

Promoting Public Participation in the Energy Transition: The Case of France's National Debate

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Abstract

In an energy transitions era, the citizens tend to be increasingly considered as actors of the energy system. This situation reinforces in turn the importance of public participation processes into energy policy or legislation design. In 2012-2013, a significant public participation process in the field of energy policy was organised in France, named National Debate on the Energy Transition. From the beginning, it was proclaimed that its results would be integrated into a flagship energy transition act, which did happen with the adoption of the *Energy Transition for Green Growth Act* of 2015. This paper provides an overview of the organisation of this public debate and of the integration of its outcome into the *Energy Transition Act*. The experience of France can serve for other countries engaged in a process of transition towards a more sustainable society and especially towards a massive change of their energy mix. It addresses the successes as well as the failures of the French case and provides some key learning points to enhance the public participation into the Law-making process concerning the energy transition.

Keywords

Energy transition; France; public participation; National Debate on the *Energy Transition* (DNTE); Energy Transition Act; participative law-making.

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1 Introduction

In the field of energy transition some countries have already implemented public participation processes for the creation of long-term energy policies.¹ However, the French Government endeavoured to go one step further with its National Debate on the Energy Transition (*Débat national sur la transition énergétique*), hereafter DNTE or "national debate", which took place in 2012-2013 and was supposed to result in strong recommendations to be integrated into the flagship *Energy Transition for Green Growth Act* of 2015 (hereinafter *Energy Transition Act*).

This national debate marked a new step in France's energy policy- and law-making, in a country otherwise known for its "long-standing *jacobinist* tradition in public policy".² Traditionally, the French energy policy – marked by a very strong share of nuclear power in electricity production³ - was designed by a "minuscule super-elite of engineers".⁴ But, as Schneider⁵ highlights, for the first time in France's modern history, energy policy was submitted in 2012-2013 to a significant public participation process, the DNTE.

Far from being a purely technological issue, the energy transition was then the subject of wide public participation:

The national debate on the energy transition launched in November 2012 by the new French government is part of a global reflection on our future ways of life and their implications for our economic system and our methods of governance: how do we want to live - differently, better - in 10, 20 or 30 years? Based on current technical and scientific knowledge and on future scenarios, how can we appreciate the costs and benefits, risks and opportunities of an energy transition and make significant short- and long-term choices? This is the truly political and civic sense and scope of this debate.⁶

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¹ Eg in the Netherlands, Hendriks 2009 *Policy Sciences* 341-368; or in Poland, Wagner, Grobelski and Harembki 2016 *ERSS* 163.

² Poupeau 2013 *Environ Policy Gov* 157. Jacobinism is a term originating in the French revolution and indicating nowadays a strong central government prone to intervene on the market to change society.

³ 71,6 % in 2017. See RTE 2018 <http://bilan-electrique-2017.rte-france.com/production/le-parc-de-production-national/>.

⁴ Schneider 2013 *Bull At Sci* 31. See also Aykut and Evrard 2017 *Revue Internationale de Politique Comparée* 23-24.

⁵ Schneider 2013 *Bull At Sci* 27-28, 33.

⁶ IDDRI 2013 <http://www.iddri.org/Iddri/Lettre-de-l-Iddri/Contribuer-au-debat-sur-la-transition-energetique>.

To be exhaustive, the DNTE adds up to 3 older national debates explicitly dealing with energy, held in 1981, 1994 and 2003,⁷ although these were less open to the public or reached a clearly lower scale in public participation than for the DNTE. For this debate, the increased public participation content and the commitment to include its results in an act actually comes from environmental policy. More specifically, from the 2007 *Grenelle de l'environnement*, a name inherited from social negotiations held in 1968 in Paris,⁸ which gathered five parties to take part into the drafting of a national framework law on environmental issues, including some energy aspects (eg renewable energy production).⁹ These five parties were the employers and employees unions, environmental non-governmental organisations (NGOs), local representatives associations and State authorities. Finally, this public participation process ended up with two acts adopted by Parliament in 2009 and 2010: *Grenelle I* and *Grenelle II*.¹⁰ However, "the nuclear issue was not allowed on the table",¹¹ as it was considered too controversial,¹² underlining the barrier to public information and participation on this sensitive issue at this time.

Since May 2012, with the election of President François Hollande, the term "energy transition" gained progressively such prominence that in 2015 it was "exceptional to go a single day without seeing or hearing those words".¹³ The word "transition", from the Latin root *trans-ire*, to go beyond, transmits this idea of movement towards a different situation. It can label an incremental process as well as a much more radical one.¹⁴ Yet, when it is about energy transition, it seems that it is in most cases an evolutionary process rather than a revolutionary one.¹⁵ In France, the energy transition concerns the movement from an energy system heavily based on fossil and fissile fuels towards one relying on renewable energy sources.

⁷ Aykut and Evrard 2017 *Revue Internationale de Politique Comparée* 39.

⁸ Deumier 2008 *RTD Civ* 63.

⁹ Van Lang 2011 *Droit Administratif* 1.

¹⁰ Van Lang 2011 *Droit Administratif* 1.

¹¹ Schneider 2013 *Bull At Sci* 28.

¹² The nuclear topic was already at the heart of three public debates held in 2005 and 2006: a policy debate on radioactive wastes, and two more local ones on the third generation nuclear reactor (EPR) to be built in Flamanville and on the very-high-voltage line to be built as a result. The outcome of these debates was quite negative for a sum of reasons including political interference. See Ballan *et al* "Anticipation et contrôle dans les débats publics" 132-133.

¹³ Guerry "Reflection on Some Legal Aspects of Decision Control" 194.

¹⁴ Jaglin 2014 http://www.liberation.fr/france/2014/08/26/le-mot-transition-est-un-terme-imprescis-et-insuffisant_1087459.

¹⁵ Sovacool "History and Politics of Energy Transitions" 17-18. See also Aykut, Evrard and Topçu 2017 *Revue Internationale de Politique Comparée* 8.

