

**REPORT**  
**on the Free Movement of Workers**  
**in Denmark in 2002-2003**

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## **Introduction and General Remarks**

Although the free movement of persons did not dominate the headlines in Denmark in 2002 and 2003 at least two items caught the attention and was subject to debate. The common denominator for these seems to be a rather negative view on the consequences of the right to free movement.

The first item was the link between the tightening of the rules on family reunification and the right to free movement. The core of the discussion was to what extent Danish citizens having exercised the right to free movement and returning to Denmark could bring with them their family members under EU law. The discussion derived from this concerned the question to what extent EU law could be used to sidestep the new, stricter national rules on family reunification (this is further described in chapter V).

The second item concerned the enlargement of the European Union. Much of the debate on the perspectives of the enlargement focused on the potential use and misuse of the social benefits under the Danish welfare system and the pressure on the domestic labour market (see chapter VII for a short description of this).

The free movement of workers in the public sector appears to be a problem of limited scope in Denmark, at least in as far as very few positions in the public sector is restricted to Danish nationals according to a recent survey (as described in chapter III).

From a migration law point of view the years 2002 and 2003 were dominated by the major changes of the Danish Aliens Act in 2002 and the consequences of these changes experienced throughout 2002 and 2003. Most significant were the changes of the rules on family reunification (see chapter VI), but also other central areas of the legislation were changed, including the provisions on asylum. Few of these changes had direct effect on the free movement of persons within the European Union, but a link between the changes and the right to free movement can be - and was – established as mentioned above.

Although it is difficult to point to very dramatic new developments in relation to the free movement of workers in the reporting period it is obvious that the national preparation for the EU enlargement was a very important issue throughout 2002 and 2003. This issue is also likely to dominate the report for 2004 where the enlargement – and the transitional measures linked to that – take effect.

Although the intention with this report is to focus in particular on developments in 2002 and 2003, this report - being the first report on Denmark under this format - contains in certain chapters a short general description of the legal texts in force.



## **Chapter I**

### **Entry, Residence, Departure**

#### **A. Entry**

##### *a) Texts in force*

###### 1) Laws

The rules on free movement of workers have been implemented in Danish law first and foremost by the EC/EEA Regulation, see below. There are, however, a few articles in the Aliens Act<sup>1</sup> that should be mentioned here.

Section 2 (1) of the act contains the basic rule on the right to enter and reside for a certain period, which applies to Union Citizens and, cf. section 2 (2), members of their family. According to the article the Minister for Refugee, Immigration and Integration Affairs is to lay down more detailed provisions on the implementation of the EU rules on abolition of entry and residence restrictions in connection with the free movement of workers.

According to section 28 an EU citizen can only be refused entry if he does not comply with the requirement to have a valid passport or other identity document, if he has been prohibited from entering (as a consequence of a decision on expulsion) or if he should not be allowed to stay in Denmark for reasons of public order, security or health.

###### 2) Administrative rules

The EC/EEA Regulation<sup>2</sup> is the central piece of legislation concerning the implementation of the EU rules on the free movement as it implements the seven directives on free movement. It does not, however, contain specific rules on the right to enter, but the right to enter is, of course, a prerequisite for the enjoyment of the right to residence, which is set out in the Regulation (see point B). Sections 1 and 2 of the Regulation set out the groups of foreigners, who are encompassed by the EU rules. EU citizens, who take up paid employment, are mentioned in section 1 (1).

The abovementioned rules have remained unchanged throughout 2002 and 2003.

##### *b) Draft legislation, circulars etc.*

Nothing to report

##### *c) Judicial practice*

Nothing to report (it should be noted that Denmark does not have administrative courts and that ordinary courts only quite rarely deal with cases concerning the right to residence)

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1 Consolidation Act No. 685 of 24 July 2003. (The act has been changed in 2004, cf. Consolidation Act No. 808 of 14 July 2004.)

2 Ministerial Regulation No. 761 of 22 August 1994 with later amendments. A revised regulation has entered into force 1 May 2004. The references to the Regulation in this report are made to the 1994-Regulation.

*d) Miscellaneous (administrative practices etc.)*

Cases concerning EU citizens and their right to entry, stay etc. are handled in the first instance by the regional state county authorities, whose decisions can be appealed to the Danish Immigration Service (DIS). When the competence to handle these cases was delegated to the state county authorities in 1995, DIS issued guidelines for the processing of the cases. These guidelines are supplemented by letters of information or instruction whenever DIS deems it necessary.

