REPORT
on the Free Movement of Workers
in Denmark in 2008-2009

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Introduction

The three most important developments with regard to the implementation of EU free movement rules in Denmark in 2008 were

- The *Metock* judgment caused heavy public debate, and resulted in amendments of the EU Residence Order and adjustment of administrative practices. Criticism was raised against the European Court of Justice for having gone too far and even transgressed its competence, and the compatibility of its interpretation of Directive 2004/38 with the Danish reservation against EU harmonisation of immigration policies was questioned by certain politicians. The Government had to enter into political negotiations with the allied Danish People's Party in order to settle the conditions under which Denmark should comply with the Directive as interpreted by this judgment. The political controversies over the judgment may have been partly due to the fact that the Danish Immigration Service had already been criticised for alleged failure in providing adequate guidance on residence rights under the EU rules, in particular for third country spouses of Danish citizens.
- As part of the political agreement on the implementation of the *Metock* judgment, it was decided to widen the personal scope of application of these rules concerning third country spouses of Danish citizens. The EU rules can now be invoked by the family members of a Danish citizen who has resided in another Member State, whether or not the Danish citizen has been economically active in the host country. This adjustment of administrative practice was adopted as an indirect consequence of the judgment, probably in order to prevent further political controversy over the implementation of the EU rules.
- According to a political agreement of 4 December 2008, the transitional rules on work and residence for EU-10 citizens should be abolished altogether. The bill implementing that agreement was tabled before the Parliament on 25 February 2009, adopted by the Parliament on 21 April 2009, and entered into force as of 1 May 2009.

Chapter I
Entry, Residence, Departure

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS (DIRECTIVE 2004/38 ART. 7 (1A), 7 (3 A-D), 8 (3A), 14 (4 A-B), 17, 24 (2))

The Aliens Act[1] applies to EU/EEA citizens both regarding general and specific sections. However, the provisions of the Act apply to EU/EEA citizens only to the extent this is in accordance with EU law, cf. Section 2 (3) emphasizing and highlighting the prevalence of EU law in case of any conflict or divergence with the Act. Aliens Act Section 2 (4) provides the legal basis for the Minister of Refugee, Immigration and Integration Affairs to set out more detailed provisions on the implementation of the EU rules on free movement. This has resulted in the *EU Residence Order*[2] – which is the central piece of legislation concerning free movement as it implements the Directives on free movement.

Art. 7 (1a): Right of residence for more than 3 months for workers and self-employed

Texts in force

Laws
Aliens Act Section 2 (1) lays down 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 EU citizens as well as members of their families, cf. Section 2 (2). As for EU citizens, this rule is modified by the EU Residence Order Section 3, see below.

Administrative rules
EU Residence Order Section 3 (1) states that an EU citizen have a *right to reside* in Denmark for *more than the 3/6* months mentioned in Aliens Act Section 2 (1) when the person has *taken up employment* in Denmark or is *self-employed*, including being a service provider, which appears to be in accordance with Art. 7 (1a).

Art. 7 (3a-d): Retention of the status of the worker or self-employed

Texts in force

Administrative rules
EU Residence Order Section 3 (2) states that an EU citizen who has been encompassed by Section 3 (1), but is no longer active on the labour market, preserves his/her status as a worker or self employed person, provided that the EU citizen

- is temporarily disabled due to sickness or accident, cf. Section 3 (2) (i), which appears to be in accordance with Art. 7 (3a);

1 Consolidation Act No. 808 of 8 July 2008 and amendments.
2 Executive Order No. 300 of 29 April 2008 and amending Executive Order No. 984 of 2 October 2008. The most recent Executive Order No. 322 of 21 April 2009.

- is involuntarily unemployed upon paid occupation for more than 1 year, which is documented, and has entered an employment agency as seeking work, cf. Section 3 (2) (ii), which appears to be in accordance with Art. 7 (3b);
- has involuntarily lost his/her job within the first 12 months, which is documented, has entered an employment agency as seeking work or is involuntarily unemployed upon the expiration of a fixed-term employment contract of less than 1 year duration, cf. Section 3 (2) (iii). This group of EU citizens preserves the status as an employee or self employed person for 6 months, cf. Section 3 (3), which appears to be in accordance with Art. 7 (3c); or
- commences a business education related to the person's former occupation or is involuntarily unemployed and commences any form of business education, cf. Section 3 (2) (iv), which appears to be in accordance with Art. 7 (3d).

Art. 8 (3a): Administrative formalities for EU citizens

Texts in force

Administrative rules
EU Residence Order Section 22 states that the issuance of a *registration certificate* to an EU citizen encompassed by Section 3 (worker, self-employed or service provider) may be conditioned by *valid identity card* or *passport* and either *documentation of self-employment* in Denmark or a *declaration from his/her employer* that he/she has paid employment in Denmark, which appears to be in accordance with Art. 8 (3a).

Art. 14 (4a-b): Retention of the right to reside

Texts in force

Administrative rules
Apart from the expulsion provisions relating to criminal acts and public order (see Section 3 below), there is no legal basis for expulsion measures concerning EU citizens who are workers or self-employed persons. For jobseekers, the same is the case as long as they have actual chances to obtain employment (see Section 2 below). Thus, the Danish rules and practices on retention of residence right appear to be in accordance with Art. 14 (4).

Art. 17: Right of permanent residence for persons that are no longer working

Texts in force

Administrative rules

EU Residence Order Section 20 states that persons with a right of residence in Denmark under Sections 7, 12 or 14 (3) have a *right to permanent residence without satisfying any further conditions*.[3]

EU Residence Order section 7 concerns *retired persons, etc.* and corresponds Art. 17 (1) (a-c) and 17 (2):

- Section 7 (1) (i) concerns an EU citizen who *ceases paid employment or self-employment* after having reached the age of entitlement to *old-age pension* as fixed in the Old-Age Pension Act[4] or who ceases paid employment and retires on *anticipatory pension*, provided that the EU citizen has had *business activity* in Denmark for at least the *previous twelve months* and has *resided* in Denmark continuously for at least the *previous three years*. Hence, Section 7 (1) (i), cf. Section 20, appears to be in accordance with Art. 17 (1) (a).
- Section 7 (1) (ii) concerns an EU citizen who *ceases paid employment or self-employment* as a result of *permanent incapacity* to work, provided that the EU citizen has *resided* in Denmark continuously for at least the *previous two years*. *No condition* is imposed as to the *residence period* if such incapacity to work is the result of an *accident at work* or an *occupational illness* entitling to *permanent benefits* payable in whole or in part by a Danish authority. Hence, Section 7 (1) (ii), cf. Section 20, appears to be in accordance with Art. 17 (1) (b).
- Section 7 (1) (iii) concerns an EU citizen who works as an *employee or self-employed* in *another Member State* while *retaining residence in Denmark* to which the *EU citizen return*, as a rule, at least *once a week*, provided the EU citizen has had *business activity* and has *resided* in Denmark continuously for at least the *previous three years*.

Section 7 (3) states that as for an EU citizen falling within Section 7 (1) (iii), *periods of paid employment or self-employment* completed in *another Member States* are considered as having been *completed in Denmark* for the purpose of acquisition of the rights mentioned in subsection (1) (i) and (ii). Hence, Section 7 (1) (iii), cf. Section 7 (3), cf. Section 20, appears to be in accordance with Art. 17 (1) (c) first and second part.

- Section 7 (2) concerns *periods of involuntary unemployment* duly recorded by the competent office of the Danish Employment Service and *periods without work* over which the EU citizen *has no control* as well as *absence from work* or *cessation of work* due to *illness or accident*. These periods are considered as *periods of employment*. Hence, Section 7 (2), cf. Section 20, appears to be in accordance with Art. 17 (1) (c) third part.
- Section 7 (4) concerns an EU citizen's *spouse*. The provision states that in the cases referred to in Section 7 (1) (i) and (ii), *no condition* is imposed as to the *residence period* or the *period of business activity* if the employee's or the self-employed person's *spouse* has *Danish nationality* or has *lost it by marriage* to that person. The provision only refers to the EU citizen's *spouse* and does not refer to the person's *partner* as opposed to Art.

3 Section 20 is a modification to Section 19 on right of permanent residence for EU citizens who have lawfully resided in Denmark for a continuous period of five years, cf. Directive 2004/38 Art. 16.

4 Consolidation Act No. 484 of 29 May 2007 and amendments.

17 (2). However, Section 2 (2) states that a *registered partner* is treated as the *equivalent of a spouse*.[5] Furthermore, Section 16 (1) states that the provisions on spouses apply correspondingly in cases where a person over 18 years of age cohabits at a shared residence in *regular cohabitation* of *prolonged duration* with a principal person over 18 years of age.[6] Hence, Section 7 (4), cf. Section 20, cf. Section 2 (2), appears to be in accordance with Art. 17 (2), cf. Art. 3 (2) (b).

EU Residence Order Section 12 concerns *family members of retired persons, etc*. and corresponds Art. 17 (3):

- Section 12 (1) concerns family members of an *EU citizen falling within Section 7* (i.e. has a right of permanent residence, cf. Section 20; see above) who *accompany or join* the EU citizen. As a result of the ECJ judgment in *Metock*[7] the requirement of previous lawful residence in an EU/EEA Member State imposed on the family member was abolished, see more below Chapter VI.[8]
- Section 12 (2) makes it a condition for the right of residence under Section 12 (1) for family members falling within Section 2 (1) (iii-v), unless exceptional reasons make it inappropriate, that the EU citizen has *such income or means* at his/her disposal for the *support of him-/herself and the family member* that the persons in question are presumed, upon specific assessment, *not to become a burden* on the public authorities.

  Family members falling within Section 2 (iii) are the principal person's other dependent descendant and any other descendants of the principal person's spouse who are dependent on the principal person, cf. Section 2 (1) (iii) (cf. Art. 2 (2) (c) second part), relatives in the ascending line of either the principal person or the principal person's spouse if they are dependent on the principal person, cf. Section 2 (1) (iv) (cf. Art. 2 (2) (d)) and/or a principal person's other relatives if they are dependent on the principal person or are living under the roof of the principal person in the country from where they come, cf. Section 2 (1) (v) (cf. Art. 3 (2) (a) first part). Hence, Section 12 (2), cf. Section 20, appears to be in accordance with Art. 17 (3), cf. Art. 14 (2), Art. 7 (1) (b), cf. Art. 7 (2), cf. Art. 8 (4).

EU Residence Order Section 14 concerns *family members* with a *continued right of residence* after the principal person's *death or departure* and corresponds Art. 17 (4).

- Section 14 (3) concerns *family members'* right to *permanents residence*, cf. Section 20, when the family member has a right of residence under Sections 8-11,[9] when the principal fell within Section 3 (1)[10] and when
  - the principal person had resided in Denmark for a *continuous* period of at least *two years* at his/her death;
  - the death was due to an *accident at work* or an *occupational illness*; or
  - the family member was the principal person's *spouse* and *lost his/her Danish nationality* by *marriage* to the principal person

  Hence, Section 14 (3), cf. Section 20, appears to be in accordance with Art. 17 (4).

5 This already follows to some extent from the Act on Registered Partnership; Consolidation Act No. 938 of 10 October 2005 Section 3.
6 Section 16 (2) makes it a condition that the principal person undertakes to support the cohabitant.
7 ECJ judgment of 25 July 2008 *Metock* (C-127/08).
8 Executive Order No. 984 of 2 October 2008 amending the EU Residence Order.
9 Family members of workers or self-employed persons, family members of seconded persons, family members of students and family members of persons with sufficient means, respectively.
10 An EU national who is a worker, self-employed person, including a service provider.

Art. 24 (2): Equal treatment

Texts in force

Administrative rules

As described below in Chapter IV.2, first-time jobseeking EU citizens are not entitled to cash benefits under the *Act on Active Social Policy*[11], apart from costs related to return to their home country. EU citizens and their family members with residence right under EU law, on the other hand, are entitled to such benefits on equal terms with Danish citizens.[12] These rules appear to be in accordance with Art. 24 (2), as well as Arts. 14 and 27, of Directive 2004/38.

2. SITUATION OF JOB-SEEKERS

If seeking jobs, EU citizens have a right to residence in Denmark for up to 6 months without residence certificates/permits, cf. Aliens Act Section 2 (1), cf. EU Residence Order Section 3 (1). The EU citizen must be able to present ID or passport on the police's request.

Within this period the EU citizen has to supply for him-/herself and may only be afforded social assistance for the return journey. Hence, an EU citizen who is a first-time job-seeker does not have access to social security and/or starting allowance.[13] The reasoning behind this is the view that social security and starting allowance are not support offered specifically for job seeking.[14] However, the EU citizen may enter an unemployment fund.[15]

If the EU citizen can substantiate that he/she continues to seek job and has actual chances to obtain employment upon the expiration of the 6 months time limit, he/she may not be sent out of the country.[16]

According to the EU Residence Order Section 21 and the webpage of the Regional State Administration,[17] EU citizens with a right of time-limited residence shall apply for a registration certificate within 3 months of entry if the residence is expected to last for longer than 3 months.[18]

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11 Consolidation Act No. 1460 of 12 December 2007, Section 12 a.

12 *Ibid*., Section 3 (2).

13 See more below Chapter IV.2.

14 Cf. Guidance No. 33 of 4 May 2004 to Section 12 a in the Act on Active Social Policy 1.1. and Guidance No. 19 of 4 April 2008 on EU/EEA citizen's access to social security and starting allowance 2.2.3 and 3.2.2.B. Guidelines issued by The National Directorate of Labour, 'Arbejdsdirektoratet', a body under The Ministry of Employment, official website: www.adir.dk.

15 Cf. Consolidation Act No. 975 of 26 September 2008 and amendments, and Executive Order No. 1399 of 13 December 2006 on unemployment insurance for workers within EEA and additional countries, cf. Guidance No. 116 of 13 December 2006.

16 Cf. Guidance No. 33 of 4 May 2004 to Section 12 a in the Act on Active Social Policy 1.1. note 1.

17 www.statsforvaltning.dk/site.aspx?p=4176, accessed on 28 July 2009.

18 Thus, there seems to be an inconstancy with the webpage of the Ministry of Refugee, Immigration and Integration, stating that an EU/EEA citizen seeking job must apply for a registration certificate under the EU/EEA Residence Order with the Regional State Administration if the person in question wishes to stay in Denmark for more than 6 months. The application has to be handed in within 6 months from entry, see www.nyidanmark.dk/da-dk/Ophold/borgere_fra_eu_og_norden/eu_og_eos-statsborgere/eu_og_eos-statsborgere.htm, accessed on 28 July 2009.

3. EXPULSION OF EU CITIZENS

A number of judicial decisions have been passed on the criteria for expelling EU citizens. The general expulsion provisions in the Aliens Act apply to EU citizens, yet with the modification that they must give deference to EU rules in case of any incompatibility, cf. Aliens Act Section 2 (3). Due to possible inconsistencies in expulsion practices in cases with shorter sentences in particular (typically unsuspended imprisonment up to 6 months), as alleged by some defence lawyers, the higher courts have examined various cases with more principled issues, most importantly:

- Supreme Court judgments reported in UfR 2008.1148 (not shorter sentence), 2009.808 and 2009.813.
- High Court judgments reported in UfR 2008.2079 and 2009.581 (not shorter sentence).

As described in the previous report, Aliens Act Section 26 applies in all cases on expulsion and revocation of a residence certificate or residence permit. According to Section 26, an assessment of the alien's personal situation, including his/her attachment to the Danish society, family members here, the length of the stay etc., must be made in order to evaluate whether the expulsion or revocation may be considered to be excessively burdensome, cf. ECHR Art. 8 and the principle on proportionality.

UfR 2009.581V

A Slovakian citizen was sentenced to 4½ years imprisonment on the grounds of robbery and permanently expelled.

