

International Comparative Legal Guides



Renewable Energy 2021

A practical cross-border insight into renewable energy law

First Edition

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1 Overview of the Renewable Energy Sector

1.1 What is the basis of renewable energy policy and regulation in your jurisdiction and is there a statutory definition of 'renewable energy', 'clean energy' or equivalent terminology?

Renewable Energy is mainly regulated by the Energy Code, as well as by the Environmental Code, the Town Planning Code and the General Code on Public Property. France must comply with the “Clean energy for all Europeans” package, which consists of four directives and three regulations adopted in May 2018, December 2018 and June 2019.

The basis of the French renewable energy policy is the fulfilment of the Multiannual Energy Program (**PPE**), a binding operational tool for public authorities created by the 2015 Law No. 2015-992 on energy transition and green growth (**LTECV**). This law sets out ambitious national energy objectives, which were adjusted by the 2019 Law No. 2019-1147 on Energy and Climate (**LEC**).

The purpose of the PPE, which was last amended by Decree No. 2020-456 of 21 April 2020, is to map out the French Government's course of action regarding energy in the next 10 years, with the objective of making France a carbon neutral country by 2050. The PPE covers two five-year periods, 2019–2023 and 2024–2028, with a key target to attain 50% renewable energy by 2035.

The PPE applies to mainland France and the so-called non-interconnected zones (**ZNI**), which include Corsica and overseas territories.

Although there is no statutory definition of renewable or clean energy in France, Article L 211-2 of the Energy Code states that “renewable energy sources include wind, solar, geothermal, aerothermal, hydrothermal, marine and hydropower”.

1.2 Describe the main participants in the renewable energy sector and the roles which they each perform.

The key governmental institution is the Ministry for the Ecological Transition (**MTE**), supported by the Directorate General of Energy and Climate (**DGEC**). The MTE is represented in each region by Regional Directorates for Environment, Planning and Housing (**DREAL**), which aim to promote sustainable economic development at the regional level.

The local authorities are in charge of turning the national objectives into concrete action and taking various local actions. Through the regional schemes for spatial planning, sustainable

and territorial balance (**SRADDET**) and the Local Climate Air Energy Plans (**PCAET**), regions and inter-municipal authorities are invited to define their energy mix evolution until 2050, taking into account the objectives of the PPE, and to commit to short-term actions to achieve it.

The implementation of the French renewable energy policy is also driven by the Environment and Energy Management Agency (**ADEME**), which is a public agency reporting to the MTE. The ADEME acts both upstream of the value chain (support for research programmes) and downstream (support for the roll-out phase).

Regulatory bodies

The **Energy Regulatory Commission (CRE)** is an independent public body regulating French energy markets, including energy derived from renewable sources.

The **French Competition Authority (FCA)** is an independent public body in charge of supervising anti-competitive practices and controlling mergers in any economic sector, including energy.

Transmission and distribution

Transmission and distribution are public service activities supervised by the CRE.

Réseau de Transport d'Electricité (RTE), the only power transmission system operator in France, is responsible for transporting electricity to customers on behalf of suppliers and developing the networks.

Enedis is the main distribution network operator for France. Most of the renewable energy installations are connected to the Enedis network. The rest are managed by local distribution companies (**ELD**). The ZNIs, including overseas territories (except Mayotte) and Corsica, benefit from a special distribution network provided by **EDF SEI**. In Mayotte, Electricité de Mayotte (**EDM**) controls energy production and distribution.

Developers and producers

The main green energy developers and producers in France and French overseas territories are EDF EN, ENGIE and TOTAL QUADRAN. Other key players are French and foreign companies such as Akuo Energy, Axpo, Baywa, Boralex, CNR, EDP Renovaveis, EnBW (Valeco), NEOEN, RES, RWE, Valorem, Vattenfall or Volitalia.

Trading platforms and aggregators

With the introduction of the direct marketing scheme, EDF as well as actors of the wholesale market, namely trading platforms (Epex Spot and Nord Pool for spot transactions and EEX for derivatives) and aggregators (Agregia, ENGIE, Gazel Energie

(previously Uniper), Statkraft, Vattenfall, etc.), are the main participants in the purchase and sale market. The risk management is in particular delegated to aggregators.

Renewable energy suppliers

Apart from EDF, various alternative suppliers provide energy from renewable sources such as Total Direct Energie, ekWateur, Enercoop, ilek or Planete Oui.

