North Sea offshore wind
Developments in the Netherlands
This updated briefing focuses on the legal framework and recent developments in offshore wind in the Netherlands. We expect to publish more updates in the coming months to keep you informed on important developments.

Offshore wind in the Netherlands is developing into a significant investment opportunity for the coming years. The European and national renewable energy targets have resulted in new legislation coming into force that must procure an additional 3500MW offshore wind capacity. For this purpose, subsequent licences and subsidies to build 700MW will be tendered out annually in the years 2015 – 2019, with the first tender expected to start December 2015.

Background - Energy Agreement
On 6 September 2013, around 40 Dutch private and (semi-)public parties reached a covenant on the development of renewable growth in the Netherlands, the Energy Agreement. The Energy Agreement implements a comprehensive climate and energy policy programme aimed at long-term sustainability, and sets out agreed short to medium-term measures in ten ‘pillars’. One if these pillars is the increase of renewable energy production from the current 4.3% to 14% in 2020.

The long-term goal of a fully climate-neutral (also known as ‘zero-carbon’) energy supply is set for 2050. Short to medium-term measures and milestones are defined for the period from 2014 to 2023, with 2020 being the year when, in line with the EU Renewable Energy Directive, 14% of gross final energy consumption shall be produced from renewable sources and 16% in 2023. The Dutch government is responsible and accountable to Parliament for the adoption, execution and evaluation of policy measures set out in the Energy Agreement. The Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland, RVO) has been assigned to implement this policy.

This percentage being currently at 4.3%, the requisite steep increase of energy production from renewable sources calls for a drastic intensification of the deployment of large-scale renewable energy production (notably onshore and offshore wind) and a further increase of decentralised generation (e.g. solar energy and biomass) in the coming years.

Offshore wind
In relation to offshore wind energy capacity, the Energy Agreement identified the need for additional wind farm projects to be developed to reach a total of 4450MW by 2023 (with 1000MW being in place or under construction today). Dutch government allocated a maximum of EUR 18 billion to subsidies for renewable energy (SDE+, see below) for offshore wind, commensurate with these targets. The full amount will be committed prior to 2020 to account for a wind farm construction period of 4 years.
Government Road Map implemented in two new bills

On 26 September 2014, the Dutch Minister of Economic Affairs (MEA) sent a letter to Parliament providing a “Road Map” for reaching the targets set in the Energy Agreement. The Road Map contains the following key features:

- New roll-out schedule of 700MW capacity per year for five years
- Offshore grid (‘socket at sea’) planned and operated by TenneT TSO
- Repeal of previously granted licences
- Newly designated licence areas
- New combined application procedure for licence and SDE+

These features form the basis of a new bill on offshore wind (the Offshore Wind Act) that was submitted to Parliament on 16 October 2014 (Wet Windenergie op Zee).1 The bill prohibits the construction or exploitation of a wind farm in the Dutch territorial sea or the Dutch Exclusive Economic Area without a licence. On 26 March 2015, the bill for the Offshore Wind Act passed the Second Chamber of Parliament and is well on its way to enter into force as soon as 1 July 2015.

However, not all aspects of the Road Map are to be implemented in the Offshore Wind Act. In particular, the statutory designation of the Dutch TSO, TenneT, and the related tasks and obligations is part of a separate legislative project to reformulate and modernise the Electricity Act 1998 and the Gas Act, commonly referred to as ‘STROOM’. Furthermore, the Dutch subsidy scheme for sustainable energy, SDE+, is to be amended to provide for the subsidy tenders for offshore wind.

These and other legislative developments are discussed further below.

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700MW capacity per year for five years

The Road Map includes a capacity roll-out schedule for the period 2015-2019 that deviates from the roll-out schedule in the Energy Agreement (see table below). According to the new roll-out schedule, 700MW will be tendered out every year, in the years 2015 (Borssele area) to 2019. As a result, in 2023 the aggregate offshore capacity will be 3500MW (i.e. 50MW more than has been agreed in the Energy Agreement).

