

Brussels, 19 December 2023  
Case No: 91396  
Document No: 1331624  
Decision No 194/23/COL

Ministry of Trade, Industry and Fisheries  
PO Box 8090 Dep  
0032 Oslo  
Norway

**Subject: Phase I of Sørilige Nordsjø II**

**1 Summary**

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the planned aid for the construction and operation of a new offshore wind farm located in the area to be developed in *Phase I of Sørilige Nordsjø II* (“the measure”), ESA considers that it constitutes State aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections<sup>1</sup> as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c).

**2 Procedure**

- (2) The Norwegian authorities notified the measure on 11 December 2023.<sup>2</sup>
- (3) The Norwegian authorities consider that the measure should be declared compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c) in conjunction with the Guidelines on State aid for climate, environmental protection and energy (“CEEAG”).<sup>3</sup> The Norwegian authorities also consider that the measure can be declared compatible on the basis of Article 61(3)(c) of the EEA Agreement as it fulfils the relevant conditions in the European Commission’s (“the Commission”) Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (“TCTF”).<sup>4</sup>
- (4) By way of introduction, ESA notes that certain policy instruments and legislative provisions referred to in CEEAG and TCTF may not be incorporated into the EEA Agreement. With a view to ensuring uniform application of State aid provisions and

---

<sup>1</sup> Reference is made to Article 4(3) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

<sup>2</sup> The cover letter and notification forms are filed as Document Nos 1422666, 1422648, 1422650, and 1422644. The notification memorandum with 12 Appendixes are filed as Document Nos 1422652, 1422670, 1422674, 1422672, 1422668, 1422660, 1422662, 1422664, 1422642, 1422646, 1422658, 1422654, and 1422656. In the below footnotes, the notification memorandum is referred to as “the notification”.

<sup>3</sup> The CEEAG was published in the OJ L 277, 27.10.2022, p. 218.

<sup>4</sup> Communication from the Commission on the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3). TCTF replaces the Temporary Crisis Framework adopted on 28 October 2022.

equal conditions of competition throughout the EEA, ESA will however apply the same points of reference as the Commission when assessing the compatibility of aid measures with the functioning of the EEA Agreement. The fact that legislation and policy measures which are not incorporated into the EEA Agreement are referred to by ESA in the context of its compatibility assessment does not imply that EEA EFTA States are legally obliged to comply with such measures.

### 3 Background

#### 3.1 Objectives for mitigating climate change through the reduction of greenhouse gas emissions

- (5) The European Union is committed to transforming Europe into a highly energy-efficient, carbon-neutral economy. To this end, the European Climate Law entered into force on 29 July 2021.<sup>5</sup> It includes a legal objective for the EU to reach climate neutrality by 2050, and a target of at least 55% reductions in the net greenhouse gas emissions compared with 1990 levels by 2030.
- (6) As reflected in EEA Joint Committee Decision No 269/2019<sup>6</sup>, Norway agreed in 2019 to achieve, by 2030, at least a 40% reduction in greenhouse gas emissions compared with 1990-levels.<sup>7</sup> Following the Joint Committee Decision, Norway is subject to a similar legal framework as the EU Member States, including the Effort Sharing Regulation,<sup>8</sup> the Regulation on Land Use Change and Forestry<sup>9</sup> and the EU Emission Trading System. As part of its *Fit for 55 package*,<sup>10</sup> the EU has however revised these acts to reflect the target of at least 55% reduction.<sup>11</sup>
- (7) Norway is also party to the Paris Agreement, which entered into force in 2016. Prior to the UN Climate Change Conference (COP27) in Egypt, Norway submitted a revised target to reduce emissions by at least 55% compared with 1990 levels by 2030.<sup>12</sup> These new commitments have not yet been reflected in the EEA Agreement.

---

<sup>5</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (“European Climate Law”), OJ L 243, 9.7.2021, pp. 1–17.

<sup>6</sup> See the [EEA Joint Committee Decision No 269/2019 of 25 October 2019](#) and the [declarations made in conjunction with this decision](#), OJ L 11, 12.1.2023, p. 38-45. See also the [press release of the European Commission of 25 October 2019](#).

<sup>7</sup> Notification, p. 7.

<sup>8</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of the European Union of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (“Effort Sharing Regulation”), OJ L 156, 19.6.2018, pp. 26–42.

<sup>9</sup> Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU, OJ L 156, 19.6.2018, pp. 1–25.

<sup>10</sup> An overview of the adoption of the fit for 55-legislation is available here: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/delivering-european-green-deal/fit-55-delivering-proposals\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/delivering-european-green-deal/fit-55-delivering-proposals_en).

<sup>11</sup> These amendments, reflecting more stringent targets for the EU Member States, are currently not incorporated into the EEA Agreement.

<sup>12</sup> Notification, p. 7. See also the [press release from the Norwegian Government of 3 November 2022](#).

- (8) In the Norwegian Climate Change Act, Norway has endorsed the objective of further reducing its greenhouse gas emissions by 2050. According to Section 4 of this Act, Norway aims to reduce its greenhouse gas emissions by 90-95% by 2050 compared with 1990 levels.<sup>13</sup>

### 3.2 Offshore wind generation as a means for reducing greenhouse gas emissions

- (9) On 16 February 2022, the European Parliament adopted a resolution on a European strategy for offshore renewable energy.<sup>14</sup> The Resolution stresses that while offshore renewable energy can play a crucial role in meeting the emissions reductions targets, maritime spaces and coasts must be managed sustainably. Furthermore, the Resolution reiterates that the EU is a technological leader which could experience an economic boost by supporting clean energy production.
- (10) On 1 February 2023, the Commission launched its Green Deal Industrial Plan to enhance the competitiveness of Europe's net-zero industry and support the transition to climate neutrality.<sup>15</sup> The plan is based on the four pillars of (i) a predictable and simplified regulatory environment; (ii) faster access to funding; (iii) enhancing skills; and (iv) open trade for resilient supply chains. The Green Deal Industrial Plan was taken into account when drafting TCTF and the pending amendments to the General Block Exemption Regulation ("GBER").<sup>16</sup>
- (11) On the basis that more should be done in the current market situation to support the European wind power sector, the Commission additionally issued a communication on the European Wind Power Action Plan on 24 October 2023.<sup>17</sup> Section 5 of this communication identifies 15 actions to be taken with a view to ensure (i) acceleration of deployment through increased predictability and faster permitting; (ii) improved auction design; (iii) access to finance; (iv) ensuring a fair and competitive international environment; (v) skills; and (vi) industry engagement and Member States commitments.
- (12) Similarly to the EU, the Norwegian authorities consider increased offshore wind generation to constitute an important means for reducing greenhouse gas emissions and mitigating climate change.<sup>18</sup> In the White Paper *Norwegian Climate*

---

<sup>13</sup> Notification, p. 7.

<sup>14</sup> European Parliament resolution of 16 February 2022 on a European strategy for offshore renewable energy, OJ C 342, 6.9.2022, pp. 66–77.

<sup>15</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – A Green Deal Industrial Plan for the Net-Zero Age, COM(2023) 62, 1.2.2023. See also the [press release of 1 February 2023](#).

<sup>16</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), referred to at point 1j of Annex XV to the EEA Agreement, as amended. At the time of writing, Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 167, 30.6.2023, pp. 1–90, had not yet been incorporated into the EEA Agreement.

<sup>17</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – European Wind Power Action Plan, COM(2023) 669, 24.10.2023. The Communication is available [here](#).

<sup>18</sup> Notification, p. 4.

*policy*, submitted to the Norwegian Parliament in June 2007, offshore wind energy was identified as an important technology for sustainable energy production.<sup>19</sup>

- (13) In 2010, the Norwegian Water Resources and Energy Directorate (“the NVE”) issued a report identifying 15 possible areas for offshore wind farms.<sup>20</sup> Eleven of these were deemed suitable for bottom-fixed installations, whilst four were considered suitable for floating structures. Subsequently, the NVE also submitted a strategic impact assessment of the proposed areas.<sup>21</sup>
- (14) In 2017, the NVE recommended to the Norwegian Government that two areas, *Utsira Nord*, and either *Sørlige Nordsjø I* or *Sørlige Nordsjø II*, should be opened for offshore electricity production.<sup>22</sup>
- (15) In July 2019, the Norwegian Government issued a public consultation concerning a proposal to open the areas of *Sandskallen-Sørøya Nord*, *Sørlige Nordsjø II* and *Utsira Nord* for offshore electricity production. While the responses were mainly positive, significant objections were raised regarding *Sandskallen-Sørøya Nord*.<sup>23</sup> In light of this, the Government decided not to open this area for electricity production.<sup>24</sup>

### **3.3 The current Norwegian plans to increase offshore wind generation**

- (16) The Norwegian authorities currently aim at awarding sea areas suitable for installing offshore wind farms with a total generating capacity of 30 GW by 2040. By way of comparison, 30 GW corresponds to approximately 75% of the current capacity in the Norwegian power system. The Norwegian authorities estimate that the wind farms will cover a total area of between 4 000 and 8 600 km<sup>2</sup>.<sup>25</sup>
- (17) In June 2020, the areas *Utsira Nord* and *Sørlige Nordsjø II* were opened for offshore energy production by royal decree. *Sørlige Nordsjø II* is considered suitable for bottom-fixed foundations, whilst *Utsira Nord* is only suitable for floating technology.<sup>26</sup>
- (18) The Norwegian Government has decided to divide the development of offshore electricity production in *Sørlige Nordsjø II* into several phases. The measure assessed in this decision concerns exclusively State aid in support of the wind farm that is to be developed in the first phase (“Phase I”) of *Sørlige Nordsjø II*. The measure, including the delineation of the area and the infrastructure covered, is described in further detail in Section 4 below.<sup>27</sup>
- (19) The Norwegian authorities have underlined that the Norwegian plans for establishing additional generation capacity for offshore wind energy will contribute to increasing the amount of renewable energy available in the Norwegian and regional energy system. This clean energy can be utilised as part of the green shift,

---

<sup>19</sup> St.meld. nr. 34 (2006–2007), *Norsk klimapolitikk*.

<sup>20</sup> *Havvind – Forslag til utredningsområder (2010)*. The report is available [here](#).

<sup>21</sup> Notification, p. 5.

<sup>22</sup> Notification, p. 5.

<sup>23</sup> The documents from the public consultation are available [here](#).

<sup>24</sup> Notification, p. 5.

<sup>25</sup> Notification, p. 4.

<sup>26</sup> Notification, p.5.

<sup>27</sup> Notification, p.6.

including by replacing emitting technologies with green ones. As such, the Norwegian authorities consider increasing the availability of renewable electricity as paramount for establishing new green industry.<sup>28</sup>

- (20) While hydropower has traditionally been the predominant energy source for electricity generation in Norway, the bulk of the hydropower potential is already developed. As a result, the Norwegian authorities consider that the prospects for increasing renewable generation capacity through reliance on hydropower is more limited than the potential for offshore wind electricity generation. In this regard, the NVE estimates that hydropower production in Norway will increase by roughly 8 TWh towards 2040. By comparison, the wind farm to be developed in Phase I of Sørilige Nordsjø II is estimated to produce roughly 7 TWh per year. As was explained in Section 3.2, Phase I of Sørilige Nordsjø II is only the first of two areas in Norway recently opened for offshore wind electricity generation. Due to the length of the Norwegian coastline, many more areas are available.<sup>29</sup>
- (21) In respect of the alternative of establishing land-based wind farms, the Norwegian authorities have explained that land is a scarce resource, and that the topic of land-based wind farms has proven highly controversial in Norway. In light of this, the NVE's projections indicates that the production from onshore wind will increase by 6 TWh towards 2040.<sup>30</sup>

### **3.4 The regulatory framework in Norway**

#### *3.4.1 The Norwegian Offshore Energy Act*

- (22) As set forth in its Section 1-2, the Norwegian Offshore Energy Act<sup>31</sup> ("the Offshore Energy Act" or "the Act") concerns renewable energy production and conversion and transmission of electrical energy offshore. The Act applies to the Norwegian sea territory outside the baselines and on the continental shelf.<sup>32</sup>
- (23) Pursuant to Section 2-2 of the Act, the King in Council is competent to decide that an area falling under Section 1-2 shall be opened with a view to award a license for establishing facilities to produce electricity under Section 3-1 of the Act. Before such a decision can be made, it is however required that impact assessments addressing the environmental and societal effects of renewable energy production in the concerned area have been conducted.
- (24) According to Section 2-3 of the Offshore Energy Act, areas which have been opened pursuant to Section 2-2 shall as a main rule be awarded on the basis of a competition. The entity that is awarded the area will be granted a time-limited right to conduct a project-specific impact assessment and apply for a license to establish facilities for the production of electricity under Section 3-1.
- (25) In line with this, it follows from Section 3-1 of the Act that facilities for the production of electricity cannot be built, owned or operated without a license from the competent Ministry. Equally, it follows from Section 3-2 of the Act that a license is required to construct, own or operate infrastructure for the conversion or

---

<sup>28</sup> Notification, pp. 35-36.

<sup>29</sup> Notification, p. 42.

<sup>30</sup> Notification, p. 42.

<sup>31</sup> LOV-2010-06-04-21.

<sup>32</sup> Notification, p. 5.

transmission of energy. Pursuant to Section 3-4 of the Act, the competent Ministry may furthermore make the granting of licenses conditional on considerations defined in this Section.

- (26) Sections 3-1 and 3-2 of the Offshore Energy Act also stipulates requirements to submit impact assessments and detailed plans. Further procedural rules concerning the impact assessments are set forth in Chapter 4 of the Act.

*3.4.2 The rules on third-party access under the Norwegian Energy Act and the intention to establish similar rights concerning offshore infrastructures*

- (27) Pursuant to Section 1-1 of the Norwegian Energy Act<sup>33</sup> (“the Energy Act” or “the Act”), the Energy Act regulates the production, conversion, transmission, trade, distribution and utilisation of energy. Section 3-4 of the Act establishes provisions on third-party access to electricity networks. According to the Norwegian authorities, these provisions fulfil the requirements under Article 32 of Directive 2009/72/EC<sup>34</sup> and Article 6 of Directive EU/2019/944<sup>35, 36</sup>
- (28) It is however stipulated in Section 1-1 of the Energy Act that it does not apply to Norwegian sea territory. In view of this, the Norwegian authorities consider imposing a condition on the beneficiary, on the basis of Section 3-4 of the Offshore Energy Act, to provide third parties access to its network (connection) that falls outside the scope of the Energy Act. In the notification, the Norwegian authorities have confirmed that they will adhere to applicable EEA rules governing third party access.<sup>37</sup>
- (29) In any event, and in order to ensure legal foreseeability, the Norwegian authorities intend to introduce legislation establishing a general legal basis for third-party access to offshore electricity networks currently falling outside the scope of the Energy Act.<sup>38</sup> As already mentioned, the Norwegian authorities have confirmed in the notification that they will adhere to applicable EEA rules governing third party access.

### **3.5 Other measures in place to reduce greenhouse gas emissions**

- (30) In the State aid notification, the Norwegian authorities have submitted background information on other measures in place in Norway to reduce greenhouse gas emissions.<sup>39</sup> The below presentation is strictly limited to summarising this information as it was presented by the Norwegian authorities in the State aid notification.

---

<sup>33</sup> LOV-1990-06-29-50.

<sup>34</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211, 14.8.2009, pp. 55–93, referred to at point 22 of Annex IV to the EEA Agreement.

<sup>35</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast), OJ L 158, 14.6.2019, pp. 125–199. Directive (EU) 2019/944 is not yet incorporated into the EEA Agreement.

<sup>36</sup> Notification, p. 16.

<sup>37</sup> Notification, p. 16.

<sup>38</sup> Notification, p. 16.

<sup>39</sup> Notification, pp. 41-42.



