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SUMMARY

The legal framework governing the procedures for planning and authorising offshore wind farms in France

October 2019

Author:
David Roumegoux, OFATE, david.roumegoux@developpement-durable.gouv.fr

Contact:
Markus Wagenhäuser, OFATE, markus.wagenhauser@developpement-durable.gouv.fr

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aufgrund eines Beschlusses des Deutschen Bundestages

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MINISTÈRE DE LA TRANSITION ÉCOLOGIQUE ET SOLIDAIRE

Abstract

The development of the offshore wind sector is one of the mainstays of the energy transition. However, siting wind turbines offshore involves many specific considerations to do with the marine environment. This results in the application of a specific legal system, which differs significantly from the one applicable to siting onshore wind turbines.

Since the development phase is the most expensive for stakeholders proposing offshore wind farms at sea, a legal framework designed to ensure the social acceptability of projects and to the securing of investments is essential if the sector is to develop properly.

The feedback from the initial calls for tenders highlighted a number of difficulties, particularly with regard to planning and authorisation procedures, which several successive reforms have sought to overcome. Delicately reconciling the uses and interests involved in building such infrastructure carries the risk of appeals being launched at all stages of the development phase. The administrative complexity of these procedures has also in some cases led to particularly long delays between the announcement of the results of a call for tenders and the actual commissioning of the installations concerned.

Legislation has therefore adopted successive reforms to adapt the framework for authorising and planning offshore wind infrastructure to these specific considerations. This summary report in particular, the new provisions for France derived from the "ESSOC" law which sets out to simplify the relationship between local government and the electorate, and which came into force on 10 August 2018. These laws aim to simplify and speed up implementation procedures, while at the same time facilitating consultation upstream of the project and giving greater legal certainty to the project owner.

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Content

Introduction

In accordance with the European Union's energy and climate policy, France a has reasserted their aim of increasing the use of renewable energies, including offshore wind, in their respective national energy and climate plans, for the period 2021-2030[1].The development of offshore wind power must therefore play a part in helping to achieve the targets for renewable energies that these countries have set themselves, contributing to their European and international commitments to reduce greenhouse gas emissions.

Developing major wind farm projects in an environment as specific as the sea involves embracing a number of specific challenges. First of all, there is a particular technical constraint resulting from the infrastructure being built at sea and needing to be connected to the grid. Furthermore, it is vital to factor in the various impacts on the environment and the landscape, and on the various other activities that are carried out at sea so as to ensure the social acceptability of projects. This involves reconciling numerous, sometimes conflicting, interests.

Consequently, the first efforts to build offshore wind farms were characterised by the complexity of all the procedures involved, the frequency and sheer number of contentious appeals against administrative decisions and finally the particularly long delays between the results of the calls for tenders and the installations finally being brought into service. These various factors lead to legal uncertainty for the initiators of these projects.

The increasing numbers of these obstacles during the development phase – together with the high costs of the first wind farms – prompted the legislator to intervene. In France, reforms have gradually been adopted to address the difficulties that emerged in the wake of the first calls for tenders.

Although legislation governing wind turbines has become more straightforward over the last few years, a new reform was adopted in 2018 with the ESSOC act of 10 August 2018[2], simplifying the relationship between local government and the electorate. Although not specific to offshore wind turbines, article 58 contains provisions which introduce a number of changes. Public participation is now required when deciding on the location or potential locations of proposed facilities. It also introduces the concept of an "envelope permit", giving more flexibility to the project initiator, who can have authorisations containing variables. Although other contributions from legislation involve the option for the State to undertake all or part of the impact study, sanctions may also be imposed on the winner if they fail to deliver the project without good reason. Finally, this law enabled the State to renegotiate purchase tariffs with the winners of the first calls for tender in 2011 and 2013. Law no. 2018-1204 of 21 December 2018 on the procedures for authorising offshore renewable energy production facilities[3] subsequently clarified certain provisions of the law.

[1] OFATE 2019, Memo on Germany's draft national energy and climate plan (NECP), (link, in French) / OFATE 2018, Memo on the planning instruments of the French climate protection policy until 2028: multiannual energy programme and French national low-carbon strategy, (link, in German).
[2] law no. 2018-727 of 10 August 2018 which sets out to simplify the relationship between local government and the electorate, ESSOC, (link, in French).
[3] Law no. 2018-1204 of 21 December 2018 on procedures for authorising offshore renewable energy production facilities, (link, in French).

This summary document sets out first and foremost to provide a brief overview of the current state of offshore wind power in France then to focus on establishing the legal framework for the planning and authorisations needed to build the infrastructure in France (II). This document highlights the recent legal developments in this area, particularly the ESSOC act which will only fully apply to future projects to build wind farms.