<table>
<thead>
<tr>
<th>Start tender</th>
<th>Schedule Energy Agreement</th>
<th>New Schedule</th>
<th>Designated Areas</th>
</tr>
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<td>450MW</td>
<td>700MW</td>
<td>Borssele</td>
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<tr>
<td>2016</td>
<td>600MW</td>
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<td>Borssele</td>
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<tr>
<td>2017</td>
<td>700MW</td>
<td>700MW</td>
<td>Hollandse Kust: Zuid-Holland</td>
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<tr>
<td>2018</td>
<td>800MW</td>
<td>700MW</td>
<td>Hollandse Kust: Zuid-Holland</td>
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<tr>
<td>2019</td>
<td>900MW</td>
<td>700MW</td>
<td>Hollandse Kust: Noord-Holland</td>
</tr>
<tr>
<td>Total</td>
<td>3450MW</td>
<td>3500MW</td>
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</tbody>
</table>

Offshore grid - TenneT

In a policy letter dated 18 June 2014, the MEA announced the designation of TenneT as the operator of the future offshore grid. In this capacity, TenneT will be appointed to build five standardised platforms of 700MW each, that will each be connected to the onshore high voltage grid by two 220kV-cables. Each TenneT platform will connect two 350 MW wind farms to the shore. The designation of TenneT as the responsible party for the construction and operation of the platforms and the grid is expected to be a more (cost) effective approach to connect the wind farms to the shore than the usual method whereby each wind farm is individually connected to the onshore grid, as is the case with the existing offshore wind farms (OWEZ and Amalia) and the wind farms currently under construction (Gemini and Luchterduinen).

**STROOM**

As mentioned above, the legal implementation of the offshore grid operation is part of a separate legislative project to amend the Electricity Act 1998 and the Gas Act, generally referred to as ‘STROOM’. The STROOM-bill is expected to be submitted to the Second Chamber at the end of April/early May. The plan is to have the STROOM-bill enter into force on 1 January 2016 in order to have the legal basis for TenneT’s pivotal role in place per 1 January 2016.

In our view, this target date may well turn out to be somewhat ambitious. The STROOM-bill is a considerable legislative project containing several controversial topics that may not be easy for parliamentarians to be left unaddressed under the time pressure of Government’s offshore wind project. As a result, there is a considerable risk that the processing of the bill in Parliament may demand more time. It is conceivable (and advisable) that the MEA will lift the sections of the STROOM-bill that concern the designation of TenneT as offshore grid operator and its statutory tasks out of the STROOM-bill and submit these provisions as a separate special bill in order to speed up the process and have this crucial legal framework in force in time.
Scenario – investment plan – realisation – cost recuperation

From the draft versions of the STROOM-bill that have been circulated already by the MEA at the closing of the consultation phase, the following procedure for the construction of the offshore grid can be derived. The MEA is empowered to design a ‘scenario’ for offshore wind, providing indications for locations, sequencing, the maximum capacity, assumptions on life expectancy, the technical connectivity and availability of stimulation measures. On the basis of this scenario, TenneT is appointed to develop an investment plan for the lay out of the offshore grid.

At the time of this briefing, it was still under debate whether or not the offshore grid construction costs are to be socialised through TenneT’s regulated transportation tariffs. Large energy consumers have argued that recuperation in the transportation tariffs would lead to an significant increase in their energy costs and be detrimental to their market position. To address this concern, the MEA is considering to allow for a (part of) the offshore grid costs to be recuperated through the SDE+ funds or, alternatively, to be charged directly to the wind park developers. In our view it would be a sensitive issue to charge the costs to wind park developers as these costs would then have to become part of the project costs after all (and return in the SDE+ tender bids). Also, this would mean a deviation from the principle applied onshore that producers are exempt from transportation tariffs and it is questionable whether such deviation can be duly justified.

Liability TenneT

A key issue related to TenneT’s designation as offshore grid operator is its statutory liability in the event of construction delays or capacity restrictions. The STROOM-bill currently foresees two possible events in which there will be a statutory liability for TenneT:

1. if the construction of a relevant part of the offshore grid is completed later than foreseen in MEA-‘scenario’ as a result of which the producer is unable (in whole or in part) to transport the power produced; or
2. if (upon construction completion) the power volumes that cannot be transported exceed transport restrictions due to maintenance that is reasonably necessary for the system on average, as a result of which the producer is unable (in whole or in part) to transport the power produced.

