# The regulation of incumbent nuclear electricity:

**lessons from the ARENH mechanism and prospects for the future**

Guillaume Dezobry[[1]](#footnote-1)

##### **Summary**

*The debate on the reform of the French nuclear regulations, opened by the President of France in November 2018,[[2]](#footnote-2) is already well underway.[[3]](#footnote-3) In light of its competitiveness and the volumes at issue, the electricity generated by the country’s incumbent nuclear plants represents a major challenge in a market open to competition. An analysis of the French wholesale and retail markets shows that the configuration which justified the implementation of the ARENH mechanism in 2010 has only partially changed since then. Given this situation, it remains necessary to contemplate maintaining a regulated access to this resource – which meets the criteria of an essential facility – either in the form of a revised ARENH mechanism or in alternative forms still to be defined. In any event, the future regulation should create the conditions for (i) continuing to open the French supply market to competition and (ii) securing the financial dimension of operating the incumbent nuclear fleet.*

**Key words**

Incumbent nuclear electricity, regulation, *ex ante* regulation, *ex post* regulation, market failure, public policy objectives, NOME Act, ARENH, essential facilities doctrine, competition law.

1. Teacher-researcher and Attorney-at-law. The author would like to thank Professor Jan-Horst Keppler (University Paris Dauphine) for his time and the great relevance of his remarks and comments. [↑](#footnote-ref-1)
2. French President Emmanuel Macron’s speech on the strategy and method for the ecological transition, delivered in Paris on 27 November 2018: “Nuclear power currently allows us to benefit from low-carbon, low cost energy. That is a reality, and that is why, moreover, we will be undertaking work on a new regulation of the existing nuclear fleet, since the current mechanism, which allows the French people to have electricity prices that are among the lowest in Europe, will end in 2025. It is however indispensable that the French people be able to continue benefitting from this beyond then, for as long as the nuclear reactors are still in operation.” (unofficial translation) [↑](#footnote-ref-2)
3. J. Percebois, “Controverses sur le rôle et le devenir de l’ARENH : un peu d’histoire,” *La Revue de l’Energie*, no. 644, 2019, pp. 5-12. [↑](#footnote-ref-3)