The defendant entered Denmark in 1996 and hence prior to Slovakia entering EU. However, the prosecutor declared that the defendant's situation should be evaluated as had Slovakia been a member of EU for his entire stay in Denmark. Regarding the length of the defendant's stay, he had resided in Denmark for more than 10 years. However, when deducting periods of previous imprisonment pursuant to Aliens Act Section 27 (5), he had resided in Denmark for less than 10 years. While referring to Directive 2004/38 Art. 28 (3) lit. a and Aliens Act Section 2 (3), the High Court stated that upon calculation of the period of residence under Art. 28 (3) lit. a, previous imprisonment was not to be deducted from the length of the stay. Furthermore, the Court stated that given the defendant had resided in Denmark for more than 10 years, an expulsion decision might be made only when based on imperative grounds of public security. Upon assessment of the defendant's personal situation, cf. Aliens Act Section 26 (1), including the facts that the defendant on more than one occasion had committed serious crime, had no attachment to or contact with his family in Slovakia, spoke very little Slovak and had 3 siblings residing in Denmark, the High Court referred to Directive 2004/38 Art. 28 (3) lit. a, cf. Aliens Act Section 2 (3), and found the defendant to represent a present and sufficiently serious threat to the Danish public security to an extent requiring expulsion based on imperative grounds of public security. He was expelled and prohibited entry permanently.

UfR 2008.2079Ø

A Spanish citizen was sentenced to 4 months of imprisonment for fraud and false report, expelled and prohibited entry for a period of 5 years.

Regarding the length of the defendant's stay, he had resided in Denmark for a period of approximately 2 years.

Upon assessment of the defendant's personal situation, cf. Aliens Act Section 26 (1), including the amount and systematic character of the crimes committed and the fact that he had no attachment to Denmark, the District Court expelled the defendant and prohibited him entry for a period of 5 years. The High Court upheld the verdict, referred to Directive 2004/38 Art. 27 (2), the preamble and practice from ECJ, cf. Aliens Act Section 2 (3), and added that the professional behavior was found to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

UfR 2008.1148H

A Polish citizen was sentenced to 6 years imprisonment for smuggling 13 ton of hash to Denmark and permanently expelled.

Regarding the length of the defendant's stay, he had resided in Denmark for 6 years, legally for 4 years – upon deduction of the period of previous imprisonment, cf. Aliens Act Section 27 (5).[19]

Upon assessment of the defendant's personal situation, cf. Aliens Act Section 26 (1), including the facts that he entered Denmark at the age of 36, kept in contact with his family and friends in Poland, was married to a Polish woman, also residing in Denmark and 2 young children living in Denmark all having residence rights independent of the defendant, the High Court referred to the 'EU rules' and found the defendant to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and hence to be expelled and prohibited entry permanently. The Supreme Court upheld the verdict.

UfR 2009.808H

A British citizen was sentenced to 60 days imprisonment for violence or threat on violence by assaulting a bus driver.

Regarding the length of the defendant's stay, he had resided in Denmark for 3 years. Upon assessment of the defendant's personal situation, cf. Aliens Act Section 26 (1), including the facts that he was issued with an EU residence permit valid until 2010,[20] was seeking job, was to commence Danish course and had his parents and older brother residing in Denmark, the High Court referred to Directive 2004/38 Art. 27, 28 and 33, cf. Aliens Act Section 2 (3), and found the defendant to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (i.e. public transportation) and hence to be expelled and prohibited entry for a period of 5 years. However, the Supreme Court re-

19 Contrary to the judgment in UfR 2009.581V mentioned above, the Court does not seem to consider whether deduction of previous imprisonment in the length of the defendant's stay pursuant to Aliens Act Section 27 (5) is in accordance with Directive 2004/38.

20 Judgment's wording.

versed the decision of the High Court as the Court found the balancing pursuant to Section 26 (1) of the defendant's attachment to Denmark on the one hand and the character of the spontaneous and isolated crime on the other hand to lead the Court to establish the existence of considerations decisively against expulsion. In addition, the Supreme Court noted that expulsion would have been against the principle of proportionality in Art. 27 (2) in conjunction with Art. 28 (1), also.

UfR 2009.813H

A Lithuanian citizen was sentenced to 30 days imprisonment for shoplifting and expelled from Denmark prohibited entry for 5 years.

Upon assessment of the defendant's personal situation, cf. Aliens Act Section 26 (1), including the facts that the crime was committed the same day the defendant entered Denmark and the professional character of the theft, the District Court found the defendant to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and hence to be expelled and prohibited to enter Denmark for 5 years. The High Court and Supreme Court upheld the verdict, the Supreme Court referring to Directive 2004/38 Art. 27, 28 and 33, cf. Aliens Act Section 2 (3), adding the fact that the defendant had previous convictions in Lithuania and had no attachment to Denmark.

In an article recently published in the Danish journal *Juristen*, a public prosecutor Hjortenberg addresses the issue of expulsion of EU citizens by the Danish courts in cases with shorter sentences in particular.[21]

Hjortenberg deals with especially 2 of the cases mentioned above (UfR 2009.808H and 2009.813H) in which the Supreme Court has made an assessment of the importance of Directive 2004/38 in cases where the sentences are unsuspended imprisonment up to 6 months.

Also for the future, Hjortenberg argues in his article, a decision on expulsion will be based on a concrete, individual assessment of the circumstances of the case, such as the defendant's personal situation. From the judgments, he concludes that crime committed by EU citizens in a professional manner, like other organized or systematic crime, such as crime committed by people with previous sentences for similar crimes, must be assumed to lead to expulsion, when the person in question has no real attachment to Denmark. While referring to the increment of crimes of enrichment of a somewhat professional character committed by citizens of the Central and Eastern European countries in Denmark, Hjortenberg considers this practice to be in accordance with the purpose of the provisions of Directive 2004/38 providing enhanced protection against expulsion for (EU) workers and others of honest intentions in staying in Denmark.

Recent legal literature

Henrik Thomassen & Pernille Breinholdt Mikkelsen, Indrejse og ophold for udlændinge omfattet af EU-reglerne, in L.B. Christensen et al., *Udlændingeret*, 3. edition, Copenhagen 2006, p. 239-285.

Jesper Hjortenberg, Udvisning af EU-borgere i sager, hvor der idømmes korterevarende fængselsstraffe HD af 29.12.2008 (U 2009.808 H og U 2009. 813 H), *Juristen* No. 3, 2009.

21 Cf. 'Udvisning af EU-borgere i sager, hvor der idømmes korterevarende fængselsstraffe HD af 29.12.2008 (U 2009.808 H og U 2009. 813 H)' by Jesper Hjortenberg in *Juristen* No. 3, 2009.

Denmark

Karsten Engsig Sørensen & Poul Runge Nielsen, *EU-Retten*, 4th ed., 1.st print, Copenhagen 2008.

Chapter II
Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT (E.G. ASSISTANCE OF EMPLOYMENT AGENCIES)

Texts in force

Laws

Aliens Act Section 14 (1) (ii), cf. Section 13, and EU Residence Order Section 18, exempts EU citizens from the requirement to have a work permit in order to take up employment in Denmark, which is imposed on most other groups of foreigners.

Employment under a collective agreement or on individual contract (as opposed to employment as a civil servant, see below Chapter V) is not conditional on the applicant being a Danish citizen. Foreign citizens are generally free to hold such posts.[22]

Assistance of employment agencies

EU/EEA citizens may register with job centres, make use of the facilities and receive guidance.[23]

The job centres must offer guidance on:

- the actual job opportunities in their geographical area;
- the use of www.jobnet.dk;
- entering CV on www.jobnet.dk;
- the work out of job applications and/or CV;
- work and residence permit/registration certificate, Civil Registration System number (CPR), tax card, language school and contact with the authorities;
- local, regional and national education or continuing education opportunities; and
- the Danish job market.[24]

The job centres have an international Section, *EURES*,[25] which is the co-operation between the European Commission and the Public Employment Services of the EEA countries and Switzerland and other partner organizations (such as unions, employers' associations and local/regional authorities) with the purpose of supporting the free movement of workers by facilitating information, advice and recruitment for citizens and companies.[26]

In 2008, the EURES special function was closed down. However, the tasks are now handled in 3 international centres, established on 1 October 2008.[27] The 3 international centres

22 For general information on the Danish labour market, see *Employment in the Danish State Sector*, a publication from the State Employers' Authority, available at www.perst.dk/Publications/2005/Employment%20in-%20the%20Danish%20State%20Sector.aspx, accessed on 17 April 2009.
23 Consolidation Act No. 522 of 24 June 2005 on Responsibility for and Regulation of the Active Employment Initiative; cf. Consolidation Act No. 439 of 29 May 2008 on Active Employment Initiative.
24 Cf. information obtained from an official within the Ministry of Employment by e-mail of 17 June 2008 and Consolidation Act No. 439 of 29 May 2008 on Active Employment Initiative Part IV-IX.
25 Official website: www.eures.dk (referring to www.workindenmark.dk from 1 October 2008).
26 Cf. www.ec.europa.eu/eures/home.jsp.
27 See www.workindenmark.dk, accessed on 19 March 2009.

have been established in the metropolitan area ('Høje Taastrup'), Aarhus and Odense, respectively. The purpose of the establishment of the centres is to strengthen and professionalize the recruitment of foreign labour in Denmark. Hence, the centres' core area are focused directly on assisting companies in recruiting workers from abroad and on assisting alien workers in their job seeking in Denmark in general.

The job centres must continue to handle the tasks as described above. However, in situations where the job centres are not able to carry out a task, the task will be handled jointly with the new international centres, or the international centres will take over the handling of the task.

In connection with the establishment of the international centres, a special Polish hotline was established. The hotline provides guidance on job seeking and establishment in Denmark in Polish for Polish jobseekers only.[28]

2. LANGUAGE REQUIREMENT

Texts in force

Laws

According to the Act on *Danish Courses for Adult Aliens et al.*, every adult alien residing in Denmark can receive education by attending Danish courses etc. arranged by the municipality, cf. Section 2.[29] The Act also applies to EU citizens and their family members. This means that they have a right to receive an offer from the municipality to take part in Danish courses, but they have no obligation to do so. Whereas such courses are free of charge for foreigners encompassed by the Act on Integration,[30] the municipalities may require a fee from other categories of participants who are self-supporting, including EU citizens and their family members, according to guidelines from the Ministry of Refugee, Immigration and Integration, cf. Section 14.[31] The size of the fee is differentiated resulting in a higher fee for aliens residing in Denmark for a shorter period of time without an aim as regards to integration. Among other things, the adoption of the fee was considered to ensure a higher attendance at the courses. As a consequence of this differentiation, EU/EEA citizens are required to pay the lowest fee of a maximum of 500 DKK (app. 67 Euro) per module. The government seems to have considered whether the adoption of the fee will raise questions of discrimination, since it is emphasised in the explanatory memorandum to the Bill that the language courses will provide general qualifications and will not address the need for specific professional training. The Bill was therefore considered as having no EU law implications, even while it was clearly stated that EU citizens were to be among those participants required to pay for such courses under the Act.[32]

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28 Cf. information obtained from an official within the Ministry of Employment by e-mail of 17 June 2008 and http://workindenmark.dk/Contact.aspx, accessed on 19 March 2009.

29 Consolidation Act No. 259 of 16 March 2006 and amendments and Executive Orders No. 755 and 756 of 26 June 2007. Executive Orders No. 1159 of 1 December 2005, No. 1270 of 7 December 2006 and No. 1498 of 12 December 2007, cf. letter No. 9748 of 4 July 2008. Executive Orders No. 1246 of 15 December 2008 and No. 68 of 6 February 2008.

30 Consolidation Act No. 1593 of 14 December 2007. Danish courses are mandatory for aliens encompassed by the Act on Integration, cf. Part IV of the Act.

31 Cf. Executive Order No. 68 of 6 February 2008 Section 16 (i) and (ii). EU/EEA citizens and members of their families are not encompassed by the Act on Integration, cf. Section 2 (3).

32 Explanatory memorandum to Bill No. L 158/2002-03.

On 25 February 2009 the Ministry of of Refugee, Immigration and Integration Affairs introduced a bill to amend the Act on *Danish Courses for Adult Aliens et al.* and the Act on Integration with the purpose of attracting highly qualified employees to Denmark.[33] The Bill establishes a free vocational offer on Danish courses on the internet ('Online Dansk'), cf. Section 16a.[34] Furthermore, a specific provision on *EU/EEA frontier workers* was proposed adopted in the Act. The provision provides the legal basis for EU/EEA frontier workers to have a right to Danish courses on equal terms with aliens issued with a residence permit and residing in Denmark, cf. Section 2a. The explanatory memorandum to the Bill specifically refers to Regulation 1612/68 Art. 7 (2) on social (and tax) advantages and states that legitimate compensation claims from EU/EEA citizens who up to now themselves have defrayed the expenses for Danish courses will be covered.[35]

The Bill was adopted by the Parliament on 12 June 2009 entering into force on 1 July 2009.[36]

The Act on *Danish Courses for Adult Aliens et al.* and the supplementing executive orders[37] were amended in 2008.[38] Among other changes, Section 15 was amended. Section 15 concerns the states refund of the expenses the municipality has to Danish courses for participants not encompassed by the Act on Integration or the Act on Active Employment Initiative.

The amount with which the state refunds the municipalities' expenses was changed from 33 DKK per lesson to 50% of the expenses. This is an increase of the state's co-financing of the municipality offers on Danish courses and has as its purpose to strengthen the municipalities' supply of efficient Danish courses to aliens who are not encompassed by the Act on Integration (EU/EEA citizens and others).[39]

Draft legislation, circulars, etc.

The National Labour Market Authority ('Arbejdsmarkedsstyrelsen'[40]), which is an authority under the Ministry of Employment,[41] has issued a circular to the Act on *Prohibition of Differential Treatment on the Labour Market.*[42]

The Circular concerns employment agencies and their dealing with employers and ethnic minorities and constitutes general guidelines to the prohibition of different treatment on the labour market.

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33 Bill No. L 140/2008-09.

34 See www.nyidanmark.dk/en-us/Integration/online_danish/ for an introduction.

35 Explanatory memorandum to Bill No. L 140/2008-09, general remarks 4.2 in fine.

36 Act No. 485 of 12 June 2009.

37 Consolidation Act No. 259 of 16 March 2006 and amendments and Executive Orders No. 755 and 756 of 26 June 2007. Executive Orders No. 1159 of 1 December 2005, No. 1270 of 7 December 2006 and No. 1498 of 12 December 2007, cf. letter No. 9748 of 4 July 2008. Executive Orders No. 1246 of 15 December 2008 and No. 68 of 6 February 2008.

38 By Act No. 104 of 7 February 2007, entering into force on 1 January 2008, except for Section 13 (4-5) which entered into force on 9 February 2007.

39 See explanatory memorandum to Bill No. L 16/2006-2007, general comments para.1and specific comments to Section 2, para. 5-6, and the background Government plan for Integration 'En ny chance for alle', 17 June 2005, www.nyidanmark.dk/NR/rdonlyres/1311B350-281F-4CD1-ADD5-F9B717F16FAA/0/en_ny_chance_til_alle. pdf.

40 Official website: www.ams.dk.

41 Official website: www.bm.dk.

42 Consolidation Act No. 1349 of 16 December 2008, Circular No. 60339 of 29 October 1998.

According to the Circular, a language requirement is formally a neutral requirement. However, in situations where an employer imposes a language requirement which is not reasoned/objectively justifiable, a language requirement may constitute indirect discrimination. This will be the case if the requirement to the person's ability to speak or write Danish is disproportionate and without relevance for the maintenance of the job in question.[43]

According to the Circular, qualification requirements in general have to be justified by considerations of satisfactory maintenance of the job in question.

Recent legal literature

Henrik Thomassen & Pernille Breinholdt Mikkelsen, Indrejse og ophold for udlændinge omfattet af EU-reglerne, in L.B. Christensen et al., *Udlændingeret*, 3rd ed., Copenhagen 2006, p. 239-249.

Karsten Engsig Sørensen & Poul Runge Nielsen, *EU-Retten*, 4th ed., 1st print, Copenhagen, 2008.

