



Wind Power Plant Legal Disputes to be Expedited Under New French Decree

Under the new decree No.2018-1054 dated November 29, 2018, administrative legal actions relating to wind power plants shall be filed directly before the French Administrative Courts of Appeal.

The French Government has enacted a new decree in order to promote on-shore wind-energy in France. Its main aim is to accelerate legal procedures following claims against the administrative authorizations of wind farm projects.

The administrative legal actions relating to on-shore wind power plants shall now be filed directly before the French Administrative Courts of Appeal instead of the first instance administrative tribunals. This rule will apply for instance to legal actions filed against environmental authorizations, derogations to protected species regulations, electricity production authorizations, authorizations to occupy the public property or decisions to assign or to refuse such authorizations (Administrative Justice Code, Art. R. 311-5). This measure echoes with a previous decision to transfer to the Administrative Court of Appeal of Nantes the administrative legal actions relating to off-shore wind power plants (Administrative Justice Code, Art. R. 311-4).

The applicant shall file its request before the Administrative Court of Appeal whose territorial jurisdiction includes the defender's headquarters (Administrative Justice Code, Art. R. 311-5).

An applicant requesting the annulment of an administrative decision shall raise arguments relating to the decision's lawfulness. Under the new decree, the applicant will not be allowed to raise additional arguments later than two months after the transmission of the first defense claim filed before the Administrative Court of Appeal (Administrative Justice Code, Art. R. 611-7-2). This "argument crystallization" is intended to accelerate jurisdictional proceedings since the applicants will not be allowed to raise new arguments at the end of the jurisdictional instruction.

The new decree also includes other measures aimed at accelerating on-shore wind power plants projects in France:

- The repowering of existing on-shore wind power plants will not require any planning law formality when the administrative authority enacts an additional order (Town Planning Code, Art. R. 425-29-2).
- A ministerial order will set the distance and height criteria, beyond which the assent of the Minister of Civil Aviation will not be required to authorize a wind farm project (Environmental Code, Art. R. 181-32).

The decree took effect on December 2, 2018 and shall apply to administrative legal actions relating to on-shore wind power plants to be filed after this date. These measures may raise some opposition and it cannot be excluded that an action for annulment may be filed against

this decree before the French Supreme Administrative Court (Conseil d'Etat).



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