



**COUNTRY
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Denmark

ENVIRONMENT

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This country-specific Q&A provides an overview of environment laws and regulations applicable in Denmark.

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DENMARK ENVIRONMENT



1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

The overall purpose of the Danish environmental legislation framework is to protect the environment and promote nature conservation, so to ensure the sustainable development of society with respect for human living conditions and for the conservation of wildlife and vegetation. The key environmental framework in Denmark stems from EU law, which has been implemented in Danish legislation. The major environmental laws and related regulations are as follows:

The Environmental Protection Act (miljøbeskyttelsesloven). The Act sets the framework to prevent and control pollution of air, water, soil, and subsoil, as well as vibration and noise nuisance. The Act also contains hygienically justified rules of importance to the environment and population and limits the use and waste of raw materials and other resources. It contains rules to promote the use of cleaner technology as well as rules to promote recycling in waste management.

Nature Protection Act (naturbeskyttelsesloven). The Act protects population of fauna and flora as well as their habitats through nature conservation and restoration. It also protects landscape, cultural-historical, scientific and educational values. Finally, it grants the public access to roam in nature, thus improving the opportunities for outdoor life.

Planning Act (planloven). The Act forms the basis for the public authorities' management of future land-use. The fundamental idea of the act is that the public planning of the future land-use must be based on an overall assessment of the various public and private interests. Such interests include creating and conserving valuable buildings, settlements, urban environments, and landscapes. Furthermore, the Act establishes that open coasts shall continue to comprise an important natural and landscape resource. Finally, it aims to involve the public in the planning process.

Besides the environmental framework legislation (and environmental EU legislation), Danish environmental legislation consists of acts, statutory orders, circulars, plans, guidelines, and decisions. Acts and statutory orders are binding administrative rules.

Some of the most important acts in the environmental legislation—besides the main environmental framework as listed above—are:

Water Basin Management Planning Act (vandplanlægningsloven). The Act implements the Water Framework Directive in Danish law and provides the definition of applied measures in obtaining a good marine ecosystem, while enabling sustainable exploitation of marine resources. It applies to the ecosystem structure, function and processes—including geographic, physiographic, biologic, geologic and climatic factors—as well as physical, acoustic and chemical relations existing and caused by human activities. It encompasses Danish Sea zones such as waterbeds and seabed territories as well as exclusive economic areas.

Coastal Protection Act (kystbeskyttelsesloven). The Act provides rules to protect the Danish coastline and to guard against flood and coastal erosion risks.

Environmental Objectives Act (miljømålsloven). The Act provides a detailed framework for the planning and the protection of the international nature conservation areas (Natura 2000). It implements the Birds Directive and the Habitats Directive.

Environmental Assessment Act (miljøvurderingsloven). This Act is the principal Act implementing the EIA Directive and SEA Directive as well as the UNECE Espoo Convention and SEA Protocol. The Act regulates screening and environmental impact assessment of plans, programs, and specific projects.

Contaminated Soil Act (jordforureningsloven). The purpose of the Act is to prevent, eliminate or/and reduce land contamination to avoid adverse effects from soil contamination through technical inspection projects.

Environment Information Act (miljøoplysningsloven). The Act implements the Directive on public access to environmental information and the Aarhus Convention, which ensures that everyone has the right to access environmental information.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

Environmental legislation is primarily administered by the Danish national government (Environmental Protection Agency, EPA) and the municipalities as approval authorities. Other governmental authorities such as the Danish Energy Agency (Energistyrelsen) also administers some parts of the environmental legislation. Typically, the approval authority carries out environmental inspections and, when necessary, enforcement (by injunctions or prohibitions) if environmental legislation is not complied with.

The vast majority of the tasks pertaining to environmental control, as well as the responsibility for enforcing environmental legislation, rests with the municipalities.

The environmental legislation has very different legal provisions regarding inspections. In relation to environmental permits, inspections are carried out on a regular basis to ensure that companies routinely adjust and adapt to comply with current environmental legislation and BAT. In the area of e.g., nature protection, no requirement is set for regular inspections by the authorities. Instead, inspections and enforcement take place based on notifications from citizens.

3. What is the framework for the environmental permitting regime in your jurisdiction?

The permitting process in Denmark depends on the type of activity and installation being permitted. Polluting industrial activities are generally permitted in accordance with the Statutory Order on Industrial emission permits (godkendelsesbekendtgørelsen), which implements parts of the EU-Directive 2010/75 on industrial emissions. Some industrial activities (with high similarity) are regulated by the Statutory Order on general binding rules (standardvilkårsbekendtgørelsen).

