

## COUNTRY REPORT: DENMARK

### New Policy Initiatives, Rules and Case Law

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#### New Policy Initiatives – Overview

##### *‘Denmark Without Waste’ – Waste Management Strategy*

‘Denmark Without Waste’ (October 2013)<sup>1</sup> sets out the Danish Government's waste management objectives, the primary objective being a move away from waste incineration and towards waste recycling.<sup>2</sup> The strategy also states an intention to limit landfill to materials that are uneconomical to recycle or incinerate. The 2013 strategy moves Denmark beyond the 1990s focus on waste incineration. This focus was driven by a 1997 ban on the use of waste as landfill if the waste was suitable for incineration.

The 2013 waste management strategy is partially motivated by a political view that far too many valuable materials end up in waste incineration plants. It is also influenced by the European Union's Environmental Action Programme<sup>3</sup> and roadmap for a resource-efficient Europe.<sup>4</sup> The strategy outlines six initiatives for implementing the new waste management approach. The first initiative requires more recycling of materials from households and the service sector. The goal here is for Danes to be recycling 50 percent of their household

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<sup>1</sup> The Danish Government: Denmark Without Waste: Recycle more – incinerate less, 2013/14:2.

<sup>2</sup> Denmark is 8th on the list of EU Member States for recycling waste collected by municipalities, Eurostat & EEA (2010).

<sup>3</sup> COM(2012) 710 final. On 20 November 2013 the Decision on the Action Programme was signed into law.

<sup>4</sup> COM(2011) 571 final.

waste by 2022. This goal mirrors the European Union's 2020 target. Its success depends upon Danish households more than doubling their current recycling rate in less than 10 years.<sup>5</sup> This initiative is supported by the second initiative which aims to increase collections of waste electronic equipment from Danish households.<sup>6</sup> The third initiative relates to the exploitation of waste nutrients such as phosphorus and biogas. For example, one strategy goal is to quadruple the use of certain food wastes for biogas by 2018. Another is to promote the horticultural use of phosphorus from incineration sludge. The fourth initiative focuses on construction and demolition waste which accounts for by far the largest percentage of total waste volumes in Denmark. The fifth initiative concerns the need to improve the quality of the recycling, for example, through the removal of environmentally harmful materials from waste. The last initiative is to intensify the development of new technologies for the purpose of ensuring better waste management solutions and increasing the export of Danish technology and knowhow.

The instruments introduced to implement the strategy will be based on the EU waste management hierarchy, which prioritizes how waste should be treated.<sup>7</sup> They will include:

- control instruments
- methods to decide on best treatment
- investigations of environmental and economic factors
- identification of waste with possibilities for recycling

The new initiatives themselves will be outlined in a waste management plan and waste prevention strategy. The Government has indicated that local municipalities will be vested with much of the responsibility for developing waste management solutions.

The 'Denmark Without Waste' strategy has been met with some scepticism, especially by local municipalities and the owners of incineration installations. For example, several municipalities have asked for documentation which proves that it makes environmental sense to switch to recycling. The Government intends to conduct an evaluation of the strategy's implementation in 2016. This evaluation will be used to assess the need for further efforts.

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<sup>5</sup> Article 11(2)(a), Directive 2008/98/EC on waste.

<sup>6</sup> Article 7(1), Directive 2012/19/EU.

<sup>7</sup> See Article 4, Directive 2008/98/EC on waste.

*'Towards a Low Carbon Society' – Climate Policy Plan*

The Danish Government seeks to set a good example for ways to combat climate change in the climate policy plan *'Towards a low carbon society'* (August 2013). The plan aims to contribute to the European Union's target of an 80-95 percent reduction of greenhouse gas emissions by 2050 by targeting a 40 percent reduction in greenhouse gas emissions by 2020 (when compared to 1990 emissions). Current projections indicate that without new initiatives, Denmark will emit about 4 million tonnes more than the climate plan target.

One goal of the plan is to ensure that all energy consumption is based on renewables by 2050. This goal is to be achieved by ensuring all electricity and heating is powered by renewables by 2035. If this goal is realised, total Danish greenhouse gas emissions in 2035 will be 50 percent less than those emitted in 1990. With regards to transport and agriculture, only moderate reductions are anticipated in the absence of new policies. Implementation of the plan will be assisted by the *Climate Change Act*, due for adoption in 2014. One aim of the Act is to establish a framework for monitoring reductions through measures such as regular status reports on climate change mitigation efforts.<sup>8</sup>