Candidate Hollande promised to "open an environmental conference which will lay down an agenda, priorities and means",¹⁶ that directly concerned energy policy, *inter alia*. This commitment took the shape of a cycle of annual 2-day conferences held in Paris from 2012 to 2016, gathering the five parties engaged in the *Grenelle de l'environnement* and adding a sixth one: Parliamentarians. The objective of the environmental conferences was "to show a change in the method, a change of approach and therefore in the results"¹⁷ of environmental policy (inducing a change in many other sectors linked, such as energy, housing, transportation, etc). These meetings allowed the Government to meet different actors interested in environmental matters and regulation, to make announcements, and to provide them with a yearly feedback on its actions. Among the declarations made in September 2012, for the first environmental conference, the Government committed to organise the DNTE and provided some elements regarding its rationale, method and institutions.¹⁸

The DNTE, object of this paper, was a public participation process organised from November 2012 to July 2013 aimed at feeding a draft law on energy transition.¹⁹ It can be considered as the result of the influence of environmental policy- and law-making over energy policy- and law-making in France. It must be underlined that this movement of increased public participation to the definition of energy policies is not happening in France alone, but that under the influence of the 1998 *Aarhus Convention*,²⁰ "energy governance is becoming increasingly democratic"²¹ as it is "coming closer [to environmental regulation] in the context of the low-carbon transition".²² More specifically, its article 7 requires States to guarantee "opportunities for public participation" to the drafting of "policies relating to the environment", a provision which is controlled by the Aarhus compliance committee.²³ In addition, in France, the constitutional and legal framework clearly incentivises public debates such as the DNTE, as will be developed later in this paper.²⁴ This article addresses the recent important place that public participation has taken in the law-making process concerning the

¹⁶ Le Monde 2012 http://www.lemonde.fr/election-presidentielle-2012/article/2012/01/28/ecologie-francois-hollande-s-engage-a-ouvrir-une-conference-environnementale_1636011_1471069.html#GEGdpQWwzR6xxdKZ.99.

¹⁷ Hollande "Déclaration du Président de la République" 8.

¹⁸ Anon *Dépêches Jurisclasseur* 2012.

¹⁹ The elements of its organisation (calendar, parties, etc.) are detailed in s 3 of this paper.

²⁰ Convention on Access to Information, Public Participation and Decision-Making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998 (*Aarhus Convention* (1998)).

²¹ Duvic-Paoli "Public Participation in the Context of Energy Activities" 1.

²² Duvic-Paoli "Public Participation in the Context of Energy Activities" 4.

²³ Duvic-Paoli "Public Participation in the Context of Energy Activities" 4-8.

²⁴ See para 2.2.

energy transition in France. The DNTE constituted a remarkable experience of what can be called "participative law-making", as it endeavoured to integrate civil society and many sectorial representatives to a process based on science and transparency and aiming to lay the foundations for a flagship *Energy Transition Act*.

In the following sections, this paper will review the foundations and objectives, the organisation and the outcome of the DNTE, before analysing the integration of its outcome into the *Energy Transition Act*. Finally, this paper concludes by providing some recommendations to any State willing to organise a wide public participation process destined to influence legislative drafting, especially but not limited to energy matters.

2 Foundations and objectives of the national debate

The general and legal foundations (mainly the principles and the context underlying the debate) and the objectives of the DNTE are to be found in two soft law documents: the 2012 environmental conference roadmap²⁵ (hereinafter 2012 roadmap) resulting from the 2012 environmental conference and the DNTE charter.²⁶

2.1 General foundations of the DNTE

According to the 2012 roadmap, France is facing unprecedented climate and energy challenges (higher frequency and scale of droughts and floods, among others). But whilst climate change poses a global threat, the fight against it can also promote a "new model of smart, sustainable and solidary growth".²⁷ The energy transition in France takes place in this context.

Conscious of the role played by energy in climate change,²⁸ the 2012 roadmap asked the DNTE participants to address the following questions:

- How to move towards energy efficiency and frugality?
- Which pathway to reach the chosen energy mix for 2025? What type of scenarios are possible by 2030 and 2050, with respect to the climate commitments of France?
- Which choices to make in matters of renewable sources of energy and new energy technologies and which industrial and local development strategy?

²⁵ Feuille de route pour la transition écologique in ministerial circular "sur l'organisation du débat national de la transition énergétique" of 30 January 2013 (hereafter MC of 30 January 2013) annex 1.

²⁶ Charte du débat national sur la transition énergétique in MC of 30 January 2013 annex 4 (hereafter Charte du DNTE).

²⁷ MC of 30 January 2013 5.

²⁸ See, for France alone, Agence européenne pour l'environnement 2015 <http://www.statistiques.developpement-durable.gouv.fr/lessentiel/ar/199/1080/emissions-gaz-effet-serre-secteur-france.html>.

– What are the costs and financing for the energy transition?²⁹

To answer these questions and find the best solutions, the DNTE charter specifies that the national debate has to provide "democratic and citizen involvement, in an open and transparent manner".³⁰ Thus, section 2 of the DNTE charter states that the debate "is based on respect for diversity and plurality of views".³¹ This diversity was also a requirement for the constitution of the bodies established for the debate. The reference to diversity in this section was not just about the gender issues, but also and even more about the diversity of interests and backgrounds of the participants. In addition, the same section states that the DNTE aims at defining a "convergence" towards "the general interest of the Nation", by "the comparison of viewpoints [and] the expression of divergent views".³²

To foster expression of this diversity of opinions, section 3 of the charter requests that the DNTE informs the citizens and allows them to participate.³³ To do so, public and private legal entities are free to organise debates contributing to the DNTE, providing a kind of decentralised and opened framework.³⁴ Finally, all the contributions are supposed to be transferred to the national bodies of the DNTE to be taken into account in the final outcome of the debate.³⁵

In a nutshell, the principles underlying the DNTE can be concentrated in one word: diversity. It seems that during the DNTE there was a willingness to show that every opinion is worth to be heard and that every individual or group should express itself regarding the energy transition.

2.2 Legal foundations of the DNTE

In France, as underlined before, it is highly unusual to open an energy law-making process to public participation; with the President of the Republic committing to include the outcome of that process into the draft legislation.³⁶ Public participation requirements usually apply to plans or projects that could have an environmental impact, without including policy or legislation drafts.³⁷ Indeed, historically in France, public participation refers to environmental impact assessment (EIA)³⁸ and public inquiry³⁹ which, together, aim at gathering information on a project's environment

²⁹ MC of 30 January 2013 2-3.

³⁰ Section 1 para 1 of the Charte du DNTE.

³¹ Section 2 para 1 of the Charte du DNTE.

³² Section 2 para 2 of the Charte du DNTE.

³³ Section 3 para 2 of the Charte du DNTE.

³⁴ Section 3 para 3 of the Charte du DNTE.

³⁵ Section 3 para 4 of the Charte du DNTE.

³⁶ Hollande "Déclaration du Président de la République" 8.

³⁷ See *Environment Code* ss L. 120-1 to L. 125-40.

³⁸ See *Environment Code* ss L. 122-1 to L. 122-3-4.

³⁹ See *Environment Code* ss L. 123-1 to -18.

