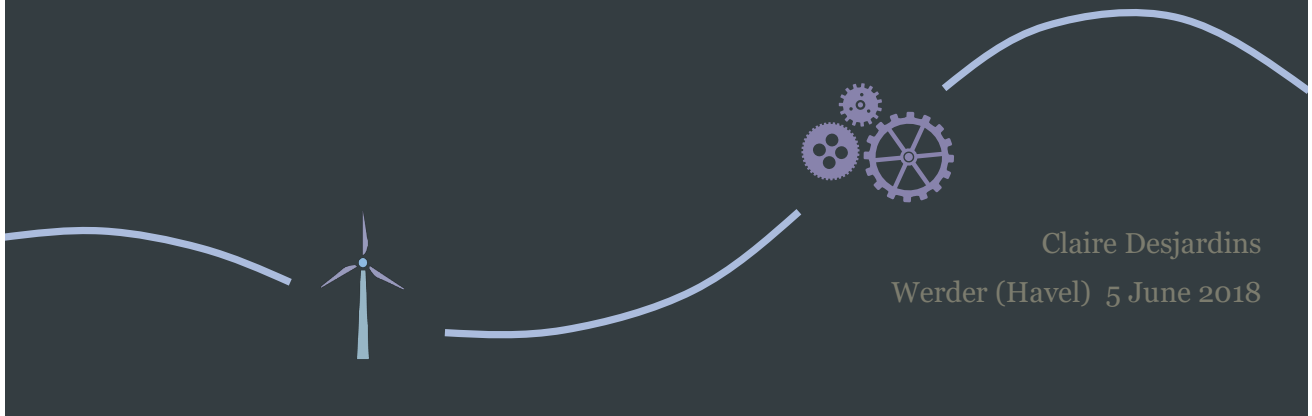




Go West  
Frankreich

# Wind Energy in France & Bird & Bird



Claire Desjardins

Werder (Havel) 5 June 2018

## Implementing wind farms in France

Risks and opportunities from a legal perspective

# Topics of this Session

- A. French wind energy market - Overview
- B. French legal support scheme - Feed-in & premium contracts
- C. Due diligence of wind projects - Essential aspects

## A. French wind energy market: Overview

# French wind energy market – Overview



- France to support wind energy already in the early 2000s

(Law 2000-108 dated 10 February 2000)

- Rationale behind this law:

- Preserving environment with clean energy without CO<sub>2</sub> emissions or waste
- Strengthening energy independence and diversifying electricity mix
- Promoting a controlled and competitive cost of electricity
- Developing a sector that creates jobs across the country

# French wind energy market – Overview



What are France's objectives?

- France has set ambitious targets for the development of renewable energies: France initially undertook to increase the share of renewable energies to 20% by 2020 in its electricity consumption, then raised this objective to 23%

(Law 2009-967 dated 3 August 2009 called "*Grenelle 1*")

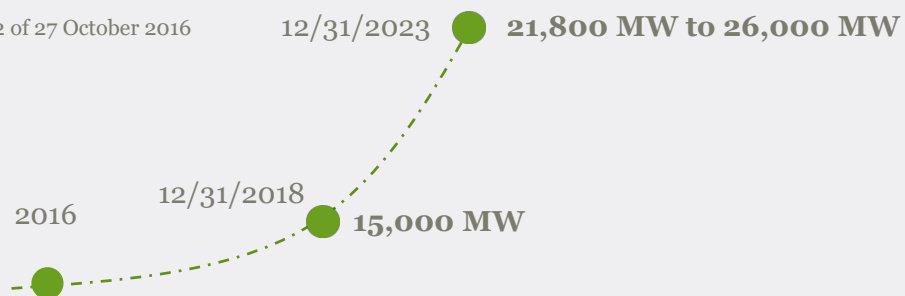
# French wind energy market – Overview

- The multiannual energy programming (*Programmation pluriannuelle de l'énergie* - PPE) sets the development objectives for onshore wind energy production at 15,000 MW by the end of 2018 and between 21,800 MW and 26,000 MW by the end of 2023

(Decree 2016-1442 dated 27 October 2016)

## PPE Objectives

Decree No 2016-1442 of 27 October 2016



## B. French legal support scheme: Feed-in contracts & premium contracts

# French legal support scheme



## 2015 Energy Transition Act

- In order to comply with the Guidelines on State aid for environmental protection and energy (2014-2020) and better integrate renewables into the market, the French Energy Transition Act of 17 August 2015 created a progressive transition from feed-in tariffs mechanism to feed-in premium mechanism (implemented from May 2016)
- Projects concerned: Greenfield projects are the primary targets of this new scheme but brownfield projects may nevertheless benefit from it, provided that an investment program is implemented.