There have been no such letters of interest concerning entry in 2002/2003.

*e) Literature*

Ellen Brinch Jørgensen, *Indrejse og ophold for udlændinge omfattet af EF-reglerne* (i "Udlændingeret"), 2. udgave, 2000)

Ruth Nielsen: *EU-arbejdsret*, 3. udgave, 1997

Ruth Nielsen: *European Labour Law*, 2000

## **B. Residence**

*a) Texts in force*

1) Laws

Section 2 (1) of the Aliens Act contains the basic rule on the right to enter and reside for up to 3 months or – if seeking work – up to 6 months, which applies to Union Citizens and, cf. section 2 (2), members of their family.

Section 6 of the act implies that a residence certificate shall be granted to foreigners, to whom the EU rules apply.

Section 14 (1) exempts EU citizens from the normal requirement to have a work permit in order to take up employment in Denmark.

2) Administrative rules

The EC/EEA Regulation determines in section 6 that a EU residence certificate is granted to a EU citizen, who is employed in Denmark. It is, however, a prerequisite that the EU citizen takes up residence in the country, cf. section 5. The certificate is granted for 5 years, cf. section 12 (1), unless the period of employment is shorter than that or the EU citizen specifically has applied for a certificate valid for a shorter period. After 5 years the certificate will be made permanent, cf. section 13 (1).

The abovementioned rules have remained unchanged throughout 2002 and 2003.

*b) Draft legislation, circulars etc.*

Nothing to report

*c) Judicial practice*

Nothing to report

*d) Miscellaneous (administrative practices etc.)*

Nothing to report

*e) Literature*

See chapter I A.

## **C. Departure**

*a) Texts in force*

1) Laws

As stated above the main piece of legislation concerning the free movement is the EC/EEA-regulation. Not all issues are covered by this regulation, however, and in such cases the rules in the Aliens Act apply. One such issue is expulsion and consequently the rules on expulsion in section 22 to 26 in the Aliens Act apply to EU citizens, but only to the extent that these rules are compatible with the EC rules, which is explicitly stated in section 2 (3). The basic principle behind these rules is, that the longer a foreigner has resided in Denmark the better is his protection against expulsion. A decision on expulsion is usually made by a court of law but in some cases it can also be decided administratively.

The rules on expulsion were changed on one point concerning EU citizens in 2002.<sup>3</sup> The change meant that appeals against administrative decisions on expulsion of EU citizens with a short term stay in the country do not have suspensive effect with regard to the time-limit for departure, which in practice means that the EU citizen would have to leave the country immediately. One of the reasons for this change was the experience from the European Council in Gothenburg in June 2001, which was the scene for quite serious trouble. This was reflected in the preparations for the Danish presidency of the EU in the second term of 2002, where demonstrations etc. were also expected, and led to the mentioned change.

As for *lapse* of EU residence certificates and *revocation of permanent* EU residence certificates the Aliens Act also applies. Sections 17 and 17 (a) of the Act contain rules on the lapse of a permit in situations where the foreigner leaves the country for certain periods of time, while section 19 (2) of the Act limits revocation of permanent certificates to cases where the certificate has been obtained by fraud or where information has been provided on the basis of which the person in question must be regarded a danger to national security or threat to the public order etc.

In all cases on expulsion and revocation of a residence certificate or residence permit section 26 of the Aliens Act applies. According to section 26 an assessment of the foreign citizens personal situation, including his attachment to the Danish society, family members there, the length of the stay etc., must be made in order to evaluate if the expulsion or revocation would be considered to be excessively burdensome.

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3 Law No. 367 of 6 June 2002.

## 2) Administrative rules

Revocation of a *time-limited* EU residence certificate is governed by the EC/EEA Regulation (section 16) (and the Aliens Act section 19 (1), in which, however, most of the reasons for revocation do not apply to EU citizens). The general rule is that a certificate can be revoked when the basis on which the certificate was issued was incorrect or is no longer present. Section 16 contains, however, also a number of exceptions from that rule in accordance with the EU regulations and directives on free movement (securing, for instance, that a person who loses his job due to sickness or accident or involuntary unemployment, will not have his residence certificate revoked).

The abovementioned rules have remained unchanged throughout 2002 and 2003.

