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EUROPEAN SOCIAL CHARTER

33rd National Report on the implementation
of the 1961 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 1988 Additional Protocol)

for the period 01/01/2009 – 31/12/2012)

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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)

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Article 2, Paragraph 2, Question 1 and 2
As described in the 29th report the act on 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 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.

Article 2, Paragraph 2, 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 month notice as far as the first three weeks are concerned and one month notice as far as the last two weeks are concerned.

If the holiday is not taken in the holiday year, the employee - as a main rule - loses it and it is transferred to the holiday fund. Firstly, this is because it gives the employee 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 (Article 13, paragraph 1 and 2), at the beginning of the working hours on the first day of holiday. 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.

Until 2012, the right to replacement holiday only applied if the illness had begun before the commencement of the holiday. Only when illness began before the holiday period, the employee retained the right to replacement of all affected days.

In 2012, the right to replacement holidays in case of illness (including injury) during the holiday period was introduced. The amendment to the Danish Holiday Act gives employees, who fall ill during their holiday, the right to interrupt their holiday and have the days of holiday during which they were sick replaced. The right to replacement holidays applies after a waiting period of up to five days per holiday year. The employee is required to present medical documentation of the illness. The amendment has been inserted into the Danish Holiday Act as section 13, subsections 3-6.

The amendment to the Act came into force on 1 May 2012.

Article 2, Paragraph 3, Question 3
No statistical information exists.

Article 2, Paragraph 5, Question 1
The Danish rules and administrative regulations which correspond to the provisions of the Charter can be found in the following documents:

- Consolidation Act No. 1072 of 7 September 2010 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, Article51, 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 of the company.

The Order on rest period 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 on certain aspects of the organisation of working time and if carrying out 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 be hospital services and activities related to supply of gas, water and electricity etc. 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 laid down in the Order on rest periods and days off – according to which "adequate protection shall be provided" if in exceptional cases, it 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.

Article 2, Paragraph 5, Question 2
There are no further measures taken to implement the legal framework in the period under review.

Article 2, Paragraph 5, Question 3
No statistical information exists.

Supplementary Information to Article 2

Question: *Paragraph 2: Public holidays with pay*
The Committee takes note of the information contained in the report submitted by Denmark.

In its previous conclusion (Conclusions 2007), the Committee asked for updated information on the increased remuneration paid in respect of work done on a public holiday. According to the report, work done on a public holiday is extraordinary and should be fully justified. The Act on salaried employees ensures a full salary to employees working on a public holiday. As regard other workers, the question is covered by collective agreements (which concern around 80 per cent of workers) or the individual employment contract.

The Committee considers that work performed on a public holiday requires a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked. **The Committee asks what rate of pay is applied for public holidays worked.**

Reply:
Collective agreements include provisions concerning the rate of payment for work done on public holidays. Below are figures covering the collective agreements within industry and trade.

Extra payment for overtime in Industry, 1 March 2012

	Extra payment pr. hour (DKK)
Sundays and holidays	
Until 12 am	72.35
After 12 am	108.05

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 trade

	Percentage added
Sundays and holidays	+100 per cent of hourly wage

Question: *Paragraph 5: Weekly rest period*
The Committee takes note of the information contained in the report submitted by Denmark. It notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter. **The Committee asks that the next report provides a full and up-to-date description of the situation in law and practice in respect of Article 2, paragraph 5.**

Reply: *The Danish Working Environment Act:*

51.-(1) Within each period of seven days, employees shall have a weekly 24-hour period off, which shall be in immediate connection to a daily rest period. The weekly 24-hour period off shall, as far as possible, fall on a Sunday, and, as far as possible, at the same time for all employees at the enterprise.

(2) The regulation in subsection (1), 2nd clause shall not apply to agriculture or horticulture.

(3) In case of care work or handling of animals or plants, and for work which is necessary to preserve objects of value, the weekly 24-hour period off may be deferred and replaced by a corresponding period off later, when this is necessary for reasons of protection or to ensure continuous provision of services or sustained production. The Minister for Employment may lay down more detailed regulations on this matter.

Order No. 324 of 23 May 2002 on rest periods and days off:

4.-(1) Within each period of 7 days, the employees have a weekly day off which must be directly linked to a daily rest period. The weekly rest day shall as far as possible fall on a Sunday, and as far as possible simultaneously for all who are employed in the company.

(2) The rule in paragraph. 1, 2 section shall not apply to agriculture and horticulture.

The Danish Working Environment Authority is not aware of complaints regarding this specific area in the period referred.

Article 4 – The right to a fair remuneration

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 per cent of the employees on the Danish labour market are covered by a collective agreement. This means that about 20 per cent 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 per cent, while it is about 60 per cent 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 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 two or three years and are renewed on 1 March or 1 April of the year of renewal.

Article 4, Paragraph 1, Question 3

In spring 2010 and 2012 collective agreements were renewed on the private labour market after negotiations between the social partners and in spring 2011 the collective agreements were renewed in the public sector.

The below table shows the income trends for the private sector 2009-2012, including the typical minimum wage.

