

# Oil and gas regulation in France: overview

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A Q&A guide to oil and gas regulation in France.

The Q&A gives a high-level overview of the domestic oil and gas sector, rights to oil and gas, health safety and the environment, sale and trade in oil and gas, tax and enforcement of regulation. It covers transfer of rights; transportation by pipeline; environmental impact assessments; decommissioning; waste regulations and proposals for reform.

## Domestic sector

### 1. What is the role of the domestic oil sector in your jurisdiction?

#### Domestic production

According to data provided by the French Ministry of Energy Transition, France consumes around 77 million tonnes of oil per year.

However, France's oil production only amounts to 1% of its oil consumption. In 2018, it produced only 0.8 million tonnes of oil.

French oil production only relates to conventional oil in accordance with Law No. 2011-835 dated 13 July 2011 and Law No. 2017-1839 dated 30 December 2017 which prohibit the exploration and production of unconventional oil (this is now codified under Article L. 111-13 of the Mining Code).

#### Oil imports/exports market

To compensate for its limited oil production, France imported 54.5 million tonnes of crude oil in 2018. The main suppliers of crude oil are:

- Kazakhstan (15%, 8.14 million tonnes).
- Russian Federation (14%, 7.62 million tonnes).
- Iran (5.9%, 3.20 million tonnes)
- Saudi Arabia (14.6%, 7.95 million tonnes).
- Norway (6.1%, 3.31 million tonnes).
- Algeria (9.3%, 5.08 million tonnes).
- Libya (8.37%, 4.70 million tonnes).
- Azerbaijan (2%, 1.09 million tonnes).

- The UK (1.4%, 0.78 million tonnes).
- Angola (1.6%, 0.9 million tonnes).
- Iraq (0.8%, 0.48 million tonnes).
- Mexico (0.1%, 0.07 million tonnes).
- Others (14.3%).

In 2018, France imported 42.83 million tonnes and exported 20.26 million tonnes of refined oil products.

Under the Energy Code, there are no import or export restrictions on crude oil and refined oil products in France.

#### Domestic market structure

Directive 94/22/EC on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (Hydrocarbons Licensing Directive) (dated 30 May 1994) sets out that member states have sovereignty and sovereign rights over hydrocarbon resources on their territories.

Under Article L. 111-1 of the Mining Code, oil resources are deemed to constitute a mining resource. Therefore, oil resources belong to the state and can only be exploited by a private operator through a concession contract (*see* Question 9).

#### Government policy objectives

Law No. 2015-992 dated 17 August 2015 on energy transition for green growth (*Loi relative à la transition énergétique pour la croissance verte*) (Energy Transition Act) aimed to set up a sustainable energy model that is able to cope with issues relating to energy supply and environmental protection.

Law No. 2011-835 dated 13 July 2011 prohibits the exploration and exploitation of liquid and gaseous hydrocarbon mines by hydraulic fracturing.

Law No. 2017-1839 dated 30 December 2017 ending research and exploitation of hydrocarbons demonstrated the intention of government to accelerate a transition towards a decarbonised economy. No new authorisation can now be granted to extract hydrocarbons and no existing licences will be renewed beyond 2040 (see Question 10).

The European Union set a new legal framework called (Clean Energy for All Europeans) package comprised of four directives and four regulations published between June 2018 and June 2019. Law No. 2019-1147 dated 8 November 2019 on energy and climate has transposed part of this package and should be completed by several ordinances. Recently, Ordinance No. 2020-866 dated 15 July 2020 finalised the transposition of provisions on the energy performance of buildings and promotion renewable energy sources.

Law No. 2019-1147 dated 8 November 2019 on energy and climate (see above) deals with a number of subjects, mainly:

- The reduction of pollution by capping CO<sub>2</sub> emissions for coal-fired power plants. The four remaining coal-fired power plants should close by 2022.
- Reinforcement of energy efficiency in buildings.
- Achievement of carbon neutrality by 2050 and of the goal of halving the share of nuclear sources by 2035.
- Update of the self-consumption system, specifically of the collective self-consumption for residential buildings, that can be extended provided that there are less than 2 km between the facilities.
- Tackle energy-saving certificate fraud by speeding up of processes and strengthening controls.
- Reform of procedures before the Dispute Settlement and Sanctions Committee and the CRE.

The multi-year programme for energy (*Programmation pluriannuelle de l'énergie*) (PPE), setting the government's goals of energy policy for a five-year period, has been released for the 2019-2023 and 2014-2028 periods on 25 January 2019. It was adopted by a Decree No. 2020-456 dated 21 April 2020. It ensures the effectiveness of the COP21 Paris Agreement and more particularly aims to:

Decrease energy consumption, notably through renovation works to promote energy efficiency.

Decrease fossil fuels use.

Promote renewable energy sources and attain 50% of renewable sources by 2035.

Foster the development of accessible clean mobility.

### Current market trends

The Energy Transition Act and Law No. 2019-1147 dated 8 November 2019 on climate and energy aim to reduce France's overall oil consumption.

Due to its limited oil production, France has always been dependant on imports and will not be able (unlike the US) to develop unconventional oil to reverse this trend.

## 2. What is the role of the natural gas sector in your jurisdiction?

### Domestic production

France has only marginal gas production.

There is no more natural gas production in France since the permanent closure of the Lacq natural gas field.

The production of mine gas accounted for 100 gigawatt hours (GWh) in 2019 (whereas it represented 2 terrawatt hours (TWh) in the early 2000s).

In addition, since 2012, biomethane has been injected into the distribution system. Such activity skyrocketed as it accounted for 406 GWh in 2017 and 714 GWh in 2018.

