

EIA in French Courts : scope of judicial review

**EU environmental Impact Assessment
Directive – challenges and perspectives in the
light of the past experiences and the recent
proposal for amendment**

**Wroclaw, 24 May 2012
Marc Clément**

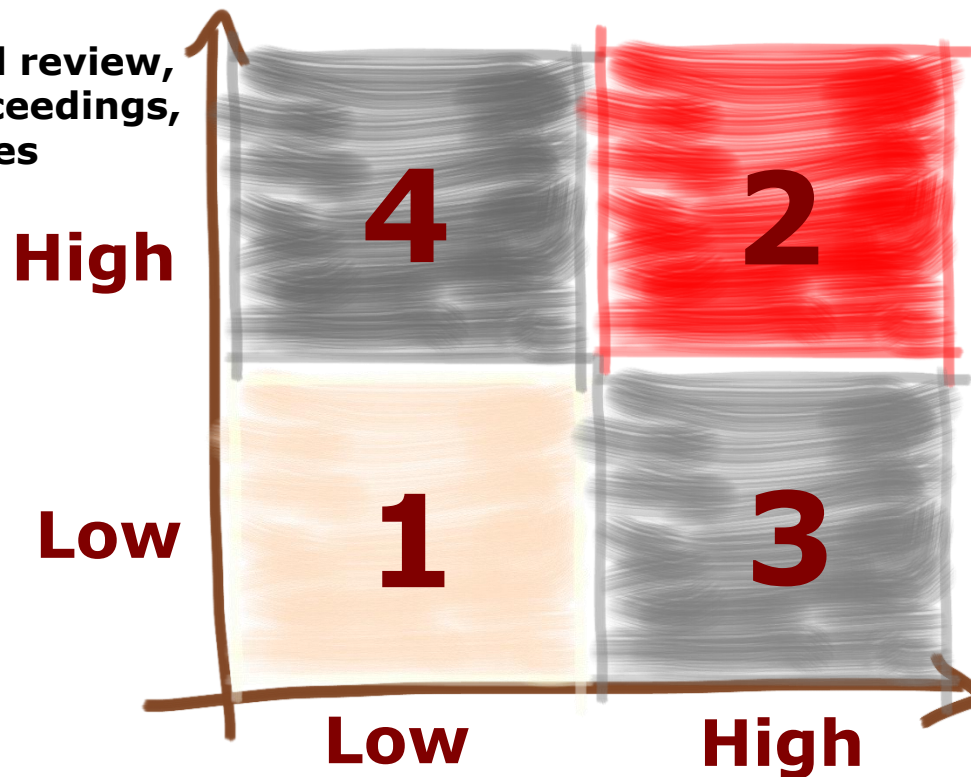
EIA and environmental cases in French Courts

- *Mainly in 3 domains :*
 - **Industrial emissions**
 - **Large infrastructures (or not so large ...)**
 - **Hunting**
 - *EIA is required for a wide scope of projects*
 - *Almost always used by complainants and opponents to projects*
-

Scope of judicial review : efficiency vs. openness

Efficiency :

Scope of judicial review,
Duration of proceedings,
Interim measures



Openness :

Access to justice,
Role of civil society,
Collective actions

EIA : what do French judges control ?

- *French environmental case-law : full control of administrative decision by judges*
 - **Possibility to modify an administrative authorization (“plein contentieux”)**
 - **Evaluation of content of the EIA and not only procedural steps**
 - **Balance of arguments : general public interest and environmental protection**
-

Balance of interests



- *Gorges du Verdon (French Conseil d'Etat 10 July 2006 n°288108)*
 - **EIA is correct**
 - **Balance between the need to connect with power lines the South of France and the protection of the Area of the “Gorges du Verdon” (landscape protection)**
 - **No derogation justified to the obligation to underground power lines**
-

EIA : Content of the impact study

- *If the public and the authorities have not been correctly informed then the administrative decision is quashed (French Conseil d'Etat 14 October 2011 Société Ocreal n°323257)*

 - *Evaluation of completeness of the study :*
 - CAA Lyon 28 March 2013 Association Armure : authorisation of quarry annulled due to lack of impact study of project on archaeological elements
-

EIA : difficult points Expertise vs. expertise

- *Burden of proof rule ?*
 - **Complainant**
 - **Limited role of the precautionary principle**
 - *Limited role of additional expertise requested by the judge*
 - **Possibilities in the French code of administrative justice**
 - **Not very often asked by complainants**
-

French EIA vs. EU EIA ?

- *The French approach is mainly driven by thresholds ...*
 - **Legal security**
 - **But need to adopt low thresholds and some potential marginal gaps**
 - *As a consequence, no cases related to the "screening decisions"*
-