.

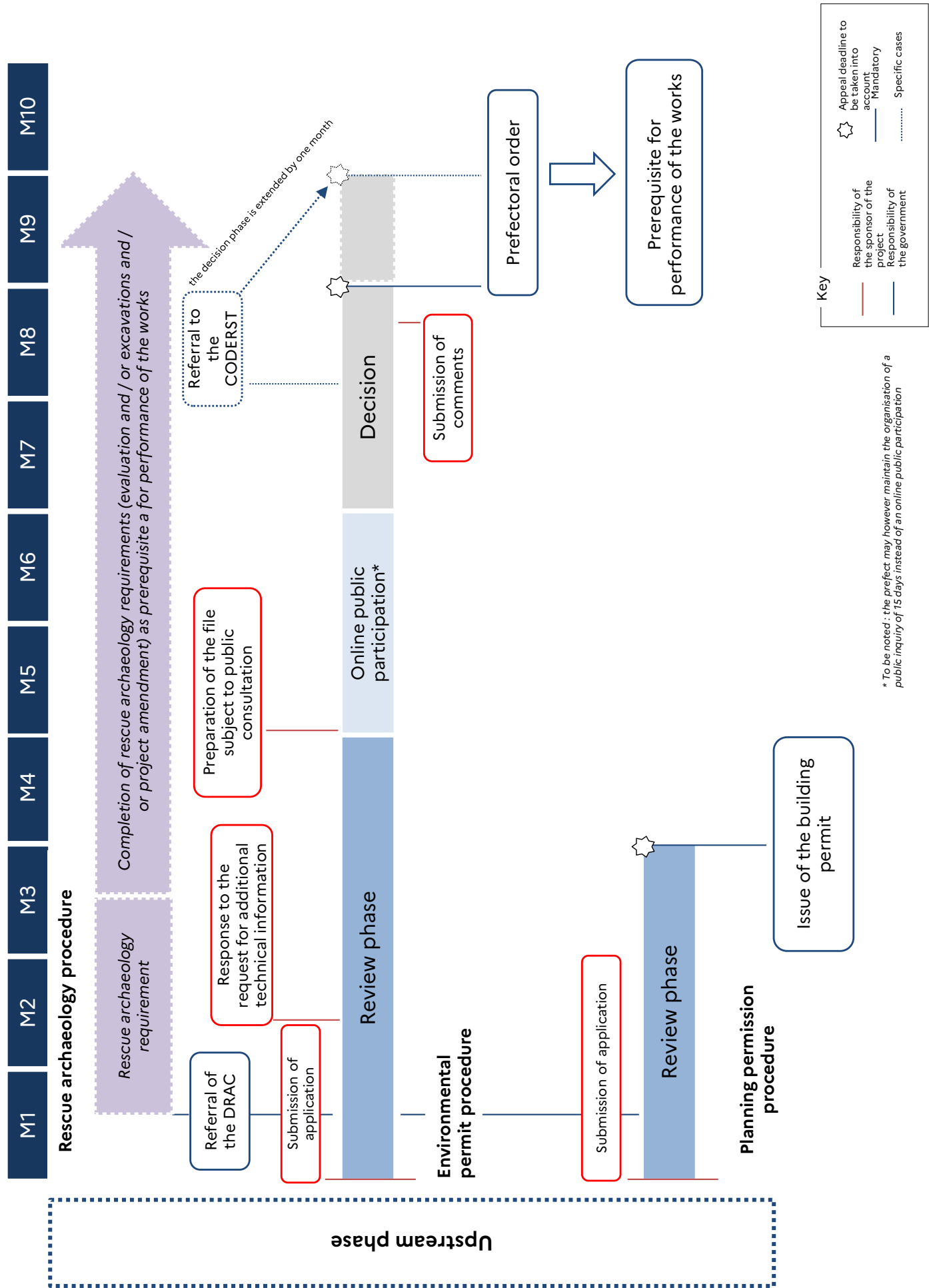
Projects submitted to environmental permit procedure with environmental assessment –
Standard timeline (specific extensions excluded)