### *b) Draft legislation, circulars etc.*

Nothing to report

### *c) Judicial practice*

There is one judgment from Danish Courts in the reporting period relevant to this issue (UfR2002.1080). Although it concerns EU citizens not residing in but providing services in Denmark it reflects principles that are also applicable to EU citizens exercising the right to freedom of movement for workers. In the judgment reference is made to directive 64/221/EC and the European Court of Justice's judgments in cases *Bouche-reau* and *Calfa*.<sup>4</sup>

The EU citizens concerned were Germans convicted of having illegally imported fireworks into Denmark. In the judgment from the Magistrate's Court one of them was also expelled from Denmark because of the danger he had imposed in course of the transportation of the fireworks. This judgment was overturned by the Crown Court, which in its judgment stated – with reference to the case law from the European Court of Justice - that the reasons concerning public order and security that can lead to expulsion of a EU citizen must be interpreted in a strict and narrow manner. Bearing this in mind it was the opinion of the court that an expulsion in the case in question would be in conflict with EU law.

### *d) Miscellaneous (administrative practices etc.)*

Nothing to report

### *e) Literature*

See chapter I A.

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4 Cases C-30/77, judgment of 27 October 1977, and C-348/96, judgment of 19 January 1999.



## Chapter II Equality of Treatment

### *a) Texts in force*

Concerning *social welfare* any foreigner, who is residing legally in Denmark, has a right to cash benefit, but only for a limited period. Right to such benefits on a permanent basis is restricted to Danish citizens and EU citizens and members of their family who are residing in Denmark on the basis of community law (as well as to certain third country nationals on the basis of international agreements). On this point EU citizens and members of their family are treated equally with Danish citizens. See chapter IX for other questions concerning social security.

Concerning *employment service* the Danish Parliament in June 2003 passed a new law, Law on an Active Employment Policy.<sup>5</sup> The intention with the law is to streamline the service provided by the municipalities and the employment services towards unemployed persons and businesses and thereby contributing to a well-functioning labour market. There is no specific reference to EU citizens – or other categories of foreign citizens – in the law, but the employment services are to render the same service to EU citizens as to Danish nationals.

Concerning basic *integration* assistance the central piece of legislation is the Law on Integration, but this law does not apply to EU citizens and the members of their families. In 2003 a new Law on Danish courses for adult aliens was passed by the Parliament and supplemented by a regulation.<sup>6</sup> The rules herein also apply to EU citizens and their family members, which is expressly stated in the Regulation. This means that EU citizens and their family members have a right to receive an offer from the municipality to take part in Danish courses. Whereas such courses are free of charge for foreigners, to whom the Law on Integration applies, the municipality can demand a fee from other categories of foreigners, including EU citizens and their family members.

The law implementing Directive 96/71/EC on the *posting of workers for cross-border services*<sup>7</sup> was amended on one minor point in 2002 as the reference in that law to the Danish laws, which are applicable to the employment contract, was extended to include the Danish law whereby (a part of) the Working Time Directive (Directive 2003/88/EC) is implemented.<sup>8</sup>

The law on *prohibition of differential treatment on the labour market*,<sup>9</sup> which prohibits differential treatment on grounds of race, colour, nationality, ethnicity etc. in the relationship between an employer and an employee, continues to apply and remained unchanged in 2002 and 2003.

A law on *equal treatment* irrespective of ethnic origin was passed by the Parliament in 2003.<sup>10</sup> The law, which is partly an implementation of directive 2000/43/EC on equal treatment of all regardless of race or ethnic origin, deals with conditions outside the

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5 Law No. 419 of 10 June 2003.

6 Law No. 375 of 28 May 2003 and Regulation No. 1014 of 10 December 2003.

7 Law No. 933 of 15 December 1999.

8 Law No. 1031 of 17 December 2002.

9 Law No. 459 of 12 June 1996.

10 Law No. 374 of 28 May 2003.

labour market and contains a prohibition against direct and indirect discrimination on the grounds of race or ethnic origin and a prohibition against harassment and instructions to discriminate. In addition, the act contains provisions concerning the shared burden of proof and a prohibition against reprisals. Violation of the law is punishable by a claim for compensation for non-pecuniary damages. The Danish Institute for Human Rights can hear complaints concerning violation of the prohibition against discrimination. The Institute may express its opinion about whether the law has been violated in specific cases. In such instances, the Institute may recommend that free legal aid be granted.

