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Act on Energinet Danmark

Act no. 1384 of December 20, 2004 (Applicable)

Later amendments to the directions

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Technical directions in full text

Act on Energinet Danmark^{) [D](#)}

BE IT KNOWN that the Folketing has enacted and We Margrethe the Second, by the Grace of God, Queen of Denmark, have given Our Royal Assent to the following Act:

Part 1

Preliminary provisions

Section 1. The Danish Minister of Economic and Business Affairs shall be entitled to establish Energinet Danmark as an independent public company.

(2) The overall electricity and gas infrastructure, for which Energinet Danmark is responsible, shall remain public property.

(3) The Danish Minister of Economic and Business Affairs shall be entitled to change the name of Energinet Danmark.

Section 2. The objective of Energinet Danmark shall be to ensure the efficient operation and expansion of the overall electricity and gas infrastructure and to ensure open and equal access for all users of the grids.

(2) In pursuance of the provisions hereof and the provisions of the Danish Electricity Supply Act (*Lov om elforsyning*) and the Danish Supply of Natural Gas Act (*Lov om naturgasforsyning*) and on the basis of coherent and holistic planning, Energinet Danmark shall engage in transmission system operation activities as well as electricity transmission and gas transmission activities. Furthermore, Energinet Danmark shall be entitled to engage in gas distribution activities.

(3) Energinet Danmark shall be entitled to establish subsidiaries, hold shares in other limited liability companies and conclude cooperation agreements etc. in connection with its activities.

(4) Activities outside the scope of activities laid down in (2), and which are undertaken by Energinet Danmark in pursuance hereof, in pursuance of the Danish Electricity Supply Act (*Lov om elforsyning*) or the Danish Supply of Natural Gas Act (*Lov om naturgasforsyning*), shall be undertaken in independent limited liability companies.

Section 3. Energinet Danmark shall exercise the purchase obligation of the Danish State in pursuance of section 35 of the Danish Electricity Supply Act (*Lov om elforsyning*) and section 34 of the Danish Supply of Natural Gas Act (*Lov om naturgasforsyning*).

Part 2

Expansion of the transmission grid

Section 4. The establishment of new transmission grids and material changes to the existing grids shall be subject to the establishment of a sufficient need for such expansion, including that the aim of the expansion is to increase the security of supply, safeguard preparedness, create a well-functioning competitive market and to incorporate renewable energy, or if the project is necessary for compliance with statutory orders in pursuance of (6).

(2) Expansion in pursuance of (1) shall, prior to commencement, be illustrated in a plan outlining the future transmission capacity requirement. This plan must be submitted to the Minister of Economic and Business Affairs before commencement of the expansion in pursuance of (1). The expansion shall be commenced no earlier than six (6) weeks from submission of the plan.

(3) The Minister of Economic and Business Affairs shall be entitled to decide that any expansion in pursuance of (1) shall be subject to approval by the Minister of Economic and Business Affairs.

(4) In connection with approval under (3), the Minister of Economic and Business Affairs shall be entitled to lay down the terms for such expansion, including terms concerning the disposal or renovation of systems.

(5) The Minister of Economic and Business Affairs shall be entitled to order Energinet Danmark to cover any additional costs incurred by other electricity transmission companies or grid companies, when such companies by order of the Danish Electricity Supply Act (*Lov om elforsyning*) lay cables or carry out renovations in connection with Energinet Danmark's establishment of the 400 kV electricity transmission grid. The Minister of Economic and Business Affairs shall be entitled to lay down any further rules in this regard.

(6) The Minister of Economic and Business Affairs shall be entitled to order Energinet Danmark to establish, expand and run electricity transmission systems and submarine cable systems with the aim of safeguarding the security of the electricity supply on small islands.

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

Part 3

Authority of the Danish Ministry of Economic and Business Affairs

Section 5. The Minister of Economic and Business Affairs shall be entitled to make decisions on any matters pertaining to Energinet Danmark's affairs.

(2) The Minister of Economic and Business Affairs shall lay down the Articles of Association for Energinet Danmark.

(3) The Minister of Economic and Business Affairs shall exercise his authority under the present provision vis-à-vis Energinet Danmark by notifying the Supervisory Board in writing.

Part 4

Management and stakeholder forum

Section 6. Energinet Danmark shall be headed by a Supervisory Board consisting of eleven (11) members.

(2) The Minister of Economic and Business Affairs shall appoint eight (8) board members, including the chairman of the Supervisory Board.

(3) The members of the Supervisory Board shall jointly possess general business and managerial competencies as well as having insight into the fields of electricity, gas and heating supply and consumer and social conditions. The members of the Supervisory Board must be independent of commercial interests in companies engaging in production and trade in the electricity and gas area.

(4) The members of the Supervisory Board in pursuance of section 6 (2) shall be appointed for a period of two (2) years, cf., however, (6).

(5) Employees of Energinet Danmark and its subsidiaries shall appoint three (3) members to the Supervisory Board, including one (1) group representative, pursuant to corresponding rules as laid down in the Danish Companies Act (*Aktieselskabsloven*), cf., however, section 27.

