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EUROPEAN SOCIAL CHARTER

29th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF DENMARK

(Articles 2, 4, 5 and 6 of the European Social Charter and
Articles 2 and 3 of the Additional Protocol
for the period 01/01/2005 – 31/12/2008)

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29th Danish Report

on the application of the

European Social Charter

Concerning articles 2, 4, 5 and 6
for the period 01.01.2005 - 31.12.2008
&
article 2 and 3 of the Additional Protocol
for the period 01.01.2005 – 31.12.2008

February 2010

In accordance with article 23 of the Charter, copies of this report have been communicated to:

The Confederation of Danish Employers (DA)
The Danish Confederation of Trade Unions (LO)
Confederation of Professionals in Denmark (FTF)
The Danish Confederation of Professional Associations (AC)

Article 2 - The right to just conditions of work

Article 2
Paragraph 2

Question 1 and 2
The Act of salaried workers (white collar workers) which dates back to 1938 secures salaried employees full salary during public holidays.

For other workers on the Danish labour market the question of the right to public holidays with pay is regulated in the collective agreements or in the individual contract.

Approximately 80 per cent of all employees in Denmark are assumed to be included in a collective agreement or an adhesion agreement.

The question of public holidays with pay according to collective agreements also has a significant rub-off effect in fields that are not covered by any collective agreement. Since the question of public holiday with pay is also a part of the wage, the trade unions supervise that no wage dumping takes place on the part of non-organised employers.

Generally, employees are not working on public holidays. Work on public holidays is considered to be extraordinary and has to be particularly justified. Thus, collective agreements take due consideration to secure the limitation of work on public holidays. Naturally, special cases do exist within certain sectors where work is needed also on public holidays – e.g. the health sector, service sector etc.

Extra pay is given for work done on a public holiday. Reference is made to the answer to the question from the ECSR concerning increased remuneration paid in respect of work done on a public holiday (page 37).

Question 3
No statistical information exists.

Article 2
Paragraph 3

Question 1 and 2
The Danish Holiday Act dates back to 1938. Even though amendments have been made continuously - improving the rights of the employees considerably - the basic principles concerning the earning of holidays and the periods within which the holidays can be taken, remain fundamentally the same.

From the very beginning, the Danish Holiday Act has formed an integral and important part of the Danish so-called “flexicurity model” based on a bargained balance between the interests of the social partners on the Danish labour market and supported by all Danish governments during the years.

Therefore, the Danish Holiday Act can be departed from in collective agreements so it can be adapted to the various industries. Naturally there are certain minimum standards, such as the right to five weeks of annual holiday which cannot be departed from neither in collective nor individual agreements. If the Holiday Act is included in a collective agreement, the interpretation and breach of this part of the collective agreement should be processed by the parties to the collective agreement in the (collective) labour law judicial system.

According to the Danish Holiday Act, all employees earn the right to five weeks of paid holiday if they have been employed for a total qualifying year (calendar year). With shorter employment in the qualifying year,

the right to paid holiday is correspondingly reduced. In such case, everybody has the right to supplement up to five weeks holiday, but at his/her own expense.

According to the Danish Holiday Act, the holiday is to be taken in the holiday year that follows the qualifying year. The holiday year goes from 1 May after the qualifying year to 30 April the following year. The holiday is taken following agreement with the employer, who in case of disagreement, has the right to schedule the holiday with three months and one months notice, respectively, as far as the first three weeks holiday and the last two weeks holiday are concerned.

If the holiday is not taken in the holiday year, the employer - as a main rule - loses it and it is transferred to the holiday fund. Firstly, this is because it gives the employer the incentive to take the holiday in the holiday year, and secondly, the employer does not make a profit on the employee not taking his or her holiday. There are however, some exceptions. This applies primarily to the following situations:

1. Before the expiry of the holiday year, an employer and an employee can agree that the 5th holiday week with pay - and only the 5th holiday week - can be transferred to the following holiday year. Because of consideration of the EU rules which protect the first four weeks of holiday with pay, such an agreement is only possible regarding the 5th holiday week.
2. An employee who has resigned can have all earned holiday paid out after the holiday year (reference period) in which the holiday should have been taken, but only after application in the period from 1 May to the end of September.

When an employee takes his or her earned holiday, the holiday begins, according to the Holiday Act (§13, section 1 and 2), at the beginning of the working hours on the first holiday day. This means that for the majority of employees, the holiday begins at normal working hours on a Monday morning. If an employee is ill at the beginning of the holiday, the employee is not obliged to commence the holiday.

This state of law has been applicable since an amendment to the Holiday Act in 2001. Before then, the holiday commenced at the end of the working hours on the last working day before the holiday, which was typically Friday afternoon. The amendment in 2001 was therefore a significant improvement for employees because the burden of the risk of illness was shifted over to the employer already from the end of the working hours on the last working day before the holiday. This means that there is a right to compensatory holiday for illness that arises all the way up to the actual commencement of the holiday.

The condition that there is no right to compensatory holiday for illness that occurs during the holiday is, however, modified as far as illness contingent on pregnancy is concerned. In the same way, employees who begin maternity leave during the holiday have the right to compensatory holiday for the lost days of holiday.

In addition to this, since 2001 the Danish Holiday Act has opened up the possibility that paid holidays, which cannot be taken during the year because of illness or injury, can be transferred to the next year without reduction of the ordinary paid holidays that year.

The social partners can conclude agreements giving better rights to the employees than those laid down in the Holiday Act. According to at least two major collective agreements, holidays can be suspended due to serious or persistent illness or injury which occurred during the holiday. Without doubt, this development will spread to other parts of the labour market.

However, the fact that the Danish Holiday Act grants five weeks of annual paid holiday should be emphasized. On top of this, most agreements give a right to one additional holiday week. This leaves room for at least four weeks of illness per year during holiday leave - enough to *de facto* secure the right to

minimum two weeks annual holiday with pay, in accordance with Article 2§3 of the European Social Charter.

The Danish rules on suspension of the holiday due to illness have not given rise to problems or objections, neither at courts of law nor in the administrative system.

However, it must be mentioned that the legal development at the Court of Justice of the European Communities, particularly the rulings in the combined cases C-350/06 and C-520/06 as well as in case C-277/08, give rise to considering in more detail the Danish state of law in this relation, even though both rulings regard situations where the person concerned was ill before the holiday commenced.

Question3
No statistical information exists.

Article 2
Paragraph 5

Question 1 and 2
The Danish rules and administrative regulations which correspond to the provisions of the Charter can be found in the following documents:

Consolidation Act No. 268 of 18 March 2005 on the working environment.
Order No. 324 of 23 May 2002 on rest periods and days off.
Order No. 239 of 6 April 2005 on young persons' work.

According to the Working Environment Act §51, section 1, the employees must have 24 hours of rest within every period of 7 days; this weekly rest period shall, as far as possible, be on Sundays (which is the day traditionally recognised as a day of rest) and as far as possible at the same time for all employees at the company.

The Order on rest periods and days off provides for certain exemption clauses in special situations. In accordance herewith the Working Environment Authority may within the scope of some forms of work included in the appendix to the Order, allow certain exemptions if consistent with Council Directive 93/104/EC (as amended by Directive 2003/88/EC) on certain aspects of the organisation of working time and if the carrying out of the work, in accordance with its nature, cannot be deferred, or if special forms of work necessitates an exemption. These may be activities characterised by the necessity to ensure continuous services or permanent production – and these may under certain circumstances for instance be hospital services and activities related to supply of gas, water and electricity etc - see the enclosed Order and appendix. In practice the Working Environment Authority very rarely grants such exemption.

Within the scope of forms of work as comprised by the appendix to the Order, the right in respect of a single day off may be deferred if exemption cannot be obtained from the Working Environment Authority in due time, and if the work in accordance with its nature cannot be delayed, or if special forms of work necessitates an exemption.

Compensation for the weekly rest period in the form of equivalent rest days is always given.

The possibility in the Order on rest periods and days off - according to which "adequate protection shall be provided" if it in exceptional cases is not possible to compensate rest days - is based on Article 17, paragraph

2, in Directive 2003/88/EC concerning certain aspects of the organisation of working time. This possibility is not used as compensation of days off is always required.

