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## **EUROPEAN SOCIAL CHARTER**

37<sup>th</sup> National Report on the implementation of  
the European Social Charter  
submitted by

### **THE GOVERNMENT OF DENMARK**

- Articles 2, 4, 5, 6 and Articles 2 and 3 of the 1988 Additional Protocol for the period 01/01/2013 - 31/12/2016
- Complementary information on Article 1§4 and 15§1 (Conclusions 2016)

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on 15 April 2018

**CYCLE 2018**



# **EUROPEAN SOCIAL CHARTER**

## **37<sup>th</sup> Report on the Application of the European Social Charter**

Submitted by  
The Government of Denmark

Concerning articles 2, 4, 5 and 6  
for the period 01.01.2013 - 31.12.2016  
&  
Articles 2 and 3 of the Additional Protocol  
for the period 01.01.2013 – 31.12.2016

**February 2018**

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)  
The Danish Institute for Human Rights (IMR)

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## **Article 1 – Right to work**

**Article 1, Paragraph 4**

*The Committee considered the situation was not in conformity with the 1961 Charter as regards measures concerning training for persons with disabilities(Article 15§1).*

The demands for a well-educated labour force are increasing with strong financial growth, companies' demand for skilled labour and new technologies. Excellent basic qualifications are essential for every student, including young people with disabilities, to be able to continue learning, and to be ready to take on the demands of the labour market. It is crucial that upper secondary education is also attractive and challenging and that it offers good opportunities to all groups of young people. Denmark is committed to ensuring inclusive learning environments and has taken many initiatives to support all pupils and students, with and without disabilities, to develop their skills in the mainstream education system.

For detailed information regarding article 1, Paragraph 4, the government of Denmark refers to its answers to the Committee's questions regarding Article 15, Paragraph 1.

**Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**



**Article 15, Paragraph 1 (Conclusions XXI-1, 2016: 27):**

*The Committee asked that the next report contains information on the data concerning the total number of persons with disabilities, including the number of children, the number of students with disabilities following mainstream and special education and vocational training, and the percentage of students with disabilities entering the labour market following mainstream or special education and/or training.*

Background for the Danish system

According to Danish legislation regarding primary and lower secondary education, “The Danish Folkeskole Act”, all children have a right to a satisfactory education offer. Municipalities and schools must offer all students, including students with special needs and disabilities, a teaching provision that meets the student's educational needs, and a school day organized to take due account of a pupil's special needs or needs for support.

Special needs education and special educational assistance as well as other forms of support are provided following a concrete assessment of the individual's educational needs. Special needs education shall be given to children whose development requires special consideration or support and shall not be given alone on the basis of the student's disabilities. This secures support tailored to the specific needs of the pupil or student.

Referral to special needs education, which is delimited to teaching in special schools and special classes and support for at least 9 hours a week in a mainstream school class, takes place following pedagogical, psychological counseling and in consultation with the student and parents.

In case the student needs support of less than 9 hours a week, the school leader may include pedagogical, psychological counseling in connection with the organization of an educational offer within a mainstream school class.

Available data in general

Data on students in primary and lower secondary schools are collected once a year by the Ministry of Education. They include the number of students in primary and lower secondary schools, students receiving special needs education in special schools and special classes as well as students who receive support within a mainstream school class for at least 9 hours a week.

**Table 1. Number of students in municipal schools receiving special needs education, 0. – 10. Class**

	2012/13	2013/14	2014/15	2015/16
Total number of students	579.955	573.752	570.311	566.617
Students in special schools	9.251	9.280	9.129	9.407
Students in special	30.221	28.817	27.725	26.775

classes				
Support for at least 9 hours a week	939	1.223	1.457	1.337

*Source: Ministry of Education*

The Ministry of Education does not collect data specifically on the basis of disabled pupils' and students' disabilities.

Henceforth, no central register of disability in Denmark exists, and as a consequence no full-count, register-based data is available on the number of disabled pupils and students.

However, the National Agency for Education and Quality maintain a register on recipients of Special Educational Assistance (SEA), which provide reliable estimates of the number of disabled students in vocational schools, high schools and further and higher education.

#### Available data concerning Special Educational Assistance (SEA)

Students with disabilities are included in the mainstream educational settings. The educational legislation ensures that students in need of SEA are entitled to have this (provided by the educational institutions) when their eligibility has been assessed by the National Agency for Education and Quality. The costs are held by the National Agency for Education and Quality.

This is in accordance with the Danish principle of sector responsibility, which ensures that every sector is responsible for creating possibilities within their sector for persons with disabilities to be able to benefit from society on equal terms with non-disabled persons. In the field of education, the aim of the provisions and support services (e.g. SEA) are to ensure, that students with disabilities, regardless of this, can participate in mainstream education on equal terms with other students.