(6) The Minister of Economic and Business Affairs may reappoint members of the Supervisory Board and shall at any time be entitled to remove any members of the Supervisory Board appointed by the Minister.

Section 7. The day-to-day management shall be the responsibility of the Executive Board, which shall be appointed by the Supervisory Board following prior briefing of the Minister of Economic and Business Affairs.

Section 8. The Minister of Economic and Business Affairs shall appoint an advisory stakeholder forum.

(2) The stakeholder forum shall represent a broad section of parties interested in the activities of Energinet Danmark.

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

(4) The stakeholder forum shall, with a view to supporting the operation of Energinet Danmark, submit opinions to the Energinet Danmark management on the company's overall strategies and plans.

Part 5

Finances and accounts

Section 9. Energinet Danmark's capital shall be separate from the capital of the State.

Section 10. Energinet Danmark shall not be party to the State's collective or formal agreement system, but shall independently negotiate terms of pay and employment with its staff, including the conclusion of collective agreements.

(2) Any terms of employment currently applicable shall remain in force in pursuance of the rules laid down in the Danish Act on Employees' Rights in Connection with Business Acquisitions (*Lov om lønmodtageres retsstilling ved virksomhedsoverdragelse*). The three-week notice period mentioned in section 4 a (1) of the Danish Act on Employees' Rights in Connection with Business Acquisitions pertaining to the acquirer's option of stating that he does not wish to enter into any current collective agreement shall be calculated as from the day when the supervisory boards of the respective companies have held their first meeting.

Section 11. The rules laid down in the Danish Financial Statements Act (*Årsregnskabsloven*) on the preparation and submission of annual reports etc., including any provisions applying to government-owned limited companies, shall apply to Energinet Danmark with any amendments that follow therefrom.

(2) Energinet Danmark's annual report shall be audited by the Office of the Auditor General in pursuance of the Danish Financial Statements Act (*Årsregnskabsloven*) and in pursuance of the Danish Act on the Auditing of Governmental Accounts etc. (*Lov om revisionen af statens regnskaber m.m.*).

(3) The audited annual report shall be presented to the Minister of Economic and Business Affairs for approval.

Section 12. In order to avoid differential treatment, cross-subsidization and the distortion of competition, Energinet Danmark and the company's wholly owned subsidiaries shall:

1) keep separate accounts for each of their activities pertaining to electricity and natural gas, including the transmission system operation activities, transmission activities and distribution activities; and

2) specify revenue from the ownership of transmission and distribution grids.

(2) As regards the activities mentioned in (1), Energinet Danmark and the company's wholly owned subsidiaries shall keep accounts and have these audited as if the said activities were performed by separate companies. Assets for which entry values are applied in pursuance of section 35 O of the Danish Corporation Tax Act (*Selskabsskatteloven*) as well as income and expenditure related to the ownership of such assets shall be included, irrespective of the use of the said assets, in separate accounts for Energinet Danmark's electricity-related activities.

(3) The Minister of Economic and Business Affairs shall be entitled to lay down rules on bookkeeping in pursuance of (1) and (2).

Section 13. Energinet Danmark's profit according to the accounts for its electricity supply and natural gas activities as laid down in section 12 (1) may be carried back to the respective consumer groups as dividend or be used as a means of consolidation.

(2) The Minister of Economic and Business Affairs shall be entitled to lay down detailed rules on how to carry back profit to consumers in pursuance of (1).

(3) Energinet Danmark shall not be entitled to distribute any profit or equity through dividend distribution or in any other way to the State.

Section 14. Energinet Danmark shall be entitled to arrange loans to finance its activities, including the financing of fixed asset investments and the performance of the purchase obligation under section 3. Loans shall be arranged on the basis of an annual investment and financing plan approved by the Minister of Economic and Business Affairs.

(2) The Minister of Finance shall, in so far as is deemed appropriate, cover the company's financing requirement in pursuance of (1) through government loans. Such loans shall not be granted on terms more favourable than the terms which can be obtained by the State in its capacity of borrower. Loans shall be raised within the limits set by the Minister of Economic and Business Affairs subject to approval by the Finance Committee of the Danish Parliament (*Folketingets Finansudvalg*).

Section 15. Energinet Danmark and the company's wholly owned subsidiaries shall take out such insurance as is necessary for the company.

Part 6

Application and registration

Section 16. Energinet Danmark shall file an application and register with the Danish Commerce and Companies Agency (*Erhvervs- og Selskabsstyrelsen*) in pursuance of the rules stipulated in Part 19 of the Danish Companies Act (*Aktieselskabsloven*).

The Danish Commerce and Companies Agency's order on application, registration, fees and disclosure of information etc. with the Danish Commerce and Companies Agency shall apply to Energinet Danmark.

Part 7

Public access

Section 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*) shall apply to Energinet Danmark and the company's wholly owned subsidiaries.

Section 18. Energinet Danmark shall immediately and in electronic form notify the Danish Commerce and Companies Agency of all material information about the company deemed to be of significance to the future of the company, its employees and creditors.

Section 19. Decisions made by the Minister of Economic and Business Affairs in pursuance of section 5 (1), shall be submitted to the Danish Commerce and Companies Agency with a view to publication.

