CMS Expert Guide to electricity law and regulation

Electricity law and regulation in France
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1. Overview

1.1 Introduction

1.1.1 The French electricity sector (generation, transmission, distribution, supply and trading) has been fully open to competition since 1 July 2007.

1.1.2 It is a system based on regulated access to gas and electricity networks/facilities with a charge for the use of the networks determined by the government upon a proposal made by the Commission de Regulation de l’énergie (CRE) that counts for circa 40% of the price paid by the final customer.

1.1.3 When implementing the provisions of the Third Energy Package, which reinforces the unbundling obligations of transmission and distribution system operators, as well as storage facilities and LNG terminals, from generation and supply within vertically integrated undertakings, France chose the Independent Transmission Operator (ITO) unbundling model. Under this model, the Transmission System Operator (TSO) may remain part of a vertically integrated undertaking as long as it respects numerous measures set out in the Third Energy Package in order to ensure effective unbundling.

1.1.4 All the compulsory provisions of the Third Energy Package in respect of electricity have been transposed into French law.

1.2 Structure of electricity market

1.2.1 The French electricity market is still dominated by Electricité de France (EDF), both in generation and supply. New entrants have sought market entry vertically (generation, supply and trading) and when they are of sufficient size, horizontally (for example through investments in Distribution System Operators (DSOs)).

1.2.2 EDF’s market share was supposed to reduce following the introduction of Nouvelle Organisation du Marché de l’Electricité (Law No. 2010-1488 of 7 December 2010, now codified in the Energy Code, negotiated with the European Commission). This Law, by requiring EDF to sell electricity to other suppliers at a regulated price, gave such competitor suppliers access to baseload electricity from existing nuclear plants. The law aims to foster competition by giving such suppliers the benefit of buying baseload electricity at prices which are supposed to be the internal transfer price of the incumbent (i.e. EDF in 95% of situations). The maximum volume to be sold is set by the Law in relation to each relevant supplier’s respective client portfolio. The end customer can then choose until 31 December 2015 between regulated tariffs, and market prices – after that date, regulated tariffs for non-domestic customers will be scrapped. While the aim was to level the playing field, in reality, for various reasons including that the current market price is close to the price set by the government, few customers have chosen to change their supplier.

1.2.3 The same Law also introduced the creation of a capacity market to improve the ability of French power generation to satisfy peak demand; French consumption peaks are the highest in Europe. Pursuant to this and to Decree No. 2012-1405 of 14 December 2012 on the contribution of suppliers to the security of electricity supply and establishing a mechanism for capacity obligation in the electricity sector, electricity suppliers must buy peakload production capacity certificates to match their forecast needs three years in advance; such certificates are delivered to the operators of generation plants.

1.2.4 In compliance with the Third Energy Package requirements, the Energy Code also imposes an obligation of
legal unbundling between the network operators and competitive businesses on the other (small) DSOs which connect more than 100,000 users. These legal provisions are placed under the control of the regulator, which has the power to impose sanctions on various operators.

1.3 Key players

1.3.1 Although the French generation sector is entirely open to competition, three companies:

- EDF;
- Compagnie Nationale du Rhône (CNR) and Société Hydraulique du Midi (SHEM) (owned and/or operated by GDF SUEZ); and
- Endesa France (owned by E.ON),

generate almost all non-imported electricity.

1.3.2 The transmission and distribution businesses are regulated by the CRE, in order to guarantee neutrality of access to the networks. The role of the TSO is carried out by Réseau de Transport d'Electricité (RTE) (a fully-owned subsidiary of EDF) which owns the transmission grid. 95% of the distribution grids, which are owned by local corporations, are operated (by law) by ERDF, a fully-owned subsidiary of EDF. The remaining distribution systems are owned and operated by the relevant local corporations and by companies belonging mainly to them.

1.3.3 EDF dominates the supply market with a market share of more than 90% in terms of the number of sites and a market share of more than 91% in terms of allocation of consumption in the third quarter of 2014. New entrants in the supply market are mainly subsidiaries of EU utilities, with the exception of Direct Energie. This firm is the product of a merger between Poweo and Direct Energie, two private limited entities established after the opening of the electricity market and whose business models focussed on the mass market in electricity and gas.

