

The crisis and national labour law reforms: a mapping exercise

Country report: Denmark

1. Introduction

As a small economy Denmark was hit hard by the global financial and economic crisis. However, while at the onset of the crisis the unemployment rate grew sharply,¹ it recovered as early as 2009² and in spring 2011 the country was considered to be experiencing a gradual and moderate recovery. Nonetheless, or rather in view of more structural concerns, such as the pressure from demographic changes and decreasing competitiveness,³ the European Commission and the Council drew the country's attention to the need to strengthen employment and the sustainability of public finances in the Country-Specific Recommendations (CSRs) in 2011 and 2012.⁴ In 2013 and 2014 the EU institutions asked for more attention to be paid to the employability of people on the margins of the labour market (particularly young people with an immigrant background).⁵ However, since 2015 there have been no specific recommendations addressed to Denmark, which seems to suggest that the country's policies are largely in line with the EU's employment objectives and policy targets.

2. Labour law reforms 2010–2013

Following the European Commission's Country-Specific Recommendations for 2012, the Danish government undertook to enhance the economic recovery in the aftermath of the crisis. Accordingly, in 2012 tripartite negotiations were launched on the reforms needed to improve the *competitiveness and growth* of Danish businesses, while increasing workers' employment rate and skills. The key points for the negotiations were:

- increasing working time, including the possibility of changing the number of national holidays and annual leave, increasing the flexibility of labour organisation, and encouraging full-time rather than part-time employment;
- improving skills;
- fighting social dumping.

¹ <http://voxeu.org/article/flexicurity-danish-labour-market-model-great-recession> (accessed 26 October 2016)

² <http://www.tradingeconomics.com/denmark/unemployment-rate> (accessed 26 October 2016)

³ In 2012, the OECD expressed concern about Denmark's weak economic growth and pondered the factors behind it: 'Despite sound policies and institutions, Danish productivity has grown modestly over the past decade, both historically and in relation to other countries, contributing to weak economic growth and an erosion in competitiveness. An examination of the four potential drivers of this puzzle, namely competition, education, labour market flexibility and the size of the public sector, shows that there is room for improvement in all areas, calling for action on each of these fronts. This Working Paper relates to the 2012 OECD Economic Survey of Denmark (www.oecd.org/eco/surveys/denmark).' Adalet McGowan, M. and S. Jamet (2012), 'Sluggish Productivity Growth in Denmark: The Usual Suspects?' OECD Economics Department Working Papers, No. 975, OECD Publishing. <http://dx.doi.org/10.1787/5k962hj88txt-en>

⁴ They stressed the need to adapt retirement and disability pensions, better targeting the subsidised employment scheme of the so-called 'flexi-job' system towards the most vulnerable groups and improving educational outcomes and the effectiveness of vocational training (drop-out rates and the number of apprenticeship places). See the European Commission's recommendations and consolidated versions for the years 2011–2015 at http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm; for an overview see Clauwaert (2015) at 74–75.

⁵ Clauwaert S., The country-specific recommendations (CSRs) in the social field. An overview and comparison. Update including the CSRs 2014–2015, ETUI, p. 75.

However, in June 2012 trade union Dansk Metal refused to increase working time by abolishing public holidays, therefore negotiations on this issue stopped. Later in June a fiscal reform agreement was signed between the government and conservative opposition in order to reduce taxes on labour. In the same vein, another agreement was signed on 30 June 2012 to reform flexible work as the basis for a government bill intended to enter into force in early 2013. These agreements led to the following measures:

- Regarding the *reduction of taxes on labour*, the higher fiscal limit (*topskattegrænsen*) was to increase by 7.76 euros, affecting only high-level annual earnings over 62.81 euros by 2022. Furthermore, the employment deduction (*Beskæftigelsesfradraget*) – the tax credit on earned income – was set to double from 5.6 per cent currently to 10.65 per cent in 2022. Parents raising their children alone would get an additional 6.25 per cent deduction.
- Concerning *measures against social dumping*, the agreement provided for a series of initiatives to combat and prevent social dumping, including fiscal deductions (*rejsefradrag*) for low-wage earners who are not residents, tougher subcontracting regulations⁶ and higher taxation of foreign workers if they spend more than 183 days a year in Denmark.
- A reform of the Danish ‘flexi-job’ system was also ongoing. This scheme was aimed at supporting people with impaired work capacity to participate in suitable employment. The envisaged changes would render the amount of the benefits variable according to the number of hours worked, imply a cut in benefits for workers with the highest earnings and an increase for low-wage earners and workers who worked less due to a reduced working capacity. A tripartite committee was to monitor the development of the reform and determine necessary adjustments in collective agreements. The reform of the *disability pension* and the flexi-job scheme came into force on 1 January 2013. At the same time, the flexi-job scheme was made more inclusive and targeted at persons with very limited working capacity. The way subsidies are awarded in the scheme was restructured and generally flexi-jobs are now more temporary. As a result of the reform of the disability pension and flexi-job scheme many new flexi-jobs of only a few hours a week have been created, allowing more people with a limited work capacity, including persons with disabilities, to gain a foothold in the labour market.

Also in 2012, the Danish legislator adopted an amendment to the *Holiday Act* to bring it into line with European case law developments. It sought to clarify the *rights of employees unable to take holidays due to sickness*.⁷ Previously, Danish law (Article 13 of the Act on Holiday) provided that if a worker was prevented by sickness from taking a holiday they were entitled to a ‘compensation holiday’ (*erstatningsferie*). However, such compensatory vacation days were not available for workers who got sick during their holidays. This latter option was added in May 2012 in order to comply with EU law. Employees are accordingly entitled to a compensation holiday even if they get sick during their annual vacation, provided that the sickness is documented by a doctor’s statement. However, the employee is not entitled to a new holiday for the first five days (one week) of the 25 days (five weeks) of their total holiday within a year.

Denmark also introduced a right for parents to request flexible working arrangements and clarified the legal protection in relation to less favourable treatment in the context of *parental leave*. On 12 December 2012, the government proposed an amendment to the Equal Treatment of Men and Women Act to this end, effectively seeking to implement Directive 2010/18/EU on Parental Leave. Most of the revised rules on parental leave were already part of Danish law. Each parent is already entitled to 32 weeks of parental leave (cf. Paragraph 9 of the Maternity Act). Furthermore, Paragraph 15 (4) of the Maternity Act already establishes a protection period of 8 weeks. The Danish Parliament adopted the amended Equal Treatment of Men and Women Act without further ado.

Denmark was late with the implementation of *Temporary Agency Work Directive* (2008/104/EC) (deadline for implementation was 5 December 2011) because of the prolonged and very sensitive discussions between the government and the social partners on the interplay between new and existing collective agreements on agency work, especially the

⁶ Notably by taxing foreign workers and businesses in Denmark when they perform a job that is an ‘integral part’ of the work done by a Danish company.

⁷ Based on the ECJ judgment in the case C-277/08 *Pereda* in reference to Article 7 of the Working Time Directive 2003/88/EC

use of Article 5 (3) and (4) of Directive 2008/104/EC and the implications of different models. On 17 April 2013, finally, the government submitted a proposal to the Danish Parliament, which adopted the law on 30 May 2013, and entered into force on 1 July 2013.⁸ The main change was the introduction of an obligation of non-discrimination. Agencies now have to offer agency workers employment conditions (wages, working hours, daily rest periods and holidays) during their assignment at a user undertaking, which are at least comparable to those that would apply if they had been directly recruited by the enterprise to fill the same post (Article 3 (1)). However, the agency is exempted from this equal treatment obligation if it is bound by a nationwide collective agreement agreed by the most representative labour market organisations in Denmark covering the working conditions mentioned above (Article 3 (4)).

Finally, in spring 2013, the Parliament amended the Danish *Act on Posting of Workers* to improve the regulation of foreign service providers deploying workers in Denmark. The following changes were adopted: strengthening of the service providers' notification requirement; shortening the deadline for notification of change of information in the public register (RUT); ensuring public access to more information from the register; and introducing fines issued by administrative authorities for breach of the obligation to notify the RUT.

3. Labour law reforms from 2014 onwards

The reforms carried out since 2014 have affected various areas of labour law, including atypical work, active labour market policies, health and safety (including working time), trade union rights and some others. Overall, the underlying trend has been to activate the non-active in the labour market, to protect marginalised groups (such as temporary agency workers) and to comply with EU obligations.