By the end of 2018, 76 plants, with an injection capacity of 1,218 GWh/year, are connected to the natural gas grid, while a further 661 projects, representing a capacity of nearly 14 TWh/year, are under development.

### Natural gas imports/exports

France does not export natural gas.

France imported 565.76 TWh of natural gas in 2018. The main suppliers of natural gas are:

- Norway (42.3%, 235.74 TWh).
- Russian Federation (19%, 105.67 TWh).
- The Netherlands (10.2%, 56.94 TWh).
- Algeria (7.9%, 43.84 TWh).
- Nigeria (6.2%, 34.41 TWh).
- Qatar (4.1%, 22.93 TWh).
- Others (10.3%).

### Domestic market structures

As for oil, gas qualifies as a mining resource and is publicly owned (see Question 1 and Question 9).

### Government policy objectives

The gas sector may be impacted by various governmental policies.

Reform of the Mining Code is currently under discussion.

Law No 2019-1147 dated 8 November 2019 on climate and energy decided the abolition of all regulated tariffs for the sale of natural gas by 1 July 2023 for end consumers and by 1 December 2020 for small professionals (see Question 26).

### Current market trends

In general terms, gas consumption skyrocketed until the mid-2000s and is now stable. Since 2014, consumption decreased to a level that had not been seen since the end of the 20th Century.

However, in 2019, 451 TWh of gas were consumed on the transmission system of GRTgaz (the larger of the two French gas transmission operators), which is an increase of 2% compared with 2018. However, under Article L. 141-10 of the Energy Code, distribution and transport system operators of gas published for the first time in 2016 a multi-year forecast of demand and production of gas in France. This study indicates that gas consumption should decrease from approximately 413 TWh to 364 TWh between 2016 and 2035.

- In 2019, France recorded an 87% increase in liquefied natural gas (LNG gas) inflows, reaching 219 TWh, the highest level of imports in the last ten years.

Finally, Law No. 2017-1839 dated 30 December 2017 ending research and exploitation of hydrocarbons will not impact significantly France's gas production (which is already marginal). It will prevent this production from increasing.

### 3. Are domestic energy requirements met by domestic oil and gas production?

#### Oil requirements

Domestic energy requirements are not met by oil production (see Question 1).

#### Natural gas requirements

Domestic energy requirements are not met by gas production (see Question 2).

### 4. Are there specific government policies to encourage the exploration and production of unconventional gas or oil?

Law No. 2011-835 dated 13 July 2011 and Law No. 2017-1839 dated 30 December 2017 prohibit the exploration and production of unconventional oil (now codified under Article L. 111-13 of the Mining Code).

## Regulation

### Regulatory bodies

#### 5. Who regulates the exploration and production of oil and gas?

#### Oil

The Minister for the Economy and the Minister for the Environment are jointly in charge of monitoring the extraction of oil.

#### Natural gas

The Minister for the Economy and the Minister for the Environment are jointly in charge of monitoring the extraction of gas.

Several other public entities regulate the energy sector, but do not have jurisdiction over the extraction of oil and gas. The Energy Regulatory Commission (*Commission de régulation de l'énergie*) (CRE) is an independent public body regulating the French electricity and gas markets.

The CRE:

- Guarantees non-discriminatory access to the grids for all plants, suppliers and producers.
- Supervises the grid development according to the EU policy for the European electricity and gas market.
- Supervises transactions on electricity and gas markets.
- Proposes electricity regulated tariffs and provides an opinion for gas regulated tariffs.
- Proposes the amount of the public contribution for electricity public service costs.

The Dispute Settlement and Sanctions Committee (*Comité de Règlements des Différends et des Sanctions*) (CoRDIS) was created in 2006. It is part of the CRE but is independent from its executive direction. It is in charge of settling disputes between grid users and distribution and transmission operators. It can also impose penalties in the case of a breach of the obligations imposed on suppliers, grid operators or consumers, or if the persons concerned by a dispute settling decision do not respect it. While the penalties can be contested in front of the French administrative supreme court (*Conseil d'Etat*), disputes settlement decisions can be initially challenged before the Paris Court of Appeal (*Cour d'appel de Paris*) and then before the Court of Cassation (*Cour de cassation*).

The proceeding before the CoRDIS has been reformed by Ordinance No. 2020-891 dated 22 July 2020 to

strengthen the rights to judicial remedy, of defence and the contradictory principle.

The Financial Market Authority (*Autorité des marchés financiers*) (AMF) is an independent public body in charge of regulating actors and products in France's financial markets. The AMF supervises the greenhouse gas quota-based emissions market, the electricity and gas markets and their derived products.

The Competition Authority (*Autorité de la concurrence*) is an independent public body in charge of supervising anti-competitive practices and controlling mergers. As far as the electricity market is concerned, the Competition Authority:

- Can receive complaints on abuse of a dominant position or anti-competitive practices on the gas or electricity markets, about which it must inform the CRE.
- Issues an opinion on the accounting rules related to unbundling requirements.
- Can be asked by the CRE to issue an opinion on any competition issue.

The General Directorate for Competition Policy, Consumer Affairs and Fraud Control (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes*) (DGCCRF) is a department of the Ministry of Economy which investigates anti-competitive practices. Among other duties, it checks that electricity and gas suppliers respect the requirements regarding contracts' terms.

The National Energy Mediator is an independent public body which offers resolutions to conflicts between energy companies and consumers.