Other participants

Various non-profit associations are also playing a key role in the promotion of renewable energy, such as the Renewable Energy Association (**SER**), the Wind Energy association (**FEE**), the Solar Association (**Enerplan**), the Network for Energy Transition (**CLER**) and the French German Office for Energy Transition (**OFATE**).

1.3 Describe the government's role in the ownership and development of renewable energy and any policy commitments towards renewable energy, including applicable renewable energy targets.

The PPE plays a crucial role in the development of renewable energy. Its implementation decrees set objectives for the launching of calls for tenders to be achieved by 2023 and 2028:

- For solar energy: 20.1GW for 2023; and 35.1 to 44GW for 2028.
- For onshore wind energy: 24.1GW for 2023; and 33.2 to 34.7GW for 2028.
- For offshore wind energy (including floating offshore wind): 2.4GW for 2023; and 5.2 to 6.2GW for 2028.
- For hydroelectricity (including tidal energy): 25.7GW for 2023; and 26.4 to 26.7GW for 2028.
- For biomass: 145TWh for 2023; and 157 to 169TWh for 2028.
- For geothermal energy: 2.9TWh for 2023; and 4 to 5.2TWh for 2028.
- The PPE also aims to promote alternative sources, with a focus on hydrogen and power-to-gas, including a target of 660,000 electrical cars by 2023 and 3,000,000 by 2028.

Most of the renewable energy facilities are owned by private developers. However, hydropower generation facilities greater than 4.5MW in capacity are operated under concessions awarded by the French State. Among these plants, more than 80% are operated by EDF and 15% by ENGIE. Around 150 concessions out of 400 will reach their term in 2023.

2 Renewable Energy Market

2.1 Describe the market for renewable energy in your jurisdiction. What are the main types of renewable energy deployed and what are the trends in terms of technology preference and size of facility?

With more than 25.7GW installed in France, hydropower remains the leading renewable source of electricity in France. While the installed hydropower capacity remains stable, wind and solar power capacity has been steadily growing. In 2020, 48.6% of renewable energy production capacity is of wind or solar origin. As of 31 March 2020, the wind and solar parks capacity exceeded 27GW (17GW from wind power and 10GW from solar power). The bioenergy power generation fleet exceeds 2.1GW. All sectors combined, the growth in the renewable energy generation portfolio reached 468MW over the quarter, bringing its capacity to 54.2GW on 31 March 2020.

The size of wind and solar projects is increasing following technological improvements and the removal of several regulatory pressures. The offshore deployment of wind projects as well as repowering will also contribute to increasing the installed capacity.

2.2 What role does the energy transition have in the level of commitment to, and investment in, renewables? What are the main drivers for change?

The PPE aims to increase the share of renewable energy and to reduce nuclear power from 75% to 50% by 2035. Technological improvements have contributed to making solar and wind power installations more competitive compared to nuclear energy. The National Low-Carbon Strategy (**SNBC**) also aims at reducing greenhouse gas emissions and diversifying the energy mix in order to ensure security of supply and reduce dependence on imports.

2.3 What role, if any, has civil society played in the promotion of renewable energy?

The PPE and SNBC have been subject to a prior consultation process, including a public debate organised by the National Commission for Public Debate (**CNPD**). Public debates are also launched for offshore wind projects.

The citizen involvement in the energy transition is encouraged by crowdfunding. Several platforms (such as Lumo, Enerfip, ENGIE Green, Lendopolis, etc.) are collecting funds for the financing of renewable energy projects. Moreover, several tender procedures allow the candidates a crowdfunding bonus.

Local renewable energy project initiatives are also promoted through "renewable energy communities", which is defined as the economic and operational participation and/or ownership by citizens or members of a defined community in a renewable energy project pursuant to Article L 211-3-2 of the Energy Code.

2.4 What is the legal and regulatory framework for the generation, transmission and distribution of renewable energy?

The generation, transmission and distribution of renewable energy are notably regulated by the Energy Code, the Environmental Code and the Town Planning Code (please see question 4.1).

2.5 What are the main challenges that limit investment in, and development of, renewable energy projects?

Supremacy of nuclear energy

The main obstacle to the development of renewable energy is the competitive price of electricity produced via nuclear plants.