- (31) The Norwegian authorities have explained that the polluter pays-principle is embedded in the Norwegian Pollution Act<sup>40</sup> and that Norway is part of the Emissions Trading System (“the ETS”) established under the ETS Directive.<sup>41</sup> Successive Norwegian Governments have furthermore worked towards increasing the costs of emitting CO<sub>2</sub> by increasing the Norwegian CO<sub>2</sub> tax.<sup>42</sup> In addition, various Norwegian aid grantors are granting aid with a view to reducing greenhouse gas emissions. The aided projects have included aid in respect of the capture, transport and storage of CO<sub>2</sub>.<sup>43</sup>
- (32) In 2019, the Norwegian Government tasked several public bodies with making a comprehensive study on how Norway can reduce its CO<sub>2</sub> emissions by 50% by 2030 in sectors falling outside the scope of the ETS.<sup>44</sup> Based on this study, the Norwegian Government has introduced additional measures in the transport sector and entered into an agreement with Norwegian farmers to cut CO<sub>2</sub> emissions from farming. The report has additionally formed the basis for a White Paper to the Norwegian Parliament addressing how Norway should achieve its climate goals.<sup>45</sup>
- (33) In 2022, the Norwegian Government presented a climate status and climate plan together with the State budget for 2023.<sup>46</sup> In this plan, the Government proposed a range of measures to reduce greenhouse gas emissions. With respect to the non-ETS sectors, the most important measures entail increasing the CO<sub>2</sub> tax, requiring a higher degree of biofuels in respect of road traffic, and introducing a differential tax on waste incineration. In addition, the Norwegian Government has introduced a new tax on SF<sub>6</sub> gases, increased the funding to be distributed by the State-owned entity *ENOVA SF* to projects pursuing reductions in the emissions of greenhouse gases, and proposed various other measures.
- (34) While other policy measures, such as in particular the ETS and the national rules on CO<sub>2</sub> taxation, have been introduced to impose costs on the emission of greenhouse gases, the Norwegian authorities have underlined that these measures are not sufficient to ensure the necessary investments in renewable energy production. This is evident from the calculations illustrating the level of State aid that would be required to make the project profitable, as set out in Section 4.4.4 below.<sup>47</sup>

---

<sup>40</sup> LOV-1981-03-13-6.

<sup>41</sup> The ETS Directive, referred to in footnote (7) above.

<sup>42</sup> Further information on the Norwegian CO<sub>2</sub> tax is available [here](#).

<sup>43</sup> ESA Decision No 093/20/COL of 17 July 2020 on the Full-Scale CCS Project. The decision is available [here](#).

<sup>44</sup> The report, Klimakur 2030 – Tiltak og virkemidler mot 2030, is available [here](#).

<sup>45</sup> The White Paper, Meld. St. 13 (2020–2021), is available [here](#).

<sup>46</sup> Regjeringas klimastatus og -plan, særskilt vedlegg til Prop. 1 S (2022–2023). The plan is available [here](#). A second climate status and climate plan was published on 6 October 2023.

<sup>47</sup> Notification, pp. 42-43.

## 4 Description of the measure

### 4.1 Objective

- (35) The measure ensures the production of emissions-free energy.<sup>48</sup> In this regard, the Norwegian authorities have underlined their ambitious plans of awarding sea areas suitable for installing offshore wind farms with a total generating capacity of 30 GW by 2040. This will contribute to the furtherance of the applicable targets on emissions reductions in Norway.<sup>49</sup>
- (36) In addition, the measure aims at facilitating innovation and technological and industrial development. According to the Norwegian authorities, it is necessary to facilitate innovation and technological development to reach the ambitious goals on offshore wind energy production shared by Norway and the European Union. As regards industrial development, the Norwegian authorities have underlined that there is a need to rapidly increase capacity in the supply chain to meet the same goals.<sup>50</sup>

### 4.2 The area to be developed

#### 4.2.1 Location

- (37) The area Sørilige Nordsjø II is located in the Norwegian part of the North Sea, south-west of Kristiansand. As was explained in Section 3.3 above, the Norwegian authorities plan for this area to be developed for offshore electricity production in several stages. The measure concerns exclusively that part of Sørilige Nordsjø II which is to be developed in the first phase (Phase I).

---

<sup>48</sup> In this respect, ESA notes that when all the inputs of production are accounted for, electricity generation through wind farms is not in fact emissions free. This is so because the construction and maintenance of wind farms is normally associated with emissions from the fabrication of pre-made parts, as well as from the construction and maintenance works themselves. In addition, the transport services used to transport parts, materials, or staff to the location of the wind farm are normally associated with greenhouse gas emissions.

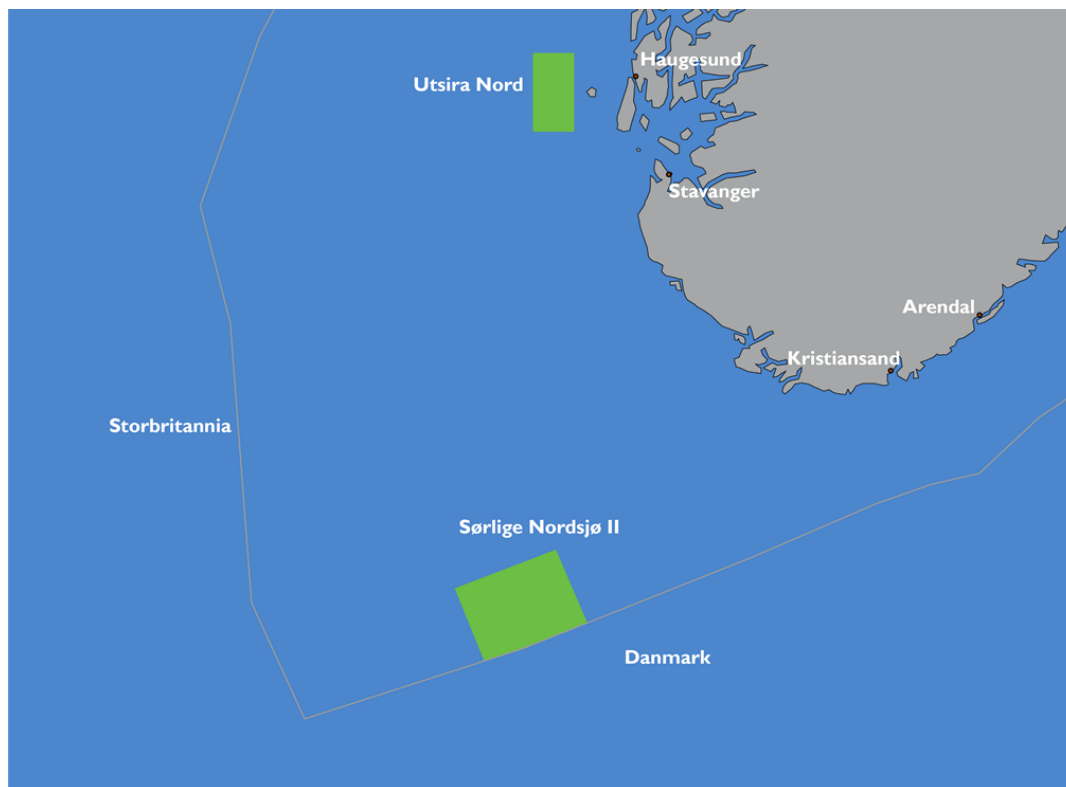
<sup>49</sup> Notification, pp. 35-36.

<sup>50</sup> Notification, pp. 35-36.



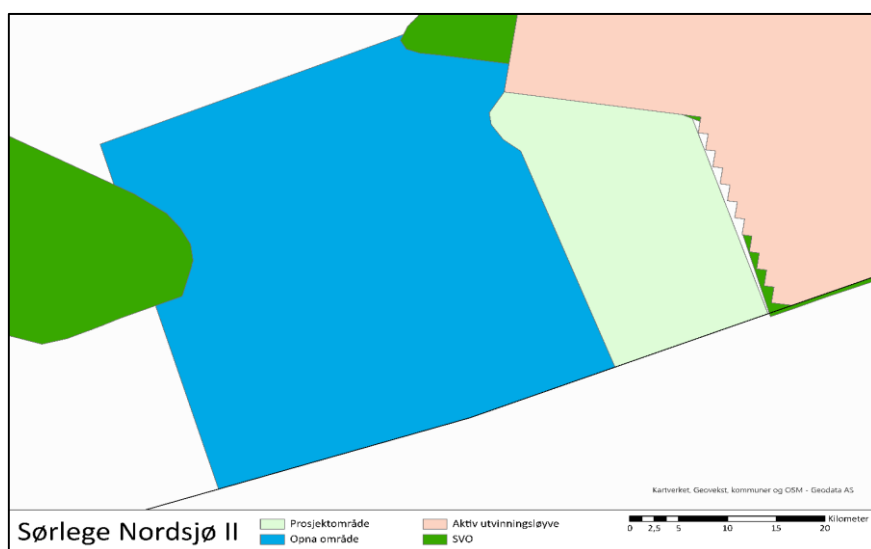
(38) The area Sørliche Nordsjø II is presented in *Figure 1* below.<sup>51</sup>

*Figure 1 – Sørliche Nordsjø II*



(39) Only the eastern part of Sørliche Nordsjø II will be included in Phase I. This is illustrated in *Figure 2* below where the project area (“prosjektområde”) reserved for Phase I is highlighted in the lighter shade of green.<sup>52</sup>

*Figure 2 – The part of Sørliche Nordsjø II that is to be developed in Phase I.*



<sup>51</sup> Figure 1 is based on the figure presented at page 11 of the notification.

<sup>52</sup> Figure 2 is based on the figure presented at page 12 of the notification.

#### 4.2.2 Technical specifications

- (40) The technical specifications for Sørilige Nordsjø II are set out in *Table 1* below. The data presented include the entire area of Sørilige Nordsjø II and are not limited to that part which is to be developed in Phase I.<sup>53</sup>

*Table 1 – Technical specifications for Sørilige Nordsjø II*

Total area (km <sup>2</sup> )	2 589
Distance to shore (km)	140
Sea depth (m)	53-70
Average sea depth (m)	60
Average wind speed (m/s)	10.7

- (41) The Norwegian authorities have underlined that offshore wind farms in Europe are normally located closer to the coastline and in more shallow waters. According to the Norwegian authorities, the average distance to shore for European wind farms is 44 kilometres, whereas the average depth of areas with bottom-fixed installations is 36 meters. By way of comparison, the *Thor* wind farm in Denmark is located approximately 22 kilometres from shore at a depth of 21-35 meters. The *Seagreen* wind farm that is currently under construction outside the coast of Scotland is located 27 kilometres offshore at a maximum depth of 59 meters.<sup>54</sup>
- (42) In light of these factors, the Norwegian authorities expect that the costs of development will be higher than those relating to other, and more typical, European wind farms located closer to shore and/or in more shallow waters. In this regard, the Norwegian authorities have also pointed out that the distance from Phase I of Sørilige Nordsjø II to the most likely point for connecting the new wind farm to the transmission network in mainland Norway, is approximately 200 kilometres.<sup>55</sup>

### 4.3 The infrastructure covered

#### 4.3.1 Overview of the infrastructure elements

- (43) The infrastructure comprised by the measure include the wind farm to be developed and its (radial) grid connection to the transmission network in mainland Norway. This infrastructure includes the following components:<sup>56</sup>
- the wind farm itself, including wind turbines, foundations and inter-array cabling;
  - the offshore substation in the High Voltage Direct Current (“HVDC”)-connection;
  - the HVDC grid connection from the offshore substation, including the cable; and

<sup>53</sup> *Table 1* is based on the table presented at page 14 of the notification.

<sup>54</sup> Notification, p. 13.

<sup>55</sup> Notification, p. 13.

<sup>56</sup> Notification, p. 14.

- the onshore converter station to the point of connection in the first onshore substation owned by *Statnett* (the Norwegian transmission system operator).
- (44) The infrastructure components are explained in further detail in Sections 4.3.2 and 4.3.3 below.
- (45) Statnett currently considers it most likely that the point for connecting the wind farm to the onshore transmission network will be located in *Kvinesdal*. However, Statnett will make a final decision on the connection point at a later stage. To this end, the beneficiary will have to apply for a specific connection point within six months of having been awarded the area.<sup>57</sup>
- (46) In addition to the above components, the beneficiary will have to cover a proportionate share of the costs of making the necessary upgrades to the mainland transmission network to allow for the connection of the wind farm.<sup>58</sup> As per normal practice in Norway, this financial contribution will be calculated pursuant to the rules on investment contribution fees in the Regulation on economic and technical reporting and tariffs.<sup>59</sup>

#### *4.3.2 Further information on the wind farm to be developed in Phase I of Sørilige Nordsjø II*

- (47) Due to a technical limitation of 1400 MW in the Nordic transmission network, the cable from the wind farm to the point of connection to the mainland transmission network cannot have a capacity exceeding 1400 MW. Consequently, no more than 1400 MW of electricity can be fed into the Norwegian onshore transmission network from the wind farm at any time.<sup>60</sup>
- (48) The Norwegian authorities however consider it beneficial to allow for the wind farm to have a maximum generating capacity slightly exceeding the transmission capacity of 1400 MW. In this regard, the Norwegian authorities have firstly pointed out that the estimated capacity factor for the wind farm will be around 68%. In most periods, therefore, the actual level of electricity generated will be substantially lower than the maximum generating capacity. Given that the capacity factor remains equal or similar, a wind farm with a higher maximum generating capacity will produce a level of output closer to the transmission capacity of 1400 MW in periods of lower windspeeds.<sup>61</sup>
- (49) Secondly, the Norwegian authorities have explained that establishing a wind farm with a theoretical capacity slightly exceeding 1400 MW would allow for a comparatively higher level of production in periods where parts of the wind farm is unproductive due to scheduled or unscheduled maintenance.<sup>62</sup>
- (50) Thirdly, the Norwegian authorities have indicated that if the capacity of the wind farm is made somewhat higher than 1400 MW, this could make it possible to

---

<sup>57</sup> Notification, p. 14.

<sup>58</sup> Notification, p. 14.

<sup>59</sup> FOR-2023-05-08-671.

<sup>60</sup> Notification, p. 15.

<sup>61</sup> Notification, p. 15.

<sup>62</sup> Notification, p. 15.

establish connections to offshore consumers at a later stage. Such consumers could include, for example, the petroleum industry.<sup>63</sup>

- (51) In view of these considerations, the Norwegian authorities have decided that the wind farm to be developed in Phase I of Sørlige Nordsjø II shall have an installed capacity of between 1400 and 1500 MW.<sup>64</sup>

#### 4.3.3 Further information on the connection between the wind farm and the mainland transmission network

- (52) Due to the significant distance to shore, the connecting cable must be a direct current (“DC”) cable as opposed to a cable for alternating current (“AC”). The offshore wind farm will therefore be connected to the mainland transmission network by way of a HVDC-connection. The Norwegian authorities expect the costs of this connection to amount to a significant part of the construction costs of the project.<sup>65</sup>
- (53) According to the Norwegian authorities, an HVDC-connection typically consists of an AC/DC converter station at each of the endpoints and a DC-cable in between. The converter stations convert alternating current (AC) into direct current (DC), and vice versa. The conversion at the onshore converter station is necessary as the Norwegian electricity network relies on AC-technology.<sup>66</sup>
- (54) Due to the sea depth, the station to be located at the offshore end of the HVDC-connection (“the HVDC substation”) must be built on a platform. In the same way as the extensive foundations that are required for the wind turbines at such depths, this will represent an additional cost compared with wind farms in more shallow areas. The wind turbines in Phase I of Sørlige Nordsjø II will be connected to the offshore HVDC substation by inter-array cabling.<sup>67</sup>
- (55) As regards the onshore converter station, this will as already mentioned convert the direct current (DC) in the HVDC-connection into alternating current (AC). Following this conversion, the electricity will be transmitted into the mainland transmission network through a connection between the onshore converter station and the designated point of connection to this network.<sup>68</sup>
- (56) The various elements of the connection between the wind farm in Phase I of Sørlige Nordsjø II and the mainland transmission network is illustrated in *Figure 3* below. The point of connection to the Norwegian mainland transmission network is referred to as the *Statnett substation* in this figure.<sup>69</sup>

---

<sup>63</sup> Notification, p. 15-16.

<sup>64</sup> Notification, pp. 6 and 16.

<sup>65</sup> Notification, p. 14.

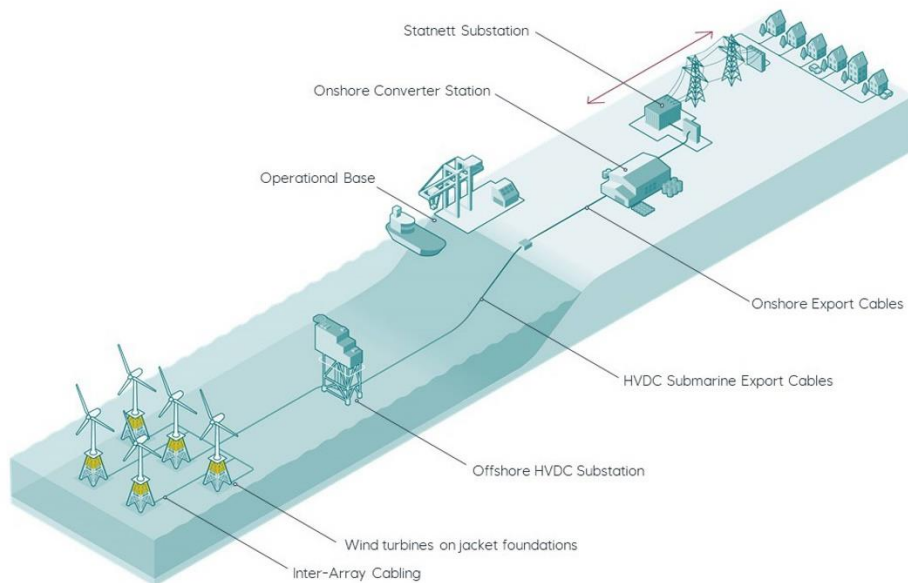
<sup>66</sup> Notification, pp. 14-15.