Question 3
No statistical information exists.

Article 4 – The right to a fair remuneration

Article 4
Paragraph 1

Question 1 and 2
The Danish labour market is characterised by the autonomy of the social partners, including their freedom to regulate pay and working conditions without any interference from the State. There is thus no general legislation in Denmark concerning for instance remuneration, including minimum wage, occupational pension schemes, continued training and dismissal.

Since Denmark does not have a system of statutory minimum wage there are no generally applicable rules concerning minimum pay.

Wages are only regulated by agreements - either by collective agreements or individual agreements.

It is assessed that nearly 80% of the employees on the Danish labour market are covered by a collective agreement. This means that about 20% or about 500,000 employees are not covered by a collective agreement, but are instead covered by an individual agreement with their employer. In the public sector the coverage is about 100%, while it is about 60% in the private sector.

The level of pay and working conditions in the fields covered by collective agreements has a significant rub-off effect in fields that are not covered by any collective agreement (i.e. the remuneration within these fields is at the same level as within the fields covered by collective agreements). Generally, the trade unions supervise that no wage dumping takes place on the part of non-organised employers in relation to the ordinary wage in the field concerned. If such wage dumping occurs, the trade union will try to make the employer conclude a collective agreement. If this fails, the union will support its demand by taking industrial action against the employer.

There is a far-reaching right to take industrial action and sympathy action (to support an on-going strike). Lawful industrial action on the unions' side comprises of strikes and blockades (sympathy action). The lawfulness of industrial action depends on whether the action concerns work that normally falls within the trade union's fields of activity. It should be underlined, that it is not a requirement that the enterprise concerned have any employees that are members of the trade union taking industrial action.

After the *Laval-judgment* (the judgment from the ECJ in the preliminary ruling case C-341/05) a clause has been inserted in the Danish Posting of Workers Act in order to make sure, that industrial action is in line with the Laval-judgment. The right to industrial action applies in all sectors.

The minimum wage laid down in the collective agreements varies from one occupational field to another.

Most collective agreements in Denmark – both in the private and the public sector – run for a period of three years and are renewed on 1 March or 1 April of the year of renewal.

Question 3
In spring 2008 collective agreements were renewed in the public sector after negotiations between the social partners. The public sector consists of the state, municipalities and regions. The entire public sector comprises approximately 729,000 (full time) employees.

The collective agreements in the public sector are in effect for an agreed 3-year period, i.e. from 1 April 2008 to 31 March 2011. The results of the negotiations include wage increases and other improvements of conditions of employment within the scope of approximately 12.8 percent over a period of 3 years. Below is

a table showing the income trends for the private sector 2002-2008, including information on the typical minimum wage.

Income trends

	2002	2003	2004	2005	2006	2007	2008
Earned income incl. pension				1,000 DKK per year			
- High-level qualifications	485	505	518	532	544	574	589
- Skilled manual work	305	313	322	332	346	364	380
- Sales and service	231	241	249	256	265	273	280
- Typical minimum wage	178	184	190	195	200	209	213
Earned income excl. pension							
- High-level qualifications	434	448	464	469	474	498	511
- Skilled manual work	279	283	292	299	308	324	337
- Sales and service	212	220	228	232	238	245	251
- Typical minimum wage	162	165	171	175	178	183	188
Disposable earned income							
- High-level qualifications	228	236	249	253	256	268	276
- Skilled manual work	166	169	180	184	190	199	207
- Sales and service	132	137	144	147	151	155	160
- Typical minimum wage	104	107	112	114	117	120	124
Earned income excl. pension				Annual change, per cent			
- High-level qualifications	4.2	4.2	2.6	2.7	2.3	5.4	2.7
- Skilled manual work	4.2	2.7	2.8	3.2	4.1	5.3	4.5
- Sales and service	4.1	4.4	3.6	2.8	3.5	2.7	2.9
- Typical minimum wage	2.8	3.5	2.9	3.0	2.7	3.1	2.8
Disposable earned income							
- High-level qualifications	4.0	3.3	5.8	1.5	1.4	4.3	3.0
- Skilled manual work	4.6	1.8	6.5	2.3	3.0	4.6	4.5
- Sales and service	4.6	3.8	5.1	1.9	2.5	2.7	3.3
- Typical minimum wage	3.0	2.5	4.8	2.2	1.9	3.1	3.3
Real earned income							
- High-level qualifications	1.6	1.3	4.6	-0.2	-0.5	2.6	-0.3
- Skilled manual work	2.3	-0.2	5.4	0.5	1.2	2.9	1.2
- Sales and service	2.3	1.7	4.0	0.2	0.7	1.0	0.0
- Typical minimum wage	0.6	0.4	3.7	0.4	0.0	1.4	0.0

NOTE: The standard calculation is based on the level from DA's (The Confederation of Danish Employers) Structural Wage Statistics 2008, which is backward adjusted using the rates of increase from DA's Short-term Wage Statistics. The figures for full-year earnings are based on people working a 37-hour week throughout the year (apart from holidays and public holidays). Disposable income represents earned income excl. pension contributions and tax.

SOURCE: Statistics Denmark (PRIS8) and DA.

Reference is also made to the Danish reply of 13 March 2007 to questions of 15 December 2006 from the ECSR concerning Article 4, paragraph 1 and 2, in respect of the 26.th report of Denmark. In a supplement to the reply the Danish authorities forwarded information concerning the **net national average wage per hour** for the year 2005 based on information received from Statistics Denmark. Since these are the most recent figures available, the data are included below. The data concerns the salary per hour actually paid - regardless of certain types of absence and excluding certain supplements paid by the employer:

Private Sector

168.92 DKK/hour

(1,236,961 employees)

Municipalities (including the former counties, now regions)

148.70 DKK/hour

(695,155 employees)

The State Sector

173.99 DKK/hour

(178,746 employees)

Article 4
Paragraph 2

Question 1, 2 and 3
Questions on payment for overtime are covered by collective agreements. No legislation exists concerning overtime pay. The question of overtime pay is solely a matter regulated by collective bargaining. In employment relationships that are not covered by any collective agreement, the agreed pay and working conditions, including the question of overtime pay, will appear from the employment contract of the person concerned.

The level of overtime pay according to collective agreements also has a significant rub-off effect in fields that are not covered by any collective agreement (i.e. the overtime pay within these fields is at the same level as within the fields covered by collective agreements). Since overtime pay is a part of the wage, the trade unions also supervise that no wage dumping takes place on the part of non-organised employers in relation to overtime pay.

The social partners have informed the Ministry of Employment that remuneration for overtime is paid according to one of two models - the absolute model and the percentage model. Listed below are examples of these two models, concerning payment for overtime in two large areas - the industry and sales and services.

Extra payment for overtime in Industry, 1 March 2009

Payment	**DKK pr. Hour**
1st and 2nd clock hour	34.65
3rd and 4th clock hour	55.35
5th clock hour and after	103.50
Before normal working hours	
6 am – 6 pm	34.65
6 pm – 6 am	103.50
Sundays and holidays	
Until 12 am	68.90
After 12 am	103.50
Overtime without notice	88.35

Source: Collective agreement between DI (Confederation of Danish Industry) and CO-Industri (The Central Organization of Industrial Employees in Denmark).

Extra payment for overtime in Sales

Payment	Percentage
1st-3rd clock hour	+50 per cent of hourly wage
Hereafter	+100 per cent of hourly wage
Sundays and holidays	+100 per cent of hourly wage
Without notice	+100 per cent of hourly wage

The social partners have informed the Ministry of Employment that they have no concise information concerning payment of overtime for employers not covered by collective agreements.

It is therefore the case that such information is not available from any central source.

Reference is also made to the Danish reply of March 2007 to questions from the ECSR concerning Article 4, paragraph 1 and 2, in respect of the 26.th report of Denmark.

Article 5 – The right to organise

Article 5

Question 1 and 2
In Denmark freedom of association is to a wide extent based on ordinary legal principles. But at the same time, legislation lays down a number of provisions involving both the positive and the negative freedom of association.

