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French on-shore wind market in 2019: Towards repowering

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Speed Read

The French Government recently announced new objectives for on-shore wind development. The contemplated objectives are 24.6 GW by 2023 and 34.1 to 35.6 GW by 2028 (rising from about 14.5 GW currently).

Repowering is widely seen as a key tool for reaching these objectives. The legal framework for repowering has been clarified in the course of 2018. However, there is still no unified specific regime for repowering projects.

Regulations allow for the granting of a 20-year premium contract for repowering projects – provided the facilities qualify as "new". At the same time, such new facilities may require a new authorisation (a lengthy process) if the project is "substantially" different from the existing wind farms.

The measures implemented in 2018 are a good starting point for wind farm developers willing to consider a repowering project. That said, significant uncertainties remain (for instance: the combination of tariffs and permitting constraints, the implementation of the instruction by local authorities and the potential local technical constraints for grid connection). The upcoming implementation of the updated EU Directive on renewables may be an occasion to further clarify/simplify the framework.

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Background: New objectives for on-shore wind in France

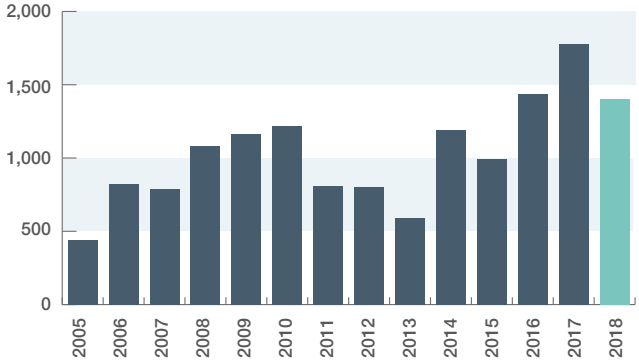
REPOWERING IS SEEN AS NECESSARY TO MEET THE OBJECTIVES SET OUT BY THE FRENCH "PPE"

The policy ambition: Implementing a repowering-friendly PPE

The Law dated 17 August 2015 on energy transition provides that the government must establish (by decree) five-year programming periods (*programmation pluriannuelle de l'énergie*, or "PPE") with objectives set for the development of energy in mainland France (including renewable energy).

Following the initial objectives set out in 2016[1], the latest proposed targets for on-shore wind, which were announced in November 2018, are 24.6 GW by 2023 and 34.1 to 35.6 GW by 2028[2] (from about 14.5 GW currently). This updated PPE is expected to be formally approved by decree during the first semester of 2019.

Repowering takes a special place in these objectives, as this draft new PPE intends to "*promote the reuse of wind farms at the end of their life in order to install more efficient machines*".[3]



Defining repowering

Repowering consists of partially or totally replacing the technical components of a wind farm in order to (i) take advantage of technological developments and (ii) increase wind farms' performance.

Repowering a wind farm may take many forms, including:

– Replacement of wind turbines by another model of identical dimensions, at the same location;

– Replacement of existing wind turbines, at the same location, by wind turbines of the same height overall (mast, pod and blades vertically), but with longer blades;

– Replacement of existing wind turbines, at the same location, by higher wind turbines;

– Replacement and relocation of wind turbines; and

– Adding wind turbines.

01_**https://www.legifrance.gouv.fr/eli/decret/2016/10/27/DEVR1619015D/jo/texte**

02_**https://www.ecologique-solidaire.gouv.fr/sites/default/files/2018.11.27_MTES_dp_PPE_SNBC_stategiefrancaiseenergieclimat.pdf**

03_**https://www.ecologique-solidaire.gouv.fr/sites/default/files/2018.11.27_MTES_dp_PPE_SNBC_stategiefrancaiseenergieclimat.pdf**

The business case: Strong incentives for repowering

Some stakeholders consider that, by 2030, about 5 GW of wind installed capacities could be added by replacing existing wind turbines with more powerful wind turbines[4] (such installed capacities will represent around 14% of the PPE's total wind power objectives by the end of the 2020's).

There are many factors that will lead to such a development:

– Repowering is a question that has arisen for some French players in the sector, with the ageing of the French wind farms. First generation power purchase agreements (PPAs) started expiring in 2014;

– Many sites under favourable wind conditions are already used by existing wind farms. Other constraints (radar, mountain and coastal restrictions) limit the possibilities to find new locations for wind farms and contribute to the relevance of repowering in France;

– Repowering is also an alternative to the dismantling of wind farms.

This trend is already very visible in other countries. The first repowering markets are the countries where wind power development started earlier, including Germany, Denmark and the United States. This market is estimated to grow by around 20% globally per year between 2015 and 2035.

04_**https://www.ecologique-solidaire.gouv.fr/sites/default/files/DP_Groupe_Travail_eolien_2018.pdf**

05_**https://www.ademe.fr/sites/default/files/assets/documents/filiere_eolienne_francaise_partie1a_etat_lieux_filiere.pdf**

Some key legal considerations for repowering projects

THE FRENCH GOVERNMENT HAS TAKEN STEPS TO DEVELOP A CLEARER LEGAL FRAMEWORK FOR REPOWERING

Project developers, lenders and investors will be particularly interested in tariffs, permitting and grid-connection aspects.