The EU directives on *recognition of exams and professional qualifications* have led to the issue of three new regulations in 2003.<sup>11</sup> The background for the new regulations, which replaced older ones, was partly the need to transpose directive 2001/19/EC into national law<sup>12</sup> and partly to reflect the fact, that the responsibility for the co-ordinating function according to the directives in 2001 was transferred from the Ministry of Business Affairs to the Ministry of Education. Within the Ministry of Education a Centre for Assessment of Foreign Qualifications (CVUU) has been set up.<sup>13</sup>

By a ministerial regulation from 2003<sup>14</sup> the *requirements to hold Danish citizenship* and to reside in Denmark imposed upon translators, interpreters and legal adjusters were repealed for EU citizens as was the requirement to be residing in Denmark in order to act as real estate brokers.

*b) Draft legislation, circulars etc.*

Nothing to report

*c) Judicial practice*

Nothing to report

*d) Miscellaneous (administrative practices etc.)*

The statistics on the administration of the rules on recognition of exams and professional qualifications show that there are quite few negative decisions on applications to be allowed to take up employment according to the national rules implementing the directives on recognition of exams and professional qualifications (7 percent in 2003).

*e) Literature*

Nothing to report

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11 Ministerial Regulations No. 177, 178 and 179 of 17 March 2003.

12 The transposal should have taken place before 1 January 2003, which led the Commission to start an infringement procedure. This was, however, quickly closed again.

13 More information on CVUU and the administration on the rules on recognition of exams and qualifications, including some statistics, can be found at [www.cvuu.dk](http://www.cvuu.dk).

14 Ministerial Regulation No. 746 of 21 August 2003.

### Chapter III Employment in the Public Sector

#### *a) Texts in force*

According to the Danish Constitution (section 27) only Danish citizens can be appointed to civil servants (“tjenestemænd”), which could seem to hamper EU citizens possibilities of obtaining a higher public office, as such posts are traditionally reserved for civil servants. This is modified, however, by the fact that foreign citizens can be employed on conditions similar to those of civil servants, which would allow them to take up also high ranking posts. A rule on this is inserted in the Law on Civil Servants<sup>15</sup> and reference is made to this rule and its connection with art. 39 of the EC Treaty in the guidelines from the Ministry of Finance to the public employers.<sup>16</sup> Employment under a collective agreement or on individual conditions (as opposed to employment as civil servant/“tjenestemand”), however, is not conditional on the applicant being a Danish citizen. Foreign citizens are generally free to hold such posts.

A survey on the extent to which a requirement on Danish citizenship exists regarding positions in the public sector has been carried out by the State Employers’ Authority (an agency within the Ministry of Finance) in 2004.<sup>17</sup> The survey covers all Danish ministries but not the regional/municipal part of the public sector.<sup>18</sup> The conclusion in the survey is that there are in general no posts within the public sector where a requirement on Danish citizenship is upheld. Exceptions to this are certain posts within the Ministry of Defence, for which, however, a dispensation can be given, and certain posts within the Prison and Probation Service.

Regarding the recognition of diplomas for access to employment in the public sector the Ministry of Finance has in a circular from 2003 on the collective agreement for staff with a university degree within the central Government<sup>19</sup> pointed out that by the employment of persons with a degree from a foreign university the degree is to be evaluated by the Danish Centre for Assessment of Foreign Qualifications (CVUU). CVUU is to evaluate on a case-by-case basis what foreign degrees are comparable to the relevant Danish degrees (see also chapter II).

#### *b) Draft legislation, circulars etc.*

Nothing to report.

#### *Legislative trends following procedures set in motion by the Commission*

Nothing to report.

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15 Consolidation Act No. 531 of 11 June 2004, section 58 c.

16 “Personale-Administrativ Vejledning” (Guidance on Personnel Administration), chapter 17.

17 The references to the survey are based on the preliminary findings in the survey, which had not been finalized nor made public by the time this report was concluded.

18 The survey does not include information on positions for law graduates within the Danish courts.

19 Circular of 6 October 2003.

*c) Judicial practice*

Nothing to report. It should be mentioned that the situation giving cause to the ECJ judgment in the *Burbaud* case<sup>20</sup> – the use of competitions for access to training and afterwards employment in the public sector – does not seem to be relevant in Denmark.

*d) Miscellaneous (administrative practices etc.)*

Among the barriers most frequently mentioned concerning employment in the public sector is the question of being credited for previous employment in the public administration in other Member States. Concerning this point the Ministry of Finance has inserted a paragraph in the guidelines to the public employers<sup>21</sup> on the fact that previous employment in other Member States shall be taken into account to the same extent as it would have been, if it was employment in Denmark. This applies to Danish citizens and other EU nationals alike. In the guidelines reference is made to the jurisprudence of ECJ and the Communication from the Commission from December 2002.<sup>22</sup>

*e) Recent legal literature*

Nothing to report.

