

*This is an unofficial translation of the political agreement “Udbudsforberedende delaftale II om udbud af energien i Nordsøen”, Copenhagen, 3 October 2022. Please note that the political agreement is a text agreed upon by several Danish political parties and that the agreement is not legally binding.*

## **Tendering procedure preparation sub-agreement II on tendering for the Energy Island in the North Sea**

(Implementation of the Climate Agreement for Energy and Industry etc. of 22 June 2020, supplementary agreement of 4 February 2021 re. ownership and construction of energy islands etc. and supplement to tendering procedure preparation sub-agreement of 1 September 2021 re. a long-term framework for tendering procedures and ownership of the Energy Island in the North Sea.)

Voting agreement between

The Danish Government (the Social Democratic Party) and Denmark's Liberal Party, the Socialist People's Party, the Social-Liberal Party, the Red-Green Alliance, the Conservative People's Party, the Danish People's Party, Liberal Alliance and The Alternative.

In the political supplementary agreement of 4 February 2021, a majority of the Danish Parliament decided on the ownership terms and type of construction for the energy islands in the North Sea and off Bornholm. On 1 September 2021, the same parties to the agreement entered into a tendering procedure preparation sub-agreement with a number of implementation resolutions on the long-term framework for the tendering procedure and ownership of the Energy Island in the North Sea. The present agreement implements parts of these agreements and stipulates the specific framework for preparations of the tendering procedure for construction and joint ownership of the Energy Island in the North Sea with respect to the requirements for private joint owners and the jointly-owned island company, including corporate form, responsible joint ownership, social clauses and sustainability.

### **1. Timetable for the tendering procedure**

The parties to the agreement note that the tendering procedure is expected to be launched in spring 2023. The parties to the agreement note that the Danish Energy Agency does not assess that the final date of realisation for the first phase of the Energy Island in the North Sea will be delayed as a result of the extension of the preparation phase for the tendering procedure, although it is still deemed difficult to realise the first phase of the Energy Island before 2033. The parties to the agreement reaffirm that, as soon as possible, realisation of the project and ongoing optimisation of the timetable, e.g. by running sub-processes simultaneously where deemed appropriate, is a key focus for the parties to the agreement.

### **2. Technical concept and business model**

The parties to the agreement note that the tendering procedure will be organised as a functional tendering procedure that, among other things, stipulates requirements for the technical functionality of the Energy Island as a transmission link so that the island meets the objective to facilitate the use and transmission of a total of 10 GW offshore wind power by no later than the end of 2040, while also securing the necessary interconnectors. There is leeway for tenderers with regard to more specific choice of design, materials, construction principles, etc. that encourage innovation from private parties in the tendering procedure. Realisation of this will depend on continued close and agile market dialogue in future work on preparation of the tendering procedure. The parties to the agreement also note that it will be possible for private parties to propose an innovation area in the tendering procedure for construction and ownership of the Energy Island in the North Sea. However, for legal

public procurement reasons, it has been deemed inappropriate to allow an innovation area to be included in the evaluation model, and it is therefore expected that such an area will not be part of weighting of the tenders received.

On the basis of analyses by the Danish Energy Agency and market dialogue, the parties to the agreement agree on the direction for further work by advisors to the Danish Energy Agency and the Government regarding the framework for the tendering procedure for the Energy Island in the North Sea, including that:

- the direction for the technical concept in future work focuses on a flexible island concept, which makes it possible to combine a fixed reclaimed island and platforms, without restricting possibilities for innovative activities (for example, PtX) and room for manoeuvre on the island within the relevant regulatory and safety framework.
- future work on developing the business model focuses on the public-private company renting out areas for Energinet activities (transmission) to ensure open and free competition on subsequent offshore wind power and related innovation opportunities.
- the selected direction aims to ensure the greatest possible freedom to develop the green innovation potentials in the Energy Island. This will be ensured by supporting direct cohesion between erection of the wind turbines and innovative activities. This in turn will ensure the greatest possible free and open competition for offshore wind power and innovation, full exploitation of the island's capacity, limited risk for the state, and solutions that are cost-effective and create value for society and investors in all of the sub-elements of the project.

The parties to the agreement note that the proposed model supports rapid realisation of the overall project within the framework of the political agreements.

