

## **Agreement for Statistical Transfer of Energy from renewable sources**

This agreement is entered into between

The Danish State, represented by the Minister of Climate, Energy and Utilities, having its seat at Holmens Kanal, 20 DK-1060 Copenhagen K, Denmark, "The Danish State";

and

The Dutch State, represented by the Minister of Economic Affairs and Climate Policy, having its seat at Bezuidenhoutseweg 73, 2594 AC The Hague, the Netherlands, "The Dutch State",

Hereinafter also separately or jointly referred to as respectively the "Party" or the "Parties", "The Danish State" or "The Dutch State" or "Selling Member State" or "Buying Member State".

### **WHEREAS:**

- 1) Parties wish to enter into an agreement for the statistical transfer of the amount(s) of energy from renewable sources as specified in this agreement from The Danish State to the Dutch State under Article 8 of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (hereafter: Directive (EU) 2018/2001).
- 2) The Danish State is developing plans for which The Danish State shall use the due amount payable by The Dutch State as the Buying Member State. The plans will be discussed between Danish and Dutch authorities. The Danish State shall use the payments for statistical transfer to finance a tender for projects aimed at developing and upscaling Power-to-X technologies in Denmark, with a particular focus on production of green hydrogen (aiming for instance at approx. 100 MW electrolysis capacity). The exact design of the tender, including plant capacity and grant allocation criteria, will be determined by the Danish authorities in a later phase. Power-to-X, i.e. a combination of different conversion technologies, that utilize renewable electricity to produce green hydrogen, which is then used directly or converted to other e-fuels, is considered a mutual interest of both parties. The statistical transfer would therefore also ensure fundamental experience and knowledge exchange between the Danish and the Dutch authorities in this area. Responsibility for the project lies with the Danish State.

### **Article 1 Objective**

- (1) The objective of this Agreement is to enter into an arrangement for the statistical transfer of the in this Agreement specified amount(s) of energy from renewable sources from The Danish State to the Dutch State under Directive 2009/28/EC and Directive (EU) 2018/2001.
- (2) The Parties enter into this Agreement with the purpose of
  - a) contributing to the cost-efficient achievement of the EU target to increase the share of energy from renewable sources to 20 percent by 2020;
  - b) optimize the balance of benefits from statistical transfers of Renewable energy target amounts for both the Buying and the Selling Member State;

## **Article 2 Definitions**

Pursuant to this Agreement the following terms are defined as

- a) Selling Member State: The Danish State which, as a party to this Agreement, shall transfer the Renewable energy target amounts to the buying Member State, The Dutch State, according to this Agreement;
  
- b) Buying Member State: the Dutch State which, as a party to this Agreement, shall receive the Renewable energy target amounts for target compliance purposes under Directive 2009/28/EC and Directive (EU) 2018/2001 from the Selling Member State, The Danish State;
  
- c) Directive 2009/28/EC: Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC;
  
- d) Directive (EU) 2018/2001: Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources;
  
- e) Renewable energy target amount(s): the statistical value of energy from renewable sources as mentioned in Article 7 Directive (EU) 2018/2001 and reported for the purpose of compliance with the mandatory national targets for the share of energy from renewable sources in final energy consumption as set out in the third column in part A of Annex I to the Directive(EU) 2018/2001;
  
- f) Statistical Transfer: statistical transfer of a specified amount of energy from renewable sources from the Selling Member State to the Buying Member State in accordance with Article 6 of Directive 2009/28/EC and Article 8 of Directive (EU) 2018/2001.

## **Article 3 Cooperation**

- (1) The Parties shall at all times co-operate in order to establish and maintain the necessary and favorable conditions for the implementation of the Statistical Transfer.
  
- (2) National contact points are established to facilitate the implementation of this Agreement and deal with any matters arising in the course of the implementation. The contact point of the Danish State will be the Ministry of Climate, Energy and Utilities. The contact point of the Buying Member State will be the Ministry of Economic Affairs and Climate Policy (directie Elektriciteit).