In further and higher education, the act on SEA from 2000 gave the Ministry of Education the sector responsibility of students with disabilities. The focus was on the ordinary educational system from primary school to university, with adult and continuing education to follow later. Before this act, students with disabilities in further and higher education had been referred to the municipalities for support pursuant to the act on active social policy, as part of a rehabilitation plan. This legislation primarily had a social political aim. In accordance with this, it was not sufficient for a student to be admitted to a further and higher education while being eligible for SEA. It was also required that the applicant was assessed to be able to become self-supported, through that training. This additional condition had, in effect, the character of a double requirement. However, with the legislation on SEA, which had an educational political aim, the double requirement was abolished.

SEA is granted in order to allow students to complete training in the mainstream educational system regardless of a disability. The legislation is focused on creating equal terms within the educational sector as well as to establish equality in the choice of education, working for inclusive mainstream educational settings and supplying adequate assistance. This also creates a more equal foundation for access to the labour market. The subsequent integration of persons with disabilities in the

labour market is not part of the educational sector, however different measures such as sector collaboration with the employment sector are in place to ensure the transition and sustainable labour market participation (e.g. the Best Possible Transition project). This is described in the subsequent sections along with data on the effect of education.

*In the 35th Danish Report on the Application of the European Social Charter Denmark reported on the number of students with disabilities receiving SEA. The Committee asks for data from 2015 and onwards. The available data on special educational assistance since the last report are presented here.*

### Number of SEA-recipients by educational affiliation

	2015	2016
<b>Vocational Schools</b>	7.812	7.807
<b>High School</b>	7.961	9.060
<b>Higher Education</b>	6.826	7.684
<b>Total</b>	22.599	24.551

1 The Vocational School category now contains the students attending the social and healthcare training programs.

2 All SEA recipients have a physical or mental incapacity problem. It is a criterion to apply for SEA support.

A way of looking at the increasing number of SEA recipients is through the share of students supported by SEA in the youth and higher education in its entirety. The share of students receiving SEA has not only increased numerically, but also relatively to the population of both educational groups.

#### Studies concerning the transition from primary and lower secondary school to upper secondary school

Studies indicate that the transition from primary and lower secondary school to upper secondary education can be a challenge for students with special needs. Several studies show that students with special needs to a significant lesser extent start and complete an upper secondary education.

The predominant challenge seems to be connected to the transition from primary and lower secondary school to upper secondary education. A study on the educational patterns of young people with disabilities shows that young people with disabilities, who begin an upper secondary education, have an educational pattern broadly resembling other young people. The predominant difference seems to be that significantly fewer young people with disabilities begin an upper secondary education.

In relation to the beginning and completion of an upper secondary education, the study shows that 73 pct. of students with disabilities begin a regular upper secondary education, while 92 pct. of the students without disabilities begin a regular upper secondary education.

The drop-out rate among young people in upper secondary education is slightly greater for students with disabilities than for the group without disabilities. It is a very small difference. There is no or substantially no difference between the groups in relation to dropout in general upper secondary education or vocational and technical education.

It should be noted that the study is based on young people with visual impairment, moving disability, dyslexia and developmental disorder, etc., who, in principle, have no cognitive impairment and thus not a disability which, as a rule, should lead them to not complete an upper secondary education, if they have the necessary resources.

The same pattern is also seen in a study from 2014 on quality of special schools. It concludes, among other things, that the problems of special school students mainly arise in the transition from the (protected) school life at special schools. These students seem to have particular problems with creating an adult life with education and a permanent place at the labour market. This indicates that it is the transition from primary and lower secondary to upper secondary education and to the labour market, which is the main challenge<sup>1</sup>.

Another important factor for the performance of young people with disabilities in the education system is the socioeconomic background of the students. The connection of the parents to the labour market, an income level over median income, and one parent having a higher education generally have positive effect on the performance of the young person with disabilities in the education system<sup>2</sup>. In general, the same parameters are important to young people's beginning and completion of upper secondary education<sup>3</sup>. Students with disabilities coming from homes with a relatively low socioeconomic background appear to be at high risk of not beginning and completing upper secondary education.

Another significant barrier to completing an upper secondary education is if the students do not complete the 9th grade and do not graduate with a complete set of 9th grade exams. Looking at the key results regarding the completion of the primary and lower secondary school, it should be noted that 90 per cent of the disabled students complete 9th grade. 96 per cent among their peers without disabilities complete 9th grade, 62 per cent of students with disabilities have taken the primary and lower secondary school exams without exams missing, while 86 pct. of the students without disabilities have taken the these exams without exams lacking<sup>4</sup>.

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<sup>1</sup> Egelund, Niels (2014): Kvalitet i specialskoler.

<sup>2</sup> Epinion (2014): Uddannelsesresultater og -mønstre for børn og unge med handicap – Årgang 1990.

<sup>3</sup> Jensen, Vibeke Myrup m.fl. (2010): Veje til ungdomsuddannelse I

<sup>4</sup> Epinion (2014): Uddannelsesresultater og -mønstre for børn og unge med handicap – Årgang 1990.

**Article 15, Paragraph 1 (Conclusions XXI-1, 2016: 27):**

*The Committee asked whether new initiatives taken during the reference period have led to a new definition of disability.*

Definition of disability

In the public primary and secondary school both support and special needs education are based on the student's educational needs, and therefore no definition of disability in this area is used. Hence, the approach is to focusing on support and promoting measures for the students' potentials and opportunities to complete a regular education.

