

# A Comparative approach of Offshore Renewable Energy legal framework between France and the United Kingdom

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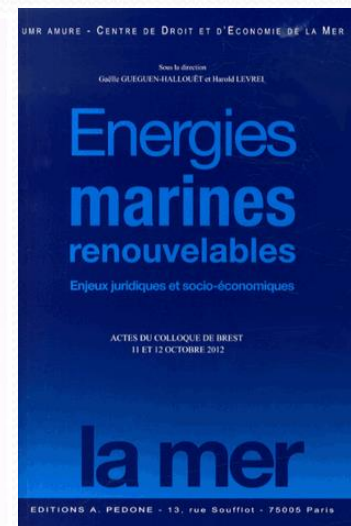
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- A continuation of a research started in 2011 in the **Center for the Law and Economics of the Sea – UMR AMURE**

- Publication of Articles, Book and Book chapters :







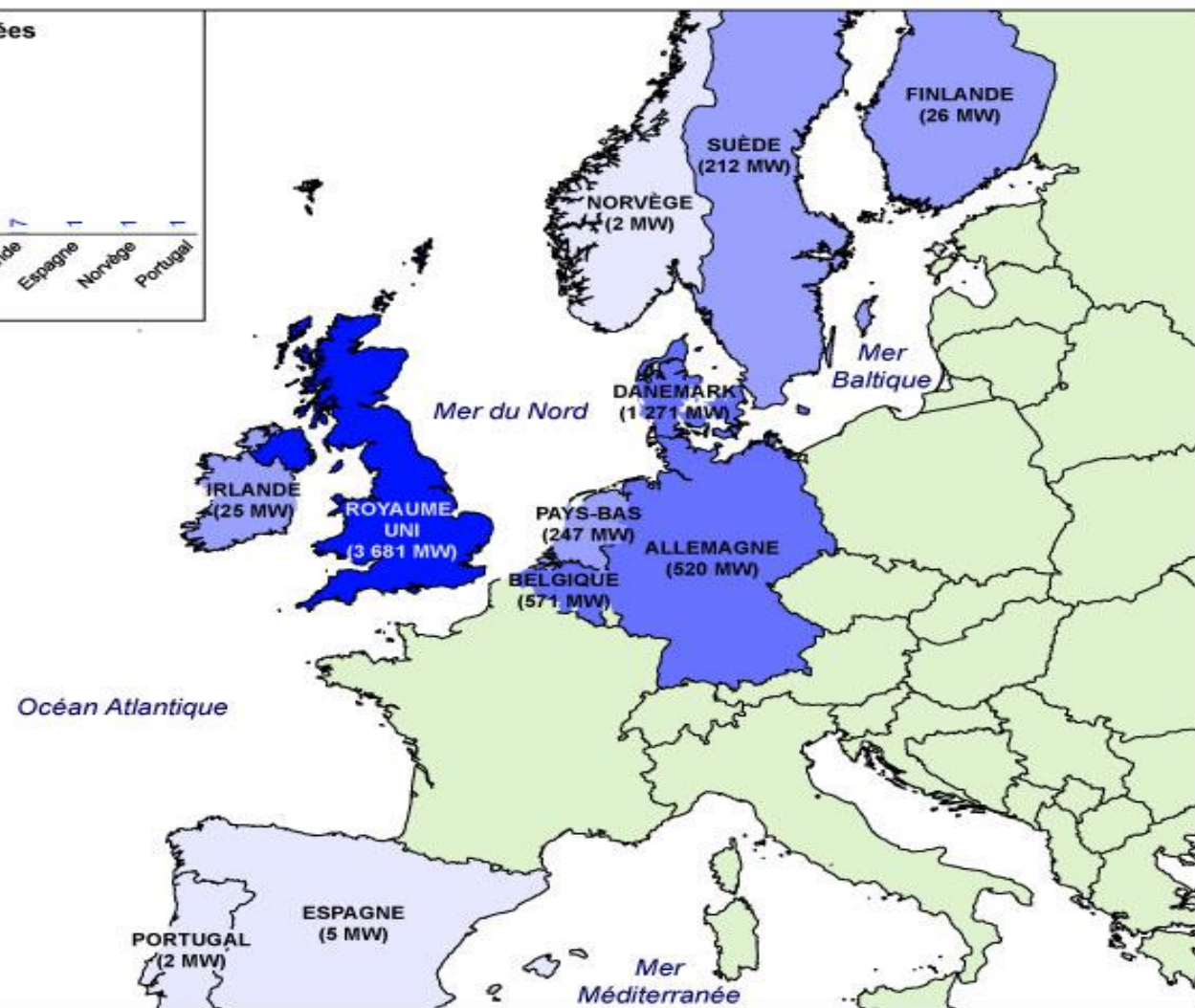
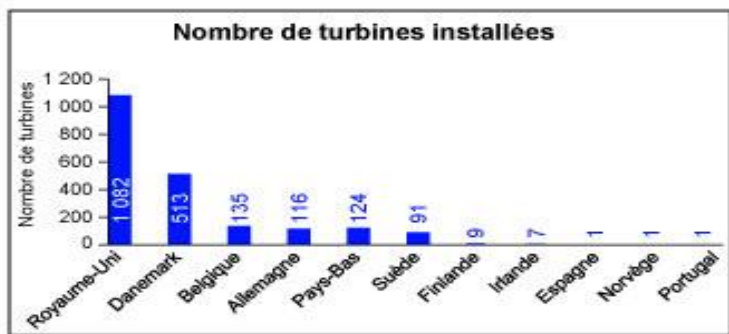
## Why a Comparative approach ?



