

GETTING THE
DEAL THROUGH 

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Denmark

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Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

The agriculture and food industry is one of Denmark's largest industries, employing approximately 175,000 people or 6 per cent of the total workforce. Despite a limited area of about 43,000 square kilometres of which 51 per cent is rural, Denmark exports agricultural products and food worth €20 billion to 150 countries, corresponding to more than 3 per cent of the world food market. The farming sector has, in recent decades, experienced a consolidation leading to an average farm size of 70 hectares – well above the EU average of 16.1 hectares.

In the late 1800s, the Danish agricultural cooperative movement was founded on the simple principle that farmers collectively invested in everything from dairies and slaughterhouses to agricultural machinery and fire insurance. This enabled the costs to be divided among many, and allowed farmers to think expansively and protect themselves against financial risks. Therefore, many of the main export corporations – such as DLF Seeds and Science, Copenhagen Fur, Arla Foods and Danish Crown (the second-largest meat exporter in the world) – are ultimately owned by Danish farmers.

Food products are mainly distributed by five large retailing organisations that, together, control more than 85 per cent of the market share.

High standards for food safety with traceability in the food supply and distribution chain has been a driver for Danish food products' reputation as safe and of a high quality. Denmark has also been identified as a role model in China and many other large exports markets because of its production of safe, high-quality dairy products.

Denmark is recognised as a leading country in respect of organic production. The governing regulation and supervision is very strict regarding animal welfare, for example, and many Danish citizens combine organic production with high standards of animal welfare. Among EU consumers, Danish consumers spend the most on organic products and the share of organic sales as part of total sales is estimated to be 8 per cent (the highest in the EU). It is the Danish Agriculture and Food Council's ambition to double the amount of organic agricultural products by 2020.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The Danish legislation governing the agricultural sector derives primarily from EU legislation. However, within certain areas of law (especially within the area of environmental protection and animal welfare), Denmark has implemented EU legislation with stricter rules and thresholds than prescribed by EU law (eg, in relation to use of fertilisers, size and ventilation of stables).

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

The main non-governmental organisations and non-profit organisations are the Danish Agriculture and Food Council, the Agricultural Associations and the Royal Danish Agricultural Society.

The Danish Agriculture and Food Council represents the farming and food industry of Denmark, including businesses, trade and farmers' associations. It was established in 2009 as a result of a merger

between five organisations: Danish Agriculture, the Danish Bacon and Meat Council, the Danish Agricultural Council, the Danish Dairy Board and Danish Pig Production. The purpose of the Council is to promote the political influence of the agricultural sector as well as to pursue the implementation of research and development programmes within food safety and veterinary issues.

The Agricultural Associations includes 29 local farmers' associations. Each association advises its members on both legal, economic and agricultural topics. The associations are a unique feature of the Danish agricultural sector as they are governed by the farmers and do not pursue commercial interests.

The Royal Danish Agricultural Society is a debate forum covering sustainable use of open land and its resources for the benefit of agriculture, society and the environment. The core activities include the organisation of seminars and the publication of the *Journal of Rural Economy*, among others.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

The number and average size of agricultural holdings has increased significantly during the past 25 years to around 30,000 with an average size of 70 hectares compared to 66,000 in 1990 with an average size of 35.1 hectares.

The typical form of ownership of agricultural properties is private freehold ownership.

Until 2015, the regulation of ownership of farmland was extremely strict, including residency requirements. After 2015, the Danish Agricultural Act was amended, creating an opportunity for investment through corporations, etc, with the possibility of fulfilling the residency requirements by leasing the farm house to a third party.

There is a high level of conservation in respect of both farm properties and land. Many of the old farm properties are subject to restrictions in respect of changes to layout, design, etc. In addition thereto special regulation concerning building of new stables, removal of hedgerows, streams, stone nozzles, etc, applies. The construction of new buildings is subject to a public hearing process for neighbours and other interest groups, who have the right to object to the project.

In order to receive EU subsidies, 5 per cent of the total farming area must be fallow land.

The humid Danish climate during the autumn and winter means that almost all agricultural land is drained, even though such drainage is costly to establish and maintain.

Owners of farmland are obliged to accept that infrastructure installation including gas pipelines and other technical supply lines supporting urban areas are placed subsurface on their land. If a farmer causes damages to such installation, any required replacement and costs associated therewith must be made by the farmer.

There is public access to all roads and footpaths on farmland, forests and along the coastlines even if such areas are privately held.

