COUNTRY REPORT: DENMARK
Landmark Energy Agreement and New Rules

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Introduction

The Energy Agreement 2012-2020

Based on the Government's energy strategy, *'Our Energy' - The New Government's Energy Strategy*, with the main objective to convert the country to 100% renewable energy use by 2050 (see further last year's Country Report in the IUCNAEL eJournal) the Government initiated negotiations with the opposition. A final agreement that reduced the costs but maintained the overall objectives was reached on 22 March 2012, laying down Denmark's energy policy road map for the period 2012-2020. While the Government's energy strategy was a 'unilateral' policy document, the energy agreement is based on a broad political consensus, which gives it much more political weight. To a wide extent the political agreement stipulates the content of the subsequent bills that have been and will be proposed to and adopted by Parliament.

The energy agreement gives wind energy a special position. It thus constitutes the basis for making sure that half of Denmark's electricity requirement will come from wind energy in 2020. In 2011 the share of wind energy in the Danish electricity use was 28.3%; the target is thus still far away. According to the agreement, two new offshore wind energy parks are to be built at Horns Rev in the North Sea and at Kriegers Flak in the Baltic Sea. Together they will provide a capacity of 1000 MW. The increase in onshore capacity (500 MW) will continue up to 2020, and there will also be a significant expansion of wind energy installations in coastal areas (500 MW). Subsequent to a screening procedure and strategic environmental assessment, six areas have been identified and agreed in November and will be made available for open tenders.

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The conversion to renewable energy in power and heat production is not only to be based on wind energy. It is recognized that biomass is an important replacement for coal; thus it is an aim of the agreement to facilitate an easier shift from coal to biomass in central CHP production. Likewise, solar panels will be supported financially although some adjustments were agreed in November because the previous regime was in fact too successful. The guaranteed price for energy sold to the common grid will be reduced every year. However, property owners that have already made investments are guaranteed a continued support for 20 years. The new principles are to be included in a new bill to be presented to Parliament.

Furthermore, the agreement emphasizes the need to increase energy-saving initiatives. This will include an increase in energy-saving initiatives by energy companies by 75% from 2013-2014 and by 100% from 2015-2020 compared to 2010-2012. Another target is focusing on energy renovations of existing buildings and businesses and initiatives to ensure that new buildings have high energy efficiency. However, specific obligations will also be imposed on ordinary property owners. Accordingly, it will be illegal to install oil-fired burners in existing buildings from 2016 unless they, due to their location, are unable to connect to more climate friendly sources of energy.

As a follow-up, the Minister for Climate, Energy and Building on 13 November 2012, entered into an agreement with the grid and distribution companies within the electricity, natural gas, district heating and oil sectors on the future energy saving obligations. It covers the period 2013-2020 and in practice, the initiatives by the companies will include consultancy, specialist assistance, and financial assistance to their customers to reduce energy consumption. The new agreement focuses in particular on making initiatives as cost-effective as possible. Therefore, it includes smoother administration for calculation, verification and documentation of savings.

Recent Statutory Developments

New Legislation on the CO_2 Emission Trading Scheme

On 20 November 2012, a new Act on CO_2 Quotas was passed by Parliament. The purpose is to implement the EU Directive 2009/29/EC that amends the *Emission Trading Directive* from 2003 in order to introduce a third emission trading period running from 2013-2020. New elements are the allocation of allowances by auctioning instead of giving it to enterprises for

free. Aviation was included as from 2012 but has recently been put on hold for a year with respect to international flights.

New Rules on Administrative Appeal to the Nature and Environment Appeals Board

The process and scope of review of the new Nature and Environmental Appeals Board (Natur- og Miljøklagenævnet), which has been effective since 1 January 2011, have been amended by the Parliament in June 2012.[4] There is generally a broad access to appeal administrative decisions to the Board according to environmental legislation and the Appeals Board has under the current legal framework in many cases conducted a full assessment of the case brought before it.

The purpose of the amendment was to make administrative appeal more effective by, for example, encouraging the first instance authority to reconsider the decision in view of the appeal. It has also been stipulated that the Appeals Board may limit its review to those issues that have been raised in the complaint and also to the most significant issues. This provision makes it clear that the Appeals Board is not obliged to make a full review of all aspects and conditions of, for example, an environmental permit. The Appeals Board is, however, obliged to review compliance with the requirements of EU law. On the other hand, it has been emphasised that the Appeals Board should only in specific circumstances remit a decision back to the first instance authority and if they do so, the Board should guide the first instance authority in order to avoid a second appeal to the Board. In addition, the amendment aims to increase the use of digital communication.

The amendment also included changes to the fee structure. The 3.000 DKK (400 EUR) fee for organisations and other legal entities that was introduced in January 2011 is now abolished. The 3.000 DKK fee was subject to a complaint to the Compliance Committee of the Aarhus Convention which in March 2012, found that the 3.000 DKK fee was in breach of Article 9(4) considering that: the intended purpose of the fee was to reduce the number of NGO appeals; and that the fee was considerably higher than fees for similar quasi-judicial appeal bodies in Denmark (Compliance Committee Communication ACCC/C/2011/57 concerning compliance by Denmark, 30 March 2012). The new fee is 500 DKK, which is the same as the previous standard fee. The new fee will, however, be subject to inflation indexation.

