

## **Concerted action Offshore wind energy Deployment (COD): Legal and administrative issues**

by

Concerted action offshore wind energy Deployment (COD)  
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### **Summary**

The Concerted Action Offshore wind energy Deployment (COD) aims to progress offshore wind energy in the EU. COD exchanges information between the national energy agencies or delegated third parties from the participating countries, representing more than 90% of the offshore wind energy potential in the EU. COD provides an overview of the legislation and consents procedures in the related countries. The presentation includes an analysis of current practices.

### **Observations**

- Requirements for acquiring concessions and licenses are basically the same in all countries involved.
- Information applicants have to deliver can create a threshold for intending developers. Investments for gathering of information are weighed against the benefits of receiving exclusive rights. Granting of exclusive rights at an early stage reduces risks to investments at the development stage.

### **Conclusions**

- Each consent regime leads to activity, from receipt of concession or planning applications to deployment. There is too little experience to draw any conclusions if one consent regime performs better than another. Indeed, diversity could be viewed by some as spreading the risk of imperfections in each approach.
- For the authorities, no need, request or tendency to harmonise consent regimes or legal frameworks between nations can be recognised. Harmonisations in itself is not necessary to trigger the development of offshore wind energy activities.
- The United Kingdom, the Netherlands, Denmark and Ireland apply a one stop shop system.
- Some of the countries have pre-selected preferred areas, and some even on an SEA-like basis.

### **Recommendations**

- Competent authorities should specify clearly information and other requirements.
- In order not to delay the implementation of cross-border projects, anticipate the need for a transnational development strategy, aiming to tune and co-ordinate procedures across adjacent jurisdictions. The intention is not necessarily to form one strategy, but to ensure that national differences are not obstructive.
- The exchange of knowledge of regulatory frameworks, consent regimes and procedures based on evaluation and experiences with applying these should continue in the future.
- The definition of streamlining and expediting of procedures should be made more precise, for example via determination of specific, measurable, acceptable, realistic and time related goals at which authorities can aim for, evaluate and improve.
- Perform an SEA in order to identify and assess (cumulative) environmental conflicts and their solutions, and to give better insight in the topics that need detailed consideration in project related EIA's. Authorities could consider doing this on a transnational or international level.

## 1 COD

The Concerted Action Offshore wind energy Deployment (COD) aims to progress offshore wind energy in the European Community by sharing and incorporating good practice in legislation and consents procedures; environmental impact assessment and mitigation, and grid integration. COD exchanges information between the national energy agencies or delegated third parties from Belgium, Denmark, Germany, Ireland, the Netherlands, Poland, Sweden and the United Kingdom; representing more than 90% of the offshore wind energy potential in the EU.

COD interacts with key actors through an Advisory Board. The COD activities are steered by a Ministerial Working group with representatives of the energy departments of the related countries.

### 1.1 Scope of work COD's Legislation analysis

COD provides an overview of the legislation and consents procedures in the related countries. The presentation includes an analysis of current practices. Examples will be given of practical experiences as well as suggestions for improvements.

### 1.2 Approach

The members have gathered all available information on legal and administrative procedures for the deployment of offshore wind energy in the participating countries. These and the state of the art of consenting wind farms in those countries have been analysed. This paper may be seen as a summary of the final results which are published in reference <sup>[iv]</sup>. Apart from the overview and analysis in this report some observations and recommendations have been included.

## 2 Legal and Administrative Issues

An obvious barrier to the realisation of offshore wind is the absence of a legal route by which a facility is granted permission for construction. Where legislation is in place, it may not be ideally suited to a new technology such as offshore wind energy. Driven by an immediate need, procedures in a number of countries have progressed over the last few years, such that the situation now is rather more developed than at the inception of the COD project. There was a perception that harmonised procedures might be desirable, but it has become clear that the benefits or otherwise of harmonisation are outweighed by an imperative to have useable, streamlined and transparent consent procedures.

As projects move further offshore and increasingly begin to occupy EEZ areas, projects will increasingly come to the attention of more than one member state. There are already procedures in place to cover environmental impacts in more than one country, but projects physically located in a number of jurisdictions need to secure separate planning permissions. The extent to which this is a barrier is not yet apparent.

