

Act on CO₂ Allowances¹⁾

WE, MARGRETHE THE SECOND, by the grace of God Queen of Denmark, make it known:

The Danish Parliament has passed and We have given Our Royal Assent to the following Act:

Part 1

Scope of application

1. This Act applies to the release (emission) of greenhouse gases and activities covered by the Emissions Trading Directive, cf. Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC, and related EU legal acts.

2.-(1) The Minister for Climate, Energy and Utilities decides whether and from when an asset or an activity is covered by the Act.

(2) For the purpose of making a decision pursuant subsection (1), the Minister for Climate, Energy and Utilities may decide that the natural or legal person who owns, possesses or operates an asset or who performs an activity must provide any information, including on oath, about the design of the asset or activity and all other relevant matters.

Part 2

Definitions

3. For the purposes of this Act, the following definitions apply:

(i) Greenhouse gases: Carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆) and other gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.

(ii) The allowance scheme: The regulation in this Act, rules issued pursuant to this Act or EU legal acts on matters covered by this Act.

(iii) Aircraft operator: An operator of an aircraft, a commercial air transport operator or any other person who is subject to EU rules on requirements for greenhouse gas emission allowance trading within the area of aviation.

(iv) Operator: An operator of an installation, an aircraft operator, shipping company (maritime operator), fuel operator (regulated entity) or any other person, who is subject to EU rules on requirements for greenhouse gas emission allowance trading.

Part 3

Emissions permits to operators of installations and fuel operators

4.-(1) Operators of installations and fuel operators may emit greenhouse gases only if the Minister for Climate, Energy and Utilities has granted them a permit to do so.

(2) The Minister for Climate, Energy and Utilities may refuse to issue an emissions permit to an operator of an installation or fuel operator who has repeatedly or grossly violated the allowance scheme, including obligations to provide information in connection with the application.

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5.-(1) A decision made pursuant to section 4(2) may be appealed to the courts. The decision must contain information on the right to apply for judicial review and the time limit for doing so; cf. subsection (2).

(2) An application for judicial review, cf. subsection (1), must have been received by the Minister for Climate, Energy and Utilities no later than four weeks after the operator of an installation or the fuel operator was notified of the decision. The Minister will then bring the matter before the court in accordance with the rules of civil procedure.

6.-(1) An emissions permit may be revoked if an operator of an installation or a fuel operator has repeatedly or grossly violated the allowance scheme. A decision to this effect must be made by a court in legal proceedings initiated by the Minister for Climate, Energy and Utilities and governed by the rules of civil procedure. The judgment in the case may stipulate that an appeal will have no suspensory effect.

(2) The Minister for Climate, Energy and Utilities may decide that the emissions permit will be temporarily revoked until the proceedings, cf. subsection (1), have been finally settled. The court rules by way of order whether the temporary revocation of the emissions permit is upheld if the operator of an installation or fuel operator so requests.

(3) If an operator of an installation or a fuel operator is excluded from carrying out its activities pursuant to section 79(1), (3) or (4) of the Danish Criminal Code because of a violation of the rules or terms of the allowance scheme, the emissions permit lapses from the date on which the court's decision becomes final.

Part 4

Operating bans on aircraft operators and detention and expulsion of ships

7.-(1) Where an aircraft operator fails to comply with its obligations under the allowance scheme, the Minister for Climate, Energy and Utilities may, in consultation with the Minister for Transport, request the European Commission to decide on the imposition of an operating ban in accordance with the provisions of Article 16(5)-(11) of the ETS Directive.

(2) Where a shipping company fails to comply with its obligations under the allowance scheme, the Minister for Climate, Energy and Utilities may detain the shipping company's Danish ships or expel foreign ships from Danish ports in accordance with the provisions of Article 16(11)(a) of the ETS Directive or the provisions of Article 20(3) of Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC.

Part 5

Auctioning, free allocation and return of allowances

8. The Minister for Climate, Energy and Utilities auctions the auction shares allocated to Denmark; cf. Article 10 of the ETS Directive. The revenue from the auctioning of allowances accrues to the Danish treasury.

9.-(1) The Minister for Climate, Energy and Utilities notifies the operator of free allocation of allowances to the extent that the operator is entitled to do so under EU legal acts on matters covered by this Act.

(2) Where the allocation was made on the basis of incorrect data or information, or without otherwise fulfilling the conditions in the allowance scheme for receiving or retaining free allowances, the Minister

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for Climate, Energy and Utilities may decide that an operator must return a quantity of allowances corresponding to those unduly received.

