

Legal 500

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Denmark

Environmental, Social and Governance

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This country-specific Q&A provides an overview of environmental, social and governance laws and regulations applicable in Denmark.

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Denmark: Environmental, Social and Governance

1. Climate – the law governing operations that emit Greenhouse Gases (e.g. carbon trading) is addressed by Environment and Climate Change international guides, in respect of ESG: a. Is there any statutory duty to implement net zero business strategies; b. Is the use of carbon offsets to meet net zero or carbon neutral commitments regulated; c. Have there been any test cases brought against companies for undeliverable net zero strategies; d. Have there been any test cases brought against companies for their proportionate contribution to global levels of greenhouse gases (GHGs)?

The Danish Climate Act (in Danish "*Klimaloven*") does not impose net zero obligations directly on businesses operating in Denmark. However, the government's commitments as a state trickle down to more specific initiatives in various sectors and have resulted in specific climate objectives for several industries such as real estate, transportation, energy and agriculture. Notably, fossil fuels extraction, investments in offshore oil and gas production are still permitted, but licenses will not be granted or extended beyond 2050.

The Danish law¹ implementing the EU Corporate Sustainability Reporting Directive ("CSRD")² requires in-scope companies (including large companies and listed companies) to include in their sustainability reporting, *inter alia*, the company's plans to ensure that its business model and strategy are compatible with the Paris Agreement's objective of achieving climate neutrality by 2050.

The EU Corporate Sustainability Due Diligence Directive ("CSDDD") has been adopted in the EU and is set to be implemented into law by the Member States. The directive imposes an obligation for companies within the scope of CSDDD to adopt and put into effect a transition plan for climate change mitigation which aims to ensure compatibility of the business model and strategy of the company with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement's objective.

We note that both the CSRD and the CSDDD are currently under revision as part of the EU Omnibus process,

through which the Commission has proposed amendments to the CSDDD, CSRD, the Taxonomy Regulation and the carbon border adjustment mechanism ("CBAM"). These proposed changes were presented on 26 February 2025 and include a postponement of obligations as well as a reduction in the climate transition plans obligation and due diligence under CSDDD. At this time, the expectation of the EU legislative institutions is to adopt the first part of the Omnibus in the first half of 2025 and thereby postpone the CSRD and the CSDDD obligations. Subsequently, it is expected to adopt an increase of the thresholds for entities in scope of the CSRD and the CSDDD during the second half of 2025, which is expected to effectively exclude approximately 80% of the entities hitherto in scope of the two directives.

The use of carbon offsets to meet net zero or carbon neutrality commitments is regulated by the European Sustainability Reporting Standards ("ESRS") to the CSRD.

There have been no publicly known cases in Denmark regarding Danish companies' net zero strategies similar to cases seen in, *inter alia*, the Netherlands. However, Danish companies' claims regarding climate-related commitments and strategies are under increasing scrutiny by the competent authorities, media, citizens and several non-governmental organisations and associations. There seems to be an uptick in the number of cases (i) taken up by the Danish Consumer Ombudsman regarding companies' marketing claims stating that their products or services are *inter alia* "sustainable", "green", "recycled", or "climate neutral", and (ii) subsequently reported to the police by the Danish Consumer Ombudsman. The recently appointed Danish Consumer Ombudsman has publicly confirmed that more companies will be reported to the police.

Climate litigation also seems to be a theme of increasing activity. In a recent landmark court judgment, the Western High Court of Denmark ruled that a Danish major meat producing company had made misleading claims regarding a self-declared "climate controlled" marking scheme, whereas a different climate-related claim was found sufficiently documented (and, thus, not considered greenwashing).

Footnote(s):

¹ Proposed Act no. 107 introduced on 7 February 2024

² In this article, our references to requirements set out in the CSRD refer to all companies in scope of these requirements from time to time.

2. Biodiversity – are new projects required to demonstrate biodiversity net gain to receive development consent?

At present, there is no obligation to demonstrate positive net gain effects to receive development consent. The current proposal for an EU-wide nature restoration law focuses on mitigating biodiversity losses and is expected to require restoration measures on EU land and sea areas to make these more biodiverse and resilient.