43 Chapter III.B.

Chapter III
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS (DIRECT, INDIRECT DISCRIMINATION)

Texts in force

Laws
In Denmark, the labour market is characterised by a *collective bargaining model*. The key aspect of this model is the fact that the government will intervene as little as possible in the relationship between employers and employees as long as the labour market parties themselves are able to reach agreement.[44]

However, labour market laws do exist, and concerning equal treatment, the central piece of legislation is the Act on *Prohibition of Differential Treatment on the Labour Market etc.*,[45] which prohibits direct and indirect discrimination, harassment and instructions on differential treatment on grounds of race, colour, religion or belief, political opinion, sexual orientation, age or handicap or national, social or ethnic origin in the relationship between an employer and an employee, cf. Sections 2-5.[46] The Act transposes parts of Directive 2000/43/EC on equal treatment of all regardless of race or ethnic origin into Danish law and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.[47]

The Act on *Prohibition of Differential Treatment on the Labour Market etc.* was amended in 2008 as a consequence of the establishment of the *Committee on Equal Treatment* ('Ligebehandlingsnævnet'), cf. Section 8a.[48]

As regards discrimination on grounds of *nationality*, the Act does not encompass all kind of discrimination. Hence, differential treatment on the grounds of citizenship is not in itself encompassed by the Act. However, a requirement on citizenship may be categorized as indirect discrimination on the grounds of national or ethnic origin.[49]

The Act on *Equal Treatment Irrespective of Ethnic Origin*[50] was amended in 2008 as a consequence of the establishment of the *Committee on Equal Treatment* ('Ligebehandlingsnævnet'), cf. Part IV, Section 10 (2).[51] The Act 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 labour market and lays down a prohibition against direct and indirect discrimination on the grounds of race or ethnic origin and a prohibition against harassment and instructions to discriminate, cf. Section 3 and a prohibition on reprisals, cf. Section 8.

44 Cf. *Employment in the Danish State Sector,* p. 8-9, a publication from the State Employers' Authority, available at www.perst.dk/Publications/2005/Employment%20in%20the%20 Danish%20State%20Sector.aspx, accessed on 17 April 2009.
45 Consolidation Act No. 1349 of 16 December 2008.
46 As regards discrimination on the grounds of gender, this is regulated in a specific act, cf. Consolidation Act No. 1095 of 19 September 2007, which partly implements Directive 2004/113/EC.
47 Act No. 253 of 7 April 2004 and Act No. 1417 of 22 December 2004 amending Act No. 459 of 12 June 1996.
48 By Consolidation Act No. 387 of 27 May 2008.
49 Cf. Guidance on the Act on Prohibition of Differential Treatment on the Labour Market etc. No. 9237 of 6 January 2006 issued by the Ministry of Employment.
50 Act No. 374 of 28 May 2003 and amendment.
51 By Consolidation Act No. 387 of 27 May 2008.

As mentioned above, in 2008, the acts were amended to replace the Committee for Ethnic Equal Treatment established within the Danish Institute for Human Rights to hear complaints concerning violation of the *prohibitions against discrimination* on the grounds of *race* or *ethnic origin* both inside and outside the labour market, by the *Committee on Equal Treatment* ('Ligebehandlingsnævnet') with the purpose of promoting equal treatment on all grounds.[52]

The purpose of the establishment of the *Committee on Equal Treatment* is to unite the processing of cases regarding equality of treatment both inside and outside the labour market in one authority and to extent the competence of the Committee to encompass cases regarding equality of treatment on grounds of religion or belief, political opinion, sexual orientation, age, handicap and national or social origin in order to uniformize the access to complaints on violation of the prohibition on discrimination on all grounds encompassed by the Danish legislation on equal treatment. Hence, the amendment results in a union of the two existing Committees (the Committee for Ethnic Equal Treatment and the Committee on Gender Equal Treatment, respectively), changes of a formal character and does not result in any changes as regards the protection against differential treatment.[53]

The *Committee on Equal Treatment* is competent to deal with complaints on differential treatment on the grounds of gender, race, colour, religion or belief, political opinion, sexual orientation, age, handicap or national, social or ethnic origin, cf. Section 1.

As for a comparison with the former Committee for Ethnic Equal Treatment established within the DIHR, the amendment results in an extension of the competence, both as regards an extension of the grounds (as described above) and as regards the Committee's reaction possibilities, see below on Section 2. However, the Committee on Equal Treatment will not be able to take up cases on its own initiative. Furthermore, the amendment results in changes of organisational character as the Committee on Equal Treatment is organized in accordance with the model for the existing Committee on Gender Equal Treatment.[54]

With regard to the Act on *Prohibition of Differential Treatment on the Labour Market etc.,* the Committee on Equal Treatment deals with complaints on discrimination on grounds of race, colour, religion or belief, political orientation, sexual orientation, age, handicap or national, social or ethnic origin under this Act, cf. the Act on *the Committee on Equal Treatment* ('Ligebehandlingsnævnet') Section 1 (3). Furthermore, the Committee deals with complaints from employees on violation of Collective Agreements containing an obligation to equal treatment similar to the Act on Prohibition of Differential Treatment on the Labour Market etc. (Section 1 (6) and (7)) provided the case is not brought before the Industrial Committees/Courts, cf. Section 1 (5).

As regards the Act on *Equal Treatment Irrespective of Ethnic Origin,* the Committee deals with complaints on discrimination on grounds of race or ethnic origin under this Act, cf. the Act on *the Committee on Equal Treatment* ('Ligebehandlingsnævnet') Section 1 (4).

According to Act on *the Committee on Equal Treatment* Section 2, the Committee can give judgment for non financial compensation and overrule dismissals in accordance with the Acts and Collective Agreements mentioned in Section 1 (2)-(5), cf. Section 2. Decisions of the Committee may be brought before the ordinary courts of which the parties should be notified, cf. Section 12 (1). If a decision of the Committee is not complied with, the Committee may bring the case before the ordinary courts on behalf of the complainant, cf. Section 12

52 Consolidation Act No. 387 of 27 May 2008, entering into force on 1 January 2009, cf. Bill No. L 41/2007-08.
53 Explanatory memorandum to Bill No. L 41/2007-08, general remarks 1.
54 Explanatory memorandum to Bill No. L 41/2007-08, general remarks 2.2

(2). This competence is based on the fact that decisions of the Committee are not executable.[55]

Regarding the obligation under Directive 2000/43/EC Art. 13, the Act does not result in any changes to the competence of DIHR as defined in the Act on Establishment of DIHR Section 2 (2)[56]and the Act on Equal Treatment Irrespective of Ethnic Origin Section 10 (1).[57]

As described in the previous report, problems arise in terms of exploitation of, underpayment of and poor working conditions for workers from the East European countries being stationed. With the purpose of strengthening the supervision and control, stationing companies must register with the Danish Commerce and Companies Agency ('Erhvervs- og Selskabsstyrelsen')[58] from 1 May 2008, thus providing the Danish authorities with more possibilities of checking and supervising the companies and the working conditions.[59]

Miscellaneous (administrative practices, etc.)

As mentioned above the Committee for Ethnic Equal Treatment[60] established within the Danish Institute for Human Rights[61] was replaced by the *Committee on Equal Treatment* ('Ligebehandlingsnævnet')[62] as from 1 January 2009. There is yet to follow published practice from the Committee on Equal Treatment and compared to the previous report, there are no new cases concerning EU citizens from the Committee for Ethnic Equal Treatment.

Recent legal literature

Yvonne Frederiksen & Mads Krarup, *Lov om forbud mod forskelsbehandling på arbejdsmarkedet med kommentarer,* 1st ed., 1st print, Copenhagen 2008.

Yvonne Frederiksen & Mads Krarup, Nyt klagenævn i sager om diskrimination*,* in *Advokaten,* Årg. 87, No. 3, 2008.

Karsten Engsig Sørensen & Poul Runge Nielsen, *EU-Retten*, 4th ed., 1st print, Copenhagen 2008.

Ruth Nielsen, *Dansk Arbejdsret,* 1st ed., 1st print, Copenhagen 2008.

Ruth Nielsen, *EU-arbejdsret*, 4th ed., 1st print, Copenhagen 2006.

Jens Kristiansen, *Grundlæggende arbejdsret,* 2. edition, 1. print, Copenhagen 2009.

Ole Hasselbalch, *Den danske arbejdsret,* Copenhagen 2009.

Ole Hasselbalch, *Arbejdsmarkedets regler 2008*, 8. edition, Copenhagen 2008.

55 Explanatory memorandum to Bill No. L 41/2007-08, specific remarks Section 12.
56 Consolidation Act No. 411 of 6 June 2002.
57 Explanatory memorandum to Bill No. L41/2007-08, general remarks 2.1.3.
58 Official website: www.erhvervsogselskabsstyrelsen.dk, see www.virk.dk/English/RUT/RUT_dansk.
59 Cf. Act No. 263 of 23 April 2008, amending Consolidation Act No. 849 of 21 July 2006.
60 Official website: www.klagekomite.dk.
61 Official website: www.humanrights.dk.
62 Official website: www.ligebehandlingsnaevnet.dk.

2. SOCIAL AND TAX ADVANTAGES

Tax issues

Texts in force

Laws
The *Act on Pay-as-you-earn Taxation* ('Kildeskatteloven') Section 48 E[63] on optional *25% gross taxation for 3 years* for *key employees and researchers* who are migrant workers residing in Denmark for a maximum of 36 months at a time was amended in 2008, with the purpose of making it more appealing for highly educated and qualified employees to reside in Denmark for a longer period of time.

Section 48 E was amended in 2008 by the adoption of Section 48 F including an option (besides the 25% gross taxation for 3 years) of *optional 33% gross taxation for 5 years*, cf. Section 48 F (2-3).[64]

The application of the provision has no limitations as regards the line of business. However, the person may not have been involved in the management of the company in question within the past 5 years. Furthermore, the person in question may not have been stationed abroad by the future employer (research institute or company).

If the requirements on settlement and moving, the size of the fee (this condition does not apply to researchers whose qualifications have been approved/recognized by a public research institute or a research committee, see below) and the employer are fulfilled[65] the rule on 25% or 33% gross taxation is applicable – both to Danish citizens and aliens, provided the person has not been encompassed by the Danish rules on tax liability within the past 3 years. As a main rule, the person in question must be encompassed by the rules on unlimited tax liability in Denmark upon commencement of the employment by taking up residence in Denmark or staying for 6 consecutive months upon commencement of the employment (this rule does not apply to researchers, see below).[66]

The arrangement in Section 48 E contains a rule on *subsequent taxation* once the tax payer remains under the rules of unlimited tax liability in Denmark upon cessation of the employment encompassed by the 25% gross taxation arrangement (this rule does not apply to researchers, see below). The rule on subsequent taxation has been revised through the years, and by Act No. 270 of 8 May 2002, entering into force on 1 January 2002, subsequent taxation was abolished for persons who have not been under the rules on unlimited or limited tax liability in Denmark within the past 5 years prior to the commencement of employment under the 25% (or 33%) gross taxation arrangement. This means that this category of persons is not forced to leave Denmark for tax reasons.

In a case concerning subsequent taxation the Danish National Tax Tribunal ('Landsskatteretten') has ruled that the arrangement *does not affect the free movement of workers in a negative sense*. Hence, the arrangement was not considered to be incompatible with TEF Art. 39.[67]

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63 Consolidation Act No. 1086 of 14 November 2005 and amendments.
64 Act No. 522 of 17 June 2008 entering into force on 19 June 2008.
65 As regards researchers, a requirement on approval/recognition also has to be fulfilled, see below.
66 Cf. Instruction2008-1 of 15 January 2008 'Ligningsvejledningen' D.B.5, available at www.skat.dk/SKAT.aspx?oId=102290&vId=201707&i=63&action=open#i102290 and the most recent Instruction 2009-1, available at www.skat.dk/SKAT.aspx?oId=102290&vId=202192&i=61&action=close#i102290.
67 SKM 2005.407.LSR.

Social advantages

The *Act on Active Social Policy* Section 11 (3) makes it a requirement for the payment of full social assistance ('kontanthjælp') that the recipient has resided in Denmark during a total period of 7 years within the past 8 years. This implies the allocation of the lower amount of starting assistance ('starthjælp') to some Danish citizens returning from another EU country (see below Chapter IV.3).

As mentioned above Chapter II.2, the Ministry of of Refugee, Immigration and Integration Affairs introduced a bill to amend the Act on *Danish Courses for Adult Aliens et al.* and the Act on Integration on 25 February 2009 adopted on 12 June 2009.[68] Among other things, a specific provision providing the legal basis for EU/EEA frontier workers with a right to Danish courses on equal terms with aliens issued with a residence permit and residing in Denmark was adopted, cf. Section 2a. The explanatory memorandum to the Bill specifically refers to Regulation 1612/68 Art. 7 (2) on social (and tax) advantages and states that legitimate compensation claims from EU/EEA citizens who up to now themselves have defrayed the expenses for Danish courses will be covered.[69]

Recent legal literature

Jeppe R. Stokholm, *EU skatteret,* 1st ed., 1st print, Copenhagen 2008.

Søren Erenbjerg, Lovforslag om ændring af 25% – skatteordningen fremsat, *Ugeskrift for skat,* 2008 nr. 16.

Bjarne Sall Hansen & Louise Leth Kløve, Særlig skatteordning for forskere og højtlønnede medarbejdere: en kort status vedr. de nye regler i KSL §§ 48 E-F, *SR-SKAT* 6/2009.

Karsten Engsig Sørensen & Poul Runge Nielsen, *EU-Retten*, 4th ed., 1st print, Copenhagen 2008.

Niels Winther-Sørensen in *Skatteretten 3*, 3rd ed., Copenhagen 2000, p. 405ff.

3. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS

Nothing to report.

4. SPECIFIC ISSUES: FRONTIER WORKERS, SPORTSMEN/SPORTSWOMEN, MARITIME SECTOR, RESEARCHERS, ARTISTS

4.1. Frontier workers

Texts in force

Laws

The Act on *Pay-as-you-earn Taxation* ('Kildeskatteloven')[70] Part IA deals with frontier workers.[71]

68 Act. No. 485 of 12 June 2009.

69 Explanatory memorandum to Bill No. L 140/2008-09, general remarks 4.2 in fine.

70 Consolidation Act No. 1086 of 14 November 2005 and amendments.

Sections 5 A-5 D provides the frontier worker with a choice on how his/her income should be taxed.

As a frontier worker does not reside in Denmark, the rules on unlimited tax liability in the Act on Pay-as-you-earn Taxation Section 1 do not encompass the worker. Instead the rules in Section 2 on limited tax liability apply, which limits the access to tax relief.

However, Section 5 A states that provided the frontier worker earns at least 75% of his/her global income in Denmark in the form of payment for personal work or profit from performing business, he/she may choose access to deduction for expenses, cf. Sections 5 B-5 C, i.e. tax relief, resulting in the frontier worker being in a position similar to an unlimited tax liable, cf. Section 1.[72]

Administrative rules
The *EU Residence Order* Section 7 (1) (iii), cf. Section 7 (1),[73] states that an EU citizen who works as an employee or self-employed in another Member State while retaining residence in Denmark to which the EU citizen return, as a rule, at least once a week, has a right to residence for more than the 3/6 months mentioned in Aliens Act Section 2 (1), provided the EU citizen has had business activity and has resided in Denmark continuously for at least the previous three years.

As mentioned above Chapter I on Art. 17, Section 7 (3) states that as for an EU citizen falling within Section 7 (1) (iii), periods of paid employment or self-employment completed in another Member States are considered as having been completed in Denmark for the purpose of acquisition of the rights mentioned in subsection (1) (i) and (ii).

4.2. Sportsmen/sportswomen

4.2.1. Nationality quotas and transfer fees

Football

Nationality quotas
Compared with last year's report, there are changes to the rules affecting the best Danish football series. As described in detail in the previous report, the rules on the Danish Football Association ('Dansk Boldspil-Union', DBU),[74] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF),[75] Fédération Internationale de Football Association (FIFA)[76] and the Union des Associations Européennes de Football (UEFA)[77] and under the competence of the Court of Arbitration for Sport (CAS)[78] and the International

71 The rules on frontier workers were originally introduced by Act No. 1095 of 20 December 1995 on the background of the Commission's recommendation 1993-12-21 and the judgments in C-279/93 and C-80/94. The rules took effect from the income year 1992.
72 Cf. Instruction2009-1'Ligningsvejledningen' D.B.8, available at www.skat.dk/SKAT.aspx?oID=102307&chk=202192#pos, accessed on 15 April 2009.
73 Executive Order No. 300 of 29 April 2008 and amending Executive Order No. 984 of 2 October 2008. The most recent Executive Order No. 322 of 21 April 2009.
74 Official website: www.dbu.dk.
75 Official website: www.dif.dk.
76 Official website: www.fifa.com.
77 Official website: www.uefa.com.
78 Official website: www.tas-cas.org.