<sup>67</sup> Notification, p. 15.

<sup>68</sup> Notification, p. 15.

<sup>69</sup> Notification, p. 15. Figure 3 is based on the figure presented at page 15 of the notification.

Figure 3 – Illustration of the connection between the wind farm and the mainland transmission network



#### 4.4 State aid is a precondition for the realisation of the wind farm

##### 4.4.1 The expected investment and operating costs

- (57) The Norwegian authorities have submitted extensive calculations substantiating that the construction and operation of the wind farm will not take place without the aid. These calculations are summarized in Sections 4.4.1 to 4.4.4.
- (58) The Norwegian authorities estimate that the total investment costs will amount to approximately NOK 63 billion in 2030. This estimate comprises the investment costs concerning the wind farm and the connecting infrastructure to the point of connection to the mainland electricity network. The costs arising from necessary reinforcements of the mainland electricity network are however excluded.<sup>70</sup>
- (59) As for the operation and maintenance costs, these have been estimated to NOK 1.1 billion annually. In the same way as for the investment costs, this estimate comprises costs relating to the wind farm and the connecting infrastructure to the point of connection to the mainland electricity network.<sup>71</sup>
- (60) The above cost estimates are based on a report from the NVE. The Norwegian authorities have however updated the estimates to take account of subsequent market developments. Where data have been available on the cost increase experienced for a specific component, these data have been used to update the cost estimate for the component in question. Where such specific data have not been available, the Norwegian authorities have adjusted the cost estimates by applying the Consumer Price Index (“CPI”) of Statistics Norway.<sup>72</sup>

##### 4.4.2 The levelized cost of electricity production

- (61) Based on the above cost estimates, the levelized cost of electricity (“the LCOE”) for the wind farm to be developed in Phase I of Sørilige Nordsjø II will amount to NOK

<sup>70</sup> Notification, pp. 17-18.

<sup>71</sup> Notification, p. 18.

<sup>72</sup> Notification, pp. 17-20 and Appendixes 1 and 2 to the notification.

0.83/kWh. This estimate is based on a required rate of return of 6%. Such a rate is in line with the assumptions applied by the NVE in respect of offshore wind investments, and the real rate of return of 4-8% applied by the Danish authorities in relation to the Thor Offshore wind farm. Equally, a rate of return in the range between 4-8% is consistent with the available information on the rate of return required by a large Norwegian undertaking making investments in the renewable energy sector in Norway and abroad.<sup>73</sup>

#### 4.4.3 Future electricity prices

- (62) As has already been identified, the wind farm to be developed in Phase I of Sørlige Nordsjø II will be connected to the mainland electricity network in Norway. Based on the current delimitation of electricity price areas in Norway, the connection will be to the electricity price area for Southern Norway (NO2).<sup>74</sup>
- (63) With a view to forecast future electricity prices, the Norwegian authorities have considered projections from the NVE and the consulting firm Thema Consulting. Both sets of projections are from 2023.<sup>75</sup>

Table 2 – Price forecasts for the electricity price area for Southern Norway (NO2)

NOK/kWh	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045
NVE	0.82	0.82	0.82	0.82	0.82	0.57	0.57	0.57	0.57	0.57	0.49	0.49	0.49	0.49	0.49	0.49
Thema	1.09	1.07	1.01	0.89	0.86	0.80	0.77	0.74	0.70	0.67	0.64	0.64	0.64	0.64	0.64	0.64

- (64) The price forecasts set out in Table 2 concern average annual prices. Due to its production profile, the wind farm is however expected to obtain slightly lower prices on average than the yearly average prices. This is so because the production at the wind farm will be dependent on the prevailing wind conditions. When the wind conditions allow for production at full capacity in Phase I of Sørlige Nordsjø II, other wind farms will likely experience similar conditions and also produce at full capacity. The result of this will be a simultaneous influx of wind generated electricity on the grid, which is likely to reduce prices.<sup>76</sup>
- (65) Taking this so-called cannibalisation effect of wind farms into account, the NVE has estimated what electricity prices will be obtained from future offshore wind generation in the sea south of Norway. These projections are set out in Table 3 below, and comprise electricity sold in the Norwegian electricity price areas NO1, NO2 and NO5.<sup>77</sup>

Table 3 – Projections of electricity prices obtained from offshore wind generation

Year	Obtained electricity price, NOK/kWh	Share of the average electricity price
2030	0.80	98%
2035	0.55	94%
2040	0.44	89%

<sup>73</sup> Notification, pp. 36-37 with reference to Appendix 7 to the notification.

<sup>74</sup> Notification, p. 37.

<sup>75</sup> Notification, p. 37. Table 2 is based on the table presented at page 37 of the notification.

<sup>76</sup> Notification, p. 38.

<sup>77</sup> Notification, p. 38. Table 3 is based on the table presented at pages 38-39 of the notification.

#### 4.4.4 The net present value of the project

- (66) The above estimates on investment and operating costs, the LCOE, and future electricity prices, suggest that the project will not be profitable without State aid.
- (67) On this basis, the Norwegian authorities have presented net present value calculations indicating the need for State aid. These calculations are presented in *Table 4* below.<sup>78</sup> The costs of decommissioning the wind farm are not included in the calculations.
- (68) *Table 4* includes three different scenarios. The base-case scenario is calculated on the basis of the updated cost estimates from the NVE and the price projections from the NVE. The reason that the Norwegian authorities have used the price projections from the NVE, is that this is considered to ensure the greatest level of consistency on the costs and income sides of the calculation.<sup>79</sup>
- (69) In addition, *Table 4* includes respectively a pessimistic and an optimistic scenario to illustrate how different assumptions would affect the calculations. For the reasons set out in point (61) above, all three scenarios are based on a required rate of return of 6%.<sup>80</sup>
- (70) As already indicated, the calculations in *Table 4* represent the level of aid required to render the net present value of the project positive. Therefore, the positive figure of NOK 17 billion in the base-case scenario indicates that State aid with a net present value of NOK 17 billion would be required. Conversely, the negative figure of NOK -15 billion in the most optimistic scenario indicates the level of profitability under this scenario in the absence of State aid.
- (71) For the sake of completeness, the Norwegian authorities have explained that if the price projections from Thema consulting had been applied on the income side of the calculations, the base-case scenario would still have been negative. Following such an approach, the base-case scenario would have indicated a need for aid of NOK 8.6 billion.<sup>81</sup>

---

<sup>78</sup> Notification, pp. 38-40. *Table 4* is based on the table presented at page 40 of the notification.

<sup>79</sup> Notification, p. 38.

<sup>80</sup> Notification, p. 38.

<sup>81</sup> Notification, footnote 118, and Appendix 10 to the notification.



Table 4 – Calculations of the level of State aid required to make the project profitable

<b>Base case scenario</b>		
<b>17 BNOK</b>		
<b>Pessimistic scenarios</b>		
<i>High investment costs (+30% CAPEX)</i>	<i>Low electricity prices (NVE's low scenario)</i>	<i>Low electricity prices (NVE's low scenario) and high investment costs (+30% CAPEX)</i>
<b>31 BNOK</b>	<b>35 BNOK</b>	<b>49 BNOK</b>
<b>Optimistic scenarios</b>		
<i>Low investment costs (-30% CAPEX)</i>	<i>High electricity prices (NVE's high scenario)</i>	<i>High electricity prices (NVE's high scenario) and low investment costs (-30% CAPEX)</i>
<b>4 BNOK</b>	<b>-1 BNOK</b>	<b>-15 BNOK</b>

#### 4.5 Overview of the procedure for granting aid and carrying out the project

- (72) The procedure for granting aid under the measure must be understood against the background of the regime established by the Norwegian Offshore Energy Act, described in Section 3.4.1 above. As was identified in this Section, it follows from Section 2-2 of this Act that the King in Council is competent to decide that an area shall be opened with a view to award a license for establishing facilities to produce electricity under Section 3-1 of the Act. Furthermore, as reiterated in Section 3.3 above, the areas of Utsira Nord and Sørilige Nordsjø II were opened for offshore energy production by royal decree in June 2020.
- (73) The Norwegian authorities have explained that the process for awarding the right to develop an area opened for offshore wind electricity production, on the basis of a competition pursuant to Section 2-3 of the Offshore Energy Act, begins when the competent Ministry publishes the competition documents. With respect to the area to be developed in Phase I of Sørilige Nordsjø II, this publication took place on 29 March 2023.<sup>82</sup>
- (74) In line with Section 2-3 of the Offshore Energy Act, the competition documents for Phase I of Sørilige Nordsjø II stipulate that entities which are interested in participating in the competition will have to qualify in a pre-qualification process. This process shall determine what entities will be invited to submit bids in the subsequent competition, which will take the form of an auction.<sup>83</sup>
- (75) The winner of the auction will obtain a time-limited exclusive right to the area, and the right to apply for a license for offshore electricity production pursuant to Section 3-1 of the Offshore Energy Act. Before applying for such a license, the auction

<sup>82</sup> Notification, p. 20.

<sup>83</sup> Notification, p. 20.

winner will however be responsible for undertaking a full Environmental Impact Assessment (“EIA”) of the project.<sup>84</sup>

- (76) The Norwegian authorities will require that the application for the license, including the EIA, is submitted to the competent Ministry within two years from the point in time when the winner of the auction is announced. The license will be granted for a period of up to 30 years, which may be extended upon application.<sup>85</sup>
- (77) Prior to the commencement of the construction of the wind farm, the license holder must additionally submit and receive approval of a detailed plan for construction and operation. It has not yet been finally decided at which stage in the process this plan will have to be submitted.<sup>86</sup>
- (78) The Norwegian authorities will require for the construction to be completed, and the wind farm to be put into operation, within deadlines that will be specified in conjunction with granting the license. These deadlines may be extended upon application.<sup>87</sup>

## 4.6 Form of aid

### 4.6.1 The two-way contract for difference

#### 4.6.1.1 Concept

- (79) The aid instrument is a so-called two-way contract for difference (“CfD”). It will remain in force for 15 years calculated from the time when the majority of the wind farm has been put into operation.<sup>88</sup>
- (80) A two-way CfD is structured around the parameters *reference price* and *strike price*. Conceptually speaking, such contracts entails that the State agrees to pay the beneficiary the difference in periods where the strike price exceeds the reference price. Conversely, the beneficiary undertakes to pay the State the difference in those periods where the strike price is lower than the reference price. As a result, the beneficiary’s interest in obtaining sufficient certainty about future revenue streams to make it rational to commit to the project is protected. At the same time, it is ensured that the excess revenue in periods where the reference price exceeds the strike price accrues to the State.<sup>89</sup>
- (81) The concept of a two-way CfD is illustrated in *Figure 4* below.<sup>90</sup>

---

<sup>84</sup> Notification, p. 20.

<sup>85</sup> Notification, p. 20.

<sup>86</sup> Notification, p. 20.

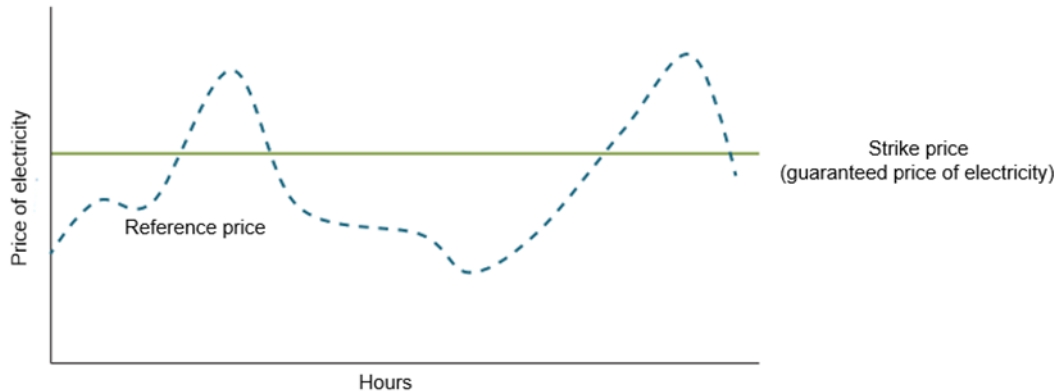
<sup>87</sup> Notification, p. 20.

<sup>88</sup> Notification, pp. 27, 32 and 33.

<sup>89</sup> Notification, pp. 26-27.

<sup>90</sup> Figure 4 is based on the figure presented at page 26 of the notification.

Figure 4 – Illustration of the two-way Contract for Difference



#### 4.6.1.2 The reference price

- (82) The Norwegian authorities have decided that the reference prices shall be calculated as a monthly wind-weighted average. The aim of this is to reflect the market prices actually obtained by the beneficiary thereby exposing it to price signals.<sup>91</sup>
- (83) The reference prices will be calculated based on the weighted average of all relevant spot prices and the production from Phase I of Sørilige Nordsjø II in each month. The spot prices used in the calculations shall be the hourly day-ahead spot prices in that price area which the offshore wind farm is connected to.<sup>92</sup>
- (84) The Norwegian authorities will use the following formula to calculate the reference prices:<sup>93</sup>

$$r_i = \frac{\sum_{t=1}^n s_t * x_t}{\sum_{t=1}^n x_t}$$

where:

- $r_i$  = the reference price in a specific month
- $s_t$  = the spot price in each hour/settlement period
- $x_t$  = the production in each hour/settlement period
- $t$  = hour/settlement period
- $n$  = the number of hours/settlement periods each month

- (85) However, all hours with negative spot prices will be excluded from the calculation. Therefore, if  $s_t < 0$  then  $x_t$  must be set to zero.<sup>94</sup>

#### 4.6.1.3 Strike price

- (86) As will be described in further detail in Section 4.6.2 below, the beneficiary will be determined based on a competitive procedure. As part of that procedure, the bidders in the final auction are required to offer an electricity price, expressed in

<sup>91</sup> Notification, p. 29.

<sup>92</sup> Notification, p. 29. Based on the current delimitation of electricity price areas, the wind farm will be connected to price area NO2.

<sup>93</sup> Notification, p. 29.

<sup>94</sup> Notification, p. 29.

NOK per kWh (the *bid price*). This bid price will amount to the strike price in the CfD.<sup>95</sup>

#### 4.6.1.4 Minimum price

- (87) In order to disincentivise production at times when electricity prices are negative or below the marginal costs of production, the CfD sets a minimum price of NOK 0.05/kWh. For those periods where electricity prices are below this level, the beneficiary will not be entitled to payments.<sup>96</sup>
- (88) According to the Norwegian authorities, the figure of NOK 0.05/kWh is based on the approximate marginal costs of production for the Thor offshore wind farm, as stated by the Danish authorities. This level equals NOK 0.05/kWh when adjusted for inflation and currency. However, the Norwegian authorities have underlined that it is not possible to determine accurately what the marginal costs of production will be, as this will depend on factors such as technology choices and physical conditions.<sup>97</sup>

#### 4.6.1.5 Obligation of production

- (89) The beneficiary will be obliged to produce electricity when the spot price is higher than or equal to the minimum price (NOK 0.05/kWh). This obligation does however not preclude the beneficiary from adjusting the level of production based on safety considerations, including to perform maintenance. Equally, the beneficiary is not prohibited from participating in intra-day and balancing markets, nor from adhering to orders from the system operator to down-regulate production.<sup>98</sup>

#### 4.6.1.6 The level of production covered by the CfD

- (90) As was explained in further detail in Section 4.3.2 above, no more than 1400 MW of electricity can be transferred to the onshore converter station due to the mainland transmission network being limited to this capacity. On this basis, the CfD will only cover electricity production up to this limit of 1400 MW.<sup>99</sup> The CfD furthermore specifies that, throughout the support period, all electricity produced must be fed into the (onshore) connection point, unless the Norwegian authorities have consented otherwise.<sup>100</sup>

#### 4.6.1.7 Symmetrical caps on payments

- (91) The Norwegian authorities have decided to include symmetrical caps on the net payments made under the CfD. The cap on payments from the State entails that such payments will be stopped once a budget evaluation threshold of NOK 23 billion is reached. Conversely, the net payments from the beneficiary to the State under the CfD are also capped at NOK 23 billion. The objective of the caps is to ensure predictability both from the perspective of the Norwegian State and from the perspective of the beneficiary.<sup>101</sup>

---

<sup>95</sup> Notification, p. 28.