Member States are obliged to reduce the regulatory and legislative framework for authorisation procedures according to EC Directive 2001/77 <sup>[1]</sup>, which says that:

*“Member States or the competent bodies appointed by the Member States shall evaluate the existing legislative and regulatory framework with regard to authorisation procedures or the other procedures laid down in Article 4 of Directive 96/92/EC, which are applicable to production plants for electricity produced from renewable energy sources, with a view to:*

- *reducing the regulatory and non-regulatory barriers to the increase in electricity production from renewable energy sources,*

- *streamlining and expediting procedures at the appropriate administrative level, and*
- *ensuring that the rules are objective, transparent and non-discriminatory, and take fully into account the particularities of the various renewable energy source technologies*

A number of projects have reviewed the status and development of legal procedures [<sup>ii</sup>, <sup>iii</sup>]. For the European Commission, the 2002 SEALEGAL report details international, European and national legislation relevant to planning and constructing offshore wind plants. This was intended in part as a guide for developers in navigating the sometimes complex procedures involved. To illustrate the pace of development, just 3 years later some of the national material has already been superseded by new legislation.

The COD project has reviewed current legal and administrative procedures in represented countries, and commented on the rationale for any recent changes. This can be viewed as an update to the SEALEGAL commentary. In order to be of ongoing relevance, it is essential to keep this information up-to-date. The detail of this review can be found in the COD final report [<sup>iv</sup>].

Having reviewed the status of legislative procedures, COD has gone on to consider what might be learnt from experience to-date. Procedures are largely in their formative stages, while it is still uncertain what the results will be in the long run. Moreover, different administrations will vary in their objectives and the way in which “success” is judged. Thus, without pre-judging the outcomes, COD is seeking to gather together the various observations with a view to gaining some insight into the future development of new procedures and refinement of existing legislation.

Four main themes emerged from a summary and comparison of legal and administrative practices in the eight COD countries:

- The regulatory framework: managing and processing wind farm applications
- Harmonisation of regulatory frameworks
- Streamlining of procedures;
- Pre-selection of areas suitable for offshore wind energy deployment.

## **2.1 Regulatory Framework**

Consent procedures in place tend to reflect existing MS legal frameworks, and for the most part remain subject to ongoing refinement. Changes are driven by a “learning by doing” approach, an urge to improve or streamline existing procedures, or a need to develop a proprietary regime specifically for offshore wind.

Differences between MSs – maritime heritage, regulatory practices and other factors – all contribute to differences in consent regimes. Nonetheless it may be observed that development activity is stimulated where a framework is implemented.

The development path of offshore wind can be thought of as a filtering process of initial interest in offshore wind which spans a wide spectrum of both potential sites and developers, to an smaller core of projects which will eventually be granted consent. All regimes share this general characteristic, but within this there are a number of differences:

- In filtering sites, an option is to pre-select suitable areas.
- In filtering developers, an option is to set minimum criteria for participation.
- In filtering developers with sites, two broad types of mechanism can be defined: a tender system and an open ‘first come first served’ system.

Some factual data outlining the characteristics of regimes in each COD country are presented in the table below.

	Leading principle: tender or first come first served (FCFS)?	Pre-selection of areas?	Is SEA performed?	Assessment financial standing applicants?	Does applicant get exclusive rights to area prior to permits? And when?	Number of new applications:	Issued permits, but not yet built or under construction:	Offshore wind farms built or under construction (MW)
United Kingdom	Tender	Yes	No, but pre-selection based on SEA-like principles	Yes	Yes	Round 2: 11 applications	12 (Round 1) and 12 licences to investigate for Round 2	Blyth (3,8 MW) North Hoyle (60 MW) Scrioby Sands (60 MW)
Denmark	Tender	Yes	No	Yes	Yes, as soon as the winner of the tender is found, exclusive rights to preliminary surveys and depending on the outcome of the EIA-procedure and public hearing - also exclusive rights to the area are granted.	2 new tenders (Horns Rev 200 MW + Rødsand 200 MW)		Vindeby (5 MW) Tuno Knobs (5 MW) Mittelgrunden (40 MW) Horns Rev (160 MW) Frederikshaven (10,6 MW) Samsø (23 MW) Nysted (158 MW)
The Netherlands	FCFS	No	No	No	Yes, as soon as complete application and approved EIA-report is delivered	57 (approx.)	2 (NSW and Q7)	Construction of NSW (108 MW) started, to be completed in 2006.
Ireland	FCFS	No	No	Yes	No	Codling Bank, Bray and Kish Banks (to be expected)	1 (Sure Partners, 520 MW)	Arklow Banks (25 MW)
Belgium	Tender (application for competition)	Yes	No	Yes	Yes	9 (according to MUMM)	Seanergy: Vlakte van de Raan (has all permits, but will not be built). C-Power II: Thornton Bank	
Sweden	FCFS	Yes	No	Yes	No	2: Karskronavind (Vattenfall in Kalmarsund) and Kriegers flak	3 (Lilgrund and Utgrunden and Klasarden)	Bockstigen (2,5 MW) Utgrunden (10 MW) Yttre Stengrund (10 MW)
Germany	FCFS	Not yet, but formal procedure still in progress (finished approx. in 2005)	Yes (due to changes in legislation in June 2005)	No	No	33 (27 North Sea, 6 Baltic Sea)	10 (in EEZ)	0
Poland	Consent regime under construction	No	No	No	No	0	0	0