3.1 Protection at work

In 2014 the Danish legislator adopted an amendment concerning employees' right to accrue *annual leave* benefits during their sick leave.⁹ The Danish Holiday Act entitles employees to five weeks' (paid) annual holidays. An employee on sick leave, who is not entitled to an ordinary salary during their sick leave, is entitled to a sickness benefit. Therefore, previously the employee did not earn a right to annual leave benefits during sick leave. Following the Holiday Act's 2014 amendment (effective from January 2015), workers are not only entitled to compensation holidays for proven sick days occurring during their annual vacation but also to accruing annual leave benefits from the second day they are on sick leave. Subsequently, on 31 August 2015 the Danish Minister of Employment announced a more general revision of the rules on holidays. The Danish government has appointed a committee to prepare a proposal on a new Holiday Act. One of the major aims of this reform initiative is to ensure that the Danish Holiday Act complies with Denmark's international obligations, especially those of the EU. The committee has been asked to deliver its proposal by autumn 2016 at the latest.

The 2015 Finance Bill brought numerous changes affecting workers. The main ones were the introduction of a health check for lower-qualified workers that covers diabetes, lung cancer and heart disease and implementation of an *obligatory 'safety card'* for buildings in order to facilitate an appropriate working environment and to prevent and manage accidents at work.¹⁰

In March 2014 the European CRD IV Directive was transposed into Danish law. It obliged financial institutions to implement internal '*whistle-blowing*' mechanisms by 1 September 2014. The law applies to all financial institutions under Danish financial regulatory control: the big banks, mortgage and lending institutions, insurance companies and small company pension funds (with more than five employees). Whistle-blowers can report on an anonymous basis, thereby guaranteeing the ability to sound an alarm without fear of dismissal. The law

⁸ http://www.ft.dk/Rlpdf/samling/20121/lovforslag/L209/20121_L209_som_vedtaget.pdf (accessed 26 October 2016)

⁹ Based on the ECJ judgment in C-281/10 *Dominguez* in reference to Article 7 of EU Directive 2003/88 on Working Time (employees unable to take annual leave due to sickness).

¹⁰ The Bill also introduced a rise in the tax deduction allowable for union dues allowing most trade union members full tax deduction (Maria Gianina Mura, Planet Labor, 8 September 2014, n° 8569 – <http://www.planetlabor.com>)

prohibits companies undergoing a whistle-blowing procedure by one of their employees from unfavourably treating that person because they reported a claim, regardless of how the claim was reported. Should the company mistreat the employee then they have the right to receive significant compensation.¹¹

In January 2015, the Danish Parliament amended the law covering workplaces. This was done in response to the increase in the amount of employee complaints over *work-related violence* outside working hours. The changes adopted include creating a legal basis for extending companies' obligations to warn employees of work-related violence outside regular working hours. The employers now also have to assess the risk of violence, threats and harassment to their employees during their free time and design an action policy to address the matter, ranging from prevention to victim support. The Labour Inspector has been given the ability to act (including sanctions when necessary) when employers breach this law.¹²

3.2 Atypical work and posted workers

In November 2014, the Danish government proposed a further amendment to the *Act on Agency Work* transposing Directive 2008/104. The proposal concerned the enforcement of the equal treatment principle. It aimed at enabling more speedy decision-making in cases in which an agency worker submits a respective claim based Article 3 (1) of the Agency Workers Act. The amendment entitled trade unions to bring a claim before the Labour Court on behalf of a member based on the Act on Agency Work. It also equipped the Labour Court with the competence to decide whether a collective agreement meets the requirements of Article 3 (5) to depart from the principle of equal treatment in Article 3 (1) of the Act. On 4 December 2014, the Danish Parliament adopted the proposal on the Act on Agency Work without further amendment.¹³

The Danish government held an external hearing on a draft proposal on the amendment of the *Act on Part-Time Work* on 24 November 2015. The proposal aimed to adapt the Act in line with a reasoned opinion of the EU Commission in June 2013 on inadequate implementation of the Part-Time Work Directive (exemptions of employees who work fewer than 8 hours a week on average). The government submitted the proposal to the Danish Parliament on 27 January 2016.