1.4 Current issues and drivers

1.4.1 The issue of priority access for intermittent generating stations, the development of international interconnections, the integration of CCGT on the transmission grid (and their survival in the current situation of low wholesale and CO2 prices), smart grid stakes, the security of supply in winter periods and the balance of supply and demand in all parts of the territory remain key issues in the French electricity market.

1.4.2 As regards the security of supply, France has had, for a number of years, a far more comfortable position than the average European situation, but this advantage is decreasing because of a lack of investment, especially in peak generating stations and shale gas exploration. This is the reason for the creation of capacity obligations and for a capacity market.

1.4.3 The French investment strategy, now conveyed by the bill “regarding energy transition towards green growth”, is based on three main points:

- keeping the nuclear option open: nuclear energy is still seen as the best way to contribute to security of supply low carbon generation, energy independence and competitiveness, even if the law intends to reduce the proportion of electricity generated by nuclear plants from 75% to 50% of the national consumption by 2025;
- ensuring the development of renewable energy; and
increasing investment in energy efficiency for housing and transport.

2. Sector Analysis

2.1 Generation

2.1.1 The generation market is entirely liberalised. Any company may build and operate a generating station, provided that it obtains the required authorisations, including environmental and planning permits.

2.1.2 The Minister for Energy grants all the authorisations to generate electricity. If the available generation capacities do not meet the objectives of the Multi-annual Investment Plan (PPI, soon replaced by the "PPE": all sources of energy shall be contemplated), determined in a governmental decision, he/she may tender for the creation of new generation capacities. This system ensures security of supply but is also used to foster the development of renewable energy and co-generation projects supported by the purchase obligation and related feed-in tariffs (see paragraph 3.4 for more details).

Structure of the generation sector

2.1.3 As referred to above, there are three main companies involved in generation: EDF, CNR and Endesa France (owned by E.ON). Of them, EDF, the public utility which formerly held a monopoly, is still responsible for almost 90% of generation. Nuclear technology is dominant in EDF’s generation fleet (about 80% of the electricity generated in France comes from nuclear plants).

Energy mix

2.1.4 In accordance with European laws requiring Member States to design a strategy for reaching the 2020 target of having 20% of renewable energy in their final energy consumption, France has ambitious laws on its energy mix. In line with article 4 of Directive 2009/28 on the promotion of the use of energy from renewable sources (RED), France has adopted a national renewable energy action plan, and notified the EU Commission of it by the required deadline of 30 June 2010.

2.1.5 Law No. 2009-967 of 3 August 2009 on the timetable for the implementation of the Grenelle Round Table on the Environment ("Grenelle I" Law) and Law No. 2010-788 of 12 July 2010 relating to the national commitment for the environment ("Grenelle II" Law) are the first steps of the French action plan for improving energy efficiency and increasing the use of renewable energies. The government encourages the generation of energy from renewable sources (currently through feed-in tariffs for renewable energy and investment support), and also the consumption of renewable energy (by way of financial aids).

2.1.6 Law No. 2013-321 of 15 April 2013 preparing the transition to a less consumptive energy system is another step of the French action plan. This law aimed at introducing progressive tariffs for residential electricity and heat consumption, based on a “bonus-malus” system applicable as from 1 January 2015. In reviewing the law, the Constitutional Council scrapped the mechanism, finding that it violated the constitutional principle of equality. Nevertheless, the remaining provisions of this law contain various measures for preparing the energy transition, like the removal of ”wind farm development zones” to incentivise the development of onshore wind farms (prior to this, only projects established within such development zones could benefit from the tariff). The Law also abolished the “minimum five towers rule” needed to qualify for the feed-in tariff, relaxed the conditions of realisation of wind farms in the overseas departments, and contains certain measures for managing electricity.
2.1.7 Since 2000, the PPI has strengthened the energy generation subsector and to incentivised the “right” types of generation. More recently, regional public authorities have been preparing Schémas régionaux du climat, de l'air et de l'énergie (SRCAE). These documents shall define qualitative and quantitative targets for the use of renewable energies. Each SRCAE must include a regional wind energy plan with potential locations for onshore and, where relevant, offshore production.