### The regulatory regime

#### 6. What is the regulatory regime for onshore and offshore oil and gas exploration and production?

#### Exploration

Exploration works can be conducted:

- With the express consent of the surface owner and after a declaration to the competent administrative authority.
- If the surface owner's express consent has not been given, with authorisation from the competent administrative authority after inviting the surface owner to present its observations.
- By the holder of an exclusive exploration licence (*permis exclusif de recherche*).

(Article L 121-1, Mining Code.)

#### Declaration and authorisation

Declarations and authorisations are awarded by the local state's representative (*Préfet*). The application files must contain technical information and an impact assessment of the adverse effects on the environment that may be caused by the projected exploration works.

The application for authorisation is examined by administrative services and after a public enquiry.

The application for a declaration is also examined by administrative services but not after a public enquiry.

#### Exclusive exploration licence

For onshore projects, an exclusive exploration licence allows its beneficiary to freely:

- Search the area of the concession.
- Dispose of the resources extracted during this research phase.

(Article L. 122-1, Mining Code.)

The licence is granted after an application to the Ministers for the Economy and the Environment, who will forward the application to the *Préfet*. The application file must contain:

- A technical report.
- The projected works and the minimum financial commitment that the applicant is prepared to invest in the concession.
- A map of the projected works and an impact assessment of the adverse effects on the environment that may be caused by the projected exploration works.
- The application is subject to examination by the administrative services.

On publication of the application in the *Official Journal*, concurring offers can be presented within 90 days.

The permit is granted by ministerial order submitted to the General Council of Industry Energy and Technology (*Conseil général de l'industrie, de l'énergie et des technologies*).

If the Minister for the Economy and the Environment remains silent for two years, the application is rejected.

For offshore projects, research activities are submitted either to:

- An exclusive exploration licence.
- A prospecting authorisation (*autorisation de prospection préalable*).

The application process for an exclusive exploration licence is similar to the one described above for onshore

projects. However, the applicant must also demonstrate that it undertook the appropriate measures to assume the financial obligations that may arise in case of liability caused by a major accident. To do so, financial guarantees can be provided.

A prospecting authorisation is granted for a duration not exceeding two years and entitles its holder to non-exclusively execute any prospecting works, including drilling at a depth of not more than 300 meters. Contrary to an exclusive exploration licence, the holder is not entitled to dispose of the resources extracted during this research phase, and the authorisation is granted without any competitive procedure or public inquiry (*Article L. 123-13 et seq, Mining Code*).

The administrative process slightly varies depending on the marine area concerned. For example, if offshore explorations are carried out in the exclusive economic zone (*Zone économique exclusive*) (ZEE), a specific regime must be applied in accordance with Ordinance No. 2016-1687 dated 8 December 2016 (*Article 20 et seq*).

### Production

The process for obtaining a mining concession is largely similar to the one described for an exclusive exploration licence.

A concession is granted after an application to the Ministers for the Economy and the Environment, who will forward the application to the *Préfet*. The application file must contain:

- A technical report.
- The projected works and the minimum financial commitment that the applicant is prepared to invest in the concession.
- A map of the projected works and an impact assessment of the adverse effects on the environment that may be caused by the extraction works.

The concession application will be examined by the administrative services and a public inquiry for 30 days.

On publication of the application file in the *Official Journal*, concurring offers can be presented within 90 days.

The concession is granted by decree after an opinion of the French administrative supreme court (*Conseil d'Etat*). However, a rejection of the application is notified by ministerial order.

### Impact of the Law No. 2017-1839 dated 30 December 2017 ending research and exploitation of hydrocarbons

Law No. 2017-1893 dated 30 December 2017 ending research and exploitation of hydrocarbons implemented

a major change to the regulatory regime for oil and gas exploration and production.

Research and exploitation of all hydrocarbons (that is, oil and gas) except mine gas will be gradually discontinued (*Article L. 111-6, Mining Code*). This applies to onshore and offshore exploration, and production works in France.

To implement the gradual stop, Article L. 111-9 of the Mining Code indicates that:

- Exclusive exploration licence or prospecting authorisation related to hydrocarbons must not be granted anymore.
- Mining concessions regarding hydrocarbons exploitation must not be granted anymore.
- Mining concession regarding hydrocarbons already granted cannot last after 1 January 2040.

## Enforcement of regulation

### 7. What are the regulator's enforcement powers?

#### Orders

*Préfets* are in charge (on behalf of the Ministers for the Economy and the Environment) of ensuring that the environmental requirements for mining activities are respected. They can also impose any additional requirements justified by environmental protection during the operation of the mine or a suspension of the works.

The Energy Regulatory Commission (*Commission de régulation de l'énergie*) (CRE) can issue various types of orders (administrative orders, recommendations and imperative opinions) relating to the organisation of the gas sector.

#### Fines and penalties

The Dispute Settlement and Sanctions Committee (*Comité de Réglements des Différends et des sanctions*) (CoRDIS) of the CRE can settle disputes over access and use of the public gas grid between operators and users. Depending on the seriousness of the offences, the CoRDIS can impose various sanctions including:

- A ban from accessing public transportation and distribution networks for up to a year.
- An operator fine of between 3% and 5% of its overall turnover.
- The CoRDIS can sanction breaches of the energy code, for instance in case of a breach of the Regulation (EU) 1227/2011 on wholesale energy market integrity and

transparency (REMIT) which prohibits market abuse. In 2018, the CoRDIS fined for the first time an entity for market manipulation. The fine was EUR5 million. On 19 December 2019, the CoRDIS sanctioned an entity for the second time and imposed a EUR1 million fine.