5 Outline any rules related to use of farmland for non-agricultural uses.

Areas of more than two hectares are characterised as agricultural land and impose an obligation on the owner to use it for agricultural purposes. Cessation of such duty is permissible only in certain limited situations outlined in the Agricultural Act.

Farm buildings are subject to similarly strict requirements regarding use of the building and exemptions therefrom are generally only accessible for limited periods of time and for a limited number of purposes.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

All rights relating to land, including security over farms and farmland, must be registered in the Danish Land Registry in order to be effective against third-party rights.

Security over farms and farmland includes all ancillary operating equipment, for example, machinery and the associated livestock, fertilizer, harvest and other produce, to the extent not segregated in accordance with the ordinary cause of the agriculture business. This provision applies unless otherwise agreed by the owner of the farm and the mortgagee. However, security granted in respect of farms and farmland is subordinated to security over harvest that has been pledged pursuant to the Danish Mortgage Credit Act as security for debts incurred in connection with the purchase of intermediary products, such as corn seed, seed potatoes and fertiliser.

Furthermore, security over farms and farmland is subject to any terms or time limitations relating to the permission of the use of the agriculture and farmland, applicable pursuant to the Agricultural Act.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

At debtor's default, creditors have certain rights to use the debtor's personal property to satisfy repayment of outstanding debt. The creditor can recover its debt through the bailiff's court. The enforcement of a claim through the bailiff's court requires an enforceable document. Among these enforceable documents are judgments, small money claim forms, settlements in court, certain documents of indebtedness, settlements out of court and mortgages.

Enforcement of a claim through the bailiff's court will most likely result in the creditor gaining security over one of the debtor's assets, for example, the farm. Subsequently, the creditor can then force a sale of the asset in order to cover the debtor's debt.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

The Agricultural Act primarily regulates public control of farm property. The purpose of the Act is to ensure proper use of farmland in relation to agricultural production, nature and the environment, and it regulates the permitted forms of ownership and the structures of the farmland. More specifically, the Act regulates the obligation to cultivate the farmland, and how such cultivation should be performed and managed, the acquisition of agricultural property, joint operations, leasing or rent of agricultural property, rules relating to the replacement of farmland, and the establishment of new agricultural properties.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

Historically, Danish agribusinesses have been granted large mortgages, which has resulted in high financial costs in the same years as the prices for meat and grain have decreased. Consequently, many Danish farms and agribusinesses are surviving because of support from the bank. Change of ownership has become extremely difficult because farms are struggling financially and the banks are increasingly withholding from granting loans to new (younger) owners. As a result, and as the government is interested in creating more jobs in the agribusiness sector (and reducing the number of agribusinesses and farms owned by an individual), the Agricultural Act was amended in 2015, opening up the possibility of investing through Danish corporations, including European Union and European Economic Area (EEA) corporations, as long as they have a registered branch in Denmark.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The primary support programme in the Danish agriculture sector is the EU hectare support subsidies, which are based on the number of hectares and not production.

A number of other support programmes, most of which are EU-based, such as support programmes for young farmers, are available. A reasonable portion of all EU subsidies are withheld by the government and made available upon applications from farmers under, for example, the European Agricultural Fund for Rural Development and the Green Development and Demonstration Programme.

The above-mentioned funds are subsidised by taxes on pesticides, etc, and support various development projects and activities with around 500 million kroner a year.

Another significant support programme is the new Danish Agribusiness Fund, under which the government has 'earmarked' 500 million kroner to support Danish agribusinesses through an investment fund that will be run jointly with a pension fund to make investments in Danish farms.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

If a Danish farmer is interested in investing in farming outside the EU, the farmer may apply for financial support to the Danish Investment Fund for Developing Countries for support. There are no programmes regarding foreign ownership in agribusiness in Denmark.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

The rules set out in the various EU directives, regulations, etc, are applicable to Danish primary processors. Danish primary processors of live animals are subject to the authority of the Ministry of Environment and Food in Denmark and its two agencies: the Danish Veterinary and Food Administration (DVFA) and the Danish Agrifish Agency (DAA). The DVFA oversees compliance with the rules applicable to animals (including animal welfare, feed safety, etc), while the DAA oversees compliance with the legislation on cultivation of crops, fertilisation, etc. In order to lawfully export to third countries, certain certificates are required.