2.2 Transmission

Structure of transmission sector

2.2.1 France initially implemented the First Energy Package which only imposed an obligation of accounting unbundling. This resulted in the functional independence of the Transmission Division of EDF, the first French TSO. The Second Energy Package then imposed legal unbundling. Since it was clearly specified that legal unbundling and ownership unbundling were two different operations, and that legal unbundling did not imply any change in the ownership of the assets, Law No. 2004-803 of 9 August 2004 relating to public gas and electricity services and electricity and gas companies provided for the transformation of the Transmission Division into RTE, a limited company (“société anonyme”) in which 100% of the capital is currently held by EDF.

2.2.2 Finally, in accordance with the Third Energy Package, France chose to create an ITO. For this reason, the French legislation distinguishes between the two types of TSOs:

- TSOs created after 3 September 2009: Article L. 111-8 of the French Energy Code provides that such undertakings cannot be controlled directly or indirectly by an undertaking performing supply and generation activities; and
- TSOs included in a vertically integrated undertaking on 3 September 2009 (i.e. RTE). To comply with the Third Energy Package requirements, Articles L. 111-9 to L. 111-38 of the Energy Code set out measures that reinforce RTE's independence.

2.2.3 The French government neither dismantled RTE, nor entrusted third parties with the management of any part of the transmission grid. The rationale is that the transmission grid constitutes an essential facility and the privatisation of both national monopolies and national public services is prohibited by the French Constitution. This also prohibits the privatisation of RTE.

2.2.4 RTE owns and operates the transmission grid. As the TSO, RTE is a public service operator in charge of operating, maintaining and developing the high and extra high voltage grid, as the concessionaire chosen by the government. RTE guarantees the reliability and the proper operation of the grid, which has to be managed in a neutral, fair and non-discriminatory way, for all users. It is also a member of ENTSO-E, the organisation that coordinates the European TSOs.

2.2.5 Controlling the reliability of the electricity transmission system is at the core of the responsibilities entrusted to RTE. The reliability of the network is based upon RTE's capacity to immediately mitigate any failure of generation facilities, or of transmission lines.

Cross-border issues
2.2.6 Regulation No. 714/2009 of 3 September 2009 on conditions for access to the network for cross-border exchanges in electricity, which repealed Regulation 1228/2003, has applied in France since 3 March 2011.

2.2.7 According to the Third Energy Package concerning common rules for the internal market in electricity, which repealed the Second Energy Package, an eligible customer may freely decide to buy electricity from a generator located in another EU Member State. A French generator or supplier can also freely contract with a foreign customer.

2.2.8 As the European transmission grids are interconnected, RTE has to cooperate with the neighbouring TSOs and is bound by obligations relating to cross-border interconnections. RTE must establish coordination and information exchange mechanisms to ensure the security of the grids in the case of congestion.

2.2.9 France has developed interconnections with all neighbouring countries (with the exception of Luxemburg):

- United Kingdom (their capacity (IFA) is jointly allocated by National Grid and RTE; and three projects are competing for at least a second link);
- Belgium (operated by ELIA and RTE);
- Germany (operated by Amprion and ENBW TNG);
- Switzerland (operated by RTE and Swissgrid);
- Spain (operated by RTE and REE, including a new DC line); and
- Italy (Terna and RTE operating the auctions).

2.2.10 RTE must inform the participants to the markets involved in interconnections and solve any congestion issues using non-discriminatory methods. Given its geographical position in the European electric network, RTE organises exports or imports between France and its interconnected neighbours, and so contributes to the optimisation of the electricity transmission systems. Various methods have been implemented across various lines to enable this, including one direct current line (with the UK), with a second one with Spain under construction. Regardless, RTE organises the allocation of those capacities in a transparent and non-discriminatory way, under the CRE’s and neighbour TSO’s joint control. These rules were organised either in a coordinated way with the other neighbour TSOs (United Kingdom, Belgium, or Italy), or unilaterally by RTE.

