

## **Changes to the legal framework of natural gas in Denmark due to Nord Stream 2 and suspension of production from the Tyra field**

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On 2 October 2019, the Danish minister of Climate, Energy and Supply brought forward a bill on changes to the Danish Natural Gas Supply Act and other acts of relevance in the natural gas area.

The changes are due to EU law requirements and the handling of the Nord Stream 2 pipeline project in the Baltic Sea.

However the prime motivator seems to be the interim close-down of 90% of Danish gas production and export from the Danish Continental Shelf due to the redevelopment of the Tyra field in the Danish sector of the North Sea<sup>1</sup>.

### **Overview**

First, the bill will require notification of agreements on the operation of transmission links to and from third countries<sup>2</sup>.

Secondly, the draft law clarifies the scope of a transmission company's liability in relation to security of gas supply.

In addition, the bill contains proposals for new rules on expropriations for certain types of gas infrastructure and a few minor amendments to the Natural Gas Supply Act for formal reasons<sup>3</sup>.

### **Background**

The Amending Directive has relations to the case of Nord Stream 2, which is a gas transmission link between Russia and Germany.

The overall aim of the Amending Directive is to clarify the scope of the Gas Directive so as to ensure a pan-European approach for such gas transmission links. The Amending Directive and the pan-European approach aim to ensure a common playing field in the internal market and security of supply is expected to be improved.

Thus, third-country gas transmission links located within the EU, in particular within the land and sea territory of the Member States, will be subject to the same rules that apply to gas transmission links within the EU, that is, between EU Member States.

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<sup>1</sup> The offshore Tyra gas field in the North Sea is shut down from September 2019 to the summer of 2022. During this period, consumers in Denmark and Sweden will primarily get their gas supply from Germany and biogas fed into the gas system combined with gas from the Danish gas storage facilities.

<sup>2</sup> as per Directive 2019/692 / EU of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73 / EC on common rules for the internal market for natural gas. Directive 2019/692 / EU is hereinafter referred to as the Amending Directive and Directive 2009/73 / EC is hereinafter referred to as the Gas Directive.

<sup>3</sup> which also entails proposals for similar minor amendments to the Act on Energinet, the Danish transmissions systems operator (TSO).

The Gas Directive has been implemented in Denmark in the Natural Gas Supply Act and in regulations issued pursuant to the Natural Gas Supply Act.

The Natural Gas Supply Act applies

- on land,
- in the maritime territory,
- in the exclusive economic zone and
- on the Danish continental shelf area,

which is why Danish regulations – according to the Danish authorities - already largely take into account the amendments to the directive. In other words, transmission links on the Danish land and sea territory that will link the Danish gas transmission system with third countries are already covered by the Natural Gas Supply Act.

However, the Bill proposes a single amendment to the Natural Gas Supply Act in order to implement a new requirement in the Amending Directive that technical agreements on the operation of transmission links to and from third countries must be notified to the regulatory authorities, that is, the Danish Utility Regulator (DUR) in Denmark.

The Amending Directive must be transposed into national law by 24 February 2020, but as a result of Denmark's commitment to a directive amendment, and thus the Danish desire for a pan-European solution, expedited implementation is considered most appropriate to take effect on 1 January 2020.

## **Upstream preparedness**

The proposal aims to clarify that gas producers and suppliers are also responsible for security of supply.

Gas supply security will in the coming period be challenged with the lapse of the largest natural gas supply source in connection with the decommissioning and reconstruction of the Tyra complex in the Danish North Sea.

Therefore, a need has been found to clarify the responsibility for security of gas supply. It follows from section 12, subsection 1, No. 3 that the security of gas supply must be provided by a transmission company.

It is proposed that the provision be amended to clarify that transmission companies carry out certain tasks relating to security of gas supply rather than having sole responsibility for security of gas supply.

The background to the proposal for clarification is EU Regulation No 2017/1938 / EU of 25 October 2017 on measures to maintain security of gas supply (hereinafter referred to as the Gas Supply Security Regulation), according to which gas security is a joint responsibility of both the authorities and the natural gas supply companies (i.e. also natural gas suppliers and buyers of natural gas, the so-called transport customers etc.) within their respective fields of activity and competence. Per section 23 a, the Minister can issue more detailed rules to supplement the rules of the Gas Supply Security Regulation.

The Bill seeks to improve the coherence between the Natural Gas Supply Act and the joint responsibility for gas supply security under the Gas Supply Security Regulation. However in bringing forward the Bill, the authorities have stressed that commercial market players, who are

not regulated by the Natural Gas Supply Act, do not have a joint and several (objective) liability for security of supply but are only responsible for balancing their own respective portfolios.

## **Expropriation**

The Bill will clarify the Natural Gas Supply Act as regards expropriation access for upstream plants and will also clarify the expropriation access for upgraded biogas connections.

Danish gas infrastructure was predominantly established in the 1980's, and there has not since been a significant new gas infrastructure in Denmark. In the intervening period from the 1980's to the present, legal distinctions have emerged between the types of infrastructure at the transmission level, despite the physical similarities (which should – in this author's point of view – not be overestimated).

Thus, a distinction is made between activities related to upstream and transmission activities. The EU legal distinction is not reflected in the current provision of natural gas supply law on expropriation. The original provision on expropriation from 1972 has been continued with minor editorial changes in the the subsequent main Act which was adopted in the year 2000.

According to the ministry, the expropriation provision today already includes expropriation for upstream installations, although it does not appear in the wording. Upstream activities have been legally separated from transmission activities (unbundling). The bill will therefore clarify that the expropriation provision also includes expropriation for upstream facilities.

## **Outlook in the Danish parliament**

The bill has been scheduled for the first of three readings in Parliament on 31 October 2019 and is likely to be finally passed before the end of the year. The amendments will, as stated above, enter into force on 1 January 2020.

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For questions or comments to this newsletter or energy and offshore in general, please contact Bo Sandroos on +45 4088 5422 or [bos@wsco.dk](mailto:bos@wsco.dk).

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