- France lagging behind its neighbours especially United-Kingdom
- UK/leader in promoting energy at sea



- Evaluate and compare the tools used in France and in UK.
- Identify the existence of innovative legal instruments implemented

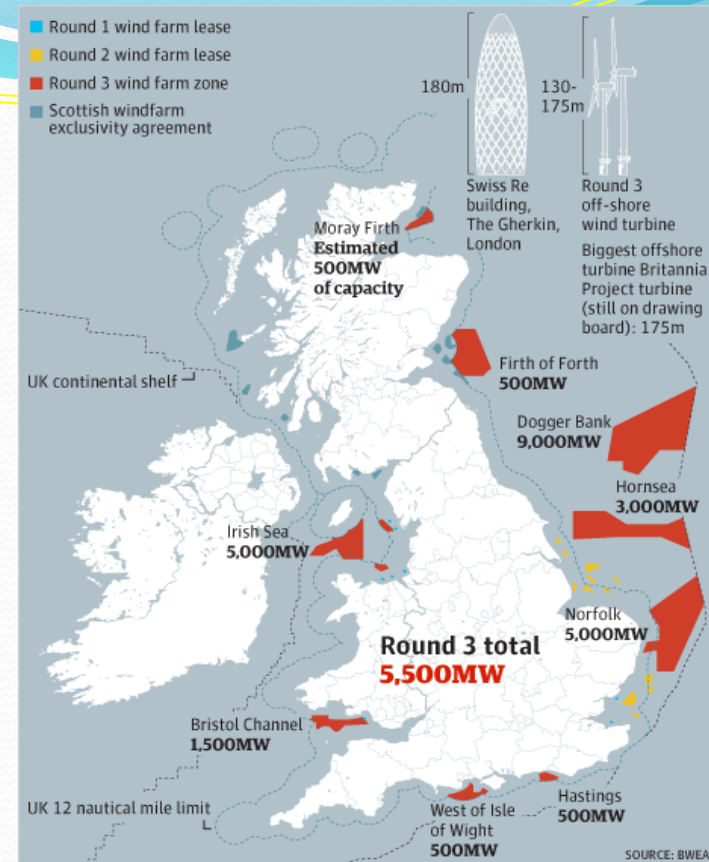


Sources : EWEA 2014    Crédits : Géoconfluences ENS Lyon / DGESCO    Cartographie : H. Tronchère



# ORE IN UK

- The world leader in offshore wind : **3657 MW end 2013** on a European total of *6 949 MW*
- The biggest number of turbines installed (**1075**)
- The biggest offshore wind farm in the world **London Array- 175 turbines** giving a total of 1000MW in 2013.





## Harnessing the power of offshore wind

London Array is arguably the most widely known UK offshore wind farm. Its sheer scale and proximity to Greater London mean it's often referred to by politicians and in the press.

Its 175 turbines are capable of generating enough energy to power nearly half a million UK homes and reduce harmful CO<sub>2</sub> emissions by more than 900,000 tonnes a year. So it's making a big difference to the environment as well as helping provide a reliable electricity supply to south east England.

The largest operational offshore wind farm in the world, London Array was opened by Prime Minister David Cameron in July 2013.