Length of the administrative process

Another obstacle is the complexity and length of the administrative process to obtain the required construction and environmental permits. The new single Environmental Authorisation is intended to give more visibility to operators as to the upstream phase of the projects.

The scarcity of large-scale onshore wind projects is also due to regulatory barriers, and especially to the size constraints related to civil and military aviation and distance constraints related to military radar.

Grid connection

To facilitate the grid connection procedure, RTE has put in place the Regional Renewable Energy Grid Connection Scheme (**S3REnR**) which allows the connection of renewable energy to the grid in a coordinated and cost-effective way for each region.

Litigation and recourse

Compared to other forms of renewable energy, wind farms draw most of the criticism and opposition from the public. In case of litigation against an onshore wind project, to simplify and speed up the process, the Administrative Courts of Appeal rule at first and last instance. For offshore wind projects, the Administrative Court of Appeal of Nantes has exclusive jurisdiction to settle litigations.

2.6 How are large utility-scale renewable power projects typically tendered?

Renewable energy tenders are used for wind, solar, biomass, biogas and hydropower projects, in compliance with Articles L 311-10 and R 311-13 of the Energy Code. The PPE foresees provisional timetables for calls for tenders. The CRE is in charge of drawing up the tendering documentation and organising the tender procedure. The specifications are published on the CRE website and a request for qualification is published in the Official Journal of the European Union. Candidates' questions and their related answers are available on the CRE website to ensure that all candidates are put on an equal footing in terms of available information. The CRE makes a first selection of candidates and the final selection is made by the Ministry of Energy. Candidates can request to access their instruction file and are informed about the reason of their rejection or acceptance.

Winning candidates receive their operation permit, but also have to obtain the other required authorisations.

Depending on the technology and size of the installation, the tender procedure may be implemented in two different ways:

- The **classic tender** procedure: The tender specifications will include a description of the characteristics of the call for tender, the foreseen output, technical, economic and financial conditions, including, *inter alia*, the duration and financial terms of the Contract for Difference (**CfD**).
- The **competitive dialogue** procedure: The competitive dialogue procedure was used, for instance, in the context of the third offshore wind farm tender, for the selection of the Dunkirk offshore wind farm developer. By enabling discussion between the candidates and the administration, it has led to a better allocation of the risks and to lower prices. At the end of the dialogue phase, the MTE invites the pre-selected candidates to submit their best and final offers within the deadline set out in the tender specifications.

Neither tender procedure is subject to the French public procurement code as the energy is not generated for the needs of the French State and the tender will not result in the conclusion of one global and single agreement with the French State. Therefore, although the administrative authority is bound by non-discrimination and transparency principles, the procedure is not governed by European and national legislation on public procurement.

By way of examples, the following calls for tenders have been issued:

Onshore wind

The call for tender is mandatory for wind farms having at least seven wind turbines or one wind turbine exceeding 3MW.

The tender procedure launched in May 2017 was to run on six periods until November 2020, with a cumulative capacity of 3.382GW. The price per MWh was the sole selection criterion, the limit being set at 74.8€/MWh. Successful bidders will sign a CfD with EDF. The average proposed tariff of the successful candidates of the fifth period was 62.9€/MWh.

Offshore wind

A first call for tender was launched in 2011 on four areas:

- Fécamp (498MW), Courseulles-sur-Mer (450MW) and Saint-Nazaire (480MW), awarded to the consortium Eolien Maritime France (**EMF**), led by EDF Energies Nouvelles, together with Canadian energy infrastructure company Enbridge and wpd. The shareholders of EMF are now EDF Renouvelables and Enbridge.
 - Saint-Brieuc (500MW), awarded to Ailes Marines consortium, comprising Iberdrola, Eole-RES and Caisse des dépôts et consignations (**CDC**).
- Round 2 (2013) led to the award of two projects:
- Yeu and Noirmoutier (496MW) to the Eoliennes en Mer consortium, led by ENGIE, together with EDP Renewables and CDC.
 - Treport (496MW), also awarded to the Eoliennes en Mer consortium.

The third round (2019) led to the award of the 600MW Dunkirk offshore wind farm to the Eoliennes en Mer de Dunkerque consortium, made up of EDF Renouvelables, Innogy SE and Enbridge.

Legal procedures against the projects slowed things down, and only one of the projects of the first call (Saint-Nazaire) is ready for a final investment decision in 2020. France's first fixed-bottom offshore wind farm is expected to be connected to the grid in 2020–2022.