Within the SEA student support needs are evaluated on the basis of a disability model, which distinguishes between 'impairment' and 'disability'. While physical, sensory, intellectual, or psychological variations may cause individual functional limitation, these do not have to lead to a disability unless society (the educational setting) fails to take account of and include people (students) regardless of their individual differences.

In 2009 Denmark ratified the Convention on the Rights of Persons with Disabilities (UNCRPD). In article 1 of the UNCRPD it is stated that:

'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.

The disability models applied are the same.

**Article 15, Paragraph 1, (Conclusions XXI-1, 2016: 27):**

*The Committee asked that the next report provide up-dated information on the implementation of the national disability policy action plan, entitled "One society for everyone".*

The Ministry for Children and Social Affairs note that the action plan referenced in the conclusions XXI-1 'One society for everyone' was launched by the former Danish government in 2013 and was funded for a period of 4 years.

The current Danish Government has established a new set of priorities which i.a. includes:

- A revision of the Act on Social Services in order to provide the Danish municipalities with new possibilities for providing early, temporary and preventive assistance and support to adults with special needs including disabilities. The revision includes a simplification of the regulation on technical aids to persons with permanent impairment of physical or mental function.
- Focus on supporting more persons with disabilities to enter education and employment.
- New legislation against discrimination. The Government expects to propose a bill containing a general prohibition against discrimination on the ground of disability in autumn 2017. The bill will allow The Board of Equal Treatment to consider complaints regarding differential treatment on the ground of disability. The bill will supplement the existing Danish legal

framework on anti-discrimination including the Act on Prohibition of Discrimination on the Labour Market.

**Article 15, Paragraph 1, (Conclusions XXI-1, 2016: 28):**

*The Committee invites the Government to provide observations on that the right to complain does not apply to children who need less than 9 hours' special education per week.*

Appeals in general

According to the Danish Folkeskole Act, § 44, 2, the school board determines principles for the school's activities, including the organization of teaching, the students' teaching time at each grade step, the length of the school day, special needs education at the school, the students' placement in classes, the cooperation between school and home and the school-based leisure activities.

Within the financial framework that is determined for the school by the municipal council, the school board approves the school's budget, cf. the Danish Folkeskole Act, § 44, 3. In addition, the school board approves the school's teaching resources and determines the school's code of conduct and value rules, cf. § 44, 4.

Within the framework mentioned, it is also possible for the school board to lay down principles for inclusion efforts at the school.

It is stipulated in § 45, 2 of the Folkeskole Act that the decisions of the school leader regarding school pupils within the goals and frameworks and principles set by the municipal council and the school board cannot be a matter for the municipal council. Thus, it is apparent from the wording of § 45, 2, 2nd sentence of the Danish Folkeskole Act that this provision should be seen in conjunction with the municipal council and the school board setting out principles for the school's activities.

The Ministry of Education is therefore not in a position to establish a complaint system in which it can be tried whether a child receives the adaptation and support that the child needs and in environments that promote inclusion.

The Ministry also draws attention to the fact that for children, whose parents consider that they have a support requirement of at least 9 lessons a week, parents may refer the school's decision to the Board of Appeals for Special Needs Education, cf. § 51,1.

Municipal decisions on the referral of children to special needs education in special schools and special classes can also be brought before the Board of Appeals for Special Needs Education.

Special remedies concerning Special Educational Assistance (SEA)

All decisions taken by the National Agency for Education and Quality on the allocation of Special Educational Assistance (SEA) may be brought before the Board of Appeal (Ankenævnet for Statens

Uddannelsesstøtteordninger) by the pupil or student with a disability within four weeks of the decision.

The Board of Appeal consists of a chairman, who is a judge, and two other members both from the educational sector. In each case concerning SEA the board is joined by a special expert member appointed by the Disabled Peoples Organisations Denmark (DH).

**Article 15, Paragraph 1, (Conclusions XXI-1, 2016: 28):**

*The Committee asked that the next report contains information on the question of whether deaf pupils have the right to choose to be educated in sign language and what training teachers are given so that they are in a position to set up an inclusive system of education. It also asked to what extent pupils with disabilities receive the support and necessary accommodations, within the general education system, to facilitate their effective education.*

Teaching Sign Language

The executive order on the teaching of sign language in the Danish primary and lower secondary school states that teaching of sign language must be offered to all students who have a hearing loss to the extent that they are cut off from or have major difficulties in communicating safely by voice, regardless of technical aids, including hearing aids and cochlear implant.

The purpose of teaching sign language is to increase the students' understanding of and skills in the use of the sign language so that students are able to communicate with other sign language users and in situations where interpreters are available with persons who do not know the sign language.

Special educational assistance for preschool children

The executive order on special educational assistance for children who have not reached school-age, states that special educational assistance is given to children whose development requires special consideration or support.

The purpose of special educational assistance for children who have not yet begun school is to promote as early as possible the development of children with special needs, so that they can start schooling on equal footing with other children.