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20 Case C-285/01, judgment of 9 September 2003.

21 “Personale-Administrativ Vejledning” (Guidance on Personnel Administration), chapter 18.

22 “Free movement of workers – achieving the full benefits and potential”, Communication from the Commission of 11 December 2002.

## Chapter IV Family Members

The rights of family members concerning entry and residence are derived from those of the EU citizen performing the right to free movement. To a large extent reference can therefore be made to chapter I of this report. There are, however, certain rules that apply specifically for family members – these rules are described below.

### *a) Texts in force*

According to section 1 (2) of the EC/EEA Regulation the Regulation applies to members of the family of a EU citizen who is employed in Denmark. As family members for this purpose qualify spouses and children of EU citizens or their spouses who are either under the age of 21 or are being supported by the EU citizen, other persons related in the ascending line with the EU citizen or his spouse if they are supported by these and other family members who are supported by the EU citizen and who form part of his household. The rules on spouses also apply to couples, which cohabit, but for this category a self-support requirement can be imposed (section 3 of the Regulation. This corresponds to the rules applying to other foreigners, cf. section 9 of the Aliens Act.)

According to section 7 of the Regulation a residence certificate is issued to EU citizens who fall into one of these groups of family members, while for family members who are third country nationals a residence permit is issued, cf. section 14. Family members below the age of 18 do not have to have a residence certificate or a residence permit provided they are living with the holder of the parental custody.

Concerning revocation of residence certificates or permits rules are set out in sections 17 and 18 of the regulation to supplement the rules described in chapter I C. Revocation of a residence certificate or a residence permit can take place if the EU citizen, from whom the right to residence is derived, dies. This does not apply, however, if the deceased has had two years of residence in Denmark prior to his death or if the death was caused by an accident connected to his or her work (section 17). Furthermore, a residence permit can be revoked if the residence certificate of the EU citizen, from whom the right to residence is derived, is revoked or lapses (section 18).

The abovementioned rules have remained unchanged throughout 2002 and 2003. It could be argued, however, that the right to continued residence for the spouse of a EU citizen, which can be derived from the ECJ's Judgment in the *Baumbast* case<sup>23</sup> ought to be reflected in the EC/EEA Regulation.

The access to family reunification can also have an impact on Danish citizens' possibilities and willingness to exercise the right to free movement for workers. This is described in chapter V below.

### *b) Draft legislation, circulars etc.*

Nothing to report

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23 Case C-413/99, judgment of 17 September 2002.

*c) Judicial practice*

Nothing to report

*d) Miscellaneous (administrative practices etc.)*

According to the Aliens Act a foreigner, who is not a national of a Member State, cannot – unless particular reasons make it appropriate – be granted residence permit if an alert on the person has been entered in the Schengen Information System (SIS). This has in 2003 led to an instruction to the regional state county authorities to make sure that a SIS check is performed before a residence permit is granted to EU citizens' family members, who are third country nationals.

*e) Recent legal literature*

See chapter I A.

## Chapter V

### Relevance/Influence/Follow-up of Recent Court of Justice Judgments

Although the *Singh* case<sup>24</sup> cannot be said to be recent it has, nevertheless, been at the centre of attention following the tightening of the Danish rules on family reunification in 2002. The reason for this is that the new stricter Danish rules have increased the practical significance in Denmark of the EU rules on free movement, as these rules – and not least the interpretation by the European Court of Justice of the rules – in some cases can be used to circumvent the domestic rules on family reunification. That follows from the right of an EU citizen, who makes use of the right to free movement, to have his family accompany him, and from the widened interpretation of this right encompassed in the European Court of Justice's judgments in cases such as *Singh*, and also *Carpenter* and more recently *Akrich*.<sup>25</sup>

As will be known the Court held in the *Singh* case that an EU citizen who has worked in another Member State as an employed person within the meaning of the Community law may, when he returns to his own country, be accompanied by his spouse, regardless of his or her nationality. This right has been invoked in some cases by Danish citizens wanting to bring their spouse to Denmark.

A number of Danish citizens married to a third country national have chosen to move to other Member States, most notably neighbouring Sweden, using the right of free movement and the right derived from that to be accompanied by the family. Some have even done that allegedly with a view to become Swedish nationals after a couple of years and then returning to Denmark again making use of the right to movement, but now as Swedes in Denmark, although it would seem unnecessary to obtain Swedish citizenship if the principles derived from the *Singh* judgment can be invoked.