Football Association Board (IFAB),[79] do not contain nationality quotas with regard to players with citizenship from countries within Europe generally applicable. However, recently DBU adopted rules on *home-grown players* covering only the best Danish football league; the *SAS league*. The concept of home-grown players is in accordance with UEFA's rules on participation in the Champions League and the new Europe League, and thus, similar to the international concept of home-grown players. Hence, in an official first team of 25 players, DBU's rules require the teams in the SAS league to have a minimum of 8 home grown players. According to the DIF, the purpose of the adoption of the concept is to motivate the domestic talent development by retaining a clear Danish element in the best Danish teams.[80]

As for international matches ('landskampe'), only players who are Danish citizens and entitled to play for a Danish club or an alien club organized under a football federation which is a member of FIFA, must be selected.[81] Regarding players with citizenship from countries outside of Europe, nationality quotas are applied.

Transfer fees

According to the rules on the Danish Football Association ('Dansk Boldspil-Union', DBU),[82] FIFA's Regulations for the Status and Transfer of Players apply regarding *training compensation*.[83] In the event of transfer between Danish clubs, there is no requirement on payment of training compensation.[84]

As for *solidarity contribution*, DBU specifically refers to FIFA's Regulations on the Status and Transfer of Players – Annex 5, which requires a proportional solidarity contribution to be paid to any of the player's training or education club(s) when a professional player is transferred during the course of his contract. The solidarity contribution equals 5% of the compensation paid to his former club, not including training compensation.[85]

Basketball

Nationality quotas

Compared with last year's report, there are no changes to the rules in the area.[86] As described in detail in the previous report, the rules on Denmark's Basketball Federation

79 Cf. *Love for Dansk Boldspil-Union* Part I, Section 5 (2-3) and 6 (1), available at www.dbu.dk/law/lawShow.aspx?lawid=2, accessed on 1 April 2009.

80 Cf. e-mail of 18 August 2009 from an official within the Ministry of Culture and *Propositioner for Danmarksturneringen i fodbold (Herre-DM)* Section 14 (2), accessible at www.dbu.dk/law/lawShow.aspx?lawid=1#bottom. See also UEFA newsletter for coaches No. 38, Feb. 2008, p. 5, accessible at www.uefa.com/newsfiles/651829.pdf, both accessed on 30 August 2009.

81 *Love for Dansk Boldspil-Union,* Part XIV: *Afsluttende bestemmelser,* Section 51 (1), available at www.dbu.dk/law/lawShow.aspx?lawid=2, accessed on 1 April 2009.

82 Official website: www.dbu.dk.

83 *Love for Dansk Boldspil-Union* Part I, Section 5 (2), available at www.dbu.dk/law/lawShow.aspx?lawid=2, *Danske regler om overgangsperioder og betaling af træningskompensation, Cirkulære nr. 49 (2008),* available at www.dbu.dk/page.aspx?id=6751, cf. *Revideret standardspillerkontrakt m.v. Cirkulære nr. 43 (2006),* available at www.dbu.dk/page.aspx?id=4178, cf. *Spillerkontrakt* (English) available at www.dbu.dk/data/dbu/filedb/2376.pdf, cf. *Regler for overførsel af spillercertifikater,* available at www.dbu.dk/law/lawShow.aspx?lawid=40, cf. *Regler for beregning af solidaritetsbidrag i forbindelse med internationale klubskifter,* available at www.dbu.dk/page.aspx?id=4010, all accessed on 1 April 2009.

84 Cf. *Danske regler om overgangsperioder og betaling af træningskompensation, Cirkulære nr. 49 (2008)* Section 4 (1).

85 Cf. *Regler for beregning af solidaritetsbidrag i forbindelse med internationale klubskifter*.

86 Cf. *Danmarks Basketball-Forbund, love og reglementer 2009-2010,* available at www.danmarksbasketballforbund.basket.dk/Forbund/~/media/Specialforbund/Danmarks_Basketball_Forbund/dbbf1/dbbf1_forbund/Love%20%20%20Reglementer%202008%202009%20pdf.ashx, accessed on 30 August 2009.

('Danmarks Basketball-Forbund', DBBF),[87] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF)[88] and the International Basketball Federation (FIBA Europe),[89] do not contain nationality quotas as regards players with citizenship from countries within Europe. However, nationality quotas are applied with regard to players with citizenship from countries outside of Europe. Furthermore, special rules apply to national teams.

Transfer fees
As described in detail in the previous report, transfer fees are not applied in Danish basketball. However, on 13 June 2009, DBBF adopted rules on young players, prescribing a *compensation sum* to be paid to the club of origin when the young talent plays in the best series later on.[90] The compensation sum currently amounts to approximately 270 Euro (2,000 DKK) per season for men, and approximately 130 Euro (1,000 DKK) per season for women.

Volleyball

Nationality quotas
Compared with last year's report, there are no changes to the rules in the area. As described in detail in the previous report, the rules on the Danish Volleyball Federation ('Dansk Volleyball Forbund', DVBF),[91] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF),[92] the International Volleyball Federation (FIVB)[93] and the International Volleyball Federation's European Volleyball Confederation (CEV),[94] do not seem to contain nationality quotas. However, DVBF imposes residence requirements on non-Danish citizens upon participation in certain tournaments and special rules apply to national teams. Furthermore, DVBF is subject to the rules issued by FIVB as regards the number of alien players hired per team in the clubs and alien players simultaneously on court.[95] However, DVBR has not implemented the regulations of FIVB on limitation of the number of players from other national federations simultaneously on court.[96]

Transfer fees
As described in detail in the previous report, the Danish Volleyball Federation ('Dansk Volleyball Forbund', DVBF) is subject to FIVB's rules on transfer.[97] As for international trans-

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87 Official website: www.danmarksbasketballforbund.basket.dk.
88 Official website: www.dif.dk.
89 Official website: www.fibaeurope.com.
90 Cf. e-mail of 18 August 2009 from an official within the Ministry of Culture and *Danmarks Basketball-Forbund, Love og reglementer 2009-2010, Fælles turneringsreglemet* Part III, Section 39, accessible at www.danmarksbasketballforbund.basket.dk/Nyheder/Nyheder_turnering/nyhedsfolder_turnering/2009/~/media/Specialforbund/Danmarks_Basketball_Forbund/dbbf1/dbbf1_nyheder/dokumenter/Love%20%20%20Reglementer%202009%2010%20pdf.ashx, accessed on 30 August 2009.
91 Official website: www.volleyball.dk.
92 Official website: www.dif.dk.
93 Official website: www.fivb.com.
94 Official website: www.cev.lu.
95 Cf. *Reglement for benyttelse af udenlandske spillere i klubber under DVBF, 2008-2009* Section 2, available at www.volleyball.dk/graphics/Docs/Gaeldende-reglementer/2-7-Reglement-for-benyttelse-af-udenlandske-spillere.pdf and *Fælles Turneringsreglement 2008-2009* Section 19 (1), available at www.volleyball.dk/graphics/Docs/Gaeldende-reglementer/2-1-Faelles-turneringsreglement-2008.pdf, both accessed on 1 April 2009.
96 Cf. e-mail of 18 August 2009 from an official within the Ministry of Culture
97 Cf. *Fælles Turneringsreglement* Section 19 (1).

fer, FIVB requires a transfer fee of 2,000 USD to be paid when an alien player is to play international matches for a Danish club during a season.[98] Moreover, according to the rules on DVBF, a fee of 1,000 Euro must be paid to DVBF for the issuance of the transfer certificate upon transferring to an alien club.[99]

Handball

Nationality quotas
Compared to last year's report, there are no changes to the rules in the area.[100] As described in detail in the previous report, the rules on Danish Handball Federation ('Dansk Håndbold Forbund', DHF),[101] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF),[102] the International Handball Federation (IHF),[103] the European Handball Federation (EHF)[104] and the Scandinavian Handball Federation ('Skandinavisk Håndbold Forbund', SkHF) do not contain nationality quotas. However, DHF is subject to the regulations of the federations[105] and both DHF and the international federations are contemplating on a regularly basis to adopt regulations limiting the number of alien players in Danish Handball. According to information obtained from the Ministry of Culture, DHF is aware of the limitations for such regulations following the EU rules on free movement.[106]

Transfer fees
The Danish Handball Federation ('Dansk Håndbold Forbund', DHF) is subject to the rules of IHF and EHF on transfer and applies *education compensation*.[107] Moreover, a fee must be paid for the issuance of an international player certificate upon transferring to/from an alien club.[108] The size of the fee varies depending on whether the player is an amateur or a professional player, whether the transfer is to/from a European country or a country outside of Europe and whether the player is on contract. If the player is not on contract and is being transferred within EU, only an administration fee is required.[109] DHF's regulation specifically refers to the EU rules on free movement and in particular the *Bosman Case* and its consequences for the transfer regulations.[110] It is noted that the Bosman Case overrides part of the transfer regulation for which reason it is of crucial importance knowing the player's na-

98 Cf. e-mail from an official within the Ministry of Culture of 18 August 2009.
99 *Vejledning til spillere, der skal spille i udenlandske klubber 2007-2008 (the most recent version),* available at www.volleyball.dk/graphics/Docs/Gaeldende-reglementer/2-8-Vejledning-spillere-til-udlandet.pdf, accessed on 1 April 2009.
100 Cf. e-mail from an official within the Ministry of Culture of 18 August 2009.
101 Official website: www.dhf.dk.
102 Official website: www.dif.dk.
103 Official website: www.ihf.info/front_content.php?idcat=57.
104 Official website: www.eurohandball.com.
105 Cf. *Love for Dansk Håndbold Forbund* of 7 June 2008, *Dansk Håndbold Forbund og dets opgaver Section 1,* available at www.dhf.dk/media(5783,1030)/Love_for_Dansk_H%C3%A5ndbold_Forbund_-_vedtaget_7._juni_2008.pdf, accessed on 2 April 2009.
106 Cf. e-mail of 30 June 2008 from an official within the Ministry of Culture.
107 Cf. *Grundlæggende retningslinjer for uddannelseskompensation, 2008-2009,* available at www.dhf.dk/media(5814,1030)/Grundl%C3%A6ggende_retningslinjer_for_uddannelseskompensation_-_2008-2009.pdf, accessed on 2 April 2009.
108 There is no fee on the issuance of a Danish player certificate.
109 See *Formular til brug ved overgang fra udenlandsk forening,* available at www.dhf.dk/media(6362,1030)/Formular_international_transfer.pdf and the English version: *Formula, transfer from foreign to Danish club,* available at www.dhf.dk/media(6363,1030)/Formular_international_transfer_-_engelsk.pdf, both accessed on 2 April 2009.
110 ECJ judgment of 15 December 1995 *Bosman* (C-415/93).

tionality. As an alternative to transfer of a player in contract, DHF mentions the possibility of hiring out the player.[111]

The *education compensation* may be requested for contract players at the age of 16-23, who has been on contract within the past 12 months provided the player appears on the match report for the season on question. The education compensation may amount to a maximum of 2,500 Euro for each season the player has been on contract between the player's 16th to 23th year. Moreover, an additional compensation of 500 Euro for each year the player has been on contract and played for a youth national team may be requested. Hence, the education compensation may amount to a maximum of 24,000 Euro (8 x 3,000).[112]

Rugby

Nationality quotas

The rules on the Danish Rugby Association ('Dansk Rugby Union', DRU),[113] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF),[114] the International Rugby Board (IRB),[115] the Association Europ'eenne Rugby (FIRA-AER)[116] and the Scandinavian Rugby Union (SRU) do not contain nationality quotas.

According to the most recent membership statement from 2008, DRU has 1,777 members. This makes DRU DIF's smallest federation and its activities are solely performed on an amateur basis. Thus, neither nationality quotas nor transfer fees exist in Danish rugby.[117]

Transfer fees

See above on nationality quotas.

Ice-hockey

Nationality quotas

Comparing with last year's report, there are no changes to the rules in the area. As described in detail in the previous report, the rules on Denmark's Ice-Hockey Association ('Danmarks Ishockey Union', DIU),[118] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF)[119] and the International Ice Hockey Federation (IIHF),[120] do contain

111 Cf. *Spillerkontrakter, vejledning i indgåelse af spillerkontrakter, 2008, Internationalt klubskifte for kontraktspillere,* pp. 15-18, available at www.dhf.dk/media(5569,1030)/Vejledning_-_Spillerkontrakter_-_juli_2008.pdf, accessed on 2 April 2009.

112 Cf. *Grundlæggende retningslinjer for uddannelseskompensation, 2008-2009, Procedure i transfersager hvor der kræves uddannelseskompensation, 2008-2009,* available at www.dhf.dk/media(5815,1030)/Procedure_i_transfersager_hvor_der_kr%C3%A6ves_UK_2008-2009.pdf, and *Procedure i tilfælde af uenighed omkring krav om uddannelsesgebyr, 2008-2009,* available at www.dhf.dk/media(5816,1030)/Procedure_ved_uenighed_2008-2009.pdf, both accessed on 2 April 2009.

113 Official website: www.rugby.dk.

114 Official website: www.dif.dk.

115 Official website: www.irb.com.

116 Official website: www.fira-aer-rugby.com. DRU is subject to the rules of FIRA-AER and IRB, see *Vedtægter for Dansk Rugby Union, April 2007* (the most recent version) Section 1 (3), available at www.rugby.dk/index.php?option=com_docman&task=cat_view&gid=79&Itemid=85 (download required), accessed on 2 April 2009.

117 Cf. e-mail from an official within the Ministry of Culture of 18 August 2009.

118 Official website: www.ishockey.dk.

119 Official website: www.dif.dk.

120 Official website: www.iihf.com.

nationality quotas. According to DIU's rules on tournaments, a maximum of 10 players without Danish citizenship may be added to the match report's player list in a DIU tournament match or cup match.[121]

Transfer fees

As described in detail in the previous report, Denmark's Ice-Hockey Association ('Danmarks Ishockey Union', DIU) is under the rules on transfer of IIHF. Moreover, a fee of approximately 1,000 Euro (8,250 DKK) must be paid to IIHF for the issuance of the transfer card.[122]

4.2.2. Taxation in general

The rule in Section 48 E of the Act on Pay-as-you-earn Taxation ('Kildeskatteloven')[123] on optional *25% gross taxation for 3 years* was amended in 2008 by the adoption of Section 48 F including an option of *optional 33% gross taxation for 5 years*, cf. Section 48 F (2-3).[124] These provisions are also applicable to sportspersons, see above.[125]

4.2.3. Taxation of sign on fees

Texts in force

On 12 June 2007 an announcement from the Danish tax authority ('SKAT') changed the practice as regards taxation of sign on fees for sportsmen/-women taking effect from the date of the announcement.[126] Following the announcement of 2007, the tax authority now considers sign on fees as an *advance on salary*. The reasoning of this new view is that upon signing the contract, the sportsperson obligates him-/herself to commence employment with his/her new employer. Therefore, the tax authority finds that a sign on fee cannot be considered payment for anything but the sportsperson's undertaking to perform personal work as an employee within the duration of the contract. Hence, the sign on fee is liable to taxation to Denmark under the Act on Pay-as-you-earn Taxation ('Kildeskatteloven') Section 43 (1) and the Danish employer must withhold initial tax in accordance with Section 46 (1).[127]

Judicial practice

SKM 2009.30.HR:[128] A professional football player who resided and worked in UK during the negotiations with a Danish football club, but who signed the contract with the Danish

121 *Danmarks Ishockey Union, love og turneringsbestemmelser, juli 2008, Turneringsbestemmelser,* Part III: *Kampe,* Section 8, available at www.ishockey.dk/website/pdf/DIUs_love_og_turneringsbestemmelser_JULI_2008.pdf, accessed on 1 April 2009.

122 *Danmarks Ishockey Union, love og turneringsbestemmelser, juli 2008, Turneringsbestemmelser,* Part X: *Klubskifte og transfer,* Section 2. *(Love,* Part II: *DIUs medlemmer,* Section 12.3 concerns the write-off of transfer fees).

