Amendment of the Offshore Wind Energy Act (*Wet windenergie op zee*) to support the offshore wind energy assignment

(21 February 2018)

EXPLANATORY MEMORANDUM

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I. GENERAL

Chapter 1. Introduction

1.1 First tenders based on the Act and announcement of the legislative proposal

The Offshore Wind Energy Act (Bulletin of Acts and Decrees 2015, No. 261) entered into force on 1 July 2015. Subsequently, the agreements under the Energy Agreement (Parliamentary Papers II, 2012/13, 30 196 No. 202) were implemented through the Offshore Wind Energy Roadmap (Parliamentary Papers II, 2014/15, 33 561, no. 11). At the heart of the approach for offshore wind energy is the strong guiding role played by the central government in the choice of site, site examinations and the process by which permits are granted, a standardised grid connection provided by the offshore electricity grid operator (TenneT) and the stimulation of innovation and competition between developers. This approach has resulted in three successful tenders for offshore wind energy. Subsidies with a relatively low and falling SDE+ base amount of 7.27 euro cents (Parliamentary Papers II, 2015/16, 33 561, No. 31) and 5.45 euro cents per kWh respectively (Parliamentary Papers II, 2016/17, 33 561, No. 38) were applied for in the case of the first and second tenders under the SDE+ (Stimulation of Sustainable Energy Production subsidy) scheme. The third tender saw the first publication of rules for the permit procedure without any subsidy (Parliamentary Papers II, 2016/17, 33561, No. 39). It was announced on 21 December 2017 that a number of applications for a permit without a subsidy had been submitted (Parliamentary Papers II, 2017/18, 33561, No. 40). This meant another breakthrough had been made in the cost trend for offshore wind energy. If the applications result in the granting of a permit, at least 700 MW capacity for renewable electricity will be realised without a government subsidy. As a result, only TenneT's offshore grid connection will be financed by the government. In view of the success here, it is desirable that this approach is continued in future, adjusted to accommodate changing circumstances and taking account of potential future changes.

The present legislative proposal entails an amendment of the Offshore Wind Energy Act to support the offshore wind energy assignment. The legislative proposal was announced in the letter of the Minister of Economic Affairs, dated 28 June 2017 (Parliamentary Papers II, 2016/17, 33 561, No. 39). The energy transition legislative agenda (Parliamentary Papers II, 2017/18, 30 196, No. 566) in which this legislative proposal is included was announced in the letter dated 11 December 2017. The energy transition is supported by a review of legislation and regulations.

1.2 The core of the Offshore Wind Energy Act will not change

The core of the Offshore Wind Energy Act remains unchanged by this legislative proposal. The allocation scheme provided for under this Act, which, as the first tenders show, is successful, contains a number of steps and decisions that will have to be taken before new offshore wind farms can be built. Wind farms may only be built at sites (wind farm sites) designated as such in a Wind Farm Site Decision. Wind farm sites are designated only within a zone which is designated in the National Water Plan, the designated wind farm zones. The Wind Farm Site Decision specifies where and under which conditions a wind farm may be built and operated. The Wind Farm Site Decision does not specify who is entitled to build and operate a wind farm at that site.

The adoption of a Wind Farm Site Decision is followed by the procedure for granting a permit. Only the holder of a permit is entitled to build and operate a wind farm at the wind farm site.

1.3 The Act supports the offshore wind energy assignment

With the present realisation of offshore wind energy under the Energy Agreement important steps have been and are being made towards making Dutch energy supply more sustainable. The prospect of five tenders has given market parties the confidence to invest and has changed risk perception. This has resulted in a substantial reduction in the cost of offshore wind energy. The government wishes to retain the confidence of the markets and the current momentum, and over the next two years will be issuing the other tenders under the Energy Agreement to complete the Offshore Wind Energy Roadmap by the end of 2023 (Parliamentary Papers II, 2014/15, 33 561, No. 11).

The coalition agreement contains the task of realising an additional reduction of CO_2 emissions of four megatons relative to the baseline according to the 2016 National Energy Outlook by means of offshore wind energy. The inclusion of this additional task means that the total scope of offshore wind farms will amount to approximately 11.5 gigawatts (GW) by 2030. Taking into account the already existing wind farms (approximately 1 GW) and the wind farms to be built under the Offshore Wind Energy Roadmap by the end of 2023 (approximately 3.5 GW), it will be necessary to add further wind farms with a combined capacity of approximately 7 GW between 2024 and 2030. This is in line with the 2016 Energy Agenda, in which a rollout of approximately 1 GW a year in the wind energy zones already designated further out to sea is taken as the basis for this period (Parliamentary Papers II, 2016/17, 31 510, No. 6). In early 2018, the government will publish the 2030 Offshore Wind Energy Roadmap, which indicates the designated wind energy zones and the order in which wind farms will be built between 2024 and 2030 inclusive. The Offshore Wind Energy Act requires amendments if continued support is to be provided for the rollout of offshore wind energy until 2030.

1.4 Drafting the legislative proposal

In part prompted by a letter from the Netherlands Wind Energy Association (NWEA) dated 11 September 2017, time was made for a careful consultation process when this legislative proposal was drafted. Extending and adjusting the procedures for granting a permit was discussed at length in several sessions with the wind sector industry organisation NWEA and with companies. In a letter dated 9 November 2017, the NWEA voiced its appreciation of the process, whilst at the same reiterating its concerns about auctioning and mentioning an alternative system. The content of those discussions and letters is dealt with in the continuation of the general part of this Explanatory Memorandum.

The political declaration of the North Sea countries and the European Commission was also used in order to give further impetus to energy cooperation in the North Sea. One of the ambitions of that declaration is to reduce offshore wind energy costs through improved cooperation (Parliamentary Papers II, 2015/16, 21 501-33, No. 606). Information on possible ways of dealing with the situation where no further subsidies will be required for offshore wind energy was also exchanged with the other North Sea countries.

Chapter 2. Main features of the legislative proposal

The legislative proposal consists of laying down a new division of powers, making the Act suitable in the longer term for energy carriers other than electricity and extending and adjusting the procedures for granting permits on the basis of the experienced gained from and the outcomes of the first three tenders. They are addressed in the sections below.

2.1 Laying down a new division of powers for ministers

This legislative proposal also mentions our Minister of the Interior and Kingdom Relations, Minister of Infrastructure and Water Management and Minister of Agriculture, Nature and Food Quality. With the swearing-in of the third Rutte government on 26 October 2017, various tasks and responsibilities of relevance to this legislative proposal were allocated to other and/or new ministries than was the case in the previous government. The new allocation is the result of the Decree on the departmental reorganisation of spatial development, spatial planning, the Environmental and Planning Act (Omgevingswet) and the Land Registry Office (Government

Gazette 2017, no. 62725) and the Decree establishing the Ministry of Agriculture, Nature and Food Quality (Government Gazette 2017, no. 62723). The Decree of 26 October 2017, no. 2017001803, changing the name of the Ministry of Economic Affairs (Government Gazette 2017, no. 62722) will be included in a separate legislative proposal. Since these adjustments are taking place concurrently with the preparation of this legislative proposal, it was decided to include the departmental and portfolio reorganisation in it.

2.2 Energy carriers other than electricity

According to the 2017 National Energy Outlook (Parliamentary Papers II, 2017/18, 30 196, No. 559), electricity consumption in final consumption sectors will be just as high until 2030 as it was in 2015 if the proposed policy measures are implemented. Expectations are that an improvement of efficiency will counteract increased use of equipment and increasing electricity consumption in traffic and transport. According to the same 2017 National Energy Outlook, the announced further rollout of offshore wind energy in the period between 2023 and 2030 and the expansion of the contribution made by solar power is leading to a substantial growth in the share of renewable electricity in national electricity production. By 2025 this proportion will have increased to around half, and it will be close to two-thirds by 2030.

If onshore and offshore wind energy combined with solar power provide a similarly large share of the total electricity requirement of the Netherlands, and this is also the case in neighbouring countries such as the United Kingdom, Germany and Denmark, there may be a need in future to convert wind energy into carriers of energy other than electricity, such as hydrogen or ammonia, for example. Other energy carriers might also be cheaper to store on a large scale than electricity or might be put to better use for functions other than power and light, such as in traffic and transport, for high temperature heating in industry or for low temperature heating in the built environment.

This legislative proposal is intended to equip the Offshore Wind Energy Act to use the electricity generated with offshore wind energy directly in industry or to convert it onshore into other energy carriers without any connection to an offshore grid or to the onshore high-voltage grid. It is further proposed to equip the Act to deal with a situation where wind generated offshore is converted into energy carriers other than electricity. Lastly, it is proposed to transport energy generated by wind to the coast or elsewhere by means of a pipeline or even vessels as a supplement to the electricity cables currently used.