*'Intelligent Energy System of the Future' – Smart Grid Strategy*

There is political agreement that by 2020, 50 percent of electricity consumption in Denmark will be met by wind turbines. To help achieve this goal, the *'Smart Grid Strategy'* (May 2013) aims to reduce the need to expand electricity infrastructure by enabling Danish consumer's greater management over their energy consumption. The strategy allows consumer access to data hubs that record, among other things, hourly electricity meter readings. This information will help consumers use energy more efficiently and identify when power is cheapest to use. Another strategy measure to incentivise electricity use during low demand times is the wider application of variable tariffs. The *'Smart Grid Strategy'* introduces new products and digital services that are likely to help move Denmark towards a smart energy future.<sup>9</sup>

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<sup>8</sup> [http://www.ens.dk/sites/ens.dk/files/policy/danish-climate-energy-policy/danishclimatepolicyplan\\_uk.pdf](http://www.ens.dk/sites/ens.dk/files/policy/danish-climate-energy-policy/danishclimatepolicyplan_uk.pdf).

<sup>9</sup> [http://www.kebmin.dk/sites/kebmin.dk/files/klima-energi-bygningspolitik/dansk-klima-energi-bygningspolitik/energiforsyning-effektivitet/smart/smart\\_grid\\_strategy\\_uk\\_summary\\_web.pdf](http://www.kebmin.dk/sites/kebmin.dk/files/klima-energi-bygningspolitik/dansk-klima-energi-bygningspolitik/energiforsyning-effektivitet/smart/smart_grid_strategy_uk_summary_web.pdf).

## Strategic Environmental Assessment of Offshore Oil and Gas Licensing and CO<sub>2</sub>

### Injections

The Danish Energy Agency (DEA) is in the midst of planning the 2014 round of oil and gas exploration and production licenses in the western Danish part of the North Sea. The DEA are also considering the possibility of a permit scheme for CO<sub>2</sub> injections into existing oil fields in the area. CO<sub>2</sub> injections aim to stimulate the production of hydrocarbons that in turn enhance oil recovery. While the permit scheme is expected to generate more activity in the area, it is not expected to lead to new types of activity. No CO<sub>2</sub> injections have occurred in the area to date.

A Strategic Environmental Assessment of the scheme has been prepared and published in accordance with the *Environmental Assessment of Plans and Programmes Act 2013*.<sup>10</sup> The assessment concludes that the scheme is unlikely to have a significant impact on marine mammals, birds and fish. The assessment also considers the impact of the scheme on nearby Natura 2000 sites, being sites designated under European Union directives for the purpose of ensuring 'the long-term survival of Europe's most valuable and threatened species and habitats'.<sup>11</sup> The assessment concludes that the scheme is unlikely to lead to any significant effects on nearby Natura 2000 areas.

The Strategic Environmental Assessment was submitted for public consultation in July 2012 and open to submissions from authorities in Norway, Germany, the Netherlands and England. The DEA received 839 responses, including two from the UK, eight from Denmark and 829 from Germany (many identical). Submission concerns related to:

- oil and gas mining in general
- CO<sub>2</sub> injections in general
- effect of noise levels of CO<sub>2</sub> injections on marine mammals
- fear of major environmental accidents and resulting impact on neighbouring German habitats

The DEA have prepared a summary report on how these submissions will be taken into account in the final permit scheme. It is expected that oil and gas exploration licenses will be

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<sup>10</sup> Consolidated Act No 939 of 7 March, 2013.

<sup>11</sup> <http://ec.europa.eu/environment/nature/natura2000/>.

granted separate to CO<sub>2</sub> injection licenses. Before any 2014 licenses can be granted, the Minister must present a statement on the area and any licensing scheme conditions to the Parliamentary Climate, Energy and Building Committee. An invitation to apply for a license will then be published in the Official Journal of the European Union and the Danish Official Gazette.<sup>12</sup>

## Recent Statutory Developments

### *Renewable Energy Act (Revised) – Promoting Local Acceptance of Onshore and Near-Shore wind Energy Projects*

In many countries, wind energy projects are increasingly confronted with local opposition that extends the project development period, raises costs and in some cases brings otherwise viable projects to a halt. As a result, there is a need for incentives to enhance local support. One such incentive may be the introduction of regulatory financial obligations that allow those living close to renewable energy installations to buy-in to the project or be compensated for the loss of value to property. In 2009, Denmark introduced such a mechanism through the *Renewable Energy Act*.<sup>13</sup> Legislated measures include:

- support for the financing of preliminary investigations by local wind turbine owners' groups
- an option for local citizens to purchase between 20 to 50 percent of the shares in wind turbine projects (the co-ownership scheme)
- a right of property owners to be compensated for the loss of value of their property due to the erection of wind turbines (the compensation scheme)
- a fund to enhance local scenic and recreational values

