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EUROPEAN SOCIAL CHARTER

41st National Report on the implementation
of the European Social Charter

submitted by

THE GOVERNMENT OF DENMARK

Articles 2, 4, 5, 6 and article 2 and 3 of the Additional Protocol

for the period 01/01/2017 – 31/12/2020

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In pursuance to article 23 of the Charter, copies of this report have been communicated to:
Danish Trade Union Confederation (FH)
The Danish Confederation of Professional Associations (AC)
The Confederation of Danish Employers (DA)
Confederation of Danish Industry (DI)

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Article 2 – The right to just conditions of work

Article 2§2, Article 2§3, Article 2§5

a) No information is requested on these provisions, except insofar as they concern special arrangements related to the pandemic or changes to work arrangements following the pandemic: public holidays (Article 2§2), annual holiday (2§3), reduced working time in inherently dangerous or unhealthy occupations, in particular health assessments, including mental health impact (2§4), weekly rest period (2§5).

Temporary Amendments to the Holiday Act due to the consequences of COVID-19

In order to minimize layoffs under the COVID-19 crisis, the government, unions and employers' representative organisations reached a tripartite agreement in the spring 2020 on a new, temporary wage compensation. The scheme was primary directed towards employers in the private sector, so that they, to the largest extent possible, retained their employees in their employment. At the same time, the scheme made it flexible for companies and employees to take holiday and use other saved freedom from work, regardless of the other terms of employment. The scheme included temporary changes to the Holiday Act, which are described below:

Act No. 264 of 24 March 2020 on employers´ and employees' legal status under a wage compensation scheme for companies due to COVID-19

The Act entailed that a private employer, who was about to dismiss employees, instead could send the employees home with salary and get compensation from the state. The employers' right to compensation was conditional on that the employees, who was covered by the scheme received salary during the furlough period, however, the employees had to contribute themselves by taking five days of holiday, time off in lieu or other saved freedom from work. If the employee didn't have five days of holiday, time off lieu or other saved freedom, the employee was obligated to take holidays in advance (from the next holiday year) or to take leave without salary. The scheme was temporary and does no longer apply.

An employed worker in Denmark has the right to five weeks of holiday a year. An employee under the scheme was therefore still ensured the right to four weeks of paid holiday a year, even though the employee used five days of holiday, which normally were granted not until the new holiday year. The scheme did not result in employees losing any of their holiday.

Act No. 348 of 2 April 2020 on postponement of vacation due to COVID-19

The Act makes it possible to postpone holiday to the next holiday period, if the employee could not take the time off in the holiday period due to significant and unpredictable operational issues caused by COVID-19. The Act ensured that vital parts of the society had the necessary labour force and continued to be up and running under COVID-19. The possibility to postpone holiday included both holiday that was scheduled and holiday that was not yet scheduled. The Act was temporary and is no longer in effect.

The Act was justified and limited to force majeure cases to ensure i.a. health care and food supply. The Act entailed that the affected employees were not ensured a minimum of vacation in the holiday period in which

it was decided to postpone the holiday. The employees did however not lose the postponed vacation, as it could be used in the following holiday period.

Act No. 958 of 26 June 2020 on holiday notice in the extended period of wage compensation

In June 2020, a tripartite agreement prolonged the wage compensation period. As part of the conditions for the wage compensation scheme, the employees had to contribute to it by taking their remaining holiday. The agreement only included holiday after the Holiday Act and the employees were only required to use a maximum of 15 days of holiday.

The Act allowed employers, covered by the scheme, to notify holiday with a shorter notice than usual, so that the employees could take 15 days of holiday. The Act also made it possible for the employers to change holiday that already been scheduled outside the wage compensation period.

The Act was in force from 9 June 2020 to the 29 August 2020. The Act did not influence the employees' right to five weeks of holiday a year, because the Act only dealt with the placement of holiday within the holiday year.

Act No. 158 of 2 February 2021 on holiday notice on the basis of the reestablished wage compensation scheme in regards to dealing with COVID-19

The wage compensation was reestablished in February 2021. As part of the conditions for the wage compensation scheme, the employees had to contribute to it by taking one day of holiday or time off in lieu for each month (28 days) the wage compensation lasted. The first day of holiday could however be notified after 21 days with wage compensation, i.e. employees who was covered by the wage compensation for less than 21 days would not be obligated to go on holiday.

The Act allowed the employers, who were covered by the scheme, to notify holiday with one day notice in accordance with the wage compensation scheme. Employees were generally only required to take five days of holiday under the wage compensation period.

The agreement was temporary and is no longer valid. The Act did not influence the employees' right to five weeks of holiday a year.

(Follow up on Conclusions XXI-3 2018) Article 2: Conclusions of non-conformity; conclusions of conformity pending receipt of specific information; deferrals due to lack of information

Article 2§2 - Public holidays with pay

The Committee takes note of the information contained in the report submitted by Denmark.
It was previously noted that no general legislation regulates public holidays with pay (Conclusion XIV- 2 (1998)), but that in practice most workers are covered by collective agreements which generally provide for public holidays with pay. In the last conclusions (Conclusions XX-3 (2014)) the Committee deferred its conclusion and requested clarification under what circumstances work is allowed during public holidays and whether an increased salary is paid for work on public holidays. The report states that work on public holidays is considered to be extraordinary and has to be particularly justified. Extra pay is given for work done on a public holiday. However, additional pay for work on public holidays is regulated by collective agreements and according to the report there is no available statistical information as to the rate of the increased salary.