The directive on the assessment of the effects of certain private and public projects on the environment (in Danish "VVM-direktivet") is implemented in the Danish Environmental Assessment Act (in Danish "Miljøvurderingsloven") and sets out an obligation to assess effects on nature in a broad sense prior to certain projects and/or plans and programmes with the objective of mitigating negative impacts on nature. The regulation and requirements are quite extensive, and in case of negative consequences on governed nature and fauna, the mitigating means involves establishing compensatory habitats and biodiversity offsetting.

3. Water – are companies required to report on water usage?

Up until implementation of the CSRD, there was no requirement for companies to include water usage in their public reporting. The CSRD introduces data points regarding water usage, which companies in scope of CSRD must include in their sustainability reporting if water usage is assessed as material for the company in question.

This excludes companies who perform specific water related activities, e.g. abstract certain volumes of water, and thus hold a water abstraction permit and water utility companies, where reporting requirements (can) apply towards the relevant supervisory authority.

4. Forever chemicals – have there been any test cases brought against companies for product liability or pollution of the environment related to forever chemicals such as Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)?

There is no Danish case law related to forever chemicals.

The Danish authorities have performed several tests of different areas of land to measure the amount of PFAS in the ground, and there is currently a lot of legislative focus both pursuant to Danish law and on EU basis regarding PFAS, but, to our knowledge, this has not yet led to any legal precedents from the Danish courts.

5. Circularity – a. The law governing the waste hierarchy is addressed by the Environment international guide, in respect of ESG are any duties placed on producers, distributors or retailers of products to ensure levels of recycling and / or incorporate a proportionate amount of recycled materials in product construction? b. Are any duties placed on producers, distributors or retailers of products to handle the end-of-life of the products placed on the market?

The law governing the waste hierarchy, including the Executive Order on Waste (in Danish "Affaldsbekendtgørelsen"), does not include specific obligations to ensure certain levels of recycling or recycled materials.

The Danish Environmental Protection Act (in Danish "Miljøbeskyttelsesloven") has been amended as a result of the EU Packaging and Packaging Directive, which has made it mandatory for all EU countries to introduce producer liability for packaging of all types of materials. The producer liability enters into effect on 1 October 2025.

The aim of the EU Packaging Directive is for 65% of all packaging and 50% of plastic packaging to be recycled by the end of 2025 with further reductions by the end of 2030.

Also, the EU Packaging and Packaging Waste Regulation entered into force on 11 February 2025. However, the general date of application is 12 August 2026, at which point the EU Packaging Directive is effectively replaced. The regulation, *inter alia*, aims to make all packaging placed on the EU market reusable or recyclable in an economically viable way by 2030.

Likewise, it continues the aforementioned recycling targets from the EU Packaging and Packaging Directive that member states must take *necessary measures* to achieve, i.e. 65% of all packaging and 50% of plastic packaging, and additionally sets out specific targets for recycling of wood, ferrous metals, aluminum, glass, paper and cardboard, that must be achieved by the end 2025 and again with higher targets by the end of 2030.

The regulation also sets forth 2030 and 2040 target for a minimum percentage of recycled content in packaging.

While the building sector is not subject to specific mandatory levels of recycling or recycled materials, at the national level, the Danish Building Regulation (in Danish "Bygningsreglementet") encourages the use of recycled materials in construction. Technically the CO2 emissions of these recycled building materials are calculated as having a 0%-contribution to the CO2 emissions in the mandatory life cycle assessment (LCA) as of 1 January 2024. The LCA requirement came into effect on 1 January 2023 for new buildings covered by requirements of energy performance, i.e. buildings heated to over 5°C (with only few exceptions).

6. Plastics – what laws are in place to deter and punish plastic pollution (e.g. producer responsibility, plastic tax or bans on certain plastic uses)?