The Central Husbandry Register (CHR) is the central database used for registration of holdings of animals. It is owned by the Ministry of Environment and Food and was established in 1992. The CHR contains information on all holdings with cattle, pigs, sheep and goats, and commercialised holdings with poultry, fur animals, deer, game birds and fish.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

The EU food hygiene and control regulations are directly applicable in Denmark. The DVFA has also issued a set of Danish Executive Orders, including Executive Order No. 11 of 7 January 2016 on Food Hygiene, which sets out different requirements for storage and handling of foodstuffs.

All shops, restaurants and other enterprises selling food and beverages to the public are inspected on a regular basis, typically one to three times a year. The inspection reports with smileys must be posted in the seller's shop. The expression of the smiley is a signal to the consumers about how well an enterprise complies with food regulations.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

The DVFA is authorised to order a recall or withdrawal of foodstuffs and to inform the public thereof. A food business operator may be ordered to pay a fine for lack of compliance with the applicable food

safety legislation. Furthermore, food business operators may be stripped of their authorisations and registrations in case of severe or repeated non-compliance with applicable food safety legislation. In severe cases, food business operators may be sentenced to jail and have their profits seized.

In respect of farmers, cross-compliance must be met, which means that farmers receiving direct aid or subsidies for certain schemes under the rural development programme must meet a number of requirements for environmental, health, animal welfare and good agricultural conditions to receive their subsidies or contributions without a loss.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

In Denmark, as in many other EU member states, production of genetically modified organisms (GMOs) is not allowed (with the exception of one particular corn variety produced in Spain). Acquisition and sale of products that contain permitted GMOs must be labelled showing the consumer that it contains GMOs; however, it is possible to sell meat from animals that have been fed with GMOs. Organic food must not contain any GMOs and animals of organic production may not be fed with food containing GMOs.

Denmark has a long tradition of organic farming, and over the years organic food production has attracted great attention from politicians, authorities and organisations. Effective control of organic production has given Danish organic products a high degree of credibility. This is an important condition for the marketing of organic products. The Danish 'Ø' logo is the mark of an inspection, which shows that the final stage in the preparation of the product took place in a Danish company inspected by the public authorities. Therefore, the logo can be seen on both foods that originate from Danish organic farms and on imported foods that are processed, packed or labelled in Denmark.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

Regulations (EU) No. 1169/2011 on Food Information to Consumers and No. 1924/2006 on Nutrition and Health Claims are directly applicable in Denmark. Danish Executive Order No. 1355 of 17 November 2015 on the Labelling of Foodstuffs is also applicable. This Executive Order sets out various particular Danish rules, for example, a requirement for mandatory food information to be provided in Danish.

The labelling rules are enforced by the DVFA, which is authorised to order recalls or withdrawals of mislabelled foodstuffs and to inform the public thereof. A food business operator may be ordered to pay a fine for lack of compliance with the food labelling requirements.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

The Danish Animal Protection Act stipulates that animals must be treated properly and with care, and protected as much as possible from pain, suffering, fear, disablement and major inconvenience. A number of executive orders (eg, Executive Orders No. 21 of 7 January 2016 on the Protection of Livestock at Slaughter Assembly Points and No. 1729 of 21 December 2006 on the Protection of Livestock during Transport) have been issued based on the Danish Animal Protection Act.

Pursuant to the Animal Keeping Act (No. 466 of 15 May 2014), the Danish authorities may issue various orders to farmers in order to prevent disease outbreaks, including for the isolation, treatment or destruction of a farmer's livestock.

18 What are the restrictions on the movement of animals within your country?

Council Regulation (EC) No. 1/2005 is directly applicable in Denmark. Danish Executive Order No. 1729 of 21 December 2006 contains supplementary rules and requirements, including particular space requirements applicable to transport of pigs. These requirements apply on the basis of the average weight of the pigs transported (40, 50, 70, 90, 100, 110, 130, 150, 170, 190, 210 or 230 kilograms). By way of example, if the average weight of pigs to be transported is 100 kilograms, the height of each floor must be at least 92cm, if a mechanical ventilation system is used, and at least 107cm, if another type of ventilation system is used;

if the average weight is 110 kilograms, the space requirements are 95cm and 110cm respectively, etc.

If the average weight of the pigs is, for example, 105 kilograms, the transporter must establish the minimum space requirements on the basis of a linear interpolation. However, if the average weight exceeds 230 kilograms, the space requirements must be calculated on the basis of extrapolation.

There is also a prohibition on transporting sows that have farrowed for more than eight hours.