Income trends

	2009	2010	2011	2012
Payment in thousands DKK				
Earned income incl. pension				
High-level qualifications	604	602	624	632
Skilled manual work	391	397	399	400
Trade and service	296	310	324	312
Typical minimum wage	220	224	228	229
Earned income excl. pension				
High-level qualifications	561	558	577	585
Skilled manual work	360	365	366	367
Trade and service	275	288	300	290
Typical minimum wage	202	206	209	210
Disputable earned income				
High-level qualifications	285	309	317	321
Skilled manual work	214	222	223	223
Trade and service	174	185	191	188
Typical minimum wage	137	142	145	145
Changes in per cent				
Earned income excl. pension				
High-level qualifications	2,5	-0,6	3,4	1,5

Skilled manual work	2,8	1,4	0,4	0,2
Trade and service	4,7	5,0	4,0	-3,5
Typical minimum wage	1,9	2,0	1,7	0,4
Disputable earned income				
High-level qualifications	4,1	8,1	2,6	1,2
Skilled manual work	4,2	3,5	0,4	0,3
Trade and service	4,4	6,2	3,2	-1,5
Typical minimum wage	2,7	4,1	1,6	0,4
Real earned income				
High-level qualifications	2,8	5,8	-0,1	-1,2
Skilled manual work	2,9	1,2	-2,3	-2,1
Trade and service	3,1	3,9	0,5	-3,9
Typical minimum wage	1,4	1,8	-1,2	-2,0

Note: Standard calculation is based on the level of the Structural Statistics While the typical minimum wage is based on industry convention. Full-year Profit is based on 37 hours per week throughout the year (except public holidays). Disposable income is earned income excl. pension contributions and tax.
Source: Statistics Denmark and DA.

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 and the social partners make sure that there are no breaches in their collective agreements concerning overtime. 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 trades and services.

Extra payment for overtime in Industry, 1 March 2012

Payment	**DKK pr. hour**
1st and 2nd clock hour	36.35
3rd and 4th clock hour	58.10
5th clock hour and after	108.65
Before normal working hours	
6 am – 6 pm	36.35
6 pm – 6 am	108.65
Sundays and holidays	
Until 12 am	72.35
After 12 am	108.05
Overtime without notice	92.75

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 trade

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.

Article 4, Paragraph 3, Question 1, 2 and 3

There is a relationship between gender segregation and wage differentials on the labour market.

The gender-segregated labour market is considered the most important reason for the pay differentials between women and men. Therefore, the two gender equality challenges are dealt with together.

- A little more than half of all female employees and about 21 per cent of men are employed in the public sector. A larger number of men are employed in the private sector. In local government, there are more than three times as many female as male employees. By contrast, there are slightly more men than women employed in the state sector.
- On average, men earn more than women. The observed pay differentials reflect among other things differences in the trades they work in, differences in the jobs they perform, and differences in the personal characteristics such as educational level and work experience. Today, discrimination is a minor problem.

Gender segregation on the labour market shows in several ways:

- Women and men work in different sectors: women dominate the local government sector and men are employed in the private and state sectors to a much higher degree,
- Women and men work in different professions or trades: few women are employed in the building industry, and office related work remains dominated by women,
- Enterprises tend to see women and men in specific jobs: there is a tendency that many enterprises have fixed, preconceived ideas of what kind of jobs women and men perform. A female smith is unusual,

- Customers may want to have their orders attended to by men or women: e.g. male social educators are not always welcomed by parents at child-care facilities; women electricians are not always considered qualified.

Pay development for women and men

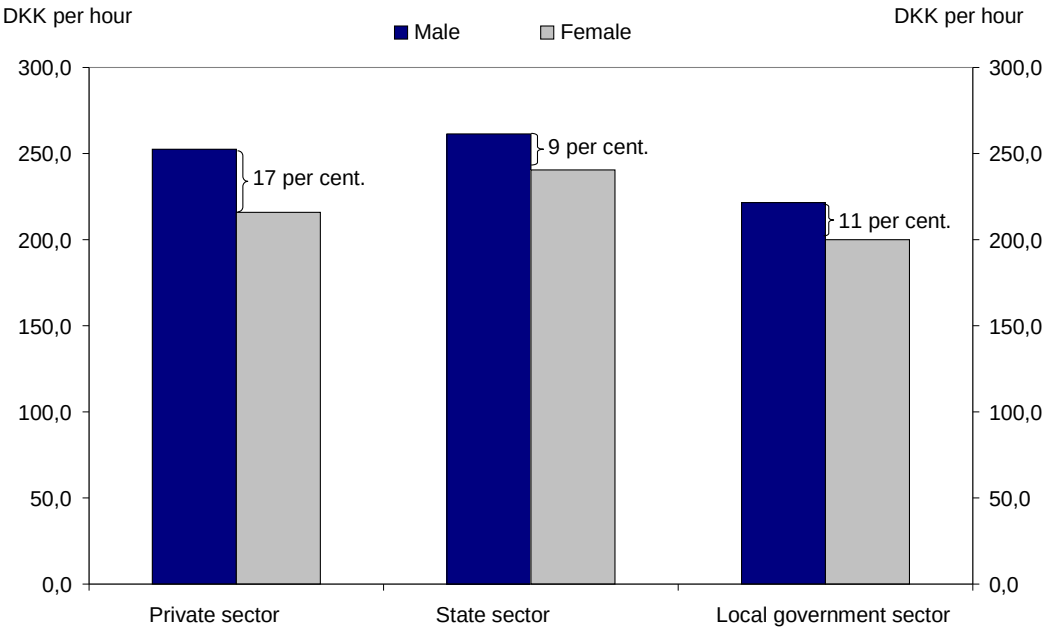
In 2011, the hourly earnings (exclusive of inconvenience premium) were DKK 252.4 for men employed in the private sector against close to DKK 215.5 for women, cf. the figure. That corresponds to a pay differential of 17 per cent.