It has been questioned whether this group would be able to benefit from the *Singh* judgment and return to Denmark after a stay in Sweden for a certain period. This is due to the Court's statement in that judgment, that the rights derived from the Treaty cannot be invoked with a view to unlawfully evade the application of national law. In the *Akrich* judgment, however, the Court held that the motives of the EU citizen to seek employment in another Member State are irrelevant when assessing the legal situation of the couple upon their return to the Member State of which the worker is a national. What will be the effect in practice of this quite recent judgment as regards the possibility of using EU law to circumvent the Danish rules on family reunification remains to be seen.

The abovementioned situation has been the source of numerous articles in the Danish (and even international) press and has also led the relevant administrative bodies to specify the guidelines for the processing of cases where the *Singh* and *Carpenter* judgments are relevant.<sup>26</sup>

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24 Case C-370/90, judgment of 7 July 1992.

25 Cases C-60/00, judgment of 11 July 2002, and C-109/01, judgment of 23 September 2003.

26 Guidelines from the Danish Immigration Service of 18 June 2003.

## Chapter VI

### Policies, texts and/or practices of a general nature with repercussions on free movement of workers

The link between the EU rules on free movement for persons and the national rules on family reunification is explained in chapter V. As mentioned there the Danish rules on family reunification were substantially tightened in 2002. The changes included a new minimum age for spouses, a so-called attachment requirement, a broadening out of the support requirement, the introduction of a financial guarantee to be provided by the spouses and a number of other tightenings. One interesting aspect of this is that the reverse discrimination, which arises from the fact that Danish citizens are subject to much stricter rules concerning family reunification than EU citizens living in Denmark, has become clearer and might become even clearer when the directive on the right to free movement of Union Citizens and their family members<sup>27</sup> is implemented.

In a regulation from 2002<sup>28</sup> the agreement of 21 June 1999 between the EU and Switzerland on free movement of persons has been implemented.

The Europe Agreements between the EU and a number of central and eastern European countries led in 2003 to a specification from the Danish Immigration Service of the terms and conditions for granting of residence and work permit to the citizens of the countries that are parties to the agreements.<sup>29</sup>

Concerning naturalisation the Ministry of Integration has in June 2002 issued a circular with new guidelines on naturalisation reflecting a political agreement from May 2002 between the Government and the Danish People's Party.<sup>30</sup> The agreement provides for a tightening of the rules on naturalisation, now requiring as the general rule nine years of residence in Denmark (as opposed to the earlier requirement of seven years). Further tightenings include the requirements on knowledge of the Danish language and the period in which acquiring Danish citizenship is excluded due to the commitment of criminal offences. Also in 2002 the Law on citizenship was amended to include a provision on suspension of citizenship, that has been acquired fraudulently.<sup>31</sup>

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27 Directive 2004/38/EC.

28 Regulation No. 345 of 28 May 2002.

29 Guidelines from the Danish Immigration Service of 9 May 2003.

30 Circular of 12 June 2002.

31 Law No. 193 of 5 April 2002.



## **Chapter VII**

### **EU enlargement**

The public and political debate on the EU enlargement has to a large extent focused on the possible pressure on the Danish labour market and the risk of unintended use of the social benefits under the Danish welfare system.

In April 2003 a working group composed of representatives from a number of ministries issued a report on the risk of such unintended use of social benefits as a consequence of the enlargement.<sup>32</sup>

The Government and the main part of the political parties represented in Parliament concluded – partly on the basis of the abovementioned report – on 2 December 2003 an agreement on transitional arrangements for the access of workers, who are nationals of the new EU member states (except Malta and Cyprus), to the country and the access to social benefits.<sup>33</sup> The agreement has led to legal and administrative changes in the first months of 2004 prior to the enlargement taking effect on 1 May 2004 and will, consequently, be dealt with in the national report for 2004.

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32 “Danish Social Benefits in the Light of the EU Enlargement”, Report of 11 April 2003 from an interministerial working-group.

33 The agreement is available in an English version at the website of the Danish Ministry of Employment ([www.bm.dk](http://www.bm.dk)).