The formation of associations and the right to organise is part of the positive freedom of association and is ensured in Danish legislation by section 78 of the Danish Constitution (Danmarks Riges Grundlov) on the right to form associations without previous permission. As regards the possibility of the State to prevent or regulate the formation of associations the Government's obligation is assumed to include first and foremost a duty to abstain from interfering with the free formation of associations. The substantial protection of the positive freedom of association on the labour market and at individual level as well, follows the rules on prohibition of organisational persecution and the Act on protection against dismissal related to trade union membership.

Section 78 of the Constitution protects the right to form associations. This is a formal protection of the positive freedom of association, which means that the lawfulness cannot be conditioned by previous permission. The provision also includes protection of the right to organise collectively.

Section 78 of the Constitution provides:

1. Citizens *shall, without previous permission, be free to form associations for any lawful purpose.*

2. *Associations employing violence, or aiming at the attainment of their object by violence, by instigation to violence, or by similar punishable influence on persons holding other views, shall be dissolved by a court judgment.*

3. *No association shall be dissolved by any Government measure; but an association may be temporarily prohibited, provided that immediate proceedings be taken for its dissolution*.

4. *Cases relating to the dissolution of political associations may, without special permission, be brought before the Supreme Court ("Rigets øverste domstol")*.

5. *The legal effects of the dissolution shall be determined by statute.*

The Act on Protection against Dismissal due to Association Membership was adopted in 1982 on the basis of a decision made by the European Court of Human Rights in the British Rail-case (*Young, James and Webster v. the United Kingdom*). The Act concerns, as can be seen from the title, solely the conditions on the labour market and prior to the adoption of the Act there was no protection against dismissal related to trade union membership.

In 2006 the Danish Government took measures to ensure that Danish law is in compliance with Article 11 of the European Convention on Human Rights as interpreted by the European Court of Human Rights in its judgment of 11 January 2006 in the cases of Sørensen and Rasmussen v. Denmark (Applications nos. 52562/99 and 52620/99) on closed shop clauses on the labour market.

In order to comply with the judgment the Danish Government tabled a bill on 2 February 2006 on amending The Act on Protection against dismissal due to Association Membership. The Act came into force on 29 April 2006. According to the Act, a person's affiliation to a union or non-membership of a union must not be taken into account in a recruitment situation or in connection with dismissal. The Act protects the positive as

well as the so-called negative freedom of association and extends the scope of the negative freedom of association, i.e. the right not to be a member of a union to also cover the recruitment situation. The Act means that the use of closed shops agreements is unlawful on the Danish labour market, and any closed shop agreements contained in collective agreements will be null and void and may not be concluded in the future.

The following is an abstract of the Act on Protection against Dismissal due to Association Membership (a copy in Danish of the full text of the Act is enclosed):

Section 1
An employer may not fail to employ a person nor dismiss an employee on the grounds that he or she is a member of an association or of a certain association.

Section 2
An employer may not fail to employ a person nor dismiss an employee on the grounds that he or she is not a member of an association or of a certain association

Section 3
Sections 1 and 2 of the Act do not apply to employees who are employed by employers whose business specifically aims at furthering a political, ideological, religious or cultural purpose and the membership of the person concerned must be considered of importance for the business.

Section 4
Where an employee is dismissed contrary to the provisions of this Act, the dismissal must be overruled and the employment continued or restored, if so claimed. However, this does not apply to employees in the private sector if, in special cases and following a balancing of the interest of the parties, it is found obviously unreasonable to claim continuation or restoration of the employment.

Section 4.a
1. Where an employee is dismissed contrary to the provisions of this Act without the dismissal being overruled, the employer shall pay compensation.
2. The compensation, which may not be less than one month's salary or wages and not exceed 24 months' salary or wages, must be fixed in view of the period of employment and the circumstances of the case in general. If the employment has lasted for at least two years, such compensation may not be less than three months' salary or wages.

Section 4.b
1. Cases under this Act must be processed as quickly as possible.
2. During the hearing of a case concerning dismissal, the court may order that the dismissal will not become effective until the case has been finally decided by a judgment. The judgment may stipulate that the dismissal will not be stayed in case of an appeal.

It should be underlined that no prohibitions or restrictions exist regarding the establishment of organizations by certain categories of workers in Denmark. This also applies for the formation of associations by public employees. The armed forces and the police enjoy the same protection against interference from the public authorities.

Danish legislation does not distinguish between Danish citizens and citizens of other contracting parties as regards the participation in and formation of trade unions. As regards employment in associations the Act on prohibition against discrimination in respect of employment applies like the EU prohibition against discrimination based on nationality is assumed to apply in these situations.

Moreover, the right of employees to organise and the mutual recognition of organizations was established in connection with the September settlement of 1899 between the Danish Employers' Confederation and the Federation of Danish Trade Unions. The legal practice which applies for the mutual relationship of the parties to collective agreements also protects against hostile behaviour towards organizations.

Question 3
No relevant figures or statistics exist.

Article 6 - The right to bargain collectively

Article 6
Paragraph 1

Question 1 and 2
Denmark has a long tradition dating back more than 110 years for regulation of pay and working conditions by the social partners in the form of conclusion of collective agreements. Collective bargaining thus plays a decisive role for the organisation of the Danish labour market. The collective bargaining system is based on a division of labour between the legislator and the social partners with the legislator intervening as little as possible in the regulation of pay and working conditions.

Collective bargaining – free from legislative intervention – is a basic precondition for the Danish labour market system which has broad support from a majority of the members of Folketinget (the Danish Parliament). The incentive for collective bargaining both in the private and the public sector is thus implicit in the very foundation of the organisation of the labour market. Reference is also made to the reporting on Article 6, paragraph 2 and 3.

Question 3
No relevant figures or statistics exist.

Article 6
Paragraph 2

Question 1 and 2
In Denmark regulation of pay and working conditions are to the largest extent possible negotiated via collective agreements and not regulated by legislation. This applies in relation to matters such as wages, pensions, rules on working hours, dismissals, rules for shop stewards, continued training, etc.

The Danish trade unions are joined together in national unions which are again affiliated with a few central organizations. In the individual enterprise the employees are typically organised in various unions according to their training and/or education.

A special feature of the Danish system of collective agreements is that there are many professionally defined collective agreements which on the one hand is very different from a system of industrial trade unions but on the other hand is usually negotiated jointly and at the same time in large parts of the labour market, e.g. the whole private and the whole public sector, respectively.

The Danish labour market is characterised by having a high union density and a high number of collective agreements between on the one side the individual national unions and on the other side the employers' organizations. In the private sector alone, which is covered by the Danish Confederation of Trade Unions (LO) and the Confederation of Danish Employers (DA), more than 600 collective agreements are concluded.

Up to 80 per cent of all employees in Denmark are assumed to be included in a collective agreement or an adhesion agreement (a collective agreement between a trade union and an unorganised employer referring to the collective agreement that usually applies for the particular trade).

Most collective agreements in Denmark in the private sector as well as the public sector apply at the time for three years and are to be renewed 1 March or 1 April in the renewal year of the relevant period.

The bargaining system is based on voluntarism and free bargaining between the two sides. The legislation does not regulate how the social partners conduct their negotiation. The question of which organisation is the

bargaining party on the employee side will often depend upon the position of strength of the different trade unions.

Trade unions have wide powers to seek to conclude collective agreements on the labour market, for instance by picketing or sympathetic action in relation to the employer they wish to negotiate with. Reference is also made to the reporting concerning Article 6§4.

In order to underpin the collective machinery for voluntary negotiations between the employers and the workers the Parliament has adopted the Act on Conciliation in Industrial Disputes which aims at conciliating the parties, especially in connection with the renewal of collective agreements. The Act was lastly amended 20 August 2002. A copy of the legislation is enclosed (in Danish). Reference is also made to the reporting concerning Article 6§3.

As regards recognition of trade unions and freedom of association reference is made to the reporting concerning Article 5.

On the Danish shipping industry

The Act on the Danish International Register of Shipping (DIS) came into force in 1988. Section 10(2) of the Act was changed effective 1 April 2009 with explicit reference to EU law. A copy of the amendment act is attached.