123 Consolidation Act No. 1086 of 14 November 2005 and amendments.

124 Act No. 522 of 17 June 2008 entering into force on 19 June 2008.

125 Cf. TfS1997.573.TSS.

126 SKM 2007.370.SKAT, available at www.skat.dk/SKAT.aspx?oId=1650019&vId=0, accessed on 19 March 2009. The abandoned practice is described in detail in the previous report.

127 Consolidation Act No. 1086 of 14 November 2005 and amendments.

128 Available at www.skat.dk/SKAT.aspx?oId=1797567&vId=0, accessed on 19 March 2009.

club in Denmark and commenced playing for the Danish club and stayed in Denmark immediately upon signing the contract, was considered liable to tax to Denmark of a sign on fee of 3.3 million. His stay in Denmark was interrupted by a few days return to UK in order for him to end his engagements there (move, sell car etc.).

It is not clear whether SKAT's amendment of practice mentioned above had an impact on the ruling, as the contract in question was signed on 12 August 1999, wherefore the decision related to the income year 1999 and hence prior to SKAT's announcement amending the practice on taxation of sign on fees.

However, it is important to note that the football player was considered liable to taxation to Denmark under the rules of unlimited tax liability not because the sign on fee was considered as an advance on salary or because the player was considered to reside in Denmark upon signing the contract, but solely due to the fact that the Supreme Court found that the football player commenced and hereafter sustained a consecutive stay in Denmark of at least 6 months duration upon arrival to Denmark, cf. the Act on Pay-as-you-earn Taxation ('Kildeskatteloven') [129] Sections 1 (1) (2) and 8 (1).[130]

Recent legal literature

Jan Børjesson, Sign on fee for sportsudøvere – civilretligt og skatteretligt, *SR-SKAT* 1/2009.

Laura Christina Petersen, *Spillermobilitet kontra kontraktsstabilitet,* Copenhagen 2008.

Rasmus K. Storm & Henrik H. Brandt (red.), *Idræt og sport i den danske oplevelsesøkonomi – mellem forening og forretning,* Copenhagen: Imagine.. og Samfundslitteratur, 1st ed., 2008,

Lars Halgreen, *Sportsret: Eu-retlige og kontrakstmæssige aspekter ved sportsudøvelse i Danmark,* 1st ed., 1st print, Copenhagen 2000.

Niels Winther-Sørensen in *Skatteretten 3*, 3rd ed., Copenhagen 2000.

4.3. The Maritime sector

As described in detail in the previous reports, the Act on *a Danish International Ship's Register* Section 10 (2) determines that Danish collective agreements regarding wages and working conditions on board ships can only apply to persons living in Denmark or persons who must be put at an equal footing with Danish nationals on the basis of international obligations.[131] In practice this provision has been construed by the Danish authorities to mean that the *place of residence* is the decisive factor, which has been upheld by the Industrial Court ('Arbejdsretten').[132]

In October 2004 the Commission filed an *opening statement regarding breach of Article 39 (2) of the EC Treaty and Articles 7 and 8 of Regulation 1612/68*. According to governmental information obtained in May 2006, meetings concerning amendment of the Act on a Danish International Ship's Register Section 10 have been held with the Commission. The Danish Ministry of Justice is awaiting the Commission's response on the proposed legislative amendment.[133] By March 2009 the Act has not been amended.

129 Consolidation Act No. 1086 of 14 November 2005 and amendments.

130 Cf. Jan Børjesson, 'Sign on fee for sportsudøvere – civilretligt og skatteretligt' in *SR-SKAT* 1/2009.

131 Consolidation Act No. 273 of 11 April 1997 and later amendments.

132 Official website: www.arbejdsretten.dk. Cf. cases No. 96.017, No. 2001.335, cf. cases No. 2004.435, No. A2007.250 and A2007.255.

133 E-mail of 13 April 2007 from an official within the Danish Ministry of Justice.

4.4. Researchers/artists

According to information obtained from the Ministry of Employment, no rules on the interpretation of the concept of worker apply specifically to researchers and artists.[134] Hence, the general rules requiring such cases to be dealt with on a case-by-case basis, apply, comprising criteria such as the requirement on the employment to be real and genuine and not to be regarded as marginal or of such limited extent that the income appears as a purely marginal supplement to a person's other income or means in order to serve as the basis for the residence right. Moreover, the minimum requirement on the duration of employment of 10-12 hours on a weekly basis, apply as a main rule. Regarding fixed-term and short-term employment contracts in particular, the Danish Immigration Service emphasises the requirement on dealing with the cases on a case-by-case basis. While referring to practice from the ECJ, the Danish Immigration Service states that no lower limit on the duration of employment may be set.[135]

Researchers

Texts in force

Laws
The Act *on Pay-as-you-earn Taxation* ('Kildeskatteloven') Section 48 E[136] on optional *25% gross taxation* for key employees and researchers who are migrant workers residing in Denmark for a maximum of 36 months at a time was amended in 2008, with the purpose of making it more appealing for highly educated and qualified employees to reside in Denmark for a longer period of time.

Section 48 E was amended in 2008 by the adoption of Section 48 F including an option (besides the 25% gross taxation for 3 years) of *optional 33% gross taxation for 5 years*, cf. Section 48 F (2-3).[137]

Furthermore, researchers may use the arrangement in Section 48 E even though they have been liable to taxation to Denmark within the past 3 years as a result of shorter stays in Denmark of a total maximum of 12 months or if the stay of the researcher in question is solely financed by means originating from sources outside of Denmark, cf. Section 48 E (6).

Section 48 E and 48 F apply to researchers who are under the rules of unlimited tax liability and limited tax liability, provided the researcher's qualifications have been approved/recognized by a public research institute or a research committee, or provided a research committee attests that the person in question is to perform research and development in Denmark.[138]

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134 Cf. e-mail of 15 July 2009 from an official within the Ministry of Employment.

135 Cf. *Guidance on Residence under the EU Residence Order* issued by the Danish Immigration Service to the Regional State Administration, published on 25 May 2009, referring to ECJ judgment of 6 November 2003 *Franca Ninni-Orasche* (C-413/01) on short-term employment of 10 weeks duration, available at www.nyidanmark.dk/NR/rdonlyres/BB2D02FD-6E1F-4E09-878A-C059BF80ED54/0/vejledning_til_stats-forvaltningerne_vedr_ophold_efter_eu_opholdsbekendtgoerelsen.pdf, accessed on 28 July 2009.

136 Consolidation Act No. 1086 of 14 November 2005 and amendments.

137 Act No. 522 of 17 June 2008 entering into force on 19 June 2008.

138 Cf. Instruction 2008-1 of 15 January 2008 'Indeholdelse af A-skat, AM-bidrag og SP-bidrag' C.1.10, available at www.skat.dk/SKAT.aspx?oId=1550841&chk=201704#pos.
Cf. Instruction 2008-1 of 15 January 2008 'Ligningsvejledningen' D.B.5, available at www.skat.dk/SKAT.aspx?oId=102290&vId=201707&i=63&action=open#i102290 and the most recent Instruction 2009-1,

Section 48 E lays down requirements on non-involvement in the management for the past 5 years, no former stationing abroad by the future employer, settlement and moving and size of the fee, the latter not applicable to researchers whose qualifications have been approved/recognized by a public research institute or a research committee. However, the condition applies to researchers who are not qualified as researchers but are to perform research and development in Denmark.

The provision lays down a rule on *subsequent taxation* when the tax payer remains under the rules of unlimited tax liability in Denmark upon termination of the employment encompassed by the 25% or 33% gross taxation arrangement. The rule on *subsequent taxation* does not apply to researchers as it was abolished by Act No. 913 of 16 December 1998, entering into force on 13 May 2000.

Artists

According to the *Act on VAT* Section 13 (1) lit. 7 artistic activities are exempted from VAT.[139]

Alien artists are not liable to taxation to Denmark under the Act on Pay-as-you-earn Taxation ('Kildeskatteloven') Section 2[140] unless the length of the stay in Denmark exceeds 6 months,[141] and the fee will rarely be considered as A income since engagement of artists will rarely be considered to be employment ('tjenesteforhold').

4.5. Access to study grants

Texts in force

Laws

The Act on *the State Education Grant* ('SU-loven') Section 2 a (2) states that students who are EU/EEA citizens and their family members can obtain study grants for education in Denmark and abroad on the conditions following from the EU rules or the EEA agreement.[142] Section 2 a (3) states that EU/EEA citizens who are *not workers or self-employed* and their family members do not acquire the right to study grants until they have resided for 5 consecutive years in Denmark.

Administrative rules

Executive Order on *State Education Grant* ('SU-bekendtgørelsen') Section 67[143] states that an EU/EEA citizen may obtain study grants on equal conditions to Danish citizens when the alien is either

- considered a *worker or self-employed person* under the EU rules

  The following categories are also considered to be encompassed by the concepts of worker or self-employed:

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available at www.skat.dk/SKAT.aspx?oId=102290&vId=202192&i=61&action=close#i102290 and Executive Order No. 568 of 22 June 2000.

139 Consolidation Act No. 966 of 14 October 2005 and amendments.

140 Consolidation Act No. 1086 of 14 November 2005 and amendments.

141 Cf. Circular SDCirk1981.24 Section 1 (3).

142 Consolidation Act No. 983 of 27 July 2007.

143 Executive Order No. 1408 of 7 December 2007.

  - an EU/EEA citizen who has been working in Denmark as an employee or self-employed person, when there is relation between the education and the former work in terms of contents and time
  - an EU citizen who is involuntarily unemployed and as a consequence of health grounds or structural circumstances in the labour market is in need of re-education with the purpose of employment in a profession without relation to the former work in Denmark in terms of contents and time, or
- a *spouse* of an EU/EEA citizen who is considered to be a *worker or self-employed* under the EU rules, if he/she is or has been living with the EU/EEA citizen in the period of time when the EU/EEA citizen was a worker or self-employed in Denmark, or
- a *child* of an EU/EEA citizen who is considered a *worker or self-employed* under the EU rules, if the child resided in Denmark with the EU/EEA citizen and is or has been living with the EU/EEA citizen in the period of time when the EU/EEA citizen was a worker or self-employed in Denmark. It is a condition that the student is not of such age or status making it unreasonable to attach importance to the parent's circumstances. If the child is not residing in Denmark at the time of the commencement of the education, the child is entitled to study grants only if the EU/EEA citizen is considered to be a worker or self-employed under the EU rules and has provided for the child until the time of the commencement of the education, or
- a *parent* to an EU/EEA citizen who is considered to be a *worker or self-employed* under the EU rules, when the parent is provided for by the EU/EEA citizen and lives with or has lived with the EU/EEA citizen in a period of time when the EU/EEA citizen is or was a worker or self-employed in Denmark, or
- an *EU/EEA citizen or family member* thereof who has resided for *5 consecutive years* in Denmark:
  - According to Consolidation Act No. 983 of 27 July 2007 Section 2 a (3), the stay in Denmark is not considered to be interrupted due to temporary stays outside the country when these stays do not exceed 6 months a year in total or when the stay abroad is of longer duration due to obligatory military service or if one stay of maximum 12 consecutive months is caused by special circumstances, such as pregnancy and birth, serious illness, studies or foreign assignment. In cases of more than 2 years consecutive stay abroad, the right to study grants cannot be required until a following stay in Denmark of 5 consecutive years.

Chapter IV
Relationship between Regulation 1408/71 and Article 39 and Regulation 1612/68

1. ISSUES RELATING TO THE IMPLEMENTATION OF REGULATION 1408/71

Both principled and practical aspects of the interaction of Regulation No. 1408/71 and Danish social welfare legislation – not least concerning the delimitation of benefits covered by the Regulation – seem to come increasingly into focus at various administrative levels, and the National Social Appeals Board ('Ankestyrelsen') has clarified the impact of Regulation No. 1408/71 in a number of important decisions in recent years.

In 2005 the Appeals Board examined three cases of a principled nature pertaining to Regulation No. 1408/71. The first case concerned a Spanish citizen receiving partial Danish old-age pension who had applied for a social pension supplement under Danish law, which was to be calculated in accordance with Regulation No. 1408/71.[144] In the second case, the Appeals Board held that a Danish citizen, resident in Spain, was entitled to certain health-related benefits during his temporary stay in Denmark. Being formerly employed within the EU, and now receiving old-age pension from Denmark, he was eligible for benefits under Regulation No. 1408/71, and the specific kind of benefit was to be delivered by Denmark during his stay here, according to Art. 31 of the Regulation.[145] The third case also involved mobility issues, the Appeals Board here finding that an EU citizen who had resided in Denmark for 22 years and who was now receiving Danish old-age pension, would be entitled to continued receipt of this social pension upon removal to an African country, since Art. 3 (1) of Regulation No. 1408/71 had been amended and residence within the territory of the EU Member States was therefore no longer required.[146]

In 2006 the Appeals Board re-examined a case concerning the right to payment of medical services in other Member States that had been brought before the Parliamentary Ombudsman. While acknowledging the potential difference between recent ECJ judgments and the rules laid down by the Danish Health Ministry, the Appeals Board held that the applicant in the concrete case did not fulfil the general conditions for access to medical services under Danish law.[147] Two other 2006 decisions from the Appeals Board regarding Regulation No. 1408/71 concerned more specific issues. One case in principle pertained to free movement, yet it dealt with a question regarding the geographical delimitation between Danish and German legislation in connection with the particular conditions for frontier workers according to Arts. 4 and 13 (2) of the Regulation.[148] Another decision was based *ex contrario* on the listing of social security benefits in the Regulation.[149]

Both of the Appeals Board decisions from 2007 clarified principled aspects of the obligations incumbent on the social welfare authorities under Regulation No. 1408/71. One of the appeals decisions concerned the extent of the obligation to provide information from the authorities in other Member States as a basis for decision-making, and the Appeals Board set

144 National Social Appeals Board ('Ankestyrelsen'), decision of 17 November 2004. Reported in P-2-05, 8 March 2005 (available at www.ast.dk/afgoerelser/principafgoerelser).

145 National Social Appeals Board, decision of 15 June 2005. Reported in C-30-05, 6 July 2005. In its decision, the Appeals Board makes reference to two statements from the Ministry of Social Affairs.

146 National Social Appeals Board, decision of 19 October 2005. Reported in P-30-05, 1 December 2005.

147 National Social Appeals Board, decision of 30 August 2006. Reported in S-2-06, 29 September 2006.

148 National Social Appeals Board, decision of 23 November 2005. Reported in N-2-06, 3 February 2006.

149 National Social Appeals Board, decision of 26 April 2006. Reported in S-1-06, 29 September 2006.

aside an administrative decision refusing to re-examine an application for social pension, due to the failure of the Danish administration to apply the rules on administrative assistance laid down in Regulation No. 1408/71.[150] In the other decision, concerning the payment of child's allowance to a mother whose child was living with the father in France, it was stated that due to the direct effect and the primacy of Regulation No. 1408/71, a residence requirement in the domestic Act on Child Family Allowances could not be enforced.[151]

In an important 2008 decision, the Appeals Board accepted the principle of retroactive effect of ECJ judgments clarifying the impact of Community legislation. Hence, the applicant German citizen, residing in Canada, was granted old-age pension retroactively – although only for a period of 5 years according to Danish legislation on limitation – under the Danish-Canadian Convention on social security which was considered applicable to him on equal terms with Danish citizens, in accordance with the ECJ's interpretation of Article 39 TEC in respect of bilateral treaties with third countries.[152] Another decision concerned frontier workers,[153] one decision the prioritisation between Denmark and another Member State in which one of the spouses was working and residing,[154] whereas three decisions dealt with more specific issues concerning the application of Regulation No. 1408/71 in Danish law.[155]

2. JOBSEEKERS' ENTITLEMENT TO SOCIAL ASSISTANCE

According to Section 12 a of the *Act on Active Social Policy*,[156] EU/EEA citizens residing in Denmark as first-time jobseekers on the basis of Community law, as well as persons with a right to stay until 3 months without administrative formalities, are entitled to no other economic assistance than coverage of costs related to the return to their home country. This provision was inserted into the Act in implementation of the political agreement on access to the labour market following the EU enlargement.[157] According to the available information, the National Social Appeals Board ('Ankestyrelsen') has not examined any cases concerning Section 12 a.[158] Thus, the impact of ECJ judgments such as *Collins*, *Trojani* and *Ioannidis*[159] on the application of that provision has not yet been clarified by the Appeals Board.