In 2005, the hourly earnings for men employed in the local government sector were DKK 236.6, cf. the figure. Hourly earnings for women were DKK 214.3, which is 14.3 per cent lower than for men.

In 2011 men employed in the state sector earn on average DKK 261.1 per hour performed. That is 9 per cent more than for women, whose hourly earnings in 2011 amounted to DKK 240.3, cf. the figure.

Hourly earnings (exclusive of inconvenience premium) indicate total payment by the employer to the employee. Accordingly, hourly earnings include pay during sickness and leave in connection with childbirth as well as other paid absence, holiday pay and public holidays as well as employee benefits.

The figure shows pay differentials (earnings exclusive of inconvenience premium per hour performed) for employees by gender, 2011. (The first column shows the private sector, the second column shows the state sector and the third column shows the local government sector. Men are shown as blue, women as grey. The value is shown as Danish Crowns, DKK, per hour. The gap between blue and grey in each column is shown as per cent).



Source: Statistics Denmark - www.statistikbanken.dk

In November 2008 the Danish National Centre for Social Research published an updated version of a report on wage differences between men and women, first published in 2004.

The 2008 report analyses the wage differences between men and women in the period 1996-2006. The first report from 2004 concluded that men on average earn 12 to 19 per cent more than women, depending on the method applied. The 2008 report finds that this wage gap has not changed during the 10 year period.

The report analyses the wage gap on the basis of a statistical model which seeks to explain the gap by a number of factors, e.g. sector, branch, working function, length of training/education, experience as well as individual characteristics such as age, marital status and geographical location of the work place.

The model explains about 70 to 80 per cent of the wage gap between men and women. This does not mean that the remaining 20 to 30 per cent of the wage gap can be explained by discrimination between men and women but merely indicates that the model does not explain the entire wage difference. Personal performance in particular cannot be measured.

Furthermore the value of the explanation of the model has decreased in the period 1996-2006. The report explains this result by an increasing part of the wages being determined locally. Local negotiations on wages mean that objective factors can explain less on a macro level.

The Danish National Centre for Social Research published an updated version of the analysis in September 2013. The updated report shows that the wage gap has fallen from 1997 to 2011, but that the wage gap between men and women is still relatively big.

Concrete initiatives on the gender-segregated labour market and equal pay

In relation to the Government's gender equality strategy, the following concrete initiatives have been taken since 2009:

The Government's effort on equal pay and the gender-segregated labour market is very complex and is conducted in a dialogue with companies and the social partners in recognition of the fact that promoting equal pay takes place at the workplace and during the collective bargaining.

The Equal Pay Act provides protection against discrimination, and the courts of law, the Board of Equal Treatment and industrial arbitration deal with such cases. Since the seventh report the courts of law have dealt with three cases and the Board of Equal Treatment has dealt with six cases.

The Social Partners are aware of their crucial role in this field, so it is thoroughly debated how companies and employees may change their attitudes in order to admit more women to well-paid male dominated jobs. This approach makes it possible to deal with equal pay, the gender-segregated labour market, and the reconciliation of working life and family life at the same time.

The debate takes place among other things at equal pay seminars organised by the Ministry of Employment where researchers and experts discuss various gender equality subjects. Examples of gender equality subjects are: the significance of the gender-segregated labour market to pay differentials between women and men, what is the significance of taking maternity leave to the individual woman's pay conditions, corporate gender-segregated pay statistics etc.

The knowledge of the pay gap between women and men is to be used in the enterprises and to exert

influence on collective agreements. As far as possible, experience should be collected in databases and tool boxes as best practice for inspirational exchange of experience for both enterprises and the social partners.

As of 1 January 2007, all major enterprises are required to draw up gender-segregated pay statistics. This means that many enterprises for the first time are required to work for equal pay. Cooperation on equal pay in the enterprises becomes a top priority. Therefore, it is the enterprises that already have gathered experience from joint consultation committees that are to draw up gender-segregated pay statistics. It is only major enterprises that are required to do so. The legislation is to be revised in order to include a bigger number of companies and to give the employees more knowledge about the pay situation of women and men in their company.

In 2010 the Government's Pay Commission published its report on the public sector with equal pay as a crucial theme. The Commission underlines that the principle of equal treatment on the Danish labour market implies that men and women are treated equally when it comes to working conditions including pay.

According to the Commission the gender segregated labour market is one of the most important causes of pay differentials. Many factors are at stake in the formation of the gender segregated labour market such as choice of trade, education, flexibility and status of job.