Conclusion
The Committee concludes that the situation in Denmark is not in conformity with Article 2§2 of the 1961 Charter on the ground that it has not been established that workers receive a sufficiently increased salary for work on public holidays.

There has been no change in the legislation. There is no available statistics on the rate of the increased salary on public holidays.

Article 2§5 – Weekly rest period

The Committee takes note of the information contained in the report submitted by Denmark.

The Committee previously considered the situation to be in conformity with the Charter on the ground that the Danish Work Environment Authority (WEA) had not approved any agreements or given dispensations to more than 12 days between two weekly rest periods. It asked the next report to provide updated information in this respect.

The report explains in detail the process of dispensation from the weekly rest period repeating the information given in the previous report and states that the WEA rarely grants such exemptions but also states that as regards the question raised by the Committee no information is currently available.

The Committee reiterates its request for information on whether the WEA has approved any agreements or given dispensations to more than 12 days between two rest periods.

The Danish Work Environment Authority (WEA) has based its reply on the reference period of the current report: 01.01.2017-31.12.2020.

WEA have since 2017 approved 3 dispensations and 1 agreement regarding more than 12 days between two rest periods.

Case 20165200166 - dispensation

Personal helper to a terminal ill patient was allowed to postpone the weekly rest period for a limited time, until the patient didn't need care anymore. The dispensation was given under the terms, that the helper should have compensating rest days corresponding to the days she had lost, when the limited time were over.

Case 20195100862 – dispensation

Workers working offshore with installations of wind turbines were allowed to work offshore for 14 days without a weekly rest period. The work period of 14 days offshore was followed by 14 days of rest. The dispensation was given for a limited period.

Case 20200013042 – dispensation

Workers on a gas line were allowed to work for 20 days and 13 days without a weekly rest period. The dispensation was given for a limited period of 10 weeks. An extension of the dispensation was denied. The dispensation was given under the terms, that the workers should have compensating rest as soon as possible.

Case 20205100368 – agreement

Work on wind turbines far from shore is allowed to go on for 14 days without a weekly rest period, followed by 14 days of rest.

Article 4 – The right to a fair remuneration

Article 4§1 – decent remuneration

a) Please provide information on gross and net minimum wages and their evolution over the reference period, including about exceptions and detailed statistics about the number (or proportion) of workers concerned by minimum or below minimum wage. Please provide specific information about furlough schemes during the pandemic, including as regards rates of pay and duration. Provide statistics both on those covered by these arrangements and also on categories of workers who were not included.

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 400,000 employees are not covered by at least one 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 70 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 typically will try to make the employer conclude a collective agreement. If this fails, the union could 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.

According to Statistics Denmark data from the Structure of Earnings statistic (undertakings with more than 10 employees), the standardised annual gross wage for non-managerial level employees was DDK499,663 (EUR67,140) in 2020 (table 1). The comparable wage for the job function cashier and ticket clerks, that range at the lowest end of the statistic, have an annual standardised annual gross wage of DDK309,321 (EUR 41,563). Excluding pensions, the average annual standardised annual gross wage is DDK437,518 (EUR 58,802) in total and DDK273,824 (EUR36,802) for cashier and ticket clerks. This wage is lower than the sector wide Wholesale and retail trade wage of DDK457,258 (EUR61,455) including pensions and DDK404,906 (EUR54,419) excluding pensions.

Net wages are calculated (using the tax situation of single employees without dependent children) as gross standardised annual wages excluding pensions and after taxes. Taxes include state taxes, an average for municipal taxes, labour marked contributions, green cheque and church tax. The estimated average net wage

for this specific type of employee in total is DDK283,490 (EUR38.101) in total and DDK187,262 (EUR25.168).

During the pandemic there have been implemented a number of wage compensation e.g. furlough schemes for employees through the firm and self-employed. The regulations were implemented on an ad hoc basis in times of severe restrictions during the pandemic. One requirement for public wage compensation was the continuation of payment of the contractually agreed amount in full. In total over 350.000 people were covered at least at one point.

The wage compensation scheme covered employees on monthly salary, hourly wage and self-employed. There has been implemented several eligibility criterias for firms to receive wage compensation and maximum amounts for wages a compensation could be paid out. The length that firms could receive compensation for individual employees has been extended several times during times of high infection rates. The actual length firms were receiving benefits was practically limited by the degree of compensation in the wage compensation scheme through their economic incentives to apply for wage compensation. The COVID-19 related extensions of the wage compensation scheme expired in January 2022.

The temporary work-sharing scheme in the private sector labour market, whose purpose is to prevent layoffs has been extended during the COVID-19 crises. Firms can claim join the scheme and give their employees the opportunity to receive unemployment benefits while the employees do not have to fulfil the requirements as under ordinary unemployment. The scheme covers all employees paid monthly or hourly and regardless of their employment contract. Apprentices were not covered by the scheme. The extension of this additional scheme expires in March 2022.