(2) A copy of the company's Articles of Association shall be available upon request from the company's head office.

Part 8

Supervision, right to complain etc.

Section 20. The Minister of Economic and Business Affairs shall carry out supervision to ensure that Energinet Danmark and the company's wholly owned subsidiaries act in compliance with the provisions laid down herein.

(2) Energinet Danmark and the company's wholly owned subsidiaries shall upon request make any information about its activities available to the Minister of Economic and Business Affairs.

Section 21. The Minister of Economic and Business Affairs shall be entitled to authorize any institution or other authority established under the Ministry to exercise the authority granted to the Minister herein.

(2) The Minister of Economic and Business Affairs shall be entitled to lay down rules to the effect that decisions made by an institution or other authority to which the Minister has delegated his authority in pursuance of (1), cannot be brought before the Minister.

Section 22. As far as the electricity transmission grid is concerned, any decisions made by the Minister of Economic and Business Affairs in pursuance of section 4 (3) - (5) can be appealed to the Energy Board of Appeal (*Energiklagenævnet*) according to the provisions laid down in sections 89 and 91 of the Danish Electricity Supply Act (*Lov om elforsyning*) and, as far as the gas transmission grid is concerned, according to the provisions laid down in sections 51 and 53 of the Natural Gas Supply Act (*Lov om naturgasforsyning*).

(2) Energinet Danmark's expansion plan in pursuance of section 4 (2), can, where section 4 (3) does not apply, be appealed by anyone with material and individual interest in the expansion plan in pursuance of the provisions laid down in section 4 (1).

Part 9

Liability in damages and penalty

Section 23. The Supervisory Board or the Minister of Economic and Business Affairs shall be entitled to make decisions on the institution of legal proceedings against members of the Supervisory Board, members of the Executive Board or others in the event of losses sustained by Energinet Danmark.

Section 24. Unless increased penalty has been laid down in pursuance of other legislation, members of the Supervisory Board, members of the Executive Board, valuers and their deputies shall be fined where they disclose knowledge gained during the performance of their duties for Energinet Danmark without being authorized to do so.

Part 10

Commencement etc.

Section 25. The Minister of Economic and Business Affairs shall fix the date of commencement of the present Act.

Section 26. Following the takeover of Eltra a.m.b.a., Elkraft Transmission a.m.b.a. and Elkraft System a.m.b.a., the Minister of Economic and Business Affairs shall be entitled to make a decision to merge these companies to form a new limited liability company, the shares of which shall be owned by Energinet Danmark. Upon such merger, the assets and liabilities in the former companies shall as a whole become the property of the new limited liability company, and the former companies shall be wound up without liquidation. Sections 6 a – 6 c and sections 134-134 of the Danish Companies Act (*Aktieselskabsloven*) with such amendments as follow from this act and from the nature of the companies shall also apply to the merger.

(2) The Minister of Finance shall be entitled to make a decision to transfer the shares in Gastra A/S to Energinet Danmark.

(3) The Minister of Economic and Business Affairs shall be entitled to make a decision that parts of the cooperative societies mentioned in (1), and parts of the assets and liabilities of Gastra A/S be transferred to Energinet Danmark through a division. Sections 136-136 of the Danish Companies Act (*Aktieselskabsloven*) with such amendments as follow from this act and from the nature of the companies shall also apply to such division.

(4) The establishment of Energinet Danmark, the merger in pursuance of (1), the transfer of shares in pursuance of (2) and the division in pursuance of (3) shall take effect for accounting and tax purposes as from January 1, 2005.

(5) The provisions laid down in sections 5-8 of the Danish Merger Tax Act (*Fusionsskatteloven*) with such amendments as follow from this act and from the nature of the companies shall also apply to any merger in pursuance of (1).

(6) The provisions laid down in section 15 a (3) and section 15 b of the Danish Merger Tax Act (*Fusionsskatteloven*) with such amendments as follow from this act and from the nature of the companies shall also apply to any division in pursuance of (3).

Section 27. During a two-year transition period calculated from the incorporation of the company, three (3) employee representatives shall be elected by and from among the employees of the Energinet Danmark group, such that one (1) representative is elected by and from among the employees of Eltra a.m.b.a.; one (1) representative is elected by and from among the employees of Elkraft System a.m.b.a. and Elkraft Transmission a.m.b.a.; and one (1) representative is elected by and from among the employees of Gastra A/S. After the end of the transition period, election shall take place in accordance with the provisions laid down in section 6 (5).

Section 28. The Act shall apply to territorial land and waters, in the exclusive economic zone and on the Danish continental shelf.

Section 29. The Act shall not apply to Greenland and the Faroe Islands.

Part 11

Amendment provisions

Section 30. The Danish Electricity Supply Act (*Lov om elforsyning*), cf. Consolidated Act no. 151 of March 10, 2003 as amended by section 1 of Act no. 494 of June 9, 2004 and most recently by section 1 of Act no. 495 of June 9, 2004, shall be amended as follows:

1. In the entire Act, »the system-responsible enterprises«, »The system-responsible enterprises« and »the system-responsible enterprises'« and »The system-responsible enterprises'«, respectively, shall be changed to: »the system-responsible enterprise«, »The system-responsible enterprise«, »the system-responsible enterprise's« and »The system-responsible enterprise's«.