<sup>96</sup> Notification, pp. 28-29.

<sup>97</sup> Notification, pp. 28-29.

<sup>98</sup> Notification, p. 28.

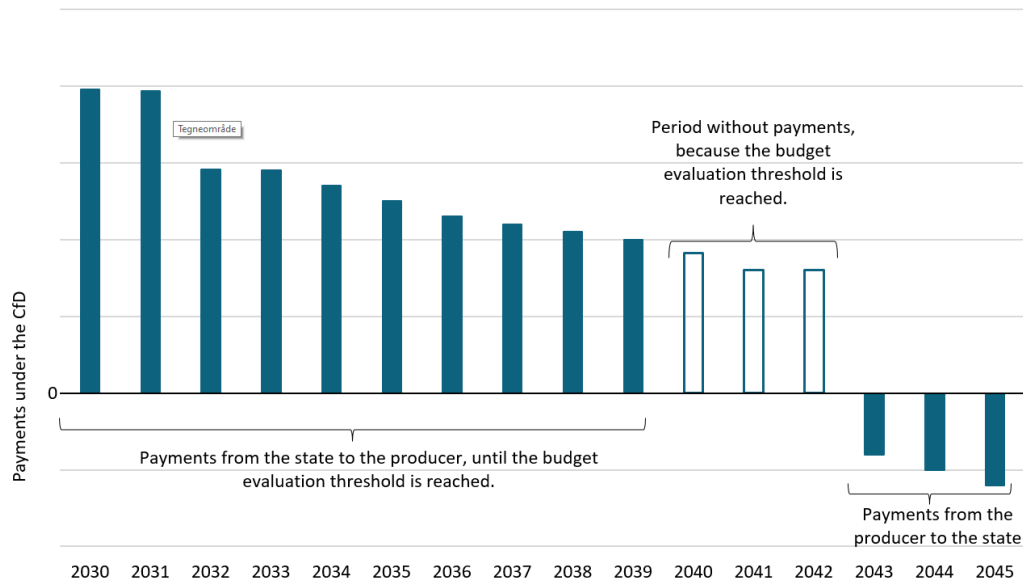
<sup>99</sup> Point 46 of the notification.

<sup>100</sup> Notification, p. 16.

<sup>101</sup> Notification, p.31.

(92) In a scenario where one of the symmetrical caps has been reached, payments going in the other direction will not be discontinued. Each of the caps will therefore be assessed and applied in isolation. This is illustrated in *Figure 5* below.<sup>102</sup>

*Figure 5 – Illustration of calculations against the cap on payments from the State*



#### 4.6.1.8 Correction mechanism

(93) While the marginal costs of production are as previously mentioned unknown, it cannot be completely excluded that, in certain situations, the relevant spot price for electricity may be higher than the minimum price of NOK 0.05/kWh, but insufficient to cover the beneficiary's marginal costs of production and payment to the State under the CfD. In such circumstances, the terms of the CfD would result in the beneficiary producing at a loss.<sup>103</sup>

(94) In order to prevent the bidders from having to factor in such possible loss-making when calculating their bid prices, the Norwegian authorities envision incorporating a correction mechanism in the measure. This mechanism will apply when the below conditions occur:

- the reference price results in payments from the beneficiary to the State;
- the spot price is above NOK 0.05/kWh; and
- the net sum of the spot price and the payment to the State per kWh is lower than NOK 0.05/kWh.<sup>104</sup>

(95) Where applicable, the correction mechanism will ensure that the beneficiary only pays the difference between the spot price and NOK 0.05/kWh (the minimum price).<sup>105</sup>

<sup>102</sup> Notification, pp.31-32. Figure 5 is based on the figure presented at page 32 of the notification.

<sup>103</sup> Notification, p. 30.

<sup>104</sup> Notification, pp. 30-31.

<sup>105</sup> Notification, p. 31.

#### 4.6.2 The competitive procedure

##### 4.6.2.1 The pre-qualification phase

- (96) As was identified in Section 4.5 above, the competitive procedure used to determine the beneficiary and aid amount will consist of two phases. The first phase is the *pre-qualification phase*. In this phase, interested parties must qualify to participate in the competition. The second phase is the *competition phase*, wherein the pre-qualified parties submit their bids.
- (97) The Norwegian authorities first published a proposal for pre-qualification criteria on 6 December 2022. The deadline to provide comments to this public consultation was set to four weeks. A total of 130 responses were received. According to the Norwegian authorities, these were generally positive.<sup>106</sup>
- (98) In the competition documents that were subsequently published on 29 March 2023, the pre-qualification criteria concerned respectively: (i) execution capability (60%); (ii) sustainability (20%); and (iii) positive ripple effects (20%). Depending on the number of applications received, the applicants would be scored against the pre-qualification criteria to decide who would be invited to submit bids in the competition phase.<sup>107</sup>
- (99) The Norwegian authorities have since decided to revise the pre-qualification criteria. Following this amendment, it is only the criterion of execution capability that will continue to amount to a pre-qualification criterion, and which the applicants may be scored against depending on the number of applications. The criteria pertaining to sustainability and positive ripple effects have instead been included as minimum contractual requirements. The applicants will however be required to document in their application that these contractual minimum requirements are complied with.<sup>108</sup>
- (100) The remaining pre-qualification criterion of execution capability is designed to ensure that all bidders in the auction have satisfactory technical expertise, experience and financial strength, and that they meet the relevant requirements pertaining to health, safety and the environment. The pre-qualification criterion of execution capability, and the sub-criteria that will be applied in the assessment against this criterion, are summarised in *Table 5* below:<sup>109</sup>

---

<sup>106</sup> Notification, p. 22.

<sup>107</sup> Notification, p. 22.

<sup>108</sup> Notification, p. 22.

<sup>109</sup> Notification, p. 22. Table 5 is based on the table presented at page 22 of the notification.

Table 5 – Overview of the pre-qualification criterion and its sub-criteria

Main criterion	Sub-criteria
Execution capability	Financial strength Financial plan Integrity Competence of key personnel Experience (reference projects) Health, safety and environment Project concept Project plan (including risk assessment)

- (101) In order to qualify for the subsequent competition phase, each applicant must demonstrate that it fulfils the sub-criteria to the requisite degree. Applicants who fail to fulfil any of the sub-criteria in this way will not be invited to participate in the competition.<sup>110</sup>
- (102) Provided that more than six applications are submitted, the Norwegian authorities will rank the applicants based on their execution capabilities. For this purpose, the Norwegian authorities will evaluate to what extent the applicants fulfil the sub-criteria. The applicants will be scored on a scale from one to ten.<sup>111</sup>
- (103) Based on this ranking, the Norwegian authorities would select between six and eight applicants to participate in the auction. This limitation in the number of bidders is meant to incentivise each applicant to develop the project in accordance with the sub-criteria ensuring execution capability, and to ensure that the eventual winner is competent and committed to carrying out the project.<sup>112</sup>
- (104) In the event that less than six applicants pre-qualify, however, the Norwegian authorities will consider whether to proceed with the auction. In this regard, the Norwegian authorities have confirmed that they will not proceed unless effective competition is ensured. Therefore, at least two entities will have to pre-qualify in order for the Norwegian authorities to consider proceeding with the auction.<sup>113</sup>

#### 4.6.2.2 The competition phase

- (105) As was touched upon in Section 4.6.1.3 above, one single criterion will be employed to determine the award of the CfD in the competition phase. This criterion is the bid price expressed in NOK per kWh. Accordingly, the CfD will be awarded to that bidder offering the lowest price per kWh.<sup>114</sup>

<sup>110</sup> Notification, pp. 22-23.

<sup>111</sup> Notification, p. 23.

<sup>112</sup> Notification, p. 23.

<sup>113</sup> Notification, p. 23.

<sup>114</sup> Notification, p. 25.



- (106) Based on an assessment of the advice received from their external consultants, and the feedback provided during the public consultation, the Norwegian authorities have decided that the auction shall be based on open bids (a so-called “English auction”). The auction will proceed until no new bids are offered.<sup>115</sup>
- (107) The Norwegian authorities have included a mechanism for determining the contract award in the event that two or more bidders offer the same final bid price. In such a scenario, the award will be made on the basis of a lottery between the concerned bidders.<sup>116</sup>

#### 4.6.2.3 Indexation

- (108) The strike price, minimum price and symmetrical caps on payments will be indexed according to the CPI from Statistics Norway. The indexation will cover the period from the first quarter of 2023 to the first quarter when the wind farm is fully operational. The CPI for a quarter will be set to the average for the three months included in the quarter in question.<sup>117</sup>

### 4.7 Duration

- (109) The Norwegian authorities have confirmed that the aid under the measure will be granted no later than 31 December 2025. To this end, the Norwegian authorities have indicated that the auction for the CfD, on the basis of which the aid will be granted, will be held in February/March 2024.<sup>118</sup>
- (110) As set out in point (79) above, the CfD will remain in force for 15 years calculated from the time when the majority of the wind farm has been put into operation. For the sake of completeness, however, the Norwegian authorities have explained that the license(s) allowing for the construction and operation of the offshore wind farm will be granted for up to 30 years, as regulated by the Offshore Energy Act. In line with this, it will be stipulated in the CfD that the wind farm must be constructed for a technical lifetime of at least 30 years.<sup>119</sup>

### 4.8 Beneficiary

- (111) The beneficiary will be the winner of the competition described in Section 4.6.2.2 above.

### 4.9 Granting authority and administration

- (112) The Ministry of Petroleum and Energy will be responsible for the administration of the measure, including the granting of aid. This Ministry may however authorise other entities to undertake defined tasks.<sup>120</sup>

### 4.10 Financing and budget

- (113) As identified in Section 4.6.1.7 above, a cap of NOK 23 billion has been set to limit the financial exposure of the Norwegian State over the 15-year duration of the CfD. The Norwegian authorities have confirmed that this cap amounts to a genuine

---

<sup>115</sup> Notification, pp. 24-25.

<sup>116</sup> Notification, p. 25.

<sup>117</sup> Notification, p. 32 and footnote 95.

<sup>118</sup> Notification, p. 57.

<sup>119</sup> Notification, pp. 32-33.

<sup>120</sup> Notification, p. 32. The name of the Ministry will change to the Ministry of Energy with effect from 1. January 2024.

budget which is non-negotiable. Therefore, according to the terms of the measure that has been notified to ESA, the Norwegian authorities cannot exceed the pre-defined cap. The measure will be financed from the State budget.<sup>121</sup>

#### **4.11 National legal basis**

(114) The national legal basis for the measure will be the Parliamentary Decision authorising support to Phase I of Sørilige Nordsjø II, as well as the CfD setting out the respective rights and obligations of the State and the beneficiary.<sup>122</sup>

#### **4.12 Transparency**

(115) The Norwegian authorities have committed to complying with the transparency requirements set forth in CEEAG Section 3.1.2.4. To that end, the Norwegian authorities will ensure the publication of all the required information on a comprehensive State aid website at the national level.<sup>123</sup>

#### **4.13 Prohibition on aid to undertakings in difficulty**

(116) The Norwegian authorities have committed to respecting the condition in CEEAG point 14 that aid cannot be awarded to undertakings in difficulty, as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty.<sup>124</sup> To this end, the bidders will be required to declare, before the auction described in Section 4.6.2.2 above, that they are not in difficulty within the meaning of these guidelines.<sup>125</sup>

#### **4.14 Prohibition on aid to undertakings subject to an outstanding recovery order**

(117) The Norwegian authorities have committed to ensuring that no aid will be granted to undertakings subject to an order to recover incompatible State aid, issued by ESA or the European Commission, which has yet to be effectively implemented. This will be ensured by requiring the pre-qualified applicants to declare, before the auction described in Section 4.6.2.2 above, that they have rescinded any advantage encompassed by such a recovery order.<sup>126</sup>

#### **4.15 Prohibition on cumulation**

(118) The Norwegian authorities do not foresee that State aid under the measure can be combined with other State aid granted in support of the same eligible costs. Equally, the Norwegian authorities do not foresee that the aid under the measure can be combined with other centrally managed Union funding granted in support of the same eligible costs.<sup>127</sup>

### **5 Presence of State aid**

(119) Article 61(1) of the EEA Agreement reads as follows: "Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through

---

<sup>121</sup> Notification, pp. 23 and 33.

<sup>122</sup> Notification, p. 33.

<sup>123</sup> Notification, p. 54.

<sup>124</sup> Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ L 271, 16.10.2015, p. 35, and EEA Supplement No 62, 15.10.2015, p. 1) The consolidated Guidelines are [available electronically](#) on ESA's webpages.

<sup>125</sup> Notification, p. 54.

<sup>126</sup> Notification, p. 54.

<sup>127</sup> Notification, p. 33.

State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement”.

- (120) The qualification of a measure as State aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (121) As noted in Sections 4.9 and 4.11 above, the measure will be administered by the Ministry of Petroleum and Energy and financed from the State budget. The measure is therefore imputable to the Norwegian State and involves the consumption of State resources. Accordingly, the first condition of Article 61(1) of the EEA Agreement is fulfilled.
- (122) As described in further detail in Section 4.6.1 above, the measure will subsidise the revenue from electricity sales on certain conditions. This support will only be made available to that entity which wins the competition for the CfD (the beneficiary). Accordingly, the second and third conditions of Article 61(1) of the EEA Agreement are fulfilled since the measure will confer a selective economic advantage on an undertaking.
- (123) As regards the fourth condition under Article 61(1) of the EEA Agreement, it suffices to examine whether the aid is liable to distort competition and affect trade in the EEA. ESA is not required to establish empirically that the measure has an actual effect on competition and trade.<sup>128</sup>
- (124) In this respect, ESA notes that electricity producers have in practice engaged in cross-border trade since the liberalisation of European electricity markets and the construction of connecting cables between European countries. In line with this, the electricity generated by the wind farm is to be sold on the spot market in competition with electricity from other sources. On this basis, the measure is liable to distort competition and affect trade between EEA States.
- (125) In view of the assessment set out in the above points (121)-(124), ESA finds that the measure fulfils all the conditions in Article 61(1) of the EEA Agreement. It therefore constitutes State aid within the meaning of this provision.

## 6 Aid scheme or individual aid

- (126) According to the first sentence of Article 1(d) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“Protocol 3”), the term “aid scheme” shall mean any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner.

---

<sup>128</sup> Judgment of the Court of Justice of 29 July 2019, *Istituto nazionale della previdenza sociale (INPS) v Azienda Napoletana Mobilità SpA*, C-659/17, EU:C:2019:633, point 29 and the case-law cited.

- (127) In this respect, ESA notes, firstly, that the aid will be granted on the basis of an act, which does not require further implementing measures for the granting of aid. As was explained in Section 4.5 above, the procedure for granting aid must be understood against the background of the Offshore Energy Act. Pursuant to Section 2-3 of this Act, the right to develop areas for offshore wind electricity production shall as a main rule be awarded on the basis of a competition. It furthermore follows explicitly from the second paragraph of Section 2-3 that such competitions may take the form of auctions.
- (128) In keeping with this, and as explained in Section 4.6 above, the Norwegian authorities have decided to award the right to develop the area in Phase I of Sørliche Nordsjø II on the basis of an auction. Since the available information indicates that the project will not be commercially viable in the absence of a risk mitigation measure, the terms of the auction stipulate that the bidders will compete for a CfD to be entered into with the Norwegian State. As specified in the CfD, the amounts of aid will be determined on the basis of the strike price offered by the winning bidder and the reference prices following from the regulation in the CfD.
- (129) As was also identified in Section 4.6 above, the terms of the auction, including the pre-qualification criteria and the CfD, have been defined in advance. Furthermore, as set out in Section 4.10, the Norwegian authorities have defined a budget.
- (130) Against this background, ESA concludes that the aid will be granted on the basis of an act consisting of Section 2-3 of the Offshore Energy Act and the competition documents defining the terms of the auction. Moreover, since the Norwegian authorities have also defined the relevant budget, no further implementing measures are required for the granting of aid within the meaning of Article 1(d) of Part II of Protocol 3.
- (131) Secondly, ESA notes that the act, which will be the basis for the aid, defines the circle of potential beneficiaries in a general and abstract manner. In this respect, ESA reiterates that the act, consisting of Section 2-3 of the Offshore Energy Act and the competition documents defined on that basis, employs objective criteria for regulating what entities will be invited to participate in the competition. Moreover, as identified in Section 4.6.2.2 above, the award of the CfD in the competition phase will be determined solely on the basis of the bid price offered.
- (132) This finding is consistent with the decision-making practice of the Commission. In its decision-making practice, the Commission has found that a single pre-defined tender for the award of a CfD can qualify as an aid scheme.<sup>129</sup> The General Court has furthermore upheld the Commission's assessment in the context of the selectivity analysis that a competition which is effectively open to different service providers may qualify as a general measure.<sup>130</sup>

---

<sup>129</sup> Reference is made in this regard to the Decision of 01.03.2021 in State aid case SA.57858 – *Thor Offshore Wind Farm in Denmark*, OJ C 94, 19.03.2021, p. 4, and the Decision of 4.10.2023 in State Aid case SA.102871 (2023/N) – *Lithuania TCTF: Offshore wind support scheme*, not yet published.