The bill provides that the producer is entitled to consequential damages and damages resulting from deferred, respectively, lost income. Further rules on the right to compensation and the components eligible for compensation are to be laid down by order in council (AMvB). This order in council has been published for consultation until 23 March 2015.

Ad 1. Liability for delay

The draft text of the order in council provides that a right to damages resulting from delays can only exist when the foundations of the wind farm are in place and the producer can demonstrate that the wind farm would otherwise be operational. The explanatory note provides that if (a part of) the wind farm itself is delayed, there is no (full) right to compensation. The order in council does not specifically address the event that the developer plans to develop and commission the new wind farm ‘string-by-string’ and TenneT is ready only after all strings are operational.
Deferred income from both power sales and SDE+ subsidy are taken into account for the calculation of damages. Deferred income eligible for damages (net cash at a 7% discount rate) is calculated by multiplying the power volume (kWh) that could not be transported and the Base amount as established in the applicable SDE+ decision (see below), less such deferred income divided by 2.95.

**Ad 2. Liability for restricted availability**

With respect to a right to damages under 2. the draft order in council provides that maintenance of five days per calendar year per cable is considered “maintenance that is reasonably necessary for the system on average”. As it is expected that there will be two cables per platform, the expected maintenance period per year is ten days during which 50% of the transport capacity will be available. Therefore, it is provided that a right to damages can exist only when the size of the restricted transport volume is bigger than can be transported in five days under normal circumstances. Only lost income from power sales (not from SDE+) is taken into account for the calculation of damages. Lost income is calculated by multiplying the power volume (kWh) that could not be transported and the Base energy price (floor price) as established in the applicable SDE+ decision (see below).

For both liabilities the order in council provides that consequential damages are considered the total of financial consequences that have a causal link with the event from which the right to damages has arisen, including the actual costs incurred to limit the damages and actual additional costs for materials, personnel, storage and property damage to the wind farm. Losses incurred as a result of required dry-out periods are not mentioned.

A model to establish the power volume that could have been produced (taking into account wind speed and the production profile of the wind farm) will be laid down in a Ministerial Regulation.

**Offshore Code**

In order to be able to execute its statutory tasks, TenneT is currently preparing an Offshore Code which will hold the technical conditions that both TenneT and offshore producers will have to comply with. The Offshore Code will contain provisions taken from the Net Code and the System Code (generally binding regulations under the Electricity Act 1998), modified to apply to offshore wind and taking into account (to the extent possible) the European NetCode Requirements for Generators (RfG) that have entered the EU Comitology process and are expected to enter into force early 2016. A first text proposal for the Offshore Code is expected May 2015 and will be submitted to the GEN-platform (a Dutch platform for representative organisations of grid users) in June 2015 before it will be sent to the Dutch regulatory authority, ACM. It is envisaged that ACM will render its preliminary approval November 2015, subject to the entry into force of the formal legislation by which TenneT will be designated as offshore grid operator and the statutory tasks will be attributed to it (STROOM or a separate specific bill).

**Contractual framework**

Furthermore, TenneT is in process of developing a new contractual framework, consisting of a new standard Realisation Agreement (REA) and a new standard Connection and Transport Agreement (CTA).
The first drafts of the REA an CTA are to be expected this Q1. These drafts will be subject to the outcome
of negotiations with market parties and will be published November 2015.

Planning TenneT
The internal planning of TenneT is included below. As the overview demonstrates, TenneT aims for
realisation of the grid connection for Borssele 1 mid 2019.