On the floating offshore wind front, French key players and their partners are also active with four 24MW projects already awarded, including those to consortiums led by:

- ENGIE, together with EDPR and CDC (Eolien Flottant Golfe du Lyon).
- EDF Renouvelables (Provence Grand Large).

Solar energy

Tendering procedures are mandatory for PV installations on buildings with a peak power greater than 100kW, as well as for all ground-mounted PV plants. Several tendering procedures have been launched since 2011.

Special tenders with fixed tariffs are planned for innovative solar projects, for example agrophotovoltaics, carport schemes or building-integrated PV.

For 2020, some 88 large-scale PV projects were awarded, with a total generation capacity of 649MW.

2.7 To what extent is your jurisdiction's energy demand met through domestic renewable power generation?

Renewable energy produced in France covers 25% of the electricity consumed year-to-year. This rate has reached 26.5% in the first quarter of 2020.

3 Sale of Renewable Energy and Financial Incentives

3.1 What is the legal and regulatory framework for the sale of utility-scale renewable power?

The French legal framework consists mainly in Articles L 314-1

to L 314-27 of the Energy Code. The sale of renewable energy was initially based on the power purchase obligation (**PPA**) mechanism with feed-in-tariff (**FIT**) by which the eligible producer concluded a PPA with EDF (or an ELD).

Since the LTECV law, the Energy Code sets forth a market-based premium mechanism whereby a CfD is signed with EDF, which includes a market-based premium that gradually replaced the FIT mechanism.

The premium mechanism is an *ex post* calculation equal to the difference between the target tariffs per kWh, and a reference tariff to which a management premium is added. The reference tariff is published by the CRE on a monthly basis.

Installations benefiting from a FIT PPA contract at the time of the entry into force of the premium mechanism will remain subject to the FIT PPA.

The sale of power is to be undertaken either on the EPEX Spot market through an aggregator, or under a sales contract entered into with an industrial purchaser for a pre-agreed period of time at a pre-agreed price, i.e. a Corporate PPA. In the first case, a contract is to be concluded with the aggregator, pursuant to which the aggregator purchases all kWh delivered at the delivery substation (**PDL**) as measured by a power meter controlled by Enedis. In the second case, all the power measured at the PDL by Enedis is to be acquired by the offtaker.

3.2 Are there financial or regulatory incentives available to promote investment in/sale of utility-scale renewable power?

There are no financial or regulatory incentives, other than through the above-mentioned support mechanisms. Since 2017, the main support mechanism is the market-based premium granted through an open window procedure or a competitive tender procedure. The open window market premium procedure is notably applicable to:

- Hydraulic plants with installed capacity under 1MW.
- Biogas plants with installed capacity between 500kW and 12MW.
- Wind power plants with maximum of six wind turbine generators and an individual limit of 3MW per turbine.

For other types of plants, the signature of a CfD with EDF is only possible through the tender procedure, whereby the tariff for each winner results from the tender process.

The significant reduction in the production costs of wind and photovoltaic technologies will facilitate their development at a lower cost for the public budget. The results of recent tenders gave strike prices for guaranteed contracts close to 60€/MWh for ground-based photovoltaic plants, 62.2€/MWh for onshore wind power and the Dunkirk offshore wind tender reached a record level of 44€/MWh.

3.3 What are the main sources of financing for the development of utility-scale renewable power projects?

The development of utility-scale renewable power projects is mainly financed by long-term bank debt granted notably by BNP Paribas, Crédit Agricole, Crédit Coopératif, Crédit Mutuel, BPCE Energéco, HSBC, Natixis, Société Générale, Unifergie, Nord LB, Saar LB, etc.

Specialised infrastructure funds are also key players in the financing of renewable energy projects such as Mirova or Omnes.

French public financial institutions Bpifrance (**BPI**), notably through its fund France Investissement Energie Environnement (**FIEE**), and CDC, in particular through Banque des Territoires, are also highly involved in financing renewable power projects.

3.4 What is the legal and regulatory framework applicable to distributed renewable energy?

The Energy Code contains specific provisions for the construction of direct lines (Article L 343-1 *et seq.*), closed distribution networks (Article L 344-1) and building integrated networks (Article L 345-1). Those provisions are favourable to the development of local Corporate PPAs and self-consumption.

