

Decision dated _____ to amend the Decision on Stimulation of Sustainable Energy Production in connection with provisions on the subsidisation of innovative offshore wind energy

Draft 14 December 2016

We; Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau etc.

On the recommendation of Our Minister of Economic Affairs dated _____, No. WJZ / _____;
Having regard to Article 3, first and second paragraph, of the Economic Affairs Framework Act;
Having heard the opinion of the Advisory Division of the Council of State (opinion dated _____, No. W _____);
Considering the detailed report of Our Minister of Economic Affairs dated _____, No. WJZ / _____;
Have approved and decreed:

Article 1

The Decision on Stimulating Sustainable Energy Production will be amended as follows:

A

In Article 1 the full stop at the end of the part under s will be replaced by a semicolon so that a part can be added, reading:

t. innovation site: wind farm site as referred to in Article 1 of the Offshore Wind Energy Act, which is designated for the production of renewable electricity through offshore wind energy with the extraordinary and high-risk implementation of an innovative production installation.

B

In Article 2, first paragraph, after 'Our Minister can', the following will be added: notwithstanding Article 24a.

C

Article 24a will be replaced by three articles, reading:

Article 24a

1. On application from a producer of renewable electricity produced by a production installation for the generation of renewable electricity using offshore wind energy at an innovation site, our Minister can provide an innovation site subsidy for the costs of the extraordinary and high-risk implementation of an innovative production installation. This leaves the possibility of providing a subsidy as referred to in Article 2, first paragraph, under a, unaffected.

2. Sections 1, 6, 7 and 9 and Article 69 are applicable to subsidy as referred to in the first paragraph, first sentence, and Article 4 is applicable mutatis mutandis. The further provisions of this Decision are not applicable.

Article 24b

1. In the Ministerial Order, following consultation with our Minister of Finance, a subsidy cap is established per innovation site, for the provision of a subsidy as referred to in Article 2, first paragraph, under a, and Article 24a, first paragraph.

2. By Ministerial Order, a period can be established within which the applications for a subsidy for an innovation site must be received.

3. By Ministerial Order, additional regulations can be established regarding the provision of a subsidy as referred to in the first paragraph, which can deviate from this Decision. In each case, regulations can be established regarding the production installation for which this subsidy is provided, the form of the subsidy, the application of a subsidy and the decision-making on this, as well as the amount of the subsidy and the way in which this amount is determined.

Article 24c

1. Our Minister distributes the subsidy cap, referred to in Article 24b, first paragraph, on the basis of a ranking.

2. Criteria for ranking of the applications are established by Ministerial Order.

3. Regulations can be set by Ministerial Order with respect to the weighting factors for the criteria referred to in the second paragraph.

Article II

This decision will take effect at a time to be determined by Royal Decree.

We order and command that this Decision and the explanatory memorandum be published in the Government Gazette.

The Minister of Economic Affairs,

EXPLANATORY NOTE

I. GENERAL

1. Objective and reasoning

This Decision, dated _____ amends the Decision on Stimulation of Sustainable Energy Production (hereinafter: the Decision) in connection with provisions on the subsidisation of innovative offshore wind energy.

The stimulation of sustainable energy production (Stimulerend Duurzame Energieproductie), hereinafter: SDE+) is focused in the first instance on stimulation of sustainable energy at the lowest possible costs. This means that in general the basic principle is the application of technology referred to as proven technologies. However, the stimulation of more innovative technology could also be important. This applies in particular to the category of offshore wind energy. Both nationally and internationally, more and more experience is being gained with offshore wind energy. In this category specifically, innovation takes place in such areas as the development of turbine technology, foundations and installation methods. The application of such innovative technology can lead to acceleration of completion of the so-called learning curve, meaning that in time the costs will be lower and more capacity can be achieved. This is important in order to achieve ambitions in the area of offshore wind energy. However, application of innovative technology is often associated with extra costs, including as a result of the smaller scale and additional risks, so such technology will not simply spring from nowhere.