The conclusion is that the system provided for under the Offshore Wind Energy Act, which involves the designation of zones and the Wind Farm Site Decisions, is capable of accommodating the abovementioned applications. The said applications will, however, require several modifications of definitions in Section 1 and in Section 3. They are described in detail in the explanatory notes on individual sections. With these adjustments, the Offshore Wind Energy Act will continue to facilitate the energy transition in the future as well.

2.3 Extending and adjusting the procedures for granting a permit

The rising trend as described in paragraph 1.1 whereby fewer to no subsidies are being granted for offshore wind energy is a desirable one. With fewer or no subsidies, it will no longer be necessary to raise funds or as the same level of funds in the form of the surcharge on the electricity or gas bill levied under the Sustainable Energy Surcharge Act (Wet opslag duurzame energie), not including the funds needed for the offshore grid. The impact of offshore wind energy on the energy bill will thereby be limited. In addition, offshore wind energy where no subsidy is provided is set to become a full participant in the electricity market, meaning that the use of offshore wind energy will be entirely market-driven, and that will encourage further innovation. On the other hand, exposing offshore wind energy fully to market prices will also create uncertainty, which may lead to higher capital charges and a greater likelihood of a wind farm not being completed. The following paragraphs describe how the procedures for granting a permit will be extended and adjusted to accommodate a situation involving fewer or no subsidies. They are followed by several paragraphs describing a number of improvements applicable to more than one procedure.

2.3.1 The procedure with subsidy will remain in the Act

The Offshore Wind Energy Act currently provides for, among others, a procedure with subsidy. In this procedure, the granting of a permit coincides with the procedure for granting a subsidy, and both are issued to the applicant requesting the smallest subsidy. That procedure is retained in the present legislative proposal. If it is clear from the outset that a subsidy will be required for the construction of a wind farm, , the applicant may opt for that procedure alone, as was the case in the first two tenders under the 2015 Ministerial Order for Offshore Wind Energy or the 2016 Ministerial Order for Offshore Wind Energy. The ability to grant subsidies therefore continues to exist.

For as long as subsidies are required for offshore wind energy, the government will make them available in accordance with the agreements under the Energy Agreement. Agreements on the costs for offshore wind energy were made in the Energy Agreement. For the tenders for offshore wind energy agreed in the Energy Agreement during the period running until 2019 inclusive, those agreements were translated into maximum base amounts in the SDE+ subsidy scheme (Parliamentary Papers II, 2014/15, 33 561, No. 15). Consequently, the maximum subsidy the government was prepared to grant for those tenders was clear from the outset.

It is not known when subsidies will no longer be needed. Circumstances may change over the course of time, in part because among the offshore wind energy zones there are differences in terms of distances to ports, water depths, seabed conditions and wind speeds that will determine the cost price. The conditions under which a wind farm is built may also differ from site to site. In addition, market conditions, including electricity prices, steel prices and the interest rate, change over time. Lastly, a change in supply and demand can change the price of parts such as cables, foundations, turbines and installation vessels. Added to this is the fact that innovation is continuing and moving towards, among other things, ever larger turbines. The time at which a wind farm can or should be built is therefore also an important factor.

As a consequence, offshore wind energy tenders all differ slightly as regards timing and circumstances. For this reason, each tender will require an assessment to establish whether, because of the circumstances referred to above, the procedure with subsidy should be applied.

It is important to have adequate tools to deal with a situation where no subsidy is required when such a situation arises. Experience of the procedure without subsidy was gained for the first time with the third tender under the Ministerial Order for the granting of offshore wind energy permits for Hollandse Kust (zuid) Wind Farm Sites I and II. The procedure without subsidy was incorporated into the Act only as a comparative assessment, where permit applications are ranked on the basis of the criteria included in the Act. Initial experience has shown that the procedure without subsidy could be improved in a number of areas.

It is for companies to assess whether a wind farm can be built without a subsidy and the legislator's responsibility to create the right framework conditions and include safeguards to ensure that the farms can in fact be built.

2.3.2 Options for dealing with applications where a lower subsidy or no subsidy is requested

Where more than one competing market party is prepared to build a wind farm without any subsidy, the question arises as to how to determine to which party the permit for the wind farm should be granted.

There are various ways of dealing with such a situation. First and foremost, the costs for offshore wind energy could be increased by taking account of the preparation costs or by making connection to the onshore high-voltage grid part of the wind farm. However, this is not a long-term solution if the costs fall further still. Furthermore, having TenneT install an offshore grid will improve efficiency substantially as a result of standardisation. Onshore space efficiency will be created too because TenneT would be able to connect several offshore grids in a single process using one route and make a choice between expanding the onshore high-voltage grid or

connecting the offshore grid further inland. Lastly, there would be a significant time benefit. Since TenneT will be able to prepare the offshore grid in parallel with the drafting of the Wind Farm Site Decision and the permit procedures for it will be able to proceed, the wind farm could be built within three to five years after the permit is granted. If the procedures for connection to the onshore high-voltage grid cannot start until after the permit is granted, i.e. long after the Wind Farm Site Decisions have been drafted, a far longer period will be needed to build the wind farm. This will entail additional costs and, therefore, risks and is undesirable for those reasons. Increasing the costs, then, is not a solution.

A second option is to avoid a situation where no subsidy is needed. If a subsidy decision is always given, it will be possible to suffice with the procedure with subsidy as set out in paragraph 2.3.1 alone. In that case, the permit will be granted to the party which also receives the subsidy decision. In the discussions as referred to in paragraph 1.4 and a letter dated 9 November 2017, the NWEA requested the contract for difference option, as applied in the United Kingdom, as a temporary transition system prior to the step towards the auction format. SDE+ is currently being used for the procedure with subsidy. Contract for difference provides for both payments to and revenue from the operator, depending on the electricity price relative to the cost price. The present system of subsidies (SDE+) provides for only payments to the operator.

A contract for difference therefore resembles SDE+, with the important difference that if the market price for electricity generated from wind energy exceeds the price bid, the producer will pay the difference to the government when the contract for difference approach is used and, under the SDE+ system, is allowed to keep the expected difference. In the latter case involving SDE+, the producer could also use the expected difference it is allowed to keep to improve its chances of obtaining the permit by requesting a lower subsidy or no subsidy.

As the applications for the third tender based on the Ministerial Order for the granting of offshore wind energy permits for Hollandse Kust (zuid) Sites I and II show (Parliamentary Papers II, 2017/18, 33561, No. 40), a number of reputable energy companies stated that they would be able to build the wind farm without any subsidy when they were wholly dependent for income on the revenue from the sale of electricity. The option to use contract for difference has been effectively passed over with this Ministerial Order.

The greatest drawback of contract for difference is that it means the subsidy obligation of the government-owned operator is maintained during the operational period. There will never come a point, as there is now in the Netherlands, when companies say that they are able to produce sustainable energy without a subsidy or guarantee of income from the State. In that case, offshore wind farms will never entirely break free of subsidies or a guarantee of income from the State and will therefore never become a truly integral part of the electricity market. SDE+ does make this possible however, because companies are able to keep the market price. If market parties consider the market price for electricity generated by wind energy sufficient, they will implement projects without any subsidy.

Lastly, introducing contract for difference as a temporary system will require a separate, second process to amend the law, the fundamental objection to which is that it would entail merging the subsidy framework and charging framework to form a single instrument. A contract for difference as an alternative to, or in addition to, an SDE+ system would therefore require very substantial changes to be made to the system. It would mean the government not only having to pay subsidies, but also having to be able to collect revenue if the market price for electricity generated by wind energy on average exceeds the price bid. The latter is a levy or tax and the ability to impose a tax would require a different legal framework from the present SDE+ based on the Economic Affairs Subsidies Framework Act (Kaderwet EZ-subsidies). Unlike the United Kingdom, the Netherlands has a separate system involving, on the one hand, subsidies based on the General Administrative Law Act (Algemene wet bestuursrecht) and developed in sectoral legislation and, on the other, taxes based on the Constitution (Grondwet) and developed in various tax laws. Moreover, any changes in the system would also have to apply to similar sustainable and capital-intensive options, either in the long term or temporarily, which could be implemented virtually

without any subsidy such as, for example, onshore wind energy, photovoltaic electricity generated using solar or geothermal sources. This also creates uncertainty for these options. For these reasons, the second option, avoiding a situation where no subsidy is granted, does not offer a desirable solution for determining which applicant should be granted the permit for the wind farm. The present legislative proposal only concerns the addition of auctioning as an option to be used when granting a permit for a wind farm. If a decision is made to replace the subsidy system (in this case the SDE+ system) with contract for difference despite the objections mentioned, that new system will still be within the frameworks provided for under the Offshore Wind Energy Act.