Special educational assistance includes specialized pedagogical counseling for parents or others who exercise daily care for the child, special educational aids that are needed in accordance with the special educational assistance for the child, and education and training of the child organized according to its special conditions and needs.

According to the executive order, the municipal council may decide to offer the teaching of sign language to a child with extensive hearing loss. The decision on the special educational assistance is taken after pedagogical psychological counseling and in consultation with the parents and the child on the basis of an expert and holistic assessment of the needs of each child.

In the specialized social and special education area, the National Coordination Structure was established in 2014 under the National Board of Social Services. The coordination structure must support the existence of the necessary supply of bets and offers in the most specialized social and special needs education area.

As part of the National Coordination Structure of the specialized social and special needs education area, a course description "Rehabilitation and Teaching of Children and Adolescents with Early Hearing loss 0-18 years" was presented in spring 2015 regarding the organization of efforts for children and young people with early hearing loss.

The course description contains recommendations to the municipalities on the organization of efforts for children and adolescents with early hearing loss based on the best current professional knowledge.

#### Support for students with disabilities

By a change of law in 2012, it was agreed that more students in the public primary and lower secondary school should be included in regular/mainstream school classes with the necessary support and professional challenges - and not excluded for special needs education in special schools or special classes.

In order to support the development and learning of students as much as possible in mainstream school classes, differentiation of teaching, team formation and supplementary education can be used.

According to the decision of the municipality, teaching assistants may be used. This can help both the individual student and the class as a whole. In addition, according to the municipality's decision, personal assistance may be provided to the student in order to help the student to overcome practical difficulties in schooling, for example in the form of assistance to pupils with physical disabilities where the student needs a personal assistant in various practical situations.

With the reform of the primary and lower secondary school that came into force in 2014, clear goals have been set for the development of the primary and lower secondary school: All pupils should become as skilled as they can, the importance of social background must be reduced in relation to the academic achievements, and the student's well-being should be improved.

An agreement between the government and the municipalities states that the efforts and measures to create inclusive learning environments must be based on each individual child. The goal is to strengthen the general community of the primary and lower secondary school and strengthen teaching for all children.



The government and the municipalities also agreed to look at how the progression and well-being of the individual student can be followed<sup>5</sup>.

A change in the Folkeskole Act was implemented in order to include the strengthening of inclusive learning environments by emphasizing that primary and lower secondary schools must be a place where all pupils are developing in an academic and versatile way, including socially, and are thriving in the academic and social community of the school.

In support of the creation of academic and social communities and thus an inclusive learning environment in schools, the school board is required to develop principles for the school's work on students' development in these areas.

Under the auspices of the Ministry of Education's education learning consultants, a number of supportive initiatives have been launched:

- Development work in relation to early action
- The importance of language for inclusive learning environments
- Research and development projects on:
  - a. Parental cooperation - parents as active participants in an inclusive learning environment
  - b. Physical frames supporting an inclusive learning environment
  - c. A longer and more varied school day in an inclusion perspective
  - d. Good cooperation between school, leisure and local communities
  - e. Well-being and student involvement

**Article 15, Paragraph 1, (Conclusions XXI-1, 2016: 28):**

*The Committee asked for information concerning the impact of vocational training on the subsequent integration of persons with disabilities in the labour market and the remedies available in the event of discrimination or lack of access to vocational training.*

Please refer to the answers in the paragraph about “Special remedies concerning Special Educational Assistance (SEA)”, and concerning the impact of vocational training in the paragraph about “Best possible transition project”.

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<sup>5</sup> Aftale om kommunernes økonomi for 2018

**Article 15, Paragraph 1, (Conclusions XXI-1, 2016: 29):**

*The report states that, in 2014, the Danish Parliament adopted the Act on Vocational Training, establishing post-compulsory vocational training for including special assistance. This type of education was to be introduced in August 2015, (outside the reference period).*

The Committee refers to an education that was to be introduced August 2015. The Ministry of Education has informed that it assumes the education in question is the Combined Youth Education (Kombineret Ungdomsuddannelse, KUU).

Combined Youth Education is a programme for young people who are not ready for education at an upper secondary school or vocational education. The programme can last up to two years. Tuition is tailored to local or regional businesses based on the student's subsequent chances of getting a job. The programme can also provide a basis for completing an ordinary youth education, e.g. a vocational programme.

**Article 15, Paragraph 1, (Conclusions XXI-1, 2016: 29):**

*The Committee has asked for updated information on the results from initiatives focused on pupils suffering from dyslexia and pupils with mental health difficulties and development disorders.*

The general effort for children and adolescents with dyslexia

In recent years, a number of initiatives have been launched to strengthen measures to help children and young people with dyslexia.

The measures include a national dyslexia test, the development of a national dyslexia risk test, new guidance material on the organization of teaching for students with dyslexia and the introduction of legal requirements for the completion of a national dyslexia test once in the school process.

In 2015, the Ministry of Education launched a national dyslexia test that may help to identify students with dyslexia across educational sectors ranging from 3rd grade to higher education.