Supplementary Information on Article 4

Question: *Paragraph 2: Increased remuneration for overtime work*
The Committee asks that the next report describe the concept of overtime and also to provide information on the activities of the Labor Inspection in respect of any breaches related to the failure to pay overtime wages.

Reply: As mentioned earlier there is no legislation concerning overtime pay. In Denmark the social partners monitor the provisions for extra payment in the collective agreements without any interference of the State.

Question: *Paragraph 3: Non-discrimination between women and men with respect to remuneration*

In the General Introduction to Conclusions 2002 on the Revised Charter, the Committee indicated that national situations in respect of Article 4, paragraph 3 (right to equal pay) would be examined under Article 20 of the Revised Charter. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4, paragraph 3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men

with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4, paragraph 3 and Article 20, thus every two years (under the thematic group 1 "Employment, training and equal opportunities", as well as thematic group 3 "Labour rights"). Henceforth, **the Committee invites Denmark to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3**.

Reply: Reference is made to the reporting on Article 4, paragraph 3.

Article 5 – The right to organise

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 the 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:

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.

Article 5, Question 3

No relevant figures or statistics exist.

Supplementary Information on Article 5

Question: *Freedom to join and not to join a trade union*

The Act on Protection against Dismissal due to Association Membership was amended in 2006 in order to protect the right not to be a member of a union including during recruitment. Closed shop agreements have therefore become prohibited on Danish labour market. The Committee considers that the situation is now in conformity with Article 5 on this point.

From another source[1], the Committee notes however that there are in practice serious allegations of pressure or discrimination based on non-membership of one of the three main trade unions in the areas of career and promotion, in particular in the public sector. This type of pressure and discrimination is in breach of Article 5, and **the Committee therefore asks for the Government's comments on these allegations and information on any concrete measures that are taken to fight against such phenomena.**

Reply: In the public sector, it has for many years been in violation of the administrative law principle of equality to emphasize the union membership in relation to recruitment, by dismissal and during employment. The public employers have an obligation to ensure that there is no discrimination because of union issues. It is thus primarily a management responsibility to do something about trade union pressure and harassment in public workplaces.

In the private sector, it is not illegal for an employer to a certain extent to emphasise on the employees' union conditions - for example, the allocation of allowances and miscellaneous goods, but harassment and bullying because of the association relationship during their employmentship would be contrary to the Working Environment Act.

Krifa's survey in 2008 on discrimination on the Danish labour market showed that employees continued experiencing union pressure. The Government took this allegation very seriously. The Minister for Employment therefore instructed all public employers to

[1] Comments from Krifa on the 29th National Report on the implementation of the European Social Charter, registered on 1 October 2009.

always be aware of the prohibition to discriminate against membership/non-membership in all aspects of working life. Since then the public employers have in different ways had focus on the issue and, have stressed the rules locally for full implementation.

Article 6 - The right to bargain collectively

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.

Article 6, Paragraph 1, Question 3

No relevant figures or statistics exist.

Article 6, Paragraph 2, Question 1, 2 and 3

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 (confederations). It is basically the central organizations which are members of boards, committees and councils concerning labour market issues set up by the government because they cover overall the Danish labour market with their wide collective agreements for various trades and industries on the labour market. Individual trade unions, which are not affiliated in a central organization, are not usually represented in boards, councils and committees.

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 two or 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, paragraph 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 last amended 20 August 2002. A copy of the legislation is enclosed (in Danish). Reference is also made to the reporting concerning Article 6, paragraph 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

In previous reports, the Danish Government has given information about the Danish International Register of Shipping (DIS) and agreements 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 15 years.

The latest DIS Framework Agreement from 2013, now referred to as the DIS Main Agreement, is a continuation of previous cooperation and main agreements between the parties, starting with the agreement of 6 March 1997 and subsequently revised by agreements of 13 September 1999, 1 March 2002, 16 January 2004, 15 December 2005 and 26 August 2009.

It still follows from the DIS Main Agreement that the special Contact Committee established in accordance with the DIS Main Agreement should, in addition to what is described in the introduction to the Agreement, strive to:

- respect the right to conclude DIS agreements with foreign trade unions in accordance with the Act on the Danish International Register of Shipping and respect these agreements in accordance with the procedure stipulated in Article 6 of the Agreement,
- develop the basis for employment of Danish seafarers in view of the international competitive conditions of the maritime industry, cf. Article 3,
- continuously follow the development of DIS compared with the international development of the industry,
- mutually inform each other about matters of common interest, including contents, guidelines and possible problems concerning foreign collective bargaining agreements.

Today, there are four Danish trade unions for officers and ratings in the Danish merchant fleet. They are the following: The Danish Maritime Officers (Søfartens Ledere), the Danish Engineers' Association (Maskinmestrenes Forening), the Danish Metal Workers' Union, the Maritime Section (Dansk Metals Maritime Afdeling), and the United Federation of Danish Workers (3F, Fagligt Fælles Forbund).

These organizations – except for 3F – are "the seafarers' contracting parties" to the Main Agreement. 3F is one of two organizations representing Danish ratings. The seafarers' contracting parties represent the majority of Danish seafarers employed on board DIS ships.