The Danish legislation in place to deter and punish plastic pollution is largely driven by implementation of EU law, including the EU Packaging and Packaging Waste Regulation and EU Packaging and Packaging Waste regulation as specified in question 5 above, and the EU Single-Use Plastics Directive.

As such, the Danish Environmental Protection Act (in Danish "Miljøbeskyttelsesloven") introduces producer liability for packaging of all types of materials with an EU-level aim of 50% of plastic packaging to be recycled by the end of 2025 and 55% by the end of 2030, which member states must take *necessary measures* to achieve, and a requirement for producers and importers to organise a take-back scheme and separation of packaging.

Particularly, the new EU Packaging and Packaging Waste Regulation *inter alia* puts restrictions on the use of single-use plastic packaging e.g. for very lightweight plastic bags, food and beverages filled and consumed within hotels, bars and restaurants.

Also, a tax is placed on plastic carrier bags and single-use serveware applies pursuant to the Danish Act on Packaging Tax (in Danish: "emballageafgiftsloven").

7. Equality Diversity and Inclusion (EDI) – what legal obligations are placed on an employer to ensure equality, diversity and inclusion in the

workplace?

While there are no specific national laws in Denmark that require employers to ensure or promote workplace diversity, the Danish Act on Equal Treatment (in Danish "Ligebehandlingsloven") sets out an obligation for employers to treat men and women equally in the workplace *inter alia* in connection with recruitment, promotions, dismissals, prevention of harassment and sexual harassment. See also the response to question 8 below. Further, the Danish Companies Act (in Danish "Selskabsloven") includes an obligation for large companies to set out target figures for the share of the under-represented gender of the board of directors and top management. This regulation is supplemented by the Danish Act on Gender Balance, which entered into force on 28 December 2024 and thereby implements the EU directive on improving the gender balance among directors of listed companies and related measures ((EU) 2022/2381). The Danish Act on Gender Balance applies to certain Danish listed companies and, in contrast to the target gender distribution imposed under the Danish Companies Act, the Danish Act on Gender Balance sets out a specific percentage share of the under-represented gender relative to the total number of board members that certain Danish listed companies must meet on their board of directors by 30 June 2026. Companies that have not met this percentage share by 30 June 2026 must establish procedures for the election of board members enabling the company to meet the requirement. Such procedures must be based on neutral and objective criteria and give candidates of the under-represented gender a preferential position when choosing between equally qualified candidates.

In pursuit of the same objectives, the Act on the Prohibition of Differences of Treatment in the Labour Market (in Danish "Forskelsbehandlingsloven") also prohibits any direct or indirect discrimination based on factors such as race, skin colour, religion or faith, and other characteristics. The act also prohibits an employer's request for certain information about its employees. We have experienced that this creates certain barriers for Danish employers to measure on diversity factors among its employees.

8. Workplace welfare – the law governing health and safety at work is addressed in the Health and Safety international guide, in respect of ESG are there any legal duties on employers to treat employees fairly and with respect?

The Danish Equal Pay Act (in Danish "Ligelønsloven")

prohibits unequal pay between genders and imposes an obligation to remunerate men and women equally for the same work or work of equal value.

Further, the Danish Act on Equal Treatment (in Danish "*Ligebehandlingsloven*") and the Act on the Prohibition of Differences of Treatment in the Labour Market (in Danish "*Forskelsbehandlingsloven*") cover gender and other diversity gaps.

The EU Pay Transparency Directive ((EU) 2023/970) is expected to bring about further pay transparency and equality once it is implemented, which is expected within three years from its publication in the EU's Official Journal.

Lastly, the right to safe and healthy working conditions will presumably be listed as a human right in the CSDDD (see also the response to question 9 below).

9. Living wage – the law governing employment rights is addressed in the Employment and Labour international guide, in respect of ESG is there a legal requirement to pay a wage that is high enough to maintain a normal standard of living?

In Denmark, there is no specific statutory legal obligation to pay a wage that is high enough to maintain a normal standard of living. Collective agreements typically include a minimum wage for those covered by the collective agreement in question.