EU-10 workers have allegedly experienced problems in a number of cases where they, upon dismissal from jobs in which they had been working for a longer period, applied for social assistance while seeking for new jobs in Denmark.. The social administration in some municipalities seem to have very precise information about EU-citizens' entitlement to social

150 National Social Appeals Board, decision of 15 August 2007. Reported in R-7-07, 27 September 2007.
151 National Social Appeals Board, decision of 10 October 2007. Reported in B-6-07, 28 November 2007.
152 National Social Appeals Board, decision of 12 March 2008. Reported in P-9-08, 31 May 2008. Particular reference is made in the Appeals Board's decision to the ECJ judgment of 15 January 2002 *Gottardo* (C-55-00).
153 National Social Appeals Board, decisions of 5 November 2008 (reported in No. 22-09, 26 January 2009). See also decision of 18 March 2009 (reported in No. 104-09, 1 May 2009).
154 National Social Appeals Board, decision of 22 October 2008 (reported in No. 29-09, 10 February 2009).
155 National Social Appeals Board, decisions of 13 February 2008 (reported in B-2-08, 1 April 2008), 11 September 2008 (reported in D-25-08, 10 November 2008) and 10 December 2008 (reported in No. 31-09, 10 February 2009).
156 Consolidation Act No. 1460 of 12 December 2007.
157 Act No. 282 of 26 April 2004. Guidance on the new provision was issued by the National Directorate of Labour ('Arbejdsdirektoratet') in Guidelines No. 33 of 4 May 2004. The transitional arrangements were described in previous reports, and their gradual abolishment in Chapter VIII.
158 Search result from the list of appeals cases examined by the National Social Appeals Board ('Ankestyrelsen'), available at www.ast.dk/afgoerelser/principafgoerelser, accessed on 20 April and 24 July 2009.
159 ECJ judgments of 23 March 2004 *Collins* (C-138/02), 7 September 2004 *Trojani* (C-456/02), and 15 September 2005 *Ioannidis* (C-258/04).

cash benefits and to administer the rules accordingly, whereas other municipalities seem to base their practice on an incorrect understanding of the rules, probably confusing the above-mentioned provision on jobseekers and the general rules concerning EU workers' access to social assistance on equal terms with Danish citizens. The National Directorate of Labour ('Arbejdsdirektoratet') has suggested patience towards the municipalities, but stated its preparedness to consider the need for additional guidance on the applicable law.[160]

Section 3 (2) of the *Act on Active Social Policy* makes it a precondition for entitlement to benefits of longer duration – defined as more than half a year, cf. Section 3 (3) – that the recipient must be either a Danish citizen or an EU citizen or family member who has a right of residence under EU law, or have such entitlement under an international agreement. Provided that this rule is administered on the basis of a correct understanding of the conditions for residence rights, it should not give rise to expulsion decisions that might contravene Articles 24 (2) or 27 of Directive 2004/38 or Article 7 (2) of Regulation No. 1612/68.

More general guidelines concerning the right of EU/EEA citizens to social cash benefits under the Act on Active Social Policy were issued by the National Directorate of Labour in April 2008.[161] As the guidelines appear less than clear on various aspects of the law, and they do not take heed of recent amendments and the ultimate abolishment of the transitional rules concerning EU-10 workers, they may be expected to be updated in the near future.

3. SOCIAL ASSISTANCE TO DANISH CITIZENS RETURNING FROM ANOTHER EU COUNTRY

Section 11 (3) of the *Act on Active Social Policy* makes it a requirement for the payment of full social assistance ('kontanthjælp') that the recipient has resided in Denmark during a total period of 7 years within the past 8 years. If this requirement is not fulfilled, the significantly lower amount of the so-called *starting assistance* ('starthjælp') will be paid out instead. The provisions on reduced assistance and the residence requirement for entitlement to full social assistance were adopted in 2002. [162] The purpose of the residence requirement and the reduced assistance that follows from non-compliance, as officially stated in the preparatory works of the legislation, was to create stronger incentives for refugees and immigrants to seek employment and become self-sufficient as an alternative to receiving social benefits.[163] From the political background and the legislative context it could be assumed that an additional, yet only implicit, purpose was to make it less attractive for third country citizens to come to Denmark and apply for asylum or other kinds of residence permit.[164]

In any event, it was not intended to make the residence requirement an obstacle to the free movement of EU citizens. This is demonstrated by Section 11 (6) of the Act on Active Social Policy, stating that the requirement of 7 years of residence in Denmark does not apply to EU/EEA citizens insofar as they are entitled to cash benefits under EU law. The somewhat unclear scope of this exemption was clarified in the explanatory memorandum. Reference was here made to Regulation No. 1612/68 and the EEA Agreement, and the ECJ caselaw

160 See *A 4* No. 17, weekly newsletter from the Danish Confederation of Trade Unions ('LO'), 11 May 2009.

161 Guidelines on EU/EEA citizens' right to social cash assistance and starting assistance, No. 19 of 4 April 2008, National Directorate of Labour.

162 Act No. 361 of 6 June 2002 amending the Act on Active Social Policy and the Integration Act.

163 Cf. Ministry of Refugee, Immigration and Integration Affairs, *En ny udlændingepolitik* ('A new aliens policy'), government policy paper 17 January 2002, p. 6-7, and the explanatory memorandum to Bill No. 126/2001-02 (2. Session), paras. 1 and 4.

164 *Ibid*., p. 1, and explanatory memorandum to Bill No. 126/2001-02 (2. Session), para. 1.

according similar rights to self-employed persons as to workers under these instruments. It was further explained that the requirement of 7 years of residence therefore does not apply to workers and self-employed persons, nor to Danish citizens comprised by Regulation No. 1612/68, such as Danish citizens having resided as workers in another EU/EEA country.[165] Against this background, Section 11 (6) would seem to imply that Danes and other EU/EEA citizens would only rarely, and mainly due to residence periods outside the EU/EEA Member States, be referred to the starting assistance as a result of non-compliance with the residence requirement.

Some decisions from the National Social Appeals Board have created doubts about the scope of this EU exemption, in particular regarding Danish citizens who have resided under the EU rules in another Member State, and then move back to Denmark. In the first case the applicant had returned to Denmark after a number of years of residence and work in another EU/EEA country. Upon return he applied for full social assistance, but was only granted the lower starting assistance. The reason given for this was that he did not fulfil the residence requirement in Section 11 (3) of the Act on Active Social Policy, and that his period of residence in the other Member State did not count towards the 7 years requirement because he had not acquired the *status of worker* in Denmark. This conclusion, as well as the line of reasoning, was upheld by the National Social Appeals Board. The Appeals Board referred to the caselaw of the ECJ, in particular the *Tsiotras* judgment,[166] invoking this as a basis of the assumption that the status of worker is lost in case of cessation of an employment contract unless it is documented that the EU citizen is genuinely jobseeking in the Member State in which he or she got unemployed.[167] The Appeals Board's decision seems to be based on a misinterpretation of the EU rules, as the *Tsiotras* judgment dealt with a particular situation regarding the transitional arrangements upon the accession of Greece to the EC. Furthermore, the Appeals Board seems to have confused the requirement of previous employment and actual jobseeking in a host Member State with the issue of seeking employment in the Member State of origin upon return to that country. Only a month after the publication of this decision the Appeals Board admitted another case concerning starting assistance in order to carry out a new principled examination 'as a supplement' to the abovementioned decision.[168]

In its decision on the latter case, the National Social Appeals Board maintained focus on the issue of having *acquired the status of worker* upon the Danish citizen's return to Denmark from another Member State.[169] While that criterion was rather obviously met, the decision seems at the same time to detract attention from the more pertinent question of whether the person actually had such status while staying in another EU Member State. In this case the Danish citizen who applied for cash benefits had been living in Germany as a housewife for 21 years, when returning to Denmark with her four children. Although she might have been eligible for residence right under EU law in Germany, and perhaps actually did hold an EU residence certificate there, that issue was never highlighted in the appeals case, and did not appear to be considered relevant by the Appeals Board. While the latter decision is questionable under Danish social welfare law for similar reasons as the abovementioned decision

165 Explanatory memorandum to Bill No. L 126/2001-02 (2. Session), para. 5.4 and specific comments on Section 11 (4) (the EU exemption was moved to Section 11 (6) by amending Act No. 379 of 25 April 2007).

166 ECJ judgment of 26 May 2003 *Tsiotras* (C-171/91). Particular reference was made to para. 11 of the judgment.

167 National Social Appeals Board, decision of 14 December 2005. Reported in A-1-06, 3 February 2006.

168 National Social Appeals Board, admissibility decision of 3 March 2006.

169 National Social Appeals Board, decision of 30 August 2006. Reported in A-34-06, 1 December 2006.

from December 2005 – and possibly also raises problems under EU law – it cannot as such be considered an impediment to the free movement of workers between Member States.

Two Appeals Board decisions from the spring of 2009 have upheld *acquisition of the status of worker in Denmark* upon return as the decisive criterion for the application of the EU exemption from the residence requirement for payment of full social assistance. Both cases concerned Danish citizens, and were admitted by the National Social Appeals Board 'with a view to further clarification' of EU rules pertaining to applications for social assistance. In the first one, the Danish citizen had returned to Denmark after staying in Germany for around 1½ years, and it is not entirely clear whether and to which extent she had been employed in Germany. As she had only been temporarily employed for one day upon return, she was found not to have acquired the status of worker in Denmark, and the Appeals Board held that her period of residence in Germany could 'therefore' not be taken into account on equal terms with residence in Denmark.[170] The second case dealt with the special issues relating to the child of a Danish citizen working and residing in another Member State. While acknowledging the principle that family members derive rights from workers under EU law, the Appeals Board again here focused merely on the status of worker in Denmark. As he was working and residing in Belgium, the applicant's father could not be considered a worker in Denmark, and the applicant could 'therefore' not invoke derived EU rights from him in Denmark, just as the applicant himself had not acquired the status of worker in Denmark since he had returned for educational purposes and had been applying for social assistance when he left school.[171]

The abovementioned decisions did not discuss the possible relevance of recent ECJ judgments, in particular *Collins*, *Trojani* or *Eind*.[172] While the interpretation adopted by the Appeals Board is probably at variance with the legislative intentions behind the EU exemption in the Act on Active Social Policy, it also seems unsustainable under EU law at least since the *Eind* judgment which established that upholding EU rights upon return to the country of origin is not contingent on the EU citizen's renewed acquisition of the status of worker in that country.

170 National Social Appeals Board, decision of 29 April 2009. Reported in No. 137-09, 29 June 2009.
171 National Social Appeals Board, decision of 29 April 2009. Reported in No. 138-09, 29 June 2009.
172 ECJ judgments of 23 March 2004 *Collins* (C-138/02), 7 September 2004 *Trojani* (C-456/02), and 11 December 2007 *Eind* (C-291/05).

Chapter V
Employment in the Public Sector

1. ACCESS TO PUBLIC SECTOR

1.1. Nationality condition for access to positions in the public sector

A public employer has a special obligation to ensure equality for all employees regarding gender, ethnic origin, nationality etc.[173] as stated in the Co-operative Agreement, Section 5 (3) ('Samarbejdsaftalen'), which is an agreement on co-operation and co-operation committees in the state's companies and institutions.[174] Apart from the legislation on prohibition of differential treatment on specific grounds, a public employer is subject to the principle on equality ('lighedsgrundsætning'), the principle on legality ('legalitetsprincippet') and the rule on instruction ('instruktionsreglen').

Texts in force

Laws
According to the *Danish Constitutional Act* Section 27, Danish nationality is a prerequisite for employment as a *civil servant*.[175] This is modified, however, by the fact that foreign citizens can be employed on conditions similar to those of civil servants in positions where persons with Danish nationality are employed as civil servants. A rule on this is inserted in the *Act on Civil Servants*[176] and the *Act on Civil Servants' Pension*,[177] and reference is made to this rule and its connection with Art. 39 of the EC Treaty in the *Guidance on Personnel Administration*.[178]

Draft legislation, circulars, etc.

Circular 210 of 11 December 2000 ('Ansættelsesformcirkulæret') specifies the special positions where appointments as *civil servants* ('tjenestemænd') are confined. If the position is not regulated by the Circular, the employment is not encompassed by the rules on civil servants, and aliens are free to hold such posts on the same circumstances as Danish citizens.

According to the *Guidance on Personnel Administration*, the right to be employed on the same circumstances as civil servants is limited by restrictions justified by regard for public order, public security and public health. Moreover, the job advertisement may not impose a requirement of Danish citizenship in a manner discouraging EAA citizens from applying for

173 *Guidance on Personnel Administration* ('Personale-Administrativ Vejledning'), December 2008, issued by the State Employers' Authority ('Personalestyrelsen'), an agency within the Ministry of Finance, to public employers. The guidance is updated every year and is available at www.pav.perst.dk (registration is required). See Chapter 15.2.2.10.
174 Circular No. 9450 of 8 May 2008.
175 Constitutional Act No. 169 of 5 June 1953.
176 Consolidation Act No. 531 of 11 June 2004 and amendments, Section 58 c.
177 Consolidation Act No. 230 of 19 March 2004 and amendments, Section 19 (1).
178 Chapters 15.2.2.2 and 15.2.2.4.

the position, unless the position is encompassed by restrictions justified by regard for public order, public security and public health.[179]

Miscellaneous (administrative practices, etc.)

In 2004 the State Employers' Authority ('Personalestyrelsen',[180] an agency within the Ministry of Finance[181]) carried out a survey on the extent to which a requirement on Danish citizenship exists regarding positions in the public sector. The survey covers all Danish ministries but not the regional and municipal parts of the public sector.[182] The conclusion of the survey is that within the public sector there are in general not posts where a requirement on Danish citizenship is upheld. Exceptions to this are certain posts within the Ministry of Defence for which, however, a dispensation may be given, and certain posts within the Prison and Probation Service.[183] A supplementary survey from 2006 has shown that in practice, for certain other posts, mainly within the police, the juridical system and the foreign services, Danish nationality is required.[184]

1.2. Language requirement

Texts in force

Laws

Concerning equal treatment in access to employment, the central piece of legislation is the Act on *Prohibition of Differential Treatment on the Labour Market,*[185] which prohibits direct and indirect discrimination, harassment and instructions on differential treatment on grounds of race, colour, religion or belief, political opinion, sexual orientation, age or handicap or national, social or ethnic origin in the relationship between an employer and an employee, cf. Sections 2-5.

Draft legislation, circulars, etc.

The National Labour Market Authority ('Arbejdsmarkedsstyrelsen'[186]), which is an authority under the Ministry of Employment,[187] has issued a circular to the Act on *Prohibition of Differential Treatment on the Labour Market.* The Circular concerns employment agencies and

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179 Chapter 15.2.1.4, cf. 15.2.2.4. Cf. *Employment in the Danish State Sector*, publication from the State Employers' Authority, Chapters 1-3 available at www.perst.dk/~/media/Publications/2005/Employment%20in%20the%20Danish%20State%20Sector/Employment%20in%20the%20Danish%20State%20Sector%202005-pdf.ashx, accessed on 14 April 2009.
180 Official website: www.perst.dk.
181 Official website: www.fm.dk.
182 Neither does the survey include information on positions for law graduates within the Danish courts.
183 See *Employment in the Danish State Sector*, Chapter 3.
184 Cf. information from the Ministry of Employment in *Danish remarks to the Danish Report 2006,* p. 4 ad p. 24 and information obtained by e-mail from an official within the Ministry of Employment of 17 June 2008.
185 Consolidation Act No. 1349 of 16 December 2008. See above Chapter II.
186 Official website: www.ams.dk.
187 Official website: www.bm.dk.

their dealing with employers and ethnic minorities and constitutes general guidelines for the prohibition against differential treatment on the labour market.[188]

According to the Circular, a language requirement is formally a neutral requirement. However, a language requirement may constitute indirect discrimination when an employer's language requirement is not reasoned/objectively justifiable. This will be the case if the requirement to the person's ability to speak or write Danish is disproportionate to and without relevance for the maintenance of the job in question.[189]

According to the Circular, qualification requirements in general have to be justified by considerations of satisfactory maintenance of the job in question.