In previous reports the Danish government has informed about the agreement concluded by the Danish social partners concerning employment on board ships registered in the Danish International Register of Shipping (DIS-framework agreement).

The DIS-framework agreement concerning mutual information, coordination and cooperation between the Danish social partners concerning seafarers on board DIS-ships has developed gradually over more than ten years. The agreement was renewed in December 2005 and most recently in September 2009.

Today there are five Danish trade unions for officers and ratings in the Danish merchant fleet. These organizations are: Danish Maritime Officers (Søfartens Ledere), The Danish Engineers' Association (Maskinmestrenes Forening), The Danish Maritime Catering Union (Dansk Sø-Restaurations Forening), Danish Metal Workers Union (Metal Søfart), and the United Federation of Danish Workers (Fagligt Fælles Forbund, 3F). These organizations - except 3F - are "the seafarers' contracting parties" to the framework agreement. 3F is one of three organizations representing Danish ratings. The seafarers contracting parties represent the majority of Danish seafarers employed onboard DIS-ships.

The agreement gives the seafarers' contracting parties the right to be represented at negotiations between non-Danish unions and Danish shipowners organizations in order to ensure themselves that a negotiated result is in accordance with an internationally accepted level in terms of international standards for pay and working conditions.

The agreement also states that seafarers, who are not resident in Denmark, but working onboard DIS-ships, have the right to be members of several trade unions (i.e. both a Danish trade union, and a trade union in their home country). This enables the seafarers' contracting parties to represent a seafarer not domiciled in Denmark or a foreign trade union in matters relating to the Danish Legislation and assist seafarers without a Danish residence in relation to the Danish public authorities.

For the reporting period until the end of 2008, Denmark has not received information that the collective agreements concerning wages and general working conditions onboard Danish ships, regardless of whether

they were concluded by Danish or foreign trade unions, were not at an international acceptable level, amongst other standards meeting the requirements of the ILO recommendation on minimum wage. In this connection, it should be noted that in Denmark the question of minimum wage is not governed by law; this issue is settled by the social partners.

Now more than 20 years after the establishment of the Danish International Register of Shipping, the underlying reasons for this still apply. Even today there is a risk of ships being transferred to foreign registers and foreign registers exist which enable shipowners to further reduce costs by lowering standards, which may thus be attractive alternatives to registering a ship under the Danish flag. Based on this it is therefore gratifying that the agreement between the social partners has continued to develop since 1997.

The following information on the development in the Danish shipping industry for the period from 2005 to 2008 can be provided:

Foreign currency earnings in the Danish shipping industry in 2005 were DKK 130bn which increased to DKK 160bn in 2006. In 2007, currency earnings were DKK 175bn and in 2008 DKK 190bn. Thus, the Danish shipping industry has become the second largest export industry in Denmark.

The table below shows the number of seafarers serving on board DIS vessels on a particular date (30 September) in 1989, which was the first year after the establishment of DIS, and on the same date for the period 2005 to 2008. The numbers comprises both Danish and foreign seafarers on DIS vessels (not including seafarers who - due to holiday, time off, illness etc. - were not on board a vessel but still involved in shipping).

Year	***Danish seafarers***	***Foreign seafarers***	***Seafarers, total***
1989	2,577	713	3,290
2005	3,989	3,376	7,365
2006	4,375	3,958	8,333
2007	4,128	4,432	8,560
2008	4,277	5,317	9,594

The numbers for 2008 does not comprise seafarers on passenger ships registered with DIS since the duty to report to the Danish shipping authorities ceased to apply as of 1 May 2008. A total of 20-25 large passenger ships are engaged in voyages between Danish and foreign ports, and they employ many Danish seafarers. The relative increase in the number of foreign seafarers from 2007 to 2008, among other things, is a reflection of the modified duty to report.

Thus, with the Danish International Register of Shipping it has been possible to maintain a significant number of workplaces for Danish seafarers. In addition, a considerable number of people are employed at shore-based workplaces as a result of maintaining a maritime "cluster" where shipping and the ships make up the "engine".

The fact that the Government of Denmark attaches great importance to employment of Danish seafarers is also reflected in the political proposal to introduce an amendment of the agreement on tonnage tax of March 2007, in which one of the crucial prerequisites were that Danish shipowners secured training places for ship’s deck officers, ship’s apprentices and ratings. This is a contributory factor in securing Danish competences and Danish employment in the entire cluster constituting “The Blue Denmark”.

On the basis of statistics from the Danish Maritime Authority, the Danish Shipowners' Association has drawn up employment statistics taking into consideration factors such as seafarers not being on board due to

holiday, sickness, etc. The total annual employment of Danish and foreign seafarers onboard ships registered with the Danish International Register of Shipping in the period 2005-2008 is as follows:

Year	*Danish seafarers*	*Foreign seafarers*	*Seafarers, total*
2005	8,648	4,343	12,991
2006	9,414	5,024	14,438
2007	9,344	5,324	14,668
2008	9,310	6,104	15,414

Source: The Danish Shipowners' Association.

At the end of 2005, 484 vessels with a total tonnage of 7.9m tons were registered by DIS. This number had increased to 490 vessels with a total tonnage of 8.4m tons at the end of 2006. This development continued in 2007 with 500 vessels with a total tonnage of 9.1 tons. At the end of 2008, the numbers were 537 vessels with a total tonnage of 10.1m tons.

Question 3
No relevant figures or statistics exist.

Article 6
Paragraph 3
(For the period 1 January 2005 to 1 December 2008)

Question 1 and 2
Settlement of Industrial disputes

The settlement of industrial disputes is based on a distinction between disputes of interest and disputes of rights.

a) Disputes of interest
Disputes of interest concern fields which are not covered by any collective agreement, either because no agreement has ever been concluded or because the collective agreement has expired without the parties having agreed on a renewal of it. The main rule is that industrial action will be lawful in such case.

With of view to assisting the two sides of industry in concluding acceptable agreements without resorting to industrial action, The Danish Parliament has adopted the Act on Conciliation in Industrial Disputes, popularly called the Public Conciliator's Act.

The task of the Official Conciliator is to assist the social partners in concluding agreements without resorting to industrial action.

The tasks and powers of the Official Conciliator are laid down in the Act on Conciliation in Industrial Disputes. The Danish Government has no influence on the actions of the Official Conciliator in connection with renewal of collective agreements. He or she will not have to take socio-economic considerations either in trying to make the parties reach a compromise and he or she has very wide powers in this connection.

Among the most important powers are the following:

- The Official Conciliator can decide that the continued negotiations shall take place with the assistance of an official mediator as chief negotiator.

- The Official Conciliator can decide to enter into the negotiations as mediator.

- The Official Conciliator is permitted to demand that any industrial action of which notice has been given should be postponed for up to two weeks.

- Where a conciliator finds that there is a possibility of a proposed solution that would be acceptable to both sides, he possesses the right to put forward a mediation proposal that must be communicated to the organizations concerned so that a ballot can be held. Before the Conciliator puts forward the mediation proposal he shall consult the representatives of each of the parties as to the formal and technical issues. Such a mediation proposal shall be put to a vote with the parties.

- The conciliator concerned is empowered to combine the various mediation proposals into a whole so that the voting is carried out on a single proposal, irrespective of how the industries involved are organized (the right to combine mediation proposals), provided all avenues for the possible negotiation of new agreements are exhausted.

The Danish system of collective agreements is special in the respect that many agreements specific to different trades entered into with different unions are in effect at the same workplace. Firstly, this differs greatly from an industry-oriented organisation and secondly, contract negotiations are carried out simultaneously and as part of a single agreement for large sections of the labour market.

The actors on the labour market are elected in order to negotiate agreements simultaneously in order to secure homogenous conditions for the organised labour market. The Official Conciliator's power vested in him by the act to link his proposals for settlements for different areas must be seen in the context of the aforementioned special characteristics of the Danish labour market. This rule assures solidarity in situations where a majority of wage earners have voted for a proposed settlement. In these situations the linkage rule provides an assurance for these wage earners that they will not be involved in a labour conflict when a minority - possibly a very little one - from an area of limited size for one reason or the other is dissatisfied with the agreement.