2. The wording of section 5 (1), no. 8 shall be:

»8) *Collective electricity-supply enterprise:* A publicly or privately owned electricity supply enterprise with a licence and an electricity supply enterprise operated by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*), the purpose of which is to carry out activities such as grid, transmission or system-responsible enterprise on publicly regulated terms.«

3. »With a licence« in section 5 (1), no. 13 shall be omitted.

4. The wording of section 5 (1), no. 16 shall be:

»16) *Transmission enterprise*: En enterprise with a licence or electricity supply company operated by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3), of the Act on Energinet Danmark (*Lov om Energinet Danmark*) that operate transmission grids.«

5. In section 8 (4), »Costs pertaining to the below services shall be charged by the system-responsible enterprise from all electricity consumers in the area to which the system-responsible enterprise holds a licence:« shall be changed to: »Costs pertaining to the below services shall be calculated by the system-responsible enterprise for each of the two (2) areas to which a licence has been granted to the system-responsible enterprise in pursuance of section 27 and shall be charged from all electricity consumers in the respective areas:«.

6. In section 8 (5) and (6), the following shall be inserted after »tariffs«: », cf., however, section 7«.

7. In section 8, the following shall be inserted as (7):

»(7) For the system-responsible enterprise, costs mentioned in (5) and (6) shall be calculated for each of the two (2) areas to which a licence has been granted to the system-responsible enterprise in pursuance of section 27 previously in force and shall be charged from the users in the respective areas receiving the enterprise's services«.

8. In section 12 (1), no. 4 »of the supply area« shall be changed to: »it«.

9. In section 19 (1) the following shall be inserted as (2):

»Transmission activities carried out by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*) shall, however, not be subject to the granting of a licence.«

10. In section 20 (1), »Holders of licences in accordance with section 19 (1)« shall be changed to: »Transmission and grid enterprises«.

11. The wording of section 20 a (1) shall be:

»Transmission and grid enterprises shall draw up a programme on internal monitoring describing the companies' initiatives for the purpose of preventing discriminatory behaviour. The enterprises shall ensure compliance with the programme for internal monitoring and ensure appropriate control measures. An annual report with a description of the programme and control thereof shall be published and registered with the Danish Energy Regulatory Body (*Energitilsynet*).«

12. In section 21 (1) the following shall be inserted after the first sentence:

»This shall not apply to activities undertaken by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*).«

13. In section 21 (1), second sentence, which shall become the third sentence, »3 or 4« shall be changed to: »2«.

14. Section 21 (2) and (3) shall be deleted.

Consequently, (4) - (6) shall become (2) - (4).

15. In section 21 (4), which shall become (2), »rules laid down in (2)« shall be changed to: »provisions laid down in the Act on Energinet Danmark (*Lov om Energinet Danmark*)«.

16. Section 21 a shall be deleted.

17. In section 23 (3), »section 21 (5)« shall be changed to: »section 21 (3)«.

18. In section 26 a (1) »section 21 (2) - (6)« shall be changed to: »section 21 (2) - (4)«.

19. Section 27 shall be deleted.

20. In section 28 (2), no. 3, »other system-responsible enterprises in Denmark and« shall be changed to: »system-responsible enterprises«.

21. In section 29 (2), »section 9 (1), no. 1 shall be changed to: »section 8 (4), no. 1«.

22. Section 31 (3), shall be deleted.

Consequently, (4) and (5) shall become (3) and (4).

23. In *section 35 (1), first sentence*, the following shall be inserted after »200 kV«: »and grid connections to other countries below 100 kV placed at the disposal of the system-responsible enterprise,«.

24. The wording of *section 35 (6)* shall be:

»(6). Prior to the State's takeover of transmission shares in pursuance of (1) and (2), companies that own transmission grids covered by (1) and other grids shall hive off the transmission grids covered by (1) in an independent limited liability company. Such hiving-off shall take place as soon as possible and within twelve (12) months of receipt of information about commencement of the State's purchase obligation at the latest.«

25. The wording of *section 35 (9)* shall be:

»(9) Transmission enterprises operating transmission grids covered by section 35 (1), shall be operated as limited liability companies as from January 1, 2005.«

26. In section 35, the following shall be inserted as section 35 (2):

»(2) Grid companies may choose to transfer ownership shares to the State under an agreement in pursuance of section 35 (1), irrespective of any provisions concerning intransferability contained in the Articles of Association. A transfer of ownership shares under an agreement in pursuance of (1), shall be treated for tax purposes in accordance with the provisions laid down in the Danish Capital Gains Tax Act (*Aktieavancebeskatningsloven*), seeing that ownership shares, which are transferred irrespective of any provisions concerning intransferability contained in the Articles of Association, are as a whole considered as being acquired upon the cooperative owner entering into the transmission enterprise and as being renounced at the time of transfer to the State.«

27. In section 47 (1), »system-responsible enterprise« shall be deleted.

28. In section 47 (2), the second sentence shall be deleted.

29. In section 47 (3), »The cases specified in section 47 (2)« shall be changed to: »The case specified in section 47 (2)«.