### **3. Corporate form of the jointly owned island company**

The parties to the agreement note that the market players have unambiguously expressed a desire to structure the future island company as a partnership (P/S). In order to establish an attractive invitation to tender for construction and joint ownership of the Energy Island in the North Sea (*Energio Nordsoen*), the parties to the agreement have agreed to reverse the decision of 1 September 2021 to establish a limited company, and instead organise the Energy Island company as a partnership (P/S). The Danish state will continue to own at least 50.1% of the company's shares, *see previous agreements*.

### **4. Requirements for the private joint owner and establishment of the Energy Island**

The parties to the agreement note that, initially, the Energy Island is expected to be defined as critical infrastructure. The parties to the agreement stress that the project is expected to be screened under the Investment Screening Act (*investeringscreeningsloven*), and that the control tools available in current public procurement law are to apply. The requirements for the private joint owner will apply throughout the lifetime of the island company, i.e. in connection with the tendering procedure, in the construction phase, at the time of establishment of the joint ownership, and in the operating phase. The requirements entail that the Danish state will have a strong degree of ongoing control of *who* owns the Energy Island. Furthermore, under specified conditions in the tender documents and within the framework of tendering and EU law, the Danish state will have the option to refuse potential joint owners in the tendering phase and subsequently. The parties to the agreement note that more stringent control of the private party, as well as the fact that construction of the Energy Island in the North Sea and joint ownership of critical Danish infrastructure are up for tender at the same time, mean that certain requirements in the approved model for ensuring responsible joint ownership are new and untested in practice, and this may be perceived as a tightened requirement by market players.

The parties to the agreement want the tendering procedure for construction and joint ownership of the Energy Island to include social clauses for the construction phase based on the highest possible Danish standards from

comparable large construction projects. Furthermore, they note that there may be a need for specific measures in relation to the construction works at sea, including through clauses on compliance with the international conventions in the area.

The parties to the agreement focus on sustainability in connection with realisation of the Energy Island in the North Sea. The contractual requirements in the tender documents should, as far as possible, ensure that construction of the Energy Island in the North Sea and the associated larger components are established in full compliance with the framework of the EU taxonomy for sustainable investment, including requirements on sustainable materials and the possibility for stricter, project-specific sustainability requirements. This should also apply for ECG and sustainability policies in the operating phase. The parties to the agreement note that a specific framework for how the EU Taxonomy Regulation is to be implemented has yet to be set, and that specific implementation of the provisions in the agreement on sustainability will be determined in connection with the preparation work for the tendering procedure and discussed with the market, including the effects of the requirements on the timetable and on the competitiveness of the bid price.

The overall sustainability model will in practice be new and, notwithstanding ongoing market involvement, may be perceived by market players as stricter requirements.

## **5. Process moving forward**

Prior to commencement of the tendering procedure for construction and joint ownership of the Energy Island in the North Sea, the parties to the agreement will make their final decision on continuation of the project on the basis of a status report on ongoing work on interconnectors, possibilities regarding absorption of Energinet's net costs by the successful offshore wind projects, as well as specific and updated profitability calculations for the Energy Island.

Apart from the choice of the corporate form of the jointly owned the island company that the present agreement has reversed to a partner company (P/S), the parties to the agreement recognise that the previous agreements still apply. Final decisions about innovative activities on the Energy Island, for example, including any innovation areas, will be made by the jointly owned island company and according to the relevant regulations as well as safety, environmental and supply frameworks, taking into account the arm's length principle for the state.

The parties to the agreement note that implementation of the energy islands is to be in accordance with EU law, including rules on state aid, unbundling and tendering procedures. The tender specifications for future offshore wind power in relation to the Energy Island in the North Sea will be decided in later agreements following a possible final decision on implementation of tendering for the island and joint ownership.

This resolution text is a voting agreement. The parties to the agreement commit to voting in favour of the bills, additional financing and funding authority arising from the contents of the agreement. The parties to the agreement note that this supplementary agreement is within the financial framework of the Climate Agreement for Energy and Industry of 22 June 2020. The parties to the agreement will be unencumbered when the necessary legislation has been adopted and the agreed funding has been appropriated.