

RISK ASSESSMENT IN THE FRAMEWORK OF DIRECT MARKETING AND CALL FOR TENDER IN FRANCE

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WIND FARM PROJECT FINANCING IN FRANCE AND
GERMANY



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SUMMARY



- 1. INTRODUCTION
- 2. PROJECT STRUCTURING
- 3. DIRECT MARKETING: aggregation contract
 - a. Direct marketing – Risk matrix
 - b. Direct marketing – Risk management / interface risk
- 4. CALL FOR TENDER
- 5. CONCLUSION



1. INTRODUCTION





1. INTRODUCTION

Implementation of the new support schemes (reminder):

- Implementation in France of the EU Guideline dated June 2014 through the *Loi relative à la transition énergétique pour la croissance verte* dated 17 August 2015 and implementing decrees;
- In 2016: implementation of the tariff decree dated 13 December 2016 (Te 2016);
- Since 2017 : (i) Call for tenders for projects with more than 7 turbines or with one turbine of 3MW or more and (ii) tariff decree (Te 2017) for wind farms with maximum 6 turbines of no more than 3 MW each organizing an "open window" system are coexisting;
- In both cases direct marketing, *i.e.* sale of the power on the electricity market (through an aggregator as the case may be) is required.

In practice:

- More fears than expected, lenders are still financing wind farm projects;
- High competition between lenders despite the new complexities introduced by the new support schemes;
- The wind branch is still facing some uncertainties (current discussion on CR 2016), end of "open window" scheme expected at some point...