## **Article 4 Obligations of the Parties**

- (1) The Danish State enters into an obligation to notify the European Commission about the Statistical Transfer according to the terms of this Agreement at the moment determined in this Agreement and within the deadline set out in Article 8 (4) of Directive (EU) 2018/2001.
  
- (2) The Dutch State remunerates the Danish State according to the terms laid down in this Agreement.

#### **Article 5 Specifications of Statistical Transfer**

(1) This Agreement covers the Statistical Transfer of a fixed volume of 8 TWh of energy from renewable energy sources.

(2) In addition, the Dutch State is granted the option to receive an additional volume of 8 TWh of energy from renewable energy sources.

(3) The Dutch State shall determine before the end of July 2021 whether it is necessary to use the option to buy (a part of) this additional volume and shall let the Danish State know this before the 1<sup>st</sup> of August 2021.

(4) The Danish State will keep the in paragraph (2) of this article mentioned additional volume reserved for The Dutch State until the 1<sup>st</sup> of August 2021.

(5) After the 1<sup>st</sup> of August 2021 or an earlier date when the Dutch State decides and informs the Danish State in written form, the Danish State is free to sell the reserved volume of energy from renewable energy sources which the Dutch State did not buy to any other party.

(6) When the Danish State, due to Force Majeure or any other reason, is not able to notify the European Commission according to the terms of this Agreement, the Dutch State is not obliged to make the payments as set out in this Agreement.

#### **Article 6 Notification to the European Commission**

(1) The Danish State shall notify the European Commission according to Article 8 of Directive (EU) 2018/2001, in written form, specifying the exact amount of energy from renewable sources to be statistically transferred from the Selling Member State to the Buying Member State as well as the corresponding price paid by the Buying Member State.

(2) The Dutch State shall notify the European Commission according to Article 8 of Directive (EU) 2018/2001, in written form, specifying the exact amount of energy from renewable sources to be statistically transferred from the Selling Member State to the Buying Member State as well as the corresponding price paid by the Buying Member State.

(3) The moment of informing the European Commission is within a month after the Dutch State informs the Danish State as mentioned in Article 5 paragraph (3) about the volume the Dutch State wishes to buy, therefore before the first of September 2021 and within the deadline set out in Article 8 of Directive (EU) 2018/2001.

(4) A copy of the notification shall be sent to the contact point of the other Party.

#### **Article 7 Price**

(1) The price per Renewable energy target amount transferred shall be 12.50 Euros (twelve euro and fifty cents) per MWh.

(2) The total price for the fixed volume of 8 TWh of energy from renewable energy sources is € 100,000,000 (one hundred million Euros).

(3) As set out in article 5 paragraph (3), the Dutch State will inform the Danish State before the 1<sup>st</sup> of August 2021 of the additional volume of energy from renewable sources that it wishes to buy from the Danish State. The price for the additional volume will be determined in accordance with article 7 paragraph (1).

#### **Article 8 Payment(s)**

(1) The Buying Member State shall disburse the due amount as set out in article 7 paragraphs (2) and (3) onto the following account:

FM – BFK 91037:  
Reg.nr. 0216  
Kontonr. 4069 066 682  
IBAN: DK7102164069066682  
BIC/SWIFT: DABADKKK

(2) The payment of the due amount will take place in equal payments spread over 5 (five) years.

(3) The first payment will be made before the end of October 2021.

(4) The following payments will take place every year in October.

#### **Article 9 Responsibilities in case of non-compliance**

(1) Parties assume the responsibility for any failure or refusal to perform their obligations under this Agreement other than for reasons of force majeure according to Article 11 of this Agreement.

(2) In case of non-compliance with any obligation under this Agreement a party is obliged to compensate the injured party fully for any damages incurred due to the non-compliance.

(3) The payment of such damages shall not limit the right to seek further compensation under this Agreement or otherwise.

#### **Article 10 (Civil) Agreement**

(1) This agreement does not constitute a treaty.

#### **Article 11 Force Majeure**

(1) Responsibility for non-performance or delay in performance on the part of any Party to this Agreement with respect to any obligations or any part thereof under this Agreement, other than an obligation to contribute financially, shall be suspended to the extent that such non-performance or delay in performance is caused or occasioned by *Force Majeure*, as defined in this Agreement.