Designated licence areas
Pursuant to the Water Act, the MEA and the Minster of Infrastructure and Environment jointly lay down
the national water policy in a ‘National Waterplan’. In the National Waterplan 2009-2015, the government
designated two areas in the North Sea for the erection of wind farms, Borssele and IJmuiden, allowing for
the assessment of potential additional wind farm areas: Hollandse Kust ('Dutch Shore') and 'Ten noorden
van de Waddeneilanden' ('North of the Wadden Islands'). The Road Map, however, includes other
designated areas than the areas provided in the present National Waterplan 2009-2015 and involves:
Borssele, Hollandse Kust Zuid-Holland and Hollandse Kust Noord-Holland. As a result the next National
Waterplan 2016-2021 will have to include the new wind areas Hollandse Kust Zuid-Holland and Hollandse
Kust Noord-Holland.

The map below shows the existing wind farms plus capacity (blue), the selected areas (red), the
everisaged additional wind energy areas (shaded orange), the envisaged locations of the 700MW TenneT

3 This map includes the wind farms currently under construction. Visible are ‘Amalia’ (Q7, 120MW), the near shore wind farm
‘Offshore Wind Egmond aan Zee’ (OWEZ, 108MW) and ‘Luchterduinen’ (Q10, 129MW). The Gemini wind farm (600MW)
falls outside the scope of this map.
4 From top to bottom: Hollandse Kust Noord-Holland, Hollandse Kust Zuid-Holland and Borssele.
platforms (indicative), the envisaged tendering year and the procedural steps in the application process below.⁵

Pursuant to the Offshore Wind Act, the MEA⁶ will appoint certain plots ("kavels") within these three designated wind areas, in so-called ‘site decrees’ ("kavelbesluiten"). A ‘site decree’ will not only determine the exact location of the wind farm within the area but will also (inter alia) include:

- a description of required measures aimed at remedying, reducing or compensating the effects of building a wind farm
- a description of temporary measures and facilities to build the wind farm
- geographical dimensions of the wind farm and the route of the connection cable
- the results of the soil survey, the ecological soil survey, the archaeological and cultural-heritage survey and other ecological surveys performed by the State.

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⁵ The procedural steps described are: 1) The government selects the licence areas; 2) The government designates the exact location of the wind farm; 3) the applicant submits a construction plan 4) the applicant with the best plan is awarded the licence and SDE+.  
⁶ This competence is shared with the Minister of Infrastructure and Environment.
The site decree must thereby provide sufficient information for private parties to choose the best available technique within the (environmental) constraints applicable and to enable them to optimise their combined bids for a licence and SDE+.

The Borssele area (as shown in the map below) lies outside the 12 nautical mile zone. In the Borssele area two sites have been indicated, Borssele 1 and Borssele 2. Borssele 1, comprising of Site I and Site II, is the first site that will be tendered out in December 2015 (see below). In 2016, Borssele 2, comprising of Site III and Site IV, will be tendered out, resulting in four wind farms in the Borssele area with an aggregate capacity of 1400MW (see map below).7

In preparation of the Environmental Impact Assessment, the MEA has announced in the Government Gazette of 23 October 2014 the deposition of documents with regard to the sites Borssele 1 and Borssele 2. Interested parties were allowed until 4 December 2014 to submit their views on these documents. The final Environmental Impact Assessment report will follow shortly upon geophysical and geotechnical research that started early 2015. The RVO website provides technical data, maps and results from site investigations to the extent available.8

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7 Plots I and IV are considered the windiest but they are also the deepest which makes construction more expensive.

8 [https://rvothem4.pleio.nl/studiesborssele](https://rvothem4.pleio.nl/studiesborssele)
Another notable aspect is that the delineation for offshore wind areas (originally outside the 12 nautical mile zone, the EEZ) has been moved two nautical miles towards the shore. The delineation of the areas *Hollandse Kust Zuid-Holland* and *Hollandse Kust Noord-Holland* will be enlarged to include the 2 mile strip between the 12 mile zone and the 10 mile line. This is expected to reduce the development costs of the wind farms, the connection platforms and cables by EUR 1.2 billion, as both construction and O&M will be less complex and less expensive. More importantly, however, it appears that without this extension, the areas may prove to be too small to build the required 700 MW and therefore the extension is necessary not only from a cost-reduction point of view but also from a spatial point of view. This new delineation will be laid down in the new National Waterplan 2016-2021.