The Main Agreement entitles seafarers' contracting parties to be represented in negotiations between non-Danish unions and Danish shipowners' associations in order to ensure that a negotiated result is in accordance with the internationally accepted level in terms of international standards of pay and working conditions. The term "international standard" relates to what has been agreed between other internationally affiliated trade unions and shipping companies.

The Main Agreement also states that seafarers who are not resident in Denmark, but who work on board DIS ships, are entitled to be members of several trade unions (i.e. both a Danish trade union and a trade union in their home country). This enables seafarers' contracting parties to represent and assist seafarers not domiciled in Denmark or foreign trade unions in matters relating to Danish legislation and in dealings with the Danish public authorities.

In December 2012, an agreement was established on foreign seafarers' representation in connection with the Danish consultation process and the representation on maritime councils and boards established by the Danish Government for, inter alia, consultative purposes. This agreement resulted from a proposal by the maritime syndicate CO-SEA of which the Danish Metal Workers' Union, Maritime Section, is a member. 3F is not part of this agreement.

For the reporting period, Denmark has not received any information that the collective agreements on wages and general working conditions on board DIS ships – regardless of whether they were concluded by Danish or foreign trade unions – were not at an internationally acceptable level, for example as regards compliance with the requirements of the ILO recommendation on minimum wages. In this connection, it should be noted that in Denmark the issue of minimum wages is not governed by law, but rather settled by the social partners.

Now, 25 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. Foreign registers, enabling shipowners to further reduce their costs by lowering standards, do actually exist, and these foreign registers may thus be considered attractive alternatives to registration under the Danish flag. Against this background, it is therefore gratifying for the Danish Government that the agreement between the social partners has continuously developed since 1997. In addition, the agreement still comprises

Danish shipowners' associations and Danish seafarers' organisations, with the exception of one.

It deserves to be mentioned that today there are four DIS collective bargaining agreements for officers and ratings between the Associated Marine Officers and Seamen's Union of the Philippines (AMOSUP) and the Danish Shipowners' Association/Shipowners' Association of 2010 valid until 31 December 2015, while there are two DIS collective bargaining agreements for officers and ratings between the Maritime Union of India (MUI)/National Union of India (NUSI) and the Danish Shipowners' Association valid until 31 December 2014. Thus, the collective bargaining agreements cover some of the large groups of seafarers.

The following information can be provided on the development in the Danish shipping industry for the period from 2008 to 2010:

In 2008, foreign currency earnings in the Danish shipping industry amounted to DKK 194bn. In 2009, foreign currency earnings amounted to DKK 140bn and in 2010 they amounted to DKK 179bn. Thus, the Danish shipping industry has become the second-largest export industry in Denmark.

The Danish International Register of Shipping still makes it possible to maintain a significant number of jobs for Danish seafarers. In addition, a considerable number of people are employed at shore-based workplaces as a result of the existence of a Danish maritime "cluster" where the shipping activities and the ships as such make up the "engine".

The table below gives the number of seafarers serving on DIS ships, thus illustrating the development in individual categories of seafarers over a number of years. The table has been generated on the basis of the seafarers on board a ship on 30 September of the year in question. Consequently, the table does not include persons who are actually employed, but who were not on board a ship on 30 September due to vacation, lieu days or illness. The actual employment rate is thus greater.

The number of seafarers on duty includes officers and other crew members, such as deck hands, engine-room crew, and service personnel.

Table: On duty staff on DIS ships as of 30 September, 2000–2012

Year	Number of ships on 30 September	Total	Crew categories		Nationality of the crew		
		Total	Officers	Other crew members	Danes	Foreigners	
						EU/EEA	Third party countries
2000	578	6,701	2,574	4,027	3,647	394	2,560
2001	558	6,342	2,367	3,975	3,516	390	2,436

Year	Number of ships on 30 September	Total	Crew categories		Nationality of the crew		
		Total	Officers	Other crew	Danes	Foreigners	
2002	513	6,375	2,331	4,044	3,648	456	2,274
2003	500	6,392	2,295	4,097	3,486	451	2,455
2004	491	6,447	2,319	4,128	3,483	920	2,044
2005	488	6,486	2,358	4,128	3,322	931	2,267
2006	497	7,109	2,495	4,614	3,290	1,022	2,732
2007	493	6,856	2,449	4,407	2,885	977	2,997
2008	535	7,759	2,844	4,915	2,965	1,029	3,765
2009	560	7,677	2,884	4,793	2,822	913	3,942
2010	599	8,283	3,143	5,130	2,868	1,102	4,308
2011	621	9,406	3,395	5,811	2,987	1,448	4,907
2012	634	9,316	3,715	5,601	2,974	1,583	4,759

Source: Crew information from shipping companies with ships registered in DIS, supplemented by information from the Danish Maritime Authority on the size of the crew on board passenger ships and ships which do not report crew information. The information for 2012 is from July 2012.

As a general trend, an increasing number of ships has been registered in DIS since 2007, just as more seafarers have been recorded as serving on ships registered in DIS. This increase is accounted for by especially foreign seafarers, while the number of Danish seafarers has been relatively constant. This is, inter alia, due to the fact that the growth in the number of ships is based on the flagging in of foreign ships that have kept their crews in connection with the flagging in.