2.3 Distribution

Structure of distribution sector

2.3.1 The distribution of electricity is performed under the public service concessions regime or, more rarely, under direct management by the local authorities.

2.3.2 ERDF is the EDF subsidiary that operates 95% of the distribution system in terms of length of networks, billed energy and number of clients. This monopoly is consistent with the Directive 2014/23/EU on the award of concessions (Article 10).

2.3.3 The remaining 5% of the distribution system is operated by non-nationalised distributors, now called local distribution companies (ELD). These ELDs can take various legal forms (régies, SIAC, semi-public companies, etc.). There are about 150 ELDs in France. They distribute electricity in about 2,500 municipalities.

2.4 Supply
Structure of supply sector

2.4.1 Since the complete opening of the electricity market on 1 July 2007, all French consumers may choose their electricity supplier. The historical incumbent energy suppliers, i.e. EDF and the ELDs, still dominate this sector, selling 91% of the quantities delivered to end users. Alternative energy suppliers exist but are still marginal. These include ENGIE Direct Energie and Enercoop.

2.4.2 Only the historical suppliers (EDF and the ELDs, each of them in its traditional area) are allowed to offer contracts with regulated tariffs (determined by the government). Otherwise, all the suppliers must compete with market offers (where the prices are freely determined through bilateral negotiations between the supplier and the customer). Pursuant to the current transition period introduced by Loi NOME, dated 7 December 2010, non-domestic customers continue to benefit from regulated tariffs. During this time, regulated tariffs, based on the recommendation of the CRE, are set by the Ministers in charge of Energy and Economy. After 7 December 2015 (the end of the transition period), the CRE will submit proposals to the Ministers and, after 31 December 2015, the regulated tariffs will be limited to small and mainly domestic customers (all customers in Corsica and “overseas departments”).

Competition

2.4.3 Pursuant to Law No. 2006-1537 of 7 December 2006 concerning the energy sector, the CRE is responsible for the wholesale markets. This task was extended by Law No. 2010-1249 of 22 October 2010 on financial and banking regulation to transactions made between the entities operating in the CO2 market.

2.4.4 This surveillance is now implemented in accordance with the European regulation, “REMIT”, No. 1227/2011, which entered into force on 28 December 2011, on wholesale energy market integrity and transparency.

2.4.5 The CRE examines the development of competition in the retail market and the relationship between the bid price and the price of the ARENH (see paragraph 2.5.2).

Applicability of EU competition law

2.4.6 While the strict application of European competition law is certainly not sufficient to open electricity markets to competition, such laws nonetheless play a decisive role in strengthening competition in the French markets.

2.4.7 The Commission makes full use of its powers, as emphasised by cases concerning the concentration between EDF and EnBW (Decision dated 7 February 2001 No. COMP/M.1853), and between EDF and Hidrocanabtrico (Decision dated 19 March 2002 No. 4064/89).

Basic laws and regulations

2.4.8 The basic laws and regulations concerning wholesale and retail competition are set out in the Commercial Code (Book IV) as well as in the French Energy Code (only the legislative part has currently been published), and in the Consumption Code.

Authorities
2.4.9 French competition rules are basically identical to those applicable under EU competition law. The main categories of abuse of dominant position are predatory pricing, restraining the commercial independence of customers or retailers and creating barriers to market entry.

2.4.10 Preventing and/or punishing anti-competitive practices in the electricity sector falls under the competence of the Autorité de la concurrence (National Competition Authority).

**Anti-Cartel**

2.4.11 Under article L.420-1 of the Commercial Code:
“common actions, agreements, express or tacit undertakings or coalitions are prohibited, particularly when they are intended to: restrict access to the market or the free exercise of competition by other undertakings; prevent the setting of prices by free competition on the market through artificial increase or reduction; limit or control production, market outlets, investments or technical developments; apportion markets or the sources of supply; even through the direct or indirect intermediation of a company of the group established outside France, if the aim or the effect is to prevent, restrict or distort free competition on a market”.