**Offshore wind licensing**

The licence application procedure will be a combined application procedure for SDE+ subsidy and the exclusive licence to erect the wind farm (‘wind licence’, *windvergunning*) in a certain licence area. The wind licence will replace the respective licences currently required under various acts, such as the Nature Conservation Act, the Flora and Fauna Act and the Water Act. This new regulatory regime will contribute to efficient use of space, cost reduction and should step up the roll-out. An offshore wind production licence will be granted for a maximum period of 30 years. The license is transferable subject to MEA’s consent.

In order to obtain a licence, the applicant must demonstrate that it can meet the requirements set in the plot decree and that the envisaged construction and exploitation of the wind farm is financially and technically practicable and economically feasible within the term stated in the licence. Furthermore, the applicant must demonstrate that building and exploitation meet the plot licence requirements and can commence within 4 years after the effective date of the licence.

The application for the licence must be submitted to RVO (acting for MEA) during the period in which the relevant SDE+ application must be submitted. If more competitive applications are submitted for one licence that are all in compliance with the statutory requirements, the licence shall be issued to the party to which the SDE+ is granted. Both decisions (licence and SDE+) are taken simultaneously.

**SDE+**

SDE+ is an operating subsidy and is granted on the basis of a tendering procedure and is administered by RVO. SDE+ compensates producers for the unprofitable component of renewable energy compared to energy from fossil fuels. This is illustrated below (Source: RVO)\(^9\) where the ‘Base amount’ represents the sum of the investment and operational costs plus a reasonable profit, divided by the projected production volume. The Base amount is set by the MEA for the duration of the subsidy period. The ‘Base energy price’ is the bottom price set by the MEA to mitigate the subsidy in the event the ‘Correction amount’ should fall below the Base energy price.

At the time of this briefing, the Base amount for the Borssele areas has so far been calculated by ECN at EUR 123 / MWh, and a Base energy price (floor price) of EUR 29 / MWh.

The total required subsidy amount is calculated as the delta between the estimated offshore wind costs and the forecasted long term power price, multiplied by the total capacity (3500 MW), the full load hours (4000) and the subsidy period per project (15 years).

In the 2013 Energy Agreement, it has been estimated that the total costs of 3500 MW offshore wind capacity without any cost-reduction in 15 years would amount to EUR 30 billion (EUR 150/MWh at 4000 full load hours). It was agreed that an overall 40% (i.e. EUR 12 billion) cost reduction could be realized in the period 2014-2023, resulting in an annual cost reduction of EUR 5/MWh. The total costs would therefore amount to EUR 18 billion.

Consequently, the Government originally reserved a maximum amount of EUR 18 billion for SDE+ to be granted in the tenders of 2015-2019 and payable over a 15 year period. However, in his letters of 23 and 25 March 2015, the MEA set out a re-calculation of the expected subsidy costs for offshore wind leading to a total of EUR 12 billion instead of the EUR 18 billion maximum that was expected earlier. This new result was based on a new assessment of the long term power price as applied in the National Energy Assessment 2014 of 7 October 2014 by the Netherlands Environmental Assessment Agency (Planbureau voor de Leefomgeving).

An important part of this cost-reduction is expected to be derived from the designation of the Dutch transmission system operator (TSO) TenneT as the operator of the offshore grid. This designation is expected to result in a 10% overall cost reduction (i.e. a quarter of the total 40% overall reduction target) set against the originally expected EUR 30 billion that included the costs of individual connections to shore for each wind farm. This 10% cost-reduction is to be realised through efficiencies of scale, lower costs of capital, longer amortisation periods and better availability because of network redundancy.

The remaining 30% cost-reduction obligation will be the joint responsibility of the wind farm developer and TenneT but an exact allocation of this responsibility is still under debate.

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**Rules and regulations**

The SDE+ subsidy scheme has been laid down in the SDE+ Decree.\(^\text{12}\) The SDE+ Decree provides the general rules and regulations that are applicable to the respective types of eligible forms of sustainable energy production, including offshore wind. In paragraph 3.3 of the SDE+ Decree, the tendering system is regulated that will be applied in respect to offshore wind. It provides that a maximum tender amount will be determined in a Ministerial Regulation that equals the average costs per kWh for a certain category of production installations and – in the case of offshore wind – for each individual site.

