

# Chapter 2

## Posting of workers before Danish courts<sup>1</sup>

Natalie Videbaek Munkholm

### Introduction

Denmark is a Scandinavian country of 5.8 million inhabitants. It is a constitutional monarchy, and state powers are in the Constitution of Denmark, ‘Grundloven’, Section 3, divided between the parliament (legislative), government (executive), and the courts (judiciary). The rule of law is a fundamental principle in the Danish legal system (World Justice Project 2019). Denmark is one of the richest countries in the world, and presumably also among the happiest (World Happiness Report 2018).

Denmark receives an increasing number of posted workers.<sup>2</sup> In 2011, 14,278 posted workers from the EU/EEC were registered in the Danish Register of Foreign Service Providers (RUT); by 2018 the number had risen to 26,780 from the 31 EU/EEC countries (Jobindsats.dk). According to 2018 data, most posted workers are from Poland (6,926), Germany (4,681), Lithuania (2,419), Romania (1,538), Italy (1,475), Slovakia (997) and Great Britain (928). Large proportions of posted workers from neighbouring countries live in their home country while working in Denmark (DA 2018: 14).

The main political debate regarding posting of workers concerns posting to Denmark, and in particular the protection of the Danish method of negotiating pay and working conditions by way of negotiating collective agreements supported by industrial action. The courts support this by testing the lawfulness of conflicts towards posting entities under the Danish legal framework on the lawfulness of collective action, and since 2008, according to principles developed by the Court of Justice of the European Union (CJEU) in the *Laval* and *Viking* cases on collective action as a restriction on the free movement of services and right of establishment.

The political debate has also been concerned with how to combat social dumping (see below) by ensuring Danish pay and working conditions, including a safe working environment, for workers performing work in Denmark. These political aims have to a large extent been reflected in case law. Issues brought before the courts have included: the duty for posting entities to register in Denmark by way of a simple declaration in the RUT; assessment of whether the situation constitutes a genuine posting situation,

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2. The statistics count posted workers per se as well as posted self-employed workers. Posted self-employed workers are companies that are providing services without posting employees, so they are not posted workers in the understanding of the Posted Workers Directive.

to counteract circumvention of collective agreements in force at the receiving entity by constructing fake posting situations; and breaches of provisions of the occupational health and safety regulations for workers. The majority of cases before national courts relate to breach of collective agreement by underpayment of posted workers by the posting entities. These types of cases align closely with the political debate on counteracting social dumping by control and enforcement.

No cases have been referred to the CJEU for a preliminary ruling, as the courts have found the EU law sufficiently clear on the issues reviewed.

The Danish case law on posted workers is relatively limited compared to that of other Member States.

## **1. Legal framework on posting of workers and key political debates in Denmark**

### **1.1. Danish legal framework for pay and working conditions for employees**

Pay and working conditions in Denmark are determined primarily by way of negotiated collective agreements. Denmark has a unionisation rate of 67.7% (Ibsen et al. 2014) and a collective agreement coverage of 83%, 74% in the private sector and 100% in the public sector (Ravn 2018). Collective agreements are binding (Hasselbalch 2012: 44)<sup>3</sup> for signatories and their members (Due et al. 2010: 81). Legislation is passed sparingly to supplement the agreements, mainly in relation to certain groups of workers, in the area of social security, when negotiation and conflict have been exhausted, or to implement EU Directives. The industrial relations system of negotiating pay and working conditions by way of binding collective agreements, supported by a strong system of enforcement, is an essential element in the Danish socioeconomic set up<sup>4</sup> (Hasselbalch 2012: 23, Bruun 1992: 464, Hasselbalch 2002, Fahlbeck 2002, Kristiansen 2015b). Supplementing legislation is provided in order to implement rights and obligations in EU Directives. Parliament supports the model *inter alia* by instituting tripartite negotiations before passing legislation in any area affecting the labour market.<sup>5</sup>

In Denmark, industrial relations, collective agreements and trade union activities are to a large extent self-regulating. The rules regulating relations between trade unions have their legal basis in collective agreements and case law. Most notably the principles promoted in the General Agreement between FH - the Danish Trade Union Confederation (formerly LO) and DA - the Danish Employers' Confederation. These principles, which are reflected also in other General Agreements, along with the case law developed by the Labour Court and industrial arbitration, are key regulators of industrial relations in Denmark. A system for dialogue-based dispute resolution is set

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3. Provisions can only be amended at plant level agreements by a mandate to do so in the collective agreement or to the benefit of the worker.

4. That is, the Danish or Nordic model.

5. Dialogue is current and continuous, and recent results are agreements on continued training and on apprenticeships (Ministry of Employment press releases).

out in Normen – Rules for Handling Industrial Disputes, agreed to by DA and LO (now FH) (LO and DA 2006). If a dispute is not settled by way of dialogue and negotiation involving the social partners at various levels of negotiation, in the end it is settled by judicial review by the Labour Court or industrial arbitration, as set out in the Act on a Labour Court and Industrial Arbitration, (*Lov om arbejdsretten og faglig voldgift*), Section 9. The Labour Court is a specialised court with judges appointed among the Supreme Court Judges. Industrial arbitration is a judicial procedure by arbitration headed by appointed Supreme Court Judges or similar experts, assisted by appointed lay judges. The Labour Court Act furthermore in Section 12 provides a legal basis for the Labour Court to issue penalties for breach of agreement, including breach of principles developed by case law.

Statutory legislation does not oblige employers to be covered by collective agreements, and there is no system for making agreements universally binding. Collective agreements are binding only on the signatories and their members. An employer is bound by a collective agreement *either* by way of membership of an employer's association that is signatory to a collective agreement covering the work performed, *or* by way of concluding a collective agreement directly with a trade union. Coverage is therefore left entirely to the social partners by initiating negotiation with and industrial action against employers. When covered by a collective agreement, the employer becomes part of the general industrial relations system, where disputes must be settled by way of the procedures agreed to, and in the end by judicial review.

While pay and working conditions are settled by collective agreement, statutory acts regulate occupational health and safety, the Act on Occupational Health and Safety, (*Arbejds miljøloven*), the Act on Annual Leave, (*Ferieloven*), and the Act on Working Time, (*Arbejdstidsloven*), as well as issues relating to equal treatment and non-discrimination, the Act on Equal Treatment between Men and Women in Employment, (*Ligebehandlingsloven*), the Act on Equal Pay between Men and Women, (*Ligelønsloven*) and the Act on Non-Discrimination in Employment, (*Forskelsbehandlingsloven*). The general rules on occupational health and safety are enforced by the Danish Working Environment Authority (DWEA), whereas certain rules on working time, the right to annual leave, as well as the rules on equal treatment on non-discrimination, are enforced by the individual worker against the employer and reviewed by the ordinary courts.