The third and fourth possibilities are the comparative assessment and the addition of a further bidding option. In the procedure without subsidy already included in the Act, a comparative assessment based on qualitative criteria is used to decide which applicant should be granted the permit. Introducing an auction format would provide a further bidding opportunity and make offshore wind energy an integral part of the North-West European electricity market. This will encourage innovation on both the environmental and cost side, and also on the revenue side. Should the market situation prevent a subsidy-free rollout, the safety net of the SDE+ subsidy remains available. Replacing SDE+ with contract for difference would render auctioning and the comparative assessment superfluous.

The third and fourth possibilities are consistent with the government's position on "The auction format and other allocation mechanisms" drawn up as part of the Market Forces, Deregulation and Legislative Quality project. This government position provide a uniform assessment framework which still contributes substantially to well-considered choices being made on where to allocate scarce rights and to successful implementation of the system used to allocate them. This government position has not yet been revised and remains the one on which, for example, present auctions in the telecommunications sector are based. It also includes the two most important allocation methods, namely the comparative assessment and the auction (Parliamentary Papers II, 2001/02, 24 036, No. 254).

2.3.3. Additional sites for offshore wind energy where a small or no subsidy is granted

At the time the Offshore Wind Energy Act was drafted, it was not thought possible that offshore wind farms would be built without any subsidy in the coming years (Parliamentary Papers II, 2014/15, 34 058, No. 3). As a result, the availability of subsidies determined the rate of growth of offshore wind energy. Since the possibility of subsidy-free offshore wind farms can no longer be ruled out, market demand, instead of the availability of subsidies, could determine that rate of growth. In line with the development set out in paragraph 1.1 it is conceivable that sites for offshore wind farms will be prepared by the government at the request of market parties in future if there is no prospect of any subsidy. At the same time, balancing of interests has become a more complex process thanks to the upscaling of offshore wind energy. The system provided for in the Act where wind energy zones are first designated in the National Water Plan, followed by the Wind Farm Site Decisions, could also continue to facilitate the offshore wind energy task in the future.

From one kilometre out to sea, the national government is the sole competent authority and is therefore responsible for the North Sea policy. The North Sea is an intensively used sea, which is put to many uses and serves many objectives, as well as being home to natural assets. Within international and European frameworks (including the Birds Directive, Habitats Directive and the Common Fisheries Policy) many economic activities which take up space and/or have environmental impacts take place at sea, such as oil and gas extraction, shipping (including the space needed for traffic separation schemes, clearways and anchorages), fishing, sand and shell extraction, dredging spoil depositing, installation of cables and pipelines and the generation of sustainable energy. It also contains exercise zones for the Ministry of Defence. Those interests may well have to be considered in the future as well when wind energy zones are designated in the National Water Plan and Wind Farm Site Decisions are taken.

The space available for offshore wind energy sites in the Dutch part of the North Sea is therefore limited. Offshore wind energy will also have to remain within international and European frameworks as one of the activities. It will take time to expand the offshore grid, in part because it

might be necessary to expand the onshore grid. As long as an offshore grid is still needed in order to transport the electricity generated from an offshore facility to an onshore one, it makes no sense to designate sites for offshore wind energy at a pace faster than the pace at which the expansion of the offshore grid can be completed.

With this legislative proposal, improvements will be made to the comparative assessment, and the procedure for granting a permit will be extended to include the auction format option. Upon a successful comparative assessment or auction, attempts will be made to make additional offshore wind energy sites available on the market as quickly as possible within the limited space and international and European frameworks and, if applicable, using the opportunities offered by the onshore grid.

2.3.4 Improving the comparative assessment used in the procedure for granting a permit

The elaboration of the procedure without subsidy laid down in the existing Act (implementation of the assessment criteria and establishing weighting factors) for the third tender in the Ministerial Order for the granting of offshore wind energy permits for Hollandse Kust (zuid) Sites I and II revealed a number of areas requiring improvement.

The legislative proposal provides for the inclusion of a number of fixed and always applicable criteria in the Act. The ranking criteria included in the proposal concern an assurance as regards the completion of the wind farm and the contribution made by the wind farm to energy supply. It also provides the opportunity to develop and add ranking criteria by Ministerial Order, for example criteria which are location-specific or which, owing to additional social considerations related to innovation, have a one-off part to play at a particular time. The ranking criteria to be added could, for example, include criteria pertaining to nature, aquaculture, fishing, safety or shipping. A nature-inclusive design of a wind farm that proactively fosters nature or a design that offers greater opportunities for shipping could then receive a higher ranking. This way, it will be possible to consider for each wind farm whether the addition of any such criterion would serve a useful purpose.

A second point of improvement would be to include the possibility of considering a financial bid when conducting the comparative assessment. Under the present Act, it is not possible when conducting a comparative assessment to determine the ranking order in part based on a financial bid for the permit. This would make it possible to use a combination of a comparative assessment and an auction. The substantive assurances produced by the comparative assessment, combined with the financial bid, could then jointly determine the ranking. One example could be a combination of a financial bid and measures to foster natural assets and/or associated hydraulic engineering innovations.

2.3.5 Adding the auction format to the procedure for granting a permit

In view of the agreements made under the 2013 Energy Agreement and the first tender in 2015 agreed in it on the basis of a new statutory framework, the procedure with subsidy received much attention when the Offshore Wind Energy Act was drafted. The discussions largely had to do with the question of whether the agreed decrease in costs of 40% compared with 2014 was feasible and made no mention whatsoever of offshore wind energy without any subsidy. That is why the government's position on "The auction format and other allocation mechanisms" as referred to in paragraph 2.3.2 received no attention then and the auction format as an option to be used in the procedure for granting a permit was not immediately included in the Act.

The government has acquired a great deal of experience with the auction format, particularly in the telecommunications sector, where frequencies (spectrum) were auctioned. That experience was used in the formulation of the section of the legislative proposal covering auctions. Provisions included in the Telecommunications Act have been adapted for application to offshore wind energy. There are various ways of conducting auctions. The desired objective of the auction is an important element to take into account when choosing the auction format. Where the objective of the auction is an economically efficient allocation of the available offshore wind energy sites, the permit will be granted to the party which can create the greatest economic value with it. Whether

or not the auction will comprise a single round or several rounds is an important choice to be made when opting for an auction. There will probably be one or two permits for each tender. As is the case for telecommunications auctions, an external study is organised to obtain advice on the best auction method. In the process, a comparison is made with, and a link sought with, the way in which the permit is granted in the case of a procedure with subsidy.

The legislative proposal allows the way in which a bid is made at an auction and the time of payment to be determined in more detail in the Ministerial Order. As a rule, the sum will have to be paid within two weeks after the permit is granted. This does not rule out the possibility that a decision will after all be made to allow the payment (or part of it) to be made later or in annual instalments so as to limit the financial burden. Later could mean, for example, the time when the wind farm produces the first electricity and starts generating revenue. In considering whether to allow payment to be made later or in instalments, the benefits of potentially greater revenue will be weighed against having an assurance that the sum will actually be paid and the administrative costs associated with securing the later or annual payment. The final payment will be made no later than a few years of the commissioning of the wind farm.

The bid will usually consist of a fixed amount or possibly a fixed amount to be paid in annual instalments or at a later date. In the case of other auctions too (telecommunications frequencies, concessions for filling stations) a fixed sum that is independent of the permit holder's performance is usually the option chosen. Making a link to, for example, the quantity of electricity produced or to other units linked to the performance of the wind farm is undesirable because the bid for a fixed amount per kWh, for instance, could have an impact on the business operations of the wind farm and could lead to strategic behaviour. The use of offshore wind energy is therefore not wholly driven by the market, but also in part by payments to the government. Moreover, a fixed amount makes the determination of the winner clear-cut. The amount of the sum is accordingly independent of the successful bidder's future performance. There will be no discussion about which bid was the highest.

Offshore wind energy has the advantage of having its own Act and of not requiring any land holdings. For that reason the auction option could be introduced into this specific Act relatively simply and quickly for offshore wind energy alone as a means of granting a permit without there being any consequences for other forms of sustainable energy.

Combining the present SDE+ scheme with an auction would also mean the transition could be gradual. For as long as the market price for electricity generated by offshore wind energy remains too uncertain for a decision to be made to invest in an offshore wind farm, no one will be willing to pay for a permit through an auction process. The logical consequence of this is that applications will continue to be made for an SDE+ subsidy accompanied, it is expected, by an ever decreasing base amount.

An ever decreasing base amount means exposure to the electricity price will come into play at an increasingly early stage. In December 2016, the then Minister of Economic Affairs stated that the electricity price forecast applicable at that time, as prepared for the 2016 National Energy Outlook, indicated that some wind farms will start producing electricity without any subsidy. Should that forecast become a reality, a subsidy will be required for the first half of the 15-year subsidy period only. Thereafter, wind farms will produce electricity without any subsidy (Parliamentary Papers II, 2015/16, 33 561, No. 38). With the low base amounts in the SDE+ scheme we are already part way through the transition.