## Chapter VIII

### Statistics (flux of Community workers/family-members in comparison to third country nationals)<sup>34</sup>

2002	
	EU workers (+ Swiss nationals) granted a residence certificate
<i>Nationality</i>	
Belgium	0
Finland	4
France	204
Greece	42
Netherlands	177
Ireland	74
Italy	205
Luxembourg	2
Portugal	43
Spain	140
Switzerland	35
UK	509
Sweden	6
Germany	522
Austria	48
<b>Total</b>	<b>2.011</b>

2003	
	EU workers (+ Swiss nationals) granted a residence certificate
<i>Nationality:</i>	
Belgium	39
British Nationals Overseas	1
Finland	4
France	197
Greece	61
Netherlands	186
Ireland	70
Italy	230
Luxembourg	0

<sup>34</sup> The figures in this chapter is obtained from The Danish Immigration Service ([www.udlst.dk](http://www.udlst.dk)) and Statistics Denmark ([www.dst.dk](http://www.dst.dk)).

Portugal	40
Switzerland	48
Spain	123
UK	538
Sweden	10
Germany	518
Austria	34
<b>Total</b>	<b>2.099</b>

The figures do not include residence certificates or permits granted to family members to EU workers. For both years the number of family members is around 800. It should be noted, that nationals of Sweden and Finland (as well as of Norway and Iceland) can reside and work in Denmark without a permit. Were these nationalities to be included the total would presumably be somewhat higher.

In both 2002 and 2003 99 percent of all applications for residence certificate from EU workers have been accepted.

A different figure from that above emerges if one looks into the number of EU citizens immigrating to Denmark. For 2003 that figure was approx. 6.400 while the number of EU citizens leaving Denmark was approx. 4.200. In 2003 approx. 12.000 Danish citizens emigrated from Denmark to another EU Member State.

The total number of EU citizens residing in Denmark by 1 January 2003 was just over 55.000 and just over 56.000 one year later. The largest nationality-groups are from Germany, the UK and Sweden. These nationalities also dominate the statistics on naturalisations of EU citizens of which there were 275 altogether in 2003.

The number of EU citizens taking up residence in Denmark in order to find a job can be illustrated by the figures on persons seeking work in Denmark bringing unemployment benefits from another Member State with them. That number was 228 persons in 2002 (no figure was found for 2003).

For the sake of comparison the number of residence permits granted to third country nationals on the basis of work/business considerations can be mentioned. For this category a residence permit is only granted in so far as essential occupational or business considerations make it appropriate. The figures for this category of residence permits were approximately 4.800 in 2002 and more than 5.500 in 2003.

*Repartition by sex/branch/skills-qualifications/region*

No such information is available

*Trends*

There has been a drop in the numbers of residence certificates issued to EU workers since 1996, where the total peaked at around 3.000 such certificates.

It is noteworthy, that for third country nationals granted residence permits on grounds of work or business the trend has been the opposite, as this figure has been going up in the same period from around 2.200 in 1996 to more than 5.500 in 2003.

## Chapter IX Social Security

### *Relationship between regulation 1408/71 and regulation 1612/68*

It is worth mentioning that Regulations 1408/71 and 1612/68 are based on a system of social security, which is different from the Danish one. The regulations are based on a system, where the right to social benefits is closely connected to the attachment to the labour market, whereas in Denmark such benefits, including for instance health insurance and pension, are available to all citizens regardless of their employment situation and are financed by the taxes. This fact is known to have given cause to some problems over the years, notably for Danish citizens wanting to take up residence in other Member States, but also from a more general point of view. From time to time it is argued that a change of the Danish system should be considered, but no specific development on this can be reported for 2002 or 2003. As it is the relative incompatibility between the systems is sought overcome by way of administrative regulation and guidelines issued from the National Social Security Agency, which is a body under the Ministry for Social Affairs, to the municipalities, who handle cases on social security in the first instance.

The Law on an Active Social Policy,<sup>35</sup> which sets out the rules on cash benefits to persons, who are not able to provide for themselves and their families, has been changed on a number of points in 2002 and 2003. According to the Law foreigners, including EU citizens provided they can no longer be regarded as workers, can be returned if they are in need of permanent economic aid to support themselves. Such aid is considered permanent if it is granted for more than six months. This limit has been changed from a year to six months by an amendment of the law in 2002. This rule is linked to section 18 of the Aliens Act, according to which a residence permit lapses when for reasons of maintenance it has been decided that an alien is to be returned to his country of origin.

The European Court of Justice's judgments in cases *Offermans* and *Humer*<sup>36</sup> concerning maintenance obligations have led to changes in the administration of the rules on advanced payments of maintenance obligations regarding children. The main point in this is that EU citizens now will have a right to such payments on the same terms as Danish nationals. The changes are described in guidelines from the National Social Security Agency from May 2003.