## 1.2. Danish legal framework for posted workers

The statutory framework for posted workers is the Posting of Workers Act, (*Udstationeringsloven*), which implemented the Posted Workers Directive in 1999, with later amendments.<sup>6</sup> The Posting of Workers Act is supplemented by more detailed regulation in a number of Executive Orders, primarily providing the framework for controlling, monitoring and enforcing the rules on posting to Denmark.

6. The Act was amended many times, last time in 2016 to implement the Enforcement Directive.

Section 5 in the Posting of Workers Act stipulates that the following statutory acts apply to posted workers:

- a) Statutory Act on Occupational Health and Safety
- b) Statutory Act on Equal Treatment of Men and Women
- c) Statutory Act on Equal Pay between Men and Women
- d) Statutory Act on White Collar Workers, (*Funktionærloven*), Section 7 regarding paid maternity leave
- e) Statutory Act on Non-discrimination
- f) Statutory Act on Working Time
- g) Statutory Act on Temporary Agency Workers, (*Vikarloven*), regardless of regulation in the home country.

Furthermore, Section 6 stipulates that in situations where the home country's legislation on annual paid leave is less favourable for the employee, the posting entity must provide the rights in:

- h) Statutory Act on Holidays Sections 7, 23 and 24<sup>7</sup> on accrual of holiday pay for up to five weeks per year.

Remuneration, including overtime payment, special payment for leaves of absence or days off, supplementing occupational pensions, additional paid holiday days, is settled by way of collective agreement.

In Denmark, industrial action with a view to force a party to sign a collective agreement is lawful, subject to certain formal and material requirements. Industrial action can be activated by workers and employers alike as part of the negotiation process. The voluntary system of pursuing collective agreement by social partners and not by statutory act applies to any employer, domestic and posting entities alike. The formal and material lawfulness of the industrial action is assessed by the Labour Court, and based on legal principles developed by case law over a century. Specifically in the situation of posting, according to Section 6a of the Posted Workers Act, industrial action is only lawful in support of collective agreements which have been concluded by the most representative employers' and worker's associations at national level and which are applied throughout national territory. This provision is a result of the CJEU ruling, C-341-05 *Laval and Partnerei*.

According to the Posting of Workers Act Section 13, the posting entity can have complaints regarding the lawfulness of collective action, or disputes concerning collective agreements assessed by the Labour Court or industrial arbitration.

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7. This will be Sections 5 and 16-19 in the new Statutory Act on Holidays, in force from 1 September 2020. Only the section numbers change, the content referred to is the same.

The proportion of (all) foreign workers performing work in Denmark covered by a collective agreement is almost as high as the proportion of Danish workers covered by a collective agreement (DA Report 2018: 18), that is 67% of non-Danish workers versus 74% of all workers in private employment in Denmark.

### 1.2.1. Social dumping

The most significant public debate in Denmark regarding the free movement of services and workers concerns the issue of social dumping (*Finansudvalget* 2012). There is no universal or even official definition of the term. A report from the 2012 governmental tripartite committee on social dumping explains (*Finansudvalget* 2012: 14) that it often refers to situations where posted workers in Denmark are provided with pay and working conditions below Danish standards, meaning standards commonly provided by collective agreements. Also, the term often refers to situations where foreign entities carry out work in Denmark without adhering to Danish legislation, for example where taxes, occupational health and safety, social security and residency and working permits are concerned (*Finansudvalget* 2012: 15). These phenomena are viewed as potentially undermining the Danish labour market. Aspects of social dumping can arise among domestic or foreign employers, for example domestic employers and undeclared work. In relation to posting, the issue can concern pay and working conditions for the posted workers. Additionally, this potentially creates unfair competition terms for Danish companies if competing against posting entities who are not providing pay and working conditions at the same level as the Danish companies. These elements impose a certain level of costs on Danish companies, and it is considered unfair competition if the posting entities are able to sidestep Danish legislation and/or avoid being covered by collective agreements.

The 1999 Posting of Workers Act had the sole purpose of implementing the Posted Workers Directive. The pre-existing system of collective bargaining with posting entities was upheld as the preferred mechanism to ensure pay and working conditions to posted workers. The main challenge quickly became how to ensure that posting entities operating in Denmark could be met by a demand of agreement and controlled by the authorities for adhering to Danish legislation. Another important issue was that of enforcing provisions in collective agreements in cases of breach.

### 1.2.2. First judicial review of a posting of workers situation under the Posting of Workers Act

In 2000, the first significant case regarding posted workers to Denmark assessed the lawfulness of a conflict aimed at German train personnel working on trains while in Denmark (AR2000.455). The Labour Court in the ruling confirmed that the lawfulness of industrial action against posting entities in Denmark would be assessed according to the general principles for lawfulness of conflicts developed in Danish labour law.

### 1.2.3. Laval ruling – access to negotiations on pay and working conditions

The CJEU ruling of *Laval*<sup>8</sup> set out certain criteria for collective action not to constitute a barrier to the free movement of services within the EU. After the ruling of *Laval*, the debate became about how to ensure that collective action against posting entities to Denmark could continue to be lawful under EU law in light of the new criteria.

The government established a tripartite committee to look into amending the Posting of Workers Act. The committee suggested establishing three criteria for lawful action against posting entities, the new Section 6a(1) and (2):

- 1) the posting entity must be provided in advance with full access to the relevant provisions on pay that are the subject of negotiation and conflict;
- 2) those provisions must be sufficiently clear; and
- 3) the provisions must be part of a collective agreement applicable in all of Denmark and concluded by the most representative social partners in Denmark.

The Posting of Workers Act was amended in order to align the Danish requirements for lawful action against posting entities with the CJEU ruling. The amendment was the result of tripartite negotiations involving the social partners, and the response from the majority of the social partners was positive.<sup>9</sup> The Labour Court was made responsible for assessing whether the conditions in Section 6a for lawful collective action against posting entities have been met.