30. In section 51 (1), the following shall be inserted after »licences«: »and with the activities undertaken by Energinet Danmark and its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*) in pursuance of the Danish Electricity Supply Act (*Lov om elforsyning*).«

31. In section 51 (2), the following shall be inserted after »holders of licences«: »and Energinet Danmark and its wholly owned subsidiaries, cf. section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*)«

32. In section 53 (2), the following shall be inserted as *second sentence*:

»However, this shall not apply to Energinet Danmark«.

33. In section 70 (1), first sentence, the following shall be inserted after »framework«: », cf., however, section 70 a«.

34. After section 70, the following shall be inserted:

»**Section 70 a.** For transmission activities undertaken by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*), prices shall be fixed in accordance with section 71.«

35. The wording of section 71 shall be:

»**71.** In the prices applying to the activities undertaken in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*), Energinet Danmark and its wholly owned subsidiaries shall be entitled to include necessary costs, including costs incidental to the procurement of energy, pay, services, administration, maintenance, other operating costs and depreciation and the required return on the company capital. Section 69 shall not apply, except for section 69 (1), last sentence.

(2) The Minister of Economic and Business Affairs shall be entitled to lay down detailed rules on the delimitation of costs deemed necessary in pursuance of (1) and on the fixing of the required return on the capital and the basis of business activities in pursuance of (1).«

36. In section 76, the following shall be inserted as a new subsection after section 76 (2):

»(3). For activities undertaken by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*), the Danish Energy Regulatory Body shall, as far as transmission system operation and transmission services are concerned, be notified of any prices, tariffs and terms pertaining to services and the basis for the fixing thereof, including delivery agreements, in pursuance of the Danish Energy Regulatory Body's provisions thereon.«

Consequently, section 76 (3) and (4) shall become section 76 (4) and (5).

37. In section 76 (4), which shall become section 76 (5), »(1) - (3)« shall be changed to: »(1) - (4)«.

38. In section 77 (2), »to the licensees« shall be deleted.

39. In section 84 (1) the following shall be inserted after »companies that must hold a licence«:
»Energinet Danmark,«.

40. In section 85 b (1) »10, 19 or 27« shall be changed to: »10 and 19 and electricity supply activities undertaken by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*).«

41. In section 87 (1), no. 1, »or for system-responsible activity« and », 27« shall be deleted.

42. After section 92, the following shall be inserted before Part 15:

»Part 14 a

Special financial regulation etc. of certain companies

Section 92a Grid and transmission enterprises shall be entitled to notify the Minister of Economic and Business Affairs in writing by March 1, 2005 that they wish to be covered by the provisions laid down in this Part. Any company submitting such notification shall be subject to the provisions laid down in this Part with effect as from January 1, 2005.

(2) Companies that have not submitted such notification as laid down in (1) by March 1, 2005 shall forfeit any right to claim any amounts owing to insufficient charging of tariffs in the period from January 1, 2000 to December 31, 2003. This shall not, however, apply to insufficient charging of tariffs that can be settled according to the rules laid down in the statutory order on revenue caps limits applying to Internet companies and regional transmission companies covered by the Danish Electricity Supply Act (*Bekendtgørelse om indtægtsrammer for netvirksomheder og regionale transmissionsvirksomheder omfattet af elforsyningsloven*).

(3) The provisions laid down in sections 69, 70 and 74 and section 76 (1), no. 5, of the Danish Electricity Supply Act (*Lov om Elforsyning*), and section 4 (6) and (8) of Act no. 494 of June 9, 2004 amending the Danish Electricity Supply Act (*Lov om elforsyning*), the Natural Gas Supply Act (*Lov om naturgasforsyning*) and the Danish Heat Supply Act (*Lov om varmforsyning*) (Safeguarding independence in the overall infrastructure, change of capital notions, private board of appeal in the energy supply area etc.) shall not apply to companies which have submitted notification as set out in (1) by March 1, 2005.

Section 92 b. The terms laid down in sections 92 c-92 k shall apply to companies which have by March 1, 2005 submitted notification as set out in section 92 a (1), cf., however, section 92 i.

Section 92 c. Prices applying to services rendered by the companies shall be fixed with account being taken of the costs incurred by the companies in connection with the procurement of energy, pay, services, administration, maintenance, other operating costs, depreciation and return on capital. Moreover, prices shall be fixed with account being taken of expenses paid as a consequence of the companies being liable for debt in pursuance of section 92 k (3), or for debt incurred by other electricity supply companies before December 30, 1999. The prices for the services rendered by the companies shall not increase as a result of any consideration paid in connection with the transfer of the company.

(2) The Minister of Economic and Business Affairs shall be entitled to lay down rules concerning the calculation of operational depreciation and the calculation of the company capital, including any invested capital, as well as the rates forming the basis of calculating the return in pursuance of section 92 c (1). Furthermore, the Minister of Economic and Business Affairs shall be entitled to lay down rules on separation for accounting purposes of various activities and rules on the companies' bookkeeping and budgeting, including rules to the effect that the companies shall prepare, audit and publish annual reports in pursuance of the provisions stipulated in the Danish Financial Statements Act (*Årsregnskabsloven*).

