

Third-party access to upstream natural gas pipelines – revised Executive Order

New Executive Order

In Denmark third-party access to upstream natural gas pipelines is governed by an Executive Order issued pursuant to Section 21 of the Natural Gas Supply Act (the Executive Order on Access to Upstream Pipeline Networks and Upstream Facilities).

The Order has recently been revised. The final draft of the revised Order was submitted to the parliament's Climate, Energy and Supply Committee in December following a public consultation which did not give rise to external consultation responses.

The Order was subsequently issued on 16 December 2019 as Executive Order No. 1410 and entered into force on 1 January 2020.

The purpose of the executive order is primarily to implement parts of the amended EU gas directive, which is also implemented by Bill No. 17 that was adopted on November 28, 2019 (we reported on the proposed changes to the Natural Gas Supply Act and other Acts, [here](#)).

Second the purpose of the new Order is to make certain formal, editorial changes to the existing Order which have been necessitated by the changes to the Act. The aim is to ensure a robust regulation that provides an equal playing field for actors from both the EU and the EEA (European Economic Area).

The rules on third-party access to upstream gas pipelines

The Danish third-party access regime is a negotiated access regime. Under Section 1 of the Order, anyone who is willing and able to pay for access can get access to the upstream pipeline networks and upstream facilities. This includes the facilities providing technical services in connection with such access, other than those parts of such networks and facilities used for local production activities in a field where the gas is produced.

The right of access to upstream pipeline networks and upstream installations shall apply to anyone resident in an EU or EEA country, ref. Section 1(2).

For the purposes of the Order, ref. Section 2, upstream pipeline networks shall mean any pipeline or network of pipelines operated and/or constructed as part of an oil or gas production plant or used to direct natural gas from one or more such plants to a treatment facility, treatment terminal or a final coastal landing terminal.

Upstream facilities mean upstream pipeline networks and associated treatment plants on land operated together.

The starting point for access is commercial negotiations between the parties. Negotiation between owner or operator and applicant for access to upstream pipeline networks or to upstream facilities must be initiated and sought to be completed within a reasonable time, Section 3 of the Order.

If an application for access cannot be accepted, the owner or operator shall notify the applicant within 14 days of receipt of the application for access. Refusal must be justified.

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If an application for access is granted, the applicant and the owner or operator immediately commence negotiations on prices and conditions for the use of the upstream pipeline network or the upstream facility.

In negotiations on access, the owner or operator must take into account the capacity that is available or can in a reasonably easy manner be made available, and how possible environmental impacts can be minimized.

Per Section 3(5), the owner or operator may refuse to grant access to its upstream pipeline network or to its upstream facility when necessary:

- if the technical specifications are mutually incompatible and this problem cannot be solved reasonably easily,
- to avoid difficulties that cannot be overcome reasonably easily and which may be detrimental to efficient existing and planned future hydrocarbon production, including from fields with marginal economic viability, or
- to respect duly documented reasonable needs of the owner or operator of the upstream pipeline network or of upstream gas transport and processing plants and the interests of all other potentially affected users of the upstream pipeline network or relevant processing or handling facilities.

Under Section 5 prices for access are established via negotiations between the parties, and in a non-discriminatory manner.

Disputes concerning access, prices or other matters are to be resolved by the Danish Utility Regulator (DUR – “Forsyningstilsynet” in Danish), ref. Section 7 of the Order. The decisions of the DUR can be appealed to the Danish Energy Appeals Board, ref. Section 51 of the Natural Gas Supply Act.

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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.

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