Tabel 1

Standard wage payments in Denmark by ISCO-08, in DDK1,000

		2013	2014	2015	2016	2017	2018	2019	2020
Gross wage incl. pensions	TOTAL	439	445	452	458	468	477	488	500
	Cashiers and ticket clerks	285	292	296	289	292	297	304	309
Gross wage excl. pensions	TOTAL	386	390	397	402	411	418	427	438
	Cashiers and ticket clerks	252	259	263	255	259	262	269	274
Net wage (single)	TOTAL	250	253	257	260	266	271	277	283
	Cashiers and ticket clerks	172	176	179	175	177	180	184	187

Anm.: Gross payment including and excluding pensions and net wages of employees without leadership function after occupation type after ISCO_08. Wages defined as standard wages for full time equivalent employment from the Structure of Earnings statistic. Wages include holiday payments special holiday allowance overtime payments, sickness with pay, nuisance bonuses, fringe benefits and irregular payments and pensions including ATP for this wages including pensions. Net wages (single) are gross wages minus taxes and duties on wages for a single without dependent children. Taxes include national and an average for municipal taxes, labour marked contributions, green cheque and church tax.

Kilde: Statistics Denmark (lons20) and own calculations.

b) The Committee also requests information on measures taken to ensure fair remuneration (above the 60% threshold, or 50% with the proposed explanations or justification) sufficient for a decent standard of living,+ for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts. Please also provide information on fair remuneration requirements and enforcement activities (e.g. by labour inspectorates or other relevant bodies) as well as on their outcomes (legal action, sanctions imposed) as regards circumvention of minimum wage requirements (e.g. through schemes such as sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

As described above, the State does not intervene in the determination of wages. This is the case for all types of employment relationships, including in the platform economy.

c) Please also provide information on the nature of the measures taken to ensure that this right is effectively upheld as regards the categories of workers referred to in the previous paragraph (b) or in other areas of activity where workers are at risk of or vulnerable to exploitation, making in particular reference to regulatory action and to promotion of unionisation, collective bargaining or other means appropriate to national conditions.

Please refer to the answers above.

Article 4§2 – remuneration for overtime work

a) Please provide up to date information on the rules applied to on-call service, zero-hour contracts, including on whether inactive periods of on-call duty are considered as time worked or as a period of rest and how these periods are remunerated.

According to the relevant legislation the inactive part of on call-time *at the workplace* is regarded as working time unless a collective agreement allows for it to be regarded as a rest period. The inactive part of on call-time *outside the workplace* is regarded as a rest period. In Denmark we do not have legislation on renumeration and how on call-time is renumerated is normally regulated by collective agreements. Accordingly, this may differ from sector to sector. The Danish authorities have no statistical data concerning overtime.

b) Please explain the impact of the COVID-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. Please include specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, remuneration, increased compensation).

Overtime remuneration and compensation are agreed in collective agreements. Thus, it has not been impacted by the COVID-19 pandemic, and no measures have been taken to fulfil this right. Additionally, Denmark does not have legislation specifically regarding telework

c) The Committee would welcome information on any other measures put in place intended to have effects after the pandemic which affect overtime regulation and its remuneration/compensation. Provide information on their intended duration and the time frame for them to be lifted.

No measures have been put in place that were intended to have effect after the pandemic and which affect overtime regulation and its remuneration/compensation.

Article 4§3 – Equal pay for work of equal value

a) Please provide information on the impact of COVID-19 and the pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

Wage developments for men and women are described in the Gender pay gaps in the European Union – a statistical analysis – 2021 edition, where Denmark ranks as number five with an unexplained gender wage gap of 9.4 % in 2018. Due to the high rate of industry and sector based collective bargaining agreements that are a limiting factor for individual wage negotiations the impacts of COVID-19 on the wage disparity can be assumed low.

Furlough schemes were fully available to both men and women due to their broad design. The actual degree of participation in the schemes was limited by the employer's willingness to apply for compensation. There are no current evaluations of the effect of the schemes available, but there has been agreement to evaluate the schemes in the future.

(Follow up on Conclusions XXI-3 2018) Article 4: Conclusions of non-conformity; conclusions of conformity pending receipt of specific information; deferrals due to lack of information

Article 4§1 – Decent remuneration

The Committee takes note of the information contained in the report submitted by Denmark.
It previously concluded (Conclusions XVIII-2 (2007), XIX-3 (2010) and XX-3 (2014)) that the situation was in conformity with Article 4§1 of the 1961 Charter.
The report reiterates that minimum wages are determined for each sector under collective agreements, which cover nearly 60% of employees in the private sector and almost 100% in the public sector, amounting to about 80% overall coverage. According to the report, in sectors not covered by collective agreements the latter have a spill over effect, since workers' organizations verify that no "wage dumping" takes place and pressure employers to conclude agreements if necessary.

It considers in the present case that on the basis of figures provided for 2012 the typical net minimum wage represents 77.33% of the net average wage and thus constitutes a decent remuneration according to Article 4§1 of the 1961 Charter. However recent data is not provided.