At convention level, the International Covenant on Economic, Social and Cultural Rights ("ICESCR" includes, among other things, as a human right the right to fair wages, equal remuneration, and a decent living. It is also worth noting that the CSDDD will, based on the latest proposed text of the directive, presumably list the rights to a fair wage, an adequate living wage and safe and healthy working conditions for employed workers as human rights that companies must respect in line with the ICESCR and the CSDDD due diligence obligations.

10. Human rights in the supply chain – in relation to adverse impact on human rights or the environment in the supply chain: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

There are no statutory due diligence obligations on

human rights or the environment embedded in Danish law at this point in time within the meaning of due diligence as set out in internationally recognised guidelines issued by the United Nations or the OECD. Due diligence obligations under the CSDDD will apply once the directive has been implemented into national law and has entered into force, the timing of which depends on whether the Council and the Parliament adopt the Omnibus proposal.

Since there is no statutory obligation to this effect, no test cases at the Danish courts have been brought against companies at this point in time.

The EU Deforestation Regulation ("EUDR") includes obligations for so-called *operators* and *traders* of products that contain, have been fed with or have been made using relevant commodities, cattle, cocoa, coffee, oil palm, rubber, soya and wood, to conduct due diligence and deliver a due diligence statement before products are placed on the EU market or exported to demonstrate that the products come from deforestation-free plots of land and were produced in accordance with the legislation of the country of production. The due diligence obligations will enter into force on 30 December 2025 (30 June 2026 for in-scope SMEs).

11. Responsibility for host communities, environment and indigenous populations – in relation to adverse impact on human rights or the environment in host communities: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

Similarly to question 10, other than the specific due diligence obligations under EUDR, there are no statutory due diligence obligations in relation to host communities, the environment and indigenous populations embedded in Danish law at this point in time.

No test cases at the Danish courts have been brought against companies at this point in time.

12. Have the Advertising authorities required any businesses to remove adverts for unsubstantiated sustainability claims?

In Denmark, the relevant supervisory authority concerning unsubstantiated sustainability claims is the Danish Consumer Ombudsman ("DCO") who oversees compliance with the Danish Marketing Practices Act (in Danish "*Markedsføringsloven*").

The DCO has the authority to issue orders requiring a defendant company to take specific actions to comply with the Danish Marketing Practices Act. Initially, the DCO will attempt to resolve the issue by negotiating with the defendant company to agree on specific commitments. The DCO has in several cases assessed specific sustainability claims as unsubstantiated, and the businesses have via the negotiation process with the DCO agreed to refrain from further use of such claims (please see question 1).

In a case from the DCO, the Danish distributor of a certain cars agreed to pay a fine of 1 million DKK for misleading environmental claims in their marketing. From September 2021 to January 2022, the distributor marketed cars with claims such as "certified environmentally friendly," "the green revolution," and a "CO2-neutral production". The DCO found that these statements could give consumers a misleading impression of the cars' environmental impact. The distributor stated that the use of the term "certified" was due to a translation error, which was corrected immediately after it was discovered.

In a different case from the DCO from 2024, another car distributor agreed to pay a fine of 3 million DKK for misleading environmental claims in their marketing. The DCO found that the distributor used statements such as "the world's most sustainable car manufacturer," "there is sustainability in every car", and "the entire production chain for BMW iX is green". These claims were deemed misleading as they could give consumers a false impression of the cars' environmental impact. The distributor admitted 11 violations of the Danish Marketing Practices Act and accepted the fine.

13. Have the Competition and Markets authorities taken action, fined or prosecuted any businesses for unsubstantiated sustainability claims relating to products or services?

Just like question 12, the DCO is also responsible for ensuring that sustainability claims about products or services comply with the Danish Marketing Practices Act. The DCO has taken action in a wide range of cases which largely concerns, among other things, misleading claims stating that certain products are "CO2-neutral", "environmentally friendly", or "sustainable" without proper documentation; misuse of certifications and marking schemes, such as the Nordic Swan Ecolabel or the UN Sustainable Development Goals; or claims regarding unsubstantiated CO2-compensation or reductions.