Finally, in 2015, the *Act on Posted Workers* was amended again in order to clarify and strengthen the system of sanctions (fines) applicable when a foreign service provider violated their duty to inform the register (RUT) in accordance with Article 7 of that Act.¹⁴

3.3 Integration in the labour market

During this period the Danish government focused on improving *active labour market policy (ALMP)* measures for various target groups. Following the European recommendations, the Danish Executive set up an expert group, the so-called 'Carsten-Koch' expert group. In February 2014, the group made a number of recommendations ('Carsten-Koch' I report) on

¹¹ Planet Labor, 18 September 2014, No. 8594 – <http://www.planetlabor.com>

¹² Planet Labor, 26 January 2015, No. 8843 – www.planetlabor.com

¹³ http://www.ft.dk/R1pdf/samling/20141/lovforslag/L15/20141_L15_som_vedtaget.pdf (accessed 26 October 2016).

¹⁴ On 17 October 2014, the government submitted a proposal of an amendment of the Act on Posted Workers. Parliament adopted the proposal on 19 February without any adjustment. The adopted amendment of the Act entered into force on 1 March 2015. According to Article 10 of the Posted Worker Act, such an infringement is sanctioned with a fine. A new distinction of the types of infringement of the duty to notify the register (RUT) were introduced, which shall be considered aggravating circumstances when determining the amount of the fine: (1) if an infringement is committed intentionally or constitutes gross negligence, (2) if an infringement was intended to achieve financial benefits for the company or others or (3) if the infringement is of a serious nature. The third category is new. An infringement of a serious nature is a repeated breach of the duty to notify the register in accordance with Article 7. The law stipulates that the usual sanction shall be a fine of DKR 10,000 (approximately 1,350 euros), while the usual fine for an infringement of a serious nature shall be DKR 20,000 (approximately 2,700 euros).

ALMP for insured workers, that is, those on unemployment benefit.¹⁵ It advised to adopt more individualised and job-targeted measures. The reform entered into force in January 2015.¹⁶

The reform changed both the content and the structure of the Danish ALMP measures and the public employment services. The changes aimed at providing better and more individualised support for people who become *unemployed*. A key function of the new approach is a process of ‘screening’, where those who are assessed as being able to find a job independently within six months will have more freedom to do so, while those who are at risk of ending up in long-term unemployment should get more support at an earlier stage. The reform primarily improves the situation for those who have recently been in employment (as they qualify for unemployment benefits) and reduces the outflow of people towards the margins of the labour market. However, the reinforced ALMP measures do not target those who are already more or less permanently excluded from the labour market.

On 17 March 2016, the Danish Parliament adopted a government draft law reforming the *social services system* in order to encourage those on benefits to re-enter the labour market. The main changes include a new social assistance benefit ceiling, the obligation to work 225 hours of regular employment in the year (in other words, six full weeks of work) in order to retain all benefits, as well as a reduction in holiday time for benefit receivers from five to four weeks with the holiday period itself being a maximum of two consecutive weeks. The new law will enter into force on 1 October 2016.

On 16 August 2016 a new tripartite agreement on *young people and occupational training* was signed. The goals of the agreement are to provide between 8,000 and 10,000 young people with extra training places and to ensure that 30 per cent of young people are choosing vocational educational training by 2025. The agreement is focused on simplifying the training system for the unemployed and looks to make occupational training more attractive for both youths and business.¹⁷

Denmark has also carried out some reforms concerning the access to the labour market of foreign workers and to activate groups that are underrepresented in the labour market, such as refugees.

In 2014 Denmark introduced a number of measures easing labour market *access for qualified foreign workers*, including:

- a new fast-track scheme within the framework of which certified companies can have cases heard about the work permit on more flexible terms;
- more flexible rules for foreign researchers to access the Danish labour market;
- targeting the green card system, taking better account of the demand side;
- simplification of rules for businesses and citizens, including simpler rules for extending applications, flexible rules for compulsory internships and the allocation of administrative personal identification numbers;
- an option for foreign students to stay in Denmark two years after graduation without having to apply for a work permit;
- increased opportunities for foreigners to become self-employed in Denmark; and
- extension of the work permit to 20 hours a week for international students.