92 d. Prices for the services rendered by the companies shall be fixed in pursuance of the revenue caps laid down in (2). These limits shall be determined with a view to covering the costs mentioned in section 92 c through the efficient operation of the company.

(2) The Minister of Economic and Business Affairs shall lay down rules concerning general revenue caps for all affected companies for a number of years to be specified. Within the said limits, the Danish Energy Regulatory Body shall each year specify an earnings limit for each of the affected companies.

(3) The Danish Energy Regulatory Body shall grant an exemption where this is necessary for the company to meet its obligations as laid down in the licence, by law or in any statutory provisions.

(4) All forms of earnings flowing to the company shall be included for coverage of expenses as laid down in section 92 c (1). This does not, however, apply to profit in the form of returns on the invested capital or efficiency gains which are of an extraordinary nature in comparison with the revenue caps. The Minister of Economic and Business Affairs shall be entitled to lay down rules on what can be considered extraordinary efficiency gains and on the fixing of the size hereof.

(5) Municipalities and counties shall not grant any subsidies to municipal grid activities that are not undertaken by limited liability companies in pursuance of section 4 (1).

Section 92 e. Companies shall report to the Danish Energy Regulatory Body the size of the capital, which, according to the company, is to form the basis of the fixing of the return to be included in the prices in pursuance of section 92 c (1). The company shall separately state the size of any invested capital.

(2) On the basis of the reporting mentioned in (1), the Danish Energy Regulatory Body shall, with due consideration being had to the financing and revenues of the company, compute the size of the capital forming the basis of the computation of the return to be included in the calculation and the size of any invested capital.

(3) Notwithstanding the provisions laid down in sections 92c and 92d, the companies and their owners shall be free to control such capital and earnings as they were free to control in pursuance of the Danish Electricity Supply Act (*Lov om Elforsyning*) in force until December 30, 1999.

Section 92 f. The companies shall submit to the Danish Energy Regulatory Board statements of invested capital and capital on which a return is desired, cf. section 92 e.

(2) The Danish Energy Regulatory Board shall be entitled to lay down rules on reporting, cf. (1).

Section 92 g. With effect as from January 1, 2000 and according to the rules laid down by the Minister of Economic and Business Affairs, the companies shall prepare a statement of non-used provisions made in pursuance of the Danish Electricity Supply Act (*Lov om elforsyning*) in force until December 30, 1999, excess and insufficient charging of tariffs for the period before December 30, 1999 and other aspects of their capital affairs. Subsequently, the companies shall prepare an opening balance sheet drawn up according to the rules laid down by the Minister of Economic and Business Affairs and which shall form the basis of the future fixing of prices in pursuance of the provisions set out in this Part. The statement and opening balance sheet shall be submitted to the Danish Energy Regulatory Board by a deadline to be set by the Board.

(2) By a deadline set by the Danish Energy Regulatory Board, the companies shall submit a statement outlining the way in which non-used provisions made in pursuance of the Danish Electricity Supply Act (*Lov om elforsyning*) in force until December 30, 1999, excess and insufficient charging of tariffs for the period before December 30, 1999 as well as other assets and liabilities included in the opening balance sheet mentioned in (1) will be offset in the prices for coming years.

(3) The Danish Energy Regulatory Board shall decide whether the statements and opening balance sheets submitted in pursuance of (1) can be approved. The Danish Energy Regulatory Board shall also decide on the extent to which the companies' statements in pursuance of (2) can form the basis of the setting-off of provisions etc. in the prices for the coming years.

(4) Where a company has failed to meet its obligations in pursuance of (1) and (2) by the deadline set by the Danish Energy Regulatory Board, the Board shall prepare the statement and the opening balance sheet.

Section 92 h. A grid company shall not be allowed to sell its ownership shares in an electricity production company, neither in full nor in part, to:

- 1) a company in which the grid company holds ownership shares, be it directly or indirectly;
- 2) a company which holds ownership shares in the grid company, be it directly or indirectly;
- 3) a company which, either directly or indirectly, is fully or partly owned by a company which also, either directly or indirectly, holds ownership shares in the grid company.

(2) The Minister of Economic and Business Affairs shall be entitled to grant exemptions to the provisions laid down in (1).

Section 92 i. Electricity production and electricity distribution companies and the subsidiaries of such companies shall not jointly:

- 1) hold more than fifteen (15) per cent of the total capital of a company covered by this Part; or
- 2) have a controlling interest by means of special voting rights on the executive bodies of such a company.

(2) Agreements concerning the transfer of capital shares and agreements or provisions contained in the Articles of Association concerning the assignment of voting rights at variance with (1) shall be null and void.

Section 92 j. The granting of licences to grid companies shall be conditional upon the transfer to such grid companies of direct or indirect ownership shares in electricity production companies, transmission companies and enterprises subject to a supply obligation, which on April 29, 1999 are owned by the grid company or by companies which directly or indirectly hold ownership shares in the grid company, such that the grid company becomes the direct holder of the said ownership shares. Moreover, the granting of a licence to transmission companies shall be conditional upon the ownership shares in these companies being transferred to the grid companies in pursuance of the first sentence.