The national dyslexia test is based on knowledge of the specific reading and spelling difficulties that characterize dyslexia. The national dyslexia test provides a reliable and uniform identification of dyslexia, so that work is based on the same perception of dyslexia in all municipalities and at all levels of education.

The dyslexia test can help ensure that dyslexic students have smoother transitions between various education levels.

The dyslexia test is a tool to identify dyslexia among students showing signs of dyslexia. Therefore, the student will only be tested if there is a suspicion of dyslexia.

By 2017, the Ministry of Education has launched the national dyslexia risk test, which will make it possible to test students in the nursery class and 1st grade for risk of dyslexia. If the students receive the necessary additional support and attention early when learning to read, it is possible to prevent and reduce their reading difficulties.

### Initiatives focusing on students with dyslexia or mental health issues

The largest group of students supported within the Special Educational Assistance (SEA) is students with dyslexia. Among the groups increasing the most in the SEA-system throughout the years are the groups of students with mental health difficulties and developmental disorders. The committee asks for a status for the initiatives focusing on these groups.

#### *Dyslexia:*

The initiatives from the Disability Policy Action Plan are finished. Two new initiatives are planned.

The National Agency for Education and Quality operates an electronic network for professionals who work with dyslexic pupils and students and assistive technology for reading and writing. The network is established as a forum for educators to discuss teaching methods and technological opportunities for dyslexic pupils and students. Thus, the network shares knowledge on the use of reading and spelling technology as an aid in teaching.

The Ministry of Education in cooperation with 'Uddannelsesforbundet' (the union for teachers and counselors at vocational educational institutions and language centers) will arrange a conference on 'Dyslexia and other reading difficulties' in 2018. Conferences within the subject have so far been arranged every third year. The 2018 conference will be aiming at disseminating current knowledge from research and practice about dyslexia and other reading difficulties, nationally as well as internationally. The attendees of the conference, called Ord18, include professionals working with pupils and students with dyslexia or other reading difficulties. The conference will help to bring current knowledge about teaching of dyslexic pupils and students into everyday educational settings.

#### *Mental health difficulties:*

The National Agency for Education and Quality conducted a project on new forms of support for students with mental health difficulties and developmental disorders in 2014-2015. The project involved a survey mapping of the support offered to students with mental health difficulties and developmental disorders in youth education. It also involved a trial programme at 8 educational institutions where different forms of support were tested to examine how SEA could be developed in the youth education institutions, and a data analysis.

Results from the project were reported in three reports. Examples of interventions were also shared in the form of articles and a video targeted at teachers and counselors at the educational institutions. In the articles and video were examples of best practice and of teaching methods in inclusive learning environments.

Knowledge from the project was gathered showing that the quality of the SEA to the student is enhanced when teacher training (e.g. supervision on relevant knowledge about the target group and tools for working with improved study-strategies) was provided, and the responsibility and

assignments of each type of support person were made transparent. Among other results the project has shown the importance of - and contributed to the development of:

- The importance of a coordinator function when more persons are involved supplying the support.
- Improved knowledge of the content of the support and experiences with new forms of support (study support by professionals and a new focus on supervision).
- Clearer procedures for application for support and for implementation of the support and a clearer focus on performance management and evaluation.

**Article 15, Paragraph 1, (Conclusions XXI-1, 2016: 29):**

*The Committee asked to be informed of the progress made in the “Best possible transitions” project.*

Project “Best Possible Transitions”

The objective of the project “Best Possible Transitions” (‘Smidige overgange’) was to promote a seamless transition between education programmes and occupation for pupils and students with disabilities. Most of the initiatives are already implemented with a focus on how to strengthen the transition to youth education to ensure that the pupils are motivated and have the qualifications for completing a youth education. These projects are reported in the 35th Danish Report on the Application of the Euro-pean Social Charter.

The remaining project was an analysis of developments in employment and educational levels among people with disabilities with the purpose of examining the education level and education activity among persons with disabilities.

*Transition to the labour market (data on education and employment)*

The project ‘Best Possible Transition’ was launched to focus on the importance of education in the context of employment. The initiative en-tailed an analysis to be carried out in 2014 and again in 2016.

The National Centre for Social Research (SFI) was commissioned to perform the analysis of behalf of the Danish Agency for Labour Market and Recruitment and the National Agency for Education and Quality. Reports were published in 2014 and in 2017.

Due to a number of changes in the data collection method from the beginning of 2016, the progress over time must be downplayed to some extent. Hence, the data breach complicates comparison of data from 2016 (reported in 2017) with data from 2014.

In the 2017 report, data is based on responses from approximately 19,300 citizens between the ages of 16 and 64 of whom 3,800 self-registered as having a disability or long-term health condition. If

the results are converted and weighted to be representative of the whole population the estimate is that 780,000 persons in Denmark would have a disability or long-term health condition.

In the group of persons with disabilities who have a higher education approximately 80 per cent are employed. The same only applies to approximately 40 per cent of those with a primary education as their highest education. The latter group, however, often has more severe disabilities. In the group of persons with disabilities who have completed vocational training 60 per cent between the ages of 16-64 years are employed.