<sup>130</sup> Judgment of 14 June 2023, *Ryanair and Airport Marketing Services v Commission*, EU:T:2023:334, Case T-79/21, points 327-328.

(133) In view of the above, ESA concludes that the measure qualifies as an aid scheme within the meaning of Article 1(d) of Part II of Protocol 3.

## **7 Lawfulness of the aid**

(134) Pursuant to Article 1(3) of Part I of Protocol 3: “The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. [...] The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision”.

(135) The Norwegian authorities have notified the measure and have yet to let it enter into effect. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

## **8 Compatibility of the aid**

### **8.1 Compatibility on the basis of Article 61(3)(c) of the EEA Agreement in conjunction with CEEAG.**

#### *8.1.1 Introduction*

(136) As identified in Section 5 above, Article 61(1) of the EEA Agreement establishes a prohibition on State aid. Such aid may nevertheless be declared compatible with the functioning of the EEA Agreement if it fulfils the conditions in one of the derogations set out in the Agreement. As set out in Section 2 above, the Norwegian authorities consider, firstly, that the measure should be declared compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c) in conjunction with CEEAG.

(137) Article 61(3)(c) of the EEA Agreement provides that ESA may declare compatible “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”. Therefore, in order to declare State aid compatible on the basis of this provision, it must firstly facilitate the development of certain economic activities or of certain economic areas. Secondly, the aid must not adversely affect trading conditions to an extent contrary to the common interest.<sup>131</sup>

(138) In CEEAG, ESA has set out conditions according to which aid measures in respect of environmental protection and energy will be declared compatible with the EEA Agreement on the basis of its Article 61(3)(c). Therefore, where an EEA EFTA State has demonstrated that an aid measure fulfils the applicable conditions in CEEAG, ESA will approve the measure in question.

#### *8.1.2 Positive condition: the aid must facilitate the development of an economic activity*

##### *8.1.2.1 Identification of the economic activity which is being facilitated by the measure, its positive effects for society at large and, where applicable, its relevance for specific policies*

(139) As identified in point (137) above, a State aid measure must facilitate the development of certain economic activities or areas in order to be declared compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c). In line with this, it follows from CEEAG point 23 that EEA EFTA States

<sup>131</sup> Judgment of 22 September 2020, *Austria v Commission (Hinkley Point C)*, C-594/18 P, EU:C:2020:742, points 18–20.

must identify the economic activities that will be facilitated by the aid and how the development of those activities is supported. As set out in CEEAG point 25, EEA EFTA States must also describe the expected benefits of the aid in terms of its material contribution to environmental protection, or the efficient functioning of the internal energy market. Furthermore, it follows from the same point in CEEAG that EEA EFTA States must identify how the aid will contribute to the achievement of the objectives of the climate, environmental and energy policies of the European Union.

- (140) As explained by the Norwegian authorities, the measure is designed to induce the economic activity of electricity production from the wind farm that is to be established in Phase I of Sørlige Nordsjø II. To this end, the measure is designed to provide the minimum level of support necessary to ensure that the wind farm is built and operated. Therefore, in addition to those economic activities encompassing electricity production, the measure will also facilitate various economic activities related to the construction and operation of the wind farm. In this regard, the Norwegian authorities have highlighted that the measure will facilitate innovation and technological development in the supply chain, as well as the increase in capacity that is necessary to cater for future demand.<sup>132</sup>
- (141) In terms of the contribution to environmental protection, the Norwegian authorities have pointed out that the wind farm will generate electricity through renewable wind-power. The electricity produced can be used to achieve decarbonisation by replacing energy sources associated with greater greenhouse gas emissions. The measure will therefore contribute to the fulfilment of the climate targets applicable in Norway and to compliance with the agreements between Norway and its international partners, including the EU.<sup>133</sup>
- (142) Based on the information provided by the Norwegian authorities, ESA finds that the measure will facilitate the economic activity of electricity production from the future wind farm, as well as various associated economic activities which are necessary for its construction and operation. Moreover, based on the reasoning set out in Section 8.1.2.2 below, ESA is convinced that the measure is a prerequisite for ensuring that the wind farm will be built and operated within the desired timeframe. Against this background, ESA concludes that the aid facilitates the development of certain economic activities within the meaning of Article 61(3)(c) of the EEA Agreement.

#### 8.1.2.2 Incentive effect

- (143) As stipulated in CEEAG point 26, State aid will be considered to facilitate an economic activity only if it has an incentive effect. Such an effect is present when the aid induces the beneficiary to engage in an additional or more environmentally friendly economic activity that it would otherwise not have carried out, or which it would only have carried out in a more restricted or different manner. Accordingly, as reiterated in CEEAG point 27, the aid must not support the costs of an activity that the beneficiary would have carried out anyway, nor compensate for the normal business risk of an economic activity.

---

<sup>132</sup> See Section 4.1.

<sup>133</sup> See Sections 3.1, 3.2 and 3.3.

- (144) Establishing the incentive effect of a State aid measure entails undertaking a counterfactual analysis. The scenario likely to materialise in the event that the aid is granted must be identified and compared with that likely to take place in the absence of the aid. As noted in CEEAG point 28, ESA will generally undertake this analysis based on the quantification referred to in CEEAG Section 3.2.1.3.
- (145) ESA considers, in the context of CEEAG, that State aid does not have an incentive effect in cases where the start of works on the concerned project or activity took place prior to the beneficiary applying for the aid in writing. Therefore, as set forth in CEEAG point 29, State aid will in principle not be considered compatible with the functioning of the EEA Agreement in cases where the beneficiary has started implementing the concerned project before applying for the aid. As specified in CEEAG point 30, however, the aid application may take various forms, including that of a bid in a competitive bidding process.
- (146) In the case at hand, it is evident that the latter formal requirement of an application predating the start of works will be fulfilled. As was set out in Section 4.6.2.2 above, State aid under the measure will be granted on the basis of a competitive bidding process. Moreover, as noted in point (145) above, written bids submitted in the context of such procedures qualify as applications for aid within the meaning of CCEAG point 29.
- (147) When assessing the incentive effect of the measure, it is furthermore necessary to undertake a counterfactual analysis in line with the conditions identified in the above points (143) to (145). As was noted in point (144) with reference to CEEAG point 28, ESA will generally undertake this analysis based on the quantification referred to in CEEAG Section 3.2.1.3.
- (148) CEEAG Section 3.2.1.3 concerns the condition on the proportionality of the aid. In line with the structure of CEEAG, this condition is addressed in Section 8.1.3.1.5 below.
- (149) It follows from CEEAG point 48 that in order to demonstrate that the aid is limited to the minimum necessary, and therefore proportionate, it is generally necessary to undertake a funding gap analysis. The objective of such an analysis is to establish that the aid corresponds to the net extra costs necessary to meet the objective of the measure in question, compared to the counterfactual scenario in the absence of aid. The net extra costs amount to the difference between the economic revenues and costs of the aided project, and those of an alternative project which the aid beneficiary would credibly have carried out in the absence of aid.
- (150) However, as set out in CEEAG point 49, a detailed assessment of the net extra costs is not required if the aid amounts are determined through a competitive bidding process. In line with this, CEEAG point 49 goes on to stipulate conditions which competitive bidding processes must fulfil to ensure the proportionality of the aid. Additional conditions are found in CEEAG point 50.
- (151) In the case at hand, the Norwegian authorities consider that the proportionality of the measure will be ensured by the competitive bidding process which is to take place. As follows from the proportionality assessment set out in Section 8.1.3.1.5 below, ESA has come to the same conclusion. On this basis, and in line with the



first sentence of CEEAG point 49, ESA has not required the Norwegian authorities to establish the net extra costs in order to demonstrate the proportionality of the aid.

- (152) The Norwegian authorities have presented extensive calculations which, in their view, underpin that the measure is necessary to induce the construction and operation of the wind farm. Given that the Norwegian authorities were not required to submit additional quantifications in the context of CEEAG Section 3.2.1.3, ESA will assess the incentive effect of the measure with reference to these calculations.
- (153) The information submitted by the Norwegian authorities is summarised in Section 4.4 above. The information addresses the expected investment and operating costs (Section 4.4.1), the levelized cost of electricity production (Section 4.4.2) and forecasted electricity prices (Section 4.4.3). On this basis, the Norwegian authorities have performed calculations to establish what amounts of aid would be required to make the project profitable (Section 4.4.4).
- (154) In the light of this information, ESA is convinced that the wind farm would not be realised within the desired timeframe without the risk-sharing provided by the measure. The calculations provided indicate that substantial amounts of State aid will be required for the wind farm to become profitable.
- (155) In view of the foregoing analysis, ESA concludes that the measure has an incentive effect within the meaning of CEEAG.

#### 8.1.2.3 No breach of any relevant provision of EEA law

- (156) On the basis of the information submitted by the Norwegian authorities, ESA concludes that neither the supported activity, the aid measure or the conditions attached to it will entail a violation of relevant EEA law. The measure therefore complies with CEEAG point 33.

#### 8.1.3 *Negative condition: the aid measure must not unduly affect trading conditions to an extent contrary to the common interest*

##### 8.1.3.1 Minimisation of distortions of competition and trade

###### 8.1.3.1.1 Necessity of the aid

- (157) It follows from CEEAG point 38 that in order to demonstrate the necessity of an aid measure, the EEA EFTA State must establish that the project or reference project would not be carried out without the aid. ESA will either assess this on the basis of the quantification referred to in CEEAG Section 3.2.1.3 or another evidence-based analysis submitted by the EEA EFTA State concerned.
- (158) In respect of aid for the reduction of greenhouse gas emissions, CEEAG point 89 states that the EEA EFTA State in question must identify the policy measures already in place to reduce such emissions. CEEAG point 90 further specifies that the EEA EFTA State must take into account the counterfactual situation as well as relevant costs and revenues, including those linked to the ETS and other measures identified in accordance with CEEAG point 89.
- (159) By way of introduction, ESA notes that the Norwegian authorities have indeed identified those policy measures already in place to reduce greenhouse gas emissions, as prescribed by CEEAG point 89. In this regard, reference is made to Section 3.5 above.

- (160) In respect of the requirements under CEEAG points 38 and 90, ESA recalls that, for the reasons set out in points (147)-(151) above, the Norwegian authorities were not required to submit a detailed quantification in the context of demonstrating the proportionality of the aid. In such a situation, it follows from CEEAG points 38 and 90 that the Norwegian authorities were required to submit another evidence-based analysis to demonstrate the necessity of the aid.
- (161) As was reiterated in point (153) above, the Norwegian authorities have submitted extensive information on the expected investment and operating costs (Section 4.4.1), the levelized cost of electricity production (Section 4.4.2), and the forecasted electricity prices (Section 4.4.3). On the basis of this information, the Norwegian authorities have performed calculations to establish what amounts of aid would be required to make the project profitable (Section 4.4.4). The information and calculations submitted by the Norwegian authorities qualify as an evidence-based analysis within the meaning of CEEAG points 38 and 90.
- (162) As noted in point (154) above, ESA is convinced on the basis of this evidence-based analysis that the wind farm would not be realised and operated within the desired timeframe without the aid. In this regard, the calculations provided by the Norwegian authorities indicate that substantial amounts of State aid will be required for the project to become profitable. Given this, ESA also agrees that other policy measures, such as the ETS and the national rules on CO<sub>2</sub> taxation, are currently insufficient to ensure that the wind farm is built and put into operation.
- (163) On this basis, ESA finds that the Norwegian authorities have demonstrated that the requirement in CEEAG points 38 and 90 that the project or reference project would not be carried out without the aid, is fulfilled.<sup>134</sup> Furthermore, ESA finds that the Norwegian authorities have appropriately taken into account the counterfactual situation as well as relevant costs and revenues, as required by CEEAG point 90.
- (164) As expressed in CEEAG point 91, ESA normally presumes that a residual market failure, which can be addressed through aid for decarbonisation, remains where the EEA EFTA State demonstrates under CEEAG point 90 that there is a need for State aid. In the case at hand, ESA is not aware of any evidence capable of rebutting this presumption.
- (165) Based on the above considerations, ESA therefore concludes that the measure is necessary for furthering decarbonisation through the production of renewable energy from the wind farm to be developed in Phase I of Sørilige Nordsjø II.

#### 8.1.3.1.2 Appropriateness

- (166) As noted in CEEAG point 93, provided that all the applicable compatibility conditions in CEEAG are met, ESA presumes that State aid is appropriate for furthering the achievement of the decarbonisation goals. Moreover, given the scale and urgency of the decarbonisation challenge, a variety of aid instruments may be used.
- (167) As follows from the below assessment, the measure complies with most of the applicable conditions in CEEAG. However, as established in Section 8.1.3.1.4

---

<sup>134</sup> Given that the aid scheme comprises only one project, ESA concurs with the Norwegian authorities that it is appropriate to apply this project as the reference project.

below, the measure does not comply with all the requirements pertaining to public consultations set out in CEEAG point 99(a). Equally, for the reasons set out in point 8.1.3.2.2 below, the explanations provided by the Norwegian authorities are insufficient to establish that their estimate of the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided complies with CEEAG point 115.

(168) Since the Norwegian authorities have not established that the measure fulfils all the applicable compatibility conditions in CEEAG, it does not benefit from the presumption of appropriateness set forth in CEEAG point 93.

#### 8.1.3.1.3 Eligibility

(169) As set out in CEEAG point 95, decarbonisation measures targeting specific activities can be expected to lead to greater distortions of competition compared to measures open to all competing activities. On this basis, EEA EFTA States should give reasons for not including in the scope of a measure all competing technologies, for example all technologies in the electricity market. These reasons should be based on objective considerations linked, for example, to efficiency or costs or other relevant circumstances.

(170) Pursuant to CEEAG point 96, ESA will assess the reasoning provided. This provision also lists examples of circumstances where ESA will consider that a limited eligibility does not unduly distort competition.

(171) As set out in Sections 4.2 and 4.3 above, the eligibility under the measure is limited to projects ensuring the construction and operation of the offshore wind farm in Phase I of Sørilige Nordsjø II. In respect of the reasoning provided for this, ESA notes, firstly, that the measure forms part of a Norwegian strategy to roll out offshore wind farms in Norway. As was explained in Sections 3.2 and 3.3 above, this strategy reflects analyses investigating the potential for establishing additional generating capacity through various green technologies. Similar to the situation in the EU, the Norwegian authorities have concluded that offshore wind generation amounts to an important, appropriate and cost-effective means of contributing to the green shift through decarbonisation.

(172) Secondly, the information submitted establishes that the decisions on what offshore areas to open for electricity generation in Norway have been based on a thorough process involving advice from the NVE. Moreover, the Norwegian authorities have proceeded on the basis of the regime established in the Offshore Energy Act. Due to the risks associated with offshore electricity generation, and the potentially conflicting societal considerations which have to be taken into account, the system under the Offshore Energy Act prescribes that individual areas shall be opened on a case-by-case basis. In this regard, reference is made to Sections 3.3, 3.4 and 4.5 above.<sup>135</sup>

(173) Lastly, the Norwegian authorities have explained, with reference to the technical characteristics set out in Section 4.2.2 above, that there exists no other sufficiently mature technology to establish a generating capacity between 1400 and 1500 MW in Phase I of Sørilige Nordsjø II. At the same time, the comparatively deep waters and long-distances to shore entail that the project will necessitate technological development, which can be relied on in future projects with similar characteristics.

---

<sup>135</sup> See also the notification, pp. 44-45.

The measure will therefore not only contribute to decarbonisation by virtue of the significant amounts of electricity that will be produced by the wind farm, but also through the technological advancements and learning effects that will benefit future projects in similar areas.<sup>136</sup>

(174) In view of the above, ESA concludes that the Norwegian authorities have provided sufficient reasoning as to why it can be expected that the eligible sector and innovative technologies have the potential to make an important and cost-effective contribution to environmental protection and deep decarbonisation in the longer term. In line with CEEAG point 96(d), ESA therefore finds that the limitations of the eligible projects will not unduly distort competition.

