

## Task description by the contracting authority

Advertisement of a legal analysis on phasing out fossil fuels (primarily oil) in individual heating (households)

### 1. Background

The Danish government has set the the political ambition to reduce CO2 emissions by minimum 70 percent in 2030. With the Danish Climate Agreement for Energy and Industry 2020 (The Climate Agreement) adopted by a broad majority of the Danish Parliament, it was agreed, inter alia, to give subsidies when replacing oil and fossil gas boilers with either an electrical heat pump or district heating, while simultaneously adjusting the national terms of contract for district heating in order to expand the district heating grid further. In addition to this, electricity taxes on heating were lowered to give owners of oil and fossil gas boilers an incentive to replace their boiler with a more energy efficient source of heating. Acknowledging the fact that all the mentioned measures are a step in the move towards phasing out oil and fossil gas in the individual heating sector, the initiatives alone are not considered sufficient. After these measures, oil and fossil gas boilers are estimated to emit approximately 1.5 million tonnes of CO2 in 2025 and almost 1 million tonnes in 2030.

Furthermore, with The Climate Agreement it was decided that an analysis on the possibilities of phasing out oil and fossil gas in individual heating (Danish households) was to be conducted. Terms of Reference was set up in the Ministry of Climate, Energy and Utilities and the Danish Energy Agency in order to prepare an analysis with the purpose of illustrating the measures available within relevant national and EU regulation for further limiting or completely phasing out fossil fuels in individual heating. The work with the analysis started in January 2021 and will be completed by the end of 2022.

The European Commission's Fit for 55 Package is a main focus for the subject of energy efficiency, as the revision of three key EU-directives (Energy Efficiency Directive, Energy Performance on Buildings Directive and Renewable Energy Directive) creates an opportunity during 2021 to impact the legislative process on the mentioned Directives. Furthermore and simultaneously, the European Commission will be revising the Ecodesign Directive as part of its Sustainable Products Initiative.

The Danish Energy Agency (DEA) has as part of an initial legal mapping of relevant national and EU regulation in regards to phasing out of fossils fuels in heating identified legal barriers in both national and EU-legislation (in The Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union

**Danish Energy Agency**

Carsten Niebuhrs Gade 43  
1577 København V

T: +45 3392 6700

E: [ens@ens.dk](mailto:ens@ens.dk)

[www.ens.dk](http://www.ens.dk)

(TFEU) and the sector specific energy legislation). Due to the differences shown in the fossil fuels in question (oil and fossil gas), the legal mapping resulted in the division into two sub-analysis, one on oil and one on fossil gas. The mapping on oil also identified that the relevant sector regulation is primarily the one on energy efficiency.

## 2. Description of the task and product

A main conclusion in the initial legal mapping was that it is very difficult for a Member State to restrict or even ban oil/oil boilers in national individual heating when the limitations have to comply with the current EU-legislation e.g. rules on free movement of goods and harmonised standards for products (Ecodesign Directive).

To find ways where Denmark as a Member State can limit and potentially phase out the use of oil in heating that complies with EU-regulation, the DEA hereby advertises the task of preparing a legal analysis. It would mainly concern – but not be limited to – the European Commissions' Fit for 55 Package and the upcoming revision of the aforementioned Directives.

The overall aim of the legal analysis is twofold: to support the DEA's work to identify possible solutions within the current EU-regulation to limit the use of oil at national or European level, and to identify possible new ways forward in terms of suggestions to possible policy and legal recommendations to the EU regulation.

The analysis is to be carried out in close cooperation with the project manager and legal advisor of the DEA, who will be available to provide guidance in relation to the overall aim and content of the legal analysis, throughout the contract period.

As examples of the limitations and possibilities within EU law and the internal cohesion between some of the relevant Directives, the initial mapping revealed the following topics, which will be regarded as a baseline for the legal analysis and should be taken into consideration when starting the preparation of the analysis:

- *Oil (as a fuel)*: Oil is considered a good under EU law and is therefore subject to the rules on free movement in article 34-36 TFEU. Because of this, a national measure banning the use of oil for individual heating in one Member State, risks impeding the free movement of goods on the EU market, by creating a barrier to trade. Such a measure can under certain circumstances, be notified to the European Commission according to article 114, (5-7) TFEU, where it would be subject to a strict evaluation, hereunder a proportionality assessment in order to determine, whether other less restrictive measures are more proportionate. Other ways of

notification are not excluded, and should be explored under this point.

