Mining Act

Exploring the forthcoming amendments to the Mining Act in the Netherlands

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The path to net zero, energy-security risks, and the closure of the Groningen gas field are some of the major challenges faced by energy policy makers in the Netherlands. These challenges paint the backdrop to the forthcoming changes to the Mining Act.

In this document we highlight the key amendments to the Act, consider the potential impacts for companies in the sector and also reflect on how technologies such as the Athos and Porthos carbon capture projects will play a role in reducing emissions.

Background to the amendments to the Mining Act

On 26 January, the Upper House of Parliament in the Netherlands passed a bill to amend the Dutch Mining Act. The amendments are now waiting to be signed into law by Royal Decree. As described in the Memorie van Toelichting[1] released in May 2020, the aims of the amendment are broadly twofold:

1. to strengthen the oversight and governance surrounding the decommissioning of mining infrastructure; and
2. to promote investment in existing and new gas production assets.

The strategic backdrop to the bill is evident in these two aims.

Firstly, given many fields are moving towards the end of their productive lives, the authorities recognize a mechanism is required to ensure license holders will meet the financial obligations to decommission the infrastructure.

Secondly, despite the fact the energy transition is underway the government acknowledges that the Netherlands will continue to rely on gas for a number of years and has a clear preference for domestic production.

To support these dual objectives the bill introduces a range of measures. In our opinion the key measures are:

1. the introduction of compulsory decommissioning agreements;
2. updates to the actions license holders are required to take when assets reach the end of their lives;
3. a broadening of the scope of projects entitled to the State Profit Share investment allowance and a simplification of the process to claim the allowance; and
4. an increase in the investment allowance from 25% to 40%.

What does this mean for companies involved in the Dutch oil and gas industry or those companies considering new investments? We believe there are four key topics to consider: decommissioning agreements, decommissioning activities, transactions and M&A activities, and the investment climate.

[1] Memorie van toelichting can be accessed via the following link: https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2020Z08961&dossier=35462#activity-2020a05036.

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Decommissioning agreements

Two new agreements will become compulsory for offshore production licensees.

— a Decommissioning Security Agreement (or DSA) between the operator and other licensees; and

— a Decommissioning Security Monitoring Agreement (DSMA) between all license holders and Energie Beheer Nederland (EBN).

Key considerations

These decommissioning agreements will support EBN, operators, and non-operators to ensure their partners have the required funds available to cover the decommissioning expenses.

License holders should consider the potential follow-on measures from these new agreements, such as financial security measures in the form of guarantees, in the event these are requested from partners or EBN.

Working together with EBN and other industry bodies such as Nexstep, the Dutch association for decommissioning and reuse of oil and gas infrastructure, is also likely to become increasingly important. A joint decommissioning campaign between six operators announced in February 2021 is evidence of the potential benefits of collaborating.[2]

Decommissioning activities

The amendments include changes to the decommissioning procedures. A decommissioning plan will be required to be filed within one year for mining works no longer in use. However, an exemption may apply if the mining works will be reused for another purpose. Section 3 of the Memorie van toelichting[3] specifically highlights the possibility to convert and deploy infrastructure for use in sustainable energy projects.

Key considerations

As the energy transition gathers pace a key question is what possibilities may arise to adapt the existing infrastructure for use in new energy projects such as CO_2 storage or hydrogen production? These amendments may be a clarion call to license holders to revisit their decommissioning plans. Could emerging possibilities and new information impact the decommissioning plans and timelines currently in place?

The scope for reusing infrastructure will depend on many factors such as its location and whether the existing structures are capable of playing a role in sustainable forms of energy generation, transportation and storage. Developments in this area will no doubt continue in the coming years and clearly have the potential to significantly impact decommissioning plans.

With the drive from the Dutch State to ensure new opportunities are explored companies may need to revisit their decommissioning accounting estimates to factor in that certain infrastructure may need to remain in place for reuse.

