

Act on Energinet.dk

as amended by L 2009-06-12 no. 516, L 2010-06-12 no. 622 and L 2011-05-18 no. 466.

Part 1

Preliminary provisions

1(1) The Danish Minister for Climate and Energy is entitled to establish Energinet.dk as an independent public enterprise.

(2) The main electricity and gas infrastructure, for which Energinet.dk is responsible, must remain public property.

(3) The Minister for Climate and Energy is entitled to change Energinet.dk's name.

1 (a) The Minister for Climate and Energy prescribes the rules and make decisions with a view to implementing or using international conventions and EU rules in respect of issues covered by this Act, including regulations, directives and decisions about nature conservation in territorial waters and in the exclusive economic zone.

2 Energinet.dk's objective is to ensure the efficient operation and expansion of the main electricity and gas infrastructure and to ensure open, equal access for all users of the grids.

(2) Pursuant to the provisions of this Act and the provisions of the Danish Electricity Supply Act (*lov om elforsyning*), the Danish Act on the Promotion of Renewable Energy (*lov om fremme af vedvarende energi*), and the Danish Natural Gas Supply Act (*lov om naturgasforsyning*) and on the basis of coherent and holistic planning, Energinet.dk must engage in transmission system operation activities, electricity transmission activities, including the task of acting as independent system operator, and gas transmission activities. Furthermore, Energinet.dk must pursuant to the Danish Electricity Supply Act (*lov om elforsyning*) and the Danish Act on the Promotion of Renewable Energy (*lov om fremme af vedvarende energi*) perform administrative tasks in relation to environmentally friendly electricity. Furthermore, Energinet.dk may engage in activities relating to gas distribution, gas storage and gas upstream pipeline networks.

(3) Energinet.dk may establish subsidiaries, hold shares in other limited liability companies and conclude cooperation agreements etc. in connection with the performance of its activities.

(4) Activities outside the scope of activities set out in subsection (2) which Energinet.dk must undertake pursuant to this Act, the Danish Electricity Supply Act (*lov om elforsyning*), the Danish Act on the Promotion of Renewable Energy (*lov om fremme af vedvarende energi*), the Danish Natural Gas Supply Act (*lov om naturgasforsyning*) and the Danish Act on Electricity Generation Subsidies (*lov om tilskud til elproduktion*) must be undertaken in independent limited liability companies.

3 Energinet.dk must perform the purchase obligation of the Danish State pursuant to section 35 of the Danish Electricity Supply Act (*lov om elforsyning*) and section 34 of the Danish Natural Gas Supply Act (*lov om naturgasforsyning*).

Part 2

Expansion of the transmission grid etc.

4 (1) New transmission grids may be constructed and material changes to existing grids may be implemented if there is a sufficient need for such expansion, including that the aim of the expansion is to increase security of supply, safeguard preparedness, create well-functioning competitive markets or to integrate renewable energy, or if the project is necessary for compliance with statutory orders pursuant to subsection (6).

(2) Expansion pursuant to subsection (1) must prior to its commencement be described in a plan which also outlines the future transmission capacity requirement. This plan must be submitted to the Danish Minister for Climate and Energy before expansion under subsection (1) can be commenced. The expansion work may at the earliest be commenced six weeks from submission of the plan.

(3) The Minister for Climate and Energy may decide that any expansion under subsection (1) must be approved by the Minister for Climate and Energy.

(4) In connection with the granting of approval under subsection (3), the Minister for Climate and Energy may determine the terms of such expansion, including the terms relating to the removal or renovation of systems.

(5) The Minister for Climate and Energy may order Energinet.dk to pay any additional expenses incurred by other electricity transmission companies and grid companies when such companies by virtue of orders made pursuant to the Danish Electricity Supply Act (*lov om elforsyning*) lay cables or carry out renovations in connection with Energinet.dk's construction of 400 kV electricity transmission grids. The Minister for Climate and Energy may prescribe more detailed rules in this regard.

(6) The Minister for Climate and Energy may order Energinet.dk to establish, expand and operate electricity transmission systems and submarine cable systems with the aim of safeguarding security of electricity supply on small islands.

(7) Subsections (5) and (6) do not apply to matters covered by Article 17 of Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

(8) Similarly, subsections (1) to (4) apply to the construction of new gas upstream pipeline networks and material changes to existing gas upstream pipeline networks.

4 a The construction of new electricity supply networks as mentioned in section 4 in territorial waters and in the exclusive economic zone and any material changes to similar existing networks may only be implemented following prior approval by the Minister for Climate and Energy.