The *Renewable Energy Act* was reviewed in 2011. The review included an assessment of the effectiveness of the above schemes. While the assessments were generally favourable, the review did recommend some changes to the scope of compensation claimants. Other changes were recommended so as to bring the schemes into line with the Energy Agreement settled on 22 March 2012. This agreement, the result of broad political consensus, prioritised wind energy installations in near-shore areas. The review led to

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<sup>12</sup> <http://www.ens.dk/undergrund-forsyning/olie-gas/miljo/strategisk-miljoevurdering-plan-olie-gas-co2-injektion-eor>.

<sup>13</sup> Act No 1392 of 27 December 2008 on the promotion of renewable energy.

Parliament adopting an amended *Renewable Energy Act* in June 2013.<sup>14</sup> The amendments limit compensation claimants to dwelling owners and expand the application of the schemes to near-shore developments.

In regard to compensation claimants, the previous scheme obliged developers to compensate every property owner for any 1 percent decrease in property value. This entitled owners of farm land to compensation despite the fact that wind farms are unlikely to affect the value of cultivated land. Under the revised *Renewable Energy Act*, only dwelling owners can claim compensation for such a loss. Concerning an expanded application of the Act, the revisions extended the schemes to near-shore wind farms. That is, the Act now recognises that although most wind turbine nuisances occur in relation to onshore wind turbines, near-shore wind turbines may also impact the value of coastal dwellings. The revised Act also extends the co-ownership scheme to near-shore projects. This allows locals located less than 16 kilometres from any offshore development to purchase a minimum of 20 percent of shares in the project. The scheme is open to citizens who permanently reside in the municipality where the wind farm is located or, in the case of near-shore wind parks, residents in municipalities that have a shoreline within 16 kilometres of the nearest wind turbine. Citizens who live within 4.5 kilometres of the site have preferential rights to purchase a maximum of 50 shares.<sup>15</sup> To promote local ownership specifically for near-shore projects, an additional incentive has been introduced into the revised Act. Now, developers who can document that at least 30 percent of a project is locally owned (by enterprises and citizens) receive an extra price supplement (DKK 0.01/kWh) during the subsidy period.

## **Recent Case Law**

### *Danish River Basin Management Plans Declared Invalid by the Appeals Board*

The heated controversy surrounding the implementation of the Danish Water Framework Directive resulted in significant delays to the development of River Basin Management Plans (RBMPs). The Ministry for the Environment finally published the RBMPs in December 2011, more than two years after the Water Framework Directive deadline. In December 2012, following an appeal from a number of farmers, the Nature and Environment Appeals Board declared the RBMPs invalid on the grounds that an 8-day public consultation period was inadequate to allow landowners and others to comment on adjustments made to the RBMPs

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<sup>14</sup> Consolidated Act No 1274 of 11 November 2013.

<sup>15</sup> Renewable Energy Act, s 15(1).

by the Ministry.<sup>16</sup> The dispute concerned the status of watercourses, specifically whether watercourses should be categorised as 'natural' or 'artificial or heavily modified'. It was well known that the Ministry for the Environment had categorised most watercourses as 'natural' even though some of them fulfilled the criteria for 'artificial or heavily modified'. A categorisation of 'natural' meant that the watercourse was subject to the more onerous objective of 'good ecological status' rather than the less ambitious objective of ensuring 'good ecological potential'. In the draft RBMPs, the Ministry had categorised about 2 percent of RBMPs as 'artificial or heavily modified'. After a 6-month period of public consultation, the Ministry made adjustments concerning about 27 percent of RBMPs watercourses. The Nature and Environment Board of Appeals found that while the adjustments were not so significant as to constitute a new plan, landowners and others should have been given an adequate opportunity to comment. A supplementary consultation period of 8 days was insufficient for this purpose.

The Nature and Environment Appeals Board decision was a major blow to the Ministry for the Environment. In July 2013, the Ministry opened new draft RBMPs up to another 6-month consultation period. In the meantime, the Ministry drafted an entirely new legal framework for the implementation of the Water Framework Directive. This framework was presented to Parliament in November 2013. The basic idea of the new framework is that the new RBMPs will only serve informative purposes and the categorisation of water bodies will be established in separate executive orders. This would, in the Government's view, justify the abolition of any right of administrative appeal to the Nature and Environment Appeals Board.

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<sup>16</sup> Nature and Environment Appeals Board, 4. December 2012, NMK-400-0063, NMK-400-00067, NMK-400-00069.