Articles L 315-1 *et seq.* of the Energy Code regulate individual self-consumption (electricity produced and consumed in a given location by one person) and collective self-consumption (electricity produced and consumed by several consumers and producers located on the same low voltage grid and linked together through a legal entity).

Grid operators have the obligation to facilitate self-consumption subject to the payment of the Tariff for Use of Public Electricity Grid (**TURPE**), which is reduced for self-consumption with an installed capacity of less than 100kW per producer.

There is a distinction between partial self-consumption (the surplus output injected into the grid can be sold at a FIT) and total self-consumption (the surplus output injected into the grid cannot be valorised). There is no system of set-off against the power received from the grid (net metering).

3.5 Are there financial or regulatory incentives available to promote investment in distributed renewable energy facilities?

The development of distributed renewable facilities is largely based on public support mechanisms (FIT and calls for tender). Self-consumption projects of up to 100kW may also be eligible for an investment premium.

3.6 What are the main sources of financing for the development of distributed renewable energy facilities?

Renewable distributed energy facilities are mainly financed by commercial banks.

3.7 What is the legal and regulatory framework that applies for clean energy certificates/environmental attributes from renewable energy projects?

French Guarantees of Origin (GO) (Articles R 314-24 and following of the Energy Code) are the only recognised system in France for the tracking of energy production from renewable sources. This system ensures that end consumers can verify the origin of the electricity they consume. Renewable energy with a production capacity of above 100kW must be registered on the French GO registry, which is managed by EEX upon appointment by the Minister in charge of Energy.

However, pursuant to Article L 314-14 of the Energy Code, GOs cannot be issued by a renewable energy producer having concluded a FIT or CfD with EDF.

3.8 Are there financial or regulatory incentives or mechanisms in place to promote the purchase of renewable energy by the private sector?

There is no specific incentive for private individuals to purchase electricity from renewable energy production.

4 Consents and Permits

4.1 What are the primary consents and permits required to construct, commission and operate utility-scale renewable energy facilities?

Operation permit

An operation permit issued by the MTE is required only for utility-scale renewable energy facilities above 50MW.

The operation permit is automatically granted to the successful bidder of a tender procedure.

Construction permit

Depending on the size and capacity of the project, the construction of renewable energy facilities may require a prior declaration (solar plants under 250kW) or a construction permit (ground-mounted PV plants above 250kWp) issued by the relevant public authorities.

When applicable, construction permits are merged into the Environmental Authorisation.

Environmental Authorisation

Since 1 March 2017, the Single Environmental Authorisation has merged a dozen authorisations governed by the Environmental Code (one authorisation for environmentally classified facilities (ICPE) and others for installations, plants, works and activities (IOTA)), the Forestry Code (land cleaning authorisation) and the Energy Code (operation permit).

The Single Environmental Authorisation is notably required for onshore and offshore fixed and floating wind farm projects, and for biomass projects, together with an impact and hazard study assessing the effects of the project on the environment.

The Environmental Authorisation issued by the Prefect may set additional compensatory requirements in addition to the national regulatory requirements.

For offshore wind farm projects, in addition to the Environmental Authorisation, a specific authorisation for the use of the maritime public domain needs to be obtained from the Prefect by means of the conclusion of a lease of the seabed with the State ("*concession d'utilisation du domaine public maritime*").

According to the 2018 law creating the envelop permit (as enacted in Article L 181-28-1 of the Environmental Code) to ease the feasibility of fixed and floating offshore wind projects, the Environmental Authorisation and the authorisation for the use of the maritime public domain can define variable features for the concerned projects: number, size and installed capacity of wind turbines; or their organisation in the dedicated area. The operator may change a project within the limits set in advance to benefit from the latest technological developments, but it must stay within the limits of the authorisations granted.

4.2 What are the primary consents and permits required to construct, commission and operate distributed renewable energy facilities?

The applicable laws and regulations are the same as those for utility-scale renewable energy facilities (please see question 4.1).

4.3 What are the requirements for renewable energy facilities to be connected to and access the transmission network(s)?

Access by private power production sites to the public transport and distribution grids is guaranteed by virtue of Article L 111-91

of the Energy Code. The energy producer must, however, enter into several agreements with the grid operator, as part of the grid connection procedure.

Following the acceptance of the Technical and Financial Proposal (PTF) issued by the grid operator, the parties sign the grid connection agreement setting out the technical conditions, final costs and timing for connection.