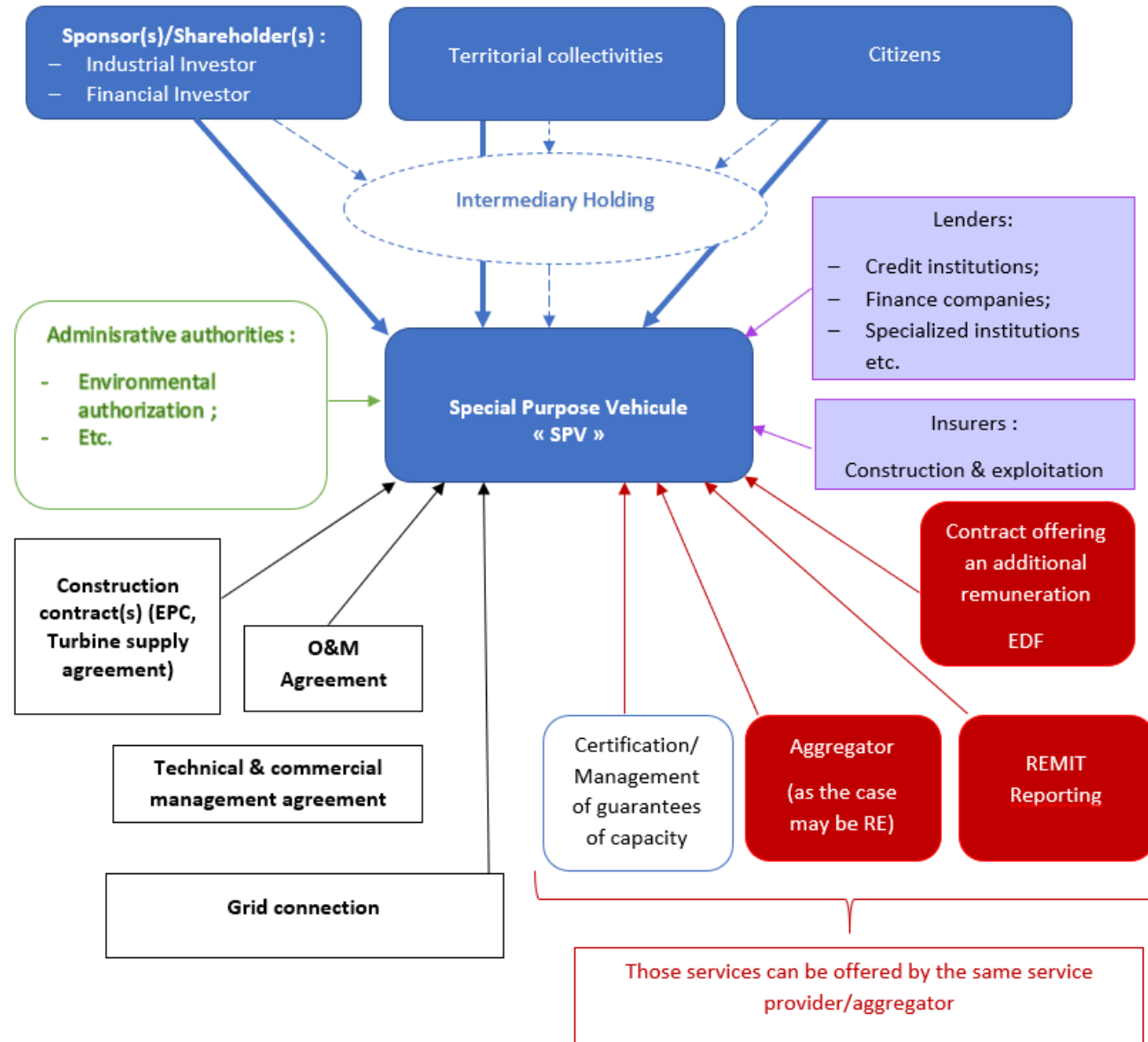


2. PROJECT STRUCTURING





2. PROJECT STRUCTURING





3. DIRECT MARKETING





3. DIRECT MARKETING: aggregation contract

a. Risk matrix (1)

Item	Risk(s) reviewed
Form of contract	Simple contract under French law versus contract inspired by English contracts
Purpose of the contract	Services covered by the contract: <ul style="list-style-type: none">✓ Sale/Purchase of power;✓ Certification of the wind farm and management of guarantees of capacity;✓ REMIT reporting;✓ Self-billing, etc.
Aggregator	Solvability / experience of the Aggregator
Balancing group/attachement to a balancing group	<ul style="list-style-type: none">✓ Is the aggregator balance responsible itself ? If not, who is the balance responsible ? A third party or related company ?;✓ The plant shall be attached to the balancing group before the entry into force of the aggregation contract.



3. DIRECT MARKETING: aggregation contract

a. Risk matrix (2)

Item	Risk(s) reviewed
SPV's liability	<ul style="list-style-type: none">✓ SPV's main obligation: to sell 100% of the power produced by the wind farm;✓ SPV's other obligations shall be limited (information on maintenance periods, disruption, etc.)
Aggregator's liability	<ul style="list-style-type: none">✓ The aggregator is a professional of energy markets and shall therefore incur a broader liability;✓ Main obligation: to purchase 100% of the electricity produced by the wind farm, to accept the delivery thereof, to pay the purchase price;✓ Information of the SPV on due time when the prices are negative;✓ Specific attention is given to limitation of liability clauses.
Metering system	Information resulting from the metering system of the network operator
Duration	From 3 to 5 years usually



3. DIRECT MARKETING: aggregation contract

a. Risk matrix (3)

Item	Risk(s) reviewed
Guarantees of capacity	<ul style="list-style-type: none">✓ Person in charge of the certification (SPV or aggregator) and management of the guarantees of capacity;✓ Who is guarantee portfolio manager?;✓ Price for the guarantees of capacity: often refers to the « Prefcapa », i.e. the reference price for guarantees of capacity as defined in the tariff decrees;
REMIT reporting	Who is in charge, SPV or Aggregator?
Remuneration of the aggregator	<ul style="list-style-type: none">✓ Risk premium which is deduced from the power purchase price / price for the guarantees of capacity (see above);✓ As the case may be other fees for other services provided (self billing etc.)
Invoicing	Who is in charge, SPV or Aggregator?