Thus the linkage rule, and the institution of the Official Conciliator, is primarily an expression of how Danish employees and employers organizations have chosen to run things. The Danish system of agreements makes the linkage rule a natural and clear state of affairs and the Danish government would have great reservations concerning a revision of the rule unless this represented the wishes of a majority of the actors on the Danish labour market, which up till now has not been the case. Reference is made to the reporting concerning Article 6§4 for more information on the views of the social partners concerning the linkage rule.

As mentioned the Official Conciliator is independent of the State. It is the Official Conciliator alone who assesses when the negotiation possibilities of new agreements are exhausted. This is naturally dependent upon the specific situation and the assessment takes place based on information from the organizations involved in the negotiations in the Official Conciliation Service. Both historically and today, the Official Conciliator's Act reflects how the Danish employees' and employers' organizations have wanted to solve these issues.

b) Disputes of rights

Disputes of rights concern disagreement regarding questions regulated by a collective agreement. In such cases it is not lawful to take industrial action. The labour market organizations have agreed to settle all such disputes through negotiation. The detailed regulations concerning such negotiations are contained in an agreement which lays down rules on conciliation in case of industrial disputes.

If a dispute arises in an enterprise, the first step should be that the shop steward and the management try to solve it through negotiations. If they fail to reach an agreement the matter must be negotiated at the level of the organizations, and if necessary, through the organizations at the central level. The matter can be settled finally at any of these levels.

If it turns out not to be possible to solve the dispute through negotiations between the two parties, the dispute must be referred to arbitration for final settlement or be brought before the Labour Court, depending on the nature of the case.

If the dispute concerns the interpretation of a collective agreement, it is settled by arbitration. If it concerns a breach of a collective agreement, e.g. a work stoppage in violation of a collective agreement, the matter is dealt with by the Labour Court.

The Labour Court

The Labour Court is a court of law with a special jurisdiction and its functioning is regulated by the Labour Court Act. The Labour Court is composed not solely of legally qualified judges, but also lay judges appointed by the social partners. The Labour Court is an important institution because the social partners are actively involved in the settlement of industrial disputes.

If a party to a case has no attachment to any of the organizations which appoint lay judges, a request may be made to the effect that the case is heard and settled without the participation of lay judges.

The Labour Court is empowered to deal solely with breaches of collective agreements, and to rule on the interpretation of the basic agreement in the event of any disputes arising from this agreement. It should be noted that these issues cannot be brought before the ordinary courts of law, and that there is no appeal against the rulings of the Labour Court.

The Labour Court may impose penalties. The amount of the penalty varies from case to case and will include damages for the loss suffered.

In the event of a work stoppage in violation of a collective agreement, the penalty imposed on the striking employees will typically be fixed as a certain amount for each hour they strike.

A copy of the Labour Court Act is enclosed (in Danish).

As an extension of the collective bargaining system, the parties apply their own system of sanctions to settle disputes arising from interpretation of the collective agreements. They have agreed on special rules for Industrial Arbitration. These rules may vary from sector to sector, but are all based on the special "Standard Rules for Handling of Labour Disputes", originally agreed upon by LO and DA in 1908.

The Arbitration Tribunal is typically composed of persons appointed by the two sides and a neutral jointly appointed umpire. If the two parties fail to agree on the appointment of the umpire, he will be appointed by the President of the Labour Court. The philosophy is that the parties themselves are in the best position to decide how their collective agreement should be interpreted.

Question 3
The table below shows the development in the number of cases during recent years in the Labour Court:

	2005	**2006**	**2007**	**2008**
Received cases	1186	1073	1045	992
Closed cases	1072	859	991	1096
Pending cases	747	961	1015	897

Source: The Danish Labour Court

The table below concerns the number of received cases distributed on workers' organisations:

	2005	**2006**	**2007**	**2008**
The Danish Confederation of Trade Unions	1028	883	847	912
Confederation of Professionals in Denmark	2	7	4	6
Other	9	72	7	5

Source: The Danish Labour Court

The table below concerns the number of received cases distributed on employer's organisations:

	2005	**2006**	**2007**	**2008**
The Confederation of Danish Employers	122	67	120	55
The Danish Confederation of Employers' Associations in Agriculture	1	1	2	2
Other	24	43	64	6

Source: The Danish Labour Court

Of the 1096 cases which were closed at the Labour Court in 2008, 244 cases (22 pct.) were repealed with no session being held.

214 cases (20 pct.) were closed with judgment by default after one or few preliminary sessions.

375 cases (35 pct.) were closed by settlements between the parties, also after one or few sessions.

263 cases (23 pct.) were subject to actual judicial hearing.

Article 6
Paragraph 4

Question 1 and 2
In Denmark, trade unions have a fundamental right to try to obtain agreements with the employers and employers organizations. The trade unions may reinforce their claim by taking industrial action against the employer.

The right to take industrial action is based on many years of practice by the Danish Labour Court. There is a far-reaching right to take industrial action and sympathy action (to support an on-going strike). The lawfulness of industrial action depends on whether the action concerns work that normally falls within the trade union's fields of activity. However, it is not a requirement that the enterprise concerned have any employees that are members of the trade union taking industrial action.

The main rule in the Danish system is that a strike can only be called on employers who have not yet concluded collective agreements, or in connection with renewal of collective agreements and only if the organization orders its members to strike. In the Danish system, the power to decide to call a strike lies with the organization and not with the individual member. Before taking industrial action a strike notice must be served. The strike notices appears from the basic agreement or the individual collective agreements. In certain areas strike notices may be required to be served with the individual employee's notice of termination.

The Danish labour law does thus not regulate the right to strike for neither the employers nor the employees. However, the legal system assumes that the social partners have disputes of rights to support the demand for a collective agreement. Lawful industrial action comprises strikes, blockades, lockouts and boycotts.

The legislature does not intervene in the negotiations on the labour market and in pending industrial disputes as long as there is a chance that the social partners will come to a negotiated solution. But in quite extraordinary cases, the legislature has intervened in industrial disputes in situations where there was no prospect of a negotiated solution and the dispute affected essential services, i.e. in sectors where industrial disputes could lead to danger to life, personal security or health for the entire population or special groups. No legislative intervention has taken place during the period under review.

The disputes of rights are thus closely connected to the industrial right of negotiation and are applied in connection with demands for conclusion or renewal of collective agreements. The disputes of rights are laid down in all basic agreements on the labour market, including the public area agreements. The right to call strikes on behalf of the members rests with the labour market organizations.

An agreement not to strike during the settlement period applies, which means that the collective agreement cannot be breached by stoppage of work in the form of strikes, blockades, lockouts or boycotts. The agreement not to strike is a legal doctrine, which has been used since 1899 where representatives of

employers and employees concluded the so-called September compromise. The September compromise was concluded on the basis of the largest strike ever to have taken place in the history of Denmark.

The initial aim of the September compromise was recognising that strikes and lockouts were not merely to be called without the other party having received a notice from the competent bodies in the organization. Thus it was recognised that "collective agreements concluded between (the two main organizations) shall be respected and met by all the organizations existing under them".

The parties also clearly described the importance of the workplaces being opened after the lockout and that all parties took part in ensuring secure and stabile working conditions in the workplaces.

Today, the so-called "peace obligation" appears explicitly from the majority of the collective agreements, which are concluded.

Moreover, the peace obligation is supplemented with a quick and efficient system of solving disputes. The parties solve any disputes arising as to the comprehension of the collective agreement and the terms agreed through a system, which is recognised by both parties.

The peace obligation is based solely on the parties' individual agreements, which have developed against this background. In Denmark this is also a completely natural state of law: When two parties have signed an agreement they naturally have the right to agree that in the term of the agreement they will not start or engage in industrial disputes to change the agreement.

<u>On the linkage rule</u>
In May 2009 the Danish Government held consultations with the most representative social partners concerning the linkage rule in section 12 of the Conciliation Act. At this occasion DA (the Confederation of Danish Employers) and LO (the Danish Confederation of Trade Unions) reiterated their comments from June 2004 (to the ILO) which are copied below. FTF (Confederation of Professionals in Denmark) and KL (Local Government Denmark, LGDK) associated themselves with the statement made by DA and LO.