1.3. Recognition of professional experience for access to the public sector

Texts in force

Draft legislation, circulars, etc.

In a paragraph in the *Guidance on Personnel Administration* it is expressly stated that previous employment in other Member States shall be taken into account to the same extent as had it been employment in Denmark. [190] This applies to Danish citizens and other EU/EEA citizens alike. In the guidelines reference is made to the jurisprudence of ECJ and the Communication from the Commission from December 2002.[191]

2. WORKING CONDITIONS

Texts in force

Draft legislation, circulars, etc.

Regarding salary, the *Guidance on Personnel Administration* states that *professional experience obtained in another EU/EEA country* has to be accounted for in the same manner as had the occupation been in Denmark.[192]

Hence, the comparison of previous occupation has to be performed on an objective and non-discriminatory basis, and without accounting for whether the previous employment was under the conditions for civil servants or collective agreements. These principles apply to both workers from other Member States and Danish citizens working in another Member State. In the guidelines reference is made to the jurisprudence of ECJ and the Communication from the Commission from December 2002. *Circular No. 6633 of 16 July 1987* on Salary Seniority lays down the detailed rules on determination of advantages.

Regarding grade, which per definition is a single reward granted for employment by the same employer for a certain period of time (i.e. loyalty), the most recent *Circular No. 9340 of 30 June 2009* states that the seniority is estimated from the first employment within the Danish State only. Respectively, the size of the grade granted for employment in the Danish

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188 Circular No. 60339 of 29 October 1998.
189 Chapter III.B.
190 Chapter 16.2.4.1.
191 *Free movement of workers – achieving the full benefits and potential*, Communication from the Commission, 11 December 2002 (COM (2002) 694).
192 Chapter 16.2.4.1.

State amounts to 4,000 DKK (app. 550 Euro) for 25 years, 5,000 DKK (app. 650 Euro) for 40 years and 6,000 DKK (app. 800 Euro) for 50 years of employment.[193]

Recent legal literature

Karsten Engsig Sørensen & Poul Runge Nielsen, *EU-Retten*, 4th ed., 1st print, Copenhagen 2008.

Ruth Nielsen, *Dansk Arbejdsret,* 1st ed., 1st print, Copenhagen 2008.

Ruth Nielsen, *EU-arbejdsret*, 4th ed., 1st print, Copenhagen 2006.

Jens Kristiansen, *Grundlæggende arbejdsret,* 2.nd ed., 1st print, Copenhagen 2009.

Ole Hasselbalch, *Den danske arbejdsret,* Copenhagen 2009.

Ole Hasselbalch, *Arbejdsmarkedets regler 2008*, 8th ed., Copenhagen 2008.

193 The size of the grade is adjusted once every second year.

Chapter VI
Members of the Worker's Family and Treatment of Third Country Family Members

1. RESIDENCE RIGHTS – TRANSPOSITION OF DIRECTIVE 2004/38/EC

Texts in force

Administrative rules
Sections 8-12 of the EU Residence Order lay down specific rules on residence rights for family members of workers, self-employed persons, seconded persons, students, persons with sufficient means, and retired persons, respectively. Sections 14 and 15 provide for the continued right of residence for family members after the principal person's death or departure, and upon dissolution of the marriage. In contrast to previous versions of the Order, the 2008 and the 2009 EU Residence Order also includes a specific provision on residence right for family members of Danish citizens (Section 13). Detailed rules on documentation and other requirements for the issuance of registration certificates and residence cards have been laid down in Sections 21-29 of the EU Residence Order.

As described in detail in previous reports, various issues have been persistently raised in recent years concerning the rules on residence right for third country family members, as well as their implementation in administrative practice. In particular, there have been contentious issues concerning

- The requirement of *previous lawful permanent residence* in an EU/EEA Member State
- The *personal scope* of application of the EU rules concerning third country spouses of *Danish citizens*, that was limited to Danes who had been *economically active* in another Member State, i.e. having resided there as workers, service providers or self-employed persons, or as retired from such activity.
- The requirement that the Danish citizen be *economically active* upon return to Denmark, or returning to Denmark for retirement upon such activity in the host Member State.

These issues were solved during 2008:

- As a result of the ECJ judgment in *Metock*[194] the requirement of previous lawful residence in an EU/EEA Member State was abolished. Instead, various measures were taken in order to prevent abuse of the EU rules on residence right for family members.[195]
- As part of the political agreement of 22 September 2008 on the implementation of the EU rules on free movement in light of the *Metock* judgment, it was decided to widen the personal scope of application of these rules concerning third country spouses of Danish citizens. Accordingly, the EU rules can now be invoked by a Danish citizen who has resided in another Member State as either worker, self-employed person, service provider, as a retired worker or self-employed or service provider, or as a seconded person, student or person with sufficient means. Thus, although this was not an issue expressly dealt with in the *Metock* judgment, the adjustment of administrative practice in this regard was

194 ECJ judgment of 25 July 2008 *Metock* (C-127/08).
195 Executive Order No. 984 of 2 October 2008 amending the EU Residence Order. See further Sections 1.2 and 1.3 below.

decided as an indirect consequence of the judgment, probably in order to prevent further political controversy over the Danish implementation of the EU rules.

- As a result of the ECJ judgment in *Eind*[196] the Ministry of Refugee, Immigration and Integration Affairs adopted new guidelines according to which the returning Danish citizen will be entitled to bring his or her family back to Denmark even if he or she is not employed or carrying out other economic activity at the time of return from abroad.[197]

Judicial practice

Nothing to rep*ort.*

On a related matter, however, it should be noted that in November 2008 the Parliamentary Ombudsman issued a report on alleged failures by the Danish Immigration Service in providing adequate guidance on residence rights under the EU rules, in particular for third country spouses of Danish citizens, to persons affected by these rules and the administrative implementation thereof. The Ombudsman addressed criticism towards the Immigration Service and the Ministry of Refugee, Immigration and Integration Affairs, while acknowledging the efforts of these authorities to remedy the failures.[198]

1.1. Situation of family members of jobseekers

Texts in force

The abovementioned rules on residence rights for family members of EU workers apply similarly to the family members of jobseekers. While the period of residence permitted for the purpose of seeking employment is normally limited to 6 months (see above Chapter I.2), the jobseeker will be permitted to bring family members to Denmark for the same duration of time. The personal scope of this residence right is limited to spouses, registered partners or regularly cohabiting partners, children below 21 years of age, and other dependent family members.

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196 ECJ judgment of 11 December 2007 *Eind* (C-291/05).

197 Press release of 15 January 2008 from the Ministry of Refugee, Immigration and Integration Affairs. According to the Danish Ministry of Employment (letter of 27 February 2008 to the European Commission with remarks to the Report for 2006, p. 4), the change of administrative practice took place already on 11 December 2007. From the transcript of the hearing of the Minister of Refugee, Immigration and Integration Affairs by the Parliament Committee on Aliens and Integration, 15 January 2008, question A, it may be assumed that the administrative practice would be changed as of that date, while no concrete cases raising this issue were known to be pending at the time. According to a memorandum of 10 April 2008 from the Ministry of Refugee, Immigration and Integration Affairs, the change of practice would have legal effect as of 11 December 2007, whereas decisions made before that date were not to be re-examined on the authorities' own motion.

198 Parliamentary Ombudsman, final report of 21 November 2008.

1.2. Application of Metock judgment

As mentioned above, the *Metock* judgment resulted in amendments of the EU Residence Order and adjustment of administrative practices.[199] Given that the political controversies over the judgment, as well as the legal measures adopted in order to implement it into Danish law, are well-known to the Commission, and the latter were subject to discussion between the Danish Government and the Commission, it is considered unnecessary to discuss the measures adopted in this connection in detail. The main elements of the amendments concerning the requirement of third country family members' previous lawful residence, as well as the adjusted practices concerning third country family members of Danish citizens returning from another Member State, are described above. The compensating measures taken to prevent abuse of the EU rules on residence right for family members will be briefly described in Section 1.3.

1.3. How are the problems of abuse of rights (marriages of convenience) tackled?

As part of the political agreement of 22 September 2008 on the implementation of the EU rules on free movement in light of the *Metock* judgment, it was decided to take various measures in order to prevent abuse of the EU rules, in particular those on residence right for family members. This decision was implemented by the amendment of the EU Residence Order, inserting provisions on the refusal of residence cards on grounds of public policy, public security or public health, or in case of abuse of rights or fraud (Section 22 (5), Section 23 (2), Section 26 (1) in fine, and Section 26 (3)). Furthermore, it is a precondition for the issuance of the family member's registration certificate or residence card that both spouses or partners declare that the purpose of contracting the marriage or the partnership or establishing cohabitation was not solely to obtain a separate basis of residence for the person applying for the residence document (Section 23 (1) and Section 26 (2)). Proof may also be required that the principal person has established genuine and effective residence in Denmark (Section 23 (1) and Section 26 (2)).[200]

2. ACCESS TO WORK

Texts in force

According to Section 14 (1) (ii) of the Aliens Act, aliens who are encompassed by the EU free movement rules, as described in Sections 2 and 6 of the Act, are exempt from the requirement of a work permit. While this exemption did not apply to EU-10 workers falling

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199 Executive Order No. 984 of 2 October 2008 amending the EU Residence Order, and Information to the Immigration Service about amendments of the EU Residence Order and of practice as a consequence of the *Metock* judgment, Ministry of Refugee, Immigration and Integration Affairs, 2 October 2008.

200 Executive Order No. 984 of 2 October 2008 amending the EU Residence Order. Detailed guidelines on the right to family reunification under EU law, and on the control measures mentioned above, are laid down in Information to the Immigration Service about amendments of the EU Residence Order and of practice as a consequence of the *Metock* judgment, Ministry of Refugee, Immigration and Integration Affairs, 2 October 2008. See also the official information accessible at www.nyidanmark.dk/en-us/coming_to_dk/eu_and_nordic_citizens/eu-eea_citizens/family_reunification_in_denmark (family members of EU citizens in general) and www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/family_reunification_under_eu-law (family members of Danish citizens).

under the transitional rules, it is applicable to all EU workers since the abolishment of these rules as of 1 May 2009 (see Chapter VIII below). Similarly, Section 18 of the EU Residence Order exempts from the requirement to hold a work permit all persons who have the right of residence under the EU Residence Order.

3. OTHER ISSUES CONCERNING EQUAL TREATMENT (SOCIAL AND TAX ADVANTAGES)

As regards access to study grants for workers and their family members, see above, Chapter III, Section 4.5.

Chapter VII
Relevance/Influence/Follow-up of recent Court of Justice Judgments

C-287/05 Hendrix

According to the Ministry of Employment, the judgment in *Hendrix* did not require any changes to Danish legislation.[201] There appear to be no cases or other information suggesting that this assessment of the judgment should not be appropriate.

C-527/06 Renneberg

According to information obtained from the Ministry of Taxation, the ECJ judgement in *Renneberg* did not require any changes to Danish tax legalisation, as the rules on frontier workers introduced in Danish legislation upon the ECJ judgement in *Schumacker,*[202] such as The Act on *Pay-as-you-earn Taxation* ('Kildeskatteloven') Section 5B,[203] allows tax relief in situations similar to the situation in *Renneberg*, cf. above Chapter III.4.1.[204]
There appear to be no cases or other information suggesting that this assessment of the judgment should not be appropriate.

C-94/07 Raccanelli

According to information obtained from the Ministry of Employment, the judgment in *Raccanelli* did not require any changes to Danish legislation. The reasoning behind this is the fact that the general rules on interpretation of the concept of workers apply, as no rules on the interpretation of the concept of worker apply specifically to researchers and artists, cf. above Chapter III, 4.4.[205] There appear to be no cases or other information suggesting that this assessment of the judgment should not be appropriate.

201 Cf. e-mail of 15 July 2009 from an official within the Ministry of Employment.
202 ECJ Judgment of 14 February 1995 *Schumacker* (C-279/93).
203 Consolidation Act No. 1086 of 14 November 2005 and amendments.
204 Cf. e-mail from an official within the Danish Ministry of Taxation of 9 July 2009.
205 Cf. e-mail of 15 July 2009 from an official within the Ministry of Employment.

Chapter VIII
Application of Transitional Measures

Texts in force

Laws

The transitional rules on work and residence for EU-10 citizens were revised as of 1 May 2008.[206] The main principle guiding the revision was the distinction between jobs and companies covered by *collective agreements*, and those not covered by such agreements. According to the amended Section 6 of the Aliens Act, EU-10 workers employed under ordinary conditions according to a collective agreement had the right of residence in Denmark on equal footing with other EU workers (Section 6 (2)). Researchers, teachers, managers and highly-skilled specialists had the same right of residence even if their terms of employment were settled in an *individual contract*, provided that conditions were ordinary and that the company was otherwise covered by a collective agreement (Section 6 (3)).[207] In the latter case, the employer must issue an affidavit on the employment conditions to the Regional State Administration, and the company must provide workers employed under a collective agreement with written documentation stating the collective agreement applicable, cf. Section 6 (3) in fine and Section 6 (4), respectively.

While EU-10 citizens employed under a collective agreement or by a company covered by such an agreement, in accordance with the abovementioned provisions of the Aliens Act, were exempted from the requirement of *work permits*, this requirement was upheld for other EU-10 workers. For those who were neither personally covered by a collective agreement nor employed as highly-skilled specialists etc. in companies covered by such an agreement, the transitional rules continued to apply.

These rules were formally modified as of 1 May 2008 in the sense that *only a work permit* was required under the amended Section 9 a (5) and (6) of the Aliens Act. The former provision dealt with EU-10 workers in general, the latter with researchers, teachers, managers and highly-skilled specialists. According to the 2008 EU Residence Order, these categories of workers had the *right of residence* if they fulfil the conditions for a work permit under Section 9 a (5) or (6) of the Aliens Act.[208] This modification was introduced in order to bring the transitional rules in line with Directive 2004/38, as the possibility of maintaining transitional arrangements was considered to relate only to the right to seek and take up employment.[209] Once an EU-10 worker had been affiliated with the Danish labour market for 12 consecutive months, he or she would be entitled to residence under the general EU rules on free movement.[210]

According to a political agreement of 4 December 2008, the transitional rules were to be abolished altogether. The bill implementing that agreement was tabled before the Parliament

206 Act No. 264 of 23 April 2008, amending the Aliens Act.

207 The delimitation of these categories of employees, which was thus decisive to the applicability of the general EU rules on free movement, was clarified in the explanatory memorandum to Bill No. L 65/2007-08 (2. Session), pp. 14-15.

208 Section 3 (3) of the 2008 EU Residence Order.

209 Explanatory memorandum to Bill No. L 65/2007-08 (2. Session), pp. 8-9.

210 Section 9 a (7) of the Aliens Act, and Section 3 (4) of the 2008 EU Residence Order.

on 25 February 2009,[211] adopted by the Parliament on 21 April 2009, and entered into force as of 1 May 2009.[212]

Administrative rules
Certain provisions of the 2008 EU Residence Order, as described above.

Draft legislation, circulars, etc.

Amendment of the Aliens Act according to a political agreement of 4 December 2008, see above.

Recent legal literature
Nikolaj Malchow-Møller et al., *Det danske arbejdsmarked og EU-udvidelsen mod øst*, Copenhagen 2009.

211 Bill No. L 141/2008-09.
212 Act No. 313 of 28 April 2009, amending the Aliens Act.

Chapter IX
Miscellaneous

1. Short analysis of existing policies, legislations and/or practices of a general nature

A clear aim of increased recruitment of foreign labour and attracting highly qualified labour to Denmark has had an impact on the Danish legislation.[213] Examples of this have been described in the previous Chapters,[214] and another example is the amendment of Aliens Act Section 9a on the issuance of residence permits on the basis of employment or self-employment by Act No. 486 of 17 June 2008. The Act implements a number of the initiatives mentioned in the government's Job Plan, such as an expansion of the positive list to encompass aliens who are bachelors or has a medium long education, a lowering of the amount limit of the job card arrangement, an adoption of an expanded green card arrangement (point system), the possibility of residence permit when working for an international concern with a division in Denmark, better access to job change and an adjustment of the access to continued residence for certain groups of aliens in employment.[215]

2. Studies, seminars, reports, legal literature (copies)

The Confederation of Danish Labour Unions ('LO')[216] held a seminar on 20 October 2008 on the future of the Danish collective bargaining model in light of recent jurisprudence from the ECJ.