### 1.2.4. Controlling posting entities

At the same time in 2008, a separate significant issue emerged in the public discourse about how to control posting entities that provide services in Denmark. This debate had its origin in the enlargement of the EU to include central and eastern European (CEE) countries in 2004. Before 2008, the authorities had no reliable information on posting entities and their employees. The authorities could not efficiently control the posting entities' compliance with Danish regulation on occupational health and safety at workplaces or payment of taxes. Further, Denmark could not comply with the obligation to ensure that posted workers are provided with conditions for pay and work as stated in the Posted Workers Directive Article 3(1), and that appropriate means are available to employees and their representatives in the case of non-compliance as set out in Article 5.

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8. A Riga-based construction company, Laval, provided services in Sweden and was met with demands to sign a collective agreement for the posted workers, followed by industrial action. The CJEU ruled that the right to engage in industrial action is a fundamental right. Industrial action can be a restriction to the free movement of services. The restriction was not justified in the Laval case because the salaries were negotiated at the place of work on a case-by-case basis and minimum rates of pay were not determined in advance, giving uncertainty for posting entities.

9. The Employment Committee, Consultation report concerning amendment to the Posting of Workers Act, *Arbejdsmarkedsudvalget, L 36 – Bilag 1, Offentligt, Notat, Høringsnotat ang. Lovforslag om ændring af udstationeringsloven*, J.nr. 2008-000705, 6 October 2008.

The debate resulted in a political agreement to strengthen the supervision and control of posting entities. The agreement resulted in development of the Posting of Workers Act to actively ensure control of foreign service providers and offer additional protection against social dumping. In 2009 the Register of Foreign Service Providers (RUT) was introduced in an amendment to the Posted Workers Act and a new Executive Order.<sup>10</sup> A foreign service provider posting workers to Denmark in the framework of posting must register a list of information electronically by way of simple declaration with the RUT. Incorrect or lack of registration is sanctioned by a fine. The registration enables the DWEA to control foreign companies performing work in Denmark with regards to adherence to applicable rules on occupational health and safety and tax. Social partners have access to certain information about the posting entities, the posted workers and their place of performing work as a basis for initiating negotiations of salary and working conditions for the posted workers.

In 2011, Parliament again focused on controlling posting entities in order to counteract social dumping. A ministerial working group to counteract social dumping was commissioned and tasked with proposing new initiatives to combat social dumping. Within the limits of Danish and EU law, this induces foreign entities posting workers to Denmark to provide Danish pay and working conditions. The work resulted in a 200-page report (*Finansudvalget* 2012). The duty to register was further strengthened, and information about RUT registration must be provided to the Danish receiving entity. The receiving entity, company or private contractor, must report to the DWEA if a posting entity has not provided documentation for registration. Basic registered information is public, and trade unions, which have a collective agreement at the receiving entity, can access further information (Amendment Act No. 509 2010).

The duty to register was also extended to self-employed workers providing services in Denmark. Parliament viewed the purpose of ensuring the occupational health and safety of the self-employed workers to be a consideration of public health, and thus fall under the requirements of Article 16(3) of Directive 2006/123, the Services Directive (L509 2010). And this was considered in line with the CJEU ruling C-557/10 *Commission v Belgium* (Ekman et al 2014: 220).

In 2016, the duty to register was extended to all foreign entities providing services in Denmark by performing work but not fulfilling the definition of posting workers. This category was introduced as a consequence of the clarification of the definition of a posted worker in the Enforcement Directive, and the amendments to the Posting of Workers Act implementing the Enforcement Directive. Foreign entities providing services by performing work in Denmark, who are not a genuine establishment in the country of establishment, must also register. The duty of foreign companies to register is fulfilled when the information has been supplied. There are no special formal or material requirements for registering. The duty to register now applies to all types of foreign entities providing services in Denmark, divided into three categories in Section 1(1), (2) and (4):

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10. The Executive Order has since been amended a few times, most recently in June 2019.

- 1) entities posting workers to Denmark as defined in Section 4, which is in accordance with the Posted Workers Directive and the Enforcement Directive;
- 2) entities providing services in Denmark, but without fulfilling the conditions for posting workers in Section 4; and
- 3) where a service is provided by performing work in Denmark by a foreign self-employed company, which does not post workers to Denmark.

The duty to register varies for each category of foreign company. The rest of this chapter concerns only entities posting workers to Denmark, fulfilling the definition of posting in accordance with the Posted Workers Directive and the Enforcement Directive, as in 1) above.

Fines can be imposed if the posting entity fails to give holidays including pay, fails to register or gives wrongful or inadequate information upon registration, or fails to provide documentation to the receiving entity.<sup>11</sup> Fines are imposed on the receiving entity for failing to report to the DWEA, if a subcontracting posting entity has not provided proof of registration.

A number of Executive Orders have been issued concerning the RUT (Ministry of Employment 2019, 2017 (several) and 2013). The supervising entities (DWEA, the Police, and the Ministry of Taxation) co-ordinate and co-operate with regards to control of posting entities' adherence to national regulation, and the duties to register.

### 1.2.5. Transposition of the Enforcement Directive

The Enforcement Directive was implemented in July 2016 *inter alia* by launching a new webpage [workplacedenmark.dk](http://workplacedenmark.dk). This gives foreign service providers and posted workers easy access to information on the Danish labour market and the system of negotiating pay and working conditions. Provisions relating to working conditions, occupational health and safety, taxes and VAT, and regulations on posting were also amended. In the Posting of Workers Act the provisions concerning genuine establishment of the posting entity in the home country was clarified, and a system of co-operation between the supervising entities in Denmark and the home countries of posting entities was introduced (Amendment Act 626 2016). Before this, the authorities did not test the genuine establishment of the posting entity in the home country. Instead the court tested the reality of the posting contract based on the contract and the reality of the working situation in Denmark. If a contract was in reality not a posting contract, the situation did not constitute posting but was instead hiring-in workers to the receiving entity.

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11. Fines have so far been DKK 10,000 (EUR 1,333) for breach of these duties.

