

# Legal 500

## Country Comparative Guides 2024

### 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 law<sup>1</sup> implementing the EU Corporate Sustainability Reporting Directive (“CSRD”)<sup>2</sup> 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 proposed EU Corporate Sustainability Due Diligence Directive (“CSDDD”) include, based on the latest proposed text of the directive, 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. As of 16 April 2024, CSDDD has not yet been adopted in the EU.

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. 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.

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.

#### Footnote(s):

<sup>1</sup> Proposed Act no. 107 introduced on 7 February 2024 (as of 16 April 2024 not yet adopted).

<sup>2</sup> 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.

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

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

### 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 in Danish law and on EU basis regarding PFAS, but to our knowledge this has not led to any legal precedents from the Danish courts.

### 5. Circularity – 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?

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 January 2025. The aim of the EU Packaging and Packaging Directive is for 65% of all packaging and 50% of plastic

packaging to be recycled by end of 2025 and with further reductions by end of 2030. The EU Packaging Directive is expected to be replaced by the EU Packaging and Packaging Waste Regulation which, *inter alia*, will require that all packaging is recyclable.

While the building sector is not subject to specific mandatory levels of recycling or recycled materials, at 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. The Danish Environmental Protection Act (in Danish "Miljøbeskyttelsesloven") introduces producer liability for packaging of all types of materials with an aim of 50% of plastic packaging to be recycled by end of 2025 and a requirement for producers and importers to organise a take-back scheme and separation of packaging. Other EU regulation includes the EU Single-Use Plastics Directive.

### 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.

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.

### **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.

Lastly, 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 3 years from its publication in the EU's Official Journal.

### **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 and an adequate living wage 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. The CSDDD is expected to bring about due diligence obligations that target such objectives.

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, namely 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 2024 (30 June 2025 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, 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.

## 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 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.

However, in a recent case, the DCO filed a police report concerning a car dealership of one of the world's largest car brands for claims that it was the "*World's most sustainable car manufacturer*" and other claims that the DCO found misleading pursuant to the Danish Marketing Practices Act. According to the actions taken to produce cars in a less environmentally harmful manner were only standard for similar car manufacturers' environmental and sustainability initiatives and did not qualify as sustainable.

## 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, 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 will be amended once CSRD has been implemented into Danish law. The implementation of CSRD into Danish law is expected to take effect on 1 June 2024.

In public companies, the reporting obligations go further and require public limited 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.



In line with EU policy, the reporting obligations are now being amended to reflect the provisions of the CSRD. This effectively means that a reporting company's oversight on environmental and social impacts will be expanded significantly, for example with the required double materiality assessment and relevant data points as well as a requirement to obtain limited assurance by an auditor or another accredited provider.

The CSDDD is expected to be adopted in EU in 2024. Once the directive has been adopted and transposed into Danish law, the CSDDD will presumably impose 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 to 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.

#### **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?**

Just like 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).

#### **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 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 businesses to report on whether there is a gap between men and women.

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.

**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.

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