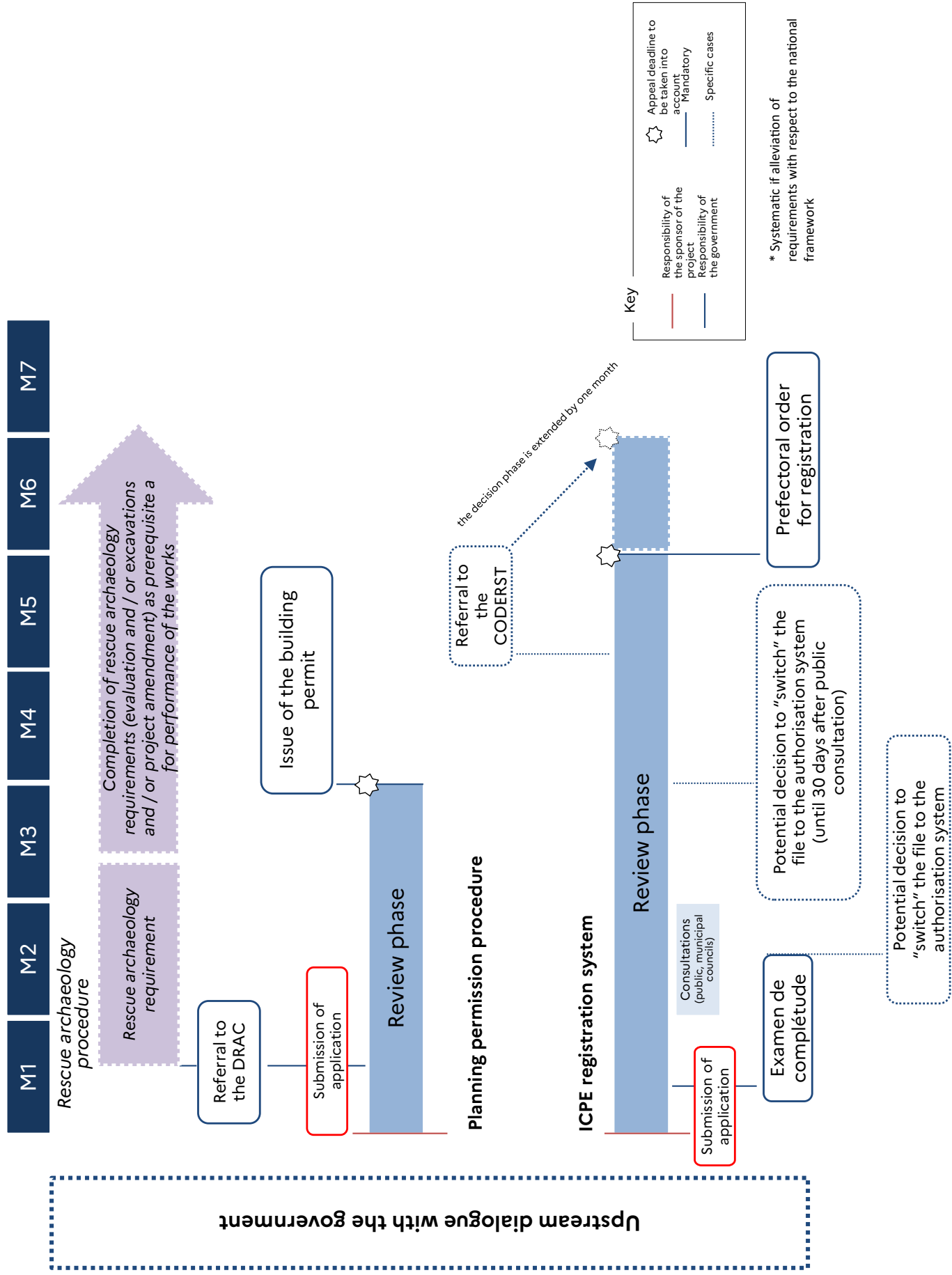
Projects submitted to environmental permit procedure with environmental assessment – Standard timeline (specific extensions excluded)



Projects submitted to environmental permit procedure without environmental assessment – Standard timeline (specific extensions excluded)



Projects submitted to the ICPE registration system – Standard timeline
(specific extensions excluded)





DIRECTION GÉNÉRALE DES ENTREPRISES

Crédits photo Aleksandra Platonova

