

Agreement

between

the Government of the Federal Republic of Germany

and

the Government of the Kingdom of Denmark

on the Realisation of the Joint Project Bornholm Energy Island for the Generation and
Transmission of Offshore Renewable Energy

The Government of the Federal Republic of Germany
and
the Government of the Kingdom of Denmark,
hereinafter collectively referred to as “Parties” (or individually as “Party”) –

With a view to further developing the friendly relations on energy matters between the Parties;

Aiming at strengthening regional cooperation and jointly understanding and meeting the challenges of market integration of renewable energies;

Keeping in mind that the European Union (EU) aims at a target of 300 gigawatts (GW) offshore wind until 2050 to reach climate neutrality;

Stressing that Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources enables the Member States of the EU to cooperate on all types of joint projects with regard to the production of electricity, heating or cooling from renewable sources with the aim of sharing renewable energy target amounts as counting towards the national contribution of another Member State to the binding EU overall target ;

Building on the Memorandum of Understanding between the Federal Ministry for Economic Affairs and Climate Action of the Federal Government of Germany and the Ministry of Climate, Energy and Utilities of the Kingdom of Denmark on the realisation of a joint project between Germany and Denmark on Bornholm Energy Island, signed on 26 July 2022, hereinafter referred to as the MoU of 26 July 2022, in which the Participants expressed the joint intent to seek a fair and balanced distribution of costs and benefits by agreement of the Government of the Federal Republic of Germany and the Government of the Kingdom of Denmark regarding an equal sharing of the generated renewable energy target amounts and by agreement of the transmission system operators Energinet SOV and 50Hertz Transmission GmbH regarding sharing of utilisation rights with regards to the project-related electricity grid infrastructure on Bornholm as well as an intention to achieve an equal sharing of infrastructure costs for the project-related electricity grid infrastructure

on Bornholm and congestion income between the German and Danish transmission system operators on the transmission connection between Zealand and Bornholm and the interconnector between the Federal Republic of Germany and Bornholm, to be considered by the respective national regulatory authorities Bundesnetzagentur and Forsyningstilsynet in their decision of a cross-border cost allocation of the respective electricity infrastructure projects;

Supporting the agreements of the transmission system operators Energinet SOV and 50Hertz Transmission GmbH regarding the realisation of the project-related electricity grid infrastructure on Bornholm and the sea electricity transmission cables from Bornholm to the Federal Republic of Germany and Zealand in the Kingdom of Denmark respectively, together constituting the Bornholm Energy Island, and its further development in the form of the Cooperation Agreement between 50Hertz Transmission GmbH and Energinet SOV signed on 23 November 2021 and the Addendum to the Cooperation Agreement signed on 11 November 2022 and all following addenda to the Cooperation Agreement on the cooperation on the Bornholm Energy Island Project in the Baltic Sea;

Bearing in mind that Directive (EU) 2018/2001 is currently under revision,

have agreed as follows:

Article 1

Objective

The objective of this Agreement is to:

1. Provide a framework for the implementation of a joint project in accordance with the respective applicable national law and with EU law, in particular Articles 9 and 10 of Directive (EU) 2018/2001 which provide the basis for Member States of the EU to cooperate to realise joint projects relating to the production of electricity, heating or cooling from renewable energy sources. The aim of the implementation of joint projects between Member States is to share the renewable energy target amounts for

the purpose of accounting towards their respective national contributions to the binding overall Union target;

2. Contribute to the achievement of the binding overall Union target by allowing the Parties to count the joint projects' renewable electricity production towards their national contributions;

Article 2

Definitions

For the purposes of this Agreement, the following terms shall have the meaning set forth below:

1. “Joint project” is a project where two or more Member States cooperate with regard to the production of electricity, heating or cooling from renewable sources with the aim of sharing the renewable energy target amounts. Member States shall notify the Commission of the proportion or amount of electricity, heating or cooling from renewable sources produced by any joint project in their territory, which is to be regarded as counting towards the renewable energy share of another Member State for the purposes of Directive (EU) 2018/2001;
2. “Bornholm Energy Island” means the project-related electricity production and grid infrastructure on Bornholm and the sea electricity transmission cables from Bornholm to the Federal Republic of Germany and Zealand in the Kingdom of Denmark respectively. For the purpose of Directive (EU) 2018/2001, only the part of Bornholm Energy Island related to electricity production is considered as the joint project;
3. “Renewable energy target amounts” mean the statistical value of energy from renewable sources for the purpose of compliance with the national contributions of

the share of energy from renewable sources in final energy consumption to the binding overall Union target;