The SDE+ Decree allows for a carry-forward of produced kWh in excess of the volume eligible for SDE+, to future years where production volumes do not reach the projected volumes. As a result of this amendment, the ‘wind factor’ will no longer be required in SDE+ applications. The winner of the SDE+ subsidy cannot transfer the subsidy decision prior to the commissioning of the production installation without the consent of the MEA. In a Ministerial Regulation it may be determined that the winner of the tender must enter into an Execution Agreement stating certain terms and conditions with respect to the execution of the activities for which the subsidy has been granted.

A draft Ministerial Regulation (MR) concerning SDE+ for the Borssele 1 area (Sites I and II) has been published for consultation on 2 April 2015. Stakeholders are invited to submit their views until 30 April 2015.

Pursuant to the draft MR, the SDE+ is granted on the basis of ranking, whereby the ranking takes place on the basis of the tender price (lowest price = highest ranking). Qualitative requirements are limited to the minimum nominal capacity (at least 351MW per site minus the capacity of the smallest turbine) and the maximum nominal capacity (maximum 380MW). The applicant must demonstrate that its equity capital exceeds 5% of the total investment costs of the production installation(s).\(^\text{13}\) Also the license criteria in article 14 of the Offshore Wind Act apply (construction and exploitation must be compliant with the site decision, practicable, financially, technically and economically feasible within the term stated in the license and construction can start within four years after the license decision has become irrevocable).

Applicants may submit their bids between the date of entry into force of the MR, 1 December 2015,\(^\text{14}\) and 31 March 2016, 17:00 hrs. Bids are allowed for one site only, for both sites separately or for both sites bundled together. Therefore, one applicant can – in theory - submit three bids: one for Site I, one for Site II and one bundled for Sites I&II. In order for a bundled bid to win, it must be ranked higher for both sites than the highest non-bundled bid or it will lose in whole. In case more bundled bids are ranked higher than the highest ranked individual bid, the bundled bids are ranked on the basis of the average price per kWh of the respective bids. In the event that the same applicant submits the highest unbundled bids for both sites but its equity capital is less than 5% of the total investment costs of both production installations,

\(^{12}\) Besluit stimulerings duurzame energieproduktie, Bulletin of laws and decrees 2007, 410, as amended.

\(^{13}\) To be demonstrated by the most recent Annual Accounts. Please note that the draft MR does not address the possibility of an application by a (transparent) consortium SPV with no noteworthy equity capital at the time of the application.

\(^{14}\) If the Borssele Site decision for either Site I or Site II should enter into force after 1 December 2015, the MR will enter into force on the date of that (latest) decision. The end date of 31 March 2016 remains the same unless the date of entry into force is later than 3 March 2016, in which case the end date will be forwarded to the fifth Thursday after the entry into force.
he will be granted SDE+ for one site, to be selected by him (up front) in the application. In case of two or more winning bids, the ranking will be established by MEA by drawing lots.

The MR provides for a maximum tender amount per kWh. We already mentioned the result of the latest ECN calculations being EUR 0.123 / kWh (EUR 123 / MWh).

The decision to grant the SDE+ subsidy is issued under the conditions precedent that (i) within two weeks an execution agreement is entered into between the State and the applicant, for which a model is attached to the draft MR, and (ii) within our weeks a EUR 5 million bank guarantee is provided. Failure to timely provide this bank guarantees will result in the runner-up to be selected. After one year the applicant must provide an additional EUR 25 million bank guarantee.

The draft execution agreement provides for the obligation of the “Entrepreneur” vis-à-vis the Dutch State to commission the production installation within 5 years after the SDE+ decision. It contains the obligation to provide the two bank guarantees. It contains a penalty arrangement for delays in commissioning of the production installation of EUR 2.5 million per month of delay. It explicitly stipulates that the Entrepreneur is not entitled to invoke any rights against the State under the Borssele research reports that have been made available by the State.