(2) The approval may be made conditional on compliance with various terms, including terms in respect of siting, design and removal of plants as well as technical, environmental and safety issues in connection with construction and operation.

4 b With a view to avoiding damage to the integrity of designated international nature conservation areas, construction projects under section 4 a which may in itself or in connection with other projects or plans significantly impact such areas must be assessed in terms of their impact on the site concerned giving due consideration to the conservation objectives defined for the site.

(2) Permission to carry out the projects mentioned in subsection (1) can only be granted after consultation of the parties affected and provided

- 1) such projects are not detrimental to the integrity of international nature conservation areas, or

- 2) significant public interest, for example of a social or economic nature, renders it absolutely necessary to carry out such project because there are no alternative solutions, but see subsection (4).
 - (3) Where permission is granted under subsection (2), paragraph 2, the Minister for Climate and Energy must decide on suitable compensatory measures. The expenses of such measures are to be paid by the project applicant. The Minister for Climate and Energy must notify the European Commission of the compensatory measures decided upon.
 - (4) Where the area concerned is an international nature conservation area with a prioritised natural habitat or a prioritised species, permission under section 4 a can only be granted to projects covered by subsection (2), paragraph 2, if
 - 1) this is necessary to ensure human health, public safety or significant beneficial environmental impacts, or
 - 2) other significant public interest renders the project absolutely necessary.
 - (5) Permission under subsection (4), paragraph 2, cannot be granted until an opinion has been obtained from the European Commission.
 - (6) The Minister for Climate and Energy may prescribe more detailed rules for the assessment of projects under subsection (1) and may in permissions granted under this provision set up terms, including about compensatory measures to protect the nature conservation areas.
- 4 c** The Minister for Climate and Energy must take suitable measures, including the determination of terms or the issuing of orders and prohibitions, to avoid deterioration of the natural habitats and the habitats of the species in international nature conservation areas and any disturbance of the species for which the areas have been designated where such disturbance considerably impacts the objectives of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

Part 3

Powers of the Danish Minister for Climate and Energy

- 5(1)** The Danish Minister for Climate and Energy may decide on any matters pertaining to Energinet.dk's affairs.
- (2) The Minister for Climate and Energy must lay down the Articles of Association for Energinet.dk.
 - (3) The Minister for Climate and Energy must exercise his powers under this provision vis-à-vis Energinet.dk by sending written notifications to the Supervisory Board.

Part 4

Management and stakeholder forum

- 6(1)** Energinet.dk must be headed by a Supervisory Board consisting of eleven members.
- (2) The Danish Minister for Climate and Energy must appoint eight Supervisory Board members, including the Supervisory Board chairman.
 - (3) The Supervisory Board members must collectively possess general business and managerial competencies as well as have insight into the fields of electricity, gas and heat supply as well as consumer issues and social conditions. The Supervisory Board members must be independent of commercial interests in enterprises engaging in production and trade within the areas of electricity and gas.
 - (4) Supervisory Board members appointed under subsection (2) must be appointed for a term of two years, but see subsection (6).

(5) Energinet.dk's employees and subsidiaries must appoint three members to the Supervisory Board, including one group representative, pursuant to rules similar to the ones laid down in the Danish Act on Public and Private Limited Companies (the Danish Companies Act) (*lov om aktie- og anpartsselskaber (selskabsloven)*), but see section 27.

(6) The Minister for Climate and Energy may reappoint Supervisory Board members and may at any time remove any Supervisory Board members appointed by the Minister.

7 Day-to-day management must be undertaken by the Executive Board, which is appointed by the Supervisory Board following prior briefing of the Minister for Climate and Energy.

8(1) The Minister for Climate and Energy must appoint a consultative stakeholder forum.

(2) The stakeholder forum must represent a broad selection of parties interested in Energinet.dk's activities.

(3) The stakeholder forum must convene at least once a year.

(4) With a view to supporting Energinet.dk's operations, the stakeholder forum must give opinions to Energinet.dk's management about the enterprise's overall strategies and plans.

Part 5

Finances and financial statements

9 Energinet.dk's capital must be kept separate from the capital of the Danish State.

10 Energinet.dk will be a part of the Danish State's collective bargaining system but is entitled to independently negotiate the terms of pay and employment for its employees. This includes the conclusion of collective agreements.

