

## Questions posed by the ACCC in ACCC/2016/C/181

1. Please provide the text of the 2013 administrative agreement between the central government and the Province of Utrecht, through which the Province of Utrecht committed to realize 65.5mW of operational wind capacity by 2020.
2. Please describe the opportunities, if any, that the public had to comment on the commitment made by the Province of Utrecht in 2013 to increase its wind energy generating capacity from 50 mW to 65.5 mW, prior to the Province of Utrecht making that commitment.
3. At paragraph 54 of its response to the communication, the Party concerned states: “The Provincial Spatial Policy Strategy is the successor to the provincial regional plan”. Does the Party concerned therefore accept that the Provincial Spatial Policy Strategy 2013-2028 (PSSV) is a plan or programme subject to the requirements of article 7 of the Convention?

### **Answers of the Netherlands to the questions posed**

#### Question 1

The Aarhus Compliance Committee of the Convention (‘the Committee’) wishes the Government to provide the text of the 2013 administrative agreement between the central government and the Province of Utrecht, through which the Province of Utrecht committed to realize an additional operational wind capacity to realize 65,5 MW by 2020.

The agreement the Committee refers to, might have been interpreted by the Committee to strictly. The Government is not aware of an “agreement” in the sense of a legal agreement or an agreement with a specific status. The “agreement” referred to therefore refers to an arrangement made between the respective governments on the upscaling the production of sustainable energy with 2%. In this light, the Government is able to provide the Committee with a report of the arrangements made about “wind on land” with the former Minister of Infrastructure and the Environment (*IenM*), on behalf of the national government, and the Association of Dutch Provinces (‘IPO’). In this document (see Annexes 1 and 2, English translation is provided), several arrangements can be found, dating from 22 January 2013. The arrangement for the Province of Utrecht to achieve 65,5 MW is not embedded or explicitly mentioned in this document, but flows from it. This arrangement is about adjusting the tasks of the Province of Utrecht of 60 MW that was included in the draft policy strategy “Wind on Land” of 14 March. The national target 6000 MW of 2020 did not change.

#### Question 2

The **Wind op Land Management Agreement** (‘BLOW’) from 2001 already states that the province of Utrecht should realize 50 MW of wind energy. It predates the entry into force of the Convention of Aarhus.

This target of 50 MW is also included in the **draft Provincial Spatial Policy Strategy 2013-2018** (4 February 2013). The uniform public preparatory procedure which is set out in part 3.4 of the General Administrative Law Act (*Algemene Wet Bestuursrecht*) was applied to this draft.

During the meetings on 22 January 2013 between the national government and the IPO, an arrangement was reached on onshore wind energy. This arrangement is a performance agreement for the realisation of 6000 MW wind energy on land to be divided over the 12 provinces of the Netherlands. Such a performance agreement means that provinces have to lay down the identified spaces so as to uphold its share in reaching 6000 MW in provincial structural visions.

These arrangements were (re-)confirmed in an administrative consultation between the national government and IPO on 27 January 2014.

The target for the province of Utrecht of 60 MW is set out in the **draft Structural Vision for Onshore Wind** (March 2013). It was also agreed with the IPO to examine in a separate process how the 2% extra renewable energy included in the new cabinet target for 2020 can be generated in a cost-effective way; this had not yet been taken into account when choosing the target of 6000 MW of onshore wind power generation. This interpretation will be determined in May 2013.

In the **Draft Structure Vision**, it is already mentioned that the provinces are exploring the possibilities for the remaining 285 Watts (on top of the 5715 MW that were assumed). It says: “after 1 May 2013, it will be decided how the possible additional task for onshore wind energy (including the 285 MW) will be spatially planned”.

The uniform public preparatory procedure which is set out in part 3.4 of the General Administrative Law Act was applied on the **Draft Structure Vision**. In June 2013, IPO and the national government made arrangements on the remaining 285 MW. Subsequently, the Province of Utrecht made an administrative arrangement with the national government to upscale the provincial target to achieve 65,5 MW in connection with the *extra* assignment on the production of wind energy. Agreeing on an additional assignment is, in the view of the Government, in itself not a plan or programme in the sense of article 7 of the Aarhus Convention nor any material change to any plan or program.

The final **Government Structure Vision for Onshore Wind** (28 March 2014) includes a target of 65.5 MW for the province of Utrecht. See, in this respect, table 2 on page 17.<sup>1</sup>

The upscale to 65.5 MW was also included in the **draft partial revision of the Provincial Spatial Structural Vision 2013-2018**. In accordance with the statutory requirements, this draft was available for inspection and anyone could present their views during this six-week period, either on paper, online or orally. The uniform public preparatory procedure which is set out in part 3.4 of the General Administrative Law Act was applied, as prescribed by law (sections 3.10 to 3.18). The views of the public were taken into account in the determination of the final partial revision of Provincial Spatial Structural Vision 2013-2018. The Memorandum of Reply addresses the objections made and a response is provided as well with respect to whether or not the views are implemented and/or adopted or not. No views have been submitted against the target of 65.5 MW of onshore wind energy.

Nevertheless, the Government wishes to note that the Province of Utrecht has up to this date, not realised the target of 65.5 MW. To date, only 34 MW have been realised. This is the result of the preference of the province of Utrecht to determine locations for wind energy only with the support of the municipalities. The province did designate search areas in the **Provincial Spatial Structural Vision 2013-2018**. Within the search areas, a zoning plan has to still indicate the concrete location for a wind turbine (farm) in order to make the construction possible from a planning point of view. In practice, it is left to initiators to submit an application for a zoning plan change and an environmental permit for the construction of a windmill and to the municipality to decide on this. For political reasons, municipalities have chosen sometimes not to initiate or not to continue these procedures. There may be various reasons for this, including views expressed during public participation and as a result of public opposition.

### Answer 3

Yes, in the Government’s view the **Provincial Spatial Policy Strategy 2013-2028** is a plan or programme subject to the requirements of article 7 of the Convention. In accordance with article 7 of the Convention, public participation is provided.

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<sup>1</sup> [A4 brochure \(officielebekendmakingen.nl\)](#)