The Committee points out that to be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the state party concerned to conduct the needed enquiries or to provide estimates. Where the net minimum wage is between 50% and 60% of the net average wage, it is for the state party to establish that this wage permits a decent standard of living.

The Committee asks the next report to provide updated figures concerning the average annual wage and typical minimum wage as paid in the wholesale and retail sector under the terms of the relevant collective agreement.

Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

Please refer to the reply under article 4§1, question a.

Article 4§2 – Increased remuneration for overtime work

The Committee takes note of the information contained in the report submitted by Denmark.

In its previous conclusion (Conclusions 2014), the Committee deferred its conclusion requesting further information

- whether workers in the private sector had adequate legal guarantees ensuring them increased remuneration for overtime;
- whether under flexible working time arrangements there are limits to daily and weekly working hours.

The report reiterates that overtime pay is regulated by collective bargaining. The social partners make sure that there are no breaches in their collective agreements concerning overtime. The report also confirms, as requested in the previous conclusions (Conclusions XX-3 (2014)), that the level of overtime pay according to collective agreements also has a significant spill over 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.

As regards the second, the Committee notes that the report provides no information on flexible working time arrangements.

The Committee reiterates its request and asks the next report to answer the question whether under flexible working time arrangements there are any limits to daily and weekly working hours that the workers may be asked to perform.

Conclusion:

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 4§2 of the 1961 Charter.

The limits to daily and weekly working hours according to the legislation in Denmark applies to workers in general and does not contain exceptions for flexible working time arrangements.

Article 4§3 – non-discrimination between women and men with respect to remuneration

Legal basis of equal pay

The legal basis was analysed by the Committee in its conclusions under Article 20 (Conclusions XX-1 (2012) and Conclusions XXI-1(2016)). It noted that the Equal Pay Act prohibits discrimination against women and men in pay. The Committee asks the next report to provide updated information on this issue.

Please see reply below to "Policy and other measures".

Guarantees of enforcement and judicial safeguards

The Equal Pay Act provides protection against discrimination, and such cases are dealt with by the courts of law, the Board of Equal Treatment and industrial arbitration. The report does not give any information on the cases dealt with during the reference period, and the Committee asks on the case law developed by the courts and the Board of Equal Treatment regarding discrimination on the basis of gender in employment and equal pay.

In general, there are very few equal pay cases in Denmark. Thus, the Government is not aware of decisions from the Courts or rulings in Industrial Arbitration on equal pay since the last report.

Since the last report, the Board of Equal Treatment has dealt with 10 cases regarding equal pay.

In 7 cases, the Board did not find that the principle of equal pay was infringed.

In 2 cases, the Board ruled in favour of the claimant (one of which was a man), and in 1 case the Board was unable to make a ruling based on the written procedures before the Board.

According to the Annual Reports from the Board of Equal Treatment, the Board issues rulings in approximately 100 cases per year regarding discrimination on the basis of gender both within and outside the labour market, see table below[1].

	Number of cases regarding gender discrimination
2016	115
2017	119
2018	86
2019	94
2020	100

Unfortunately, the annual reports do no longer specify that nature of the rulings further which means that some of the cases may concern discrimination outside the labour market.

[1] The Annual Report from 2021 is not yet available.

A search in the Board of Equal Treatment Database shows that from 2016-2022, 230 cases were related to gender discrimination in employment, including equal pay. A majority of these cases concerned dismissal due to pregnancy and/or family leave, and in that type of case, the burden of proof is reversed. This means that the dismissal is deemed to be due to pregnancy and/or family leave unless the employer can establish that this is not the case.

If the principle of equal treatments is found to have been infringed, the average compensation to the worker is 9-12 months' pay.

The Government is aware of 12 High Court decisions, 2 decisions from the municipal courts and 1 ruling in Industrial Arbitration regarding discrimination based on gender in relation to employment since the last report.

In 4 of the decisions from the High Court, the equal treatment principle was not infringed. The remaining decisions were in favour of the claimants.

Methods of comparison

The Committee refers to its conclusion under Article 20 (Conclusions XX-1) where it noted from the report that the current case law only deals with comparisons within the same company. Under Article 20 of the Charter (Article 1 of the Additional Protocol of 1988), equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings.

The Committee asked therefore whether pay comparisons outside the company are possible in equal pay litigation cases, when the difference identified in the pay conditions of female and male workers performing work of equal value is attributable to a single source. The report states on this respect that pay comparison across companies and/or outside the company 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. The Committee therefore takes note that wages and pay depends ultimately on individual negotiation, but requests for further information on pay transparency, and on whether pay comparison across companies is possible not only in the legislation, but also in cases on equal pay, and what is the practice followed.

Under the Act on Equal Pay, workers are entitled to share information regarding their pay with whomever they choose. Any clause in an employment contract, which states that the employee cannot share information regarding his or her pay, is invalid.

Workers are also entitled to receive information of the pay code with which the employer registers their pay. The pay code (a 6-digit DISCO-code or similar code) refers the workers job function and helps identify relevant comparators.

With regards to pay comparison across companies, the Government notes that the concept of 'single source' for comparing pay already exist in current EU-legislation and EU-case law

The Government further notes that in the context of the negotiations of the proposed EU-Directive on Pay Transparency the concept of 'single source' in relation to pay comparison across companies has been discussed in depth.