The SDE+ decision is to be made within 13 weeks. The decision is subject to objection and appeal by affected parties.

Repeal of previously granted licences – compensation for licensees
Under current law, nine licences for the construction of a wind farm have already been granted in 2009 to various parties. Construction of wind farms in the respective licence areas has never started as the necessary SDE+ funds were not available. The original expiration date of the licences (Q4 2012) was extended to 2020 in January 2012 following a motion in the Second Chamber. However, according to the new bill, these ‘old’ licences will lapse upon the entry into force of the bill. The present holders of the licences will lose their licence(s) and will have to participate in the new application procedure.

In his letter to Parliament of 23 March 2015 the MEA announced that after negotiations, there has been reached an agreement with certain holders of the 2009 licenses on compensation for costs in relation to 2014 SDE+ subsidy applications that have been made after January 2012. Financing costs and loss of income and any costs made to purchase a license from a previous holder have been explicitly excluded from this arrangement. The total compensation amount made available by the MEA is EUR 7.35 million. The MEA plans to fund this amount using the SDE+ budget.

15 The holders of the present nine licences are: RWE (Tromp Binnen), Nuon (Beaufort), Typhoon/NPI(Clearcamp), Dong (Breeveertien II, Den Helder and West Rijn) and Eneco (Brown Ridge Oost, Q4 and Q4 West).
Tax considerations
Our Energy Team has significant first-hand experience with the relevant tax aspects of large scale project finance structures, including offshore wind. Some of our recent experience includes acting as project tax counsel for the 600MW Gemini offshore wind farm. One of the most important tax items in relation to the upcoming new tenders is to ensure that the tender process is entered into with a suitable and efficient tax structure that provides for flexibility for all stakeholders involved. After the tender procedure has been successfully completed, it will be difficult to make any changes to the legal structure. This requires the potential bidder(s) to set-up the legal structure well in advance of actually putting in the tender bid.

Some other tax items that should be taken into account (and may ideally be discussed in advance with the Dutch tax authorities) are inter alia avoiding VAT pre-financing, claiming exemptions from real estate transfer tax, determining a suitable depreciation profile for tax purposes, and insurance tax issues.

Some useful links (in English):
RVO Offshore wind website providing information, maps, studies and workshop minutes and presentations
TenneT offshore grid providing information from the operator of the offshore grid
Noordzeeloket.nl general website on the use of the North Sea

The Loyens & Loeff Energy Team

Shared industry focus
The Energy Team represents the largest full-service energy practice among law firms in the Benelux area. With a history of over 30 years of working with key players on corporate, regulatory, contract and tax matters Loyens & Loeff has concentrated its energy sector expertise in the fully integrated Loyens & Loeff Energy Team, comprising of dedicated lawyers and tax advisers. Each member is a specialist in his or her own field, but all have the energy sector as a shared industry focus. Unlike its competitors Loyens & Loeff is seen to be active (both by market players and by regulatory and tax authorities) in all main energy subsectors, handling transactional, tax advisory and structuring, regulatory and contractual matters across the spectrum of the energy industry, including upstream and midstream oil and gas, power & utilities, energy infrastructure, renewables & sustainability and trade & supply.

Renewables & Sustainability
In recognition of the importance of, and opportunities offered by, the irreversible shift towards a sustainable economy Loyens & Loeff’s Energy Team has taken the lead in advising on renewable energy projects and transactions. Sustainability will continue to top the agenda in the coming decades. In recognition of this Loyens & Loeff’s Energy Team has dedicated a significant part of its resources to renewable energy and sustainability projects in terms of staff, permanent internal knowhow building to keep abreast of developments in the field, and the sharing of information with clients. One of the hallmarks of our renewables & sustainability practice is that we work with clients on small scale initiatives (notably solar, wind, biomass), the variety and sheer number of which is a typical aspect of the shift towards a sustainable economy, as well as on nationwide landmark projects (large scale district heating, CCS, large scale (offshore) wind power). Testifying to our leading position in this field is our key involvement in the largest wind farm projects to date in both the Netherlands and Belgium.
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