### *Supplementary pension schemes*

The right to Danish social pension is as a starting point reserved for Danish citizens with permanent residence in Denmark, who have resided in Denmark for at least three years between the age of 15 and 65. The requirements on citizenship and the duration of the residence do not, however, apply to EU citizens (or to a few other groups, including refugees).

Any person receiving Danish social pension can apply for a personal supplement to either one off expenses or as a regular supplement to the pension.

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35 Consolidation Act No. 709 of 13 August 2003.

36 Cases C- 85/99 and C-255/99, judgments of 15 March 2001 and 5 February 2002.

Concerning supplementary private pension schemes the directive 98/49/EC has not led to any changes in the Danish legislation as it was considered that the rules and practices were compatible with the contents of the directive. The directive does not, however, address the question of taxation of payments to supplementary pension schemes, and Denmark is one of the countries in which there is a different treatment – as regards taxation – of pension schemes established outside the country from those schemes established in the country<sup>37</sup>.

In a report from 2002 on the pension system (see literature list below) the Ministry of Social Affairs in the chapter on the importance of the pension systems for the mobility on the labour market speaks about the transfer of a pension scheme when moving abroad but does not specifically deal with the transfer to other Member States. The conclusion in this chapter is, however: “Hence, the Danish pension system seems to create no unnecessary obstacles to labour market mobility.”

*Recent national reports, legal literature*

Kirsten Ketscher, *EU's påvirkning af dansk socialret – fra ubevægelighed til fri bevægelighed* (i “EU-rettens påvirkning af dansk ret”), 2002

Jon Kvist (red.), *Velfærdspolitik i et nyt Europa*, Socialforskningsinstituttet, 2002

Jon Kvist (red.), *Beskæftigelsespolitik i et nyt Europa*, Socialforskningsinstituttet, 2002

The Ministry of Social Affairs, *National strategy report on the Danish pension system*, 2002

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<sup>37</sup> See also Communication of 19 April 2001 from the Commission on the elimination of tax obstacles to the cross-border provision of occupational pensions.

## **Chapter X**

### **Establishment, Provision of Services, Students**

To a large extent the rules, schemes etc. applicable for community workers, which are described in the previous chapters, also apply to EU citizens who exercises the right to free movement related to establishment, provision of services and studies. There are differences, of course, and the most relevant of these are briefly described here.

#### *Establishment*

The rules on entry and residence for EU workers as set out in the EC/EEA Regulation, cf. chapter I, also apply to EU citizens establishing businesses in Denmark.

Around 80 residence certificates were granted on the basis of establishment in 2003.

#### *Provision of services*

On a few points the rules on residence for service providers differ from those of the abovementioned groups, notably concerning the length of the allowed stay in Denmark, which for this group is restricted to the period in which the service in question is provided, cf. section 12 (3) of the EC/EEA Regulation.

The Danish Immigration Service has in 2003 issued guidelines on the application in national practice of the principles that can be derived from the Van der Elst case (ECJ, C-43/93), setting out the situations in which a third country national, who is stationed in one Member State for an employer in another Member State, can be exempted from the usual requirement to have a work permit<sup>38</sup>.

Around 40 residence certificates were granted on the basis of provision of services in 2003.

#### *Students*

The rules on residence and departure for students and their family differ slightly from those of workers on some points, but are also found in the EC/EEA-regulation. The most important of these differences are set out in section 10 on residence permit, sections 2 and 11 on family reunification and section 19 on revocation. These rules have remained unchanged throughout 2002 and 2003.

Around 2.300 residence certificates were granted to EU citizens for the purpose of studying in 2002, while the number for 2003 was around 2.500.

#### *Recent legal literature*

See chapter I A.

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<sup>38</sup> Guidelines from the Danish Immigration Service of 2 July 2003.

**Chapter XI**  
**Miscellaneous**

*Studies, seminars, reports, legal literature*  
Nothing to report.

## **Annexes**

The Aliens Act, Consolidation Act No. 685 of 24 July 2003 (in English)

The EC/EEA Regulation, Regulation No. 761 of 22 August 1994 (in Danish)

Act on Danish Courses for Adult Aliens, Act No. 375 of 28 May 2003 (in English)

Act on Danish Citizenship, Consolidation Act No. 113 of 20 February 2003 (in Danish)

Regulations on Recognition of Qualifications and Exams, Regulations No. 177, 178 and 179 of 17 March 2003 (in Danish)

*Please note that some of the acts and regulations have been amended in 2004. The versions in the annex are those to which reference is made in the report.*