4. “Federal Republic of Germany” when used in a geographical sense means the land territory of the Federal Republic of Germany, including inland waters, and the air space and the territorial sea of the Federal Republic of Germany and any maritime area beyond the territorial sea within which the Federal Republic of Germany may exercise sovereign rights or jurisdiction in accordance with international law;
5. “Kingdom of Denmark” when used in a geographical sense means the land territory of the Kingdom of Denmark, including inland waters, and the air space and the territorial sea of the Kingdom of Denmark and any maritime area beyond the territorial sea within which the Kingdom of Denmark may exercise sovereign rights or jurisdiction in accordance with international law; the term does not comprise the Faroe Islands and Greenland;

Article 3

Joint Project

- (1) The Parties cooperate on the joint project Bornholm Energy Island with regard to the production and transmission of electricity from renewable sources in accordance with Article 9 and 10 of Directive (EU) 2018/2001.
- (2) The joint project concerns Bornholm Energy Island comprising offshore wind farms around the island of Bornholm of 3 GW which are connected to onshore converter stations and the following grid connections to Zealand, Kingdom of Denmark, and the Federal Republic of Germany. From the onshore converter stations a 1.2 GW High Voltage Direct Current (HVDC) grid connection to Zealand, Kingdom of Denmark, and a 2 GW HVDC

grid connection to the Federal Republic of Germany is installed. The technical setup is illustrated in figure 1 in the MoU of 26 July 2022

(3) With a view to a fair and balanced distribution of costs and benefits of the joint project Bornholm Energy Island in accordance with the MoU of 26 July 2022, the Parties share the renewable energy target amounts produced from the joint project in accordance with Article 7.

Article 4

Market arrangements

The Parties support the development of adequate power generation capacities, stronger grids and cross-zonal transmission capacity on interconnectors, alongside a well-functioning internal energy market that will increase our resilience and energy security. To this end,

1. The Parties work together and support the European Commission in strengthening the electricity market arrangements at Union level to enable the swift realisation of joint and hybrid offshore renewable energy projects considering possible distributional effects on costs and benefits of market actors including transmission system operators and offshore wind farm developers, a fair distribution of costs and benefits between them, an efficient utilisation of grid and market resources and the effective grid and market integration of offshore renewable electricity.
2. The electricity market arrangements for Bornholm Energy Island will be implemented in accordance with the revision of the EU Regulation on the internal market for electricity (EU) 2019/943 as foreseen in 2023, and with subsequent revisions of the Regulation.

Article 5

Obligations of the Kingdom of Denmark on permits, licenses and tendering

(1) The Kingdom of Denmark shall, in accordance with Danish national legislation in force, exercise due care and prioritise to ensure that construction permits and all other necessary permits and licenses for the construction and operation of the joint project Bornholm Energy Island located in Danish territory shall be obtainable in a non-discriminatory manner and in due time.

(2) The Kingdom of Denmark shall as the host Member State of the electricity generation be responsible for preparing and hosting the offshore wind electricity generation tender, including specification of the evaluation criteria and determination of their weighting, as well as the selection of the bidder. The Federal Republic of Germany shall as the off-taking Member State of the electricity generation be informed on the design and progress of the tender on an annual basis.

Article 6

Obligations of the Federal Republic of Germany on permits and licenses

The Federal Republic of Germany shall, in accordance with German national legislation in force, exercise due care and prioritise to ensure that construction permits and all other necessary permits and licenses for the construction and operation of parts of the joint project Bornholm Energy Island located in German territory shall be obtainable in a non-discriminatory manner and in due time.