(2) The currently applicable terms of employment must remain in force pursuant to the provisions of the Danish Act on Employees' Rights in connection with Acquisitions (*lov om lønmodtageres retsstilling ved virksomhedsoverdragelse*). The three-week notice period stipulated in section 4 a(1) of the Danish Act on Employees' Rights in connection with Acquisitions (*lov om lønmodtageres retsstilling ved virksomhedsoverdragelse*) pertaining to the acquirer's option of announcing that he does not want to be a party to any current collective agreement is calculated from the day when the supervisory boards of the respective companies have held their first meeting.

11 The provisions of the Danish Financial Statements Act (*årsregnskabsloven*) on limited liability companies' preparation and submission of annual reports etc., including the provisions applying to government-owned limited liability companies, apply to Energinet.dk with any amendments resulting from this Act.

(2) Energinet.dk's annual report must be audited by the Office of the Auditor General pursuant to the Danish Financial Statements Act (*årsregnskabsloven*) and the Danish Act on the Auditing of Governmental Financial Statements etc. (*lov om revisionen af statens regnskaber m.m.*).

(3) The audited annual report must be presented to the Danish Minister for Climate and Energy for approval.

12 In order to avoid differential treatment, cross-subsidisation and distortion of competition, Energinet.dk and its wholly owned subsidiaries must in their internal keeping of accounts

- 1) keep separate financial statements for each of their electricity and natural gas activities, including activities related to transmission system operation, transmission, distribution, storage and gas upstream pipeline networks, and

- 2) specify revenues from the ownership of transmission and distribution systems as well as storage facilities and gas upstream pipeline networks.

(2) As regards the activities mentioned in subsection (1), Energinet.dk and its wholly owned subsidiaries must prepare financial statements and have them audited as if the said activities were performed by separate enterprises. Assets for which entry values are applied pursuant to section 35 O of the Danish Corporation Tax Act (*selskabsskatteloven*) as well as revenue and expenditure associated with the ownership of such assets must be included, irrespective of whether the said assets are used in the separate financial statements covering Energinet.dk's electricity activities

(3) The Minister for Climate and Energy may prescribe detailed rules on the keeping of accounts under subsections (1) and (2).

13 Energinet.dk's profit according to the financial statements for its electricity supply and natural gas activities as mentioned in section 12(1) may be carried back to the respective consumer groups as dividend or be used to consolidate Energinet.dk's financial position. Any profit from storage activities must be used to consolidate Energinet.dk's financial position only, but see subsection (4).

(2) The Minister for Climate and Energy may prescribe more detailed rules on how to carry back profit to consumers under subsection (1).

(3) Energinet.dk may not distribute any profit or equity through the distribution of dividend or in any other way to the Danish State.

(4) The Minister for Climate and Energy may prescribe special rules for the use of profit from storage activities after having presented such rules to a committee appointed by the Danish Parliament (*Folketinget*).

14 Energinet.dk may take out loans to finance its activities, including for the financing of capital expenditure and the performance of the purchase obligation under section 3. Loans must be taken out on the basis of an annual investment and financing plan approved by the Minister for Climate and Energy.

(2) In so far as it is deemed appropriate, the Danish Minister of Finance is authorised to cover Energinet.dk's financing requirement under subsection (1) through government loans. Such loans must not be granted on terms more favourable than the ones which can be obtained by the Danish State in its capacity as borrower. Loans must be taken out within the limits determined by the Minister for Climate and Energy subject to approval by the Finance Committee of the Danish Parliament (*Folketingets Finansudvalg*).

15 Energinet.dk and its wholly owned subsidiaries must take out any such insurance as is considered necessary.

Part 6

Application for registration and registration

16 Energinet.dk must file an application for registration with the Danish Commerce and Companies Agency (*Erhvervs- og Selskabsstyrelsen*) pursuant to the provisions of Part 2 of the Danish Act on Public and Private Limited Companies (the Danish Companies Act) (*lov om aktie- og anpartsselskaber (selskabsloven)*). The executive order issued by the Agency on application, registration, fees and publication etc. with the Agency applies to Energinet.dk.

Part 7
Public access

17 The Danish Act on Public Access to Documents in Administrative Files (*lov om offentliggørelse af dokumenter i forvaltningen*), the Danish Public Administration Act (*forvaltningsloven*) and the Danish Ombudsman Act (*lov om Folketingets Ombudsmand*) apply to Energinet.dk and its wholly owned subsidiaries.