### 8. Is there a right of appeal against the regulator's decisions?

Any decision of the *Préfet* imposing additional requirements justified by environmental protection can be challenged by a party to a conciliation committee composed of three members. The decision can also be referred to the Ministers in charge of mining activities (which are the Ministry of economy and finance and the Ministry of ecological and solidarity transition) and challenged before administrative courts within two months of notification.

Decisions of the Dispute Settlement and Sanctions Committee (*Comité de Règlement des Différends et des sanctions*) (CoRDIS) can be challenged:

- For settlement disputes decisions, in front of the Paris Court of Appeal, where the claimant can ask for reform or cancellation of the decision. The appeal named *recours pour annulation* must be filed within one month of their notification.
- For sanctioning breaches of the energy code decisions, in front of the French administrative supreme court (*Conseil d'Etat*). The appeal, in which the judge has broad powers, (*recours de pleine juridiction*) must be filed within two months of notification.

## Rights to oil and gas

### Ownership

#### 9. How are rights to oil and gas held?

Rights to oil and gas are publicly owned. The exploitation of oil and gas resources can only be performed directly by the state or through a privately-operated concession.

### Nature of oil and gas rights

#### 10. What are the key features of the leases, licences or concessions which are issued under the regulatory regime?

### Lease/licence/concession terms

An exclusive exploration licence is granted for a maximum of five years and can be renewed twice, for five years each time (*Article L. 122-3 and Article L. 142-1, Mining Code*).

Mining concessions have a maximum initial length of 50 years and can be extended several times, for a maximum of 25 years each time. Mining concession for oil and gas cannot be extended after 1 January 2040 (*Article L. 111-9, Mining Code*).

Decree No. 2018-511 dated 26 June 2018 applying Article L. 132-12-1 of the Mining Code to hydrocarbon mining concessions provides a framework for the conditions under which the operator of a hydrocarbon mine may submit a project to convert part, or all, of the site it operates within five years before the end of the concession, in particular for the purposes of operating geothermal energy or renewable energy production facilities.

### Fees

The holders of an oil or gas concession are, where relevant, subject to:

- A subsurface royalty (*redevance tréfoncière*) to the land owner determined by each individual concession (*Article L. 132-15, Mining Code*).
- An annual production-based royalty paid to both the municipalities (*commune*) and the district (*département*) whose rates depend of the type of extracted resources. The royalties apply to both onshore and offshore concessions unless the site is located more than a mile from the baseline.
- An annual production-based royalty paid to the state for onshore sites. Almost a third of the revenues from this royalty are devoted to financing the Independent National Social Security Fund for Mines (*Caisse autonome nationale de sécurité sociale dans les mines*) (CANSSM) (*Article L. 132-16, Mining Code*).
- An annual production-based royalty paid to the state for offshore sites. The rates are determined according to the:
  - type of extracted resources;
  - location of the site;
  - water depth;
  - distance between the coast and the site; and
  - overall amount of expenditure during the exploration phase, capped at a rate of 12% (*Article L. 132-16-1, Mining Code*).

### Liability

The operator or holder of the concession or licence is liable for any damage caused by its activities, without limitation to the perimeter or length of the title. If the person responsible disappears or becomes insolvent, the state will ensure compensation of the damage.

### Restrictions

The applicant for a concession or a licence can be a public or a private person and based abroad, but must constitute a trading company under French law or the law of another EU member state and establish its head office or main establishment in France or in the EU.

The applicant must also prove its financial capacity, so the title will not be issued to an insolvent company.

#### 11. How are rights to explore for and produce oil and gas awarded?

See Question 6.

### Transfer of rights

#### 12. How are oil and gas rights transferred?

Under the Mining Code, oil and gas rights can be transferred through two mechanisms:

- A transfer that applies to both an exclusive exploration licence and a concession.
- A farm-out agreement, applicable only to concessions.

A farm-out agreement enables the concession holder to lease it to a third party.

### Transfer of rights

A transfer or a farm-out agreement must be authorised by the administrative authority, without any competitive procedure, public inquiry or consulting the French administrative supreme court (*Conseil d'Etat*) (Articles L. 143-1 and 143-9, *Mining Code*).

If there is no reply after 15 months, the authorisation is deemed to have been rejected.

### Restrictions on transfer

It is not possible to benefit from a transfer or a farm-out agreement if the conditions for obtaining the exclusive exploration licence or concession are not met (Articles L. 143-2 and L. 143-11, *Mining Code*). Therefore, the beneficiary of a transfer or a farm-out agreement must also prove its financial capacity (see Question 10, Restrictions).

### Tax

#### 13. What payments are payable by oil and gas interest holders to the government?

### Tax

Holders of mining titles and undertakings producing oil or gas must pay corporate tax. The 2018 French corporate tax rate ranges from 15% to 31% of taxable income. However, the French government recently announced that the highest corporate tax rate will decrease by 2022 to a rate of 25%.

In addition, network companies that operate hydrocarbons or natural gas pipelines are submitted to the flat-rate tax on network businesses (*Imposition forfaitaire sur les entreprises de réseaux*) (IFER), which provides benefits to local authorities.

### Royalties

The holders of an oil or gas concession must pay various royalties (see Question 10, Fees).

#### 14. What taxes and duties apply on import and export of oil and gas?

### Oil

The following taxes apply on the import of oil:

- Domestic Consumption Tax on Energy Products (*Taxe intérieure de consommation sur les produits énergétiques*) (TICPE) is an excise duty levied on the importation, production or exportation of oil products as listed in Tables B and C of Article 265 of the Customs Code. The TICPE does not apply to France's overseas territories.
- Special Consumption Tax is the TICPE equivalent for overseas territories (*Article 266 quater, Customs Code*).
- VAT on oil products whose rate is 20% in France and 13% in Corsica.
- The General Tax on Polluting Activities (*Taxe générale sur les activités polluantes*) (TGAP) targets all polluting products and is paid by producers or importers when these products are put on the market.