The social partners emphasize that negotiations do take place before section 12 can be enforced and that a compromise proposal will not be put forward against the wish of the social partners.

Furthermore, the DA, LO, FTF and KL underline that section 12 should be seen in the light of the extensive right to strike in Denmark, including the right to sympathy actions.

DA's and LO's statement (to the ILO) from June 2004:

The central organizations are of the opinion that section 12 of the Conciliation Act should be seen in the light of the wording of Article 4 of the ILO Convention No. 98:"Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

The central organizations are of the opinion that the Conciliation Service must be said to be "a machinery for voluntary negotiation" as one of the most important purposes of the Conciliation Service is to offer assistance (at its own initiative or at the request of the social partners) in connection with the renewal of collective agreements, cf. section 3 of the Act.

The Public Conciliator and the body of conciliators may also postpone work stoppages of which notice has been given for up to 2 weeks two times, but are not empowered to decide that such work stoppages may not be carried out at a later point of time.

Similarly, the Public Conciliator is during the conciliation process authorised to recommend concessions which may seem appropriate for a peaceful settlement of the dispute, cf. section 4(1) of the Act. But the Public Conciliator may not dictate any conciliatory solution to the parties - but is authorised to come up with a compromise proposal when he/she finds it appropriate to do so, cf. section 4(3) of the Act. In such cases the Public Conciliator is only to evaluate the possibilities for the adoption of the proposal. A compromise proposal will not be put forward against the wish of the parties.

The activities of the Public Conciliator are further subject to judicial supervision, cf. section 9 (1), 6 of the Labour Court Act which provides that disputes concerning the powers of conciliators may be brought before the Labour Court.

Furthermore, the social partners have an important influence in connection with the appointment of the conciliators, cf. section 1 of the Conciliation Act according to which the Minister for Employment appoints 3 conciliators at the nomination of the Labour Court.

In this connection the central organizations stress the autonomy of the conciliators - both in relation to the social partners and in relation to the Government.

This is in the opinion of the central organizations underpinned by the fact that it is often a judge who exercises the function, that the conciliators are not subject to instructions from the Government, and that no financial considerations are taken in connection with submission of compromise proposals.

It should also be noted that the parties have no influence on the content and submission of compromise proposals, cf. section 4 (3). In connection with voting on compromise proposals the voting is on own negotiated results. Bargaining results obtained without the assistance of the Conciliation Service form part of a compromise proposal if wished by the parties.

The central organizations thus find that the Conciliation Service cannot be said to be an element in the general exercise of public powers.

<u>On civil servants under the Civil Servants Act</u>
As mentioned in earlier reports, civil servants in Denmark have favourable conditions of employment and a favourable pension scheme as compensation for being denied the right to strike.

Giving civil servants a right to strike would tip the balance and make a radical change of the system necessary.

Initiating a major change of the employment conditions for civil servants does not seem expedient as the number of persons employed according to the Civil Servants Act is continuously reduced, and because only employees mentioned in article 2 in the circular letter about utilisation of employment under the Civil Servants Act will be civil servants after a transition period.

The circular letter about utilisation of employment under the Civil Servants Act was issued in December 2000 and the categories of employees mentioned in article 2 are covered by article 31 in the Social Charter.

The employees mentioned in article 2 the circular letter about utilisation of employment under the Civil Servants Act are:

- higher government officials,
- judges,
- senior deputy judges,
- deputy police prosecutors,
- deputy public prosecutors,
- deputy state prosecutors,
- employees in the police corps,
- governors of prisons,
- prison officers,
- some military personnel (officers, sergeants, etc.),
- officers in the civil defence forces, and
- inspectors of the Fishery Inspection.

A copy of the circular letter and its amendments is enclosed.

In spring 2008 collective agreements were renewed after negotiations between the social partners. The social partners in the state sector agreed on a collective framework agreement on employment conditions for higher government officials (”Rammeaftale om kontraktansættelse af chefer i staten”). The agreement will reduce the use of civil servant status for executives and it will generally not be possible to engage executives to positions with civil servant status unless the applicant already is a civil servant and wishes to uphold that status. The permanent secretaries will, however, still be civil servants.

On participation in a lawful strike and the status of the employment relationship
In October 2009 the Government held consultations with the most representative social partners - DA (the Confederation of Danish Employers) and LO (the Danish Confederation of Trade Unions) - concerning the question of the status of the employment relationship after participation in a lawful strike.

The Danish state of law is the following:

In Denmark the disputes of rights are not governed by statute but have developed through collective agreements and the practice of the Labour Court since the beginning of the 20th century.

This also applies for the question of maintaining or re-establishing the employment relationship after a lawful strike.

The so-called no-detriment clause which ensures that the broken employment relationship is re-established after an industrial dispute used to be included in basic agreements or in mediation proposals. This is however not the case any more since the no-detriment clause is now regarded as a general prerequisite in relation to dispute and lawful strikes in connection with concluding or renewal of collective agreements.

The worker who participates in a lawful strike is thus guaranteed to be re-employed unless there are other factors such as shortage of materials, lapse of orders, shutting the enterprise or parts thereof.

During the reporting period there have been no cases of lack of re-establishment after an industrial dispute brought for the Labour Court.

The social partners do not believe that further regulation is necessary in this field.

On the status of non-members of trade unions when the trade union has called a strike
The right to strike in Denmark is closely related to the right to collective bargaining. The right is primarily exercised when unions attempt to establish or renew collective agreements on wage and working conditions

with employers. In order to engage in negotiations, a collective of workers must exist to make this demand - typically a trade union. It is the opinion of the Danish Government that a single worker can neither demand such negotiations nor support these demands by means of a strike.

The right to strike is guaranteed by all major labour market agreements, including agreements for the public sector. Labour market organizations have an independent right to initiate conflicts on behalf of their members. Organizations may not demand that non-members initiate or participate in labour conflicts; therefore there is no general right in Denmark for unorganised workers to strike in order to obtain agreements.

It should be noted however that, according to the working environment legislation, collective agreements and fundamental legal principles, an employee has, regardless of whether he or she is organised, the right to leave the workplace if his or her life, honour or welfare is under threat. As a consequence, amongst other things, a worker may leave the workplace without harmful or unfair consequences when a serious and immediate danger exists.

After an agreement is reached a peace obligation exists for the duration of the agreement. As a consequence strikes are prohibited until the expiration of the agreement.

It is the opinion of the Danish Government that Article 6 protects the right to collective bargaining and the use of collective action as a means to ensure that this right may be exercised. The right to action in support of attaining a collective agreement is the sole prerogative of a collective of workers. The Danish Government does not view Article 6 as relating to an individual right to action in order to secure collective bargaining.

Question 3
In spring 2008 collective agreements within the public sector were renewed. Within the public health sector there was a major strike from 16 April 2008 until 3 June 2008 where the social partners reached an agreement without intervention from the Government.

ADDITIONAL PROTOCOL
TO THE EUROPEAN SOCIAL CHARTER

Article 2 - Right to information and consultation

Article 2
Paragraph 1 and 2

Question 1
Directive 2002/14/EC has been implemented in the Act on Information and Consultation of Workers (No. 303 of 2 May 2005) creating a legal framework with regard to information and consultation of workers. The Act guarantees a right to information and consultation for workers in enterprises with a minimum of 35 employees. However, the Act only applies to workers who are not by virtue of a collective or other agreement already covered by a procedure which gives them a right to be informed at an appropriate time of matters of essential importance for their employment, including information on the situation of the enterprise and the long-term perspectives as regards employment and the financial situation.

Employers who do not fulfil their obligations according to the Act can be fined.

Question 2
The Act on Information and Consultation of Workers is in force and applicable.

Question 3
All workers employed at an undertaking with 35 employees or more will be covered either by the Act on Information and Consultation of Workers or by a collective agreement setting forth an obligation to inform and consult the workers in accordance with Directive 2002/14/EC. Workers employed by an undertaking with less than 35 employees are not covered by the Act on Information and Consultation of Workers but may be covered by a collective agreement with provisions on information and consultation of workers. Accordingly, it is not possible to give an exact number of workers in Denmark not covered by an information and consultation procedure.