# French legal support scheme

## Feed-in tariff mechanism

- A power purchase agreements (PPA) is entered into with the national electricity company (EDF) for a fixed and long-term period at a set price
- This mechanism has been initiated in 2000 in order to support energy producers through a power purchase obligation to secure the capital investment in renewables energies

# French legal support scheme

## Feed-in premium mechanism

- The producer sells its electric capacity on the open market or through an aggregator and, in addition, obtains from EDF a premium and a management bonus.
- The premium is based on monthly weighted average spot price and more precisely corresponds to the difference between a “target tariff” and the applicable monthly weighted average spot price (as published by the Regulatory Commission of Energy)
- The additional cost incurred by EDF is offset against the electricity public service charge (CSPE)

# French legal support scheme

## Focus on onshore wind farms

*A transition regime for projects developed in 2016 (ministerial order dated 13 December 2016)*

- Reasons: challenges by the French association *Vent de Colère !* and European Commission's analysis on potential breach of EU State aid rules
- 15-year contract

# French legal support scheme

## Focus on onshore wind farms

*A new regime for 2017* (ministerial order dated 6 May 2017)

- Projects comprising up to 6 wind turbines with an installed power capacity of less than or equal to 3 MW per wind turbine are eligible to a feed-in premium contract which will last 20 years

→ When an interested producer request a feed-in premium contract for a new project that complies with the above mentioned characteristics, EDF is required to sign such contract

- Projects comprising at least 7 wind turbines or having one wind turbine of more than 3 MW can only enter into a feed-in premium contract after a competitive bidding process

# French legal support scheme



## Financial aspects of the 2017 regime for onshore wind farms

- In the 2017 scheme, the “**target tariff**” is set between 72€/MWh and 74€/MWh up to an annual threshold. Above this threshold, the tariff is set at 40 €/MWh
- The **management bonus** is set at 2,8€/MWh throughout the 20-year contract. Its aim is to compensate the producer for the costs of having to sell on the electricity market (as opposed to the feed-in contract where EDF was in charge of it)

# French legal support scheme

## Contractual set-up

- Both feed-in tariffs contracts and feed-in premium contracts are standard contracts with EDF which cannot be negotiated
- In the case of feed-in premium mechanism, a **PPA** is entered into by the producer with an aggregator. Such aggregator could also undertake to be the **balance responsible entity** for the production site of the producer, be the **beneficiary of the capacity guarantees** related to the production site and be in charge of the REMIT reporting pursuant to European regulations

# French legal support scheme

## Purchaser of last resort

- In the event the producer can justify an impossibility to sell the electricity produced (whether it is an impossibility to enter into a PPA with an aggregator, to sell electricity itself directly or the aggregator is in default), the producer is allowed to enter into a PPA with a “*purchaser of last resort*”, for a maximum of three months
- The purchaser of last resort will be selected by the French Government by way of a tender offer and the price of electricity in this PPA is set by ministerial order, being specified that this price cannot be more than 80% of the “target tariff”



# French legal support scheme

## Current competitive bidding process for feed-in premium contract for onshore wind farms

- A tender for the development and operation of onshore wind farms for a total capacity of 3 000 MW has been published in May 2017. It is spread over 3 years and the scheme is divided into 6 separate tenders, each for a total of 500 MW
- The results of the first tender shows an average price of 65,4 €/MWh for the 22 winning projects