(population and health, biodiversity, soils, water, air, climate, material assets, cultural heritage and landscape⁴⁰) before its implementation, on its (cumulative) impact on these elements, and finally to provide the public with these data and collect its remarks. Since 2004 and 2010 only, respectively EIA and public inquiry requirements were added for plans and programmes,⁴¹ and a 2016 ordinance⁴² finally formally included the option for the government to organise "a national public debate on the drafting of a reform concerning a public policy significantly impacting the environment or land use planning".⁴³ This debate can also be organised on request from sixty members of the *Assemblée Nationale*, sixty from the Senate or 500 000 adult EU residents living in France.⁴⁴ Hence, in 2012-2013, the DNTE was developed outside any legal obligation.

It is however worth to be noted that the establishment of the DNTE could have constituted a voluntarily extensive application by the Government of section 7 of the *Environment Charter* of 2004,⁴⁵ a text of constitutional rank in France. This section states that:

Every person has the right, in the conditions and limits legally defined, to have access to the information related to the environment in possession of the public authorities, and to participate to the production of public decisions having an impact on the environment.

As Brunet notes, this provision is quite open when it comes to public participation to the production of public decisions, as it simply mentions the "impact on the environment", without referring to a "significant" or "direct" impact.⁴⁶ Concerning the term "public decisions", it is wide enough to include a law-making process.⁴⁷ Hence, it is advised to automatically develop a public participation process related to the drafting of an act such as this one, as there is no doubt that national energy policy will have an impact on the environment.

⁴⁰ *Environment Code* s L. 122-1, III.

⁴¹ For EIA, since the *Ordinance 2004-489* of 3 June 2004 that Transposes Directive 2001/42/CE of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment s 1; for public inquiries, since the *National Commitment for the Environment Act* 2010-788 of 12 July 2010 s 236.

⁴² *Ordinance 2016-1060* of 3 August 2016 to Reform Procedures to Ensure Information and Participation of the Public to the Conception of Decisions which may have an Impact on Environment s 2.

⁴³ *Environment Code* s L. 121-10.

⁴⁴ *Environment Code* s L. 121-10.

⁴⁵ Section 7 of the *Charte de l'environnement* of 2004. Constitutional rank granted by *Constitutional Act related to the Environment Charter* 2005-205 of 1 March 2005.

⁴⁶ Brunet 2016 AJDA 1327.

⁴⁷ In a recent case, the *Conseil d'État* explicitly included the Parliament's work into a report on risk consideration in public decision. *Conseil d'État* 2018 <http://www.ladocumentationfrancaise.fr/rapports-publics/184000392/index.shtml> 89.

Despite all the elements raised, section 1 of the DNTE charter only mentions the European and international commitments in matters of greenhouse gases (GHG) emissions reductions.⁴⁸ The international commitments referred to are mainly the Kyoto Protocol and its objectives for 2020.⁴⁹ The European commitments are specified a few lines thereafter and concern the "energy package" and its "20X20X20 by 2020" objectives.⁵⁰ In both cases, these requirements were already integrated into French law at the moment of the DNTE⁵¹ and constituted legally binding objectives for which the debate was supposed to organise the pathway to. Therefore, one can note that the legal foundation of the DNTE is linked to the energy and climate international and European commitments of France, but not at all on its applicable public participation provisions.

2.3 Objectives of the DNTE

According to section 1 of the DNTE charter, the national debate "aims to enlighten the French Nation on the fundamentals of energy and the reasons for the energy transition".⁵² It was therefore an aim purely about top-down information to the public. Nevertheless, the same section specifies that the debate "must indicate the conditions for this transition".⁵³ Herein lies the goal of the DNTE:

[...] to define the most economically and ecologically relevant and the socially fairest way to engage in this energy transition.⁵⁴

The DNTE must therefore provide the means and the trajectory of the energy transition in order to reach its goals. It does not choose the goals already fixed by the existing international, European and national legal frameworks or by the Government's promises. The last paragraph of section 1 of the DNTE charter, states that the debate will result in "recommendations that the Government commits to integrate in the drafting of the energy transition act".⁵⁵ These recommendations, constituting the format of submissions of the DNTE's outcome, was the subject of deep tensions between the different participants of some of the main bodies of the debate. Before addressing this conflict, the following section will provide an overview of the architecture and timeframe of the debate.

⁴⁸ Section 1 para 1 of the Charte du DNTE.

⁴⁹ Article 1 of the *Doha Amendment to the Kyoto Protocol* (2012).

⁵⁰ Section 1 para 1 of the Charte du DNTE.

⁵¹ See s 2 of the *Programming Act regarding the Implementation of the Grenelle de l'Environnement* 2009-967 of 3 August 2009.

⁵² Section 1 para 1 of the Charte du DNTE.

⁵³ Section 1 para 2 of the Charte du DNTE.

⁵⁴ Feuille de route pour la transition écologique in MC "sur l'organisation du débat national de la transition énergétique" of 30 January 2013 annex 1 4.

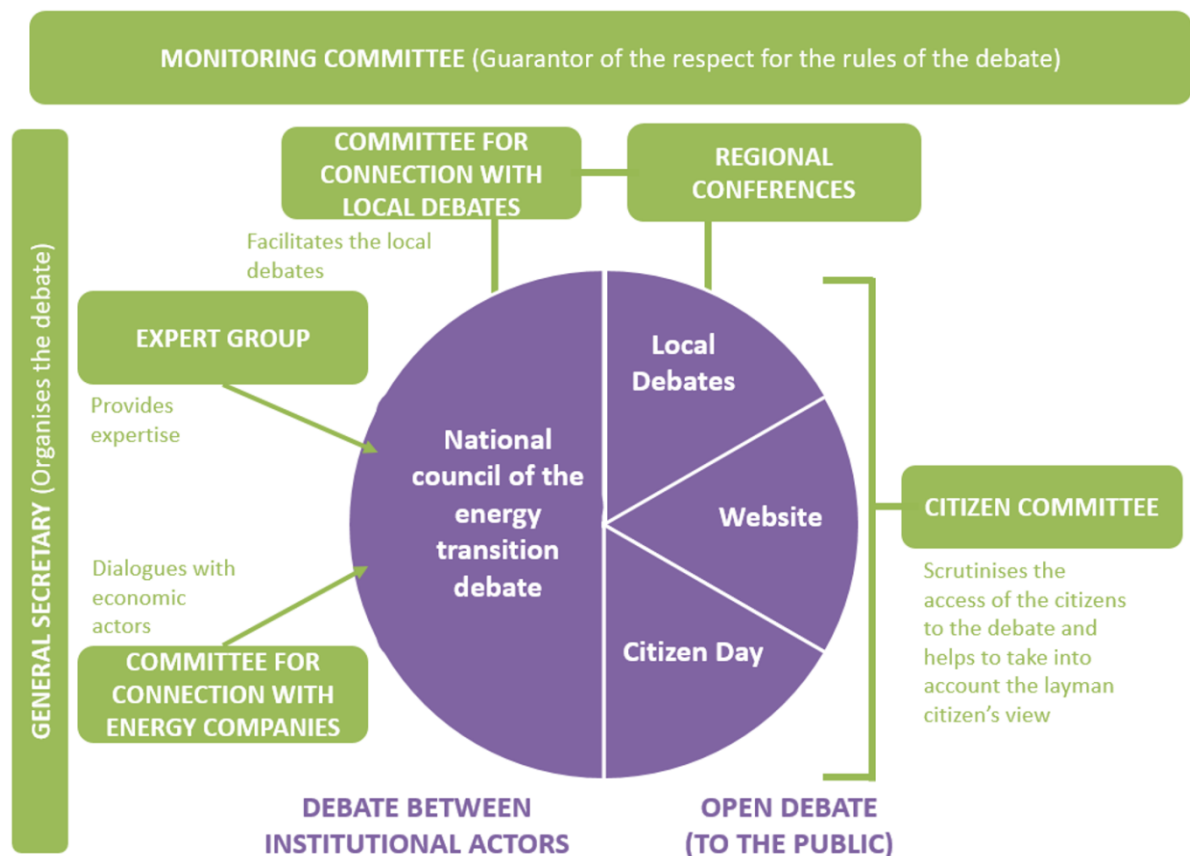
⁵⁵ Section 1 para 5 of the Charte du DNTE.