I. Overview of offshore wind development in France

Below is an overview of the current situation regarding the offshore wind sector in France **(I.1.)**

I.1. Situation in France

In France, the expansion of the offshore wind power sector must help the country achieve its **target of having renewable electricity account for 40% of the power mix by 2030**, a target set by the law on the energy transition to boost green growth[4], and transposed into article L. 100-4 of the Energy code[5].

The multiannual energy programme (PPE II) consultation project thus sets a target of **2400 megawatts (MW)** of installed capacity by the end of **2023**, and then between**4700 and 5200 MW** of installed capacity **by 2028**[6]. These targets could be revised upwards by the government in the near future[7].

In 2004, a first call for tenders was issued to build a wind farm off the coast of Alabaster. The project involved building a 21-turbine farm with 105 MW of installed capacity, but it never actually came to fruition.

Since then, six other calls for tenders have been issued for offshore wind projects, which are all at different stages of development (see table 1). The project off the coast of Dunkirk is the most recently awarded and also the first to have resulted from the competitive bidding procedure. The awarding of this project involving nearly 600 MW and 45 wind turbines was announced at the end of June 2019[8]. The next step for this wind farm will involve the project being referred to the **national commission for public debate** (CNDP), with the filing of the **various applications required before authorisation** can be granted to build the farm and connect it up to the grid.

The purchase prices for the projects have changed significantly since the first calls for tenders in 2011 and 2013, and article 58 of the ESSOC act introduced the option for the government to **renegotiate the purchase prices of these initial projects with the winners**[9].

[4] Law no. 2015-992 of 17 August 2015 on the energy transition for green growth, article 1 III, paragraph 4, (link).
[5] Energy code, article L. 100-4 paragraph 4, (link).
[6] Ministry for the ecological and inclusive transition (MTES), PPE II p. 119, (link).
[7] When the project was awarded for the wind farm off the coast of Dunkirk in summer 2019, the Minister for the ecological and inclusive transition expressed his desire to increase the volumes provided for in the multiannual energy programme, raising the target to 1 GW allocated per year, as opposed to the 500 MW initially planned. Prime Minister Edouard Philippe confirmed this position in his general policy speech on June 12, 2019.
[8] Ministry for the ecological and inclusive transition, "The government speeds up deployment of offshore wind", (link)
[9] Law which sets out to simplify the relationship between local government and the electorate, article 58, paragraph III, (link).

This has led to the government securing a new financial agreement, representing **a 30% adjustment** on the purchase price, **reducing it from around €200 to €150/MWh.** This has most likely saved the government the equivalent of €15 billion of public money. The purchase prices renegotiated by the French government were subsequently approved by the European Commission on 26 July 2019[10].