## 2. Overview and evaluation of the national case law on posting (since 2004)

The survey is based on case law found via searches in a number of databases: the research database on labour law ‘*Arbejdsretsportalen*’ (Arbejdsretsportalen.dk); the database on published rulings from ordinary courts (Karnov.dk); the Labour Court webpage publishing rulings from the Labour Court and industrial arbitration (Arbejdsretten.dk); and the DWEA appeals board database ‘*Arbejdsmiljøklagenævnet*’ (ast.dk). The search revealed that disputes concerning collective agreements and industrial action have been subject to judicial review in 14 published rulings from the Labour Court (between 2000 and 2019), and 34 published industrial arbitration rulings (available only between 2010 and 2019). Some uncertainty exists as to whether some industrial arbitration rulings concern posting, as some rulings are not very specific on the factual circumstances. The survey includes only rulings where the wording, the factual circumstances or the parties indicate that this is a situation of posting. From the ordinary courts the survey includes three illustrative examples of disputes heard concerning occupational health and safety, as by far most cases are resolved in the administrative appeals process for domestic as well as for posting entities. Finally, one ordinary court case assesses the lawfulness of the RUT in light of EU law. The overview will be organised under the following thematic headings:

1. Lawfulness of collective action and choice of law (6)
2. General issues of validity and binding nature of agreement (5)
3. Genuine posting situation, liability for receiving entity (9)
4. Breach of agreement: remuneration and wages including questions on underpayment of non-unionised workers, calculations of estimated number of workers and working hours, documentation for and classification of pension payments in the country of origin (26)
5. Breach of agreement: procedural (2)
6. Occupational health and safety (3)
7. Formal requirements – registration in the RUT (3) (and changed Executive Order in June 2019 not giving public access to place of delivering service).

Most of the situations concern workers in the construction industry and groundwork, and a few concern the transportation sector (road, rail and air) and the agricultural and plant nurseries sector. The cases in the construction sector are primarily to do with building construction and include painting, general construction, bricklaying, electric installations and roofing. Some cases concern a high numbers of workers, such as the *Solesi* ruling (AR2015.0254), which resulted in a fine for underpayment of an estimated 130 posted workers. The cases concern posting entities from all across the EU, with the majority originating in eastern Europe.

No cases have been referred to the CJEU for a preliminary ruling. Requests have been promoted, but the Danish courts have so far found that EU law is sufficiently clear or that the specific circumstances are not of a nature that challenges the application of EU law (AR2015.0254, AR2015.0083).

The relatively limited number of rulings should not be interpreted as an indication of the lack of disputes. Disputes are often settled by way of dialogue and negotiations before they are settled by judicial review.

## 2.1. Lawfulness of collective action and choice of law (6)

Choice of (Danish) law is an important precondition for the Danish collective bargaining system to be upheld. The question surfaces in connection with the lawfulness of the Danish collective bargaining system and has only appeared twice in case law. Choice of law issues have not been part of the national debate. The Rome II Regulation, Regulation No. 864/2007, is not applicable in Denmark. Choice of law issues are settled with reference to general principles of international private law, which correspond with the provisions in Rome II.

Collective actions against posting entities have been assessed according to the Danish legal framework for the lawfulness of collective actions, as well as against the supplementing criteria in the Posting of Workers Act. This has given rise to a question of applicable law for collective actions. In the 2015 *Ryanair* case (AR2015.0083), the main legal question concerned the lawfulness of the notice of conflict, and as part of this, the applicable choice of law for industrial action against Ryanair. The view of the Labour Court was that the lawfulness of the conflict should be settled according to Danish law because the collective action would be initiated in Denmark, would primarily be aimed at Ryanair's activities in Denmark, the actions would have their immediate effect here, and the purpose would be to ensure that pilots and cabin crew at Ryanair's bases in Denmark are covered by Danish collective agreements. This choice of law assessment corresponds with Article 9 in the Rome II Regulation, and with the later CJEU ruling on choice of law for Ryanair's personnel on the base in Belgium (CJEU ruling C-168/16 and C-169/16 *Nogueira et al v Crewlink v Ryanair*).

The Labour Court has developed the Danish criteria for lawful collective action over the past century. The criteria include formal as well as material requirements for a collective action to be lawful. The Labour Court is the competent judiciary assessing the lawfulness of collective actions, Section 9 of the Act on a Labour Court. In the context of posting, the material requirements for conflicts to be lawful have been the most disputed. The material requirements are that:

- 1) the purpose of the conflict must be to conclude a collective agreement;
- 2) the type of work performed for the employer must fall within the area of work usually covered by the social partner; and
- 3) the social partners must have a sufficiently strong and current interest in concluding an agreement for the work concerned, that is, there must be a certain amount of work performed in Denmark. It is not a requirement that current members of the trade unions perform the work.

In particular, requirement 3, concerning the amount of work performed in Denmark in order to establish 'a strong and current interest' for the trade unions, has been under judicial review. In the *Mitropa* case from 2000 (AR2000.0455), the question concerned German employees on trains travelling in Denmark as part of an overall international transportation of passengers. The Labour Court stated that when only a small part of an international transportation takes place in Denmark, and it is a natural and insignificant part of the overall transportation, special circumstances would be required in order to establish a sufficiently strong and current interest of the trade union regarding this limited work performed in Denmark. The ruling set a standard for the assessment of the amount and character of work performed temporarily in Denmark with a view to fulfil the requirement of a sufficiently strong and current interest of trade unions in concluding a collective agreement for the work performed. The same assessment was applied in the Labour Court ruling AR2013.0468 *Hekabe*, where 20% of the work performed by Polish housepainters fell under the scope of the collective agreement for painters. The conflict was found lawful because the amount of work was deemed of a volume that constituted a sufficiently strong and current interest of the trade unions. In the ruling AR2014.0028 *Kim Johanson OÜ*, which concerned international transportation of goods by road, the truck drivers also carried out work in Denmark, but this amounted to less than 3% of the total work performed. The conflicts were found unlawful on the basis that this diminutive amount of work did not constitute an interest of sufficient strength. In the *Ryanair* case (AR2015.0083), a certain amount of the work of the airline personnel must be performed in Denmark. The airline personnel started and ended their working day in Denmark, and the base included facilities for working on the ground. The work performed on the airplane while on the ground in Denmark and in Danish air territory was performed in Denmark, cf Section 1, 16 and 17 in the Chicago Convention. The work performed on the airplanes outside Danish air territory does not have a stronger real and factual connection to a specific territory of any other country. After work the crew return to the home base and go to their private domicile, which is their natural social point of connection for work and free time. On this basis, the Court in its overall assessment found that the work performed has a connection to Denmark that constitutes a sufficiently strong and current interest of the trade unions to cover the work with a collective agreement.