Article 7

Renewable Energy Target Amounts

(1) The Federal Republic of Germany shall receive on an annual basis renewable energy target amounts corresponding to 50 per cent of the annually produced electricity from 3 GW or to the total annually produced electricity from up to 1.5 GW of the offshore wind electricity generation capacity connected to the joint project Bornholm Energy Island for the purpose of counting the renewable energy shares towards the national contributions of the Federal Republic of Germany to the binding overall Union target for the purposes of Articles 3, 9 and 10 of Directive (EU) 2018/2001 and under any European legislation succeeding this Directive.

(2) Notwithstanding the connection of electricity consumers or electricity producers to the joint project Bornholm Energy Island on or around the island of Bornholm, the Federal Republic of Germany shall on an annual basis receive renewable energy target amounts corresponding to 50 per cent of the annual electricity production from 3 GW or to the total annual electricity production from up to 1.5 GW offshore wind electricity generation capacity in accordance with paragraph (1).

(3) As both Parties share the renewable energy target amounts produced from the joint project Bornholm Energy Island in accordance with paragraph 1 and 2 and the MoU of 26 July 2022, no further payment obligations will arise with regards to the renewable energy target amounts under this Agreement.

Article 8

Notification to the European Commission

(1) To facilitate the European Commission's task of monitoring the overall progress of implementation of and compliance with Directive (EU) 2018/2001, the Parties shall notify the European Commission of the full content of this Agreement.

(2) The Kingdom of Denmark shall notify the European Commission on an annual basis of the agreed proportion or amount of electricity from renewable sources produced by the joint project Bornholm Energy Island in accordance with Article 7 (1), which is to be regarded as counting towards the renewable energy share of the Federal Republic of Germany over the lifetime of the project of 30 years under this Agreement for the purposes of Directive (EU) 2018/2001 in accordance with Article 9 of this Directive.

(3) Within three months of the end of each year, the Kingdom of Denmark shall issue a letter of notification in accordance with paragraph (2) stating (a) the total amount of electricity produced from renewable sources during that year by the installations of the joint project Bornholm Energy Island and (b) the amount of electricity produced from renewable sources during that year by these installations which is to count towards the renewable energy share of the Federal Republic of Germany in accordance with Article 10 of Directive (EU) 2018/2001. The Kingdom of Denmark shall submit the letter of notification to the Federal Republic of Germany and to the European Commission.

(4) In the event that the legislative framework of the EU for joint projects should change, the Parties shall automatically follow the revised rules. Should this prove to be in contradiction with this Agreement, the Parties undertake to discuss in good faith how to proceed and to find an amicable solution that resolves the contradiction with Union law.

Article 9

General Commitment

(1) The Parties shall fulfil all obligations under this Agreement with due diligence and in good faith.

(2) To the extent possible and with full respect of the roles and responsibilities of all participants involved, the Parties shall support the transmission system operators in engaging

the necessary activities for the timely delivery of the Bornholm Energy Island by the year 2030.

(3) The Parties and the transmission system operators shall convene at least once per year to monitor the progress in the planned activities and timeline of the joint project Bornholm Energy Island and to discuss potential amendments and modifications pursuant to Article 15.

Article 10

Force Majeure

(1) Responsibility for non-performance or delay in performance on the part of a Party with respect to any obligations or any part thereof under this Agreement shall be suspended to the extent that such non-performance or delay in performance is caused or occasioned by force majeure within the meaning of this Article.

(2) Force majeure exists in case of:

1. natural disasters, in particular earthquakes, landslides, cyclones, floods, fires, lightning, tidal waves, volcanic eruptions and other similar natural events or occurrences;
2. war between sovereign states where a Party has not initiated the war under the principles of international law, acts of terrorism, sabotage, rebellion or insurrection;
3. international embargoes against states other than the relevant Party,

provided, in every case, that the specified event or its cause and any resulting effects preventing the performance by the relevant Party of its obligations, or any part thereof, are beyond the relevant Party's control.

(3) If a Party is prevented from carrying out its obligations or any part thereof under this Agreement as a result of force majeure, it shall inform the other Party in writing. The notice must:

1. specify the obligations or any part thereof that cannot be performed;
2. fully describe the event of force majeure;
3. estimate the time during which the force majeure will continue; and
4. specify the measures proposed to be adopted to remedy or abate the force majeure or its effects.