The DCO is authorized to issue orders, prohibitions,

injunctions and, in case of a violation where the DCO finds the most appropriate sanction to be a fine, report a company to the police for prosecution, particularly in severe cases. Over the past year, only a few of the DCO's cases resulted in actual police reports (and thus a recommendation from the DCO to fine the company). Most cases were resolved with a notice of criticism (in Danish "*indskærpelse*"), guidance provided to the company, or an order to modify certain specific claims.

14. Have there been any test cases brought against businesses for unsubstantiated enterprise wide sustainability commitments?

At present, there are no known test cases before the Danish courts regarding broad enterprise-wide sustainability commitments.

15. Is there a statutory duty on directors to oversee environmental and social impacts?

There are certain legal obligations that require directors to take environmental and social impacts into consideration.

For example, for limited liability companies, the Danish Companies Act (in Danish "*Selskabsloven*") sets out an overarching obligation on directors to ensure a proper organisation of the company's activities and to ensure adequate risk management. The relevant risks may include risks of negative environmental or social impacts. It is important to note, however, that this obligation does not extend to all and any environmental or social matters, but those that are relevant to the company and/or the affected environmental or social impacts.

The Danish Financial Statements Act (in Danish "*Årsregnskabsloven*"), and similar accounting obligations on financial companies, commercial foundations etc., have for several years required large companies to include in the management report of their annual accounts a non-financial statement regarding corporate social responsibility, including both environmental and social matters. These requirements have been replaced by the requirements under CSRD including the double materiality assessment and other relevant data points.

In publicly listed companies, the reporting obligations go further and require publicly listed companies to consider whether the company follows the Danish Corporate Governance Recommendations which include recommendations for the board of directors to adopt a policy for the company's corporate social responsibility

and to include risks in terms of sustainability in relation to risk management.

The CSDDD was adopted in the EU on 13 June 2024 and is awaiting transposition into Danish law. The CSDDD will include a statutory duty on companies to conduct risk-based human rights and environmental due diligence. We expect that the due diligence requirements will include an obligation on the company's policies, risk management systems, and annual reporting, which will then intrinsically impose obligations on the company's directors to oversee environmental and social impacts. With the Omnibus-proposal, such obligations are, however, potentially subject to be changed.

16. Have there been any test cases brought against directors for presenting misleading information on environmental and social impact?

To our knowledge, there are no test cases brought against directors for presenting misleading information specifically concerning environmental and social impact. We expect that the increasing attention to environmental and social impact will lead to liability test cases, especially where severe negative impacts occur or are likely to occur due to suspected negligence of a company's board of directors.

17. Are financial institutions and large or listed corporates required to report against sustainable investment criteria?

Financial institutions and large or listed corporates are required to report in line with sustainable investment criteria to the extent that they are subject to EU-wide regulations such as the Sustainable Finance Disclosure Regulation (SFDR) or the Taxonomy Regulation. It is worth noting that Denmark has not implemented any extra reporting requirements regarding sustainable investment criteria beyond these regulations.

18. Is there a statutory responsibility on businesses to report on managing climate related financial risks?

Following the transposition of the CSRD into Danish law, businesses are required to report on their management of climate related financial risk, if the business assesses that climate matters materially affect, or is at a risk of materially affecting, the business' development, performance or position (for example if climate change materially affects supply of materials to the business or

climate change materially changes the end-users' use of the business' product).

19. Is there a statutory responsibility on businesses to report on energy consumption?

Similar to question 18, pursuant to the CSRD, it is mandatory for businesses to report on energy consumption, if energy consumption is a material topic for the business in terms of its impact on sustainability matters and/or the business is affected by, or there is a likelihood of being materially affected by, energy consumption matters (for example regulatory restrictions or pricing volatility).

Based on the national implementation of the Energy Efficiency Directive, i.e. order no. 761 of 18 June 2024, companies consuming energy above a certain threshold are subject to energy monitoring with the aim to increase energy efficiency. As a part of the monitoring process, energy consumption data is shared with the Danish Energy Agency.