Thereafter, the producer and the grid operator enter into several agreements:

- A grid access agreement establishing the injection capacity and disconnection limitations, as well as the related liabilities of each of the parties.
- An operation agreement, which contains the operation rules of the power plant.
- An agreement for the identification of the balance responsible entity, which will aim at ensuring that the electricity injected on the public grid is balanced with the consumption of electricity consumers.

A simplified procedure is applicable to small projects under 36kVA, with the signature of a Connection, Access and Operation Contract (CRAE) with Enedis.

With respect to offshore wind, a set of agreements, including the connection agreement, must be executed between the producer and RTE: a grid access agreement; an operation agreement; a testing agreement; and a performance agreement (which determines the technical, legal and financial conditions relating to the technical performance of the installation).

4.4 What are the requirements for renewable energy facilities to be connected to and access the distribution network(s)?

The applicable laws and regulations are the same as those for utility-scale renewable energy facilities (please see question 4.3).

4.5 Are microgrids able to operate? If so, what is the legislative basis and are there any financial or regulatory incentives available to promote investment in microgrids?

A number of microgrids operate in France, particularly in overseas areas where connection to the main grid is not available. This type of technology enables the powering of isolated communities and the incorporation of renewable energy into the energy mix of ZNIs in a sustainable way.

Given their special features, island energy systems are a good testing ground for smart grids. EDF is involved in research programmes and concrete projects to develop smart grids in island territories.

Furthermore, smart grid projects have recently multiplied in the wake of the "smart electric grids" plan published by the Government in 2013 as part of a global plan for reindustrialisation called "*Nouvelle France Industrielle*". This plan aims to consolidate the French electrical and IT sectors in new high-growth, job-creating markets.

5 Storage

5.1 What is the legal and regulatory framework which applies to energy storage and specifically the storage of renewable energy?

According to Articles D 141-12-5, D 142-9-2, D 142-9-3 and D 142-9-5 of the Energy Code, an electrical energy storage facility

is defined as “a set of stationary electricity storage equipment enabling electrical energy to be stored in another form and then returned as electrical energy while being coupled to the public electricity grid. The technologies used in this equipment include pumped energy transfer stations, compressed air storage, storage by converting electricity into hydrogen, electrochemical batteries and flywheels”.

The operators of certain types of storage facilities are considered as “dual users” of the grid with regard to the TURPE. Article D 315-5 of the Energy Code states that an electricity storage unit produced in the context of a self-consumption operation alternately qualifies the operator of the infrastructure as a producer and a consumer, which implies that he is twice subject to the TURPE.

This double taxation does not apply to electro-intensive consumers. In this respect, sites with high electricity consumption can benefit from a reduction going up to 50% of the TURPE that must normally be paid if they allow electricity storage with a view to its subsequent dispatch to the grid.

For electricity storage facilities in ZNIs, the costs of storage facilities managed by the grid operator are compensated through the contribution to the public electricity service (CSPE). The PPE has not set any targets for electric storage until 2023, except for hydroelectric storage.

With regard to hydroelectricity, the PPE only plans to take steps by 2023 to allow the development of electricity pumping stations (STEPS) for a potential of 1.5GW, identified with a view to commissioning the installations between 2030 and 2035. This would be in addition to the 4.3GW of STEPs already in operation and 13GW of existing hydraulic dams.

5.2 Are there any financial or regulatory incentives available to promote the storage of renewable energy?

The long-term call for tenders (AOLT), launched by the MTE on 12 June 2019, organised by the transmission system operator RTE with respect to the French capacity mechanism and open to all non-carbon technologies, is focused on storage.

The aim of this AOLT is to enable the development of capacities to secure electricity supply in the long term. The successful bidders will be ensured revenue stability over seven-year periods starting in 2020, 2021, 2022 and 2023, respectively, with guaranteed prices during such periods under the capacity mechanism.

Voltalis, BHC, INNERGEX and ZE Energy are among the successful bidders of the 2021–2027 and 2022–2028 AOLT.

6 Foreign Investment and International Obligations

6.1 Are there any special requirements or limitations on foreign investors investing in renewable energy projects?

The French Monetary and Financial Code (Article L 151-3) has established a foreign direct investment screening regime under which any foreign investor who wants to invest in sensitive business sectors in France must obtain the prior approval of the French Ministry of Economy and Finance. The list of sensitive business sectors includes, *inter alia*, the integrity, security or continuity of the supply of energy.