18 Energinet.dk must immediately and electronically notify the Danish Commerce and Companies Agency of any significant matters relating to the enterprise which can be assumed to affect the enterprise's future, its employees and its creditors.

19(1) Decisions made by the Danish Minister for Climate and Energy under section 5(1) must be forwarded to the Danish Commerce and Companies Agency with a view to publication.

(2) A copy of Energinet.dk's Articles of Association is available upon request from the enterprise's head office.

Part 8
Supervision, right to complain etc.

20(1) The Danish Minister for Climate and Energy must oversee that Energinet.dk and its wholly owned subsidiaries comply with the provisions of this Act.

(2) Energinet.dk and its wholly owned subsidiaries must upon request make any information about their activities available to the Minister for Climate and Energy.

21(1) The Minister for Climate and Energy may authorise any institution or other authority established under the Ministry of Climate and Energy to exercise the powers granted to the Minister by this Act.

(2) The Minister for Climate and Energy may prescribe rules to the effect that decisions made by an institution or other authority to which the Minister pursuant to this Act has delegated his powers under subsection (1) cannot be brought before the Minister.

22(1) As far as the electricity transmission grid is concerned, decisions made by the Minister for Climate and Energy pursuant to section 4(3) to (5) can be appealed to the Energy Board of Appeal (*Energiklagenævnet*) according to the provisions of sections 89 and 91 of the Danish Electricity Supply Act (*lov om elforsyning*) and, as far as the gas transmission network is concerned, according to the provisions of sections 51 and 53 of the Danish Natural Gas Supply Act (*lov om naturgasforsyning*).

(2) Energinet.dk's expansion plan pursuant to section 4(2) can where section 4(3) does not apply be appealed by anyone with a significant, individual interest in the expansion plan pursuant to the provisions of subsection (1).

Part 9
Liability in damages and penalty

23 The Supervisory Board or the Danish Minister for Climate and Energy may decide to institute legal proceedings against Supervisory Board members, Executive Board members or others in the event of Energinet.dk sustaining any loss.

24 In the event of Supervisory Board members, Executive Board members, valuation experts and their deputies disclosing knowledge gained during the performance of their duties on behalf of Energinet.dk without being authorised to do so, such members will in the absence of a more severe penalty under any other statute be liable to a fine.

24 a In the absence of a more severe penalty under any other statute, Energinet.dk or its wholly owned subsidiaries will be liable to a fine if they

- 1) establish and operate without authorisation facilities covered by section 4 b,
- 2) disregard the terms on which permission has been granted under section 4 a for facilities covered by section 4 b, or
- 3) fail to comply with orders or prohibitions made under section 4 c.

(2) Rules prescribed pursuant to this Act may stipulate that Energinet.dk or its wholly owned subsidiaries will be liable to a fine if they fail to comply with provisions, terms and orders made in accordance with the rules.

Part 10

Commencement etc.

25 The Danish Minister for Climate and Energy fixes the date of commencement of this Act.

26 After having taken over Eltra a.m.b.a., Elkraft Transmission a.m.b.a. and Elkraft System a.m.b.a., the Minister for Climate and Energy may decide to merge these cooperative societies into a new limited liability company whose shares will be owned by Energinet.dk. Upon such merger, the assets and liabilities of the former companies become as a whole the property of the new limited liability company, and the former companies must be wound up without liquidation. Sections 6 a to 6 c and sections 134 to 134 of the Danish Act on Public and Private Limited Companies (the Danish Companies Act) (*lov om aktie- og anpartsselskaber (selskabsloven)*) with any amendments resulting from this Act and from the nature of the companies also apply to the merger.

(2) The Danish Minister for Finance may decide to transfer the shares in Gastra A/S to Energinet.dk.

(3) The Minister for Climate and Energy may decide to transfer some of the assets and liabilities of the cooperative societies mentioned in subsection (1) and some of the assets and liabilities of Gastra A/S to Energinet.dk through a demerger. Sections 136 to 136 of the Danish Act on Public and Private Limited Companies (the Danish Companies Act) (*lov om aktie- og anpartsselskaber (selskabsloven)*) with any amendments resulting from this Act and from the nature of the companies also apply to such demerger.

(4) The establishment of Energinet.dk, the merger under subsection (1), the transfer of shares under subsection (2) and the demerger under subsection (3) take effect for accounting and tax purposes from 1 January 2005.

(5) The provisions of sections 5 to 8 of the Danish Merger Tax Act (*fusionsskatteoven*) with any amendments resulting from this Act and from the nature of the companies also apply to any merger pursuant to subsection (1).

