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## Energy Law : Q3 update on recent developments

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In this news article, we take you through the recent key changes and deals within the energy and infrastructure sectors to keep you up to date.

### Draft bill amending the biogas subsidy scheme sent in public consultation

As mentioned in our previous newsletters, the existing biogas subsidy scheme is currently being phased out as part of implementing the 2018 Energy Agreement.

On 10 July 2019, the Danish Energy Agency ("DEA") sent the draft bill implementing the phase-out in public consultation. The draft bill includes, as expected, the criteria set out in the DEA's memorandum of 5 April 2019, but also introduces a new requirement to curb leakages of greenhouse gasses, specifically methane, from biogas plants that either produce or upgrade biogas.

It is expected to be a condition for plants producing or upgrading biogas that they must keep methane leakages below a certain threshold in order to be eligible to receive subsidies.

The DEA is not expecting to impose any specific threshold requirements at this time as there are currently no available methods that can measure methane leakages with the level of accuracy required. Instead, the DEA is expecting to impose requirements on the producers and upgraders to control and limit leakages.

The DEA will conduct annual inspections to ensure compliance with the requirements to curb methane leakages.

In addition to curbing methane leakages, the draft bill also deals with the matter of the phase-out having an effect tantamount to expropriation without compensation for certain of the affected biogas plants. The DEA is of the view that the majority of biogas plants under construction will not be atypically adversely affected but does not rule out that such effects might occur. In those cases, the affected owners will be able to claim compensation.

### The Government's Memorandum of Understanding's implications on critical infrastructure

Following the parliamentary election in June 2019, the new Government and its supporting parties have agreed on a memorandum of understanding which will form the basis for the Government's work in this election cycle.

The memorandum contains a number of important points that stakeholders in the Danish energy sector as well as potential investors should be aware of.

The Government intends to launch an initiative under which it will examine how to retain democratic control over critical infrastructure amongst other in the Danish

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energy sector. This comes after a long-standing public debate on the future ownership of critical infrastructure and, in particular, ownership of the electricity distribution networks (the electricity transmission network is owned by state-owned Energinet). The majority of the distribution networks have traditionally been owned by consumer-owned co-operatives or by municipalities thereby securing a certain level of influence for the individual consumer.

Furthermore, the Government also intends to define in which sectors the Danish State today owns critical infrastructure.

It remains to be seen how broad the scope of the initiative will be, and whether it will also seek to cover e.g. power generation.

## The Danish Energy Agency has published a paper on cyber and information security strategy

Digital vulnerabilities in the energy sector pose a threat to the stable security of supply. The paper, which was published earlier this year, outlines a strategy containing 10 specific initiatives aimed at strengthening the cyber and information security strategy in the Danish energy sector. The initiatives are a sector-specific implementation of the Government's Strategy on Cyber- and Information Security 2018-2021.

The initiatives are divided into three main categories: "common effort", "improved competences", and "best practice and procedures", and come at a time when the Centre for Cyber Security of the Danish Defence Intelligence Service assesses the current threat level of cybercrime and cyber espionage as very high.

The aim of the specific initiatives is to ensure a stable security of energy supply in a digitalised age, and the DEA is intending for the cyber and information security strategy to result in a coherent and specific program for the period 2018-2021, including preparation of reports and recommendations in order to strengthen work on cyber and information security in the energy sectors.

## Amendments proposed to the economic regulation of water utilities

The DEA has sent a draft bill in public consultation amending the economic regulation of water utilities in order to improve the economic efficiency in the sector, in which the estimated efficiency improvement potential is DKK 2.5 billion.

The draft bill inter alia includes:

- easing regulations for small consumer-owned water utilities by allowing them to opt out of the economic regulation in the Danish Water Sector Act
- adjusting the requirements for when water utilities are subject to the Danish Water Sector Act
- allowing the Secretariat for Water Supply under the Danish Competition and Consumer Authority to collect the necessary information from the water utilities to conduct analyses
- certain adjustments to the taxation regime for water utilities following two cases decided by the Danish Supreme Court on 8 November 2018.

The draft bill is the first step in the implementation of an agreement between the then incumbent Government with cross-party support from amongst other the Social Democratic Party concerning adjustments to the economic regulation of the Danish water sector.

## The Danish Utilities Regulator clarifies its enforcement powers

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The Danish Utilities Regulator ("DUR") (the supervisory authority in the Danish energy sector) has published a statement clarifying its enforcement powers when there is indication or proof that a regulated person is contravening or is likely to contravene relevant laws and regulations.

The DUR's enforcement powers consist of:

- reminders of obligations
- reprimands
- orders.

## 1. Reminders of obligations

If the DUR finds indication that a regulated person is non-compliant with its obligations, but has no definitive proof thereof, the DUR can issue the regulated person a reminder of the obligations, requesting the person to stay in compliance.

This enforcement power is not an administrative decision and as such does not have to be published by the DUR.

## 2. Reprimands

A reprimand is used by the DUR in situations where the regulated person has been non-compliant with its obligations but has subsequently rectified the situation. A reprimand is an administrative decision and must therefore be published by the DUR.

## 3. Orders

An order is used in situations where the DUR ascertains that a regulated person is contravening its obligations and enforcement action from the DUR is therefore required. An order is an administrative decision and must therefore also be published by the DUR.

## Recent deals

### Ørsted's divestment of its power distribution, residential customer, and city light businesses

Kromann Reumert advised Ørsted on the divestment of its Danish power distribution (Radius), residential customer business, and city light businesses to SEAS-NVE for a price of DKK 21.3 bn on a cash and debt-free basis.

The divestment process initially begun as a structured divestment process in 2018 but was later discontinued in January 2019 due to lack of political support. In the second half of June 2019, SEAS-NVE submitted an unsolicited, non-binding offer for the three business which led the parties to reach an agreement on 18 September 2019.

The joint responsible partners for the transaction were Anders Stubbe Arndal and Christian Lundgren.

### Nature Energy's acquisition of HMN Naturgas' CNG filling stations

Kromann Reumert advised Nature Energy the leading producer of biogas in Denmark, on its acquisition of HMN's compressed natural gas (CNG) filling station business for an undisclosed fee.

Following the acquisition, Nature Energy is the largest operator of CNG filling stations in Denmark.

The Kromann Reumert team was led by director Maria Holst Levin, and the responsible partner for the transaction was Teis Gullitz-Wormslev.