Transactions and M&A activity

The bill introduces new change-of-control requirements. This obligates licensees to alert EBN in the event a license changes hands. This means license holders selling an interest in an operation may need to carefully vet potential buyers. In the event EBN is not notified of the change of control or the change of control has a negative impact on the provision of security for the decommissioning costs, it will be within the power of a court to nullify the legal acts which transferred control.

Key considerations

While the Dutch government understandably seeks to limit its residual risk for the decommissioning cost, this clause has the potential to limit the pool of available buyers for existing infrastructure. To overcome this limitation, parties may need to provide additional security in the event of a change of control, which may present a challenge for the sale of late-life assets approaching their decommissioning dates.

The financial risk and cash impact of decommissioning is an increasingly important topic for investors and companies in the sector. Companies seeking to sell license interests need to understand the possible options and financial impact for each specific asset. Whilst reuse may defer removal careful consideration should be given to estimating the costs to rejuvenate infrastructure and the potential new revenue streams. And whilst the energy transition may bring reuse opportunities it may also accelerate decommissioning plans if renewable projects require existing infrastructure to be removed.

[2] Nexstep announcement that six oil and gas operators launch joint campaign to abandon wells in the North Sea: https://www.nexstep.nl/press-release-joint-campaign/
[3] Memorie van toelichting can be accessed via the following link: https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2020Z08961&dossier=35462#activity-2020a05036

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The investment climate

During the energy transition, to ensure the Netherlands utilizes its natural gas reserves, and to promote new investments in domestic supply the bill increases the investment deduction allowance for the State Profit Share from 25% to 40%. The investment deduction was limited under the current scheme to investments in "small fields" offshore. Under the new rules onshore investments will also be entitled to the allowance, and investments in improvements to existing infrastructure may also be eligible. Broadening the scope of the investment allowance has been motivated by EU state aid considerations. Procedures to obtain the investment allowance have been simplified: it is no longer required to obtain prior approval through the Ministry of Economic Affairs, the allowance can be claimed in the State Profit Share return.

The effective date of the changes is to be determined and the bill provides for the option for this date to be as early as 01 January 2020. The outcome will be clarified when the changes are signed into law via the Royal Decree.

Key considerations

This measure is specifically aimed to encourage further investment in existing and new assets. The Dutch State highlights that it is valuable to maintain and continue to use the existing infrastructure for two reasons: (1) to ensure domestic supplies are available during the energy transition, and (2) to avoid the risk that a significant proportion of the existing and most important infrastructure is decommissioned before the sector has a full understanding of how it could be redeployed for renewable energy storage and production projects.

This measure aims to prompt companies in the sector to reassess current plans and consider new opportunities in particular with respect to existing late-life assets. The amendments to the legislation highlight the importance placed on creating an attractive investment climate in order to make the most of the country's domestic resources and keep options open as the energy transition gathers pace.