(2) The Minister of Economic and Business Affairs shall be entitled to grant exemptions to the provisions laid down in (1), where dictated by special considerations.

Section 92 k. A company shall not be entitled to grant loans to or furnish security for other companies, including other collective electricity supply companies.

(2) The provision laid down in (1) shall not apply to the extent that the granting of loans or the furnishing of security affects only the capital mentioned in section 92 e (3).

(3) Furthermore, the provision laid down in (1) shall not apply to the extent that a grid company furnishes security in favour of an electricity production company which is owned in full or in part by the grid company, where such security covers only debt which the electricity production company undertakes with a view to the residual financing of construction work commenced before April 29, 1999.«

Section 31. In the Danish Supply of Natural Gas Act (*Lov om naturgasforsyning*), cf. Statutory order no. 130 of February 27, 2003, as amended by section 2 of Act no. 494 of June 9, 2004, the following amendments shall be made:

1. In section 7 (5), the following shall be inserted as second sentence:

»This shall not apply to activities undertaken by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*).«

2. In section 10 (1), the following shall be inserted as second sentence:

»Activities undertaken by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*) shall, however, not be subject to the granting of a licence.«

3. In section 13, the following shall be inserted as (3):

(3) (1) and (2) shall not apply to activities undertaken by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*).«

4. In section 15 a (1), the following shall be inserted after »section 10,«: »and Energinet Danmark and its wholly owned subsidiaries that are responsible for the natural gas supply activities in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*)«.

5. The wording of section 15 a (2) shall be:

»(2) Energinet Danmark shall handle the overall, coordinated planning and operative tasks pertaining to the preparedness mentioned in (1).«

6. In section 28 c, the following shall be inserted as (3):

»(3) The provisions laid down in (1) and (2) shall also apply to agreements concluded by Energinet Danmark or its wholly owned subsidiaries, cf. section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*).«

7. In section 30 (1), the following shall be inserted after »the licences«: »and the activities undertaken by Energinet Danmark and its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*) in pursuance of the Supply of Natural Gas Act (*Lov om naturgasforsyning*)«.

8. In section 30 (2), the following shall be inserted after »holders of licences«: »and Energinet Danmark and its wholly owned subsidiaries, cf. section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*)«.

9. In section 37 a (1), first sentence, the following shall be inserted after »framework«: », cf., however, section 37 c«.

10. After section 37 b, the following shall be inserted:

»**S 37 c.** For distribution activities undertaken by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*), prices shall be fixed in accordance with section 37 d.«

Section 37 d. In the prices applying to the activities undertaken in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*), Energinet Danmark and its wholly owned subsidiaries shall be entitled to include necessary costs, including costs incidental to the procurement of energy, pay, services, administration, maintenance, other operating costs and depreciation and the required return on company capital.

(2). The Minister of Economic and Business Affairs shall be entitled to lay down detailed rules on the delimitation of costs deemed necessary in pursuance of (1) and on the fixing of the required return on capital and the basis of business activities in pursuance of (1).«

11. In section 38 (1), second sentence, the following shall be inserted after »capital«: », cf. however section 37 d«.

12. In section 40, the following shall be inserted as a new subsection after (1):

»(2) For activities undertaken by Energinet Danmark or its wholly owned subsidiaries in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*), the Danish Energy Regulatory Body shall, as far as transmission system operation and transmission services are concerned, be notified of any prices, tariffs and terms pertaining to services and the basis for the fixing thereof, including delivery agreements, in pursuance of the Danish Energy Regulatory Body's provisions thereon.«

Consequently, (2) shall become (3).

13. In section 45 (1), the following shall be inserted after »companies that must hold a licence«: », Energinet Danmark«.

14. In section 45 (2), the following shall be inserted after »companies that must hold a licence«: », Energinet Danmark«.

15. In section 47, the following shall be inserted as (6):

»(6) The provisions laid down in (1) - (5) shall not apply to Energinet Danmark and its wholly owned subsidiaries.«

16. In section 54, the following shall be inserted after »the Danish Energy Regulatory Body«: »or an institution established under the Ministry«.

17. In section 56, the following shall be inserted as a new subsection after (1):

»(2) Similarly, Energinet Danmark and its wholly owned subsidiaries shall make good any damage caused by natural gas activities performed in pursuance of section 2 (2) and (3) of the Act on Energinet Danmark (*Lov om Energinet Danmark*), regardless of whether such damage is accidental.«

Consequently, (2) shall become (3).