The programme is available at www.lo.dk/AKTUELT/LOnyheder/~/media/LO/Aktuelt/LO_Nyheder/EU_seminar_program.ashx.

The Copenhagen Business School ('CBS')[217] holds a conference on 18 September 2009 on the role of courts in developing a European social model, see www.cbs.dk/forskning_viden/institutter_centre/institutter/law/hoejreboks/arrangementer/2009_09_18_09_00_00_conference_the_role_of_courts_in_developing_a_european_social_model_theoretical_and_methodological_perspective. The conference is part of the project 'Blurring Boundaries: EU Law and the Danish Welfare State' and a description of the project and the related publications are available at www.cbs.dk/forskning_viden/institutter_centre/institutter/law/menu/forskningsprojekter.

The Copenhagen University ('KU')[218], Centre of European Policy,[219] held a seminar on EU's coordination on social security on 23 April 2008 in corporation with the Swedish Lund

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213 See the Agreement on a Job plan of 28 February 2008 pp. 8-11, available at www.fm.dk/db/filarkiv/19625/jobplan.pdf, accessed on 20 April 2009.

214 See above Chapter II, draft legislation, on the proposed amendment of the Act on Danish Courses for Adult Aliens et al. and Chapter III.2 on the amendment of the Act on Pay-as-you-earn. Also, the establishment of www.workindenmark.dk, which is part of the governement's 13 step plan for recruitment of foreign labour, should be mentioned. The status of the government's 13 step plan as of 8 June 2007 is available at www.bm.dk/graphics/dokumenter/temaer/udlaendingesarbejdeidanmark/status.pdf,

215 Cf. explanatory memorandum to Bill No. L 132 on recruitment of foreign labour etc. of 27 March 2008.

216 Official website www.lo.dk.

217 Official website www.cbs.dk.

218 Official website www.ku.dk.

219 Official website www.cep.polsci.ku.dk.

University, see www.cep.polsci.ku.dk/nyheder/nyhedsliste/launch_311058/. The seminar was part of the larger project TrESS (Training and Reporting on European Social Security), financed by EU, see www.tress-network.org/TRESSNEW/.

Publications from the centre are available at www.cep.polsci.ku.dk/publikationer/.

Copenhagen University, Research Centre for Employment Relations by the Department of Sociology at the University of Copenhagen ('Forskningscenter for Arbejdsmarkeds- og Organisationsstudier', FAOS),[220] has launched a research program on 'Open markets and the Danish model', available at http://faos.sociology.ku.dk/default2.asp?lan=en&active_ page_ id=42. FAOS has published a number of research papers, available at http://faos.sociology.ku.dk/pub/?typ=3.[221] FAOS' most recent contributions to EIRO (European Industrial Relations Observatory On-line) are available at www.eurofound.europa.eu/eiro/2008/country/denmark.htm and www.eurofound.europa.eu/eiro/2009/ country/denmark.htm.

Aliens Act is available in English at www.nyidanmark.dk/NR/rdonlyres/C2A9678D-73B3-41B0-A076-67C6660E482B/0/alens_consolidation_act_english.pdf

EU Residence Order is available in English at www.nyidanmark.dk/NR/rdonlyres/42CF-236D-A334-4A40-A2B6-9AA0C4ABB61A/0/euopholdsbekendtgoerelsen322af21.pdf.

3. References to national organisation, bodies where citizens can launch complaints for violation of Community law on free movement for workers (apart from SOLVIT centres).

In Denmark, there is no establishment of specific bodies competent to deal with complaints of violation of Community Law. Hence, the complaints must be launched to the common bodies competent to deal with legal disputes, such as the courts, the sector specific complaint bodies, the administrative bodies and the Ombudsman.

220 Official website http://faos.sociology.ku.dk/.

221 Available in English at http://faos.sociology.ku.dk/default2.asp?lan=en&active_page_id=43.

NOTAT

January 2010

J.nr.

JAIC/LMN

Danish comments to Report on Free Movement of Workers in Denmark in 2008-2009

Vores sag
2009-0020067
5. kt./8. kt./2. kt.
BIF/BST/BEK/MNI

Below are listed the comments that the Ministry of Employment has received from relevant Danish authorities on the national report on free movement of workers in Denmark in 2008-2009 as received by the Commission by email of 10 November 2009. Some of the authorities have also given comments to those parts of the European report that concern Denmark.

The National Labour Market Authority (AMS)
"The National Labour Market Authority has the following comments on the report on the Free Movement of Workers in Denmark:

Chapter II: Access to employment

P. 14-15:
Instead of the following sentences:

> "*The job centres have an international Section, EURES, which is the co-operation between the European Commission and the Public Employment Services of the EEA countries and Switzerland and other partner organizations (such as unions, employers' associations and local/regional authorities) with the purpose of supporting the free movement of workers by facilitating information, advice and recruitment for citizens and companies.*
>
> *In 2008, the EURES special function was closed down. However, the tasks are now handled in 3 international centres, established on 1 October 2008. The 3 international centres have been established in the metropolitan area ('Høje Taastrup'), Aarhus and Odense, respectively. The purpose of the establishment of the centres is to strengthen and professionalize the recruitment of foreign labour in Denmark. Hence, the centres' core area are focused directly on assisting companies in recruiting workers from abroad and on assisting alien workers in their job seeking in Denmark in general*."

We would like to add some words and to use the words interpreted below to insure the text doesn't lead to misunderstanding:

> "*In 2008, the Danish Government launched a major Action Plan (the so-called Job Plan). The Plan included a range of measures to strengthen Denmark's ability to attract qualified manpower from other countries.*

On the service side, the existing set-up (launched 1 January 2007) with one EURES Specialist Unit in Aarhus and a EURES contact person in each of the 91 job centres was changed, taking effect as from 1 October 2009. In stead of a single specialist unit, three new service centres were established: Workindenmark East (Metropolitan area ´Høje Taastrup´, Workindenmark West (Aarhus) and Workindenmark South (Odense). The establishment of these tree centres should be seen as an overall strengthening of and a supplement of the existing efforts in relation to international recruitment and on assisting alien workers in their job seeking in Denmark in general.

The tree centres are all linked to EU's employment service EURES[1]and comprise of more than 30 recruitment experts who offer specialized information and service with regard to international recruitment in different languages, which the 91 job centres, companies and alien workers can draw upon. This includes:

- *helping companies and alien workers in general e.g.:*
    - *How to use www.jobnet.dk or www.workindenmarks's Job and CV bank*
    - *Be the link between an employer and a alien worker if the employer has a job vacancy*
- *work and residence permit/registration certificate, Civil Registration System number (CPR), tax card, language school and contact with the authorities;*
- *the ability to target sectors on the job market with the greatest labour shortages*
- *assisting in the implementation of major international recruitment initiatives*
- *promoting EURES (European Employment service)*
- *co-operation with authorities in Denmark and abroad, e.g. EURES*
- *Upon payment of a fee, the tree Workindenmark centres can also assist with the recruitment and retention process, including interviews, check of references, helping spouses, housing, activities for the family etc.*
- *info about working abroad.*"

<u>P. 15:</u>
We would also like to add following information concerning the new website <u>www.workindenmark</u>:

"*Along with the centres, a new comprehensive website www.workindenmark.dk (in Danish, English and German) has been launched. On the website, alien workers can set up a profile (CV) and*

[1] EURES (European Employment service) is the co-operation between the European Commission and the Public Employment Services of the EEA countries and Switzerland and other partner organisations (such as unions, employers associations and local/regional authorities) with the purpose of supporting the free movement of workers by facilitation information, advice and recruitment for citizens and companies.

> *search for vacant jobs. Likewise, Danish employers can post job adverts and seek new employees in the CV bank. Here you can also find important information about job opportunities, as well as about rules for working in Denmark, tax, social welfare, health insurance, unemployment insurance, unemployment benefits, living conditions, etc.*"

P 16-17:
It is now the municipalities in Denmark, which are responsible for the public employment service. The Circular to Act on *Prohibition of Differential Treatment on the Labour Market* is not aimed at the municipalities. But the municipalities of course have to follow the rules in the law about *Prohibition Differential Treatment on the Labour Market*.

Chapter IV: 2. paragraph, Jobseekers entitlement to social assistance

The Danish government can confirm that the guidelines concerning the right of EU/EEA citizens to social cash benefits under the Act on Active Social Policy will be updated in the near future. (Guidelines on EU/EEA citizens´ right to social cash assistance and starting assistance - No. 19 of 4. April 2008, National Directorate of Labour.)

Chapter IV: 3. paragraph, Social assistance to Danish citizens returning from another EU country

Section 11 (3) of the Act on Active Social Policy makes it a requirement for the payment of full social assistance ("kontanthjælp") that the recipient has resided in Denmark during a total period of 7 years within the past 8 years. If this requirement is not fulfilled, the so called starting assistance ("start-hjælp") will be paid out instead. This requirement does not apply for EU/EEA citizens in the extent those according to EU-law are eligible for social assistance.

Regarding this exemption the report states, that some decisions from the National Social Appeals Board have created doubts about the scope of the EU exemption in particular regarding Danish citizens who have resided under the EU rules in another Member State, and then move back to Denmark.

In this connection The National Social Appeals Board has stated the following:

"Besides the decisions mentioned, the National Social Appeals Board made two decisions, 180-09, which was published on September 1 2009, and 207-09, which was published October 30 2009.

In the decision 180-09 a Danish citizen was found eligible to receive social cash assistance as he was regarded to have obtained status of worker in Denmark when he was reported sick after 18 days of employment. Residence in another EEA country could be equated with residence in Denmark

The National Social Appeals Board judged that there was a real condition of employment without time limit and that the applicant had subsequently been unable to work due to illness.

In decision 207-09, the Danish citizen was only entitled to starting assistance after returning home from a longer stay with the purpose of education in another EU country.

The reason was that the applicant had not obtained status of worker in Denmark after his return.

The fact that the applicant had joined private studies at a Danish university during his residence in another EU country, could not be equated with residence in Denmark. Consequently the residence in the other EU country could not be included in the calculation of the period of residence in Denmark. It was the physical residence in Denmark, which was decisive for the calculation of residence period.

The regulation on the use of social security schemes to employees and their families moving within the Community could not be used in relation to entitlement to social cash assistance as social cash assistance is not part of a social security scheme.

In both the abovementioned decisions the National Social Appeals Board stressed that it is decisive that status of worker has been obtained after returning to Denmark, in order to include the period of residence in another EU/EEA country.

The National Social Appeals Board has not in any of these published decisions on the right to social cash assistance or starting assistance (A-1-06, A-34-06, 137-09, 138-09, 180-09 and 207-09) found that there were real doubts, whether the applicants could be considered as migrant workers. The main issue in the decisions have been the applicants' status as workers under Regulation 1612/68, and thus rights under Article 7. 2 of the Regulation.

With respect to the reference in the report to the National Social Appeals Board for not including the relevance of recent EU rulings, especially Collins, Trojani and Eind, the National Social Appeals Board states that it has not - on the basis of the information in the cases - found reason to involve these judgements in the grounds for the decisions.

The information in the report does not alter that assessment.

The EU rulings have along with other legal sources been included in The National Social Appeals Board's assessment in relation to decisions on this matter.""

The Ministry of Employment
"Concerning equal treatment (pp. 16-20 + 39-40) the Ministry has made the following observations and comments:

<u>General observation</u>
The titles of the acts have in other connections been translated as follows:

- *Lov om forbud mod forskelsbehandling på arbejdsmarkedet mv.* translates as *Act on Prohibition against Discrimination on the Labour Market etc.*
- *Lov om Ligebehandlingsnævnet* translates as *Act on the Board of Equal Treatment*

Specific observations:
1) p. 16 + 39/40, under the heading Draft legislation, circulars, etc.
Comment to the sentence "*The circular concerns employment agencies (…)*":

The circular concerns ArbejdsFormidlingen (today Jobcentres), which are public authorities.

2) p. 19, second paragraph:
Comment to the sentence "*Hence, the amendment results in a union of the two existing Committees (…)*:

As a consequence of the establishment of the Board of Equal Treatment, The Gender Equality Board and The Complaints Committee for Ethnic Equal Treatment have been abolished. Pending cases by 1st January 2009 were transfered to the new board.

3) p. 19, fifth paragraph:
Comment to the sentence: "*violation of Collective Agreements containing on obligation to equal treatment (…) provided the case is not brought before the Industrial Committees/Courts (…)"* should be amended to:

"Violation of Collective Agreements containing on obligation to equal treatment (…) provided it is established that the union will not bring the case for review in the dispute settlement system for the organized employees."

The Ministry of Taxation
"The Ministry has the following comments that should clarify a few facts in the report on free movement of workers:

Page 21, third paragraph: The second sentence ("*Furthermore, the person in question…*") should be replaced with:

"*Furthermore, the person in question may not have been employed by his future employer for a period of three years before and one year after becoming a non-resident of Denmark*."

Page 21, fourth paragraph: The last sentence (*"As a main rule, the person…*") should be deleted.

Page 30, the chapter on "Researchers": In the first paragraph the words "*residing in Denmark for a maximum of 36 months at a time*" should be deleted."

The Danish Ministry for Culture

“The Ministry would like the following sentences in the report to be modified slightly: “*According to the most recent membership statement from 2008, DRU has 1,777 members. This makes DRU DIF’s smallest federation and its activities are solely performed on an ama-teur basis. Thus, neither nationality quotas nor transfer fees exist in Danish rugby”* (page 27).

In order to give a more precise account of the situation in Denmark, the sentences should in stead read:

“*According to the most recent membership statement from* ***2009 from the Sports Confederation of Denmark****, DRU has* ***2011*** *members. This makes DRU* ***among*** *DIF’s smallest* ***federations*** *and its activities are solely performed on an amateur basis. Thus, neither nationality quotas nor transfer fees exist in Danish rugby*.””

The Danish Maritime Authority
“The Danish Maritime Authority has the following comments to section 4.3 in the report, page 29:

In our view the report's descriptions and information on the maritime sector are not fully correct.

The original Act on the Danish International Register of Shipping, article 10, par. 2, constituted that collective agreements concluded by a Danish trade union can only cover persons, who are considered having residence in Denmark or who according to international obligations are to be treated as Danish nationals.

It follows from the judgement of the European Court of Justice in the so-called Da Veiga Case (C9/88) - which concerned a Portuguese seafarer whose primary centre of interest was in the Netherlands – that any European seafarer with a sufficiently close link to Denmark is to be treated as a person who is resident in Denmark. The seafarer can thus be covered by collective agreements concluded with Danish trade unions.

Already at an early stage of the Commission's infringement case against Denmark, the Danish government made it clear to the Commission that Denmark would respect the Lopes Da Veiga case. After intense negotiations and several meetings between the Danish Government and the Commission a revised article 10, par. 2, in the Act on the Danish International Register of Shipping (Law no. 214) was adopted by the Danish Parliament 17 March 2009 and entered into force 1 April 2009.

It now follows directly from the wording of art. 10, par. 2, that the Da Veiga case is respected.

The infringement case no. 2003/4827 against Denmark was officially closed by letter of 8 October 2009 from the Commission.”

The Danish Educational Support Agency (on behalf of the Danish Ministry of Education)

“The Agency does not have any specific comments to the national report. However, the Agency would like make a single comment to the European report’s section 4.5 in which it says: "*The following problem areas were identified: in Denmark, Greece (where the limitation has been challenged by the ombudsman), the Netherlands and the Slovakia study grants are only available after five years residence.*" This does not correspond with the Danish rules and how these (correctly) are described in the national report.”

Danish Ministry of Refugee, Immigration and Integration Affairs
“After a review of Chapter VI: ”Members of the Worker’s Family and Treatment of Third Country Family Members”, the Ministry have in bullet 1 on page 42 found an inaccuracy.

There is in our view no doubt, that the former requirement of previous lawful residence in a Member State did not presume the residence permit involved had to be of permanent character. The word "permanent" is therefore not correctly used in this context and should consequently be deleted.”