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Act No. 2017-1839 of 30 December 2017: a new legal framework for gas storage in France

By **Michel Guénaire**, partner, and **Pierre-Adrien Lienhardt**, associate,
Gide Loyrette Nouel

The main political goal of Act No. 2017-1839 of 30 December 2017 was to ban all new oil and gas explorations. From now on, no new authorisation can be granted to extract hydrocarbons and no existing licences will be renewed beyond 2040. This decision is consistent with the objectives of the Paris Agreement on climate change.

However, the gradual abandonment of oil, gas and coal exploration and production is not the only change introduced by this new act. Many other provisions modify environment and energy regulations and will substantially modify the legal framework that apply to related projects:

- **Relations between energy suppliers and grid operators:** the Act establishes a compensation paid by the grid operators to the energy suppliers for the services provided to consumers under a single contract ("*contrat unique*", Article L. 224-8 of the French Consumer Code). The new Act enables the Energy Regulatory Commission (CRE) to determine the remuneration owed by network operators to energy suppliers in return for the services related to grid access and carried out for their customers (Articles 13 and 14);
- **Wind power:** the Act provides new compensation rules for electricity producers in the event of delay in connecting the offshore wind farms to the grid (Article 15);
- **Electrical grid:** a new status is created for building inner electrical grids ("*réseaux intérieurs des bâtiments*"), covering indoor high or low voltage electricity installations of single-owner office buildings with these facilities. Conditions are to be specified by decree (Article 16);
- **Biofuels:** the Act provides for a wider control of biofuels (Chapter IV, Articles 18, 19 and 20);
- **Air pollution:** provisions related to the reduction of atmospheric pollutants are amended. The new Act modifies Article L. 222-9 of the Environmental Code in order to comply with EU Directive 2016/2284 on the reduction of national emissions of certain atmospheric pollutants (Chapter V);
- **Oil shipping:** the Act modifies some of the provisions of the Energy Code related to fines imposed in the event of non-compliance with French flag shipping capacity obligations (Article 27);
- **Energy saving certificates:** the Act decreases energy saving obligations for domestic fuel distributors by aligning their regime with that applicable to fuel dispensers, in order to allow these operators to fulfil these obligations (Article 28).



Michel Guénaire

Partner

Gide



Pierre-Adrien Lienhardt

Associate

Gide

Gas storage regulations are also amended and will now include new provisions that had been long expected (see section I below), including additional measures that intend to enhance the security of gas supply (see section II).

I - A new legal framework for gas storage

Over the last few years, many energy experts have focused on decreasing gas stock levels in France. They now warn that this decline may jeopardise the security of gas supply in the event of a peak in demand. Up until the Act of 30 December 2017, gas suppliers had the legal obligation to build up gas stocks to a predetermined amount. Yet, they have been in breach of this rule in recent years because the price for storage, freely set by gas storage operators, was considered too high.

Given the urgency and seriousness of the situation, the French State launched a reform of the French gas storage legal framework. Article 167 of Act No. 2015-992 of 17 August 2015 allowed the government to implement the reform by ordinance, but the government was not able to pass it in the timeframe imposed by the law.

On 31 July 2017, the government issued a decree to specify the conditions for the application of the legal obligation to build up gas stocks. It gave gas suppliers the right to use gas facilities in other European countries in order to fulfil their legal obligation. Although important, this modification was far from the reform expected by operators.

Act No. 2017-1839 of 30 December 2017 establishes this new legal framework for gas storage and provides for the adoption and publication of a series of implementation decrees. Therefore, although detailed application of the new rules remains to be discussed, Article 12 modifies the legal framework of access to, operation and marketing of, underground natural gas storage facilities. A regulated framework is established.