In addition, any operator trading oil products chargeable to TICPE must contribute to the implementation of strategic deployment stocks (Articles L. 642-2 et seq, *Energy Code*). An operator must pay the fee to the Professional Committee of Strategic Deployment Stocks (*Comité professionnel des stocks stratégiques pétroliers*) (CPSSP). The relevant oil products covered by this obligation are listed under Article L. 642-3 of the Energy Code.

The TICPE fee is:

- Determined by the advisory board of the CPSSP.
- Connected to the cost incurred to implement the stocks for one year.
- Levied by the customs administration on behalf of the CPSSP.

Lastly, any operator trading oil products chargeable to TICPE must justify its shipping capacity operating under the French flag (*Articles L. 631-1 et seq, Energy Code*). The shipping capacity must be proportional to the quantity of product put on the market during the previous year. To do this, an operator can either own or charter ships under the French flag or fund with other operators an undertaking that acquires capacity cover contracts from ship owners. The relevant oil products covered by this obligation are listed under Article L. 642-3 of the Energy Code.

### Gas

The Domestic Consumption Tax on Natural Gas (*Taxe intérieure de consommation sur le gaz naturel*) (TICGN) is the TICPE equivalent for natural gas. The tax is:

- Levied on natural gas used as fuel.
- Paid by natural gas suppliers on deliveries made to end consumers in France and by end consumers if they themselves have imported or produced gas.

From 1 January 2020 the TICGN rate is EUR8.45 per MWh. However, reduced rates of EUR1.52 per MWh hour and EUR1.6 per MWh respectively are offered to:

- Undertakings that exchange greenhouse gas emission quotas and are considered to be energy intensive.
- Undertakings exposed to the risk of carbon leakage and considered to be energy intensive.

### Transportation by pipeline

#### 15. What regulatory requirements apply to the construction and operation of oil and gas pipelines?

The construction and operation of oil and gas pipelines must be authorised. The authorisation can come from any of the following:

- A joint ministerial order from the Ministry of Energy and the ministry in charge of pipeline transportation safety.
- A ministerial order from the ministry in charge of pipeline transportation safety.
- A prefectural order.

(*Articles L. 555-1 et seq, Environmental Code.*)

Before this authorisation is granted, an impact study and a public inquiry are required if the project will cause environmental harm. The opinion of the High Council for Prevention of Technological Risks (*Conseil supérieur de la prévention des risques technologiques*) (CSPRT) is also required.

To obtain this authorisation, the applicant must submit:

- A report indicating its technical, economic and financial capabilities.
- A description of the main technical and economic features of the pipeline and a description of the connections to other pipelines.
- A map of the pipeline.
- Any convention concluded between the applicant and a third party related the exploitation and financing of the pipeline.
- A non-technical summary of the abovementioned documents.

The authorisation can also be subject to additional requirements such as:

- A minimal distance between the pipeline and the nearest housing or watercourse.
- Implementation of security measures guaranteeing surveillance and protection of public safety and environmental issues.

In addition, gas pipeline projects must fit within the principles and missions of public interest (*Article L. 555-9, Environmental Code*).

Oil and gas pipelines may contribute to the common good. In these cases, if the applicant requests it, their construction works can be given a declaration of public authority (*déclaration d'utilité publique*), conferring the right to occupy a public domain (*Article L. 555-25, Environmental Code*).

The construction and operation of an oil and gas pipeline must also obtain a water law authorisation or declaration (*Articles L. 214-1 et seq, Environmental Code*).

#### 16. What regulatory requirements apply to the operation of oil and gas pipelines?

The main requirements are set out below.

The operation of oil and gas pipelines must be authorised. The authorisation granted for the construction of oil and gas pipelines also applies for their operation (*see Question 15*).

The authorisation holders whose works are declared a public utility (*travaux déclarés d'utilité publique*) may benefit from easements for the construction and operation of oil and gas pipelines on private property. The owners of land subject to an easement must refrain from any act that interferes with the construction, operation and maintenance of the pipelines concerned, from any cultivation practice exceeding 0.6 metres in depth and from any planting of trees or shrubs. In a limited space, they must also not build any sustainable



construction. The easement is given under an amicable agreement with the owners or, failing that, can be imposed by operation of the expropriation procedure.

In return for the permanent reduction of their property rights, compensation is paid by the authorisation holders to the owners of the land subject to an easement. The amount of compensation is set by the amicable agreement, or failing that, in accordance with the rules relating to expropriation (*Articles L. 555-27 and Article R. 555-35, Environmental Code*).

In addition, foreign investments related to infrastructure, goods or services essential to guarantee the integrity, security and continuity of the supply of energy may require the authorisation of the French Ministry of the Economy (*Articles L. 151-2 and seq and Articles R. 151-1 and seq, Monetary and Financial Code*).

The following investments made by a foreign investor in the following may require authorisation:

- The acquisition of control of a legal entity governed by French law.
- The acquisition of all or part of a line of business of an entity governed by French law.
- The crossing (upward), directly or indirectly, either alone or in a concert with others, the threshold of 25% of the voting rights of a legal entity governed by French law.

(*Article R. 151-2, Monetary and Financial Code*).

