Participatory projects in France: which legal solutions, which prospects for development?

Models and perspectives in participatory wind power development in France and Germany

Thursday 3rd July 2014
Summary

1. Citizen participation
   - Stakes and context
   - The question of participation

2. Legal solutions
   - Corporate forms
   - Other schemes

3. Analysis
   - Barriers and development
1. Citizen participation
   Stakes and context

• Context
  ▪ Several initiatives but still few realisations
  ▪ Regulatory framework not properly adapted but changing

• Stakes
  ▪ Citizen appropriation of key issues and behavioural change
  ▪ Funding the Energy transition
  ▪ Local development
  ▪ Acceptance of projects
1. Citizen participation
Definition

• Participation….in what ways?
  ▪ Making decisions, choosing projects, ensuring their development, etc.
    ◌ Participation in the governance → involvement in a company, voting rights, responsibilities
  ▪ Project financing (with a profit “even a small one”)
    ◌ Financial contribution → Acquisition of financial stocks

• Participation…at which level?
  ▪ Citizen control (voting rights in majority)
  ▪ Citizen influence (blocking minority)
  ▪ Minority

• Participation…with whom?
  ▪ Municipalities, developer, local companies or associations
1. Citizen participation
Definition

- Participation...how?
  - Direct: Subscription in equity, Bonds, Shareholders’ current accounts
  - Indirect: Investment clubs, EPI, etc.
- Participation... at what point?

DEVELOPMENT
Feasibility studies
Submission of the building permit

FUNDING IMPLEMENTATION
Investments funding
SIGNIFICANT FINANCING NEEDED

OPERATING
Energy marketing
Maintenance
LONG PERIOD
## 2. Citizen governance in the projects

### Corporate forms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>SAS</td>
<td>Functioning entirely defined in the statutes. High degree of flexibility notably in the definition of governance – No public bodies in the capital</td>
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<tr>
<td>SARL</td>
<td>A limited liability company, Limited to 99 shareholders – Proportional governance</td>
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<tr>
<td>SA</td>
<td>Setting-up and management process more complex (auditor, minimum capital, etc.) – Proportional governance. No variable capital</td>
</tr>
<tr>
<td>SCIC</td>
<td>SA or SARL, Collective interest cooperative company, possibility of Local authorities in the capital, Cooperative form of governance with possible weightings per college, Mandatory employee</td>
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<tr>
<td>SEM</td>
<td>Semi-public company, similar functioning with a SA, Object in relation with the local authorities skills (majority shareholders in the capital)</td>
</tr>
<tr>
<td>SCA</td>
<td>Separation of ownership (capital) and control (governance). CAC and minimum capital</td>
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</tbody>
</table>

+ Role of associations at starting point
2. Citizen governance in the projects
Offer of securities to the public (OPTF)

- Rules defined by the Financial Market Authority (AMF) to protect investors
- Sufficient communication describing a financial offer to allow investment → OPTF → subject to approval by the AMF
- SAS, SARL: no rights for offer of securities to the public
- Exemption schemes defined in the Monetary and Financial Code (L411-2)

- Offer of less than 100,000 €/year
- Offer between 100 k€ and 5 M€ and < 50% of the capital
- Offer to less than 150 investors and less than 20% of the capital
- Other offers of securities

- SAS, SARL
  - Prohibited
- SA (SEM, SCIC/SA)
  - Exemption Scheme
- Prohibited

- Exemption Scheme: private investment
- OPTF

- + Rules on financial canvassing
Example: les Ailes du Taillard (42)

One sole SAS for development and operating

SAS worth 150 k€  
DEVELOPMENT

- Developer 50%
- SEM 25%
- Citizens 25%

SAS worth 5 M€  
CONSTRUCTION - OPERATING

- Developer 80%
- SEM 10%
- Citizens 15%

Capital Increase

- Indirect participation of the “Community of communes” through a local SEM
- Important role of a local citizen association at the beginning of the project
- Less than 150 shareholders
- In-depth work on the functioning of governance in order to maintain citizens and public control in terms of development, financing and operating process.
Example: wind power project of Clamecy Oisy
One SEM and one SAS for financing

ABO WIND DEVELOPMENT

SEM NIEVRE ENERGIES FINANCING

SAS FECO FINANCING-OPERATING

Private developer

Local authorities

SAS Citizens

Investors clubs

SEM devoted to develop projects and fund project companies which will produce RES-e on the territory

Public : 81,5%

10%

Local authority in charge of energy supply

66%

34%

0%

ABO INVEST

SEM NE

○ SAS for exploitation with a shareholders’ agreement to ensure the stability of capital over time

Local authority in charge of energy supply

Public : 81,5%
Other examples
Development managed by citizens

• Wind park Bégawatt (35)
  o Governance defined through 5 colleges – Citizen control (different levels)
  o Numerous Investment Clubs to get less than 150 shareholders

- SARL SITE A WATTS
  Development
  Citizens, SEM, 4 Clubs

- SAS BEGAWATTS worth 5 M€
  Construction - Operating
  Founders (among which SARL SAW), EPI, Regional SEM, 53 Cigales Clubs...

• Wind park Les Ailes des Crêtes (08)
  o 100% citizen funding (without bank)

- SAS ENEOLE
  Development
  About ten private investors

- SAS LES AILES DES CRETES, 3,4 M€
  Construction - Operating
  Citizens, EPI, Regional SCIC with many municipalities, SAS Eneole, etc..
2. Citizen funding: others schemes

• “Energie Partagée Investissement”
• Crowdfunding platforms
  ▪ Government order of 31/05/2014
  ▪ Example Combrailles Durables / ULULE
• Saving products
  ▪ Ex: « Prêt de chez moi », La Nef
• Debenture loan
  ▪ Ex: ABO WIND
3. Analysis

- **Development and projects funding**
  - Preference for SAS with a precise work on statutes to
    - Ensure a citizen control of the projects
    - Restrict the number of shares per shareholder
    - Ensure the sustainability of the capital
    - Have different various shareholders (like in SCIC)
    - Be transparent towards shareholders
  - Complex corporate forms to enable municipalities to participate (indirectly) in projects
  - Importance of Investment Clubs to gather more citizens together
  - Importance of Associations at the project start
3. Analysis

• Development and projects funding
  ▪ Many barriers identified
    ▪ Financing of the development phase
    ▪ Citizen subscription / OPTF regulation « offer of securities to the public "
    ▪ Governance setting-up quite complex

• Projects implementation
  ▪ Not enough experience feedback in France to analyse the organisation of the governance process.
  ▪ Role of economic interest to be tested
Suggestions . Prospects

• Loosening of exemption schemes with regards OPTF, more particularly for SAS: Facilitate access to financial securities for citizens while ensuring their understanding of the risk

• Developing statutory schemes in order to facilitate access to capital for public bodies in private companies

• Setting up territorial support tools for the development phase: Capital funding—risk

Order on participatory financing (31/05/14)
Opted rules adapted for projects which go through crowdfunding platforms

Draft law for social and solidarity economy
- Public bodies < 50% capital of SCIC
- Introduction of ‘SCIC / SAS’
- Employee no more compulsory

Draft law on energy transition
- Capital of companies developing RES projects open to local inhabitants and municipalities
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THANK YOU