(6) The provisions of section 15 a(3) and section 15 b of the Danish Merger Tax Act (*fusionsskatteoven*) with any amendments resulting from this Act and from the nature of the companies also apply to any demerger under subsection (3).

27 For a transitional period of two years calculated from the establishment, three employee representatives must be elected by and among the employees of the Energinet.dk Group so that one is elected by and among the employees of Eltra a.m.b.a., one is elected by and among the employees of Elkraft System a.m.b.a. and Elkraft Transmission a.m.b.a., and one is elected by and among the employees of Gastra A/S. After the expiry of the transitional period, an election must be held in accordance with the provisions of section 6(5).

28 This Act applies to territorial land and waters, in the exclusive economic zone and on the Danish continental shelf.

29 This Act does not extend to Greenland and the Faroe Islands.

Part 11
Amendment provisions

30-36 (Omitted)

Act no. 520 of 7 June 2006 on the amendment of the Danish Electricity Supply Act (*lov om elforsyning*), the Danish Natural Gas Supply Act (*lov om naturgasforsyning*), the Danish Heat Supply Act (*lov om varmforsyning*), the Danish Act on Energinet.dk (*lov om Energinet.dk*), the Danish Planning Act (*lov om planlægning*), the Danish Act on Municipal Compensation and General Subsidies for Local and Regional Authorities (*lov om kommunal udligning og generelle tilskud til kommuner og amtskommuner*), and the Danish Act on Carbon Dioxide Tax on Certain Energy Products (*lov om kuldioxidafgift af visse energiprodukter*)³⁾, whose section 4 relates to Energinet.dk's name, section 2(2), section 4 a, section 12(1) (paragraphs 1 and 2), and section 13(1) and (4), includes the following commencement provision:

9

The Danish Minister for Climate and Energy fixes the date of commencement of this Act, but see subsection (2). The Minister may decide that parts of this Act come into force before other parts of the Act.

(2) to (6) (Omitted)

9

Danish Act no. 548 of 6 June 2007 on the amendment of the Danish Consolidated Act on the Use of the Danish Subsoil (*lov om anvendelse af Danmarks undergrund*), the Danish Electricity Supply Act (*lov om elforsyning*), the Danish Coastal Protection Act (*lov om kystbeskyttelse*), the Danish Harbour Act (*lov om havne*), and various other acts⁴⁾, whose section 6 relates to the footnote in the Danish Act on Energinet.dk and sections 1 a, 4 b and 4 c of the Act on Energinet.dk, includes the following commencement provision:

This Act comes into force on the day after the announcement has been published in the Danish Official Gazette.

(2) (Omitted)

Section 74

Danish Act no. 1392 of 27 December 2008 on the promotion of renewable energy, whose section 79 relates to the Danish Act on Energinet.dk, includes the following commencement provision:

This Act came into force on 1 January 2009.

(2) (Omitted)

(3) (Omitted)

Danish Energy Agency, 16 March 2009

Ib Larsen

/ Flemming G. Nielsen

Official notes

1) The Act includes provisions implementing parts of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 (Official Journal of the European Union 2010, no. L 20, page 7), parts of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 (Official Journal of the European Union 2009, no. L 211, page 94), parts of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 (Official Journal of the European Union 2009, no. L 211, page 55), parts of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 (Official Journal of the European Union 2009, no. L 140, page 16), parts of Directive no. 2008/99/EC of the European Parliament and of the Council of 19 November 2008 (Official Journal of the European Union 2008, no. L 328, page 28), parts of Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 (Official Journal of the European Union 2006 no. L 33, page 22), and parts of Council Directive 92/43/EEC of 21 May 1992 (Official Journal of the European Union 1992, no. L 206, page 7, as last amended by Council Directive 2006/105/EC of 20 November 2006 (Official Journal of the European Union 2006 no. L 363, page 368).

2) Pursuant to executive order no. 1483 of 23 December 2004 this Act came into force on 1 January 2005.

3) The amendment, which pursuant to executive order no. 531 of 8 June 2006 came into force on 15 June 2006, changes the name of Energinet Danmark to Energinet.dk and introduces provisions on the construction of new electricity supply systems in territorial waters and in the exclusive economic zone.

4) The amendment, which came into force on 7 June 2007, implements parts of the Council Directive on the conservation of natural habitats and of wild fauna and flora, and parts of the Council Directive on the conservation of wild birds.