Article 3 - Right to take part in the determination and improvement of the working conditions and working environment

Article 3
Paragraph 1 and 2

Question 1 (concerning point a, b and d)
Working environment
Part 2 of the Working Environment Act lays down the rules concerning the structures and resources of the committees on safety and health in the enterprises, including rules concerning information and consultation of the employees in the field of safety and health. The more detailed rules concerning the safety and health cooperation activities in the enterprises are laid down in Order No. 575 of 21 June 2001 (as amended by Order No. 491 of 20 June 2002, Order No. 557 of 17 June 2004, Order No. 557 of 17 June 2004, Order No. 1506 of 21 December 2004 and Order No. 1425 of 27 December 2008).

Order No. 1506 of 21 December 2004 about the obligation for the employer to give the members of the safety group an obligatory education and Order nr. 1503 of 21 December 2004 about the content and quality of this education are part of a working environment reform, which the Danish WEA has implemented since 2005 to strengthen the resources and skills of the members of the safety organisation. The reform was enacted by the Act of Amendment of The Working Environment Act, No. 425 of 9 June 2004.

It is expected, that a major reform of the structures of the health and safety-committees in the enterprises will be adopted in 2010.

The purpose of having specific structures of obligatory cooperation between employer and employees in the enterprise and information and consultation of the employees, is to strengthen the resources aiming at securing sufficient health and safety activities within the enterprise. In the safety organisation the workers can take part both in the determination and improvement of the working environment, and they can contribute to the enforcement of the regulation.

In enterprises with 1-9 employees the work in the enterprise concerning these matters shall take place in the form of personal contacts between the employer and the employees. In enterprises with 10 employees or more, the work shall be organised in a safety organisation, with supervisors and elected safety representatives.

With a view to strengthening and streamlining the safety and health activities of enterprises, deviation may be made from the above rules if 1) an agreement has been concluded between one or more employee organisations and the employer organisation(s), and 2) if the enterprise is covered by such an agreement concluded at enterprise level between the employer and the employees. Only the rules about structure, the working method, number of meetings etc. can be deviated from by collective agreement. Reference is also made to Denmark's 26.th Report.

Working conditions and work organisation
In Denmark working conditions are mainly regulated by collective agreements. Legislation in this field do exist, though, e.g. on areas where Denmark has implemented EU-directives through legislation. In Denmark there is a long and strong tradition for workers involvement in decisions concerning working conditions and work organisation on all levels, including the workplace. The collective agreements provide provisions on working conditions as on work organisation. The collective agreements set out the general framework for working conditions and work organisation but individual agreements are often made at the workplace level for instance on flexible working hours, telework, team organised work, seniority agreements etc.

Thus the employees are always involved in these decisions either by forming part of the collective agreements or by participating in local agreements.

Regarding information and consultation of workers in general reference is made to the reporting concerning Article 2 of the Additional Protocol.

Question 2 (concerning point a, b and d)

Working environment

Since 2005 the Danish Working Environment Authority (WEA) has implemented a working environment reform, ensuring all employees a good working environment. According to the reform, the WEA must screen all Danish enterprises with employees by the end of 2011 with a view to prioritising enterprises with the most problematic working environment for inspection. This division of enterprises provides the WEA with the opportunity to concentrate inspection resources on inspections of "less good" enterprises, and consistently do follow-ups until the enterprise's working environment starts to comply with the legislative requirements.

As from 1 January 2005 and for the following seven years, the WEA will screen the health and safety conditions of all Danish enterprises with employees. Subsequently, all enterprises will be screened approximately once every three years. Enterprises prioritised for inspection will be screened approximately every two years.

Screening is a quick inspection of health and safety conditions in enterprises. The primary aim of screening is to assess whether health and safety conditions are adequate or need a closer inspection. Adapted inspections are thorough inspections carried out at enterprises where the screening indicates that there are or might be significant working environment problems.

During the screening and the adapted inspection the WEA will check whether the enterprise has organised the safety-groups and committees according to the legislation and whether the persons, who are elected and appointed to the safety group have completed the obligatory education. It is also checked that the safety organisation has been involved, as regulated, in the activities related to the APV (workplace assessment). Further reference is made to the comments made in Denmark's 26.th Report.

Working conditions and work organisation

Reference is made to remarks concerning question 1.

Question 3 (concerning point a, b and d)

No relevant statistics are available. Reference is made to the comments made in Denmark's 26.th Report (questions D, E and F) concerning proportions, thresholds etc.

Question 1, 2 and 3 concerning point c

Within the private sector as well as the public sector the social partners have made agreements to set up the framework for cooperation between management and employees at all levels in all enterprises. In enterprises with 35 employees or more, the day-to-day cooperation shall be promoted and observed by a cooperation committee (works councils) composed of representatives of management and employees.

The first Cooperation Agreement was made between the Central Organizations in 1947 and it has been revised since.

The agreements have e.g. been supplied with the agreements on equal treatment (women and men) and also on matters relating to equality between native Danish employees and employees having different ethnic backgrounds.

In order to have an effective and dynamic implementation of the agreements, secretariats have been set up in particular to support, guide and inspire the work of the cooperation committees. The secretariats are composed by representatives of the social partners.

The cooperation committees also function as a focal point for promoting social and socio-cultural services at the work place. This is also underpinned in the collective agreements where cooperation committees are encouraged to support a broad range of social and socio-cultural services within the undertaking.
Due to the long tradition for cooperation between management and employees in undertakings such arrangements are often agreed upon in a more informal way.

In all circumstances the employees are involved in the decisions concerning these initiatives.

The concrete results of these consultations and decisions are that it is very common for the undertakings to offer e.g. free or at low cost gym facilities, fruit, massage, healthy meals etc. In addition to this, it is widely spread to have all kinds of social gatherings at the workplace giving the management and employees occasions to meet informally - which can help improving the social climate at the workplace. These arrangements can take place during working hours, e.g. focussing on the health of the employees (sports and health days) or with a purely social agenda which at the same time serves to improve the reconciliation of work and family life (Christmas parties with the participation of children of the employees).

There is a general trend that management invests much more in the well-being of the employees offering them a wide range of social and socio-cultural activities. This can also be seen during the negotiations of collective agreements where such initiatives are put forward as important elements in the agreements. For instance in the collective agreements from 2008 concerning the public sector it was agreed to include a wide range of initiatives to promote the well-being of employees.

In the text below are given answers and supplementary information as requested by the ECSR on the basis of previous reporting on the articles covered by the 29.th Danish Report

European Social Charter

Article 2

Paragraph 2: The Committee asks the next report to provide updated information on the increased remuneration paid in respect of work done on a public holiday.

Answer:
Collective agreements include provisions concerning the rate of payment for work done on public holidays. Below is a table covering the collective agreements within industry and sales.

Reference is also made to the reporting on Article 2.

Extra payment for overtime in Industry, 1 March 2009

	Extra payment pr. Hour (DKK)
Sundays and holidays	
Until 12 am	68,90
After 12 am	103,50

Source: Collective agreement between Dansk Industri and CO-Industri.

Payment for overtime in Sales

	Percentage added
Sundays and holidays	+100 % of hourly wage

Paragraph 5: The Committee had also noted that where social partners agree on a postponement of the weekly rest day compensation in the form of equivalent rest days shall be provided, except if in exceptional cases it is not possible to compensate rest days "adequate protection shall be provided." The Committee has sought clarification of this point.

Answer:
Reference is made to the reporting on Article 2, paragraph 5.

Article 4

Paragraph 1 and 2: The report reiterates that the level of pay and working conditions in the fields covered by collective agreements have a significant spill-over effect on those areas that are not covered by collective agreements. The Committee notes that once again, the Government does not provide information on the minimum wages actually paid in the latter.

…..The Committee notes that collective agreements cover 80% of all workers. Therefore it asks what rules on remuneration for overtime applies to workers not covered by collective agreements.

In its previous conclusion the Committee asked to receive all relevant information on rules regulation flexible working time arrangements in order to assess their impact on the workers' right to an increased rate of remuneration in compensation for overtime work. In the absence of reply, the Committee notes that if the necessary information is not provided in the next report, there will be nothing to show that the situation in Denmark is in compliance with Article 4§2 of the Charter.