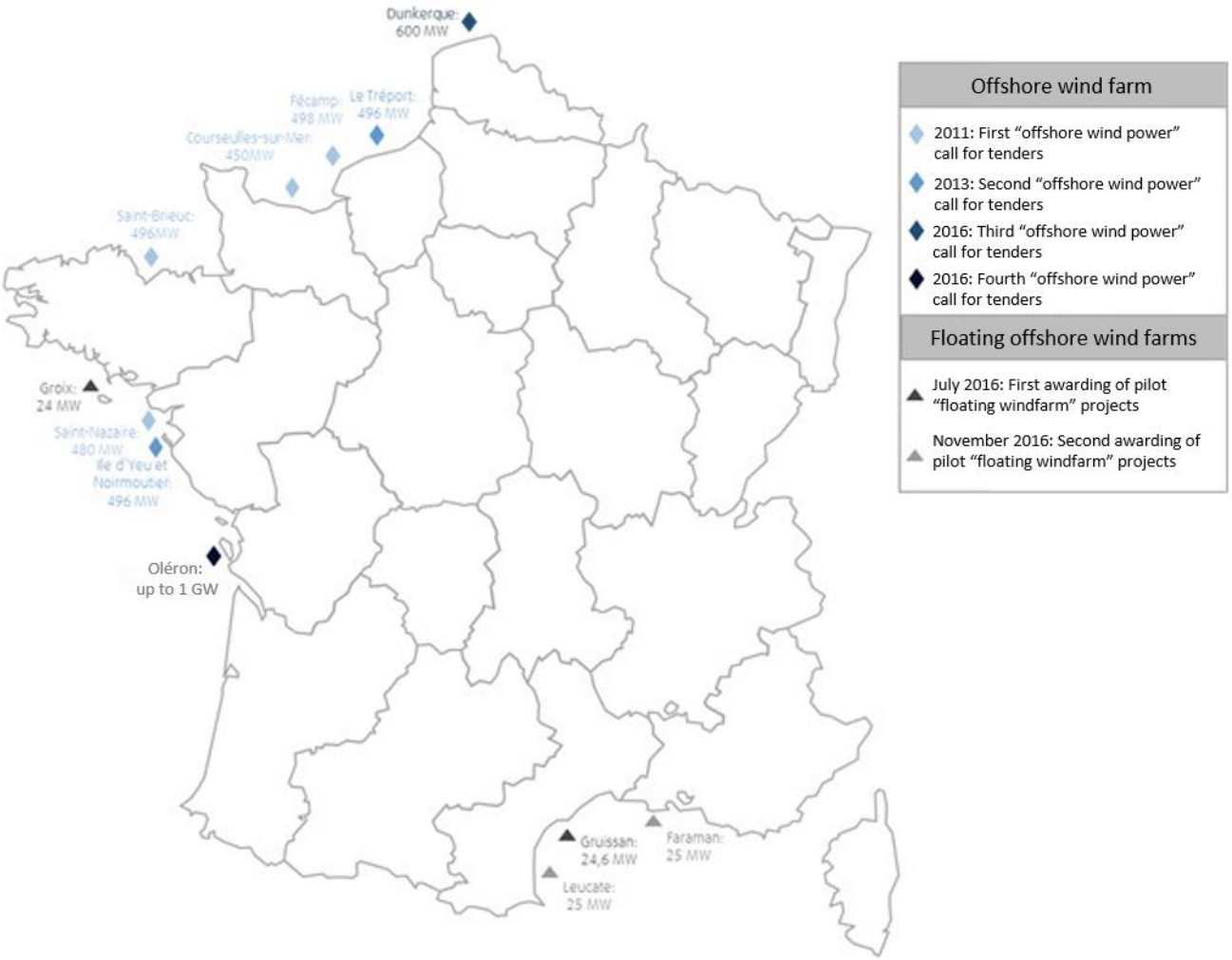

Figure 1: Locations of various proposed offshore wind farms in France Source: Windustry 2019, OFATE presentation

[10] European Commission, Press release, "State aid: the Commission authorises support measures for six offshore wind farms in France", (link).

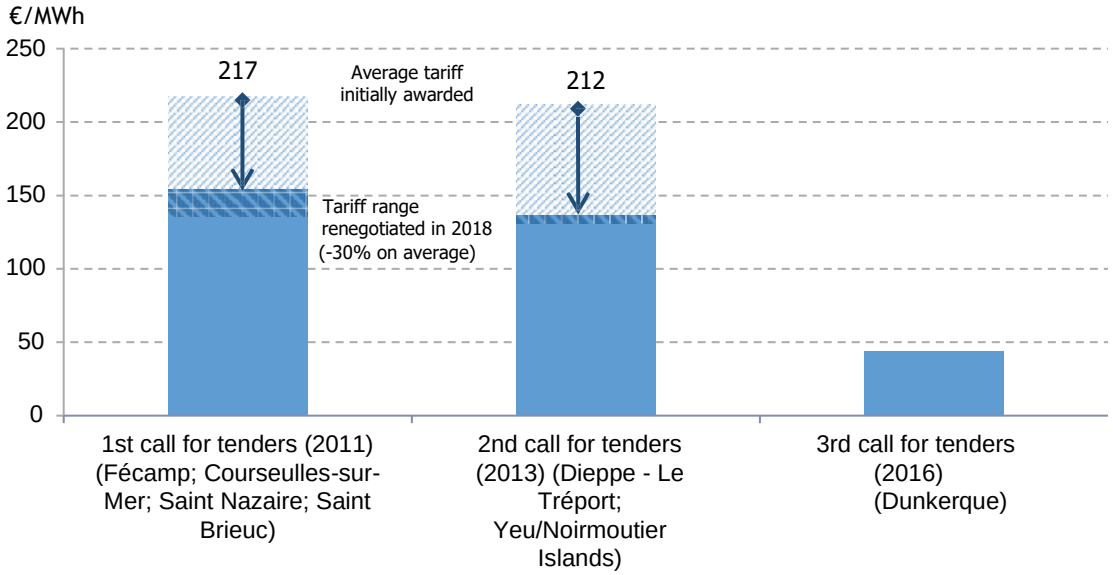

Figure 2: Offshore wind power tariffs for the various calls for tender
Source: CRE 2019 / European Commission 2019 / Court of Auditors 2019, OFATE presentation

The progress of the various wind farm projects in France is shown in the table below:

Project name	Tender period	Volumes chosen	Purchase tariff	Winners	Status of the project	Scheduled to come into service
Fécamp (Seine-Maritime) (link)	1st call for tenders (July 2011)	498 MW	€135.2/MWh	EDF Energies Nouvelles / Dong Energy Power	Last authorisation issued (link)	Law extending the commissioning lead time to 2025 (link)
Courseulles-sur-Mer (Calvados) (link)	1st call for tenders (July 2011)	450 MW	€138.7/MWh	EDF Energies Nouvelles / Dong Energy Power	Last authorisation issued (link)	Law extending the commissioning lead time to 2025 (link)
Saint-Nazaire (Loire-Atlantique) (link)	1st call for tenders (July 2011)	480 MW	€143.6/MWh	EDF Energies Nouvelles / Dong Energy Power	Last authorisation issued (link)	Law extending the commissioning lead time to 2025 (link)
Saint Brieuc (Côtes d'Armor) (link)	1st call for tenders (July 2011)	500 MW	€155/MWh	Iberdola / EOLE-RES SA	Last authorisation issued (link)	Between 2021 and 2023
Dieppe - Le Tréport (Haute-Normandie) (link)	2nd call for tenders (March 2013)	496 MW	€131/MWh	ENGIE/EDPR/Sumitomo Corporation/Banque des Territoires	Last authorisation issued (link)	Between 2020 and 2023
Yeu and Noirmoutier Islands (Pays de la Loire) (link)	2nd call for tenders (March 2013)	496 MW	€137/MWh	ENGIE/EDPR/Caisse des dépôts et consignations	Last authorisation issued (link)	Between 2020 and 2023
Dunkirk (Hauts de France)	1st competitive bidding (April 2016)	600 MW	€44/MWh	EDF Renouvelables / Innogy / Enbridge	Authorisation applications may be filed.	2026

Table 1: Status of the various wind farm projects
Sources: Project websites, for tariffs: European Commission 2019 / CRE 2019, OFATE presentation

The wind farm off the coast of Dunkirk is the first to be able to take advantage of the reforms detailed in the rest of the summary report. This is particularly the case with the introduction of the competitive bidding procedure (II.1), and the introduction of authorisations with variable characteristics, with the concept of the "envelope permit" (II.2.3).

In November 2016, a new call for tenders was issued for the installation of offshore wind turbines off the coast of the island of Oléron in 2020, for total power (still to be determined) of between 500 and 1000 MW. The 2019 multiannual energy programme also provides for the installation of a farm capable of generating approximately 1000 MW between the East Channel and the North Sea. It will soon be the subject of a public debate, which will serve as a means to identify one or several possible areas for locating it, without harming marine biodiversity or interfering with offshore activities[11].

At the same time, France inaugurated a prototype floating wind turbine on 31 October 2017 in Saint-Nazaire, with total installed capacity of 2 MW. The multiannual energy programme also sets production targets for floating wind farms, with a call for tenders for 250 MW off the coast of Brittany in 2021. 250 MW of wind farms should also be sited in the Mediterranean, in the Occitanie and PACA regions.

[11] Ministry for the ecological and inclusive transition, 2019 multiannual energy programme, p. 119, (link).

II. Overhauling the legal framework for offshore wind in France

In France, the legal framework for installing offshore wind farms comes under the provisions of the **Environmental Code**, the **Energy code** and the **Urban development code**, as well as certain provisions deriving from the **General code on public property**.

These various laws thus govern **the major phases** involved in building an offshore wind farm, which can be broken down as follows:

- **Selecting an area for the wind farm, with the upstream planning phase;**
- The **competitive bidding procedure** (either involving an invitation to tender, or a competitive bidding process), initiated by the Minister for the ecological and inclusive transition, and under the responsibility of the energy regulator, which will ultimately lead to the **winners being selected**;
- Filing and obtaining the **required authorisations**, with all the mandatory procedures, including the **impact assessment** and the public consultation, which will then entitle the project initiator to commence construction before the installation is ultimately brought into service.

The legislative and regulatory authorities have, in recent years, introduced several reforms at all stages of the procedure. These include the following:

- Law no. 2016-9 of 8 January 2016 reforming the litigation procedure regarding offshore wind;
- Law no. 2017-81 of 26 January 2016 which requires offshore wind turbines to obtain a single environmental permit;
- The three laws of 27 and 28 May 2016 which redefine the mechanisms of support for renewable energies;
- Law no. 2016-1059 of 3 August 2016 and law no. 2016-1129 of 17 August 2016 establishing the competitive bidding procedure;
- Law no. 2017-724 of 3 May 2017 integrating marine planning and the marine environment plan into the strategic seaboard documents;
- The ESSOC law of 10 August 2018 which introduces public participation into the procedure for selecting locations, creates the concept of an “envelope permit”, and provides the State with the option to conduct all or part of the impact assessment and impose financial penalties on the winner in the event of their failing to deliver the project without a valid reason, as well as giving the Government the opportunity to renegotiate the purchase prices set during the first calls for tender in 2018;
- The law of 21 December 2018 which sets forth the procedures for applying the various provisions of the ESSOC law, and supplements the litigation system applicable to certain decisions pertaining to offshore renewable energy production facilities and their related infrastructure.

From the **identification of suitable areas (II.1)** to the obtaining of **the various authorisations required (II.2)**, offshore wind farms are covered by a specific legal system which also extends to **litigation (II.3)**.