3 Organisation of the national debate

3.1 The architecture of the institutional framework of the DNTE

The role and composition of the different bodies as well as the timeframe of the DNTE were provided in a Ministerial circular on the organisation of the DNTE of 30 January 2013, read with annex 4 of the charter. Figure 1 below provides an overview of the architecture of the DNTE bodies and its main events.⁵⁶

Figure 1 Architecture of the bodies of the DNTE



3.1.1 The national council of the debate

The national council of the debate (CND) was the main body of the DNTE, especially to fulfil its mission. Section 4 of the DNTE charter compares it to a Parliament as it organised the dialogue between the different actors of the debate. Constituted of 112 members equally distributed in 7 Colleges, it was based on the parties of the 2012 environmental conference, but added a seventh group, made up of non-environmental NGOs: consumer and

⁵⁶ Translation from the Synthèse des travaux du DNTE de la France of 18 July 2013 (hereafter Synthèse des travaux du DNTE) annex 3 2. The Energy Days (seen after) are not included in this graphic.

families associations, poverty combatting organisations and chambers of commerce.⁵⁷

The council played a very important role during the DNTE. First, it validated the DNTE charter⁵⁸ and determined the main orientations of the debate and its schedule.⁵⁹ Then, at the end of the debate, it had to "approve the synthesis of the debate", organise "the formulation of its recommendations" and highlight "the areas of existing consensus and the ones causing disagreement".⁶⁰

In between, the council "can proceed to public hearings on the main themes of the debate",⁶¹ a competence it used 23 times with ministers, associations, international experts, etc.⁶² Also, the Council created working groups, and eight saw the light.⁶³

As it was the one body supposed to produce the final synthesis with the recommendations, thus influencing the energy transition draft law, the Council could be seen as a "pre-law-maker".

3.1.2 *The monitoring committee*

Regulated by section 5 of the DNTE charter, the monitoring committee was:

[T]he guarantor of the respect for the rules of the debate, of the collection of pluralist opinions, of the respect for the [...] charter, of the democratic nature of the debate it is coordinating.⁶⁴

The charter does not specify the number of the committee members, but it states that they are appointed by the Government.⁶⁵ Thus, the government chose six persons.

Yet, its composition caused tremendous turmoil for various reasons and led to the withdrawal of multiple environmental NGOs from the debate. First, while it had been promised that the composition of the committee would be submitted to consultation with the parties (the CND members), that did not happen. Instead, its composition was directly revealed in the newspapers without any consultation.⁶⁶ Second, two of its six members were directly linked to the nuclear industry (Anne Lauvergeon, former Areva CEO and Pascal Colombani, ex-general administrator of the Atomic Energy

⁵⁷ Section 4 para 1 of the Charte du DNTE.

⁵⁸ Section 4 para 4 of the Charte du DNTE.

⁵⁹ Section 4 para 2 of the Charte du DNTE.

⁶⁰ Section 4 para 4 of the Charte du DNTE.

⁶¹ Section 4 para 3 of the Charte du DNTE.

⁶² Synthèse des travaux du DNTE annex 3 5.

⁶³ Synthèse des travaux du DNTE annex 3 4.

⁶⁴ Section 5 para 1 of the Charte du DNTE.

⁶⁵ Section 5 para 1 of the Charte du DNTE.

⁶⁶ CLER *et al* 2012 <http://www.rac-f.org/Les-ONG-ne-veulent-pas-d-un-debat>.

Commission (CEA)) – when there was no representative of another energy source. Such a disproportion in the debate on the evolution of an energy mix mainly based on nuclear energy for electricity production sent out a very bad signal regarding the true willingness of the Government to opt for real transition. Although the former CEA general administrator resigned from its position, Lauvergeon remained in the committee,⁶⁷ still providing an extraordinary and not representative place to nuclear in this body. Third, the NGOs criticised the fact that the committee was led by the Minister responsible for environmental and energy issues while they requested a neutral presidency.⁶⁸ The Minister was then both judge of and be judged by a public debate, as well as recipient of the final recommendations.

The mandate of the monitoring committee also created some challenges. Effectively, the charter requested the committee to present to the CND "the questions to explore and debate as well as the intermediary reports and syntheses".⁶⁹ It also had to conduct "a review of the process of the debate".⁷⁰ However, this mandate lacked precision. What was the difference between the final synthesis of the DNTE and the different reports, the syntheses and the reviews that the committee had to produce? How these documents influenced the debate and how the committee chose the questions to debate? The Ministerial circular of January 2013 and its annexes were quiet on these issues.

On that basis, it remained unclear how the monitoring committee, supposed to be the guarantor of the respect for the charter and its principles, could have controlled and stimulated the diversity of the DNTE while being itself not perfect. It was uncertain how it was supposed to promote an open and transparent debate while its own mandate was vague?

3.1.3 *The expert group*

The expert group was composed of recognised French or international experts representing "the diversity of the scientific community and of economic, social, union, associative and local actors".⁷¹ In accordance with section 7 of the DNTE charter the group should have been pluri-disciplinary and pluralistic and its members should have belonged to public organisations (State and agencies, universities), companies, unions, associations and foreign institutes, all with a strong experience in energy matters.⁷²

⁶⁷ Schneider 2013 *Bull At Sci* 29.