Finally, we can provide you with the following information: 500 vessels with a total tonnage of 9.1m tons were registered in DIS at the end of 2007. This number had increased to 538 vessels with a total tonnage of 10.1m tons at the end of 2008. At the end of 2009, the numbers were 570 vessels with a total tonnage of 10.8m tons. In 2010, there were 604 vessels with a total tonnage of 10.9m tons, and at the end of 2011, 622 vessels with a total tonnage of 10.5m. Finally, at the end of 2012, the numbers were 638 vessels with a total tonnage of 11.5m tons.

Article 6, Paragraph 3, 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 when 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 parties on the Danish labour market, which up till now has not been the case. Reference is made to the reporting concerning Article 6, paragraph 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.

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.

Article 6, Paragraph 3, Question 3

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

	2009	**2010**	**2011**	**2012**
Received cases	810	882	866	815
Closed cases	857	1129	782	909
Pending cases	864	617	701	607

Source: The Danish Labour Court

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

	2009	**2010**	**2011**	**2012**
The Danish Confederation of Trade Unions	769	836	815	772
Other	19	11	23	13

Source: The Danish Labour Court

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

	2009	**2010**	**2011**	**2012**
The Confederation of Danish Employers	12	24	19	25
Other	10	11	9	5

Source: The Danish Labour Court

Of the 909 cases which were closed at the Labour Court in 2012, 259 cases (29 pct.) were repealed with no session being held. 309 cases (34 pct.) were closed with judgment by default after one or few preliminary sessions. 238 cases (26 pct.) were closed by settlements between the parties, also after one or few sessions. 103 cases (11 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.

Thus, the Danish labour law does 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 state 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 state 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.

Thus, the disputes of rights are 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 stable 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.

On the linkage rule

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, a so-called pay as you go pension, as compensation for being denied the right to strike. The civil state servant’s pension scheme

can be compared to a pension scheme where the employer during the employment has paid a monthly pension contribution equivalent to 30 per cent of the employee's monthly pay[2].

Giving civil servants a right to strike would tip the balance and make a radical change of the system necessary. Thus, initiating a major change of the employment conditions for civil servants does not seem expedient especially not as the number of persons employed in the Danish state sector according to the Civil Servant Act is continuously reduced.

The Danish Government is aware of its obligation according to the European Social Charter. In order to limit the usage of civil servant's employment in the Danish state sector the Minister for Finance issued a circular letter in December 2000[3] about the employment of civil servants under the Civil Servants' Act.

According to the circular letter only employees covered by the job categories mentioned in article 2 of the circular letter about employment under the Civil Servant's Act can be employed as civil servants since only these jobs live up to the requirements of 31 of the European Social Charter. Consequently, the circular letter has the effect that in the event of a new hiring, a position originally hold by a civil servant will be replaced with an employee covered by the relevant collective agreement if the position is not mentioned on the list.

As a finishing remark it should be noted that the ongoing focus on the usage of civil servants has had as consequence that in 2012 the Minister for Justice eliminated three job categories from the list, namely deputy police, public and state prosecutors. New hirings will therefore be made in accordance with the relevant collective agreement.

Furthermore, the usage of civil servants in the state sector has been reduced with the social partners' collective framework agreement on employment conditions for higher government officials (Framework Agreement on Contractual Employment of Government Heads of Department). The agreement has reduced the usage of civil servant employment for executives, and as a result 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.

The decline in the number of persons employed as civil servants is evident on the one hand because of the abovementioned restrictions in the access to employ civil servants and on the other hand because of the retirement of (older) civil servants. Consequently, the total

[2] Report by the wage commission, May 2010. http://www.lonkommissionen.dk/

[3] Circular No. 210 of 11 December 2000 on the Application of Civil Service Employment in the State and the National Church.

number of civil servants in the state sector has been reduced from 50,000 in September 2011 to 44,000 in January 2013.

In 2011 25,000 of the civil servants in the state sector were comprised by the circular letter. In 2013 the number of civil servants comprised by the circular letter was reduced with 8 per cent to 23,000.

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.

In Denmark it is a general rule that employees have the right to strike as a part of industrial actions. There is no legislation that further specifies under which conditions members and non-members of a union can strike in order to obtain a collective agreement. The unionised member in a workplace is part of a collective agreement through his/hers membership of the union and the employment is based on the collective agreement. The employer on the other hand is obliged to give the rights (and duties) according to the collective agreement to the non-member employee, but the non-member employee can only obtain rights (and duties) through an individual employment contract with the employer. This means that the non-member is not entitled to participate in a strike initiated by the union unless he or she joins the union concerned. In Denmark the right to strike is not an individual right, but a collective right.

Article 6, Paragraph 4, **Question 3**

The renewal of the collective agreements, respectively, the private sector in 2010 and 2012 as well as in the public sector in 2011 passed without strikes or lockouts.

Supplementary Information on Article 6

Question: *Paragraph 1: Joint consultation*

The Committee takes note fom the information contained in the report submitted by Denmark that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6, paragraph 1 of the Charter.