### Oil pipelines

Several types of oil pipelines exist in France:

- Crude oil pipelines that connect import depots to refineries. The main ones are the:
  - South European Pipeline (PSE); and
  - Antifer-Le Havre pipeline.
- Finished product pipelines that supply distribution depots, that is, the:
  - Le Havre-Paris pipeline (LHP);
  - Mediterranean-Rhône pipeline (PMR).
  - Common Defense Pipeline (CDP), which represents the French part of the North Atlantic Treaty Organization's (NATO) Central Europe Pipeline System (CEPS); and
  - Donges-Melun-Metz pipeline (DMM).
- Pipelines that supply both distribution depots and refineries with crude oil and finished products, that is, the:
  - Île-de-France pipeline (PLIF); and
  - Pipelines between Fos and Manosque (PSM and GSM).

Only companies with the authorisation (*see above*) may build and operate oil pipelines.

If the application for authorisation to build and operate a new transmission pipeline is submitted in the name of an already incorporated company, the application file is completed by the articles of association and a list of the shareholders or partners of the petitioning company holding more than 1% of the share capital, with an indication of the number of shares held by each of them.

(*Article R. 632-2, Energy Code*).

The main companies operating oil pipelines are the Oil Pipeline Transportation Company (TRAPIL) and the Pipeline Méditerranée-Rhône Company (SPMR).

The proper functioning of the transport of the products and, where appropriate, interconnections with other oil pipelines are ensured by dispatching centers. In the event of anomalies, dispatchers can stop or divert cargoes.

In addition, subject to compliance with certain provisions, the receipt from and dispatch to foreign countries, processing, transport, storage and distribution of crude oil and petroleum products are carried out freely (*Article L.112-1, Energy Code*).

Therefore, oil pipeline rates are not set by an independent regulator but directly by the operating companies (*see Question 17*).

### Gas pipelines

The French natural gas transmission system is operated by two operators:

- GRTgaz, operating 8,346 kilometres (km) of main network and 23,974 km of regional network.
- Teréga, operating 1,150 km of main network and 3,950 km of regional network.

Natural gas transmission system operators must:

- Ensure at all times the safety and efficiency of its network and the balance of natural gas flows, taking into account the constraints weighing on the network.
- Ensure the availability and implementation of the services and reserves necessary for the operation of the network, in particular by managing physical congestion, and compliance with the rules relating to the interconnection of natural gas transmission networks.
- Carry out the metering necessary for the performance of its missions.
- Implement energy efficiency actions and to promote the integration of renewable energies into the network.

(*Article L.431-3, Energy Code*).

Therefore, gas pipelines are continuously piloted by the operators who manage gas flows in real time through various sensors according to consumption.

The gas transmission networks are regulated by the Energy Regulatory Commission (*Commission de régulation de l'énergie*) (CRE), which determines the tariffs for use of the natural gas transmission network (ATRT7 tariff since 1 April 2020) (see Question 17).

### 17. Is there a system of third party access to pipelines and other infrastructure?

#### Oil

Tariffs for third party access are determined by the operator at the beginning of the exploitation and submitted to the control of the Minister for Energy at least two months before they enter into force. Any subsequent modification to these access tariffs can be made by lodging a statement with the Minister for Energy at least one month before its enters into force (*Article 6, Decree No. 2012-615 dated 2 May 2012*).

#### Gas

**Regulation of the natural gas market.** Gas transmission and distribution networks are essential infrastructures, with costs too high to duplicate. As a result, third party access is organised under the Energy Code.

Access to the transmission and distribution of gas networks is guaranteed for all suppliers and clients (*Article L. 111-97, Energy Code*). The two tariffs for access to the transmission network (*accès des tiers au réseau de transport*) (ATRT) and the distribution network (*accès des tiers au réseau de distribution*) (ATRD) are set by the Energy Regulatory Commission (*Commission de régulation de l'énergie*) (CRE) (*Article L. 134-2, 4°, Energy Code*) in accordance with the methods it determines (*Article L. 452-2, Energy Code*).

The ATRT and ATRD aim to remunerate an efficient network operator and are paid by suppliers and producers, who pass on their costs to the end consumer.

**Framework for gas storage.** Third-party access to underground natural gas storage is governed by the Energy Code, amended by Law No. 2017-1839 dated 30 December 2017 which provided the following principles:

- The underground gas storage facilities considered as necessary to security of supply are covered by the multi-year programme for energy project.
- Operators of these essential facilities are required to keep them in good working order and to offer third-party access under transparent and non-discriminatory conditions.

- Storage capacities of these essential facilities are offered through open auctions according to terms and conditions set by the CRE.
- The CRE regulates the operators of these essential facilities by determining their revenues in order to cover the costs they incur to operate these essential facilities.
- In case the auction incomes do not cover the costs incurred by the operators to run these essential facilities, full recovery is ensured by the natural gas transmission network tariff.

## Health, safety and the environment

### Health and safety

#### 18. What is the health and safety regime for oil and gas exploration and production, and transportation by pipeline?

#### Exploration

Since the enactment of Law No. 2009-526 dated 23 May 2009, the Labour Code governs all general measures that must be taken by an employer relating to the security and wellbeing of its employees and applies to extracting industries.

Directive 2013/30/EU related to safety of offshore oil and gas operations and amending Directive 2004/35/EC aims to prevent major accidents and limit their consequences by establishing minimum safety requirements which may indirectly contribute to improve the workers environmental and health conditions during offshore oil and gas operations.

The operator of exploration or drilling works must both:

- Ensure monitoring of its works on the environment.
- Implement a systemic risk management process to minimise the environmental and health consequences of a major incident.

