



# Developing Renewable Energy Projects

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YOUR TRUSTED ESG GUIDE

# Local participation in renewable energy projects

## A challenge for developers and investors in the Netherlands

Since 2019, renewable energy developers and investors are obligated to include local citizens and businesses as participants in their Dutch wind, solar, geothermal, hydrogen and energy storage projects.

In the 2019 Climate Agreement, the Dutch government, sector representatives and civil society organisations set a target of 50% local ownership for large-scale renewable energy projects. This fits the broader trend of democratising energy, where citizens and companies will eventually generate their own energy and use their own infrastructure.

The Netherlands has already privatised both power producers and grid operators. The high percentage of rooftop solar installations and the rise of innovative solutions like closed distribution systems and energy hubs further reinforce local participation.

This landscape poses a important challenge for developers and investors of renewable energy projects in the Netherlands.

In addition, the defined purpose of local participation is still unclear and the legal framework to support it is lacking. The level of organisation, technical understanding and financial capabilities of participating citizens and businesses can vary widely. Overall, this can put the interests of developers and investors at risk.

## Successfully implementing local participation

### Navigating a challenging landscape

Whether it's solar, wind, geothermal, or green hydrogen, a successful renewable energy project should be a shared goal for developers, investors, local governments, and communities. However in some instances, local participation can drive stakeholders apart.

Local participation can be successful under the right conditions:

- If developers, investors, local governments and communities agree on the desired interpretation of the local participation requirements per project.
- If the respective stakeholders acknowledge and do justice to the different interests and capabilities.
- If local authorities use (and don't abuse) the available legal framework to enable local participation.

## Bridging the gap

### Preventing issues and removing friction between parties

When stakeholders are obligated to work together, issues can arise. As an independent advisor, we can help you prevent or remove friction. We can help define stakeholders' roles and interests. And we can help assign responsibilities appropriate to the contribution of knowledge, skills and capital related to the level of participation required and the feasibility of the project.

This enables stakeholders to choose the kind of participation that suits their role and capabilities. With this approach, local participation can contribute to the success of the project, future-proofing it.

## Drawing a line

### What if a party oversteps?

But what happens when a developer is unwilling to allow public participation? Or when a local community demands a share in a property or profit without contributing to the project? These are only a few examples of when a project can be put at risk.

This is when our ability to litigate comes into play. While litigation may not seem like the best basis for fruitful and sustainable cooperation, it is sometimes necessary to clarify roles and responsibilities.

Due to the underdeveloped legal framework for local participation, our experience can help you navigate and manage these uncertainties. We draw from our solid track record in the energy sector and infrastructure development and apply this knowledge to your project.

We are familiar with how local government can enforce participation, and the limits to that power.

We know how to deal with skimming profits through the government and allocating them to local goals. Although in practice the connection is rarely made, this is very similar to the approach used in real estate project development.

Similarly, we know the different variants for shaping financial or ownership participation, and how to manage the documentation for it. of participating citizens and businesses can vary widely. Overall, this can put the interests of developers and investors at risk.

## Local participation from an investor's perspective



### Keeping projects going with the involvement of third parties

Sometimes, a local community lacks the organisation or financial capabilities required to participate in the early stages of a project. To keep the project going the temporary involvement of a third party can provide a solution.

We have assisted developers as well as investors and lenders in this type of project, requiring complex documentation that allows the participating third party to be replaced by the local community over time.

We provided international investors and lenders with clear explanations of the participation structure. We developed new standard documentation to meet investors' and lenders' needs, enabling them to remain involved in these projects.

### Overcoming grid congestion



### Participation as a solution

In the Netherlands, many times new projects cannot be developed because of the overcrowded electricity grid.

By setting up a cooperative in which both the grid and the energy are shared, we have turned this obstacle into a successful project, thereby enabling more production and consumption that's also less expensive.

The cooperation between users and the grid operator required new innovative documentation that now serves as a standard for other projects in The Netherlands.

## Zeewolde Wind Farm



### Setting the standard for local participation

It is not always clear which parties are allowed to participate in a renewable energy project, nor at which point they should be invited to do so. With the strategic design of a project, this can be managed.

A group of landowners was interested in participating in the development of the largest onshore wind farm in The Netherlands. However, the developer had not invited them to participate in the project.

This led to proceedings before the Council of State and a landmark conclusion by the Advocate General regarding so-called 'scarce rights' and the government's ability to select a developer and grant permits without involving local landowners.

Through these procedures, this case has set the standard for how a project can allow and limit local participation. It also clarified the project stage in which local participation must be sought.

## Do you want to know more?

Do not hesitate to **give us a call** to discuss. We are here to **help**.



### Gerard Kneppers

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Gerard Kneppers is a partner in the Banking (Finance & Projects) department of DLA Piper in Amsterdam and has more than 20 years of transactional experience in the Netherlands, England and Wales as well as in South Africa (being a qualified and admitted lawyer in all of the aforesaid jurisdictions). He focuses on (Renewable) Energy, PPP, DFI and leveraged finance / corporate lending products, and also has substantial experience in the field of mergers & acquisitions, thereby giving him a deep understanding of the full transactional cycle of project- and leveraged finance transactions.

He is recognised as a leading banking and finance lawyer by both Chambers & Partners and Legal 500 and his clients include parties across the spectrum such as sponsors, project companies, financial institutions and (strategic) purchasers (borrowers) and vendors.



### Pieter Paul Terpstra

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Pieter Paul Terpstra is a highly experienced M&A lawyer in the Netherlands with a particular focus on the (renewable) energy and technology sectors. With over 15 years of experience in the field, Pieter Paul has worked on a wide range of transactions, including minority and majority investments, acquisitions, and joint ventures, often with a cross-border dimension.

Pieter Paul co-heads the Energy & Natural Resources practice in the Netherlands. He also leads the ESG Initiative for the International Corporate team. Further, Pieter Paul is a member of the D&I committee of DLA Piper in Amsterdam.

Pieter Paul has been seconded to the Paris corporate team of DLA Piper. In Paris, he worked extensively on (French law governed) transactions.

Pieter Paul has also been seconded to the in-house legal team of a multinational life insurance, pensions and asset management company.

## DLA Piper

### Your trusted ESG guide

**Environment, Social and Governance (ESG)** can no longer be regarded as just a corporate box ticking or report writing exercise. It is now firmly established as the umbrella under which all facets of the transition towards a more sustainable future are gathered.

In the past few years, we've seen the ESG legal framework evolve rapidly. Making the transition towards a more sustainable future an undeniable and critical necessity for every business. Your organisation's social license depends on meeting stakeholder's ESG expectations, complying with the ESG legal framework and driving performance through a well-articulated strategy.

We believe that by making businesses better, we make the world a better place. On your journey towards a more sustainable future, DLA Piper is well positioned to be your trusted ESG guide. Wherever you are in your transition, we will guide you with forward-looking and pragmatic legal advice. With our global mind-set and vast practical experience, we can help you navigate environmental, social and governance challenges and seize ESG-related opportunities.