#### 8.1.3.1.4 Public consultation

(175) CEEAG Section 4.1.3.4 sets out requirements to consult publicly on the competition impacts and proportionality of measures prior to the notification of aid. The requirements have been applicable since 1 July 2023.

(176) The requirements in CEEAG Section 4.1.3.4 distinguish between (a) measures where the estimated average annual aid to be granted is at least EUR 150 million per year (point 99(a)), and (b) measures where the estimated average annual aid to be granted is below EUR 150 million per year (point 99(b)). The requirements are stricter in respect of measures falling under category (a) than for measures in category (b).

(177) CEEAG point 100 establishes an exemption for certain measures which would otherwise have been encompassed by the requirements in point 99(b). According to this exemption, no public consultation is required for measures falling under point 99(b) where a competitive bidding process is used and the measure does not support investments in fossil-fuel based activities.

(178) In the view of the Norwegian authorities, the term "average" indicates that, for the purposes of the assessment against the thresholds in CEEAG point 99(a) and (b), the aid granted should be evenly distributed over the duration of the measure. On this basis, the Norwegian authorities have divided the maximum aid amount under the measure of NOK 23 billion with its duration of 15 years. Following such an approach, the estimated aid amount to be paid out per year is below EUR 150 million. Considering that a competitive bidding process is used, the Norwegian authorities therefore assert that the exemption in CEEAG point 100 is applicable.<sup>137</sup>

(179) The thresholds in CEEAG point 99(a) and (b) do however not refer to the average aid amount per year, but to the "estimated average annual aid to be granted". It follows from case-law that aid is granted at that point in time where a legal right to receive the aid is conferred upon the beneficiary.<sup>138</sup> Therefore, in order to establish the average annual aid to be granted under an aid scheme, what matters is the value and timing of each granting decision.

---

<sup>136</sup> Notification, pp. 44-45.

<sup>137</sup> Notification, p. 45.

<sup>138</sup> See in this regard the Judgment of the General Court of 14 January 2004, *Fleuren Compost v Commission*, T-109/01, EU:T:2004:4, point 74.

- (180) On this basis, ESA finds that the aid under the measure will be granted upon completion of the competition phase when the CfD is awarded and entered into. Subsequent payments made by the Norwegian authorities under the CfD will not amount to grants of aid, but to disbursements in accordance with the terms of the original granting decision, as set out in the CfD. For the sake of completeness, ESA observes that this finding is consistent with the assertion made by the Norwegian authorities in the context of TCTF that the aid will be granted by 31 December 2025. In this regard, reference is made to Section 8.2.2 below.
- (181) It follows from the above that the approach of the Norwegian authorities of dividing the maximum aid amount with the duration of the CfD is inconsistent with the regulation of the thresholds in CEEAG points 99(a) and (b). Since only one granting decision will be made under the measure, the estimated average annual aid to be granted equates to the estimated value of this grant. When based on the base-case scenario presented in Section 4.4.4 above, this value exceeds the threshold in CEEAG point 99(a). This is so because the base-case scenario indicates that the net present value of the State aid that the State will undertake to pay by entering into the CfD is approximately 1.5 billion euro.
- (182) While the Norwegian authorities consider that they were not compelled to undertake a public consultation in line with Section 4.1.3.4 to comply with CEEAG, they nevertheless submit that the measure complies with CEEAG point 99(b). In this respect, they refer to various public consultations held in the period from 9 February 2022 to 29 September 2023.<sup>139</sup>
- (183) However, as was established in points (179)-(181) above, the fact that only one granting decision will be made under the measure entails that the average annual aid to be granted exceeds the threshold in CEEAG point 99(a). Therefore, in order to comply with CEEAG, the measure must adhere to the stricter conditions in CEEAG point 99(a).
- (184) Pursuant to this provision, a public consultation with a duration of at least six weeks shall be held. This consultation must cover the following elements: (i) eligibility; (ii) method and estimate of subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided; (iii) proposed use and scope of competitive bidding processes and any proposed exceptions; (iv) main parameters for the aid allocation process, including for enabling competition between different types of beneficiaries; (v) main assumptions informing the quantification used to demonstrate the incentive effect, necessity and proportionality; and (vi) where new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union's climate targets.
- (185) With reference to these requirements, the Norwegian authorities firstly acknowledge that the method and the estimate of subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided have not been subject to public consultation, as prescribed by CEEAG point 99(a)(ii). On the basis of CEEAG point 102, the Norwegian authorities however assert that it is duly justified to consider alternative methods of consultation as sufficient on an exceptional basis.<sup>140</sup>

---

<sup>139</sup> Notification, p. 46.

<sup>140</sup> Notification, pp. 46-48.

- (186) In support of this position, the Norwegian authorities submit that they have applied the method used by the EU Innovation Fund for calculating the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided. The Norwegian authorities also argue that the results of the calculations could be of no consequence for the aid measure or choice of beneficiary, and that the design of the auction ensures that the measure will benefit exclusively that project with the lowest subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided. In addition, the Norwegian authorities underline that the measure has been subject to extensive political debate, and that public consultations will be held in conjunction with the beneficiary applying for the license required under the Offshore Energy Act.<sup>141</sup>
- (187) CEEAG point 102 stipulates that ESA may consider alternative methods of consultation in exceptional and duly justified cases. Therefore, it needs to be assessed, firstly, whether the situation invoked by the Norwegian authorities as basis for derogating from CEEAG point 99(a) is truly exceptional. Secondly, it must be assessed whether the Norwegian authorities have presented a convincing justification that it is appropriate to consider as acceptable the alternative methods of consultation referred to by the Norwegian authorities.
- (188) With respect to the first question, ESA notes, as was reiterated in point (185) above, that the Norwegian authorities have underlined that they have applied the methodology of the EU Innovation Fund for calculating the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided. It would appear that the Norwegian authorities consider this as a factor indicating that a public consultation would have no added value, since this methodology is well known and generally accepted.
- (189) It however follows directly from the wording of CEEAG point 99(a)(ii) that the public consultation shall cover the method and estimate of subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided. This condition reflects the requirements for estimating the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided that are set forth in CEEAG point 115. It is stated in footnote 67 to CEEAG point 115 that the principles for the calculation of greenhouse gas emissions reductions used by the EU Innovation Fund may provide a useful point of reference for estimating the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided.
- (190) Against this background, ESA cannot see that the situation at hand is an exceptional one. The Norwegian authorities have simply attempted to estimate the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided, as required by CEEAG point 115. For this purpose, they have applied the methodology referred to in CEEAG footnote 67. Rather than being exceptional, such a situation can be characterised as normal under CEEAG.
- (191) With respect to the second question of whether the Norwegian authorities have presented a convincing justification that it is appropriate to derogate from the requirement in CEEAG point 99(a)(ii), ESA equally cannot agree that the results of the calculations could have been of no consequence for the aid measure or choice of beneficiary. In this regard, ESA notes that a public consultation is a step for ensuring that large aid measures are justified, as reflected in the last sentence of the first paragraph of CEEAG point 99.

---

<sup>141</sup> Notification, pp. 47-48.

- (192) Therefore, it cannot simply be excluded on an *a priori*-basis that consulting publicly on the methodology and results of the calculations of the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided would have uncovered relevant information for assessing whether the measure is justified. By way of example, such feedback could have concerned whether the choice of methodology for calculating the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided was appropriate. In the same vein, it is conceivable that consulting on the results of the calculations would have spurred market players to identify alternative projects where the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided would have been lower for a comparable level of electricity generation.
- (193) ESA also cannot accept at face value that the measure will benefit exclusively that project with the lowest subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided. While it is true that the design of the auction will ensure that the winning project will be that with the lowest subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided of those eligible to participate, it can as already mentioned not be ruled out that an alternative measure would have been more cost-effective in terms of avoiding CO<sub>2</sub> equivalent emissions. In order to facilitate that national authorities allocate scarce public resources to large measures on the basis of the best information available, CEEAG point 99(a) therefore requires a public consultation which covers e.g. the eligibility under the measure and the method and estimate of the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided.
- (194) In respect of the political debate and public consultations that have taken place, these are incapable of justifying a derogation from CEEAG point 99(a)(ii) since the method and estimate of the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided have not been shared as basis for those interactions. Equally, the future public consultations that are to take place pursuant to the Offshore Energy Act are immaterial for the assessment against CEEAG point 99, as those public consultations will be undertaken after that point in time when the measure was finalised and notified to ESA. Since the measure will only comprise one granting of aid made on the basis of the conditions assessed in this decision, the views of interested parties cannot meaningfully be taken into account once the measure has been approved by ESA.
- (195) Secondly, the Norwegian authorities also acknowledge that the main assumptions that form the basis for the quantification used to demonstrate the incentive effect, the necessity and the proportionality of the aid have not been subject to public consultation, as prescribed by CEEAG point 99(a)(v). The Norwegian authorities however assert also on this point that alternative methods of consultation should be considered sufficient on the basis of the derogation in CEEAG point 102.<sup>142</sup>
- (196) In this regard, the Norwegian authorities point out that the quantifications reflect input from the NVE, that the reports of the NVE have been published, and that there has been an effective public debate where interested parties could present their views on the measure to the Ministry and the Parliamentary committee. The Norwegian authorities further explain that this approach is in line with normal practice in Norway, and that expert reports from governmental agencies are rarely made subject to public consultation. Lastly, the Norwegian authorities highlight that

---

<sup>142</sup> Notification, pp. 47-48.

public consultations will be held in conjunction with the beneficiary applying for the license required under the Offshore Energy Act.<sup>143</sup>

- (197) As was identified in point (187) above, CEEAG point 102 stipulates that ESA may consider as acceptable alternative methods of consultation in exceptional *and* duly justified cases.
- (198) With respect to the requirement that the circumstances invoked are exceptional, ESA notes that the Norwegian authorities have opted not to make the assumptions underpinning the concerned quantifications subject to public consultation in line with CEEAG point 99(a)(v). While this may be in accordance with normal administrative practice in Norway, the fact that CEEAG point 99 establishes conditions which may not have a counterpart in internal Norwegian law cannot in itself amount to an exceptional circumstance.
- (199) ESA also does not consider that the circumstances invoked by the Norwegian authorities are capable of justifying a derogation from the requirement in CEEAG point 99(a)(v). In this regard, ESA reiterates, as was identified in point (191) above, that a public consultation is a step for ensuring that large aid measures are justified. In order for stakeholders to make meaningful input, it is crucial that the assumptions behind the quantifications used to demonstrate the incentive effect, necessity and proportionality of the aid, are included in the public consultation that is to be held under CEEAG point 99(a). Such information does not only enable stakeholders to verify whether more or less aid is required to facilitate the concerned economic activity, but also to argue that the same level of decarbonisation could be achieved through less costly measures.
- (200) As for the political debate and future public consultations referred to by the Norwegian authorities, the reasoning set out in point (194) above is valid also in respect of the requirement in CEEAG point 99(a)(v). Accordingly, ESA considers that these factors are incapable of justifying the choice of the Norwegian authorities not to include the main assumptions that form the basis for the quantifications used to demonstrate the incentive effect, the necessity and the proportionality of the aid in a public consultation held pursuant to CEEAG point 99(a).
- (201) On the basis of the above assessment, ESA concludes that the measure does not comply with all of the applicable requirements in CEEAG point 99(a).

#### 8.1.3.1.5 Proportionality

- (202) As set out in points (149)-(150) above, it follows from CEEAG point 48 that it is generally necessary to undertake a funding gap analysis to demonstrate that the aid is proportionate. However, CEEAG point 49 states that such a detailed assessment of the net extra costs is not required if the aid amounts are determined through a competitive bidding process.
- (203) CEEAG point 49 goes on to stipulate four cumulative requirements which competitive bidding processes must fulfil to ensure the proportionality of the aid. These are:

---

<sup>143</sup> Notification, pp. 47-48.



- a) the bidding process is competitive, namely: it is open, clear, transparent and non-discriminatory, based on objective criteria, defined *ex ante* in accordance with the objective of the measure and minimising the risk of strategic bidding;
- b) the criteria are published sufficiently far in advance of the deadline for submitting applications to enable effective competition;
- c) the budget or volume related to the bidding process is a binding constraint in that it can be expected that not all bidders will receive aid, the expected number of bidders is sufficient to ensure effective competition, and the design of undersubscribed bidding processes during the implementation of a scheme is corrected to restore effective competition in the subsequent bidding processes or, failing that, as soon as appropriate;
- d) *ex post* adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) are avoided as they may undermine the efficiency of the process's outcome.

(204) With respect to CEEAG point 49(a), ESA notes that the bidding process is indeed open, clear, transparent and non-discriminatory, and based on objective criteria defined *ex ante*. The sole award criterion of the lowest price per kWh furthermore minimises the risk of strategic bidding and is consistent with the main objective of the measure. In this regard, reference is made to Section 4.6.2 above.

(205) Concerning the requirement under CEEAG point 49(b), that the criteria shall be published sufficiently far in advance, its stated purpose is to ensure effective competition. This entails that the degree of advance publication required can differ from case to case. As a rule of thumb, however, CEEAG footnote 43 states that six weeks will usually be sufficient.

(206) With respect to the publication of the criteria, ESA recalls that the Norwegian authorities initially published their proposed pre-qualification criteria and auction model on 6 December 2022.<sup>144</sup> The competition documents were subsequently published on 29 March 2023.<sup>145</sup>

(207) A revised version of the competition documents, where the pre-qualification criteria had been amended, was published on 17 October 2023. As set out in points (98)-(99) above, the pre-qualification criterion on execution capability was upheld. The criteria on sustainability and positive ripple effects, were however reclassified as contractual minimum requirements.<sup>146</sup>

(208) Given that the competition documents were published on 29 March 2023, and that the substance of those pre-qualification criteria which were reclassified as minimum requirements was essentially upheld, ESA finds that the publication of the revised pre-qualification criteria on 17 October was sufficient to ensure efficient competition in the case at hand. According to the Norwegian authorities, the deadline for applying to participate in the competition expired on 15 November 2023, whereas the auction is expected to take place in February/March 2023.<sup>147</sup>

---

<sup>144</sup> Notification, p. 22.

<sup>145</sup> Notification, p. 22.

<sup>146</sup> Notification, p. 22.

<sup>147</sup> Notification, p. 21.

- (209) Regarding the auction criterion, this has remained the single criterion of the bid price expressed in NOK per kWh. Moreover, since the competitive procedure is to be conducted in two steps, ESA considers that it was not necessary, in order to ensure effective competition, to publish all the final conditions relevant for assessing what bid price to offer at the same time as publishing the auction criterion.
- (210) The Norwegian authorities have explained that a first draft of the CfD was published on 2 June 2023, that consultations on a second version were initiated on 20 September, and that the final CfD was published on 7 November. This entails that the market has been well informed of the CfD, and that the final version was published approximately three months prior to the deadline for submitting bids. In view of this, ESA concludes that the requirements in CEEAG point 49(b) have been complied with.<sup>148</sup>
- (211) As for the requirements in CEEAG point 49(c), ESA notes that the volume auctioned will be a binding constraint in that it can be expected that not all bidders will receive aid. This is so because the aid under the measure will be granted exclusively to the bidder with the lowest bid. Based on their contacts with the market, the Norwegian authorities furthermore have a reasoned basis for proceeding on the assumption that sufficient bids will be submitted to ensure effective competition. As noted in point (104) above, the Norwegian authorities have additionally confirmed that at least two entities will have to pre-qualify in order for the Norwegian authorities to consider proceeding with the auction.
- (212) Lastly, *ex post* adjustments to the outcome of the competition will be avoided since the aid will be granted on the basis of the final and non-negotiable bid price. The measure therefore complies with CEEAG point 49(d).
- (213) In addition to the requirements in CEEAG point 49, CEEAG points 50 and 112 also contain requirements which must be fulfilled for the aid to qualify as proportionate.
- (214) CEEAG point 50 requires that the criteria used for ranking the bids put the contribution to the main objectives of the measure in direct or indirect relation with the aid amount requested by the applicant. Given that the sole criterion used for ranking the bids will be the bid price expressed in NOK per kWh, this criterion is fulfilled in the case at hand.
- (215) It furthermore follows from CEEAG point 112 that where concessions or other benefits, such as the right to use land or seabed, are granted as part of aid measures, the EEA EFTA State must ensure that they are awarded on the basis of objective and transparent criteria linked to the objectives of the measure. While the licenses necessary for constructing and operating the wind farm and network connection will be granted at a later stage, the information provided by the Norwegian authorities establishes that these licenses will be awarded on the basis of objective and transparent criteria linked to the objectives of the measure. In this regard, reference is made to Sections 3.4 and 4.5 above.
- (216) In light of the above, ESA concludes that the measure is proportionate as required by the CEEAG.