⁶⁸ Schneider 2013 *Bull At Sci* 29.

⁶⁹ Section 5 para 2 of the Charte du DNTE.

⁷⁰ Section 5 para 4 of the Charte du DNTE.

⁷¹ Section 7 para 1 of the Charte du DNTE.

⁷² Synthèse des travaux du DNTE annex 5.

The main task of the group was to support the CND in various ways. As the charter notes:

It brings, by its contributions, the scientific, economic, social, environmental, technical and financial data necessary to the debate. It is responsible for providing an expert opinion on the documents underpinning the debate in order to promote an informed and well-argued dialogue. The group of experts analyses and compares the available national and international scenarios. It delivers to the Council an expertise on the 2020 and 2025 pathways compliant with the 2050 objectives.⁷³

The expert groups' participation highlights the utmost importance of science in building an efficient and satisfactory public participation process on energy transition. It constitutes without a doubt the most accepted body of the DNTE due to the diversity and experience of its members.

3.1.4 The Citizen committee

The Citizen committee was composed of 20 persons drawn and representing the diversity of French society (with regards to gender, age, profession, accommodation owner/renter, transportation mode to go to work, geographical distribution, and marital status).⁷⁴ This committee convened three times for a one-day meeting in February, April and June 2013. The first to collect a layman understanding of energy and the energy transition, the second to work on energy transition goals and scenarios, and the third to provide recommendations on the propositions of the CND before the finalisation of the synthesis.⁷⁵

According to section 8 of the DNTE charter, the committee "is the observer of the public participation at every step of the debate", but this did not emerge from the synthesis of its sessions. It was also called to ensure "the educational quality of the information provided for the debate", a task which also did not appear in the concerned synthesis. In fact, the Citizen committee mainly highlighted the need for more information delivered to the public on energy transition.⁷⁶ Finally, it was tasked with an "assessment of the recommendations submitted by the national council". During its last session, the Citizen committee considered this analysis. Briefly, it recommended to the CND to focus less on coercion and more on financial incentives and enhanced access to information in its final synthesis.⁷⁷ It also noted that the possibilities opened for enhanced local actions (by local authorities) into the energy transition are very limited, while it conceived a

⁷³ Section 7 para 2 of the Charte du DNTE.

⁷⁴ Synthèse des travaux du DNTE annex 12 2.

⁷⁵ Synthèse des travaux du DNTE annex 12 1-47.

⁷⁶ Synthèse des travaux du DNTE annex 12 15-16.

⁷⁷ Synthèse des travaux du DNTE annex 12 37-38.

need for a national impetus and the monitoring of a transition directly implemented by local actors at local level.⁷⁸

In summary, it seems that the Citizen committee had more of a witness role, but its contribution was very useful in order to remind the energy specialists and decision-makers that the population, before and even after dissemination of information, is firstly concerned by the cost of power and their own material comfort, aspects that are often overlooked in expert debates.

3.1.5 The General secretary

Placed under the guidance of the monitoring committee, the General secretary was the administrative body of the debate in charge of its operational organisation.⁷⁹ It was led by a senior official. It was the General secretary that presented the draft synthesis to the CND.⁸⁰ However, as for the monitoring committee, the limits of its role regarding the synthesis were not specified by the charter.

3.1.6 The committee for connection with local debates

The committee for connection with local debates was composed of representatives of national associations, local authorities and specialised associations. Its mission was to follow the local debates taking place in the territories and make sure that their syntheses respected the established format in order to facilitate their compilation at the national level.⁸¹ It also coordinated the regional conferences, mentioned in graphic 1, a regional frame gathering local authorities' representatives charged with organising and producing a synthesis of the local debates taking place in their territories.⁸²

Additionally, the decentralised regional energy and environmental services had to contribute to the debate on the local energy situation.⁸³

3.1.7 The committee for connection with energy companies

A committee for connection with energy companies was added at the last moment when the DNTE had already started. This committee was not mentioned in the 2012 environmental conference roadmap. The committee was added due to the fact that energy companies had complained about their alleged lack of representation among the bodies of the debate. This complaint was, however, unsubstantiated given that into the colleges of

⁷⁸ Synthèse des travaux du DNTE annex 12 43.

⁷⁹ Section 6 of the Charte du DNTE.

⁸⁰ Section 4 para 4 of the Charte du DNTE.

⁸¹ Section 9 of the Charte du DNTE.

⁸² MC of 30 January 2013 3-4.

⁸³ MC of 30 January 2013 4.

employers and employee unions of the CND, the energy branches were the ones representing their respective associations. Energy companies had then two bodies to act on their behalf and impact the debate.

This brings into question the respect for the charter values of diversity as energy companies were double-represented, while this was not the case for other actors such as NGOs.

According to section 10 of the DNTE charter, this committee "allows for an organised and transparent dialogue with the economic actors of energy". More specifically, this committee was aimed at proposing:

[A] dialogue area to foster the debates, particularly on the feasibility of the different options [including the scenarios] and on the implications in terms of costs, benefits and industrial structuring.

Various questions then arise. Was it not the role of the State to estimate the costs and benefits of scenarios for energy policies? Or the task of the group of experts? In this case, this fundamental aspect of energy policy seems to have been delegated to the incumbent companies which have no interest into a deep and ambitious energy transition.

As feared, this body has proved conservative. It submitted a synthesis that, *inter alia*, called for the preservation of the incumbent sources of energy: nuclear, gas and oil.⁸⁴ The synthesis published by the committee was then criticised by a handful of professional unions representing renewable energy sectors, arguing that it suggested "continuity more than transition".⁸⁵

Although the effort to give a place to various sectors of civil society and professional organisations may be saluted, Meadowcroft reminds that:

[t]he proliferation of centres of power, the growth in the number of implicated actors, or an increase in veto points, can make organized efforts for reform more difficult.⁸⁶

The main challenge, as addressed below, was then to organise these bodies and reach an ambitious conclusion. The main public participation events of the DNTE will now be discussed.

3.2 The main public participation events of the DNTE

As stated in the 2012 environmental conference roadmap, the DNTE was sequenced in three phases, supposed to run from November 2012 until May

⁸⁴ Synthèse des travaux du DNTE annex 23 8.

⁸⁵ AFGP *et al* 2013 <http://cluster006.ovh.net/~feeuyddi/wp-content/uploads/2013/10/cp-24-avril-2013-re%CC%81action-des-membres-du-groupe-contact-entreprises-de-le%CC%81nergie.pdf>.

⁸⁶ Meadowcroft 2007 *J Environ Pol Plann* 307.