20. Is there a statutory responsibility on businesses to report on EDI and / or gender pay gaps?

Just like the above, pursuant to the CSRD, it is mandatory for businesses to report on topics such as equality, diversity and inclusion ("EDI") or gender pay gaps, if these topics are material for the business in terms of its impact on sustainability matters and/or the business is affected, or is at a risk of being materially affected, by EDI and gender pay gaps.

The Danish Act on Equal Pay sets out an obligation for certain companies to prepare a gender divided pay analysis to be shared with Statistics Denmark and/or the employee representatives provided certain thresholds on number of employees are met.

Once the EU Directive on Pay Transparency is transposed into Danish law – expectedly in 2026 – it will create a specific responsibility for certain companies to report on whether there is a pay gap between men and women and ensure internal transparency on any such potential pay gaps as well as individual salary levels, salary levels for employees in comparable positions and factors that form the basis for salary determination. It is at this point in time unknown whether it will replace the duty to prepare a gender-based statistic mentioned above.

On a related note, from 1 January 2023, certain entities,

including large companies, public companies, state-owned public companies, and financial institutions, have been required to strive for gender diversity among management members at the highest level (usually the board of directors) and other levels (typically the executive board). According to the Danish Companies Act section 139 c, these companies must set goals to increase the number of the underrepresented gender at these management levels and implement a policy for the executive board to achieve the same, unless there is an even distribution (defined as 60/40 percent) of men and women at these management levels. The Danish Business Authority provides guidelines to help companies comply with these requirements and navigate the legislation. From December 2024, these obligations are supplemented by the Danish Act on Gender Balance as described in response to question 7 above. This act applies to certain Danish listed companies, and, in contrast to the Danish Companies Act which obligates the implicated Danish companies to strive for gender diversity (defined as 60/40 percent distribution), the Danish Act on Gender Balance sets out a specific percentage share of the under-represented gender which these companies must meet on their board of directors. Depending on the number of board members, the percentage share required under the Danish Act on Gender Balance exceeds the obligation to strive for a 40/60 percent distribution set out in the Danish Companies Act.

While the passing of the Danish Act on Gender Balance is the only change to Danish statutory responsibilities for businesses to report on EDI, it is to be determined whether existing EDI obligations will be impacted by the current geopolitical situation and in particular certain executive orders issued under the current US administration. Pursuant to these US executive orders, existing EDI policies for Danish businesses operating in the US may be contrary to US federal legislation, however, the extent of the impact is still to be determined once the executive orders are applied by US courts.

21. Is there a statutory responsibility to report on

modern day slavery in the supply chain?

Pursuant to the CSRD – in line with the above – it is mandatory for businesses to report on modern day slavery, if it is a material topic for the business in terms of its impact on sustainability matters and/or the business is affected by, or is at a risk of being materially affected by, modern day slavery matters (for example by violation of legislation leading to a fine; a law suit by an affected individual; or by reputational damage).

The EU Forced Labour Regulation is expected to bring about a nearly ultimate prohibition against placing on the market any products manufactured using forced labour. The regulation is not expected to include a separate reporting obligation.

22. Trends and developments – Where do you see the most significant legal developments in ESG in your jurisdiction in the next 12 months? Do you expect a rise in Court disputes or enforcement actions?

We expect that the most significant legal development, inevitably, will be the Omnibus I and II, which by far has also been the hottest topic until now in 2025.

Aside from Omnibus, we also expect greenwashing to remain a top priority for the DCO in light of its recent guidance on environmental marketing from October 2024. Furthermore, in a recent news article, the DCO has stated that he expects a rise in greenwashing cases going forward, which could, inter alia, be both court disputes and enforcement actions.

Lastly, the Danish Financial Supervisory Authority ("DFSA"), which is the NCA for the SFDR, has (i) in 2024 published a number of investigations regarding so-called Article – funds with criticism regarding the funds' levels of documentation, and (ii) in 2025 published a number of investigations regarding Article 9-funds, also leading to criticism on the funds. We expect the enforcement attention from the DFSA to remain high in the next 12 months.

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