---

<sup>148</sup> Notification, p. 21.

#### 8.1.3.1.6 Cumulation

- (217) CEEAG points 56 and 57 set forth conditions concerning the extent to which aid under a measure approved on the basis of CEEAG can be cumulated with support provided under other measures.
- (218) As was identified in Section 4.15 above, the Norwegian authorities do not foresee that the aid under the measure can be combined with State aid or other centrally managed Union funding granted in support of the same eligible costs. On this basis, ESA concludes that the measure respects the limitations on cumulation set forth in points 56 and 57 CEEAG.
- (219) For the sake of completeness, ESA notes that in the event that the Norwegian authorities should in the future decide that State aid under the measure can be combined with other State aid or centrally managed Union funding in support of the same eligible costs, the Norwegian authorities have committed to specifying cumulation mechanisms in each of the concerned measures ensuring compliance with points 56 and 57 CEEAG. The Norwegian authorities have furthermore committed to submitting the proposed cumulation mechanisms to ESA before the contemplated modification of allowing cumulation with other support of the same eligible costs is put into effect.<sup>149</sup>

#### 8.1.3.1.7 Transparency

- (220) CEEAG Section 3.2.1.4 establishes transparency requirements to ensure that competitors have access to relevant information about supported activities. To this end, CEEAG point 58 imposes an obligation on EEA EFTA States to ensure publication of (a) the full text of the approved aid scheme or individual granting decision and its implementing provisions, or a link to it; and (b) information on each individual aid award exceeding EUR 100 000. Further requirements concerning the websites that may be used for publication are set forth in CEEAG point 59.
- (221) In respect of the time of publication, CEEAG point 61 requires that the information referred to in its point 58(b) must generally be published within six months from the date the aid was granted. In order to facilitate the enforcement of State aid rules, the information must also be kept available for at least 10 years from this date.
- (222) As set out in Section 4.12, the Norwegian authorities have committed to complying with the applicable requirements in CEEAG Section 3.2.1.4 by publishing information on a State aid website at the national level. On this basis, ESA finds that the measure complies with the transparency conditions set out in CEEAG.

### 8.1.3.2 Avoidance of undue negative effects on competition and trade

#### 8.1.3.2.1 CEEAG point 70

- (223) According to CCEAG point 114, with the exception of point 70, CEEAG Sections 3.2.2 and 3.3 do not apply to measures for the reduction of greenhouse gas emissions.
- (224) It follows from CEEAG point 70 that ESA will generally approve measures under CEEAG for a maximum period of 10 years. As specified in the last sentence of point 70, this entails that aid can be granted within a maximum period of 10 years

---

<sup>149</sup> Notification, p. 33.

calculated from the date of the notification of ESA's decision declaring the measure compatible. As the aid under the measure will be granted on the basis of the single auction that is planned to be concluded in the first half of 2024, the measure complies with CEEAG point 70.

#### 8.1.3.2.2 CEEAG point 115

- (225) As was touched upon in point (189) above, CEEAG point 115 establishes requirements for estimating the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided. CEEAG point 115 has been applicable since 1 July 2023.
- (226) Pursuant to CEEAG point 115, the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided must be estimated for each project or reference project and the assumptions and methodology for that calculation provided. To the extent possible, the estimate should identify the net emissions reduction from the activity, taking into account life-cycle emissions created or reduced. Short and long-term interactions with any other relevant policies or measures, including the ETS, should be considered. To facilitate a comparison between the costs of different environmental protection measures, the methodology applied should in principle be similar for all measures promoted by the EEA EFTA State in question.
- (227) As follows from this wording, no particular methodology is prescribed to comply with CEEAG point 115. However, to render meaningful the obligation to calculate the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided, the methodology applied must yield sufficiently representative results. Therefore, while the principles for the calculation of greenhouse gas emissions reductions used by the EU Innovation Fund ("IF") are identified in CEEAG footnote 67 as a useful point of reference, these principles should not be applied mechanically.
- (228) The Norwegian authorities have explained that they have based their calculations on the principles used by the IF. According to these principles, the level of emissions avoided shall be calculated by comparing a reference scenario (the counterfactual) with the project scenario over a ten-year period. For the sake of simplification, IF has pre-defined reference scenarios for certain outputs. The emissions attributed to grid electricity in the IF-reference scenario corresponds to the typical EU grid electricity emissions in 2030 (0.17570 tonnes CO<sub>2</sub> e/MWh).<sup>150</sup>
- (229) Based on this assumption, and following the principles set out by the IF, the Norwegian authorities have calculated the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided as set out in *Table 6* below.<sup>151</sup> This table distinguishes between the same three scenarios that were presented under Section 4.4.4 in relation to the net present value of the project.

---

<sup>150</sup> Notification, p. 50.

<sup>151</sup> Table 6 is based on the table on page 51 of the notification.

Table 6 – Calculation of the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided

<b>Base case scenario</b>		
<b>1 430 NOK</b>		
<b>Pessimistic scenarios</b>		
<i>High investment costs (+30% CAPEX)</i>	<i>Low electricity prices (NVE's low scenario)</i>	<i>Low electricity prices (NVE's low scenario) and high investment costs (+30% CAPEX)</i>
<b>2 580 NOK</b>	<b>2 930 NOK</b>	<b>4 070 NOK</b>
<b>Optimistic scenarios</b>		
<i>Low investment costs (-30% CAPEX)</i>	<i>High electricity prices (NVE's high scenario)</i>	<i>High electricity prices (NVE's high scenario) and low investment costs (-30% CAPEX)</i>
<b>290 NOK</b>	<b>0 NOK</b>	<b>0 NOK</b>

- (230) The Norwegian authorities have explained that their choice of methodology is based on three considerations. Firstly, while the Norwegian electricity mix consists of 95% renewables, the wind farm will be connected to the Norwegian mainland electricity network.<sup>152</sup> Since this network is connected to the European electricity market, the Norwegian authorities consider it appropriate to apply the IF-reference scenario of typical EU grid electricity emissions in 2030 (0.17570 tonnes CO<sub>2</sub> e/MWh).<sup>153</sup>
- (231) Secondly, the Norwegian authorities have asserted that it is impossible to calculate the emissions that will be generated by the construction, operation and decommissioning of the wind farm. The Norwegian authorities have consequently excluded all such emissions from their calculation of the CO<sub>2</sub> equivalent emissions avoided. Following the approach of the IF, the Norwegian authorities have also limited their calculations to a period of ten years even though the wind farm shall be constructed for a technical lifetime of at least 30 years.<sup>154</sup>
- (232) Thirdly, the Norwegian authorities have submitted that interactions with other relevant policies or measures should be assumed to be reflected in the methodology applied by the IF. Therefore, the Norwegian authorities should not be required to conduct an independent analysis of such interactions.<sup>155</sup>
- (233) It follows from case-law that the burden for proving that one of the derogations from the State aid prohibition applies rests with the national authorities. Consequently, it

<sup>152</sup> Based on the current plans and organisation of the Norwegian electricity network, the Norwegian authorities consider it likely that the connection will be to price area NO2.

<sup>153</sup> Notification, p. 50.

<sup>154</sup> Notification, p. 50.

<sup>155</sup> Notification, p. 51.

is for the national authorities to establish that the conditions for the derogation they are invoking are satisfied.<sup>156</sup>

- (234) In this respect, ESA notes that the reasoning provided by the Norwegian authorities to justify their choice of methodology is scarce. Firstly, it is not explained at any detail why the typical EU grid electricity emissions in 2030 is an appropriate counterfactual scenario given the unusually high level of renewables in the Norwegian energy mix.
- (235) Secondly, the position of the Norwegian authorities that it is impossible to calculate the life cycle emissions is not sufficiently substantiated to exclude that it would have been possible to make a meaningful estimate. In this regard, ESA notes that there has already been established many wind farms in European waters, and that the supply chains and materials typically used are well known. Since there are many operative wind farms in European waters, it can equally not be excluded on an *a priori*-basis that it is possible to make a meaningful estimate of the emissions from maintenance. In the same vein, the ongoing decommissioning of subsea offshore structures used in the oil and gas industry would suggest that it could be possible to estimate the emissions associated with decommissioning an offshore wind farm.
- (236) Thirdly, in respect of the assertion made by the Norwegian authorities that interactions with other relevant policies or measures should be assumed to be reflected in the methodology applied by the IF, the Norwegian authorities have not presented any basis for this generalised stance. In this regard, ESA notes that according to the wording of CEEAG point 115, the relevant interactions that should be taken into account are not limited to measures and policies decided at the European level.
- (237) While ESA is not in a position to definitely exclude that the approach followed by the Norwegian authorities is substantially in line with CEEAG point 115, the reasoning provided by the Norwegian authorities is insufficient to establish that this is the case. On this basis, ESA is bound to conclude that the Norwegian authorities have not complied with CEEAG point 115.

#### 8.1.3.2.3 CEEAG points 116 and 120

- (238) CEEAG point 116 requires that to deliver positive environmental effects in relation to decarbonisation the aid must not merely displace the emissions from one sector to another and must deliver overall greenhouse gas emissions reductions.
- (239) As noted in point 3.3 above, the planned offshore wind farm will increase the amount of renewable energy available in the Norwegian and regional energy system. This is expected to result in reductions in the emissions of greenhouse gases, and thereby decarbonisation, compared to a scenario where (parts of) the demand for energy is covered through fossil fuels. Increased amounts of electricity generated by renewable energy will also allow for sustainable electrification.
- (240) On this basis, ESA finds that the aid will deliver overall greenhouse gas emissions reductions and not merely displace the emissions from one sector to another.

---

<sup>156</sup> Judgment of 12 September 2007, *Olympiaki Aeroporía Ypiresies v Commission*, T-68/03, EU:T:2007:253, point 34.

(241) CEEAG point 120 establishes requirements to avoid a budget being allocated to projects that are not realised, potentially blocking new market entry. EEA EFTA States must therefore demonstrate that reasonable measures will be taken to ensure that projects granted aid will be developed. Such measures may include deadlines for project delivery, checking project feasibility as part of the pre-qualification, requiring collateral to be paid by participants, or monitoring project development and construction.

(242) As explained in Sections 4.5 and 4.6 above, the Norwegian authorities have set up a process and requirements that are designed to ensure that the project is realised. The measures incorporated include the pre-qualification criterion relating to execution capability, and the thorough requirements pertaining to applications for licenses under the Offshore Energy Act. ESA therefore concludes that the measure complies with CEEAG point 120.

#### 8.1.3.2.4 CEEAG point 123

(243) CEEAG point 123 specifies that the aid must be designed to prevent any undue distortion to the efficient functioning of markets, and that efficient operating incentives and price signals must be preserved. Beneficiaries should therefore remain exposed to price variation and market risk, unless this undermines the attainment of the objective of the aid. Furthermore, beneficiaries should not be incentivised to offer their output below their marginal costs and must not receive aid for production in any periods during which the market value of that production is negative.

(244) By way of introduction, ESA notes that, as was explained in Section 4.6.1 above, the measure takes the form of a two-way CfD. In the Commission's decisional practice under CEEAG, such mechanisms have been deemed compatible with CEEAG point 123.<sup>157</sup>

(245) The last sentence of point 78(i) TCTF takes a similar approach to CEEAG point 123 in that it stipulates that beneficiaries should not be incentivised to offer their output below their marginal costs, and that they must not receive aid for production in any periods during which the market value of that production is negative. It is therefore also of interest to note, in the context of the assessment against CEEAG point 123, that the Commission has found CfDs to comply with point 78(i) TCTF.<sup>158</sup>

(246) In view of this, ESA finds that there is nothing inherent in the concept of a two-way CfD which would make such an aid mechanism liable to unduly distort energy markets or remove efficient operating incentives and price-signals.

(247) As concerns the design of the Norwegian measure, ESA notes, firstly, that the beneficiary will not be entitled to compensation for periods where electricity prices are below the minimum price of NOK 0.05/kWh.<sup>159</sup> Secondly, the Norwegian

---

<sup>157</sup> Decision of 13.02.2023, *Parc éolien flottant en mer dans une zone au large du sud de la Bretagne*, OJ C 90, 10.03.2023, p. 1.

<sup>158</sup> Commission decision of 4.10.2023 concerning the Lithuanian offshore wind support scheme, referred to in footnote 129 above.

<sup>159</sup> See point (87) above.

authorities have pledged to exclude all hours with negative electricity prices from the calculation of the reference price under the CfD.<sup>160</sup>

- (248) On this basis, ESA concludes that the beneficiary will not receive aid for production in any periods during which the market value of that production is negative. This is in line with CEEAG point 123.
- (249) CEEAG point 123 also indicates that beneficiaries *should* not be incentivised to offer their output below their marginal costs. Unlike the stipulation that beneficiaries must not receive aid for production in any periods when the market value of that production is negative, this indication is not absolute.
- (250) In this regard, it should be noted, as underlined by the Norwegian authorities, that estimating what the marginal costs of production will be at the wind farm to be established in Phase I of Sørlige Nordsjø II is challenging. The Norwegian authorities are therefore not able to indicate precisely what the marginal costs of production will be. The marginal costs are however expected to be close to zero.<sup>161</sup>
- (251) In its comparable and recent decisional practice concerning aid for offshore wind farms, the Commission has not expressed that the marginal costs of production were above zero. Consequently, the Commission has found that CfDs comply with CEEAG point 123 and the corresponding point 78(i) TCTF when the design of the CfD did not incentivise production at times when the value of that production is negative. Reference is made in this regard to Section 2.5.5 and points 281-285 of the decision concerning French offshore windfarms,<sup>162</sup> and points 51 and 95(g) of the recent decision<sup>163</sup> concerning the Lithuanian offshore wind support scheme.
- (252) In light of the explanations provided by the Norwegian authorities, and the approach of the Commission in its recent decisions, ESA finds that for the purposes of the assessment under CEEAG point 123, it is well-founded to assume that the marginal costs of production will be zero. On the basis of this assumption, ESA concludes that the two elements described in point (247) above are also sufficient to exclude that the aid mechanism will incentivise the beneficiary to produce electricity at times when the market value of that production is lower than the marginal costs of production.
- (253) In any event, the indication in CEEAG point 123 that beneficiaries should not be incentivised to offer their output below their marginal costs, is as already identified not absolute.
- (254) As was recalled in point (247) above, the design of the measure ensures, firstly, that the beneficiary will not be entitled to compensation for periods where electricity prices are below the minimum price of NOK 0.05/kWh. As a result, the mechanism excludes payments directly incentivising production in such periods.

---

<sup>160</sup> See point (85) above.

<sup>161</sup> See point (88) above.

<sup>162</sup> The Commission decision concerning French offshore wind farms, referred to in footnote 157 above.

<sup>163</sup> The Commission decision concerning the Lithuanian offshore wind support scheme, referred to in footnote 129 above.



- (255) Secondly, as was also observed in point (247) above, the Norwegian authorities have committed to excluding all hours with negative electricity prices from the calculation of the reference price under the CfD. This commitment ensures that the beneficiary cannot speculate in producing during periods with negative electricity prices to lower the reference price used to calculate the level of compensation under the CfD in other periods.
- (256) Therefore, the only remaining potential and indirect incentive for production at below marginal costs would stem from the inclusion in the reference price of periods where electricity prices are positive, but below an actual marginal cost which turns out to be slightly higher than zero.
- (257) On a first note, ESA observes that such an incentive is indeed only potential and indirect. In any event, given that the actual marginal costs will likely be close to zero, ESA cannot see that such a potential and indirect incentive for production at below marginal costs would unduly distort markets or threaten efficient operating incentives and price signals. In this regard, ESA also observes that in its comparable and recent decision-making practice concerning offshore wind farms, the Commission has as already mentioned focused on whether the design of the concerned CfD provided incentives for production at negative prices. Reference is made once again to Section 2.5.5 and points 281-285 of the decision concerning French offshore wind farms,<sup>164</sup> and points 51 and 95(g) of the decision<sup>165</sup> concerning the Lithuanian offshore wind support scheme.
- (258) On this basis, ESA finds that the measure complies with CEEAG point 123 even under the assumption that the marginal costs of production will be slightly above zero, e.g. correspond to the minimum price of NOK 0.05/kWh.