An auction does away with the certainty provided by the SDE+ scheme, which more or less guarantees revenue from electricity production during the initial period. According to the NWEA, the market is not ready for such a scenario. The safety net, as it were, to cover the eventuality of revenue from the sale of electricity during the first part of the project's term being insufficient to realise a reasonable return, would disappear. Only parties with the ability and desire to cope with such uncertainty would compete with each other for the permit. This could vary from case to case.

The government could try to minimise as far as possible the uncertainty regarding the value of the permit in the manner in which an auction is conducted.

2.3.6 Opting for one or more procedures to grant a permit

The proposal to add additional procedures for granting a permit to the Act will give rise to a multi-faceted and future-proof set of tools. This paragraph explains the considerations that play a part when the Minister of Economic Affairs and Climate Policy decides on one or more of those procedures.

Earlier, The government took the view that provided public interests are safeguarded, a specific form of auction will often generate the best results (Parliamentary Papers II, 2001/02, 24 036, No. 254). It is also still used as the basis for auctions in the telecommunications sector. An auction ensures that a permit is granted on the economically most efficient basis. An auction is also a good fit with the present procedure with subsidy. For the first two tenders for the wind farms in Borssele wind energy zone based on the 2015 Ministerial Order for Offshore Wind Energy and the 2016 Ministerial Order for Offshore Wind Energy the tender amount, and therefore the maximum subsidy, was the sole criterion for obtaining the subsidy decision and the permit. Exactly the same would apply in the case of an auction, where the price is the sole criterion, taking the form of a 'negative subsidy' or a sum to be paid to the government as opposed to a sum to be received from it. The bids will be evaluated objectively during the auction. The way in which a bid's score is determined will be established in advance.

For instance, the offshore grid, the preparation of Wind Farm Site Decisions, wind speed and seabed studies and/or additional enforcement measures or radars connected with shipping safety in and around wind farms create (subsidy) costs for the government. Through an auction, the market party pays part of the costs incurred to the government.

With a comparative assessment, ranking takes place on the basis of ranking criteria other than just the lowest maximum subsidy or the financial offer. It allows the plan of the party which best meets the policy objectives set to be laid down in the conditions attached to a permit. The comparative assessment can be used to pursue other policy objectives (those pertaining to the development of the natural environment, for example) and when the government wishes to encourage market parties to implement them using their own expertise. Proposals generated in the plan will then have to be included as a condition of the permit and later also enforced. Alternatively, objective-based conditions could be laid down earlier in the process in the Wind Farm Site Decisions to make sure that the objective is achieved irrespective of which party is granted the permit. Points for consideration for a comparative assessment include setting up a sound procedure and establishing objective criteria on whose basis a distinction can be made between the permit applications. Using criteria which do not allow a sufficient distinction to be made can result in situations where applicants obtain the same number of points and it also being impossible to make a distinction between the plans forming part of the applications. With a comparative assessment there is a possibility that it will become harder to ensure the legal tenability and transparency of the procedure for granting a permit and to keep the implementation costs low, giving rise to a risk of the procedure taking longer to complete. An inherent feature of a comparative assessment is that it is not entirely clear at the outset how ranking based on a criterion will be determined. An assessment committee will often be used to rank an application.

It has already been stated in paragraph 2.3.1 that if it is clear from the outset that a subsidy will be required for a wind farm to be built, only the procedure with subsidy will be chosen.

As is the case with the subsidy scheme, the Minister of Economic Affairs and Climate Policy, having consulted the Minister of Finance, will opt for one or more procedures in a Ministerial Order based on the above considerations for each site or two sites.

2.3.7 Taking part in several procedures at the same time

The present Act works on the assumption that it is known from the outset whether a subsidy will be required for a wind farm to be built. However, this is not always clear from the outset. Other

tenders in this country and abroad can be examined, but, as mentioned in paragraph 2.3.1, this will not provide complete certainty as to the outcome of a new tender. Added to that is the fact that divergences between regulations mean there are other differences between countries such as access to the grid and, for example, differences in subsidy schemes or the consequences if a wind farm is not completed. As a result, individual tender outcomes cannot be compared directly and developments cannot always be extended on a one-to-one basis. This means it is not always clear from the outset whether or not a subsidy is required and - even with a general trend towards cost reductions - there may be a shorter or longer period where wind farms will be built with and without a subsidy. For the third tender this had the consequence that two rounds in succession were planned, the first of which would involve awarding a permit without subsidy and, were that to result in no permit being awarded, a further round involving the procedure with subsidy would be opened. The legislative proposal will allow several procedures for granting a permit to be applied and the order in which applications are dealt with to be determined at the same time.

To be able to adopt the most appropriate procedure and to achieve the most efficient outcome it is proposed to make it possible to conduct several procedures at the same time. A procedure involving an auction and a procedure involving the granting of a subsidy could be applied simultaneously, for example. The applicant will have to decide whether to bid an amount at the auction or whether to specify at which base SDE+ level it is prepared to build the wind farm. In other words, if the applicant requests a subsidy, it may not simultaneously take part in the bidding at the auction. If it does not apply for a subsidy, it may take part in the bidding at the auction. Only then will the applications including a bid in the procedure involving an auction be accepted for processing. Only if the applications including a bid in the procedure involving an auction do not result in a permit being granted will the applications in the procedure with subsidy be accepted for processing. This will enable it to be established in a single tender whether the wind farm can be built without a subsidy and, if that is not the case, to proceed directly to the granting of a subsidy and a permit. If one or more applications meet the requirements of the procedure involving an auction for all sites, the applications for the procedure with subsidy will be rejected. The procedure involving a comparative assessment and the procedure involving the granting of a subsidy can be applied simultaneously in a similar manner.

This is also consistent with the fact that applications in a procedure involving a subsidy and an auction in some respects constitute a continuous range of bids with negative payments (and therefore subsidy applications) and positive payments.

If only the procedure involving an auction is conducted and it does not result in a permit being granted, the procedure can be conducted again one or two years later. This could be done one or more times in a period ending no later than when the Wind Farm Site Decision is withdrawn on the basis of Section 11.

2.3.8 Certainty that a wind farm will be built when considering granting a permit

It is stated in paragraph 2.3 that fully exposing offshore wind energy to the market creates the risk of a higher probability that a wind farm will not be built. For that reason, certainty that a wind farm will be built is a fixed criterion that is always applicable in the comparative assessment.

That aspect also featured in the discussions with the wind sector mentioned in paragraph 1.4. Some members of the wind sector are wary of the move from the present SDE+ system to one involving an auction. With the SDE+ system, revenue is more or less assured for the first fifteen years because the government makes up the difference between the market price of electricity generated by wind energy and the base amount bid in the subsidy tender. With the auction procedure, a wind farm's revenue is wholly dependent on revenue from electricity sales. The risk of the price of electricity being lower than estimated decreases certainty that a wind farm will be built.

In the procedure with subsidy there is a provision whereby the subsidy is granted on the suspensive condition that a guarantee deposit or bank guarantee is provided. Should the guarantee deposit or bank guarantee not be made available in time, the subsidy and therefore the

permit will be granted to the next highest-ranked application. For the tenders in 2015 and 2016, a guarantee deposit or bank guarantee was made available for the subsidy for the first year after the issuing of the subsidy decision. If a second, larger bank guarantee was not provided for years two to five inclusive within one year, the first bank guarantee was forfeited. Otherwise it was returned or sent back. The second guarantee deposit or bank guarantee was returned at the moment the first electricity is delivered by the wind farm. The second guarantee deposit or bank guarantee was forfeited if the wind farm is not delivering electricity within five years. The suspensive condition attached to the subsidy is necessary to ensure the actual and timely construction of the wind farm and to avoid bids that are not serious.

Without the forfeiture of the guarantee deposit or bank guarantee, there are no consequences attached to failing to construct a wind farm other than the possibility of the permit being withdrawn. Without the guarantee deposit or bank guarantee, a permit for an offshore wind farm would make building, or not building, a wind farm optional with no consequences attached while at the same time causing a delay in the process whereby the wind farm is realised because the decision-making regarding the allocation of the relevant site is slowed down. Furthermore, situations could arise where preparations are made for offshore grids that ultimately are never completed or only partly used. Lastly, it is undesirable to claim space in the North Sea unnecessarily. That is why the legislative proposal also includes the requirement that a guarantee deposit or bank guarantee that is subject to forfeiture shall also apply in procedures without subsidy.