**Anti-Trust**

2.4.12 Article L.420-2 of the Commercial Code prohibits the abuse of a dominant position by an undertaking or group of undertakings with a dominant position on the internal market or a substantial part of it. Such abuse may in particular consist of refusals to sell, coercive tied selling or discriminatory conditions of sale as well as breach of established commercial relations solely due to a partner’s refusal to submit to unjustified trading conditions. The same provision forbids an undertaking or group of undertakings abusing the position of economic dependence of a client or a supplier - such abuse may consist of refusals to sell, coercive tied selling, discriminatory practice or range agreements.

2.4.13 These anti-cartel and anti-trust provisions apply in the energy sector. For instance on 25 March 2009, the French Competition Authority issued a decision imposing a fine of EUR 320,000 to “Gaz and Electricité de Grenoble”, a local semi-public company jointly owned by the city of Grenoble, Suez Energie Services and other energy suppliers. This company was found to have abused its dominant position in the market for the supply of electricity to small businesses in 2005 (Decision No. 09-D-14).

**Merger control**

2.4.14 The French merger control regime is governed by the provisions of Book IV of the Commercial Code as amended by the Law on the Modernisation of the Economy, enacted on 4 August 2008 and Decree No. 2008-1161 dated 14 November 2008. Since 2 March 2009, mergers, acquisitions, take-overs and joint-ventures over the turnover thresholds require an authorisation from the French Competition Authority, which is independent.

2.4.15 According to Article L. 430-2 of the French Commercial Code, a merger must be notified to the French Competition Authority when the following three conditions are met:

- the combined aggregate worldwide turnover, exclusive of tax, of all of the companies or groups of natural persons or legal entities involved in the merger is greater than EUR 150m;
- the combined aggregate turnover exclusive of tax achieved in France by at least two of the companies or groups of natural persons or legal entities concerned is greater than EUR 50m; and
2.4.16 Such a decision of the French Competition Authority can be challenged before the French Administrative Supreme Court (Conseil d'Etat) within two months of its notification.

2.5 Energy exchange / trading

Structure of trading market

2.5.1 Generators, suppliers and traders all participate in the wholesale market. About 90% of the electricity injected into the French grid comes from French generating stations, with the remaining 10% coming from imports mainly from other EU Member States. The majority of the electricity is not exchanged on the wholesale market, but is directly delivered to the final consumers by vertically integrated undertakings. In 2014, the volumes traded in the wholesale electricity market amounted to 960TWh.

2.5.2 Since 1 July 2011, suppliers that compete with EDF have been allowed to buy nuclear baseload electricity at a regulated price that reflects the economic conditions of the then existing fleet of nuclear plants (ARENH). The conditions of ARENH are supposed to be similar to the ones made internally between EDF as a generator and EDF as a supplier. The price has been set by the government up to now and will be adjusted by the regulator every year. A valuation method is expected to be adjusted to take into account deployment and maintenance costs, and other costs related to long-term burdens on nuclear operators, amongst others.

2.5.3 According to Law No. 2006-1537 of 7 December 2006 in respect of Title III of Book I of the Energy Code, the CRE is responsible for overseeing the wholesale electricity market. On this market, electricity is traded either on European stock markets (Epex Spot France for spot products and European Energy Exchange (EEX) Power Derivatives France for forward products), or over-the-counter by direct negotiation between the market players, which uses the form of contract that best suits their needs. Electricity may also be traded via brokered agreements. The transactions are physical or financial (futures and forwards).

2.5.4 Powernext S.A., operating a multilateral trading facility, is responsible for matching trades under non-discriminatory rules, through physical electricity contracts or financial instruments. Powernext S.A. is subject to the control of the French Financial Markets Authority (Autorité des marchés financiers), the French Prudential Supervisory Authority (l’Autorité de contrôle prudentiel) and the CRE. Powernext is mostly owned by EEX (65,89%).

Figure 1: Structure of trading market
2.5.5 EEX, located in Leipzig, Germany, cooperates with Powernext in relation to trading power. Both EEX and Powernext integrated their power spot and derivatives markets. EEX holds 50% of the shares in the joint venture, EPEX SPOT, which operates the spot market for Germany, France, Austria, and Switzerland. The power derivatives market for Germany and France is operated by an EEX subsidiary named EEX Power Derivatives.