Thus, Member States have been unsure of the concept's scope, and it has been unclear when exactly a collective agreement constitutes a single source. In countries with collective agreement models – such as Denmark – there is concern that a "broad" meaning of the concept could lead to cross-sectoral comparisons between workers who may not even be in comparable situations, yet who are still able to compare themselves, as they belong to the same collective agreement (single source). This could not only entail great burdens for employers; it could also make it a disadvantage to have a collective agreement, whereby the concept of 'single source' risks undermining collective agreement models.

The European Commission has clarified that, according to case law, 'single source' is a narrow concept: a collective agreement can only constitute a single source when the collective agreement sets all the conditions of pay.

This is now reflected in the recital text of the proposed Directive: "Workers may be in a comparable situation even when they do not work for the same employer whenever the pay conditions can be attributed to a single source setting up those conditions **and where these conditions are fully equal and comparable**. This may be the case when **all relevant** pay conditions are regulated by statutory provisions or agreements relating to pay applicable to several companies, or when such conditions are laid down centrally for more than one organisation or business within a holding company or conglomerate."

This text reflects the existing legal practice in the EU and thus also in Denmark.

Finally, the Government notes that 'single source' is an active legal concept that courts can – and do – evoke to assess whether workers can compare the value of their work.

In case **C-320/00 Lawrence**, the Court of Justice (ECJ) deemed that cleaning and catering services in schools and educational establishments (mainly performed by women) is of equal value to gardening, refuse collection and sewage treatment (mainly performed by men). In this case, there was no single source. Yet, the court developed the single source concept through its interpretation of article 157 of the Treaty. The Court held that the value of men and women's work can be compared even if they do not work for the same employer. Their work is comparable as long as there is a 'single source (e.g. a legislative provision, collective agreement or holding company) which is responsible for the inequality and which can rectify the pay difference.

If there is no single source, then there is no discrimination in the sense of article 157 of the Treaty, as no single body is responsible for the discrimination and able to correct it.

Statistics

The unadjusted gender pay gap in Denmark, according to EUROSTAT data of 2016, stood at 15%, while in 2011 it stood at 16.3%.

There is no information on the report on the gender pay gap, but the Committee takes note of the factsheet prepared by the European Union on Denmark, in which it is referred to the main factors that contribute to the gender pay gap. One is the fact that women take important unpaid tasks, such as household work and caring for children and relatives, which is reflected in working part-time. Women also tend to stay periods *off the* labour market more often than men and there is a segregation in education and in the labour market. This means that in some sectors and occupations, women tend to be overrepresented, while in others men are overrepresented. Occupations predominantly carried out by women, such as teaching or sales, offer lower wages than occupations predominantly carried out by men, even when the same level of experience and education is needed. Finally, management and supervisory positions are overwhelmingly held by men. Pay

discrimination, according to this factsheet, while illegal, continues to exist. The Committee therefore asks for further information on measures taken addressing the gender pay gap.

The continued dialogue between the Government and the Danish Social Partners resulted in a report by the Danish Centre for Social Science Research in October 2020 on the unexplained gender pay gap.[2]

The report found that 85 percent of the pay gap can be 'explained'. In other words, 15 percent of this difference is 'unexplained'. The ‘unexplained part’ may be due to two things: that there are conditions that the analysis does not take into account and that women and men with ‘same’ characteristics receive different pay.

The ‘unexplained’ part of the pay gap is a statistical concept. It is not a measure of whether discrimination takes place in the Danish labour market. ‘Fair’ and ‘unfair’ pay gaps can be found in both the ‘explained’ and the ‘unexplained’ part. However, the results can form the basis for a discussion of the reasons behind the difference in the hourly wages between men and women.

In 2017, the difference between men and women's hourly wages was 14.4 percent. 15 percent of this is 'unexplained', ie. that the remaining ‘unexplained part’ amounts to approx. 2 percentage points. A significant part of the 'explained' part of the pay gap is related to the fact that the labour market is gender-segregated. The analysis shows that the gender segregation in the labour market plays a greater role in the pay gap than previously assumed.

The gender segregation leads to pay differences because there are systematic differences in pay in the female- and the male-dominated jobs: The more of the employees in one's job function in the workplace, there are women, the lower the pay. Furthermore, it plays a role that men are placed higher up in the job hierarchy than women.

The pay gap is also related to the fact that women have more absenteeism than men. More absence can result in lower pay if one's competencies deteriorate during absence, and if longer (voluntary) periods of absence are a signal that one is less dedicated to one's job. It also plays a role that women have less work experience than men. Women take longer educations than men. If they did not, the pay gap between the two sexes would be even greater.

Policy and other measures

The Conclusions further indicated that in June 2014, the Danish Government amended the Equal Pay Act and adopted new legislation to extend the obligation to prepare annually gender-segregated pay statistics from employers employing 35 workers or more to employers employing 10 workers or more, of which at least 3 are men and 3 are women. This extended the scope of the regulation from approximately 2.24 million employees and 3.500 enterprises to approximately 2.7 million employees and 13.000 enterprises. However, the report indicates that the legislation has been revised again on this point in 2016, and that the threshold for drawing up gender-segregated pay-statistics has changed again from 10 to 35 employees.