The Committee notes from comments on the report from the Independent Danish Union *"Kristelig*

Fagbevægelse" (Krifa), that “unions other than the traditional ones are excluded from tripartite consultations". **The Committee asks for the Government's comments on these allegations and information on any concrete measures that are taken to involve all trade unions in such consultations. The Committee also asks that the next report provide a full and up-to-date description of the situation.**

Reply: As mentioned in the report regulation of pay and working conditions in Denmark 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 (confederations). It is basically the central organizations which are members of boards, committees and councils concerning labour market issues set up by the government because they cover overall the Danish labour market with their wide collective agreements for various trades and industries on the labour market. Individual trade unions, which are not affiliated in a central organization, are not usually represented in boards, councils and committees.

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.

Question: *Paragraph 3: Conciliation and arbitration*
The Committee notes from the report submitted by Denmark and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6, paragraph 3 of the Charter. **It asks that the next report provide a full and up-to-date description of the situation**.

Reply: There have been no changes since the last report.

Question: *Paragraph 4: Collective action*

[….] The Committee has also re-examined the situation as regards non-unionised workers. According to the report the right to strike under Danish law can only be exercised by a collective, typically a trade union. The Committee understands on this basis that "non-unionised" workers acting as a collective may, in principle, initiate a strike. Furthermore, while noting that trade unions may not force non-members to participate in a strike, the Committee assumes that non-members in a given workplace nevertheless have the freedom to join a strike called by a trade union in the same workplace.

The Committee asks that the next report confirm whether this understanding is correct and in particular indicate whether non-unionised workers enjoy the same protection as unionised workers in such situations, including in respect of reinstatement after termination of the strike (the no-detriment rule). Meanwhile, the Committee reserves its position on this point

Reply: In Denmark it is a general rule that employees have the right to strike as a part of industrial actions. There is no legislation that further specifies under which conditions members and non-members of a union can strike in order to obtain a collective agreement. The unionised member in a workplace is part of a collective agreement through his/hers membership of the union and the employment is based on the collective agreement. The employer on the other hand is obliged to give the rights (and duties) according to the collective agreement to the non-member employee, but the non-member employee can only obtain rights (and duties) through an individual employment contract with the employer. This means that the non-member is not entitled to participate in a strike initiated by the union unless he or she joins the union concerned. In Denmark the right to strike is not an individual right, but a collective right.

ADDITIONAL PROTOCOL
TO THE EUROPEAN SOCIAL CHARTER

Article 2 – The right to information and consultation

Article 2 – The 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.

No inspections are carried out in this field. If the right to information and consultation is not respected workers either go to the union or to the courts to get the employer fined. The government does not have the number of sanctions imposed in this field.

Article 2, Paragraph 1 and 2, Question 2

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

Article 2, Paragraph 1 and 2, 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.

Supplementary information to article 2

Question: ***Enforcement***

The Committee previously requested information on sanctions in the event the right to information and consultation is not respected. The report states that employers who fail to inform and consult workers in accordance with the applicable rules may be fined. **The Committee asks the next report to provide the number of inspections carried out by**

the Labour Inspectorate as well as the number of sanctions imposed in this particular field.

Reply: It is only very rarely that cases of lack of information and consultation are raised. There have been no cases in the reporting period.

DA (Danish Confederation of Employers) and LO (Danish Confederation of Trade Unions) have established a common system which advises employees and management in situations where there is a disagreement. Due to this system there virtually is no cases concerning lack of information and consultation.

Article 3 – The right to take part in the determination and improvement of the working conditions and working environment

Article 3 – The right to take part in the determination and improvement of the working conditions and working environment

Article 3, Paragraph 1 and 2, Question 1

Working environment

The Danish Working Environment Act part 2 – Cooperation on health and safety – which lays down the rules on the structures and resources of the health and safety organization in enterprises, was amended in 2010 (Consolidated Act no. 1072 of 7 September 2010 on the working environment).

It is expected, that the new rules will provide a basis for a more preventive and dynamic working environment effort within the enterprises, where supervisors, managers and employees will, to a greater extent, be able to find their own ways to deal with co-operation in the working environment.

The basis for the new rules is that they shall be modern and reflect the modern labour market. Emphasis has been placed on highlighting the collaborative process and increasing management priority as central elements in the future working environment organisation.

The new rules make the working environment a strategic and priority element within the enterprises. It is therefore necessary that the members of the working environment group are able to perform the tasks at hand. The employer has a new duty to provide ongoing competency development that will contribute to make participation in the working environment group attractive.

It will remain a fundamental principle that the employers, supervisors and employees in all enterprises co-operate on the working environment. However, the formal requirements for this co-operation are less detailed than previously. It shows, among other things, that each year the employer shall plan the safety and health of the enterprise for the coming year in co-operation with the employees. The objective is that an annual debate will provide a simple process that promotes and strengthens the working environment efforts of the enterprise.

The more detailed rules concerning the safety and health cooperation activities are laid down in Order No 1181 of 15 October 2010 and Order No 840 of 29 June 2010 on occupational safety and health training.

In every enterprise, the employer and the employees must cooperate on the working environment. If the enterprise has ten or more employees, cooperation must take place in a working environment organisation.