Data on traded volumes

2.5.6 The volumes of electricity traded at the borders represented in 2014: 92.4TWh (exports) and 27.3TWh (imports).

Figure 2: Proportional apportionment of trading by platform and deadline in 2013

3. Regulation

3.1 Authorities

3.1.1 The CRE, an independent regulatory authority is responsible for monitoring access to electricity and gas transmission and distribution networks. Generally speaking, the CRE has to ensure that electricity and gas systems are operated and developed in a non-discriminatory manner. Several other functions have been conferred to it including tariffs, tender processes for renewable generation and regulating the access of EDF’s competitors to EDF’s nuclear energy (“ARENH”).

3.1.2 Licensing for generation and for trading remains in the hands of the Minister for Energy, but under precise criteria set forth by the law. Electricity trading has been subject to a system of authorisation by the Minister for energy since 7 December 2011. Transmission and distribution are performed by RTE (transmission) and the DSO’s operating under a legal monopoly, even though the DSOs are concessionaires of local corporations.

3.1.3 Within the CRE, a special body named Comité de réglement des différends et des sanctions which is independent from the members of the college of Commissioners, is empowered to settle disputes related to the access to electricity and gas systems and to impose sanctions for breaches of the rules governing the electricity and gas sectors. No sanctions have been imposed so far.

3.1.4 The Commission cooperates with the French Competition Authority, which is solely empowered to ascertain and impose sanctions for anti-competitive practices in the energy sector.

3.1.5 Part of the regulatory role is retained by the Minister for Energy. This includes setting the regulated supply tariffs, the price of ARENH (for the first years) selecting winners of tenders for renewable generating stations and approving the electricity transmission network development scheme.
3.2 Key legislation

The Law-Decree no 2011-504 of 9 May 2011 codified all the legislative provisions relating to gas and electricity and implemented the Third Energy Package. It came into force on 1 June 2011.

The codification of the regulatory part was scheduled for the beginning of 2014, but has not been published yet (September 2014). Meanwhile, the former regulations remain applicable.

3.3 Regulatory framework

3.3.1 The Minister for Energy is responsible for issuing generation and trading licences. He is also in charge of calls for tenders if and when necessary. Additionally, the acquisition of property rights for land and pre-grid-connection processes with the relevant grid operator are compulsory steps in the process for building and operating a power generation facility.

The CRE's role and powers in the electricity sector

3.3.2 The responsibilities of the CRE are specified in Title III of the Energy Code (Articles L. 131-1 to L. 135-16). They specify that the CRE must ensure the efficient functioning of the market for the benefit of final consumers in accordance with the objectives set out in the energy policy (as defined in article 1 of Law No. 2005-781). This policy includes objectives regarding the reduction of greenhouse gas emissions and increasing renewable energy generation. It also has a major role in non-discrimination and effective competition. The CRE has a wide range of powers, including:

- decisions pursuant to Articles L. 134-1 - L. 134-9 of the Energy Code, including rules on the efficient functioning of the grids;
- preparing reports, opinions, proposals or consultations (Articles L. 134-10 to L. 134-18 of the Energy Code) in respect of competition issues. For instance, the CRE can refer a matter to the Competition Authority when it appears that an operation could possibly lead to distortions of competition in the electricity and/or gas sectors;
- dispute resolution process in the electricity and gas sectors (Articles L. 134-19 to L. 134-24 of the Energy Code); and
- imposing sanctions (Articles L. 134-25 to L. 134-34 of the Energy Code) in case of breach of law by the TSO, a DSO, a supplier or a system user.

3.3.3 For these purposes, the CRE has investigative and control powers, including a right of access to the accounts of companies (Articles L. 135-1 and L. 135-2 of the Energy Code).

Authorisation to operate a generating station

3.3.4 According to the Third Energy Package and to French law, there are two ways for a company to enter the power generation market: by authorisation or under a tender. Both processes must respect objective, transparent and non-discriminatory criteria.