[2] Den ’uforklarede’ del af forskellen mellem kvinders og mænds timeløn - VIVE

The Danish Government can confirm that the Equal Pay Act was amended on 15 February 2016 raising the threshold for drawing up gender-segregated pay-statistics from 10 to 35 employees.

The Government notes that gender-segregated pay statistics are meant as a tool for the in-house cooperation at enterprise level between the management and the elected worker representatives (shop stewards) on eliminating the gender pay gap.

The amendment of the threshold in 2016 was proposed by the former liberal Government to recreate the link between the obligations to develop gender-segregated pays statistics and to establish a Works Council as companies with less than 35 employees are not obliged to do so and therefore may not have an elected workers' representative.

Since the amendment in 2016, the Government has continued the dialogue with the Social Partners regarding the gender pay gap resulting in the above-mentioned report by the Danish Centre for Social Science Research in October 2020 on the unexplained gender pay gap.

Following the renewal of the collective agreements for the public sector in June 2021, the nurses went on strike for two months, as they were not satisfied with the pay increases in the agreements. The Government intervened and ended the strike in August 2021 as the public health services faced severe difficulties.

In the wake of the strikes, the Government pledged to examine the pay structures in the public sector in particular in relation to the female-dominated health-care professions and thus established a Committee for Wage Structures[3] in the Public Sector in October 2021.

The Committee consists of academic experts and representatives of the Social Partners. The Committee will:

- Analyse wage structures and wage developments in the public sector, e.g. on the basis of the Wages Commission's work and conclusions, including the work of defining wage concepts and the importance of terms that are not included in the wage statistics, comparison between the public and private sector, the importance of employment rate, etc.
- Highlight effects and consequences of any changes in the wage structures in the public sector, including the significance for the private sector.
- Highlight opportunities for developing wage formation in the public sector within the framework of the Danish Labour Market Model in the public sector, including which opportunities and possible barriers there may be for ongoing or more fundamental changes in wage structures in the public sector.

The Committee is organised under the Ministry of Employment and will present its findings before the end of 2022.

Furthermore, on 26 October 2021 the Government and a majority of the parties of the Danish Parliament concluded a political agreement to reform the Act on Maternity Leave.

The reform grants parents equal rights to 24 weeks family leave after the birth of a child with state benefits, including 9 weeks, which are earmarked and non-transferable.

On 3 March 2022, the Parliament adopted legislation implementing the agreement, which will enter into force on 1 July 2022.

[3] Lønstrukturkomitéen (loenstrukturkomiteen.dk)

The Government expects that the reform will encourage parents to share leave more equally which in turn can positively affect women's' labour market participation and gender equality in the labour market in general.

Finally, the Danish Government is actively engaged in the negotiations of the above-mentioned proposed EU Directive on Pay Transparency, which is currently undergoing Trilogue negotiations with the European Parliament.

Article 5 – The right to organize

a) Please provide data on trade union membership prevalence across the country and across sectors of activity, as well as information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. Also provide information on recent legal developments in these respects and measures taken to promote unionisation and membership (with specific reference to areas of activity with low level of unionisation, such as knowledge workers, agricultural and seasonal workers, domestic workers, catering industry and workers employed through service outsourcing, including cross border service contracts).

There are no available national statistics on trade union prevalence. According to an estimate by the Confederation of Danish Employers, the figure for the collective bargaining coverage rate was 82 percent in 2018.

There are no activities in which workers are excluded from forming or joining for the protection of their economic and social interests.

There has been no recent legal developments and no recent measures taken to promote unionisation and membership.

b) Also provide information on measures taken or considered to proactively promote or ensure social dialogue, with participation of trade unions and workers organisations, in order to take stock of the COVID-19 crisis and pandemic and their fallout, and with a view to preserving or, as the case may be, restoring the rights protected under the Charter after the crisis is over.

The Danish model is characterised by a large degree of tripartite cooperation, and this was also the case during the COVID-19 pandemic. Below are listed four central tripartite agreements in the Danish COVID-19 policy response.

1. Tripartite agreement on maternity benefits for parents with children who was sent home because of COVID-19

The agreement gave parents of children who were sent home due to COVID-19 the opportunity of temporarily receiving maternity benefits until the child could return to an institution or school. The scheme covered parents of children up to and including 13 years of age and both employees and self-employed parents. They had to meet the Maternity Act's conditions for entitlement to benefits, including the employment requirement. It was a condition that none of the child's parents had the opportunity to work from home and that they did not have care days and time off that could be used to care for their children. If the child was infected with COVID-19, the parents also had to have exhausted the child's first and second day of illness.

The government and the social partners also agreed to call for great flexibility and understanding in the workplace if an employee found themselves in the situation where a child had been found infected or had been sent home as a close contact. The scheme entered into force on September 29 2020, was valid until June 31 2021.

On 23 November 2021, the agreement was reintroduced. However, the maternity benefits could be received from day 1 without first having to use care days or the first and second child's sick days. This scheme was in place until 28 February 2022.

