

BRIEFING

FRANCE: UPDATE ON THE SUPPORT
MECHANISM FOR FRENCH
ONSHORE WIND PROJECTS

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Energy Transition Act – Replacement of the FIT by the CFD

The Energy Transition Act was adopted by the French Parliament on 22 July 2015 and published on 18 August 2015. In compliance with the new European guidelines on State aid for environmental protection and energy published by the European Commission on 28 June 2014 (the “New European Guidelines”), the Energy Transition Act, with respect in particular to onshore wind farms and photovoltaic plants, provides for the gradual replacement of the existing support mechanism, the FIT, by a new support mechanism, the contract for difference (the “CFD”).

Specific situation for onshore wind projects

Initially, in compliance with the New European Guidelines, the French government decided to continue to allow onshore wind projects to benefit from the FIT – which was approved by the European Commission in March 2014 – up to the end of 2018.

However, this summer, this retaining of the FIT for onshore wind projects as of 1 January 2016 was challenged by the European Commission¹. In addition, the French Association “*Vent de Colère*” challenged Decree n°2016-191 dated 28 May 2016 defining this transition regime and, in particular, the possibility for onshore wind projects to continue benefitting from the FIT.

In this context, and in order to avoid any uncertainty relating to the applicable support mechanism, the French government decided to speed up the replacement of the FIT by the CFD. Accordingly, a ministerial order dated 13 December 2016 providing the

¹ Due to the modification by the French government of the specific contribution (“*CSPE*”) financing this FIT as from 1 January 2016.

CFD rules for 2016 was published by the French Ministry for Energy on 14 December 2016.

Three categories of projects to be considered

As a result, the situation can be summarised as follows:

- 1) **Projects which remain eligible for the FIT**, provided that the installations will be completed within the deadline defined by Decree n°2016-691 dated 28 May 2016². In this respect, please note that on 16 December 2016 the French government also published a new decree which complements the provisions of Decree n°2016-691 dated 28 May 2016. Pursuant to these new provisions, the completion deadline provided by Decree n°2016-691 dated 28 May 2016 can be extended if the commissioning of installations is delayed (i) by the time necessary for the completion of the grid connection works or (ii) in the event that claims against permits relating to installations delay their completion. In such cases, an additional period of time, equivalent to the delay resulting from the grid connection works or the duration of the proceedings, is granted by the French Ministry for Energy at the request of the power producer. If an event of *force majeure* occurs, the completion deadline provided by Decree n°2016-691 dated 28 May 2016 can also be extended by decision of the French Ministry for Energy for a period of time decided on a case by case basis by the Ministry.
- 2) **Projects which are eligible for the CFD in 2016**, i.e. projects for which:
 1. A complete PPA application was filed after 1 January 2016 and the anticipated execution of the PPA occurred, at the latest, by 15 December 2016; or
 2. A complete PPA application was filed between 1 January 2016 and 31 December 2016, without the anticipated execution of the PPA; or
 3. A complete CFD application was filed no later than 31 December 2016 and the construction works have not already started before the date of such application.
- 3) **Projects not eligible for the FIT or the 2016 CFD**, in particular, new projects at an earlier stage of development. These projects will be eligible for the new CFD rules, applicable as from 2017.

As from 2017, two main situations have to be considered:

1. In principle, in order to benefit from a CFD, projects should be awarded under a call for tender as required by the New European Guidelines. The French government has already indicated that there will be two calls for tender per year during an initial period of three (3) years as from 2017. At this stage, no call for tender specifications have been disclosed.
2. By way of exception, projects up to 6 MW or 6 wind turbines – in principle each of 3 MW – should be eligible for a CFD for which the conditions

² /i.e. at the later of (i) 3 years following the PPA application date and (ii) 30 November 2017.

will be defined by a new ministerial order to be published by the French government at the beginning of 2017, after approval by the European Commission.

Main characteristics of the 2016 CFD – Ministerial order dated 13 December 2016

- Sale of electricity on the wholesale market, mainly through contracts concluded with aggregators;
- CFD concluded with EDF;
- Target remuneration of the electricity equivalent to the existing FIT (i.e. 82€/MWh, L and K indexations, decrease during the last five years / 2,400 hours threshold rule);
- Management premium: 2.8€/MWh;
- CFD duration: 15 years;
- Monthly payment;
- In the event of negative prices³ of more than 20 hours (consecutive or not) during a calendar year and if the installation has not produced during the period of negative prices, the power producer receives compensation;
- In the event that it is impossible to sell electricity on the wholesale market, the power producer can conclude a power purchase agreement with an offtaker of last resort / Remuneration equivalent to 80% of the target remuneration.

Expected main characteristics of the 2017 CFD – New ministerial order to be published

On the basis of the latest draft of this new ministerial order which was disclosed to us, the main characteristics of the 2017 CFD would be as follows:

- Sale of electricity on the wholesale market, mainly through contracts concluded with aggregators;
- CFD concluded with EDF;
- Target remuneration of the electricity: between 72€ and 74€/MWh, depending on the diameter of the rotor (L indexation);
- Definition of a production threshold beyond which the target remuneration would be 40 €/MWh;
- Management premium: 2.8€/MWh;
- CFD duration: 20 years;
- Monthly payment;
- Negative prices rules similar to the 2016 CFD;
- Offtaker of last resort rules similar to the 2016 CFD.

³ * Negative prices are a price signal on the power wholesale market that occurs when a high inflexible power generation meets low demand. In this case, producers have to compare their costs of stopping and restarting their plants with the costs of selling their energy at a negative price (which means paying instead of receiving money)* (Epex Spot).

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with the author, Laurent Battoue, or your regular contact at Watson Farley & Williams.

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