In the case of an auction or a comparative assessment involving a financial bid, the sum paid will not be deducted from the guarantee deposit or bank guarantee. This means that the successful bidder will both pay the bid and also provide the pre-determined guarantee deposit or bank guarantee. This will prevent the possibility of the permit holder having an incentive to recover part of its bid at no risk by not building the wind farm should the amount bid be greater than the guarantee deposit or bank guarantee. The bid is also linked to holding the permit and the guarantee deposit or bank guarantee is designed to ensure a degree of progress in the construction of the wind farm. Not linking the bid and the guarantee deposit will prevent strategic behaviour as a result of the link.

The bank guarantee for the costs of the removal of the wind farm at the end of its service life is unrelated to this and will remain in full force. The procedure with subsidy also makes provision for both bank guarantees.

2.3.9 More flexible period between the time a permit is granted and the time a wind farm commences operations

The present grounds for rejecting an application in Section 14 are largely satisfactory. It is proposed that the period of four years between the date on which the permit has become irrevocable and the start of the construction and operation of the wind farm should be removed from the Act and that that period should be determined in the Ministerial Order on a tender-by-tender basis. If a wind farm is connected to an offshore grid, however, the period between the time when the permit is granted and the commencement of construction and operation should continue to be between three and five years after the granting of the permit. If it is important that a target is reached in a specific year and the offshore grid can be ready in time, a shorter period of, for example, three years between the permit becoming irrevocable and the commencement of construction and operation could be included as a requirement in the Ministerial Order. A shorter period could possibly also be desirable where unforeseen circumstances cause the Wind Farm Site Decision to be delayed so as to ensure timely completion of the wind farm. Several companies have also indicated that it could be advantageous to send out the invitations to tender less than four years before the offshore grid can be made ready because this would reduce interest-rate and price risks. On the other hand, a longer period could be desirable if the market temporarily tightens, as a result, for example, of tenders in other countries, and the flexibility provided by being able to build the wind farm one year later could possibly lead to a lower level of subsidy being required or to greater auction proceeds. The possibility of its enabling more parties to participate in the tender is another reason to introduce a longer period. Some parties will require more time for a (European) tendering procedure or to arrange financing than others. The period

could also be several years longer than the aforementioned three to five years if, for example, for the reasons cited in paragraph 2.2 no offshore grid is installed and the permit holder, after obtaining the permit for the offshore wind farm, also has to obtain permits for a pipeline or cable to the coast and, possibly, an onshore facility. The permit holder would then not have to take the final decision to invest until after those permits had been obtained.

2.3.10 Maximum number of applications for a permit per company

Large undertakings often have the structure of a parent company with several subsidiaries. Risks can be spread by organising activities in different companies. However, there are also instances where companies are formed with the sole intention of increasing the possibility of obtaining a permit, believing that submitting multiple applications will improve their chance of success. The latter example is an undesirable development. A company submitting an application should present its best 'bid' in the form of a subsidy sum, a sum in the auction process or a qualitative plan for a comparative assessment. In line with the Telecommunications Act and the proposed inclusion in it of Section 14a(4), the legislative proposal includes a provision which makes it possible to stipulate a maximum number of applications an applicant may submit for a single procedure. The maximum number was limited to two in the 2016 tender through the subsidy scheme, as it could be desirable for a single company to be able to participate in a limited number of consortia where there is a limited number of turbine suppliers, installation companies or any other type of company in the supply chain. The legislative proposal provides for the possibility of limiting the number of bids in which a company is involved.

2.3.11 Extending the maximum term of a permit

There is a scarcity of space for offshore wind energy and for other uses and other assets, so is not desirable for a permit holder to be able to use an offshore site for an unlimited period. Unlike in many other cases, the permit holder does not own the seabed or the water column. A new Wind Farm Site Decision may or may not be issued at the moment the holder's permit expires. If the zone in question is re-designated a wind farm site, all parties in the market can make a bid for a permit for a new period. Furthermore, the permit does not confer an exclusive right to use the wind farm site, but rather only the right to build and operate a wind farm at the site. A permit holder is not entitled to refuse shared use within the site either. When an application for a permit for a different activity at the wind farm is made, the competent authority weighs up the interests of the wind farm against those of the activity for which an application has been made.

When the Act was created, the useful life of an offshore wind farm was 20 years. However, it had already been stated in the Explanatory Memorandum that owing to technical developments, the service life could perhaps be longer in the future (Parliamentary Papers II, 2014/15, 34 058, No. 3, p. 43) and the maximum term of a permit was established at thirty years. The current fall in costs is partly explained by the increased useful life of a wind farm. That is why it is stated in the Wind Farm Site Decisions for the Borssele and Hollandse Kust (zuid) Wind Farm Zones that the permit is granted for thirty years. The first four years of the permit are usually taken up with the signing of all of the contracts, the production of the foundations and turbines, and installation work. The final year of the permit must be used for the removal of the wind farm. Consequently, the effective period in which the wind farm can be operated is a maximum of about 25 years, longer than the 20 years previously provided for. However, the service life of the turbines is increasing further still. The 30-year maximum term of the permit as included in the present Act is restrictive since it will not be possible to extend the term of the permit beyond thirty years for future Wind Farm Site Decisions. It is proposed that the possibility of extending the permit by a maximum of 10 years up to a maximum of forty years be created so as to bring Wind Farm Site Decisions arising from the next Roadmap into line with the increasingly longer service life of a wind farm. By providing the opportunity to extend the maximum term by 10 years, it will be possible to respond gradually and flexibly to the evolving service life of wind farms in the Wind Farm Site Decisions arising from the next Roadmap. Owing to the length of the period laid down for use of the site, the extension option was favoured over granting a permit for a maximum of forty years at the outset. The interests of the wind farm will be weighed against other parties having an interest in a space in the North Sea when a request for an extension is considered.

2.3.12 Amending Wind Farm Site Decisions before an application is made for a permit

In practice, it has proved necessary to amend some Wind Farm Site Decisions that had already been taken. To ensure legal certainty for the permit holder, Section 11 of the Act contains an exhaustive number of grounds under which Wind Farm Site Decisions may be amended. The Act does not provide for a situation where a Wind Farm Site Decision is amended before an application is made for a permit, for example owing to a 'clear error' in the coordinates or another figure in a Wind Farm Site Decision. It is proposed that the possibility of a Wind Farm Site Decision being amended if a permit has not yet been granted for the site should be added to that Section. Since there will be no permit holder at that point, legal certainty is not a factor for the permit holder.

Chapter 3. Execution and enforcement

The legislative proposal does not alter the fact that it is the Minister of Economic Affairs and Climate Policy who grants the permit. Nor does it alter the enforcement under administrative law and criminal law of the prohibition on setting up or having in operation a wind farm without a permit or acting contrary to the Wind Farm Site Decision and the permit provisions. Only if a decision is made to conduct an auction comprising several rounds or a comparative assessment could implementation and enforcement costs increase. If a decision is made to conduct a comparative assessment or an auction comprising several rounds for one or more wind farm sites, the implementation and enforcement costs will also be taken into account in the Ministerial Order for the procedure for those sites.

Chapter 4. Commercial impact

Offshore wind energy involves substantial investments, which are exhaustively prepared for within companies. Only some of the investment decisions prepared for within a company will actually be implemented.

The procedure undergone to obtain a permit under the Offshore Wind Energy Act has little impact on the costs companies incur when preparing an investment decision for offshore wind energy. Nearly all the information that has to be submitted with an application for a permit will already be available. Even were it not compulsory to have a permit under the Offshore Wind Energy Act, the company would gather and use that information for internal decision-making and, for example the purchasing of turbines, foundations, cables and installation, the sale of electricity and for potential financial backers of the investment. With the present system, about twenty-five man-years per company are spent on preparations for each tender.

The benefit of the permit-granting procedure for companies is that under Section 4(2)(d), the government researches, among other things, the meteorological conditions, soil composition, currents and wave heights and archaeology and conducts environmental soil analysis, and other environmental research. This information is made available to the companies, meaning there is no need for them to gather it themselves. Since the system ensures that it is certain that the wind farm will be built at that location, more detailed information about the wind farm site is gathered and made available to the companies before the permit is granted. Nor will companies have to prepare a report on the environmental impact as that is prepared by the government and included in the Wind Farm Site Decision. All things considered, the preparatory research the government conducts, relieving companies from conducting it themselves, saves those companies at least half if not two-thirds of the preparation costs involved in such an investment decision.

Lastly, with TenneT designated the offshore grid operator, companies need not apply for permits for landing cables on shore under the present system.

The aforementioned Ministerial Order for Offshore Wind Energy 2015 (Government Gazette 2015, No. 18526) and the Ministerial Order for the granting of offshore wind energy permits for Hollandse Kust (zuid) Wind Farm Sites I and II (Government Gazette 2017, No. 59835) cover, respectively, the commercial impact for the procedure with subsidy and the procedure without subsidy. They are addressed in the section below.

