

## ENERGY: REGULATION FOR PROJECTS FRANCE

From 1996 to 2019, the legal framework governing the electricity and gas sectors underwent significant change, with the implementation of 23 European regulations and 34 European directives. The opening up to competition in France led to the adoption of nearly 50 laws and more than 100 regulatory acts. Conducting an economic activity in the energy sector thus requires the understanding of a significant number of European and domestic rules.

The succession of standards governing the energy sector has not been hampered either by the codification of the legislative and regulatory sections of the Energy Code, or by the adoption of law no. 2015-992 of 17 August 2015 *on energy transition for green growth*. The energy markets will need to adapt again to meet objectives related to opening up to competition, security of supply, development of non-fossil energies and protection of the environment, particularly on the impetus of the European Union. New European directives are currently under discussion that will bring deep modifications to the national legal framework. Major energy infrastructure projects will be developed in the coming years (electricity and gas interconnections, offshore wind farms, hydroelectric concessions exceeding 100 MW, smart grids, tidal projects, energy storage, positive energy buildings, energy savings, electrical charging points, etc.), leading to a constant change in these activities' legal context.



The legislative part of the Energy Code, published on 10 May 2011, was complemented by the codified regulatory part on 30 December 2015. After initiating the first and the second comments of this Code, Michel Guénaire coordinated the third edition of this commented work. Two of its seven books were commented by members of Gide's Energy team (LexisNexis, November 2018, 2,538 pages).

### Gide's Tailored Offer

Gide enjoys **long-standing** experience in the energy field. In particular, in 1999 our team was involved in the transposition into French law of the first directive *concerning common rules for the internal market in electricity*. Gide monitored each stage of the opening up of the electricity and gas markets, and assisted its clients in their issues relating to purchase, investment and access to infrastructure.

Our expertise is now **recognised** by all actors in the electricity and natural gas sectors. Both in France and abroad, we have assisted financial establishments, suppliers, producers, transmitters and industrial consumers alike.

Our Energy - Regulatory practice draws on the firm's **multidisciplinary skills**, in particular in the field of mergers & acquisitions, European law and tax law. For instance, we act on a number of disputes before the Energy Regulation Commission and the French courts, and advise the leading electricity joint buying organisation (Exeltium), comprising major electricity-consuming companies in Europe.

Our team regularly drafts articles for the specialised press (*Europ'Energies*, *Energie-Environnement-Infrastructures*), organises conferences on topics specific to the energy sector, and trains professionals (Development Institute International). We also maintain close working relationships with the Energy teams of law firms Gleiss Lutz (in Germany), Chiomenti (in Italy) and Cuatrecasas (in Spain and Portugal).

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## Our Experience

**Generation, Transmission and Distribution of Gas and Electricity** We act to structure energy infrastructure projects and to restructure groups active in the energy sector. Advice includes analysing regulatory and tax aspects of a given project using our perfect knowledge of the latest changes to national and European law. We also draft or review construction and maintenance contracts, as well as financing contracts. We assist producers and consumers in negotiating their grid connection, operation and access agreements, in relation with the use of transmission and distribution networks. Our expertise also covers obtaining the administrative authorisations for projects, as well as relations with the administrative bodies concerned.

**Renewables** We act for national and foreign companies, both in greenfield (completely new) and brownfield (already existing) projects, and assist them either in their acquisition projects or in the development of new projects in France. We also advise them on key legal issues that arise in the course of their projects and on the consequences of the latest changes to the regulatory framework. Additionally, we assist our clients in the bids they wish to submit to calls for tenders launched by the French Energy Regulatory Commission.

**Drafting and Negotiating Electricity and Gas Supply Contracts** We act to formalise supply offers, validate general conditions of sale, support certain consumers in their contractual negotiations. We also act during energy supply contract negotiations for a same consumer in several EU countries, thus validating contract templates established on the basis of EFET®.

**Financing and Acquisition** We advise developers, banking institutions and investment funds on the implementation of loans to finance energy production, transmission and storage infrastructures. Similarly, we assist energy sector operators in the acquisition or sale of these same assets, in particular in the renewable energy sector.

**Pre-litigation, litigation and dispute resolution** We defend our clients before national authorities and courts (judicial and administrative), as well as before European courts. We can support our clients during disputes pertaining to their access to the electricity and gas distribution grids before the Energy Regulatory Commission. Similarly, we manage damages claims that can be brought by or against our clients in the course of their activities in the energy sector. We support and advise our clients on inquiries and sanction procedures carried out by the Energy Regulatory Commission.

**Lobbying** We assist our clients in parliamentary debates on major energy sector laws, such as during the reform of the mining code and the preparation of the bill *on energy transition for green growth*. We also act on laws and regulations that impact our clients' activity in the energy sector, such as the reform of the regime for the tax contribution for the public service of electricity (CSPE) or the law of 30 December 2017 on hydrocarbons. In the context of the negotiation of the 4th Energy Package before European institutions, we uphold our clients' positions and help them to anticipate the changes that will arise.

**Competition** Drawing on the expertise of our Competition team, we assist clients active in the electricity and gas chains in their disputes before the Competition Authority, the European Commission and domestic courts. We ensure the compliance of our client projects with the rules of the European Union, in particular those related to competition law. To this end, our team works hand in hand with our Brussels office, which acts regularly on major European energy cases.

*“Experienced team dealing with both contractual and regulatory aspects of energy and mining. Also skilled in energy-related disputes and advises several market-leading energy providers in this regard.*

*Particularly active in Africa where it assists with complex projects. Assisted Senelec and the state of Senegal with a power purchase agreement pertaining to a 158 MW wind power plant in Taïba Ndiaye, Senegal. Michel Guénaire is highly skilled in managing domestic and international regulatory issues, owing to his significant knowledge of public law. He often represents clients in energy law disputes. »*

**Chambers Europe 2018**

*“Gide Loyrette Nouel A.A.R.P.I. is second-to-none for energy regulatory issues in France and is retained by leading operators to provide assistance before the energy regulatory authority. It successfully represented French main energy distributor Enedis in a high-stakes lawsuit initiated by property developer Valsophia challenging Enedis' de facto monopoly. The team also represented Engie in a litigation against GRTgaz before the energy regulatory authority. Michel Guénaire is the key contact for regulatory energy work. »*

**Legal 500 EMEA 2018**

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