(*Article 1, Decree No. 2016-1303 dated 4 October 2016*.)

To achieve this, operators must:

- Provide a regularly updated set of information to the *Préfet*.
- Implement protection against noxious fumes (installing a fumes alarm system, constructing a venting system).
- Implement protection against explosions, fires, and electrical hazards.

- Determine emergency, evacuation, rescue and first-aid measures and exercises.

### Extraction

See above, *Exploration*.

### Transportation

See above, *Exploration*.

## Environmental impact assessments (EIAs)

### 19. Is an EIA required before extracting or processing onshore or offshore oil and gas?

Projects that, by their nature, size or situation, have a significant effect on the environment or human health, are subject to environmental assessment (*Articles L. 122-1 et seq, Environmental Code*).

The annex to Article R. 122-2 of the Environmental Code states that mining and drilling works for extraction of gas or oil must undergo an environmental assessment.

This environmental assessment is usually conducted by a consulting firm.

### 20. What are the different stages of the EIA?

[Please give details on:

The stages of the assessment.

- How long it would usually take to complete.]

The environmental assessment contains the following stages:

- Presenting a report evaluating possible fallouts on the environment by the contracting authority (approximately four or five months for the file review phase from the submission of the complete file).
- Consulting with public and relevant local authorities (around three months).
- Examination by the authorities of the environmental report and results of the consultations. Examination is done by the Minister for the Environment, who can also consult a local authority on the matter (*Article R. 122-7, Environmental Code*) (around two months).

The environmental assessment must include the following:

- A non-technical summary.
- A description of the project.

- A description of the current state of the environment.
- Details of the factors that might be impacted by the project.
- An explanation of the most notable effects of the projected works on the environment.
- An account of the adverse effects on the environment that might be caused by the project.
- A description of the reasonable alternative solutions that were studied.
- A report on any reasonable solutions to compensate for the negative effects on the environment.
- Where applicable, the procedures for monitoring the proposed avoidance, reduction and compensation measures.
- A description of the prediction methods or evidence used to identify and assess significant environmental impacts.
- The names, qualifications and skills of the expert(s) who prepared the impact assessment and the studies that contributed to its completion.

(*Article R. 122-5, Environmental Code*.)

On examination, the administrative authority renders a decision giving specifications that the applicant will need to follow. These specifications aim to reduce the adverse impact on the environment.

Undertaking an environmental assessment usually takes several months.

## Environmental permits

### 21. Is there a permit regime for environmental damage or emissions produced during the extraction or processing of oil and gas?

## Directive 2010/75/EU on industrial emissions (Industrial Emissions Directive)

Due to their potentially harmful effects, oil and gas production facilities and refineries are considered to be installations classified for the protection of the environment under the Industrial Emissions Directive. The Directive implements a system where member states commit to reducing the impact of industrial emissions on the environment.

The Industrial Emissions Directive implemented the Best Available Techniques (BAT) to determine the emission limit value (EVT) that a site should not exceed. The BAT

approach refers to “the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values”. Therefore, by providing information about the optimised version of the project, it is possible to define the EVT that should not be exceeded.

The Directive also implemented a baseline report describing the site before the beginning of the industrial activity. At the end of the industrial activities, the operator must decommission the site and restore it to the position described in the baseline report.

### Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading

This Directive organised a cap and trade system on greenhouse gas allowances for industrial companies, which are not allowed to pollute more than the amount outlined in their allowance. The scheme encourages companies to:

- Reduce their emissions.
- Sell their unused allowances.
- Benefits from the sale of unused allowance.

Companies that are going to pollute more than their allowances permit can buy allowances from other companies. The goal of this system is to progressively reduce the amount of emissions, leading to a decrease in pollution and an increase in gas allowance prices.

The proposed goal is to reduce greenhouse gas emissions by 40% by 2030.

### Environmental concerns

#### 22. Are there any specific government policies and/or incentives aimed at meeting the environmental concerns associated with the exploration and production of oil and gas?

Law No. 2011-835 dated 13 July 2011 prohibits the use of hydraulic fracturing (now codified under Article L. 111-13 of the Mining Code) (see Question 4).

Furthermore, Law No. 2017-1893 dated 30 December 2017 ending research and exploitation of hydrocarbons highlights the government’s commitment to tackling environmental issues (see Question 6).

Decree No. 2018-511 dated 26 June 2005 applying Article L. 132-12-1 of the Mining Code to hydrocarbon mining concessions therefore provides a framework for the conditions under which the operator of a

hydrocarbon mine may submit a project to convert part, or all, of the site it operates within five years before the end of the concession, in particular for the purposes of exploiting geothermal energy or renewable energy production facilities.

Finally, a reform of the Mining Code is still being discussed in parliament. The main objectives of the reform are to:

- Standardise mining titles.
- Improve environmental and socio-economic assessments and public information.
- Create a High Council of Mines and national politics for mining resources and uses.

### Waste

#### 23. What are the regulations on the disposal of waste products resulting from oil or gas extraction or processing?

Waste products resulting from oil or gas extraction and processing are defined as hazardous (*Article R. 541-8, Environmental Code*). As a result, a regional waste prevention and management plan is planned to co-ordinate the actions taken by the various undertakings concerned by waste disposal. The plan contains:

- An inventory of waste prevention and management objectives.
- A prospective study with a forecast for six and 12 years to determine waste quantity.
- Objectives in terms of prevention, recycling and waste recovery.
- A regional action plan for developing a circular economy.