Company industries that are alike (e.g. car repair shops and machine shops) are regulated by small businesses executive orders (branchebekendtgørelser). The process

for these industries is based on a notification scheme and not a permitting process. The owner notifies the municipality and, if no terms or conditions are set, the owner can open their workshop four weeks from the time of the notification.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Permits are given to a specific entity for the purpose of operating one or more specific activities or one or more specific installations in one particular geographical location.

Companies sold in free trade may transfer a permit to the purchasing company. It is not, however, possible to utilize the permit in another location.

A change of ownership must be registered with the authorities, so to identify the party responsible for complying with the terms of the permit, BAT and other relevant legislation.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

Denmark has ratified the *UNECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters* (Aarhus Convention), which grants the right for any person with a direct, personal, and legitimate interest access to judicial procedure in environmental matters.

Decisions to grant environmental permits can be appealed to a higher authority and through the courts. In Denmark all appeals regarding environmental issues and decisions will be lodged to the Environmental Protection and Food Appeals Board (Miljø- og Fødevareklagenævnet). The verdict can be brought to court.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

Environmental impact assessment (EIA) is by Danish law required before granting a permit for projects that may have a significant impact on the environment. The list of

projects obliged to undergo an EIA by Danish legislation is identical to Annex I in the EIA Directive.

The same goes for the list of projects subject to a screening in Annex II of the EIA Directive

In accordance with the EIA Directive, the main element of the EIA's includes an assessment and evaluation of impacts and development of alternatives, in order to predict and identify the likely environmental impacts of a proposed project, including a detailed elaboration of alternatives. The competent authority is obliged to conduct hearings of the concerned public, authorities and, if relevant, other states before a permit is granted or rejected.

The EIA Directive is implemented in the Environmental Assessment Act, partly in the legislation under the auspice of the Ministry of Transport and in the sector-specific legislation concerning intensive livestock installations. A screening decision or an EIA permit may be brought before one of the three Appeal Boards in Denmark: The Environmental Protection and Food Appeal Board, The Planning Appeal Board and The Energy Appeal Board.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

In general, and similar to EU legislation, the precautionary principle and the polluter pays principle applies in all Danish environmental legislation.

Naturally, the principles also apply to soil and groundwater pollution. The Contaminated Soil Act contains the legal framework for determining soil and groundwater pollution, and grants the authorities enforcement power e.g., through injunctions or prohibitions to the responsible polluter. In addition, the Environmental Damage Act contains legal provisions for the person (typical a legal person) responsible for pollution to be held liable for the damages and costs associated with remediation.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative

reports to regulatory authorities?

The authorities (in these cases it will most often be a municipality) can grant an injunction to investigation in order to determine the extent of a soil contamination, complete a risk assessment, and estimate the costs associated with remediation.

For soil contaminations where no person can be held responsible, the Regions of Denmark are responsible for mapping the contaminated areas. Mapped areas are categorized at Knowledge Level 1 or 2.

Knowledge Level 1 regard areas where there is actual knowledge about industrial activities that may have caused contamination.

Knowledge Level 2 regard areas where studies have confirmed that the area is contaminated. The Regions of Denmark are responsible for soil remediation (removing contaminated soil) or to carry out remedial measures (purifying and revitalizing the soil).

The Regions of Denmark are responsible and obligated to perform soil remediation. The requirement applies to areas concerning groundwater, surface water, Natura 2000-areas, and areas where contaminated soil has a detrimental effect on people (e.g. kindergartens or public playgrounds).

All mapped areas are registered in the public database, Digital MiljøAdministration (DMA), which is administrated by the Danish EPA.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Both the Environmental Protection Act or the Contaminated Soil Act establishes an obligation to report detected pollution to the competent authorities.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

Depending on the circumstances, a contaminated property may be viewed as suffering from a defect. In such cases, the owner can file a lawsuit against the previous owner to be compensated if the property value

is diminished as a result of the contamination. The current owner carries the burden of proof.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

The key legislation for waste management are the Statutory Order on Waste (affaldsbekendtgørelsen), Statutory Order on waste incineration (affaldsforbrændingsbekendtgørelsen), Statutory Order on waste treatment facility (affaldsbehandlingsanlægsbekendtgørelsen), Statutory Order on waste on landfills (deponeringsbekendtgørelsen), Statutory Order on Seveso (risikobekendtgørelsen), Statutory Order on waste regulations, -fees, and -actors, etc. (bekendtgørelse om affaldsregulativer, -gebyrer og -aktører mv.).