As stated above, new or deliberately modified consent regimes for offshore wind lead to development activity. There are however some important differences in the stage at which development interest is narrowed down to a manageable, realistic level.

A tender process, whereby developers compete for something which is in limited supply – a suitable site or a power purchase contract – seeks to select suitable development parties at a relatively early stage in the process. A “first come first served” approach allows a large number of developers the opportunity to move further into the process before projects are selected through the planning system.

The former approach means that the consenting authorities see potentially fewer applications from developers who have been pre-filtered variously on criteria including financial standing, technical expertise and experience in offshore development. The latter approach means that developers compete on the speed with which they can deliver an acceptable planning application – developers need to commit much more before being awarded any rights, and potentially this is a strong incentive to separate out serious players. But if accompanied by an attractive market, authorities can be overwhelmed by applications, and the focus tends to be on achieving consent, rather than project building.

In the table below, some characteristics of the tender and the first come first served systems are presented.

<b>Characteristics</b>	<b>Tender</b>	<b>First Come First Served</b>
Number of applicants or intending developers	Relatively small	Relatively large
Number of applicants or intending developers that move further through the consenting process	Relatively small	Relatively large
Selection of applicants, based on financial and technical standing	Early in consenting process	Late in consenting process
Most important ranking criteria	1. Quality of applicant 2. Quality of application	1. Speed of delivery of application 2. Quality of application 3. Quality of applicant
Delivery of detailed project information	Early in consenting process	Late in consenting process

The above commentary is only relevant to regimes which have a market-based mechanism for implementing offshore wind. A number of early projects in Denmark and Sweden were implemented as demonstration projects, and not under open-market conditions.

There are still rather few realised projects developed as a commercial concern, in an open market. In fact this only applies to projects in the UK, which has pioneered commercial developments, learning a great deal from earlier demonstration projects in other countries.

**2.2 Observations**

- Requirements for acquiring concessions or licenses to deploy offshore wind energy are basically the same in all countries involved – determined in large part by European law on environmental assessment. However, it is not the amounts of information applicants have to deliver, but rather what, and when, which can create a threshold for intending developers. In particular, investigative work looks expensive prior to allocation of development rights.
- Gathering of information means making investments, which is weighed against the benefits of receiving some form of exclusive rights. Granting of exclusive rights at an early stage reduces risks to investments at the development stage.

**2.3 Conclusion**

- Each consent regime leads to some activity, whether in receipt of concession or planning applications, or even in actual deployment of offshore wind energy. There is too little experience in the COD-countries to draw any conclusions if one consent regime performs better than another. Indeed, diversity could be viewed by some as spreading the risk of imperfections in each approach.

**2.4 Recommendation**

- Competent authorities should clearly specify information and other requirements.

### 3 Harmonisation of Regulatory Frameworks?

On legislation and consent regimes, the Background Document of the Policy Workshop in Egmond aan Zee (2004)<sup>1</sup> observes that existing procedures are based on national legal frameworks. It goes on to say that harmonisation may not be necessary for EU-wide deployment.

COD also notes that there have been no prominent calls for harmonisation on a European or bilateral basis. However, nations and their energy agencies do exchange information on their consent regimes and their experiences, and find this to be to their advantage.

Looking to the future, offshore wind farms are likely to be larger and further offshore, increasing the prospect of projects spanning two or more jurisdictions. This could lead to a desire for some harmonisation or, at least, co-ordination between respective authorities.

#### 3.1 Conclusion

- For the COD-countries' authorities, no need, request or tendency to harmonise consent regimes or legal frameworks between nations can be recognised. On the other hand, harmonisations in itself is not necessary to trigger the development of offshore wind energy activities.

#### 3.2 Recommendations

- In order not to delay the implementation of cross-border projects, anticipate the need for a transnational development strategy, aiming to tune and co-ordinate procedures across adjacent jurisdictions. The intention is not necessarily to form one strategy, but to ensure that national differences are not obstructive.
- The exchange of knowledge of regulatory frameworks, consent regimes and procedures based on evaluation and experiences with applying these should continue in the future.