While establishing the legal framework governing the procedures for planning offshore wind farms, as well as the procedures for securing authorisations, the various changes introduced by recent reforms should be highlighted.

II.1. Identifying favourable areas

Planning offshore wind farms is a prerequisite for establishing these new installations. It is undertaken under the responsibility of the State and involves identifying appropriate areas for building offshore wind farms in relation to the competitive bidding procedures, while at the same time listing the various constraints to do with the environment and the various other activities being undertaken at sea and in the marine environment. The spatial planning phase is also when arrangements are made to connect the proposed wind farms up to the electrical grid.

Currently, and in light of feedback from previous calls for tender, the administrative practices for planning RMEs are structured as follows:

- Energy law and the objectives set forth in the multiannual energy programme form the basis for planning RMEs;
- Strategic seaboard documents, functioning as a planning tool, take these objectives into account and enable RMEs to be planned across the maritime area.

Producing strategic seaboard documents and so planning RMEs is a procedure that involves the State's public services and establishments, various coordinating bodies, the general public and the contracting authority for the operations to connect the offshore wind farms to the public grids. On the basis of these documents, the Minister responsible for energy subsequently initiates the competitive bidding procedures, as provided for in articles 311-10 et seq. of the Energy Code[12].

Through successive reforms, the State has sought to involve all stakeholders in the planning process, by more effectively involving investors and by strengthening the way in which the general public is informed and participates, in particular in order to reduce the risk of litigation.

- The **2009 multiannual investment programme** provided for State-managed spatial planning of the marine environment, and the creation of a "maritime seaboard coordination and planning body"[13];

- The **Grenelle II Law of 12 July 2010**, created the strategic seaboard documents, which are more broadly part of the national sea and coast strategy, whose objective is to enable various sea-based activities to be conducted concomitantly, while protecting the environment and maintaining it in sound ecological condition;

- **Directive 2014/89/EU** defines maritime spatial planning as "the process whereby member state authorities analyse and structure activities in maritime areas"[14]. However, member states have a great deal of room for manoeuvre in determining how such planning should be carried out. In 2016, for example, the legislator transposed this directive, specifying that the strategic seaboard document contains the plans resulting from this process, which aim, in particular, to "contribute to the sustainable development of offshore energy sectors"[15];

- The Energy Transition **law no. 2015-1992** defined the new energy policy guidance tools which together constitute the multiannual energy programme[16];

- **Law no. 2017-724 of 3 May 2017** integrating the marine planning and marine environment plan into the strategic seaboard document[17] clarifies the system which applies to it, and which is currently defined in articles L. 219-1 to L. 219-18, as well as R. 219-1 to R. 219-1-14 of the environmental code;

- The **ESSOC Act** of 10 August 2018 has recently made a substantial step forward with the planning stage, by having the State-led public participation phase at same the time as when the areas for future projects are selected, namely before any competitive bidding procedure.

[12] Energy code, articles L. 311-10 et seq. (link).
[13] Multiannual investment programme for electricity generation 2009, p. 36, (link).
[14] Directive 2014/89/EU of the European Parliament and of the Council establishing a framework for maritime spatial planning, article 3, (link).
[15] Environmental code, article L. 219-5-1 paragraph 5, (link).
[16] This document replaces the three existing multiannual investment programming instruments: Electricity multiannual investment programme, gas multiannual investment programme and heat multiannual investment programme.
[17] Law no. 2017-724 of 3 May 2017 integrating marine planning and the marine environment plan into the strategic seaboard document, (link).

Article 58 of the ESSOC law, which creates the new **article L. 121-8-1 of the Environmental Code**, stipulates that the Minister for energy shall refer the matter to the national commission for public debate before arranging any competitive bidding procedure to create and operate an offshore wind farm. This commission in charge of public debate must determine the procedures for public participation beforehand. The article goes on to state that "The public is consulted, in particular, on decisions as to where the proposed facilities should potentially be located"[18]. This new provision is designed to improve the acceptability of projects.

The **law of 21 December 2018** sets out the detailed procedures for applying this article, in particular the fact that the procedure to be applied is that detailed in article L. 121-8 of the Environmental code, namely the common law procedure implemented by the national commission for public debate. The contracting authority for operations to connect wind farms up to public grids must always be involved in these consultation procedures[19].

The strategic seaboard document is made up of **four sections** described in article R. 219-1-7 of the Environmental code[20].

- The **first section** provides an overview of the coastal and marine environment and its ecosystem, as well as an overview of the various activities – economic and otherwise – undertaken at sea and the way in which they interact on this seaboard.

- The strategic environmental and socio-economic objectives are presented in **the second section**. Using cartographic representations, the temporal and spatial coexistence of various activities undertaken across the seaboard's maritime space is set out in it. Areas are therefore defined in relation to the various issues and objectives, and some are earmarked as areas in which the renewable marine energy production installations can be located.