Lawfulness of secondary action is likewise assessed under Danish law. The main conflict must be lawful, the secondary action must be an appropriate means to influence the main conflict, and the pressure of the combined conflict must be proportional to the aim of obtaining the collective agreement. In AR2005.839, the Labour Court found that a number of notices of secondary actions against Danish employers were lawful under Danish law in order to apply pressure on a main conflict against posting companies from Latvia, Poland and Lithuania. The pending secondary actions were suitable to influence the main conflict, and the actions were found to not be disproportionate compared to the strong interest in concluding agreements with the posted workers.

The lawfulness of industrial action against posting entities must additionally fulfil the requirements in Sections 6a(1) and (2) of the Posting of Workers Act. In AR2013.0468 *Hekabe*, the Labour Court ruled that the provisions on pay which had been provided to the posting entity were sufficiently clear and accessible, as all elements of pay were

defined and presented in an annex to the agreement, and the conflict was found lawful under the Posting of Workers Act. This was also the case in the *Ryanair* ruling, where the Labour Court stated that the main conflict and secondary action did not go further than necessary in order to obtain a collective agreement with Ryanair, and the conflicts fulfilled the criteria in the Posting of Workers Act Section 6a(1) and (2) and the general criteria laid out by the CJEU.

In summary, the lawfulness of industrial action is assessed first according to Danish criteria for formal and material requirements for lawful action. Also, when applicable, the lawfulness is assessed according to the EU principles for collective action being a justified restriction of the free movement of services, as implemented in the Posting of Workers Act Section 6a.

## 2.2. General issues of validity and binding nature of agreement (2)

When signing a collective agreement or joining an employers' association, a posting entity becomes an actor on the Danish labour market and party to the Danish industrial relations system. As such, posting entities become subject to rules and principles governing industrial relations.

In the *Gal-Met* case from 2008 (AR2008.0132), Gal-Met, a Polish posting entity, had joined the Danish Construction Association (*Dansk Byggeri*). The Danish association entered a settlement on behalf of Gal-Met, including penalties for underpayment of the posted workers. Gal-Met had the effects of the penalties reversed by the Polish courts, by claiming refund of the additional payments from the Polish workers when returning to Poland. The company argued that outside the territory of Denmark Polish law can be used to demand repayment from the workers, once they returned to Poland. The Danish Labour Court stated that it is a fundamental principle in Danish collective labour law that settlements reached as a result of the industrial dispute resolution system are binding on their members. A member can sue the association for damages if the association has not properly looked after the interests of the member. This applies regardless of the legislation in the country, where the legal proceedings are taking place. It was a severe breach of agreement to seek to avoid the economic consequences of the binding nature of a settlement, and the Polish entity was fined for breach of agreement. In a 2017 Labour Court ruling *Solesi* AR2015.0154, the Italian posting entity Solesi questioned the validity of the collective agreement entered into, on the basis that it was not voluntary but signed under the threat of industrial action. The Labour Court assessed that notifications of industrial action, in order to apply force on an employer to sign a collective agreement, are in line with both Danish and EU law, and do not question the validity of the agreement entered into. The Court fined Solesi Danish krone (DKK) 14 million (approximately EUR 2 million) for underpayment of the posted workers under the agreement.

As with the *Gal-Met* case, Solesi then filed a claim with the Municipal Court of Syracuse to not enforce the Danish ruling. The claim is based on the argument that the Danish labour law ruling is against *Ordre Public*, Article 45 of the Brussels Regulation,

Regulation 1215/2012, for not observing the principle of legality under the law of Italy, the EU, the Charter of Fundamental Rights of the European Union (EUCFR), and the European Convention on Human Rights (ECHR), for not providing access to an appeal of criminal sanctions in breach of ECHR Protocol 7 Article 2, and for lack of referral to the CJEU for judicial review. The Municipal Court of Syracuse in December 2018 ruled that the Danish ruling was contrary to *Ordre Public* as the Italian court assessed, that the Danish fine for breach of agreement was a fine of criminal character rather than a penalty of private contractual character as promoted in the Danish system (RG n. 577/2018). Lack of access to a second judicial review was thus in breach of the principle of legality and contrary to *Ordre Public*, and the Labour Court ruling was not recognised or enforced in Italy. The Syracuse ruling has been appealed by the Danish trade union, and is pending as of November 2019.

The claim for lack of recognition in Italy of a fine issued against a posting entity for underpayment of their workers has attracted attention from the media as well as the social partners and labour law lawyers. The legal implication of refusal to recognise Danish rulings in the Member State of establishment, when posting entities have been fined for breach of agreement by the Danish Labour Court, is of course significant. The system of free movement of services across borders relies on a strong mutual recognition of judicial rulings, and it would not be in line with the rules on jurisdiction and choice of law to allow an established ruling in one jurisdiction to be challenged in another jurisdiction entirely based on the same facts and legal questions.

In summary, both the validity and the binding nature of agreements have been raised by posting entities as well as by the Danish trade union. The Danish system of ‘voluntary’ agreements based on negotiation and collective action, and the strict system of enforcement of breach of the provisions, may be unfamiliar to foreign entities with a different tradition and framework for industrial relations, but unfamiliarity with the binding nature of agreements does not excuse breach of agreement, as long as the system is in line with EU law.

Validity of agreements has not been part of the political debate but has clearly been presupposed in the legislative efforts to support the position of the social partners and the Labour Court in relation to posting entities.

### 2.3. Genuine posting situation and liability for receiving entity

With the implementation of the Enforcement Directive in 2016 adding Sections 4a-4e to the Posting of Workers Act, the competencies of the DWEA were expanded to not only control registration but also to assess the reality of the undertaking’s genuine business activities in the Member State of establishment. Earlier, the Danish authorities did not assess the genuine business activities of the posting entity in the country of origin, but assessed the character of the contract between the posting entity and the receiving entity as either a genuine contract of posting or in reality a situation of hired workers.

Assessing the contract as real or *pro forma* is essential for the question of liability of the receiving entity. In Denmark, joint liability or chain liability between private entities is not the norm and is not generally established by law or collective agreement concerning the issue of wages.<sup>12</sup> The Working Environment Act establishes that the posting entity as well as the receiving entity is liable for the working environment at the receiving entity. The implementation of the Enforcement Directive with regards to joint liability for the receiving entity has been by way of establishing the Labour Market Fund for Posted Workers, which is financed by all companies registered in Denmark, including foreign companies. Joint liability for breach of workers' rights by subcontractors is not the norm and requires specific legal basis.