Renewable energy is, therefore, among the sectors in which investors need a Government approval to reach a specific threshold: a majority stake for EU investors; and one-third of the equity for non-EU investors.

6.2 Are there any currency exchange restrictions or restrictions on the transfer of funds derived from investment in renewable energy projects?

There are no currency exchange restrictions or restrictions on the transfer of funds derived from investment in renewable energy projects.

6.3 Are there any employment limitations or requirements which may impact on foreign investment in renewable energy projects?

There are no employment limitations or requirements which may impact on foreign investment in renewable energy projects.

6.4 Are there any limitations or requirements related to equipment and materials which may impact on foreign investment in renewable energy projects?

There are no limitations or requirements related to equipment and materials which may impact on foreign investment in renewable energy projects.

7 Competition and Antitrust

7.1 Which governmental authority or regulator is responsible for the regulation of competition and antitrust in the renewable energy sector?

The CRE has a market regulation mission, allowing the development of free and fair competition for the benefit of the final consumer.

The FCA is in charge of supervising anti-competitive practices.

The **General Directorate for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF)** is a department of the Ministry of Economy which investigates anti-competitive practices. Among other duties, it ensures that electricity and gas suppliers comply with the requirements regarding contractual terms.

7.2 What power or authority does the relevant governmental authority or regulator have to prohibit or take action in relation to anti-competitive practices?

In case of infringements, the FCA may impose sanctions and issue injunctions. Each financial penalty imposed by the FCA shall be determined on the basis of the particulars of the case and the individual circumstances of each offender.

The law on restrictive competitive practices enables the Minister of Economy to act in defence of public economic policy and have practices or contractual clauses affecting the fairness of commercial relations punished by the courts.

7.3 What are the key criteria applied by the relevant governmental authority or regulator to determine whether a practice is anti-competitive?

Anti-competitive practices can be classified into two main categories:

- Cartels, when their purpose is to freeze the market, raise prices or share customers, in particular practices consisting of fixing prices with competitors or imposing a resale price on distributors.

- Abuses of dominant position, with three criteria to determine whether the practice is anti-competitive: (i) the existence of a dominant position; (ii) the abusive use of this position; and (iii) a restrictive object or effect on competition on the market.

8 Dispute Resolution

8.1 Provide a short summary of the dispute resolution framework (statutory or contractual) that typically applies in the renewable energy sector, including procedures applying in the context of disputes between any applicable government authority/regulator and the private sector.

The **CoRDIS committee** is an independent body of the CRE. It has the power to impose sanctions on those in breach of the Energy Code provisions and to settle disputes related to the access and use of public electricity grids and natural gas networks.

The **National Energy Mediator (MNE)** is an independent public body which offers resolutions to conflicts between energy companies and consumers.

The **Administrative Courts of Appeal** are competent for disputes relating to authorisations or refusals relating to onshore wind facilities. The decisions of these courts can be appealed before the State Council.

The **Administrative Court of Appeal of Nantes** settles disputes in relation to offshore renewable energy facilities. Its decisions can also be appealed before the State Council.

8.2 Are alternative dispute resolution or tiered dispute resolution clauses common in the renewable energy sector?

For disputes between operators, depending on the nationality, either the Commercial Courts will be competent, or an arbitration clause may be inserted in the contract. Arbitration clauses are frequent in contracts where a party is not French. Alternative dispute resolution clauses are common in the context of Corporate PPA.

8.3 What interim or emergency relief can the courts grant?

The Administrative Court may grant interim injunction and suspensions as an accelerated procedure which results in a rapid but provisional decision pending a judgment.

8.4 Is your jurisdiction a party to and has it ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and/or any significant regional treaty for the recognition and enforcement of judgments and/or arbitral awards?

Yes, France has ratified the New York Convention and the ICSID Convention.

8.5 Are there any specific difficulties (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against government authorities or the state?

There are no specific difficulties in litigating or seeking to enforce judgments or awards against government authorities or the State.

8.6 Are there examples where foreign investors in the renewable energy sector have successfully obtained domestic judgments or arbitral awards seated in your jurisdiction against government authorities or the state?

We are unaware of any instances where a foreign investor was able to successfully obtain domestic judgments or arbitral awards against government authorities or the State in the context of renewable energy projects, but there are famous examples in the infrastructure sector.