- The **third section** describes the procedures for assessing application of the strategic seaboard document.

- Finally, the action plan itself is in the **last section**.

At the end of 2018, the first two sections of the strategic seaboard document for each seaboard were made public[21], and were submitted to the environmental authority for assessment. This authority then issued opinions for each seaboard[22]. The websites of the interregional directorates for maritime affairs provide information about the strategic seaboard document's state of progress for each seaboard.

The competitive bidding procedure

Once the areas conducive to the development of RMEs have been identified, the minister of energy can decide whether to use the tendering procedure or the competitive bidding procedure to award such projects[23].

This competitive bidding procedure[24], was created by law no. 2016-1059 of 3 August 2016 and law no. 2016-1129 of 17 August 2016. For the first projects, the minister for energy was only able to use the tender procedure[25]to award projects and chose the most economically attractive bid. For the competitive bidding procedure, once the candidates have been pre-selected on the basis of their technical and financial capacities, a dialogue phase between the State and candidates in question is entered into in order to define the technical and economic conditions which their bids must fulfil.

[18] Environmental code, L. 121-8-1, (link).
[19] Environmental code, R. 121-3-1, (link).
[20] Environmental code, article R. 219-1-7, (link).
[21] Strategic North Atlantic-Western Channel seaboard document, (link), strategic Mediterranean seaboard document, (link), strategic East Channel-North Sea seaboard document, (link), and the second draft strategic South Atlantic seaboard document, (link).
[22] General Council on the environment and sustainable development, press release (link).
[23] Energy code, article R. 311-12 (link).
[24] Energy code, articles R. 311-25-1 et seq. (link).
[25] Energy code, articles R. 311-13 et seq. (link).

At the end of this phase, the final specifications are drawn up and candidates are invited to submit their bids. After investigation and examination of these bids, the winners are finally selected by the minister for energy.

The wind farm project off the coast of Dunkirk was the first to benefit from this competitive bidding procedure. Regardless of the competitive bidding procedure used, the authority that has jurisdiction to manage these procedures is the French energy regulator. The purpose of the specifications is to precisely define the qualities expected of the candidates.

II.2. Authorisations required

As part of a drive to modernise environmental law, law no.2017-81 of 26 January 2017[26] created the environmental authorisation. The aim is both to simplify administrative procedures for project initiators and facilitate the investigation of applications by State services.

Before this environmental authorisation came into force, building an offshore wind farm required three separate authorisations: licence to occupy the public domain, authorisation to operate and authorisation under the water act.

Since 1 March 2017 and the coming into force of this law, building offshore wind farms requires an environmental authorisation, which covers all the authorisations required under the Water Act, and an operating authorisation. This procedure brings all these together. However, the license for the right to use the public maritime area is not included in the environmental authorisation, and must therefore always be covered by a separate request.

This subsection therefore deals with the **license for the right to use the public area**, as provided for by the General code on public property (II.2.1), environmental authorisation, as provided for by the Environmental code (II.2.2) and the concept of "envelope permit", as introduced in the ESSOC law (II.2.3.).

II.2.1. License to use the public domain

One of the distinctive features of wind turbines is that they are located in the maritime public domain. So, unlike onshore wind farms, they do **not require building permits** (article L. 421-5 of the Urban planning code[27]), nor are they covered by legislation and regulations on land use, or by regulatory provisions governing location, use, type, architecture, dimensions and sewerage, or on the development of their surrounding areas (article L.421-8 of the Urban planning code[28]).

Offshore wind farms in the maritime public domain are, however, subject to article L. 2122-1 of the General code on public property, according to which no use may be made of the public domain without explicit authorisation granted beforehand[29]. The authorisation thus required is the **license to use the public domain**, provided for in article L. 2124-3 of the General code on public property[30].

[26] Law no. 2017-81 of 26 January 2017 on environmental authorisation, (link).
[27] Urban planning code, article L. 421-5 (e), (link).
[28] Urban planning code, article L. 421-8 (e), (link).
[29] General code on public property, article L. 2122-1, (link).
[30] General code on public property, article L. 2124-3, (link).

Articles R. 2124-1 et seq. of the General code on public property[31] specify that such authorisation **may not exceed a period of forty years** for offshore infrastructure producing renewable energy. The contents of the application, which must be sent to the *préfet*, are detailed in article R. 2124-2 of the General code on public property. A public enquiry needs to be conducted beforehand under article R.2124-7 of the General code on public property before the *préfet* can grant any approval.

A license to occupy the public domain must be obtained, in addition to those provided for under the Environmental code.