In the field of education the 2016 report shows that persons with a disability or long-term health condition in general complete a lower level of education than persons without disabilities. Persons with disabilities more seldom complete a qualifying education (56.7 against 63.4 per cent). Among people with a minor disability or long-term health condition 60.6 percent has a qualifying education. Among people with more severe disabilities or long-term health conditions the numbers are 52.6 per cent.

Relatively fewer persons with a disability are in the process of completing an education (9.4 per cent) compared to persons without disabilities (19.8 per cent).

The report shows that the probability of employment increases along with the level of education. This applies to both persons with and with-out disabilities, but education makes a positive difference for persons with disabilities in particular.

**“Labour rights”**  
**Conclusions XX-3 and changes occurred since the last report**

## **Article 2 - The right to just conditions of work**

## **Article 2, Paragraph 2,**

As described in the 33rd 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.

*Supplementary information /answers to questions from the committee concerning article 2, paragraph 2*

There is in no diminution of the monthly salary if the working period is shortened due to public holidays.

It is within the discretion of the employer in certain sectors to determine under what circumstances work will have to be carried out during public holidays due the nature of the work and the need for sufficient staffing for instance at hospitals, nursing homes, police force etc.

The salary is regulated in collective agreements concluded by the social partners, and further information on extra payment due to overtime, or public holidays is agreed upon in the different collective agreements. There is no available statistical information.

## **Article 2, Paragraph 3**

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.

#### *Supplementary information on article 2, paragraph 3*

In 2015 a Holiday Committee was set up by the Government in order to present a reform of the Danish Holiday Act. The main task for the Committee was to present a solution that ensures the rights for new employees on the labour to have paid holiday already in their first year of employment. The Committee represented a report in 2017 and on the basis of the Committee's recommendation a bill has been presented to the Danish Parliament. The outcome of the Committee's work and the presented bill on a coming reform of the paid holiday system will be described in the next report.

#### **Article 2, Paragraph 5**

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

*Supplementary information /answer to the question from the committee concerning article 2, paragraph 5*

Regarding request for updated information on given dispensations concerning rest days no information is available.

## **Article 4 – The right to a fair remuneration**

#### **Article 4, Paragraph 1**

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.

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.

*Supplementary information /answer to the question from the committee concerning article 4, paragraph 1*

Regarding the request for information on remuneration in sectors or occupations not governed by collective agreements no information is available.

## **Article 4, Paragraph 2**

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.

*Supplementary information /answer to the question from the committee concerning article 4, paragraph 2*

Regarding the request for documentation for the spill-over effect of the collective agreements and more concise information concerning payment of overtime for employees not covered by collective agreements such information is not available from any central source.

## **Article 4, Paragraph 3**

Pay developments for men and women are described the 33rd report on the basis of analysis from the Danish National Centre for Social Research in 2008 and 2013. A new and updated analysis is expected in 2018 and will concern the period 2012-2015.

In 2016 the legislation on gender-segregated pay statistics was revised. The threshold for drawing up gender-segregated pay-statistics was changed from 10 to 35 employees.

*Supplementary information /answer to the question from the committee concerning article 4, paragraph 3*

Regarding the request for further clarifications on pay comparison across companies and/or outside the company it is not part of the existing rules on gender-segregated pay statistics, which applies to companies and/or entities. Furthermore the collective bargaining system is to a large extent based on wages being negotiated locally and therefore the gender pay comparison is dealt with at a company or entity level.

## **Article 5 – The right to organise**

## **Article 5 – The right to organise**

The rules protecting the right to organise and the freedom of association are described the 33rd report and there have been no legal changes since the last report.

*Supplementary information /answer to the question from the committee concerning article 5*

Information on court cases or any cases and/or practise regarding pressure and discrimination based on non-membership is not available from any central source.

The Government assumes that the Committee does not have new questions on the Danish International Shipping Register but maintains its well-known view.

## **Article 6 - The right to bargain collectively**



## **Article 6 - The right to bargain collectively**

The legal position on collective bargaining in Denmark is described the 33rd report.

**Article 6, Paragraph 1** 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.

*Supplementary information /answer to the question from the committee concerning article 6, paragraph 1*

Any independent trade union – including KRIFA – can take part in collective bargaining. This has been established by The Labour Court.

Concerning tripartite cooperation this takes place between the Government and the social partners at a central level. The main organisations represent member organisations within different professional areas.

### **Article 6, Paragraph 2**

The legal position on collective bargaining in Denmark is thoroughly described the 33rd report, including the situation on The Danish Shipping Register.

The Government assumes that the Committee does not have new questions on the Danish International Shipping Register but maintains its well-known view.

### **Article 6, Paragraph 3**

The legal position on settlement of industrial disputes is thoroughly described the 33rd report.