9 Updates and Recent Developments

9.1 Please provide a summary of any recent cases, new legislation and regulations, policy announcements, trends and developments in renewables in your jurisdiction.

The 2019 **LEC** law and the 2020 **PPE** reaffirm France's ambitions on climate change and renewable energy targets.

France is positioning itself in a growing European offshore wind market. The first awarded wind farm will be operational in 2021 and RTE is adapting its network to the challenges of marine energy. As first generation PPAs expire, onshore wind could be boosted by repowering, with estimated potential of between 0.8–1GW annually by 2025. The first project launched in July 2020 by Boralex will repower a wind farm from 18MW to 35MW.

Solar projects of the 2020 tenders are notably to be built on industrial sites. Twelve solar projects with a global capacity of 94.2MWp were selected to be built at the Fessenheim nuclear power station, to be decommissioned. A 50 MWp solar project awarded to Total will be built on its former refinery site in Valenciennes.

The trend for Corporate PPAs is visible with several deals signed in 2020:

- PPA between airport group ADP and Urbasolar for 47GWh per year from three solar parks.
- PPA between Voltalia and Auchan Retail with a total capacity of 61MW.
- Fifteen to 20-year PPA between SNCF and RES.
- PPA between Orange and Boralex for 67 GWh/year of renewable electricity produced by 26 wind turbines.

COVID-19 will undoubtedly affect renewable energy investment levels in 2020. However, large energy utility companies have continued to secure their position on the French market, such as Iberdrola acquiring Aalto Power with an 118MW installed wind onshore capacity and a pipeline of 63MW. After Quadran in 2017 and Vents d'Oc in 2019, Total acquired in 2020 Global Wind Power France and its 1GW wind onshore portfolio.

The French renewable energy market has become one of the most attractive in Europe.



Véronique Fröding has been advising clients for more than 20 years in cross-border investment, notably for German companies and in the energy sector. She started her career at GIDE and joined DS Avocats as of mid-2017. She regularly advises investors, banks and developers in the development, acquisition and financing of power plant production as well as on construction, operation and maintenance contracts. Her expertise covers regulatory issues, contract law and M&A relevant to the energy sector (electricity, gas, onshore and offshore wind projects, solar and biomass).

Recent highlights include her work with ADEME, E.ON, Enercon, Innogy, NRW Bank, Ralos New Energy, Searenergy, STEAG and RWE. In 2019, Véronique was elected as a member of the Steering Committee of OFATE (French German Office for Energy Transition).

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Stéphane Gasne advises clients on the development, financing, acquisition and disposal of energy assets. After years of experience as a partner with Pinsent Masons, he joined DS Avocats in 2020.

Recent highlights include his work with EDF, RTE, Sonatrel, ENGIE, Siemens Gamesa Renewable Energy, Deme, Suez, Vinci Construction Grands Projets, Bouygues Bâtiment International, Dreev, Urbanomy, John Laing, the Africa Legal Support Facility (part of the African Development Bank), GuarantCo (part of the Private Infrastructure Development Group) and the International Finance Corporation.

Stéphane is the Head of the Export Finance Working Group of the French Renewable Energy Federation (*Syndicat des énergies renouvelables*). This official role leads him to deliver notes, views and analysis to the renewable energy community in France, including developers, financiers and industrial equipment producers. He is currently designing new support schemes with the French Treasury, export credit agency (BPI) and development banks (AFD and Proparco).

The Legal 500 ranks Stéphane in Project Finance, Construction and Energy, and has also singled him out as a leading individual in Energy.

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Founded in 1972 in Paris, DS Avocats has 22 offices on four continents. Our 400 legal professionals provide legal and tax advice, as well as litigation services, in all key areas of business law, including in particular projects development, corporate, finance, construction, competition and regulatory expertise in the energy sector.

We have a long track-record advising on innovative conventional, nuclear and renewable energy projects. The size of our energy team, with 15 experts in Paris alone, allows us to cover the full range of expertise needed for energy projects development, finance, acquisition and disposal. Thanks to our long-standing market presence and breadth of knowledge, we are active on most of the key transactions in France.

Beyond France, our teams regularly advise leading French and international utilities, developers, investors and State entities on their energy projects in Europe, Asia, Africa and Latin America, where DS offices are active in the energy sector.

We also participate in the renewable energy business development through active membership in professional renewable energy organisations, both in France and internationally.

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