Part 6

Surrender of allowances

10.-(1) In accordance with the allowance scheme, operators of installations, aircraft operators and shipping companies must each year by 30 September in the EU Registry, cf. section 12, surrender a number of allowances equal to their verified emissions during the preceding calendar year.

(2) In accordance with the allowance scheme, fuel operators must each year by 31 May in the EU Registry, cf. section 12, surrender a number of allowances equal to their verified emissions during the preceding calendar year.

11.-(1) Where an operator of an installation, aircraft operator or shipping company fails to comply with its obligation to surrender allowances pursuant to section 10(1), the Minister for Climate, Energy and Utilities orders the operator to pay a penalty to the treasury corresponding to EUR 100 for each tonne of CO₂ equivalent emitted that was not surrendered.

(2) The penalty pursuant to subsection (1) increases in accordance with the European index of consumer prices, with base year 2012.

(3) The penalty pursuant to subsection (1) falls due for payment within 14 days of demand. If the amount due is not paid on time, the amount will carry interest in accordance with section 5(1) and (2) of the Danish Interest Act, but at least DKK 100.

(4) Payment of the penalty pursuant to subsection (1) will not release the operator from the obligation to surrender allowances in full; cf. section 10.

(5) The operator is liable for payment of the penalty pursuant to subsection (1). If the operator is not the owner of the asset that is the source of the greenhouse gas emission, the owner is jointly and severally liable with the operator for payment of the penalty.

Part 7

The EU Registry and the Danish Kyoto Registry

12.-(1) The Minister for Industry, Business and Financial Affairs administers Danish allowance accounts in the electronic EU Registry, including for the purpose of allocation, surrender and cancellation of allowances.

(2) The allocation of free allowances is administered as follows: Each year by 30 June, the Minister for Industry, Business and Financial Affairs deposits the allowances in the accounts of the eligible account holders in the EU Registry.

(3) The Minister for Taxation has access to any information on the accounts in the EU Registry administered by the Minister for Industry, Business and Financial Affairs, and which is necessary for the performance of the Minister for Taxation's tasks.

13.-(1) The Minister for Industry, Business and Financial Affairs administers an electronic Danish Kyoto Registry containing information on climate credits, etc. issued under the UN Climate Convention and the Kyoto Protocol.

(2) The Minister for Taxation has access to any information on the accounts in the Kyoto Registry that is necessary for the performance of the Minister for Taxation's duties.

Part 8

Supervision, obligation to provide information and publicity

14. The Minister for Climate, Energy and Utilities supervises compliance with the rules of the allowance scheme and decisions made pursuant thereto, but see section 15.

15. In relation to the EU Registry and the Kyoto Registry, the Minister for Industry, Business and Financial Affairs supervises compliance with the rules of the allowance scheme and decisions made pursuant thereto.

16.-(1) At the request of the Minister for Climate, Energy and Utilities or the Minister for Industry, Business and Financial Affairs, operators or others who own or operate assets or otherwise perform activities covered by the allowance scheme must provide any information which the Minister, based on a reasonable assessment, deems necessary for the performance of the Minister's duties under this Act, including duties in connection with the exercise of supervision pursuant to section 14 or section 15.

(2) The Minister for Climate, Energy and Utilities and the Minister for Industry, Business and Financial Affairs have access to any information from the Customs and Tax Administration that is necessary for the performance of the Minister's duties.

(3) The Minister for Climate, Energy and Utilities may obtain environmental information from the Minister for Environment for the purpose of administering this Act.

17.-(1) The Minister for Climate, Energy and Utilities ensures that all decisions and reports regarding the quantity and allocation of allowances and regarding monitoring, reporting and verification of greenhouse gas emissions are published immediately. Information subject to a duty of confidentiality may not be disclosed to other persons or authorities except in pursuance of current legislation.

(2) The Minister for Climate, Energy and Utilities publishes the names of operators of installations, aircraft operators and shipping companies that fail to comply with the requirement in section 10(1) to surrender sufficient allowances.

Part 9

Orders

18. The Minister for Climate, Energy and Utilities and the Minister for Industry, Business and Financial Affairs may issue orders to the effect that matters that are contrary to the allowance scheme, including decisions made pursuant thereto, must be brought into compliance with the allowance scheme within a specified time limit.

Part 10

Digital communication and automation

19.-(1) Written communication to and from authorities performing duties under the allowance scheme must be digital with the use of the IT systems, digital formats and identification solutions specified by the authority.