(2) Force Majeure shall be limited to:

a) Natural disasters (earthquakes, landslides, cyclones, floods, fires, lightning, tidal waves, volcanic eruptions and other similar natural events or occurrences);

b) War between sovereign States where the relevant State has not initiated the war under the principles of international law, acts of terrorism, sabotage, rebellion or insurrection;

c) International embargoes against States other than the relevant State, provided, in every case, that the specified event or cause of the above mentioned types and any resulting effects preventing the performance by the relevant State of its obligations, or any part thereof, are beyond the relevant State's control.

(3) If a Party to this Agreement is prevented from carrying out its obligations or any part thereof under this Agreement (other than an obligation to pay money) as a result of Force Majeure, it shall notify in writing the other affected Party to which performance is owed at the earlier convenience. The notice must:

- a) Specify the obligations or part thereof that cannot be performed;
- b) Fully describe the event of Force Majeure;
- c) Estimate the time during which the Force Majeure will continue; and
- d) Specify the measures proposed to be adopted to remedy or abate the Force Majeure.

Following this notice, and for so long as the Force Majeure continues, any obligations or parts thereof which cannot be performed because of the Force Majeure, other than the obligation to pay money, shall be suspended.

#### **Article 12 Dispute Settlement**

(1) The Parties shall take all possible steps in good faith in order to ensure that all disputes and disagreements arising in connection with the implementation of this Agreement, or related to this Agreement are settled by mutual negotiations between the Parties.

(2) The Party raising any dispute shall first serve a written notification of the dispute to the other Party (a "Dispute Notice"). If within 2 weeks of the service of a Dispute Notice, the dispute is not settled or good faith consultations have not taken place, then either Party shall be entitled to refer the dispute for final and binding resolution to arbitration in accordance with paragraph (3) of this article 12.

(3) Any dispute, controversy or claim arising out of or relating exclusively to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules for Expedited Arbitration of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). The seat of arbitration shall be Stockholm, Sweden. This contract shall be governed by the substantive law of Sweden. The language to be used in the arbitral proceedings shall be English. The arbitral tribunal shall be composed of three arbitrators. Both parties may select one arbiter from a predetermined list. The third arbiter may be selected by the Board of de SCC.

#### **Article 13 Confidentiality**

(1) The Parties to this Agreement and their advisors are committed to confidentiality against third parties for all information and objects that are not to be notified to the European Commission according to Article 6 of this Agreement or have not been otherwise published and are conveyed in confidence by any other Party. The receiving Party shall not use any such information or objects for any purpose other than in accordance with the terms of this Agreement. The disclosure of confidential information or objects requires the express written consent by the conveying Party.

(2) The confidentiality clause excludes objects or types of information that

- a) have been developed or are being developed by the receiving Party independently of the information;
- b) are part of the generally accessible state of technology or that reach this status without the fault of the receiving Party;
- c) is publicly known or at any time after that date becomes publicly known (otherwise than by breach of this Agreement by a Party or its authorized representatives);
- d) is disclosed by a Party under applicable law, including by governmental order, decree, regulation or rule issued by any governmental authority or agency, tax authority, court of competent law or arbitration or any other statutory or regulatory body;

- e) is disclosed by both Parties or one Party to a third party in accordance with the written consent of the other Party; or
- f) were already in the possession of the receiving Party at the time of entry into force.

**Article 14 Additions**

All additions and modifications to this Agreement, which will be numbered consecutively, shall be duly signed by both parties prior to affecting any of the changes therein contained. No addition or modification of this Agreement shall be effective or binding on either of the parties hereto unless agreed in writing and duly signed by the parties.

**Article 15 Entry into Force**

This Agreement shall enter into force on upon signature.

*Made out in twofold and signed,*

*The Dutch State, being represented by  
the Minister of Economic Affairs and Climate Policy*

*The Danish State, being represented by  
the Minister of Climate, Energy and Utilities*

*Eric Wiebes*

*Dan Jørgensen*

*Place: THE HAGUE*

*Place: COPENHAGEN*

*Date: 19 JUNE 2020*

*Date: 19 JUNE 2020*