3. DIRECT MARKETING: aggregation contract

a. Risk matrix (4)

Item	Risk(s) reviewed
Remote system	<ul style="list-style-type: none">✓ If a remote system is existing and accessible to the aggregator, it can facilitate the performance of/limit the SPV's information obligations;✓ If no access to a remote system is given to the aggregator, the SPV's information obligations are more detailed.
Treatment of negative prices	<ul style="list-style-type: none">✓ Information on the existence of negative prices to be given by the Aggregator day ahead ;✓ The wind farm should not produce power during negative prices hours;✓ Nevertheless, should the wind farm produce power (due to SPV's failure or at the Aggregator's request for instance), the contract shall provide for adequate indemnities (compensation for the loss of the prime for negative prices)



3. DIRECT MARKETING: aggregation contract

a. Risk matrix (5)

Item	Risk(s) reviewed
Hardship	<ul style="list-style-type: none">✓ Exclusion of article 1195 of the French civil code;✓ Clause providing for an adaptation of the remuneration/imbalance of the contract nevertheless usual in case of a change in law or a change in market design.
Early termination clause	<ul style="list-style-type: none">✓ Review of standard termination causes: payment default, the aggregator (or appointed balance responsible) is no more balance responsible, long term force-majeure, loss of the permits required to operate the wind farm etc.✓ Penalties in case of early termination;✓ Adequate termination delay (3 months) to enable the plant to be attached to another balancing group. <p><i>NB: question of the termination of the aggregation contract in case the contract for additional remuneration with EDF is terminated for whatever reason.</i></p>



3. DIRECT MARKETING: aggregation contract

a. Risk matrix (6)

Item	Risk(s) reviewed
Financial guarantees	<ul style="list-style-type: none">✓ Depends on the aggregator's solvability (credit analysis performed by lenders);✓ A parent company guarantee or a bank guarantee covering 3 months of invoicing may be required.
Specific clauses for lenders	<ul style="list-style-type: none">✓ Receivables under the aggregation contract shall be freely transferred to lenders (through <i>Dailly</i> assignment, direct agreement, imperfect delegation etc.);
Jurisdiction – applicable laws	Shall be in France / French law.



3. DIRECT MARKETING

b. Risk management – interface risk

How to handle the various obligations of the SPV resulting from the aggregation contract?

- SPV is a special purpose company, without personal, adequate competencies;
- Providing the aggregator with access to the wind farm remote control is a good way to reduce the SPV's obligations;
- The SPV's obligations (information obligations more specifically) towards the aggregator shall be transferred to / taken over by its other service providers having the appropriate competencies :
 - O&M Contractor;
 - EPC Contractor/Turbine manufacturer (as regards the Scada System);
 - Technical and commercial manager.



4. CALL FOR TENDER





4. CALL FOR TENDER

What are the additional risks associated to call for tender ?

- Above mentioned developments as regards direct marketing are still valid for call of tender;
- Call for tender as compared to the "open window" system organized by the tariff decrees 2016 and 2017 is more constraining:
 - Equity / development expenses are incurred without certainty on the outcome of the call for tender;
 - Commitments of the winning bidders (compliance with the specification of the call for tender) are sometimes difficult to meet (in particular in case of technology evolution between the date the winners have been selected and the date the wind farm is erected/commissioned);
 - Bonus for "participative investment", should the winning bidder has made such commitment, may generate further complexity in the financing of the project: adhesion of the participative investors to the credit documentation may be required (subordination agreement, share pledge etc.)



5. CONCLUSION





5. CONCLUSION

- New support mechanisms are still very attractive for wind farm projects in France;
- The end of "open window" scheme (tariff decrees 2016 and 2017) is expected at some point...;
- Calls for tender with their constraints might be generalized;
- Time to go ahead with power purchase agreements outside new support schemes?

THANK YOU FOR YOUR
ATTENTION!



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- French-German cross-border energy transactions;
- Audit of energy projects;
- Purchase and sale agreements for energy on wholesale energy markets for underlying electricity, gas, capacity guarantees, CO2 quotas, certificates of origin (EFET / ISDA framework agreements, ad hoc contracts, etc.).

Claire Bretheau advises banks, investors, and corporations working in the energy industry. She has over fifteen years of experience in the energy industry, half of which she acquired in law firms, and half in corporations in France, Germany, and Austria.

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