3.3.5 The commissioning of any new or replacement generating station (or one where the power capacity will be increased by at least 10%) is subject to the awarding of a licence from the Ministry for Energy. Changing the
source of primary energy of an existing facility also requires a licence.

3.3.6 An application for a generation licence is made in accordance with Decree no. 2000-877 of 7 September 2000 relating to the authorisation to operate electricity production installations. The Minister for Energy should issue his decision within four months from the date of receiving the application. The Minister must take into account the six criteria set out in Article L. 311-5 of the Energy Code:

1. security and safety of the public networks;
2. in relation to choice of sites, town planning issues and occupation of the public domain;
3. energy efficiency;
4. technical, economic and financial capacities of the applicant;
5. compatibility with the principles of public service and PPI; and
6. compliance with employment law.

3.3.7 As an exception to the above, Article L. 311-6 of the Energy Code grants automatic authorisations (without needing any licence), for:

- facilities with an installed power capacity below the thresholds set out in Decree No. 2000-877 (for example 12MW for photovoltaic generating stations); and
- facilities legally established on or before 11 February 2000.

Hydro power plants are submitted to specific law.

3.3.8 If the available generation capacity does not reach the objectives set out in the government’s multi-annual national programme for investment in generation (“PPI”), the government may call for tenders to achieve the creation of the required generation capacities (as set out in Articles L. 311-10 to L. 311-13 of the Energy Code). These provisions are mainly used to develop renewable energy, but allow for the creation of thermal generating stations in regions where the balance between supply and demand cannot be reached through market measures (mainly in territories and islands).

Permits and Consents

3.3.9 Acquiring property rights constitutes the first legal step in building and operating a power generation facility. Legal schemes ensuring real property rights (full ownership, emphyteutic leases or construction leases) are most frequently used. If the facility is located on the public domain, legal schemes creating property rights, consistent with the public domain regime, are available, that allow long-term occupation and financial leverage.

3.3.10 Specific restrictions are set out in Law No. 86-2 of 3 January 1986 on planning, protection and enhancement of coastal areas, Law No. 85-30 of 9 January 1985 regarding the development and protection of mountains and, more generally, pursuant to the Environment Code and laws protecting landscapes, sites, and monuments. Finally, the construction process usually involves an evaluation of the integration of the project with the environment and an environmental impact assessment. The operation of the generating station cannot begin before all such authorisations have been obtained.

3.3.11 Furthermore, in order to be granted the connection to the grid, the operator has to confirm details such as the planning authorisations (either a non-objection certificate signed by the mayor, a building permit or a prior declaration receipt) and the appointment of a responsible entity (for facilities that do not benefit from the purchase obligation and relevant feed-in tariffs).
3.4 Support schemes

Power purchase obligation and feed-in tariffs

3.4.1 According to article 10 of Law No. 2000-108 of 10 February 2000 on the modernisation and development of public service electricity, now codified in Article L. 314-1 of the Energy Code, two main types of electricity generation facilities can benefit from the power purchase obligation: (i) those facilities that recover household waste or that generate electricity for heating; and (ii) those that use either renewable energies or energy efficient methods (such as cogeneration). The generator has the right, and, as long as this does not hamper the proper functioning of the grids, EDF (or, as the case may be, the local ELDs) has the obligation, to conclude a power purchase agreement at a regulated tariff.

3.4.2 Decree No. 2000-1196 of 6 December 2000 sets, for each category of facility, a power cap for the power purchase obligation, with the exception of wind farms. This cap is currently set at 12MW per site for each category.

3.4.3 According to Decree No. 2001-410 of 10 May 2001, a generator must obtain, from the local administrative authority (préfet), a certificate allowing it to enter into a power purchase agreement with the relevant purchaser.

3.4.4 Feed-in tariffs are determined by Ministerial Orders on the basis of opinions delivered by the Conseil supérieur de l’énergie and the CRE. The pace of change has been especially high for solar PV generating stations, it being specified that, for each facility, the tariff is frozen at a certain date for the whole duration of the purchase contract (15 years for onshore wind farms, 20 years for solar PV plants, etc.).

