

How France coped with the coronavirus pandemic ?

The case of the energy sector



- ❖ A complex equation:
 - Interpenetration of the crisis: Cross-cutting responses.
 - Problem of temporality is essential: Short and long term responses



- ❖ French public authorities have perceived the energy sector as strategic.
- ❖ Legal challenges :
 - identify the tools and, therefore, the legal framework put in place during the crisis and their relevance.
 - unveil the strategies contained in this legal framework

The establishment of the "state of health emergency" legislation

- ❖ In France, no specific text relating to the management of a health crisis in the energy sector
- ❖ Following the SARS epidemic of 2003: institution of a new mechanism to confer extensive powers on the Minister of Health to deal with a health crisis.
- ❖ The first measures taken at the beginning of March were taken on this basis.
- ❖ Necessary to adapt the legal framework to the exceptional nature of the situation.
 - Institution of a new mechanism known as a "state of health emergency" (Act No. 2020-290 of 23 March 2020)
 - Act No. 2020-546 of 11 May 2020 extends the state of health emergency until 10 July inclusive.
 - As of 10 July, the state of health emergency has been in effect for 16 weeks.



A law organizing the exit from the state of health emergency is currently under discussion in Parliament.

- ❖ In order to avoid a too brutal exit.
- ❖ Except for French Guiana and Mayotte where it will be extended "until 30 October inclusive".
- ❖ For the rest of the country, the text authorizes restrictions on the movement of persons and the reception of the public.



Continuity of essential activities: Operators' business continuity plans (BPCs)

- ❖ From the very beginning of the crisis, some actors activated their national crisis cell as a preventive measure.
 - Public administrations: National Energy Ombudsman, the Energy Regulatory Commission, the National Agency for Radioactive Waste Management and the Nuclear Safety, etc.
 - Private operators: Engie, RTE, Enedis, EDF, Téréga, GRTgaz, EpexSpot, Nordpool, local distribution companies, etc.
- ❖ Each operator defines the perimeter of the essential missions concerning its public service obligations and the economic and technical realities:
 - the evaluation of consumption and production by network operators;
 - the production of electricity, in particular by EDF's nuclear power plants;
 - the balancing of supply and demand and the correct routing of electricity and gas to consumption;
 - the maintaining of the electricity and gas transmission and distribution networks (in particular urgent work);
 - the proper functioning of IT tools and services enabling the company to adapt its operations (remote access, secure teleworking).

The Continuity of essential activities: Adaptation of the legal framework to encourage operators to focus on core tasks

❖ For example :

- by freezing the tariffs of contracts for the purchase of electricity produced by photovoltaic installations to secure investments (decree 30 March 2020)
- by postponing due dates during the health emergency period except in sensitive cases (ordinance 25 March 2020)

Operators' support for the national economy: Binding measures

- ❖ Article 11 of the Act of 23 March 2020 empowers the government to take various measures through an ordinance.
- ❖ For example :
 - the postponement of the "winter truce" (initially set for 31 March 2020, has been postponed to 1 May 2020)
 - the postponement or staggering of the payment of gas and electricity bills for business premises in favour of microenterprises whose activity is affected by the spread of the epidemic

Operators' support for the national economy: Voluntary measures

- ❖ Economic actors, whether or not concerned by legal measures, have sometimes, on their initiative, put in place solidarity measures.
- ❖ For example:
 - - widening the scope of beneficiaries of the energy bill deferral :
 - - the immediate payment of invoices from suppliers and subcontractors in difficulty even if the legal or contractual deadlines have not expired.
 - - the donation of personal protective equipment for employees (masks, freezers, etc.) with other companies in the sector or with their suppliers or subcontractors.



The ARENH litigation

- ❖ A mechanism designed to allow emergence and development of competition in the French electricity sector.
 - Suppliers can buy energy from EDF, which is obliged to sell it to them, at a price determined by the government.
 - EDF has thus become both 'an obliged seller and a direct competitor' (A. Peny, *Energie en Lumière*, mai 2020).
- ❖ The health crisis has led to a significant drop in consumption (in the order of 20 to 30%).
- ❖ some players, including TOTAL Direct energie, requested the activation of a contractual "force majeure" clause.
- ❖ EDF has refused to comply with this clause.
- ❖ Two main issues:
 - Could EDF refuse to submit to the request for a stay of execution of the contract?
 - Did the covid-19 pandemic constitute an event of force majeure?

Thinking the post-crisis model: Compatibility of public aid with French and European law

- ❖ The health crisis will have significant economic consequences.
- ❖ However, the governments will mobilize significant funds to support businesses and strategic sectors.
 - Does this public aid comply with internal market law and in particular, with state aid law?
 - Is this public aid compatible with the environmental objectives of France and the EU?

- ❖ Thinking the post-crisis model: design a new energy model and, thus, for lawyers, anticipate the legal obstacles to overcome.
- ❖ Two issues:
 - Energy decentralization : consumers themselves could provide services to the network and reduce the risk of a crisis occurring (service interruptibility, variation of consumption according to peak periods).
 - Sanctuarization of the environment in constitutional legal norms. Today there is a temptation to "environmental deregulation.

Thank you for your attention

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