- *Oil boilers (as products)*: Oil boilers are considered as energy-related products under Directive 2009/125/EC establishing a framework for the setting of ecodesign requirements for energy-related products and the specific product regulations, that are delegated acts to the Ecodesign Directive. Furthermore, oil boilers are subject to of Regulation (EU) 2017/1369 setting a framework for energy labelling, and the product regulations that are delegated acts to the Energy Labelling Regulation. Under the Ecodesign Directive, and its fully harmonised delegated acts, it is not seen as a possibility to set up stricter national rules, that would be potential barriers to the trade of products that are “CE” marked.
- *Installation requirements (new and existing buildings)*: The EPBD has shown, under some circumstances, to be able to limit installation of energy-related products that are in accordance with the Ecodesign Directive, e.g.. “CE”-marked products with the purpose of making requirements to the energy performance in buildings. However, it is not certain how strict the requirements to energy performance can be, without them creating a barrier to trade for products that are subject to the Ecodesign Directive, as it is difficult to define the hierarchy between EPBD and the Ecodesign Directive (and the Energy labelling Regulation).
- *Coherence between EPBD and the Renewable Energy Directive*: It would be of relevance for this legal analysis to investigate whether articles on heating and cooling in the Renewable Energy Directive could have an impact on similar articles in the EPBD, and how the upcoming revisions of both the mentioned directives could impact the recommendations given as a result of the legal analysis.

The abovementioned topics are examples that are indicative for the direction of the legal analysis. They should be used as a baseline when preparing the legal analysis, in the sense that the topics should somewhat be used as a starting point when preparing the analysis. The topics are non-exhaustive in terms of scope, although the legal analysis should have a clear focus on relevant EU legislation for phasing out oil/oil boilers in individual heating. The DEA will especially for this part of the task, be able to offer their insights and expertise, in collaboration with the applicant.

The legal analysis is to be provided in English or Danish.

### 3. Performance requirements

The contractor can work on the task individually or in a team, but it is required that the contractor has significant experience with at least one of the following areas:

- Extensive experience from working on projects in the field of European Climate and Energy law or other relevant EU-legislation, that resulted in giving recommendations in form of policy and legal changes.
- A legal background, either by education or by acquiring significant experience with working with legal analysis in the field of European Climate and Energy law or other relevant EU-legislation,
- Experience with tasks similar to the one at hand, e.g. other analysis of extensive EU-legislation in or outside the field of European Climate and Energy law.
- Work experience from within the EU institutions, or work experience where there was a high degree of collaboration with EU institutions is considered a considerable advantage.
- Excellent English language skills, both written and spoken.

Knowledge of other EU-languages than English, such as French or German is not a requirement, but is seen as an advantage in the decision to assign the task.

### 4. Timeframe

The timeframe in which the legal analysis is to be prepared is from the time the contract is signed (approx. 23 April 2021) until 31 May 2021, with the exception that, if the option to extend the contract is enforced by the contracting authority, then the contract remains in effect until 31 July 2021.

The main task involves a delivery of a draft legal analysis, which should be presented no later than 31 May. However, since the results of the legal analysis are dependent of the results of the European Commission's revision of EU-legislation mentioned in the task description, during the months of May-July 2021, alterations to the legal analysis could be proven necessary in order to achieve the aim of the task. In this situation, the DEA has the option of enforcing an extension of the contract until 31 July 2021. If the option is enforced, it must be the same employees, who worked on the legal analysis, that will work on the extension.

The contractor will be expected to present preliminary results of the legal analysis to the contracting authority, as well as include and consult with the legal experts in the DEA on the ongoing work with the legal analysis, throughout the contract period.

The contractor will not be expected to attend any meetings or events as part of preparing the analysis.

## 5. Maximum budget

The Contract commences when signed by both parties and remains in effect until 31 May 2021 but can be extended if the option to extend the contract is enforced by the Costumer. Then the contract remains in effect until 31 July 2021.

### *Main task*

The main task involves delivery of a draft legal analysis, which shall be delivered no later than 31 May.

The task of delivering a draft legal analysis has a budget of maximum DKK 200.000 exclusive VAT (approx. EUR 26.667) and is expected to take 180-200 hours. The applicants will be evaluated based on experience/qualifications (see paragraph 4 in the terms of advertisement)

### *Option*

Since the results of the legal analysis are dependent on the results of the European Commission's revision of EU-legislation (see task description), during the months of May-July 2021, alterations to the legal analysis could be necessary in order to achieve the aim of the task. In this situation, the contract can be extended if the contracting authority activates the option with two weeks notice. In this case the contract remains in effect until 31 July 2021.

If the option is enforced, it must be the same employees, who worked on the legal analysis, that shall work on the extension, and all terms in this contract and other material that is part of this advertisement also applies to the option.

The contracting authority expects to enforce the option.

The option has a budget of maximum DKK 100.000 exclusive VAT (approx. EUR 13.333) and is expected to take 80-100 hours of work. The applicants will be evaluated on same basis as above (see terms of advertisement paragraph 4).

### *Cooperation with the contracting authority*

In regards to the cooperation on the legal analysis when it comes to guidance from the contracting authority to the contractor, the contracting authority will have a limit on maximum 55 hours in time spent on guidance related to the preparation of the legal analysis including time related to the option.

### *Selection*

In accordance with the advertisement conditions, the contract will be awarded based on the best ratio between experience/qualifications and price.

## 6. Travel expenses

Due to the Covid-19 pandemic, no travelling is expected for performing this task. Should the contractor, during the timeframe in which the task is performed, find that travelling is necessary in order to perform the task, the contractor can inform the

DEA, and if the DEA finds that the expenses of the travel in question are directly linked to the performance of the task, the DEA can decide to cover the expenses.