II.2.2. Single environmental authorisation

Unlike onshore wind turbines, offshore wind turbines are not subject to the regulations which govern installations which are classified for the protection of the environment. Law no. 2011-984 of 23 August 2011 amended the nomenclature used for classified facilities, which only applies to onshore wind turbines. Offshore wind farms require **authorisation** under articles L. 214-1 et seq. of the Environmental code[32].

This Article L. 214-2 refers to the classification set forth in article R. 214-1 of the Environmental code: section 4.1.2.0 of this article provides that works made in contact with – and having a direct impact on – the marine environment shall be subject to authorisation - as opposed to the reporting regime - where they represent an amount greater than or equal to 1,900,000 euros, which is the case for offshore wind projects. These works shall therefore require an environmental authorisation as provided for in article L. 181-1-1 of the Environmental code[33].
The single environmental authorisation procedure sets out to:

- Simplify and reduce the procedures and timeframes for the project initiator;
- Provide a better understanding of a project's environmental issues:
- Provide more legal stability for project initiators and a better understanding of the rules governing their project.

As previously stated, this environmental authorisation henceforth covers all the requirements of the various applicable legislation under the various codes as listed in article L. 181-2 of the Environmental code.

The environmental authorisation granted thus functions as authorisation to operate an electricity generating facility, pursuant to article L. 311-1 of the Energy code[34]. However, as set out in article L. 181-3 of the Environmental code[35], the issuance of the environmental authorisation remains subject to the consideration of the criteria referenced in article L. 311-5 of the Energy code, formerly required by projects before an authorisation to operate could be granted. For example, the application will need to specify the project's characteristics, its production capacity, the techniques used, its energy efficiency and the expected operating times as provided for in article D. 181-15-8 of the Environmental code[36].

The terms and content of the application are set out in more detail in sections R. 181-1 et seq. of the Environmental code. **An impact assessment**, as provided for in article R. 181-13 of the Environmental code, is required in particular in the application[37], by reference to article R. 122-2 which expressly stipulates this formality in its appendices for offshore wind turbines[38].

[31] General code on public property, articles R. 2124-1 et seq., (link).
[32] Environmental code, article L. 214-1 et seq., (link).
[33] Environmental code, article L. 181-1 et seq., (link).
[34] Environmental code, article L. 181-2 10°, (link).
[35] Environmental code, article L. 181-3 8°, (link).
[36] Environmental code, article R. 181-15-8, (link).
[37] Environmental code, article L. 181-13 5°, (link).
[38] Environmental code, Appendix to article R. 122-2, (link).

While the impact assessment was previously carried out entirely under the responsibility of the contracting authority[39], the ESSOC law introduced a derogation for offshore wind turbines in article L. 181-28-1 of the Environmental Code: all or part of the impact assessment for installations and their connection to the grid may now be carried out by the Minister for energy. While a reduction in costs for the project initiator is foreseeable, no past projects have yet benefited from this option, and it is therefore difficult to judge its effects.

The investigation procedure is then conducted in three phases:

- The review phase as set out in articles R. 181-16 et seq.[40];
- The investigation phase with the holding of a public inquiry organised in accordance with articles L. 123-1 et seq. of the Environmental code, and R. 181-36 et seq.[41];
- The decision phase is governed by the provisions of articles R. 181-39 to D. 181-44-1 of the Environmental code[42].

The administrative authority with jurisdiction to issue the environmental authorisation will be the *préfet* for the French *département* in which the wind farm is to be located. An excerpt of the authorisation or refusal order must be posted in the town hall and published on the *préfecture's* website for at least one month, so as to inform third parties.

The main contribution that the ESSOC law has made to the authorisation system is the creation of the "envelope permit" concept in article 58. Codified in the new article L. 181-28-1, it introduces a specific system for governing how authorisations are granted to offshore renewable energy production installations.

II.2.3. The concept of an "envelope permit" introduced by the ESSOC law

The first calls for tenders highlight the fact that it can take about ten years between the start of the competitive bidding procedure and the installations being brought into service. These extended times can sometimes result in a mismatch between the technology originally chosen by the project initiator and the technical developments that have occurred in the meantime. Until the ESSOC law and the introduction of the "envelope permit", the project initiator had no choice but to continue with these older technologies, or to modify the project. This could then result in a new authorisation being required, further delaying the project. The new article L. 181-28-1 of the Environmental code has therefore created the "envelope permit" scheme which allows project initiators involved in developing RMEs to have **authorisations with variables[43]**.

[39] Environmental code, Article R. 122-1, (link).
[40] Environmental code, articles R. 181-16 et seq., (link).
[41] Environmental code, articles L. 123-1 et seq., (link), and articles R. 181-36 et seq., (link).
[42] Environmental code, articles R. 181-39 et seq., (link).
[43] Environmental code, article L. 181-28-1 2°, (link).