(4) For so long as the force majeure continues, any obligations or parts thereof which cannot be performed because of the force majeure shall be suspended.

Article 11

Dispute Settlement

(1) In the case of disagreement or doubts concerning the interpretation or the application of this Agreement, for which no solution can be found during a mutual agreement procedure between the competent authorities within a period of three years from the initiation of that procedure, the Parties are obliged to submit the dispute to the Court of Justice of the European Union under a dispute settlement procedure pursuant to Article 273 of the Treaty on the Functioning of the European Union.

(2) The application of any other dispute settlement or arbitration procedures, for instance those based on the United Nations Convention on the Law of the Sea or on Articles 26 and 27 of the Energy Charter Treaty is excluded.

Article 12

Public Disclosure of this Agreement

- (1) Each Party is entitled to publish this Agreement partly or in its entirety after written consent of the other Party.
- (2) Each Party is entitled to disclose this Agreement partly or in its entirety to any third party after written consent of the other Party.

Article 13

Relationship to Other International Obligations

- (1) Nothing in this Agreement shall derogate from any rights or obligations of a Party under any international treaty to which the Parties are party or from general international law.
- (2) In the event of any inconsistency between this Agreement and any other international treaty to which a Party is a party to, or to international law, the Parties shall immediately consult one another with a view to finding a mutually satisfactory solution.

Article 14

Entry into Force

- (1) Without prejudice to paragraph 2, this Agreement shall enter into force upon signature.
- (2) Article 7 is preconditioned by the actual sharing of costs in accordance with Article 3 (3). Article 7 shall not enter into force before the start of the offshore wind electricity

generation from the joint project Bornholm Energy Island and the electricity connection to the Federal Republic of Germany has been established and is being put in operation.

Article 15 Modifications

- (1) This Agreement may only be modified by a written agreement. Each Party may request an amendment of this Agreement.
- (2) Each Party agrees to notify the other Party of all relevant changes related to the joint project Bornholm Energy Island in due time and to the extent possible, including significant changes to the technical setup of the joint project Bornholm Energy Island described in Article 3, such as changes to the generation capacity or the grid infrastructure of the joint project Bornholm Energy Island, or the connection of electricity consumers or electricity producers to the joint project Bornholm Energy Island or any other change that may affect elements of this Agreement.
- (3) The Parties agree that relevant changes to the joint project Bornholm Energy Island in accordance with paragraph 2 of this Article will be discussed among the Parties with regard to the need of amendments to this Agreement. The necessary amendments shall be provided in an addendum to this Agreement.
- (4) The Parties agree that if the lifetime of the joint project Bornholm Energy Island exceeds the timeframe set out in Article 8 (2), they shall convene to decide upon the need to extend the provisions of this Agreement, in particular of Article 7 and 8, in accordance with Article 17.

Article 16

Implementation of this Agreement

Representatives of the Parties shall meet on a regular basis, and whenever necessary at the request of a Party, to discuss the implementation of this Agreement and, if deemed necessary, propose amendments to this Agreement, including pursuant to Article 15 and in the light of the forthcoming revisions to Directive (EU) 2018/2001 and Regulation (EU) 2019/943.

Article 17

Validity and termination

(1) This Agreement is valid upon the date of signature in accordance with Article 14 (1). The Agreement shall remain valid for 30 years from the year Article 7 enters into force pursuant to Article 14 (2) with the possibility of extension by mutual written consent of the Parties. This Agreement may be terminated at any time by mutual written consent of the Parties or in accordance with the provisions of the Vienna Convention on the Law of Treaties of 23 May 1969 by notification of the other Party.

(2) Notwithstanding paragraph 1, the Parties shall in good faith seek to negotiate an amicable solution prior to terminating this Agreement.

Done in Berlin and Copenhagen, on 1 June 2023, in two duplicates, each in the English, Danish and German languages, each of these texts being authentic. In case of any differences in interpretation of the Danish and the German texts the English text shall prevail.

For the Government of the
Kingdom of Denmark

For the Government of the
Federal Republic of Germany

Lars Aagaard
Minister of Climate, Energy and
Utilities

Robert Habeck
Federal Minister of Economic
Affairs and Climate Action