Securing incentive schemes for repowering: Premium contracts

Since 2017, on-shore wind may benefit from the so-called "premium regime" (*complément de réumunération*) in the form of a 20-year contract entered into with EDF.

Securing premium contracts for repowering projects involves mainly:

Installing new facilities

As a matter of principle, a given wind farm may not benefit from more than one financial incentive scheme (either PPA or premium regime).

As a result, only fully renewed facilities (ie facilities whose main components are new) may be awarded a premium contract.

Under the relevant legislation, the main components are the wind turbines (including the masts), the inter-turbine connections and the electrical systems.

Complying with the open gate/tendering process

In the absence of specific provisions, the conclusion of a new premium contract will have to comply with the open gate / tendering process system implemented in 2017.

Under the current framework, wind farms of up to six turbines are operated on an open-gate basis whereas wind farms with more than six turbines require prior competitive tenders. You will find more details in the table below:

Open gate (cumulative conditions)[6]	Tender process (when criteria for open gate process are not met)
Up to 6 wind turbines	7 wind turbines or more
Unitary power < 3MW	Also, facilities < 7 wind turbines but at least one turbine > 3 MW
Compliance of minimum distance between facilities as set out by prefectural order	Compliance or non-compliance with such minimum distance
Environmental authorisation	Environmental authorisation

Source: DGEC [7]

Some repowering projects have recently been granted a premium contract as part of a tender process – for example, Boralex Repowering Cham Longe, in Auvergne-Rhône-Alpes (35.35 MW).[8]

Benefitting from the relevant operating permit

For both the open gate and the tender process, developers are currently required to have obtained an environmental authorisation for the project. Depending on the characteristics of the repowering project, such an authorisation will have to be:

– The authorisation already obtained in compliance with the French Environmental Code (as the case may be, as amended by a complementary prefectural order); or

– A new authorisation (if the project involves a substantial modification to the previous one – see below).

The obligation to have an environmental authorisation for applying for a premium contract is an important constraint for project developers. It cannot be excluded that some flexibility could be introduced in the future.

06_The French Government recently announced that the condtions for the open gate system (as per the **ministerial order** dated 06 May 2017) will be modified. It may become more stringent.

07_**https://www.ecologique-solidaire.gouv.fr/sites/default/files/20180626_MardiDGPR_LO-repowering.pdf**

Permitting: A ministerial instruction to clarify obligations

A key question is whether or not a new environmental authorisation is required for a repowering project to be implemented.

If a repowering project requires applying for a new environmental authorisation, the process will take longer, the outcome is not guaranteed, and the new authorisation may be challenged by third parties.

As a reminder, under French law:[9]

– **Prior notification of notable modifications**: The authorisation holder must inform the authority of any notable modifications prior to their implementation (*porter à connaissance*);

– **Substantial modifications**: If, on the basis of the prior notification sent by the operator, the authority considers that the modifications at stake are substantial, the operator will have to submit an application for a new environmental authorisation;

– **Other notable modifications**: If the authority considers that the modifications at stake are not substantial, the project will not require a new authorisation, but may lead the authority to impose new obligations on the operator as part of an amendment to the existing permit.

In this context, stakeholders will have to deal with a particular challenge: these rules on permitting are difficult to combine with tariffs regulations, which require that the facilities be new in order to benefit from a premium contract (see above).

The 2018 instruction clarifies the cases where a new environmental authorisation is (or is not) potentially required.

On 11 July 2018, the Minister in charge of Energy issued an instruction to be used by environmental authorities when dealing with prior notifications.

You will find below a quick summary of the instruction:

– **Cases where the change is notable, but not substantial**: In the case of replacement of wind turbines by another model of identical dimensions, at the same location, where the modification is not substantial but is nevertheless notable; the wind turbine model change therefore requires notifying the authority;

– **Cases where the change is automatically considered as substantial**: The modification is necessarily substantial if the change in the wind farm leads to:

  – an increase in the number of wind turbines (where the wind turbines' masts exceed 50 metres); or

  – a capacity increase of more than 20 MW (where the wind turbines' mast height is between 12 and 50 metres); or

  – an increase of the masts' height from below 50 metres to above this threshold.

  The operator will then have to submit an application for a new environmental authorisation;

– **Cases where the authority will decide on a case-by-case basis**: For the other cases, the operator must notify the authority, and the latter will have to assess the extent of the change on a case-by-case basis (the application file will include elements on noise, disturbances on radar and air navigation (civil and military), the landscape, heritage (*patrimoine*) protection, biodiversity, the provisions set out for carrying out the works, some specific information in case of relocation of the wind turbines, and the conformity of the renewal project with the town planning rules).