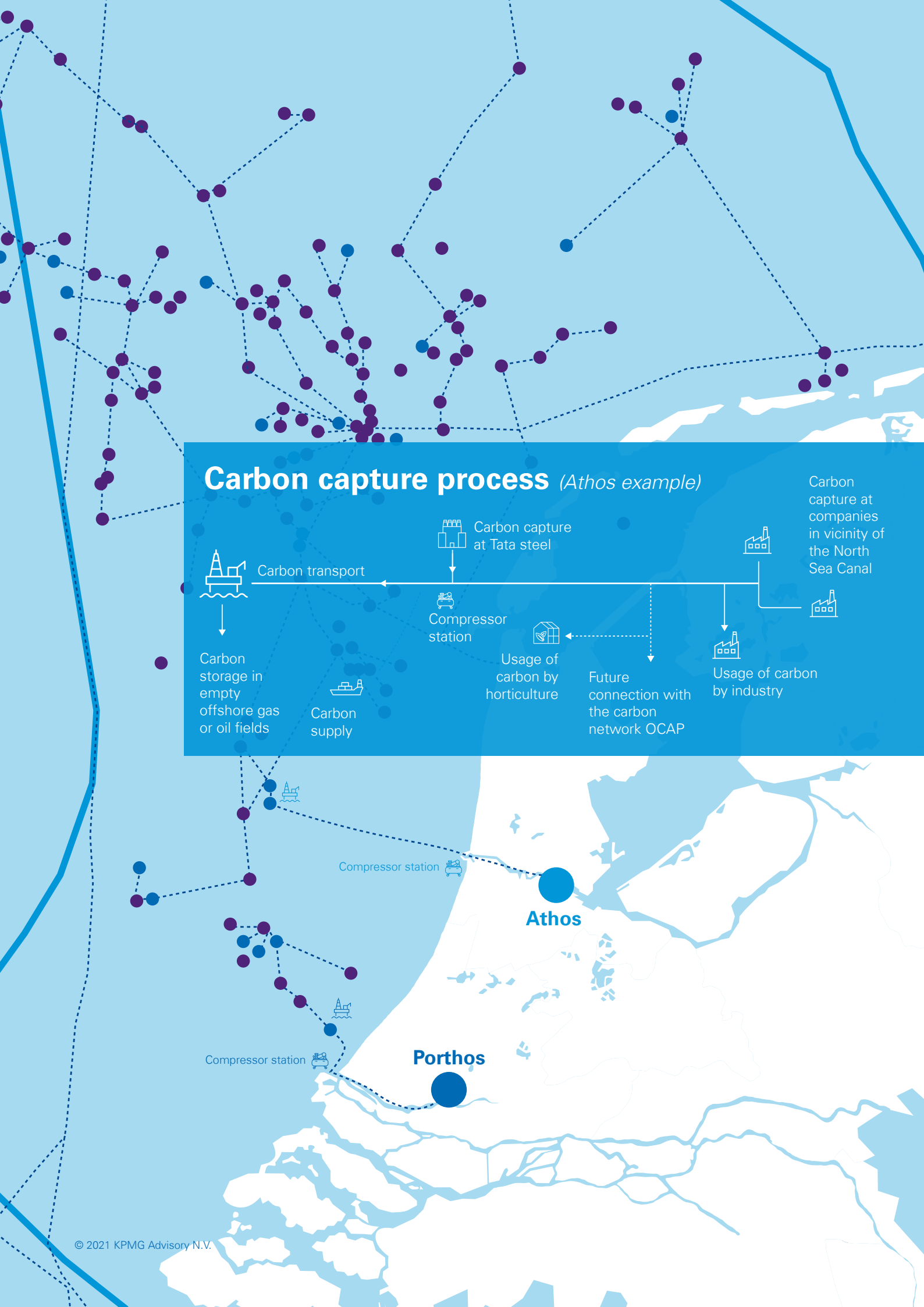
Rotterdam and Amsterdam Carbon Capture Projects

Carbon capture utilization and storage (CCUS) technologies offer a way to reduce emissions from carbon intensive industries by capturing the gases at the point of production and transporting and storing these in empty gas fields. The technology could play a key role in reducing the emissions released into the atmosphere by carbon intensive industries.

The Porthos and Athos projects are two such carbon capture projects which aim to capture and store emissions from the industrial areas surrounding the Port of Rotterdam and North Sea Canal. Athos is an abbreviation for **A**msterdam-IJmuiden CO_2 **T**ransport **H**ub & **O**ffshore **S**torage and Porthos is an abbreviation for **P**ort **o**f **R**otterdam CO_2 **T**ransport **H**ub and **O**ffshore **S**torage.

The captured emissions will be compressed and transported via pipelines to empty offshore oil and gas fields for permanent storage. Both the Porthos and Athos projects are currently making progress with feasibility and follow-up studies in order to develop their business cases. If everything goes to plan, the projects could be operational within the next 4 to 6 years with the promise to significantly reduce the CO_2 emitted into the atmosphere by industry in the Netherlands for years to come.[4]

[4] Details obtained from the Athos and Porthos websites:
https://athosccus.nl/en/
https://www.porthosco2.nl/en/



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