The judicial review takes into consideration the contract as well as the reality of the relationship between the posted workers and the receiving entity. This includes assessing who has the instruction and control of the posted workers. The Labour Court takes into consideration all the particularities of the relationship between the parties, including inspections and interviews of the workers by the DWEA.

Underpayment can take place with regards to *a collective agreement in force at the receiving entity*. If the posting situation is real, the receiving entity is not liable for underpayment of the workers under its own collective agreement. On the other hand, if a situation is assessed as in reality one of hiring-in workers, the receiving entity becomes liable for underpayment of the foreign workers under its collective agreement. In a number of cases, judicial review has revealed that posting contracts were in fact *pro forma*. This is considered abuse of the posting system and undermining of the collective agreement in force at the receiving entity. In FV2010.0139 Lithuanian temporary agency workers were posted to work at Danish plant nurseries, where they worked alongside domestic workers and under the instruction of the receiving entity. The Court found that the significant risk of abuse and circumvention by using temporary agency workers in this field of work weighs more heavily than the consideration for the employment contract of the temporary work agency. The hired Lithuanian workers had the right to be remunerated under the Danish collective agreement in force at the user entity. Likewise, in FV2012.0180 Lithuanian workers were subject to the instruction and supervision of the receiving Danish entity, which was fined DKK 100,000 (EUR 13,333) for attempting to circumvent the collective agreement and for underpayment of wages to the Lithuanian workers. Similarly, in FV2017.0202, Polish painters were considered hired workers, and the Danish entity was fined DKK 2 million (EUR 266,667), the outstanding salaries for the workers, for circumvention and breach of agreement by underpayment. In FV2016.0202, Polish workers were in reality under the instruction and control of the receiving entity, which was evidenced with explanations provided by the Polish painters and by the daily manager of the receiving entity before the Court as well as to the DWEA during a control visit. The receiving entity was ordered to pay a penalty of DKK 2.5 million (EUR 333,000). In FV2017.0114, also concerning underpayment, the control

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12. The arrangement provided to comply with the Enforcement Directive likewise does not establish direct joint liability for the receiving entity, but instead establishes a Labour Market Fund for Posted Workers, which pays out any outstanding salaries to posted workers. The Fund is financed by contributions from all employers, domestic as well as those registered in the RUT (Statutory Act on a Labour Market Fund).

visit indicated that the workers were under the instruction of the receiving entity, and as the Polish posting entity could not produce the subcontractor agreements, the workers were viewed as hired by the receiving entity. The penalty for breach of agreement and underpayments was DKK 300,000 (EUR 40,000). And in FV2017.0097, the fine to the receiving entities was calculated on the basis of the outstanding salaries to the workers at DKK 500,000 (EUR 75,000).

Underpayment can also take place with regards to *the collective agreement of the posting entity*. The lack of joint liability is, as mentioned, well established in case law and was reiterated by the industrial arbitrator in the case FV2013.014. The arbitrator found no legal basis in the collective agreement to establish liability for a Danish receiving entity for underpayment of posted workers. This was in line with (then) Article 3 of the Posted Workers Directive, as establishing liability for the receiving entity was viewed as establishing a barrier for the principle of free movement in the Treaty on the Functioning of the European Union (TFEU) Article 56. In AR2011.352, where Czech painters were working on a Danish hotel renovation, the contractual relationship was assessed as a genuine situation of posting, although the workers were posted via a number of interconnected subcontractors, some self-employed. Each subcontractor agreement was presented as real, and the receiving entity did not manage the workers during the work in Denmark, even though the workers wore the logo of the receiving entity on their work clothes. Likewise, in the ruling FV2013.0157, the contractor had agreed to take on the entire roof-thatching enterprise at a set price, which implied that it was a subcontracting agreement in a genuine business relationship. The relationship with the receiving entity did not resemble temporary agency work, and there was no legal basis for establishing liability for the receiving entity for underpayment of the workers.

To sum up, the issue of circumvention of collective agreements by ‘fake’ or bogus constructions of posting contracts is part of the debate on social dumping. In order to uphold Danish working conditions, the court assesses the contract as well as all other available information, including the relationship at the workplace, in order to classify the situation as a genuine posting or as hired-in workers.

## 2.4. Breach of agreement: remuneration and wages

The issue of breach of agreement in particular by underpayment has been assessed by the judiciary several times. This constitutes by far the majority of cases. Lack of payment is considered a severe breach of agreement. The penalty is calculated at the discretion of the consideration of the court and includes outstanding payments as well as a penal fine for the breach, which for posting entities are calculated as the estimated outstanding payments when possible.

The following cases illustrate this: in FV2014.0141, a posting entity from Poland was fined DKK 1 million (EUR 133,333) for breach of agreement for not paying their posted bricklayers according to the collective agreement; in FV2016.0137 a posting entity from Bulgaria was fined for breach of agreement by underpaying posted Bulgarian carpenters,

and the parties settled for a penalty of DKK 600,000 (EUR 80,000); in FV2014.171 the Portuguese posting entity produced fake payslips with constructed working hours to cover up the fact that the real working hours and payments were underpayments in breach of the agreement. As a result, 39 workers were entitled to outstanding payments and the entity was fined in total DKK 22 million (EUR 2,933,333).

More specific aspects relating to remuneration are also assessed. These can be divided into three topics: the type of payments perceived as part of the remuneration, for example payments in relation to relocation and accommodation; the lawfulness of pension contributions and holiday pay in Denmark (in light of payments in the home state); and principles for calculation of penalties for underpayment of unionised and non-unionised workers.

#### **2.4.1. Payments counting towards remuneration**

In Labour Court ruling AR2008.464 from 2011, the Court stated that as payments had been made without deduction of taxes and social security contributions, the payments were presumed to be reimbursements and not remuneration. The starting point was the same in the Labour Court ruling AR2012.0618, but here the posting entity provided documentation that payments had constituted remuneration. In FV2009.0093 the arbitrator found that social pensions paid in Germany could be calculated as part of the salaries paid to the posted workers, as they were covered by the term in the collective agreement of deductions for ‘supplementing occupational pensions’.

#### **2.4.2. Pension contributions and holiday pay**

The question is the lawfulness of requiring posting entities to pay supplementing occupational pension contributions in Denmark as part of the total remuneration required in the collective agreement, and whether deductions for payments in the home country can be counted. The issue of Danish provisions on pension payments in collective agreements for posted workers was the subject of an investigative report on the lawfulness of the Danish provisions under the EU Pensions Directive, Directive 98/49 (Kristiansen 2015a). The report stated that certain Danish provisions in collective agreements were most likely not in line with the EU Pensions Directive. The agreements were then adjusted accordingly (AR2017.9787: 14).