(2) Decisions of the Minister for Climate, Energy and Utilities and the Minister for Industry, Business and Financial Affairs on matters covered by the allowance scheme may be made using automated case management.

Part 11

Authorisations

20.-(1) The Minister for Climate, Energy and Utilities may authorise an institution established under the Ministry or another public authority to exercise powers conferred on the Minister for Climate, Energy and Utilities in this Act.

(2) The Minister for Climate, Energy and Utilities appoints a competent authority pursuant to the ETS Directive.

(3) The Minister for Industry, Business and Financial Affairs may authorise an institution established under the Ministry or another public authority to exercise powers conferred on the Minister for Industry, Business and Financial Affairs in this Act.

21.-(1) Within the Minister's field of responsibility, the Minister for Climate, Energy and Utilities may lay down rules governing the following matters:

(i) Obligations, deadlines, formal requirements, procedures and other administrative matters regarding the allowance scheme, including on orders and bans, on detention and expulsion of ships, on the cases in which and the form in which applications for approvals or permits should be submitted, and on the terms, amendment or revocation of decisions.

(ii) Digital communication and automated case management.

(iii) The right to appeal against decisions made by or on behalf of the Minister in the area of the allowance scheme, including whether decisions may be brought before the Danish Energy Board of Appeal, or whether decisions made under the authority of the Minister should be appealable to the Minister.

(iv) Payment by operators to cover the Minister's costs of supervision and case management, including fees or other payments to cover additional work or other additional expenses in situations where an operator or account holder has not fulfilled its obligations under the allowance scheme or under decisions made in accordance with the allowance scheme.

(v) Publication of decisions, reports and other information that come to the knowledge of the Minister or an institution authorised by the Minister in connection with the performance of administrative tasks in the area of allowances.

(2) Within the Minister's field of responsibility, the Minister for Climate, Energy and Utilities may lay down rules necessary to implement, apply or enforce legal acts adopted by European Union institutions on the allowance scheme, including on bans, orders, approval requirements, obligations to provide information or any other form of onerous measures. In this connection, the Minister for Climate, Energy and Utilities may lay down rules to the effect that the Act will apply to specified natural and legal persons covered by the EU legal acts in the area of allowances in force from time to time.

(3) The Minister for Climate, Energy and Utilities may lay down rules governing the following matters:

(i) Monitoring, reporting and verification in relation to greenhouse gas emissions covered by the allowance scheme, including on decisions on the determination of emissions.

(ii) Surrender and free allocation of allowances, including on decisions on the determination of activity levels and on the return of allowances unduly received.

(iii) Types of credit that may not be deposited in accounts in the Kyoto Registry.

22.-(1) Within the Minister's field of responsibility, the Minister for Industry, Business and Financial Affairs may lay down rules governing the following matters:

(i) Obligations, deadlines, formal requirements, procedures and other administrative matters regarding the allowance scheme, including on orders and bans, on the cases in which and the form in which applications for approvals should be submitted, and on the terms, amendment or revocation of decisions.

(ii) Digital communication and automated case management.

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- (iii) The right to appeal against decisions made by or on behalf of the Minister in the area of the allowance scheme, including whether decisions may be brought before the Energy Board of Appeal, or whether decisions made under the authority of the Minister should be appealable to the Minister.
- (iv) Payment by account holders to cover the Minister's costs of supervision and case management, including account charges or other payments to cover additional work in situations where an account holder has not fulfilled its obligations under the allowance scheme or under decisions made in accordance with the allowance scheme.

(2) Within the Minister's field of responsibility, the Minister for Industry, Business and Financial Affairs may lay down rules that are necessary to implement, apply or enforce legal acts adopted by European Union institutions on the allowance scheme, including on bans, orders, approval requirements, obligations to provide information and any other form of onerous measures.

(3) The Minister for Industry, Business and Financial Affairs may lay down rules on the following matters:

- (i) Accounts in the EU Registry or the Kyoto Registry administered by the Minister for Industry, Business and Financial Affairs, including on the right to open accounts, documentation requirements for account holders, terms of use of the registry and the Minister's right to block and close accounts.
- (ii) Payment of a fee when an appeal is brought before the Energy Board of Appeal.

Exceptions to entry in the Danish Law Gazette

23.-(1) The Minister for Climate, Energy and Utilities may lay down rules to the effect that specified international decisions and technical specifications regarding requirements for businesses, assets, facilities, etc., to which reference is made in rules issued pursuant to this Act, are not entered in the Danish Law Gazette. In this connection, the Minister for Climate, Energy and Utilities lays down rules on how information on the content of such international decisions and technical specifications may be obtained.