With regard to the procedure with subsidy it was noted that the administrative costs had fallen substantially compared with the last tender in 2009. That was the result of combining the tender for a subsidy with the granting of a permit and the simplification of the reporting requirements. The regulatory burden in the procedure with subsidy mainly relates to following activities carried out by applicants for a subsidy and a permit.

One-off:

- The applicant must submit a project plan including a project budget per application. That plan and budget form the supporting evidence for the tender amount requested (the ranking criterion). The production estimates (per subsidy year) also form part of this.
- The General Implementing Regulations state that during the construction of the production facility, an annual report should be submitted on the progress of the project in relation to the planning schedule. This should be a short description of the progress of the project in relation to a number of evaluation moments. In this way, whether and when the power generation facility will enter use can be evaluated. This information is necessary for financial management and monitoring of the objectives of the Ministerial Order.
- Within a year after the power generation facility comes into operation, an overview of the actual investment costs and the subsidy (to be) received should be presented. As the total SDE subsidy to be received will be more than €125,000, the overview should be accompanied by an auditor's report.
- The SDE subsidy is granted under the suspensive condition that an implementation agreement is signed by the subsidy recipient. This implementation agreement establishes that the subsidy recipient must provide the State with financial security. This financial security is provided in the form of two successive bank guarantees. As a standard implementation agreement and standard bank guarantee are attached in the appendix to this Ministerial Order, this should entail relatively low administrative costs for the applicant.
- Each applicant has the option to submit an objection and then an appeal against the subsidy decision or the decision on the objection. To determine the administrative costs of this part of the subsidy award process, a total of three objection and appeal procedures are assumed.

Annually:

- A characteristic feature of a subsidy granted under the SDE scheme is that a subsidy is awarded for a long period. In the years following the completion of the power generation facility, an advance will be paid automatically every month, based on an annual application. To determine the advance amount, the applicant should apply for a subsidy advance (for the relevant year), indicating the production estimate for the relevant calendar year.

The above results in the following overall picture of the regulatory burden for the procedure with subsidy. In the calculation of the administrative costs, an internal rate of €60 per hour is taken as a basis. This results in around €100,000 in administrative costs to submit some 12 applications for an SDE subsidy. Of these, a maximum of two can be accepted. The administrative costs during the operation and for the final report on these two projects together amount to a total of around €40,000. The administrative costs of objection and appeal procedures amount to around €10,000. The total administrative costs for all applications under this Ministerial Order therefore amount to €150,000.

For the procedure without subsidy in the form of a comparative assessment, information must be provided on how the project proposal performs in respect of the ranking criteria elaborated on in the Ministerial Order. It was anticipated that on balance the regulatory burden would be comparable with that of the procedure with subsidy.

The regulatory burden in the procedure without subsidy in the form of a comparative assessment relates to the following one-off activities carried out by applicants for a permit. The applicant must submit details on the basis of which the technical and financial feasibility is assessed for each application. The production estimates also form part of this. That obligation to provide information is elaborated upon further in the Ministerial Order, including for the purpose of assessing applications against the ranking criteria. An annual report on the progress of the project relative to

the schedule must be provided during the construction of the power generation facility. This should be a short description of the progress of the project in relation to a number of evaluation moments. In this way, when the power generation facility will enter into use and whether this will be within the set period after the date on which the permit became irrevocable can be evaluated. Each applicant has the option to submit an objection and then an appeal against the award of a permit or the decision on the objection. To determine the administrative costs of this part of the permit award process, a total of three objection and appeal procedures are assumed.

This resulted in the same overall picture of the regulatory burden as for the procedure with subsidy of €150,000 in total. These are low costs in comparison with those for the complete preparation for an investment decision such as this and also when compared with costs incurred by the government in the run-up to the tender.

Costs incurred as a result of the regulatory burden will be on a similar scale in the case of an auction or a comparative assessment involving a financial bid as well. With an auction, on the one hand, the administrative costs for applicants will be slightly lower than those for a comparative assessment because the submission of additional information for the evaluation of the comparative assessment criteria is not required. On the other hand, if a decision is made to conduct an auction comprising several rounds, the administrative costs will be greater because applicants must meet certain conditions in order to bid in several rounds.

The final two tenders resulting from the Energy Agreement will involve the granting of permits for three new wind farms in the period running until 2019 inclusive. The Offshore Wind Energy Roadmap for the period between 2024 and 2030 could mean another seven permits being granted. Applications were received from seven different companies for the first tender and for the second, and no objections or appeals were lodged against the granting of the permits. The number of applicants for the recent third tender, conducted by means of a procedure without subsidy, and the future tenders is not yet known.

The legislative proposal will not entail a regulatory burden for citizens, nor will it have any consequences for local authorities or professionals in the public sector. It does not alter any aspect of the legal procedure for the permit.

The present legislative proposal has no implications for the substantive compliance costs. After all, the substantive compliance costs are for the most part determined by the provisions in the Wind Farm Site Decisions and the general rules for offshore wind farms set out in paragraph 6A of the Water Decree. They will not change because of the present legislative proposal.

Chapter 5. Consultation

The main features of the legislative proposal have been discussed with the NWEA as the industry organisation for the wind sector and companies as mentioned in paragraph 1.4. In addition, everyone will have the opportunity between ... February 2018 and ... March 2018 to submit his or her reaction to the draft version of the present legislative proposal through the website www.internetconsultatie.nl. In total, ... responses were received within the deadline set. The responses related to ... . Prompted by the responses during the online consultation ... .

Chapter 6. Transitional law

Since the legislative proposal provides only for amended and new procedures for the granting of future permits, no transitional arrangements will be necessary.

II. ARTICLES

Article I, parts A and B (amendment of Sections 1 and 3)
The Offshore Wind Energy Act is presently based on the assumption that the wind turbines are used to generate electricity and that the electricity generated is fed into the grid through a grid connection. Electricity is not the only energy carrier that can be generated using wind turbines. Other energy carriers such as hydrogen and ammonia can be produced offshore equally well. Since the share of electricity produced using renewable energy sources is growing, the storage of electricity and its conversion into other energy carriers will become increasingly important in future. The definition of a wind farm is to be changed in line with this development. With the proposed change, wind farms which produce not electricity but other energy carriers will also come within the scope of the Act. The definition will mention the generation of wind energy. At the same time a definition of wind energy will be added. Wind energy is taken to mean the energy resulting from the conversion of wind. This could involve energy carriers such as hydrogen and ammonia, but also types of energy carrier that are not yet immediately obvious. Wind energy ultimately has to be brought onshore. For electricity, this requires the offshore grid, which is linked onshore to the national high-voltage grid. Hydrogen and ammonia can be transported onshore in a variety of ways. The most obvious method is a pipeline, but more than one method is needed. A definition of a connection point will be added to Section 1 to clarify this. A connection point is the point where a grid connection is connected to a grid or to another installation. As things currently stand, the definition refers to a connection to the grid. There are various situations which qualify as connection to an installation or facility. Examples include an electricity cable which is connected to a hydrogen plant, where the plant is the facility and may be located onshore (on the mainland) or offshore (on an island). A hydrogen plant that is connected to a facility where the hydrogen is distributed onwards (by pipelines, trucks or ships) is also covered by this definition. The final example cited is a hydrogen pipeline that is connected to a facility where electricity is produced from hydrogen.

Section 3 will be amended accordingly. The connection point is included in a Wind Farm Site Decision. Depending on the connection required, a Wind Farm Site Decision will include an onshore connection point or an offshore one. Whether or not a Wind Farm Site Decision has a short or long "tail" will depend on the circumstances applicable to its preparation.

Article I, part D (amendment of Section 7)
The amendment of Section 7 of the Act entails correcting the reference in it to several provisions of the Nature Conservation Act. Before the entry into force of the Nature Conservation Act, Section 7 of the Act referred to provisions of the Flora and Fauna Act. In the latter Act, exemption was required for a number of activities in a single Section. In the Nature Conservation Act, those activities are spread over several Sections. Since some offshore activities are not relevant, it is proposed to remove the reference to these activities. The taking of eggs is an example of such an activity.