2. Tripartite agreement on temporarily extended right to employer reimbursement

With the temporary suspension of the employer-period, employers got the right to reimbursement from the first day of absence for employees with COVID-19. The scheme also entitled employers to reimbursement of sickness benefits from the first day of absence for employees who, on the recommendation of health authorities, had to attend self-isolation because they were considered a close contact to an infected person. Persons covered by the scheme as close contacts who had to go in self-isolation, also had to, in good faith, declare that they complied with the requirements of the health authorities recommendations for self-isolation of close contacts. It was a requirement that the person could not work from home. Self-employed people who were in the same situations could receive sickness benefits from the municipality from the first day of absence.

The scheme applied from November 23 2021 until February 28 2022. It was in line with those previously in use during the pandemic that expired on July 1 2021. Unlike last time, however, in the case of a child that was sent home, it was possible to receive maternity benefit from day one without first having to use care days or the first and second child's sick days.

3. Tripartite agreement on a new temporary division of labor in the private labor market

The aim of the agreement was to help both employees and companies in relation to the expiry of wage compensation. The division of labor made it possible for employees to share the work between them, instead of being dismissed. While being home, the employee would receive unemployment benefits while also be able to continue training. The employees would not use their unemployment benefit entitlement.

The agreement was extended on November 27 2020 so that private companies could apply for all 12 months in 2021, regardless of whether they had used the scheme in 2020. Thus, companies that were still challenged due to the COVID-19 outbreak could take advantage of the division of labor. The agreement also made the scheme more flexible, meaning that the companies in collective bargaining would have the opportunity to reduce working hours by up to 80% instead of 50%. It also became possible, under certain conditions, to call in replacements for employees who had suddenly emerged, which had been a particular wish of the hotel and restaurant industry.

In addition, the rules was made simpler to administer for the unemployment insurance funds. Employees could receive an increased unemployment benefit rate and not draw on their two-year unemployment benefit entitlement.

The agreement was entered on August 31 2020, extended on November 27 2020, and afterwards prolonged on December 10 until March 31 2022.

4. Tripartite agreement on temporary wage compensation

In connection with the reintroduction of restrictions, the government and the social partners entered an agreement on 10 December 2021 to introduce a temporary wage compensation scheme for companies that were suffering extra hard. The agreement ensured that these companies could receive a partial reimbursement for wage costs. The companies undertook not to terminate employees for financial reasons during the period in which they received the compensation.

With the extension, there are still no requirements for holidays. However, it will again be possible for companies to be included in the wage compensation scheme based on a number of criteria. The previous premise that companies must face the dismissal of 30% of the staff or 50 employees apply for wage compensation with retroactive effect from December 10 2021 until and including January 31 2022. Companies forced to close due to ban will continue to have the opportunity to apply for wage compensation.

The scheme was extended on 20 January 2022 to 15 February 2022. There is no expiration date for companies that are still closed.

(Follow up on Conclusions XXI-3 2018) Article 5 & 6: Conclusions of non-conformity; conclusions of conformity pending receipt of specific information; deferrals due to lack of information

Article 5 - Right to organise
The Committee takes note of the information contained in the report submitted by Denmark.
The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. Therefore it will only consider recent developments and additional information in this conclusion.

Personal scope
The Committee takes note from the information contained in the report submitted by Denmark that there have been no changes to the situation, which it previously considered not to be conformity on the ground that the legislation on the International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark. This restriction impairs the right of non-resident seafarers engaged on vessels entered in the Register to be fully represented by their trade unions, and the right of Danish trade unions to effectively protect the social and economic interests of such workers.
The Committee refers to its general question on the right of members of the armed forces to organize.

Conclusion
The Committee concludes that the situation in Denmark is not in conformity with Article 5 of the 1961 Charter on the ground that the legislation on the International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark.

Article 6§2 – negotiation procedures
The Committee takes note of the information contained in the report submitted by Denmark.
The Committee takes note from the information contained in the report submitted by Denmark that there have been no changes to the situation, which it previously considered not to be in conformity on the ground that the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.

Conclusion
The Committee concludes that the situation in Denmark is not in conformity with Article 6§2 of the 1961 Charter on the ground that the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.

The Committee's conclusions of non-conformity are made on the grounds that 1) the legislation on the DIS provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark and 2) the right to collective bargaining of non-resident seafarers engaged on vessels entered in the DIS is restricted.

The provision in article 10 of the Act on the Danish International Register of Shipping only regulates which workers may be covered by collective agreements entered into by respectively Danish and foreign unions. There is nothing in Danish law preventing a seafarer not resident in Denmark and working on board a ship registered in DIS to choose to be member of any Danish trade union provided that the membership is in accordance with the individual trade union's own rules.

The fact remains, that the conditions leading to the establishment of the Danish International Ship Register still apply. Traditional shipping nations – such as Denmark – compete with a number of ship registries all over the world, and Danish ships still face fierce international competition. Today, shipping has become even more international by nature, and Danish ships are engaged in voyages all over the world. It would not be beneficial for the seafarers if we do not maintain the competitive framework conditions and dismiss our legislation. This would increase manning costs. Ships would be transferred to foreign registers, some with substantially lower safety standards, let alone social and employment standards – all matters that have been taken into account and ensured for seafarers working on a ship registered in the DIS regardless of nationality. Ships registered in Danish International Ship Register are subject to regulations ensuring seafarers high standards of social conditions, including conditions of employment. Denmark is among the countries that have ratified the ILO Maritime Labour Convention, 2006.

