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KEY CONTRIBUTIONS OF THE FRENCH LAW RELATED TO THE ACCELERATION OF THE RENEWABLES IN FRANCE

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KEY CONTRIBUTIONS OF THE FRENCH LAW RELATED TO THE ACCELERATION OF THE RENEWABLES IN FRANCE

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1. Acceleration Zones for the development of renewables
2. Warranty of recourse insurance
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I. INTRODUCTION

Purpose of the French renewable energy acceleration law

Challenges to tackle:

- Energetical crisis
- Climate change
- Delay for France in achieving its renewable energy targets:
 - Only 19% in final consumption in 2020 instead of 23%
 - Fixed target of 42,5% in final consumption in 2030

Renewable energy acceleration law main goals:

- Territorial planning of renewable energy projects (distortion between Regions)
- Simplification of procedures
- Facilitate mobilisation of land for the development of solar and wind energy
- Sharing of renewable energy values (with local actors)

I. INTRODUCTION

Purpose of the French renewable energy acceleration law

General comment:

- Complexification of the administrative process (ex. : acceleration zones) ;
- The future application of these new provisions will show the effectiveness or not of the law to accelerate the renewables development.

Ref. :

LOI n° 2023-175 du 10 mars 2023 relative à l'accélération de la production d'énergies renouvelables

FOCUS ON 3 KEY CONTRIBUTIONS OF THE LAW

1. Acceleration Zones for the development of renewables



2. Warranty of recourse insurance



3. Sharing the value of renewables



1. ACCELERATION ZONES FOR THE DEVELOPMENT OF RENEWABLES



1. ACCELERATION ZONES FOR THE DEVELOPMENT OF RENEWABLES

The law creates acceleration zones dedicated to the implantation of renewable energy installations:

Criteria : based on the areas potential and the capacity already installed

Why ? Considered as the counterpart of the initially planned veto power (“droit de veto”) of the Mayors on renewables (specifically Wind Power) replaced by such acceleration areas in the approval process of the Law (importance of the Municipalities in this acceleration areas procedure

Purpose:

- Identify in planning documents of Municipalities areas to easier the development of renewables
- Accelerate procedures in those identified areas
- Prevent the « dangers » resulting of the installation of renewables
- Key actor : Municipality

1. ACCELERATION ZONES FOR THE DEVELOPMENT OF RENEWABLES

Procedure for the creation of acceleration zones :

- 1) Municipalities, after public consultation, identify the areas beneficial for the implementation of renewable energy installations (information provided by the Ministry of Environment / State services)
- 2) Transmission of this information to a Prefectural referent
- 3) The referent fixes a mapping at departmental scale and transmits this document to the regional energy committee (a newly created committee composed of representatives of the various territorial authorities, representatives of the state and public institutions)
- 4) The committee determines if the identified acceleration areas are sufficient to achieve regional renewable energy goals
- 5) The mapping document is discussed in the Municipal councils of the concerned departments and requires the assent of the council to be finally approved

To be noted : **Exclusion zones** of renewables can only be set by a Municipality if the creation of an acceleration zone is accepted (Municipality always able to limit the installation of renewables on its territory within its Urban Planning rules but framed and to be justified)

Municipalities always give their assent to be included in an acceleration zone

1. ACCELERATION ZONES FOR THE DEVELOPMENT OF RENEWABLES

Advantages in the acceleration zones:

- Examination phase of the Environmental authorisation request is limited to 3 months as of the reception of the file (currently 5 months and often more)
- Reduction of the time for the public inquiry commissioner to submit its final report (from 1 month to 15 days now, with a delay possible up to 15 days extra)
- In calls for tenders, the intent to develop a project in an acceleration area is considered as an objective criteria that should be taken into account
- Winning projects in acceleration zones can benefit from an annual modulation of the feed-in tariff for the produced electricity in order to compensate losses due to less favorable installation conditions than average projects in the area

To be noted: Development of projects outside of the acceleration zones remain possible (business as usual)

- But obligation to create a project committee gathering the various stakeholders

Summary

Pro arguments	Contra arguments
<ul style="list-style-type: none">- The identified acceleration zones take into account the energetical potential of each territory and identify territories with less impacts (ex. : outside of migratory paths)- Accelerate specific administrative procedures, especially the examination phase of the environmental authorisation (nowadays it can take up to 2 years)	<ul style="list-style-type: none">- A municipal council can vote against the acceleration zones as it has to give its assent to the mapping- If a municipality decides to identify acceleration areas, it can also delineate exclusion areas for renewable energy installations- Planning period can take long: up to 1, 5 years if the identified are considered insufficient to achieve regional objectives)