More specifically, the legal provisions include the following rules:

- **Expansion of the jurisdiction of the CRE in relation to third-party access to gas storage:** the CRE can now ensure that conditions of access to underground natural gas storage facilities (as well as liquefied natural gas facilities) do not hinder the development of competition (Art. L. 131-10 of the Energy Code). It must also be consulted on draft regulatory provisions relating to the use of underground natural gas storage facilities (Art. L. 138-10 of the Energy Code).
- **Definition of the functions of natural gas storage infrastructures:** the law now refers explicitly to objectives of grid balancing, continuity of gas flow, optimisation of the gas system and security of supply (Art. L. 421-3 of the Energy Code).
- **Gas storage infrastructures needed for security of supply:** a list of gas storage infrastructures recognised by the State as being of paramount importance for supply security must be kept in operation by operators (Art. L. 421-3-1 of the Energy Code). These facilities are subject to a specific regime.
- **Public auctions for gas storage:** the storage capacity is subscribed at the end of public auctions, whose terms will be fixed by the energy regulator (Art. L. 421-5-1 of the Energy Code).
- **Minimum stock levels:** if the minimum level of stocks is not reached, the Minister of Energy may require one or all suppliers and/or storage operators to build up additional stocks under conditions to be specified by decree (Art. L. 421-6 of the Energy Code).
- **Sanctions:** breaches to the obligation to acquire gas stocks are punishable by financial penalty. Gas suppliers' licences may also be withdrawn or suspended for a maximum of one year (Art. L. 421-26 of the Energy Code).
- **Separate accounting for regulated storage infrastructures:** separate accounting records, according to special rules defined by the CRE, must be kept up-to-date by the operators for the storage infrastructures identified as necessary to the security of gas supply (Art. L. 421-10 of the Energy Code).

- **Pricing for use of the gas transmission grid:** provisions for pricing the use of the gas transmission grid are amended in order to take into account the new legal framework regarding storage infrastructure (Art. L.452-1, L.452-2, L.452-1-1, L. 452-1-2 of the Energy Code).

The magnitude of these modifications required a public consultation on the implementation of regulated third-party access to underground natural gas storage facilities, conducted by the CRE until 23 January 2018. The public authorities' intention is to implement the reform as of next winter (2018/2019), which implies that public auctions be organised as early as March 2018. By the end of February, a draft decree on the minimum level of storage should be presented by the Ministry of Energy.

II - Additional measures to enhance the security of gas supply

New legal framework for interruptible capacity

The new Act creates an additional system that allows gas transmission and distribution system operators to contract new interruptible capacity without compensation (Article L. 431-6-3 of the Energy Code). Interruptible capacity corresponds to gas capacity that may be interrupted by the transmission system operator when it is necessary, in a view to provide a flexible and rapid response to the needs of the gas system operator in situations of threats on the security of gas supply.

Article L. 431-6-2 of the Energy Code provides that this interruptible capacity be set by contracts concluded between the transmission system operator and certain approved consumers (who have the technical capacity to interrupt their consumption). In return, interrupted customers receive a compensation from the transmission system operator. However, this measure was considered insufficient because there are insufficient numbers of consumers so far approved for interruptibility.

The new legal provisions include the following rules:

- the gas transmission system operator shall, on its own initiative, interrupt the approved consumer or request that the distribution system operator connected to its network carry out the operation of interruption of the approved consumer;
- the distribution system operator shall also, on its own initiative, interrupt the approved consumer connected to its gas distribution system.

The legal conditions to become an "approved consumer" and other application rules will be set by decree in the coming months.

Additional legal provisions to come

The Act gives the government an authorisation to legislate by ordinance on three matters:

- the modification of the roles and obligations of gas system actors (TSO, DSO, gas suppliers, gas storage operators, LNG terminals operators);
- the contract making process for interruptible capacity mentioned in Article L. 431-6-3 of the Energy Code for DSOs;
- the definition of the rules for gas interruption, with a possible modulation of grid fees for intensive gas consumer sites (depending on the levels of quality guaranteed to the consumers, in terms of chances of being interrupted).

In the coming months, the draft ordinance and decrees resulting from Act No. 2017-1839 of 30 December 2017 will provide the sector with a clearer view of the changes actually incurred by the reform. At this stage however, these new rules should be seen as a positive sign for the gas sector in France. ■