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

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Received cases</b>	853	718	724	667
<b>Closed cases</b>	872	763	756	615
<b>Pending cases</b>	585	540	511	561

*Source: The Danish Labour Court*

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

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>The Danish Confederation of Trade Unions</b>	807	670	665	620
<b>Other</b>	12	18	27	13

*Source: The Danish Labour Court*

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

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>The Confederation of Danish Employers</b>	25	24	28	25
<b>Other</b>	9	6	4	9

*Source: The Danish Labour Court*

#### **Article 6, Paragraph 4**

The legal position on the right to take industrial action towards an employer is thoroughly described in the 33rd report, and there have been no legal changes concerning restrictions on the civil servants' right to strike, the consequences of a strike and the linkage rule.

**Article 2 of the Additional Protocol – The right to information  
and consultation**

## **Article 2 – The right to information and consultation**

The rules on the right to information and consultation are described the 33rd report, and there have been no legal changes since this report.

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

**Article 3, paragraph 1 and 2, (Conclusions XX-3, 2017: 24):**

*The Committee asked to receive information on the practical implementation of the new rules applicable in enterprises.*

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 organisation in enterprises, was amended in 2010 (Consolidation Act no. 1072 of September 7th 2010 on the working environment).

The aim of the amendment was to provide a basis for more preventive and dynamic working environment measures within the enterprises where supervisors, managers and employees to a greater extent could cooperate to improve the working environment.

Furthermore, the amended rules should put the working environment in focus as a strategic and prioritized element within the enterprises. It was therefore necessary that the members of the working environment groups were able to perform the tasks at hand. The employer was given a new duty to provide ongoing competency development that would contribute to make participation in the working environment group attractive.

In practice, with the amendment each year the employer had to, among other things, plan the safety and health of the enterprise for the coming year in cooperation with the employees. The objective was that an annual debate would provide a simple process that promotes and strengthens the working environment efforts of the enterprise.

Act no. 1072 of September 7th 2010 has since been amended through;

Act no. 1538 of December 21st 2010.  
Act no. 597 of June 14th 2011  
Act no. 155 of February 20th 2013.  
Act no. 356 of April 9th 2013.  
Act no. 639 of June 12th 2013  
Act no. 238 of marts 18th 2014  
Act no. 736 of June 25th 2014  
Act no. 54 of January 27th 2015  
Act no. 1869 of December 29th 2015  
Act no. 395 of May 2nd 2016  
Act no. 426 of May 18th 2016  
Act no. 1717 of December 27th 2016  
Act no 285 of Marts 29th 2017.

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

Order No 1181 of October 15th 2010 has since been amended through;

Order No 116 of February 5th 2013

Order No 444 of April 24th 2013  
Order No 1561 of December 10th 2015.

Order No 840 of June 29th 2010 has since been amended through;

Order No 114 of February 5th 2013.

*The Committee has asked to receive information on the practical implementation of the new rules applicable in enterprises.*

The obligation for the employers to set up working environment organisations, and to have an annual debate, planning the safety and health of the enterprise, are laid down in Order No. 1072 of September 7th 2010. The Danish Work Environment Authority can at monitoring visits examine whether the enterprises are in fact fulfilling their obligations. The Danish Work Environment Authority can also give a binding notification for the enterprises to put things in order, when they find that the obligation has not been fulfilled. A binding notification means that the Danish Working Environment Authority may not impose additional requirements if the investment in the working environment is conducted in accordance with the notification. Furthermore, a starter kit for new enterprises has been made available.

Enterprises will receive the starter kit when the Danish Working Environment Authority becomes aware of the fact that the enterprise in question has employees.

Furthermore, the Danish Work Environment Authority provides material on major working environment problems in the different industries, as well as information on relevant preventive measures. The information is accessible at the Danish Work Environment Authority web page which the enterprises can use in their work with the annual planning.

Finally, The Danish Work Environment Authority has set out rules to ensure that the education of the employees, who partake in the health and safety organisations, are all meeting the same requirements for the education. These rules can be found in Order No. 840 of June 29th on approval of the providers of the compulsory labour education program.

**Article 3, paragraph 1 and 2, (Conclusions XX-3, 2017: 25):**

*The Committee asked to receive information in the next report on the progress of the new strategy relating to the working environment up to 2020.*

Working environment

In September 2010 the government presented a new strategy for working efforts up to 2020 called "A New Way Towards a Better Working Environment". This strategy was superseded in Marts 2001 by the political agreement; "A strategy for working environment efforts up to 2020." It focuses on the following working environment problems:

- Accident at work
- Psychosocial working environment
- Musculoskeletal disorders.

Furthermore, the strategy contains the following objectives regarding the working environment in 2020:

1. The number of serious accidents at work is to be reduced by 25 percent in proportion to the number of employees
2. The number of employees who are psychologically overloaded is to be reduced by 20 percent
3. The number of employees who experience musculoskeletal disorders is to be reduced by 20 percent.

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

The committee has asked to receive information on the progress of the new strategy relating to the working environment up to 2020.

Since launching the new strategy relating to the working environment up to 2020, the progress has been monitored through a midterm study.

Among other things, this showed that the prognoses indicated an 18 percent decrease in serious work related accidents (defined as work accidents leading to compensation for damages and/or leading to a sick leave of 30 days or more). This is based on a study of the development in work accidents between 2011 and 2014. However, there was a margin of error at the time of the study, as several occurrences had delayed the processing of cases in the Danish Department of Industrial Injuries on which the statistics used in the study was based. Furthermore, the prognoses indicated a 17 percent increase in cases where employees were psychologically overloaded. The prognoses were based on a study of the development between the years 2012 to 2016.

