

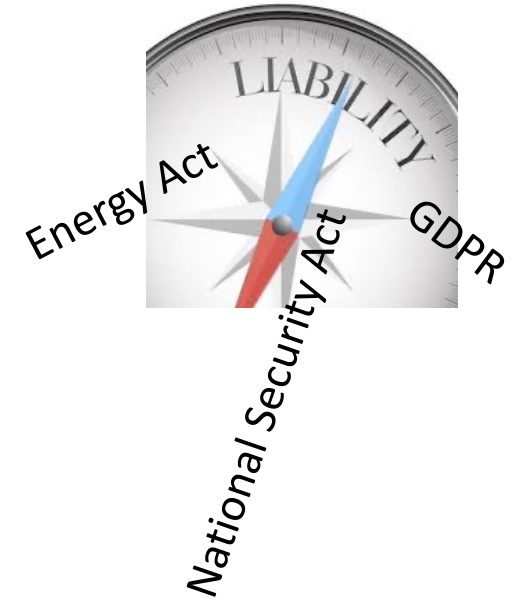
Cyber security compliance – legal aspects

Smart Energy Network

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Strict legal requirements and even stricter remedies



The board of directors' and managing director's liability

Obligations to take preventive measures to avoid cyber attacks

- **Proper organisation**
 - The Board of Directors is responsible for properly organising the company's operation
- **Day-to-day management**
 - The managing director is responsible for the day-to-day management of the company's operations
- **Implications**
 - This includes the obligation to take required preventive measures to avoid cyber attacks
 - As a minimum
 - Must have cyber security risks regularly at its agenda
 - Have implemented generally accepted industry standard information security measures

Sanctions if the obligations are not complied with

- **Compensating financial loss**
 - A managing director and director of the board can be held liable to compensate the financial loss caused the company or the shareholders by his/hers wilful or negligent acts or omissions
- **Fines and imprisonment**
 - A managing director and director of the board can be convicted to pay fines or up to one year's imprisonment for
 - wilful or negligent breach of the Limited liability companies act (§ 19-1) or
 - showing gross misconduct in the performance of his duties for the company (§ 19-2)

Contractual risk exposure

Business contracts implies an obligations to take preventive measures to avoid cyber attacks

- **Cyber attack = breach of contracts**
 - A successful cyber attack is likely to interrupt your business operations and involve that you will be delayed in or unable to fulfil your contractual obligations
 - to deliver your goods or services
 - to protect your business partners' confidential information
 - we also see an increasing trend that specific information security and business continuity obligations are being included in business contracts
- Failure to fulfil a contractual obligation due to business interruption or loss of confidential information will constitute breach of contract

Sanctions if the obligations are not complied with

- **Remedy and compensate**
 - In case of breach of contract you will be obliged
 - To use the resources necessary to remedy the breach of contract
 - Compensate your business partner's direct economic loss caused by the breach of contract
 - If your anti-cyber attack measures are absent or seriously sub-standard, this may be regarded as gross-negligent misconduct involving liability also for indirect losses
- **Force majeure?**
 - You may be free from liability if the cyber-attack can be regarded as force majeure
 - i.e. an event that you could not have reasonably foreseen at the time of contracting and you have done all that can be reasonable expected to avoid or overcome
 - This will in our view only be the case if you have meet the highest industry standards for preventing cyber attacks

Regulatory requirements and obligations

Regulatory obligations to take preventive measures to avoid cyber attacks

- **National security act**
 - Undertakings shall ensure an appropriate level of security in relation to critical national information, so that the information a) does not become known to unauthorized persons, b) is not lost or altered and c) is available when there is an official need-to-know
- **Sector specific requirements - the Norwegian Energy Act**
 - Imposes an obligation on essential facilities to
 - ensure effective security and preparedness and implement measures to prevent, manage and limit the effects of extraordinary situations
 - establish effective shielding and protection of sensitive information
 - NIS –directive will sharpen these obligations when implemented
- **GDPR**
 - Implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk

Sanctions if the obligations are not complied with

- Loss of licenses and authorizations
- Fines
 - GDPR up to €20 million or 4% of annual global turnover – whichever is greater
- Imprisonment
- Coercive fines

Thank you!

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