This new provision, inspired by the UK and Denmark, is designed to provide the project initiator with greater flexibility. Authorisation requests will therefore be able to contain variables regarding certain of the project's characteristics which, once authorised by the competent authority, may evolve within the limits of these variables. Therefore, it will not be necessary to obtain a new authorisation if the changes in the project's characteristics fall within the scope of these originally planned variables. This way, the project can be adapted to keep track with subsequent technological developments. However, the variable characteristics must be clearly identified. These may be to do with the number of wind turbines, their unit power, or the installation of wiring and foundations.

The projects' variable characteristics should be submitted with the authorisation applications, and should include:

- The license to use the maritime public domain;
- The environment authorisation;
- The authorisation to operate provided for in section 2 of chapter I of title I of Book III of the Energy code[44]

Law no. 2018-1204 of 17 December 2018 on the procedures for authorising offshore renewable energy production facilities, clarifies the concept of the "permit envelope" by creating article R. 181-54-2 of the Environment code[45].
Paragraph 1 of this new article provides that "the variable characteristics of the proposed installation, and in particular their maximum negative effects, shall be taken into account when producing the following documents":

- The impact assessment;
- The environmental impact assessment;
- The *Natura 2000* impact assessment file when the project is submitted;
- And for many opinions also listed.

With the following new article R. 181-54-3, the law also provides details on the measures for avoiding, reducing and compensating for authorisations issued. Indeed, it is the responsibility of the project initiator to define – in their authorisation application – appropriate measures for avoiding, reducing and compensating for any negative environmental impacts that their project might have. The principle has been codified in article L. 110-1[46] of the Environmental code with the adoption of the law on restoring biodiversity, nature and landscapes of 8 August 2016[47]. Regarding authorisations issued for offshore wind farms, these measures and the procedures in place for monitoring them must be for the "maximum negative effects of the proposed installation's variable characteristics", as provided for in the first paragraph of article 181-54-3.

The "envelope permit" which provides the option to set variables for the authorisations required for a project, will only be issued to projects for which no authorisation application was filed before 11 February 2019 – six months after the publication of the ESSOC law on 11 August 2018[48]. As such, the winners selected to build the wind farm off the coast of Dunkirk may be the first beneficiaries of this "envelope permit".

[44] Energy code, section 2 of chapter I of title I of book III, (link).
[45] Environmental code, article R. 181-54-2, (link).
[46] Environmental code, article L. 110-1 2°, (link).
[47] Law no. 2016-1087 of 8 August 2016 on restoring biodiversity, nature and landscapes, (link).
[48] Environmental code, article L. 181-28-1 II, (link).

II.3. Enhanced legal and financial certainty

By introducing the law of 8 January 2016[49], the Government intervened on the issue of contentious appeals filed by various stakeholders. These can sometimes cause significant delay for building proposed wind farms.
The purpose of this law is therefore to speed up and simplify the appeals system for marine renewable energies, in order to provide project initiators with greater legal certainty.

Article 1 of the law which created article R. 311-4 of the Administrative Justice code[50] gives jurisdiction to the Nantes administrative appeals court in the first and last instance "to hear disputes pertaining to decisions[...], about offshore renewable energy production facilities and their associated infrastructure". This has been the case since 1 February 2016, in accordance with article 6, and so such matters must be referred to it directly.

The decisions concerned by this law are listed in article R. 311-4 of the Administrative Justice code, including selecting winners, granting authorisation to occupy the public domain and granting the environmental authorisation.

An analysis of the relevant decisions shows that almost all the appeals lodged after the first two calls for tenders were rejected. In this sense, the *Conseil d'Etat* of 24 July 2019 rejected the appeals filed against the licences occupy the maritime public domain issued for the proposed Fécamp and Courseulles-sur-Mer wind farms.

Moreover, article 4 of the law requires the party filing the appeal to "notify [...] the party making the decision of it and the recipient the authorisation or declaration", otherwise the appeal may be deemed inadmissible. In addition, the remedies and time limits are all amended to four months for both the project initiators and third parties (article 3). Finally, an opportunity is granted to the judge to whom the case has been referred to "set a date after which new pleas may no longer be invoked" (article 4).

As far as financial security is concerned, article L341-2 of the Energy code provides an opportunity for initiators of offshore wind farm projects the cost of which is covered by RTE to be compensated in the event of the deadline for the facility being connected up to the transport network being missed owing to damage or the connection infrastructure developing a fault such that electricity generation is partly or totally limited[51].

Similarly, the cost of the connection is covered by the public system operator, and therefore by RTE since the passing of the ESSOC law[52] .

[49] Law of 8 January 2016 on offshore renewable energy production and transport infrastructure, (link).
[50] Administrative justice code, Articles R. 311-4, (link).
[51] Energy code, Article L. 341-2 paragraph 4, (link).
[52] ESSOC law, article 58, paragraph V, (link).