

Alert | Renewable Energy



July 2021

New Wind Parks in the Netherlands Frustrated by Court Ruling

On 30 June 2021, the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*) issued its **judgment** in a case regarding the provincial executive (*Gedeputeerde Staten*) of Groningen's permit issuance for the expansion of a wind park close to Delfzijl. According to the Administrative Jurisdiction Division, the general wind turbine standards currently used to license the realization of the majority of wind farms do not comply with European rules. The current Dutch standards are included in the Activities Decree (*Activiteitenbesluit*) and the Environmental Management (Activities) Regulations (*Activiteitenregeling*).

This judgment is the direct result of the EU Court of Justice's *Nevele* judgment (which the appealing parties in the *Delftzijsl* case also referred to). The EU Court ruled in the *Nevele* case that under **Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment**, an environmental assessment (*milieubeoordeling*) should be carried out in line with the Directive for various wind farm effects (regarding noise, shadow flicker, and safety) prior to issuing permits for placing wind turbines. According to the EU Court, Belgium unlawfully failed to do so, and in the Netherlands, such an environmental assessment was not made for the statutory norms for wind farms.

Pursuant to the judgment of 30 June 2021, the Dutch government will be required to prepare such environmental assessment. In the meantime, the current wind turbine norms cannot be used as a basis to issue permits for wind farms without performing an environmental impact

report (*milieueffectrapportage*), which is time-consuming and means that various projects will be put on hold.

Yet, the ruling does not mean that new permits for wind farms cannot be issued in the meantime. According to the judgment, a city council (*raad*) can set its own standards in a zoning plan (*bestemmingsplan*) which applies to a wind farm. As long as these standards are properly substantiated, they can be used for permit issuance. However, such an individual approach for wind farms (instead of a more generic statutory framework) will likely impede the large-scale realization of wind farms where various zoning authorities are involved.

** This GT Alert is limited to non-U.S. matters and law.*

Authors

This GT Alert was prepared by:

- [Marijn Bodelier](#) | +31 20 301 7309 | bodelierm@gtlaw.com
- [Jan Herfkens](#) | +31 20 301 7312 | herfkensja@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.~ Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. Milan.* Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. Salt Lake City. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.² Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimbengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2021 Greenberg Traurig, LLP. All rights reserved.*