2013.⁸⁷ However, the process was extended until July 2013. In theory, the last months of 2012 should have been dedicated to the information of the public. January to April 2013 was supposed to be the participation phase with many forms of public meetings. And finally, in May the same year the synthesis of the DNTE should have been elaborated by the CND and fed into the energy transition draft legislation due to be presented to Parliament in June 2013.

Despite the aforementioned agenda, the reality of the debate was more complex, especially because the debate started later than planned, with the circular and the charter only published at the end of January 2013.

Also, the three phases were not hermetically separated, as some events also contributed to the information of the public later in 2013, like the Energy Days or the official website of the debate, providing information and collecting contributions during the first half of 2013.

However, it remains that from February to May 2013, more than 850 labelled local events took place, attracting more than 170 000 people in all of France.⁸⁸ The following events and the website provided easy-to-reproduce effective initiatives.

3.2.1 *The Energy Days*

The Energy Days encouraged energy companies and local authorities to open the doors of their energy facilities to the public during three days in March 2013.⁸⁹ Based on the model of the *Journées du Patrimoine* (Heritage Days) – that consist in opening to the public otherwise closed or submitted to entry fee historical sites, monuments and museums- this event allowed around 200 000 visitors to discover wind and solar farms, dams, biomass heating plants, electricity distribution centres, passive buildings, etc.⁹⁰

Although the event was more focused on promoting access to information than participation, it contributed to "open the black boxes" (according to the expression of the philosopher Pascal Chabot⁹¹) of energy by demystifying energy production, transportation, distribution and consumption. As these energy facilities are effectively not easily accessible to those not working in them; the Energy Days opened up the possibility of visiting such facilities allowing a better understanding of different energy sources but also of the energy transition as a whole.

⁸⁷ Feuille de route pour la transition écologique in MC "sur l'organisation du débat national de la transition énergétique" of 30 January 2013 6.

⁸⁸ Synthèse des travaux du DNTE 5.

⁸⁹ MC of 30 January 2013 4.

⁹⁰ Synthèse des travaux du DNTE annex 3 8.

⁹¹ Chabot "La transition, un concept philosophique transversal".

3.2.2 *The Citizen Day*

The Citizen Day took the shape of panels of around a hundred of citizens per region, taking place the same day: 25 May 2013. Planned to happen in 26 regions, it finally only saw the light in 14, mobilising a total of 1115 citizens.⁹² The questions submitted to the panels were the same in all the regional gatherings and a unique protocol (named "World Wide Views") was used to orientate the debates.⁹³ This single methodology allowed to discern the significant differences in energy concerns depending on the geographical context. It also allowed to select participants, who were not especially knowledgeable about energy, for the Citizen committee. It then appeared that after having been informed of the energy transition goals and issues, most of the participants considered it as a chance for society.⁹⁴

3.2.3 *The website*

The DNTE-specific website⁹⁵ was launched on 31 January 2013. It contained the programme of the events and the documentation elaborated upon and validated by the expert committee, but was also open for online contributions.⁹⁶ The charter itself guaranteed that the online contributions would be transmitted to the CND.⁹⁷

In total, 1200 contributions were posted on the website.⁹⁸ This tool allowed the participation of people unable or unwilling to attend to one of the events of the DNTE. However, it also found a limit in the sense that many of the contributors were already engaged people (in favour or opposed to the energy transition or some of its aspects).

On the basis of the above, it seems that the strength of the DNTE process was in the combination of a series of tools and bodies, allowing each one to compensate the flaws of the others. Nevertheless, the downside of the debate is that its architecture was criticised for its complexity.⁹⁹ Namely, the complexity of its organisation with many different bodies, but also the complexity caused by the maintained uncertainty regarding its methodology and its decision-making method, postponing the difficult choices, especially the question of the adoption of the final synthesis.¹⁰⁰ As described below,

⁹² Synthèse des travaux du DNTE annex 3 9.

⁹³ MC of 30 January 2013 4.

⁹⁴ Synthèse des travaux du DNTE annex 3 9.

⁹⁵ France 2017 <http://www.transition-energetique.gouv.fr>.

⁹⁶ MC of 30 January 2013 4.

⁹⁷ Section 3 paras 3-4 of the Charte du DNTE.

⁹⁸ Synthèse des travaux du DNTE annex 14 2.

⁹⁹ Eg Tsuchiya "Les débats nationaux sur la transition énergétique".

¹⁰⁰ A point already highlighted by the NGOs before the beginning of the DNTE. See RAC-F 2012 <http://www.rac-f.org/Note-de-position-des-associations>.

such a complex system had a strong negative impact on the outcome of the DNTE.

4 Outcome of the national debate

The outcomes of the DNTE are hereunder classified in two categories, namely firstly concerning the outcomes of the debate before the final synthesis, which means the preliminary syntheses of the local debates and of different committees, and secondly, concerning the conclusion of the DNTE as a whole, tarnished by the flaws of its decision-making process.

4.1 The main outcomes of the debate before the final synthesis

These outcomes may be organised in two sub-categories: the consensus of the participants and their disagreements.

4.1.1 The consensus emerging from the participants of the debate

It resulted from the DNTE bodies as well as from the layman participants that energy transition was seen as an opportunity and that energy savings was a priority action.¹⁰¹ Regarding the energy mix, a positive consensus on the use of renewable energy sources in general with a demand for support by public authorities to foster their development was evident. Actually, the local debates syntheses argued for a higher share of renewable energy in the energy mix than what was planned by the Government.¹⁰²

Another consensual topic among the public was the decentralisation of energy production. This goes against the views of the Government as well as the incumbent energy producers. Citizens saw the French society in 2050 organised around local energy production hubs close to population and labour catchment areas, hereby promoting energy autonomy and self-consumption.¹⁰³

4.1.2 The disagreements emerging from the participants of the debate

There were some cross-cutting divisions in the debate, regardless of the means of participation. The two main disagreements were nuclear electricity reduction and the increase of wind energy. Solar photovoltaic energy also created division, more particularly regarding the cost of its support.¹⁰⁴

Energy prices also caused division between informed users and the uninformed. When internet contributors called for a higher tax on polluting energies and for progressive electricity tariffs in order to reveal the true price

¹⁰¹ Synthèse des travaux du DNTE annex 14 8, annex 9 2.

¹⁰² Synthèse des travaux du DNTE annex 9 37.

¹⁰³ Synthèse des travaux du DNTE annex 9 14, annex 14 13.

¹⁰⁴ Synthèse des travaux du DNTE annex 14 9, 16 and 17.

of energy, the citizens consulted on the ground were much more careful and some even opposed such energy prices increases.¹⁰⁵

As a result of these public participation meetings (part of the greater national debate), the law-maker had rich material at its disposal and above all a clear picture of the public perception of energy transition in France. How this material was used and integrated into the eventual Act will be discussed in the following paragraphs.