In June 2014 the government signed an agreement with the social partners to improve labour market integration for non-Western residents and *youngsters of immigrant descent* (these groups have been overrepresented among welfare beneficiaries). The central element of the agreement is a close link between Danish language lessons and the needs of companies.¹⁸

In March 2016 the social partners concluded an agreement on *integrating refugees via employment*. The goal of the agreement is to ensure that at least 50 per cent of refugees are in work. Key to the agreement is the provision on training and work put forward by the country’s main employers and trade union confederation bodies. Other new elements included an

¹⁵ See European Commission (2015) Country Report Denmark 2015. SWD(2015) 24 final/COM(2015) 85 final, Brussels, 26 February 2015, at 14; available at http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_denmark_en.pdf

¹⁶ This reform of ALMP represented one of the government’s main responses to the Commission’s 2014 CSR on inclusion of those at the margins of the labour market. Another set of recommendations (Carsten-Koch II) concerning measures for uninsured workers (on social assistance and so on) were due in March 2015.

¹⁷ Planet Labor, 8 September 2016, No. 9808 – www.planetlabor.com

¹⁸ Maria Gianina Mura, Planet Labor, 13 June 2014, No. 8449 – www.planetlabor.com

assessment of refugees' competences once they are official asylum seekers, bolstering employment centres' resources to facilitate refugee meetings with companies and encouraging companies to hire refugees via a specific bonus system.¹⁹

3.4 Sectoral measures

In June 2016 the Danish parliament adopted new measures to combat *social dumping in road transportation*. According to the new rules the drivers must be direct employees or recognised intermediaries registered with Danish road traffic authorities (the idea is to prevent Danish transport companies from using drivers from their lower cost foreign subsidiaries). The amendments also provide that the intermediaries established outside of Denmark and drivers registered in Denmark will have to comply with the Danish collective agreements concerning pay, overtime hours, paid leave and retirement. The companies will also have to provide supporting documentation proving that they comply with these requirements. For serious violations the company can have its authorisation to practice in Denmark withdrawn.²⁰

In the *postal sector*, due to the difficulties faced by the sector Denmark's postal service operator concluded an agreement with unions that modifies various provisions in collective agreements. As of 1 April 2016 meal breaks (20–29 minutes) will no longer be paid and specific payments for paid leave will drop from 1.5 to 1 per cent for regular employees and from 2 to 1 per cent for senior staff. In addition, the number of free days from within 'the maintaining seniors at work framework' (*fastholdelsesfridage*) was lowered from January 2016. Thus workers between 57 and 59 years of age can have five paid days off a year instead of six previously and for the over 60s the number drops from 20 to 15. Annual salary adjustments are also to be lowered (*Lønregulering*).

However, there are also some improvements for workers. A total of 10 extra days off in 2016 are to be given in exchange for the concessions made. In addition, HK civil servants and contract workers (*overenskomstkontractantsatte*) whose contracts terminate will receive resignation compensation, an early redundancy compensation if they decide to resign early and compensation in case they work throughout the notice period. The agreement also set up a skills development fund focusing on developing workers' skills. In addition, employers under 55 that are HK members will be able to conclude agreements over reducing working time for specific periods whilst maintaining contributions to their current pensions.²¹

3.5 Other measures

In May 2014 the Parliament adopted a reform of the act containing the obligation for the businesses to issue *pay statistics broken down by gender*. Since 2007 all businesses with at least 35 employees, or employing at least 10 people of each sex for the same job, had to present annual gender pay statistics. With the reform this obligation was extended to all businesses with 10 workers or more with at least three men and three women in similar positions, and it now compels employers to send this information not only to the National Statistics Institute, but also to inform the employee representatives or employees, if there are none, and, when they request it, to discuss them with the workers.²² Violations will be punished with a fine. More recently, however, the government has submitted a proposal to the Parliament to revoke the changes and to once again raise the threshold to 35 with at least 10 men and 10 women performing the same function. This revocation is yet to be approved by the Parliament.²³

On 10 December 2015 the Danish parliament adopted a new law on *contract clauses*. The new law provides that the companies can continue to use some contract clauses, especially non-compete clauses (*Konkurrenceklausul*), and customer clauses (*Kundeklausul*), but these must