Under the earlier provisions, the question surfaced a few times as a question of correct remuneration under the agreement. In the *Solesi* ruling in 2017 (AR2015.0254), an Italian posting entity was in breach of agreement by not paying outstanding salaries. This included outstanding deposits of holiday payments and pension contributions. Solesi claimed that these requirements as well as the demand that Solesi provide evidence of payments to occupational pension funds in Italy were in breach of EU law. The requirement of depositing holiday payments in Denmark was seen as a restriction of the free movement of services. The requirement could be justified, as the purpose was to ensure workers’ social rights. As the posting entity would have the deposits refunded upon documenting holiday payments in the home country, the requirement did not go beyond what is necessary. Regarding the lawfulness of the requirement

of pension contributions in Denmark, Solesi had not provided documentation for pension payments for the workers in Italy, and for this reason the payment of pension contributions in Denmark was not *in casu* a breach of EU law. The Court did not assess the character of pension contributions in Italy or the lawfulness of the provision in the Danish agreements under the EU Directive 98/49 on supplementing occupational pension rights. The *Solesi* ruling ended with an overall penalty of DKK 14 million, as mentioned above. The ruling did not resolve the question of the lawfulness of the Danish provisions, and the status of pension payments in the country of origin.

These questions have surfaced again. As mentioned above, in FV2009.0093 the arbitrator found that mandatory payments to a German social security and pension fund were considered ‘supplementing occupational pensions’ and could count towards the salary payments under the collective agreement. Similarly, in the later ruling FV2018.0060 the posting entity had provided documentation for the pension agreements and for individual deposits to a Czech pension fund, and the pension fund was sufficiently documented as a supplementing occupational pension. As the Czech pension payments were higher than the Danish pension payments, there was no duty to pay any contributions in Denmark. Finally, in FV2018.0075 a disagreement on the understanding of the term ‘occupational pension fund’ resulted in a ruling that all social security payments in the country of origin, as they also covered supplementing occupational pensions, could count towards the Danish pension contributions, regardless of whether this duty followed from statutory acts or collective agreements. This assessment is more in line with EU law, and the amendment of the agreements from 2017-2020 is expected to decrease the number of cases on the lawfulness of pension contributions.

### 2.4.3. Calculation of penalties for underpayment

In the ruling FV2014.0156 *Daniterm*, the question *inter alia* concerned how to calculate penalties for underpayment of unionised as well as non-unionised workers. According to well-established case law, the trade union is entitled to claim repayment on behalf of all unionised workers. With regard to a claim for penalties for non-unionised workers, case law has also established that a claim should be calculated on the basis of the amount the company has saved by underpaying these employees compared to the correct level in the collective agreement (the difference principle). The accumulated claim for additional payment/penalties concerning three unionised and non-unionised employees were set at DKK 600,000 (EUR 80,000). This difference principle has been used to calculate penalties for underpayments of posted non-unionised workers in the rulings AR2015.0254 *Solesi* penalty of DKK 14 million (EUR 1,866,667), FV2016.0191 penalty of DKK 7 million (EUR 900,000), and FV2017.0107 and FV2018.0064. For the unionised workers in FV2014.0090 *Solesi*, a penalty of DKK 400,000 (EUR 55,000) was calculated on the basis of outstanding payments to the workers.

The *Solesi* ruling also assessed the question of the lawfulness of payment of penalties to the trade union for claims calculated on the basis of underpayment of non-unionised workers. The Court stated that such penalties are not in breach of either the ECHR Article 11 or the EUCFR Article 12. The penalties are not viewed as enrichment of the

trade unions on behalf of non-unionised workers. The non-unionised workers have chosen not to be members of this union, but this does not affect the principle that the posting entity is obliged to pay a penalty for breach of the agreement. The penalty is payable to the signatory to the agreement, the trade union, and the penalty is calculated on the basis of the accumulated savings of the posting entity by breach of the agreement. The purpose of counteracting social dumping would be illusory if the employer was not obliged to pay a penalty of at least the saved amount of money.

In situations where there is no certain basis to calculate the actual savings of the posting entity (the difference principle), the arbitrator will set a discretionary amount based on the claims and the evidence of the case. This is also seen several times, for example in FV2017.0168 with a penalty set at DKK 100,00 (EUR 13,333), and in FV1017.0027 where it was uncertain how many workers were present at the building site in the period, and for this reason the arbitrator awarded a discretionary amount of DKK 450,000 (EUR 60,000) rather than the full claimed amount of DKK 666,000 (88,800). In FV2014.0065, as it was impossible to calculate an exact claim, the penalty was set at a discretionary DKK 500,000 (EUR 66,667).

The general question of review of breach of agreement by underpayment, therefore, is well known in Denmark, and the strict assessment and enforcement that is central to the Danish model of negotiating pay and working conditions functions efficiently for domestic as well as foreign employers. Fake payslips are sanctioned as attempts to circumvent the collective agreement. The judicial review has settled a method for calculating the penalty for underpayment of posted non-unionised workers, based on the savings of the posting entity by breaching the agreement (the difference principle), which is upheld in later case law.

## 2.5. Breach of agreement: procedural

Refusal to adhere to procedural provisions in collective agreements, such as participating in negotiation meetings in case of dispute about the agreement, are also considered breach of agreement. This is the case for Danish companies as well as for posting entities covered by a collective agreement. In FV2016.0137 a Bulgarian company was fined for breach of agreement in part due to its refusal to participate in dispute resolution procedures. In AR2014.0659 the Danish trade union was charged for breach of agreement by performing control visits to a place of work outside the customary controls. The court found that control visits must be carried out under a mutual duty of trust and respect, and that after only a short time additional control visits required objective reasons. The trade union did not breach the procedural regulation because such reasons were present and the request for an additional control visit had followed the agreed procedure.

Breach of procedural provisions of the collective agreement are pursued and sanctioned as well as breach of material provisions. The procedural duties form an essential part of the dispute resolution system and as such can be enforced and sanctioned.

## 2.6. Occupational health and safety

The Danish Statutory Act on Occupational Health and Safety applies to posting entities in the same way as to domestic employers. In the cases regarding liability for ensuring a safe working environment, posting entities are subject to control and fines in the same way as other companies for whom work is performed in Denmark.