Replacement of the wind turbines, at the same location, by higher turbines

By way of example, the instruction notes that in such a case (in the absence of specific circumstances):

– an increase of less than 10% in the height of all wind turbines is a notable modification;

– an increase of more than 50% in the height of one of the wind turbines is a substantial modification; and

– for an increase in the height of wind turbines of between 10% and 50%, the substantial or significant nature of the modification will be assessed on a case-by-case basis based on the elements of assessment submitted.

08_See the **winning bids** for the second period of tender no 2017/S 083-161855.

09_See Articles L.181-14, R.181-45 and R.181-46 of the French Environmental Code.

Dealing with grid connection aspects

The technical documentation of ENEDIS and RTE (the French distribution and transport grid operators) does not seem to specifically deal with repowering projects at this stage.

However, it seems that the modification cases provided in such documentation – in particular, the modification of the facilities, of their installed capacity and/or of their grid injection power – will be relevant to most repowering projects.[10]

We note that:

– **From a legal standpoint**, the implementation of a repowering project is likely to involve the execution of new grid connection-related agreements;

– **From a technical standpoint**, technical constraints will of course have to be taken into account by the transport grid operators, requiring in some cases that works be carried out on the public grid. For instance, in case of capacity increase, such constraints may result from the current capacities of the connection cables, of the substation and/or of the transport grid itself.

What's next?

The measures implemented in 2018 are a good starting point for wind farm developers willing to consider a repowering project from a regulatory standpoint.

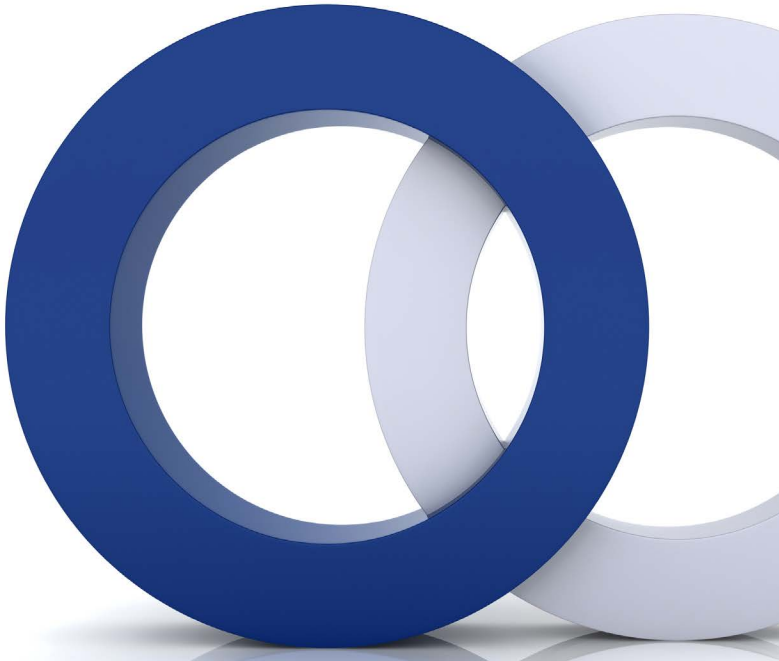
That said, significant uncertainties remain – for instance:

– **Combination of tariffs and permitting constraints**: Developers will need to combine premium contract regulations (which require the facilities to be new) with permitting regulations (which require applying for a new authorisation if the repowering project is "substantially" different from the existing project);

– **Local implementation of the instruction**: The instruction mainly provides useful guidelines for rather straightforward situations (e.g. the addition of a wind turbine whose height exceeds 50 metres); as a result, it will not exclude potential discrepancies of approach between authorities across France;

– **Potential local technical constraints for grid connection**: The feasibility of each repowering project will have to be discussed with the transport grid distributors at a local level.

The upcoming implementation of the updated EU Directive on renewables may provide an opportunity to clarify/simplify further the framework. Indeed, the current framework (in particular tariffs, permitting and grid connection) could be amended as part of the 2018 recast of the EU Directive on the promotion of the use of energy from renewable sources, which provides for simplified and swift processes for permit-granting and grid connection for repowering projects.[11]



10_Source: this **presentation** of Enedis

11_Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources **https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2018%3A328%3ATOC&uri=uriserv%3AOJ.L_.2018.328.01.0082.01.ENG**

The Paris Energy group

The Paris Energy group is at the forefront of the renewable energy market, advising sponsors, developers, project companies and financiers across the renewable energy spectrum, with particular expertise in the wind (on-shore and off-shore) and solar sectors.

Our team has considerable experience of advising on all aspects of renewables projects including the permitting and planning procedures, construction and maintenance aspects, the financing, corporate and tax aspects, as well as the environmental economic instruments which are essential in order to make such projects viable.
The combination of sector expertise, focused legal skills, the ability to keep up-to-date with the energy and utilities sector, which is one of the fastest moving marketplaces in the world, together with our global reach, gives our clients access to the best possible advice.

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"Market-leading expertise in matters relating to renewables."

Chambers & Partners 2018 – Europe Wide (Energy)