Answer:
Reference is made to the reporting on Article 4, paragraph 1 and 2. Reference is also made to the Danish reply of 13 March 2007 to questions of 15 December 2006 from the ECSR concerning Article 4, paragraph 1 and 2, in respect of the 26.th report of Denmark and the later supplement to the reply containing information on the net national average wage per hour for the year 2005 based on information received from Statistics Denmark.

Additional Protocol to the European Social Charter

Article 2

The Committee previously noted (Conclusions XVI-2, pp. 232 – 233) that according to figures provided by LO on the basis of a 2000 survey, the total coverage of the collective agreements laying down rules on the right to information and consultation is 83 % of the total work force, including a coverage rate of 100 % in the public sector and of 71 % in the private sector. With regard to the private sector, figures provided by DA were slightly different since they showed a coverage rate of 77 %.

The Committee recalled that Article 2 of the Additional Protocol does not apply to civil servants and requested confirmation that civil servants are not calculated among 83 % of workers covered by relevant collective agreements. The report does not provide an answer to this question.

Answer:
The Danish Government assumes that the 83 % mentioned by LO in 2000 includes civil servants. It should be emphasized that workers who are not covered by a collective agreement in this respect are covered by the Act on Information and Consultation of Workers.

The Committee understands that following implementation of the Act [on Information and Consultation of Workers] all employees in undertakings employing at least 35 employees are granted a right to information and consultation irrespective of whether they are covered by a collective (cooperation) agreement or not and asks the next report to confirm whether this understanding is correct.

Answer:
Yes. The understanding of the Committee is correct.

In reply to the Committee's question, as to what is the procedure and what are the sanctions in the event employers do not comply with their obligation to inform and consult their employees, the report specifies that employees in the public sector may forward a written request to the management to comply with their obligation within a period of one month. In the event management fails to follow such request, employees may submit a complaint to the Cooperation Board and if the latter finds that the conduct of the employer constitutes a breach of the cooperation agreement, it may impose appropriate sanctions, like issuing an order for compliance to the employer or imposing a penalty.

The Committee asks whether a similar procedure applies in the private sector or whether there exist other legal remedies in the event the employee's right to information and consultation has been violated.

It further asks what the legal remedies for workers governed by the new Act on information and consultation of workers are, in the event their information and consultation rights are not respected.

Answer:
When an employer does not comply with the obligation in a collective agreement to inform and consult workers the way to proceed depends on the relevant collective agreement. Ultimately the breach of the collective agreement may be taken to the Danish Labour Court. Employers who do not comply with the Act on Information and Consultation of Workers can be fined.

Article 3

It asks for information how employee participation in decision-making within the enterprise regarding the working conditions, the work organisation and the working environment is guaranteed by legislation, collective agreements or other means outside the scope of regulations on the protection of health and safety at the workplace.

It refers in particular to its conclusion under Article 2 of the 1988 Additional Protocol and asks whether cooperation agreements entered into by the social partners do not only cover the employees' right to information and consultation but also grant an effective right to participation in the determination and improvement of the working environment.

Answer:
The legislation and collective agreements within the scope of the Working Environment Act also covers employee participation in decision-making within the enterprise regarding the working environment and protection of health and safety (art 3 (1), (a), last clause and (b)). Reference is made to the reporting concerning Article 3, question 1, where the system of direct employee participation in the safety organisation is described. The main task for the safety organisation is to offer advice to the employer in matters of health and safety. The employer must be a member of the safety organisation.

The above mentioned possibility to deviate from the regulation about the structure of the safety organisation by collective agreement can be considered as a second possibility to guarantee employee participation in decision making, namely through membership of the union, and the union being a party in the collective agreement. The Working Environment Act has two other areas, where the regulation can be either deviated from or supplemented by collective agreements - the working-time regulation and the regulation on dangerous work.

As far as working conditions and work organisation is concerned, employee participation is on the general level guaranteed in collective agreements setting out standards for working conditions and on work organisation issues in the broad sense.

On the enterprise level the employees are guaranteed participation according to the cooperation agreements. Reference is made to the remarks concerning Article 3, c, as far as the mandate and functioning of the cooperation committees is concerned.

Concerning the question of whether the cooperation agreement also grants an effective right for the employees to participate in the determination and improvement of the working environment reference is made to the reporting on Article 3, question 1, on committees on safety and health. Thus, the employees are effectively secured the right to participate in all aspects of the working environment issues at the work place.

The Committee asks for information whether employees are granted a right to participate in the supervision of the observance of regulations in all matters referred to in Article 3 of the 1988 Additional Protocol.

It further wishes to know what are the legal remedies available to workers in the event their right to take part in the determination and improvement of the working conditions and working environment within the areas covered by Article 3 of the 1988 Additional Protocol is not respected.

Finally it asks what sanctions may be imposed on employers which fail to fulfil their obligations in this respect.

Answer:
The detailed Danish regulation of the rights, obligations, skills and powers of the members of the safety organisation is laid down in Order No. 575 of 21 June 2001. Both the safety group and the safety committee have, among others, the task of monitoring the working environment in the enterprise. The members of the safety organisation can if necessary order the stopping of a working process, if it is dangerous. Furthermore the safety group, as the lowest level in the organisation, is guaranteed an ongoing contact with the employees. Thus the employees participate in the supervision of the observance of the regulation.

Employees as well as employers, including members of the safety organisation, can contact the Danish Working Environment Authority, if they are denied their rights to take part in the determination and improvement of the working environment. If employees for instance are denied the right to elect representatives for the safety organisation, they can file a complaint to the authority. The WEA will then consider the complaint and take appropriate action.

If the legislation on the safety organisation etc. is violated, the employer can be given an improvement notice from the WEA, and if the employer fails to comply with the legislation and/or the improvement notice he or she can be fined or sentenced to prison.

If the complaint is about violation of the legislation, the employee and the employer can further file a complaint to the Working Environment Appeals Board.

The Board was set up in 1999 and is an independent administrative authority. The Board considers decisions on specific cases under the Danish Working Environment Act. The Board makes the final decision as to whether the Working Environment Act has been violated. In addition, the Board considers administrative law issues related to the individual decision. The Board consists of a chairman and 13 appointed members. 10 of the appointed members are appointed on recommendation by the social partners.

The Committee recalls that Article 3 of the Additional Protocol does not require that employers offer social and socio-cultural services and facilities to their employees but requires that workers may participate in their organisation, where such services and facilities have been established.

It reiterates its question whether there were undertakings which have set up social or socio-cultural services and whether employees of such undertakings are entitled to take part in their determination and improvement.

Answer:
Reference is made to the reporting on Article 3, c.

List of enclosures – legislation

Act No. 407 of 28 May 2004 – The Holiday Act

LBK nr. 268 af 18/03/2005 om arbejdsmiljø

BEK nr. 324 af 23/05/2002 om hvileperiode og fridøgn

BEK nr. 611 af 25/06/2003 om ændring af bekendtgørelse om hvileperiode og fridøgn

BEK nr. 239 af 06/04/2005 om unges arbejde

LBK nr. 424 af 08/05/2006 om foreningsfrihed på arbejdsmarkedet

LBK nr. 443 af 13/06/1990 om beskyttelse mod afskedigelse på grund af foreningsforhold

LBK nr. 709 af 20/08/2002 om mægling i arbejdsstridigheder

LOV nr. 214 af 24. marts 2009 om ændring af lov om Dansk Internationalt Skibsregister

LOV nr. 106 af 26/02/2008 om Arbejdsretten og faglige voldgiftsretter

Cirkulære om Anvendelsen af tjenestemandsansættelse i staten og i folkekirken

LOV nr. 303 af 02/05/2005 om information og høring af lønmodtagere

BEK nr. 575 af 21/06/2001 om virksomhedernes sikkerheds- og sundhedsarbejde

BEK nr. 1506 af 21/12/2004 om ændring af bekendtgørelse om virksomhedernes sikkerheds- og sundhedsarbejde

BEK nr. 1503 af 21/12/2004 om arbejdsmiljøuddannelserne

LOV nr. 425 af 09/06/2004 om ændring af lov om arbejdsmiljø