4.2 The chaotic conclusion of the debate and its consequences

The DNTE charter and the other annex documents of the Ministerial circular of January 2013, did not specify the decision-making method or how to validate the final synthesis and its recommendations, constituting a sword of Damocles upon its fulfilment.

A draft of synthesis was prepared by the General secretary and released on the DNTE website on 13 June 2013, before the eighth and penultimate plenary session of the CND. Its methodology was the following: the monitoring committee proposed to the CND members to rank the measures presented by its own working groups. The draft synthesis resulting from this process emphasised some trends and indicated the number of CND members picking out each measure. As a result, the introduction of a carbon tax obtained the highest ranking, as it had been placed first by 19 members coming from six of the seven colleges. The college which did not choose this measure among the 273 recommendations proposed was the one of the employers. The employers' unions' representatives then estimated that the document was "unacceptable" and that "this draft synthesis pretends to be consensual while built on an absurd computing of the expressed views per college". It was finally withdrawn later; therefore, it was never presented to the CND.¹⁰⁶ This rejection was a direct consequence of the postponement of the decision method clarification by the Government.

One month later, the 18 July 2013, in a plenary session, the CND finally adopted 15 issues, instead of adopting recommendations, a less compelling notion. The notion of recommendation was in fact rejected by both the employers' unions and part of the employees' unions. It is to be noted that some of the original recommendations submitted to the vote of the CND before its 8th plenary session were supposed to be prerequisites of the DNTE (the nuclear reduction by 2025, for example), but finally they were rejected by the aforementioned members anyway. This situation then

¹⁰⁵ Synthèse des travaux du DNTE annex 14 18-19, annex 9 15.

¹⁰⁶ Le Billon 2013 https://www.lesechos.fr/20/06/2013/lesechos.fr/0202843430081_transition-energetique---le-coup-de-force-du-medef.htm#.

constituted a breach of the principle of this public debate process, as some of these objectives were mentioned in the DNTE charter.¹⁰⁷

The CND members adopted the 15 issues nearly unanimously, with the exception of one employee union. It seems that it was easier to agree on a watered-down (the carbon-tax was discreetly mentioned in the corps of issue 11) and not very compelling document (with issues instead of recommendations). This goes directly against the charter which requested "recommendations" to be addressed to the law-maker,¹⁰⁸ here less tied by the chaotic result of this process.

The following section will look at the integration of the 15 agreed issues as well as to some of the aspects highlighted during the DNTE into the Energy Transition Act adopted in August 2015.

5 Integration of the national debate outcome in the *Energy Transition Act*

Although it was first planned to be presented to the Parliament in June 2013, the Energy Transition draft legislation was only submitted to the *Assemblée nationale* on 30 July 2014. After many hours of disputed debate within the Assembly, the draft was referred to the *Conseil constitutionnel* and mostly declared valid the 13 August 2015. Finally, on 17 August 2015, the *Energy Transition for Green Growth Act* n° 2015-992 was promulgated by the President of the Republic.¹⁰⁹

What now remains to be assessed is whether the outcomes of the DNTE were taken into account in the writing of the *Energy Transition Act*, in order to determine the effectiveness of the public participation process in the framework of the national debate. The following paragraphs analyse three of the main themes addressed during the DNTE and into its synthesis and can be deemed essential for the fulfilment of the energy transition: GHG emissions reduction, electricity production and energy policy and planning.

5.1 The integration of GHG emissions reduction objectives and measures from the DNTE into the Energy Transition Act

Issue 1 of the synthesis of the DNTE entitled "An energy transition providing a long term orientation and respecting the commitments of France",¹¹⁰ mentioned multiple principles to be respected and actions to be conducted. Among those principles, the objective to reduce by three-quarters of the

¹⁰⁷ Section 1 para 1 of the Charte du DNTE.

¹⁰⁸ Section 1 para 5 of the Charte du DNTE.

¹⁰⁹ Regarding all this process, see National Assembly 2015 http://www.assemblee-nationale.fr/14/dossiers/transition_energetique_croissance_verte.asp.

¹¹⁰ All the issues (1-15) are clearly numbered in the Synthèse des travaux du DNTE, at the pages 10 to 30.

total GHG emissions by 2050 compared to 1990,¹¹¹ was reiterated by section 1, paragraph III of the 2015 *Energy Transition Act*. In addition, the milestone of 40% of GHG reduction by 2030 on the 1990 basis coming from the actions required by the synthesis was also included in the same section of the Act.¹¹²

Issue 1 of the synthesis also dealt with energy consumption. Among the actions it proposed, the synthesis acknowledged that the energy transition scenarios which reach the goal of a division by a factor four of the GHG emissions by 2050 are based on a reduction of the final energy consumption by 50% compared to 2012. Yet, the synthesis stated that this objective was not a consensual one among the actors of the DNTE. Again, despite the lack of a general agreement, this goal was transposed to the section 1, paragraph III of the *Energy Transition Act*.¹¹³

Issue 11, on energy transition financing, called for a "tax regime coherent with the energy transition" and, therefore, including a carbon tax. This issue was also a contested one amongst the DNTE actors. A carbon tax, however, was already integrated in section 32 of the *Finance Act* of 2014 and was therefore not included into the *Energy Transition Act*.¹¹⁴

5.2 The integration of electricity production objectives and measures from the DNTE into the Energy Transition Act

5.2.1 Nuclear electricity reduction: objectives and measures

Another principle of issue 1 was the objective to diminish the share of electricity from nuclear source to 50% of the mix by 2025.¹¹⁵ The synthesis specified that there were disagreements on this goal, especially regarding the risk to increase GHG emissions if the replacement technologies are less cleaner. Despite that, this principle was integrated into section 1, paragraph III of the *Energy Transition Act* as well.¹¹⁶ However, as it will be described below, the problem with this objective lies into the tools for its implementation.

When it comes to issue 10 and its part focused on nuclear energy, the synthesis invited the law-maker to integrate into the bill and then the act, the capacity for the State authorities to decide, for energy policy reasons, to decommission a nuclear electricity production facility. The synthesis

¹¹¹ Section 2 of the *Programming Act setting the Orientations of Energy Policy* 2005-781 of 13 July 2005 already included such objective.

¹¹² Both now in the *Energy Code*, s L. 100-4, 1.

¹¹³ *Energy Code* s L. 100-4, 2.

¹¹⁴ *Finance Act for 2014* 2013-1278 of 29 December 2013.