The possibility was therefore created in 2009, in the Decision for the Production of Electricity Using Offshore Wind Energy, to provide an additional subsidy for the extraordinary and high-risk application of innovative wind turbines.

The entering into effect of the Offshore Wind Energy Act on 1 July 2015 provides for an integrated statutory framework for the large-scale production of offshore wind energy. A central notion in the Act is that wind farms can only be built on sites ('Wind Farm Sites') designated for that purpose in a Wind Farm Site Decision (WFSD) and only after a permit has been issued.

In the Energy Agreement (appendix to Parliamentary Papers II 2012/13, 30196, No. 202) the sector is invited to present a plan for implementation of innovations. At the end of 2014, the Top Consortium for Knowledge and Innovation (TKI) on Offshore Energy submitted a proposal for test and demonstration facilities for offshore wind energy in the period 2019-2023. The proposal was based on a market consultation the TKI held in the period 2013-2014. As a result, the decision was taken to guarantee space for innovation by designating an innovation site for two wind turbines with a total nominal capacity of a maximum of 20 MW at Borssele and organising a separate subsidy tender for this, with different criteria than for the other sites. This resulted in the designation of Wind Farm Site V at the Borssele Wind Farm Zone (BWFZ) as the first site that is specifically intended for the production of electricity from wind energy using innovative technology in the relevant WFSD.

The objectives for the innovation site are to:

- create an opportunity for companies established in the Netherlands to test or demonstrate highly-developed technology before actual market introduction (showcase). This mainly relates to innovations that lend themselves less well to experimentation at the regular Wind Farm Sites.
- contribute to reducing the cost of offshore wind energy.
- contribute to the Dutch economy through expansion of the market and (export) potential for Dutch companies.

- contribute to building knowledge in the Netherlands by involving Dutch SMEs and Dutch knowledge institutions.

The design of the innovation site will mirror as much as possible how the regular Borssele sites are operated, deviating from this where necessary. Per wind farm site, there is space for one production installation, so the tender will have one winner per site. Where in the regular tenders the lowest offer wins, for an innovation site, the application that contributes most to the objectives will win. A number of qualitative ranking criteria will therefore be formulated in this Ministerial Order for this purpose.

The winner of the tender will receive a single subsidy, which can include both an investment component and an operation component. With the investment component, in contrast to the operation component, finance can be provided before the operation phase, independent of the amount of energy eventually produced. The operation phase will commence as soon as the installation enters into operation.

The present Decision aims to provide a framework to facilitate this form of subsidisation, based on the new wind farm site system in the Offshore Wind Energy Act. In view of the experience that still needs to be gained with this system, the present Decision is provided with broader delegation provisions than is the case for a regular operation subsidy.

2. European aspects

The subsidisation of producers of offshore wind energy constitutes state support. The tender for the innovation site does not fall under the scope of the approval of the European Commission of the SDE+ scheme, as competition will be based not on price but on other criteria. In the General Block Exemption Regulation (hereinafter: GBER) certain support categories are declared compatible with the Single Market. On the basis of Articles 41 and 42, fourth paragraph of the GBER, the subsidisation of innovative offshore wind energy is permitted under the present Decision.

The GBER faces obstacles for the provision of both investment support and operation support (SDE+) for the same project. Total government support must not be higher than the GBER allows. This is regulated in Article 4, first paragraph, of the Decision, which states that an excess of government support received can be deducted from the operation subsidy.

The subsidy conditions and percentages are drawn up in a Ministerial Order, in which the European aspects will be explained in further detail. On the basis of Article 11 GBER, a subsidy scheme to be set up on the basis of the Decision should be reported to the Commission for notification within 20 days of entering into effect.

3. Regulatory burden

To determine the regulatory burden for the producers of innovative offshore wind energy, the Decision, the General Implementing Regulation for Stimulating Sustainable Energy Production (hereinafter: General Implementing Regulation) and the Ministerial Order for Subsidisation of the Innovation Site with associated Implementation Agreement are relevant. When the General Implementing Regulation was changed in 2008 (Government Gazette 2009, 60), an extensive explanation was provided on the regulatory burden resulting from the SDE+. The regulatory burden for producers of innovative offshore wind energy will be largely similar to the regulatory burden for producers of regular offshore wind energy, as calculated in the Ministerial Order on Offshore Wind Energy 2015. The regulatory burden for producers of offshore wind energy will be specified in the explanation of the Ministerial Order for Subsidisation of the Innovation Site.