Any producer of original waste must either manage it or use a third party to treat it. Waste producers are responsible for their waste until it is disposed of or recovered even if it is entrusted to a third party for treatment (*Article L. 541-2, Environmental Code*).

If waste is abandoned, companies can suffer a range of penalties from finding a remedy to the imposition of a fine (*Article L. 541-3, Environmental Code*).

A general tax on polluting activities will be levied (see Question 14).

### Flares and vents

#### 24. Do regulations apply to the flaring or venting of oil and gas?

In 2015, France signed the “Zero Routine Flaring by 2030” initiative. It was introduced by the World Bank to bring together governments, oil companies and development institutions to eliminate routine flaring by no later than 2030. However, the initiative has yet to be transposed into national law, but France no longer grants a State guarantee for liquid hydrocarbon production projects involving gas routine flaring emitted during the exploitation of the deposit (*Article L. 432-1, Insurance Code*).

The Industrial Emissions Directive works to reduce flaring by imposing the use of the best available techniques to lower industrial emissions in the environment.

Air quality is regularly monitored and France has pledged to reduce its emission of greenhouse gases by signing the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and, more recently, the Paris Agreement on climate change.

### Decommissioning

#### 25. What are the decommissioning obligations and liabilities that arise?

##### Obligations

The operator of an authorised installation classified for the protection of the environment (such as gas and oil extraction sites or pipelines) must, when the facility is no longer in use, ensure that the site cannot harm the environment, safety and public health or other protected interests.

These decommissioning obligations are either defined in the authorisation of the facility or must allow a similar exploitation of the site.

The operator must:

- Notify the *Préfet* of the definitive cessation of activity at least three months in advance.
- Send a rehabilitation report to the *Préfet* indicating the measures taken to ensure the protection of the environment, safety and public health.
- Rehabilitate the site according to the conditions of the authorisation or to ensure a similar exploitation of the site. Additional conditions can be imposed by the *Préfet*.

The duly completed rehabilitation works are set out in a written statement by an environmental inspector.

##### Liabilities

The *Préfet* can impose additional requirements on the operator to protect the environment, safety and public health, even after completion of the rehabilitation works (*Article R. 512-39-4, Environmental Code*).

If land is polluted and the operator cannot be found, the landowner can be held liable if it has contributed to the pollution or acted negligently (*Article L. 556-3,II, 2°, Environmental Code*).

Article 40 of Ordinance No. 2016-1687 dated 8 December 2016 states that if an operator fails to dismantle an offshore site, the competent administrative authority can do it in lieu and at the expense of the operator.

### Sale and trade

#### 26. How is trade in oil and gas usually carried out?

##### Gas

Before it is delivered through the network to final customers, gas is traded on the wholesale market in two different ways:

- Over-the-counter agreements (especially long-term contracts but also some short-term contracts).
- On the market, through gas exchanges (Pownext) and stockbrokers.

On the French wholesale market, exchanges used to take place on three virtual trading points of the transmission system called gas exchange points (*points d'échange gaz*) (PEG). These were PEG North, PEG South and PEG TIGF. Physical gas deliveries used to be processed at these points. Since November 2018, these three PEG have now been merged into a single trading zone (Trading Region France) (TRF), which constitutes a single virtual gas trading point. From a physical point of view, the TRF zone remains divided into two balancing zones, Teréga and GRTgaz.

##### Oil

Oil is traded freely either on the stock market or through agreements and direct contracts.

Oil trading conditions are monitored by the state. Consequently, oil traders may:

- Acquire French shipping capacity.
- Contribute to the implementation of strategic deployment stocks (see Question 14).
- Transfer information or documents.

Under Article L. 142-10 of the Energy Code, any operator trading crude oil or oil products must provide to the administrative authority any documents or information regarding its contribution to the supply of the French market:

- If a shortage of supply arises.
- To ensure the implementation of strategic deployment stocks.
- To contribute to the fulfilment of France's international commitments.

### 27. Are oil and gas prices regulated?

#### Oil

As a country that does not produce oil, France has no control over its price, which is set according to market conditions.

#### Gas

Two types of prices are set on the gas market:

- Market prices (which depend on supply and demand).
- Regulated tariffs (for gas provided by the historical supplier Engie and local distribution companies).

The regulated tariffs are now only available for end consumers whose consumption is lower than 30 MWh (Article L. 445-4, Energy Code). However, a ruling by the French administrative supreme court (*Conseil d'Etat*) dated 19 July 2017 repealed regulated tariffs for gas supply, as their effect is crippling to competition and contrary to EU law. Law No 2019-1147 on climate and energy dated 8 November 2019 confirmed the abolition of all regulated tariffs for the sale of natural gas by 1 July 2023 for end consumers and by 1 December 2020 for small professionals.

#### Insurance

### 28. Are there any insurance requirements that must be met by companies exploring for, producing or transporting oil & gas?

There are no specific insurance requirements that must be met for a project aimed at producing oil or gas.

#### Reform

### 29. Are there plans for changes to the legal and regulatory framework?

A reform of the Mining Code is still being discussed in parliament. The main objectives of the reform are to:

- Standardise mining titles.
- Improve environmental and socio-economic assessments and public information.
- Create a High Council of Mines and national politics for mining resources and uses.

Since October 2019, France has been holding a Citizens' Convention for the Climate, which has adopted 149 proposals as part of the fight against global warming, including:

- Including the protection of the environment and biodiversity as well as the fight against climate change in the French Constitution.
- Introducing the crime of ecocide into French law to punish the most serious environmental offences.

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- Advising a Norwegian company in the creation of an activity of installation of solar panels for individuals.
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