### London Array partners



Caisse de dépôt et placement  
du Québec





# Contents

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# International and European Background



## International commitments

- ✓ Convention on Climate Change of 9 May 1992
- ✓ Additional Kyoto Protocol adopted in 1997



➔ Targets for the stabilization of greenhouse gas concentrations in the atmosphere





# European legislation

Transposing and amplifying the provisions set out  
in international conventions



- ✓ **Directive n° 2009/72/EC 13 July 2009** concerning common rules for the internal market in electricity
- ✓ **Directive n° 2009/28/EC 23 April 2009** on the promotion of the use of energy from renewable sources



**3 main targets** for 2020

- **20%** Reduction of its greenhouse gas emissions
- **20%** of energy from renewable resources in a country's gross final consumption
- **20%** Reduction of the energy consumption by improving energy efficiency



**1 main target** for 2030

- **40%** Reduction of its GGE



# Quantitative targets and Energy policy

National overall target for the share of energy from renewable sources in gross final consumption of energy in 2020 (directive 2009/28/CE)

	Share of energy from renewable sources in gross final consumption of energy in 2005	Target of energy from renewable sources in gross final consumption of energy in 2020	ORE Objective of producing for 2020	ORE production in 2014
France	10,3%	23%	6000 MW	0
UK	1,3%	15%	33000MW	3657 MW



# National policies for the development of renewable marine energy

	Framework	Policy guidelines	Methods
<p>UK</p> 	<ul style="list-style-type: none"> <li>-National Renewable Energy Action Plan</li> <li>-The UK Renewable Energy Strategy, 2009</li> <li>-UK Renewable Energy Roadmap Update 2012</li> <li>-Energy Market Reform 2013</li> </ul>	<ul style="list-style-type: none"> <li>➤ Objectives : Security of energy supplies with the promotion of energy transition</li> <li>✓ Two pillars :               <ul style="list-style-type: none"> <li>- Encouraging energy providers to invest in generation that emits less CO<sub>2</sub></li> <li>- In preparation for the post-2020 period, it accompanies research in future technologies such as marine energies</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Rounds : Call for Tenders organized by the Crown Estate</li> </ul>
<p>France</p> 	<ul style="list-style-type: none"> <li>- Renewable Energy Action Plan (2009-2020))</li> <li>- Grenelle I / Act n° 2009-967</li> <li>- PPI- Multiannual Investment of Electricity (2009-2020)</li> <li>- Grenelle II / Act 2010-788 12 July 2010</li> <li>- A bill on Energy transition is discussing actually</li> </ul>	<p>Three challenges:</p> <ul style="list-style-type: none"> <li>- diversifying energy supplies,</li> <li>- strengthening energy efficiency</li> <li>- promoting a flexible strategy.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Tenders (2004, 2011, 2013) ) organized by the Energy Regulation Commission under the responsibility of the Minister of Ecology</li> </ul>

# Feed-in tariff *Versus* Guaranteed purchase price for electricity produced

Under the control of the European Commission in the respect of the Treaty (Article 107-109 TFUE) and the **Guidelines on State aid for environmental protection and energy 2014-2020** 28 june 2015 (JOUE C 200/1)

UK



## Energy Market Reform 2013

- Feed in tariffs linked to Contract for difference (CfD's) : Long term contracts to encourage investment in new, low carbon generation

France





## Article L 314-1 Energy code :

- Guaranteed price set by a **tariff order** issued by the Ministers of the Economy and Energfor each energy source

- **Price resulting from the tender** / Compensation system support by consumers (contribution to public electricity supply)



# Others Financial Support for the Development of ORE

	Examples of financial support for research and development	Examples of financial support for first commercialization experiences
<p><b>UK</b></p> 	<p>Offshore wind:</p> <ul style="list-style-type: none"> <li>✓ Component Technologies <b>Development and Demonstration scheme (DECC)</b></li> <li>✓ <b>The Marine Energy Array Demonstrator (MEAD) scheme (DECC)</b></li> <li>✓ Water, Scottish enterprise</li> <li>✓ Funds from <b>The Crown Estate</b>, surveys, etc.</li> </ul>	<p>Scotland :</p> <ul style="list-style-type: none"> <li>✓ Saltire Prize (10 M£)</li> <li>✓ Marine Renewables Commercialisation Fund (MRCF), 18 M£, (hydrolien, ferme pilote)</li> </ul>
	<ul style="list-style-type: none"> <li>✓ <b>ADEME Fund</b> (French Agency for the Environment and Energy Management)</li> <li>✓ <b>State-region contract plan,</b></li> </ul>	<ul style="list-style-type: none"> <li>✓ Fund of the <b>Great loan / Investment for the future</b></li> <li>✓ Tender for expressions of interest for <b>tidal turbine test-farm project.</b></li> </ul>