19 Describe any restrictions on import of food animals.

Regulation (EU) No. 206/2010 applies to the importation of food animals in the EU and Denmark. In addition, Danish Executive Order No. 55 of 15 January 2016 contains general requirements for importation of animals; Danish Executive Order No. 20 of January 2016 contains requirements specific to the import of pigs; Danish Executive Order No. 25 of 7 January 2016 contains requirements specific to import of cattle; Danish Executive Order No. 1325 of 26 November 2015 contains requirements specific to imports of sheep and goats; and Danish Executive Order No. 23 of 1 January 2016 contains requirements specific to imports of poultry.

It is a requirement under all sets of rules that the importer must be registered with the Danish Veterinary and Food Administration prior to importing animals and that each importer must register certain particulars regarding each import. Furthermore, the importer must notify the DVFA of the import at least one working day prior to the expected arrival.

20 What are the regulations related to livestock slaughtering?

Council Regulation (EC) No. 1099/2009 is directly applicable in Denmark with regard to livestock slaughtering. Danish Executive Order No. 135 of 14 February 2014 contains special requirements applicable to, for example, kosher and halal slaughtering procedures.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The EU legislation on the use of pesticides is directly applicable in Denmark. However, when assessing applications for use of specific pesticides, the Danish authorities are known to apply comparatively strict requirements.

In Denmark, a special reassessment programme applies. If there is a risk of a product being dangerous for humans or the environment, a special restrictive approval programme is set in place. As a consequence, and as Denmark is a small country, a lot of the pesticide companies do not sell pesticides in Denmark, and therefore use of any pesticide in agribusiness must first be approved. As a result of this, Danish farmers have fewer pesticides at their disposal.

Denmark is known to have less pesticide residues in fruits and vegetables.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

Agricultural operations are often organised by cooperative societies ultimately owned by the farmers. This is important for Denmark as the cooperatives not only aim to provide large dividends to the owners of the business but also work to provide better prices for the farmers.

Farmland is often owned by one farmer with personal and full liability, but with the new amendment of the Agricultural Act, ownership through various corporate forms with limited liability is expected to be more common.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

There are no restrictions on foreign ownership other than those described in question 9 in respect of Danish and EU/EEA corporations.

Update and trends

The amendment to the Danish Agricultural Act means that there is a growing focus on alternative investment in Danish agribusiness. We believe that the ownership of land and the merger of farms (either by ownership or by cooperation between farmers) will increase in the coming years. This will result in larger corporations and more cost-effective farms in Denmark, which is expected to attract more investment from domestic and international financial and strategic sponsors. As Denmark is already a role model in respect of organic products, clean high-quality products and products with a high level of food safety, exports will continue to grow as the demand for these products throughout the world grows.

Focus on food products with alternative effects such as protein-rich products (eg, eggs and low-fat meat such as chicken) and trends toward products produced with a lower amount of energy and less impact on the environment are major focus areas in Western countries. In addition, production of bioethanol will increase and influence the production of goods.

The development and survival of Danish agribusiness is indeed of high political interest and changes are certain to happen.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

In Denmark most blue-collar workers (except those working directly on the small farms) are covered by collective bargaining agreements (COBs). Employees in the agricultural sector will, as a general rule, be covered by a COB if the employer is a member of an employer organisation and, in such cases, the material employment terms such as working time, salary and sickness will be regulated in the COB.

Employees who undertake agricultural work, regardless of whether they are covered by a COB, are covered by the Agricultural and Domestic Workers' Act, which regulates several employment terms for agricultural employees including board and lodging, holiday, sickness, termination, etc. In addition, there are some general mandatory employment statutes that apply regarding holiday, non-discrimination, maternity leave, working hours, etc.

In addition, salaried employees who primarily perform office work or are involved in management are covered by the Salaried Employees Act and therefore gain certain rights not held by blue-collar workers.

25 How is farmworker immigration regulated in your jurisdiction?

Agricultural workers from other EU and EEA countries are free to enter and work in Denmark according to the EU and EEA rules on free movement of labour. Workers from countries outside the EU and EEA who wish to work within the Danish agricultural sector must have a valid residence and work permit.