### 4 Streamlining of Procedures

As noted earlier and also in the Background Document for the Egmond aan Zee policy workshop, EU MSs are obliged under the Renewables Directive 2001/77<sup>2</sup> to “*evaluate the existing legislative and regulatory framework....with a view to reducing the regulatory and non-regulatory barriers to the increase in electricity production from renewable energy sources, streamlining and expediting procedures....and ensuring that rules are objective, transparent and non-discriminatory....*”

As concluded earlier, existing procedures are based on national legal frameworks, and to-date no tendency to harmonise procedure can be recognised.

Intending developers of offshore wind farms generally require multiple permits. A so-called “one stop shop” offers one main point of contact, the main competent authority involved, which has efficient and effective communications lines with other relevant authorities. The one-stop-shop is mandated to make decisions, informed by opinions from experts on the subjects of, for instance, legal issues, or environmental impacts. This is regarded as “streamlining” procedures and to some extent as a way to expedite these procedures.

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<sup>1</sup> This policy workshop was organised by The Netherlands Ministry of Economic Affairs in co-operation with Concerted Action for Offshore Wind Energy Deployment in Egmond aan Zee (The Netherlands) on 30 September and 1 October 2004. The Background Document is part of the basis for the policy's Declaration.

<sup>2</sup> Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market

The exact interpretation of “streamlining” in the EC Renewables Directive is not yet defined, but a one-stop-shop would appear to qualify, and certainly seems desirable<sup>3</sup>. When evaluating whether MS’s have met this part of the Directive, evaluation criteria could include:

- Reduction in development lead times;
- Consent of high quality projects;
- Reducing the cost of gaining permits;
- Reducing the cost of issuing permits.

It goes beyond the COD project to judge whether member states ensure that the rules within their consent regime are objective, transparent and non-discriminatory.

As recommended earlier, evaluation and comparison of consent regimes and experiences, leads to valuable knowledge that is already being exchanged.

Some of the COD-countries have gained experience with permitting offshore wind, and even altered authorisation procedures based on these experiences. It is premature to evaluate the outcome of these and future actions, and specifically whether there is a reduction of regulatory and non-regulatory barriers to increases in renewable electricity production.

#### **4.1 Conclusion**

- The United Kingdom, the Netherlands, Denmark and Ireland all apply a one stop shop system.

#### **4.2 Observation:**

- The idea to streamline procedures originated from the perception that these procedures pose a bottleneck. Many countries have taken early action in this respect, and the question arises whether, in these cases, consent regimes remain a bottleneck for the (fast) development of offshore wind energy.

#### **4.3 Recommendation:**

- The definition of streamlining and expediting of procedures should be made more precise, for example via determination of specific, measurable, acceptable, realistic and time related goals at which authorities can aim for, evaluate and improve.

## **5 Pre-selection of Suitable Areas**

Some of the COD countries have made a pre-selection of preferred areas for offshore wind energy development. Although only named as such in the UK and newly in Germany, this can be considered an activity that would be akin to a Strategic Environment Assessment (SEA). An SEA gives both authorities and applicants the opportunity to assess cumulative environmental consequences and benefits of a programme for offshore wind, and to identify at an early stage mitigatory action. Furthermore, performing an SEA gives a better indication of what topics need to be addressed in detail in the applicants’ Environmental Impact Assessments (EIA).

The SEA EC-Directive [v] obliges MSs to perform an SEA for the approval of plans or programmes such as offshore wind energy development. It would seem that SEA-type activities for offshore wind have already yielded advantages, and thus it should be in MS interests to

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<sup>3</sup> This was also one of the conclusions of the 2002 3E and EWEA report:  
S. Shaw, M.J. Cremers and G. Palmers (3E and EWEA) *Enabling Offshore Wind Developments*, Brussels, 2002.

comply with this Directive. Also, in line with the earlier recommendation on co-ordination between adjacent jurisdictions for cross-border projects, the same recommendation would apply to co-operation on SEA activities.

### 5.1 Conclusion:

- Some of the countries have pre-selected preferred areas for offshore wind energy development, and some even on an SEA-like basis.

### 5.2 Recommendation:

- Perform an SEA in order to identify and assess (cumulative) environmental conflicts and their solutions, and to give better insight in the topics that need detailed consideration in project related EIA's. Authorities could consider doing this on a transnational or international level.

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## References

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