



ENERGY | NEWSLETTER

May 2021

Court hearing of the Council of State on the consequences of the “Nevele” judgment for Dutch wind farms

On 6 April 2021 the Administrative Jurisdiction Division of the Dutch Council of State held a court hearing in four wind turbine cases regarding the consequences of the judgment of the Court of Justice of the EU of 25 June 2020. In this so-called “Nevele” judgment, the Court of Justice ordered the Flemish government to conduct an extensive environmental impact assessment into the general environmental standards that apply to wind turbines and wind farms.

In the four Dutch wind turbine cases, plaintiffs have argued before the Administrative Jurisdiction Division of the Council of State that the decisions in their (Dutch) cases cannot be upheld as a result of the “Nevele” judgment. During the court hearing on 6 April, the central question was whether the “Nevele” judgment implies that certain parts of the Dutch Activities Decree and the Activities Regulation concerning wind turbines should have been preceded by an extensive environmental impact assessment (a video recording of the hearing is available [here](#), in Dutch).

The Administrative Jurisdiction Division of the Council of State may decide to submit preliminary questions regarding the Dutch situation to the Court of Justice of the EU. The decision of the Council of state is expected early summer. Sander Simonetti and Pieter Leopold of HVG Law published an [annotation](#) to the “Nevele” judgment in the Netherlands Energy Law Journal (*Nederlands Tijdschrift voor Energierecht (NTE)*), in which the potential implications of the judgment are set out.

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Uncertainty about the Energy Act

The Energy Act is a proposed new Act to replace the current 1998 Electricity Act and Gas Act and to prepare Dutch energy legislation for the energy transition. In addition, the Energy Act implements the fourth Electricity Directive (Directive (EU) 2019/944) and the Electricity Regulation (Regulation (EU) 2019/943) from the Clean Energy Package into Dutch legislation.

The current Electricity Act 1998 and Gas Act are the result of the implementation of European directives aimed at liberalization and the internal market, with focus on reliability, affordability and safety. The proposed new legislation sets new goals: the realization of low-carbon and climate-neutral energy supply and the integration of the energy system in spatial planning.

The proposal for the Energy Act was published on 17 December 2020 as part of a public consultation. This consultation ran until 11 February 2021. On 11 March 2021, the Dutch Advisory Board on Regulatory Burden (ATR) advised against submitting the Act to Parliament.

The ATR questions the substantiation of the proposal, in particular because certain obligations will be further elaborated in lower legislation, which is not yet available, and can therefore not yet be properly assessed.

In the written answers to parliamentary questions published on 22 April 2021, outgoing Minister Van 't Wout of Economic Affairs and Climate indicates that the input from the consultation on the Energy Act is currently being processed and the Act will be submitted to the Advisory Division of the Council of State later this year.

Link to the documents:

[Internet consultation Energy Act](#)
[ATR letter Energy Act 11 March 2021](#)
[Parliamentary Papers 32 813 No. 682 Cabinet approach to Climate Policy, Report written consultation 22 April 2021](#)

Collection right for residual heat from data centers and industry in the Collective Heat Supply Act

The proposal for a Collective Heat Supply Act (*Wet Collectieve Warmtevoorziening* or *WCW*) stipulates that a residual heat producer that discharges such heat must make the heat available to a heat company upon request and free of charge (see Article 6 paragraph 1 of the Bill). This obligation concerns residual heat (unavoidable thermal energy) that is generated as a by-product in the operational management of a company and which, if not fed into a heat network, would end up unused in air or water.

According to the Explanatory Memorandum to the proposed new Act, it will often concern residual heat that is discharged into the water, but it may also concern a heat discharge into the air via, for example, a cooling tower or chimney. Examples of residual heat are surplus heat from data centers or industry. With the introduction of a “heat collection right” the minister aims to create an incentive that stimulates the use of residual heat and strengthens the negotiating position of heat companies. This will give heat companies access to residual heat that would otherwise be discharged.

The heat company must pay the producer’s decoupling costs, consisting of the actual costs of the heat producer to make the residual heat available to the heat company.

The WCW public consultation was completed in August 2020. The results of this consultation were published on 15 December 2020. In the written answers to parliamentary questions published on 22 April 2021, outgoing Minister Van 't Wout of Economic Affairs and Climate indicates that he aims to submit the Act to the Council of State for advice this year, so that the proposal can be presented to Parliament by the end of 2021.