1. ACCELERATION ZONES FOR THE DEVELOPMENT OF RENEWABLES

Latest news :

- Drafting of the acceleration zones map is ongoing
- The Ministry of Environment / State services is providing information to the Municipalities on such zones
- Within 8/9 months, the Departmental mapping should be achieved

2. WARRANTY OF RECOURSE INSURANCE



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Purpose of the legal recourse insurance:

- Fasten project development: nowadays, if the authority has issued an authorisation and this authorisation is being **challenged** before the Court, the operators aren't keen to start the construction of the project while remaining in uncertainty regarding the uphold of their authorisation.
- Statistics : Approx. 70 % of the authorisations are challenged (40/50% recourses successful)
- ➔ It could lead to a project development acceleration from 1 up to 4 years

Immediate enforcement but implementing decree expected : currently drafting, based on the following elements :

Who could adhere to the legal recourse insurance:

- The operator of any renewable energy installation laureate of a call for tender or
- The operator of a renewable energy installation benefitting from a remuneration by a tariff order (ex: CR 17)

What is the object of the legal recourse insurance :

- Possibility of adherence/membership to a guaranty fund
- If the environmental authorisation gets withdrawn/cancelled, the operator can be partially compensated for his financial losses in the project
- Elements considered as financial losses (supply, construction, further financial expenses)

2. WARRANTY OF RECOURSE INSURANCE

When to adhere to the fund:

- After delivery of the environmental authorisation and
- Before starting the construction works and
- Before the environmental authorisation is being contested in front of the administrative judge

About the fund *(statements of the minister for energy transition in parliamentary session)* :

- It will be mostly funded by the operators (90%) and the State will inject 10% for its launching
- Approximately estimated between 200 to 300 million euros
- The contribution of each member of the fund is proportional to the power capacity of the project

In practice :

Payment after the definitive ruling of the Court on the recourse

3. SHARING THE VALUE OF RENEWABLES



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Purposes: To enable economic benefits at local scale (Article 93 of the law) and strengthen the local acceptance

Proposition of participation to the Project Company (SA, SAS, SCIC, SEM):

- Associates or shareholders of a Project Company have to inform:
 - The Mayor or
 - The President of a public establishment for cooperation between local authorities (EPCI)
- Before signature of the bylaws (to allow the Mayor/EPCI to submit a participation offer to the Project Company)
- Before the SPV shares sale (to allow the Mayor/EPCI to submit a purchase to the Project Company)

Consequences and enforcement ?

- 2 months before signature / sale
- Simple information required (no penalties if not set) / Silence of the Mayor/ EPCI : reject of the offer (after 2 months)

3. SHARING THE VALUE OF RENEWABLES

Purposes: To enable economic benefits at local scale (Article 93 of the law) and strengthen the local acceptance

Proposition of participation to the Project Company:

Consequences and enforcement ?

Immediate enforcement (but implementing decrees expected)

- To the SPV established after the enforcement of the Law (March 12, 2023)
- To the shares sale after the enforcement of the Law (March 12, 2023)

Recommendation : by letter with acknowledgement of receipt (preserve evidence)

3. SHARING THE VALUE OF RENEWABLES

Purposes: To enable economic benefits at local scale (Article 93 of the law) and strengthen the local acceptance

Financing obligations of local/environmental projects for project holders:

- The laureate of a call for tenders have to finance two kind of projects:
 - Projects carried out by a municipality (or a public establishment for cooperation between local authorities/EPCI) in favour of the energy transition, the safeguarding or protection of biodiversity or adaptation to climate change such as energy renovation, energy efficiency, etc.
 - Nature and biodiversity protection projects: a fund dedicated to biodiversity will be created and abounded by project holders

3. SHARING THE VALUE OF RENEWABLES

Enforcement : immediate

Nb : Financing obligations of local/environmental projects for project holders have to be allowed by the European Commission before come into force and applies to the new projects starting at June 1st 2024.

Benefit of this provision :

→ provides a legal framework to these kind of measures already implemented by developers (legal security)

Examples ?

QUESTIONS & ANSWERS