Article I, parts C and F (amendment of Sections 4 and 10)
Part of the Act's methodology is that the central government adopts Wind Farm Site Decisions and conducts the necessary research, or has the necessary research conducted. Costs are associated with that research. It is stated in Section 10 of the Act that the costs associated with adopting a Wind Farm Site Decision may be charged to the party to which the permit is granted. Section 10(3) of the Act provides that the amount of charges for costs shall be laid down in the Wind Farm Site Decision. Since developments in respect of offshore wind energy are moving fast, there may be situations where, at the time a Wind Farm Site Decision is prepared and ultimately adopted, it has not yet been established which procedure will be used to grant the permit. Were it to be laid down in the Wind Farm Site Decision that an amount greater than zero euros should be charged, and the permit is ultimately granted using the procedure with subsidy, the result will be a larger subsidy because applicants will in turn pass those costs on in their tender amount. Opting to lay down the amount a later point in time could ensure better alignment with developments. That is

why it is proposed that the Ministerial Order in which the procedure or procedures to be applied for the granting of a permit is determined also stipulates the amount to be charged to the permit holder. Section 4(1)(g) provides that rules and regulations may be attached to the financial conditions relating to the amounts charged for costs associated with the preparation and adoption of a Wind Farm Site Decision in a Wind Farm Site Decision. In line with the proposed amendment of Section 10(3), the reference to Section 4(3)(g) may be deleted.

Article I, part G (amendment of Section 11)
Under Section 11 of the Act, a Wind Farm Site Decision may be amended or rescinded in whole or in part. To provide the permit holder with as much legal certainty as possible, the number of grounds on which a Wind Farm Site Decision may be amended or rescinded is limited; see also paragraph 2.3.12 of the general part of the explanatory memorandum. It some cases, though, it may be necessary to amend a Wind Farm Site Decision for reasons other than the grounds included in Section 11. It is proposed to enable an amendment to be made for two reasons. The first reason is to enable an amendment to be made in a situation where an application has not yet been made for the permit. This restriction does not compromise the interests of the permit holder. In addition, the amendments concerned must be minor in nature. After all, the Wind Farm Site Decision will have been adopted on the basis of the uniform preparation procedure. It would be undesirable for a Wind Farm Site Decision to be substantially revised between the time of its adoption and the commencement of the application procedure for a permit. Examples of minor amendments include the correction of obvious errors, such as the errors in coordinates or another figure, for instance a swept area quoted in a Wind Farm Site Decision, referred to in paragraph 2.3.12. The intention will therefore often have been clear and apparent from the explanatory notes, map material or the area researched in the environmental impact report, but in such cases there will in any case be an incorrect figure or other clerical error in the provisions, for example. It will then be in everyone's interest to amend the provisions so that they have the intended meaning and to ensure that the framework conditions are clear and unambiguous for everyone. The uniform preparation procedure will continue to apply that amendment as well.

The second reason for allowing an amendment is where the period for which a permit is granted is extended. There is an explanation in the general part of why it might be necessary to extend the period.

Article I, part H (Section 12a)
At present, the Offshore Wind Energy Act has two procedures for the granting of a permit, namely the procedure with subsidy and the procedure without subsidy. Those procedures are described in full in two separate paragraphs and there is also a paragraph containing general provisions concerning the granting of a permit. With this legislative proposal the addition of two procedures for the granting of a permit is proposed. To avoid the unnecessary accumulation of specific procedural provisions, the inclusion in paragraph 3.1 of a section setting out the general requirements for an application for a permit is proposed. Those requirements will then apply to all procedures. Where necessary, supplementary specific requirements for an application for a permit could be set in the other paragraphs.

The proposed Section 12a is virtually identical to the present Section 23 of the Act. Owing to the experience that has now been acquired in relation to the granting of permits, three subparagraphs of Section 23(2) will not appear in Section 12a. Subparagraphs (d) to (f) inclusive were connected to the ranking criteria of the procedure involving a comparative assessment as provided for in Section 24 and will therefore not appear in Section 12a.

For the first and second tenders for the wind farm sites in the Borssele Wind Farm Zone, applicants were able to apply for a subsidy for a single wind farm site or for two wind farm sites. The simultaneous development of two wind farm sites can be more advantageous owing to the benefits of scale. Section 12a provides that a permit for two or more wind farm sites may be applied for in a single application procedure. This is referred to as a combined application.

Article I, part I (amendment of Section 14)

It follows from the methodology of the Act that a single permit is granted per wind farm site. Where more than one competing market party is prepared to build a wind farm without any subsidy, the question arises as to how to determine to which party the permit for the wind farm should be granted; see also the explanation in paragraph 2.3.2 of the general part of the explanatory memorandum. It is therefore important that there is as much certainty as possible as to the ability of the party granted the permit to build the wind farm before the permit is granted. Section 14 of the Act provides that a permit shall be granted only if an applicant demonstrates satisfactorily that it is able to build and operate the wind farm. An application can therefore be rejected if the applicant has failed to demonstrate satisfactorily that it will be possible for the operation of the wind farm to start four years after the date on which the permit became irrevocable; see also paragraph 2.3.9 of the general part of the explanatory memorandum. Belgium, the United Kingdom, Germany and Denmark are also actively developing offshore wind energy in close proximity to the Netherlands. This could result in parties in several countries operating at the same time, or their upstream suppliers doing so, and more time being required before the construction of a wind farm is completed. At the same time, there may be occasions when it is desirable to require a specific farm to be put into production faster, for example if a shorter time to completion would result in less uncertainty about prices and the interest rate and therefore the time at which the offshore grid can be made available (at an earlier or later stage) could reduce costs. Some flexibility in respect of the period within which the operation of a wind farm must start is desirable. The proposed amendment of Section 14(1)(d) entails creating such flexibility by having the period laid down by Ministerial Order. That period will be laid down based on the specific situation for each order inviting applications.

Sections 14, 20 and 24 of the Act currently provide for the requirements an application must meet. Those sections contain implicit grounds for refusal: an applicant will not be eligible for a permit if the application does not comply with those provisions. Since the legislative proposal will add two procedures for the granting of a permit, it is simpler to make the grounds for refusal explicit in Section 14. This will avoid unnecessary repetitions in the four paragraphs containing the specific procedures for granting a permit.

Article I, part J (Section 14a)
It is stated in paragraph 2.3.7 of the general part of the explanatory memorandum that in some cases it is not clear at the outset whether all applicants would require a subsidy. Under the present Act, the procedures with and without subsidy can be opened in a sequential manner. Section 14a proposes an arrangement whereby, if it is desirable to apply several application procedures, those procedures can be opened at the same time. This could be stipulated in a Ministerial Order, which will be drawn up following consultation with the Minister of Finance. That Ministerial Order will also stipulate the order in which the applications are dealt with and therefore also which procedure will be used as the basis for granting the permit. If, for example, the procedure involving an auction and the procedure involving a subsidy are opened and it is stipulated that the applications will be dealt with in that order, all applications submitted for the procedure involving an auction will be dealt with first. Only where it is not possible to grant a permit using that procedure will the applications submitted for the other procedure be dealt with. The period for processing the subsidy will apply to them. To prevent parties from submitting strategic applications in order to improve their chances of securing a permit, a provision can be included stipulating that an applicant may submit an application for one procedure only. The general part of the explanatory memorandum deals with the maximum number of applications for a permit an individual company may submit. This could prompt the question of what constitutes a single application by an applicant. The formulation of a group as defined in Section 24b of Book 2 of the Civil Code and a legal person or other legal entity where two or more applications hold the same number of shares or have the same legal control could be drawn on when considering the answer to that question.

Article I, part K (amendment of Section 15)
Please see paragraph 2.3.11 in the general part of the explanatory memorandum for an explanation of the amendment of Section 15. The period begins at the time the permit is issued.

Article I, part L (Section 15a)

As stated in the explanatory notes to Article I, part I, obtaining certainty that the wind farm will actually be built once a permit has been granted is an important condition for the granting of a permit. The way in which that certainty is obtained at present in the procedure with subsidy and the provisions in that regard in the other procedures is explained in paragraph 2.3.5 of the general part of the explanatory memorandum. With regard to the procedure with subsidy, the requirement that the subsidy is granted under the suspensive condition that a guarantee deposit or a bank guarantee be provided has proved to be effective. However, the requirement that a financial guarantee be provided is included in the subsidy scheme and is not part of the Act. In those cases where a subsidy is no longer granted, it will not be possible at present to request a guarantee in advance. Section 27 of the Act does, however, provide the opportunity to impose an administrative enforcement order (including an order subject to a penalty for non-compliance) if a permit holder fails to comply with the obligations under or pursuant to the Act. The proposed Section 15a will make it possible to require a financial guarantee in advance.

The amount of the security, and the term within which and period for which it is requested depends, among other things, on the size and location of the wind farm. It is not practicable to include those parameters in the Act. As is the case now in the subsidy implementation agreements concluded under the SDE+ scheme, separate guarantees could also be required for different periods. This will be laid down in the Ministerial Order so that the specific circumstances of the wind farm can be reflected properly.

If the suspensive condition is not met, the permit for the site concerned is granted to the next eligible applicant. If several procedures were opened for the granting of the permit, this could be an applicant from a different procedure.