Section 32. In the act on taxation to the municipalities of real property (*Lov om beskatning til kommunerne af faste ejendomme*), cf. Statutory order no. 783 of September 1, 2003 as amended most recently by section 31 of Act no. 469 of June 9, 2004, the following amendments shall be made:

1. In section 7 (1), para b, second sentence, the following shall be inserted after »DSB«: »and Energinet Danmark«.

Section 33. In the Danish Act on Income Taxation of Limited Liability Companies etc. (Corporation Tax Act) (*Lov om indkomstbeskatning af aktieselskaber m.v. (Selskabsskatteloven)*), cf. Statutory order no. 111 of February 19, 2004 as amended, among other things, by section 10 of Act no. 221 of March 31, 2004, Act no. 465 of June 9, 2004 and most recently by section 5 of Act no. 485 of June 9, 2004, the following amendments shall be made:

1. In section 1 (1), the following shall be inserted after no. 2f:

»2 g) Energinet Danmark,«.

2. In section 3 (1), no. 1, the following shall be inserted after »cf., however, section 1 (1), no. 2 d«: »and 2 g«.:

3. In section 8, the following shall be inserted as a new subsection after (1):

»(2) In addition, the rules laid down in sections 13 d and 13 e shall apply to the company mentioned in section 1 (1), no. 2 g, Energinet Danmark.

Consequently, (2) shall become (3).

4. In section 13 (1), no. 2, first sentence, »2 c-2 f« shall be changed to: »2 c-2 g«.

5. After section 13, the following shall be inserted:

»**Section 13 d.** Energinet Danmark shall prepare a statement of separate taxable income for the activities covered by Energinet Danmark's separate accounts for electricity-related activities in pursuance of section 12 of the Act on Energinet Danmark (*Lov om Energinet Danmark*).«

(2) Energinet Danmark shall prepare a separate statement of taxable income for the other activities not covered by (1).

(3) Where a depreciable asset is used in connection with activities covered by both (1) and (2), the depreciable acquisition sum shall be distributed in accordance with the separate accounts in pursuance of section 12 of the Act on Energinet Danmark (*Lov om Energinet Danmark*). This shall not cover assets with entry values in pursuance of section 35 O.

Section 13 e. Where the total separate income calculated in pursuance of section 13 d (1) shows a loss, such loss may be deducted from the corresponding taxable income for the following year. Such deduction can only be transferred to a later year of income if it cannot be deducted from the income of previous years.

(2) Where the separate income calculated in accordance with section 13 d (2) shows a loss, such loss cannot be transferred for deduction in the separate income as calculated in accordance with section 13 d (1).

(3) Where Energinet Danmark is taxed jointly, the separate income calculated in accordance with section 13 d (1) cannot be included.«

6. In section 17 (1), »2 c-2 f« shall be changed to: »2 c-2 g«.

7. In section 23 (2), »DSB and any« shall be changed to: »DSB and Energinet Danmark and any of their«.

8. In section 31 (6), the following shall be inserted after no. 5 as a new number:

»6) Energinet Danmark.«

Subsequently, nos. 6-9 shall become nos. 7-10.

9. In section 31 (13), the following shall be inserted after »joint taxation«: », cf., however, section 13 e (3)«.

Section 34. In the Danish Act on the Imposition of Income Tax to the State (Tax Assessment Act) (*Lov om påligningen af indkomstskat til staten (Ligningsloven)*), cf. Statutory order no. 995 of October 7, 2004, the following amendments shall be made:

1. In section 8 g (1), first sentence and section 8 g (2), first sentence, the following shall be inserted after »2 c-2 e,«: »2 g«.

2. In section 8 h (1), first sentence, the following shall be inserted after »2 c-2 e,«: »2 g«.

Section 35. In the Danish Act on Taxation of Proceeds From the Sale of Shares etc. (Capital Gains Tax Act), (*Lov om beskatning af fortjeneste ved afståelse af aktier m.v. (Aktieavancebeskatningsloven)*), cf. Statutory order no. 974 of September 21, 2004, the following amendments shall be made:

1. In section 2 (3), fourth sentence, »2 c-2 f« shall be changed to: »2 c-2 g«.

2. In section 2 d (3), first sentence, »2 c-2 f« shall be changed to: »2 c-2 g«.

3. In section 4 (6), first sentence, »2 c-2 f« shall be changed to: »2 c-2 g«.

Section 36. In the Danish Insolvency Taxation Act (*Konkursskatteloven*), cf. Statutory order no. 808 of August 24, 2000 as amended most recently by section 21 of Act no. 409 of June 6, 2002, the following amendments shall be made:

1. In section 2 »2 c-2 e« shall be changed to: »2 c-2 g«.

Given at Christiansborg Castle this 20th day of December 2004

Under Our Royal hand and Seal

MARGRETHE R.

/Bendt Bendtsen

Official notes

^D The Act contains provisions that implement Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market for electricity and repealing Directive 96/92/EC (Official Journal 2003 no. L176, page 37) and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market for natural gas and repealing Directive 98/30/EC (Official Journal 2003 no. L 176, page 57).

Editorial notes

The following regulation(s) contain(s) provisions on effective dates:

[BEK Nr. 1483 af 23/12/2004](#) ø

Links to EC directives, cf. Note 1

[Direktiv 1996/92/EF](#) Celex no. 31996L0092

[Direktiv 1998/30/EF](#) Celex no. 31998L0030

[Direktiv 2003/54/EF](#) Celex no. 32003L0054

[Direktiv 2003/55/EF](#) Celex no. 32003L0055