(2) The Minister for Climate, Energy and Utilities may lay down rules to the effect that the international decisions and technical specifications to be applicable under subsection (1) will apply even if they are not available in the Danish language.

Part 12

Complaint provisions

24.-(1) The Energy Board of Appeal considers appeals against decisions made by the Minister for Climate, Energy and Utilities or the Minister for Industry, Business and Financial Affairs in accordance with the allowance scheme, but cf. subsection (2).

(2) The following decisions cannot be appealed to the Energy Board of Appeal, but cf. subsection (3):

- (i) Rejection of an application for an emissions permit; cf. section 4(2).
- (ii) Decisions on temporary revocation of an emissions permit; cf. section 6(2).
- (iii) Decisions on the determination of greenhouse gas emissions or activity levels.

(3) Notwithstanding subsection (2), complaints about administrative law issues in connection with the Minister's decisions may be brought before the Energy Board of Appeal.

(4) Decisions may not be brought before the courts until the final administrative decision has been made.

(5) Complaints must be submitted in writing within four weeks of the notification of the decision.

25.-(1) When examining appeals in the area of the allowance scheme, the Energy Board of Appeal is made up of the members who decide appeals pursuant to the Danish Electricity Supply Act. Depending on the circumstances, the chairman of the Board may decide that the Board is to consist of the members who decide appeals under the Danish Heat Supply Act.

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(2) As specifically agreed with the Board, the chairman of the Energy Board of Appeal may make decisions on behalf of the Board in cases considered under this Act or rules issued pursuant to the Act.

Part 13

Penalty provisions

26.-(1) Unless a more severe punishment is stipulated elsewhere in the law, the following offences are punishable by a fine:

- (i) failure to provide information or provision of incorrect or misleading information required pursuant to section 2(2);
- (ii) emission of greenhouse gases without a valid permit as required pursuant to section 4;
- (iii) failure to return allowances in accordance with a decision pursuant to section 9(2);
- (iv) failure to comply with an order pursuant to section 18; or
- (v) outside the cases mentioned in (i) above and in breach of section 16, failure to provide information or provision of incorrect or misleading information that is of importance to the case management by authorities under the allowance scheme.

(2) Any person violating subsection (1)(i) or (ii) intentionally or by gross negligence is liable to a prison sentence of up to two years, unless a more severe punishment is stipulated elsewhere in the law.

(3) Companies, etc. (legal persons) may incur criminal liability under the rules of Part 5 of the Criminal Code.

(4) Regulations issued under the Act may provide for penalties in the form of fines for violation of the provisions of the regulations.

Part 14

Commencement and transitional provisions

27.-(1) The Act will take effect on 1 January 2024.

(2) The Act on CO₂ Allowances, cf. Consolidating Act no. 536 of 27 April 2022, is repealed.

(3) Emissions permits issued pursuant to section 12 of the Act on CO₂ Allowances, cf. Consolidating Act no. 536 of 27 April 2022, cf. subsection (1), remain in force until they expire, are revoked or replaced by an emissions permit issued under this Act.

(4) Rules laid down pursuant to the Act on CO₂ Allowances, cf. Consolidating Act no. 536 of 27 April 2022, remain in force until they are repealed or replaced by rules laid down under this Act.

28.-(1) This Act applies to fuel operators from 1 July 2024, but see subsection (2).

(2) Section 4 applies to fuel operators from 1 January 2025.

Part 15

Amendment of the Heat Supply Act

29. The Danish Heat Supply Act, cf. Consolidating Act no. 2068 of 16 November 2021 as amended *inter alia*, by Act no. 217 of 7 March 2023 and most recently by section 2 of Act no. 745 of 13 June 2023, is amended as follows:

1. In *section 20(8)*, “under Part 4 of the Act on CO₂ Allowances” is amended to read: “under the Act on CO₂ Allowances”.

2. In two places in *section 20(9)*, “under Part 19 of the Act on CO₂ Allowances” is amended to read: “under the Act on CO₂ Allowances”.

Unofficial translation – the Danish text shall prevail

3. In *section 20(10)*, “tax under Part 28 of the Act on CO₂ Allowances” is amended to read: “tax under the Act on CO₂ Allowances”.

Part 16

Territorial provision

30. This Act does not apply to the Faroe Islands and Greenland.

Given at Marselisborg Castle on 28 December 2023

Under Our Royal Hand and Seal

MARGRETHE R.