The DWEA makes control visits to the workplaces of posting entities. Posting entities receive fines as other companies. The fines are issued by the DWEA, and can be assessed by the administrative board of appeal for sanctions by the DWEA. The employer can challenge the administrative ruling before the ordinary courts. There is an abundance of rulings concerning health and safety of posted workers as well as domestic workers. The legal basis and the assessment of the situations do not differ, as the rules are equally applicable. Administrative case law of the administrative board of appeal for the working environment is publicly accessible ([ast.dk](http://ast.dk)).

The survey includes three illustrative examples of High Court rulings on challenges on fines issued for not adhering to the safety regulations for work performed at height. Fines were confirmed in the rulings to the amounts of DKK 40,000 (EUR 5,333) (Western High Court 2014), DKK 25,000 (EUR 3,333) (Western High Court 2007) and DKK 50,000 (EUR 6,667) (Eastern High Court 2007).

## 2.7. Formal requirements: RUT registration (3)

The RUT was debated more intensely as part of the control and enforcement packages in 2010, 2011 and 2016. Since 2010, the DWEA has been the authority controlling whether foreign service providers register correctly in the RUT, Section 7e.

The duty to register is sanctioned separately with a fine. The issue of the lawfulness of the RUT surfaced for the first time in 2018 as a separate claim. Until then, fines for breach of registration were not challenged separately but as part of an overall fine for breach of the applicable Danish legislation. In the Western High Court Ruling (2014), the posting entity was fined DKK 10,000 (EUR 1,333) for failing to register at the RUT. Earlier, posted workers in Denmark were required to carry a work permit, which is no longer the case according to the Act on Foreigners, (*Udlændingeloven*). Breach of the (then) duty was included in the dispute concerning breach of occupational health and safety regulation heard by the Eastern High Court in 2007. The entity was fined a total of DKK 50,000 (EUR 6,667).

The lawfulness of the RUT was in 2018 challenged by a Polish posting entity, and in May 2019, the Western High Court delivered their ruling (Western High Court 2019). The duty to register as provided in the Posting of Workers Act Section 7a(1) does not go beyond what is necessary and corresponds to the Enforcement Directive list of information. The Court found, however, that the option to give public access to certain information, in particular, information about the place of delivery of service, went beyond what is necessary. This information could be used by the competitors to

monitor the market and analyse competitors, as the information makes it possible to identify customer relationships and projects of foreign service providers. Public access to this information goes beyond what is necessary and is in breach of Article 56 TFEU. The Court acquitted the defendant for the fines for lack of correct registration. The Ministry of Employment has responded swiftly and issued a revised *Executive Order in June 2019, where the general public can no longer obtain access to information about the place of delivery of service.*

To sum up, the system of registration and control of foreign service providers receives strong political attention. The duty to register was subject to judicial review in 2019, and the authorities responded with an amendment to the legal basis, in order to ensure that the system corresponds with EU law and that fines are lawful. In the few earlier disputes on fines, the courts have supported that they were lawful. Formal requirements of registration play an essential role in ensuring that work is performed under Danish pay and working conditions and applicable Danish law.

## Conclusions

In Denmark, the national debate has focused on upholding the system of social partners' negotiation on pay and working conditions for workers in Denmark, including for posted workers. The case law clearly reflects the political intention to uphold collective bargaining as a workable means for establishing pay and working conditions for posted workers, and to uphold the strong enforcement mechanisms of industrial dispute resolution in the Labour Court and industrial arbitration. Most of the cases concern issues related to collective agreements and in particular the binding nature and the strong enforcement mechanisms in the Danish industrial relations system.

Registration and control of posting entities is viewed as a necessary means for ensuring adherence to national statutory regulation protecting the posted workers, and as a means to initiate negotiations in order to obtain a collective agreement for the pay and working conditions of the posted workers. The lawfulness of the system has not yet been subject to legal dispute in Denmark or by the CJEU.

The question of the use of collective action against posting entities as lawful under Danish law has been subject to legal review. The use of collective action is viewed as being in line with EU law as long as the social partners adhere to the requirements in the Posting of Workers Act Section 6a(2).

When posting entities have entered an agreement or have become a member of a Danish employer association, the legal disputes concern the validity of the agreement, breach of agreement, and sanctions for breach of agreement. The enforcement system is strict and efficient, which has also proven necessary against posting entities. The Labour Court conducts the judicial review according to the same rules and principles as are applied to domestic employers.

The Enforcement Directive, which was implemented in Denmark in 2016, expands the duty of the country where the work is performed to test for genuine establishment in home countries. This increased attention on counteracting ‘fake’ posting entities with a view to counteract abuse of the posting system aligns with the review of the Danish Labour Court and industrial arbitration assessing whether the contracts of posting were real and genuine. The question in Denmark concerned whether the workers were in reality hired workers. If the workers are genuinely hired workers and not posted workers, the receiving entity is liable for underpayment of the workers according to their collective agreement. This system has illuminated the necessity of requiring collective agreements for the posting entity, as the receiving entity is not jointly liable for breach of any agreement. If the posting entity is not covered by a collective agreement, the posted workers can be paid any level of salary, and this is not in breach of Danish law.

Domestic courts of the posting entity’s home country may have difficulties understanding the Danish system, in particular the binding nature of agreements regarding salaries, procedural obligations of the parties, and that the agreements oblige employers to adhere to the provisions for unionised and non-unionised workers alike. These elements are central to the smooth and efficient working of the Danish system, but may be foreign to posting entities coming from different traditions in the workplace.

The low number of complaints before the courts – industrial or ordinary – is a finding in itself. This could be explained by many phenomena: that the social partners are adjusting their procedures accordingly; that posting entities and their Danish consultants are gaining the necessary knowledge about the interplay between the collective bargaining system and posting of workers; or that the relevant legal and labour market actors fundamentally agree on the basic purposes and the legal remedies available. The legal and political actors involved could support the functioning of the system to the benefit of the posted workers as well as for the purpose of equalising the competitiveness between national companies and posting entities.

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### **Danish caselaw**

For the list of cases please refer to Annex I.

### **Italian caselaw**

Ruling of Municipal Court of Syracuse, RG n. 577/2018.

### **EU caselaw**

CJEU ruling of 18 December 2007 in Case C-341/05 Laval un partneri v Svenska Byggnadsarbetareförbundet, ECLI:EU:C:2007:809.

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