A number of schemes have been designed in order to make it possible for highly qualified professionals to obtain a residence and work permit in Denmark. Unless covered by such a scheme, it is very difficult to obtain the permit. One specific scheme offers an opportunity for herdsmen and managers within the agricultural sector to obtain a residence and work permit if they have the required qualifications and education to perform the work as a herdsman or manager. All the different schemes under which applications can be filed are found on www.nyidanmark.dk.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

Owing to the inherent risks of the agricultural working environment, health and safety are heavily regulated. The general Working Environment Act applies to workplaces in the agricultural sector and the Act is supplemented by a working environment guide concerning specific working environment issues in the agricultural sector. The Act is also supplemented by several instructions from the Working Environment Authority with special relevance for this sector and several sector guidelines that describe what the parties on the labour market consider good working environment standards and practices in the agricultural sector, as well as a high level of safety regarding machinery, certificates, etc, and unexpected control visits.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

Applicable EU regulations on exports and imports are directly applicable in Denmark.

28 May tariffs, quotas or similar measures be put in place?

As an EU member state, Denmark is not allowed to (unilaterally) put in place tariffs, quotas or similar measures. However, special regulation in respect of labels, etc, may be allowed in extraordinary circumstances.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

Denmark is not (unilaterally) party to treaties on the import and export of agricultural products.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

Like most countries in the world, Denmark is member of the International Union for the Protection of New Varieties of Plants (UPOV). Denmark has adopted the 1991 Convention.

Pursuant to the Danish Patents Act, patents may not be issued in respect of plant varieties. However, Regulation (EC) No. 2100/94 and appurtenant EU legislation is applicable in Denmark. Accordingly, plant varieties may be protected by means of a Community plant variety right. Further, it is possible to obtain a Danish plant variety right under the Consolidation Act No. 190 of 12 March 2009 on Plant Variety Rights.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

A farmer's access to crop varieties, etc, is regulated by Regulation (EC) No. 2100/9 and the Act on Plant Variety Rights. According to these legal instruments, a farmer's access to crop varieties is conditional on the payment of a licence fee. If the farmer reuses the crop for the following harvest, a licence fee must also be paid.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

In a very limited number of cases, a patent on a plant's characteristics may be issued (eg, Carlsberg was granted a patent with respect to barley in order to make the process of malting barley easier).

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

The Ministry of Environment and Food of Denmark and the local municipalities are the main regulatory authorities with regard to agricultural legislation.

The municipalities typically handle the bigger and more polluting businesses, such as livestock farming.

In Denmark, there is strict legislation and regulation in respect of the environmental impact of agricultural production, some of which the farmers have addressed themselves. The strict legislation has ensured that the environmental impact has been reduced during the past decades. Pollution from greenhouse gases has been reduced by 30 per cent in the past two decades, and today, a Danish farmer can produce two pigs with the same environmental impact of rearing a single pig in 1985.

The Danish authorities employ one of the world's strictest agricultural control systems. In relation to the environment, unannounced inspections are carried out to check land use, feed mixtures, fertiliser accounts, mandatory buffer strips along watercourses, management of slurry and chemicals, as well as health and safety conditions.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

In many areas, the Danish national legislation exceeds the minimum requirements of the EU directives (all of which have been implemented in Denmark). For example, Danish farmers are also controlled by fixed limits in respect of odour nuisance affecting neighbours and nearby residential areas.

Water and air pollution is primarily regulated by the Environmental Protection Act and EU-based rules on environmental impact assessment (EIA) and strategic environmental assessment (SEA).

Depending on the size and type of farm, livestock farming requires several permits (eg, an environmental permit, an EIA and a SEA). The authorities set the terms regarding pollution in the permits.

Other agricultural activities, for instance, plant cultivation including manure and fertiliser use, require stand-alone permits as set out in the Environmental Protection Act.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

There has been increased focus on reducing nitrate and phosphate leaking into the aquatic environment since the late 1970s. In addition, there has been a shift in the type of pesticide used and a number of substances that have previously polluted the groundwater have been withdrawn from the market.

Use of fertilisation is strictly regulated in the Act on Agricultural Use of Fertilisers. According to the Act, companies, including farms, using nitrogen and plant growth as fertilization are required to register with the Ministry of Environment and Food of Denmark. Companies are given nitrogen quotas that cannot be exceeded.

The agribusiness firms shall report sales of fertilisers to individual farmers. This is checked in the separate fertiliser accounts of the farmers.

Other kinds of fertilisation also require a permit if the fertilisation in question may cause contamination of soil, subsoil water or air (as provided by the Environmental Protection Act).

Limits for pollution originating from livestock farming will typically be set in an overall environmental permit.

Under the Environmental Protection Act, other agricultural activities (eg, plant cultivation) that cause pollution and waste require stand-alone permits.

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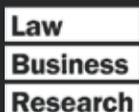
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