The provision of a financial guarantee alone is not sufficient to persuade the permit holder to perform the activities described in the permit within the periods of time specified in the permit. To be able to put the financial guarantee to the most effective use, the proposed third paragraph of Section 15a will provide that the guarantee deposit or bank guarantee will be forfeited if the permit holder falls behind in the performance of the activities set out in the permit.

Article I, part M (amendment of Section 16)
Section 16 of the Act contains provisions to cover the eventuality of a permit holder wishing to transfer its licence to another party. It may be that at the time of transfer the period for which the permit holder has to provide a financial guarantee has not yet expired. To ensure that the intended permit holder will continue to build the wind farm, it is desirable that it be placed under an obligation to provide a financial guarantee. The details are set out in the proposed new fourth paragraph of Section 16 which provides that consent shall be granted under the suspensive condition that a financial guarantee is provided.

Article I, parts N and R (Sections 19 and 22 are to be deleted)
The procedure to be applied for the granting of the permit will be determined on the basis of the proposed Section 14a. The paragraph under which the permit will be granted is based on that determination, rendering Sections 19 and 22 superfluous. Those Sections will therefore be deleted.

Article I, parts O and T (amendment of Sections 20 and 25)
The amendment of Section 20 of the Act is connected with the proposed Section 12a in which the general requirements for applications for a permit are included. The first and third paragraphs of Section 20 are to be deleted because they are included in the proposed Section 12a. In light of the proposed Section 14(3), the present second paragraph will be amended and is a supplement to the grounds for refusal proposed in Section 14(3). The present provision that an application must meet the requirements set for an application for a subsidy is now set out as a ground for refusal.

The provisions of Section 23 are included in the proposed Section 12a so Section 23 can be deleted. Since Section 25 of the Act refers to Section 23, which is due to be deleted, that reference will be changed to a reference to the new Section 12a.

Article I, part Q (amendment of the heading of paragraph 3.3)

The heading of paragraph 3.3 will be changed because the legislative proposal introduces two additional procedures without subsidy.

Article I, part S (amendment of Section 24)
If a permit is granted using the procedure involving a comparative assessment, the criteria upon which ranking will take place need to be known in advance. There are several reasons for not including those criteria in the Act but rather in a Ministerial Order; see also paragraph 2.3.4 of the general part of the explanatory memorandum. Offshore wind energy is evolving faster than expected, which means the criteria included in Section 24 of the Act are out-of-date in some areas and it is desirable to be able to use other criteria to rank applications. This in part due to the fact that the present comparative assessment was initially aimed at a single initiative rather than at several competing ones. The social costs could therefore cease to apply, for example. In addition, the circumstances for each wind farm site could vary such that criteria that are relevant to one site are irrelevant to another and therefore cannot be used as ranking criteria. Whether or not an offshore grid is installed can, for example, determine whether the quality to guarantee cost efficiency or the wind farm's capacity should or should not be criteria. That is why it is proposed to lay down the criteria involved in the ranking process by Ministerial Order. However, there are two criteria to which the specific features of a particular wind farm site are irrelevant and which must always be involved in the ranking process. The first concerns the certainty that the wind farm will be built. If an applicant is looking for a high score for this criterion, the application will have to demonstrate which measures will be taken to ensure that the wind farm is completed in time. That certainty can be inferred from the information about the wind farm's design, the schedule for the construction and operation of the wind farm and the list of the parties involved in its construction and operation, as well as the knowledge and experience of those parties, as included in the proposed Section 12a. The second criterion concerns the wind farm's contribution to the energy supply. Energy supply should be understood as meaning not only the nominal capacity or the anticipated yield in MWh but also the contribution the wind farm can make to security of supply by scaling production up or down and thus contributing to the stability of the grid and to options whereby electricity can be stored or converted into hydrogen, for example. The criteria can be elaborated upon in the Ministerial Order.

Article I, part U (paragraphs 3.4 and 3.5)
This part adds two new paragraphs to the Act. In the proposed paragraph 3.4, the procedure involving the comparative assessment with a financial bid is developed further, as also explained in paragraph 2.3.4 of the general part of the explanatory memorandum. If that procedure is opened, an applicant will also have to make a financial bid with its application. If an applicant has not included a bid in its application, that application will be rejected on the basis of the proposed Section 25. If it has included a bid in the application, the amount of that bid will then be included in the ranking of the applications. The weight the amount of a financial bid carries may vary from one invitation to submit applications to another and is largely dependent on the question of how much weight should be attached to the other criteria used in the ranking process, having regard to the specific characteristics of the wind farm site concerned or the stage of development of offshore wind farms (necessary innovations).

The procedure involving an auction is elaborated upon in the proposed paragraph 3.5, and is also discussed in paragraph 2.3.5 of the general part of the explanatory memorandum. The Telecommunications Act and the 2013 Frequency Decree based on that Act are used as a guideline. The Telecommunications Act is fairly concise in the detail it provides with regard to auctions and provides that more detailed rules can be set for an auction under or pursuant to an order in council. Since the Act does not provide for more detailed rules to be set by an order in council, it was decided to include the main elements relating to the conducting of an auction and the participants in an auction in the Act and to flesh them out by Ministerial Order. The provisions of the proposed Section 25e are therefore elaborated upon in more detail than those of Section 3.9 of the Telecommunications Act.

Section 3.10 of the Telecommunications Act makes provision for a procedure where the assignment method to be used for the issuing of permits for a specific frequency space (or bandwidth) is made known through a notification. The permit conditions are also included in the

notification. The uniform preparation procedure provided for in Part 3.4 of the General Administrative Law Act is applicable to the preparation of this notification and an appeal may be brought before the administrative court against a notification. For offshore wind energy, the conditions for construction and operation are included not in the permit but in the Wind Farm Site Decision. Under Section 3(4) of the Act, the uniform preparation procedure is also applicable to the preparation of a Wind Farm Site Decision, making a notification unnecessary for offshore wind energy.

Pursuant to Section 25e(1), the Ministerial Order shall be drawn up following consultation with the Minister of Finance. Section 25e(2) provides for the aspects to which the rules to be set by Ministerial Order should relate in any event. The Ministerial Order may differ from one permit to be granted to another. Since the further rules to be drawn up might be of a technical and detailed nature, it is difficult to lay down such rules in relation to the auction procedure at the level of the Act, or to lay down a single procedure now which will apply to any separate auction to be held in future.

Section 25e(1)(a) provides the opportunity to set rules relating to the way in which a bid is made. Examples include making a bid by submitting a bid card at a specific physical location. However, there are other alternatives, too, such as submitting a bid online. A provision could also be included stipulating who is entitled to make a bid.

Rules relating to the requirements for a bid to be valid will be set pursuant to the provisions in subparagraph (b). They will include requirements pertaining to the method to be used to enter the amount. Should such be considered desirable in a specific situation, requirements could also be set in relation to the minimum amount that can be bid in each round.

It is important that an auction is run fairly and uninterruptedly. That is why subparagraph (e) will provides that the Ministerial Order must specify the cases where the auction can be suspended temporarily, bids can be declared invalid and bidding rounds can be held again, and which deadlines and conditions will apply. In addition to those rules, consideration could be given to including rules which specify when the Minister can exclude a participant from further participation in the auction, for example if it turns out that that participant is deliberately causing an obstruction for whatever purpose or otherwise infringing the rules in respect of the auction procedure.

As stated in the explanatory notes to Article I, part I, obtaining certainty that the wind farm will actually be built once a permit has been granted is an important condition for the granting of a permit. If the permit is granted based on the procedure involving an auction, it will be necessary to obtain certainty that a bid will be honoured. Rules in this regard are set under subparagraph (e). For instance, the Ministerial Order could contain a provision whereby the applicant for a permit makes a guarantee deposit or provides a bank guarantee the purpose of which is to provide certainty that a bid made will be honoured. For that certainty to be provided, the Minister will need to have set the amount of the guarantee deposit or the bank guarantee at a level such that that certainty is actually created. It is expected that requiring such a guarantee will prevent applicants from making bids that are not meant seriously. That guarantee and the honouring of the bid do not remove the obligation to provide a guarantee under the proposed Section 15a.

Under Section 25f(1), the permit is granted to the applicant making the highest bid. Section 25e(2)(f) will provide the opportunity to specify which bid the successful bidder must honour by Ministerial Order and could include, for example a provision stipulating that the successful bidder should not honour the highest bid but rather any bid other than the highest one. Unlike the other allocation procedures, the period for granting the permit does not start after the end of the application period, but after the end of the auction procedure.

Pursuant to the provisions in subparagraph (g), requirements will be set in relation to the method and time of payment, for example immediate payment or staggered payments.

The Minister of Economic Affairs and Climate Policy,