II. ARTICLES

Article 1, under A

In order to provide space for innovative production installations, for which not only the production of sustainable energy through offshore wind energy is important but also the use of innovative technology, innovation sites can be designated. These are sites that are specifically designated for the extraordinary and high-risk application of an innovative production installation. Whether a site is designated as an innovation site is indicated in the related Site Decision. At present, only Site V of the BWFZ is specifically designated for the production of innovative offshore wind energy in the relevant Site Decision.

Article 1, under B

This Article aims to explain the fact that an operation subsidy as referred to in Article 2 of the Decision and operation subsidy as referred to in Article 24a of the Decision can exist alongside each other. Here, the operation subsidy is the regular subsidy possibility as provided for in the Decision and, for an innovation site, there is an additional possibility for an investment subsidy. This means that for an innovation site, it is possible for both types of subsidy to be offered separately or in combination. In the latter case, one subsidy is provided for both types of subsidy together. Article 3, second paragraph, of the Decision determines that no operation subsidy is provided if subsidy has already been provided for the same production installation on the basis of the Decision. As a single subsidy is provided, Article 3, second paragraph, of the Decision is not applicable to the combination of operation subsidy and investment subsidy for the innovation site.

Article 1, under C

Article 24a provides the basis for the provision of investment subsidy for an innovation production installation. This subsidy can be provided independently or in combination with an operation subsidy. In all cases, the subsidy recipient will receive a single subsidy for the innovation site. The investment component of the subsidy has a different character to the operation component. The latter component is linked to the quantity of sustainable energy produced, whilst the investment component is linked to the construction of the innovative production installation. In this regard it is important that this is an installation for the production of sustainable energy, but the investment subsidy is not dependent on the quantity of energy produced.

The existing provisions in the Decision primarily concern the operation subsidy. Part of these provisions are also declared applicable to the investment component of the subsidy for an innovation site in Article 24a, second paragraph. This relates to general provisions on the subsidisation of renewable energy production. Insofar as the General Implementing Regulation provides further detail in relation to these provisions, this regulation is also applicable.

Other provisions in the Decision, however, are not applicable in relation to the investment component, as these provisions do not fit with the character of the investment component of the subsidy. This concerns in particular provisions that specifically relate to the subsidisation of the difference between the average price of electricity and the cost price of renewable electricity. Instead of this, regulations can be established by Ministerial Order.

A number of specific provisions on the subsidy for an innovation site are included in Articles 24b and 24c. This concerns provisions on the definition of the subsidy cap and the application period, and on the way in which the available subsidy amount is distributed. In addition to this, the third paragraph of Article 24b makes it possible for further regulations to be established on the provision of a subsidy for an innovation site by Ministerial Order. This relates to both the investment component and the operation component. The possibility is therefore provided to establish regulations by Ministerial Order that meet the objective of the subsidy for the innovation site, the specific character of the investment component of the subsidy and the possibility of combining the subsidy for investment costs and operation costs. As no experience has yet been gained with this form of subsidisation, the choice was

made to establish these regulations by Ministerial Order. This ensures flexibility, so that regulations can be adapted where necessary, in line with the experience gained. The regulations established by Ministerial Order can deviate from the Decision, in order to focus the Ministerial Order on the specific character of the subsidy for an innovation site. In relation also to the more general provisions of the Decision, which are declared applicable to the investment subsidy, it may be necessary, for example, to set a specific regulation in relation to the character of the investment component. Considering the specific aim for which an innovation site is designated, different ranking criteria are also provided to the criteria listed in Article 60, first paragraph, of the Decision, as well as additional grounds for rejection. These criteria are established on the basis of Article 24c, second paragraph.

The Minister of Economic Affairs,