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

As a general rule, the waste producer is no longer responsible for his waste when it has been handed over to a third party for treatment, whether that would be through recycling, incineration or by another disposal method.

However, as regulated by the EU Regulation on Shipments of Waste, which applies in Denmark, shipments of waste are subject to the requirement of a financial guarantee or equivalent insurance covering costs of transport, etc.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

In accordance with EU legislation, the Extended Producer Responsibility (EPR) for electronics, batteries, and cars, applies in Denmark.

In addition, Denmark also has national voluntary take-back schemes for companies' own products when they have been turned into waste, e.g., Nespresso capsules.

And finally, companies will have to comply with the

Packaging Waste Regulation and be responsible to clean up single-use plastic and cigarettes.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

As a general rule, a premises owner is not obligated to take action in relation to the discovery of asbestos or other deleterious materials found on their land and in their buildings. If there is a need to remove, renovate or clean materials containing asbestos, it must be reported to the Danish Working Environment Authority (WEA) and the work must be done by professionally trained personnel.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

REACH and CLP are regulations of the European Union, and they are both directly applicable in Denmark.

TSCA is American regulation that do not apply in Denmark. However, the threshold limit values (e.g., formaldehyde in wood-based products) as set by the TSCA must be complied with when exporting Danish products to the United States.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

Energy efficiency requirements apply with a few exceptions to all activities listed in Annex I in the IE Directive (identical with Annex 1 in the Statutory Order on Industrial emission permits), IE livestock, and all waste incineration plants.

The binding requirement for energy efficiency is set in the Statutory Order on Industrial emission permits (§ 20, stk. 1), requiring the use of BAT in accordance with Activities listed in Annex I in the IE Directive.

For IE livestock, the binding requirement for energy efficiency is set in the Statutory Order on Environmental Approval for Livestock Holdings (husdyrgodkendelsesbekendtgørelsen § 35, stk. 1, and § 47) and requires the greatest possible utilization of

energy and raw material consumption and information on energy efficiency.

For waste incineration plants, the Statutory Order on Waste Incineration (§ 12), which implements the Energy Efficiency Directive (EU 27/2012), requires all heat generated from waste incineration or co-incineration plants to be utilized when possible.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

According to The Danish Climate Act, Denmark will reduce greenhouse gas emission by 70% in 2030 compared to 1990. Furthermore, Denmark aims by 2050 to have achieved carbon neutrality and not emit more greenhouse gas than are absorbed.

According to the current Government of Denmark (SVM-Government, December 2023), Denmark intends to advance the goal of carbon neutrality from 2050 to 2045, and from 2050 reduce greenhouse gas emission by 110% compared to 1990.

In addition, Denmark is obliged to comply with the EU's 2020 and 2030 climate goals.

18. Does your jurisdiction have an overarching "net zero" or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

Denmark aims to be carbon neutral by 2050. The climate goal is set by the Danish Climate Act. Binding rules to ensure the achievement of the climate goal have not been implemented. In addition, Denmark has ratified the Convention on Long-Range Transboundary Air Pollutants (LRTAP), the Directive on National Emission Ceilings (NEC Directive that sets stricter limits on the five main pollutants in Europe), and the Air Quality Framework Directive, which establish standards for a range of pollutants as well as requires quality monitoring of air pollution so to better assess the level of pollution in relation to the ambient air quality standards.

19. To what extent does your jurisdiction

regulate the ability for products or companies to be referred to as "green", "sustainable" or similar terms? Who are the regulators in relation to greenwashing allegations?

In Denmark there are several certification and labeling schemes, including international schemes such as FSC, PEFC, Fairtrade, MSC, ASC, GOTS and EU-organic production-regulation. Denmark, along with other Nordic countries, also have a few national green and sustainable labeling schemes such as:

Svanemærket, which ensures that the product and service has the lowest environmental impact within its category. Strict demands are set for substances that are or can be problematic for human health.

Ø-mærket, is the Danish organic label, which guarantees increased animal welfare, fewer food additives, protection of nature and groundwater, no pesticides, no E numbers, and no GMO in animal feed.

According to the Danish Marketing Practices Act (*markedsføringsloven*), marketing must not contain false information or in any other way be deceptive or likely to deceive the average consumer, even if the information is factually correct. The trader must be able to furnish evidence as to the accuracy of factual claims.

The Consumer Ombudsman (*Forbrugerombudsmanden*) is tasked with monitoring compliance with the Danish Marketing Practices Act.

20. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

Under Danish Law, there are no specific arrangements in relation to anti-trust matters and climate change issues.

21. Have there been any notable court judgments in relation to climate change litigation over the past three years?

A case regarding greenwashing, *Vegetarian Society et al. of Denmark v. Danish Crown*, is currently pending at the Danish courts (as of December 2023). The case concerns a suit brought against Danish Crown, one of EU's largest pork producer, alleging that the company violated the Marketing Act by misrepresenting its climate footprint through its campaigns. A decision in the case is expected to be ready by February 2024.

22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

Denmark has decided to end all new oil and gas exploration in the North Sea. The extraction will end in 2050. This is a part of a wider plan to stop the extraction of fossil fuels and to achieve the climate goal of being carbon neutral by 2050.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

Each of the Danish environmental acts have a section on penalties and sanctions for breaches of the provisions etc. in the act. The general rule in all these sections is that cases regarding environmental breaches start against a legal entity such as a company or an institution. Normally when starting a case against a legal entity, a concurrent criminal case is brought against the CEO of the legal entity. To start a case against a person, presupposes that the person acted intentionally or exhibited gross negligence.

In general, a criminal case must start against the company that committed the violation. However, there may be cases where activities are carried out by subsidiaries, but the actual decisions are made by the parent company. In such cases, both companies can be prosecuted. Banks, creditors or other entities cannot be held liable as legal entities for environmental breaches.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

(a) a buyer cannot assume any pre-acquisition environmental liabilities in an asset sale/share sale.

There are, however, provisions in e.g., the Nature Protection Act and the Planning Act under which the *owner or user* is liable for environmental harm. Thus, the current owner can be held responsible for the seller's actions.

(b) it depends on the agreement between buyer and seller whether the buyer retains the seller's environmental liabilities. Since the polluter pays principle applies in Danish law, it follows that if it can be proven that a former seller is responsible for the pollution, the seller retains the liability after an asset sale/share sale.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

The legal *caveat emptor* principle applies in Danish law. This means that the buyer purchases at his own risk in the absence of a warranty in the contract. A buyer of a company or parts of a company, including the purchase of shares, has an elaborated duty to investigate the company's conditions, including the environmental conditions.

Vice versa the seller is obligated not to withhold or misrepresent material facts of the company or any other information that may be of significant importance to the buyer. If violated, the seller may be held liable. The assessment is based on increased culpa/carelessness, which is the level of guilt or negligence exhibited by the seller.

When placing the onus on the buyer, it is recommended—and quite common—for buyers to perform due diligence before making a purchase.

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

It is possible for companies in Denmark, including in the agricultural sector, to be covered by environmental insurance. The insurance policy typically covers the cost associated with restoration and remediation of natural and semi-natural areas. In addition, applicable property owners have an obligation to have an insurance that covers damages from leaks etc., from oil tanks of 6.000

liters or less.

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

The Danish Environmental Protection Agency hosts and provides public access to most of the archives for environmental data in Denmark. The archives contain a large number of collected data pertaining to nature and the environment. Among them are data sets regarding protected nature and species. There is also data on soil polluted areas as well as data from industrial activities, including permits, derogations, or injunctions.

The public has full access to most of the Danish environmental information and data. However, some archives may require a login and some are subject to confidentiality due to e.g., intellectual property rights or trade secrets.

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

According to Danish environmental information legislation—the Freedom of Access to Environment Information Act and the Access to public Files Act (offentlighedsloven)—the public have full access to all environmental data, with only a few exceptions. The public authorities can refuse to provide the requested information:

- if the authority is not in possession of the environmental information,
- if the environmental information relates to a pending lawsuit,
- or if releasing the information would adversely affect international relations, public safety, property rights or national defense.

The list is not exhaustive.

29. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

Within the last three years, stricter requirements have been put on low emission zones for trucks, buses, and vans. From October 1st 2023, these low emission zones will also apply to diesel passenger cars. Stricter requirements have also been imposed for wood-burning stoves. Wood-burning stoves installed in houses prior to 2008 must be removed or replaced if ownership of the property is transferred. Moreover, a ban has been adopted on the distribution of free plastic bags by retailers. Lastly, stricter requirements have been adopted for sorting of waste. Municipalities are now obligated to sort waste into ten different waste types.

The current Government of Denmark still has zero-emissions zones on its political agenda. A continued focused is placed on the establishment of more and bigger wind farms and solar parks. And lastly, there has been a renewed political and public interest in building nuclear power plants.

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