

Memorandum of Understanding

Between

Energinet System Operator

Tonne Kjærvej 65
DK - 7000 Fredericia
Denmark

Hereinafter referred to as “Energinet”

And

Gasunie Deutschland Transport Services GmbH (GUD)

Pasteurallee 1
30655 Hannover

Hereinafter referred to as “Gasunie”

Jointly hereinafter referred to as “Parties”

Preamble

Denmark has significant renewable energy sources, particularly offshore wind, which can be utilized for production of green hydrogen. Germany foresees a significant demand potential for hydrogen (e.g. in the steel- and chemical industry) which is higher than the targets for renewable hydrogen production in Germany. As a result, Germany will need to import large volumes of hydrogen.

Last year Energinet and Gasunie jointly performed and published a techno-economic feasibility study for hydrogen infrastructure for export between Denmark and Germany as part of the European Hydrogen Backbone. The study showed that such a connection can be established in a stepwise and cost-efficient way by repurposing existing gas pipelines and with gradually expansions.

The connection from Denmark is an important element of the project HyPerLink – the hydrogen backbone which Gasunie is developing in North Germany. The Gasunie company Gasunie Energy Development GmbH, which is currently being established, will carry out the development services in particular.

The Esbjerg Declaration of May 2022 sets a joint target for Germany, Denmark, Belgium and the Netherlands to deliver at least 65 GW offshore wind power by 2030 and to increase capacity to at least 150 GW by 2050. The Ministers of Energy signed a joint declaration on the efforts required to reach the ambitious targets set out in the Esbjerg Declaration including the production of green hydrogen.

In conjunction with the Esbjerg declaration, the Danish and German Governments concluded a Letter of Intent (LoI) between the federal Ministries for Economic Affairs and Climate Action, the Federal Government of Germany and the Ministry of Climate, Energy and Utilities of the Kingdom of Denmark on cooperation on green hydrogen with the objective to initiate bilateral cooperation on

green hydrogen based on renewable energy both onshore and offshore. The participants in this Lol will also cooperate on improving security of supply of green hydrogen by facilitating integration of national energy systems, with a specific focus on hydrogen infrastructure.

Energinet and Gasunie wish to continue their cooperation and engage in a dialogue with European stakeholders to advance the roll-out of hydrogen infrastructure for the cross-border transportation of hydrogen on a timely and commercially viable basis.

It is currently unclear how the regulatory framework applicable for hydrogen transmission networks in both countries will develop.

It is currently undecided, who will become hydrogen network operator(s) in Denmark, it is acknowledged that Energinet contributes on behalf of the future Danish hydrogen network operator(s).

Gasunie operates under the expectation that GUD or a legal successor respectively subsidiary necessary for this purpose will become the hydrogen network operator for a hydrogen network emerging from the GUD network and that the activities are in the best interest of an emerging German hydrogen network.

Article 1 – Scope

The objective of this Memorandum of Understanding is to manifest the aim of the Parties to continue the cooperation between the Parties with the overall aim to develop the path towards the realization of infrastructure for the cross-border transportation of hydrogen between Denmark and Germany on a timely and commercially viable basis.

More specifically, Parties envisage a cooperation addressing the following topics:

- Network development plan coordination - Based on the results of the 2021 techno-economic feasibility study performed by Energinet and Gasunie and latest market developments, coordinate their activities in the grid development plans (national development plans and EU-wide planning (TYNDP, EHB)).
- Cross border supply/demand assessment – further updating and compiling the latest market developments in terms of supply and demand of hydrogen in Denmark and (North) Germany, mapping the most significant supply and demand along the envisaged cross border hydrogen infrastructure.
- Cross border planning – based on market developments, identifying the sufficient infrastructure/capacity needs necessary to meet demand for hydrogen transport from Denmark to Germany
- Joint application/Coordination of the application for EU funding for the development of the cross-border hydrogen infrastructure (PCI) between Denmark and Germany.
- Developing a common understanding of how and under which conditions the hydrogen network operators and users of the system can move towards binding capacity bookings for (cross border) hydrogen transport.
- Decision gates and timeline – Developing a common understanding of the requirements and timeline necessary to reach Final Investment Decisions. Both parties seek to develop infrastructure in alignment with the national hydrogen strategies in Denmark and Germany and wish to engage in a dialog with the governments about the effectuation of this plans and the mechanism to do so.