The Danish government has always encouraged free negotiations and has held consultations with the industry on the Danish International Ship Register and the employment of foreign seafarers in order to facilitate the pro-cess of exploring possibilities to develop mutually satisfactory solutions in relation to the DIS for the parties concerned. Many issues related to the DIS are resolved on an ad hoc basis within the framework of the social partners. This ongoing joint industry ad-hoc work is from Danish experience the best way to create sustainable and reliable solutions.

As a follow up to the conclusions XXI-3 (2018) by the European Committee of Social Rights the Danish authorities has reached out to the Committee in order to arrange a meeting. This resulted in a meeting between the Danish Maritime Authority and the Committee on 22 March 2022.

Article 6 – The right of workers to bargain collectively

Article 6§2

Please provide information on specific measures taken during the pandemic to ensure the respect of the right to bargain collectively. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

There has been no specific measures during the pandemic to ensure the respect of the right to bargain collectively. Conversely, the right to bargain collectively has not been infringed during the pandemic.

Article 6§4

a) Please provide information on specific measures taken during the pandemic to ensure the right to strike (Article 6§4). As regards minimum or essential services, please provide information on any measures introduced in connection with the COVID-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.

There has been no specific measures taken to during the pandemic to ensure the right to strike. Conversely, the right to strike has not been infringed during the pandemic.

(Follow up on Conclusions XXI-3 2018) Article 6: Conclusions of non-conformity; conclusions of conformity pending receipt of specific information; deferrals due to lack of information

Article 6 - Right to bargain collectively
Paragraph 4 - Collective action
The Committee takes note of the information contained in the report submitted by Denmark.
It already examined the situation with respect to collective action (definition, permitted objectives, entitlement; consequences) in its previous conclusions and found the situation to be in conformity with the Charter.

Specific restrictions to the right to strike and procedural requirements
The Committee recalls that the situation in Denmark has been in violation of the 1961 Charter since Conclusions XX-3 (2014) on the grounds that civil servants employed under the Civil Service Act are denied the right to strike and that the workers who are not members of a trade union having called a strike are prevented from participating in the strike unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike. It notes from the report submitted by Denmark that there have been no changes to the situation. The Committee refers to its general question on the right of members of the police force to strike.

Conclusion
The Committee concludes that the situation in Denmark is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- civil servants employed under the Civil Service Act are denied the right to strike and
- the workers who are not members of a trade union that has called a strike are prevented from participating in the strike unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike.

There has been no change in legislation regarding this conclusion on non-conformity.
Regarding the civil servants, there is a decreasing trend in the number of people employed under Civil Service Act.

Regarding the right to join a strike, the affected workers are free to join the relevant striking union to participate in the strike and enjoy the same protection as the unionised workers.

Article 6 - Right to bargain collectively
Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Denmark.
The Committee takes note from the information contained in the report submitted by Denmark that there have been no changes to the situation, which it previously considered not to be in conformity on the ground that the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.

Conclusion
The Committee concludes that the situation in Denmark is not in conformity with Article 6§2 of the 1961 Charter on the ground that the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.

See reply under "Article 5 and 6: Conclusions of non-conformity; conclusions of conformity pending receipt of specific information; deferrals due to lack of information"

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

a) Please provide information on specific measures taken during the pandemic to ensure the respect of the right to information and consultation. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

There has in general not been taken specific measures with regard to information and consultation during the pandemic, neither with regard to the labour market as a whole or in specific sectors. It should be mentioned, however, that many of those measures taken in conjunction with the pandemic - working from home, use of protection such as face masks - have been covered by existing rules on information and consultation and have accordingly been discussed within the established framework for information and consultation. A few of the specific pieces of legislation that has been adopted specifically because of the pandemic, such as legislation on the use of tests for COVID-19 on the labour market, contain provisions providing for measures to be subject to information and consultation.

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

a) Please provide information on specific measures taken during the pandemic to ensure the respect of the right to take part in the determination and improvement of the working conditions and working environment. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

During the pandemic, the Danish Working Environment Authority (WEA) launched a webpage with Q&A's concerning the working environment. Two of these Q&A's informed about the health and safety risk assessment. The health and safety organization must be involved in the entire risk assessment process, which could be difficult during lock down. If the company is not required to have a health and safety organization, the employees must be involved in the process. WEA informed that even though the employees worked from home, the risk assessment had to be prepared and updated, and for example, virtual discussion could be a part of the process, or WEA's digital risk assessment solution could be consulted.

WEA also launched a webpage with advices about how to organize the working from home. The page stages that the employer must prevent working environment problems related to the COVID-situation in collaboration with the employees, and that the best solutions on avoiding discomforts during working from home are often found together.

Another of WEA's initiatives was to communicate how the employer had to engage the employees in the work with preventing COVID-19 infections and other COVID-19 related working environment problems. In the material, it is also described how the health and safety organization must contribute, and the employer is reminded to take care of foreign workers, e.g. by translating information.