

Netherlands

The gas-bubble of the famous Dutch Groningen gas field is slowly but surely getting depleted, as are the other Dutch gas reserves. Within the Netherlands and the Netherlands sector of the Continental Shelf approximately 67 oil and gas accumulations have been discovered which for a variety of reasons have not been taken into production, writes Martika Jonk

Fallow acreage rethink

On 26 November 2009 the Act holding amendment to the Mining Act in connection with the promotion of an active use of exploration, production and storage licenses has been adopted.

The purpose of the new Act is to promote an active use of exploration and production of hydrocarbons and to promote the underground storage of CO₂ and gas.

The new provisions stipulate that the MEA is to prepare each year before 1 April an overview of all license areas that are not being explored or produced during the preceding two years. The overview is to be published by the MEA in the National Gazette. Information on fallow acreage is also published on the www.nlog.nl website.

License areas where "no significant activity" has taken place, may be reduced with the inactive part by Decree of the MEA. The license holder may substantiate within a period of 6 months after having been notified by the MEA of his intent to reduce the area, that significant activities are being undertaken, or that such activities will be undertaken. The New Mining Act defines "significant activities" as exploration, production or storage activities that have been performed or that, in the reasonable opinion of the MEA, will be undertaken. The filing of



Martika Jonk

a Production Plan or a Storage Plan also qualifies. If a period of 4 months after the 6 months period has lapsed, or if the license holders has confirmed that no activities will be undertaken, the MEA will pass a Decree to reduce the license area. Once the license area has been reduced, the part that has become available can be re-issued to a third party, in the expectation that such new license holder will undertake exploration or production activities.

Financial stimulus

In the past inactive licenses have been exchanged or transferred to other parties in consultation with the Ministry. According to the Dutch oil and gas industry, represented by NOGEP (Netherlands Oil & Gas Exploration and Production Association), this informal method was sufficiently effective. During long negotiations NOGEP has tried to convince the MEA that financial stimulus measures in the New Mining Act would be more effective in order to encourage the use of licenses than the punitive action of reduction of a license area.

Finally, the MEA has agreed to also adopt financial stimulus measures to promote the exploration and production of so called marginal fields. The entry into force of these provisions in the new Mining Act was made condi-

tional upon the execution of a Covenant between the MEA and the oil and gas industry. The provisions of the new Act provide for the possibility to have a gas field qualified as a so-called "marginal field". 25 % of the investments made for the exploration and production of such marginal field may be deducted from the profit used to calculate the Dutch State profit share.

The Covenant was executed by the MEA and 33 operators active in the Dutch North Sea on 31 August 2010. Interestingly enough, the Covenant stipulates that its rights and obligations are not enforceable in a court of law. It is therefore based on the free co-operation of the parties. Pursuant to the Covenant the MEA has agreed to only reduce a license area in very special cir-

cumstances. What this means is not clarified and therefore potentially ground for dispute.

Fallow area

The Covenant provides for a detailed procedure with regard to the publication and notification of fallow areas. It stipulates that for a period of 9 months after the publication of a fallow area on www.nlog.nl, the license holder may submit a plan of activity. If acceptable to the MEA, the area will be taken off the list of fallow areas. After the period for the license holder has lapsed, the co-license holders may, for a period of three months after expiry of the 9 month period, submit a plan of activity. In the event that no plans have been filed, third parties may submit a plan of activity. Such third party

plan is to be published on www.nlog.nl. Competing plans of activity may be filed within a period of three months after the publication. The New Mining Act should therefore be read in conjunction with the Covenant, which sets out the applicable proceedings in substantially more detail.

In the event a license area is reduced, the new Mining Act does not provide for what happens to the assets located in the reduced area. Upon the Decree becoming effective, the license holder can no longer undertake any activity in the area and the mining works and infrastructure located in the area will have to be abandoned or removed. The MEA has stated that conditions with regard to a proper transfer of the assets and with regard to the way the infrastructure and mining

works are to be left behind for further use may be attached to his Decree to reduce an area. The MEA has proposed that EBN can play an intermediary role in this respect. How the license holders will be compensated for the transfer of assets, or for that matter for the loss of their hydrocarbons in areas that have been taken from them, is not clear.

Many issues are therefore left open. It is to be hoped that they will be dealt with in the pragmatic way that is typical for the Dutch oil and gas industry. It will be interesting to see how the new Mining Act and the provisions of the Covenant will work out in practice. ■■■

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