# French legal support scheme



## Wind farms which remain eligible to feed-in tariffs

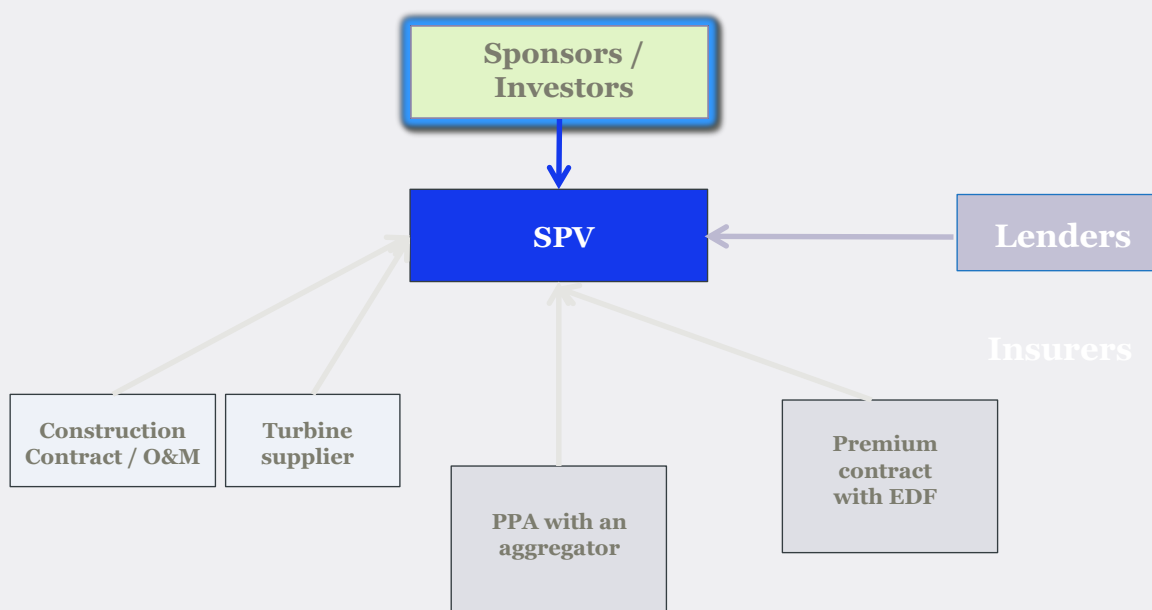
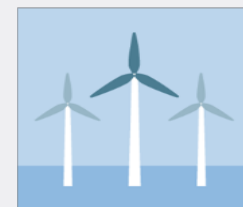
(art. L. 314-1 and D. 314-15 of the French Energy Code)

- Floating wind turbines winner of a competitive bidding process (French "PIA" or European "New Entrant Reserve") located on the maritime public domain
- Wind turbines located in areas particularly exposed to cyclonic risk and equipped with a device able to anticipate and regulate power production

## C. Due diligence of wind projects: Essential aspects

### Due diligence essential aspects

#### Wind project financing scheme



# Due diligence essential aspects



- Permits and administrative authorisations: construction and operation of a wind farm is subject to several authorisations, in particular under the Energy Code and the Environmental Code
  - **Under the Energy Code**
    - Operating permit (only for installations over 50 MW since for installations using wind energy of an installed capacity of not more than 50 MW, there are deemed to be authorised, without the need of a formal permit)
    - Grid connection agreement

# Due diligence essential aspects

- **Under the Environmental Code**

The operation of a wind farm falls under the legislation of Classified Installations for Environmental Protection (ICPE). As a consequence, it requires:

  - Declaration when the installation only includes wind turbines between 12 and 50 metres high and with an installed capacity of less than 20 MW
  - Authorisation when the installation includes at least one wind turbine higher than 50 metres or with an installed capacity of more than 20 MW

## Due diligence essential aspects

- In order to simplify the legal framework applicable to wind farms, the French government has experimented with the principle of a **single environmental authorisation** for wind projects
- This experiment pursued several objectives:
  - Simplification of procedures without reducing the level of environmental protection
  - Integration of environmental issues for the same project
  - Increased anticipation and legal stability for project developers

## Due diligence essential aspects



- Following feedback on this experiment, the single environmental authorisation has been generalised since 1<sup>st</sup> March 2017, making the administrative procedure faster while reducing the number of permits that can be challenged in legal court proceedings

## Expected new improvements

- Based on a government's initiative, the National Wind Working Group consulted between October 2017 and January 2018 to propose structural changes for the onshore wind sector
- The objective given to this group was twofold: (i) achieve measures that would accelerate the development of onshore wind power and simplify regulations, (ii) while ensuring the protection of local residents, the environment and the landscape
- The group discussions resulted in several recommendations, notably to reduce the duration of litigation relating to onshore wind farms by removing the first level of procedure

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