# Governance actors and policy makers

## Administration Main role of each State

- Two different administrative organisations but the same functions
- More agencies in the UK : TCE /MMO

## Economic operators Developers and the supply chain

- Same economic actors / Northern European companies are the leaders
- The supply chain is improving in the UK /not yet in France

## Stakeholders and public

- Early involving of stakeholders in the UK statements and projects
- Some lacks or imbalances in France despite EU law





# Marine space regulation

Law of the sea and ocean renewable energy : territorial sea 0-12 nm and exclusive economic zone 12-200 nm = different law situations

UK

Crown assets : sea bed until 12 nm / right to generate electricity on the continental shelf

The Crown Estate : a statutory body to manage assets and leasing

France

Public property until 12 nm  
Rights in the EEZ

- 1) Local State authority = concession
- 2) Marine State authority = authorization in EEZ

# Planning and ORE

## A European legal framework:

- **Directive 2014/89/EU** of 23<sup>rd</sup> July 2014 establishing a framework for maritime spatial planning
- **Directive 2008/56/EC** of 17<sup>th</sup> June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)

## Two forms of spatial planning

**Marine spatial planning**  
Integrated planning and management approach for all activities

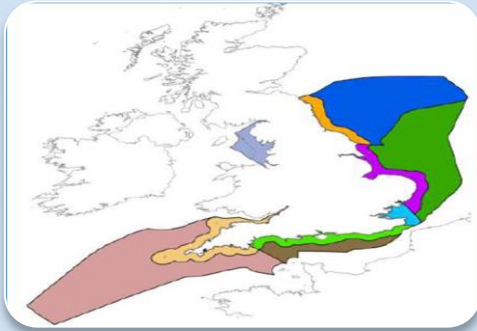
**Sector planning**  
Planning for one activity (close to zoning)

# Sector planning

UK	FRANCE
<p><b>National and regional Statement :</b></p> <ul style="list-style-type: none"><li>✓ <i>National Policy Statement for Energy (EN-1), 2011</i></li><li>✓ <i>National Policy Statement for Renewable Energy Infrastructure (EN-3), 2013</i></li><li>✓ UK Offshore energy</li></ul>	<p>There is no legal link between some statements (like Strategy for biodiversity) and planning tools decided by the Minister of Ecology.</p>
<p>➤ Planning by <b>the Crown Estate</b>: Planning for the round 3, nine zones With the MaRS instrument (MSP)</p>	<p>➤ Regional planning of offshore wind made by <b>state authority</b> with stakeholders (decided by circular) No SEA</p>
<p>For the round 3 : zone planning by Zone Appraisal and Planning (ZAP)</p>	<p>Zones defined in the offshore wind tenders, 2011, 2013.</p>



# Marine spatial planning



## Marine and coastal Act 2008

- 10 areas (inshore/offshore)
- Responsibility under MMO

## Art. L. 219-1 .. Environmental Code

- First level : National strategy for the sea and the coasts
- Second level : 4 regional documents (*Documents stratégiques de façade*)
- // Action plans for marine environment (MFSD)



# Consent processes

- Several authorizations needed for a project: consent, licence, etc..
- Installations and arrays (at sea)  $\neq$  grid (at sea and on land)
- Different sources of law: energy law, environmental law, marine law
- Various consent regimes in England, Northern Ireland, Wales and Scotland

➔ A same aim in both countries : **simplification of the ORE consent scheme**







# Consent processes comparison

## United Kingdom



### 1) The Crown Estate

- Call for tender
- Planning

### 2) DCC + PI

- Development consent with deemed licence (marine, electricity..)

### 3) The Crown Estate

- Lease

## France



### 1) Ministry of ecology

- Planning
- **Call for tender**
- Electricity licence

### 2) Local State Authority

- Public domain authorization (state property)
- Authorization pursuant to water law



# Environmental law issues

## Same European legal framework

- Directive 2001/42/CE on the assessment of the effects of certain plans and programmes : SEA
- Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment : EIA
- Directive 92/43/CEE « Natura 2000 » (Habitats and birds): specific assessment

## Two different ways in the UK and France

- In the UK: a continuous process / assessments 'step by step'
- In France : lacks on SEA / Importance of EIA during the consent process / Some problems of timing for the participation tools : too early or too late

# Uncertainties and Risks of appeals

## In France

- ✓ Weak public participation (too few stakeholders and late participation procedure)
- ✓ Method to identify the suitable areas / A limited environmental integration



## Both

- ✓ Lengthy and Complex procedures
- ✓ Financial uncertainties and undermining investors' confidence