#### 8.1.3.2.5 CEEAG points 127 and 132

- (259) As reiterated in CEEAG point 127, State aid for decarbonisation may unduly distort competition. This can be the case where the aid displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for and the use of cleaner solutions. As part of its assessment of the compatibility of a State aid measure with the EEA Agreement, ESA will therefore verify that it does not stimulate or prolong the consumption of fossil-based fuels and energy.
- (260) As has already been identified, the measure will facilitate the production of wind generated electricity. This can replace electricity from fossil fuels that would otherwise be present in the regional energy mix. Moreover, the additional electricity brought about by the measure can be used for sustainable electrification and the production of green hydrogen. Accordingly, ESA finds that the measure does not stimulate or prolong the consumption of fossil-based fuels and energy.
- (261) The first sentence of CEEAG point 132 further stipulates that for aid schemes benefitting a particularly limited number of beneficiaries, EEA EFTA States should demonstrate that the proposed measure will not lead to distortions of competition

---

<sup>164</sup> The Commission decision concerning French offshore wind farms, referred to in footnote 157 above.

<sup>165</sup> The Commission decision concerning the Lithuanian offshore wind support scheme, referred to in footnote 129 above.

through, for example, increased market power. It is recalled in the second sentence of point 132 that, even when the aid does not directly increase market power, it may do so indirectly.

- (262) It follows from the third and fourth sentence of CEEAG point 132 that ESA will focus its analysis on the foreseeable impact the aid may have on competition between undertakings, as well as on the risk of overcapacity. ESA will further assess potential negative effects on trade, including the risk of subsidy races between EEA States.
- (263) As has been set out in Section 4.6 above, the aid under the measure will be awarded on the basis of a competitive procedure. While it is true that the market position of the beneficiary and its suppliers will be affected positively by the aid, this will be achieved through open and fair competition with other undertakings. As a result, the distortions to competition will be reduced to the extent that this is possible for a measure limited to the offshore wind farm to be established in the area concerned.
- (264) As regards these limitations in eligibility, it should be recalled that, as set out in Section 8.1.3.1.3 above, the measure reflects the comprehensive analyses that form the basis for the Norwegian strategy on offshore wind. Furthermore, the limitation to the area in Phase I of Sørilige Nordsjø II reflects that opening this area for offshore wind energy production has been singled out as the best available alternative for establishing 1400-1500 MW of additional, renewables-based, generating capacity within the desired timeframe.
- (265) In respect of the decision of the Norwegian authorities to establish the measure so as to ensure that this additional generating capacity is established faster than what could be achieved through market forces alone, ESA notes that this course of action is in line with the Norwegian and European objectives for mitigating climate change, as reiterated in Section 3.1 above. In the current market situation, there is undercapacity as regards the production of electricity from renewable sources.
- (266) In light of these factors, ESA finds that the measure will not distort competition in a manner that is contrary to CEEAG point 132.
- (267) As concerns the impact on trade between EEA States, the non-discriminatory design of the competitive procedure equally suggests that trade flows will not be unduly affected. In this respect, ESA also notes that the measure is designed so as to reduce the amount of aid to the absolute minimum necessary. Given the current undercapacity as regards the production of electricity from renewable sources, the measure furthermore does not reflect undesirable subsidy races.
- (268) Based on the above, ESA concludes that the measure complies with CEEAG point 132.

#### 8.1.3.3 Weighing the positive effects of the aid against the negative effects on competition and trade

- (269) Provided that all other compatibility conditions are met, and that there are no obvious indications that the “do no significant harm” principle will not be complied with, CEEAG point 134 establishes a presumption whereunder ESA will typically find that the balance for decarbonisation measures is positive. This presumption

reflects that decarbonisation measures contribute to climate change mitigation, which is defined as an environmental objective in Regulation (EU) 2020/852,<sup>166</sup> and/or the achievement of European Union energy and climate objectives.

(270) As was explained in Sections 8.1.2 to 8.1.3.2.5 above, the measure complies with most of the conditions of CEEAG. However, as established in Section 8.1.3.1.4 above, the measure does not comply with all of the requirements pertaining to public consultations in CEEAG point 99(a). Equally, for the reasons set out in Section 8.1.3.2.2 above, the explanations provided by the Norwegian authorities are insufficient to establish that their estimate of the subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided complies with CEEAG point 115.

#### 8.1.4 Summary

(271) In view of the above, ESA concludes that the measure fulfils most, but not all, of the conditions laid down in CEEAG. ESA will therefore proceed to assess the second basis invoked by the Norwegian authorities for concluding that the measure can be declared compatible on the basis of Article 61(3)(c) of the EEA Agreement, namely that the measure complies with all of the relevant conditions in TCTF.

(272) Since the measure does not fulfil all of the compatibility conditions in CEEAG, ESA has not assessed whether it would be appropriate, in the context of CEEAG, to stipulate conditions on evaluation under CEEAG points 131 and 456.

## 8.2 Compatibility on the basis of Article 61(3)(c) of the EEA Agreement in conjunction with TCTF

### 8.2.1 Introduction

(273) As set out in point 75 TCTF, the Commission considered it essential in the context of the ongoing crisis and the REPowerEU Plan<sup>167</sup> to accelerate and expand the availability of renewable energy in a manner that went beyond the possibilities that were already available in accordance with Article 107(3)(c) TFEU. In this respect, the Commission noted that State aid to accelerate the deployment of renewable energy forms part of an appropriate, necessary and targeted solution to reduce the dependency on imported fossil fuels. Therefore, in the light of the urgent need to ensure the swift implementation of projects that accelerate the rollout of renewable energy, the Commission decided that certain simplifications for the implementation of support measures were justified on a temporary basis.

(274) Against this background, the Commission set out additional provisions on aid for accelerating the rollout of renewable energy in Section 2.5 TCTF. While these provisions (partly) overlap with CEEAG, they have been tailored to allow for a more swift and simplified deployment of aid measures than was considered necessary when CEEAG was prepared.

---

<sup>166</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.6.2020, p. 13–43, incorporated at point 310 of Annex IX to the EEA Agreement by [Joint Committee Decision No 151/2022 of 29 April 2022](#), OJ L 246, 22.9.2022, pp. 114–115.

<sup>167</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – REPowerEU Plan, 18.5.2022, COM/2022/230.

(275) Article 107(3)(c) TFEU corresponds to Article 61(3)(c) of the EEA Agreement. To ensure uniform application of the State aid rules throughout the European Economic Area, in line with the objective of homogeneity established in Article 1 of the EEA Agreement, ESA will also apply the TCTF. Therefore, provided that a measure fulfils all the applicable conditions in the TCTF, ESA will declare the measure in question compatible with the EEA Agreement on the basis of its Article 61(3)(c).

### 8.2.2 Assessment against the applicable conditions in TCTF

(276) By way of introduction, ESA notes that the aid measure takes the form of a two-way CfD. Depending on the relationship between the strike price and the reference price, the beneficiary will be entitled to subsidies from the State to ensure that its income from electricity sales corresponds to the strike price. Therefore, since the measure is designed to support the ongoing operating income of the beneficiary, ESA concludes that it concerns operating aid. This is in line with the decision-making practice of the Commission.<sup>168</sup>

(277) In keeping with this, the Norwegian authorities have submitted that the measure should be assessed against the applicable conditions for operating aid for accelerating the rollout of renewable energy in Section 2.5.2 TCTF. More specifically, the Norwegian authorities have submitted that the measure complies with the applicable conditions in point 78 TCTF.<sup>169</sup>

(278) ESA agrees with this assessment. In this regard, ESA notes that:

- i. Point 78(a)(i) TCTF requires that the aid is granted for the production of energy from renewable sources, as defined in Article 2 point (1) of Directive (EU) 2018/2001.<sup>170</sup> As follows from Section 4 above, the measure supports the generation of electricity from wind-energy. Wind is defined as a renewable non-fossil source in Article 2 point (1) of Directive (EU) 2018/2001. The measure therefore complies with point 78(a)(i) TCTF.
- ii. Pursuant to point 78(b) TCTF, the aid is to be granted on the basis of a scheme with an estimated capacity or output volume and budget. In this regard, ESA notes, firstly, that, as was set out in Section 6 above, the measure qualifies as an aid scheme. Secondly, the Norwegian authorities have decided that the wind farm shall have an installed capacity of between 1400 and 1500 MW (see point (51)) and estimated its capacity factor to around 68% (see point (48)). Therefore, the measure has both an estimated capacity and output volume. Thirdly, the Norwegian authorities have set a cap of NOK 23 billion on payments from the Norwegian State. This cap amounts to the budget of the scheme (see point (113)). In view of these factors, the measure complies with point 78(b) TCTF.
- iii. According to point 78(c) TCTF, support schemes may be limited to one or several technologies covered by point 78(a) TCTF but cannot include any artificial limitation or discrimination. As reflected in Section 8.1.3.1.3 above,

<sup>168</sup> The Commission decision concerning the Lithuanian offshore wind support scheme, referred to in footnote 129 above, point 8.

<sup>169</sup> Notification, pp. 55-60.

<sup>170</sup> Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), OJ L 328, 21.12.2018, p. 82. The directive had not been incorporated in the EEA Agreement at the time of writing.

the Norwegian authorities have demonstrated that the limitations in eligibility under the measure are justified. The procedure for awarding aid, as set out in Section 4.6 above, has furthermore been designed to ensure objectivity and exclude discrimination. Moreover, as was identified in point (215) above, the information provided by the Norwegian authorities establishes that the required license(s) will be awarded on the basis of objective and transparent criteria linked to the objectives of the measure. In line with this, the Norwegian authorities have confirmed that the measure does not include any artificial limitation or discrimination.<sup>171</sup> ESA therefore concludes that the measure complies with point 78(c) TCTF.

- iv. In accordance with point 78(d) TCTF, the Norwegian authorities have confirmed that the aid under the measure will be granted no later than 31 December 2025. The Norwegian authorities have indicated that the auction for the CfD, on the basis of which the aid will be granted, will be held in February/March 2024.<sup>172</sup>
- v. Point 78(e) TCTF requires that the aid be granted in the form of a two-way CfD in relation to the energy output of the installation and that the contract duration shall be no more than 20 years after the aided installation starts operations. As follows from the information set out in Sections 4.6 and 4.7 above, the aid will be granted on the basis of a two-way CfD referring to the energy output of the wind farm. The duration of the CfD is 15 years calculated from the time when the majority of the wind farm has been put into operation. Accordingly, the measure complies with point 78(e) TCTF.
- vi. Pursuant to point 78(g) TCTF, aid for the production of electricity from offshore wind is to be granted in a competitive bidding process in line with point 78(f)(i) TCTF. The latter provision requires that such processes are open, clear, transparent and non-discriminatory, and based on objective criteria which are defined *ex ante* and minimises the risk of strategic bidding and undersubscription. Furthermore, it is required that at least 70% in the criteria used for ranking bids are defined in terms of aid per unit of environmental protection or aid per unit of energy output or capacity. Under the measure at hand, the level of aid is determined through the competitive bidding process described in Section 4.6.2 above. The sole criterion used for ranking the bids is defined in terms of aid per unit of energy output (NOK per kWh). Furthermore, as reflected in Section 8.1.3.1.5 above, this process is open, clear, transparent, non-discriminatory, effectively competitive, and based on objective criteria that are defined *ex ante* and which minimise the risk of strategic bidding and undersubscription. ESA accordingly concludes that the measure complies with point 78(f)(i) TCTF. For this reason, point 78(g) TCTF is also complied with.
- vii. It follows from point 78(i) TCTF that the aid must be designed to prevent any undue distortion to the efficient functioning of markets and preserve efficient operating incentives and price signals. To this end, beneficiaries should not be incentivised to offer their output below their marginal costs and must not receive aid for production in periods when the market value of that production is negative. ESA concludes, on the basis of the reasoning set out in Section 8.1.3.2.4 above, that this requirement is fulfilled. In this regard, ESA reiterates that the beneficiary will not be entitled to compensation for periods

---

<sup>171</sup> Notification, point 272.

<sup>172</sup> Notification, p. 57.

where electricity prices are below the minimum price of NOK 0.05/kWh. The Norwegian authorities have excluded all hours with negative electricity prices from the calculation of the reference price under the CfD.

- viii. In accordance with point 78(l) TCTF, the aid will only be granted with respect to newly installed capacities. As was explained in Section 4.3.2 above, the aid will be granted exclusively in respect of the operation of a wind farm that is to be developed in Phase I of Sørilige Nordsjø II.
- ix. Point 78(m) TCTF establishes limitations on the extent to which State aid may be cumulated with State aid or other centrally managed Union funding in respect of the same eligible costs. As set out in Section 4.15 above, the Norwegian authorities do not foresee that the aid under the measure can be combined with State aid or other centrally managed Union funding granted in support of the same eligible costs. On this basis, ESA concludes that the measure respects the limitations on cumulation set forth in point 78(m) TCTF. For the sake of completeness, ESA reiterates that in the event that the Norwegian authorities should in the future decide that State aid under the measure can be combined with other State aid or centrally managed Union funding in support of the same eligible costs, the Norwegian authorities have committed to specifying cumulation mechanisms in each of the concerned measures in line with footnote 124 TCTF. The Norwegian authorities have furthermore committed to submitting the proposed cumulation mechanisms to ESA before the contemplated modification of allowing cumulation with other support of the same eligible costs is put into effect.<sup>173</sup>
- x. Point 78(n) TCTF stipulates that, as a main rule, aid under TCTF can only be granted for installations for which works started as of 9 March 2023. As reflected in Section 4.3, the aid under the measure will only be granted for an installation in respect of which works have yet to begin. The measure consequently complies with point 78(n) TCTF.
- xi. Pursuant to point 78(o) TCTF, the aid must induce the beneficiary to undertake an activity which it would otherwise not undertake, or only carry out in a more restricted or different manner. As reflected in Sections 4.4 and 8.1.2.2 above, the Norwegian authorities have established that the net present value of the project is negative and that the wind farm would therefore not be built and operated within the desired timeframe without the aid. ESA accordingly concludes that point 78(o) TCTF is complied with.
- xii. Point 78(p) TCTF requires for the national authorities to ensure compliance with the “do no significant harm” principle. In the notification, the Norwegian authorities have committed to ensuring compliance with this principle.<sup>174</sup> In this regard, the Norwegian authorities have explained that the contractual minimum requirements on sustainability, referred to in Sections 4.6.2.1 and 8.1.3.1.5 above, have been designed to ensure that the “do no significant harm” principle is complied with. ESA consequently finds that the measure fulfils the requirement in point 78(p) TCTF.

(279) In the light of the information provided by the Norwegian authorities, ESA furthermore concludes that the measure fulfils the remaining applicable conditions of TCTF.

---

<sup>173</sup> Notification, p. 59.

<sup>174</sup> Notification, point 289.

- (280) In this respect, ESA notes that the Norwegian authorities have confirmed, in line with point 51 TCTF, that the aid under the measure will not be made conditional on the relocation of an activity of the beneficiary from another country within the EEA to the territory of the Kingdom of Norway.<sup>175</sup>
- (281) In compliance with point 52 TCTF, the Norwegian authorities have confirmed that aid under the measure will not be granted to undertakings under sanctions adopted by Norway or the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by such sanctions; or c) undertakings active in industries targeted by sanctions adopted by Norway or the EU, insofar as the aid would undermine the objectives of the relevant sanctions.<sup>176</sup>
- (282) Pursuant to point 53 TCTF, the Norwegian authorities have confirmed that the measure does not by itself, nor by the conditions attached to it or its financing method, entail a non-severable violation of EEA law.<sup>177</sup> As reflected in Section 8.1.2.3 above, ESA has not been presented with any information to the contrary.
- (283) The Norwegian authorities have lastly confirmed that the monitoring and reporting rules laid down in Section 3 TCTF will be respected.<sup>178</sup>
- (284) In view of these factors, ESA finds that the measure fulfils all the relevant conditions of TCTF. It can therefore be declared compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

## 9 Conclusion

- (285) On the basis of the foregoing assessment, ESA considers that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that the aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c), it has no objections to the implementation of the measure.
- (286) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.<sup>179</sup>
- (287) For the EFTA Surveillance Authority,

Arne Røksund  
President  
Responsible College Member

Stefan Barriga  
College Member

Árni Páll Árnason  
College Member

Melipo Joséphides  
Countersigning as Director,  
Legal and Executive Affairs

---

<sup>175</sup> Notification, p. 59.

<sup>176</sup> Notification, p. 59.

<sup>177</sup> Document No 1422644, p. 5.

<sup>178</sup> Notification, pp. 59-60.

<sup>179</sup> Notification, point 298.

*This document has been electronically authenticated by Arne Roeksund, Melpo-  
Menie Josephides.*