Link to the documents:

[Internet consultation Collective Heat Supply Act](#)
[Parliamentary Papers 30196 No. 743, Parliament letter 15 December 2020](#)
[Parliamentary Papers 32 813 No. 682 Cabinet approach to Climate Policy, Report written consultation 22 April 2021](#)



Second round SDE++ incentive scheme opens in September 2021; first round oversubscribed

Minister Van 't Wout of Economic Affairs and Climate announced that the second round of the new SDE++ incentive scheme will be opened from 21 September to 14 October 2021. The opening phases and phase limits are shown in the table on the next page. As in the first opening in 2020, a total budget of 5 billion is available. The Minister has also indicated that new categories will be added for certain advanced renewable fuels for transport and CO₂ capture and use in greenhouse horticulture.

Opening round SDE++ 2021 Phase limits EUR/ton CO ₂	
21 September, 9:00 a.m.	60
27 September, 5:00 p.m.	80
4 October, 5:00 p.m.	115
11 October, 5:00 p.m. to 14 Oktober, 5:00 p.m.	300

The underlying regulations have not yet been published, but interested parties can already prepare applications based on the information provided by Minister Van 't Wout in a [letter](#) to Parliament of 22 February 2021 and on the [website](#) of the Netherlands Enterprise Agency.

At the end of 2020, the new incentive scheme for the production of renewable energy, referred to as the SDE++, was opened for the first time. This new scheme stimulates both the production of renewable energy and the reduction of CO₂ emissions. In total 4,112 applications were submitted for the scheme amounting to a total of 6.2 billion euros. Meaning that the available budget of 5 billion was amply exceeded.

Solar PV is the largest category with a claim on almost half of the available budget amounting to a total claim of 2.36 billion euros. The new Carbon Capture & Storage (CCS) category makes a claim that is slightly lower at a total amount of 2.14 billion euros. The final results have not yet been announced. See also the [letter](#) to Parliament 14 January 2021.

Rankings in Chambers and The Legal 500

The HVG Law Energy & Utilities team has once again been ranked in both Chambers Europe 2021 and The Legal 500.

Chambers writes that clients describe the HVG Law Energy & Utilities team as *“accurate and on the ball”*, with *“extensive experience in renewable energy.”*

Recent projects HVG Law

- HVG Law was selected by EIT InnoEnergy as legal adviser for the development of a standardized service contract for the delivery of energy efficiency services. This Efficiency-as-a-Service (EaaS) contract can cover services in the field of heating, cooling or compressed air using various technologies. The contact person at EIT InnoEnergy is Arno Nijrolder, Business Analyst Sustainable Energy, Kennispoort 6th floor, John F. Kennedylaan 2, 5612 AB Eindhoven, T +31 631 679 117, www.innoenergy.com.
- HVG Law advised project developer Deddens on the sale of Energy Park Pottendijk to Royal Dutch Shell. A share purchase agreement was concluded in December 2020. Shell will undertake the further development and realisation of the 110 MW combined wind/solar project. HVG Law, in cooperation with Pondera Consult, advised Deddens on the project development, including the successful permit procedure at the Council of State, and on the transaction with Shell. Click [here](#) for a description of the project by Shell (in Dutch).
- HVG Law successfully represented energy grid operator Westland Infra in legal proceedings against the Authority for Consumers and Markets (ACM). The Trade and industry Appeals Tribunal confirmed an earlier judgement by the Rotterdam District Court quashing the administrative fine that the ACM had imposed on Westland Infra in respect of metering activities. The judgment can be found [here](#).

Publications HVG Law

Click on the cover for a link to the article of Sander Simonetti and Pieter Leopold on the potential implications of the ‘Nevele’ judgement (in Dutch).



About us

HVG Law is a trusted partner in the energy sector. We are an independent quality-driven *full-service* law firm with over 180 lawyers and civil-law notaries in the Netherlands and Belgium, a unique partnership with EY Tax and a global international network (EY Law) with 2,500+ lawyers in over 75 jurisdictions worldwide.

The HVG Law Energy & Utilities Team is closely involved in projects, transactions and proceedings in the energy sector, covering all areas of law. Our experts have broad experience in regulation, M&A, development, structuring and financing of renewable energy projects, including solar, wind, biogas and geothermal.

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This article is current as of the date of its publication and does not necessarily reflect the present state of the law or relevant regulation.