Both parties are knowledgeable about the fact, that the project and the role of both companies in the future hydrogen system might change.

Article 2 – Costs

All costs resulting from pursuing the scope of this Memorandum of Understanding as stated in Article 1 are to be borne by the Party that incurs them, unless otherwise agreed in writing.

Article 3 – No rights and obligations under this Memorandum of Understanding

This Memorandum of Understanding does not create any legal rights and obligations, except for Article 4, 5, 6, 7 and 8.

Article 4 – No partnership or corporation

This Memorandum of Understanding does not create a partnership or corporation.

Article 5 – Confidentiality

Information received from the other Party in the course of pursuing the scope of this Memorandum of Understanding as stated in Article 1, that may reasonably be considered a business secret of the other Party shall be kept confidential and may only be shared or made public with the explicit written consent of the other Party or where the Party is obliged to disclose or shared said information either by applicable laws, regulation or legal decisions. No Party shall be entitled to claim any information from the other Party.

The Parties acknowledge that Energinet System Operator, being a subsidiary to a fully state-owned company, is covered by the Danish Public Administration Act (in Danish: Forvaltningsloven) and the Danish Access to Public Administration Act (in Danish: Offentlighedsloven), as well as Energinet System Operator is subject to the supervision of the Danish Energy Agency and the Danish Utility Regulator.

When, as part of the marketing activities, external communications are made, these shall be done in a joint and coordinated fashion.

Since it is currently undecided, who will become hydrogen network operator(s) in Denmark and that Energinet System Operator therefore contributes on behalf of the future Danish hydrogen network operator(s), the Parties acknowledge, that it may be necessary to share information with Evida A/S to ensure the best possible result of this cooperation. Such sharing shall be done in a joint and coordinated fashion.

If a future change in the regulatory framework means that a third company will become hydrogen network operator for the German hydrogen network originated from GUD's network, relevant for the development and operation of a hydrogen connection between Denmark and Germany, this hydrogen network operator should be enabled to build on the preliminary work done under this Memorandum of Understanding.

Article 6 – Term and Termination

The term of this Memorandum of Understanding starts on 1st of September 2022 for an indefinite term. Each Party may terminate this Memorandum of Understanding by written notice observing a notice period of one month.

The following provisions shall also apply upon termination of this Memorandum of Understanding: Confidentiality (Article 5) and Law and dispute resolution (Article 7).

Article 7 – Law and dispute resolution

This Memorandum of Understanding is subject to German law. All disputes arising out of or in connection with this Memorandum of Understanding or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The arbitral tribunal shall be comprised of a sole arbitrator. The seat of the arbitration shall be Hamburg. The language of the arbitration shall be English.

Article 8 – Miscellaneous

1. A Party may not assign the rights and obligations under this Memorandum of Understanding, except with prior written consent of the other Party. Such consent shall not be unreasonably withheld or delayed.

The Parties herewith approve the accession of Gasunie Energy Development GmbH to this Memorandum of Understanding upon its registration to the commercial register and its declaration of accession. The Parties acknowledge, that it may be necessary to share all information exchanged under this Memorandum of Understanding with Gasunie Energy Development GmbH to ensure the best possible result of this cooperation. Such sharing shall be done in a joint and coordinated fashion

2. In the event a provision of this Memorandum of Understanding proves to be invalid or unenforceable, that provision shall be replaced by a provision that is – in economic terms – as close as possible to what was intended to be achieved by the invalid or unenforceable provision. A lacuna shall be filled by supplementary contract interpretation taking into account the principles of good faith pursuant to § 242 German Civil Code.

Hannover, 31/08/2022
Gasunie Deutschland Transport Services
GmbH



Jens Schumann
Managing Director of Gasunie Deutschland
Transport Services GmbH

Fredericia,
Energinet System Operator



Søren Dupont Kristensen
CEO of Energinet System Operator

Hannover, 31/08/2022
Gasunie Deutschland Transport Services GmbH



[Schulz]