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[4] Act No. 580 of 18 June 2012 amending the *Nature and Environment Appeals Board Act*.

The amendment was based on the recommendations of a so-called Expert Committee on the Administrative Appeal System in Environmental Matters which delivered a report in May 2011. The Expert Committee was established following increasing dissatisfaction with quite long delays in many appeal cases, in particular within specific areas such as environmental permits for livestock installations. The Expert Committee made a number of recommendations on changes to the existing system to make administrative appeals more effective – most of which were included in the above-mentioned amendment of the legislation in June 2012. The Expert Committee, however, also pointed at a need to reconsider the structure and function of the Nature and Environment Appeals Board to, for example, ensure a greater legitimacy in the expert composition of the Board; and to reconsider the limited possibilities of appeal regarding supervisory decisions. Furthermore, the Expert Committee pointed to the need to consider an environmental law reform as the increasing number of administrative appeal cases to some extent can be explained by the increasing complexity and incoherence in environmental legislation.

Statutory Requirements on Climate Reporting for Large Businesses

Since 2009, large businesses in Denmark have been required to account for their work on corporate social responsibility (CSR).[5] Businesses are free to choose whether or not they wish to work on CSR, but if they do they are obliged to account for their work in their annual financial reports. If they do not have CSR policies, they are required to state this in the annual report. Thus, the statutory requirement entails that large businesses in Denmark must take a position on CSR.

If a business covered by the statutory requirement has CSR policies it must report on:

- The business's social responsibility policies, including any standards, guidelines or principles for social responsibility the business employs.
- How the business translates its social responsibility policies into action, including any systems or procedures used.
- The business's evaluation of what has been achieved through social responsibility initiatives during the financial year, and any expectations it has regarding future initiatives.

[5] Para 99a in Act No. 1403 of 27. December 2008 amending the *Danish Financial Statements Act*. (Report on social responsibility for large businesses).

Under the 2009 Act, there have been no requirements regarding what policies businesses need to account for. However, from 2013, all businesses covered by the statutory requirement are required to report on policies to reduce climate change and policies concerning human rights.[6] The reporting is still voluntary, but if a company has no policy on these issues they must state information to that effect explicitly. The reporting so far has shown that most businesses already report on environmental and climate issues (89% in 2011). However, whether the current reporting on broader environmental issues fulfils the new requirements to report on climate change explicitly is not clear. According to the preparatory works, the aim of the mandatory reporting on climate initiatives is to promote investments in new technologies, reductions of CO_2-emissions and the implementation of management strategies on climate and environment in businesses.

New Act Establishing a CSR Mediation and Complaints Board

In June 2012, Parliament adopted a new Act establishing a Mediation and Complaints Board for Responsible Business Conduct.[7] The Board became effective on 1 November 2012. The background for establishing the new complaints board was the Government's CSR strategy 'Responsible Growth' from March 2011 and an aim to comply better with the 2011 revision of the *OECD Guidelines for Multinational Enterprises*. According to the revised *OECD Guidelines*, the role of the National Contact Points had to be strengthened by making more clear and reinforced procedural guidance for the handling of breaches of the *Guidelines*. The *OECD Guidelines for Multinational Enterprises* is one among several systems of guidelines that provide standards of corporate social and environmental responsibility. Currently, 42 countries adhere to the *OECD Guidelines* of which only eight countries are non-member countries. The *Guidelines* implementation mechanism – the National Contact Points – sets it apart from other developed governmental codes of conduct for CSR.

The Mediation and Complaints Board is organized as an independent expert body consisting of a five-member panel appointed by the Minister of Business Affairs. It is a requirement that the Chairman and the Expert Member of the Board have a background in law or social sciences. The three layman members are recommended by a trade union, an industry association and a NGO.

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[6] Act No. 546 of 18 June 2012 amending the *Danish Financial Statements Act*, Act No. 323 of 11 April 2011.
[7] Act No. 546 of 18 June 2012 on the CSR Mediation and Complaints Board.

Anyone can bring matters to the Mediation and Complaints Board, but initial assessment should determine whether the issue is bona fide and relevant to the implementation of the *OECD Guidelines*. Under the Act, the Board is allowed to take on a matter on its own initiative, which is not a requirement under the *OECD Guidelines*. Complaints may be brought against all enterprises resident in Denmark or against a violation of the *OECD Guidelines* that has taken place in Denmark. There is no definition of when an enterprise is resident in Denmark, thus it is unclear whether it needs to be the head of the multinational enterprise that is placed in Denmark or whether it is enough that the enterprise has some activities in Denmark. Contrary to the *OECD Guidelines*, all companies are covered by the Act, including SMEs, and it gives access to complaints over public authorities and business partners. If a case brought before the Board is dismissed or an agreement is reached between the parties, only a short resume is published and the names of the parties is not mentioned. General rules on public access to information do not apply, which has given rise to some debate. However, if the Mediation and Complaints Board makes a final statement with recommendations this is disclosed, and the public will have the right to all information about the case. The recommendations of the Board are not enforceable.