¹¹⁵ 71,6 % in 2017. See RTE 2018 <http://bilan-electrique-2017.rte-france.com/production/le-parc-de-production-national/>.

¹¹⁶ *Energy Code* s L. 100-4, 5.

specified that this is another contested issue. Yet, the *Energy Transition Act* does not provide such a mandate to the State authorities. The Nuclear Safety Authority (ASN) then remains the only public authority (but statutory independent) to be able to force the decommissioning of a nuclear plant and only for safety reasons.¹¹⁷ This failure jeopardises to a great extent the objective of nuclear electricity share reduction.¹¹⁸

5.2.2 *Renewable electricity increase: objectives and measures*

Issue 10, regarding the energy mix, mentioned an "ambitious" objective of 30 to 40% of renewable energy sources into the electricity production by 2030, depending of the evolution of the electricity consumption. Still in the same section 1, paragraph III of the Act, the highest goal of 40% is chosen.

Issue 2 of the synthesis, entitled "An energy transition by all and for all" requested to develop community financing mechanisms for renewable energy sources. Section 111 of the 2015 Act is completely dedicated to the development of a better framework for renewable energy community financing. This provision actually completed some first steps done in 2014.¹¹⁹

It is a problem that the *Energy Transition Act* does not provide the adequate tools for a simplified harnessing of renewable energy sources. The example of onshore wind energy is striking, with some provisions actually making its development more difficult. Concretely, section 139 of the 2015 Act states that the administrative authorisation to operate a wind farm determines the suitable distance between the facility and the closest dwellings on the basis of the EIA and with a minimum distance of 500m. This decision will then take place once the EIA has been completed and the project has been designed (which involves a high investment already). The former regime consisted in a minimal distance of 500m, but not subject to a potential extension during the authorisation process.¹²⁰ The *Energy Transition Act*, in this regard, added complexity to wind energy development.

5.3 *The integration of energy policy and planning measures from the DNTE into the Energy Transition Act*

Issue 1 also suggested to generalise an energy planning method, passing from a sectorial one (electricity, gas, heat) to one encompassing energy more broadly. This new planning was then supposed to be submitted by the Government for approval by Parliament every 5 years. Though, while the

¹¹⁷ Grandjean 2014 *Études* 33.

¹¹⁸ For a more detailed development on this aspect, see Mauger 2018 *JWELB*.

¹¹⁹ By the *Ordinance 2014-559* of 30 May 2014 *on Crowd-funding* and the *Social and Solidarity Economy Act 2014-856* of 31 July 2014. On this topic, see also Guerry "Reflection on Some Legal Aspects of Decision Control" 214-217.

¹²⁰ *Environment Code* s L. 553-1 (version before the 19 August 2015).

"Multiannual energy planning" (*Programmation pluriannuelle de l'énergie – PPE*) has been created and is regulated by section 176 of the Energy Transition Act, it was not submitted to the Parliament and its revisions will not be either. This democratic oversight is of primary importance as this aspect of the DNTE synthesis was not respected.

Issue 2, the last action it recommended aims at "promoting the co-writing of energy policies with the citizens, in the spirit of Aarhus Convention".¹²¹ But nothing was mentioned on this topic in the 2015 *Energy Transition Act*. At best, it can be linked to section 1, paragraph II¹²² concerning the means to reach the objectives of the energy policy, when it requests the information of all and transparency, "especially on energies costs and prices, but also on their health, social and environmental impacts". Neither this section nor the others in the Act mention the role of citizens and public participation in the writing of the energy policies.

6 Conclusion and recommendations

The DNTE significantly pushed the boundaries of the previous energy-policy related public debates by developing an energy policy- and law-making process in France. As the outcome of the public debate shows, it experienced successes and failures. The public participation process in itself was a success, especially on a theme as technical as energy. However, the main failures include the chaotic ending of the DNTE, which had an impact on the ambition of the synthesis, and the final inclusion of the recommendations in the *Energy Transition Act*, somehow disappointing on some topics and leading some authors to consider all this process as a sum of "political statements barely hiding public authorities' pusillanimity when the transition has to be implemented".¹²³

Based on the experience of France, in order to promote a real public participation in the design of energy policies or legal frameworks related to energy transition (or even on other related topics), the following aspects should be considered:

- Public participation legal requirement for energy policy- and law-making. Law-makers should adopt the obligation to submit the drafting of any new energy-related policy or law to public participation. For Aarhus convention parties, this will reinforce their transposition of the text, and for other States, this will show their understanding of the current global energy transition.

¹²¹ Aarhus Convention (1998).

¹²² Energy Code s L. 100-2.

¹²³ Tesson 2015 *AJDA* 1965. Denolle also refers to "vague objectives" and "mere incentives to take action", see Denolle 2016 *RJE* 101.

- Diversity. Diversity of opinions, views, backgrounds, etc., should guide the public debate, including diversity in relation to gender issues. The actors solicited in the debate and its organising bodies should all be guided by the idea of diversity in order to enrich the process and provide a strengthened legitimacy to its unfolding.
- Clarity. The framework of the debate (schedule, bodies, decision-making method) should be clear (ease of access, sufficient advertisement...) to raise the interest of the population and increase its participation.
- Predictability. The steps of the debate's decision-making process need to be determined from the beginning and respected at all the stages of the process to avoid its capture by a minority at the end and a watering-down of the final document.
- Respect for the results. The outcome of the debate should be respected by the law-maker when designing the energy law and policy to enhance the value of the debate and not to erode the public's confidence in the participation processes.

In conclusion, for the energy policies and laws to be adapted to an era of energy transition it is necessary to increasingly involve a country's citizens into their drafting. The case of France provides an example of a positive initiative which, however, suffered implementation difficulties.

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LIST OF ABBREVIATIONS

AJDA	Actualité Juridique Droit Administratif
ASN	Nuclear Safety Authority
Bull At Sci	Bulletin of the Atomic Scientists
CEA	Atomic Energy Commission
CLER	Comité de Liaison Energies Renouvelables
CND	National Council of the Debate
DNTE	National Debate on the Energy Transition
EIA	Environmental impact assessment
Environ Policy Gov	Environmental Policy and Governance
ERSS	Energy Research and Social Science
GHG	Greenhouse Gases
IDDR	Institut du développement durable et des relations internationales

J Environ Pol Plann	Journal of Environmental Policy and Planning
JWELB	Journal of World Energy Law and Business
MC	Ministerial circular
NGO	Non-Governmental Organisation
PPE	Programmation pluriannuelle de l'énergie
RAC-F	Réseau Action Climat – France
RJE	Revue Juridique de l'Environnement
RTD Civ	Revue trimestrielle de droit civil
RTE	Réseau de Transport d'Électricité