

Wind Power in France today and tomorrow – legal aspects

Over the past 25 years, Sterr-Kölln & Partner have acted as legal advisors for more than a hundred wind farm developments in France – their biggest insight: A market with enormous potential for those willing to adapt

As of 31 December 2023, the overall production capacity of French wind farms amounted to 22 GW (onshore) plus 1.5 MW (offshore), compared with over 69 GW for wind farms in Germany. With its surface of over 543,000 km² and a coastline of 20,000 km, France still offers a huge potential for wind power. Thus the strong presence of German developers on the French market is by no means a coincidence – they were amongst the first foreign players to come to France and still account for a sizeable portion of projects being developed in the country.

However, France is considered a rather difficult playground. Truth be told, this reputation is not entirely undeserved; yet with some patience, the willingness to adapt to its particularities and the assistance of experienced advisors, most obstacles can be overcome. In this article we shall highlight just some of the aspects anyone considering the development of an onshore wind project in France should bear in mind.



1. Securing land

Most wind farms are developed in rural areas; they are typically built on farmland, which is subject to specific legislation tending to preserve its agricultural use. Furthermore, the long-term leases necessary to secure the land used for the construction and operation of a wind farm need to be notarized, as are the easements which typ-

ically complete the securing of land. Developers tend to postpone notarization until the start of construction; in the meantime they usually sign mere lease options (not notarized) with landowners, aware that these do not provide them with bulletproof protection against a change of mind of the landowner.

Many wind farms also use rural or logging roads, e.g. for cabling. Again, these roads are subject to specific regulations, and most of the time the execution of the necessary occupation agreements requires prior approval by the municipal council of the town or village where the project is located.

In short, securing land can be tricky, and adequate legal assistance throughout the process should not be disregarded.

2. Permitting

The average delay between the siting of a French wind farm and the beginning of its commercial operations is around seven (sometimes between 8 and 10) years; the main obstacle to faster development of projects being the complex permitting process and delays due to litigation, despite certain acceleration measures implemented over the past few years by legislators.

To begin with, wind farms fall under specific regulations pertaining to industrial sites considered as dangerous for the environment ("ICPE"), which is not the case for PV plants. The permitting process,

therefore, is quite complex, even when a project raises no specific issues such as the presence of protected species near the site; indeed the permit cannot be delivered without the prior organization of a public inquiry and the consultation of several specialized administrative and other public bodies (including the French Air Force which tends to be very strict when it comes to possible interferences with its radars caused by wind turbines).



But today local acceptance has become one of the most critical issues in the permitting process. In some regions public authorities are openly hostile to wind power. Furthermore, following recent changes in legislation, the Prefect may refuse the authorisation of a wind farm on the grounds that the project would have a significant adverse visual impact on the surrounding landscape. Depending on the degree of acceptance of wind power by the public in their "*Département*" or "*Région*", some Prefects prefer to refuse permits for wind farms even on debatable grounds, leaving developers no choice than to go before the courts in order to challenge the refusal – or give up the project.

Refusal of permits and the defence against the challenge of permits by third parties concerns between one half and two thirds of all wind farm projects in France. They often lead to extensive litigation for which the assistance of experienced lawyers is invaluable, and although these court proceedings invariably result in additional delay, the overall success rate is rather favourable for developers.

3. Support mechanisms

Today, the only support mechanism available for onshore wind farms consists in the possibility to enter into a contract for difference ("CfD") by which the French State, acting through EDF (*Electricité de France*), guarantees a certain level of revenue per MWh to wind farm owners who sell the energy produced by the farm to a private offtaker at market conditions. In order to benefit from such a contract, the wind farm must submit a bid in one of the tender procedures organised by the French Ministry of Ecological Transition.

The applicable tender rules are complex and subject to regular changes; in order to assess the opportunity to submit a bid in one of these tender procedures (rather than to opt for a

corporate PPA) legal advice may be helpful to ensure that the project meets all the conditions set out in the tender rules.

It should be noted that following the most recent call for tenders for onshore wind farms, the average reference price guaranteed to successful bidders under the "CfD" amounted to 87.23 EUR/MWh. Given the sharp increase in CAPEX and interest rates, professional organisations are actively lobbying with the French government in order to obtain improvements in these support schemes so as to save a significant number of wind projects which are currently ready for construction, but not economically viable.

4. Wind power and big politics

In conclusion one might say that this contrasted picture of onshore wind development in France perfectly reflects the somewhat equivocal approach of the French government with regard to renewable energies in general: Whilst Germany decided years ago to abandon nuclear power and to completely focus on renewables, the French government still considers nuclear power as one of the two "pillars"

of its energy production, even planning, in the coming years, to ramp up its nuclear capacity. And when it comes to renewables, offshore wind farms and PV plants are clearly favoured over onshore wind farms. But reality bites: Several of the ambitious projects for large wind farms off the French coasts have recently experienced serious setbacks, and the development of onshore PV plants calls for a great deal more land than that of an average wind farm. And despite its "two-pillar" strategy the French government must achieve its ambitious objectives in terms of development of production capacities for renewables; at present there simply seems to be no way to reach these goals without a significant boost in the overall capacity of its onshore wind farms.

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