This increase is statistically significant and attributed to an increase in reporting of cases where the employees have symptoms in the form of stress, depression or people with a high psychologically exposure score. There has also been an increase in reporting cases where the employees have been exposed to violence.

At the same time, the prognoses indicated a 15 percent increase in cases where employees were experiencing musculoskeletal disorders. The prognoses were likewise based on a study of the development in work related musculoskeletal disorders between the years 2012 and 2016. This increase can be explained, in part, by an increase in people reporting “weariness after work,” and “A limitation to work ascribed to pain.”

In 2017, the Danish government established an expert committee starting the summer of 2017. The committee will give recommendation on, among other things, how to enhance the efforts towards improving the work environment. It is expected to have recommendations ready in the summer of 2018.

Already in March 2011, the Danish government laid out 19 initiatives to achieve the goals set out in the new strategy towards 2020. The 19 initiatives include:

- Initiative 1: Risk-based inspection in two tiers focusing on enterprises with health and safety issues.
- Initiative 2: De Minimis limits (Refraining from taking action against minor matters).
- Initiative 3: Differentiated fines.



Initiative 4: Intensified dialogue with enterprises.  
 Initiative 5: Focus on psychosocial working environment.  
 Initiative 6: More help for smaller enterprises.  
 Initiative 7: Starter kit for new enterprises.  
 Initiative 8: Simplified health and safety consultancy scheme.  
 Initiative 9: Modified smiley scheme (giving the green smiley an expiration date).  
 Initiative 10: Analysis of the experiences with the Health and Safety Organisation at the enterprise level.  
 Initiative 11: Dialogue concerning health promotion.  
 Initiative 12: Focus on young and new employees.  
 Initiative 13: Focus on foreign enterprises.  
 Initiative 14: Improved guidance and information on the working environment.  
 Initiative 15: Coordination of guidance and inspections of enterprises by various authorities.  
 Initiative 16: Danish Centre for Nano-Safety.  
 Initiative 17: Targeting the resources of the Danish Working Environment Research Fund.  
 Initiative 18: Measuring progress with regard to the working environment.  
 Initiative 19: Impact measurement of specific activities.

As a supplement to these initiatives, the Danish government laid out another 15 initiatives, to begin on 1 January 2016. The purpose of this was to strengthen the original work environment initiatives. The 15 new initiatives include:

Initiative 1: More inspections of enterprises with the largest work environment problems.  
 Initiative 2: More information shall be included, when enterprises are selected for inspections.  
 Initiative 3: Inspections of enterprises shall be carried out where the work is being done.  
 Initiative 4: Inspections of new enterprises at an earlier time.  
 Initiative 5: Enterprises holding an occupational health and safety certification, while violating rules, can be inspected.  
 Initiative 6: Better control of the occupational health and safety certification.  
 Initiative 7: The Danish Working Environment Authority and the Work Environment Councils must coordinate their initiatives.  
 Initiative 8: Targeted access to The Danish Working Environment Authority's guides.  
 Initiative 9: Risk based inspections of enterprises must be notified digitally.  
 Initiative 10: A trial period with notifications of inspections of enterprises.  
 Initiative 11: Analyses of the methods used to select enterprises for inspections.  
 Initiative 12: Larger fines for grosser violations.  
 Initiative 13: More vigilant inspections of enterprises with grosser violations.  
 Initiative 14: Quick follow up on breaches of work environment regulations.  
 Initiative 15: Rules concerning collaboration on safety and health must be aggravated.

**Article 3, Paragraph 1 and 2, (Conclusions XX-3, 2017: 26):**

*The Committee asked for information on the implementation of guidelines based on the new rules.*

The report indicates that the Danish Working Environment Authority has issued the following guidelines based on the new rules:

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 work environment organisations;  
Organisation of cooperation on health and safety in enterprises with employees with special needs.

In view of these rules and guidelines, the Committee has asked that the next report provides up-to-date information on their implementation.

The guideline on cooperation on health and safety in enterprises with less than 10 employees has been in effect since May 2011.

The guideline on cooperation on health and safety in enterprises with 10-34 has been in effect since May 2011, and it has been upgraded in January 2016.

The guideline on cooperation on health and safety in enterprises with at least 35 employees has been in effect since May 2011, and it has been upgraded in January 2016.

The guideline on cooperation on health and safety at a temporary or mobile workplace in the construction area has been in effect since May 2011.

The guideline on cooperation on health and safety at a temporary or mobile workplace apart from workplaces in the construction area has been in effect since May 2011, and it has been upgraded in January 2016.

The guidelines in health and safety training for members of the work environment organisations, has been in effect since May 2011, and it has been upgraded in January 2016.

The guidelines in organisation of cooperation on health and safety in enterprises with employees with special needs has been in effect since Marts 2012, and it has been upgrade in January 2016.