¹⁹ Planet Labor, 18 March 2016, No. 9563 – www.planetlabor.com

²⁰ Planet Labor, 3 June 2015, No. 9110 – www.planetlabor.com

²¹ Planet Labor, 11 February 2016, No. 9501 – www.planetlabor.com

²² Maria Gianina Mura, Denmark: Parliament permanently adopts equal pay reform, Planet Labor, 23 May 2014, No. 8404 – www.planetlabor.com

²³ Planet Labor, 21 December 2015, No. 9429 – www.planetlabor.com

be in written form and valid for a maximum period of one year following an employee's departure. Such clauses can apply only if an employee has worked for a minimum of six months in a position in the company. Furthermore such clauses must be linked to compensation to be paid on a monthly basis whose amount will depend on the length of the clauses (ranging from 40 per cent of wages for clauses lasting six months to 60 per cent of wages for clauses lasting twelve months). In addition, the new law bans non-poaching clauses (*jobklausuler*) concluded between two companies to avoid them employing their respective employees, as well as between an employer and a former employee banning the former employee from hiring their former colleagues.²⁴

Finally, some reforms have affected retirement. On 18 December 2015 the Danish parliament passed a bill to increase *retirement age* to 68 as of 2030. The bill therefore brought the legal retirement age up to 68, for all Danish people born after 31 December 1962. The bill also made changes to the law on workplace accident insurance to prevent employers from terminating contracts because of a premium increase, itself a result of the cost increase caused by the change to the retirement age.²⁵ Furthermore, as of 1 January 2016, employment contract provisions which provide for automatic retirement at 70 will be unenforceable.²⁶

References/sources

Electronic newsletters/websites

Planet Labor: <http://www.planetlabor.com>

EIROnline: <http://www.eurofound.europa.eu/eiro/>

Epsucob@NEWS – Collective Bargaining in the Public Services: <http://www.epsu.org/>

ETUI-AIAS Collective Bargaining newsletter: <http://www.etui.org/E-Newsletters/Collective-bargaining-newsletter>

ETUC website section on economic and social crisis: <http://www.etuc.org/r/1378>

ETUI website section on crisis: <http://www.etui.org/Topics/Crisis>

European Labour Law Network website section on Labour Law Country Reports/National Legislation – country profile Denmark: <http://www.labourlawnetwork.eu/>

Periodicals

Liaisons sociales Europe

Social International

Other

Danish Government (2015) The National Reform Programme Denmark (March 2015).

http://ec.europa.eu/europe2020/pdf/csr2015/nrp2015_denmark_en.pdf

Clauwaert S. (2015) The country-specific recommendations (CSRs) in the social field. An overview and comparison – Update including the CSRs 2015-2016. ETUI, Brussels, Background Analysis 2015.03.

<https://www.etui.org/Publications2/Background-analysis/The-country-specific-recommendations-CSRs-in-the-social-field.-An-overview-and-comparison-Update-including-the-CSRs-2015-2016>

ILO (2012) World of Work Report 2012: Better jobs for a Better Economy, ILO, Geneva.

Laulom S., Mazuyer E. Teissier C., Triomphe C.E. and Vielle P. (2012) How has the crisis affected social legislation in Europe? ETUI Policy Brief 2, 2012, Brussels, ETUI. Available in English and French at:

<http://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/How-has-the-crisis-affected-social-legislation-in-Europe>

²⁴ Planet Labor, 11 December 2015, No. 9411 – www.planetlabor.com

²⁵ Planet Labor, 21 December 2015, No. 9433 – www.planetlabor.com

²⁶ <http://www.igloballaw.com/denmark-annual-update-expected-labour-law-changes-in-2016/> (accessed 26 October 2016)

- Muller A. (2011) Employment protection legislation tested by the economic crisis: A global review of collective dismissals for economic reasons. Dialogue in Brief, No. 3, September 2011, ILO, Geneva. Available in French, English and Spanish at: http://www.ilo.org/ifpdial/information-resources/publications/WCMS_166754/lang--en/index.htm
- Tajgman D., Saget C., Elkin N. and Gravel E. (2011) Rights at work in times of crisis: Trends at the country level in terms of compliance with international labour standards, Employment Sector, Employment Working Paper N° 101, ILO Geneva.
http://www.ilo.org/employment/Whatwedo/Publications/working-papers/WCMS_167804/lang--en/index.htm