REPOWERING IN FRANCE

Regulatory framework and perspectives

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Thursday, March 17, 2016
Introduction

- Repowering may consist in:
  - An increase of the capacity by the replacement of blades
  - The replacement of one wind turbine in case of incident
  - The replacement of all the wind turbines by new machines

- No special rules in French law for « repowering »

- Necessity to refer to authorizations required to develop a wind farm
  - Various authorizations (building permit, ICPE authorization, authorization for electrical operation...)
  - 2 categories of authorizations may be distinguished:
    - time limited or sole purpose authorization (cannot be modified for repowering)
    - authorization that are delivered for the operating period of the installation (could be modified for repowering)
Repowering

I. Cases in which new authorizations are required

II. Cases in which it is possible to adapt former authorizations

III. Necessity of a new framework for repowering
I. Cases in which new authorizations are required

1.1. Necessity of a new building permit

- Building permit rules are not adapted to repowering
  - Building permits cannot be reused after the construction completion
  - Impossibility to submit an application for a modifying building permit

- A new application must be filed:
  - for a building permit
  - for a unique authorization ("autorisation unique")

- There is no guarantee to be delivered the new building permit
  - new rules (if any) are applicable
I. Cases in which new authorizations are required

1.2. “Reconstruction à l’identique”* building permit: useful in minor cases for repowering

(* literal translation: “rebuild exactly as before”)

➢ Strict conditions for the issuance of the “reconstruction à l’identique” building permit
  ▪ the regular edification of the previous wind farm
  ▪ identical characteristics of the wind farm (in particular no relocation, ...)

➢ No accelerated building permit issuance procedure

➢ Advantage: new rules are not applicable
  ▪ Exception if special local planning rules forbid the right to “reconstruire à l’identique”
  ▪ Exception of article R.111-2 of the Planning Code (risk for public security or hygiene)
  ▪ Exception of article L.314-10 of the Environmental Code (natural monument, classified site)
I. Cases in which new authorizations are required

1.3. Necessity of new opinions

- Some of the authorities/services should be consulted again depending on:
  - the modifications of the project
  - the modification of the site installation characteristics
  - the modification of the legal framework

- Some opinions are required for the project as:
  - Air force
  - Civil aviation
  - Meteo France
  - Etc.

- The new opinion may be negative whereas the previous one was positive or vice-versa

- Conclusion: authorizations that cannot be reused are not adapted to repowering
II. Cases in which it is possible to adapt former authorizations

2.1. ICPE authorization could be modified for repowering

- ICPE authorization can be amended if the modification is not substantial
  - Consultation of the CDNPS
  - Complementary measures can be prescribed

- There is no definition of “substantial” modification
  - It is a case by case analysis by the judge
  - No worsening environment damages and risks
  - No illustration for wind turbine

- Comparison with the modifying building permit regime
  - Stricter than the ICPE modification regime
  - Condition: no substantial change of the overall conception of the project (ex: minor height rise, power rise, relocation and removal of wind)

- ICPE authorization could be maintained in case of repowering (a priori residual cases)
II. Cases in which it is possible to adapt former authorizations

2.2. New ICPE authorization in case of substantial modification

- **New authorization = new rules**
  - Applicable rules = rules in force at the date of the authorization’s delivery
  - there are no acquired rights ("droits acquis")

- **New authorization = new application from the beginning**
  - New impact study
  - New public enquiry
  - New opinions and authorizations from different authorities
  - New risks of claim

- Limited interest in repowering if the ICPE authorization is not maintained
II. Cases in which it is possible to adapt former authorizations

2.3. Possible adaptations for other authorizations

- **Derogations regarding protected species**
  - Delivered for a limited period of time but renewable
  - Can be suspended or revoked in case of non compliance

- **Adapted for repowering if the situation is unchanged (effects on protected species)**
- **No acquired rights**

- **Water law authorization (wind farm before ICPE regime)**
  - Delivered for a limited or unlimited period of time
  - Substantial modification: a new authorization is necessary
II. Cases in which it is possible to adapt former authorizations

2.4. Authorization for electrical operation: amending for repowering is limited

- Operating authorization:
  - Authorization required if the production of electricity is above 30 MW (50 MW expected)
  - Possible modification of the authorization
  - New authorization is required in case of:
    - modification of more than 20% of this installed output electricity production
    - Modification of the primary source of energy

- Could be used for repowering in specific cases
II. Cases in which it is possible to adapt former authorizations

2.4. Agreements for electrical operation: amending for repowering is limited

- The content of the agreements differs following the grid operator
  
  - Purchase obligation agreement (CODOA – deletion of this requirement expected)
    - Power modification is possible if a modifying certificate is delivered by the prefect
  
  - Power purchase agreement (PPA – “contrat d’achat”)  
    - Amendment possible (with a modifying certificate) for the remaining time
    - Necessity of a new PPA or Contract for difference (complement de remuneration) in case of a new installation
  
  - Grid connection agreement (“conventions de raccordement, d’exploitation, CARD”)
    - Modifications possible if they are not substantial
    - Substantial: Above 10% rise of the total installed capacity or in case of a new electrical installation

- Time limited agreements of 15 years: not adapted for repowering
- Modification is possible but restrictive
IV. Necessity of a new regime

Comments regarding how to improve repowering

➢ Repowering authorization inspired by the “\textit{Reconstruire à l’identique}” building permit?
   ➢ Possibility of relocation, possibility of power and height rise?

➢ Adaptation of the ICPE rules for an existing facility?
   ➢ Relaxation of the ‘substantial’ modification rule?
   ➢ Determination of thresholds?

➢ More possibilities to amend the agreement for electrical operation?