3.4.5 The French wind feed-in tariffs have been weakened by recent lawsuits (“Vent de Colère”): the EJC ruled on December 2013 that the conditions under which EDF is compelled by law to buy wind power triggered the use of public resources under the meaning of article 107 of the TFUE; therefore, this was an illegal state aid regime. Consequently, the State Council, the highest administrative court in France, annulled on May 2014 the order setting the wind power feed-in tariffs. In the meantime, the French government had prepared a new order, which was cleared by the European Commission in March 2014 for state aid purposes.

3.4.6 This regime is currently reviewed by the Parliament to be replaced by a new set of regulations consistent with the EU Guidelines on State aid for Environmental Protection and Energy that have been in force since 1 July 2014, with a transitional period.

Emissions Allowances

3.4.7 France is expected to meet its commitments under both the Kyoto Protocol and the Energy Climate Package (reduction of emissions by 20% before 2020), even if the “Factor 4” internal objective (reduction by 75% in 2050) still looks uncertain.

3.4.8 French climate policy is based on two pillars: (i) to curb greenhouse gas emissions; and (ii) to adapt the economy to a low-carbon strategy. The climate policy has been defined in the Climate Plan 2004-2012, which is revised every two years in accordance with article 2 of Law No. 2005-781 of 13 July 2005 establishing France’s energy policy priorities. Within the scope of this law, France aims to reduce its greenhouse gas emissions by 25% by 2050 (the above mentioned Factor 4 objective). This objective was reaffirmed within the framework of the so-
called Grenelle de l’Environnement that also confirmed sectorial commitments for the 2020 milestone (to return greenhouse gas emissions’ levels in the transport sector to those of 1990 and to reduce energy consumption in existing buildings by 38%). The bill regarding energy transition towards green growth aims at increasing the proportion of renewable energy to 32% by 2030, reducing CO2 emissions by 40% between 1990 and 2030, and cutting the consumption of fossil fuels down to 30% by 2030. It also outlines targets for 2050, such as reducing the energy consumption by a half and cutting CO2 emissions fourfold compared to 2012, in line with EU-level targets.

3.4.9 In relation to the third period under the EU-ETS scheme starting in 2013, Decree No. 2012-827 of 28 June 2012 implemented Directive 2009/29 of 23 April 2009, ensuring for this period:

- the extension of the scheme to new sectors (including chemicals and aluminium) and to new greenhouse gases (nitrous oxide and perfluorocarbons);
- the transition from a dominant allocation of allowances by free allocation to auctions (part of the generators now have to purchase the necessary allowances in order to cover their emissions); and
- the principle of free allocation of allowances for some industrial sectors that are exposed to a significant risk of “carbon leakage” because of worldwide competition. This allocation is made at EU level on a harmonised basis (i.e. the emissions of the 10% less polluting facilities within the EU), pursuant to Directive 2003/87/CE of 13 October 2003.

3.4.10 The revenues from the auction of the allowances is expected to fund the thermal renovation plan announced during the Environmental Conference of 14 and 15 September 2012. These provisions symbolise the French President's intention to meet the EU objectives in terms of climate change, in the light of the COP 21 that will be held in Paris.

### 3.5 Upcoming regulatory changes

3.5.1 In addition to the vote of the bill regarding energy transition, another crucial step is the end of the regulated electricity supply tariffs. These tariffs will no longer be available for non-domestic customers from 1 January 2016 (in accordance with Law No. 2010-1488 of 7 December 2010 known as “Loi NOMEX”, that was discussed with the EU Commission in the course of State aid procedures).

3.5.2 The issue of the renewal of hydro-electrical concessions is still pressing, and the bill regarding energy transition allows the creation of semi-public companies to run hydropower stations, as well as the possible grouping of all the concessions of a same valley.

### 4. Relevant links

- Energy Regulatory Commission: [www.cre.fr](http://www.cre.fr)
- National Competition Authority: [www.autoritedelaconcurrence.fr](http://www.autoritedelaconcurrence.fr)
Footnotes

1 CRE’s electricity and natural gas statistics for the third quarter of 2014, p.8.
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2 Commission de Régulation de l’Energie, The functioning of wholesale markets for natural gas, CO2
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