In enterprises with ten or more employees, the employer must establish a working environment organisation that consists of one or more supervisors and one or more elected health and safety representatives. The chairman of a committee shall be the employer or a representative of the employer.

In enterprises with 35 or more employees, the employer must establish a working environment organisation that consists of one or more working environment groups and one or more health and safety committees. A working environment group consists of an elected health and safety representative and a designated supervisor. A health and safety committee consists of supervisors and health and safety representatives from the company's working environment groups.

Special rules apply for temporary and mobile workplaces, including construction work. The obligation to organize cooperation on health and safety arises here when five or more employees are working for the same employer at mobile workplaces (e.g. building sites) and the work is going on for a period of at least 14 days.

Article 3, Paragraph 1 and 2, Question 2

<u>Working environment</u>

The Danish Working Environment Authority has in connection with the new rules on cooperation on health and safety made a number of guidelines:

- Guideline on cooperation on health and safety in enterprises with less than 10 employees
- Guideline on cooperation on health and safety in enterprises with 10-34 employees
- Guideline on cooperation on health and safety in enterprises with at least 35 employees
- Guideline on cooperation on health and safety at temporary or mobile workplaces in the construction area
- Guideline on cooperation on health and safety at temporary or mobile workplaces apart from workplaces in the construction area
- Health and safety training for members of the working environment organization

- Organization of cooperation on health and safety in enterprises with employees with special needs.

New working environment prioritisation up to 2020.

In 2009 the WEA started preparing a new report whit the purpose of creating the technical foundation for a political prioritisation of working environment efforts up to 2020.

The background of the report was that the Danish government's prioritisation of working environment efforts expired at the end of 2010.The report, which was finished during 2010, constitutes a technical foundation for subsequent political identification of which working environment problems should be prioritised up to 2020 as part of the overall working environment efforts and which other working environment problems require activities to be initiated within, for example, certain jobs or sectors. Similarly, the report allows the prioritisation of certain focus areas and constitutes the foundation for decision-making on the development of relevant actions.

The report has three primary focal points. First and foremost, it assesses the working environment problems so that a future prioritisation can be based on solid documentation of which problems are most significant in today's Denmark. As the technical foundation for a prioritisation up to 2020, it is also vital, however, to look ahead and not just focus on the information that we have on working environment problems up to now. Another focal point, therefore, is what the labour market will be like up to 2020, and what implications this will have for the working environment. As a third focal point, the report gives information on the effectiveness of the actions, and the actions are related to the future development of the labour market and future working environment problems. This provides the platform for future prioritisations to not only identify significant working environment problems, but also to address what actions are needed to solve and prevent these working environment problems.

New strategy for working environment efforts up to 2020

In September 2010 the government presented a new strategy for working environment efforts up to 2020 called "A New Way Towards a Better Working Environment". This new strategy superseded the former strategy by the end of 2011.

In the strategy there is focus on following working environment problems as part of the 2020

working environment efforts

• Accident at work

• Psychosocial working environment

• Musculoskeletal disorders.

The strategy contents the following objectives regarding the working environment in 2020:

1. The number of serious accidents at work is to be reduced by 25 per cent in proportion to the number of employees

2. The number of employees who are psychologically overloaded is to be reduced by 20 per cent

3. The number of employees who experience musculoskeletal disorders is to be reduced by 20 per cent.

These objectives are to be achieved in the period beginning 2012 until the end of 2020.

Article 3, Paragraph 1 and 2, Question 3
No relevant figures or statistics are available.

List of legislation

Act No. 377 of 28. April 2012 on compensatory holiday in the case of sickness during the holiday:
https://www.retsinformation.dk/forms/R0710.aspx?id=*141612*

The Danish Working Environment Act:
http://arbejdstilsynet.dk/en/engelsk/regulations/acts/working-environment-act/arbejdsmiljoeloven1.aspx

Order No 324 of 23. May 2002 on rest periods and days off:

http://arbejdstilsynet.dk/da/regler/bekendtgorelser/h/sam-hvileperiode-og-fridogn-324.aspx

Order No. 239 of 6. April 2005 on young persons' work:
http://arbejdstilsynet.dk/da/regler/bekendtgorelser/u/sam-unges-arbejde-239.aspx

Order No 1181 of 15 October 2010 on the safety and health cooperation activities:
http://arbejdstilsynet.dk/en/engelsk/regulations/executive-orders/1181-samarbejde-sikkerhed-sundhed.aspx

Order No 840 of 29 June 2010 on occupational safety and health training:
http://arbejdstilsynet.dk/da/regler/bekendtgorelser/g/godkendelse-af-udbydere-arbejdsmiljoeuddannelse.aspx

Act No. 709 of 20 August 2002 on consolation of labour dispute:
https://www.retsinformation.dk/Forms/R0710.aspx?id=29527

The Labour Court Act No. 106 of 26 February 2008:
https://www.retsinformation.dk/Forms/r0710.aspx?id=115370&exp=1

Circular No 210 of 11 December 2000 on the Application of Civil Service Employment in the State and the National Church:
https://www.retsinformation.dk/Forms/R0710.aspx?id=5181